

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.919 of 2012

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

1. The accused in Sessions case No.360 of 2006 on the file of the III Additional District and Sessions Judge (Fast Track Court) at Medak is the appellant. He was tried for the offences punishable under sections 302, 379 and 201 IPC. *Vide* Judgment dated 9.10.2009, the III Additional District and Sessions Judge at Medak convicted the accused under section 302 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.100/- for the offence. He further sentenced the accused to undergo rigorous imprisonment for three years for the offence punishable under section 379 IPC. However, no conviction was awarded under section 201 IPC.

2. The facts as culled out by the prosecution witnesses are as under:

PW2 was a tenant in the house of the deceased, living alone in the house and running a kirana shop in the said premises. According to PW2, he used to open his shop at 7.00 a.m. and close at 8.00 p.m. On 8.4.2006, he observed some foul smell coming from the house of the deceased. Immediately, he informed the same to PW1, the Sarpanch of the village. Thereafter, PW1 along with Village Servant proceeded to the house of the deceased,

broke open the door, entered the house and found the dead body of the deceased in a putrified condition. He found that somebody throttled the deceased, pursuant to which, he proceeded to the police station and lodged a report with PW14, the SI of Police, who registered a case in Crime No.12 of 2006 for the offence punishable under section 302 IPC. Ex.P15 is the First Information Report. PW15, Circle Inspector of Police took up further investigation. After receiving the C.D. file from PW14, PW15 proceeded to the scene of offence and examined PWs 1 to 5 and recorded their statements. He prepared a Panchanama of the scene of offence in the presence of PW10 and one Vishwanatham. Ex.P9 is the panchanama of the scene of offence and Ex.P10 is the rough sketch of the scene. Thereafter, he conducted inquest over the dead body in the presence of PW10. Ex.P11 is the inquest report. During inquest, he examined PW6, PW7 and PW12. Thereafter, he sent the body for postmortem examination. On 8.4.2016, at 2.00 p.m., PW13 the Civil Assistant Surgeon, Government Hospital, Jogipet, conducted autopsy over the dead body and issued Ex.P14, the postmortem certificate. According to him, the cause of death was on account of asphyxia due to throttling. On 11.4.2006 at 9.00 a.m., ID party police apprehended the accused and produced him before PW15. In the presence of PW11 and one Kokya Naik, PW15 recorded the confession statement of the accused, pursuant to which, MOs 1 to 5 i.e., gold chain, two ear studs, Pattadar pass book, bank pass book of SBH and bank pass book of SBH were recovered. Ex.P13 is

the seizure panchanama of MOs 1 to 5. Thereafter, on a requisition made by PW15, the Judicial Magistrate of First Class conducted identification of MOs 1 and 2 by PW9. Ex.P16 is the proceedings of the Magistrate. After completion of investigation, PW15 filed a charge sheet, which was taken on file as PRC No.15 of 2006 on the file of the Judicial First Class Magistrate, Jogipet.

On appearance of the accused, copies of the documents were furnished, as required under section 207 IPC and then the matter was committed to the Court of Sessions, Medak at Sangareddy under section 209 of Cr.P.C. Basing on the material available on record, charges under sections 302, 379 and 201 IPC were framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined 15 witnesses and got marked Exs.P1 to P18 and MOs. 1 to 5. Out of the 15 witnesses examined by the prosecution, PWs 2, 3, 5 to 8 did not support the prosecution evidence and were treated as hostile witnesses. After completion of the prosecution evidence, incriminating material available against the accused was put to him at the time of his examination under section 313 Cr.P.C. to which, he denied the same. Basing on the evidence available on record, the trial Court convicted the accused as referred to earlier. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that there is absolutely no evidence to connect the accused with the crime. In

the absence of any direct evidence connecting the accused with the crime, the circumstances relied upon by the prosecution also do not form a chain of events so as to connect him with the crime.

4. On the other hand, learned Public Prosecutor would contend that the very recovery of MO.s 1 and 2 from the accused within four days of the incident, is sufficient to prove that he alone is responsible for the incident.

5. A perusal of the evidence of the witnesses show that on 8.4.2006, PW2, who was a tenant in the house of the deceased, noticed some foul smell coming out from the house of the deceased. Immediately, he informed the same to PW1, who, along with Village Servant, broke open the house and noticed the dead body in the house.

