

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1372 of 2011

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

1) The sole accused in Sessions Case No.357 of 2010 on the file of II Additional District and Sessions Judge (FTC), Nizamabad, is the appellant. He was tried for the offences punishable under Sections 302, 380 and 75 IPC for causing the death of one Smt.Mada Rajavva in the intervening night of 19/ 20.02.2010 at Aloor village of Armoor Mandal, by trespassing into her house and also committed theft of gold ornaments. Vide its judgment dated 29.06.2011, the learned Sessions Judge while acquitting the accused for the offence punishable under Section 75 IPC, convicted him for the offences under Sections 302 and 380 IPC and sentenced him to undergo imprisonment for life and also to pay fine of Rs.500/-, in default to suffer simple imprisonment for one month and the accused was sentenced to undergo imprisonment for a period of three years and pay fine of Rs.500/- for the offence under Section 380 IPC, in default to undergo simple imprisonment for a period of one month. Both the sentences were directed to run concurrently.

2) The facts as culled out from the evidence of prosecution witnesses are as under:

PW1 is the grand daughter of the deceased, PW2 is the daughter-in-law of the deceased, while PW3 is the daughter of PW2 and sister of PW1. PW4 is the neighbor.

The evidence of PW1 would show that on the date of incident, while PW1 was in her village, she received a phone call from her mother, who informed her that her sister-Sumalatha is performing 'mundan ceremony' to her daughter and asked PW1 to take her sister to Aloor village for one night stay and while returning to Ethwarpet, her mother asked PW1 to bring Rs.10,000/- from her grandmother at Aloor. Accordingly, PW1 and her sister proceeded towards the house of her grand mother at Aloor village for night stay. By the time PW1 and her sister reached the house of her grand mother at about 02.30 p.m., they found the door closed and when knocked, nobody opened the door. Then the said Sumlatha entered into the house by jumping from the bathroom wall of one Gundla Ashanna and opened the main door, through which PW1 entered the house. It is stated that when PWs.1 and 3 called her grandmother, there was no reply and they could trace her on a mat, covered with a blanket. When they rubbed her hands and legs, she did not woke up and when the blanket was removed from the face of the deceased, they saw blood oozing from her mouth with several ants gathered there. They also noticed that the hands of the deceased tied with a rope and injuries around her neck. She was lying dead. As per the evidence of PW1, she found missing of one gold gundla peru, pair of gold padigalu and one nose stick. They felt that it was a murder for gain. After sometime, the neighbours gathered there and on seeing the dead body, they stated that the deceased was last seen alive even at 09.00 p.m. PW1 also deposed that his father was residing at Dubai, her younger brother was studying at Hyderabad and her mother went to Ethwarpet to attend delivery of one of her sister. Hence, the old lady herself was alone at her home on the fateful day. PW1 herself went

to Armour police station and lodged a report. Ex.P1 is the report. Pursuant to the said report, a case in Crime No.67 of 2010 came to be registered for the offences punishable under Sections 379 and 302 IPC by LW20 and issued express FIR. Ex.P17 is the express FIR. Pursuant to the registration of a crime, PW15 took up further investigation in the matter. Immediately, he rushed to the scene of offence, situated in Aloor village of Armour mandal, examined the scene of offence, secured the presence of PWs.1 to 3 and recorded their statements. As it was late in the night, he could not conduct panchanama of the scene of offence. On the next day i.e., on 21.02.2010, PW15 secured the presence of PW4, LW5, LW6 and PW5, PW8 and LW12, examined PW6 and LW7 and recorded their statements, conducted panchanama of the scene of offence, prepared a rough sketch - Ex.P8. Ex.P7 is the panchanama of the scene of offence. After completing the said proceedings, he conducted inquest over the dead body in the presence of PW9 and seized one saree and blouse of the deceased, which were marked as MOs.4 and 5. Ex.P9 is the inquest panchanama. Thereafter, PW15 sent the dead body for post mortem examination. PW12 the Civil Assistant Surgeon conducted autopsy over the body of the deceased from 10.00 a.m. to 12.00 noon and issued Ex.P13 the post mortem examination report. According to him, the cause of death was due to asphyxia as a result of strangulation. Ex.P14 is the FSL report. Subsequent investigation was taken up by PW16. On 14.08.2010 at about 07.00 a.m., on receipt of reliable information about the suspect, PW16 along with his staff rushed to Mamidipally X road and found a person with same features as that of the suspected person. On seeing the police, the said person tried to escape, but however, the police apprehended him.

