

B.Gopalakrish Vs. the State of Andhrapradesh...Respondnet

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Court : Andhra Pradesh

Decided On : Feb-04-2014

Judge : The Hon'Ble Rjustice L.Narasimha Reddy and Thehon'Ble Sri J

Appellant : B.Gopalakrish

Respondent : The State of Andhrapradesh...Respondnet

Judgement :

THE HON'BLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HON'BLE Sr.JUSTICE M.S.K.JAISWAL CRIMINAL APPEAL Nos.454 of 2007 and batch 04-02-2014 B.Gopala Krishna ...APPELLANT The State of Andhra Pradesh...RESPONDNET COUNSEL FOR THE APPELLANT:Sr.Venkateswara Rao Gudapati COUNSEL FOR RESPONDENT:-Public Prosecutor : ?.Cases Referred: THE HON'BLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HON'BLE Sr.JUSTICE M.S.K.JAISWAL CRIMINAL APPEAL Nos.454 of 2007 and 1023 of 2009 04-02-2014 COMMON

JUDGMENT

: In Sessions Case No.70 of 2005 on the file of District & Sessions Judge, Vizianagaram, the sole accused was tried for the offence of committing the murder of his wife, B.Manjuladevi on the intervening night of 12/13.09.2004.

The trial Court convicted the sole accused for the offence punishable under Section 304-II I.P.C.and sentenced him to undergo rigorous imprisonment for six

year. Fine of Rs.5,000/- was also imposed, and in default of payment thereof, the accused was required to undergo simple imprisonment for three months.

He was also convicted for the offence under Section 309 I.P.C. and was sentenced to undergo rigorous imprisonment for one year.

While the accused filed Criminal Appeal No.454 of 2007 challenging the conviction and sentence ordered against him, the State filed Criminal Appeal No.1023 of 2009 seeking conviction of the accused under Section 302 I.P.C. and for imposition of punishment therefor.

The accused was married to the deceased and it was a love marriage.

The deceased was working as a Nurse and the accused was employed as Driver on a private vehicle.

The father of the deceased, P.W.1, submitted a complaint, Ex.P1, to the Station House Officer, II Town Police Station, Vizianagaram stating that he received information at 9.00 a.m. to the effect that his daughter died in her residence at Gudachari Street, Vizianagaram, and when he went there, he noticed some marks on the body of his daughter.

He expressed suspicion as to the cause of death.

Crime No.117 of 2004 was registered under Section 174 Cr.P.C. The Station House Officer went to the spot and on noticing that Manjuladevi was found dead, he arranged for inquest by the Mandal Revenue Officer and panchanama thereof (Ex.P4) was drawn.

Post-mortem on the dead body was also conducted and a report thereof, Ex.P16, was obtained.

Almost, simultaneously, the accused was sent for treatment to the hospital on finding that he consumed poisonous tablets in an attempt to commit suicide.

The Investigating Officer examined various listed witnesses, prominent among them, being P.Ws.1 to 3.

The accused was alleged to have committed the murder of the deceased.

The version of the prosecution was that though the accused married the deceased out of love, he had a subsisting marriage by that time and he used to suspect the fidelity of the deceased.

One day prior to the date of incident, P.W.2, who was living in a portion of the same premises, was said to be sitting on the pial in front of her portion at around 10.30 p.m. and that the deceased was returning from duty at that time.

The deceased is said to have stopped at P.W.2 and narrated her misery, particularly the harassment being caused to her, by the accused and that in the meanwhile, the accused called her in a loud voice and thereafter, the deceased went inside her house.

It was further alleged that P.W.2 heard the voices of quarrel between the accused and the deceased till mid night and thereafter, she went to sleep.

On the next day morning, at about 5.00 a.m., P.W.2 is said to have noticed the son of the deceased and accused in front of the door and said to have informed her that his mother is not waking up from the bed and his father is in a semiconscious condition on the floor.

P.W.2 is said to have rushed into the room and found that Manjuladevi died, whereas the accused was in a semiconscious condition.

She is said to have passed on the information to P.W.1.

With these allegations, the prosecution filed a charge sheet and taking the same into account, the trial Court framed the following charges against the accused: (1) That on the intervening night of 12/13.09.2004, in your house in Gudachari Street, Vizianagaram you the accused did commit murder by intentionally or knowingly causing the death of your wife, Boddeti Manjuladevi (deceased).by catching hold of the neck of your wife and pushing her to wall and pressing the next by using force.

