

PETITIONER:
MANGAMMA AVVA ALIAS NESE YESODAMMA & OTHERS

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT 21/03/1995

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
REDDY, K. JAYACHANDRA (J)

CITATION:
1995 SCC Supl. (2) 434 JT 1995 (3) 447
1995 SCALE (2) 600

ACT:

HEADNOTE:

JUDGMENT:
PUNCHHI, J.:

1. This appeal by special leave is directed against an affirming judgment and order of a Division Bench of the Andhra Pradesh High Court dated June 23, 1983 passed in Criminal Appeal No.992 of 1982.

2. The three accused appellants are inter-related. A-1 and A-2 are sisters, while A-3 is the husband of a younger sister of the former two. A-1 and A-2 were originally residents of Village Thuggili. Thereat A-1 was known as Nese Yashodamma, the name given to her by her parents. She became a Digambara Sanyasni and assumed the name Mangamma Avva and on assumption of that order started remaining naked. It was believed in certain quarters that she had thereby come to possess some miraculous powers. While so she became controversial and had to move over to establish an Asharam within the revenue limits of another Village known as Hulabeedu. Her sister A-2, Savitramma became her resident companion. At a distance of about 200 yards from the Asharam was a temple on a hillock which somehow got linked with the Asharam. A-3 named Pullanna, was an occasional visitor to the Asharam. The Asharam used to be visited by devotees regularly but special Puja and Bhajans were undertaken on every Tuesday and Friday, when the number of visit-

450

ing devotees would swell. The visiting devotees used to make offerings in the form of cash or gold ornaments to the Sanyasini.

3. The deceased, Ramakoti Reddy, a young bachelor, then aged about 28 years had been a devotee for over five years and was more than ordinarily involved in the upkeep and running of the Asharam. Descriptively he was suggested to be a tall and hefty man of 5 feet 10 inches height. As part of the ritual on every Tuesday and Friday he would be in the Ashram, having come from his village Yellarathi (distance

about 10 miles) and would carry A-1 on his shoulders from the Asharam to the hilltop temple, covering about 200 to 250 yards in distance. After performing the Puja at the temple, he would likewise carry A-1 back on his shoulders to the Asharam. As a part of his involvement, he took stock of the offerings received in the form of cash and gold. Sometimes he would convert the cash into gold and sometimes pawned gold to get cash in order to meet the expenses of the Asharam, which included serving free food to the devotees. Thus being involved in the activities of the Asharam, the deceased often used to stay during nights thereat. It is alleged that the deceased had developed a close illicit relationship with A-2, as he would normally sleep with her in one of the rooms in the Asharam. He had otherwise been known to be moving in the company of A-2 to various places in connection with the affairs of the Asharam. It was also alleged that sometimes A-1 too would join the deceased in that separate room giving rise to the suspicion of her illicit intimacy with the deceased. Both A-1 and A-2, as it turns out to be, were unmarried.

4. The motive for the crime was suggested to be sexual jealousy. The prosecution alleges that the deceased was rejecting suggestions of his father and brother in settling down in marriage, because he was under the influence of A-1 and A-2. It was suggested that he was more in servitude of A-1 and A-2, in as much as, he was instrumental in arranging and helping perform the marriage of one of their sisters with A-3. It appears that the family members of the deceased were ultimately able to prevail upon him, and a couple of months earlier to the date of the occurrence, his marriage was settled with the sister of P.W.3 whose other sister was settled to be married with the younger brother of the deceased. Both the marriages were scheduled to be performed on May 15, 1981. On these developments, it is alleged, jealousy and frustration got aroused in the hearts of A-1 and A-2 because the deceased had given them a tacit understanding that he would keep A-2 as his mate, and would not marry another woman. It was feared by A-1 and A-2 and that his marriage was expected to dwindle his interest in these accused persons (A-1 and A-2) and in the affairs of the Asharam, in the running of which he had a major hand. Besides they had become concerned about the jewels of the Asharam which he had pawned to others, the identity of whom was not known to the accused, let apart the detail of the ornaments and the terms of those deals. They were thus concerned for the return of those jewels and the accounting of the financial affairs of the Asharam before the deceased entered into marriage. It was further alleged that deceased since the day of his engagement was avoiding to visit the Asharam and, whenever he did, it was with a waned interest.

