

(2016) 11 AP CK 0067

In the Andhra Pradesh High Court

Case No : Criminal Appeal No.1517 of 2010

Prashanth Bhala Chandru Mangrule

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 08-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302

Citation : (2017) 2 ALTCrI 91 : (2017) 1 HLT(CrI) 168

Hon'ble Judges : C.V. Nagarjuna Reddy and M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : Mr. P. Prabhakar Reddy, Counsel, for the Appellant; Public Prosecutor (TS), for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—;This Criminal Appeal is filed by the sole accused in Sessions Case No.648 of 2007 on the file of the learned Additional Metropolitan Sessions Judge-cum-III Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District at L.B.Nagar, assailing his conviction for the offences under Sections-302 and 201 of the Indian Penal Code and sentencing to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months, for the offence under Section-302 IPC and also to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month, for the offence under Section-201 IPC. The said sentences were directed to run concurrently.

2. The case of the prosecution, in brief, is as follows:

The appellant is the husband of the deceased; that their marriage was performed on 23.11.2005; that they lived happily for six months and thereafter, the appellant and his parents started harassing the deceased to bring additional

dowry of Rs.50,000/- to purchase motor cycle and to bring gold; and that P.W-2-uncle and P.W-3-cousin of the deceased, respectively, and Shivalal Bhasme and Rekha Bhasma, who are close relatives, went to the house of the appellant and requested him not to harass the deceased and promised to arrange the demanded amount. It is the further case that on 25.4.2007, the father of the appellant informed P.Ws.2 and 3 on phone that the appellant took the deceased for medical check up to Dr. Zambre at Sholapur and they did not return to the house and asked them whether the couple came to their house; that on 26.4.2007, P.W-3, Shivalal Bhasme and his wife-Rekha Bhasme went to the Village of the appellant and enquired with his parents, but they did not get any information about the appellant and the deceased; and that they came back to Sholapur and went to Dr. Zambre, who informed that the appellant and the deceased visited her hospital on the previous day. That on 27.4.2007, at about 12 noon, P.Ws.3 and 5 received a phone call from Sachin Kotade stating that the appellant is at Loni Kalbhor area, which is near Pune, and asked them to come there; and that P.Ws.2 and 3 and some other relatives went to that place, wherein the appellant informed that five strangers promised them to drop at Sirapur Village and they sat in the jeep at Dr. Zambre hospital and on the way, after drinking Limca (Cool drink) offered by them, he fell unconscious. That on 29.4.2007, on the repeated enquiries made by the Police personnel, the appellant confessed that he took his wife to Hyderabad by train on the pretext of seeing Ramoji Film City, took her to the nearby hillock and killed her by throttling her neck and burnt her dead body by pouring kerosene as their marriage was performed due to force of his parents. That based on Ex.P-1-report, case in Crime No.256 of 2007 was registered for the offences under Sections-302 and 201 I.P.C. and that during the course of investigation, on 30.4.2007, P.W-12 recorded the confessional statement of the appellant, conducted inquest panchanama over the dead body of the deceased, recorded the statements of P.Ws.1 to 3 and 8 and arrested the appellant. That later, he sent the dead body of the deceased to P.W-10, who conducted autopsy over the same and issued Ex.P-6-Post-mortem report opining that the cause of death was due to strangulation associated with post-mortem burns. After completion of investigation, charge sheet was filed against the appellant.

3. As the plea of the appellant was one of denial, he was tried. In support of its case, the prosecution has examined P.Ws.1 to 13 and marked Exs.P-1 to P-14. On behalf of the defence, no oral evidence was let in, but Exs.D-1 to D-4 were marked.

4. On appreciation of the oral and documentary evidence, the trial Court convicted and sentenced the appellant as noted above.

