

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.140 of 2011

DATE: 18-08-2017

Between:

Jaalam Ramulu

..... APPELLANT

AND

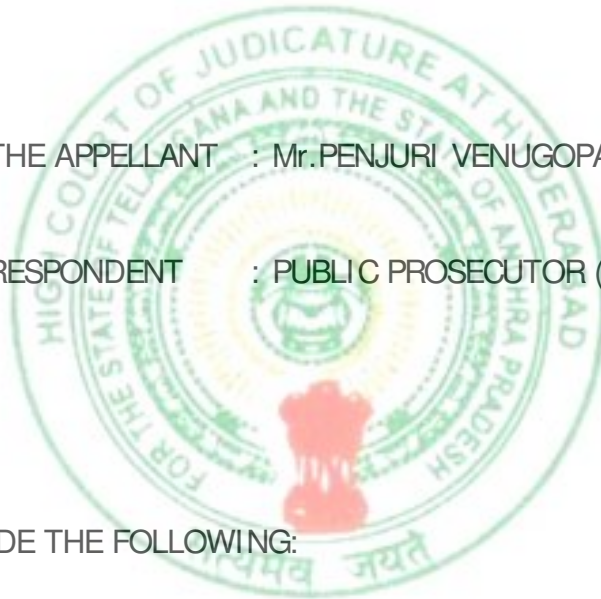
State of Telangana, rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

COUNSEL FOR THE APPELLANT : Mr.PENJURI VENUGOPAL

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (TG)

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL APPEAL No.140 of 2011

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

This criminal appeal is filed against judgment dated 10.11.2010 in Sessions Case No.181 of 2010 on the file of the IV Additional District and Sessions Judge (FTC), Mahabubnagar, by and under which, the learned Sessions Judge has convicted the appellant for the offences punishable under section 302 and 404 IPC and sentenced him to undergo imprisonment for life for the offence under Section 302 IPC and rigorous imprisonment for a period of two years for the offence under Section 404 IPC.

2. The case of the prosecution, in brief, is as under:-

Sugunamma (hereinafter referred to as 'deceased') was a resident of Camp Rayavaram village and PWs 1 and 2 are her children. PW 2 was studying in a school at Lingal. On 07.11.2008 morning the deceased went to Lingal to take her photographs and visited the school of her daughter-PW 2 and told her the purpose of her coming to Lingal and left the place. Later, the deceased came across the accused, with whom she got previous acquaintance and both of them consumed toddy and proceeded towards Avusalikunta road and the same was witnessed by PW 5, who was the classmate of PW 2 and informed the same to PW 2. PW 2 returned to the house, but the deceased did not return to home till 09.08.2008. PW 1 received information from PW 3 that the dead body of his mother was lying near Muslim Graveyard by the road side, running from Avusalikunta to Lingal. He rushed to the said place and found his mother's dead body with injuries on the neck and lower jaw. PW 1 lodged a report to the police, based on which, PW 16 registered Cr.No.66 of 2008 under Section 174 Cr.P.C. PW 16

conducted investigation, drafted scene observation report, recorded the statements of the witnesses, seized material objects, held inquest over the dead body of the deceased and sent the dead body to postmortem examination, and after receipt of the report, PW 17 altered the provision of law from Section 174 Cr.P.C to Section 302 IPC. PW 19 took up further investigation and arrested the accused on 29.01.2009 at Manajipet village in another crime and the accused confessed his guilt in the presence of PW 9 and PW 12. According to his confessional statement, both the deceased and accused consumed liquor, that while the deceased was in an inebriated condition, he had intercourse with the deceased, that later he killed the deceased by throttling her, that he has stolen away her 4 silver bangles and mortgaged the same with PW 11. In the identification parade conducted on 12.06.2009, PW 5 identified the accused and in the identification parade of property conducted on 18.07.2009, PWs 1 and 2 identified the four silver bangles as that of their deceased mother. After completion of investigation, PW 19 filed the charge sheet.