On interrogation, the said person revealed his name as Gunja Gangadhar and confessed about the commission of three offences including the present offence. Thereafter, PW16 secured the mediators, PW10 and LW15, and recorded the confessional statement cum seizure panchanama. On search of the accused, PW16 found one gold gundla peru consisting 42 gundlu, 20 enalu, one pair of gold padigelu and one nose stick which were marked as MOs.1 to 3 respectively and net cash of Rs.20,000/- which was related to another offence. In the presence of PW10, PW16 seized the said MOs. On receipt of information about the recovery of the property, which was after six months, a test identification parade of the ornaments was conducted by VRO and one Kona Raju. Exs.P10 and 11 are confessional cum recovery panchanama and Ex.P12 is the property identification panchanama. The said MOs.1 to 3 were identified by the witnesses. After completing investigation, PW16 filed a charge sheet, which was taken as PRC No.39 of 2010, on the file of Addl.Judicial Magistrate of First Class, Armoor. On committal under Section 209 Cr.P.C., the same came to be numbered as S.C.No.357 of 2010 on the file of II Additional District and Sessions Judge (FTC), Nizamabad.

On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on the basis of the material on record, charges under Sections 302, 380 and 75 of IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

In support of their case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P17 and M.Os.1 to 5.

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

On the basis of evidence adduced by the prosecution, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed through the legal aid counsel.

3) The main ground urged by the learned counsel for the appellant is that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. According to him, it is strange as to how the accused would have carried the same gold ornaments in his pocket nearly six months after the incident. Apart from that, it is also urged that the identification of the property conducted before the VRO is contrary to Rule 35 of Criminal Rules of Practice and hence the same cannot be relied upon as a basis for conviction.

4) On the other hand, learned public prosecutor would submit that the petitioner is involved in another crime and in view of the evidence of PW1 coupled with identification made in the presence of VRO in the test identification parade of property, the same can be made a basis to convict the accused.

5) As seen from the record, there are no eye witnesses to the case and the entire case rests on circumstantial evidence. The evidence of PW1 which is in corroboration with PW3 reads as under:

“...About one year ago, I was in my village Vennel-B then I got a phone call from my mother from Ithvarpet with information that my younger sister Sumalatha daughter's “puttuventrukalu ceremony” had been over at Vemulawada and my younger sister Sumalatha has to be taken to have a sleep night at Alloor and asked me to take my younger sister Sumalatha to Alloor village and have a sleep night at Alloor village and to come back to Ethwarpet. While coming to Ethwarpet my mother instructed me to bring money Rs.10,000/- from my grand mother at Alloor. Then I proceeded to Alloor village along with my young sister Sumalatha and her daughter and we reached Alloor village at about 02.30 p.m., by that time the door of the house of my grand mother was found closed and when we knocked the door nobody opened the door then I instructed my younger sister Sumalatha to enter into the house of my paternal grand mother by jumping from the bathroom wall of Gundla Ashanna, accordingly my younger sister Sumalatha entered into the house of my paternal grandmother by jumping from the bathroom wall of Gundala Ashanna and found opening of a thadaka door which was situated on the northern side of the house of my paternal grand mother and entered into the house and opened the house of my paternal grand mother. Myself and my younger sister called my paternal grand mother, but we did not receive any reply, then on search of the said house, we found my paternal grand mother Rajavva got slept on a mat and covered with blanket then myself and my younger sister Sumalatha both together rubbed the hands and legs of my paternal grand mother to make her awake, but she did not wake up then we removed the blanket which was covered on our paternal grand mother face and found blood was oozing from the mouth of our paternal grand mother and several small ants gathered to the blood which was oozing from the mouth of my paternal grand mother.....ultimately we found my paternal grand mother died.....when we entered in to the house of our paternal grand mother we found missing of gold gundla peru, pair of gold padigelu and one nose stick then we came to a opinion that my paternal grand mother was murdered for taking out the gold ornaments worn by her, then all the neighbours of the house of my paternal grand mother gathered and

observed the dead body of my paternal grand mother and we were weeping when we questioned the neighbouring residents of my paternal grand mother. They told us they saw my paternal grand mother till night 9 p.m.”

