THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Appeal No.834 of 2010

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Dated 29th February, 2016

Between:

Inakollu Thirupathi Reddy

.....Appellant

And

The State of A.P., rep.by
the Public Prosecutor,
Hyderabad

.....Respondent

Counsel for the Appellant: Smt.A.Gayatri Reddy

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

The sole accused in S.C.No.59 of 2008 on the file of the learned Special Judge for trial of Cases under SCs & STs (POA) Act, 1989-cum-IV Additional District and Sessions Judge, Guntur filed this appeal feeling aggrieved by his conviction for the offences punishable under Sections 302, 452 and 379 IPC and sentencing to undergo imprisonment for life for the offence punishable under Section 302 IPC and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for one month; to undergo simple imprisonment for three years for the offence punishable under Section 452 IPC and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for 15 days and to undergo simple imprisonment for two years for the offence punishable under

Section 379 IPC.

The case of the prosecution is that the accused is a resident of Hyderabad and the deceased was a resident of Guntur. The accused is the brother-in-law of the deceased i.e., the latter married the brother of the accused. The husband of the deceased passed away long time back and her elder son and daughter were staying in USA and her younger son i.e., PW.2 is staying in Bangalore. On 05.04.2007 at 11.00 pm, PW.1 received a phone call from PW.3, one of the tenants of the deceased, to the effect that there were no movements of the deceased and that he was suspecting that something might have happened to the deceased. Immediately when PW.1 went to the house of the deceased, it was found locked from outside. Therefore, he went to the southern entry of the house and found that the doors were bolted from outside without any lock. PW.1 unbolted the door and found the dead body of the deceased on the floor at the dining hall with bleeding injuries. Immediately, PW.1 informed PW.2 on phone and later he went to Pattabhipuram police station and reported the matter vide Ex.P1.

PW.10, Inspector of Police, received Ex.P1 report on 06.04.2007 at 2.00 am and registered the same as Crime No.108 of 2007 under Section 174 Cr.P.C. On 07.04.2007 at 1.00 am, the provision of law was altered from Section 174 Cr.P.C., to 302 IPC through Ex.P14, altered FIR. PW.12, CI of Police, received FIR from PW.10 and took up investigation. On 06.04.2007 at 8.00 am, PW.12 observed the scene of offence in the presence of PW.7 and others and prepared Ex.P10, observation report. PW.12 seized MOs.3 to 7 at the scene of offence. Rough sketch of scene of offence was prepared vide Ex.P15. PW.12 recorded the statements of PWs.1 to 5 and others. On 07.04.2007, PW.12 conducted inquest and prepared Ex.P11, inquest report. During the inquest, the accused was suspected of committing the offence. PW.12 sent the MOs for analysis by the Forensic Science Laboratory (FSL).

PW.13, police constable attached to the case, photographed the blood stained footprint at the scene of offence on 06.04.2007 at 8.30 am and Ex.P16 contains two copies of photos. PW.15, CI of Police, who took up investigation on 13.04.2007, arrested the accused on 21.04.2007. At the time of arrest, he recorded the statement of the accused and seized Rs.65/- and one gold ring studded with green stone. With the assistance of the clues team, footprint of the accused was taken. PW.14, Head Constable, went to Pattabhipuram PS on 21.04.2007 and took the footprint of the accused on white paper. Ex.P17 is the footprint of the accused taken by PW.14.

PW.9, Associate Professor of the Government General Hospital, Guntur conducted autopsy over the dead body of the deceased on 07.04.2007 and opined that the cause of death was due to head injury and issued Ex.P9. After completion of the investigation, PW.15 filed the charge sheet.

In support of its case, the prosecution examined PWs.1 to 15 and marked Exs.P1 to P18. It has also produced MOs.1 to 8.

The appellant was found guilty and accordingly he was convicted and sentenced by the lower Court, as stated supra. Feeling aggrieved thereby, the appellant filed the present appeal.

At the hearing, Smt.A.Gayatri Reddy, learned counsel for the appellant, has made the following submissions –

(i) that the prosecution failed to establish the motive which is essential to be proved in a case based on circumstantial evidence;

(ii) that the lower Court committed a serious error in relying upon the last seen theory as the accused was allegedly seen last with the deceased only on 02.04.2007, while she was found dead only four days later i.e., 06.04.2007.

