

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL Nos.63 and 1159 of 2012

COMMON JUDGMENT : (per Hon'ble Sri Justice C. Praveen Kumar)

Both these appeals are filed against the judgment dated 14.09.2011 passed in S.C.NO.262 of 2011 by the I Additional Sessions Judge, Mahabubnagar. Criminal Appeal No.63 of 2012 is filed by accused Nos.1 and 2, while Criminal Appeal No.1159 of 2012 is filed by accused No. 2.

2. The appellants/ A1 and A2 were tried for an offence punishable under Section 302 read with Section 34 of IPC for causing the death of one Nallaval Ushan on 08.06.2010 at 10.00 p.m. in Kodair village.

3. Vide judgment dated 14.09.2011, the I Additional Sessions Judge, Mahabubnagar, convicted A1 and A2 for the offence punishable under Section 302 read with Section 34 of IPC and sentenced them to suffer imprisonment for life and to pay fine of Rs.550/- each.

4. The facts as culled out from the evidence of prosecution witnesses are as under:

PW.1 is the mother, PW2 is the younger brother, PW3 is the maternal uncle and PW5 is the aunt of the deceased, PW4 is a resident of Kondraopally village, who has first seen the dead body of the deceased.

The deceased studied upto degree and was trying to get a job of the police constable. On the date of incident, at about 03.30 p.m., while PW9 was present near the cell phone shop of Kollapur situated near a wine

shop, A1, A2 along with the deceased came in a motor cycle and purchased two liquor bottles in the said shop. They also asked PW9 to accompany them. Accordingly, all of them went to a place near S.C.Hostel on one motorcycle and consumed whisky. A1 is said to have introduced the deceased and A2 to PW9. Since the liquor brought by them was not sufficient, all of them again went to the same shop and purchased two more bottles, including chicken in a hotel situated at the bus-stand and handed it to one Satyanarayana for cooking. After consuming liquor and chicken, all four left the place at about 06.30 p.m. From there, PW9 is said to have left the company of the accused and deceased. The evidence of PW5 would show that on 07.06.2010 at about 08.00 p.m., the deceased along with two others came to her house to see her son whose leg was fractured. The deceased had some water and also gave some water to his friends, who came along with him. When PW5 enquired the deceased about the persons who came along with him, he revealed their names as Ramulu and Raju (A1 and A2). PW5 identified A1 and A2 before the Court. PW3 in his evidence deposed on the same lines as that of PW5, which is as under:

“On the previous night, the deceased along with two others came to my house in order to see my son whose leg was fractured and when I questioned about the other persons who accompanied the deceased, the deceased disclosed that they are his villagers. Accused are the said persons who accompanied the deceased to out house on that day.”

On the early hours of next day morning, when PW4 went to collect dung, she observed the deceased with bleeding injuries. After going near to the dead body, she identified him as the son of PW1 and immediately informed the same to PW1 and her family members, pursuant to which, PWs.1, 2 and 4 came to the spot and noticed stab injuries on the chest of

the deceased. On noticing the same, all of them returned back to the house of PW1 and then PW1 with the help of PW13, approached PW14, the SI of police and lodged a report, which is marked as Ex.P1. PW13 who is a legal practitioner is said to have scribed the report.

Pursuant thereto, PW14 registered a case in Crime No.36 of 2010 for an offence punishable under Section 302 of IPC and issued express FIR. Ex.P9 is the original express FIR submitted before the Court. Thereafter, PW15, the CI of police took up further investigation and on receipt of a copy of FIR, visited the scene of offence, situated at Kondraopally village near the house of one Aavula Chennamma – PW4 and conducted panchanama of the scene in the presence of PW10 and another. Ex.P5 is the Crime Detail Form along with rough sketch prepared by PW15. During the said proceedings, PW15 seized one pair of chappals, cell phone, voter identity card, one pen belonging to the deceased and also seized blood stained and controlled earth from the scene of offence. MOs.2 to 5 are the objects seized. MO9 is the blood stained earth and MO10 is the controlled earth collected from the scene of offence. PW15 took photographs of the dead body with the help of PW7. Ex.P3 is the bunch of photographs. He then conducted inquest over the body of the deceased in the presence of panchas. MOs.11 to 14 are the clothes of the deceased which were seized during inquest. Ex.P6 is the inquest report. He also examined PWs.1 to 4 at the time of inquest. PW16 the Civil Assistant Surgeon, Government Hospital, Bichkunda of Nizamabad District, conducted autopsy over the dead body of the deceased between 04.30 p.m. and 05.30 p.m. in the mortuary room at Kollapur and noticed the following injuries:

“1. Stab injury 2 cm x ½ x 5 cms. At 5th inter costal region up to cardiac region.

