

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

CRIMINAL APPEAL NOS.1312 OF 2009 AND 1487 OF 2010

DATED:07-11-2016

Criminal Appeal No.1312 of 2009

Between:

Palaparthi Nagaraju @ Bujji

... Appellant/ Accused No.1

And

The State of Andhra Pradesh
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad

.... Respondent

COUNSEL FOR THE APPELLANT: Smt. V. Vasantha Lakshmi

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

Criminal Appeal No.1487 of 2010

Between:

The State of Andhra Pradesh
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad

... Appellant

And

1. Palaparthi Nagaraju @ Bujji

2. Perram Nagarjuna

... Respondents/ Accused

COUNSEL FOR THE APPELLANT: Public Prosecutor (AP)

COUNSEL FOR THE RESPONDENTS: Smt. V. Vasantha Lakshmi

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT:

These two criminal appeals are filed against judgment dated 19.11.2008 in Sessions Case No.101 of 2008 on the file of the Special Sessions Judge under SCs & STs (POA) Act-cum-X Additional District & Sessions Judge, Krishna, Machilipatnam. Accused Nos.1 & 2 were charged before the learned Sessions Judge for the offences punishable under Sections 120-B, 379, 457, 380, 411 and 302 r/w.34 IPC, however, the learned Sessions Judge convicted Accused Nos.1 & 2 for the offence under Section 411 IPC only and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/- each and in default of payment of fine to suffer simple imprisonment for one month each, and acquitted them of the remaining charges.

2. Challenging the conviction, Accused No.1 filed Crl.A.No.1312/2009. Challenging the acquittal of the accused Nos.1 & 2 for the offences under Sections 120-B, 457 and 302 IPC, the State filed Crl.A.No.1487/2010. No appeal was filed by Accused No.2.

3. The case of the prosecution in brief is as follows:

The deceased Dimmeta Jagadiswari was a physically handicapped woman, aged about 60 years and she had been running a buddy shop by the side of Eluru Road in Nagavarappadu, Gudivada, Krishna District, for eking her livelihood. She used to wear gold chain and ear studs and used to sleep in front of her buddy shop. On 06.06.2007 in the early hours, the deceased was found dead, for which, PW 1, the neighbour of the shop, gave Ex.P1 report to Gudivada I Town Police Station. PW 17 registered Cr.No.132/2007 under section 174 Cr.P.C, and after registering the crime, he rushed to the spot, drafted Ex.P10-scene observation report, conducted inquest over the dead body under Ex.P11 panchanama in the presence of PW 13-Village Revenue Officer of Nagavarappadu, drafted Ex.P21 rough sketch of the

scene of offence and sent the dead body for post mortem. The Doctor gave Ex.P19 report opining that the deceased died due to throttling. PW 18-Sub Inspector of Police, after receipt of the post mortem report, altered the F.I.R from Section 174 Cr.P.C to Section 302 IPC on 01.10.2007. On receipt of copy of altered FIR, PW 19-the Inspector of Police took up the investigation and arrested A1 & A2 on 05.10.2007 and recorded their confessional statements under Exs.P13 & P14 in the presence of PW 15.

4. A1 & A2 confessed that on the intervening night of 5/6.06.2007, they killed the deceased by throttling and committed theft of her gold chain and ear studs, and that thereafter, with the assistance of PW 8, they had pledged the gold chain in the jewelry shop of PW 10. PW 19 along with PW 15 and the accused went to the shop of PW 10 and seized M.O.1-Gold chain under Ex.P5 receipt, that thereafter they recovered M.O.2-Gold ear studs from the possession of the accused. After completion of investigation, PW 19 filed charge sheet against Accused Nos.1 and 2 for the offences under Sections 120(b), 379, 457, 380, 411 and 302 r/w.34 IPC.

5. The plea of the accused is one of denial.

6. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 19 and got marked Exs.P1 to P23 and produced M.Os.1 & 2. On behalf of defence, no oral or documentary evidence was adduced. Based on the oral and documentary evidence, the learned Sessions Judge has delivered the impugned judgment, as stated supra.

7. Mr. Posani Venkateswarlu, the learned Public Prosecutor (AP) submitted that the Court below has not appreciated the evidence on record in proper perspective and has erroneously acquitted the accused of the grave offences under Sections 120-B, 457 and 302 IPC, and convicted them for the offence under Section 411 IPC.

