

(1967) 12 AP CK 0003

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 303 of 1966

The Public Prosecutor

APPELLANT

Vs

Papanna

RESPONDENT

Date of Decision : 26-12-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342

Citation : AIR 1969 AP 291 : (1969) CriLJ 1035

Hon'ble Judges : Venkateshwara Rao, J;Obul Reddi, J

Bench : Division Bench

Advocate : Seetharama Raju, for A. Gangadhara Rao, app, for the Appellant; V. Venkataramanaiah, for the Respondent

Judgement

Obul Reddi, J.—The State has preferred this appeal against the acquittal of the accused-respondent of the charges framed against him u/s 302, I. P. C. for causing the murder of his wife, and u/s 392, I. P. C. for committing of the crime, murder.

2. The case of the prosecution briefly stated is thus: The deceased Gowamma was married to the accused about ten months prior to the occurrence. Before here marriage one other person wanted to marry her, but ultimately P. W. 2, who brought her up, gave her in marriage to the accused. The accused was teasing her about the other suitor and this led to frequent quarrels between the husband and wife. According to P. W. 2, she has once, about a month prior to the occurrence, complained to him that her husband was not treating her properly. The brother of accused, P. W. 1 has also stated that his sister-in-law, the deceased, was not treated properly by his brother, the accused, and that there were frequent quarrels between the couple. On 20-12-1964 the accused accompanied by his wife, the deceased, went to the forest area, about a mile from the village to collect firewood. At the time when he left the house, he had taken a knife or cutting sickle and his wife accompanied him. P. W. 3 was the person who saw the deceased and the accused going together. She had also

accosted the accused. When accosted by P. W. 3, the accused told her that he and his wife were going to the forest to collect fire-wood, and they did not return that night (Sunday evening) nor anything was known about the accused and the deceased till Friday morning. On the morning of Friday, 24-12-1964. P. W. 4 came and informed P. W. 1 that he saw a dead body in the forest. Then P. W. 1 collected some persons and went to the forest area and there discovered the corpse of his deceased sister-in-law covered with an upon cloth (M. O. 2) belonging to his brother accused and also a knife(M. O. 1) which the accused had carried with him while going to the forest. He then went to the Village Munsif (P. W. 6) and gave a report Ex. P. 1 stating that the corpse of his sister-in-law was discovered in the forest area. The village Munsif sent report. Ex. P. 1 along with his printed reports to the Magistrate and the Sub-Inspector of Police. P. W. 15, the Sub-Inspector of Police, registered a case on the strength of Ex. P1 and issued express F. I. Rs. to all the concerned superiors and proceeded to the scene of occurrence reaching there by 4 a.m. on 28-12-64 . At the time of the inquest, he seized the bill-hook (M. O. 1), towel or upper cloth covered on the body of the deceased (M. O. 2) and jewellery on the person of the deceased.

3. P. W. 12, the Civil Assistant Surgeon of Kuppam was sent for to the scene of occurrence and he arrived at the scene of occurrence at about 1. 30 P. M. on 29-12-1964. He commenced autopsy on the highly decomposed body of the deceased at 2. 30 P. M. and found the following external injuries:

1. Pink coloured contusion 4" X 3" irregular shaped on the lower aspect of the left chest inside of whose wall is contused red bloody, spleen lacerated on the outer aspect and lies in clotted blood.

2. Left shoulder and left upper part of the chest red and contused irregularly.

3. An area 4" X 3" contused depressed wall at the lower aspect of right clavicle with 2 and 3 right ribs fractured bloody and it is clotted.

4. Right side of the scalp is red and congested compared to the left side of scalp. Right shoulder red and congested. Area from right ear to right shoulder and joints lacerated and macerated of all sort tissues almost exposing skeleton in that area.

In his opinion, the deceased died due to shock and hemorrhage as a result of the injuries. According to him, injury 4 could have been caused by a sharp-edged instrument like M. O. 1 and the other injuries by any blunt object like a stone or with the handle of a sickle. Therefore, there is no doubt from the injuries found by the Medical Officer and the opinion expressed by him that the death of the deceased was due to homicidal violence. The accused could not be traced till 28-4-1965 and on that day he was arrested by the Head Constable, P. W. 16. When the Head Constable questioned him, the accused made a statement, Ex. P. 4 which led to the discovery of the two witnesses, P. Ws. 7 and P. W. 8 and also the recovery of M. O. 3 gold earrings session of P. W. 8. The accused was sent to P. W. 11, the Judicial Second Class Magistrate and the Judicial Second class

Magistrate after observing the usual formalities, questioned the accused. The accused came out with a statement admitting that he and his wife went to the forest on the evening of 20-12-1964 and denying that he had anything to do with the crime.

4. When questioned by the Court below u/s 342, Cr. P. C. he likewise admitted that he and his wife went to the forest and that after he collected firewood, he saw two men coming in Khaki dress and being afraid of them, he ran away from there and while running away, he heard the cries of his wife, but could not come to her rescue as he was frightened of the two men in Khaki dress. The learned Sessions Judge found that the facts and circumstances established by the prosecution are not sufficient to bring home the guilt to the accused and acquitted him, giving him the benefit of doubt.