(iii) that PWs.2 and 4 who are independent witnesses have turned hostile and PW.1 being interested witness as he happened to be the brother of the deceased, the Court below should not have placed reliance on his evidence,

(iv) that the only other evidence on record available is that of PWs.2 and 5; PW.2 being the son of the deceased, his evidence cannot be relied upon and based on the solitary evidence of PW.5, the only other independent witness, the appellant is not liable to be convicted,

(v) that in the face of the evidence on record to the effect that the jewellery such as bangles, earrings etc., were found on the body of the deceased, the appellant could not have been convicted for the offence of theft of gold ring which was clearly planted by the police,

(vi) that the footprints of the accused were not taken following the procedure prescribed under the Police Standing Orders, in that permission of the jurisdictional Magistrate was not taken for taking such footprints and that therefore, the offence cannot be linked to the appellant based on such footprints, and

(vii) that in the absence of cogent evidence establishing the link between the offence and the appellant, he is entitled to benefit of doubt.

Opposing the above submissions, the learned Public Prosecutor (AP) submitted that the prosecution is able to succeed in placing before the Court reliable evidence through PWs.1, 2, 5 and 11 proving the involvement of the appellant in the death of the deceased. That the conduct of the accused who went to the house of the deceased on the evening of 02.04.2007 and stayed in the latter's house and his admission that he has visited the house of the deceased on the morning of 04.04.2007 at 7.00 am as evident from his own letters addressed to the lower Court and seized from him through Ex.P6 clearly reveals that he has killed the deceased and therefore the lower Court has rightly applied the last seen theory. He has further submitted that the ring is recovered under Ex.P7, mediatornama, and nothing was elicited to discredit this recovery by the defence. He has further submitted that as per Standing Order No.564B of the Police Standing Orders, specimens of the footprints of the accused can be

taken before the Court or in the presence of the Presiding Officer or if the accused volunteers and that in the present case, as the defence has not pleaded that the accused has not volunteered to give footprints, it is deemed that the footprints were taken from the accused with his consent and that therefore, there is no need for obtaining the permission from the jurisdictional Magistrate for sending them to FSL.

We have carefully considered the respective submissions of the learned counsel for the parties and perused the record.

Let us first deal with the aspect of motive. PW.2 is the son of the deceased. He has deposed that ten days prior to the incident, the accused has contacted him by phone and requested to provide money and he has refused any help. He also deposed that he spoke to his mother on 3.4.2007 and at that time she informed him that the accused was in her house. He has further deposed that they had joint family house and landed property at Kanigiri and they came to know that the appellant has sold away their share also upon which the deceased went and obtained pass book and that ever since then there were disputes between their family and the accused. That as PW.2 did not give money and also the disputes relating to the immovable property arose, he suspected that the accused might have killed the deceased.

PW.1, who is the brother of the deceased, also deposed that his sister has informed him that as the accused was suspended from service, he used to demand money now and then from her and her children and that she chastised the accused for the same. He has also deposed that because of the disputes, they suspected that the accused might have killed the deceased. In Ex.P.11, inquest report, which is one of the earliest documents, it is stated that PW.2 came from Bangalore and on seeing his mother's dead body and also the shirt having the marks of Volo Rose on it, he suspected that the shirt belongs to the accused, who was moving without having any work, that there were disputes between the deceased and the accused as the latter has sold away the properties of the deceased and that he

came to know that the accused came to the house of the deceased just two days before the incident. No doubt, suggestions were put to PWs.1 and 2 that no disputes existed between the accused and the deceased. While the prosecution may not have placed strong evidence before the Court to prove that such disputes existed between the deceased and the accused, the conduct of the accused and the incriminating circumstances placed by the prosecution before the Court, convince this Court to believe the testimony of PWs.1 and 2 that the disputes did persist between the accused and the deceased, which may have lead to an altercation between them before the appellant committed the offence.

As regards the evidence, it is no doubt true that there was no eye witness to the incident and the case is based on circumstantial evidence. In this regard, PWs.3 to 5, who are the tenants of the deceased, have given their evidence. PWs.3 and 4 have turned hostile. However, the evidence of PW.3 to some extent is relevant. He stated that on 05.4.2007 in the evening himself and his wife – PW.4 went for a walk and at that time they observed that the house of the deceased was locked from outside but lights were on that some foul smell was coming and that they suspected that something would have gone wrong and they informed the same to PW.1, who is the brother of the deceased, on phone. After PW.1 reached there, they went to the back side door, which was found bolted from outside but not locked, PW.1 opened the door and found the dead body of the deceased in a pool of blood and he has accordingly informed the Police about the same. This evidence of PW.3 would show that he along with PW.1 noticed the dead body on the evening of 05.4.2007 and it was emitting smell, which suggests that substantial time would have elapsed after the murder has taken place.