5. Mr. P. Prabhakar Reddy, learned counsel for the appellant, made strenuous efforts to impress upon us to hold that the appellant is not guilty of murder. He submitted that the prosecution case is solely rested on circumstantial evidence, which does not connect the appellant to the alleged offence. He has further

submitted that the investigation is sketchy and that the articles such as mandible teeth, ear studs, Mangalasutras, red colour bangles, toe rings, silver leg chains, yellow colour nylon saree pieces and bunch of keys in the burnt hand bag, which were allegedly found on the body of the deceased, as mentioned in Ex.P-5-Dead Body Recovery Panchanama, have not been seized and produced before the Court. He has further argued that the evidence of P.W-1 is full of contradictions with regard to the alleged confessional statement of the appellant; that there was no necessity for P.W-1 to record the alleged confessional statement of the appellant-Ex.P-11 on 30.4.2007 in the limits of Hayathnagar Police Station, as deposed by him in the cross-examination, when Ex.P-3-Confessional statement of the appellant was recorded by P.W-12 at Hayathnagar Police Station on the same day; and that in view of the two different alleged confessional statements, one recorded by P.W-1 and the other recorded by P.W-12, it is not safe to convict the appellant. In support of his submission relating to the inadmissibility of the confessional statement recorded by the Police, the learned counsel placed reliance on the judgment of the Supreme Court in *Aghnoo Nagesia v. State of Bihar*, AIR 1966 SC 119.

6. The learned counsel further argued that P.W-3, who is a near relative of the deceased, deposed that on 29.4.2007, he along with his uncle-Shivlal and some Police personnel of Sholapur went to Loni Kalbhor; and that on the way, on the repeated enquiries made by the Police, the appellant confessed that he took the deceased to Hyderabad by train on the pretext of visiting Ramoji Film City, took her to the nearby hillocks, killed her by throttling and burnt her dead body by pouring petrol as he did not like his wife as, he was made to marry her out of force of his parents. That from this evidence, the Maharashtra Police came to know the place where the dead body of the deceased was lying and that, therefore, Ex.P-3- confessional statement of the appellant did not lead to discovery of the dead body of the deceased and hence, the same is not admissible in evidence. In support of his submission, he referred to and relied upon the judgments of the Supreme Court in *Musheer Khan and Anr. v. State of Madhya Pradesh*, 2010 (2)SCJ 840 = (2010) 2 SCC 748 and *Sahadevan and Anr. v. State of Tamilnadu*, (2012) 6 SCC 403.

7. Mr. C.Pratap Reddy, learned Public Prosecutor for the State of Telangana appearing for the respondent-State, opposed the above submissions of the learned counsel for the appellant and argued that even if there are lacunae in the investigation, the facts which are established beyond any reasonable doubt clearly show that it is only the appellant who has killed his wife and that, in view of existence of the incriminating circumstances, as discussed in detail by the lower Court, the appellant was rightly convicted for the offences under Sections-302 and 201 IPC and was appropriately sentenced.

8. We have carefully considered the submissions of the learned counsel for the parties with reference to the evidence on record.

9. The fact that the deceased met with homicidal death at a place far away from

her native Village in Maharashtra is established through the prosecution evidence. No detailed discussion in this regard need be undertaken.

10. The only issue that needs to be considered in this Criminal Appeal is whether the death of the deceased was caused by the appellant or not.

11. The appellant and the deceased were the married couple. It has come out in evidence that their marriage was performed on 23.11.2005 and the couple did not have children. The case of the prosecution is that on 27.4.2007, the appellant came to Loni Kalbhor Police Station and lodged a complaint stating that on 25.4.2007, at 10 am., he and his wife went to the hospital of one Dr. Jahmbare (P.W-4) at Sholapur to check up whether his wife was pregnant; that at about 11.50 am., P.W-4 informed the appellant that his wife was not pregnant; that at about 2.40 pm., they came out of the hospital and saw one white colour Mahindra Max jeep stopped before them, wherein they noticed a jeep driver and two other persons; that the appellant asked the driver whether he was going to Lomboti; that the latter has replied in the affirmative; that both the appellant and the deceased sat in the back seat of the vehicle; that when they reached Sholapur, one of the persons sitting on the front side of the vehicle took out three Limca (cool drink) bottles and gave one to the appellant; that after drinking a part of it, when the appellant offered the drink to his wife, she refused; and that, thereupon, the appellant himself drank the entire cool drink in the bottle. It was further stated that after drinking the cool drink, he fell asleep; that the deceased tried to wake him up, but he could not wake up and did not know what happened further; that on 27.4.2007 at about 10.30 am., when he regained consciousness and opened the eyes, he found himself lying in the forest area of M.S.E.B. near Sanjay Service Centre on Pune- Sholapur High way at Loni Kalbhor Village; that he made a phone call to his cousin-Sachin Subhash Khutale (not examined) and informed him about the afore-mentioned events; that in the afternoon, at about 1.30 pm., his brother-in-law, who resides in Pune, by name Sunil Bhagwan Bhojekar (not examined) came to him and gave water, tea and food and then, he regained full consciousness; and that, at that time, he realised that his wife was not with him and he also found that cash of Rs.1,300/- kept in his pocket and one Nokia Mobile phone were missing. It is this complaint, which was marked as Ex.P-9, that led to the registration of Crime No.10 of 2007 for the offences under Sections-363, 365, 328 and 379 read with 34 IPC on the file of Loni Khalbor Police Station. On the point of jurisdiction, the case was transferred to Foujdar Chawadi Police Station, Sholapur City, Maharashtra. After further examination of the appellant, the same was re-registered as Crime No.124 of 2007 for the afore-mentioned offences.

