

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE Mrs. JUSTICE T.RAJANI

CRIMINAL APPEAL No.450 of 2012

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

A1 to A5 in S.C.No.359 of 2009 on the file of Principal Sessions Judge, Nalgonda, were tried for the offences punishable under Section 302 read with Section 34 and 201 IPC, on an allegation that on the intervening night of 21/22.08.2008 at about 03.00 a.m. at Saigudem village, H/o.Alair limits, in furtherance of common intention, committed murder of one Manne Laxmaiah Babu, who is the paramour of A1, by cutting his throat with a knife. Vide its judgment dated 19.04.2012, learned Sessions Judge acquitted all the accused for the charges referred to above. Challenging the same, the present appeal came to be filed under Section 372 of Criminal Procedure Code.

2. The facts in issue are as under:

(i) A1 is the paramour of the deceased. A2 is the paramour of A1. A3 is the son of A1. PW1 is the younger brother of the deceased.

(ii) According to PW1, the deceased joined as a constable in Excise Department. He was working as Excise constable in Dhoolpet Excise Station. In the year 1998, the deceased brought A1 to their house and informed her that he wanted to marry her. PW1 objected the deceased for the said proposal, having regard to the age

of A1. It is stated that their enquiries about A1 revealed that she is having two children born through her husband and that she is an accused in a murder case. Accordingly, PW1 and others informed the deceased about A1, but without heeding their words, the deceased started living with A1 at Uppuguda, Charminar Mandal, Hyderabad. Thereafter, PW1 and his family members used to visit the house of the deceased frequently. The deceased informed PW1 that he purchased a house plot at Pedda Amberpet and got registered the same in the name of A1. He also purchased two Indica cars in the name of A1. On 10.06.2008, when the deceased came to the house of PW1, he came to know that A1 and the deceased had a quarrel with regard to illicit intimacy of A1 with one Bhasker (A2), who was also working as an Excise constable along with the deceased. On 21.08.2008, one Premdas Goud informed PW1 that his brother was murdered in Alair area. Then PW1 along with the family members went to the said place and found the dead body of the deceased, whose legs were tied with a saree and a cut injury was found on his throat. The body was also burnt with petrol. Immediately, thereafter, PW1 went to the police station and lodged a report before PW12, the SI of police. Ex.P1 is the report. Basing on the said report, a case in Crime No.114 of 2008, came to be registered for the offences punishable under Sections 302 and 201 IPC and issued FIR. Ex.P11 is the FIR, the copies of which were sent to the concerned officers and to the Court. Further investigation in this case was taken up by PW14. On receipt of information about registration of the crime, PW14 went to the scene

of offence, verified the investigation done by PW12 and in the presence of PWs.7 and 6, conducted panchanama of the scene and also prepared a rough sketch of the scene. Ex.P3 is the scene of offence panchanama. He seized MO1 – burnt pink colour Saree piece, MO3 burnt water bottle and MO2 chappal from the scene of offence in the presence of mediators. He also recorded the statements of PWs.2, 4 and others near the scene of offence and also conducted inquest over the body of the deceased. Ex.P5 is the inquest report. On 23.08.2008, PW14 examined and recorded the statement of PW3 at Hyderabad. On 25.08.2008, he examined and recorded the statement of PW5, who identified the saree piece as MO1. After conducting inquest, requisition was sent to PW11, who was working as Civil Assistant Surgeon at Area hospital, Bhongir, for conducting post mortem examination. Accordingly, at about 04.30 p.m., he conducted autopsy over the body of the deceased and issued Ex.P10 the post mortem examination report. According to him, the cause of death was due to hemorrhagic shock due to cut throat injury, but he failed to mention the percentage of burns on the dead body. He stated that the face of the deceased was totally disfigured. According to him, there are no identification marks on the dead body and somebody has furnished the name of the deceased. He stated that there was no rigor mortis on the dead body.

