

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.985 of 2012

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

The sole accused in S.C.No.245 of 2012, on the file of the Sessions Judge, Anantapur, is the appellant. He was tried for two charges. The first charge was under Section 302 IPC, for causing the death of one Boya Garla Thammanna, by cutting his throat with a knife. The second charge was under Section 201 IPC, for screening the evidence. Vide judgment dated 17.08.2012, the learned Sessions Judge convicted the accused on both the counts and sentenced him to suffer imprisonment for life and pay fine of Rs.500/- in default to suffer rigorous imprisonment for two months under Section 302 IPC. He was further convicted for an offence punishable under Section 201 IPC and sentenced him for rigorous imprisonment for a period of three years and to pay fine of Rs.200/- with a default clause.

2. The facts as unveiled from the evidence of the prosecution witnesses are as under:

(i) PW1 is the wife of the deceased, while PW2 is the father of the deceased. PW5 is the wife of the accused and PW6 is the brother of the accused. The other material witnesses are residents of Pulakunta village of Gummagatta Mandal. On the date of incident i.e., on 28.10.2011, at about 07.00 p.m., the accused came to the house of PW1. At that time, the deceased was sleeping in the house. Without informing the purpose, the accused took the deceased away

from the house and thereafter the deceased did not return home for ten days. On 29.10.2011 i.e., on the next day, at about 07.00 a.m., PW15 the SI of Police, Gummagatta Police Station, while he was present in the police station, received a phone call about noticing a dead body near Pulakunta cross road. Immediately, he rushed to the spot along with his staff and found a male dead body lying near Pulakunta cross road. One Macha Devanna (PW6) identified the body as that of his brother Macha Thippeswamy(accused) of Gonabavi village. PW15 took PW6 to the police station and recorded his statement, which is placed on record as Ex.P11. Basing on the same, he registered a case in Crime No.35 of 2011, for the offences punishable under Sections 302 and 201 IPC. Ex.P12 is the copy of the express FIR. After receipt of a copy of FIR, at about 10.00 a.m., PW16 the CI of Police, Rayadurg, took up further investigation in the crime, which was registered against an unknown accused, showing the deceased as one Boya Macha Thippeswamy(accused). On the same day, he went to Pulakunta cross road, secured the presence of mediators and examined PWs.6 to 8. At about 11.30 a.m., he conducted inquest over the body, which was lying on the margin of Rayadurg-Gummagatta main road at Ayyappa Nagar near Pulakunta cross road. He found various injuries on the body and the face was in a burnt condition. He seized the wearing apparel from the body, which are marked as MOs.1, 3, 6 and 8. He also seized blood stained wooden beads chain from the right hand wrist of the deceased, which is marked as MO5. Thereafter, he prepared a rough sketch of the scene, which is placed on record as Ex.P13. During inquest, he

examined and recorded the statements of PWs.6 to 8, basing on which, he found that some known persons killed the deceased Theppaswamy, brought his dead body and threw it at Pulakunta cross road. Thereafter, the body was sent for post mortem examination. PW14, the Civil Assistant Surgeon (contract), Community Health Centre, Rayadurg, conducted autopsy over the dead body on 29.10.2011, between 04.00 p.m. and 06.30 p.m. and issued Ex.P10, the post mortem examination report. According to him, the cause of death was due to shock and hemorrhage due to multiple injuries. On 06.11.2011, while PW16 was in police station, PWs.5 to 8 and one Devamma came to his office along with one Boya Macha Thippeswamy, who is the suspected deceased in the crime and then showed as an accused. They informed him that out of mistake, they identified the dead body as that of the accused – Boya Macha Thippeswamy, whereas the body was not that of the accused. PW16 examined and recorded the statements of PW5 and re-examined PWs.6 to 8. In view of the revised statements of PWs.5 to 8, PW16 searched for the accused and also for the identification of the deceased in Gummagatta, Pulakunta and Gonabavi villages. His investigation revealed that the dead body was that of one Boya Gorla Thammanna and not Boya Macha Thippeswamy and that the suspected culprit is Boya Macha Thippeswamy. On 16.11.2011, at about 11.45 a.m., while PW11 Mandal Revenue Officer, Gummagatta, was present in the office, the accused approached him and confessed about the commission of offence. According to him, the accused confessed stating that he borrowed Rs.60,000/- from a contractor;

