

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL Nos.1352 of 2011 and 313 of 2012

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

1) Both these appeals are filed against the judgment dated 21.11.2011, passed in S.C.No.445 of 2010 on the file of the VI Additional District and Sessions Judge (FTC), Guntur. Criminal Appeal No.1352 of 2011 is filed by accused No.1 while Criminal Appeal No.313 of 2012 is filed by accused No.2.

2) The appellants/ A1 and A2 were tried for the offences punishable under Sections 302, 379, 201 read with Section 34 of IPC for causing the death of one Kojja Uma Maheswari (hereinafter referred to as "the deceased") and committing theft of her gold and silver ornaments, and also screening the evidence.

3) Vide judgment dated 21.11.2011, the VI Additional District and Sessions Judge (FTC), Guntur, convicted A1 and A2 and sentenced them to suffer 'imprisonment for life' and to pay fine of Rs.1000/- each in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 302 read with 34 IPC. They were further sentenced to undergo rigorous imprisonment for two years each and to pay fine of Rs.500/- each in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 379 read with 34 IPC. They were also sentenced to undergo rigorous

imprisonment for two years each and to pay fine of Rs.500/- each in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 201 read with 34 IPC. All the substantive sentences were directed to run concurrently.

4) The facts as culled out from the evidence of prosecution witnesses is as under:

i) PW.3 is the wife of PW.4 and the deceased is their daughter. PW.5 is the son of PW.3. The deceased was given in marriage to one Kojja Tatarao and out of wedlock she begot two children. Two years prior to the date of her death, she came to the house of PWs.3 and 4. It is the evidence of PWs.3 to 5 that the deceased lived there for one year and due to quarrel she left the house and thereafter, her whereabouts were not known. On 05.04.2009, it was discussed in the village that a dead body was lying near Garikapadu tank. As such PW.1 went there and found the dead body with injuries on the right temporal region and the corpse was partly burnt. PW.1 also noticed three mud bangles on the right hand and two mud bangles on the left hand apart from two toe rings, one to the right leg and another to the left leg. PW.1 prepared Ex.P1 report and sent the same to police through PW.2. Basing on the report, PW.16-the Sub-Inspector of Police registered a case in Crime No.46 of 2009 of Tadikonda Police Station. Ex.P16 is the first information report. He was instructed by Deputy Superintendent of Police to investigate into the crime as

the Inspector of Amaravathi Circle was on leave. Accordingly, he proceeded to the scene of offence, prepared a panchanama of the scene which is placed on record as Ex.P13. During the preparation of observation report, he seized Mbs.8, 9, 11 to 15. He also got photographed the scene, apart from preparing a rough sketch of the scene of offence. Ex.P15 is the rough sketch of the scene. He then conducted inquest over the dead body of the deceased in the presence of PW.14 and others. Ex.P18 is the inquest report. Thereafter, the body was forwarded to Government Hospital, Guntur, for postmortem examination.

ii) One Dr.S.V.Danial, who worked as Assistant Professor in Forensic Department, Government General Hospital, Guntur, conducted autopsy over the dead body between 9.00 a.m. and 10.00 a.m. on 08.04.2009 and issued Ex.P12-the postmortem certificate. As he is dead, his signature came to be identified by PW.13, who was working as the Assistant Professor working in the Government Hospital, Guntur. According to him, the cause of death was “due to head injury” and the approximate time of death was 3 to 4 days prior to the postmortem examination. Since nobody claimed the body, PW.16 instructed the Health Inspector, Municipal Corporation, Guntur, to cremate the corpse.

iii) While things stood thus, one Duddavarapu Elia came to the police station on 06.07.2009 and lodged a report. Pursuant to which, PW.15-the Inspector of Police, altered the section of law from girl missing to Sections 302, 379 and 201 read with 34 IPC. On

21.07.2009, he arrested the accused at Tadepalli Police Station. On interrogation they confessed about the commission of offence and they also confessed about the theft of the gold ornaments of the deceased. Pursuant to the confession, the accused lead the police to Sri Sai Durga Pawn Broker shop at Chittinagar. PW.7 handed over the gold ring which was pledged by the accused. PW.15 seized the said gold ring. From there, the accused lead them to the shop of one Fazamal, Pawn Broker, where the said pawn broker stated that accused Nos.1 and 2 pledged one gold chain (nanuthadu) through one Tadikonda Babu Rao and Bellamkonda Kumari. PW.15 seized the said gold chain. The accused further confessed that they pledged anklets at Guntur. Police seized the anklets from Rahul Jewellery Shop, Jain Temple Street, Guntur. Thereafter, he handed over the record to Tadikonda Police in Crime No.46 of 2009.

