

APHC010070112018



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3566]

THURSDAY, THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL NO: 318/2018

Between:

1.VANAJA SANKARARAO, R/O. THALLABURIDI VILLAGE,
PARVATIPURAM MANDAL, VIZIANGARAM DISTRICT

...APPELLANT

AND

1.THE STATE OF ANDHRA PRADESH, Rep., by Public Prosecutor,
High Court of Judicature at Hyderabad For the State of Telangana and
the State of Andhra Pradesh

...RESPONENT

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to to enlarge the petitioner herein on bail by suspending the sentence dated 26.09.2017 passed in S.C No. 121 of 2016 dated 26.09.2017 on the file of Honble II Addl. Sessions Judge, Parvathipuram Mandal, Vilzianagaram District, pending disposal of the Criminal Appeal

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 66 days in filing the Criminal Appeal against the Judgment dated 26.09.2017 passed in S.C No. 121 of 2016 on the file of

Honble II Addl. Sessions Judge, Parvathipuram Mandal, Vilzianagaram District,

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to enlarge the petitioner herein on bail by suspending the sentence dated 26.09.2017 passed in S.C No. 121 of 2016 dated 26.09.2017 on the file of Honble II Addl. Sessions Judge, Parvathipuram Mandal, Vilzianagaram District, pending disposal of the Criminal Appeal

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution of the sentence, judgement passed on 26th, September, 2017, in S.C no. 121 of 2016 on the file of IIInd Additional Sessions Judge, Parvatipuram and release the petitioner on bail, pending disposal of the above criminal appeal no. 318 of 2018, and pass

Counsel for the Apellant:

- 1.G VIJAYA SARADHI
- 2.LEGAL AID

Counsel for the Respodent:

- 1.PUBLIC PROSECUTOR (AP)

The Court made the following:

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

THURSDAY, THIS THE TWENTY THIRD DAY OF APRIL

TWO THOUSAND AND TWENTY SIX
SPECIAL DIVISION BENCH

PRESENT

HONOURABLE SRI JUSTICE K.SURESH REDDY

And

HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL No.318 of 2018

JUDGMENT: *(per Hon'ble Sri Justice K.Suresh Reddy)*

Sole accused in Sessions Case No.121 of 2016 on the file of the Court of the learned II Additional Sessions Judge, Parvatipuram, Vizianagaram District, is the appellant. He was tried by the learned Additional Sessions Judge under the following three charges:

1. First charge was under Section 376 r/w 511 IPC.
2. Second charge was under Section 302 IPC.
3. Third charge was under Section 201 IPC.

2. Substance of the charge is that on 31.03.2015 at about 10:30 a.m., the accused attempted to commit rape on Sambangi Bharathamma (hereinafter referred to as "the deceased") at the eucalyptus plantation near Vinjammakonda and he beat her with his hands and a steel carriage and strangulated her, thereby causing her death and in the same process, he kept the dead body by the side of Vinjammakonda with an intention of screen

the evidence, thereby committing offences punishable under Sections 376 r/w 511, 302 and 201 IPC.

3. After completion of trial, the learned Additional Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer rigorous imprisonment for life and also to pay a fine of Rs.2,000/-(Rupees Two Thousand only), in default to suffer rigorous imprisonment for a period of six months. Further, the accused was convicted under Section 201 IPC and was sentenced to suffer rigorous imprisonment for a period of five years and also to pay a fine of Rs.1,000/-(Rupees One Thousand only), in default to suffer simple imprisonment for a period of three months. Both the substantial sentences were directed to run concurrently. The learned Additional Sessions Judge acquitted the accused for the offence under Section 376 r/w 511 IPC. Aggrieved by the said conviction, he preferred the present Criminal Appeal.

4. Case of the prosecution, briefly, is as follows:-

(i) The accused as well as the material prosecution witnesses are residents of Thallaburidi Village, Parvatipuram Mandal. The deceased was also a resident of the same village. P.W.1 is the father, P.W.2 is the co-sister-in-law, P.W.3 is the brother, P.W.4 is the son and P.W.8 is the relative of the deceased respectively. The marriage of the deceased was performed about 17 years prior to the date of the incident and she was blessed with two children. About seven years prior to the date of the incident, the husband of the deceased died. Thereafter, the deceased developed illicit intimacy with

the accused and both of them cultivated land to an extent of Ac.0.40 cents belonging to the deceased.

(ii) Six months prior to the date of incident, wife of the accused, having suspected the illegal relationship between the accused and the deceased, approached P.W.9, who is an elder of the village and complained to him about the said illegal relationship. Consequently, P.W.9 convened a panchayat between the accused and the deceased. P.W.9 advised both of them not to continue the relationship and he also asked the accused to repay the loan amount of Rs.40,000/- taken from the deceased. Thereafter, the deceased leased out the agricultural land to third parties.