that he came to know that his wife and the contractor got illicit intimacy; on that he and his wife got separated; that his brother-in-law refused to send back his wife to him, hence he intended to kill his friend, who is the deceased and show to the world that he himself died, by changing the dress on the dead body and also escape from payment of debt to the contractor. The said statement was reduced into writing which is placed on record as Ex.P5. On the same day, at about 11.45 a.m., PW11 brought the accused along with the said written statement to the police station and produced him before PW16. Immediately, he arrested the accused and interrogated him in the presence of PWs.12 and 13. The accused is said to have confessed about the commission of the offence in the presence of PWs.12 and 13, and also shown them the place where he has exchanged his dress with that of the deceased; the place where he threw the dead body and concealed the crime weapon. Ex.P6 is the admissible portion of the confession. The evidence of PW16 would further show that at about 03.15 p.m., the accused took them to a place near Gonabavi tank and seized one smoking pipe (ganja pipe), blood stained earth and control earth, which are marked as MOs.11 and 12. MO.7 is the smoking pipe. At about 04.15 p.m., the accused took them to Bheemireddygarri Rangareddy field on the eastern side of Pulakunta gate, from where PW16 seized burnt shirt pieces (MO9), white polyester pancha pieces (MO8), burnt pieces of cotton underwear, two rows cotton waist thread under the cover of panchanama. MO13 is the burnt pieces of cotton underwear. MO14 is the waist thread. Ex.P8 is the panchanama. On the same day, at

about 05.15 p.m. Later, Rayadurg police came to the house of PW1 and took her to the police station, where they showed her a photograph. Basing on the dress and also the smoking pipe, PW1 identified the dead body as that of the deceased.

(ii) On completion of investigation, PW 17 filed a charge sheet, which was taken on the file as PRC No.3 of 2012, on the file of Judicial Magistrate of First Class, Rayadurg. On committal to the Court of Sessions Judge, Anantapur, the same came to be numbered as S.C.No.245 of 2012.

(iii) On appearance, charges under Sections 302 and 201 IPC were framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

(iv) In support of its case, the prosecution examined PWs.1 to 16 and got marked Exs.P-1 to P-17 and M.Os.1 to 14. Out of 16 witnesses examined by the prosecution, PWs.6, 7 and 12 did not support the prosecution case and were treated hostile. No oral or documentary evidence is let in on behalf of the defence.

(v) After closure of prosecution 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.

(vi) Basing on the circumstances relied upon by the prosecution to prove the guilt of the accused, more particularly, the theory of last seen, identification of the clothes of the deceased and also the extra

judicial confession made before PW11, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed through legal aid counsel.

3. Sri B.Parameswara Rao, learned counsel for the appellant, would submit that though there are eye witnesses to the incident and the case rests on circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events, so as to connect the accused with the crime. He submits that initially, the prosecution proceeded on the footing, as if the accused was the deceased in this case. When the suspected deceased surfaced, he was shown as an accused and thereafter the petitioner has been implicated in the case. Since the circumstances relied upon are not proved beyond reasonable doubt, he would submit that conviction cannot be sustained.

4. On the other hand, learned public prosecutor would submit that the circumstances relied upon by the prosecution do form a chain of events, more particularly, with regard to deceased being last seen in the company of the accused; the extra judicial confession made before PW11 and the recovery of articles, pursuant to the confession made by the accused. In view of the same, he would submit that the order under challenge warrants no interference by this Court.

5. The point that arises for consideration is whether the prosecution was able to prove the guilt of the accused, beyond reasonable doubt?

6. As stated earlier, there are no eye witnesses to the incident and the case rests on circumstantial evidence. It is now to be seen whether the circumstances relied upon by the prosecution are established by legal evidence and if so whether they form a chain of events connecting the accused with the crime.

7. As seen from the record, the evidence of PW1 would show that on 28.10.2011, at about 07.00 p.m., the accused took the deceased from his house, without any purpose. Thereafter, neither the accused nor the deceased returned to the village. The evidence of PWs.1 and 2 would further disclose that they searched for the deceased for a period of ten days, but he did not return. However, the evidence of PWs.5 and 6 would show that on the next day i.e., 29.10.2011, they found the body near a cross road and basing on the clothes and articles found on the body, it was identified to be as that of the accused. Hence, a report was lodged by PW6, which lead to registration of a crime, wherein the accused herein was shown as the deceased. The said fact is not in dispute.

8. A perusal of the FIR, which came to be registered by PW15, amply establishes that a crime was registered against an unknown person, showing the accused herein as deceased in the case. Neither PW1, nor PW2 gave any report about the missing of the deceased. About 15 to 20 days later, the alleged deceased in the said case surfaced. Then immediately, PWs.5, 6 and 7 (hostile witnesses) are alleged to have gone to the police station and informed about the mistaken identity in identifying the body. Hence, PW16 recorded the

statements of the witnesses showing one Boya Gorla Thammanna as the deceased in the crime, instead of Boya Macha Thippeswamy. Thereafter, he started investigating the crime on those lines. On 16.11.2011, the extra judicial confession was said to have been made by the accused before PW11, confessing about his guilt in the commission of the offence, basing on which the accused was arrested. These are all the undisputed facts in the crime.