6. As contended by the appellant, the only circumstance relied upon by the prosecution is the recovery of MOs.1 to 5 from the accused. The evidence of PW9 is sought to be relied upon by the prosecution to show that these articles belong to the deceased. Dealing with the evidence of PW11, the Revenue Inspector, who acted as a panch for the recovery of MOs 1 to 5, it is to be seen that on 11.4.2006 at about 9.30 a.m., police summoned him and Kokya Naik to Shankarampet-A Police Station, where they found accused in the presence of Circle Inspector. On the request of the Police, he inquired the accused who confessed about the offence and also committing theft of the articles. From the evidence in chief of PW11, it is clear that by the time PW11 along with the police went to Shankarampet-A, the accused was in police custody.

In the cross-examination, he admitted that when he enquired the accused, the accused stated that the police brought him to the police station on the same day. The evidence in chief of PW11 and also the evidence of investigating officer show that after the confession, the accused led them to his house at Pothaipally village and from the said house MOs 1 to 5 were recovered. But, PW11 in his cross-examination admits that he has not entered into the house of the accused and he does not know how many persons were staying in the house of the accused. The relevant admission is as under:

“I have not entered into the house of accused.
I do not know how many persons are staying in
the house of accused.”

7. Coming to the identification of the articles as that of the deceased, the family members of the deceased namely PW4 who is the grand daughter of the deceased and PW6 and 7 who are the distant relatives of the deceased, were not made to identify the articles. Only PW9, who is a gold smith by profession, was made to identify the articles in the Test Identification Parade conducted by the Magistrate. The prosecution is now trying to link the accused with the two ornaments identified by PW9. It will be useful to extract the evidence of PW9, which is as under:

“I am having own house at Shankarampet-A.
I cannot say the descriptive particulars of the
each ornaments which was prepared by me for
last 3 years. I had prior acquaintance with the
deceased prior to preparing MO.1 & 2. Except
MO.1 & 2 I have not prepared any jewellery to

the deceased. My shop has no name. I will maintain the book about the names of the customers who came to me for preparing ornaments. I have not submitted any record to the Police.

Deceased alone came to me for preparing MO.1 & 2. I will put a mark on the jewellery for identification that the jewellery was prepared by me. MO.1 & 2 does not bear my symbol. Witness voluntaries I will put my symbol on silver ornaments only.

It is not true to suggest that I never prepared MO.1 & 2 for the deceased and I am deposing false at the instance of police.

Re-Examination by APP:

I have identified MO.1 & 2 in the presence of Hon'ble JFCM, Narsapur. Ex.P.18 is proceeding prepared by JFCM Narsapur which bears my signature.

Cross-examination by Accused:

Police shown Mo.1 & 2 prior to examine me and I got identified the same before JFCM Narsapur."

8. From the answers elicited in the cross-examination of PW9, it is clear that he was maintaining a book about the names of the customers who come to him for preparing the ornaments. But, in the present case, he has not submitted any record to the police. He also admits that he cannot say the description of each of the ornaments prepared by him for the last three years. He further admits that he would put a mark on the jewellery prepared by him for identification to show the said jewellery was prepared by him. But MOs 1 and 2 do not bear any symbol. He tries to clarify that he

will put such symbol only on the silver ornaments. In re-examination he admits that the police have shown MOs 1 and 2 prior to his examination and accordingly, he identified the same before the Magistrate in the Test Identification Parade. These answers which were elicited from the evidence of PW9 creates any amount of doubt as to whether MOs 1 and 2 belong to the deceased, more so, when the family members of the deceased were not subjected to identification of the ornaments either in the Test Identification Parade or in the court. It may be true that all those witnesses turned hostile but still the prosecution has not made any effort to suggest that these ornaments belong to the deceased. In so far as MO.3 Pattadar pass book, MO.4 bank pass book of SBH and MO.5 bank pass book of SBH are concerned, they belong to the deceased. Even assuming that these books were in possession of the accused, it does not by itself inculcate him with the commission of the offence.

9. Therefore, we are of the opinion that the sole circumstance relied upon by the prosecution to connect the accused with the crime, is not proved by any legal evidence.

10. Hence, we intend to extend benefit of doubt to the accused.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 09.10.2009, in Sessions Case No.360 of 2006, on the file of the III Additional District and Sessions Judge (Fast Track Court) at Medak for the offences punishable under Sections 302 and 379 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.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

16.11.2017
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