iv) On receipt of the record from Vijayawada II Town Police Station, PW.16 filed an application for issuance of personal transit warrant (P.T.Warrant). Pursuant thereto, the accused were produced before the Magistrate on 12.08.2009. After collecting all the material, PW.17 filed a charge sheet before the Court of the I Additional Judicial Magistrate of First Class, Mangalagiri, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.445 of 2010.

5) On appearance, charges under Section 302, 379 and 201 read with 34 IPC were framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

6) To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P18 and MOs.1 to 15. 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 behalf of the accused.

7) After considering the oral and documentary evidence on record, the learned Sessions Judge convicted the accused for the offences under Sections 302, 379 and 201 read with 34 IPC, as stated supra. Challenging the same, the present appeals came to be filed.

8) Learned counsel for the appellants in both the appeals would submit that there is absolutely no material to connect the accused with the crime. According to them, the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. It is their case that there is no material to show that it was these appellants who were responsible for the death of the deceased. On the other hand, the deceased left the house long back and her whereabouts are not known as she was leading wayward life. With regard to pledging of

the gold ornaments, it is urged that the evidence of the pawn brokers nowhere indicate that the accused themselves pledged the gold ornaments.

9) On the other hand, the learned Public Prosecutor would submit that in the absence of any cross-examination by the accused with regard to the alleged seizure and recovery of gold ornaments, which were identified by PWs.3 and 4, who are parents of the deceased, the conviction imposed by the trial Court warrants no interference.

10) As seen from the record, there are no eye witnesses to the incident and the case rests on the circumstantial evidence. Admittedly, both the accused are husband and wife. The evidence of PWs.3 to 5, who are the parents and brother of the deceased, show that after marrying the deceased with one Kojja Tatarao, she lived happily for some time and left him two years prior to the date of her death. For one year, she lived with them and about a year prior to her death, she left her parents also. Thereafter, her whereabouts were not known till her body was traced on 05.04.2009 near Garikapadu Tank. The evidence of PW.2 would show that on 05.04.2009, he noticed a body near the water tank of the village. Immediately he informed about the same to PW.1, who inturn went to the scene and noticed the body. Hence, lodged a report, setting the law into motion.

11) The main witnesses who are pressed into service by the prosecution are PWs.7 to 9, to prove that the accused after

committing the murder of the deceased, took away the gold ornaments and pledged the same with pawn brokers (PWs.7 to 9).

12) Insofar as the incident of murder is concerned, there is no iota of evidence to speak as to how the deceased died and also as to how the dead body came near the water tank. Basing on the recoveries made, the Public Prosecutor would contend that it was the accused alone, who were responsible for the death of the deceased as it was they, who pledged the gold ornaments of the deceased for monetary gain.

13) The question now would be whether pledging of gold ornaments with PWs.7 to 9, by the accused, if proved, would connect the accused with the crime.

14) In order to appreciate the same, it is to be noted here that the deceased left the company of her parents about a year prior to her death. Her whereabouts are not known since then. The evidence on record would show that the deceased was leading a wayward life.

15) Coming to the recovery made, PW.15 in his evidence deposed that on 21.07.2009, while himself along with his staff rushed to Tadepalli Railway Station, they found a man, woman and a girl trying to skulk away, on seeking them. They were apprehended them and interrogated separately. They claimed to have confessed about the commission of offence and assured to show as to where the gold ornaments are pledged. PWs.7 to 9 are the witnesses, before whom the ornaments were said to have been

pledged. It would be useful to refer to the evidence of these witnesses.

16) PW.7 in his evidence deposed that on 22.07.2009, the Inspector of Police came to his shop, accompanied by accused No.2 and her husband. He claims to have identified the female person as accused No.2. According to him, accused No.2 pledged the gold ring on 28.06.2009 and borrowed an amount of Rs.1500/- . M.O.3 is the gold ring said to have been pledged by her. Though he identifies accused No.2, as the person who came to his shop, but he could not remember the date. He also admits that he has no acquaintance with her prior to pledging of gold chain, but her house is situated near by his shop.

