

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE P. KESHA RAO**

CRIMINAL APPEAL No.450 of 2011

JUDGMENT : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellant has challenged the judgment dated 7th March 2011 passed in Sessions Case No.267 of 2009 on the file of Principal Sessions Judge, Nalgonda, whereby, the appellant was found guilty for the offence punishable under Section 302 of IPC and sentenced to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for 15 days.

2. Brief facts of the case are that on 19th June 2008 at about 15.00 hours, PW-1, a resident of Siddenki village, lodged a complaint stating that on the same day at about 14.00 hours, he received a telephonic message through his neighbouring farmer PW-3 that the dead body of an unknown female was lying with bleeding injuries at his agricultural land situated in the outskirts of Srinivasapuram village. He was also informed that PW-2 had seen the dead body while he was grazing the goats. After receiving the information, PW-1 went to the scene of offence, saw the dead body in the agricultural land i.e. Sy.No.96 situated in the village mentioned above and lodged complaint with the Police.

3. Basing on the complaint given by PW-1, PW-15 registered a case in Crime No.86 of 2007 for the offences under Sections 302 and 201 of IPC. Thereafter, he recorded the statement of PW-1 and handedover CD files to PW-16. During the course of investigation, PW-16 proceeded to

the scene of offence and recorded the statements of PWs.2 and 3 and LWs.4 and 5, conducted scene of offence panchanama in the presence of PWs.10 and 13 and seized the material objects. Thereafter, PW-16 conducted inquest over the dead body of the deceased in the presence of same witnesses and also in the presence of PW-14. Thereafter, sent the dead body to the Government Hospital, Bhongir for postmortem examination. On 2nd August 2008, PW-9/Principal Junior Civil Judge, Bhongir conducted test identification parade in the District Jail, Nalgonda, wherein, PWs.4 and 8 identified the appellant. LW-18/Dr.K.Arun Jyothy, Assistant Director of Forensic Science Laboratory, Hyderabad, examined the seized material objects and gave opinion that human blood was detected on Item Nos.1, 5 and 7, but blood was not detected on Item No.6. PW-12 conducted postmortem examination over the dead body of the deceased and gave his opinion that the cause of death was due to haemorrhage and shock due to multiple injuries.

4. Further case of the prosecution is that on 24th June 2008 at about 11.30 hours, on credible information, PW-15 apprehended the appellant. During the course of investigation, the appellant confessed about committing the offence. After interrogation, the appellant was sent to judicial remand on the same day. The investigation revealed that PW-6 is the mother of the deceased and PW-7 is the brother of the deceased. They disclosed that the husband of deceased by name Appanaboina Srinu was a folk singer at Hyderabad and the appellant is also a folk singer and they both participated in several programmes. About one year prior to

the incident, the husband of deceased died due to ill-health. After the death, the appellant developed illicit intimacy with the deceased by promising to marry her. Now and then, the appellant and deceased used to visit the house of PW-6, the mother of the deceased. Whenever they visited the house, PW-6 used to advise the appellant to marry the deceased, but appellant postponed the matter on one pretext or the other by stating that he got wife and children at his native village. Therefore, in order to eliminate the deceased, on 18th June 2008, the appellant asked her to accompany him stating that he would take her to his wife at Raghavapuram village and inform the matter to his wife. Then the deceased accompanied the appellant to go to Raghavapuram from Hyderabad and at about 16.00 hours, the appellant and deceased went to Jangaon from Hyderabad in an RTC bus. From Jangaon, they boarded an auto rikshaw and got down at Siddenki village and spent one hour at the bus stop shelter, where the appellant purchased mirchi for Rs.10/- from PW-11 and proceeded towards Raghavapuram village on foot. When they reached the outskirts of said village at about 20.00 hours, the appellant picked up a quarrel with the deceased and killed her brutally with a boulder by causing injuries on her hands, legs and face. From there, the appellant went to Raghavapuram village, knocked the door of PW-5 and requested him for water and also to give his scooter, for which, PW-5 refused. Upon that, the appellant left the place.

5. After investigation, Police filed the charge sheet and same was committed to the Court of Session as S.C.No.267 of 2009. Thereafter, a

charge under Section 302 of IPC was framed, to which, the appellant pleaded not guilty and claimed to be tried.