451

5. The deceased met his death on the night intervening May 11-12, 1981. His deadbody was found lying on the following morning about 200 yards away from the Asharam. It was a Tuesday and the visiting devotees saw it. The news of the death of the deceased spread and it is in this manner that P.W.7 the brother of the deceased came to hear of it. He and his father and several other people of the village came to the Asharam on a bullock cart reaching there at 3.00 pm on 12-581, having covered a distance of about 10 miles from their village. P.W.7 observed, as was observed by others, a ligature mark around the neck of the deceased. He also found that the testicles of the deceased had been squeezed and they bore a bleeding injury. There was fecal matter on the dhoti of the deceased. A bed sheet, a red towel and

certain other things were lying close-by. They went to the Asharam and questioned A-1 and A-2, as also their maid-servant PW1, about how had the deceased been killed. While A-1 gave them an abusive reply the other two remained silent. He did not pursue conversation with them and went to the bus-stop of the village in order to go to the police station. There he learnt from the general gossip that his deceased brother accompanied by A-3 had alighted from a bus there the previous evening and had gone thereafter to the Asharam. He then went to Alur and reported the matter at the Police Station by giving a written complaint Ex.P.3.

6. In Ex.P.3, the first informant P.W.7 gave out that his brother, the deceased, and Pullanna A-3 were reported to have alighted from a bus from Adoni at Hulebeedu and that he had come to know that his brother had been murdered. Further than he went there and found his brother lying dead at a distance of about 200 yards west of the Asharam and that there were injuries on his- person such as ligature marks on his neck and the bleeding of testicles. After giving more such details he mentioned that he had found present in the Asharam A-1, A-2 and their maid servant P.W. 1. He did not mention about the enquiries he made from them as to how the deceased had been killed, and the reply of A-1. He did not raise any suspicion therein about the involvement of A-1 and A-2 in the crime. He suggested that in his village there was bitter party faction between his father's family and one Basanna Gowd, Ex-village Munsif of the village, and that one Rawoof Sab was supporting the latter. As a matter of detail, he mentioned that hostile party men had been seen moving about together for the last two days and that his father had warned the deceased, to be careful, but the deceased was not impressed by the warning. Concludingly P.W.7 mentioned : "Therefore, the above mentioned persons brought my brother through Dhone Pullanna and conjointly killed my brother. I request you to take action."

7. The police, thus set in motion, arrived at the situs where the deadbody was lying, in the evening around 8.00 pm on 12-5-81. Certain preliminary checks were made and the deadbody was left guarded. The Inquest was postponed till the next morning. The Inquest suggestedly started at 6.00 am on 13-5-1981 and closed at 8.00 am on the same day. It was during this while that PW1, the maid servant came forward to claim that she was a direct witness to the offence. In the relevant column of the Inquest, mention was made that from the shirt lying close-by a four-page letter was found in its pocket, which was got

452

written by A-1 to the deceased. Significantly this letter was not claimed either to have been written by A-1 or to have been signed or thumb marked at all by anyone, much less A-1. It was not disclosed therein as to who was the scribe of the letter.

8. At this stage it would be appropriate to take stock of the evidence of PW1 as given by her at the trial. She has been believed by both the courts below and the conviction rests mainly on her evidence. Since she spoke about the incident to the police only on 13-5-81, at a belated stage, and not at the first instance when questioned by PW.7 in the afternoon of 12-5-81, before his going to the police station, or on the arrival of the police in the evening that day it would be appropriate to take into consideration her evidence once again, over and above the consideration it has received by the courts below.

9. According to her she comes from the village of A-1 and A-2. At the time of the occurrence she was 25 years of

age, and an abandoned wife. She had been working as a coolly till a year prior thereto when she joined A-1 and A-2 as their servant and started living in the Asharam. She has stated about the existence of the temple at the hillock, and the Asharam situated below at level ground. She has described the activities of the Asharam and the special interest which the deceased had in its affairs, details of which have been given in the earlier introductory paragraphs. She claims to be positive that the deceased and A-2 had illicit relations because of their sharing the same room to sleep, which occasionally was visited by A-1 also. She has also talked about the deceased carrying A-1 to the hillock and his bringing her back on his shoulders in a naked condition. She has spoken to the manner of dealing with the collections and offerings and the purpose of his pledging and buying gold. She sums it up by saying that if Ramakuti Reddy (deceased) was not there, it would not be possible to continue the Asharam. In a nutshell, she described the deceased to have become indispensable to the Asharam.

10. Now with regard to the actual occurrence PW. 1 says that on Friday morning, four days prior to the occurrence, she had gone uphill to the temple where she found A-1 and A-3 sitting in the temple and A-3 writing something to the dictation of A-1. A-2 was close by. Having observed her seeing what A-1 and A-3 were doing, A-2 admonished her to go away from there as she had no business to be around. On that day she was certain that the deceased had not come to the Asharam. The devotees who had come had done the Puja and had been served food, whereafter they had left the place. However A-3 had visited the Asharam that day and by the evening he too had left. He returned on Saturday accompanied by her brother, the latter having come to invite her for their sister's marriage scheduled to take place the following Friday. She claims to have sought permission of A-1 and A-2 to go for the marriage but she was told that she could go for the purpose on the following Thursday. On the next morning i.e. Sunday both A-3 and the brother of PWI went away. On Monday evening A-3 came back accompanied by the deceased. They were served food. While taking food PWI heard some argument going on between the accused and the deceased about the proposed marriage of the deceased, when the deceased had lived with A-1 and A-2 for so much time and yet had decided

453

to marry another girl. All the same, when night set in, all the five inmates of the Asharam being the three accused, the deceased and PWI lay slept on the open platform, adjoining the Asharam structure.

