

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.312 of 2011

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

1) Accused No.1, in Sessions Case No.368 of 2009 on the file of the II Additional Sessions Judge (FTC), Khammam, is the appellant herein. He along with another, were charged for the offences punishable under sections 302, 379 and 201 read with 34 IPC. By its judgment dated 18.08.2010, the learned Sessions Judge while acquitting accused No.2, convicted accused No.1 for all the above mentioned offences and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.2,000/- for the offence punishable under Section 302 IPC; to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- for the offence punishable under Section 379 IPC and was further sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- under Section 201 IPC.

2) The gravamen of the charge against the accused is that on 05.02.2008 at about 10.a.m., in the agriculture lands of one Golla Anajaiah, situated in Sy.Nos.405 and 406 of Velugumatla Village, accused No.1 along with Accused No.2, are said to have strangled the deceased with a clutch wire, causing death and later committed theft of a motor cycle, gold chain, gold ring and cell phone of the deceased. Thereafter, accused No.1 along with

accused No.2 caused disappearance of the evidence with an intention to screen the offenders.

3) The case of the prosecution as culled out from the evidence adduced by the prosecution is as under:

4) PW.1 is the wife of the deceased, PW.2 is the sister-in-law of PW.1 and sister of the deceased, PW.3 is the mother of PW.1, PWs.6 to 8 are neighbours of the deceased. The deceased was working as a Junior Lineman in A.P.N.P.D.C.L. at Rotary Nagar Sub-Division, Khammam. His marriage with PW.1 was performed on 20.05.2006. Both of them were living in a house near Rotary Nagar. About 15 days prior to the death of the deceased, PW.1 went to her parents house situated in Singareni Collieries, Ramagundam, as she was pregnant at that time. It is said that PW.1 and the deceased used to talk on telephone daily. She claims to have talked with her husband on 04.02.2008. Thereafter, there was no telephone call from her husband on 05.02.2008, but she did not enquire or call the deceased on that day, thinking that her husband might be busy. On 06.02.2008, PW.1 telephoned to her husband but the same was switched off. She repeatedly called him till evening, but the information received was that his telephone was switched off. On the evening of 07.02.2008, the Assistant Engineer of Electricity Department (not examined) called PW.1 and informed that her husband is not attending to duties since last two days. Immediately thereafter, PW.1 telephoned to her mother-in-law Sarojini and enquired as to whether the deceased

has come over to their place. As the response was negative, she along with her mother came down to Khammam and went to their house. Their in-laws also arrived by the time they reached their house. They enquired with their neighbours, who informed them that on 05.02.2008 during evening time, they noticed that the deceased going along with somebody on a motor cycle. On the same day ie. 08.02.2008 they went to Khammam II Town Police, where PW.1 lodged a report, which was marked as Ex.P1. Basing on the said report, PW.21 registered a case in Crime No.19 of 2008 of Khammam II Town Police Station as 'Man missing' and issued F.I.R., which is marked as Ex.P14. He visited the scene of offence, recorded the statements of PWs.1 to 3 and also that of PW.6, conducted rough sketch of the house which is placed on record as Ex.P5. Further investigation was handed over to C.I. of Police. On 09.02.2008, the C.I. of Police (PW.23) apprehended accused No.1 and on interrogation, he is said to have confessed about the commission of offence. Basing on the confession of accused No.1, one Nokia cell phone and chain were seized from the possession of accused No.1 under a cover of panchanama-Ex.P6. He affected the arrest of accused No.1 and on point of jurisdiction handed him over to PW.24. Basing on the letter from PW.23, PW.24 registered a crime in Crime No.41 of 2008 of Khanapuram Haveli Police Station and issued F.I.R. Ex.P19 is the F.I.R. Later, he handed over the case to PW.25. Basing on the confession of accused No.1, police along with accused No.1, PW.1 and another went to Gollagudem near Adithya School and found the body of the deceased in an

