

Padala Veera Reddy

Vs

State of Andhra Pradesh and Others

Criminal Appeal No. 420 of 1989

(S. R. Pandian, M. M. DuttV. Ramaswami-I JJ)

26.10.1989

JUDGMENT

RATNAVEL PANDIAN, J. –

1. This criminal appeal is directed against the judgment of the High Court of Andhra Pradesh, rendered in Criminal Appeal No. 544 of 1987 partly allowing the appeal by setting aside the convictions of respondents 2 to 4 (accused 1 to 3) under Section 302 read with Section 344 of IPC and Section 498-A IPC and the sentence of imprisonment for life and the sentence of one year rigorous imprisonment respectively but retaining the conviction of the respondents 2 to 4 under Section 201 read with Section 34 of IPC and the sentence of three years rigorous imprisonment as against respondents 2 and 3 (accused 1 and 2) but reducing the sentence of imprisonment inflicted on respondent 4(A-3) to the period already undergone and in lieu of the unserved portion of the sentence, imposing a fine of Rs. 1000 in default to suffer rigorous imprisonment for three months.
2. The relevant facts of the case giving rise to this appeal are necessary to be recapitulated for the disposal of this appeal.
3. Before the trial court, there were four accused namely respondents 2 to 4 and one Mallidi Peda Kapu alias Venkata Reddy (accused 4) who stood convicted under Section 201 IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs. 1,000 in default to undergo rigorous imprisonment for a further period of three months and who is not a respondent in this appeal. For the sake of convenience, we shall refer respondent 2 to 4 in this judgment as accused 1 to 3 as arrayed before the trial court.
4. The second and third accused are the father and mother of the first accused. The first accused married the deceased, Vijaya, daughter of PW 8 (the appellant herein) on May 10, 1979 at Tirumala hills. PW 9 is the brother of the deceased. All the accused are residents of Komaripalem. The appellant is the resident of Rayavaram. At the time of the marriage, the appellant gave sufficient cash and gold to the deceased. As the deceased was aged about 12 years at the time of her marriage she stayed with her parents till she attained her puberty and thereafter was sent to her marital home. The case of the prosecution is that the deceased used to complain to her father that her husband and in-laws were pressing hard to get some landed property towards her dowry. When the appellant made enquiries about her daughter's complaints, the accused abused and tried to beat him. In 1985 during the second crop season, accused 1, 2 and 4 along with the deceased forcibly harvested the crop standing on the land of the appellant. It is stated that the deceased even went to the extent of filing a suit against her father, the appellant (PW 8) and brother (PW 9) claiming that the land in dispute was in her possession. Her brother PW 9 in turn filed a suit against the deceased and PW 8.

The appellant filed a criminal complaint against the deceased and the accused persons. Thus, there were civil and criminal proceedings between the parties.

5. On the intervening night of September 6/7, 1985 accused 1 to 3 are said to have attended the marriage celebrated in the house of PW 1 and remained in the marriage house till morning of September 7 and when they came back to their house they, to their shock and surprise found a number of people gathered in front of their house and the body of the deceased lying in an easy chair. The fourth accused who is not a respondent in this appeal went to the police station and gave the report Ex. P. 14 to the Head Constable. Some nail marks and swelling over the neck, lips, chin and nose were noticed on the dead body. A tin covered with a cap and pasted with a label inscribed 'Democran' (i.e. pesticide) was found by the side of the dead body. The fourth accused stated in Ex. P. 14 that the deceased had committed suicide. PW 10 registered the report. Thereafter, PWs 10 and 11 reached the scene and took up investigation.

6. In the meanwhile, the appellant and PW 9 on receipt of the jarring information about the death of the deceased came to the scene village. During the investigation, accused 1 handed over three letters Exs. P. 6 to P. 8, said to have been written by the deceased to her father. These letters were seized under Ex.P. 5. PW 10 held the inquest and during the course of which he examined PWs 8 and 9 and others. As suspicion was entertained over the death of the deceased, the dead body was sent for post-mortem examination. PWs 5 and 6, the Medical Officers conducted autopsy and found some external injuries. The Medical Officers sent the viscera and some of the parts of the dead body namely liver and kidney for chemical examination. After the receipt of the Chemical Examiner's report both PWs 5 and 6 gave their opinion that the death was due to poisoning and smothering i.e., asphyxia. Further investigation was taken by PW 13 and thereafter by PW 14. All the accused were arrested. After completing the investigation, charge-sheet was laid. On the side of prosecution PWs 1 to 14 were examined.