Thereafter, on 12.09.2008, on receiving credible information, PW14 along with the SI of police went to the house of A1 and found A1, A3 to A5 present there. He recorded the confessional

statements of the accused in the presence of PW9. On the basis of confession made by A1, PW14 seized one Tata Innova Car bearing No. AP09 BB 3200. During observation of the car, they found blood stains on the left side of driver's seat which was produced as MO12. Thereafter, the accused led them to the place where they threw the article used in the commission of offence. He also prepared a rough sketch of the scene which is marked as Ex.P8. Ex.P9 is the sketch map prepared at the house of A1. MOs.6, 7 and 8 namely knife, burnt seat cover pieces (3) and burnt cell phone with battery were seized from the scene. Thereafter, A4 produced a cover containing pant and shirt, which were marked as MOs.10 and 11. After collecting all the necessary documents, a charge sheet came to be filed which was taken on file as PRC No. 6 of 2009, on the file of Additional Judicial Magistrate of First Class, Bhongir.

(iii) On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal, the Additional Judicial Magistrate of First Class, Bhongir, numbered the case as S.C.No.359 of 2009. On the basis of the material on record, charges referred to above came to be framed, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

(iv) In support of his case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P15 and MOs.1 to 12.

(v) After the closure of evidence, the accused was 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 came to be adduced on behalf of the defence, except D1 – the relevant portion of 161 Cr.P.C. statement of PW13.

(vi) Since the circumstances relied upon by the prosecution namely hiring of the vehicle, recovery of blood stained knife at the instance of the accused, blood stains found in the car, next to the driver's seat, identification of the saree and the commission of offence by the accused are not proved beyond reasonable doubt, the trial Court acquitted the accused. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant would submit that the circumstances relied upon by the prosecution to prove the chain of events are complete and the same are sufficient to point out the guilt of the accused. It is stated that inspite of service of notice, there is no representation on behalf of the unofficial respondents.

4. In order to appreciate the argument of the learned counsel for the appellant, we intend to refer to the evidence of witnesses.

5. PW1 is the elder brother of the deceased and the informant who set the law into motion. According to him, the deceased started living with A1, inspite of PW1 objecting, on the ground that A1 is an accused in a murder case and already has two children through her husband. Later on, differences arose between the accused and A1, pursuant to which PW1 and his family members used to go to the

house of the deceased wherein he was informed that he purchased few properties in the name of A1. PW1 is not an eye witness to the incident and his evidence only speak about the deceased living with A1 and the deceased purchasing property in the name of A1. Thereafter disputes arose between them.

6. PW2, who is the watchman in Ranga Reddy eye hospital states that about two years back at about 05.00 a.m., when he was going to the hospital, he found flames near the hospital. Thereafter, he went to the hospital to discharge his duties. At about 08.00 a.m., when he went to attend calls of nature, PW2 noticed the burnt dead body. His evidence does not connect the accused with the crime, except noticing a burnt body at the scene.

7. PW3 did not support the prosecution case and was treated hostile.

8. PW4 is the resident of Mailar Devarpally and also the brother of the deceased. According to him, in the year 1998, the deceased brought A1 to his house and informed them that he was going to marry her, but they advised him not to marry A1, as she was having two sons through her first husband. On that the deceased quarreled with PW4 and left the house. According to him, the deceased started living with A1 at Upuguda, Chatrinaka for about two years. About two months prior to the date of the incident, he came to PW4 and informed that he wants to marry for the purpose of children. It is stated that since the deceased expressed his intention to marry, disputes arose between his brother and A1. The

evidence of PW4 does not disclose anything about the incident in question. He only deposed about the disputes that arose with his brother when the deceased expressed his intention to marry A1. Though PW4 was cross examined at length, nothing useful came to be elicited, except the time when they received the information and when they went to the scene of offence. His evidence, in our view, does not connect the accused with the crime, since the information received by him is only hearsay.

