

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.1091 OF 2012

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

1) The sole accused in Sessions Case No.188 of 2012 on the file of the District and Sessions Judge, Chittoor, is the appellant herein. He was charged for the offence punishable under Section 302 IPC for causing the death of one P.Lakshamma (hereinafter referred to as "the deceased") and also charged for the offence punishable under Section 379 IPC for committing theft of two gold thalli bottlu and one gold ring from the possession of the deceased. Vide its judgment, dated 08.08.2012, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 302 IPC and further sentenced to suffer rigorous imprisonment for one year for the offence punishable under Section 379 IPC. Both the sentences were directed to run concurrently.

2) The facts in issue are as under:

PW.1 is the son of the deceased and PW.4 is a relative of the accused. On 14.11.2011 at about 2.30 p.m. PW.1 went to the bus station to send his sister-in-law and returned to the village at 6.30 p.m. At about 3.00 p.m. the deceased went to the fields along with cow and calves. When the sister of PW.1 informed that the

deceased did not return home, then he along with his brother by name Dilli, Ganapathi Reddy and one Gajendra went to the fields of Sreeramulu Reddy, in search of his mother. They noticed their mother lying on the banks of a vanka, near the field of Sreeramulu Reddy. He noticed a ligature mark on the throat of the deceased. The ornaments, which the deceased used to wear, were found missing. As the deceased was dead by then, they shifted the body to the village. At about 11.30 p.m., PW.1 lodged a report (Ex.P1) with PW.15-the Sub-Inspector of Police. Basing on which a case in Crime No.19 of 2011 came to be registered under Section 174 Cr.P.C. After registering the crime, PW.15 visited the scene of offence and as it was late in night, he posted a guard and returned back to the police station. On the next day, he again visited the house of PW.1 and in the presence of PW.11, conducted inquest over the dead body of the deceased. Ex.P9 is the inquest report. During inquest, he examined PWs.1 and 2 and others. Thereafter, he along with PWs.1,2 and 11 and others visited the banks of river Bahuda, inspected the crime scene and seized yellow thread, two rows of white plastic thread with 57 beads, small gold ginne bottu, pair of chappals, broken bangle pieces and small cloth bag, under Ex.P10. The rough sketch of the scene is placed on record as Ex.P20. Thereafter, the body was sent for postmortem examination. PW.14-the Civil Assistant Surgeon, Government Headquarters Hospital, Chittoor, conducted autopsy over the dead body of the deceased and issued Ex.P18-the postmortem certificate. According to him, the cause of death was “due to

shock and hemorrhage, in view of the injuries to vital organs like lungs, heart and right kidney". PW.16-the Inspector of Police, took further investigation in the matter and after receipt of the postmortem certificate, he altered the section of law from 174 Cr.P.C. to 302 IPC. Ex.P21 is the altered F.I.R. He proceeded to the village and examined PWs.4 and 5. On 27.01.2012, while he was present in the police station, PW.5-Panchayat Secretary, came to the police station, accompanied by the accused and lodged Exs.P1 and P2, the extra judicial confession (Ex.P2) and the report of PW.1 (Ex.P1). Thereafter, he arrested the accused, recorded his confessional statement in the presence of PWs.12 and 13. Pursuant to the disclosure statement made, the accused lead the above panchayatdars to the house of PW.6 stating that PW.6 is the person, to whom he has pledged the stolen ornaments. PW.16 examined PW.6 and seized Ex.P6-the receipts produced by her under Ex.P15-panchanama. Then the accused lead the police party to the house of PW.7 and stated that he is the person through whom he received money by pledging some of the stolen gold ornaments. He also seized Exs.P4 and P5, the receipts produced by PW.7 under Ex.P16. Thereafter, the accused lead them to the shop of PW.8, where the husband of PW.6 informed them that they pledged some gold ornaments with PW.8. PW.8 is said to have produced M.O.3-gold ring stating that it was the gold ring that was pledged by PW.6 and her husband twice. The said gold ring was seized under cover of Ex.P12. Thereafter, PW.7 lead all of them to the shop of PW.9, to show the place where they pledged M.O.9.

