

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE A.V.SESHA SAI

CRIMINAL APPEAL No.1531 of 2010

Date:14.11.2016

Between:

Orsu Pedda Yellaiah,

S/o Pogula Kistaiah

..... Appellant

And:

The State of A.P., repled by the

Public Prosecutor

...Respondent

Counsel for the appellant: Mr. G.Vijaya Saradhi

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Criminal Appeal is laid against the judgment, dated 19.10.2010, in Sessions Case No.68 of 2008 on the file of the learned Special Sessions Judge for trial of cases under S.Cs & S.Ts (POA) Act-cum-VII Additional District and Sessions Judge, Mahaboobnagar.

The sole accused in the above-mentioned Sessions Case was tried for the offences under Section-302 IPC and Section-3(2)(v) of SCs & STs (POA) Act, 1989 and was found guilty for the former offence and not guilty for the latter offence. The appellant was sentenced to undergo rigorous imprisonment for life and the period of judicial custody undergone by him was set off against the sentence undergone by him during trial under Section-428 Cr.P.C.

The case of the prosecution, in brief, is as follows:

The deceased is a resident of Femili Thanda, while the appellant is a resident of Mallepally Village; that on 25.10.2007, in the evening hours, the deceased informed P.W-1 that he was going to Vachya Thanda to visit the parents house of P.W-1; that on the same day, at 10 pm., P.W-1 received a phone call from P.W-5 that the deceased was killed; that thereafter, P.W-1 along with her grandson by name Lakshman went to the fields of P.W-2 and saw the dead body of the deceased with head injury; that P.W-1 gave a written complaint-Ex.P-1 to the Police on 26.10.2007; that the same was registered as case in Crime

No.206 of 2007 for the offence under Section-302 IPC; and that on 26.10.2007, P.W-10-Inspector of Police visited the scene of offence, collected the blood stained earth, control earth and seized blood stained dhoti, shirt and rumaal of the deceased, prepared scene of offence panchanama-Ex.P-3 in the presence of P.Ws.4 and 6 and held inquest over the dead body of the deceased in the presence of P.Ws.4 and 5. That on 27.10.2007, L.W-12-Civil Assistant Surgeon conducted autopsy over the dead body of the deceased and opined that the cause of death was due to head injury. Ex.P-12 is the Post-mortem report.

It is the further case of the prosecution that on 21.4.2008, at about 10 am., P.W-7 received a written statement-Ex.P-6 from P.W-4, wherein it is stated that on the evening of 20.02.2008, the appellant came to his house and asked for arrack, to which, he replied that he was not selling it, and then the appellant sat near him and informed that about four months back, he came and consumed alcohol in the house of P.W-4 and while going home, he killed the deceased near Ram Reddy fields; and that when P.W-4 asked him as to why he killed the deceased, he told that on the day of occurrence, when he was going to his house passing by the fields, he came across the deceased and asked him to give some beedies and that as the approach of the deceased annoyed him, the appellant got enraged, dragged the deceased to some distance and killed him by hitting his head to a boulder and then dragged the dead body

to some distance and fled away from the scene leaving his chappals.

That on 21.02.2008, P.W-7 apprehended the appellant, interrogated him, recorded his confession under Ex.P-4, compared the chappals seized from the appellant with that seized from the scene of offence and found that the same matched with the left leg of the appellant and that after completion of investigation, he filed the charge sheet.

In support of its case, the prosecution examined P.Ws.1 to 12 and marked Exs.P-1 to P-12 and M.O-1-Rumaal. On behalf of the defence, neither oral nor documentary evidence was marked.

Mr. G.Vijaya Saradhi, learned counsel for the appellant, submitted that the entire case of the prosecution, based on circumstantial evidence, suffers from many lacunae, shortcomings and contradictions and that, despite the same, the Court below has erroneously convicted the appellant for the offence under Section-302 IPC. He has further submitted that the alleged confession of the appellant is not proved by the prosecution as, it failed to produce before the Court the left leg chappal allegedly seized under Ex.P-3-scene of offence panchanama, dated 26.10.2007, much less marked the same and, therefore, the whole theory set up by the prosecution that the chappal of the appellant alleged to be seized under Ex.P-4 matched with the left leg chappal found at the scene of offence

is not proved. Learned counsel further submitted that P.W-1, who is no other than the wife of the deceased, did not support the case of the prosecution and that the evidence of P.W-8-the Investigation Officer, to the effect that he has compared the chappal seized from the appellant with the chappals found at the scene of offence, has not been corroborated by proper evidence of independent witnesses.

