

APHC010621242017



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3474]

TUESDAY ,THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL NO: 1177/2017

Between:

Makineni Sravanya, Guntur Dt &Anr., and Others **...APPELLANT(S)**

AND

The State Of Ap Rep Pp **...RESPONENT**

Counsel for the Appellant(S):

1.PRABHU NATH VASIREDDY

Counsel for the Respondent:

1.PUBLIC PROSECUTOR (AP)

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Judgment? Yes/No

K.SURESH REDDY, J.

B.V.L.N.CHAKRAVARTHI, J.

*** THE HON'BLE SRI JUSTICE K.SURESH REDDY**

AND

*** THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CRL.A.No.1177 OF 2017

% 07.05.2024

Between:

1. MakineniSravanya,
W/o.Sandeep, Aged 27 years,
R/o.Flat No.511, 5th Floor,
Seetharama Towers, Karampudi Road,
Vinukonda, Guntur District.

2. Makineni Sandeep,
S/o.SivaSubba Rao, Aged 35 years,
R/o.Flat No.511, 5th Floor,
Seetharama Towers, Karampudi Road,
Vinukonda, Guntur District. Appellants/Accused

A N D

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court at Hyderabad. Respondent/Complainant

! Counsel for the Appellants : Sri Prabhu Nath Vasireddy

**^ Counsel for the
Respondent : Sri Y.Nagi Reddy,
Public Prosecutor.**

< Gist:

> Head Note:

? Cases referred:

- 1. 1984 (4) SCC 116**
- 2. 2023 (6) SCC 742**
- 3. 2010 (10) SCC 439**

This Court made the following:

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

(Special Original Jurisdiction)

**TUESDAY, THIS THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR**

SPECIAL DIVISION BENCH

PRESENT

THE HON'BLE SRI JUSTICE K.SURESH REDDY

AND

THE HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CRIMINAL APPEAL No.1177 OF 2017

Between:

1. MakineniSravanya,
W/o.Sandeep,Aged 27 years,
R/o.Flat No.511, 5th Floor,
Seetharama Towers, Karampudi Road,
Vinukonda, Guntur District.

2. Makineni Sandeep,
S/o.SivaSubba Rao, Aged 35 years,
R/o.Flat No.511, 5th Floor,
Seetharama Towers, Karampudi Road,
Vinukonda, Guntur District. Appellants/Accused

A N D

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court at Hyderabad.

..... Respondent/Complainant

Counsel for the Appellant(s) : Sri Prabhu Nath Vasireddy

Counsel for the Respondent(s) : Public Prosecutor

JUDGMENT:

(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

1. The accused No.1 and 2 in Sessions Case No.20 of 2017 on the file of learned XIII Additional District and Sessions Judge, Guntur at Narasaraopet, are the appellants herein. They were tried for the offence U/s.302 r/w.34 of Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C') for causing the death of Smt.Makineni Satya Sri (hereinafter referred to as deceased) on 23.05.2016 at about 06.00 a.m. in their house at Vinukonda.
2. Vide Judgment dated 30.08.2017, the learned XIII Additional District &Sessions Judge, Guntur at Narasaraopet, convicted the accused No.1 and 2 for the offence U/s.302 r/w.34 of IPC and sentenced them to undergo imprisonment for life, and to pay a fine of Rs.1,000/- each, in default of payment of fine, to suffer simple imprisonment for a period of one (01) month each.
3. Challenging the said conviction and sentence, the present appeal came to be filed.
4. On 20.04.2023 the learned counsel for the appellant/A-1 filed memo before this Court submitting that the State Government granted remission to A-1, and as a consequence of the same, A-1 was released from the Special Prison for Women,

Rajamahendravaram on 15.08.2022. Consequently, the Criminal Appeal to the extent of the 1st appellant/A-1 was dismissed by this Court, and continued the appeal against the 2nd appellant/A-2.

5. The facts as culled out from the evidence of prosecution witnesses are as under:

(i) P.W-1 is father of A-2; A-1 is wife of A-2; the deceased Smt.Makineni Satya Sri is wife of P.W-1 and mother of A-2; P.W-1, the deceased, A-1 and A-2 along with their children were staying in a flat in Seetharama Towers (apartment) located in Karampudi Road, Vinukonda.P.W-4 is the grandson of P.W-1 and the deceased; P.W-4 is the son of daughter of P.W-1 and the deceased; he was also present in the house on the date of incident; P.W-3 is son-in-law of P.W-1 and the deceased and staying at Hyderabad.

