

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL NO.1416 OF 2010

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

The appellant, A1 in Crime No.160 of 2009 on the file of Tenali Taluk Police Station, was convicted by the learned XI Additional District & Sessions Judge (FTC), Tenali, in Sessions Case No.866 of 2009 of offences punishable under Sections 302, 380 and 201 IPC. He was sentenced to life imprisonment under Section 302 IPC along with payment of a fine of Rs.500/- or to undergo simple imprisonment for three months, in default thereof. As regards his conviction under Section 380 IPC, he was sentenced to two years simple imprisonment along with payment of a fine of Rs.500/- or to undergo simple imprisonment for three months, in default thereof. Lastly, for his conviction under Section 201 IPC, he was sentenced to simple imprisonment for three years along with payment of a fine of Rs.500/- or to undergo simple imprisonment for three months, in default thereof. Aggrieved thereby, he is in appeal before this Court under Section 374(2) CrPC. Be it noted that A2 in Sessions Case No.866 of 2009 was acquitted of all charges.

The gravamen of the first charge against the appellant was that he caused the death of Kothapalli Rajyalakshmi on 21.07.2009 at 4:00 PM in Pedaravuru Village by throttling her with a wire, thereby committing an offence punishable under Section 302 IPC. He was also charged with committing theft of the belongings of the deceased constituting an offence punishable under Section 380 IPC and lastly, he was charged with the offence

of causing disappearance of evidence with the intention of screening himself, punishable under Section 201 IPC.

He denied the charges and claimed to be tried.

To substantiate its case before the Sessions Court, the prosecution examined 10 witnesses and marked 15 exhibits. Case properties were marked as M.Os.1 to 4. The defence marked two exhibits, being parts of the statements of P.W.1 and P.W.3 respectively, recorded under Section 161 CrPC.

Perusal of the evidence, oral and documentary, manifests the following salient points.

Kothapalli Rajyalakshmi, the deceased, lived by herself in the ground floor portion of her house at Door No.2-38, Pedaravuru Village, Tenali Rural Mandal. She let out the other portion in the ground floor to A1 and A2. The first floor of the said house was let out by her to Shaik Kaleesha (L.W.6), Shaik Beebi Bathul (P.W.7) and their family. The deceased had a foster daughter, Kolli Vani (P.W.1), who lived at Mantripalem Village, Muvva Mandal, Krishna District, with her husband, Kolli Suresh Babu (L.W.2).

Ex.P.1 report was given by Kolli Vani (P.W.1) in relation to the death of the deceased and thereupon, proceedings under criminal law were set in motion. In her report, P.W.1 stated that she used to speak to her foster mother once in 4 or 5 days by telephone and in the usual course, she called her on her Nokia cell bearing No.9704200630 on 21.07.2009 in the morning at about 10:00 AM from a coin box. However, as the voice was not clear, she said that her mother gave the cell phone to A2, her tenant, and P.W.1 told her to ask her mother to come to stay with her for ten days. P.W.1 said that she thereafter called her mother 2 or 3 times but found that the phone was switched off. On 25.07.2009, P.W.1

said that she again called her mother and as it was switched off, she called one Tulasamma (P.W.4) who resided near the house of her mother and asked her to convey to her mother that she should come and stay with her in relation to a crop loan. P.W.1 further stated that Tulasamma (P.W.4) conveyed this information to Shaik Beebi Bathul (P.W.7), the tenant in the upstairs portion of the house of her mother. P.W.7 was stated to have searched for the deceased and as she had not seen her since four days, she peeped into the house through the window and found her lying dead in the room. P.W.7 was stated to have informed this to the neighbours and to P.W.1. P.W.1 said that she thereupon informed her relations and rushed to Pedaravuru along with her husband, Kolli Suresh Babu (L.W.2), Donepudi Srilakshmi (L.W.3), the younger sister of the deceased, Thummala Nageswaramma (L.W.4) and others.

