

KUSTI MALLAIAH

v.

THE STATE OF ANDHRA PRADESH

(Criminal Appeal No. 642 of 2008)

MAY 28, 2013

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Penal Code, 1860:

ss.302/34 and 404/34 – Two accused-appellants killed a woman and took away her ornaments – The witness accompanying them revealed the incident to I.O. during investigation – Conviction by trial court and sentence of life imprisonment – Affirmed by High Court – Held: Evidence of sole eye-witness is cogent and trust worthy and has been corroborated by medical evidence and proven by recoveries — Minor discrepancies in the evidence of other witnesses cannot be termed even as minor contradictions – Conviction and sentence upheld – Evidence.

Evidence:

Deposition of sole eye-witness – Held: Conviction can be recorded on the testimony of a single witness if his version is clear and reliable, for the principle is that the evidence has to be weighed and not counted – Process to evaluate the evidence of single witness, explained.

FIR

Delay in registration of FIR – Held: In the instant case process u/s 174 CrPC was followed after the dead body was located — Relatives of deceased were searching for it – They subsequently identified her photograph and her belongings – In the circumstances, it cannot be said that there has been

A *delay in lodging the FIR – Code of Criminal Procedure, 1973*
 — s.174 – *Delay/Laches.*

B The appellant was prosecuted along with A-1 for
 committing murder of a woman and taking away her
 ornaments. The prosecution case was that A-1 and the
 appellant took the deceased to a hillock. PW-6 also
 accompanied them. A-1 and the appellant committed
 sexual intercourse with the deceased. Thereafter they
 brutally assaulted her with stones, which resulted in her
 death, and took away her ornaments. The body of the
 deceased was found on the following day and the police
 sent it for post-mortem complying with the procedure
 provided u/s 174 CrPC. Subsequently, when the husband
 and the daughter of the deceased identified her
 photograph and belongings, their statements were
 recorded. The accused were arrested with the ornaments
 of the deceased. The trial court convicted them u/ss 302
 and 404 read with s.34 IPC and sentenced them to
 rigorous imprisonment for life. The appeal of A-1 was
 dismissed by the High Court. Thereafter the appellant filed
 his appeal which was also dismissed by the High Court
 by the judgment impugned in the instant appeal.

Dismissing the appeal, the Court

F HELD: 1.1. As regards the delay in lodging of the FIR,
 it is evident that the occurrence took place on 10.2.1997;
 the FIR was lodged by PW-1 stating that dead body of a
 woman was lying in the forest and on its basis, a report
 u/s 174 CrPC was registered and the body was sent for
 post-mortem. The evidence on record shows that when
 the deceased did not return from her parental home as
 per schedule, her husband (PW-4) sent a man to his
 father-in-law's house and on coming to know that the
 deceased had not reached there, they searched for her
 and in the process, on 18.2.1997, PW-4 and his daughter

H

(PW-5) went to the police station where they were shown the photograph of the deceased and a small cloth purse which they identified to be that of the deceased and, thereafter, the investigation commenced for offences punishable u/ss 302 and 404 read with 34 IPC. Regard being had to the totality of the circumstances, it cannot be said that there has been delay in lodging of the FIR. [para 9-10] [822-G-H; 823-G-H; 824-A-C, D-E]

1.2. With regard to contradictions in the statements recorded u/s 161 of CrPC and the depositions in court and further in the evidence of PW-4 and PW-5, true it is, there are certain minor discrepancies but they are absolutely minor, and even cannot earn the status of minor contradictions. Neither PW 4 nor has PW 5 made any endeavor to make any attempt to materially improve their earlier statement in their deposition before the court to make their evidence acceptable. It is also not a case where it can be said that they had withheld something material during investigation and embellished certain aspects during their deposition in court. Therefore, it cannot be said that there are such material contradictions which discredit the testimony of said witnesses. [para 11 and 15] [824-E-F; 825-D; 826-D-F]

Ousu Varghese v. State of Kerala (1974) 3 SCC 767; *State of Rajasthan v. Smt. Kalki and Another* 1981 (3) SCR 504 = 1981 (2) SCC 752; *State of U.P. v. M.K. Anthony* 1985 (1) SCC 505; and *State Rep. by Inspector of Police v. Saravanan & Anr.* 2008 (14) SCR 405 = 2009 AIR 152 - referred to.