abandoned well. The dead body was taken out from the said well and PW.1 is said to have identified the dead body as that of her husband. On receipt of requisition, a team of doctors came to the scene of offence and conducted post mortem examination over the body. Before conducting post mortem examination, the Tahsildar-PW.20 conducted inquest over the dead body of the deceased. During the inquest they have examined PWs.1 to 4, 6 and 8, LWs.3, 4 and 5. At the instance of accused No.1, one ball pen, one pair of chappals and one shirt were seized. On the same day at about 4.30 p.m. clutch wire and gold ring were seized from the house of accused No.1. On the next day, accused No.1 was remanded to judicial custody. It is said that on 13.02.2008 he took accused No.1 into police custody and in the presence of PW.16 and another, PW.25 seized the motor cycle belongs to the deceased from the house of Tene Rama Rao under a cover of panchanama-Ex.P11. On 23.02.2008 he arrested accused No.2 and seized two cell phones from his possession. Ex.P20 is the confession and seizure panchanama relating to recoveries made from accused No.2 prepared in the presence of PWs.18 and 19. After collecting all the material, PW.25 filed the charge sheet, which was taken on file as P.R.C.No.7 of 2009 on the file of the II Additional Judicial Magistrate of First Class, Khammam, which on committal came to be numbered as S.C.No.368 of 2009.

5) After complying with the provisions under Section 207 Cr.P.C., charges under Sections 302, 379 and 201 read with 34 IPC

were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

6) In support of their case, the prosecution examined PWs. 1 to 25 and got marked Exs.P1 to P22 and M.Os.1 to 6. 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 their behalf, in support of their defence.

7) Out of 25 witnesses examined by the prosecution, PWs.6 to 9, 13, 17 to 19 and 22 did not support of case of prosecution and were treated as hostile by the prosecution. Taking into consideration the circumstances relied upon by the prosecution to connect accused No.1 with the crime, the learned Sessions Judge convicted accused No.1 for the above mentioned charges and acquitted accused No.2. Challenging the same, the present appeal came to be filed.

8) Learned counsel for the appellant would submit that the circumstances relied upon by the prosecution do not form chain of events so as to connect the accused with the crime. According to him, there are only two circumstances which are sought to be relied upon by the prosecution namely last seen by PWs.7 and 8 and the recovery of dead body, motor cycle and the gold ornaments belonging to the deceased pursuant to the confession made by accused No.1. It is urged that these circumstances relied

upon are not supported by any legal evidence and as such the same cannot be made the basis to convict the accused. She further submits that PW.7 was not a stranger to the deceased and he was also working as helper in electricity department on contract basis. Though the deceased was known to him, he states that he saw that the deceased going along with a stranger on that day. It is pleaded that though the deceased was known to him, failure to identify him creates any amount of doubt of he witnessing accused and deceased together prior to the incident.

9) On the other hand, learned Public Prosecutor opposed the same contending that recovery of dead body pursuant to the confession of accused No.1 alone is sufficient to convict him. He submits that even if the theory of last seen is to be rejected, still recovery of dead body and the ornaments of the deceased is sufficient to connect accused No.1 with the crime. Hence pleads that the conviction and sentence awarded by the Sessions Judge warrants no interference.

10) As seen from the record, the prosecution mainly relied upon two circumstances (1) the deceased being last seen in the company of accused No.1 by PWs.7 and 8 and (2) recovery of incriminating material more particularly the dead body, said articles and the motor cycle of the deceased, pursuant to the confession made by the accused.

11) In order to appreciate the two circumstances it would be appropriate to refer to the relevant portion of the evidence of PWs. 1,7,8 and other witnesses.

12) As stated earlier, the first circumstance being the theory of deceased being seen in the company of accused No.1 prior to the commission of offence. In support of the same, the prosecution pressed into service of the evidence of PWs.7 and 8. Both the witnesses did not support the prosecution case and were treated hostile by the prosecution. But the evidence of PW.7 with regard to seeing the deceased in the company of accused No.1, is as under:

“About two years back Ravinder was killed by somebody and buried his dead body. On 05.02.2008 at about 7 or 7.30 p.m. I have seen the deceased Ravinder going on motor cycle along with one person as his pillion rider, but I have not observed who is that person going along with Ravinder. Thereafter, I have not seen Ravinder. On 08.02.2008 the wife of Ravinder and others came and enquired about Ravinder and I informed them that on 05.02.2008 at about 7 or 7.30 p.m. I have seen Ravinder along with another person and thereafter I have not seen him. Then they went to police station stating his whereabouts not known. On 09.02.2008 at about 1.00 p.m. I came to know that Ravinder was killed by somebody and was buried in abandoned well near Adithya School.”