PW.5 is a pivotal witness. He is also one of the tenants of the deceased. He deposed that on 02.4.2007 about 5.00 p.m. the deceased has handed over the keys of her house to him saying that

she has some work at an apartment, which she was getting constructed, that at about 7.00 p.m. the accused came to him and asked for the keys, and that he informed the same to the deceased and as instructed by her, he has given the keys to the accused. On taking the keys, the accused went into the house and thereafter at about 8.00 p.m., the deceased returned home and thereafter he did not see her alive. He further deposed that on 05.4.2007 at about 11.00 p.m., PW.3 came and informed that the house (of the deceased) was locked and foul smell was coming out, that he informed the same to PW.1 and on his arrival, they all went to the back door of the house, as the front door was locked and was found bolted from outside, that on PW.1 opening the door they have seen the dead body of the deceased in a decomposed state and that PW.1 has informed the same to the Police. It was suggested to PW.5 that he was deposing falsely at the instance of PW.2, as he was their tenant and that the accused has never gone to him and asked for keys on 2.4.2007, which he has denied.

We have on record the evidence of another witness, who is PW.11. He has deposed that he is a native of Tenali, that he knows LW.4, one of the sons of the deceased, as they have studied Intermediate in Majeti Guravaiah College, Guntur and that he also knows the deceased, who is the mother of LW.4, and he used to visit the house of the deceased now and then. He has further deposed that on 03.4.2007 he went to the house of the deceased to invite her to attend the Housewarming Function to be held on 07.4.2007 at Vijayawada, and at that time he has found the accused in the house of the deceased and she has informed him that the accused was her brother-in-law. PW.11 was also examined by the Police. In his cross-examination he has admitted that he did not mention to the Police that he has got constructed a house at Vijayawada and that he has not seen the accused prior to the incident. He has denied the suggestions that he did not go to the house of the deceased on 03.4.2007 to give invitation to the deceased, that at that time he has not found the

accused there and that the latter was not introduced to him.

As noted above, PW. 5 was categorical in his evidence that the accused has collected keys from him on 02.4.2007 at about 7.00 p.m. Except a suggestion put to him by the defence that being a tenant he has obliged PW.2 to depose falsely, nothing could be elicited from him to discredit his testimony. In our opinion, PW.5, being an independent witness, has no reason to oblige PW.2 to falsely implicate an innocent. Similarly, PW.11, who was only a friend of the brother of PW.2, had also no reason to come forward to falsely depose against the accused, if he had not really seen the latter in the house of the deceased on 03.4.2007. Therefore, we have no reason to disbelieve the evidence of these two witnesses, who spoke about the presence of the accused along with the deceased upto 03.4.2007. In Ex.P.9, post-mortem report, P.W.9 opined that the approximate time of death was three to four days prior to the examination. The post-mortem examination having been conducted on 07.4.2007, death could have occurred on 3rd or 4th April, 2007. In this connection, Ex.P.10, scene observation report, assumes relevance. It is clearly stated therein that in the cupboard fixed to northern wall in the hall, Nokiya Company cell phone was found with the number 9866411892, that the observation of calls in the Register showed that last received call was from 'Amr' (Amarendra Reddy/PW.2) - 9900198970, dt.03.4.2007 at 5.30 p.m., that the last dialled number was 9441752909, dt.3.4.2007 at 6.46 p.m. and that the last missed call number was 9848159160, dt. 6.4.2007 at 8.42 a.m. This vital information would prove that PW.2 has called his deceased mother at 5.33 p.m. on 3.4.2007. This fact is supported by the evidence of PW.2 itself wherein he has stated that he has called his mother on 03.4.2007 and he was informed about the presence of the accused in her house. It also further proves that she was alive till 6.46 p.m. when the last outgoing call was found in her mobile. Thus, from this evidence it is not only evident that the accused was with the deceased till she breathed her last, but also the deceased would have

been killed after 6.48 p.m. on 3.4.2007. This is fully correlated with the medical evidence as discussed above. From this evidence, the last seen theory can be safely applied against the accused.