2.1. So far as the plea that the evidence of PW-6 is not beyond reproach, it is manifest from the evidence brought on record that PW-6 had accompanied the accused. He had witnessed the occurrence from a distance. The illicit relationship between the deceased

- A and A-1 has been unequivocally stated by PWs-4 and 5. PW-6 has also deposed about the stealing of ornaments from the deceased. There has been recovery of the ornaments from the accused persons in presence of PW-9. The post-mortem report clearly mentions that the deceased died on account of head injury. PW-6, having accompanied the accused persons and witnessed the incident, it is natural that a sense of fear would creep in. In such circumstances, the delay in recording of his statement by the Investigating officer would not corrode the version of the prosecution. [para 16] [826-G; 827-A-E, H; 828-A]

- 2.2. There is no legal hurdle in convicting a person on the sole testimony of a single witness if his version is clear and reliable, for the principle is that the evidence has to be weighed and not counted. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories, there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness. On the analysis of evidence of PW-6, it is found that his evidence is cogent and trustworthy and further gets corroboration from the medical evidence and the factum of recovery of gold and silver ornaments which has been clearly proven by PW-9. [para 17 and 19] [828-D, E-G; 829-B]

Vadivelu Thevar v. The State of Madras 1957 SCR 981 =1957 AIR 614; *Lallu Manjhi and Another v. State of Jharkhand* 2003 (1) SCR 1 = 2003 (2) SCC 401, *Prithipal Singh and Others v. State of Punjab and Another* 2012 (14)

SCR 862 = 2012 (1) SCC 10 and *Jhapsa Kabari and Others v. State of Bihar* 2001 (10) SCC 94 – relied on. A

3. There is no error in the judgment of conviction and order of sentence passed by the trial court that has been affirmed by the High Court. [para 20] [829-C] B

Case Law Reference:

(1974) 3 SCC 767	referred to	para 12	
1981 (3) SCR 504	referred to	para 12	
1985 (1) SCC 505	referred to	para 13	C
2008 (14) SCR 405	referred to	para 14	
1957 SCR 981	relied on	para 18	
2003 (1) SCR 1	relied on	para 18	D
2012 (14) SCR 862	relied on	para 18	
2001 (10) SCC 94	relied on	para 18	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 642 of 2008. E

From the Judgment & Order dated 10.07.2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 990 of 2005. F

Rachana Joshi Issar, Ambreen Rusool for the Appellant.

D. Mahesh Babu, Amjit Mazbool, B. Ramakrishna Rao for the Respondent. G

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Calling in question the legal propriety of the judgment of conviction and order of sentence passed in Criminal Appeal No. 990 of 2005 by the High Court of Judicature, Andhra Pradesh whereby the Division Bench has H

- A concurred with the conviction and the imposition of sentence by the learned Principal Sessions Judge, Medak at Sangareddy in S.C. No. 79 of 1998 wherein the learned trial Judge, after finding the appellant along with one Koninti @ Yerrolla Veeraiah, A-1, guilty of the offences punishable under
- B Sections 302 and 404 read with 34 of the Indian Penal Code (for short "IPC"), had sentenced each of them to undergo rigorous imprisonment for life on the first count and three years on the second score.

- C 2. Shorn of unnecessary details, the case of the prosecution as unfolded is that on 9.2.1997 in the morning hours Koninti @ Yerrolla Veeraiah, A-1, and Kusti Malliah, A-2, took the deceased, Neelagiri Parvamma, with them Shiver in the Thimmaipally hillocks. Kusti Yellaiah, PW-6, eye witness to the occurrence, had accompanied them. The accused persons and
- D the deceased consumed liquor and, thereafter, both the accused removed her clothes, ravished her and assaulted her. The said action of the A-1 and A-2 was objected to by PW-6, but he was pushed away and being scared he went and stood at a distance of approximately 300 yards. Thereafter, both the
- E accused persons stole the gold and silver ornaments and brutally assaulted with stones, as a consequence of which she sustained injuries and succumbed to the same. PW-6, being panicky- stricken, ran away from the spot. On the next day, i.e., 11.2.1997 about 8.00 a.m. PW-1, P. Vittal Reddy, the Village
- F Administrative Officer, Thammaiahapally, coming to know about the dead body of a woman lying in the forest, from a village shepherd, rushed there and found the dead body of the deceased lying half naked. He returned from the forest and about 11.30 a.m. and gave the information at Papannapet
- G Police Station. On the basis of said information the investigating agency proceeded to the spot, prepared the inquest report, registered an FIR under Section 302, IPC, sent the dead body for post mortem and after PW-4, Neelagiri Bhoomiah, husband of the deceased and PW-5, Neelagiri Mogulamma, daughter
- H of the deceased, identified the photograph and small cloth