13) In the cross-examination, PW.7 denied the suggestion given by the prosecution with regard to informing the police in his earlier statement about seeing the deceased in the company of accused No.1. The omission made by PW.7 in his evidence before the Court

with regard to he seeing the deceased in the company of accused No.1 was neither marked nor was it elicited through the evidence of investigating officer. Therefore, a doubt arises as to whether really PW.7 has stated in his earlier statement recorded under Section 161 Cr.P.C. about he seeing the deceased and accused No.1 together on 05.02.2008 at about 7.30 p.m.

14) Coming to the evidence of PW.8, he deposed that on 05.02.2008 at about 7.30 p.m. he saw the deceased Ravinder going on his motor cycle along with accused No.1 and thereafter he has not seen the deceased. Two or three days thereafter, wife of the deceased (PW1) came and enquired about Ravinder. At that time he informed her, that he saw the deceased along with accused No.1 going on a motor cycle on 05.02.2008 at about 7.30 p.m. Thereafter, he was called to the police station, wherein he was asked to identify, whether the accused No.1 is the same person, who was going along with the deceased on 05.02.2008. In his evidence, he further deposed that when police interrogated accused No.1, he is alleged to have stated that on the date of incident accused No.1 along with deceased went upto Indira Nagar, where accused No.1 got down from the motor cycle and left, while the deceased went ahead on his motor cycle. On the next day, he along with others went to the scene of offence at Allipuram and in abandoned well they found the body of the deceased. At that time, the police came there along with accused No.1, where accused No.1 is alleged to have confessed to have killed the deceased in order to commit theft of the motor cycle and gold etc.

At that stage, this witness was treated hostile by the prosecution. In the cross-examination made by Public-Prosecutor, it was elicited that accused No.1 confessed that he, along with accused No.2 and his friends by name Khadar Baba and Hanumanthu, killed the deceased on 05.02.2008 and buried the dead body in a well situated in front of Aditya School. In the cross examination made by the learned counsel appearing for the Accused, it was elicited that two days after he has seen the deceased and accused No.1, he was called to the police station, wherein he identified accused No.1.

15) Keeping in view the above evidence of PW.8 it is to be seen whether really he could have seen the accused No.1 and the deceased together on 05.02.2008 at 7.30 p.m. In order to appreciate the same, it would be useful to refer to the evidence of PW.1.

16) The evidence of PW1 shows that on 07.02.2008, she came to know that her husband did not attend office since last two days and accordingly called her in-laws and enquired as to whether the deceased has come over to Paloncha. When they replied in negative, she along with her parents and in-laws came down to Khammam and enquired the neighbours about the missing of her husband. This was on 08.02.2008. Their enquiries revealed that they noticed that the deceased going with a stranger. Hence, the first information report came to be lodged against an un-known person.

17) Whereas the evidence of PW.8 shows that on 08.02.2008 the wife of the deceased enquired about the deceased and he is said to have told her about he seeing accused No.1 and deceased going together on 05.02.2008 at 7.30 p.m. If really that is true and if really he has informed the same to PW.1 on 08.02.2008, definitely the same would have figured in the first information report which was given by PW.1 on 08.02.2008 ie. after meeting PW.8. Therefore, a doubt arises as to whether really PW.8 is speaking the truth. Apart from that the evidence of PW.8 shows that on the next day which could be on 06.02.2008 or 08.02.2008 he was called to the police station and was asked to identify whether it was accused No.1, who was present in the police station, as the person, who accompanied the deceased. After identifying accused No.1, a confession was said to have been recorded in the presence of PW.8 wherein he claims to have stated that both of them went to Indira Nagar, where accused No.1 got down from motor cycle and deceased left on his own motor cycle. In the absence of any other evidence with regard to the theory of last seen, the two discrepancies pointed out may thrown any amount of doubt as to whether accused No.1 was really seen along with the deceased on 05.02.2008 at 7.30 p.m.

