

(2012) 12 AP CK 0011

Andhra Pradesh High Court**Case No:** Criminal Appeal No. 22 of 2009Upputholla Srinivasa Rao @
Srinu

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: Dec. 10, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 374(2)
- Penal Code, 1860 (IPC) - Section 302

Citation: (2013) 1 ALT(Cri) 262**Hon'ble Judges:** P. Durga Prasad, J; N.V. Ramana, J**Bench:** Division Bench**Advocate:** A. Gayatri Reddy, for the Appellant;**Final Decision:** Allowed

Judgement

N.V. Ramana, J.

This Criminal Appeal, u/s 374(2) of the Code of Criminal Procedure, is filed questioning the conviction and sentence imposed against the appellant herein, by judgment dated 17-11-2008 passed in S.C. No. 250 of 2008 by the I Additional Sessions Judge, Guntur. The case of the prosecution in brief is that the accused is a resident of Atmakuru village. He is the husband of P.W. 2, who is the daughter of the deceased and P.W. 1. The marriage of P.W. 2 was performed with the accused about 16 years back. After marriage, P.W. 2 joined the accused to lead marital life at his native village, Atmakuru in Durgi Mandal. Out of the wedlock, the accused and P.W. 2 were blessed with two male children. Since the date of marriage, the accused is alleged to have been harassing P.W. 2 coming home in drunken condition. The deceased, on coming to know about the harassment, advised the accused not to harass P.W. 2, but the accused did not heed her advice and continued the harassment. About one year back, the deceased, to protect P.W. 2 from the harassment of the accused, brought her to her house at Macherla. The deceased

got P.W. 2 employed in KCP Cements factory at Macherla, so that she can live on her own earnings. After P.W. 2 got employment, the accused came over to Macherla and started living with her in the house of the deceased. About six months prior to the incident, the accused asked P.W. 2 to come along with him to their village, but the deceased refused to send P.W. 2 to lead marital life with him. Accused grew wild and left to his native village, leaving P.W. 2 and their two children in the house of the deceased.

2. The deceased, to protect the interest and welfare of the children of P.W. 2, kept Rs. 50,000/- in fixed deposit in their names and made P.W. 2 their guardian. On coming to know about the amount kept in fixed deposit, the accused, about one month prior to the incident, came to Macherla and demanded P.W. 2 and the deceased to withdraw the fixed deposit and pay the money to him, for which the deceased and P.W. 2 refused. Therefore, the accused bore grudge against the deceased and decided to kill her.

3. On 3-8-2006, at about 12.15 p.m., while the deceased along with P.W. 1 was returning home from KCP Cement factory, carrying dry sticks over her head, and when they reached Microwave Station, the accused, who was armed with knife, followed the deceased, attacked and stabbed her with the knife indiscriminately on the left side of her neck, chest and body, and as a result of the injuries sustained by her, the deceased died instantaneously. When P.W. 1 raised cries, the accused threatened him and escaped from the place. P.W. 2, who was attending to her work, and P.Ws. 3 and 4, who were near the Microwave Station, witnessed the incident. They tried to catch hold of the accused, but in vain. On the same day at about 2.00 p.m., P.W. 1 went to Macherla Town Police Station and presented Ex.P-1 report to P.W. 7 Sub-Inspector of Police, who in turn registered the same as Crime No. 76/2006 for the offence punishable u/s 302 IPC and submitted original FIR to the court. Thereafter, P.W. 10 Inspector of Police took up investigation of the case. He inspected the scene of offence and seized blood stained earth, controlled earth and a pair of footwear under a cover of observation report, in the presence of P.W. 6 and one Challa Goipala Krishnamurthi (L.W. 7). He got the scene of offence photographed by P.W. 5. Thereafter, he prepared rough sketch of the scene of offence under Ex.P-7. He held inquest over the dead body of the deceased in the presence of P.Ws. 6 and 9, under Ex.P-4. He examined and recorded the statements of P.Ws. 1 to 4. Thereafter, he sent the dead body of the deceased to Government Hospital, Macherla, for conducting post mortem examination. P.W. 8-Doctor, having conducted autopsy over the dead body of the deceased, issued Ex.P-6 post- mortem examination certificate, opining the cause of death of the deceased as due to multiple injuries. Thereafter, P.W. 10 arrested the accused near Railway station, Macherla, on 13-8-2006, and sent him for remand, After completing the investigation, he filed charge sheet against the accused.