(ii) On the date of incident i.e., on 23.05.2016 P.W-1 and the deceased along with P.W-4 were sleeping in one bed room; A-1, A-2 and their children were sleeping in another bed room in the flat; P.W-1 on the morning of 23.05.2016 at 05.00 a.m. went outside for walking closing the main door; he returned to home at about 06.30 a.m.; he went inside the flat and noticed the deceased with injuries lying on the cot in the bed room; he tried to wake up her, but in-vain; he knocked the door of the bed room of A-1 and A-2 and informed

about the injuries sustained by the deceased; on hearing cries of P.W-1 and the accused, neighbours came to the flat.

(iii) Inspector of Police, Vinukonda Town Police Station (P.W-7) basing on Ex.P-14 report, registered Ex.P-15 FIR as case in Cr.No.97/2016 for the offence U/s.302 r/w.34 IPC against the accused on 23.05.2016 at 09.15 a.m.; P.W-7 submitted Ex.P-15 FIR to the Judicial Magistrate of the First Class, Vinukonda, and copies to all concerned; P.W-7 visited scene of offence located in flat No.511, Seetharama Towers (apartment), Karampudi Road, Vinukonda; P.W-7 observed the scene of offence in the presence of Village Revenue Officer of Timmayapalem Village (P.W-6) and another and prepared report (Ex.P-9); P.W-7 seized M.Os-1 to 10 available at the scene of offence; scene of offence was photographed vide Ex.P-16 photos; P.W-7 prepared a rough sketch of scene of offence (Ex.P-17); later, P.W-7 conducted inquest over dead body of deceased in the presence of blood relatives of the deceased and panchayatdars under the cover of an inquest report (Ex.P-10); during inquest, P.W-7 examined P.Ws-1 to 3 and recorded their statements; the dead body of deceased was shifted to Community Health Centre, Vinukonda, for autopsy.

(iv) P.W-5 Civil Assistant Surgeon, Community Health Centre, Vinukonda, conducted autopsy on 24.05.2016 and opined that the death was due to manual strangulation, and the approximate time of death was between 12 to 24 hours prior to the post mortem examination.

(v) P.W-7 during investigation examined and recorded statements of P.W-4 and others; on 26.05.2016 on information he arrested A-1 and A-2 at RTC Bus Stand, Vinukonda, in the presence of P.W-6 and another and recorded their confessional statements; basing on the fact discovered, P.W-7 seized M.Os-11 to 20 available in flat No.511 under the cover of Ex.P-13 in the presence of P.W-6 and another and they were forwarded to RFSL, Guntur for analysis; later, he received the report of RFSL, Hyderabad and Guntur.

(vi) After completing investigation, a charge sheet came to be filed, which was taken on file as P.R.C.No.40/2016 on the file of Judicial Magistrate of the First Class, Vinukonda.

6. In support of the case, the prosecution examined P.Ws-1 to 7 and got marked Ex.P.1 to Ex.P.17, besides M.Os-1 to 20. After completion of the prosecution evidence, the accused were examined U/s.313 Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) with reference to the incriminating circumstances appearing

against the accused in the evidence of prosecution witnesses. The accused denied the same as false, but no defence evidence was adduced.

7. Believing the evidence of the prosecution witnesses, the learned XIII Additional District & Sessions Judge, Guntur at Narasaraopet, convicted and sentenced accused as stated above.

8. Sri Prabhu Nath Vasireddy, learned Counsel for the 2nd appellant/A-2 submitted that the case of the prosecution is based on circumstantial evidence; it was contended by the learned counsel that the evidence of P.W-1, P.W-2 and P.W-3 did not establish the motive; that the evidence of P.W-4 was held by the Sessions Judge that he is unable to understand the meaning of the evidence, and therefore, he is not a competent witness and as such, his evidence was not recorded; that there was unexplained delay of three days in forwarding the F.I.R. to the Court; that when the medical evidence would show that P.W-5 found semi digested food in the abdomen of the deceased at the time of death and that opinion of the doctor would show that death was occurred 6 to 12 hours prior to post mortem examination; therefore, it must be between 01.00 a.m. and 02.00 a.m. on 24.05.2016; that admittedly P.W-1 was also present in the flat at that time and hence, fixing of A-1 and A-2 alone as adult

