

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1090 of 2012

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

1) The sole accused in Sessions Case No.117 of 2011 on the file of the VI Additional District & Sessions Judge, (FTC) Markapur, is the appellant herein. He was tried for the offences punishable under Sections 302 and 380 IPC for causing death of one, Tarigopula Kasamma and also for committing theft of Rs.1,500/-. By its judgment dated 30.08.2012, the Sessions Judge convicted the accused and sentenced him to undergo 'imprisonment for life' and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for a period of six months for the offence punishable under Section 302 IPC and was further sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of two months for the offence punishable under Section 380 IPC.

2) The gravamen of the charge against the accused is as under:

On 20.8.2010 at 17.00 hours, the accused, on seeing the deceased alone in the house, went to her house and demanded money for taking liquor. As she did not oblige, he scuffled with her for the

money and hit her with a stone which was available in front of her house on her head causing instantaneous death. Later he broke open the trunk and took away cash of Rs.1,500/-.

3) P.Ws.1 and 2 are daughters of the deceased, while P.W.3 is the son of the deceased. Having learnt about the death of the deceased, P.W.1 along with others went to Akkacheruvu Village and noticed the body with injuries on face and neck. P.W.1 heard through others that accused killed the deceased. Then she gave a report against the appellant/accused which came to be registered as a case in Crime No.94 of 2010 under Section 302 I.P.C., on the same day, at 20.30 hours by P.W.12 – the Station House Officer, Podili P.S. Ex.P15 is the report and Ex.P16 is the F.I.R.

4) On receipt of the copy of F.I.R., P.W.13 – the Inspector of Police, Podili took up investigation, proceeded to the scene of offence. As it is late night, he posted a guard at the scene. He sent a requisition to the Reserve Inspector, C.I.D., Vijayawada, who is the in-charge of Dog Squad, requesting him to send a sniffer dog team to the scene of offence. On 21.8.2010 at 6.30 AM, he reached the scene of offence and by that time, S.I. of Police, Podili – P.W.12 secured the mediators P.W.7 and L.W.10 – Bhusireddy Konda Reddy and later P.W.13 examined the scene of offence in the presence of above mediators and got the same photographed through P.W.8. During the said proceedings, he seized blood stained earth and control earth – M.Os.1 and 2, Yellow thread – M.O.4 and bank passbook – M.O.3

under a cover of mediators report duly attested by the mediators and also prepared a rough sketch of scene of offence. Ex.P17 is the sketch of scene of offence prepared by P.W.13. He then conducted inquest over the dead body and forwarded the dead body to CHC, Podili for autopsy. From the scene of offence, the sniffer dog proceeded to the house of accused. P.W.10 – P.C. of dog squad prepared a report and submitted to the Inspector of Police – P.W.13. On 27.8.2010 P.W.13 arrested the accused in the presence of mediators - P.W.7 and another.

5) During investigation, the accused confessed his guilt and handed over cash of Rs.500/-, which was part of the amount stolen from the trunk box of deceased. He made a disclosure statement about the stone used in killing the deceased and then led them to the Hayrick of Cherreddy Srinivasareddy and at his instance, blood stained stone is recovered and seized under the cover of mediators report duly attested by mediators. Mediators report was prepared incorporating the confession made by the accused and then accused was produced for judicial remand. Material objects seized are sent to RFSL, Guntur for Chemical Analysis. Medical Officer, CHC, issued report stating that death of deceased was caused due to shock and hemorrhage and due to damage to vital organ - brain due to multiple injuries caused by heavy blunt objects with sharp edges. Assistant Director, RFSL, Guntur, analyzed the material objects and sent a report stating that on all material objects, human blood is found except on the control earth seized at the scene of offence.

6) After completing the investigation and after collecting all the material, a charge-sheet came to be filed which was taken on file as P.R.C.No.12 of 2011 on the file of the Judicial Magistrate of First Class, Podili. After following the procedure laid down under Section 207 of Cr.P.C. and as the offence alleged is triable by the Court of Sessions, the Magistrate committed the case to the court of sessions, which came to be numbered as S.C. No.117 of 2011.

7) Charges under Sections 302 and 380 of IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

8) To substantiate their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P20 and M.Os.1 to 7. Out of 13 witnesses examined by the Prosecution, P.Ws.1 to 6 and 9 did not support the prosecution case and they were treated as hostile by the prosecution. 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 behalf of the accused, in support of his defence.