7. All the accused denied their complicity with the offence in question and stated that the relationship between the deceased and the accused were on cordial terms, that on the ill-fated night they were all in the marriage house of PW 1 and that this case is foisted against them by the appellant on account of the long-standing enmity. The trial court accepting the evidence let in by the prosecution convicted A-1 to A-3 under the respective charges and sentenced them as aforementioned. On being aggrieved, the accused 1 to 3 filed Criminal Appeal No. 544 of 1987 and the fourth accused who stood convicted only under Section 201 IPC preferred Criminal Appeal No. 576 of 1987. Both the appeals were disposed of by the High Court by the impugned common judgment.

8. The State has not preferred any appeal against the order of acquittal of A-1 to A-3 of the charges punishable under Section 302 read with Section 34 and 498-A of the Indian Penal Code; but this present appeal is by PW 8, the father of the deceased.

9. Mr. Sitaramiah, the learned senior counsel appearing on behalf of the appellant took us very meticulously through the judgments of the trial court as well of the appellate court and strenuously contended that the reasons given by the appellate court for recording an order of acquittal of the offence of murder are perverse and difficult to comprehend and the appellate court has overlooked the important and vital facts which tend to show that the circumstances established are consistent only with the hypothesis of guilt of the accused. According to him, the chain of evidence is complete leaving no reasonable ground for drawing a conclusion consistent with the innocence of the accused. It is further submitted that the unrealistic and false plea put forth by the accused stating

that none of them was present in the house on the ill-fated night is itself an additional circumstance lending support to the other impelling circumstances unfailingly pointing out the guilt of the accused. The first respondent, State of Andhra Pradesh sails with the appellant supporting the arguments advanced by Mr. Sitaramiah, Mr. P. Krishna Rao, learned counsel appearing on behalf of the respondents 2 to 4 (accused 1 to 3) countered the above argument, submitting that the judgment of the appellate court is based on sound reasoning and that the totality of the evidence adduced by the prosecution, if at all proves anything it may create only a suspicion against the appellants and that no conviction, as rightly pointed out by the appellate court, can be safely recorded on such suspicion or conjecture.

10. Before advertng to the argument advanced by the learned counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its solely on circumstantial evidence. This Court in a series of decision has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests :

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra* ((1982) 2 SCC 351 : 1982 SCC (Cri) 431).

11. See also *Rama Nand v. State of Himachal Pradesh* ((1981) 1 SCC 511 : 1981 SCC (Cri) 197), *Prem Thakur v. State of Punjab* ((1982) 3 SCC 462 : 1983 SCC (Cri) 88), *Earabhadrapa alias Krishnappa v. State of Karnataka* ((1983) 2 SCC 330 : 1983 SCC (Cri) 447), *Gian Singh v. State of Punjab* (1986 Supp SCC 676 : 1987 SCC (Cri) 223), *Balwinder Singh v. State of Punjab* ((1987) 1 SCC 1 : 1987 SCC (Cri) 27).

12. Bearing the above principle of law enunciated by this Court we shall scrutinise scrupulously and examine carefully the circumstances appearing in this case with serious and onerous responsibility imposed on this Court.

13. There are certain salient and material features in the present case which are not controverted; they being that A-1 to A-3 and the deceased lived under a common roof, that the deceased had instituted a civil suit against her father, PW 8 and brother PW 9 claiming exclusive possession of the disputed land, that the deceased was found dead on the morning of September 7, 1985 and that there were certain visible injuries such as abrasions, nail marks and contusions on the part of the nose, upper lip, chin and neck etc. as noted by the Medical Officers (PWs 5 and 6) in the post-mortem report Ex. P.9. The appellate court on the strength of the opinion given by the Medical Officers

(PWs 5 and 6) has agreed with the view of the trial court that the death of the deceased was of homicidal one and not suicidal and held "therefore suicidal is ruled out." We also very carefully went through the evidence of the Medical Officers and found that the prosecution has convincingly established that the death of the deceased was due to forcible administration of poison and smothering. Hence we are in full agreement with the concurrent findings of the court below that it is a clear case of murder.