purse to be that of the deceased, recorded their statements . A
On 7.5.1997, the accused persons were arrested and 30 gold
gundlu weighing about half tula was seized from the custody of
A-1 and two silver □ anklets and one hand bolukada weighing
about 22 tulas from the possession of A-2. On that day itself
the statement of PW-6, who was an eye witness to the incident, B
was recorded. After completion of investigation charge-sheet
was laid before the competent Magistrate who, in turn,
committed the case to the Court of Session. The accused
persons denied the charges, pleaded innocence and claimed
to be tried. C

3. The prosecution, in order to bring home the charges,
examined as many as 14 witnesses and got marked exhibits
P-1 to P-11 and also MO-1 to MO-9. On behalf of the accused
Ext. D-1 to D-3, the contradictions in the statements of PWs-4 D
and 5 were marked.

4. The learned trial Judge, after considering the evidence
on record, came to the conclusion that the prosecution had been
able to establish the guilt of the accused persons for the
offences punishable under Sections 302 and 404 read with 34 E
IPC and □ convicted them to suffer imprisonment as has been
referred to hereinbefore.

5. Challenging the judgment of conviction and order of
sentence, A-1 preferred Criminal Appeal No. 909 of 2002
wherein the High Court, analyzing and appreciating the ocular F
and documentary evidence on record, came to hold that the
finding of guilt recorded by the learned trial Judge on the basis
of the sole testimony of PW-6 could not be faulted. Being of
this view the High Court dismissed the appeal and confirmed
the conviction and sentence. It is worthy to note that the said G
appeal was disposed of on 21.9.2004. Thereafter, A-2, the
present appellant, preferred Criminal Appeal No. 990 of 2005
which has been dismissed relying on the earlier judgment on
10.7.2006. H

A 6. We have heard Mrs. Rachana Joshi Issar, learned counsel for the appellant, and Mr. D. Mahesh Babu, learned counsel for the respondent-State.

B 7. It is urged by the learned counsel for the appellant that there are material contradictions in the evidence of PWs-4 and 5, namely, the husband and daughter of the deceased, and further their statements under Section 161 of the Code of Criminal Procedure and the depositions in court being irreconcilable, their version should be treated as totally untrustworthy and unreliable. It is canvassed by her that the learned trial Judge as well as the High Court has completely
C erred in relying on the ocular testimony of PW-6 as his evidence is not beyond reproach. The learned counsel would emphatically submit that there is delay in lodging the FIR which would clearly reflect that the appellant has been roped in as the husband of
D the deceased had harboured some kind of suspicion relating to his relationship with the deceased and, therefore, the prosecution story deserves to be thrown overboard.

E 8. Resisting the aforesaid submissions it is urged by Mr. Babu that there are no contradictions which would make the prosecution version unreliable and further there is no reason to discard the evidence of husband and daughter. That apart, contends the learned counsel for the respondent, the evidence of PW-6 being absolutely credible the High Court, after
F analyzing it, given due acceptance and hence, judgment of conviction does not call for any interference.

G 9. First, we shall deal with the submission pertaining to the delay in lodging of the FIR. The occurrence, as has been stated, took place on 10.2.1997. The FIR was lodged by Vittal Reddy, PW-1, and it contained that dead body of a woman was lying
H naked in the forest and it had been noticed by a shepherd who was grazing the cattle and on the basis of the same a report under Section 174 of the Code of Criminal Procedure was registered and, accordingly, the body was sent for post mortem.

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The post mortem report revealed the following external and internal injuries: A

"External injuries:

1. Lacerated injury fore head left side 2½" x ½" communicating into the cavity of skull. B
2. Lacerated injury right temple 1½" x ¼" x 1/8"
3. Incised wound right cheek ½" x ¼" x ¼"
4. Contusion front of chest right side 2" x ½" C
5. Contusion right thigh upper 1/3" x 2" x 1"
6. Lacerated injury dorsum of the left foot 2½" x ½" x ½" D
7. Incised wound Labnamejorce left ½" x ¼" x ¼"
8. Incised wound left inguinal region in 2" x ½" x ¼".

