

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1014 of 2006

JUDGMENT:

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1. This Criminal Appeal is filed by the appellant-A1 against the conviction and sentence imposed by the Special Judge for Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, in Sessions Case No.333 of 2005 vide judgment dated 11.7.2006.

2. The case of the prosecution reads as follows:

The deceased-Smt. Savithramma was having an extra marital relationship with A1 for about 20 years and she used to meet him mostly at Jadcherla and spent with him. A4, who is a widow, used to move with the deceased and she is having illegal intimacy with A3. The deceased addicted to bad habits like drinking toddy and liquor in the company of A1 to A4. The deceased used to quarrel frequently with her mother regarding pension amount. Since about two years, the deceased reduced her meetings with A1, upon which, A1 grew hatred towards the deceased. On 7.4.2005 in the morning, the deceased left her house to Badepalli for treatment of her wound in Government Hospital and met P.W.5 and both went to the house of her mother and argued with her mother about the pension and asked to give some amount towards her expenditure. Subsequently, the deceased met A2 and A4 in the evening at Subhash Chowk and they all went to the toddy shop. On the same day, at about 19.30 hours, A1 went to Badepalli and met the deceased, Golla Parwanthamma, A2 and A4 at Subhah chowk. A1 brought half bottle whisky and took all of them to Moosa toddy compound, where all of them consumed the whisky. At about 20.30 hours, A3 met his concubine A4 and pressurized A1 to provide him whisky. A1 purchased two quarter bottles of whisky and asked them to accompany him to the railway track to have whisky.

Golla Parwanthamma returned to her house. Then, A1 to A4 and the deceased went to railway track and halted at Km.No.94/9-12 behind Raghavendra Theatre, where A1 and A4 and deceased sat at one place while A3 and A4 sat just away to them and started taking whisky. The deceased was in highly intoxicated condition. Taking advantage of her condition, A1 tried to lure A2 and asked her to cooperate with him. Then, A2 refused to fulfill his desire on the ground that A1 was having illegal intimacy with the deceased for the last 20 years. Then, A1 expressed his anguish over the deceased as she was being away to him for the last two years. He told her that he was waiting for an opportunity to do away with the life of the deceased. A1 promised to do away with the life of the deceased and to give her ornaments to A2. When the deceased was in inebriated condition, A1 hit the head of the deceased to the railway track and caused severe bleeding head injury resulting in her death. A2 caught hold of the legs of the deceased and removed a pair of gold ear tops weighing about 3 grams and a pair of silver anklets weighing 40 tulas, from the possession of the deceased and then, A3 and A4, who were present nearby the scene of offence, witnessed the incident and rushed to A1 and A2. After confirming the death of the deceased, A1 and A2 dragged the body of the deceased to the tracks and fled away. On the same day night, A1 to A4 went to Shadnagar and took shelter in the undisclosed shopping complex for the night. Later, A3 and A4 provided shelter to A1 and A2. On the complaint lodged by the Assistant Station Master, South Central Railway, Mahaboobnagar, a case was registered and investigated into. During the course of investigation, the investigating officer examined Golla Parwanthamma and apprehended A1 to A4. A1 confessed to have killed the deceased with the help of A2. After completion of the investigation, charge sheet was filed against the accused. The learned II Metropolitan Magistrate, Secunderabad took cognizance of the offence under Sections 302, 379 r/w 34 and 212 IPC. After following the procedure, the learned Magistrate committed

the case to the Court of Sessions. The learned Metropolitan Sessions Judge, Hyderabad took the case on file and made over the same to the learned VI Additional Metropolitan Sessions Judge, Secunderabad for disposal.

3. The trial Court framed charges under Sections 120-B IPC, 302 r/w 34 IPC and Section 379 r/w 34 IPC against A1 and A2; a charge under Section 212 IPC against A3 and A4 and a charge under Section 404 r/w 34 IPC against A1 to A4, read over and explained to them, for which they pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 16 were examined and Exs.P1 to P16 and M.Os.1 and 2 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of both oral and documentary evidence, the trial Court found A1 and A2 guilty for the offence under Sections 304 Part II and 379 IPC and found A2 and A4 guilty for the offence under Section 212 IPC, convicted and sentenced them as follows:

- 1) A1 and A2 were convicted and sentenced to undergo rigorous imprisonment for a period of five years each for the offence under Section 304 Part II IPC;
- 2) A1 and A2 were also convicted and sentenced to undergo rigorous imprisonment for a period of one year each for the offence under Section 379 IPC;
- 3) A3 and A4 were convicted and sentenced to undergo rigorous imprisonment for a period of two years each and to pay a fine of Rs.100/- each in default to suffer simple imprisonment for two months each for the offence under Section 212 IPC;
- 4) A1 to A4 were acquitted for the charge under

Section 404 r/w 34 IPC;

- 5) A1 and A2 were acquitted for the charge under Sections 120-B and 302 r/w 34 IPC.

