
(1995) 03 AP CK 0036
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 516 of 1994

Valasa Padma

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (1995) 2 ALD 103 : (1995) 1 ALT(Cri) 638 : (1995) 1 APLJ 456 :
(1995) CriLJ 3086

Hon'ble Judges : M.N. Rao, J; Krishna Saran Shrivastav, J

Bench : Division Bench

Advocate : Koonareddy Anjireddy and Koonareddy Raji Reddi, for the Appellant;
Public Prosecutor, for the Respondent

Judgement

M.N. RAO, J.—Accused No. 1 in Sessions Case No. 140/92 on the file of the learned Sessions Judge, Warangal is the appellant herein. She was tried along with one Chandanala Sudhakar, (A-2) her maternal uncle for committing murder of her step daughter Lavanya aged about 9 years on 19-11-1991 at about 10 A.M. at the outskirts of Urus, Kareemabad, Warangal by intentionally causing death by throttling her neck with hands, an offence punishable under S. 302, IPC. Both the accused were also charged under S. 201 read with S. 34 of the IPC for causing disappearance of the evidence of murder by throwing the dead body in the Sanoor well at Urus, Kareemabad, Warangal in order to screen themselves from legal punishment.

2. The deceased Lavanya was studying IV class in Chandra Memorial High School in Hanumakonda. P.W. 6, Valasa Rajender, is the father of the deceased. A-1 is the third wife of P.W. 6 and step-mother of the deceased. The first wife of P.W. 6 deserted him and so he married Suchitra, the mother of Lavanya, in 1981. Suchitra died in June 1983 and in November, 1983 he married A-1. A daughter by name Swati was born to A-1 in 1986. A-2 is the maternal uncle of A-1. He is also brother-in-law of P.W. 6 (P.W. 6's sister's husband).

3. The case of the prosecution in brief is that on 19-11-1991, the deceased Lavanya attended the school in the morning at about 8-30 A.M. She was studying in IV Class. That day she was to appear for a unit test which was to commence at 9-30 A.M. P.W. 10 was the class-teacher. At about 9 A.M. A-1 came to the school, introduced herself as the mother of Lavanya, sought permission to take Lavanya with her to the temple stating that she would send her back within a short time. P.W. 10 granted permission to A-1 and so Lavanya, leaving her books in the class room, followed A-1. Lavanya did not come back to the school. P.W. 4 was the invigilator for the unit-test. He found that Lavanya was absent on that day. When he enquired about her absence, he was told by P.W. 10, class teacher, that A-1 had taken away Lavanya with her. P.W. 7 Kum. Madhavi, a student of IV class was the class-leader and also a friend of Lavanya. When Madhavi was going to school, she saw at about 9 A.M., Lavanya and A-1 near a place called "tent-house" at Kumarpalli, coming from the direction of the school and at that time Lavanya was in school uniform and she was not carrying books. When she asked Lavanya as to whether she was going to attend the school, the latter replied that she would come. When the test commenced, she was asked to distribute answer sheets. A sheet meant for Lavanya remained with her as Lavanya was absent. She informed about this to P.W. 4 Prabhakar, invigilator for the unit test. Lavanya did not write the unit test on 19-11-1991 according to P.W. 4, the invigilator. P.W. 5 Rangaiah is the Head Master of the School. At about 8-45 P.M. when he was making rounds of the classes, he saw A-1 entering IV class with a suckling baby. In the evening P.W. 7 class-leader informed him that Lavanya left with her mother A-1 and she handed over the books of Lavanya to him. On the same day at about 7 P.M., the Head Master handed over the books of Lavanya to P.W. 6, her father. P.W. 8, Arvindakumar, a student of IV class studying in the same school saw the deceased and A-1 going from the direction of the school in a rickshaw in the morning on 19-11-1991 while he was on his way to school and he thought that A-1 might be taking the deceased for some purpose. That day Lavanya was absent for the unit test. P.W. 9, a resident of Urus area, on 19-11-1991 at about 10 or 11 A.M. went to answer calls of nature near tamarind trees, noticed at a distance of about 15 yards from the trees A-1 and A-2 and also the deceased. He found that the girl was weeping. Two days later P.W. 1 Kota Uppalaiah, a resident of Urus area, at about 10 A.M. while answering calls of nature observed two goats fighting near the well. He went near the goats to separate them. Then he noticed the dead body of a girl floating in the well. The body was naked except for the underwear. He went immediately to the Mills Colony Police Station and lodged a complaint Ex. P.1 which was registered by P.W. 13, B. Vijayalakshmi, Sub-Inspector of Police, Women Protection Cell, Warangal as a crime under S. 174, Cr.P.C. Immediately P.W. 13 went to the scene of offence and drew up an observation report. She also held inquest on the dead body on the same day. Ex. P.9 is the inquest report. During the inquest P.W. 6, the father of Lavanya, identified the dead body. The opinion of the inquest panchas was that the deceased might have died due to throttling. After the inquest was over, the dead body was sent to MGM hospital, Warangal,

for post-mortem examination. P.W. 12, Dr. V. P. Patnaik, Professor of Forensic Medicine Department, Kakatiya Medical College, Warangal, conducted autopsy on the body on 22-11-1991 at about 11 A.M. and he found the following ante-mortem external injuries :

- "1) A contusion of 6 x 6 cm. over the upper middle front of chest.
- 2) A contusion of 3 cm. diameter present 4 cm. below the chin just left of the mid line.
- 3) A contusion 3 cm. diameter over right side of neck 3 cm. above the inner end of right clavicle.
- 4) A contusion of 3 x 4 cm. one below the right (sic) another behind the left ear.
- 5) A contusion of 5 x 4 cm. front of right shoulder.
- 6) An abrasion 12 x 5 cms. over the forehead."