Internal Injuries: E

1. Fracture frontal bone
2. Clotted blood was found over the frontal area of brain.
3. Fracture 1st metatarsal bone. F

All the above injuries were ante mortem in nature."

10. Be it noted, the autopsy was done and photograph of the deceased, Ext. P-8, was taken by PW-14, the photographer. It is clear from the evidence on record that when the wife of PW-4 and mother of PW-5 did not come back from her parental home after two days as per schedule, the husband requested one of the villagers to go to his father-in-law's house and ask his wife to return to her matrimonial home. After the information H

A was sent, on the next day his mother-in-law and sister-in-law came to the house and informed that the deceased had not come to their house. Thereafter, his brother, Lingaiah, and he searched for her and on 18.2.1997 they came to know that some woman was found dead in Thammaiahapally and the police had been informed. Thereafter, he along with his daughter went to the police station where they were shown the photograph of the deceased and a small cloth purse which they identified to be that of the deceased and, thereafter, the investigation commenced for offences punishable under Sections 302 and 404 read with 34 IPC was registered. Thus, the chronology of events clearly shows that the police, on the basis of the report recorded under Section 174 CrPC, conducted the inquest and after the PW-4 and his daughter, PW5, identified the photograph, commenced the investigation. During this time the husband and his brother was searching for the deceased. Regard being had to the totality of the circumstances, the submission that there has been delay in lodging of the FIR and for that reason the entire prosecution story should be thrown overboard does not deserve acceptance.

11. The next ground of assail pertains to material contradictions in the statement recorded under Section 161 of CrPC and the depositions in court and further in the evidence of PW-4 and PW-5. It is urged that the said contradictions destroy the very marrow of the prosecution case. To appreciate the said submission, we have scrutinized the statement recorded under Section 161 CrPC of PW-4 and noticed that he has said everything in detail about whatever he has stated in his deposition in court except that his wife and he had a quarrel on the date of Ramjan festival. We do not really perceive any contradiction which can be called material contradiction. We say so as the omission in the statement of PW-4 recorded under Section 161 CrPC is not a significant omission so that it can be regarded as a contradiction so significant and glaring □ that the prosecution case should be

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disbelieved. As far the contradiction in the evidence of PWs-4 and 5 is concerned, on a studied scrutiny of the same we find that there are minor discrepancies. For the aforesaid purpose, we proceed to analyse the evidence of PWs-4 and 5. The husband of the deceased, PW-4, has deposed that A-1 had wanted to marry his daughter and A-1 had illicit relationship with his wife. He had clearly stated that he had identified the gold and silver ornaments. He had also identified the small cloth purse and the photograph in court. The version of the daughter, PW-5, is that prior to the day of death when her mother left the house there was a quarrel between her parents. She has also identified the ornaments of her mother. Thus, there is no material contradiction which would make their version untrustworthy. True it is, there are certain minor discrepancies regarding the timing, the factum of meeting of A-1 and the deceased in the market by the daughter, the quarrel between the husband and the wife but they are absolutely minor. They even cannot earn the status of minor contradictions.

12. In *Ousu Varghese v. State of Kerala*¹, it has been opined that the minor variations in the accounts of witnesses are often the hallmark of the truth of the testimony. In *State of Rajasthan v. Smt. Kalki and Another*², it has been observed that material discrepancies are those which are not normal, and not expected of a normal person.

13. At this juncture, it is also apt to reproduce a passage from *State of U.P. v. M.K. Anthony*³, wherein it has been laid down as follows:

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the

1. (1974) 3 SCC 767.

2. (1981) 2 SCC 752.

3. (1985) 1 SCC 505.

- A court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.”

14. Similar view has been reiterated in *State Rep. by Inspector of Police v. Saravanan & Anr.*⁴

- D 15. In the case at hand neither PW 4 nor PW 5 has made any endeavor to make any attempt to materially improve their earlier statement in their deposition before the court to make their evidence acceptable. It is also not a case where it can be said that they had withheld something material during investigation and embellished certain aspects during their deposition in court. That being the position we are unable to agree with the submission of the learned counsel for appellant that there are such material contradictions which discredit the testimony of said witnesses and accordingly the said submission is rejected.