6. In order to prove its case, the prosecution examined PWs.1 to 16 and got marked Exs.P-1 to P-37 and also marked M.Os.1 and 2 on its behalf. After closure of the evidence of prosecution, the appellant was examined under Section 313 Cr.P.C. by putting the incriminating material found against him. The appellant denied the same, however, did not choose to adduce any evidence on his behalf.

7. It is not in dispute that there is no eyewitness in the present case. The prosecution case is based on the circumstantial evidence. In the chain of circumstances, PW-4/Gattu Damodar is the main witness, who had last seen the appellant and deceased together. Based upon his evidence, the Court below has convicted the appellant. It is important to note that he deposed before the trial Court that he is a cycle mechanic by profession. His cycle repairing shop is situated by the side of bus stop in their village. About 2½ years back at about 5.00 or 5.30 pm, some persons got down from an Auto, which came from Jangaon side. Out of those persons, one male and female, who were strangers to his village, sat in the bus stop for 1 or 1½ hours. In the meantime, the said two persons went to a hotel run by one N.Kistaiah, bought some eatables (mirchi) and ate by sitting in the bus stop. Later, they left the bus stop. On the next day at about 3.00 pm, he came to know that dead body of a female person was lying in the fields of PW-1. On that, he went to the scene of offence, observed the dead body and identified it as that of the lady who sat in the

bus stand on the previous day with a male person. This witness has identified the appellant in the Court.

8. In the cross-examination, he deposed that he had not seen what item was purchased by the deceased from the hotel. He had seen the appellant and deceased at about 5.30 pm. He denied the suggestion that the deceased never accompanied the appellant to their village. He also denied the suggestion that the deceased and appellant never came to their village. However, he admitted that a Police Constable examined him at his shop. About 4 to 5 persons were produced along with appellant at the time of identification parade in jail. He denied the suggestion that Police shown him the photographs of appellant prior to the identification parade.

9. PW-6/Vangapally Balamma is mother of the deceased. She deposed that she performed the marriage of her daughter (deceased) with one Srinu of Ramannagudem village of Arvapally Mandal. Her daughter and son-in-law were singers and they used to reside at Hyderabad. Her son-in-law Srinu died about 3 years back. After the death of her son-in-law, her deceased/daughter used to stay with one Uppali i.e. the appellant herein. He is also a singer. Said Uppali kept her daughter as his mistress. Now and then they used to visit her house. The appellant promised to marry her deceased daughter, however, did not marry. About two years back, her daughter died. Their village Sarpanch called her to her house. Herself and her brother-in-law's son (LW-10)/Narsimha went to the house of Sarpanch. At that time, the husband of Sarpanch by name Balaiah was present in the house and he had shown

her a newspaper clipping. She identified the dead body shown in the clipping as that of her daughter. Thereafter, she went to the hospital and identified the dead body of her daughter. She suspected the appellant to be responsible for the death of her daughter as he was not interested in marrying her.

10. PW-7/Vangapally Narsimha deposed that PW-6 is his aunt. He deposed on similar lines as deposed by PW-6. In his cross-examination, he deposed that the deceased was his cousin sister. He had not seen the performance of singing of the deceased and her husband Srinu on stage. He never visited the house of deceased during her life time.

11. PW-11/Vadlakonda Sharada is running a small kirana shop which is situated near the bus stand in their village. She deposed that she had never seen the appellant at her shop. As per the prosecution story, the appellant and deceased purchased eatables (mirchi) from the hotel of this witness. She did not support the case of prosecution and declared hostile.

12. PW-16/K.Narsimha Reddy deposed that on 19.06.2008, S.I. of Police, Alair (PW-15) issued FIR and the same was informed to him. On information given by PW-15, he immediately went to the scene of offence situated at the outskirts of Srinivasapuram village. He observed the scene of offence and prepared rough sketch map of scene of offence in the presence of PWs.10 and 13. Ex.P-35 is the scene of offence panchanama. Ex.P-36 is the rough sketch map of scene of offence. He got photographed the scene of offence and dead body with the help of LW-5/S.Srinivas. He had examined PWs.2, 3, LW-4/S.Chandra Reddy

and LW-5/S.Srinivas at the scene of offence and recorded their statements. He had also conducted inquest panchanama over the dead body of the deceased in the presence of PWs.10 and 13. Ex.P-37 is the inquest panchanama. Thereafter, he sent the dead body for postmortem examination to the Area hospital, Bhongir. On 20.06.2008, he examined PWs.4, 5 and 11 and recorded their statements. On 21.06.2008, he examined and recorded the statements of PWs.6 and 7. On 24.06.2008, he arrested the accused and recorded his confession statement in the presence of LWs.15 and 16. He sent the material objects to the FSL for examination. On 02.08.2008, test identification parade was conducted by the Principal Junior Civil Judge, Bhongir. After completion of investigation, he filed the charge sheet.

