

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.561 of 2012

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

1) The accused in Sessions Case No.138 of 2011 on the file of II Additional Metropolitan Session Judge, Visakhapatnam, are the appellants herein. Accused No.1 was tried for the offence punishable under Section 302 IPC, while accused No.2 was tried for the offence punishable under Sections 302 read with 120-B IPC. Vide its judgment dated 21.03.2012, the learned Sessions Judge convicted accused No.1 for an offence punishable under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and shall also pay a fine of Rs.1,000/- while accused No.2 was convicted for the offence punishable under Section 302 read with 120-B IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.1,000/-.

2) The case of the prosecution as unveiled from the evidence of the prosecution witnesses are as under:

i) PW.3 is the father of the deceased O.Raju, while PWs.4 and 5 are parents of one Dinesh. The evidence on record, more particularly, the evidence of PW4 would show that his son i.e., Dinesh studied upto X class in Government School, Hanumakonda by staying in a Government hostel. It is stated by PW.6 that both the accused, deceased Raju and Dinesh are students of Nava Jeevan Bala Bhavan,

Vijayawada. When Dinesh asked his father to arrange money for further studies, his father denied for the same, due to which he grew wild and left the house. After one year, the accused is said to have come to PW.4 and informed him that his son was working as an electrician along with them at Vijayawada. Accordingly, PW.4 accompanied the accused and saw his son at Railway Station, Vijayawada. One Varalakshmi, mother of Dinesh, who was examined as PW5, also accompanied PW.4 and requested Dinesh to come along with them, but he refused to come on the ground that he has been running an electrical shop along with the accused at Vijayawada. Thereafter, his son told PW.4 that he would come to the lodge on the next day. Thereby, PWs.4 and 5 left the place stating that they would return on the next day morning. On the next day, accused No.2 alone came to PW.4 and when enquired accused No.2 stated that Dinesh and accused No.1 went to a movie and sometime later accused No.2 telephoned to accused No.1 and Dinesh. It is stated that in spite of repeated requests made by the family members and PWs.4 and 5, the said Dinesh refused to join them. On the other hand, PWs.4 and 5 noticed accused No.1 screening Dinesh. When questioned, accused No.1 threatened them with dire consequences and took the deceased Dinesh along with him to Vijayawada. Subsequently, accused No.1 brought Dinesh to his home after three months and was misbehaving with Dinesh. While things stood thus, one day said Dinesh requested PW.4 to provide Rs.10,000/- for the purpose of his business, but PW4 refused to give money. Later, accused No.1 and Dinesh went to Visakhapatnam and after few days

both Dinesh and accused No.1 returned home and started threatening PW.4 with dire consequences. Subsequently, his son left the house without informing him. It is stated that accused No.1 also left the house and on several occasions accused No.1 came to the house of PW.4 to know about the whereabouts of Dinesh.

ii) On 20.04.2011 at about 11.00 a.m., while PW.1 was in her house, one male person came to her house and informed about the body found in the bushes by the side of a railway track. Immediately, she went there along with few villagers and found several injuries on the face of the deceased and blood was oozing from the injuries. On 20.04.2011, while PW.14-the Inspector of Police was present in the police station, PW.1 lodged a report. Ex.P1 is the report. Accordingly, PW14 registered a case in Crime No.77 of 2011 for the offences punishable under Sections 302 and 120 B of IPC and issued first information report. Ex.P11 is the original first information report. He took up investigation and examined PW.1 and recorded his statement. He got prepared the observation report in the presence of mediators and also prepared rough sketch of the scene. Ex.P12 is the observation and Ex.P13 is the rough sketch. As per the requisition of PW.14, clues team and dog squad visited the scene of offence, where the dead body of the deceased was found near the bushes. On observation of scene of offence, PW.14 noticed Idea starter pack cover with SIM card No.9666483707 and Tata Docomo outer card, 3 passport size photographs with blood stains, one passport size photo in the pocket of the deceased, SC railway platform ticket, one Gokul Theater cinema ticket and black colour plastic

chappal and seized the same under a cover of panchanama. On 21.04.2011, he visited KGH hospital, conducted inquest over the dead body of the deceased in the presence of PW.11 and others. Subsequently, the body was sent for postmortem examination. PW3 who is the father of the deceased by name Raju was taken to mortuary, wherein he identified the dead body in the mortuary as his son and found the face of the dead body was completely damaged. He deposed that prior to the death of his son Raju, he used to work as an electrician in Vijayawada. He does not know the accused and he has not seen them.

iii) On 02.05.2011, PW.14 arrested the accused and recorded their confessional statements in the presence of PW.13 and another. After completing investigation, PW.14 filed a charge sheet before the Court of Chief Metropolitan Magistrate, Visakhapatnam, who intturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.138 of 2011.

3) On appearance, charges under Sections 302 read with 120-B IPC came to be framed, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P15 and MOs.1 to 5. 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.

5) After considering the oral and documentary evidence on record, the Sessions Judge, convicted the accused for the offences punishable under Sections 302 read with 120-B IPC. Challenging the same, the present Criminal Appeal came to be filed.

