

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON' BLE MS JUSTICE J.UMA DEVI

CRIMINAL APPEAL Nos.1168 of 2013 & 171 of 2014

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

1) Both these appeals are filed against the judgment, dated 07.10.2013, passed in S.C.No.124 of 2013 on the file of the learned Judge, Family Court-cum-VIII Additional District and Sessions Judge, Mahabubnagar. Criminal Appeal No.1168 of 2014 is filed by accused No.2 while Criminal Appeal No.171 of 2014 is filed by accused No.1. Both the accused were tried for the offences punishable under Sections 302 and 379 IPC for causing the death of one K. Balaswamy Shadullah (hereinafter referred to as "the deceased") on 28.05.2012, by beating him with stone on his head, and thereafter committed theft of cash of Rs.5,000/- . Vide judgment, dated 07.10.2013, the learned Sessions Judge convicted accused Nos.1 and 2 for the offence punishable under Section 302 IPC and sentenced them to suffer 'imprisonment for life' and to pay a fine of Rs.500/- each. They were further convicted for the offence punishable under Section 379 IPC and sentenced them to suffer rigorous imprisonment for two years each.

2) The gravaman of the charges against the accused are that on 28.05.2012 night 10.00 p.m., the accused along with

his grand daughter were traveling in the auto, both the accused stopped the auto near Palakonda Shivar, while accused No.2 caught hold the deceased accused No.1 hit the deceased with a stone on his head and caused his death. Thereafter, both of them snatched cash of Rs.5,000/- from the deceased.

3) Heard learned counsel for the appellants and the learned Public Prosecutor appearing for the State of Telangana, apart from perusing the entire material available on record.

4) The facts in issue are as under:

i) P.W.1 is the wife of the deceased while P.W.4 is the daughter of the accused and the deceased. P.Ws.1 and 2 are residents of the said village. On 28.05.2012, the deceased left his house and boarded a bus at Shadnagar. Though his family members waited till the next day he did not return. The son of P.W.1 informed P.W.1 over phone that the deceased-Balaswamy boarded a bus at Shadnagar, meanwhile P.W.2 informed P.W.1 over phone that on 29.05.2012 Balaswamy was found with injuries at Palkonda Shivar. Immediately P.W.1 along with the villagers went to the scene of offence and found the dead body of the deceased. Thereafter P.W.1 lodged a report, basing on which PW9-the Sub-Inspector of

Police, registered a case in Crime No.174/ 3012 and issued the first information report, which is placed on record as Ex.P8.

ii) On receipt of a copy of the F.I.R. P.W.11, the Circle Inspector of Police, visited the scene of offence, conducted scene of offence panchanama and also prepared a rough sketch of the scene in the presence of PW.5 and another. Ex.P2 is the Crime Details Form. During the course of panchanama, PW.11 seized Mo.1 and also recorded the statements of PWs.2 and 3. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW.5 and another. Ex.P3 is the inquest report. Thereafter, he forwarded the dead body of the deceased to Government Hospital, Mahabubnagar, for postmortem examination.

iii) PW.10-the Civil Assistant Surgeon, Government Hospital, Mahabubnagar, conducted autopsy over the dead body of the deceased and issued Ex.P9 the postmortem certificate. According to doctor, the cause of death was "due to head injury intracranial hemorrhage and shock".

iv) On 14.11.2012 accused No.2 was produced before P.W.11 along with auto by special squad and on interrogation accused No.2 confessed about the offence. The confessional statement of the accused No.2 was recorded in the presence of PW.7. Ex.P5-is the confessional statement of accused No.2. On 28.11.2012 accused No.1, who was arrested in

another crime, was produced on P.T.warrant and on request police custody was permitted wherein he confessed about the commission of the offence. The said confession came to be recorded in the presence of P.W.8.

v) After Collecting all the necessary documents, PW.11 filed charge sheet before the Judicial Magistrate of First Class, Kodangal, which was taken on file as P.R.C.No.9/ 2013. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 of Cr.P.C., which came to be numbered as S.C.No.61 of 2011.

5) Basing on the material on record, charges under Sections 302 and 379 IPC were framed, read over and explained to the accused, to which they denied and claimed to be tried.

6) To substantiate their case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P1 to P9 and M.Os.1 and 2. 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 their behalf in support of their defence.

7) Relying upon the evidence of the prosecution witnesses, the learned Judge convicted both the accused in the manner

referred to above. Challenging the same, these two appeals came to be filed.

8) As seen from the record, there are no eye witnesses to the incident and the entire case rests on circumstantial evidence. It appears that the trial court, relying upon the confessional statements made by the accused before the police and the accused being involved in other cases, which are similar in nature, convicted both the accused.

9) In a case where there are no eye witnesses to the incident and where the case rests on circumstantial evidence, the prosecution has to prove all the circumstances connecting the accused with the crime. The circumstances relied upon should form a chain of evidence to connect the accused with the crime. Keeping in view the principles laid down by the Apex Court in a catena of judgments, the prosecution mainly relied upon the evidence of eight witnesses to base their conviction.