male persons present in the house is not correct; that the finding of the trial Court basing on some information extracted from a text book of Medical Jurisprudence is an erroneous act, as the trial Court failed to notice that no evidence is available on record to show about the nature of food taken by the deceased before her death, and further, there is no evidence on record to show that the deceased was suffering from ill-health; that the recovery relied on by the prosecution relating to M.Os-11 to 20 i.e., blood stained clothes of the accused also do not connect the accused with the offence; that the RFSL report does not disclose that the blood found on M.Os-11 to 20 belongs to the deceased; that the evidence of P.W-1 would show that the police took the accused to the police station on the date of incident itself; therefore, the case of the prosecution that the accused were arrested on 26.05.2016 at Bus Stand, Vinukonda, and made confession about M.Os-11 to 20 is untrustworthy; that the medical evidence would show that 11 bite injuries on the body of deceased, but there is no evidence on record to connect accused with the said bite injuries; that the learned trial judge erroneously without any evidence held that the bite injuries were made by the accused; that the Investigation Officer failed to take steps for DNA examination of bite injuries to connect the accused; that the prosecution failed to prove the motive, last seen theory and recovery

of M.Os-11 to 20; therefore, section 106 of Indian Evidence Act cannot be applied to the case.

9. However, it was contended by Sri Y.Nagi Reddy, learned Public Prosecutor for State, that the evidence on record would show that P.W-1 went outside for walking at 06.00 a.m.; that the medical evidence would establish that the death was occurred at about 06.00 a.m.; that accused are the only adult persons present in the house at that time; that M.Os-11 to 20 were recovered basing on the fact disclosed by the accused and they contained blood stains of the deceased; that the accused did not give any explanation as laid down U/s.106 of Indian Evidence Act, 1872.

10. We have carefully considered the rival submissions.

11. The case of the prosecution is based on circumstantial evidence. Therefore, we may have to see whether the chain of circumstances is complete and unbroken. The Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra**¹ held that "*the Court must keep in mind five golden principles or the panchsheel*", as held in para 153 of the judgment.

¹1984 (4) SCC 116

“1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;

2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

3. The circumstances should be of a conclusive nature and tendency;

4. They should exclude every possible hypothesis except the one to be proved; and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

12. In the case on hand, the prosecution tried to establish the guilt of the accused through the evidence of P. Ws-1 to 7. The prosecution sought to establish the motive and last seen theory through the evidence of P. Ws-1 to 4.

13. P.W-1 evidence would show that on the date of incident, P.W-1 and the deceased were sleeping in one bedroom, the accused were sleeping in the other bedroom. P.W-1 went outside at 05.00 a.m. on 24.05.2016. He returned to home at 06.30 a.m. All the

inmates were sleeping at that time. He noticed the deceased with injuries lying on the cot. He tried to wake up her, but in-vain. Then, he informed the accused, who were sleeping in the other bedroom.

14. P.W-5, conducted autopsy at about 08.00 a.m. on 24.05.2016, He deposed that the approximate time of death was between 12 to 24 hours prior to postmortem examination. Later, in the cross-examination, admitted that he found semi digested food in the abdomen of the deceased. He believed the time of death may be 6 to 12 hours prior to the postmortem examination, and that semi digested food will be found if the death was occurred within 2 to 3 hours after consumption. P.W-1 deposed that himself and deceased had dinner between 08.30 and 09.00 p.m. on 23.05.2016. Therefore, the death would appear to have occurred between 01.00 a.m. to 02.00 a.m. on 24.05.2016 if the evidence of P.W-5 is taken into consideration. Undisputedly, P.W-1 was present in the flat, sleeping in the bedroom along with the deceased at that time. Unfortunately, the learned trial judge, jumped to a conclusion that in view of the opinion expressed by Dr.K.S.Narayana Reddy, in his text book of Forensic Medicine, digestion might have delayed, ignoring that there is no evidence to show that the deceased consumed fatty food, and that she was suffering with illness or emotional stress at that time. In

that view of the matter, we are not inclined to accept the said finding of the learned Sessions Judge, which is not based on any evidence. The evidence of P.W-5 available on record would show that there is every possibility of occurrence of death between 01.00 a.m. and 02.00 a.m. In those circumstances, the contention of the prosecution that A-1 and A-2 are only adult persons present in the house, falls to ground.

15. The Hon'ble Apex Court in the case of **Chotkau Vs. State of Uttar Pradesh**² held that *"to invoke section 106 of Evidence Act, in the context of last seen theory, the prosecution to successfully invoke Section 106 of the Evidence Act, they must first establish that there was "any fact especially within the knowledge of the accused"*. This can be done by the prosecution only by proving that the victim was last seen in the company of the accused.

16. Therefore, it is needless to point out that for the prosecution to successfully invoke 106 of the Evidence Act, they must first establish that there was any fact especially within the knowledge of the appellants. This can be done by the prosecution only by proving that the victim was last seen in the company of the appellants.

