

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRIMINAL APPEAL No.341 OF 2011

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

The sole accused in Sessions Case No.169 of 2009 on the file of the Special Sessions Judge for trial of cases under SCs and STs (POA) Act – cum- VII Additional District and Sessions Judge, Mahabubnagar, is the appellant herein. He was tried for the offence punishable under Section 302 IPC for causing the death of one Degavath Bujji Bai (hereinafter referred to 'the deceased') by forcibly drowning her in a water check dam, which is called as Yellamma Wadka. He was also tried for an offence punishable under Section 379 IPC, for theft of gold pusthe and silver ornaments worth of Rs.12,000/- from the body of the deceased. Vide judgment dated 03.11.2010, learned Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer Rigorous Imprisonment for LIFE and also convicted the accused for the offence punishable under Section 379 IPC and sentenced him to suffer Rigorous Imprisonment for a period of two (02) years. Both the sentences were directed to be run concurrently.

2. The case of the prosecution as unfolded from the evidence is as under:

PW.1 is the husband of the deceased. According to him, on 24.09.2008 at about 10:00 A.M., he went to the agricultural field, whereas his wife (deceased) went to Yellamma Wadka to wash clothes. During mid-day, his son by name Shankar, came and informed him that the

deceased was missing from Yellamma Wadka and that only clothes were available. On hearing the same, PW.1 went to the spot along with PWs.2 and 3 and his son and noticed the clothes of the deceased and also a pair of her chappal. Apart from that, they also noticed a pair of chappal belonging to a male person, one lungi and a bed sheet. Suspecting that the accused might have committed some offence, they went to the house of PW.4, who is a relative of the accused, and enquired about the accused. Thereafter, PW.1 along with PW.4 came to the spot, wherein PW.4 identified the chapapals and Lungi as that of the accused. Pursuant to the search made in the area, they found the dead body of the deceased, at a distance of 200 yards from the said place, which was facing downwards. PWs.2 and 3 removed the body from the water channel and found both the legs of the deceased tied with the chunni. PW.1 also noticed missing of gold pusthe, silver anklets and also mettelu from the body of the deceased. Immediately, i.e., on 24.09.2008 at about 7:00 P.M., PW.1 lodged a report with PW.8, Sub-Inspector of Police, which came to be registered as Crime No.54 of 2008 under Section 174 Cr.P.C. Ex.P.10 is the First Information Report, which was sent to Mandal Revenue Officer after registering the crime. PW.8 examined PW.1 and recorded his statement. On the next day, he visited the scene of offence and recorded the statements of PWs.2 to 4 and LW.4 J.Chander. He prepared an observation report of the scene of offence in the presence of PW.5 and another, which is marked as Ex.P.2. He has also prepared a rough sketch at the scene, which was brought on record as Ex.P.3. At the scene of offence, PW.8 seized M.Os.1 to 3. With the help of LWs.6 and 7, PW.8 conducted inquest over the dead body at the scene itself. Ex.P.4 is the Inquest Panchanama. Later, the body was sent to Government Civil

Hospital, Kodangal for post mortem examination. PW.6, the Civil Assistant Surgeon, Kodangal, conducted autopsy over the body of the deceased at 2:45 P.M. Ex.P.5 is the Post Mortem Examination Report. According to the doctor, there are no external injuries, but however, the internal organs were congested. The viscera, which was preserved, was sent to forensic lab. Ex.P.6 is the Forensic Science Laboratory (FSL) report, wherein it was stated that cause of death was due to drowning. On 09.10.2008 PW.8 received information that the Circle Inspector of Police, Mahabubnagar, arrested the accused in another crime and on the basis of confession made by him in that crime, PW.8 filed a memo altering the section of law from 174 Cr.P.C., to 302 and 379 IPC. Ex.P.11 is the altered First Information Report. PW.8 produced the accused on P.T. Warrant and after taking permission of the Court, took him into police custody. On interrogation of the accused in the presence of PW.7 and LW.9, he is alleged to have confessed about the commission of the offence in the present case. Pursuant thereto, the accused is alleged to have lead them to the shop of one Anand Jewellery, from where, M.Os.4 to 7 were recovered at the instance of the accused. Ex.P.8 is the confessional panchanama and Ex.P.9 is the recovery panchanama. After completing the investigation, a charge sheet came to be filed by the Circle Inspector of Police, Kodangal, who was examined as PW.10.

