

MADALA VENKATA NARSIMHA RAO

v.

STATE OF A.P.

(Criminal Appeal No. 393 of 2009)

NOVEMBER 27, 2012

[SWATANTER KUMAR AND MADAN B. LOKUR, JJ.]

Penal Code, 1860 – ss. 302 and 376 – Rape and Murder – Circumstantial evidence – Three witnesses saw the accused coming out of the house of the victim – Blood-stains on the clothes of the accused – Victim telling the witnesses that the accused had assaulted her – In post-mortem, the doctor opined that rape was committed on the accused – Trial court acquitted the accused of both the charges – High Court convicted the accused – On appeal, held: There was sufficient evidence to hold the appellant guilty of committing the murder – But no cogent or admissible evidence regarding rape of the victim – The only evidence as regards rape is the opinion of the doctor who conducted post-mortem, which was not safe to rely upon as the doctor was not examined as a witness.

Appellant-accused was prosecuted for having raped and murdered a girl. The prosecution case was that when the victim/deceased was alone at home, her brother had sent the appellant-accused to the house for some work. PWs 3, 4 and 5 were standing near the house of the victim. When they heard the cry from the house of the victim, and when they went to the house, they saw the accused running out of the house in blood-stained clothes and he ran away from there pushing them away. The accused was also seen on the streets with blood-stained clothes by PW-7. The victim told PWs 3, 4 and 5 that the appellant hit her with chutney grinder, as she had slapped him on his holding her hand. PW-8 (doctor) administered her first-

A aid. She died on her way to the hospital. In post-mortem report (Exbt. P-9), the doctor opined that the deceased was also raped.

B Trial Court acquitted the accused of all the charges. High Court reversing the acquittal, convicted the accused u/ss. 302 and 376 IPC. Hence the present appeal.

Partly allowing the appeal, the Court

C HELD: 1.1 To secure a conviction on circumstantial evidence, the prosecution must prove its case by cogent, reliable and admissible evidence. Each relevant circumstance must be proved like any other fact and upon a composite reading thereof, it must lead to a high degree of probability that it is only the accused and none other who has committed the alleged offence. [Para 21] D [960-C-D]

Munna Kumar Upadhyay v. State of A.P. (2012) 6 SCC 174 – relied on.

E 1.2. In the present case, the presence of the appellant at the scene of the crime, moments after it was discovered, is not in dispute. In fact, he was running away from inside the house where the crime was committed. While doing so, he pushed the persons who were F entering the house on hearing the cries of the deceased. This is proved by the consistent testimony of each one of them. There is nothing in the cross-examination of these witnesses to suggest that they had cooked up a story to implicate the appellant. There is no explanation G for this strange conduct whatsoever. The appellant had also blood-stains on his clothes at that time and he was also seen running on the street in that condition independently by PW7 who reached the scene of crime soon thereafter when the deceased was being taken H away for administration of first-aid. The eye-witness

account, moments after the discovery of the crime is so overwhelming, coupled with the conduct of the appellant, that only one conclusion is possible which is that the murder of the deceased was committed by the appellant. [Paras 22, 23, 24 and 25] [960-E-H; 961-A-C]

1.3. Even the deceased gave virtually a dying declaration in which she narrated the sequence of events including the fact that the appellant had hit her with a chutney grinder on her head and other parts of her body. There is no reason at all why the deceased should falsely implicate the appellant of such a heinous crime. Her statement on this aspect may be contrasted with her statement on the issue of rape, in which she did not say a word to implicate the appellant. There is, therefore, more than a ring of truth in the statement made by her, moments before her death to PWs 3, 4 and 5. In this view of the matter, on an overall consideration of all the facts of the case, there is no doubt that the appellant alone caused the murder. [Paras 26 and 27] [961-C-F]

1.4. It cannot be accepted that since there were a large number of discrepancies in the testimonies of various witnesses, as pointed out by the Trial Judge, the benefit thereof must go to the appellant. The discrepancies noted by the Trial Judge, such as the time of recording of the first information report, the time of commencement of investigations by the police, the absence of any clear evidence to suggest who informed PW1 and PW2, does not take away the substratum of the case of the prosecution. If, an overall picture of the events is taken into consideration, it will be clear that the discrepancies pointed out pale into insignificance and do not affect the substratum of the case for the prosecution. [Paras 33, 34 and 35] [962-F-H; 963-C]

Syed Ahmed v. State of Karnataka (2012) 8 SCC 527 – relied on.

