

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
HON'BLE MS. JUSTICE J.UMA DEVI  
CRIMINAL APPEAL No.228 of 2013**

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

1. A1 to A3 in Sessions Case No.552 of 2010 on the file of the II-Additional District and Sessions Judge (Fast Track Court), Mahabubnagar District, were tried for the offences punishable under Sections 302 read with Section 34 I.P.C., 397 read with Section 34 I.P.C., 326 read with Section 34 I.P.C. and 380 read with Section 34 I.P.C. By its judgment dated 13.02.2013, the learned II-Additional District and Sessions Judge convicted A1 to A3 and sentenced them to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for three months for the offence punishable under Section 302 read with Section 34 I.P.C.; rigorous imprisonment for seven years for the offence punishable under Section 397 read with Section 34 I.P.C. and rigorous imprisonment for three years for the offence punishable under Section 380 read with Section 34 I.P.C. However, A1 to A3 were acquitted for the offence punishable under Section 326 read with Section 34 I.P.C. since alternative charge is proved. All the sentences awarded against A1 to A3 were directed to be run concurrently.

2. The brief facts as culled out from the evidence of prosecution witnesses are as follows:

P.W.1 is the wife of the deceased Mudavath Hari Singh. P.Ws.2 and 3 are their son and daughter respectively. It is said that on the night of 27.02.2009, while the deceased, his wife (P.W.1) and son (P.W.2) were sleeping at their field, P.W.7 came to their field at about 1.00 A.M. woke up the deceased, and requested some help as his cow was facing difficulty in delivering a calf. Accordingly the deceased along with P.W.7 went there and returned back to the field. Some time thereafter, while they were sleeping, three persons came to commit theft in the nearby temple. Later, the said three persons came to the field of the deceased and demanded P.W.1 to hand over her jewellery and as they did not find any valuables on the person of P.W.1, they slapped her. It is said that out of the three persons, two are short in height and the other who is tall and aged is said to have hacked the deceased. The other two attacked and beat the deceased with sticks. Thereafter, P.W.1 went towards Thanda and brought the residents of Thanda to the scene of offence. While the deceased was being shifted to the community hospital, he succumbed to injuries. The evidence on record further shows that P.W.7 was also attacked by the accused with sticks, causing injuries on his head and hand, as a result of which he fell down. Then one of the accused is said to have kept his leg on his hand and forcibly removed silver kadiyam, while the other two persons stood nearby a street light. P.W.7 was shifted to a hospital by his son (P.W.6). On 28.02.2009 at about 10.00 A.M., P.W.1 lodged a report with P.W.15, the then Sub Inspector of Police, Balanagar, who registered a case in Crime No.41 of 2009

under Sections 302, 397 and 380 I.P.C. Ex.P11 is the F.I.R. submitted to the Court. On receipt of a copy of FIR, P.W.14, the Inspector of Police, took up investigation, proceeded to Divya hospital, Shadnagar and recorded the statement of P.W.7. Later, he visited Government hospital, Shadnagar, and conducted inquest over the dead body of the deceased in the presence of P.Ws.4 and 13, got photographed the dead body of the deceased; examined P.Ws.3, 6 and others and recorded their statements; collected blood stained clothes of the deceased, visited the scene of offence and prepared scene of offence panchanama as well as rough sketch of the scene of offence in the presence of mediators. Ex.P5 is the crime details form. Thereafter, the dead body was sent to Community Health Centre, Shadnagar for post mortem examination.

3. P.W.16-the Civil Assistant Surgeon, Shadnagar conducted autopsy over the dead body of the deceased on 28.02.2009 and issued Ex.P12 the Post Mortem Certificate. According to his opinion, the cause of death of the deceased was due to shock and abdominal injury. On the same day at about 4.15 P.M. he examined P.W.7 and issued Ex.P13-the wound certificate.