12. P.W-1, who was the Sub-Inspector of Police of Foujdar Chawadi Police Station at that time, deposed in his evidence that his investigation revealed that the appellant has taken his wife to Sholapur on 25.4.2007 on the pretext of medical examination; that on the same day, they started for Hyderabad; that on the following day, i.e ., on 26.4.2007, at 10.30 hours, they visited Ramoji Film City

at Hyderabad and remained there till 6 pm; and that thereafter, the appellant took his wife to a hillock near Ramoji Film City and throttled her neck at that place and killed her. He has further deposed that the appellant purchased two litres of petrol from the nearby petrol bunk and burnt the dead body of the deceased with an intention to screen the evidence and then, he reached Hyderabad bus-station, returned to Loni Khalbor Police Station and lodged a false complaint with a concocted story of abduction of his wife.

13. With regard to the version of the appellant mentioned in Ex.P-9-complaint, he did not take the same forward either by examining any witnesses, who are referred to in Ex.P-9- complaint, on his behalf or at least by giving relevant suggestions to any of the prosecution witnesses. Even in his Section-313 Cr.P.C. examination, the appellant did not reiterate the stand taken by him in Ex.P-9-complaint.

14. In a criminal trial, the accused need not take up a specific defence and if he takes any defence and it is proved to be false or incorrect, an adverse inference can be drawn. In the instant case, Ex.P-9 is the complaint which the appellant gave to the Police at Sholapur, wherein he has set up a concocted story that from 3 pm on 25.4.2007 till 10.30 am on 27.4.2007 he was lying unconscious by the side of the road after having been made to drink cool drink laced with some sedative. This story is highly improbable and unbelievable, more particularly, for the reason that not even a scratch of injury is shown to have been sustained by the appellant. Therefore, the appellant has failed to establish the version contained in Ex.P-9.

15. As regards the circumstantial evidence connecting the appellant to the offence, P.W-1-Sub-Inspector of Police, who conducted investigation, deposed in his evidence that the appellant confessed his guilt on the way to the Police Station on 29.4.2007. In the cross-examination, he deposed that he has recorded the confessional statement of the appellant in the presence of three witnesses, but, after verification of the case records, he deposed that since the appellant is the complainant, he has not recorded his confessional statement, but he has lodged the complaint at Hayathnagar Police Station on 30.4.2007 at 6.30 pm. The prosecution has marked Ex.P-11-the purported confessional statement recorded by P.W-1, which bears the date "30.4.2007". In his further cross-examination, P.W-1 while denying the suggestion that Ex.P-11 was recorded on 30.4.2007 at Hayathnagar Police Station, however, deposed that the same was prepared in the limits of Hayathnagar Police Station. He has further deposed that the appellant has confessed his guilt for the first time on 30.4.2007.

16. P.W-3 has deposed that on 29.4.2007 itself, the appellant has confessed his guilt and also informed about the place where he has committed the offence and the dead body of the deceased may be available.

17. A careful scrutiny of the evidence of P.W-1 shows that his version is self-contradictory as regards the date on which the appellant has allegedly confessed

the commission of the offence. As discussed above, at one stage of cross-examination, P.W-1 stated that the appellant confessed the commission of offence on 29.4.2007, while, at another place, he has stated that for the first time, the appellant has confessed his guilt on 30.4.2007. Even P.W-3 also stated that on 29.4.2007 itself, the appellant confessed his guilt.