P.W.1 further stated in Ex.P.1 report that Shaik Beebi Bathul (P.W.7) informed her that on 21.07.2009, Tuesday, the deceased was at her house. A1 and A2 were also present there. P.W.1 said that P.W.7 further informed her that in the evening at 4:00 PM, when she was returning from the house of her grandmother, she saw A1 locking the door of the deceased's house portion and when P.W.7 asked him as to why he was doing so, he told her that the deceased had hurriedly left with another woman and asked him to lock the door. P.W.1 said that P.W.7 also informed her that from 9:00 PM on the said day, she did not see A1 and A2. P.W.1 spoke of the jewellery owned by her mother - a gold chain weighing $3\frac{3}{4}$ sovereigns, four gold bangles weighing 5 sovereigns and gold ear studs. P.W.1 stated that on 26.07.2009 in the morning, she and her relations got opened the lock on the door

of the house portion of the deceased and found her lying dead on a diwan cot in the kitchen room. She stated that her mother had been murdered and her tongue was protruding from her mouth while blood was oozing from her head. The body was stated to be swollen and emitting a foul smell. P.W.1 stated that the gold ornaments, being the chain, bangles and the left gold ear stud had been stolen from the person of her mother. P.W.1 concluded by stating that it was suspected that A1 and A2 had murdered her mother on 21.07.2009 in the evening at 4:00 PM, robbed her gold jewellery and fled the scene. She prayed that necessary action be taken against them.

This report was received by the Assistant Sub-Inspector of Police, Tenali Taluk Police Station (P.W.9), at 10:00 AM on 26.07.2009, whereupon he registered a case in Crime No.160 of 2009 under Sections 302, 380 and 201 IPC read with Section 34 IPC. P.W.9 then informed the Inspector of Police, Tenali Rural Police Station (P.W.10), who took up investigation in the case and after completion thereof, laid a charge sheet against A1 and A2.

In her deposition before the Sessions Court, P.W.1 confirmed the contents of Ex.P.1 report submitted by her. She further stated that when the lock was broken open and she saw her mother's dead body, there was an injury on the throat and her eyes and tongue were protruding. She said that the left ear ring was missing along with other items of jewellery - four gold bangles and a gold chain, and the ear lobe was torn while the right side ear ring was intact. She confirmed that M.O.1 gold bangles (four in number), M.O.2 gold chain and M.O.3 cell phone were her mother's. In her cross-examination, P.W.1 was confronted with a portion of her statement recorded under Section 161 CrPC

(Ex.D.1), in the context of not having stated as to who actually broke open the door lock. This fact is however of no real relevance.

Paladugu Raghava Rao (P.W.2), a neighbour of the deceased, confirmed that A1 and A2 were the tenants of a ground floor portion in the house of the deceased and Shaik Kaleesha (L.W.6) and his family were the tenants in the first floor. He confirmed that the deceased was living alone and that A1 worked as a cook in short spells owing to his general ill-health. He spoke of A1 telling him about his sickness and of his taking medicine at Puttaparthi. As to the events of the fateful day, P.W.2 confirmed that on 21.07.2009 at 10:00 AM, he saw the deceased alive in her house and he saw A1 and A2 there at that time. However, when he returned from his camp that night, he found the house portions of the deceased as well as the accused (A1 and A2) locked. He said that he asked Shaik Kaleesha's wife, P.W.7, about the absence of the deceased and the accused and she told him that the deceased might have left to her daughter's place and that the accused had locked her house portion. He said that about two days later, he found a foul smell emanating from the house of the deceased and suspected the death of some animal. He further stated that on 25.07.2009 at about 5:00 PM, Kaleesha's wife saw the body of the deceased through the window and shouted for help and that he also went there and saw the dead body through the window. He confirmed that the dead body was lying on a diwan cot and that it had swelled up. He said that P.W.1 was informed over phone and she arrived there at 10:30 PM. He said that after arrival of P.W.1, the lock was broken open and he saw the dead body. He confirmed that one ear lobe was torn and an earring was missing

along with the gold chain and bangles regularly worn by the deceased.