18) The prosecution also relied upon the recovery of the dead body of the deceased, gold ornaments, cell phone and the motor cycle belonging to the deceased, at the instance of the accused. Insofar as the gold ornaments are concerned, it is to be noted that none of the witnesses identified the gold ornaments, which are

marked as MOs.1 and 5, as that of the deceased. In fact, it was not even put to PW.1 to identify whether these articles belong to her deceased husband.

19) Coming to recovery of motor cycle from the house of Tene Rama Rao, it is to be seen that the said recovery cannot be called a recovery made under Section 27 of the Indian Evidence Act. As seen from the record, at the time when accused No.1 was first arrested on 07.02.2008, he never made any confession with regard to taking away of the motor cycle of the deceased and hiding it in the house of Tene Rama Rao. Four days after remand, the police took the accused No.1 into police custody, pursuant to the orders of the Court, and at that point of time he claims to have made a confession, which lead to recovery of motor cycle from Tene Rama Rao. The said Tene Rama Rao was neither made an accused nor was he shown as witness. None of the witnesses identified the motor cycle as that of the deceased and no documents are filed to establish the ownership of the vehicle.

20) Insofar as the second aspect, namely recovery of dead body at the instance of the accused, it is to be noted that the evidence on record does not anywhere indicate as to when the accused was arrested. The evidence of PWs.1 and 2 is silent on the said aspect. PW.23, the C.I. of Police deposed that on 09.02.2008 he took up investigation in this case, from PW.21 and interrogated the accused, wherein he is alleged to have confessed about the commission of offence. However, the evidence of PW.25 the Circle

Inspector of Police would show that after conducting inquest, he along with PW.20 and accused No.1 and other witnesses went to the scene of offence and thereafter the body was exhumed. PW.23 in his cross-examination admits as under:

“I did not record 161 Cr.P.C. statements of witnesses. I took up investigation on 09.02.2008 at about 12.00 noon. After I took up investigation I apprehended accused No.1. By that time I took up investigation accused No.1 was in II Town P.S., Khammam. To my knowledge on the same day accused No.1 was called to the II Town Police Station, Khammam, by PW.21. But I cannot say the exact time on that day. Accused No.1 alone was called to II Town Police Station, Khammam, on that day.”

21) From the answers elicited in the cross-examination of PW.23, it is clear that by the time he took up investigation on 09.02.2008 at 12.00 noon, accused No.1 was already in the custody of II Town Police Station, Khammam, as he was called to police station by PW.21. But, the evidence of PW.21 is silent on the said aspect. He never deposed about calling the accused to the police station, either on 09.02.2008 or prior to 09.02.2008. Therefore, a doubt arises as to when the accused No.1 was arrested and also as to when he made the confession leading to recovery of dead body. From the record and the admissions of PW.23, it appears that even prior to the arrest made by PW.23, accused No.1 was in the custody of II Town Police Station, Khammam. Therefore, the alleged confession made pursuant to the arrest and recovery thereon, cannot be accepted at its face value.

22) Though PWs.1 to 3 speak about the alleged confession made by accused No.1 and recovery made thereto, any amount of doubt would arise, having regard to the evidence of investigating officer more particularly the evidence of PWs.21, 23 and 25, with regard to the arrest and recovery.

23) In view of the above findings arrived at, we feel that the two circumstances referred to above do not inspire confidence to connect the accused No.1 with the crime.

24) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant in the judgment, dated 18.08.2010 in S.C.No.368 of 2009 on the file of the II Additional Sessions Judge (FTC), Khammam, for the offences punishable under Sections 302, 379 and 201 IPC are set aside. Consequently, the appellant/accused No.1 shall be set at liberty forthwith, if he is not required in any other case or crime.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

16.10.2017
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