When your wife tried to raise alarm, you the accused put your another hand on the mouth of your wife and pressed the same by pressing the neck of your wife with force.

Thereby your wife died there and then due to fracture of hyoid bone in the hands of you the accused; and that you accused thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.

(2) That you the accused on the same day, place and time and during the couRs.of same transaction as mentioned in charge No.1 supra, attempted to commit suicide due to fear of police by swallowing the tablets available in the room and that you thereby committed an offence punishable under Section 309 of the Indian Penal Code.

On behalf of the prosecution, P.Ws.1 to 17 were examined and Exs.P1 to P24 were filed.

The contradictory portion in a statement recorded under Section 161 Cr.P.C.from P.W.2 was marked as Ex.D1.

The tablet covers and bloodstained cloth were marked as M.Os.1 and 2.

On the fiRs.charge, the trial Court found the accused guilty of the offence punishable under Section 304-II I.P.C.The second charge was held proved and punishment as indicated in the preceding paragraphs, was imposed.

Sr.Venkateswara Rao Gudapati, learned counsel for the accused, submits that there was absolutely no evidence whatever to establish that the accused caused the death of the deceased.

He contends that even according to the prosecution, there was divorce between the accused and the deceased and that the boy was in the custody of P.W.6.

He submits that in categorical terMs.P.W.6 stated that she left the boy on 13.09.2004, at 8.00 a.m., whereas P.W.2 stated that she found the boy in the premises at 5.00 a.m., when she opened the door.

He contends that when the prosecution did not doubt the version of P.W.6, the entire edifice of their case falls to ground.

He submits that while P.W.16 deposed that he went to the scene of offence on receiving the complaint, P.W.1 in his evidence stated that by the time he went to the place, police were already present.

Learned counsel further submits that when the accused himself was found to be unconscious and alleged to have committed the offence of attempt to commit suicide, the question of accusing him of committing murder of his wife does not arise.

Learned Public Prosecutor, on the other hand, submits that the chain of events provided through oral and documentary evidence has clearly established that the accused has committed murder of his wife, the deceased, and the trial Court ought to have convicted him for the offence punishable under Section 302 I.P.C. She contends that P.W.2 has narrated the incident not only of the date of occurrence, but also the one, that took place preceding night and it clearly emerges that it was the accused, who was in the company of the deceased and if one takes into account the nature of disputes that were existing between them, the only inference that can be drawn is that the accused committed murder of his wife.

She submits that small discrepancies in the evidence as regards time and arrival of P.W.1 or the leaving of the boy by P.W.6 do not have the effect of shaking the evidence, which is otherwise consistent and foolproof in all respects.

It is argued that there are no merits in the appeal filed by the accused. Two charges were framed against the accused.

One is in relation to committing murder and other is about attempt to commit suicide.

One rarely comes across a company of two such extremities.

If a person is attempting to commit suicide, one does not suspect him of committing murder of another.

If, on the other hand, the attempt to commit suicide is a sequel to committing of murder, not only the time gap between the two, but also the surrounding circumstances need to be proved, to the satisfaction of the Court.

That the relationship between the accused and the deceased was not cordial by the date of incident, is clear from the evidence on record.

P.W.1, the father of the deceased, stated that the marriage, between those two persons, is not to his liking and for a period of two years he was not even in talking terms with his daughter.

It was also elicited from him that when the deceased complained him of the alleged harassment by the accused, he did not care for it, on account of the fact that the deceased married the accused, contrary to his wishes.

The prosecution did not make any effort to establish the sequence of events that can be said to have intervened the death of the deceased on the one hand and the attempt to commit suicide by the accused, on the other.

This assumes significance from the version presented by the accused in the examination under Section 313 Cr.P.C., wherein he stated that he was in the house of his parents on the date of occurrence and he did not know as to how he landed in the hospital from that place.

Be that as it may, the sequence of events that led to the initiation of prosecution against the accused is; (a) P.W.2, the immediate neighbor of the deceased, opened the door of the house of the accused at 5.00 a.m. and she found the son of the deceased and the accused wandering in the hall and the boy is said to have informed her that his mother is not waking up from the bed, and his father is in a semiconscious condition on the floor; (b) P.W.2 is said to have immediately rushed to the room and found the mother of the boy dead and the father, the accused, in a semiconscious condition and thereafter, sent intimation to the father of the deceased who was residing at a distance of 1 1/2 k.ms.; (c) P.W.1 came to the spot at around 9.30 a.m. and submitted a complaint, Ex.P1; and (d) The police has shifted the accused to hospital and thereafter, inquest was conducted by P.W.14

from 1.00 p.m.onwards.

