

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(11.04.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.962 of 2010

Between:

Dayyala Narsaiah and another

..... APPELLANTS/A1 & A2

AND

State of Telangana, rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellants : **Smt.A.GAYATHRI REDDY**

Counsel for the Respondent : **PUBLIC PROSECUTOR (TG)**

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.962 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

A.1 & A2 in Sessions Case No.746 of 2007, on the file of the II Additional Sessions Judge, Warangal filed this appeal against the judgment, dated 20.07.2010, by and under which, the learned Sessions Judge has convicted the appellants/A1 & A2 for the offences punishable under Sections 447, 302 and 380 IPC and sentenced them to undergo rigorous imprisonment for a period of two years each for the offences under sections 380 and 447 IPC and to pay a fine of Rs.100/- (Rupees one hundred only) each; and to undergo rigorous imprisonment for life for the offence under Section 302 IPC and to pay a fine of Rs.100/- (Rupees one hundred only) each, and in default of payment of fine amounts, they were directed to suffer imprisonment for one month on each count.

2. The case of the prosecution in brief is that on 01.06.2006 PW 1 lodged Ex.P1 complaint before PW 6-Sub Inspector of Police, Mills Colony, stating that on 01.06.2006 at 8 a.m. one girl intimated her that her grandmother, by name Manda Veeralaxmi (the deceased), was killed, that PW 1 rushed to the house of the deceased and found her killed by some unknown persons and her gold and silver ornaments, as described in the complaint, were looted. Basing on the said complaint, PW 6 registered Cr.No.152/2006. On receiving the copy of First Information Report, PW 13 visited the scene of offence, secured the presence of clues team, got photographed the dead body, held inquest in the presence of PW 3 and PW 7, and sent the body for postmortem examination. During course of investigation, on 10.07.2006 PW 5 found A.1 at bullion market moving in suspicious condition, apprehended him and found M.Os.1 to 3 ornaments of the deceased in his possession. On interrogation, A.1 confessed having

committed the crime and led the investigating party to the house of A.2 from whose possession M.Os.4 to 13, the remaining gold and silver ornaments were recovered. Both A.1 and A.2 have confessed having killing the deceased and stealing her gold and silver ornaments. PW 9 compared the finger prints of A.1 and A.2 with the chance finger prints collected at the scene of offence and gave report. After completion of investigation, PW 13 filed the charge sheet.

3. In support of its case, the prosecution examined PWs 1 to 14 and marked Exs.P1 to P16 and M.Os.1 to 22. On behalf of defence no oral or documentary evidence was adduced.

4. On appreciation of the oral and documentary evidence, the lower Court has convicted the appellants of the offences alleged and awarded sentence against them, as noted hereinbefore.

5. Learned counsel for the appellants submitted that absolutely there is no legally acceptable evidence on record for holding the appellants guilty of having caused the death of the deceased, and the learned Sessions Judge relied upon the alleged recovery of property which is alleged to have been stolen by the appellants after having caused the death of the deceased. She further submitted that the so called confession and recovery have not been proved and the prosecution has not placed on record the evidence to the effect that M.Os.1 to 13 which are said to have been committed theft of by the appellants have not been properly identified by the relations of the deceased and no test of identification proceedings, as contemplated under Rule 35 of the Criminal Rules of Practice, 1990, was conducted. Therefore, the learned counsel submitted that on the basis of the said circumstance, the appellants cannot be found guilty. She further submitted that the other circumstance that is relied upon by the prosecution as well as by the Court below is the presence of finger prints on M.O.22, two steel glasses, found near the dead body of the deceased which are said to have tallied with the finger prints of the

appellants. She further submitted that the presence of finger prints on the two glasses lying near the dead body of the deceased cannot be relied upon for the reason that the admitted finger prints of the appellants were not taken either before the jurisdictional Magistrate or with the permission of the Court and hence this circumstance cannot be taken as conclusively establishing the involvement of the appellants in the gruesome murder of the deceased.

6. The learned Public Prosecutor submitted that the case is based on circumstantial evidence, that the circumstances relied upon by the prosecution and the trial court are sufficient for holding the appellants guilty and that the Court below has appreciated the evidence on record in proper perspective warranting no interference with its findings.

7. We have carefully considered the respective submissions of the learned counsel for the parties and perused the material on record.

8. The point for consideration is whether the prosecution proved its case against the appellants beyond reasonable doubt so as to sustain the conviction and sentence recorded against them, or whether the same need to be set aside, modified or varied.