(iii) Subsequently, the accused and the deceased discontinued their relationship. One month prior to the date of the incident, the deceased informed P.W.1 that the accused telephoned her questioning why she was not talking with him and also informed him that the accused is asking her to continue the relationship, otherwise he threatened to kill her.

(iv) While so, on 31.10.2015 at about 11:00 a.m., the deceased went to her field and did not return. Having waited till night, P.W.2 informed P.W.3. They, along with P.W.8 and some others went to Vinjammakonda and searched for the deceased, but in vain. Then P.W.2 telephoned P.W.1, the father of the deceased and enquired him whether the deceased had come to his house. P.W.1 replied in the negative and on the next day morning, P.W.1 came to the village at about 07:30 a.m. or 08:00 a.m.

(v) Meanwhile, P.W.8 and others received the information from P.W.5, who stated that on the previous day at about 10:30 or 11:00 a.m., she heard the cries of some woman near Vinjammakonda. Then all of them went to Vinjammakonda and found the dead body of the deceased lying beside a stone. Then P.W.1 and his relatives went to the scene of offence and found the dead body. Thereafter, P.W.1 went to the Police Station and gave a report.

(vi) At about 11:00 a.m. on 01.11.2015, the Sub-Inspector of Police, P.W.19, received Ex.P1 report from P.W.1 and registered a case in Crime No.145 of 2015 under Sections 302 and 201 IPC. He issued copies of the FIR to all the concerned. FIR is marked as Ex.P19. Having received the information from P.W.19, the Inspector of Police, P.W.20, took up investigation. He secured the presence of mediators P.Ws.14 and 16 and went to the scene of offence situated at the outskirts of the village. He prepared an observation report-Ex.P8 at the scene of offence. He has also seized M.Os.Nos.1 to 5 under Ex.P8. He summoned the clues team to the scene of offence and seized blood-stained clay and control clay-M.Os.10 and 11 at the scene of offence. He also got the scene photographed through P.W.16. The photographs and CD were marked as Ex.P11. He has also prepared a rough sketch-Ex.P20 at the scene of offence. He recorded statements of P.Ws.1 to 3 and 5 to 10. He has also held an inquest over the dead body marked as Ex.P10 and sent the dead body for post-mortem examination.

(vii) P.W.17-Civil Surgeon, Area Hospital, Parvatipuram, conducted autopsy over the dead body. He opined the cause of death was due to multiple injuries with haemothorax with fracture in ribs.

(viii) On the same day, P.W.20 visited the house of the deceased and seized M.O.12-mobile phone belonging to the deceased in the presence of mediators-P.W.14 under Ex.P21. On 09.11.2015, having received information, P.W.20 apprehended the accused in the presence of P.W.18 and another. On the confession made by the accused, P.W.20 recovered M.Os.6 and 7, blood stained lungi and mobile phone of the accused under a panchanama. On the confession made by the accused, P.W.20 also recovered M.Os.8 and 9 under the panchanama-Ex.P18. On 10.11.2015, he recorded statements of P.Ws.4 and 12.

(ix) On 12.11.2015, P.W.20 recorded statements of P.Ws.13 and 14. He sent the material objects to FSL. FSL reports are marked as Exs.P13 and P14. After securing all the documents and after completion of investigation, P.W.20 filed the charge sheet.

5. In support of its case, the prosecution examined P.Ws.1 to 20, got marked Exs.P1 to P21 and exhibited M.Os.1 to 12.

6. The accused was examined under Section 313 Cr.P.C. and he denied the incriminating evidence appearing against him.

7. Accepting the evidence of prosecution witnesses, the learned Additional Sessions Judge convicted the appellant/accused as aforesaid.

8. Heard Sri G. Vijaya Saradhi, learned Counsel for the appellant and Sri Marri Venkata Ramana, learned Additional Public Prosecutor appearing for the respondent/State.

9. Learned counsel for the appellant contends that there are no eyewitnesses to the incident and the prosecution rests its case on circumstantial evidence. He further contends that the prosecution has not established even a single circumstance to connect the appellant with the alleged offence. He also contends that the only circumstance relied upon by the prosecution is the so-called motive for the accused to kill the deceased. He further contends that the evidence of P.W.12 with regard to the tracking by the dog squad cannot be relied on, as the same is not scientific evidence.

10. Learned counsel for the appellant further contends that even the last seen theory is also not available in the present case, as such, he requests this Court to allow the appeal by setting-aside the conviction and sentence recorded by the learned trial Judge.

11. On the other hand, the learned Additional Public Prosecutor opposed the appeal contending that it is only the accused, who has got motive to kill the deceased. He further contends that the evidence of P.W.1 to 4, 8, 9 and 11 establish the illegal relationship between the accused and the deceased and also the panchayat held by P.W.9, who admonished both of them and asked them to discontinue the relationship. As such, he requests this Court to dismiss the appeal by confirming the conviction and sentence recorded by the learned trial Judge.