6) From the above, the fact that the deceased was alive till 9 p.m., cannot be said to be false. From the above evidence, it is clear that none of the neighbours/witnesses have seen any person entering the house of the deceased prior to PW1 entering the house. Therefore, there is no evidence to show as to how the deceased was killed and also as to any person entering or leaving the house of the deceased.

7) The only circumstance which is pressed into service by the prosecution is the recovery of the gold ornaments belonging to the deceased from the accused on 14.08.2010 i.e., nearly six months after the date of the incident. It is stated that on that day, PW16, who proceed to the spot on receiving information about a suspected person, caught hold of him. Thereafter, on interrogation, the accused was said to have confessed about the commission of offence in the presence of PW10 and LW15. MOs.1 to 3 were marked and seized. On 28.08.2010, the PW11-VRO and LW17 conducted test identification parade, wherein PWs.1 and 2 identified the said ornaments as that of the deceased.

8) The question that arise for consideration is whether the said recovery can be believed even if the said recovery is believed, the test identification parade conducted in the presence of VRO be accepted?

9) It is to be noted that pursuant to the recovery of gold ornaments from the suspected person, the Armour police conducted test identification of the property recovered from the accused at the Alloor

grampanchayat office. The VRO is said to have conducted property identification proceeding by mixing the ornaments recovered from the accused with other ornaments.

10) The issue is whether the test identification conducted at the earliest point of time can be accepted. Firstly, it is to be noted that the incident took place on 20.02.2010 and on 14.08.2010, on receiving information about the presence of the person, a suspect, at Mamidipally Cross Road, the police party went and apprehended the accused. At that point of time, he claims to have confessed and removed the gold articles from his pocket. The said recovery cannot be accepted at its face, for the reason that it is very difficult to believe the person who committed the murder and theft of ornaments, would have carried the gold ornaments with him in his pocket, that too after six months after the said incident. Be that as it may, it is to be seen that identification of the property was conducted through VRO, wherein PWs.1 and 2 identified them to be that of the deceased. But such identification proceedings are contrary to Rule 35 of Criminal Rules of Practice, which reads as under:

“Identification of the property: (1) Identification parades of properties shall be held in the Court of 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 five 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 in”.

11) Though PWs.1 and 2 in their evidence stated that some ornaments were identified to be that of the deceased, the evidence is silent as to number of ornaments that were mixed with other ornaments that were

subjected to identification. Apart from that, identification itself is contrary to Rule 35 of Criminal Rules of Practice, since VRO is not competent to conduct the parade. Further, in *Subramanyam @ Gangadharam @Gangappa and another Vs. State of A.P. rep. by Public Prosecutor, High Court, Hyderabad*¹, while dealing with procedure contemplated for identification and recovery of property, in para 15 the Court observed as under:

“15. At the outset, it is to be seen whether test identification parade of MOs.1 and 2 is proved; whether they belong to the deceased and whether they are identified by PWs.2 and 4 correctly. As rightly contended by the learned counsel for the appellants, there is a procedure contemplated for identification of property recovered from the accused or recovered at the instance of the accused. Rule 35 of Criminal Rules of Practice reads as under:

Identification of the property: (1) Identification parades of properties shall be held in the Court of 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 five 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 in”.

12) As the entire case is based on test identification of the property, which is said to be contrary to Rule 35 of Criminal Rules of Practice, benefit of doubt shall be extended and the accused has to be acquitted.

13) Accordingly, the appeal is allowed. The conviction and sentence awarded against the appellant/ accused by name Gunje Gangadhar, in the judgment dated 29.06.2011, in Sessions Case No.357 of 2010, on the file of the II Additional District and Sessions Judge (FTC), Nizamabad, for the offences punishable under Sections 302 and 380 I.P.C., is set aside and he

¹ 2016 (3) ALT (CrI.) 489 (DB)(A.P.)

is acquitted for the said offences. Consequently, the appellant/ accused shall be set at liberty forthwith, if not required in any other case. MOs. 1 to 3 are directed to be destroyed after expiry of appeal period.

14) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

05.12.2017
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