The cause of death in the opinion of the doctor might be due to throttling and that the death might have taken place about 3 days prior to the post-mortem examination. Ex. P. 6 is the post-mortem certificate. The doctor also opined that injuries 1 to 5 would have been caused due to throttling and injury No. 6 should have been caused by coming into contact with rough surface while struggling. The body was in a decomposed state so it was not possible to find out the finger prints on the neck. There was no fracture of hyoid bone and in case of throttling there need not necessarily be fracture of hyoid bone was the opinion of the doctor. After receiving the post-mortem report, the Sub-Inspector of Police P.W. 13 altered the Section in the FIR to one under S. 302 and 201 of the IPC and issued express alteration memo Ex.P. 10. P.W. 14, Circle Inspector of Police, on receipt of Ex.P. 10, conducted investigation. On 22-11-1991 he recorded the statements of P.Ws. 2, 3, 9 and others and also seized the school records. He arrested A-1 on 19-12-1991 at mandaripeta village at her parents house and on the basis of the information given by A-1 he recovered M.Os. 1 and 2, School Uniform of Lavanya from the house of A-1's parents. The seizure was effected in the presence of P.W. 11 and another Panch under a panchanama Ex.P.5. On 26-12-1991 A-2 was arrested at Mulug cross-roads, Warangal.

4. After the evidence of the prosecution was recorded and when the accused were apprised of the incriminating circumstances against them, they both pleaded innocence when examined under S. 313, Cr.P.C.

5. The learned judge believing the evidence of prosecution witnesses found A-1 guilty of the offence under S. 302 of the IPC and also under S. 201 of the IPC and sentenced her to imprisonment for life for the offence under S. 302, IPC and 3 years R.I. for the offence under S. 201, IPC. Both the sentences were ordered to run concurrently. A-2 was acquitted on the ground that P.W. 9 had facial acquaintance with A-1 and so he identified her but he did not whisper anything about his acquaintance with A-2. The learned judge, therefore, opined that there

was any amount of doubt whether A-2 also participated in the commission of offence and on that view gave the benefit of doubt to A-2.

6. Shri Raji Reddy, learned counsel for the appellant has contended that because the case of the prosecution rests entirely on circumstantial evidence, every link in the chain of the prosecution must be established by cogent evidence so as to lead to the only inference that the accused is guilty of the offence. According to him, every circumstance should be consistent with the guilt of the accused and inconsistent with the innocence. Tested by this rigorous standard, Mr. Raji Reddy says that the case of the prosecution contains several loopholes. There is no evidence that the deceased Lavanya was taken to the Sanoor well in Urus area. According to him, the crime might have been committed by some one else. The evidence of P.W. 9 which was not accepted for fastening guilt on A-2 could not also form the basis for conviction as against A-1, since he (PW. 9) did not tell the police in his 161 statement that he had known him prior to the crime in question. When two persons tried for one offence and if one is acquitted, the other one cannot be convicted under S. 302, IPC in a case of circumstantial nature since the possibility of the acquitted accused having committed the crime could not be ruled out.

7. We are not inclined to accept any of the contentions advanced by Shri Raji Reddy. The first circumstances against the appellant is her visit to the school, an unusual act, for taking away Lavanya with her. That she had taken away Lavanya with her is proved by the evidence of the Head Master P.W. 5. That Lavanya came to the school was spoken to by P.W. 5, the Head Master, who said that she was not in the habit of coming to school as Lavanya herself used to attend the school. That on 19-11-1991 test was conducted for the IV Class students and Lavanya was absent is established beyond reasonable doubt. P.W. 10, Ramachandraiah, the class-teacher testified that A-1 came to the school and sought permission to take away Lavanya with her, promising to send her back within a short time which had happened at about 9 A.M. P.W. 4 who was entrusted with the invigilation work in regard to the unit test on 19-11-1991 deposed that Lavanya was absent and when he enquired the class-teacher P.W. 10 and also the class-leader P.W. 7 they informed him that Lavanya was taken away by A-1 from the school. There is clear evidence that A-1 had left the school along with the deceased Lavanya. P.W. 7, the class leader of IV class, on her way to school, saw Lavanya and A-1 coming from the direction of the school and when she asked Lavanya whether she was coming to school, the latter replied that she would come back. P.W. 8, Arvindkumar, a student of IV class in the same school, on his way to school had seen A-1 and Lavanya going in a rickshaw. He thought that A-1 was taking away Lavanya for some purpose. On that day, at 7 P.M., he Head Master P.W. 5, handed over the books of Lavanya to P.W. 6, the father of Lavanya.