3. The Judicial Magistrate of First Class at Kodangal, took case on file as P.R.C.No.11 of 2009 for the offences punishable under Sections 302 and 379 IPC. On committal, the same came to be numbered as S.C.No.169 of 2009. On production of the accused from jail, all the necessary documents, which are relied upon by the prosecution, were furnished to the accused, as required under Section 207 Cr.P.C.

4. On consideration of material placed on record, charges under Sections 302 and 379 IPC were framed against the accused, which were read over and explained to him, to which he pleaded not guilty and claimed to be tried.

5. In support of its case, prosecution examined PWs.1 to 10 and got marked Exs.P.1 to P.13 and M.Os.1 to 7.

6. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., explaining the incriminating material which appeared against him in the evidence of prosecution witnesses, which was denied by him. No oral and documentary evidence was adduced by the accused in support of his plea.

7. After considering the material available on record, the trial Court recorded the conviction as stated above.

8. As seen from the record, there are no eye witnesses to the incident and the case is based only on the circumstantial evidence. The first circumstance relied upon by the prosecution was that on the date of incident, at about 10:30 A.M., PW.3 saw the deceased going towards Yellamma Wadka and thereafter at about 11:00 A.M., he claims to have seen the accused also going towards Yellamma Wadka.

9. The second circumstance relied upon by the prosecution is recovery of Mos.1 to 3 i.e., chappals, lungi and bed-sheet belonging to the accused from the scene, which were identified by PW.4.

10. The third circumstance relied upon by the prosecution is the alleged recovery of M.Os.4 to 7 belonging to the deceased from the shop of pawn broker.

11. Learned counsel for the appellant mainly submits that the circumstances 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 merely because PW.3 saw the accused going towards the Yellamma Wadka, does not by itself establish the commission of offence by the accused. It is further pleaded that recovery of M.Os.1 to 3 from the scene of offence, does not in any way prove that the accused was responsible for the death of the deceased, more so, in the absence of any external injuries on the body of the deceased and without any proof of recovery of M.Os.4 to 7.

12. Insofar as the recovery of M.Os.4 to 7 from the pawn broker is concerned, learned counsel for the appellant submits that there is any amount of doubt as to the recovery of articles since the pawn broker before whom the accused is alleged to have pledged the ornaments, is not examined.

13. Learned Public Prosecutor opposed the same contending that circumstances relied upon do form a chain of events and in the absence of any explanation given by the accused with regard to the presence of M.Os.1 to 3 at the scene, an inference could be drawn that the accused alone is responsible for the incident. He also placed reliance on the evidence of PW.3 to show that the accused also went towards the said water channel, where the dead body was found.

14. In order to appreciate the rival contentions, it would be useful to refer to the relevant portions in the evidence of PWs.1 to 3, 8 and 10.

15. Insofar as the theory of last seen, as projected by the prosecution, it is to be noted that there is no evidence adduced by the prosecution to show that accused and the deceased together proceeded towards Wadka. PW.3 was examined to speak the said circumstance. In his evidence, PW.3 stated that at about 10:30 A.M., he saw the deceased going towards Yellamma Wadka for washing the clothes and at about 11:00 A.M., he saw the accused going towards Yellamma Wadka for washing clothes. Therefore, the story of the prosecution that both of them were last seen together cannot be accepted. That being the position, the argument of learned Public Prosecutor that both of them were seen together just prior to the recovery of the dead body, which happened at 3:00 P.M., cannot be accepted, more so, when the clothes and the dead body were not at the same place.

16. If the theory of last seen goes, then, the other circumstance, which is strenuously relied upon by the prosecution is the recovery of M.Os.1 to 3 from the scene of offence and also recovery of M.Os.4 to 7 from the shop of pawn broker.