12. We have carefully scrutinized the entire evidence on record.

13. Absolutely there are no eye witnesses in the case on hand. Initially, the prosecution projected P.W.10 as if he is an eye witness, but, he did not support the prosecution and he was declared as hostile. Thereafter, the prosecution relied upon P.W.7, who stated in his evidence that he saw the accused coming hurriedly on the way. But, P.W.7 also did not support the prosecution and he was also declared hostile. As such, the theory of eye witnesses and the last seen theory could not be placed on record by the prosecution.

14. Coming to the motive, the prosecution relied on the evidence of P.Ws.1 to 4, 8, 9 and 11. These witnesses in their evidence has stated that about seven years prior to the date of incident, the husband of the deceased passed away and the accused and the deceased were maintaining illegal relationship. It is only when the wife of the accused complained to P.W.9, the Panchayat was convened. In the said panchayat P.W.9 admonished the accused as well as the deceased and advised them to discontinue the relationship. P.W.9 also directed the accused to repay the loan amount of Rs.40,000/- to the deceased. Except that, their evidence does not disclose anything. Merely because the relationship was discontinued, the accused may not go to the extent of killing the deceased. As such, the motive is not established in the circumstances of the case.

15. The learned trial Judge, in paragraphs 29 and 32 of the judgment, held as follows:

29. As discussed above, the prosecution has relied upon the evidence of PWs1 to 9. The evidence of PW1 shows his presence at the time of mediation before PW9 and other facts which are said to have been narrated to him by the deceased. The evidence of PW2 shows that the deceased went to her field with 'gamela' etc., on 31.10.2015 at about 11.00 a.m. and did not return home. The evidence of PW4 shows the accused used to come to their house in the evenings and talk to his mother. The evidence of PW5 shows on 31.10.2015 at about 11.00 a.m. When she went to collect green grass near 'Vinjammakonda' she heard the cries of a woman near Kutiram. The evidence of PW6 also supports this version. The evidence of PW7 shows that he saw the accused at 11.00 a.m after crossing teak tope of Chandramma near 'Vinjammakonda' at 11.00 a.m. PW8 is an eye witness to the mediation held before Chinthala Jagannadham. The evidence of PW9 proves mediation held by him as contended by the prosecution. The medical evidence as seen from the deposition of PW17 adds support and strengthens the case of prosecution. Further the evidence of PW18 proves the confession made by the accused and recovery of Lungi (MO6) and one Nokia cellphone (MO7) from the accused by the Investigating Officer and recovery of plastic 'gamela' (MO8), steel carriage (MO9) at the instance of the accused at the scene of offence by the Investigating Officer under Ex.P18. Added to that the evidence of PW12 i.e. dog handier proves sniffer dog tracked to the house of the accused and barked there as a sign of reaching the target.

32. Thus, the prosecution proved the existence of circumstances, which they contended and those circumstances are proved by the prosecution by examining the witnesses and when all these facts are linked up together, it formed a complete chain without any missing and it glaringly stares at the accused and the accused alone. Thus,

the prosecution had successfully proved the charges under section 302 and 201 only, but there is no evidence adduced by the prosecution to prove the charge of 376 r/w 511 IPC. Accordingly, the points are answered.

16. The learned Additional Sessions Judge also in his judgment has held that the prosecution is not depending on the last seen theory.

17. In this connection, it is trite that the Hon'ble Apex Court in a catena of judgments including the decision in ***Sharad Birdhichand Sarda v. State of Maharashtra***¹, has laid down five (5) golden principles, which govern a case based only on circumstantial evidence:

- “(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
- (3) The circumstances should be of a conclusive nature and tendency.*
- (4) They should exclude every possible hypothesis except the one to be followed, AND*
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

18. Having analyzed the evidence adduced by the prosecution carefully, this Court is of the opinion that the prosecution is not able to prove the chain of circumstances pointing guilt towards the appellant/accused, that

¹ (1981) 4 SCC 116

is to say they should not be explainable on any other hypothesis except that the appellant/accused is guilty.

19. All the above facts and circumstances indicate that the prosecution failed in proving the guilt of the appellant/accused herein beyond reasonable doubt, as such he is entitled to be acquitted and the conviction and sentence recorded by the learned Additional Sessions Judge against the appellant/accused is not sustainable and the same is liable to be interfered with.

20. In the result, the Criminal Appeal is allowed, setting aside the conviction and sentence recorded by the learned II Additional Sessions Judge, Parvatipuram under Sections 302 and 201 IPC in Sessions Case No.121 of 2016, dated 26.09.2017. As the appellant was already released on bail vide order dated 08.05.2023 passed by this Court in I.A.No.1 of 2023, his bail bonds shall stand cancelled.

Consequently, interlocutory applications, if any, pending shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE A.HARI HARANADHA SARMA

Date: 23.04.2026
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HONOURABLE SRI JUSTICE K SURESH REDDY
And
HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL No.318 of 2018

Date:23.04.2026

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