4. The Sessions Judge framed charge u/s 302 IPC against the accused. The accused pleaded not guilty for the said charge and claimed to be tried.
5. The prosecution, in order to establish the said charge, examined P.Ws. 1 to 10 and got marked Exs.P-1 to P-9 and M.Os. 1 to 8. No oral or documentary evidence was adduced on behalf of the accused in defence.
6. The Sessions Judge, upon appraisal of the evidence on record, found the appellant-accused guilty of the charge u/s 302 IPC and convicted and sentenced him to undergo imprisonment for life and to pay fine of Rs. 500/-, in default to suffer simple imprisonment for 15 days.
7. Questioning the said conviction and sentence imposed against him, the accused has preferred the present criminal appeal.
8. We have heard the counsel for the appellant-accused and the Public Prosecutor for the respondent-State and perused the judgment and other material available on record,
9. Now the point that arises for consideration in this criminal appeal is whether the prosecution could establish the charge u/s 302 IPC against the appellant-accused beyond all reasonable doubt.
10. P.W. 11 is the husband of the deceased. P.W. 2 is the daughter of the deceased and wife of the accused. P.Ws. 3 and 4 are eyewitnesses to the incident. P.W. 5 is the photographer, who took photographs of the scene of offence. P.Ws. 6 and 9 are mediators to the inquest report and scene of observation report. P.W. 7 is the Sub-Inspector of Police, who registered the case and issued FIR. P.W. 8 is the doctor, who conducted autopsy over the dead body of the deceased and issued post-mortem report. P.W. 10 is the Circle Inspector of Police, who conducted investigation.
11. According to the prosecution, the motive for the accused to kill the deceased is that the deceased deposited Rs. 50,000/- in the name of the children of P.W. 2 and the accused, that the accused demanded her to withdraw the said amount and give it to him, but she refused to give, and therefore, he bore grudge against her and killed her.
12. To prove the motive for the accused to kill the deceased, the prosecution relied upon the evidence of P.W. 1 husband of the deceased, and P.W. 2 wife of the accused and daughter of P.W. 1 and the deceased.
13. P.W. 1 stated that the accused is his son-in-law and the marriage of the accused with his daughter P.W. 2 took place about 16 years back, and that they were blessed with two children. He further stated that the accused got addicted to bad vices and was demanding Rs. 50,000/-, which was deposited in the bank in the names of their grandchildren, and as the deceased refused to give the said amount, the accused

bore grudge against her.

14. P.W. 2 is the wife of the accused and daughter of the deceased and P.W. 1. She deposed that she was married to the accused about 16 years back and that they have two children. That initially, herself and the accused led happy marital life, but thereafter, the accused got addicted to alcohol and started harassing her and therefore, about one year prior to the incident, she came to her parents house. The accused lived in her parents house for six months and thereafter went to Atmakur. The accused used to come frequently and demand her to join him, but she refused. Her parents also were not willing to send her as he was ill-treating her. The deceased deposited Rs. 50,000/-, which was earned and saved by her by doing coolie work, in the names of her minor children and kept her as guardian. The accused demanded her to withdraw the said amount, but the deceased refused.