8. Mrs. B. Vasantha Lakshmi, learned Counsel appearing for the appellant/accused No.1 in Crl.A.No.1312/2009, submitted that absolutely there is no material, leave alone legal evidence, to connect the accused with the crime and since none of the witnesses whose evidence is material for determining the guilt or otherwise of the accused, have supported the case of the prosecution, the Court below has rightly recorded the finding of acquittal for the offences under Sections 120(b), 457 and 302 IPC, but erroneously recorded conviction against the accused under section 411 IPC, and hence the conviction recorded against the accused is liable to be set aside.

9. The point that arises for consideration in these two criminals appeals is whether the judgment of the trial Court is erroneous warranting interference with the same?

10. We have carefully considered the respective submissions of the learned counsel for both parties and perused the record.

11. The uncontroverted fact is that the deceased was a physically challenged woman, aged more than 60 years, was not even in a position to walk, and was leading her life by moving around on a tri-cycle. She was a lonely woman having settled down at Gudiwada and used to earn her livelihood by running a baddi shop selling sweetmeat and other eatables. She used to cook food in that kiosk itself and used to sleep on a cot in front of the said shop during nights, on the main road connecting Gudiwada and Eluru.

12. On 06.07.2007, in the morning hours, the deceased was found lying on the cot. This was noticed by the neighbouring residents. PW.1 came over there and having found the deceased dead, lodged Ex.P.1-report with the police. It is also in the evidence of PW.1 that the deceased used to wear a

gold chain and was having gold ear studs and that the same were found missing at the time when the deceased was found lying dead on the cot.

13. Four months after the incident i.e., on 05.10.2007, A.1 and A.2 were apprehended and they are alleged to have made the confession that they killed the deceased and robbed her gold chain and gold ear studs and shared one ear stud each while pledging the gold chain with PW.10 and took Rs.5,000/- from him. The gold ornaments so seized were marked as M.Os.1 and 2 and they were said to have been identified by the people living nearby the shop of the deceased and also her sister PW.7.

14. From the above narration of events, it is manifest that there is no direct evidence to connect the accused to the death of the deceased. The case is purely based on circumstantial evidence and the only circumstance that is relied upon by the prosecution is the alleged confession leading to the recovery of M.Os.1 and 2 from the possession of and at the instance of the accused. Other than this, no other circumstance is sought to be pressed into service for determining the guilt or otherwise of the accused. Therefore, it is incumbent on the part of the prosecution to establish three aspects; firstly, it should be proved that M.Os.1 and 2 were recovered from the possession or at the instance of the accused; secondly, that the said M.Os.1 and 2 belonged to the deceased; and thirdly that the accused killed the deceased with the dishonest intention for the sake of M.Os.1 and 2.

15. The fact that the death of the deceased occurred due to throttling is amply proved by Ex.P.19 final report issued by P.W.16 – Doctor, who conducted autopsy over the dead body. In his evidence, P.W.16 has deposed that he has found the following injuries on the body of the deceased.

“Old nail marks around the neck of the deceased.”

Mouth is closed with pale tongue.

Tongue is black in colour.

Regarding the heart – red colour infarce and both the walls are thickened.”

P.W.16 further deposed that the injuries sustained by the deceased around her neck are ante mortem in nature and that the cause of the death as mentioned in Ex.P.19 final report issued by him was 'due to throttling'. Thus, this evidence conclusively proves the death as homicidal one.

16. Learned Counsel appearing for the accused submitted that admittedly the deceased was a physically crippled woman who used to sleep beside a public road in front of her shop and she was found lying dead in the morning. That even if the prosecution could establish that it was the accused who were responsible for the missing of the M.Os.1 and 2 from the person of the deceased, by no stretch of imagination, it can be said that the same connects the accused with the death of the deceased. Learned Counsel further submitted that though not admitted, even if it is proved that the accused were in possession of the ornaments of the deceased, they cannot be said to have caused the death of the deceased and therefore there are absolutely no merits in the appeal of the State seeking conviction of the appellants/accused for the offence of murder of the deceased.

17. Having perused the material on record, we find ourselves in agreement with the submission of the learned Counsel for the accused that even if M.Os.1 and 2 were proved to belong to the deceased and that they were recovered from the accused, no presumption can be drawn that it is the accused who caused the death of the deceased.

18. PW.1 is a resident of the area where the deceased was living. He claims to have seen the gold chain and ear studs on the person of the deceased when she was alive and found the same missing when he had seen her dead on 06.06.2007 in the morning hours.

19. PW.2 is another lady residing nearby and it is in her evidence that the deceased used to wear a two row gold chain and ear studs which are M.Os.1 and 2. Significantly, PW.2, who claims to have reached the dead body immediately in the morning, deposed that she noticed the said gold ornaments when she saw the dead body of the deceased.