9. Now, it is to be seen whether the circumstance of last seen together and the extra judicial confessions coupled with the recoveries made, would establish the guilt of the accused in the commission of the offences?

10. The fact that the death was homicidal death is not in dispute. PW14, the doctor, who conducted post mortem examination, deposes to that effect.

11. The circumstances which are pressed into service by the prosecution to establish the guilt of the accused are:

(a) The theory of last seen;

(b) Extra judicial confession (Ex.P5), made before PW11 and the recovery made pursuant to the confession of the accused.

12. (a) The theory of last seen:

PW1 in her evidence deposed as under:

“On the date of incident, the accused came to our house at about 07.00 p.m. My husband was sleeping in the house. Without informing the purpose, the accused

took my husband away from the house. My husband did not return home for about 10 days. Later, Rayadurg police came to our house and took me to the police station.....”

PW2 in his evidence deposed as under:

“ On the date of incident, at about 07.00 p.m., the accused came to our house and took away the deceased without revealing the purpose. As the deceased did not return home, we searched for him for about one month. In the meanwhile, we came to know that a murder took place near Pulakunta bus stand. There was rumor that my son/deceased killed the accused. On the basis of that rumor, police apprehended my other two sons and kept in lockup for 8 days.

Later, the accused came and appeared before the police and my sons were released. Then, it came to light that the accused killed my son and burnt the dead body. Later, Rayadurg Inspector showed photos, burnt clothes, weapons and other material. We identified some of the articles as that of my deceased son. PW1 and my two other daughters-in-law also came to the police station for identification and they identified the articles as that of my deceased son. We suspect the accused as the culprit of the murder”.

13. The evidence of these two witnesses show that on 28.10.2011, at about 07.00 p.m., the accused came and took the deceased. Thereafter, neither of them was available in the village, for a period to ten to fifteen days. PW3 was another person, who was examined by the prosecution to speak in respect of the accused being last seen in the company of the deceased. His evidence is to the effect that a day prior to his death, between 03.30 p.m. and 04.00 p.m., the

deceased along with a stranger came to his shop and purchased one quarter bottle of cheap liquor by paying Rs.46/ -. However, he failed to identify the person, who accompanied the deceased, as that of the accused. Similarly, PW4, who was also examined to speak to the said circumstance, stated that the deceased came to purchase beedies between 04.00 and 05.00 p.m. According to him, the deceased alone came to the shop.

14. Therefore, the evidence of PWs.3 and 4, which is sought to be used by the prosecution, to prove the theory of last seen, may not be of any help to the prosecution. Even if the evidence of PWs.1 and 2 is taken into consideration, their evidence in chief is to the effect that on the date of incident at about 07.00 p.m., the accused and the deceased both left together. There is no evidence on record as to what happened thereafter. On the other hand, the case of the accused is that both of them never went together on 28.10.2011. The post mortem doctor, who was examined to speak to the death of the deceased does not anywhere say the period during which death occurred. His evidence is silent on that aspect. After referring to the injuries on the body and also injuries caused to internal organs, he only states that the said injuries on the body, could be possible by MO10. Neither the evidence of PW14, nor the post mortem certificate, Ex.P10 issued by him, does not anywhere indicates the time during which the death must have occurred.

15. At this stage, it would be useful to extract relevant admissions in the evidence of PW1, which are as under:

“Till the police showing the photograph in the police station, we were thinking that the dead body belongs to the accused. We have not gone to the police station voluntarily to complain that my husband was in the company of the accused and that the whereabouts of my husband were not known. We did not complain to villagers also about disappearance of my husband and that my husband went along with the accused. Only in the police station, I stated for the first time that the accused and my husband together left the house.

I cannot say specific identification marks on the dress of my husband. As the police showed, I identified them a that of my husband. I do not know what dress was worn by the accused on the date of incident. I saw MO.4 and 5 for the first time in the police station as police showed them to me.....

In the photo, face of the dead body was found in complete burnt condition. I saw clothes and also smoking pipe in the photograph with the help of which, I identified my husband”.

16. From the admissions made by PW1, it is clear that though her husband was missing since ten days, no effort was made by any one of them to lodge a report in the police station. They did not even complain to the villagers about disappearance of deceased and never informed anybody about the accused and the deceased leaving the house at 07.00 p.m. For the first time in the police station, it was informed, that the accused and the deceased together left the house.