In this context, we need to observe the conduct of the appellant. It has come out in the evidence that he was with the deceased from the night of 02.4.2007. In one of his letters (Ex.P.6) addressed to the Guntur District Judge, seized from the appellant, he has clearly stated that he used to come to the house of the deceased at Guntur, two or three times in a month, that on 4.4.2007 at 7.00 a.m. when he went to the house of the deceased, it was locked, that in order to answer the calls of nature, he went backside of the house and he found the dead body lying there, that due to fear, thinking that the case might be foisted against him, he ran away from there and that he had no connection with the murder. Though the learned counsel for the appellant strenuously argued that the prosecution failed to establish the authenticity of this letter, we find that no suggestion whatsoever was put to PW.8, one of the attestors to seizure panchnama Ex.P.7 suggesting that these letters were fabricated or that they were not seized from him. Therefore, the authenticity of this letter cannot be disputed. Thus, on his own showing the appellant was at the house of the deceased even on the morning at 7.00 a.m. on 4.4.2007. If really the appellant was not guilty of killing the deceased, being her brother-in-law, he was expected to have immediately rushed to the Police and given a report. Not only that he has not done this, but he has also failed to explain why he has not done the same. If there were no disputes between himself and the deceased, there would have been no basis for him to apprehend that he would be suspected by the family members of the deceased that he is responsible for the death of the deceased. Further, the appellant was not falsely implicated is also evident from the fact that in Ex.P.1 report given by PW.1 to the Police, the name of the appellant was not mentioned and it is only on the day when the inquest was conducted, a suspicion was raised about the

involvement of the appellant and accordingly the FIR was altered showing the appellant as the accused. Hence, the stand taken by the appellant in the said letter that on 04.4.2007 itself he has apprehended that he will be suspected as being responsible for the death of the deceased, has no basis whatsoever and the said letter is evidently prepared to escape from his criminal liability. The above evidence is sufficient to hold that it was the appellant who has killed the deceased and that as a person who was last seen with the deceased, he failed to discharge the onus which lies on him to satisfactorily explain the incriminating circumstances leading to the death of the deceased.

The proximity of the accused being last seen with the deceased is so close to the probable time of death and there was no possibility for anybody else killing the deceased. Further, his conduct in not giving Police report and absconding till 21.4.2007 further strengthens the case of the prosecution that the appellant was responsible for the death of the deceased.

It is borne out from the record that the accused came to the house of the deceased on 02.4.2007 and stayed there till 03.4.2007 and that the alleged incident took place in the night of 03.4.2007. If really the appellant had the prior intention to cause the death of the deceased, he would have executed his plan even prior to the night of 3.4.2007. It is also on record that when PW.11 visited the house of the deceased on 03.4.2007 to extend the invitation to the deceased regarding housewarming ceremony, the appellant was introduced to him as her brother-in-law. These circumstances would show that the appellant had no premeditation to kill his sister-in-law. However, what could be gathered from the circumstances is that during his stay at the house of the deceased, some discussion might have taken place regarding the existing disputes over properties which would have led to the accused getting a sudden provocation or anger, and as a consequence thereof he appeared to have given a blow on the head of the deceased with hammer, which unfortunately proved to be fatal. In

this view of the matter, this is a fit case where it can be said that the appellant had committed an offence which is punishable under Section 304 Part II IPC.

The submissions of the learned counsel pertaining to the FSL report and seizure of a gold ring need not be specifically adverted to for the reason that even in the absence of these incriminating aspects, the prosecution is able to prove the culpability of the appellant beyond all reasonable doubt.

However, as regards the charge of theft, we have a serious doubt and we are not convinced with the case of the prosecution in this regard. It has come out in the evidence that the deceased had valuable ornaments, such as anklets and ear rings on her body and if the appellant had the intention of committing theft of the ring, there is no reason why he has not stolen all those gold ornaments, which are more valuable than the ring.

Similarly, as regards the charge against the accused under Section 452 IPC for house trespass, it is inconsistent with the case of the prosecution that he has collected the keys from P.W.5 and entered the house with the permission of the deceased. Therefore, the question of the appellant committing house trespass does not arise.

In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/accused in judgment, dated 23.06.2010, in Sessions Case No.59 of 2008, on the file of the learned Special Judge for the Trial of Cases under Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act – cum – IV Additional District and Sessions Judge, Guntur, for the offence punishable under Section 302 IPC, are modified to that under Section 304 Part-II of IPC. The appellant/accused is, accordingly, convicted and sentenced to suffer rigorous imprisonment for a period of seven years, while maintaining the sentence of fine imposed against him. The period of sentence already undergone by him is directed to be set off.

We also set aside the conviction and sentence recorded against the appellant/accused for the offences under Sections 379 and 452 of IPC. The fine amount paid by the appellant/accused for the offence under Section 452 of IPC shall be refunded to him.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

29th February, 2016

VGB/BNR