20. PW.3 is another neighbouring resident who also deposed that the deceased used to wear M.Os.1 and 2 which were found missing when she was found lying dead. The evidence of PWs.4 and 5 who were neighbouring residents of the deceased is on similar lines.

21. PW.6 is the brother of the deceased. He claimed to have come to Gudivada from Cheerla on being told about the death of the deceased and found M.Os.1 and 2 missing from her person.

22. Contrary to the above is the evidence of PW.7 who is the younger sister of the deceased. She deposed that the deceased used to wear gold ear studs and gold toe-rings. She did not speak about the chain having been owned or used by the deceased.

23. In the Test Identification Parade of the properties, it is only PW.7 who has participated. Her evidence is relevant for establishing that M.O.1 is the gold chain belonging to the deceased which was recovered at the instance of the accused. As stated above, according to PW.7, the deceased was wearing only gold ear studs and gold toe-rings but not the M.O.1 - chain.

24. PW.10 is the pawnbroker. The accused are strangers to him. According to PW.10, he accepted M.O.1 - gold chain for pledging since A.1 and A.2 were introduced to him by PW.8 who was a known person. However, PW.8 denied that at any point of time he took A.1 and A.2 to the shop of PW.10 for pledging M.O.1.

25. P.W.15, the Village Revenue Officer, was examined to speak to the confessional statement of accused No.1 marked as Ex.P.14 and Ex.P.13 – arrest mahazar. He has also deposed to the fact that he has conducted identification of M.Os.1 and 2 under Exs.P.16 and P.17. He has further deposed that one gold ear stud each constituting M.O.2 was received from the possession of the accused. The learned counsel for accused No.1 has seriously disputed the authenticity of these reports by stating that P.W.15 is a stock witness as evident from his own testimony. However, we need not delve into this aspect for the simple reason that it is admitted by the learned Public Prosecutor that as per the established procedure the ornaments need to be identified before the jurisdictional Magistrate by the concerned witnesses. Under Rule 35 of the Criminal Rules of Practice and Circular Orders, 1990, the identification parade of the properties shall be held in the Court of the Magistrate where the properties are lodged. Admittedly, this procedure was not followed. This necessarily follows that even if the seizure of the property was proved, the prosecution failed to prove that the seized articles are that of the deceased. Once this link could not be established, the crucial link in the chain of circumstances gets broken and the entire edifice of the prosecution that the accused have killed the deceased and taken away the gold articles, crumbles. Unfortunately, the lower Court has failed to advert to this aspect and gave a wrong finding that the seized articles belonged to the deceased.

26. The Investigating Officer – PW.19 admitted that the place where the accused were arrested, is a busy place where there were several persons, but none of them were examined as mediators.

27. When the crucial aspect such as the confession which led to the recovery of the incriminating object, connects the person with a case of

causing the death of a woman, the police ought to have taken adequate precautions to see that the investigation is not assailed on the ground that no independent witness was drafted-in to act as panch witness even though there were several persons available at that place instead of banking upon PW.15, the Village Revenue Officer, who appears to be a stock and most trusted witness of the police. As already observed supra, there is no direct evidence to connect the accused to the death of the deceased.

28. For these reasons, we are of the opinion that the acquittal of the accused for the offence under Section 302 IPC made by the lower Court, though for different reasons, with which we may not agree, is not liable for interference.

29. The lower Court has rendered a finding that except the offence under Section 411 IPC, the prosecution failed to prove the guilt of the accused on any other provisions referred to above. The learned Public Prosecutor has not seriously contested this finding. Hence, it is not necessary for us to refer to this aspect.

30. As regards the conviction of the accused for the offence under Section 411 IPC, we wonder as to how the facts of this case attract the provisions of Section 411 IPC. This provision reads as under:

“411. Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

As can be seen from the above reproduced provision, the *sine qua non* for application of Section 411 IPC is that a person must be in receipt of stolen property with dishonest intention. It is not the case of the prosecution that the accused have received any stolen property with a dishonest intention from any third party. On the contrary, the specific charge against the accused is that they have killed the deceased with the dishonest intention of

taking away the gold ornaments belonging to her. Therefore, in our opinion, Section 411 IPC is not attracted to the case at all.

31. For the aforementioned reasons, Criminal Appeal No.1312 of 2009 filed by the appellant/accused No.1 is allowed and Criminal Appeal No.1487 of 2010 filed by the State is dismissed.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

Date : 07-11-2016

DSR/bnr