9. The deceased-Veeralaxmi was living alone in the house and her sons and grand-children were living separately. The deceased was allowing her house to be used by the villagers for the purpose of gambling and consuming liquor. On 01.06.2006 at about 8 a.m, PW 1, the paternal granddaughter of the deceased, was informed by a girl, who was not named, that the deceased was lying dead in her house. PW 1 went there and after finding several gold and silver ornaments missing, and other household articles lying in pell-mell condition, lodged the complaint (Ex.P1) with the jurisdictional police. In Ex.P1 it was mentioned that some unknown thieves have robbed the deceased after killing her.

10. According to the prosecution, nearly one month 10 days

thereafter, i.e. on 10.07.2006, a beat constable-PW 5 found A.1 moving in suspicious circumstances in the bullion market and he was apprehended, and that during course of interrogation, he confessed that he along with A.2 committed the crime and MOs 1 to 13 were recovered from their possession. It is also the case of the prosecution that at the time when the scene of offence panchanama-Ex.P6 was being prepared, two steel glasses i.e. M.Os.22 were found and the same were seized and sent to the Forensic Science Laboratory for comparing the finger prints thereon with the finger prints of the appellants.

11. The fact that the deceased died in the circumstances alleged is not denied. There are no eyewitnesses to the incident. The case is based on circumstantial evidence. There is no evidence on record to show that the appellants were last seen in the company of the deceased. Admittedly, the deceased was a person who was allowing her house to be used as a den for illegal activities. She was a lonely woman, aged about 65 years. Her sons were living separately from her. The plea of the accused is one of denial.

12. PW 1 is the *de facto* complainant and she was the granddaughter of the deceased. She spoke about the contents of Ex.P1 complaint, which are referred to above. She also identified M.Os.1 to 13 as the ornaments belonging to the deceased.

13. The other relevant witness is PW 4, in whose presence A.1 is alleged to have confessed to the crime and from whose possession M.Os.1 to 3 were recovered, and that thereafter, A1 lead the police and panchas to the house of A.2 and M.Os.4 to 13 were recovered from his possession.

14. If the prosecution could establish by cogent and reliable evidence that the property which was on the person of the deceased was recovered from the accused, the presumption that can be drawn is that either it is the accused who committed the crime or that they came

in possession of the property which they have reason to believe that the property was the stolen property. Such a presumption is permissible unless the accused can satisfactorily explain for the property in their possession which belongs to the deceased. This being a crucial aspect, it is incumbent on the part of the investigating agency to strictly follow the requirement of law, and the alleged confession and recovery of incriminating objects should be in the presence of two independent and respectable inhabitants of the locality from where the property was seized. In the instant case, PW 4 is not the person residing within the vicinity of the place from where the material objects were recovered. Admittedly, he is a person running a hotel near the police station and was supplying food, tea etc., to the police personnel. Therefore, he cannot be said to be an independent and impartial witness on the basis of whose testimony it can be said that the appellants confessed having killed the deceased and robbing her ornaments which are marked as M.Os.1 to 13.

15. The other evidence which has a bearing on the facts of the case is that of PW 5, who is said to be a constable and who apprehended A.1 while the latter was moving in suspicious circumstances in the bullion market. The incident of murder for gain is said to have taken place at midnight between 31.05.2016 and 01.06.2016. One month 10 days thereafter, A.1 is said to have gone to the bullion market to dispose of the stolen property. This is not the natural human conduct of a person who kills a woman and robs her for gain. The natural instinct will be to make capital out of the booty at the earliest, but not wait for forty days for disposing it of.

16. In view of the nature of testimony placed on record, we find it difficult to hold that the prosecution could successfully prove beyond reasonable doubt that both the appellants on being apprehended and while in police custody confessed having killed the deceased and robbing her gold and silver ornaments.

17. The other circumstance that is relied upon by the prosecution is the presence of the finger prints on M.O.22 two steel glasses, which were found near the dead body of the deceased. This circumstance can also be decisive if the investigating agency can place on record trustworthy evidence that the finger prints found on M.O.22 two steel glasses were secured by following proper method, that subsequently the finger prints of the accused were obtained in the presence of a judicial officer or with the permission of the court and that when they were compared by an expert, the chance finger prints on M.O.22 glasses tallied with that of the accused.

18. In instant case, PW 13-the Investigating Officer has seized several material objects from the scene of offence, such as, the wearing apparel of the deceased, bloodstained pillow, blanket, broken bangle pieces etc., and also two steel glasses at the time of observation of scene of offence. The clues team preserved the chance finger prints on M.O.22 two steel glasses. The appellants were apprehended and their finger prints were obtained. This has been done without permission of the Court and in the absence of a judicial officer. The chance finger prints and admitted finger prints were sent to PW 9.

19. The learned counsel for the appellants submitted that unless the finger prints of the accused are obtained in accordance with law, the said circumstance cannot be taken as a conclusive proof of the guilt of the accused.

