

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE P. KESHA RAO

CRIMINAL APPEAL No.644 of 2011

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

Assailing the judgment dated 15.02.2011, passed in S.C.No.467 of 2010 on the file of the V Additional Sessions Judge (FTC), Anantapur, wherein the sole accused was found guilty for the offences punishable under Sections 302 and 201 IPC and sentenced to suffer imprisonment for life and to suffer rigorous imprisonment for three years for the offences under Sections 302 and 201 IPC respectively, the present Criminal Appeal is filed by the accused.

2) The facts in issue are as under:

3) PW.2 is the sister of the deceased. She studied up to 10th class in Rajendra Municipality High School. After developing acquaintance with the daughter of the accused, the deceased went to take tuition at her house, as she failed 10th class in the year 2009. Once in 10 days, the deceased used to come to the house of PW.2. In the month of December, the deceased did not come to the house and also did not telephone to PW.2, thereby, PW.2 went to the house of the accused. The accused is said to have been informed PW-2 that the deceased has gone to Hindupur. Believing the version of the accused, PW.2 left with a hope that the deceased would come back to the house. Few days thereafter, they came to know that the deceased was killed.

4) On 02.01.2010, at about 10.00 a.m. while PW.13, Inspector of Police, was in the police station, he received a report from PW.1 which is marked as Ex.P1. Since the said report discloses commission of cognizable crime, he made a GD entry about Ex.P-1. On 02.01.2010, the police of II Town came to the house, PW.2 and her mother to the police station and informed them about the death of her sister. They also took them to the place where the wood dust was stocked, and from underneath the wood dust, the bones of a skeleton were removed. One dress, anklet, voni and a sweater were also found near the said place. On seeing the said items, PW-2 identified the body as that of their sister. He secured the presence of PW.11 and explained to them the information received, and obtained their consent to act as mediator in the case. Thereafter, he along with his staff, left the police station and reached the Government General Hospital at 11.05 a.m. when they entered the orthopedic ward, PW.1 pointed out a person as the accused in the case. Immediately, he apprehended the accused and took him into custody. Thereafter, the accused was brought to the police station along with the mediators and noticed that his left forehand was amputated. After interrogation, the accused revealed his correct name and address, as to how he developed intimacy with the deceased and about the commission of offence. He recorded his confession, under cover of mahajar, in the presence of mediators, which was marked as Ex.P27. Pursuant to the confession, he led the raid party to the scene of offence along with the mediators, disclosing the place

where the accused is alleged to have killed the deceased. He is also said to have shown the crime weapon i.e., iron hammer. Then he led them to the open place at the western side of the saw mill and behind the compound of Dasaramireddy. They found the skeleton remains of a humanbeing spread at the place as the deadbody was eaten away by the animals and dogs. They noticed one tomato red colour sweater and other cloths of the deceased, which were seized under panchanama. The cloths were wet due to decomposed body fluids. They also collected the saw dust. In the meantime, the mother and the brother of the deceased arrived at the scene of offence and identified the cloths i.e., Mos. 1 to 7 as that of the deceased. Basing on the said identification, the crime weapon was seized under a panchanama, which is marked as Ex.P.28. He made a request to PW.9 to visit the scene of offence and prepare the rough sketch, which is marked as Ex.P30, and also to take the photograph of the scene, which are marked as Ex.P7 to P23.

5) Pursuant to the requisition given by PW.13, Inspector of Police, PW.9 visited the scene of offence on 02.01.2010 at about 4.15 p.m. He noticed scattered bones of the skeleton, under the saw dust and few of the bones were found scattered at a distance of 50 to 75 meters but no flesh of the body was found. On a careful examination, he found the right part of maxilla bone fractured and first and second permanent molar teeth were intact on the left and right side of the maxilla and there was space for a third molar teeth. Based on these findings, he observed that the

age of the deceased would be around 17 to 18 years. He further opined that the cause of death was due to head injury, caused by a hard and blunt weapon.