11. Now to the actual occurrence, it was claimed by PW. 1 that A-1 was sleeping, on one side of the deceased and next to him on the other side slept A-2 and next to A-2 was sleeping PWI. At the right angle of the four lying in row was sleeping A-3. Approximately at mid-night she got up by chance to pass urine and having done so returned to her place. While not yet asleep, she noticed A-3 slowly opening the door of the Asharam and then bringing from inside a coir rope about 1 1/2 yards in length, about one inch thick. At that time the deceased was sleeping on his back with face upwards towards the sky. While so, A-3 was said to have passed the rope underneath the neck of deceased so as to catch the end of the passed rope, catching both ends in his hands. Co-ordinatingly, it was said, that A-1 sat on the chest of the deceased catching hold both his hands and A-2 sat on his legs catching hold of his testicles, squeezing

them; A-3 tightening the rope around the neck of the deceased. After some struggle the deceased met his death. Thereafter a white-stoned gold ring was removed by A-2 from the finger of the deceased. A-2 also removed all the contents of pocket of the shirt of the deceased which was lying close by, taking the contents inside the Ashram room. Thereafter it is alleged that one hand of the deceased was caught by A-1 and the other by A-2, while both the legs were caught hold of by A-3. Jointly they lifted and carried the deadbody, occasionally keeping it on the ground, to a distance of about 200 yards from the Asharam building and left it on the cart track. There A-3 removed the rope from the neck of the deceased and threw it on a nearby tree. A-1 then applied turmeric and vermilion to both the hands of the deceased. Having thereafter wiped her hands with the towel she threw it there. In the process, it is alleged that some of the red bangles worn by A-1 got broken and some pieces got scattered. A-2 then went to the Asharam building and brought the shirt, chappals and cigarette packet of the deceased, keeping them near the deadbody. A rug was also brought to cover the deadbody. On return it was found that some feecal matter of the deceased had dropped on the platform, PWI was asked by A-1 and A-2 to clean it. She did so and washed the platform. Thereafter PW. 1 claims to have asked all the accused as to why they had killed the deceased. She in reply was asked to keep her mouth shut and warned that if it comes to the notice of the police, she will be taken away by it. After the deed was accomplished and while it was still dark, A-3 is said to have left the place and went away. The following day being Tuesday, the expected Puja was not performed because of the death of the deceased as his deadbody lay within the view of the visitors. On the arrival of the police on Tuesday night PW. 1 was not questioned. On her part she did not volunteer a statement. Only on Wednesday morning when she was taken near the deadbody of the deceased, she claims to have told the police all what she had seen and done.

12. A-1 and A-2 were arrested on 13-5-1981. A-3 was arrested on July 1, 1981, about seven weeks later. The Police Officer arresting him showed to him the letter said to have been got written from A-3,

454

asking him as to who had got written that letter. It is claimed by the Investigation that A-3 admitted having written that letter at the dictation of A-1. The Police had asked A-3 to give another writing in order to have his handwriting compared with the suggested dictated letter. Nothing useful turned ultimately on that second writing because A-3 at the trial admitted having written the questioned letter but claimed that the police had got the same written under threat. It would be worthy of recall that in the Inquest report nowhere was it mentioned that A-3 had written the letter at the dictation of A-1 to the deceased. The statement of PWI in the Inquest Report is also deficient of this detail.

13. The High Court describes the questioned letter Ex.P.5 as a very long and rambling one, which is more like the outpouring, agitated and confused mind of a "God-woman" like A-1. The High Court has substantially translated the said unsigned letter in its judgment conveying to the deceased, in a broad manner, three messages:

- (i) to come, disclose and account his money dealings and pledges of gold ornaments to A-1 before his marriage;
- (ii) with the sent money as to be added with some more he should redeem the ornaments and bring them to A-1; and

(iii) that for the sake of his prior association in the Asharam, he should come and receive the blessings of A-1 and collect his marriage gift and possibly Rs. 10,000/- as presentation.

14. This letter the prosecution claims was to allure the deceased to the Asharam and it is for this purpose that the deceased in the company of A-3 had been going about redeeming the ornaments from various people within a day or two before his death (who have been examined as prosecution witnesses) in order to return the ornaments to A-1, and that those ornaments were suggestedly returned to A-1 by the deceased prior to his death.