4. P.W.14, the Inspector of Police, continued with the investigation. On the instructions from P.W.14, P.W.15 apprehended A1 on 31.03.2009 and produced him before P.W.14 at Balanagar Police Station. P.W.14 secured the presence of P.Ws.5 and 12 and interrogated A1, wherein he confessed about his involvement in the

offence along with A2 and A3. Ex.P6 is the confessional statement of A1. Pursuant to the said confession, he seized M.O.1-Silver Idol of Mahankali Matha and M.O.2-Dagger from the house of A1 under cover of Ex.P7-Panchanama. On 08.04.2009, P.W.14 apprehended A3 from his house at Donnagadda thanda, recorded his confessional statement in the presence of P.Ws.10 and 11 and recovered M.O.3-silver kadiyam under the cover of Ex.P8 panchanama. On 19.07.2009, A2 was apprehended at Chennaguladda thanda in the presence of P.Ws.8 and 9, recorded his confessional statement and recovered a silver umbrella and a sword used in the commission of offence. Ex.P9 is the confession-cum-recovery panchanama. Subsequently, he transmitted the material objects to Forensic Science Laboratory for examination and report. After completing the investigation and collecting all the necessary documents, he laid a charge sheet against the accused, which was taken on file as P.R.C.No.11 of 2010 on the file of the Judicial Magistrate of First Class, Jadcherla. On appearance of the accused, copies of documents were furnished to them as required under Section 207 of Cr.P.C. and the case was committed to the Court of Sessions, Mahabubnagar for trial. On committal, the case came to be registered as S.C.No.552 of 2010 on the file of the II-Additional District and Sessions Judge (Fast Track Court), Mahabubnagar. Charges under Sections 302 read with Section 34 I.P.C., 397 read with Section 34 I.P.C., 326 read with Section 34 I.P.C. and 380 read with Section 34 I.P.C. were framed against the accused, read over

and explained to them, to which they denied and claimed to be tried. In support of its case, the prosecution examined P.Ws.1 to 16 and got marked Exs.P1 to P13 and M.Oss.1 to 3. After the closure of prosecution evidence, A-1 to A-3 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. On behalf of the accused, none were examined, but Exs.D1 to D4 were marked on their behalf.

5. Out of the 16 witnesses examined by the prosecution, P.Ws.4 and 13 who are the panch witnesses for inquest did not support the case of the prosecution and were treated as hostile by the prosecution. P.Ws.5 and 12 are the panch witnesses for confession and recovery of M.O.1-silver Mahankali Matha Idol and M.O.2-Jambia from A1. They also did not support the prosecution case and were treated as hostile by the prosecution. P.Ws.8 and 9 are the panch witnesses for confession and recovery of silver umbrella and sword from A2. They too did not support the case of prosecution and were treated as hostile by the prosecution. Similarly, P.Ws.10 and 11, who are the pancha witnesses for confession and recovery of M.O.3-Silver Kadiyam from A3, did not support the case of prosecution and were treated as hostile by the prosecution. However, basing on the evidence of P.Ws.1, 6 and 7 coupled with the recoveries made from the possession of the accused, the learned II-Additional District and Sessions Judge convicted A-1 to A-3 for

the offences punishable under Sections 302 read with Section 34 I.P.C., 397 read with Section 34 I.P.C. and 380 read with Section 34 I.P.C. Challenging the said conviction and sentence, the present Criminal Appeal came to be filed by A1 to A3.

6. Learned counsel for the appellants would submit that there is absolutely no legal evidence to connect the accused with the commission of offence. Even the recovery of silver idol of Mahankali Matha from A-1 does not inculcate the accused since silver idol was not the subject matter of theft in this crime. Insofar as the recovery of weapon used in the commission of offence, he pleads that the mediators did not support the case of the prosecution and as such the said recovery cannot be accepted. Even otherwise the said recovery does not inculcate the accused in the crime.

7. Learned Public Prosecutor would contend that the accused have committed the theft of silver idol and thereafter came to the land of the deceased and committed the offence. It is his contention that since P.W.1 identified the accused in Court and in view of the evidence of P.W.7, the presence and participation of the accused cannot be doubted.

8. The point that arises for consideration is,

Whether the prosecution was able to prove its case against A-1 and A-2 since A-3 died pending appeal.