Mr. C.Pratap Reddy, learned Public Prosecutor for the State of Telangana, opposed the above submissions and argued that though the prosecution case is based on circumstantial evidence, the evidence let in by it has proved the guilt of the appellant beyond all reasonable doubt and that hence, the trial Court has rightly convicted the appellant and sentenced him to suffer rigorous imprisonment for life.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the evidence on record.

The case of the prosecution is based on circumstantial evidence. Therefore, before convicting the appellant, it is the duty of the prosecution to prove all the links in the chain of circumstances. To avoid repetition, it will suffice to recapitulate the case of the prosecution. Consequent upon, Ex.P-1-report given by P.W-1, the investigation was set into motion against the appellant. In Ex.P-1, P.W-1 has stated that she came to know that on the day of occurrence, the deceased, while going to her

parents place, having drunk, was accosted by the appellant and as the latter has the history of killing persons, she suspects the appellant. Ex.P-5-First Information Report was registered by showing the appellant as suspect. P.W-1 has turned hostile. In her chief-examination, P.W-1 deposed that in Ex.P-1 she did not name anybody as suspect for the murder of her husband. While in the charge sheet, it is stated that at 11 hours, on 26.10.2007, P.W-1 has lodged a complaint at Balanagar Police Station, in her cross-examination by the defence counsel, P.W-1 has stated that she has submitted Ex.P-1-complaint at the place where the dead body of her husband was found on the next day of the occurrence. She has also deposed that she does not know as to who scribed the complaint and the contents of the same. She has further deposed that after the Sub-Inspector has examined her, no other Police officials have examined her and recorded her statement. Thus, there is a material contradiction in the evidence of P.W-1 as regards the place at which she has submitted Ex.P-1-complaint. Though Ex.P-1-complaint has named the appellant as suspect, for the reasons best known to the Investigating Officer, he was not taken into custody and questioned for a period of four months after the alleged incident, i.e., till the alleged confessional and recovery panchanama, dated 22.02.2008, was prepared. The alleged confessional statement of the appellant, to which P.W-6 is one of the witnesses, reveals that after recording the same, the Police

have brought two chappals, allegedly seized from the scene of offence, placed the same before the appellant and asked him to wear it; that both the chappals were found to suit the left leg of the appellant; that on being questioned, the appellant admitted that both the seized chappals belong to him; and that the Police have seized the chappals in possession of the appellant in the presence of the panchas.

The law is well settled that the Indian Evidence Act, 1872 does not recognize self-inculcatory statement, while Section-27 thereof is an exception to the same, provided, the alleged confession must lead to discovery. Though P.W-6 has reiterated the contents of Ex.P-4-panchanama, the chappals allegedly seized from the possession of the appellant were not produced by the prosecution before the Court and the same were not marked.

In our opinion, the failure of the prosecution in this regard is fatal to its case. If the left leg chappal of the appellant was seized on 22.02.2008 under Ex.P-4, there is absolutely no reason for the prosecution not to produce the same as a Material Object before the court. In the absence of direct evidence, the main link in the chain of circumstances, viz., matching of the chappal of the appellant with that allegedly seized from the scene of offence, under Ex.P-3-scene of offence panchanama, is not established by the prosecution. Interestingly, the prosecution failed to produce even the two chappals which were allegedly

seized under Ex.P-3-scene of offence panchanama before the Court. The dhoti of the deceased allegedly stained with blood was not produced before the Court. Therefore, Ex.P-11-Forensic Science Laboratory Report, dated 03.12.2007, relating to white colour cotton dhoti and the appellant's white colour terry cotton half sleeve shirt will have no relevance to establish the case of the prosecution. No explanation is forthcoming from the prosecution either for not producing the two chappals allegedly seized from the scene of offence or the chappals allegedly seized from the possession of the appellant, based on his confessional statement. In the absence of proof of this material evidence, the evidence of P.Ws.6 and 8, testifying such seizure and alleged matching of the chappals seized from the scene of offence with the one seized from the possession of the appellant under Ex.P-4, have no probative value.

On the afore-mentioned facts and circumstances of the case, we are of the opinion that the prosecution miserably failed to produce credible evidence to connect the appellant to the alleged offence and the Court below has failed to consider these vital missing links in the case of the prosecution while convicting the appellant for the offence under Section-302 IPC and sentencing him to suffer rigorous imprisonment for life.

In the light of the above discussion, the Criminal Appeal is allowed and the judgment, dated 19.10.2010, in Sessions Case No.68 of 2008 on the file of the learned Special Sessions Judge

for trial of cases under SCs and STs (POA) Act-cum-VII
Additional District and Sessions Judge, Mahabubnagar is set
aside. The appellant is acquitted of the charge under Section-
302 of the Indian Penal Code and he shall be forthwith released
from jail unless he is otherwise required in connection with any
other offence.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE A.V.SESHA SAI

14th November 2016
DR