A 1.5. The primary duty of the Trial Judge is to
determine the facts and then test the theory put forward
by the prosecution. In this regard, the Trial Judge has
failed in this duty. The Trial Court has not considered the
events in totality but has disjointedly read the statements
B of the witnesses and has picked up minor discrepancies
and highlighted them. The result of this approach is that
the Trial Court has cast doubt on almost every aspect of
the case. [Para 14] [958-A-C]

C 2.1. On the issue of the appellant having raped the
deceased, there is virtually no evidence except the final
opinion of the doctor who had conducted the post-
mortem Exhibit P-9. The deceased did not inform PWs 3,
4 and 5 that she was raped or attempted to be raped by
the appellant. All that she said was that the appellant
D caught hold of her hand. Thereupon, she slapped the
appellant which led him to pick up the chutney grinder
and hit her on the head and other parts of her body. There
does not seem to be anything in the testimony of PWs 3,
4 and 5 to suggest that the deceased was raped or an
E attempt was made to rape her. The evidence of the doctor
who administered first-aid to the deceased also does not
give any indication of her having been violated. Even the
complaint made by PW3 to the police does not mention
anything about the deceased having been raped. The
F only evidence in this regard is the final opinion of the
doctor. However, in the absence of the doctor having
entered the witness box, it would not be safe to rely on
the medical opinion that the deceased was raped. [Paras
28, 29 and 30] [961-G-H; 962-A-D]

G 2.2. Merely because some semen was collected from
the person of the deceased or the trousers of the
appellant, does not *ipso facto* lead to the conclusion that
he had raped her. On the basis of the facts on record,

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there is no evidence to suggest that the appellant had raped the deceased. [Paras 31 and 32] [962-E-F] A

Case Law Reference

(2012) 6 SCC 174 Relied on Para 21

(2012) 8 SCC 527 Relied on Para 34 B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 393 of 2009.

From the Judgment & Order dated 14.2.2008 of the High Court of Judicature Andhra Pradesh at Hyderabad in Criminal Appeal No. 42 of 2006. C

Vikas Upadhyay (for B.S. Banthia) for the Appellant.

Shishir Pinaki, Suchitra Hranghwal (for D. Mahesh Babu) for the Respondent. D

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The question for consideration is whether the High Court was right in setting aside the acquittal of the appellant for the murder of Lalitha and whether she was raped before her murder. In our opinion, there is sufficient evidence to hold the appellant guilty of committing the murder of Lalitha, but no cogent or admissible evidence of her having been raped. E
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The facts:

2. On 4th December, 1998 PW-1 Srimannarayana and his wife had gone to village Jangareddygudem at about 6.00 a.m. for the purpose of fixing a matrimonial alliance for their daughter, Lalitha. Later that day, at about 7/7.30 a.m. PW-2 Subrahmanyam son of Srimannarayana and brother of Lalitha opened their kirana shop. He then instructed the appellant who had been working with the family for the last about 10 years to get some tiffin from a hotel, deliver it to him and then deliver to G
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A his sister, Lalitha, who was at their residence.

3. According to Subrahmanyam, the appellant did not turn up for some time and at about 8.15 a.m. his uncle, PW-3 Lakshmi Narayana came to the kirana shop and informed him that his sister, Lalitha, was lying badly injured at their residence. Both of them then rushed to the residence where they picked up Lalitha and took her to a local doctor PW-8 Kasi Viswanadham who administered first-aid. However, considering Lalitha's serious condition, she was advised to be shifted to Rajamundry. Transport was arranged to take her to Rajamundry but she died en route. Her body was then brought back and kept in the front courtyard of the house.