9. PW5 is the maid servant in the house of the accused. In her evidence, she deposed that one Bhasker (A2) was living with A1 in her house. She used to wash the clothes and sweep the floors in the house of A1. She deposed that she knew Babu Rao, who died. She came to know that said Babu Rao was murdered. She used to wash the clothes of Babu Rao. A1 informed her that the deceased Babu Rao was her husband. She stated that she does not know as to who killed the deceased. She was examined by the prosecution to identify the clothes which were washed by her in the house of A1. MO1 is the burnt pink colour saree piece, which was confronted to be identified.

10. PW6 is the owner of one Innova car, who gave the same to Sagar Traders on lease for the purpose of travel.

11. PW13 is the owner of S.R.Travels, who in his evidence deposed that in the year 2008, PW6 gave his Innova car bearing No.AP9 BB 3200 on lease. According to him, A5 was the driver of the said Innova car. He further deposed that on 21.08.2008, A3 and A5 took

the said car on rent, but later did not turn up and return the vehicle. On enquiry, he came to know that the said vehicle was in Alair police station. He came to know that the said vehicle was involved in a murder case. He does not know anything about the said murder case. PWs.7, 8 are the panch witnesses for seizure of articles at the scene and also for inquest. PW9 is the panch for arrest and recovery of MO6 – knife, at the instance of A1. In his evidence, he deposed about A3 bringing burnt seat cover pieces, burnt cell phone with battery from the bushes. MO7 are the burnt seat cover pieces, while MO8 is the burnt cell phone with battery.

12. Learned counsel for the appellant tried to contend that the circumstances of identifying saree and hiring of the vehicle establish the involvement of the accused in the crime.

13. Insofar as motive is concerned, there is no material to show existence of any disputes between A1 and the deceased. When the deceased informed PW4 about his intention to marry A1, the same was objected by PW4 stating that A1 was already having children with her first husband. But he never disclosed to PW4 the existence of differences or disputes between him and A1. The evidence of PW4 further gives an indication that as the deceased wanted to marry again, there were disputes between them. If the argument of the learned counsel for the appellant is to be accepted, namely that there was motive on the part of A1 and A2 to cause death of the deceased, as the deceased was planning to marry another lady, the same could have been reflected in the evidence of PW4. The evidence of PW4 is

silent to that effect. Therefore, the argument that there was sufficient motive for the accused to do away with the deceased, cannot be accepted, moreso, when the entire property and the car were purchased by the deceased in favour of A1.

14. Hence the first leg in the chain of circumstances i.e., motive remained unproved.

15. The other circumstance which is pressed into service by the prosecution to connect the accused with the crime is the recovery of saree (MO1) of A1 tied to the legs of the deceased, which came to be identified by PW5.

16. The evidence of the investigating officer-PW14 shows that on 25.08.2008, he examined PW5, who is said to have identified the saree piece MO1, said to have been seized at the time of inquest. The saree cloth piece which PW5 is said to have identified was tied to the legs of the deceased. In order to appreciate the said circumstance, it would be useful to refer to the evidence of PW5, who in her evidence categorically stated that she used to wash the clothes and sweep the floors in the house of A1. She also used to wash the clothes of Babu Rao – deceased. A1 informed her that the deceased was her husband. She claims to have identified the clothes which were washed by her in the house of A1. Basing on the above, she claims to have identified MO1, which is a pink coloured cloth piece, as that of A1.

17. In the cross examination, PW5 admits that she used to wash one saree of A1 and one dress of the deceased every day. Her evidence is as under:

“A1 may be having 100 or 200 sarees. I cannot identify all the sarees belonging to A1. I can identify only one saree. About five days after the death of the deceased, police brought about four pieces of burnt saree and asked me to identify and then I identified all the said cloth pieces as belonging to A1. I have seen four or five small pieces of MO1. The sarees like MO1 are available in the market. There are no specific identification marks on MO1 to say that it belongs to A1.”

18. In the absence of any specific identification marks on MO1 and as sarees like MO1 are available in the market, it cannot be said that the MO1 saree piece is that of A1.

