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**(2014) 02 AP CK 0017**

**Andhra Pradesh High Court**

**Case No:** Criminal Appeal No. 1274 of 2009

P. Sreenu and Another

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

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**Date of Decision:** Feb. 13, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302

**Citation:** (2014) 1 ALD(Cri) 996

**Hon'ble Judges:** M.S.K. Jaiswal, J; L.N. Reddy, J

**Bench:** Division Bench

**Final Decision:** Allowed

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**Judgement**

L. Narasimha Reddy, J.

The facts of this case demonstrate the deterioration of family values, particularly in the place where the persons involved in this case, are living. Hardly, we come across any person, accused or deceased, without any allegation as to illicit relationship. If the death has occurred to one of them, hardly eyebrows are raised.

2. A1 and A2, the appellants herein, were tried by the Court of I Additional Sessions Judge, Chittoor in S.C. No. 498 of 2008 for the offence of committing the murder of Y.Vijay Kumar, the deceased.

3. The case of the prosecution was that A1 had already two wives and begot children with them, but was discarded by their family on account of his undisciplined life. A2, by name Ammulu @ Vijaya Lakshmi, was married to her maternal uncle and had three children through him. Alleging that her husband developed illicit relation with another woman, A2 started living in the house of her parents at Nagiripalle. It is here that A1, who was discarded by his wives, and A2, who left her husband alleging infidelity, developed intimacy with each other and both of them started living at a Village, by name Kothur.

4. The deceased, by name Vijay Kumar, was married to a woman, by name Latha. He is said to have left that family and got acquaintance with A1 in the course of attending a funeral of the brother-in-law of A1 at Utuvanka Village. After this meeting, A1, A2, deceased and the sister of A1 were said to have started living at Renigunta while doing labour work at a construction place.

5. The deceased is said to have developed illicit relation with A2. One day, he is said to have noticed A1 and A2 in a compromising position and is said to have chased A1 on that account and warned A2 that he would put her to death. On 04.06.2008, A1 and A2 are said to have killed the deceased by strangulating him and that the dead body that was present in the hut was visited by P.W.6, a relative of the deceased, and other villagers. P.W.6 is said to have informed P.W.2, the father of the deceased, residing at Mahasamudram Village about the incident. However, by the time P.Ws.2 and 6 returned, the dead body is said to have removed to elsewhere and on finding that it was buried clandestinely at a distant place, P.Ws.1 and 2, the brother and father of the deceased respectively, submitted a complaint to the Station House Officer, Pakala Police Station on 06.06.2008 at 4.00 p.m. The Police registered Crime No. 77 of 2008 and thereafter, exhumed the body of the deceased. A1 and A2 are said to have made voluntary confession before P.W.5, V.R.O., and he in turn, is said to have informed the matter to the Police. Thereafter, the investigation was taken up and charge sheet was filed.

6. Through its judgment, dated 23.07.2009, the trial Court found the accused guilty of the offences punishable under Sections 302 and 201 I.P.C. and accordingly A1 and A2 were sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/- each, in default to undergo rigorous imprisonment for three months for the offence punishable u/s 302 I.P.C. A1 and A2 are further sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 500/- each, in default to undergo rigorous imprisonment for three months; for the offence punishable u/s 201 I.P.C. It was directed that both the sentences shall run concurrently.

7. Ms. Naseeb Afshan, learned counsel for the accused, submits that not only there did not exist any eye witness in this case, but even the circumstantial evidence is so inadequate, that it is insufficient to constitute the basis for an allegation, let alone for conviction. She submits that the entire case is woven with the fabric of illicit relations among one another and hardly there exists any scope or basis for convicting the accused. She contends that P.W.6, on whose evidence, the entire case of the prosecution rests, was not at all consistent. Learned counsel submits that P.W.6 admittedly saw A1 and A2 present at the dead body of the deceased and at that time, he did not entertain suspicion. She contends that it is only on arrival of the brother and father of the deceased i.e. P.Ws.1 and 2 that the allegation was made by him. She contends that even the medical evidence that emerged after the body was exhumed did not support the version of the prosecution and the learned Judge has rested his conclusions just on the conjectures, which are difficult to imagine.