15. Though P.Ws. 1 and 2, in their chief-examination, stated that the accused demanded the deceased to withdraw Rs. 50,000/- deposited in the name of the children of P.W. 2 and the accused, but the fact remains, P.W.1, in his cross-examination, stated that the amount of Rs. 50,000/- was deposited by the accused, while P.W.2, in her cross-examination, stated that the amount of Rs. 50,000/- was deposited in the post-office by the accused and by them jointly. Thus, their evidence is not only inconsistent with each other, but it also does not support the case of the prosecution that the deceased deposited the said amount of Rs. 50,000/- in the name of the children of P.W. 2 and the deceased. Since the prosecution did not prove that the deceased deposited the said amount of Rs. 50,000/- in the names of the children of P.W. 2 and the accused, the evidence of P.Ws. 1 and 2 that the accused demanded the deceased to withdraw the said amount, cannot be believed. Further, it was elicited in the cross-examination of P.Ws. 1 and 2 that the accused has obtained LIC policy for him, and according to P.W. 2, the bond pertaining to that policy is with her. If that is so, it is unbelievable that the accused, who holds an LIC policy and who kept the bond pertaining to that policy with his wife-P.W. 2, would kill the deceased for an amount of Rs. 50,000/-, which is said to have been deposited in the name of his children.

16. So far as the commission of offence by the accused is concerned, the prosecution relied upon the evidence of P.Ws. 1 to 4, who are said to have witnessed the incident.

17. As regard the incident, it is the evidence of P.W. 1 that on the date of incident, the deceased was returning home with a bundle of firewood, and he went to her to carry the bundle. Then the deceased told him that he may not be able to carry that weight. Then he followed her. When they reached Microwave Station on Sagar Road, the accused came opposite to the deceased and stabbed her with knife on the left side of her neck, chest and stomach, and she died on the spot. When he tried to intervene, the accused tried to stab him. When he raised cries, P.Ws. 3 and 4 came there. On seeing them, the accused ran away threatening to kill his daughter P.W. 2.

18. Contrary to his statements in his chief-examination that he was following the deceased and the accused came opposite to her, in his cross-examination, he stated that he was coming opposite to the deceased and the accused came from her backside. Thus, there is inconsistency in his evidence as regards the material aspects as to from where he witnessed the incident and in what direction the accused came to the scene of offence. Further, though in his chief-examination, he stated that P.Ws. 3 and 4 came to the spot on hearing his cries, but P.W. 10 Investigating Officer, in his cross-examination, has categorically stated that P.W. 1 did not name anyone who has come to the scene of offence on hearing his cries. This apart, P.W. 1 made inconsistent statements in his evidence, as regards his lodging Ex.P-1 report with the police. In his chief-examination, he stated that he went to the police station and gave Ex.P-1 report, but in his cross-examination, he stated that he gave Ex.P-1 to the police after their arrival to the scene of offence and his thumb impression was obtained on Ex.P-1 at the spot. Having regard to these inconsistencies in his evidence, it is not safe to rely upon his evidence to connect the accused with the commission of the murder of the deceased.

19. P.W. 2 stated that on the date of incident, she was attending road work at the petrol bunk. At about 12.15 p.m. the deceased was returning home, carrying firewood bundle, and she informed the deceased that the accused was standing at the bunk and asked to be careful. The deceased said that the accused might have come to see his children. Then, she heard the cries from a distance of 50 yards. She went there and found the deceased dead with stab injuries on her neck, chest and stomach. The accused stabbed the deceased and ran away. In her cross-examination, she admitted that she did not state to the police that she heard the cries from a distance of 50 yards. Though she stated that she went to the scene of offence on hearing the cries and found the deceased dead, but the fact remains, P.W. 1 did not state anything about her coming to the scene of offence. Thus, her evidence cannot be relied upon.

20. P.W. 3 stated that on the day of incident, at about 12.15 p.m., himself and P.W. 4 were sitting in front of his house and talking to each other. At that time, the deceased raised cries and they found the accused running away with a knife after stabbing the deceased. They chased the accused, but could not apprehend him. They went near the deceased and found her dead, They found bleeding injuries on her dead body. P.W. 1, who was present with the deceased, also raised cries.