3. The plea of the accused is one of denial.

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 19 and marked Exs.P1 to P15 and M.O.1. On behalf of the accused, no oral or documentary evidence was adduced. Based on the oral and documentary evidence, the learned Sessions Judge has convicted the appellant and sentenced him, as stated supra.

5. Learned Counsel appearing for the appellant submitted that the trial Court erred in believing the inconsistent, discrepant and unreliable testimony of PWs.1 to 4 in holding that it is the accused who committed the crime. It is further submitted that the trial Court has not taken into consideration the fact that the prosecution could not establish the case which is based on circumstantial evidence and the circumstances relied upon by the prosecution

do not even remotely connect the accused with the crime. The last seen theory, according to the learned Counsel, is difficult to be believed as it is evident that PWs.2 and 5 are the planted witnesses and this conclusion is irresistible since their conduct is such that they cannot be believed to have seen the accused and the deceased going together on the date when the deceased was killed. It is further submitted that the recoveries were not proved and the identification made by the prosecution witnesses both with regard to the person and property cannot be believed in view of long gap between the occurrence of the crime, the arrest and the recovery and holding of the identification proceedings. Learned Counsel submitted that in view of the above circumstances, the conviction of the appellant cannot be sustained.

6. On the other hand, learned Public Prosecutor submitted that the appellant has been indulging in several murders for gain and the present crime committed by him is one such incident. According to the prosecution, as per the confession said to have been made by the accused, he committed several crimes of similar nature. It is further submitted that the evidence of the prosecution witnesses is cogent and convincing and having appreciated the same, in proper perspective, the Court below held the appellant guilty and the same does not warrant any interference.

7. The point for consideration is whether the prosecution proved its case against the appellant beyond all reasonable doubt so as to sustain the conviction and sentence recorded against him, or whether the same needs to be set aside, modified or varied?

8. According to the prosecution, the deceased Sugunamma was living with her son-PW.1 and daughter-PW.2. On 07.08.2008, it is alleged that the daughter-PW.2 went to school in the morning at about 07.30 a.m., and that in the afternoon, the deceased went to school, called her from the class and informed that she is going to take certain photographs. That sometime

thereafter it is alleged that the classmate of PW.2, who is examined as PW.5, has seen the accused dragging the deceased towards backside of the school and that at that time, the deceased was in an inebriated condition. That thereafter, PW.5 informed the same to PW.2, that PW.2 searched for the deceased behind the school but she could not find her there, that in the evening her mother did not return, and that on the next day, PW.2 claimed to have been informed by her brother-PW.1 and others that her mother was lying dead near the muslim graveyard with injuries. It is further alleged that more than five months after the incident, the accused was arrested on 29.01.2009, and that he confessed having committed this crime along with other crimes which led the police and panchas to the recovery of the stole silver bangles and other ornaments belonging to other deceased persons. That six months thereafter, i.e., on 18.07.2009 the Test Identification proceedings for the ornaments recovered at the instance of the accused was conducted by the Executive Magistrate/PW.14, in which PWs.1 and 2 have identified MO1, which are four silver bangles. That on 12.06.2009 i.e., nearly six months after the accused was arrested, the jurisdictional Judicial Magistrate conducted the identification proceedings where PW.5 and one Badala Venkatamma (LW.6) identified the accused as the person who was seen by them on the date when the deceased was killed.

9. The fact that the deceased was found lying dead and that her dead body was noticed by PWs.3, 4 and 6 on 09.08.2008 with injuries, is not in dispute. So also the fact that there were injuries on her neck and other parts of the body which is spoken to by the Doctor-PW.18 who conducted the post-mortem examination and issued Ex.P.15, and that the cause of death of the deceased was homicidal is not in dispute. However, according to the accused, it is not he who committed the crime and that he has been falsely implicated in the crime.