2. Stab injury 1 x ½ x ½ cm on 7th rib at sternal region.

3. Abrasion 1/ 1 cm. at mid occipital region.”

Ex.P11 is the post mortem certificate. According to him, the cause of death was due to cardiac arrest as a result of injuries on vital organs and hemorrhage.

On 13.06.2010, at about 12.00 noon, PW15 apprehended A1 and A2 near shop No.45, Sairam Cool Drinks and Communications at Kollapur. Thereafter, A1 and A2 were interrogated in the presence of PW11 and another, wherein they admitted their guilt. Exs.P7 and P8 are the relevant portion of confessions-cum-seizure panchanamas of A1 and A2 respectively. After completing investigation and collecting necessary documents, a charge sheet came to be filed against the accused, which was taken as PRC No.53 of 2010 on the file of Judicial Magistrate of First Class, Kollapur.

On appearance, copies of documents to the accused were furnished as contemplated under Section 207 of Cr.P.C. and on committal, the case came to be numbered as S.C.No.262 of 2011.

Basing on the material on record, a charge under Section 302 read with Section 34 of IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P11 and M.Os.1 to 14.

After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced on behalf of the accused in support of their defence.

Relying upon the evidence of PWs.5, 3 and 9 and also the confessions said to have been made by A1 and A2 before PW11, while in custody of police, the trial Court convicted the accused for the offence punishable under Section 302 read with Section 34 of IPC. Challenging the same, the present appeals came to be filed.

5. Learned counsel for the appellants would submit that there are no circumstances to connect the accused with the crime. According to him, there are number of inconsistencies in the evidence of witnesses, which throw any amount of doubt on the prosecution case. He placed reliance on the judgment of the Apex Court in *Vijay Shankar Vs. State of Haryana*¹, in support of his plea.

6. On the other hand, learned public prosecutor would submit that the circumstances relied upon by the prosecution form a chain of events, so as to connect the accused with the crime.

7. As seen from the record, there are no direct witnesses to the incident and the case rests on circumstantial evidence.

8. The question that arises for consideration is whether the circumstances relied upon by the prosecution form a chain of events, so as to connect the accused with the crime?

¹ 2016 (1) ALD (CrI.) 7 (SC)

9. It is to be seen that the prosecution is relying upon two circumstances namely:

- i. The accused being last seen in the company of the deceased on the evening and night on the date of incident,
- ii. Recovery of the dead body at 07.00 a.m. near bushes which was near the house of PW4 on 08.06.2010 and the confession made by the accused while in the custody of police in the presence of PW9.

10. Before dealing with the said aspect, it is to be noted that the prosecution failed to establish any motive for the accused to cause the death of the deceased. In the charge sheet it was mentioned that since the accused are habituated to commit thefts, a suspicion was entertained that the deceased might have informed about the same to the police and as such killed the deceased. But, no legal evidence has been adduced to prove the same. At this stage, it would be relevant to refer to the answers elicited in the cross examination of PW15, which reads as under:

“In Ex.P1 it was mentioned that some unknown persons were responsible for the death of the deceased. No dog-squad was taken to the scene of offence. I have no prior knowledge about the accused and their criminal history prior to their apprehension....I have no prior acquaintance with them. V.R.O. might have seen me as Inspector of Police, but I have no prior acquaintance with him. As per the statements of the witnesses recorded during the course of investigation the accused were apprehended on information.....It is not true to suggest that taking advantage of the previous criminal history against A1, a false case is foisted against them out of suspicion.”

11. From the above, it is clear that PW15 admits that he has no prior knowledge about the accused and their criminal history prior to their apprehension. He further submits that he has no prior acquaintance with

the accused. He denied the suggestion that taking advantage of previous criminal history against A1, a false case is foisted against them out of suspicion.

12. Therefore, the version in the charge sheet and the prosecution case with regard to motive for the accused to commit the offence has been negatived from the admission made by PW15.