21. Though P.W. 4 corroborated the version of P.W. 3 and stated that himself and P.W. 3 tried to apprehend the accused, but the fact remains, P.W. 3, in his cross-examination, has categorically stated that he cannot run. Thus, their evidence that P.W. 3 chased the accused, while he was fleeing after stabbing the deceased, cannot be believed. This apart, their version that they tried to apprehend the accused, is not corroborated by P.W. 1, who, in his cross-examination, has categorically stated that nobody tried to apprehend the accused. Further, though

P.W. 3 stated that he is not related to P.W. 1 and P.W. 4 stated that he has no acquaintance with the family of P.W. 1, but the fact remains, P.W. 10 Investigating Officer stated that they are related to P.W. 1. It was also elicited in the cross-examination of P.W. 3 that P.W. 1 asked him to come to court and that himself, P.W. 1 and P.W. 2 came together to the court. Therefore, it is also not safe to place reliance on the evidence of P.Ws. 3 and 4.

22. Further, according to the prosecution, the incident took place on a public road near the Microwave Station. The evidence of P.Ws. 3 and 4 also shows that a bar and BSNL telephone office are situated near the place of incident, and that a boring pump is situated beside the house of P.W. 3 and neighbour come to that boring pump to draw water. It is also evident from the evidence of P.W. 4 that there is a petrol bunk about 40 to 50 yards away from the Microwave Station and vehicles stop at the petrol bunk for filling petrol. Further, according to P.W. 10 Investigating Officer, the incident took place on Macherla-Nagarjunasagar Road and there is 40 yards road leading from Srisailam-Macherla, that there is continuous vehicular traffic on these two roads and there are about 40 to 50 residential houses surrounding the scene of offence. If that is so, it is unbelievable that when the deceased raised cries, except P.Ws. 3 and 4, no other person would come to the scene of offence. Further, in spite of about 40 to 50 residential houses surrounding the scene of offence, P.W. 10 did not examine any of the neighbours of the scene of offence.

23. Further, according to P.Ws. 1 and 2, at the time to incident, the deceased was carrying firewood bundle. P.W. 6, who acted as mediator to the scene of offence observation report, also stated that there was a firewood bundle beside the dead body of the deceased. But, P.W. 6 and P.W. 10 Investigating Officer have categorically admitted in their cross-examination that the said firewood bundle is not seen in Ex.P-2 photographs of the scene of offence. This apart, P.W. 10 did not seize the said firewood bundle, for the reasons best known to him.

24. Further, according to the prosecution and the evidence of P.Ws. 1 to 4, the accused stabbed the deceased with knife. Even though P.W. 10 stated that pursuant to his arrest, the accused confessed to have committed the commission of the offence, the fact remains, he did not recover the crime weapon from the accused, and there is no explanation from him as to why he did not recover the same. The non-recovery of crime weapon said to have been used by the accused in the commission of offence, is absolutely fatal to the case of the prosecution.

25. Thus, having regard to the fact that except the evidence of P.Ws. 1 and 2, who are none other than the husband and daughter of the deceased, and P.Ws. 3 and 4, who are related to P.W. 1, there is no other independent corroborating evidence adduced by the prosecution to speak about the incident, and in view of the laches on the part of the investigating agency in not examining any independent witness, in spite of there being many residential houses situated near the scene of offence,

and not recovering the crime weapon said to have been used by the accused in the commission of offence, we are of the considered opinion that the prosecution failed to prove the charge u/s 302 IPC against the appellant-accused beyond all reasonable doubt. Hence, the conviction and sentence imposed against him by the Sessions Judge, for the said charge, by the judgment under appeal, cannot be sustained and is liable to be set aside. In the result, the criminal appeal is allowed. The conviction and sentence imposed against the appellant-accused, by judgment dated 17-1-2008 passed in S.C. No. 250 of 2008 by the I Additional Sessions Judge, Guntur, for the offence punishable u/s 302 IPC is hereby set aside. The appellant-accused is acquitted for the said charge and he shall be set at liberty forthwith, if he is not required in any other case, and the fine amount if any paid by him shall be refunded to him.