10. The case is based on circumstantial evidence, in which, motive plays a significant role. According to the prosecution, the accused was leading a life of vagabond and killing or causing hurt to women who were lonely and adorning some valuable ornaments. He is said to have committed several such crimes and one such crime is the one on hand where it is alleged that he caused the death of the deceased with the sole object of committing theft of four silver bangles worn by the deceased. By winning her confidence and after making her consume toddy and indulging in sexual intercourse with her, the accused is said to have throttled the deceased to death near a muslim graveyard and took away her silver bangles, which in the instant case are exhibited as M.O.1. In the background of these allegations, it is incumbent on the part of the prosecution to establish that the ornaments which were on the person of the deceased were found in possession of or recovered at the instance of the accused so as to draw a presumption that it is he who committed the crime and robbed the deceased woman of her bangles.

11. The deceased was killed on 07.08.2008. The accused was arrested on 29.01.2009 i.e., more than five months after the incident. The accused is said to have confessed having committed the crime and also informed that the bangles which he robbed from the corpse of the deceased were mortgaged by him with PW.11 and led the investigating agency and the panchas to their recovery. The material evidence is that of PWs.9, 10, 11, 12 and 13 on this aspect.

12. PW.9 deposed that he is working as Asst.Revenue Village Officer and is acquainted with the accused. He further deposed that he and one Dharma Reddy (PW.12) were called by the Achampet Police in the afternoon, that when he enquired him at the instance of police, the accused confessed the offence, that the Inspector of Police has shown silver bangles, anklets

and silver waist belt to them, and that the Inspector of Police prepared panchanama on which himself and PW.12 signed. He further asserted that he has not accompanied the police and the accused to any place, more particularly to Nagarkurnool. This witness was treated as hostile by the prosecution since he denied the case of the prosecution that in pursuance to the confession, the accused led them to PW.11 from where the material objects were recovered at his instance.

13. The evidence of PW.12 is on similar lines and according to him also, he along with another panch went to the Police Station where the accused has produced the objects including MO.1. He also denied that the accused led them to the recovery of MO.1.

14. The evidence of these two material witnesses falsifies the case of the prosecution that the accused made voluntary confession that he caused the death of the deceased, robbed her of the ornaments, and that the ornaments were recovered at his instance from PW.11. Unless the prosecution establishes this link, it cannot be held conclusively that it is the accused who was found in possession of the objects, which were on the person of the deceased at the time when she was done to death.

15. PW.11 is said to be the person with whom the accused has mortgaged the stolen ornaments. He deposed that he is a goldsmith by profession, that the accused and the police came to his shop and enquired about the mortgaged bangles and that the police have taken the bangles from him. PW.11 is not a pawnbroker and admittedly he has not produced any other evidence to show that it is the accused who has mortgaged MO.1 with him. Excepting for his *ipsi dixit*, there is nothing on record to show that the accused has mortgaged the objects with PW-11, and that PW-11 handed them over to the police at the instance of the accused. This claim of PW.11 is negated by the evidence of PWs.9 and 12. Therefore, in the absence of

any other supporting evidence, the claim of PW.11 that it is the accused who has mortgaged MO.1 with him, which he being a goldsmith, has retained them in the same form for nearly six months cannot be accepted

16. The other aspect of the matter is about the identity of MO.1 as belonging to the deceased. MO.1 are the silver bangles which do not contain any specific marks of identity nor they are in any way distinct from other bangles. PWs.1 and 2 are the son and daughter of the deceased. They claimed to have identified MO.1 as belonging to the deceased in the presence of Executive Magistrate/PW.14 and the panch witness/PW.10. The identification proceedings were conducted on 18.07.2009 i.e., more than five months after they were recovered. This inordinate delay in getting the properties identified by PWs.1 and 2 is not satisfactorily explained. When the incident took place on 07.08.2008 and the bangles were lost, the same were recovered and identified by PWs.1 and 2 on 18.07.2009. This aspect coupled with the fact that there are no specific clues for PWs.1 and 2 to identify MO-1 bangles as the same bangles that were on the person of the deceased when she was killed raises suspicion on the claim of the prosecution with regard to identification of MO-1 bangles.

17. The above facts and circumstances creates a doubt about the case of the prosecution that the motive for the accused to cause the death of the deceased was to rob the ornaments on her person.