13. Ex.P-10 is the statement of the appellant, whereby, he deposed that on 21.06.2008, while he was going to Siddenki for singing programme and when he reached at Alair bus stand, Police persons came to him and asked to come to the Police Station. Accordingly, he was taken to the Police Station and was asked to sit. Police took his photographs and shown to unknown persons and distributed the photos to 2 or 3 persons and shown him to them by calling them to the Police Station and Court. Police continuously shown him to such persons for three days and asked them to identify him. On 4th day, Police sent him to the Court. He had no objection for conducting identification parade.

14. The aforesaid fact proves that the incident had taken place on 19.06.2008 and the appellant was arrested on 21.06.2008. Thereafter, the

identification parade was conducted on 02.08.2008 as is evident from the evidence of PW-9/Principal Junior Civil Judge, Bhongir.

15. We note that PW-6, mother of the deceased, has not deposed about taking place of any quarrels between the appellant and deceased. The deceased never complained against the appellant. It is the admitted fact as deposed by PW-6 that the appellant and deceased used to come to the residence of PW-6 after death of husband of the deceased. PW-6 only suspected that the appellant is responsible for the death of her deceased daughter. Undisputedly, no one is eyewitness to the case and none of the witnesses have supported the case of the prosecution that it is only the appellant, who had committed the murder of the deceased and none else. The case revolves around the evidence of PW-4, who had a cycle repairing shop situated by the side of bus stop in the village. He had seen the appellant and deceased on 18.06.2008 at about 5.00 or 5.30 pm, while they were eating some eatables (mirchi) at the bus stand of their village. Postmortem on the dead body of deceased was conducted on 20.06.2008, which established that the death had taken place after more than 12 hours of the appellant and deceased were last seen. Admittedly, no other witness supported the prosecution case except PW-4, who had seen the appellant and deceased together on 18.06.2008 at 5.00 or 5.30 pm. Prior to said date, he had never seen the appellant and deceased. To prove the case on circumstantial evidence, the prosecution has to link each and every circumstance which proves that only the accused had committed the offence and none else.

16. In the case of *State of U.P. v. Satish*¹, the Hon'ble Supreme Court held as under :

“The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.”

In the present case, PW-4 had seen the appellant and deceased at least more than 12 hours prior to the incident. The deceased was a singer and performer. As per the evidence produced by the prosecution, it is a mystery as to who had committed the murder of the deceased. Prior to her death, there was no complaint by the deceased against the appellant. There was no enmity between them. If the story of the prosecution is to be believed, it establishes that they both were singers and they never created any problem to each other. Therefore, there was no occasion for the appellant to commit the murder of the deceased. The story of the prosecution that on 18.06.2008, the appellant had taken the deceased to his village to discuss the issue with his wife, cannot be believed, as no prudent person will take the mistress or a girl friend to his wife to discuss the issue regarding the marriage. No witness has deposed that the appellant had taken the deceased to his wife on 18.06.2008 and in

¹ AIR 2005 SC 1000

between, he committed the offence. However, the Court below has relied upon the prosecution story without any lethal evidence against the appellant. To prove the guilt of the accused, the settled law is that the prosecution has to establish that only the accused has committed the offence and none else. The last seen theory can be believed only when the accused is seen with the deceased just before the occurrence. Further, no finger prints were found on the weapon of offence and there is no scientific evidence against the appellant.

17. Therefore, keeping in view the facts and circumstances recorded above and the legal position on theory of last seen, we are of the considered opinion that the prosecution has failed to adduce evidence to establish that the appellant alone had committed the murder of deceased and none else.

18. Accordingly, we hereby set aside the conviction and sentence imposed on the appellant vide judgment dated 7th March 2011 in Sessions Case No.267 of 2009 on the file of Principal Sessions Judge, Nalgonda. The appellant shall be set at liberty forthwith, if not required in any other case.

19. The appeal is accordingly allowed.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

29th December, 2017

P. KESHA VA RAO, J

ajr