9. As seen from the record, the incident in question took place on the intervening night of 27/28.02.2009 at about 1.00 A.M. The fact that on the date of incident, P.Ws.1, 2, 7 and deceased slept at the scene of offence is not in dispute. Since P.W.7 is injured witness in this case, his presence at the scene of offence cannot be doubted. However, it is to seen whether the prosecution was able to establish the participation of the accused in the commission of offence. P.W.1 in his evidence deposed that on the date of incident P.W.7 came to their field, woke up the deceased and requested him to come to his field as his cow was facing difficulty in delivering a calf. On his request, the deceased accompanied P.W.7 and returned back to their land along with P.W.7 and slept in the field. After some time, three persons came there to commit theft in a nearby temple and thereafter they came towards the land of P.W.1 and demanded P.W.1 to hand over her jewellery. As they did not find any valuables on P.W.1, they slapped her and thereafter an old person amongst the three persons is said to have hacked the deceased, while the other two hacked the deceased causing grievous injuries. The evidence on record more particularly the evidence of P.W.1 would show that on seeing P.W.7, they also attacked him causing bleeding injuries on his head and hand. P.W.1 identified all the three persons as accused in Court for the first time. Out of the three persons, two are short in height and one is tall and old aged person. However, in the cross-examination, P.W.1 admits that the culprits have covered their faces with black cloth. She further states that she did not state before the

police that the three unidentified persons stabbed her husband, the portion of which is marked as Ex.D3. When the evidence of P.W.1 is scrutinized along with the evidence of the Investigating Officer (P.W.15), it shows that the version given by P.W.1 in the Court is a complete improvement over her earlier statement. It would be useful to extract the relevant portion from the evidence of P.W.15, which is as under:

“It is true P.W.1 in her complaint (Ex.P1), Ex.P11 and in 161 Cr.P.C. statement stated some unknown offenders came and attacked them in dark night. It is true P.W.1 stated in her statement that the suspects covered their faces with the black cloth leaving eye portion. It is true P.W.1 stated when she woke up at 1.00 A.M. and raised cries, the deceased was attacked and stabbed by three unknown persons. P.W.1 did not state before me that old person stabbed deceased. P.W.1 did not give any identification marks or descriptive particulars of A3. It is true P.W.1 did not state before me about the names of A1 to A3 and she identified them with their names. P.W.1 did not state before me that L.W.10 (P.W.7) came to the land of deceased and asked to verify as his cow is facing difficulty in delivery and they return back at 1.00 A.M. and had a dinner. P.W.1 stated before me as in Ex.D1 to D3.”

10. From the evidence of P.W.1 and the admissions made by her, coupled with the evidence of P.W.15 and the admissions made by him, it is very clear that P.W.1 did not identify the culprits in the Court as their faces were covered with a black cloth leaving open only eye portion. Further the incident in question had happened in the dark night, at about 1.00 A.M. In the absence of any Test Identification Parade being conducted, identification of strangers by P.W.1 in the Court for the first time cannot be accepted. Basing on the features of the culprits, that out of the three persons, two are

short in height and one is tall and aged, it cannot be said with precision that it was the accused who are responsible for causing the death of the deceased. That apart, in the earlier statement P.W.1 did not state about the stabbing the deceased by an aged person. When the identification of accused by P.W.1 itself is suspicious, her evidence cannot be made the basis to connect the accused with the crime.

11. Coming to the evidence of P.W.2, who is a child witness and who claims to have been present along with his mother (P.W.1) and deceased father, at the time of incident, his presence at the scene of offence cannot be doubted in view of evidence of P.Ws.1 and 7. But, the question is whether he could have identified the assailants or not. In the cross-examination, he admits that it was a dark night and that three thieves who covered their faces with mask came to them. He admits that by the time he woke up, the culprits stabbed his father. It would be useful to extract the relevant portion in the evidence of P.W.2, which is as under:

“It is true it was a dark night during the incident day. I state before the police that three thieves who covered their faces with masks came to us on the date of incident. I state before the police that by the time I woke up culprits stabbed my father.”

12. In view of the above admission, the evidence of P.W.2 will not be of any use to the case of the prosecution to fix the culpability of the accused in the commission of offence.

13. Coming to the evidence of P.W.3, who is the daughter of the deceased, it is to be seen that immediately after the incident, she rushed to Shadnagar hospital and found the dead body of the deceased in Mortuary with stab injury and when she questioned P.W.1 as to how the incident took place, P.W.1 told her that three persons came to their field, attacked the deceased and stabbed him. P.W.1 further told P.W.3 that she can identify the said persons who were armed with stick, knife and Jambiya. However, in the cross-examination, P.W.3 admits that P.W.1 told her that three unknown persons, who covered their faces with black cloth, stabbed the deceased. If really P.W.1 was in a position to identify the culprits, nothing prevented the police in conducting a Test Identification Parade. When the accused are strangers and have covered their faces with masks, it would be impossible for the witness to identify the accused.