14. The next important question is whether the circumstances attending the case do satisfactorily and unerringly establish the guilt of the accused 1 to 3 or any of them so as to incriminate them with the heinous crime of murder and the offence of cruelty within the mischief of Section 498-A IPC. The learned counsel appearing on behalf of the appellant seeks to draw an interference of guilt of the accused on the following circumstances :

1. The demand of the deceased requesting her father to settle the landed property in her name and her subsequent filing of the civil suit in the year 1985 i.e. within a period of 6 years since her marriage indicate that the accused should have pressurised the deceased to take a hostile attitude towards her father so that they could grab the property.
2. The very fact that the deceased who was in her prime of youth did not accompany her husband and in laws to attend the marriage celebrated in the house of PW 1, situated just opposite to the accused's house shows that there was no cordial relationship between the deceased and the accused and the deceased was not leading a happy marital life.
3. The facts that the victim was alive when all the accused are said to have left their house to attend the marriage and she was done away with only during the intervening night of September 6/7, 1985 are not in dispute.
4. The fact that the deceased was found dead lying on an easy chair indicates that the dead body should have been brought and laid on the easy chair by someone else.
5. The presence of a tin container covered with a cap and pasted with a label inscribed 'Democran' (i.e. pesticide) near the easy chair which on chemical examination was not found to contain any poisonous substances shows that someone had kept the tin near the dead body so as to create a false impression in the minds of others that the victim had consumed the poison and committed suicide.
6. The presence of the injuries namely semi-circular abrasions resembling that of human nail marks over the upper parts of her lip, nose and chin, the contusions over the front of the neck, the congestion of the protruding eyeballs and the presence of bluish, black dis-colouration from the right angle of the mouth extending to right side of the neck unequivocally lead to a decisive conclusion that the deceased had been overpowered by the assailants and the poison was administered to her by forcibly opening her mouth and closing the nose and pressing the neck so as to make the victim to gulp the poison and in that process more than one person should have participated. This view is fortified by the final opinion given by the doctors stating that the death might have been caused due to the combined effect of asphyxia due to smothering and administering democran.

7. The conduct of accused 1 in handing over the three letters Exs. P. 6 to P. 8., alleged to have been written by the deceased herself, to the Investigating Officer on September 7, 1985 at the scene house itself is yet another circumstance showing that the accused has by a concerted pre-plan manipulated a defence theory of suicide so as to escape from the culpability of the crime. The defence of the accused that they were at the marriage house from 8.00 p.m. on September 6, 1985 till the morning of September 7, 1985 is patently false and unrealistic since the house of PW 1, where the marriage was conducted is almost opposite to the house of the accused. This plea of the accused is too big a pill to be swallowed.

8. The introduction of the patently false averments in Ex. P. 14 by accused 4 that the deceased had committed suicide should have been made only at the instance or A-1 to A-3 and this conduct of the accused clearly indicates that the accused had pre-planned and calculated a false theory of defence presumably due to an earlier deliberation and consultation with the local MLA.

15. According to the learned defence counsel, the totality of the above circumstances unerringly, unfailingly and unshakably prove that the accused 1 to 3 alone were the perpetrators of this heinous crime of murder and none else.

16. While considering the above circumstances, the appellate court has expressed its view that the explanation given by the accused that they were at the marriage house of PW 1 throughout the night is nothing but a false explanation and that the culprits whoever they might have been should have administered the poison to the victim and thereby caused her death and that there is very strong suspicion against the accused persons but the prosecution cannot be said to have established the guilt of the accused decisively since the suspicion cannot take the place of legal proof. The relevant portion of the final conclusion of the appellate court reads thus :

"There is no evidence whatsoever either from the neighbours or from others to show that the accused at any time ill-treated the deceased or treated her cruelly. In these circumstances, it is not possible to hold that the prosecution has established the guilt on the part of A-1 to A-3. Thus, there is no conclusive evidence that the accused committed the offence of murder. It is an unfortunate case where cold-blooded murder has been committed and it is difficult to believe that no inmate of the house had any hand in the offence of murder. But that will be only a suspicion which cannot take the place of proof."