PW.9 produced M.O.9 which was seized under Ex.P3. Thereafter, PW.7 lead all of them to the shop of PW.10 stating that they have pledged some more gold ornaments in his shop. During examination, PW.10 produced one gold ginne bottlu, four small gold beads and a receipt book from 02.04.2011 to 27.04.2011. All these documents were seized under Ex.P4. On 28.01.2012, PW.16 got MOs.1 to 5 identified by PW.1 in the presence of PW.13-the Village Revenue Officer. After completing the investigation, he filed the charge sheet before the Court of IV Additional Judicial Magistrate of First Class, Chittoor, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.188 of 2012.

3) On appearance, charges under Sections 302 and 379 IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P23 and MOs.1 to 9. 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. Neither oral nor 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 with which he was charged. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there are no direct 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. He further submits that the extra judicial confession said to have been made before PW.5 cannot be believed as there was no special reason for the accused to make such a confession before PW.5 three months after the said incident. Further, there is any amount of doubt with regard to the evidence of PW.5, as he is a stock witness in view of the admission made by PW.5 that the police used to consult him and calling him to the police station in connection with the village affairs. Hence, it is urged that, he is not an independent witness and by no stretch of imagination it can be believed that the accused would have gone to him and confessed the guilt. With regard to recovery of gold ornaments, he would submit that the evidence of PWs.8 to 10 shows that these gold ornaments were pledged by PWs.6 and 7 and as such the accused cannot be connected with the crime basing on the evidence of PWs.6 and 7.

7) On the other hand, learned Public Prosecutor would submit that though there are no eye witnesses to the incident but the extra judicial confession and recovery of gold ornaments would connect the accused with the crime. He took us through the evidence of PW.5 and also the evidence of PWs.6 and 7 to show

that these gold ornaments were pledged by the accused before PWs.6 and 7, who in turn pledged the same before PWs.8 to 10. Hence, submits that the conviction and sentence awarded by the trial Court warrants no interference.

8) As seen from the record, there are no eye witnesses to the incident and the case rests on the circumstantial evidence. The question is whether the circumstances relied upon by the prosecution do form a chain of events to connect the accused with the crime.

9) Before proceeding with the circumstances relied upon by the prosecution to connect the accused with the crime, it is to be noted that there are no witnesses, who have actually seen the incident. On 14.04.2011 at about 6.30 p.m. the sister of PW.1 informed that their mother (deceased) did not return home, on that PW.1 along with three others went in search of the deceased and found her dead body on the banks of a Vanka near the field of Seeramulu Reddy. According to him, his mother used to wear three gold ginne botlu, four small gold gundlu tied with yellow thread, gold nose stud and a gold ring. His evidence in chief is to the effect that all the gold ornaments which were on the body of the deceased, were missing. But the first information report which was given by PW.1, immediately after the incident, is silent about the missing of gold ornaments from the body of the deceased. PW.15, the investigating officer admits that there is no mention about the gold ornaments in Ex.P1. From the above, it is clear

that in the earliest document there is no reference to missing of any gold ornaments.

10) Keeping these circumstances in view, I shall now proceed to deal with the evidence on record with regard to the three circumstances relied upon by the prosecution.

11) The evidence of PW.4 is to the effect that on the date of incident at about 1.00 p.m. she along with one Soundar Raj and accused went to a Vanka on eastern side to collect data tree leaves. The accused was there with them till 2.00 p.m., and then left the place saying that he would collect some more data tree leaves. Accordingly he went towards further east, but did not return till 5.00 p.m. When he came back at 5.00 p.m. PW.4 questioned him to where he was till 5.00 p.m., but the accused did not give proper reply. Basing on this evidence, the prosecution tried to connect the accused with the crime. But nowhere the evidence of PW.4 would show that she saw the accused and deceased together or that the accused moved towards the place where the deceased was. Her evidence is of no help to the prosecution to prove the theory of last seen. Infact the witness was examined by the police nearly three months after the incident. Having regard to the above, the first circumstance of accused being seen last in the company of the deceased, remained unproved.

12) The second circumstance relied upon by the prosecution is the alleged extra judicial confession said to have been made by the accused before PW.5. It is to be noted here that the first information

report was registered against an un-known person. Initially the crime was registered under Section 174 Cr.P.C. and no suspicion was entertained against the accused. The said F.I.R. was altered to one under Section 302 IPC on 18.04.2011. Even in the altered F.I.R. also there is no reference to the appellant. His complicity came into picture only after the extra judicial confession was made by the accused before PW.5. In the absence of any threat from any quarters with regard to his arrest, it would be difficult to believe that he would have gone and made a confession before PW.5, who was the Panchayat Secretary of Paipalli Vilalge. Apart from that, the said confession came to be made nearly seven months after the incident. Therefore, a doubt arises as to whether really the accused would have gone and confessed about his involvement in the offence before PW.5 when there was no threat from any quarter. Apart from that, in the cross examination of PW.5, it has been elicited that the police used to consult PW.5 and call him to the police station in connection with the village affairs.