20. The learned counsel for the appellants further submitted that as per the evidence of PW 9, the steel glasses contained the finger prints of three persons. Two of the said finger prints are said to belong to A.1 and A.2, whereas third finger print is said to be of one Manda Padma. Who is this Manda Padma is not known. This aspect raises a serious doubt since obviously she was the person present in the house of the deceased when the appellants would have gone there for

drinking and gambling.

21. The learned counsel for the appellants also submitted that it is not as though that the appellants were not regular visitors to the house of the deceased. It is admitted case that the deceased was living alone and allowing her house to be used by the villagers for the purpose of gambling and drinking. Therefore, the presence of the finger prints on the glasses even if they are taken to be that of the appellants, the same cannot be considered as a strong circumstance for holding that the appellants are the last seen persons in the company of the deceased when she was alive.

22. The main stay of the prosecution is that pursuant to the confession M.Os.1 to 13 gold and silver ornaments were recovered from the appellants. However, the investigating agency has failed to conduct the test of identification proceedings for the family of the deceased to identify that M.Os.1 to 13 ornaments belonged to the deceased. The learned counsel for the appellants submits that the investigating agency is required to follow the procedure as contemplated under Rule-35 of the Criminal Rules of Practice, 1990 to conclusively establish that the material objects belonged to the deceased. He has drawn the attention of this Court to Rule-35 of the Criminal Rules of Practice and Circular Orders, 1990, which reads as under:

35-Identification of Property:

(1) Identification parades of properties shall be held in the court of the Magistrate where the properties are lodged;

(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or similar objects;

(3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not be allowed to communicate with the witness not yet called.

23. Admittedly, the procedure required under Rule-35 of the Criminal Rules of Practice, 1990 has not been followed in the instant case.

24. The medical evidence does not support the case of the prosecution. As already stated, there are no eyewitnesses to the incident. The case is based on the self-inculpatory confessions of the appellants. A.1 is stated to have confessed as under:-

“Then I covered her face and throat with towel and pressed it to stop her breathing. Sudhakar (A.2) caught hold of her legs to stop her movement. Since she was still alive, I have pressed the pillow on her face, pressing her head strongly to the frame of the cot and Sudhakar (A.2) punched on her chest and jumped on her. Then she died flapping her hands and legs.”

As per the above reproduced alleged confessional statement of A1, the cause of death should have been asphyxia due to throttling or smothering. The appellants did not use any hard and sharp weapon. PW 14, the Medical Officer who conducted the post-mortem examination found the following injuries as noted by him in Ex.P.16:-

- 1) Contusion measuring 5 x 2 cms., present at right side of neck below the middle of mandiblar bone. Another contusion of 3 x 1.5 cms. Present at left side of neck, on dissection the underlying subcutaneous tissue contused with extra vassation of blood, the left greater horn of hyoid bone is fractured with surrounding contusion.
- 2) Contusion of 5 x 3 cm., present at the right cheek.
- 3) On reflection of chest wall, the body of sternum is dislocated with fracture of both side ribs from 2nd to 8th in mid-clavicular line, lungs are ruptured irregularly. Plural cavities containing about 1 litre of blood and blood clots.
- 4) On reflection of scalp, contusion of 7 x 5 cm., present at right

temporal region of skull, subdural hemorrhages of 8 x 6 x 1 cm., present at right side of temporal region of brain.

The cause of death is said to be multiple injuries caused by using a blunt object as spoken to by PW.14. This circumstance raises a reasonable doubt as to whether person(s) other than the appellants have inflicted the injuries found on the person of the deceased.

25. In view of the foregoing discussion, we have no hesitation in holding that the case of the prosecution cannot be said to have been proved beyond reasonable doubt and that the appellants are entitled to the benefit of doubt. Therefore, the conviction and sentence imposed by the Court below cannot be sustained and the same need to be set aside.

26. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused are set aside. Consequently, the appellants/accused shall be set at liberty forthwith, if they are not required in any other case or crime. The fine amount, if any, paid by them shall be refunded to them.

27. The learned trial Judge while allowing the retention of M.Os.1 to 13 by P.W.1, the grand-daughter to whom interim custody of the said gold and silver ornaments which belonged to the deceased, was given, observed that no further orders are required, but however, he has again stated that M.Os.1 to 22 shall be destroyed after the appeal time is over, which is palpably incorrect. Therefore, the order with regard to the case property is modified to the effect that while M.Os.1 to 13 shall be retained by P.W.1 without prejudice to the claims, if any, of the other legal heirs of the deceased, M.Os. 14 to 22 shall be destroyed after appeal time is over.

C.V.NAGARJUNA

REDDY,J

Date: 11.04.2016
Dsr/Smr

M.S.K.JAISWAL,J