No witness who can be said to have seen the accused committing murder of his wife, the deceased, was examined.

The most important witness examined by the prosecution is P.W.2.

She is said to have interacted with the deceased on the preceding night and heard some loud discussion between the accused and the deceased, before she went to sleep.

What she narrated in her chief-examination about the death of the deceased is very important.

She stated as under: ".I woke up by 5.00 a.m.and opened the hall door.

I saw the son of the accused came to home and he is wandering in and around the room of the accused.

He came to me and informed that his mother did not woke up and his father slept on the ground.

I went inside portion of the accused and saw the deceased lying on the bed without movements and I saw the accused moving in semiconscious stage.

Blood is oozing from her Nos.and mouth.

I woke up my neighbours and they are all came and saw inside the room of the accused.

I sent a work to P.W.1 and his younger daughter.

They came.

Again, we are all went inside the portion and saw the accused is on the bed."

While the son of the deceased and the accused is said to have informed P.W.2 that the accused is lying on the floor in a semiconscious condition, P.W.2 was not

clear about what she has noticed inside the room.

However, P.W.1, the father of deceased, stated in the chief-examination that on reaching the spot, he found the accused also lying in an unconscious condition on the same bed, on which the deceased was lying.

This clear discrepancy remains unexplained.

More serious, is the one about the presence of the boy who is the immediate source of information for P.W.2.

P.W.2 is said to have noticed the boy at 5.00 a.m. when she opened the door.

P.W.5 is a woman, who is closely acquainted with the deceased as well as the accused.

The fact that there existed a serious matrimonial dispute between both the spouses, so much so, they have signed the papers for divorce, was spoken to, by P.W.5.

Her version was not at all doubted by the prosecution.

May be on account of that development, the boy was left with P.W.5 because the deceased was employed as a NuRs. and she was absent in her house throughout.

P.W.5 stated as under: ".Deceased Manjuladevi going to her work by leaving her son with me.

She used to tell me that her husband suspecting her fidelity and beat her.

The deceased left her son with me on a Saturday about two years back.

I dropped her son on Monday morning at 8.00 a.m. at her house and went away.

At 1.00 p.m., I came to know that Manjuladevi died and I went to her house and saw the dead body of Manjuladevi."

Her version that she dropped the boy at 8.00 a.m.on Monday i.e.the day of incident, was not at all contradicted by anyone.

If the boy was dropped at 8.00 a.m., it is just un-understandable as to how P.W.2 found the boy at 5.00 a.m.at the scene of occurrence.

This, virtually breaks the chain, which the prosecution wanted to construct.

Another serious contradiction is in the version of P.W.1.

He stated that by the time he reached the spot, police were already present.

He is the de facto complainant, who submitted Ex.P1.

P.W.15, who registered the crime, however, stated that on receipt of the complaint, Ex.P1, he proceeded to the spot.

Further, while according to the information received from P.W.2 the accused was lying on the floor in a semiconscious condition, P.W.1 is said to have found the accused in a semiconscious condition on the bed itself.

How the accused came to be shifted from the floor of the room to the bed that too, a bed on which a dead body was lying, is a mystery.

It has already been mentioned that the prosecution was not clear as to when the death of the deceased has taken place and at what point of time, the accused has become unconscious.

When this is the nature of evidence, it is difficult to connect the death of the deceased, to the accused.

The prosecution has also failed to establish that the accused made an attempt to commit suicide.

The plea of the accused before the trial Court that he was in the house of his parents and he did not know as to how he admitted in the hospital was not examined with reference to any other events or developments.

Therefore, it is not at all safe to convict the accused for the offence of attempting to commit suicide.

Therefore, we allow Criminal Appeal No.454 of 2007 and set aside the conviction and sentence ordered against the appellant-accused in Sessions Case No.70 of 2005 on the file of District & Sessions Judge, Vizianagaram.

The fine amount, if any, paid by the appellant-accused shall be refunded to him.

Criminal Appeal No.1023 of 2009 is dismissed.

The miscellaneous petitions filed in these appeals shall also stand disposed of.

_____ L.NARASIMHA REDDY, J _____
M.S.K.JAISWAL,J Dt: 04.02.2014

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