- G 16. The last limb of submission pertains to the credibility of the testimony of PW-6. The learned counsel has seriously criticized the evidence of the said witness on the ground that he had not told anyone about the incident and only revealed it when the dead body was identified. Criticism is also advanced against the investigating agency that it recorded his statement after ten days. As is manifest from the evidence brought on

H 4. AIR 2009 SC 152.

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record, he had accompanied the accused on the fateful night. A
He has deposed that A-1 and A2 consumed liquor along with
the deceased and after ravishing her hit her with a big stone.
The scare compelled him to run away from the scene but he
witnessed the occurrence from a distance of approximately 300
yards. The principal attack is that it is quite unnatural that he B
would not reveal the incident to anyone. It is worth noting that
he had accompanied the accused persons and the deceased.
The illicit relationship between the deceased and A-1 has been
unequivocally stated by PWs-4 and 5. As per the evidence of
PW-6, the three consumed liquor and thereafter the whole C
episode took place. This witness has deposed about the
stealing of ornaments from the deceased. There has been
recovery of the ornaments from the accused persons and the
same have been recovered from their custody in presence of
PW-9. The seizure memo, Ext. P-6, has been duly proven and D
there is nothing on record to disbelieve the testimony of PW-9
or to discard Ext.P-6. Proper procedure has been followed as
per the deposition of the Investigating Officer, PW-13. The post
mortem report, Ext.P-7, clearly mentions that the deceased died
on account of head injury. Thus, the testimony of PW-6 gets E
corroboration from the medical evidence and also from the
factum of recovery. That apart, nothing was suggested to him
that he had any animosity with the accused persons. Thus, the
cumulative nature and character of the evidence of this witness
is difficult to ignore solely on the ground that he did not tell the F
incident to any one and only revealed after the police examined
him. It is common knowledge that people react to situations in
different manner. As is evincible, he had accompanied the
accused persons along with the deceased. As deposed by the
husband and daughter, the deceased had an illicit relationship G
with A-1. Three of them consumed liquor and she was ravished
by the accused persons and, eventually, there was assault.
Having accompanied them and witnessing the incident it is
natural that a sense of fear would creep in. In such
circumstances the delay in recording of his statement by the H

- A Investigating officer would not corrode the version of the prosecution. That apart, nothing has been put to him in the cross-examination that he was not present at the spot or he was involved in the crime along with the accused persons. The roving cross-examination only concentrated on his seeing the
- B occurrence from 300 yards away because of darkness, which we think is absolutely immaterial, for they belonged to the same village, he had accompanied them and there was no one else except the accused persons and the deceased at that distance. That apart he has categorically stated that he was able to see
- C the assault by the accused persons and removing the gold and silver ornaments. Thus, there is no impediment to place reliance on his evidence as it is trustworthy and unimpeachable.

17. It has been held in catena of decisions of this Court that there is no legal hurdle in convicting a person on the sole
- D testimony of a single witness if his version is clear and reliable, for the principle is that the evidence has to be weighed and not counted. In *Vadivelu Thevar v. The State of Madras*⁵, it has been held that if the testimony of a singular witness is found by the court to be entirely reliable, there is no legal impediment in
- E recording the conviction of the accused on such proof. In the said pronouncement it has been further ruled that the law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral
- F testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has
- G to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness.

18. Similar view has been expressed in *Lallu Manjhi and*

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*Another v. State of Jharkhand*⁶, *Prithipal Singh and Others v. State of Punjab and Another*⁷ and *Jhapsa Kabari and Others v. State of Bihar*⁸. A

19. On the analysis of evidence of PW-6 we find that his evidence is cogent and trustworthy and further gets corroboration from the medical evidence and also for the factum of recovery of gold and silver ornaments which has been clearly proven by PW-9. B

20. In view of the aforesaid analysis, we do not perceive any error in the judgment of conviction and order of sentence passed by the learned trial Judge that has been affirmed by the High Court and, accordingly, the appeal, being devoid of merit, stands dismissed. C

R.P.

Appeal dismissed. D

6. (2003) 2 SCC 401.

7. (2012) 1 SCC 10.

8. (2001) 10 SCC 94.