18. In our opinion, these contradictions by themselves would not help the appellant. It is relevant to note that whether the Police received the information relating to the commission of offence on 29.4.2007 or on 30.4.2007, the fact remains that the source of information is common, viz ., the appellant. It is not the case of the defence that on 29.4.2007 itself, the Police have come to know about the place at and the manner in which the offence was committed through someone other than the appellant. Indeed, it is only through the appellant, that the Maharashtra and Hayathnagar Police have come to know about the offence and the place where the body was lying and therefore, it hardly makes any difference as to whether the appellant has confessed the commission of offence on 29.4.2007 or on 30.4.2007.

19. Section-27 of the Indian Evidence Act, 1872 (for short "the Act") is an exception to the general rule contained in Sections-24 to 26 thereof that confessional statement made to the Police is not admissible in evidence provided the confession lead to discovery.

20. Viewed from this perspective, in strict sense, Ex.P-11- confessional statement of the appellant is an inadmissible document as, no discovery was made in pursuance of the same. Therefore, the only document which is admissible in evidence is Ex.P-3 to the following extent:

"If you come with me, I can show you the place where I have burnt the dead body of my wife and if the dead body is there, I can show the dead body."

21. It is not in dispute that in pursuance of this confessional statement of the appellant, the Police were able to locate the place where the dead body of the deceased was lying and recovered the same, which is established by the evidence of P.W-9-an independent witness in whose presence the appellant was alleged to have made the confession. A perusal of the testimony of P.W-9 leaves no room for doubt that the same is consistent, cogent and reliable. Nothing is brought on record for disbelieving his evidence that the appellant made confession which led to the recovery of corpus delecti .

22. As regards the judgment relied upon by the learned counsel for the appellant in Musheer Khan (2 supra), that was a case where the Police had prior information about the availability of the dead body at a particular place through a source other than the accused. On those facts of that case, the Supreme Court held that the alleged confessional statement of the accused, which was not the source for discovery of the dead body of the deceased therein, was not admissible in evidence.

23. In Sahadevan (3 supra), the Supreme Court did not believe the confessional statement of the accused on the ground that it suffered from material discrepancies and inherent improbabilities.

24. On the facts of the present case, these two judgments will not be of any avail to the appellant because, as noted herein before, in spite of the vacillating testimony of P.W-1 regarding the date on which he has recorded the alleged confessional statement of the appellant, the fact remained that it is the same accused who made his confessional statement to Hayathnagar Police leading to discovery of dead body of the deceased. Therefore, we do not find any reason to discard the admissible portion of Ex.P-3 as, the same is in consonance with Section-27 of the Act and the settled legal principles.

25. Coming to the submission of the learned counsel for the appellant that non-recovery of the articles found on the dead body of the deceased would give rise to a serious doubt about the very identity of the dead body, a careful perusal of the entire evidence by us shows that no suggestion was put on behalf of the appellant to the prosecution witnesses about the identity of the dead body. It is not the case of the defence, as reflected from the evidence on record, besides the Section-313 Cr.P.C. examination of the appellant, that the dead body recovered by the Police is not that of the wife of the appellant. Though the investigation appears to be defective and there seems to be failure on the part of the investigation in recovering, preserving and producing the various articles found on the dead body of the deceased, this would in no way affect the case of the prosecution in proving the guilt of the appellant. After all, the deceased is the wife of the appellant, who, on his own showing, was with him till 25.4.2007, as both of them went to Sholapur for a check up. As noted herein before, the appellant tried to fabricate a story of abduction of his wife, which he miserably failed to establish. Being the husband, he is accountable for the whereabouts of his wife, and that, under Section-106 of the Act, he failed to offer satisfactory explanation on the missing of his wife who was admittedly with him till they came out of the hospital. Ex.P-3-admissible portion of the confessional statement of the appellant proves that he knew the place where the dead body of the deceased was lying and it is only through him, that the Police were able to recover the dead body of the deceased. Thus, the incriminating circumstances, viz ., he being with his wife at least one day before her death and his knowledge about the place where the dead body of the deceased was available, clearly establish the crucial links in the chain of circumstances.

26. For all the afore-mentioned reasons, we are of the opinion that the prosecution has succeeded in establishing the guilt of the appellant beyond all reasonable doubt and the trial Court has rightly convicted the appellant and sentenced him as supra.

27. In the result, the Criminal Appeal fails and is, accordingly, dismissed.