Kodali Veeraiah (P.W.3), a resident of Pedaravuru, stated that he ran a hotel, wherein A1 used to work occasionally. He said that A1 used to complain of kidney problem and backache and wanted to go to Puttaparthi for treatment.

Kudaravalli Lakshmi Tulasamma (P.W.4) stated that the house of the deceased was situated to the west of her house and that there was a vacant site in between. She confirmed that there were tenants in the house of the deceased. She said that the foster daughter of the deceased telephoned her and asked her to contact the deceased and tell her to call her. P.W.4 said that she spoke to the Muslim tenant in the house of the deceased and asked her to inform the deceased. She further stated that the Muslim tenant told her that the deceased was not to be seen for the last three days and that the house had been locked for the last three days. P.W.4 said that on the same day at about 10:00 PM, the Muslim tenant told her that a bad smell was coming from the house of the deceased and she asked her to inform the relations of the deceased. She further stated that it was revealed thereafter that the deceased was found dead in her house but she could not say whether she saw A1 and A2 after the death of the deceased. She also confirmed that she saw the deceased wearing gold bangles and a gold chain. At this stage, the witness was declared hostile and cross-examined by the prosecution. She denied that she had seen the body of the deceased at her house and also denied that Beebi Bathul (P.W.7) informed her about A1 locking the house portion of the deceased and his saying that she had left with some woman. She however confirmed that the deceased had a cell

phone and used to wear ear rings. She denied the suggestion that Beebi Bathul had not told her that the deceased was not seen for three days.

Ch.Sravankumar (P.W.5), the Village Revenue Officer of Pedaravuru, participated in the investigation and spoke of the same. He confirmed his signature in the scene of observation report (Ex.P.3) and in the inquest report (Ex.P.4). He also confirmed his participation on 14.08.2009 in the proceedings when A1 and A2 were apprehended. He said that on the said day at about 8:45 AM, he arrived at Tenali Rural Police Station upon the request made by the Inspector of Police, Tenali (P.W.10), and accompanied the police team to the old Sivalayam at Gaganammamet, where a male and a female started running upon seeing the police jeep. They were however caught by the police. A1 and A2 were the persons so caught. P.W.5 confirmed that A1 produced two gold bangles from the pocket of his underwear and a cell phone from his shirt and handed over the same to P.W.10. A1 informed them that the gold chain was with A2 and two gold bangles were pledged but one ear ring had been sold. A2 handed over the gold chain to the police. Ex.P.5 was certified by P.W.5 to be the mediators report drawn up in this regard and he confirmed his signature therein. P.W.5 stated that A1 led them to the shop of one Vinod Jain, which was about 200 yards from the old Sivalayam and the said Vinod Jain produced two gold bangles and a receipt, evidencing the pledge thereof by A1. The two gold bangles were seized under Ex.P.6 mahazar. P.W.5 said that the team then went to Pedaravuru to the house of the deceased, where A1 produced a wire lying in the plants in the eastern side site owned by a third party. P.W.5 identified M.O.4 as the said wire.

Ex.P.7 is the seizure mahazar in relation to M.O.4. P.W.5 further confirmed that he conducted an identification parade for the seized gold bangles, gold chain and cell phone by mixing them with similar type of articles and P.W.1 identified the seized articles as those belonging to her mother. The identification report (Ex.P.8) was signed by P.W.5 and Kudaravalli Sankara Rao (L.W.13).

The Civil Assistant Surgeon, District Hospital, Tenali (P.W.6), conducted the post-mortem examination of the body of the deceased on 26.07.2009 at about 3:15 PM. In his deposition before the Sessions Court, he confirmed that he found a laceration of the left ear lobe and a lineal scar mark extending from right to left sterno-mastoid muscle above the thyroid cartilage. He confirmed that there was an ante-mortem fracture of the left horn of hyoid bone at the level of cornua with surrounding area contused. He certified that cause of death was asphyxia due to throttling. According to him, the approximate time of death would have been 3 to 4 days prior to his post-mortem examination. Ex.P.9 was certified by him to be the post-mortem report given by him, while Ex.P.10 was the opinion furnished by the Forensic Science Laboratory. Ex.P.11 was confirmed to be his final report as to the cause of death. He further confirmed that the body was in a decomposed state at the time of post-mortem and that the hyoid bone fracture was possible with a wire like M.O.4 being applied with pressure on the neck.