5. Mr. Sithrama Raju appearing for the Public Prosecutor contended that the learned Sessions Judge has misdirected himself in appreciating the clinching circumstances furnished by the prosecution which would reasonably establish that the accused was the person who committed the crime.

6. Mr. Venkataramanayya, the learned counsel appearing for the accused-respondent contended that the learned Session Judge has given cogent reasons for not basing the conviction on the material placed by the prosecution and that even otherwise the circumstances are not sufficient to complete the chain of circumstantial evidence to connect the accused with the crime.

7. We may, therefore, having regard to the contention of the Public Prosecutor and the learned counsel for the accused examine the facts established by the prosecution and see if they lead to no other conclusion except the one that the accused was the person who committed the ghastly crime of doing away with the life of his wife.

8. P. W. 1 is the brother of the accused and nothing has been suggested against him. The evidence of P. W. 1 is to the effect that there were frequent quarrels between his sister-law the deceased and his brother, the accused, ever since their marriage about 10 months ago. He also spoke to the fact that the accused and his wife left on Sunday evening for the forest to collect firewood. The fact that the accused left with his wife for the forest to collect firewood is not in dispute. In fact, the evidence of P. W. 3 goes to establish that she accosted the accused while he was being accompanied by his wife and accused told her that they were both going to collect fire-wood from the forest. Therefore, to this extent, there is no dispute that the deceased was last seen alive in the company of her husband, the accused on the evening of 20th December, 1964. So far as the actual incident is concerned, there is no direct testimony and it rests entirely on the circumstances relied upon by the prosecution.

9. Two glaring circumstances relied upon by the prosecution are: (1) the presence of the towels of the accused (M. O. 2) spread on the corpse of the deceased at the time P. W. 1 and other discovered the corpse; (2) the recovery of

the knife or sickle which the accused had with him and which according to P. W. 1 belongs to the accused. These two items, M. Os. 1 and 2, it may be relevant to point out were seized at the time of inquest by the Sub-Inspector P. W. 15. Therefore, the seizure of these two items M. Os. 1 and 2 which have been established to belong to the accused directly with the crime.

10. It is no doubt true that the accused is not bound to explain even if it is an incriminating circumstance appearing against him, but if no satisfactory explanation is forthcoming from the accused an adverse inference can certainly be drawn against the accused. The explanation given by the accused in this case is that after he collected some fuel, he saw two men "in khaki" and being afraid of their presence he ran away from the place leaving his wife to the mercy of the two men "in khaki." He went to the extent of stating before the Court of Session, that his wife was crying soon after he ran, but he did not go to her help, and after that he made himself scarce. There is no reason why he should be afraid of "the two men in khaki if really he was not imagining about the men in khaki" when he had not committed any crime and when he and his wife were merely collecting fuel from the forest area. There was no reason for him to be frightened as according to him by then he had not done anything to his wife and that he simply ran away being frightened by the two men "in khaki." The explanation offered by the accused is hardly convincing. His own explanation goes to show that he ran away from the scene of occurrence after he committed the crime for fear that he may be hauled up.

11. The next incriminating circumstance is the pledge of M. O. 3, the gold ear-rings. P. W. 1's evidence goes to show that the ear-rings (M. O. 3) belonged to his sister-in-law the deceased. The accused himself does not deny this fact. His explanation is that his wife had given him the ear-rings in morning, asking him to get them repaired and they were with him in his pocket and after the occurrence he went and pledged them with P. W. 8. The fact that he pledged them after the occurrence is another circumstance which goes to establish his complicity or connection with this crime. The accused does not deny that he made the statement, Ex. P. 4 u/s 27 of the Indian Evidence Act to the Head Constable which led to the discovery of two witnesses, P. Ws. 7 and 8 and recovery and seizure of M. O. 3 the gold ear-rings.

12. According to P. W. 7 the accused came to him first and wanted to know whether he was prepared to take M. O. 3 on pledge for Rs. 100 and when he expressed his inability, he wanted a person who could take the jewel on pledge and then at his instance, the accused went to P. W. 8 and there pledged M. O. 3 with P. W. 8. The evidence P. W. 8 goes to show that the accused came to him the next morning and pledged M. O. 3. When questioned by the Sessions Judge u/s 342, Cr. P. C. the (accused) admitted having made a statement which led to the discovery of the witnesses P. Ws. 7 and 8 and he also stated that he pledged M. O. 3 with P. W. 8. The immediate conduct of the accused after the incident in pledging M. O. 3 and not taking any steps subsequent to the cries of his wife to

know as to what had happened to her and why she raised those cries, and the recovery M. O. 2 the towel covered on the corpse are circumstances pointing to an infallible inference that the accused was the person who committed the heinous crime of killing his wife on the evening of 20th December, 1964. The circumstances are clinching enough to establish the guilt of the accused beyond the pale of any doubt. The learned Session Judge misdirected himself in appreciating the clinching circumstances placed by the prosecution and giving the accused the benefit of doubt. We have therefore, no hesitation in setting aside the acquittal of the accused and convicting him of the offence u/s 302, I. P. C. and sentencing him to imprisonment for life. Although the accused is guilty of the other charge u/s 392, I. P. C. it is not necessary to award any separate sentence.

13. The State Appeal is accordingly allowed.

Appeal allowed.