18. The other circumstance relied upon by the prosecution is the last seen theory. According to the prosecution, on 07.08.2008, PW.2 being the teenaged daughter of the deceased went to school at about 07.30 a.m., that in the afternoon, her deceased mother came to the school and informed that she is going to take certain photographs and went away from there, and that it was the last time when PW.2 has seen her mother. The other evidence is that of PW.5, who is another teenaged girl and a classmate of PW.2.

According to her, in the afternoon, at about 03.00 p.m., when she went out of the class room to answer calls of nature, she has seen the accused dragging the deceased towards backside of the school and that at that time the deceased was in an inebriated condition. PW.5 further deposed that she went to the class and informed PW.2 as to what she has seen. Excepting for that, PW.5 did not do anything. According to PW.2 on being informed by PW-5 that the accused has dragged the deceased towards backside of the school, she went and searched there and not having found her mother, she returned home, but did not inform anything to anybody till next day even though her mother did not return home throughout the night. This conduct of PWs.2 and 5 is unnatural and unbelievable for the reason that if really PW.5 has seen the deceased having been physically dragged to a secluded place, that fact would have been sufficient for the teenaged daughter of the deceased and PW.5 to put someone on notice that something unusual has happened. It is in the evidence of PWs.2 and 5 that even though they witnessed such an unusual event, they did not inform anybody in the school behind which the accused is said to have physically dragged the deceased who at that time was in an inebriated condition. That apart, when PW.5 claims to have seen such an unusual scene, she did not give any statement to anybody and for the first time her statement was recorded by the Investigating Officer – PW.19 only on 27.11.2008 i.e., more than three months after the incident. The inquest was conducted on 10.08.2008. Ex.P.3 is the inquest panchanama. In column No.15 it is mentioned that the deceased was last seen on 07.08.2008 and did not return, that on 09.08.2008 evening, at about 06.0 p.m., her dead body was found with injuries and that the death is suspicious. If really, PW.5 has seen what she claimed to have and informed the same to PW.2, these aspects would have certainly found place in the inquest which was conducted on 10.08.2008

more particularly in view of the fact that PW.2 is none other than the daughter of the deceased and PW.5 a classmate of PW.2. The non-mention of these aspects at the time of inquest panchanama creates any amount of doubt about the claim of PW.5 that she has seen the accused physically dragging the deceased on the date when the deceased was killed.

19. The other aspect that is relied upon by the prosecution is about the Test Identification Parade in which PW.5 is said to have identified the accused as the person whom she has seen physically taking away the deceased on the date of her death. PW.15 is the Judicial Magistrate of First Class who conducted the Test Identification Parade on 12.06.2009. In these proceedings, PW.5 participated and she has identified the accused as the person whom she has seen on 07.08.2008. In the absence of there being any specific marks of identification, the identification made by PW.5 of the accused as the person she has seen for the first and last time on 07.08.2008 cannot be believed for the reason that the identification proceedings were conducted on 12.06.2009 even though the accused was arrested on 29.01.2009. This inordinate delay in getting the identification proceedings affects the credibility of the identification said to have been made by PW.5 of the suspect in identification proceedings conducted by the Judicial Magistrate of First Class. PW.5 was a girl aged about 11 years at the time when the incident took place. For a girl of that age, it is not easy to identify a stranger nearly after ten months i.e., on 12.06.2009, whom she has seen on 07.08.2008 for the first and last time. Therefore, we find it difficult to accept the case of the prosecution that the identification made by PW.5 of the accused while he was in the dock is corroborated by the Test Identification Parade conducted during the course of investigation.

20. In view of the foregoing discussion, we have no hesitation in holding that the prosecution could not bring home beyond all reasonable

doubt that it is the accused who committed the offence. The evidence on record does not establish involvement of the accused and therefore the Judgment of the Court below cannot be sustained. The appeal is therefore liable to be allowed by setting aside the conviction and sentence.

21. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused for the offences under Sections 302 and 404 IPC are set aside. The appellant/accused is set at liberty forthwith, if he is not required in any other case or crime. The fine amount, if any, paid by him shall be refunded to him.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 18th August, 2017
Dsr/Smr