15. What has been claimed by the prosecution to be an allurement to the deceased to be visiting the Asharam, three days prior to his scheduled marriage, in order to discharge his obligations towards the Asharam, cannot conclusively be said to be clandestine in character. The deceased may have with the best of his motive been led to clear account with the Asharam and in particular with A-1. It was not unnatural for A-1 to have trusted the deceased when he was looking after and managing the whole affairs of the Asharam. When his assistance and participation was withdrawn, the Asharam affairs must have become disarrayed. The letter Ex.P.5 does not appear to us to be conclusive on the subject, because in the first place it is not signed or thumb marked by A-1, in the second place the Inquest report does not disclose in any manner that the writing was of A-3, even though PWI had claimed at the trial A-3 to be its scribe, and in the third place the strange conduct of the Police Officer arresting A-3 to be carrying this letter till arrest on 1-7-1981. The plea of the defence that this letter was written at some stage of the investigation under threat to A-3, or as a substitute to the one mentioned in the Inquest report, might well be true and in any case suggesting considerable doubt. This aspect of the prosecution case, seeking to establish sexual jealousy as the prime motivating factor, in
455

writing that letter and alluring the deceased to the Asharam, does not inspire confidence.

16. We come back to the statement of PW 1 to test the total case of the prosecution. Having gone through her statement in the light of the arguments advanced by teamed counsel and having pondered over the matter, we are of the view that it would be unsafe to maintain the conviction of the appellants on the bare testimony of PWI. It is noteworthy that she was a grown up young woman of 25 years of age, seemingly vigilant and alert. Her statement reveals that except for her serving the household as maid servant no extra pressure stood put on her, from which it could be gathered that she was enslaved and could be frightened to submission to keep her mouth shut. Her alert eyes and ears had seen and heard A-1 dictating a letter to A-3 and yet we do not find mention of this detail in the statement attributed to her in the Inquest report. She claims that after the crime was committed, and before the deadbody was removed from a platform close to the Asharam, the contents of the pocket of the shirt of the deceased lying close-by were emptied by A2, and yet we find the investigation claiming that a four-page letter was found in the pocket of the shirt of the deceased, which was brought from the Asharam to be placed near the deadbody of the deceased. It is understandable as to why such an incriminating document, more so when the contents of the pocket of the shirt had been removed by A-2 in the presence of A-1 and A-3, was allowed to remain or put back in the pocket by A-2. seems to us that introduction of the 1

and its recovery and its authorship, connect it with the visit of the deceased the Asharam, was a thoughtless and clumsy attempt on the part of the investigation to supply the motive for the crime. We reject this piece of evidence.

17. What surprises us most is the silence of PWI in narrating this incident to others at the earliest possible time. To begin with she had the opportunity of disclosing about the incident, if not for anything else, but to unload herself to the devotees who had come on that Tuesday to the Asharam and had seen one of the most ardent of them lying murdered. That apart when questioned by PW-7 she could have unloaded her information before he left for the Police Station or to have, accompanied him. Significantly, in the first information report, Ex.P.3 the presence of PW-1 in the Asharam, finds mention. She had the opportunity to speak out then. Thirdly when the Police arrived in the evening, she could have volunteered her statement to the Police much before the Inquest, even if it was postponed to the following morning. That by itself is a suspicious circumstance as to why Inquest stood postponed, specially in the background of what was stated in Ex.P.3. Positive suspicion and assertion of the murder having taken place on account of factionalism was mentioned in Ex.P.3, not even remotely suggesting the inmates of the Asharam to be responsible for it. PW. 1 making a statement the following day, at the time of Inquest, shows that by that time the investigation had been successful in framing her to be witness of the crime; the hours of the night intervening being sufficient for the purpose. Further the version given by her appears to be highly improbable and artificial. According to the prosecution because of a deep-rooted sexual jealousy A-1 hatched a plan in a cold-

456

blooded manner to kill the deceased and with the help of A-2 and A-3 executed it in a diabolical manner by strangulating the deceased. P.W. 1 was after all a maid servant and in such a situation it is highly unthinkable that A-1 to A-3 would have allowed her to sleep near the scene of occurrence almost next to them and thus enable her to witness the same. On the other hand, they could have easily sent her away when she asked their permission to go to her village in connection with her sister's marriage. The fact that she came forward with this artificial version about the occurrence at a belated stage itself shows that she was fixed up as a witness later during the investigation. Thus in our view, it is unsafe to rest conviction of the appellants on such a witness as PWI, and on such a piece of evidence as letter Ex.P.5. The other evidence of the investigation relating to A-3 and the deceased being seen moving together and effecting redemptions of pawned ornaments, leaving apart the contents and their merit, becomes insignificant in the view we have taken on the eye witness account. The accused persons are thus entitled to acquittal.

18. For the foregoing reasons peal succeeds, the judgment and order of the High Court affirming that of the Court of Session is set aside and the appellants are acquitted of the charge. They are on bail. They need not surrender to their bail bonds.

457