14. The other witness who spoke about the incident is P.W.7. In his evidence he deposed that as his cow was facing difficulty in delivering a calf, took the help of the deceased. After completion of the purpose of their visit, he slept along with the deceased in his land and at midnight two or three unknown persons came to the land of the deceased. One of them stood at a distance, while the other two came near to the place where they were sleeping and attacked the deceased. His evidence is silent with regard to the attack on P.W.1. His evidence is to the effect that the said persons

beat him on his head and one of the persons came and kept his leg on his hand and forcibly removed silver kadiyam from his hand. He admits that he cannot identify the culprits as their faces were covered with a cloth. From the evidence of P.W.7 it is clear that he is not in a position to identify the culprits as their faces were covered with a cloth. Therefore, his evidence is of no help to the prosecution to establish that it was these three accused who are responsible for the commission of offence.

15. The next circumstance which is sought to be pressed into service by the prosecution, is the recovery of certain articles from the accused. As stated earlier, the incident in question took place on the intervening night of 27/28.02.2009 at about 1.00 A.M. A1 was apprehended on 31.03.2009, A2 on 19.07.2009 and A3 on 08.04.2009. A3 died pending appeal. Insofar as the recovery from the possession of A1 is concerned, it is clear from the evidence of the Investigating Officer (P.W.14) that after his arrest on 31.03.2009, he is said to have made a confession in the presence of P.Ws.5 and 12, pursuant to which a silver idol of Mahankali Matha and a dagger were recovered. However, P.Ws.5 and 12 did not support the case of the prosecution and were treated as hostile by the prosecution. Therefore, there arises any amount of doubt with regard to the alleged recovery. In fact, the said silver idol of Mahankali Matha, which was recovered from the possession of A1 does not relate to the present crime. No witness more particularly P.Ws.1 and 2 spoke

about the robbery of any such idol from them. Insofar as the recovery from the possession of A2 is concerned, it is clear from the evidence of P.W.14 that after the arrest of A2 on 19.07.2009, he is said to have made a confession in the presence of P.Ws.8 and 9, pursuant to which a silver umbrella and a sword were recovered. However, P.Ws.8 and 9 did not support the case of the prosecution and were treated as hostile by the prosecution. Even otherwise, it is to be noted here that the silver umbrella also does not relate to the present crime and the sword, which was said to have been seized was not produced before the Court by the prosecution. The said fact is reflected in the evidence of P.W.14, which is as under:

“On 19.07.2009 on credible information I along with my staff and P.Ws.8 and 9 proceeded to Chennaguladda thanda, h/o Eppalapally village and raided the house of A2, apprehended and enquired him, recorded confessional-cum-recovery panchanama and recovered one silver umbrella and one sword used in the commission of offence. (Property is not received by the Court nor was it found deposited before the J.F.C.M., Jadcherla). Ex.P9 is the confession-cum-recovery panchanama of A2 dated 19.07.2009 at 1630 hours.”

16. From the above, it is clear that the alleged recoveries said to have been made from the possession of A1 and A2 do not get support from any independent witnesses. Hence, the said circumstance cannot be taken as a corroborative circumstance or a link in the chain of events to connect the accused with the commission of offence.

17. Having regard to the above discussion, we feel that the evidence adduced by the prosecution is not proved establishing the guilt of the accused in the crime.

18. In the result, the Criminal Appeal is allowed. The conviction and sentence awarded against the appellants-A1 and A2 in the judgment dated 13.02.2013 in Sessions Case No.552 of 2010 on the file of the II-Additional District and Sessions Judge (Fast Track Court), Mahabubnagar District, for the offences punishable under Sections 302 read with Section 34 I.P.C., 397 read with Section 34 I.P.C. and 380 read with Section 34 I.P.C. are set aside and they are acquitted of the said offences. Consequently, the appellants-A1 and A2 shall be set at liberty forthwith, if not required in any other case or crime. The fine amount, if any paid by the appellants-A1 and A2 shall be refunded to them.

The case against the appellant-A3 abates as he is reported to have died pending the appeal.

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JUSTICE C.PRAVEEN KUMAR

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JUSTICE J.UMA DEVI

20.02.2018  
Gsn.