17. Insofar as the recovery of M.Os. 1 to 3 from the scene of offence is concerned, the prosecution pressed into service the evidence of PW.4, who is said to be the relative of the accused. In his evidence PW.4 deposed that a day prior to the date of incident, the deceased came to his house, had dinner and slept and on the next day morning, he woke up, took food and left the house by saying that he is going to Ibrahimpur Village. He further deposed that the accused left the house at about

11:00 A.M., along with lungi and bed sheet. According to him, at about 3:00 P.M., PWs.1 to 3 came to his house and enquired about the accused. They informed him that they found the chappals, lungi and bed-sheet at the scene and wanted PW.4 to identify the same. PW.4 is said to have identified these articles, as that of the accused. It is to be noted here that merely because these articles were found at the scene, the same by itself does not incriminate the accused with the commission of offence in the absence of any other evidence to show that accused and deceased were seen together. Apart from that, PW.4 in his cross-examination admits that he was detained for a period of three (03) days in the police station along with his children for tracing the accused. No explanation is coming forth from the prosecution as to why PW.4 was detained in the police station for tracing the accused. This circumstance throws any amount of doubt on the evidence of PW.4. Apart from that, it is also to be noted that the evidence of PW.3 throws any amount of doubt about the involvement of the accused and also the recovery of the articles. PW.3 in his cross-examination admits as under:

“I have not seen anybody near Yellamma wadka at about 2.00 p.m. when I took lunch. I also did not notice any clothes at Yellamma wadka. I came to know for the first time through PW.1 regarding missing of Bujji Bai. Then myself, PW.1 and PW.2 went to Yellamma wadka. After observing at Yellamma wadka we rushed to the house of LW.5 Dappu Shankar.”

18. The evidence on record also discloses that the articles similar to M.Os.1 to 3 are available in the market. From the circumstances stated above, it can be said that the articles recovered from the scene, even assuming to be that of accused, do not connect him with the commission of offence.

19. The third circumstance relied upon by the prosecution is the recovery of gold ornaments i.e., M.Os.4 to 7 from the shop of a pawn broker. Strangely, the prosecution failed to examine the person from whom these articles were recovered. Further the prosecution failed to examine any of the panch witnesses, while effecting recovery of the gold articles from the shop of the pawn broker. No panchanama was prepared while effecting recovery of gold articles from the shop of pawn broker. It is also to be noticed that the articles, which were recovered from the shop, were found to be new ones, which is evident from the evidence of PW.1 and PW.7. It would be useful to extract the relevant portion of the admission made, which is as under:

“MO-4 to 7 are looking as new ornaments.

M.Os.4 to 7 slightly looks to be new ones. The shop owners used to keep the articles purchased from the shop in the cover of their shop for the purpose of publicity.”

20. Apart from these circumstances, it is to be seen as per the evidence of PW.8, the accused led them to the pawn broker shop namely Anjaneya Jewellery shop and from there, they claim to have recovered M.Os.4 to 7. But PW.10 gave a contrary version stating that the accused took them to the gold jewellery shop by name Krishna Sai Jewellery shop at Pawn Chowrastha, from where, the alleged recovery is said to have been made. In view of the said inconsistency also, any amount of doubt would arise with regard to alleged recovery of M.Os.4 to 7, at the instance of the accused.

21. From the aforesaid reasons, we feel that the prosecution failed to connect the accused with the crime. Accordingly, we acquit the accused, by extending the benefit of doubt.

22. In the result, the Criminal Appeal is allowed. The conviction and sentences recorded against the appellant/accused in the judgment, dated 03.11.2010, in Sessions Case No.169 of 2009, on the file of the learned Sessions Judge for trial of cases under SCs and STs (POA) Act – cum- VII Additional District and Sessions Judge, Mahabubnagar, for the offences punishable under Sections 302 and 379 I.P.C., are set aside. 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, pending in this appeal shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE A.V. SESA SAI

Date:23.09.2017
INL