9) On appreciation of the entire evidence on record, the Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

10) Learned counsel for the appellant/accused would submit that there is absolutely no material to connect the accused with the crime, as the witnesses, who were examined to speak about the incident, did not support the prosecution case.

11) As seen from the record, P.Ws.1 to 3 are daughter and sons of the deceased and P.Ws.5 and 6 are neighbours of the deceased who were examined as eyewitnesses to the incident, but none of them support the case of the prosecution. P.W.1, who is the informant, did not support the case of the prosecution and was treated as hostile by the prosecution.

12) There is no evidence as to who informed P.W.1 about the accused causing the death of the deceased. Similarly, the evidence of other witnesses does not in any way inculcate the accused in the commission of offence.

13) The main circumstance which is sought to be relied upon by the prosecution is the evidence of P.W.10, the constable, attached to dog squad of clues team. According to him, on the requisition given by the Inspector of Police, Podili on 21.8.2010, he was deputed with a dog named 'Ranjit' to Akkacheruvu Village of Podili Mandal. From the scene of offence, the dog straight away led them to the house of accused-Chereddy Venkata Reddy and having stayed there for sometime, returned to the scene of offence. Ex.P13 is report of the clues team/dog squad. The evidence of sniffer dog is not corroborated by the evidence of any other witnesses, more particularly

the evidences of P.Ws.5 and 6. Even assuming that the sniffer dog proceeded to the house of the accused from the scene of offence, that by itself is not sufficient to conclude that the accused has killed the deceased, as the accused is the southern side neighbour of the deceased. Hence, the possibility of he coming to the scene of offence and return back to his house cannot be ruled out.

14) The law in this behalf is well settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused. Therefore, in the absence of any other material, the evidence of sniffer dog cannot be made the basis to connect the accused with the crime.

15) The only other circumstance which is relied upon by the prosecution is recovery of cash pursuant to arrest of the accused. But, the evidence of P.W.7, who acted as panch for the recovery, stated that on 27.8.2010, he accompanied the Inspector of Police, Podili and others towards road leading to Akkacheruvu which is on Podili-Darsi road. At that point, accused on seeing the police jeep, tried to run-away, but he was apprehended. When enquired, he is said to have confessed his guilt and also stated that, as the deceased failed to part her valuables, he killed her and handed over cash of Rs.500/- in the denomination of hundred rupees. During the said confession, the accused also made a disclosure statement about the stone secreted by him and led them to Akkacheruvu village and picked up a stone from

the hay-rick. It is to be noted here that M.O.6 is a stone which was referred to under Ex.P10 - seizure mediator's report. M.O.7 is cash of Rs.500/- seized from the possession of the accused. However, in the cross-examination P.W.7 states that basing on the colour of M.O.6 stone, he is able to say that it is same stone which was seized at the instance of the accused. He also says that he has not seen the accused showing or picking up M.O.6 from that place. He admits that he cannot say who picked up that stone on 27.8.2010.

16) It would be useful to refer to admissions made by P.W.7 in his own words which are as under :

“Basing on the colour of M.O.6 stone I am able to say that it is same stone seized at the instance of accused. I had not seen the accused showing or picking up M.O.6 stone from that place. I cannot say who picked up that M.O.6 stone on 27.8.2010.

It is true there will be several stones like M.O.6 stone like white colour in Akkacheruvu Area.”

In view of the admission, a doubt arises as to whether really the accused has shown the stone used in the commission of offence.

17) Coming to the recovery of cash, there is no evidence to show that Rs.500/- handed over by the accused belongs to the deceased. Mere recovery of Rs.500/- from the possession of the accused does not by itself connect him with the crime and it also does not establish that the said currency belongs to the deceased.

A reading of the charge does not say that what was stolen from the deceased was hundred rupee notes. What all the charge says is that Rs.1,500/- was taken away by the accused. That being the position, recovery of five hundred rupee notes from the possession of the accused does not in any way establish that these currency notes belong to the deceased.

18) Having regard to the above, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 30.08.2012, in Sessions Case No.117 of 2011, on the file of the VI Additional District & Sessions Judge (FTC), Markapur, for the offences punishable under Sections 302 and 380 I.P.C., are set aside and he is acquitted for the said offences. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

19) The fine amount paid, if any, by the accused shall be returned to him.

20) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

21.11.2017
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