Shaik Beebi Bathul (P.W.7) confirmed that she and her husband, a carpenter, lived in the first floor of the house of the deceased. She further confirmed that A1 and A2 were tenants in the ground floor, while the deceased resided in the remaining portion of the ground floor. She said that A1 worked in the hotel of

Veeraiah (P.W.3) while A2 had no profession. She said that A1 used to go to work occasionally, complaining of pain in the stomach. As to the events of the fateful day, she said that on 21.07.2009 at about 2:00 PM she went down from her portion to go to her mother-in-law's house and at that time saw the deceased and the accused sitting in the veranda. She said that when she returned at 4:00 PM, she saw A1 locking the portion of the deceased. Upon her query, A1 informed her that the deceased went out hurriedly with one lady and asked him to lock the house. She further stated that on 25.07.2009 at about 7:00 PM, P.W.4 told her that P.W.1 had telephoned and asked about her mother, saying that she was not getting any response as her cell phone was switched off. P.W.7 stated that she informed P.W.4 about the locking of the door by A1 on 21.07.2009. She further stated that when she observed the ground floor, she found a foul smell and looked around for dead animals and could not find anything. She said that she opened the window shutter of the house portion of the deceased and saw her lying dead on the diwan cot. She said that the body was decomposed and a foul smell was coming. She said that she shouted and neighbours came and they all saw the dead body. She said that P.W.1 was informed over telephone and she came there with her relations at about 11:00 PM. She confirmed that A1 and A2 were not in their house portion since the evening of 21.07.2009. She also confirmed that the deceased used to wear gold bangles and a chain along with ear rings and used to carry a cell phone. She said that the gold ornaments were missing when they saw the dead body on 25.07.2009. In her cross-examination, P.W.7 said that she had no disputes with the accused nor did the accused have any disputes with the deceased.

Vinod Jain (P.W.8) deposed to the effect that he was a sales man in Shaw Raichand Nathmal pawn broker shop at Tenali. He said that on 21.07.2009, the accused came to his shop at about 9:30 PM and stated that one of their relatives was seriously ill and required money. A1 produced two gold bangles which were pledged for a loan of Rs.10,500/- by him. Previously also, A1 pledged silver anklets for borrowing money. P.W.8 said that he prepared a pawn ticket for the pledge of the two bangles and Ex.P.12 is the said pawn ticket. He confirmed that on 14.08.2009, the Inspector of Police (P.W.10) accompanied by mediators and the accused came to his shop and at the instance of A1, police seized the two gold bangles. He confirmed that Ex.P.13 was the endorsement on the reverse of Ex.P.12 to the effect that the police had seized the gold bangles. He identified M.O.1 set of gold bangles, out of which two bangles had been pledged at his shop. In his cross-examination, P.W.8 confirmed his handwriting on Ex.P.12 and denied the suggestion that the signature therein was not that of A1.

P.W.9 and P.W.10, the investigating officers, deposed to the various steps taken by them during the course of the investigation.

