
(2007) 12 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1443 of 2005

Syed Momin Fazul Mohammed

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 04-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 302, 304A

Citation : (2008) 1 ALD(Cri) 374 : (2008) 1 ALT(Cri) 214

Hon'ble Judges : L. Narasimha Reddy, J; B. Prakash Rao, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This appeal, u/s 374(2) of the Code of Criminal Procedure, is filed by appellant (A-1), in S.C. No. 18 of 2003 on the file of Additional Sessions Judge, Hindupur, against the judgment of the trial Court dated 22-08- 2005.

2. The appellant was found guilty of the offence punishable u/s 302 of I.P.C., and was sentenced to undergo life imprisonment, and to pay a fine of Rs. 1,000/-; in default, to undergo simple imprisonment for one month. Accused No. 2 in that case was acquitted.

3. The case presented by the prosecution, before the trial Court, was as under:

A-1 and A-2 are husband and wife, and the latter was working as Auxiliary Nurse and Mid-wife, at Amadaguru Government Hospital, in Anantapur District. As part of their duties, herself and PW-2, by name, Shaik Mohammad Shafi, who was working as Health Assistant (Male), used to motivate the people to undergo family planning operation, and attend the persons who have undergone operation. In the process, they used to visit several villages.

4. On 04-01-2002, A-2 and PW-2 visited Kolimirallapalli village to motivate the people, for a State sponsored programme, scheduled to be held on the next day. B-Complex injection was given by them to four persons, who have undergone operation already. All the four persons complained of giddiness and vomiting, and immediately, they were shifted to nearby hospital at Kasamudram. The Assistant Civil Surgeon of Primary Health Centre, Amadaguru, PW-8, examined the patients and found that there was breathing problem. They were shifted to Government hospital, Kadiri, for further treatment. All the four women died, while undergoing the treatment.

5. On receiving the information about these deaths, the Inspector of Police, PW-19 rushed to the Hospital and recorded the statement of PW-1, the husband of D-4. CrimeNo. 1/2002 was registered u/s 304-A I.P.C., and F.I.R. marked as Ex.P-18 was issued. PW-19 conducted the inquest over the dead bodies of D-1 to D-4, and the inquest reports were marked as Exs.P-7 to P-10. Autopsy was also conducted on the dead bodies, and it was opined that the cause of the death in all the four cases was "Cardio respiratory failure", on account of administration of Cyanide poison. The postmortem reports were marked as Exs.P- 4, 13, 15 and 17.

6. PW-18, S.I of Police had undertaken investigation on the instructions of PW-19, the Circle Inspector. During the course of it, he visited Kolimirallapalli village and seized the vanity bag of A-2, which contained three injection bottles of cyanocobalamin vitamin B-12. Out of them, one was empty; one was partly used, and the other was unused (marked as MOs 3 to 7). They were seized under panchanama Ex.P-21. The matter was entrusted to C.I.D., for investigation.

7. PW-20, the Zonal Inspector of CID, Anantapur, prepared the rough sketch of the scene of offence, marked as Ex.P-22, and he examined the witnesses, PWs 6 and 11, on 11-01-2002 (PW-6 later on turned hostile). PW-11 is said to have informed PW-20, that A-1 purchased a piece of cyanide from him, from the shop of PW-12. A-1 was arrested on 13-01-2002. Some quantity of cyanide is said to have been recovered from him, under Ex.P-20, panchanama, during the course of interrogation. The appellant is said to have confessed that he mixed some quantity of cyanide in the injection bottles, brought by A-2. The same was forwarded to the forensic science laboratory and Exs.P-24 and 26 are the reports thereon. In view of these developments, the section in the FIR was altered to Section 302 I.P.C., and the name of the appellant was included.

8. The gist of the allegation against the appellant is that he suspected that his wife, A-2, was moving closely with PW-2 and with a view to break such relationship, he mixed cyanide in the injection bottles, that were to be administered by A-2 and PW-2, during the course of their duties, and in the result, the poisoned medicine came to be administered, resulting in the death of D-1 to D-4.