6) Ex.P15 is the Expert opinion, dated 02.01.2010. According to PW.10 the Assistant Civil Surgeon on 28.12.2009, one patient by name Eashwariah, accused herein, was brought to the casualty ward, by his friend Narayana Swamy. He noticed that his total upper arm being amputated. He identified the accused as a person, whom he examined on 28.12.2009.

7) After completing the investigation, PW.13 filed charge sheet, which was taken on file as P.R.C.No.79 of 2010 on the file of the Addl. Judicial Magistrate of First Class, Anantapur, which on committal came to be numbered as S.C.No.467 of 2010.

8) On appearance, charges under Sections 302 and 201 IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

9) To substantiate their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P34 and M.Os.1 to 8. 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 by the accused in support of his defence.

10) On appreciation of the entire evidence on record, the learned Sessions Judge convicted the accused in the manner

referred to above. Challenging the same, the present appeal is filed.

11) Sri Kadaru Prabhakar Rao, legal aid counsel for the appellant/ accused, would contend that there is absolutely no evidence to convict the accused. According to him the circumstance relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. It is urged that even the alleged extra judicial confession made before PW.1 cannot be accepted since the person before whom he alleged to have made the extra judicial confession, did not support the prosecution case. In the absence of any oral or positive evidence, he submits that the conviction of the accused cannot be sustained.

12) The same is opposed by the learned Public Prosecutor contending that the findings of the trial Court being based on evidence, the same warrants no interference.

13) As seen from the witnesses examined by the prosecution, PWs.1, 4, 5, 6, 7 and 12 did not support the prosecution case and they were treated hostile by the prosecution. Admittedly, the case rests on the alleged extra judicial confession made by the accused before PW.1 (hostile) three months after the date of alleged incident. The prosecution does not anywhere positively prove that the dead body was that of the deceased. Except the skeletal parts which were spread over the area, even the flesh was not available to establish the body as that of the deceased. Basing on the recovery of MOs.1 to 8 from the scene of offence, the

prosecution intends to establish the identity of the deceased and also connect the accused with the crime.

14) As seen from the record, the incident took place on 11.11.2009, and the skelton remains, which were spread over 20 to 25 meters, were recovered in the month of January, 2010. The evidence of PW.1 shows that in the month of December, 2009, the accused who was working under him sustained injuries to his left hand while he was working under PW.1 and as such he admitted in the Government hospital. While he was in hospital, the accused is alleged to have asked PW.1, not to remove the firewood dust kept in the existing plot. In the month of January, 2010, the accused is alleged to have informed PW.1 not to remove the dust stock. PW.1 deposed about bad smell emanating from the dust stock stored in nearby plot and out of suspicion, he said to have been reported the matter to the police. He also claims to have scribed Ex.P1 wherein the accused is alleged to have confessed about the commission of offence. But, however, while giving evidence in the Court, PW.1 resiled from his earlier statement and also from the contents of the report given by him. He only refers to the removal of saw dust. So, if the evidence of PW.1 is excluded from consideration, the only other incriminating material to connect the accused is the recovery of cloths from the scene which also cannot be accepted for the reason that it is very difficult to believe the cloths of the deceased would be lying at the scene, fully intact event after three months. Further, the panch witnesses who were examined to speak about the alleged recovery did not support the

prosecution case. In fact, PWs.4 to 7, who were examined to speak about the removal of dust from the plot and also about the skelton remains lying therein also did not support the prosecution case. In the absence of any evidence, we hold that the prosecution failed to establish the guilt of the accused and that the conviction of the trial Court warrants interference by extending the benefit of doubt.

15) In the result, the criminal appeal is allowed. The conviction and sentences recorded against the appellant/accused in the judgment, dated 15.02.2011, in Sessions Case No.467 of 2010, on the file of the learned IV Additional Sessions Judge (FTC), Ananthapur, for the offences punishable under Sections 302 and 201 IPC, 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.

Miscellaneous petitions, if any, shall also stand dismissed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

Date: 03.10.2017.
ES/ CCM