In the light of the aforestated evidence, it is clear that the case of the prosecution against A1 rests on circumstantial evidence. There were no eye witnesses to the actual crime. It would therefore be incumbent upon the prosecution to adduce circumstantial evidence that satisfies the following criteria:

- ‘1. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'

(See **HANUMANT GOVIND NARGUNDKAR V. STATE OF M.P¹** and **SHARAD BIRDHICHAND SARDA V/s. STATE OF MAHARASHTRA²**)

The most crucial evidence against A1 is the testimony of P.W.7, which is supported by P.W.2 and, to some extent, P.W.4. There is no reason as to why these witnesses would speak falsehoods against A1. P.W.7's deposition, to the effect that she saw the deceased in the presence of A1 and A2 on the afternoon of 21.07.2009 and she thereafter saw A1 locking the house portion of the deceased at about 4:00 PM, remained unshaken. P.W.2, a neighbour, confirmed that on 21.07.2007, he also saw the deceased and the accused together and that P.W.7 informed him at night that A1 had locked the portion of the deceased and that she might have gone to her daughter's place. This corroboration by P.W.2 puts P.W.7's evidence in this regard beyond the pale of doubt.

If that is so, A1, who locked the house portion of the deceased at about 4:00 PM, necessarily has to explain as to what happened to the key and as to how the body of the deceased came to be inside the locked house. Section 106 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') enjoined upon A1 the duty

¹ 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

² (1984) 4 SCC 116

of explaining this fact which was exclusively within his knowledge. Further, there is no reason to doubt recovery of the cell phone and gold ornaments of the deceased from A1 and A2 and from the pawn broker shop at Tenali. The said recovery is covered by Section 27 of the Act of 1872 as no evidence has been let in to doubt the sanctity of this recovery. P.W.8's evidence confirms the pledging of two gold bangles belonging to the deceased by A1 on 21.07.2009 at about 9:30 PM. This witness is an independent witness and his testimony is eminently believable and trustworthy. P.W.1 identified the case properties, M.Os.1 to 3, as the gold ornaments and cell phone belonging to her mother and the said identification was duly confirmed by P.W.5 apart from being borne out by documentary evidence (Ex.P.8).

Sri G. Vijaya Saradhi, learned counsel appearing for the appellant/A1, would point out that the medical evidence, in the form of the post-mortem certificate (Ex.P.9) and the deposition of the doctor (P.W.6), puts the time of death of the deceased on 22.07.2009 or 23.07.2009 and not 21.07.2009.

However, in **PATTIPATI VENKAIAH V/s. STATE OF ANDHRA PRADESH**³, the Supreme Court observed that medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerized or mathematical fashion so as to be accurate to the last second. As pointed out by the Supreme Court in **RAKESH V/s. STATE OF M.P.**⁴, it is a settled legal position that ocular evidence would have primacy unless it is established that the oral evidence is totally irreconcilable with the medical evidence. The Supreme Court

³ (1985) 4 SCC 80

⁴ (2011) 9 SCC 698

further observed that ocular testimony of a witness would have greater evidentiary value over medical evidence and only when medical evidence goes so far that it completely rules out all possibility of ocular evidence, such ocular evidence would have to be disbelieved. In **BASAVA PRASAD V/s. STATE OF BIHAR**⁵, the Supreme Court pointed out that the exact time of death cannot be established scientifically and precisely.

Earlier, in **RAMREDDY RAJESH KHANNA REDDY V/s. STATE OF A.P.**⁶, upon referring to Modi's Medical Jurisprudence and Toxicology, 22nd Edition, the Supreme Court observed that it would be extremely difficult to determine the exact time of death, more so when no sufficient reason is assigned in the post-mortem report.

It may be noted that in the present case, the body of the deceased was stated to be highly putrefied and decomposed at the time of examination by P.W.6. His final report was to the effect that the approximate time of death was 3 to 4 days prior to his post-mortem examination. P.W.6 however did not indicate the basis for this finding. The ocular evidence cogently established that the deceased was last seen alive on 21.07.2009 in the afternoon and the house portion, wherein her body ultimately came to be found, was locked by A1 on 21.07.2009 at about 4:00 PM. The only inference that can be drawn from these two facts is that she was killed before 4:00 PM on that day, as her house portion remained locked thereafter and A1 and A2 were not seen from 9:00 PM on the said day. This Court is therefore not inclined to give much weightage to this medical evidence.