10) P.W.1, who is the wife of the deceased, in her evidence deposed that on the date of the incident i.e. on 28.05.2012, her husband left for Amisthapur and boarded a bus at Shadnagar. Though he was supposed to return on the same day but he did not return till the next day morning. Thereafter she was informed by her son-P.W.4 over phone that the deceased boarded a bus at Shadnagar, meanwhile P.W.2 informed her

over phone on 29.05.2012 that the deceased was laid with injuries at Palkonda Shivar. Basing on the said information, she along with others proceeded to the scene of offence and found the dead body of the deceased lying with bleeding injuries on his head and a boulder-M.O.1 was found by the side of the dead body. Thereafter, PW.1 lodged a report. This evidence of P.W.1 does not in any way connect the accused with the crime. She did not even attribute any motive to the accused to do away the deceased.

11) P.W.2 in his evidence deposed that one year back at about 8.30 a.m. or 9.00 a.m. he found the dead body of a male person at the outskirts of Palkonda village and on enquiry he came to know that the dead body is that of a person who is a resident of Amisthapur and his name is Balaswamy. After securing telephone number of P.W.4 he informed about the death of Balaswamy. His evidence is also of no use to the prosecution case. Similarly, P.W.3, who is the nephew of the deceased, in his evidence, deposed that in the month of May the wife of the deceased-P.W.1 informed him about the death of the deceased. Thereafter, he along with P.W.2, went to Palkonda village and found the dead body of the deceased with injuries on the head and face. Similarly, P.W.4, who is the son of the deceased, in his evidence, deposed that on 28.05.2012, at about 8.00 a.m. he got his

father boarded in a bus at Shadnagar to go to Amisthapur but the deceased did not reach Amisthapur on that day and on the next day P.W.1 informed him about the death of his father and his body lying at the outskirts of the village. He saw the dead body of his father in the Government hospital.

12) P.W.5 is the panch witness for both the scene of offence-Ex.P2 and also for the inquest. P.W.6, who is a V.R.O. of Mettuguda, deposed that the police called him to the II Town police station where accused No.1 was present in the police station and in his presence accused No.1 confessed about the commission of the offence in Cr.No.276 of 2012 on the file of the II Town Police Station, Mahabubnagar, but not in respect of the case on hand. Accused No.1 also confessed that he has committed two or three offences. Ex.P4 is the confessional statement of the accused.

13) It is to be noted here that the confession, which was relied upon by the Sessions Judge, was made by the accused while he was in police custody. In fact, the evidence in chief of P.Ws.6 and 7 would show that the said confession is made by accused No.1 while he was in II town Police Station, Mahabubnagar. It is true that P.W.6 was cross-examined but nothing useful was elicited but, at the same time, his evidence will not be of any use to connect the accused with the crime, since the confession made by the accused while in

police custody is not admissible in evidence and, in fact, no recovery came to be made pursuant to the said confession. Had there been any reality pursuant to the said confession, atleast the same could have been taken into consideration to connect the accused with the crime as contemplated under Section 27 of the Indian Evidence Act.

14) P.W.7, who is a V.R.O. of Yenugonda village, speaks about he being called by the police to the police station where accused Nos.1 and 2 confessed about the commission of offence. Though the prosecution was successful in getting marking of Ex.P5-confessional statement (though inadmissible), but the said confessional statement cannot be made basis to connect the accused with the crime.

15) Similarly, P.W.8 is another V.R.O and he was also called to Mahabubnagar Rural Police Station and in his presence another confessional panchanama is said to have been recorded from A1, which is placed on record as Ex.P7. His evidence is also to the effect that pursuant to the said confession, nothing was seized by the police in their presence. Therefore, these three statements, which are sought to be relied upon by the prosecution namely Ex.P5, P6 and P7, cannot be made the basis to connect the accused with the crime since these statements are inadmissible. As stated earlier, if any recovery was made pursuant to the confession,

definitely the said recovery could have been used to take as one of the circumstances in connecting the accused with the crime. Therefore, in the absence of any other evidence, except the confession of the accused before the police, which could have been relied upon by the learned Sessions Judge, the conviction and sentence imposed by the trial Court in S.C.No.124 of 2013 are set aside.

16) In the result, both the Criminal Appeals are allowed. The conviction and sentence, recorded against the appellants/ A1 and A2 in the judgment, dated 07.10.2013, in Sessions Case No.124 of 2013, on the file of the learned Judge, Family Court-cum-VIII Additional District and Sessions Judge, Mahabubnagar, for the offences punishable under Section 302 and 309 IPC, are set aside. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime and the fine amount, if any, paid by them shall be refunded to them.

Miscellaneous petitions, pending if any, in these appeals, stand closed.

C.PRAVEEN KUMAR,J

J.UMA DEVI, J

22nd December, 2018
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