²2023 (6) SCC 742

17. In the case on hand, the facts discussed above would show that the death of deceased would have occurred between 01.00 a.m. and 02.00 a.m. and P.W-1 i.e., husband of the deceased was also present in the house sleeping in the bedroom along with the deceased. In the light of above circumstances, we are not inclined to invoke section 106 of the Indian Evidence Act, 1872.

18. When coming to the motive, nothing has been made out through the evidence of P.Ws-1 to 4 to connect the accused with the offence, to say that they had a motive to do away the life of the deceased.

19. The prosecution relied on the evidence of P.W-6 and P.W-7 to establish that M.Os-11 to 20 were recovered based on the confession made by the accused, after their arrest on 26.05.2016. Unfortunately, the learned trial judge failed to notice that the evidence would show that the accused were in the custody of the police, from the date of incident itself i.e., on 24.05.2016, creating a doubt about recovery.

20. Further, the learned Sessions Judge also jumped to a conclusion that the blood stains found on the clothes of accused i.e., M.Os-11 to 20 belongs to the deceased. This finding of the learned Sessions Judge is not based on any evidence. The RFSL Reports

(Ex.P-5 and Ex.P-6) would show that the human blood was detected on these items. But they did not give any opinion about the blood group of the blood found on M.Os-11 to 20. Therefore, there is no evidence on record to show that the blood found on these clothes of deceased is of the deceased. Further, there is no evidence to show that M.Os-11 to 20 belongs to the accused. As already stated above, the arrest of the accused was not trustworthy.

21. The medical evidence would show that there are 11 bite injuries found on body of the deceased. But no steps were taken by the Investigation Officer to send the accused for DNA examination. The learned Sessions Judge unfortunately jumped to conclusion that the bites found on the body of deceased are of A-1.

22. In the case on hand, undisputedly, the police station and court are located side by side at Vinukonda. As per the evidence of P.W-7, he registered FIR at 09.15 a.m. on 24.05.2016, whereas, it was received by the Court at 10.30 p.m. on 25.05.2016 i.e., nearly 36 hours. No explanation was offered by the prosecution for this delay. P.W-6 deposed that she was present at the time of scene observation and inquest on 23.05.2016, whereas FIR was registered on 24.05.2016. Ex.P-9 would show that she signed on 26.05.2016, though it was recorded on 23.05.2016. All these circumstances

would create a reasonable doubt that the records were prepared after deliberations, and thereafter, FIR reached the Court.

23. Where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance that its case has been proved beyond reasonable doubt. More serious the offence, stricter the degree of proof required, since a higher degree of assurance is required for conviction. The Hon'ble Supreme Court in the case of **Paramjeet Singh @ Pamma Vs. State of Uttarakhand**³ held that *"the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted"*.

24. It is necessary to say something about the approach adopted by the learned Sessions Court. In a case of this nature, the Court has to assess the evidence on the test of probability. The evidence has to be weighed carefully before recording conviction. The learned Sessions Judge without any evidence came to an erroneous opinion that the prosecution proved the motive, last seen theory and recovery. Further, he jumped to certain conclusions, without any

³2010 (10) SCC 439

evidence forgetting that he has to scrutinize the evidence carefully in a case of this nature. In the words of Hon'ble Apex Court in Chotkau's Case, the erroneous approach on the part of the Sessions Court has led to the appellants being ordained to be dispatched to the gallows.

25. In the light of above discussion, we hold that the prosecution failed to prove the motive, last seen theory and recovery, to establish the guilt of the accused beyond reasonable doubt.

26. In the result, the Criminal Appeal is allowed and the conviction and sentence recorded by the learned XIII Addl.District &Sessions Judge, Guntur at Narasaraopet, vide judgment dated 30.08.2017 in S.C.20/2017 against the accused for the offence U/s.302 r/w.34 I.P.C. is set aside. The accused No.2 is acquitted U/s.235(1) Cr.P.C. for the said offence. The Criminal Appeal against the 1st appellant / A-1 stands disposed of as per orders dated 20.04.2023, as A-1 was already been granted remission by the Government of Andhra Pradesh, and released from Special Prison for Women, Rajamahendravaram, on 15.08.2022.

27. The 2nd appellant/accused No.2 shall be set at liberty forthwith, if he is not required to be detained in any other case or crime. The

fine amount, if any, paid by the 2nd appellant/accused No.2, shall be refunded to him.

Consequently, miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE B.V.L.N. CHAKRAVARTHI

L.R. Copy is to be marked

B/o. psk.

Date: 07.05.2024

psk

THE HON'BLE SRI JUSTICE K.SURESH REDDY
AND
THE HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

Criminal Appeal No.1177 OF 2017
(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

NOTE: Mark L.R. Copy

psk

Date: 07.05.2024

psk