⁵ (2016) 13 SCC 65

⁶ (2006) 10 SCC 172

Though the learned Public Prosecutor would seek to place reliance on an extract from a text book in relation to the post-mortem findings *vis-à-vis* the time of death, it is to be noted that no such text book opinion was put to P.W.6 during his examination before the Sessions Court. Unless such a text book opinion is put to the expert/medical witness, it is not open to the prosecution to rely upon such an opinion before the appellate Court for the first time. (See **SUNDARLAL V/s. STATE OF MADHYA PRADESH**⁷ and **BHAGWANDAS V/s. STATE OF RAJASTHAN**⁸).

In any event, in the light of the law laid down by the Supreme Court as to the value to be attached to medical evidence in this regard and in the light of the clear evidence to the effect that the deceased could not have met with her death after 21.07.2009, we are of the opinion that the evidence of P.W.6 and his findings in Exs.P.9 and P.11 as to the time of death can be given no credence.

Though there appear to be certain contradictions and discrepancies in the depositions of witnesses and more particularly, with regard to the time when the body was discovered and the time when the lock was broken open, this Court finds no reason to doubt the veracity of either the said witnesses or the case against A1. P.W.4 turned hostile and her statement that P.W.7 told her about a foul smell at 10.00 PM on 25.07.2009 can be safely discarded as the body of the deceased had already been discovered by then. This aspect of the matter was confirmed through the testimony of the other witnesses. The contradiction as to when the

⁷ AIR 1954 SC 28

⁸ 1957 (1) SCR 854

lock was broken open is not shown to be of any real significance and no prejudice is shown to have been caused to A1 therefrom. Such minor discrepancies, which are natural given the passage of time, cannot be the basis for rejecting the prosecution's case when it is otherwise shown to be cogent and convincing.

Notably, A1 had no answer as to the evidence of P.W.2, P.W.7 and P.W.8 or as to his possession of the ornaments and cell phone of the deceased, in his Section 313 CrPC examination. No doubt, recovery of stolen goods from the accused may not, in itself, be sufficient to sustain a conviction under Section 302 IPC but the facts and evidence in the present case are found to be adequate to establish an unbroken chain of events and A1's possession of the ornaments and cell phone belonging to the deceased forms one such link in this chain. As pointed out by the Supreme Court in **NAGAPPA DONDIBA KALAL V/s. STATE OF KARNATAKA**⁹, an inference cannot be drawn that the accused must have murdered the deceased based solely on recovery of the ornaments of the deceased at the instance of the accused, in the absence of any other evidence to connect him with the murder. Similar was the view taken in **JOGA GOLA V/s. STATE OF GUJARAT**¹⁰. In the present case, there is ample such evidence to connect A1 with the murder of the deceased.

To sum up, this Court finds that the prosecution compellingly established that the deceased was last seen alive in the presence of the accused; that A1 locked the house portion of the deceased at 4:00 PM on 21.07.2009 and it remained locked till discovery of the body of the deceased therein; that A1 was not seen

⁹ AIR 1980 SC 1753

¹⁰ AIR 1982 SC 1227

from the night of 21.07.2009 by the neighbours and his house portion also remained locked; that A1 pledged two gold bangles belonging to the deceased at a pawn shop in Tenali with P.W.8 for Rs.10,500/- at 09.30 PM on 21.07.2009; that the other two bangles along with the cell phone belonging to the deceased were recovered from the person of A1; that the gold chain belonging to the deceased was recovered from A2 at his instance; and that he had no explanation to offer as to how he came into possession of the gold ornaments or what he had done with the key of the house portion of the deceased or how the body of the deceased came to be in the said locked portion.

The prosecution therefore proved beyond doubt that the unbroken chain of events, as set out *supra*, unerringly pointed towards the guilt of A1 and did not leave any scope to believe in his innocence. The conviction of A1 on all the three charges framed and the consequential sentences imposed upon him therefore do not brook interference in appeal.

We find no merit in this appeal and it is accordingly dismissed.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

8TH SEPTEMBER, 2016

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