4. In the meanwhile, Srimannarayana was informed about the incident by another daughter and he rushed back to his residence at about 9.30 a.m. by which time Lalitha had died.

5. After conducting necessary investigations, on the basis of a first information report lodged by Lakshmi Narayana, a challan was filed by the police in which it was alleged that the appellant had raped Lalitha and had murdered her.

6. According to the prosecution, Lakshmi Narayana, the uncle of Subrahmanyam and elder brother of Srimannarayana was asked by Srimannarayana to look after his residence in his absence. In this connection, Lakshmi Narayana went to their residential house at about 8 a.m. or so. There he found some neighbors PW-4 Purnachandra Rao and PW-5 Venkateswara Rao chitchatting and he joined them in the conversation. Suddenly, they heard some cries emanating from inside the house of Srimannarayana and while they were entering the house in response to the cries, the appellant came running out of the house with blood-stained clothes, pushed them and ran away.

7. When Lakshmi Narayana, Purnachandra Rao and Venkateswara Rao entered the house they found Lalitha lying

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in a pool of blood and she informed them that the appellant had got hold of her hand whereupon she slapped him. He then picked up a chutney grinder and hit her on the head and other parts of the body and stabbed her with a knife. She asked these persons for medical assistance and was then taken to the local doctor.

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8. After her death, a post-mortem examination was conducted on Lalitha by Dr. K. Shymala Devi who gave the final opinion Exhibit P-9 that Lalitha was raped. However, this doctor did not enter the witness box.

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9. It may be mentioned that after the appellant ran out of the house, he was seen running on the street with blood-stained clothes by PW-7 N. Visweswara Rao who was returning from a temple. While N. Visweswara Rao was passing the house of Srimannarayana, he found some people gathered over there and saw Lalitha in a pool of blood and Lakshmi Narayana, Purnachandra Rao and Venkateswara Rao preparing to remove her.

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10. The defence put up by the appellant was that in fact he had not committed the crime but had discovered it.

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11. On these broad facts, the Trial Court by its order dated 18th June 2004 passed in Sessions Case No.163/99 found the evidence insufficient to convict the appellant of the charge of rape or murder. This view was reversed in appeal by the High Court by its judgment and order dated 14th February 2008 passed in Criminal Appeal No.42 of 2006. The High Court convicted the appellant of the crime of rape and murder and sentenced him to imprisonment for life.

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12. It is under these circumstances that the matter is now before us.

Decision of the Trial Court:

13. The analysis of the evidence and the decision of the

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- A Trial Court leave much to be desired. The Trial Judge has not determined any facts, but has only found loop-holes in the oral evidence. The primary duty of the Trial Judge is to determine the facts and then test the theory put forward by the prosecution. In this regard, the Trial Judge has unfortunately failed in this duty.

14. The Trial Court has not considered the events in totality but has disjointedly read the statements of the witnesses and has picked up minor discrepancies and highlighted them. The result of this approach is that the Trial Court has cast doubt on almost every aspect of the case. It has cast doubt on the lodging of the first information report; it has doubted the arrest of the appellant; the presence of Lakshmi Narayana, Purnachandra Rao and Venkateswara Rao at the scene of the crime; the testimony of Srimannarayana and Subrahmanyam as well as N. Venkateswara Rao. In other words, the Trial Court did not believe any of the material witnesses and concluded that the entire story was cooked up to implicate the appellant. On this basis, the appellant was acquitted.

- E 15. However, the Trial Court did not err in its conclusion on the allegation of the prosecution that Lalitha was raped. In this regard, the Trial Court noted that Lalitha did not say that she was raped and only stated that the appellant caught hold of her hand. But, the Trial Court erroneously proceeded on the basis that rape can be committed only behind closed doors and since there was no evidence that the doors of the house were closed, Lalitha could not have been raped. The Trial Court noted that the complaint lodged by Lakshmi Narayana did not mention that Lalitha was raped. It also noted that even the local doctor Kasi Viswanadham who administered first aid did not notice any evidence of rape. The Trial Court failed to note that the final medical opinion given by Dr. K. Shymala Devi could not be accepted since the doctor did not enter the witness box to support the post-mortem report. Be that as it may, the Trial Court concluded that Lalitha was not raped.