8. Learned Public Prosecutor, on the other hand, submits that the trial Court found that the accused have not only committed the murder of the deceased, but also made an attempt to secret the evidence. She contends that the investigation of a very high order was undertaken and every possible link was provided to complete the chain of events to prove the case against the accused.

9. The brief introduction of the case given at the threshold of the judgment would disclose that the accused as well as the deceased are from the category of people who, hardly have any regard for the sanctity of marriage. The curious aspect of it is that each person named In the case developed intimacy with another outside their marriage, even while accusing their respective spouses, of not honest to them.

10. Left to themselves, A2 and the deceased were neither related nor married. Even the relationship between A1 and A2 was said to be illicit, notwithstanding the fact that each of them have not only their respective spouses, but also children with them. The acquaintance of the deceased with A1 and A2 was on the occasion of attending a funeral. The only thing that is said to have brought A1 to the deceased is their caste. By that time, the deceased was living separately from his legally wedded wife. Ultimately, A1, A2, deceased and sister of A1 are said to have started living in one hut at Renigunta while doing cooli work.

11. The motive attributed to A1 and A2 for killing the deceased is that the latter suspected the honesty of A2 towards him. When the entire bondage between the persons named above is nothing but illicit relationship, the theory of one suspecting the fidelity of the other, does not gain acceptability. It is only when a legally wedded spouse of one individual is suspected to have developed illicit intimacy with another, that there can exist the scope for developing hatred or motive to punish.

12. Let it be assumed that the deceased and A2 were living as wife and husband and the deceased did not tolerate his wife having relation with another. Even if that is true, there is no evidence to establish that the accused have killed the deceased. According to the prosecution itself, P.W.6, uncle of the deceased, who chanced to visit the Village, noticed the death of his nephew and even verified from A1 and A2 as to the cause of the death. The alleged information given by A1 and A2 that the deceased committed suicide by hanging himself, did not evoke any suspicion or response from P.W.6. Virtually, he took the same to be true and he has just passed on the information to the brother and father of the deceased, P.Ws. 1 and 2 respectively. P.Ws.1 and 2 entertained suspicion in this regard. It is important to note that P.W.6 did not accompany them to the place where the dead body was lying. In the cross-examination, P.W.6 stated that he did not even depose anything before the Police.

13. Even if one goes by the case of the persecution, A1 and A2 have buried the body of the deceased and thereby, they have discharged a semblance of obligation of conducting funeral. If, in fact, A1 and A2 have committed the murder of the

deceased, they would not have permitted the body to remain at that place for about one day, where number of people, including P.W.6 have visited. They buried the dead body almost after one day from the time of death. Their acts and omissions are accord with the ordinary human conduct. P.Ws.1 and 2, who did not care to verify as to what the deceased was doing when he was alive, have suspected A1 and A2, who have given the shelter to the deceased.

14. The entire case rests upon the alleged extra judicial confession of A1 and A2 said to have made before P.W.5. The deposition of this witness does not at all generate confidence. Added to that, he was treated as hostile and nothing serious was elicited from this witness in the cross-examination, by the prosecution.

15. The only source of information is P.W.6. He is said to have been examined by the Police two and half months after the incident. It is highly impossible to convict an individual for a serious offence like the one of murder on the basis of such feeble, unreliable and concocted evidence.

16. Hence, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 498 of 2008 on the file of I Additional Sessions Judge, Chittoor, dated 23.07.2009, against the appellants-accused, are set aside. The appellants-accused shall be set at liberty forthwith, unless their detention is needed in any other case. The fine amount, if any, paid by the appellants-accused shall be refunded to them.

17. The miscellaneous petitions filed in this appeal shall also stand disposed of.