9. The plea of the appellant and A-2 was of total denial.

10. The prosecution examined PWs 1 to 20, and no witness was examined for the defence. Exs.P-1 to P-30 were marked. On a consideration of the oral and documentary evidence, before it, the trial Court found that the case against the appellant is proved beyond any reasonable doubt, and accordingly convicted him for the offence of murder, u/s 302 of I.P.C. Sentence of life imprisonment and fine of Rs. 1,000/- was imposed. It was directed that in default of payment of fine, the accused shall undergo imprisonment for one month. A-2 was found not guilty and accordingly she was acquitted.

11. Sri C. Padmanabha Reddy, learned Senior Counsel appearing for the appellant submits that there is absolutely no basis for convicting the appellant for the offence u/s 302 I.P.C., since there is no direct evidence, and the circumstantial evidence is, as scanty as it could be. He contends that when the appellant had denied his very relationship with A-2, the whole theory of his nurturing a motive to implicate the latter, by poisoning the medicine, fails. Learned Counsel further points out that there are several missing links in the version presented by the prosecution, and the trial Court committed serious irregularity in convicting the appellant. He had placed reliance upon the judgment of the Supreme Court in Anant Chintaman Lagu Vs. The State of Bombay, . Learned Additional Public Prosecutor, on the other hand, submits that though there does not exist any direct evidence, the circumstantial evidence, in this case, is unequivocal. He submits that the prosecution proved beyond any reasonable doubt that the appellant purchased cyanide in the shop of PW-12, through PW.11, and no explanation worth its name, was forthcoming from the appellant, as to how he used the same. He further submits that except making suggestion to some witnesses that the appellant is not the husband of A-2, no concrete evidence was placed before the court, in this regard. He contends that even in his statement u/s 313 Cr.P.C., the appellant did not offer any explanation for his conduct.

12. As many as 4 ladies, who have undergone Family Planning Operation, died on account of poisoned medicine. The needle of suspicion naturally pointed towards A-2 and PW-2, who administered the medicine, by way of intra-muscular injection. At the first blush, there was not even a remote suspicion, or doubt, as to the involvement of the appellant. It was only after the investigation proceeded to a substantial extent, that the prosecution suspected the role of the appellant in poisoning of the medicine. The whole case rested upon the circumstantial evidence.

13. Before the evidence on record and the contentions put forwarded by the appellant, on the one hand, and the prosecution on the other hand, are analysed, it is beneficial to note the law laid down by the Supreme Court, as regards the deaths due to poisoning. In Anant Chintaman Lagu Vs. The State of Bombay, the Hon"ble Supreme Court discussed the law on the subject, with reference to the judgments rendered by the English and Indian Courts. It was pointed out that in matters of this nature, the following circumstances must be established to

convict an accused for such offence.

a) that the death take place by poisoning;

b) that the accused had poison in his possession; and

c) that the accused had an opportunity to administer the poison to the deceased.

14. As to the standard of proof, it held as under:

The cases of this Court which were decided, proceeded upon their own facts, and though the three propositions must be kept in mind always, the sufficiency of the evidence, direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence in a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of the doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the Court can unhesitatingly hold that the death was a result of administration of poison (though not detected) and that the poison must have been administered by the accused person, then the conviction can be rested on it.

A case of murder by administration of poison is almost one of secrecy. The poisoner seldom takes another into his confidence, and his preparations for the commission of the offence are also secret. He watches his opportunity and administers the poison in a manner calculated to avoid its detection. The greater his knowledge of poisons, the greater the secrecy, and consequently greater the difficulty of proving the case against him. What assistance a man of science can give he gives; but it is too much to say that the guilt of the accused must, in all cases, be demonstrated by the isolation of the poison, though in a case where there is nothing else such a course would be incumbent upon the prosecution. There are various factors, which militate against a successful isolation of the poison and its recognition. The discovery of the poison can only take place either through a post-mortem examination of the internal organs or by chemical analysis.