Decision of the High Court:

16. The High Court disagreed with the Trial Court on every aspect of the case. It was found that the evidence of Lakshmi Narayana, Purnachandra Rao and Venkateswara Rao was consistent on material issues. They had seen the appellant in blood-stained clothes pushing them and running away from the scene of the crime. In fact, the appellant was also seen running with blood stained clothes on the street by N. Venkateswara Rao.

17. The High Court noted that appellant admitted his presence at the scene of the crime since he claimed to have reached there soon after the crime was committed. The High Court found that under these circumstances there was no explanation for his conduct of running away from the scene of the crime if in fact he had not committed any offence.

18. The High Court also took into consideration the fact that Lalitha, while gasping for life, clearly stated that the appellant had hit her with a chutney grinder and all these facts put together clearly indicated that the appellant had murdered Lalitha.

19. On the issue whether Lalitha had been raped, the High Court found that the post mortem report Exhibit P-9 established that Lalitha was raped and on this basis, the conclusion arrived at by the Trial Judge was reversed and the appellant convicted for having raped Lalitha.

Submissions:

20. The principal contention of learned counsel for the appellant was that the case is one of circumstantial evidence and however strong the suspicion may be, it cannot take place of proof. There were no eye witnesses to the crime and, therefore, it cannot be conclusively said that the appellant had murdered Lalitha. It was also contended that there was no

- A evidence that Lalitha had been raped and even in this regard the conclusion of the High Court was faulty. It was finally submitted by learned counsel for the appellant that there were far too many discrepancies in the evidence of the witnesses, as brought out by the Trial Judge, and they could not be ignored.
- B The cumulative effect of all these discrepancies casts a doubt on the case of the prosecution and the benefit of this must go to the appellant.

Discussion:

- C 21. The law on appreciation of circumstantial evidence is now too well settled to bear any repetition. Suffice it to say that to secure a conviction on circumstantial evidence, the prosecution must prove its case by cogent, reliable and admissible evidence. Each relevant circumstance must be
- D proved like any other fact and upon a composite reading thereof it must lead to a high degree of probability that it is only the accused and none other who has committed the alleged offence. In this regard, reference may be made to *Munna Kumar Upadhyay v. State of A.P.*, (2012) 6 SCC 174
- E (authored by one of us, Swatanter Kumar, J).

22. In our case, the presence of the appellant at the scene of the crime moments after it was discovered is not in dispute. In fact, he was running away from inside the house where the crime was committed. While doing so, he pushed Lakshmi
- F Narayana, Purnachandra Rao and Venkateswara Rao who were entering the house on hearing the cries of Lalitha. This is proved by the consistent testimony of each one of them. There is nothing in the cross-examination of these witnesses to suggest that they had cooked up a story to implicate the
- G appellant.

23. The presence of the appellant having been conclusively established, there should be some reason why he ran away from the scene of the crime if in fact he was the one who had
- H discovered it and not the one who had committed it. There is

no explanation for this strange conduct whatsoever. To say that the appellant is a rustic villager is neither here nor there. A.

24. In this context, it is not possible to overlook the fact that the appellant had blood-stains on his clothes at that time and he was also seen running on the street in that condition independently by N. Venkateswara Rao, who reached the scene of crime soon thereafter when Lalitha was being taken away for administration of first-aid. B.

25. The eye witness account, moments after the discovery of the crime is so overwhelming, coupled with the conduct of the appellant, that only one conclusion is possible which is that the murder of Lalitha was committed by the appellant. C.