13) Having regard to the above, it is highly improbable to believe that the appellant, who was not shown as accused till the confession was made, would have confessed about the commission of offence before PW.5, that too nearly 7 months after the incident. Normally the confessions are made when there is a threat of arrest or under an apprehension that after arrest there is likelihood of he being tortured and kept under illegal detention. Hence, the extra judicial confession alleged to have been made before PW.5 cannot be believed.

14) The only other circumstance, which remains is the pledging of gold ornaments before PWs.6 and 7 and recovery of the same from PWs.8 to 10. As stated earlier, in the first information report, there is no reference to missing of the gold ornaments from the body of the deceased. PW.6 in her evidence states that about a year prior to giving evidence, the accused came to her house and requested herself and her husband to give money to meet the medical expenses of his wife, after keeping two gold thalibottu ginnelu and four small gundlu and one gold ring. They expressed their inability to give money, as they have no money. However, PW.6 along with her husband and the accused went to Y.S.Gate Village, Irala Mandal, Chittoor District, and pledged the gold ornaments with PW.8, in her name. M.O.3 is the gold ring that was pledged and an amount of Rs.2,500/- was paid to the accused. Later it was released. About three months thereafter, the accused approached them for money and again pledged M.O.3 gold ring. Six months thereafter, the police came to them along with the accused. However, in the cross-examination, PW.6 admits that the gold ornaments were pledged in her name and she signed on the pledged documents. She further admits that she cannot say the dates when the accused approached them for money. The documents seized from PWs.8 to 10 contain the signatures of PWs.6 and 7 only and not that of the accused.

15) PW.7, who is the husband of PW.6 deposed on the same lines as that of PW.6. In the cross-examination, he admits that the gold ornaments were pledged in his name and Exs.P4 and P5 bears his

signature. He further admits that he alone went to pawn broker and pledged the ornaments.

16) From the evidence of these two witnesses, it is clear that though in the chief examination they stated that it was the accused, who, brought the gold ornaments, but in the cross-examination they clearly admitted that these gold ornaments were pledged in their names and all the documents were signed by them. Though PW.6 admits that the accused has accompanied them while pledging the gold ornaments, but PW.7, who is the husband of PW.6 states that he alone went to the pawn broker and pledged the ornaments. If really, the accused accompanied PWs.6 and 7 at the time of pledging the articles for money, there was no reason for PWs.6 and 7 to say that the gold ornaments belonged to them. Therefore, a doubt arises as to whether really the gold ornaments were given to them by the accused. Apart from that, the evidence of PW.8 would show that on 14.04.2011 PW.6 and her husband pledged a gold ring (M.O.3) and received cash of Rs.2,500/- . The said gold ring was released on 18.05.2011 and again it was pledged on 26.11.2011 by PW.6 and received Rs.3,500/- . In the cross-examination, PW.8 admits that while pledging, PW.6 stated that M.O.3 belonged to her and that she is in need of money. Similarly, PWs.9 and 10 categorically deposed that PW.7 pledged the gold ornaments and received the amount by claiming ownership of the ornament. In view of the evidence of PWs.8 to 10, a doubt arises as to whether really the accused has brought the gold ornaments and gave the same to PWs.6 and 7. The answers elicited from the evidence of PWs.8 to 10 creates a doubt

with regard to the complicity of the accused in committing theft of the gold ornaments and then pledging the same with PWs.6 and 7.

17) Having regard to the circumstances stated above and in the absence of any cogent and convincing evidence, we are inclined to acquit the accused, by extending the benefit of doubt.

18) In the result the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in S.C.No.188 of 2012 on the file of the District and Sessions Judge, Chittoor, for the offences punishable under Sections 302 and 379 IPC are set aside. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

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



JUSTICE C.PRAVEEN KUMAR

JUSTICE N. BALAYOGI

08.12.2017
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