17. Therefore, from the above, it is clear that only after the accused, who was initially suspected as deceased, surfaced after ten days, they went to the police station and then it was disclosed about the accused and the deceased leaving the house on 28.10.2011 at

07.00 p.m. No explanation is forthcoming as to why PWs.1 and 2 kept quite without informing anybody about the accused and the deceased leaving the house together on that day. Therefore, in the absence of any timing by the post mortem doctor, the evidence of PWs.1 and 2 deposing about the accused and deceased leaving the house at 07.00 p.m. may not be, an incriminating circumstance pointing out the guilt of the accused.

18. (b) Extra judicial confession Ex.P5, made before PW11 and the recovery made pursuant to the confession of the accused:

It is also to be noted here that identity of the deceased is not in dispute. PWs.1 and 2 both of them in their cross examination admitted that they were able to identify the body as that of the deceased basing on the clothes and smoking pipe shown in the photograph. PW2, infact, categorically admits that the face was not identifiable in the photo shown by the police. PW1 in her cross examination further admits that she cannot speak about any specific identification marks on the dress of her husband. Since the police showed them, she identified it as that of her husband. She also says that she does not know what dress, the accused was wearing on that day. She further admits that she saw MOs.4 and 5 for the first time, when the police showed them. From the admissions made by PW1 with regard to the clothes and the ornaments worn by the deceased on the date of incident, a doubt arises as to whether really the clothes which were said to have been recovered pursuant to the

confession made by the accused on 16.11.2011, i.e., nearly 18 days after the incident, can be believed. Though some of the clothes were stained with blood, there is no evidence to show that blood found on the clothes was either that of the accused or of the deceased. Since the face of the body was totally damaged beyond recognition, we feel that identification basing on the clothes and smoking pipe cannot be made the basis.

19. Another fact which is to be noted, at this stage, is evidence of PW12, who acted as panch witness for the alleged recovery, did not support the prosecution case and he was treated hostile.

20. Before dealing with the extra-judicial confession made before PW11, it would be appropriate to extract the evidence of PW11, which reads as under:

“On 16.11.2011 at about 09.00 a.m., I was present in MRO Office, Gummagatta. Then, a person by name Boya Macha Thippeswamy approached me and made confession about a murder. He is the accused. He confessed that he murdered one Boya Gorla Thammanna of Gonabavi village, that police were searching for him and that he intended to surrender to the police and requested me to assist him. The accused confessed that he borrowed Rs.60,000/- from a contractor, that he came to know that his wife and the contractor got illicit intimacy, that his wife and he got separated, that his brother-in-law refused to send back his wife to him (accused), that he intended to kill his friend who is the deceased and show to the world that (he) died by changing the dress to the dead body and that in that manner, he can escape discharging the debt to the contractor Ramanjineyulu (PW9) and hence, he has

committed the murder. I recorded his statement and obtained his signature. It is Ex.P5.”

21. After reducing the statement of the accused into writing, PW11, produced the accused before PW16, who arrested the accused and recorded his confession. In the said confession, the accused is said to have confessed about the commission of the offence, but strangely, the person, in whose presence the said confession was recorded, namely the attender Babu, in the office of MRO, his signature was not taken. Things would have been different, had the signature of the attender was taken as a witness, for more than one reason. Firstly, PW16 the investigating officer in his cross examination admits that the pattern of writing of Exs.P5 and P6 i.e. recorded statement (extra judicial confession) and confession statement before PW13, which lead to recovery are one and the same. Therefore, from the admission made by PW16, a doubt arises as to whether really the accused made any extra judicial confession before PW11 or whether the said confession was brought into existence at the instance of the police. If really two confessions were written at two different times by two different people, the pattern of writing cannot be the same. Apart from that, PW16, while referring to Ex.P5 and P6 states that mahazarnama were written by their constable. Hence, a doubt arises with regard to the accused making a confession before the police, nearly 18 days after the incident, that too before the MRO, whose office is situated at a distance of one kilometer from the police station. Further, the recording of confession at 08.30 a.m. in the office of MRO, also appears to be slightly suspicious, since no

Government office would be open before 09.30 a.m. and there are no specific reasons for the MRO to be present in the office by 08.30 a.m.

22. Having regard to the above circumstances, we feel that the circumstances relied upon by the prosecution are not established beyond reasonable doubt and hence conviction of the accused needs to be set aside by extending benefit of doubt.

23. Accordingly, in the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused by name Boya Macha Thippeswamy, in the judgment dated 17.08.2012, in Sessions Case No.245 of 2012, on the file of the District and Sessions Judge, Anantapur, for the offences punishable under Sections 302 and 201 of I.P.C., is set aside and he is acquitted for the said offences. Consequently, the appellant/ accused shall be set at liberty forthwith, if not required in any other case.

24. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

N. BALAYOGI, J

20.12.2017
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