15. Another aspect, which needs to be taken note of, is the relevance of the answers given by an accused, in his examination, u/s 313 Cr.P.C. It is trite that the burden to prove the guilt of accused squarely rests upon the prosecution. Wherever direct evidence exists, in relation to an offence, neither circumstantial evidence, nor the answers given by an accused in the examination u/s 313 Cr.P.C., would not assume much significance. However, if the only material is in the form of circumstantial evidence, the nature of answers given by the accused, in such examination, become relevant, particularly, when he gives an answer to the questions as to his conduct, or the circumstances, that are proved against him. In *Anthony D'Souza and Others Vs. State of Karnataka*, , the Supreme Court held as under:

There is also enough evidence on record that accused have been treated at various hospitals which is borne out from the evidence of Dr. Prakash Inamdar P-28 and Dr. Vasanth Kumar PW-26 and PW-29 Dr. Chandra Kumar Ballal, as noticed earlier. This would go to show that the accused had admitted the boarding of the lorry and the lorry met with an accident and they sustained injuries on their bodies out of the lorry accident. In their examination u/s 313 Cr.P.C. the accused denied the prosecution story in toto. They denied that lorry accident had taken place. They also denied to have received any injuries. In short, in their 313 statement they completely denied the established facts and offered false answers. By now it is well established principle of law that in a case of circumstantial evidence where an accused offers false answer in his examination under 313 against the established facts that can be counted as providing a missing link for completing the chain.

16. Its decision in *Swapan Patra v. State of West Bengal*, (1999) 9 SCC 242 and certain other precedents were also relied upon, and it was held that in a case, which mostly rests on circumstantial evidence, the explanation offered by the accused if found not to be true, would provide an additional link, to complete the chain of events and circumstances. It was also pointed out that a false answer offered by an accused, when his attention was drawn to a circumstance, would by itself become a factor, capable of inculcating him, and would provide the missing link to complete the chain. The present case needs to be examined, with reference to the principles mentioned above.

17. From the beginning, there was no doubt that D-1 to D-4 died, on account of administration of poisonous medicine. The Post-mortem certificates of D-1 to D-4 were marked as Exs.P-3, P-12, P-14 and P-16. The Doctors, who issued them, were examined as PWs.5, 13, 14 and 15. After conducting the post-mortem, some relevant parts of the respective bodies were sent for analysis by Forensic Science Laboratory, through Ex.P-5. The report thereon was submitted, with an observation that cyanide, a chemical poisonous substance, is found in them, except in turbid liquid, extracted from the four dead bodies. After taking into consideration, Pws.5, 13, 14 and 15 issued final opinions, which were marked as Exs.P-3, P-12, P-14 and P-16. In all of them, the cause of death was mentioned as, "The deceased would appear to have died of cardio respiratory failure due to cyanide poisoning.

18. The defence was not able to point out any defects in the Post-mortem reports, or the results recorded therein. PW-2 stated that the medicine, i.e. B-Complex injections, was drawn by A-2 from the Primary Health Centre, for administering the same to the patients on 5.1.2002, at Kolimirallapally village, during a Janmabhoomi Medical Camp. B-complex injection was given by A-2 to the four women, and when they complained of giddiness, he initially suspected the same, on account of their not taking food, earlier. But, soon thereafter, he contacted the Primary Health Centre, and took necessary steps. One empty bottle of the injection, one partly used and the other unused injection bottles

were recovered from A-2 and they were marked as M.Os.3 to 7.