26. In addition, it must be appreciated that even Lalitha gave virtually a dying declaration in which she narrated the sequence of events including the fact that the appellant had hit her with a chutney grinder on her head and other parts of her body. There is no reason at all why Lalitha should falsely implicate the appellant of such a heinous crime. Lalitha's statement on this aspect may be contrasted with her statement on the issue of rape, in which she did not say a word to implicate the appellant. There is, therefore, more than a ring of truth in the statement made by Lalitha moments before her death to Lakshmi Narayana, Purnachandra Rao and Venkateswara Rao. D.
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27. In this view of the matter, on an overall consideration of all the facts of the case, we have no doubt that the appellant alone caused the murder of Lalitha.

28. On the issue of the appellant having raped Lalitha, we find that there is virtually no evidence to this effect except the final opinion Exhibit P-9. As noted above, Lalitha did not inform Lakshmi Narayana, Purnachandra Rao or Venkateswara Rao that she was raped or attempted to be raped by the appellant. All that she said was that the appellant caught hold of her hand. G.
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- A Thereupon, Lalitha slapped the appellant which led him to pick up the chutney grinder and hit her on the head and other parts of her body. There does not seem to be anything in the testimony of Lakshmi Narayana, Purnachandra Rao and Venkateswara Rao to suggest that Lalitha was raped or an attempt was made to rape her.
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29. The evidence of the doctor Kasi Viswanadham who administered first-aid to Lalitha also does not give any indication of Lalitha having been violated. Even the complaint made by Lakshmi Narayana to the police does not mention anything about Lalitha having been raped.
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30. As mentioned above, the only evidence in this regard is the final opinion of Dr. K. Shymala Devi which is Exhibit P-9. However, in the absence of the doctor having entered the witness box, it would not be safe to rely on the medical opinion that Lalitha was raped.
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31. We are also of the opinion that merely because some semen was collected from the person of Lalitha or the trousers of the appellant does not ipso facto lead to the conclusion that he had raped her.
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32. On the basis of the facts on record, we hold that there is no evidence to suggest that the appellant had raped Lalitha.

- F 33. We are not inclined to accept the contention of learned counsel for the appellant that since there were a large number of discrepancies in the testimonies of various witnesses, as pointed out by the Trial Judge, the benefit thereof must go to the appellant.

- G 34. The discrepancies noted by the Trial Judge, such as the time of recording of the first information report, the time of commencement of investigations by the police, the absence of any clear evidence to suggest who informed Srimannarayana or Subrahmanyam does not take away the substratum of the case of the prosecution. What are minor discrepancies and
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their impact has been dealt with in *Syed Ahmed v. State of Karnataka*, (2012) 8 SCC 527 (authored by one of us Lokur, J) and we need not repeat the view taken. A

35. The substantive case of the prosecution is that Lalitha was murdered in her house. There is no doubt about this, nor is there any doubt that almost immediately thereafter (on hearing her cries) Lakshmi Narayana, Purnachandra Rao and Venkateswara Rao saw the appellant running away from the house in blood-stained clothes. There is also no doubt that these persons were informed by Lalitha that the appellant hit her with a chutney grinder. If, on these basic facts, an overall picture of the events is taken into consideration, it will be clear that the discrepancies pointed out pale into insignificance and do not affect the substratum of the case for the prosecution. B C

36. As we have noted above, the Trial Judge has not thought it fit to determine facts but only thought it appropriate to find out the smallest inconsistency or disagreement in the testimony of the witnesses so as to discredit them. This is not the correct approach for the Trial Court to adopt and, in fact, the High Court has characterized this as perverse. We say nothing on this and leave it at that. D E

Conclusion:

37. Under these circumstances, we have no hesitation in upholding the view of the High Court that the appellant is guilty of committing the murder of Lalitha. However, we are of the opinion that there is no evidence that the appellant had raped Lalitha. F

38. The appeal is accordingly allowed in part and the conviction and sentence awarded to the appellant for an offence punishable under Section 302 of the IPC is confirmed. G

K.K.T.

Appeal partly allowed.