6) The main ground urged by the learned counsel for the appellants is that there is absolutely no material to connect the accused with the offences punishable under Section 302 IPC.

7) The evidence which has been placed on record relates to the disputes between accused No.1 and father of Dinesh, who was examined as PW4. PW.3 is the father of the deceased-Raju. The entire evidence adduced by the prosecution relates to the relationship of accused No.1 with Dinesh and the objections raised by PW.4 and his wife over the friendship between accused Nos.1 and 2 and Dinesh.

8) It would be useful to extract the evidence of PWs.4 to 6 to show the relationship between the accused No.1 and Dinesh.

9) PW.3, who is the father of Dinesh, in his evidence deposed as under:

“I am resident of Yenugula Gadda, Hanamkonda, Warangal. I am working as Tourist Driver. Name of my son is Dinesh. He studied upto 10th class in Government School, Hanamkonda, staying in Government Hostel. He passed 10th class. He requested me to arrange for further studies but I refused as such he grew wild and

left the house. Both the accused came to our house about three years ago and informed me that my son with them in Vijayawada was working as Electrician. Then I accompanied both the accused to Vijayawada and there I have seen my son at Railway Station, Vijayawada. Then my wife requested my son to come back with her on that my son refused to come, on the ground that he has been running an electrical shop along with the accused in Vijayawada. Then I also requested him to come along with me but he also refused to accept my request. Then my son told us that he will come to the lodge on the next day as the hostel authorities not allow strangers.

On that both the accused and my son left that place stating that they will return in the morning. In the morning A-2 alone came to me where I stayed in the lodge then I asked him about my son and the other accused, he replied that they went to a movie. Some time thereafter, A-2 telephoned to A-1 and my son and on receipt of the same A-1 and my son came to us. Again I requested my son to come along with us, he along with A1 came to our house. By then all of our relatives present in the house. After my son and A-1 came to our house, A-1 screened my son and on that I questioned about his misbehaviour, he threatened me with dire consequences and I grew wild and I also threatened A-1 and told A-1 that he along with my son to left my house. Then my son wept like anything and told me that he will stay with me. Finally A-1 over powered with us and took my son along with him to Vijayawada. Subsequently, my son telephoned me and informed me that he wants A-1 and he also wants to stay with him.”

10) PW.5, who is the mother of Dinesh, in her evidence deposed as under:

“I am resident of Yenugula Gadda, Hanamkonda, Warangal. I am a house wife. I know both the accused. Both the accused are friends of my son Dinesh. About 9 months ago in my absence and in the absence of my husband, the accused took the photo of my husband and driving licence from almirah. On one day my husband received an SMS in his cell phone reflecting Daddy.”

11) PW.6 in his evidence deposed as under:

“I am resident of Vijayawada. I am working as Coordinator, Nava Jeevan Bal Bhavan, near Railway Station, Vijayawada. A.1, A.2, the deceased and son of PW.4 and 5 are the students of our Bal Bhavan from 2006 to 2011.”

12) Further, the material on record indicates that on the dead body of Raju, which was traced near the railway track, photographs of PW4 and certain documents relating to PW4 were found. It is the case of the prosecution that accused No.1 tried to implicate PW.4 in the case, so as to continue his relationship with Dinesh. Dinesh and accused No.1 were said to be homosexuals. But the link as to how the accused are responsible for the death of Raju is not established by the prosecution. No legal evidence has been placed on record to substantiate these facts.

13) The learned Public Prosecutor tried to rely upon the confessions made by the accused before the police to show the complicity of the accused in the murder of Raju. But, it is a well established principle of law that such confessions cannot be made the basis to convict the accused, and at the most, any recovery made pursuant to the

confessions can be made admissible under Section 27 of the Indian Evidence Act.

14) In *G. Somaiah vs. State of Karnataka*¹, the Apex Court held as under:

“Section 27 appears to be based on the view that if a fact is actually discovered in consequence of the information given some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.

The first requisite condition for utilizing section 27 Evidence Act in support of the prosecution case is that the Investigating Officer should depose that he had discovered fact in consequence of the information received from the accused person in custody. The next component of section 27 relates to the nature and extent of information that can be proved.”

15) In the instant case, the confessions made by the accused relate to their relationship with Dinesh only. The other witnesses examined by the prosecution nowhere refer to any relationship between the accused and the deceased-Raju. PW3, who is the father of the deceased, identified the body of the deceased. In his chief-examination itself, he says that he does not know the accused and did not see them at any time. He stated that prior to his death, his son, Raju used to work as Electrician in Vijayawada, but, he did not say that his son was working with accused No.1 or accused No.2 in Vijayawada.

¹ 2007 Cri.L.J. 1792 (SC)

16) For the reasons stated above, we feel that the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime.

17) In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused in the judgment dated 21.03.2012, in Sessions Case No.138 of 2011, on the file of the I Additional Metropolitan Sessions Judge, Visakhapatnam, for the offences punishable under Sections 302 read with 120-B I.P.C., is set aside and they are acquitted for the said offences. Consequently, the appellants/accused shall be set at liberty forthwith, if not required in any other case.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

27.11.2017
DMG/ gkv