19. The next circumstance relied upon by the prosecution is seizure of Innova vehicle, which was taken on hire by A3 and A5. PW6 is said to be the owner of the vehicle, who gave his vehicle on lease to S.R.Travels, run by PW13. According to PW13, on 21.08.2008, A3 and A5 took the said car on rent, but they did not turn up later. His enquiries revealed that the said vehicle was involved in a crime. Learned counsel for the appellant would contend that this piece of evidence itself is sufficient to connect the accused with the crime. But, it is to be noted that here there is no evidence on record to show that deceased traveled in the said car.

20. The question is whether culpability of all the accused can be fixed basing on the evidence of PWs.5, 6 and 13?

21. Though PW6 in his evidence claims that he gave his car on lease to PW13, but PW13, who in turn gave car on rent to A3 and A5, who did not return it. No documentary evidence is there to show that said car was given on rent to A3 and A5. If really PW13 was doing business in letting out cars, a registry or record should be maintained to note down vehicles which were given on hire and the distance covered by the person taking the said vehicle on rent. As observed earlier, no evidence has been placed to prove the fact of giving the said vehicle on rent to A3 and A5. Hence, we feel that the said circumstance is not proved. Even for the sake of argument, it is to be accepted that the said vehicle was taken on rent by A3, but there is no evidence to show that the said vehicle was used in commission of offence. In other words, no oral evidence has been placed on record to show that the said vehicle was used in the commission of offence. The only circumstance which is now sought to be relied upon to connect the vehicle with the commission of crime, is the seizure of front seat, containing blood stains. It is to be noted here that blood stained seat was never seized from the vehicle, but after the arrest of the accused, A3 is said to have produced MO7, which are burnt seat cover pieces and MO8 burnt cell phone with battery. The evidence of the investigating officer, who effected the arrest of A3 and recovered Mos.1 and 7, does not establish that these blood stains were found in the seat attached to the car. The burnt pieces of the said cover containing blood came to

be seized. This seat cover was sent for forensic lab for analysing the blood found on the burnt seat cover. Though the FSL report indicates that it contains blood/human blood, there is no evidence to show that blood which is found on the seat is that of the deceased. No effort was made to know the blood group of the deceased and the blood stains found on the seat was that of the deceased. No tests were conducted to find out the blood group on the seat cover. Therefore, this circumstance does not establish that the vehicle was used in the commission of offence.

22. The last circumstance relied upon by the learned counsel for the appellant is recovery of blood stained knife. PW9 is the panch for recovery of knife at the scene. PW9 in his evidence deposed that on 12.09.2008 at about 12.30 p.m. or 01.00 p.m., police took him to the house of LW16, where they found A1, A3 to A5. After confession, A1 showed them the Innova car bearing registration No.AP 09 BB 3200. Thereafter, the police observed blood stains on the seat cover of the car under a cover of panchanama. The evidence of PW1 further shows that A4 produced knife before the police under MO6, which was seized under Ex.P7. As observed by the trial Court, his evidence is admissible to the extent of the incriminating material on the basis of confession statement, meaning thereby that the same is admissible to the extent of recoveries made under Ex.P7 and not with regard to the incident in question, since any confession made before the police is inadmissible under Section 24 to 26 of the Indian Evidence Act. Therefore, mere recovery of knife at the instance of the accused, does not by itself prove the

involvement of A1 or other accused in commission of offence, moreso, when FSL report does not establish that the knife was used in the commission of offence. As per the FSL report, “item one is an iron knife with plastic handle blade measuring 20 cms., with dark brown stains marked as item No.1”. Therefore, mere recovery of blood stained knife without establishing the blood stains on the knife as that of the deceased and that it was recovered at the instance of one of the accused, does not itself in our view indicate the commission of offence, by all the accused.

23. In the absence of any other evidence connecting the accused with the crime and as the three circumstances relied upon by the prosecution were not proved beyond reasonable doubt and when the scope of interference by this Court in an appeal against acquittal is limited, we see no grounds to interfere with the findings arrived at by the Court below and the appeal is accordingly dismissed.

C.PRAVEEN KUMAR, J

T.RAJANI, J

31.07.2018
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