Aggrieved by the conviction and sentence imposed by the trial Court, the appellant-A1 filed this appeal.

6. Learned Counsel for the appellant submitted that the evidence relied upon by the trial Court suffers from contradictions and that the evidence of P.W.5 is no way helpful to the case of the prosecution in view of the contradictions in her statement and that the last seen theory was not established by the prosecution and that there is no direct evidence on record and the trial Court convicted the appellant on mere surmises and conjectures and therefore, the conviction of the appellant by the trial Court is not sustainable.

7. Learned Additional Public Prosecutor submitted that the prosecution has established the guilt of the appellant beyond all reasonable doubt and that the trial Court has rightly convicted the appellant-accused.

8. Admittedly, there is no eye witness to the incident. The entire case of the prosecution rests on the circumstantial evidence. This Court has carefully considered the contentions raised by the learned Counsel for the appellant and also perused the judgment of the trial Court and other material available on record. Before going into the merits of the case based on the evidence, it is just and proper to refer to the law laid down by the Apex Court on the issue relating to circumstantial evidence. It is held by the Apex Court that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. There must be a chain of evidence so far complete as not to leave any

reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused

9. It is the case of the prosecution that on the date of incident, the deceased went to the house of her mother to demand money. P.W.2, who is the mother of the deceased, categorically stated in her cross-examination that the deceased came to her on the date of incident at noon time and asked her to give money. P.W.2 supported the case of the prosecution.

10. P.W.4, husband of the deceased, deposed that the deceased went to Jadcherla for treatment in the hospital as she was suffering with the wound to her leg. P.Ws.2 and 4 stated that they came to know that A1 to A4 killed the deceased through P.W.3 and P.W.5.

11. According to the case of the prosecution, the deceased was last seen in the company of the appellant and other accused. To prove this fact, the prosecution examined P.Ws.3, 5 and 11. P.W.3, who is the relative of the deceased, deposed that he saw the deceased with A2 and A4 on the date of incident. P.W.5, the villager of the deceased, deposed that on the date of incident, she went to Badepalli and found the deceased near a shop and both of them went to P.W.2's house and that there was an altercation between P.W.2 and the deceased and she pacified the same. From there, they went to bus stand, where A1 to A4 present. Later, P.W.5 went to her village. According to P.W.5, by the time, she was leaving bus stand, A1 to A4 were talking with the deceased. P.W.5 deposed the names of the accused in her evidence. P.Ws.11 and 12, who are the owner of the toddy shop and worker of wine shop respectively, categorically stated in their evidence that the deceased was last seen in the company of the appellant and others. The evidence of P.Ws.3, 5, 11 and 12 is very consistent and corroborative. Nothing was elicited from their cross-examination as to

any enmity between the above witnesses and the appellant to disprove their evidence.

12. Yet another circumstance is the recovery of the gold ear tops and silver anklets from the possession of P.W.6. P.W.6 deposed that A4 came to his shop and pledged the above ornaments and borrowed Rs.3,500/-. P.W.8, who is mediator, stated in his evidence that on disclosure by the accused, M.O.s 1 and 2 were seized from the possession of P.W.6. M.Os.1 and 2 were identified by the husband of the deceased as they belonged to his wife. Therefore, the recovery of M.Os.1 and 2 clearly proves the involvement of the appellant in the present crime. Thus, the evidence of P.Ws.3, 5, 11 and 12, the recovery of M.Os.1 and 2 and the medical evidence clearly establishes the case of the prosecution.

13. Even according to the case of the prosecution, there was no premeditation to do away with the life of the deceased. In order to remove the ornaments of A1 and to give them to A2, the appellant-A1 committed the offence. All the circumstances stated by the prosecution witnesses point out the guilt of the appellant-A1 for the offence under Sections 304 Part II and 379 IPC beyond all reasonable doubt. Therefore, this Court is of the view that the conviction recorded by the trial Court against the appellant-A1 does not warrant any interference.

14. At this stage, the learned Counsel for the appellant submitted that the appellant was in jail for a considerable period and that he has to look after his family and therefore, a lenient view may be taken.

15. In the result, the conviction recorded by the learned Special Judge against the appellant-A1 for the offence under Sections 304 Part II and Section 379 IPC in S.C.No.333 of 2005 is confirmed. However, the sentence of imprisonment imposed by the learned Special Judge against the appellant-A1 for each of the above offences

is modified as that of the period, which the appellant-A1 has already undergone under each offence. Both the sentences shall run concurrently.

16. Accordingly, the Criminal Appeal is partly allowed. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:22nd July, 2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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