17) Similarly, PW.8 in his evidence deposed that on 22.07.2009 at about 10.00 a.m. the Inspector of Police accompanied by two other police personnel and four individuals came to his shop. Amongst them one person by name Baburao is a gold merchant, Bellamkonda Kumari and the other two were the accused. In his evidence he deposed that on 09.05.2009 Baburao and Bellamkonda Kumari, while pledging represented to him that the gold chain belonged to accused Nos.1 and 2. He identifies the persons, who are present in the Court Hall as the persons, who pledged the gold ornaments.

18) It is to be noted here that the gold ornaments which are pledged were by Babu Rao and Bellamkonda Kumari. Both of them were not examined by the prosecution, to prove that

ornaments pledged were given to them by the accused. No explanation is forthcoming from the prosecution as to why Babu rao and Bellamkonda Kumari were not examined. On the other hand, the evidence of PW.8 would show that Babu Rao and Bellamkonda Kumari pledged the gold chain and borrowed Rs.12,000/- . The relevant portion in his evidence is as under:

“Babu Rao and B.Kumari pledged one gold chain (Nanuthadu) weighing 15.900 mgs. and borrowed Rs.12,000/- and the wife and husband mentioned above on 09.05.2009.”

19) Coming to the evidence of PW.9, who is also one of the pawn broker-cum-gold merchant, he deposed that in the month of May, 2009, the Inspector of Police came to his shop along with accused No.2. Inspector of Police enquired whether accused No.2 pledged silver anklets with him. He affirmed it and showed the silver anklets to the Inspector of Police. In his cross-examination he admits that it was only accused No.2 came to the shop on that day and pledged the silver anklets for Rs.300/- .

20) It is to be noted here that the gold ornaments which are said to have been pledged by accused Nos.1 and 2 were identified by PWs.3 and 4, as that of the deceased. It is very difficult to believe that PWs.3 and 4 could have identified the property as that of the deceased for the reason that she left their company nearly a year prior to the date of incident and the said ornaments came to be recovered in the month of July, 2009. Neither PW.3 nor PW.4 nor PW.5 gave any special marks of

identification of the property. Though they were seized in the month of July, 2009, no test identification of the property was conducted and only for the first time in the year 2011 they claimed to have identified the property as that of the deceased. In the absence of any special identification marks, a doubt arises as to whether the said identification could be believed.

21) Coming to the pledging of articles, it is to be noted that even the same is believed, the same cannot connect the accused with the offence of murder. At the most it can only be said that they were in possession of some articles belonging to the deceased. Even the pledging of the articles before PWs.7 to 9, though spoken to by them creates some doubt in view of the evidence of PW.10, the V.R.O, who acted as panch witness. In his evidence, he admits in his cross-examination that the gold chain was pledged in the name of Kumari, known person to the accused. Though the slip contains the date, but he says that he does not remember the date. The witness adds that it must be 09.05.2009. The major item weighing 15.9 grams was pledged in the name of Kumari. Insofar as the recovery made from the shop near Jain Temple, he states that he does not know the name of the shop and also the name of the owner, but however says that silver anklets were seized from the said shop.

22) The evidence of PW.10, coupled with the evidence of PWs.7 to 9, creates any amount of doubt with regard to pledging of the gold ornaments by the accused. The identification of the said

articles by PWs.3 to 4, nearly three years after the deceased left their company, creates a doubt whether these articles belonged to the deceased. None of the family members in their evidence in chief described the particulars or specific features of the ornaments which the deceased were worn at the time she left their company.

23) Having regard to the circumstances stated above and in the absence of any cogent and convincing evidence, we are inclined to acquit the accused, by extending the benefit of doubt.

24) In the result, the Criminal Appeals are allowed. The conviction and sentence recorded against the appellants/ accused in the judgment, dated 21.11.2011 in S.C.No.445 of 2010 on the file of the VI Additional District and Sessions Judge (FTC), Guntur, for the offences punishable under Sections 302, 379 and 201 read with 34 IPC, are set aside. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime. Interim custody of Mos.1 to 7 made absolute.

25) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

04.12.2017
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