13. At this stage, it would be useful to refer to the evidence of PW12, who is none other than a relative of the deceased, which is as under:

“The distance in between my house and the house of PW1 is 50 feet. Around 08.00 a.m. we reached the scene and observed the dead body. A1 and A2 are my distant relations. PW3 did not inform me personally. I do not know personally as to who killed the deceased Ushan. To my knowledge there was no enmity in between the accused and the deceased.”

In his chief examination, PW12 admits that the deceased is his brother's son. Though he was not an eye witness to the incident, in the cross examination he admits that A1 and A2 are distant relatives and he did not know personally as to who killed the deceased. He further deposed that he has no knowledge that there was any enmity between the accused and the deceased.

14. From the above circumstances, it can be held that the prosecution failed to establish any motive for the accused to kill the deceased.

15. The evidence of PW11- VRO, was pressed into service by the prosecution and was relied upon by the prosecution to show the involvement of the accused basing on confessions made by them, while they were in police custody. It would be useful to extract relevant portion of evidence of PW11, which is as under:

“Two persons were in the custody of the police in that place. On the request of the police we enquired the said persons separately and individually. They are A1 and A2 who are present in the Court. Firstly, we enquired A1. A1 while admitting his guilt that he along with another killed the deceased Ushan since the deceased was informing to the police about the acts committed by him. He has further stated that he has committed theft of motorcycle at Hyderabad and that he used to commit thefts there. So saying A1 has produced a knife which was tied to his left leg with the help of a belt. A1 has also showed a motorcycle from a nearby mechanic shop and the items so showed by A1 were seized under cover of panchanama.....After enquiry of A1, again A2 was called and enquired. A2 while admitting his guilt stated that he along with A1 killed the deceased and showed two cell phones and that the same were recovered by police under cover of panchanama...”

16. Therefore, the two confessions which were said to have been recorded by the police in the presence of PW11 and which are relied upon cannot be accepted, except to the extent made under Section 27 of the Evidence Act. The said confession cannot be treated as Extra Judicial Confession as the accused were in police custody when the said confession was made.

17. In view of the above, we feel that an inadmissible portion of their statements was relied upon by the trial Court to connect the accused with the crime.

18. Coming to the ‘theory of last seen’, PW9 in his evidence deposed that all of them consumed alcohol from 03.30 to 06.00 p.m. and thereafter, he claims to have left the company of A1 and A2 and he deceased. Subsequently, both the accused and the deceased went to the house of PWs.3 and 5, to see their son whose leg was fractured. The deceased took water and thereafter offered the same to A1 and A2. He revealed their names to PW5 and then left the place. The dead body was

traced by PW4 on the next day morning with bleeding injuries. There is no evidence on record as to whether the deceased was still in the company of A1, A2 after leaving the house. In the cross examination of PW5, she admits that she did not disclosed to others in the village that the deceased along with two others came to her house. It would be useful to extract relevant portion of the admission made by PW5, which is as under:

“.....On the previous night the deceased along with two others came to my house to see my son since his leg was fractured. The deceased after seeing my son took water and that he has also gave water to his friends who came along with him. When I enquired the deceased about two other persons, he revealed their names as Ramulu and Raju i.e. A1 and A1. I can also identify the said persons and they are present before the Court. Police examined me in this case and recorded my statement. I suspected the accused responsible for the death of the deceased since both of them came along with the deceased to our house.”

Cross examination on behalf of the accused:

I know the accused since they accompanied the deceased to my house on that day. I came at about 08.00 p.m. My husband was lying at that time and taking rest. I did not suspect when the deceased along with accused came to out house. Subsequent to the death of my son I suspected the accused. I did not disclose to any others in Kondraopally village that the deceased along with two others came to our house.”

19. Therefore, there is any amount of doubt with regard to deceased and accused being seen together even at 08.00 p.m. Hence the theory of last seen at 08.00 p.m. is not established by any cogent and reliable evidence. Further, in the absence of any animosity or motive being established, we feel that benefit of doubt can be extended to the accused.

20. Accordingly, the appeals are allowed. The conviction and sentence awarded against the appellants/ accused by names Kadathala Ramulu and

Kadathala Raju, in the judgment dated 14.09.2011, in Sessions Case No.262 of 2011, on the file of the I Additional Sessions Judge, Mahabubnagar, for an offence punishable under Section 302 read with Section 34 of I.P.C., is set aside and they are acquitted for the said offence. Since the appellants are on bail, their bail bonds shall stand discharged.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

22nd November, 2017

vhb