19. The breakthrough in the investigation came, when the matter was entrusted to the CID. The name of the appellant surfaced, when PW.7 was examined by the CID. He came to be examined, in view of the fact that though he is a Goldsmith by profession, he deals in cyanide, for the purpose of polishing the ornaments. In his chief-examination in the Court, PW-7 stated that he knows the appellant and that he asked him for cyanide. The witness is said to have refused to sell cyanide, but subsequently, the appellant procured the same, through an employee of the witness, by name Brahma Chary, who was examined as PW-11. The evidence of this witness becomes relevant, only in the context of providing a clue, and he has no direct involvement in the matter. It was not even suggested to this witness that the appellant is not acquainted to him.

20. PW-11 also said that the appellant is known to him, since the latter used to come to the shop of PW-7. He admitted that he was employed under PW.7. He stated that the appellant asked for cyanide, when PW-7 was not in the shop. He stated that about one year prior to the date of his deposition, the appellant came to him and requested to procure cyanide from the shop of PW.12, and gave him Rs. 10/-. He further stated that he went to the shop of PW-12 and purchased a piece of cyanide for Rs. 8-50 ps. According to him, he handed over cyanide to the appellant, as well as the balance of Rs. 1-50 ps., but the appellant asked him to retain the change. PW-7 is said to have scolded this witness for procuring cyanide from PW-12 for the appellant, and even he removed him from service, subsequently. Though general suggestions were made to this witness, to the effect that the appellant did not purchase cyanide from him, it was not suggested that he did not pay Rs. 10/- and that he did not ask the witness to retain the change of Rs. 1-50 ps.

21. PW-12 stated that she sold a piece of cyanide to PW-11, by collecting Rs. 8-50 ps, on 2.1.2002. She has also stated that

22. PW-11 had purchased a piece of cyanide, one month prior to that date. The cross-examination of this witness was mostly about the employment of her son, her being illiterate, etc. It was also elicited through her that cyanide is sold only to goldsmiths, but it was not suggested that PW-11 is not a goldsmith. No motives were attributed to PWs-7, 11 and 12, for the statements made by them, in the course of deposition. Feeble attempt was made in the form of suggestions to PWs-2 and 7 that A-2 is not the wife of appellant. The basis for this suggestion was that A-2 would have been converted to Islam, had her marriage with the appellant been true.

23. In his chief-examination, PW-2 categorically stated that the appellant used to suspect illicit relationship between himself and A-2. The relevant portion of the deposition in this regard reads as under:

A-1 (Appellant) used to suspect illicit relationship between me and A-2 and came to beat me once, when I was at the house of A-2, talking to her. A-1 went to Gulf

countries for six months, came in the month of December 2001. Myself and A-2 used to go for duty on my Hero Puch Moped. I was examined by the police." No suggestion was made to this witness in the cross-examination, to deny this. This circumstance, together with the purchase of cyanide by the appellant, and his being in a position to mix the same with the medicines, supposed to be administered by A-2, become relevant. Out of the three circumstances, which become necessary in the cases of death due to poisoning, the first viz; that the death took place due to poisoning, is clear from the post-mortem reports, opinion from the Forensic Laboratory and final opinion in the post-mortem, about the death of D-1 to D-4. Secondly, it is proved that the appellant had poison in his possession, as is evident from the clinching evidence of PWs.7, 11 and 12. Thirdly, the appellant had an opportunity to administer the poison, which is in the possession of his wife, A-2. In addition, he had a motive and grouse against A-2 and PW-2. Through his answers in the form of bald denials, during the cross-examination u/s 313 Cr.P.C., the appellant had provided the missing links, if any, in the chain of events. The reason is that when he was under an obligation to explain as to what he did with the cyanide procured through PWs.11 and 12, his silence becomes a stray circumstance, and the principle laid down in Swapan Patra's case³ get attracted.

24. The trial court had analyzed the matter, from correct perspective, and on settled principles of law. We are not inclined to interfere with the judgment under appeal.

25. Accordingly, we dismiss the appeal, confirming the conviction and sentence awarded to the appellant by the trial court.