8. The next important link in the prosecution case is that, Lavanya did not come home to take lunch. She was in the habit of going home for lunch during lunch interval between 1 and 2 P.M. P.W. 6, the father of Lavanya, testified that he

went home for lunch at 2 P.M. When he asked his wife A-1 about Lavanya, she replied that Lavanya went to school after taking lunch. P.W. 6 also stated that A-1 was not looking after Lavanya properly. He also stated that Lavanya used to go to tuition after the school was over at 4-00 or 4-30 P.M. As she did not return home even by 5-00 P.M., P.W. 6 went to the tuition teacher and enquired. He was informed that Lavanya did not come for tuition. Later on he went to the school and found that there were no teachers and so he went to the place where the teachers were attending a school function. He was told there by the Head Master and the class teacher that Lavanya was taken away by A-1 in the morning and that she did not return. The teachers handed over the school books of Lavanya to P.W. 6. When he asked his wife A-1 as to what happened, she started weeping saying that she did not know anything. Nothing was elicited in the cross-examination of either the classmates of Lavanya, the School teachers or the Head Master suggestive of any circumstance to doubt their testimony.

Lavanya was last seen near the well by P.W. 9 who is a resident of Urus area. His explanation for his presence at that time was quite natural. He was suffering from ill-health and at that time he was under treatment of Dr. Sambamurthy. He went to answer calls of nature at about 10 A.M. towards tamarind trees in Urus area. The abandoned well was at a distance of 15 yards. He noticed there A-1, A-2 and also a girl who was weeping. Two days later he identified the dead body of the girl Lavanya to be that of the girl whom he had seen two days earlier at about 10 or 11 A.M. in the Urus area along with A-1 and A-2. As A-1 and P.W. 9 both hail from the same village, P.W. 9 had facial acquaintance with A-1 for a period of ten years prior to the date of incident. He also used to visit the house of A-1's parents in the village. In the cross-examination it was elicited from him that he did not inform the police that A-1 was known to him for ten years prior to the date of offence.

9. The learned judge gave benefit of doubt to A-2 on the ground that P.W. 9 had not stated anything about his acquaintance with A-2 and that for the first time he had identified A-2 in the Court hall. The omission in the 161, Cr.P.C., statement of P.W. 9 about his prior acquaintance with A-1, in our view, does not amount to a contradiction falsifying the very testimony of P.W. 9. In the chief examination, he did not state that he was acquainted with A-1 prior to the offence for a number of years. It was in the cross-examination, when asked, he stated that he was acquainted with A-1 because she is a native of his village. At the time when his statement was recorded by the police, evidently there was no need for him to mention, for how long he was acquainted with A-1; there was no need for him to state that he knew her because she happened to be a native of the same village from where he hails.

10. We are inclined to accept the testimony of P.W. 9 since it does not suffer from any infirmities. However, as the learned Sessions Judge gave benefit of doubt to A-2 and acquitted him, we cannot pronounce upon the guilt of A-2 in the absence of an appeal by the State. But, this will not preclude from assessing the evidence

of P.W. 9 for the purpose of judging the criminality of A1.

11. The three incriminating circumstances strongly establishing the guilt of the accused-appellant are (1) the recovery of M.Os. 1 and 2 from the parents house; (2) P. Madhavi P.W. 7, a class leader of IV class, on her way to school on 19-11-1991, saw the deceased accompanied by A-1 coming from the direction of the school and at that time the deceased was wearing school uniform. When P.W. 1 noticed the dead body of the deceased Lavanya in the well, it was naked-there was only one underwear on the body; and, (3) under Ex. P-5, M.Os. 1 and 2 viz., the school uniform of the deceased Lavanya were recovered at the instance of A-1 from her parents' house in the presence of P.W. 11 and another mediator. The evidence of P.W. 11 to the effect that the police seized M.Os. 1 and 2 cannot be brushed aside. Except an omnibus suggestion that police did not seize M.Os. 1 and 2 and Ex. P. 1 was not written in the village and that P.W. 11 was testifying falsely, no circumstances were brought in the cross-examination to doubt the credibility of his evidence.

12. The nature of the crime committed-throttling the neck of the deceased Lavanya with hands and throwing her in the well-suggest that it must have been perpetrated by more than one person. Even assuming that the person who participated in the crime along with A-1 was not A-2 but someone else, still we think that A-1 is liable for the offence of murder punishable under S. 302 read with S. 34 of the Indian Penal Code. Since she was helped by a second person in the commission of offence, S. 34 of the IPC comes into play. We are, therefore, not inclined to accept the contention of the learned counsel for the appellant that as A-2 was acquitted, A-1 cannot be convicted for the offence of murder.

13. For the foregoing reasons, the appeal fails. The accused-appellant A-1 is convicted in respect of charge No. 1 under S. 302 read with S. 34 of the IPC Code instead of S. 302, IPC simpliciter. The conviction recorded under S. 201 read with S. 34 of the IPC is sustained. The sentences awarded in respect of both the charges are confirmed. The appeal is dismissed.

14. Appeal dismissed.