17. We, in evaluating the circumstantial evidence available on record on different aspects of the case, shall at the foremost watchfully examine whether the accused 1 to 3 had developed bad blood against the deceased to the extent of silencing her forever, that too in a very inhuman and horrendous manner. The appellant wants us to infer that the deceased should have subjected to all kinds of pressures and harassments and compelled to institute the suit against her father and brother claiming exclusive right over the landed property in order to grab the said property, that this conduct of the accused should have been resented by the deceased and that on that score the accused should have decided to put an end to her life. In our view, this submission has no merit because there is no acceptable evidence showing that there was any quarrel in the family and that the deceased was ill-treated either by her husband or in-laws. The appellate court while dealing with this aspect of the case has observed that there is no evidence that the accused ill-treated the deceased, which observation we have extracted above. Hence, we hold that there is no sufficient material to warrant a

conclusion that the accused had any motive to snatch away the life thread of the deceased. There is no denying the fact that the deceased did not accompany her husband and in laws to attend the marriage celebrated in the house of PW 1 and remained in the scene house and that she has been done away with on the intervening night of September 6/7, 1985. From this circumstance, the court will not be justified in drawing any conclusion that the deceased was not leading a happy marital life. As observed by the appellate court, the explanation offered by accused 1 to 3 that they remained in the house of PW 1 throughout the night is too big a pill to be swallowed. But at the same time, in our view, this unacceptable explanation would not lead to any irresistible inference that the accused alone should have committed this murder and have come forward with this false explanation. We have to hesitation in coming to the conclusion that it is a case of murder but not a suicide as we have pointed out supra. The placing of the tin container with the inscription 'Democran' by the side of the dead body is nothing but a planted one so as to give a misleading impression that the deceased had consumed poison and committed suicide. But there is no evidence as to who had placed the tin container by the side of the dead body. Even if we hold that the perpetrators of the crime whoever might have been had placed the tin, that in the absence of any satisfactory evidence against the accused would not lead to any inference that these accused or any of them should have done it. It is the admitted case that the first accused handed over three letters Exs. P. 6 to P. 8 alleged to have been written by the deceased to the Investigating Officer. The sum and substance of these letters are to the effect that the deceased had some grouse against her parents and that the accused were not responsible for her death. The explanation given by accused 1 in this written statement is that by about the time of the arrival of the police, one Sathi Presada Reddy handed over these letters to him saying that he (Reddy) found them near the place where the dead body was laid and that the (A-1) in turn handed over them to the police. PWs 8 and 9 have deposed that these letters are not under the handwriting of the deceased. But the prosecution has not taken any effort to send the letters to any handwriting expert for comparison with the admitted writings of the deceased with the writings found in Exs. P.6 to P.8. Under these circumstances, no adverse inference can be drawn against accused 1 on his conduct in handing over these letters.

18. No doubt, this murder is diabolical in conception and cruel in execution but the real and pivotal issue is whether the totality of the circumstances unerringly establish that all the accused or any of them are the real culprits. The circumstances indicated by the learned counsel undoubtedly create a suspicion against the accused. But would these circumstances be sufficient to hold that the respondents 2 to 4 (accused 1 to 3) had committed this heinous crime. In our view, they are not.

19. There are series of decisions holding that no one can be convicted on the basis of mere suspicion, however it may be. Though we feel it is not necessary to recapitulate all those decisions we will refer to a few on this point.

20. This Court in *Palvinder Kaur v. State of Punjab* (1953 SCR 94 : AIR 1952 SC 354 : 1953 Cri LJ 154) has pointed out that in cases depending on circumstantial evidence courts should safeguard themselves against the danger of basing their conclusions on suspicions howsoever strong.

21. In *Chandrakant Ganpat Sovitkar v. State of Maharashtra* ((1975) 3 SCC 16 : 1974 SCC (Cri) 712) it has been observed : (SCC p. 28, para 16)

"It is well settled that no one can be convicted on the basis of mere suspicion, however strong it may be. It also cannot be disputed that when we take into account the conduct of an accused, his conduct must be looked at in its entirety."

22. In *Sharad Birdhichand Sarda v. State of Maharashtra* ((1984) 4 SCC 116 : 1984 SCC (Cri) 487) this Court has reiterated the above dictum and pointed out that the suspicion, however great it may be, cannot take the place of legal proof and that "fouler the crime higher the proof".

23. We are of the firm view that the circumstances appearing in this case when examined in the light of the above principle enunciated by this Court do not lead to any decisive conclusion that either all these accused or any of them had committed the murder of the deceased, Vijaya punishable under Section 302 read with Section 34 of IPC or the offence of cruelty within the mischief of Section 498-A IPC. Hence, viewed from any angle, the judgment of the appellate court does not call for interference.

24. The appeal is dismissed accordingly.

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