

THE HON'BLE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.633 of 2013

JUDGMENT: (Per Hon'ble Smt Justice T. Rajani)

This appeal is preferred by the appellant against the judgment of the Additional Sessions Judge, Hindupur in S.C.No.108 of 2011, dated 07.05.2013, convicting and sentencing him to undergo rigorous imprisonment for life and pay fine of Rs.5,000/- in default to undergo simple imprisonment for a period of six months for the offence punishable under Section 302 read with 34 of the Indian Penal Code.

2. The facts, in brief, as reflected in the charge sheet, are as follows:

A1 was married to one Jyothi in the year 1998 and was blessed with one son. He was residing in Anantapur Town and attending coolie work. At that time one Boya Narayana of Kurnool, with his sons and daughter, came from Kurnool to Anantapur and they were also attending the above work. A1 got acquainted with one Asamma, daughter of Boya Narayana and married her as his second wife, with the consent of his first wife and were residing under one roof. Asamma gave birth to two sons and one daughter. After few days, ill-feelings started between Jyothi and Asamma and hence, A1 kept his second wife Asamma separately, in Jakker Kottalu, Anantapur Town. About two years prior to the occurrence of the incident, A1 purchased compressor machine. A1 employed one Enumula Suri (deceased), who was his cousin brother, to attend the coolie work. The deceased, who was residing near the house of A1, used to visit the house of A1

for the sake of A1. While frequenting the house of A1, since about four months prior to the date of occurrence, the deceased got acquaintance with Asamma and during the absence of A1, he committed rape on Asamma. Since then Asamma was not feeling well. When A1 asked his second wife, as to what had happened and why she was feeling unhappy, she informed A1 that the deceased committed rape on her, in his absence. Since then, A1 was determined to kill the deceased somehow. He sought the help of A2, who is his cousin brother, presuming that it would be difficult for him to commit the murder of the deceased alone. A2 accepted and obliged the offer of A1, as he had developed enmity against the deceased, who assaulted and insulted him previously, during an altercation between A2 and one Enumula Chandra, who is younger brother of the deceased, in connection with a money transaction and A2 was waiting for an opportunity to take vengeance against the deceased.

The deceased, who was attending coolie work under A1, stopped attending the work and since two months prior to the occurrence, the deceased was attending the work of demolition of old houses and digging foundations in Old town, Anantapur. On 06.08.2010 morning, the deceased went to attend the work of digging foundations, along with P.w.6 and the deceased did not return home in the night, on that day. P.W.3 approached P.W.6 and on enquiry with P.W.6, she came to know that on 06.08.2010 evening, while they were taking tea, A1 took the deceased on his motor cycle and later he does not know as to what happened. On that, P.W.3 informed the same to her elder brother-in-law (L.W.8) and younger brother-in-law (L.W.7) and they started

searching for the deceased. On 17.08.2010, on coming to know that A1 was available at the crusher machine near Yatakallu village of Setturu Mandal, L.Ws.6 and 7 went there and asked A1 as to where the deceased was. On that, A1 informed them that on 06.08.2010 he took the deceased on his motor cycle, he and his cousin brother, A2, made the deceased drink liquor excessively, in a hotel and took him to P.A.B.R. Canal and killed him. When P.Ws.3 and 5 tried to catch A1, he escaped from them and ran away. They went to Rapthadu police station on 18.08.2010 and informed the matter to P.W.10, who informed that the case was transferred to Dharmavaram Police Station on point of jurisdiction.

On 07.08.2010, on information given by L.W.2, P.W.1 went to Rapthadu police station and gave a report to the S.I, stating that one unidentified male person was killed and abandoned at the bank of P.A.B.R. Canal and on that, a case was registered in Cr.No.83 of 2010 for the offence under Section 302 IPC.

During investigation, the scene of offence panchanama was conducted and the dead body was subjected to inquest and post mortem examination. After investigation, P.W.12 transferred the case to Dharmavaram Rural Police Station on point of jurisdiction, for further investigation and P.W.9 re-registered the case as Cr.No.97 of 2010 for the offence under Section 302 IPC. The accused were arrested on 22.08.2010, when they were produced by P.W.8, before P.W.11, with a report that the accused made extra-judicial confession. The confessional statement of the accused was recorded and based on the same, the motor cycle and an iron rod were seized. Later, they

were produced before the Court for judicial remand. After concluding the investigation, charge sheet was laid against the accused for the offence under Section 302 read with 34 IPC.

On appearance of the accused, the Judicial Magistrate of First Class, Dharamavaram took cognizance of the case under Section 302 read with 34 IPC and after complying with the legal formalities and as the case is exclusively triable by a Court of Sessions, committed the case to the Sessions Division, Anantapur District by virtue of orders in PRC.No.46 of 2010. The learned Sessions Judge, in turn, made over the case to the Court of the Additional Sessions Judge, Hindupur for trial and disposal in accordance with law. On appearance of the accused before the Court below, the charges referred to above were framed and read over to the accused, to which the accused pleaded not guilty and claimed to be tried. During trial, in support of its case, the prosecution examined P.Ws.1 to 12 and got marked Exs.P1 to P13 and M.Os.1 and 10. Ex.D1 was marked in the cross-examination of P.W.3. After completion of the prosecution evidence, the accused were questioned about the incriminating circumstances appearing in the prosecution evidence, when they were examined under Section 313 Cr.P.C. They denied the truth in the prosecution evidence and reported no evidence on their behalf.

3. The Court below, after considering the evidence and the material on record, passed the impugned judgment against which the present appeal is preferred on the following and other grounds that were urged at the hearing:

The Court below should have seen that the entire case rests on circumstantial evidence; it failed to see that there was delay in lodging report; the Court below should have seen that the extra-judicial confession is inadmissible in evidence; it failed to see that the deceased was not a drunkard and womanizer and hence, the prosecution failed to establish the motive; it ought to have seen that there was no reason for the accused to approach P.W.8, to make a confession and the Court below should have seen that the evidence of P.Ws.3 and 6 is falsified by the evidence of P.W.5. Based on the above, the appellant seeks this Court to set aside the impugned judgment.

4. Heard the counsel for the appellant and the learned Public Prosecutor.

5. The counsel for the appellant contends that the Court below acquitted A2, considering that except the extra-judicial confession made by A2 along with A1, absolutely, there is no material against A2 about his involvement in the commission of the offence or in the murder of the deceased by A1, but convicted A1 by considering the same extra-judicial confession. She contends that if the extra-judicial confession is not believed, against A1 also, there is absolutely no material fixing his complicity in the murder of the deceased.

6. Learned Public Prosecutor, on the other hand, submits that the witness, who has last seen the deceased and the accused together, has testified about the said fact when he was examined as P.W.6 and the silence of the accused to explain as to what happened to the

deceased thereafter would lead to an adverse inference that he was the person, who killed the deceased. He further submits that the said evidence of P.W.6 and the motive, which is proved through the evidence of P.Ws.3 and 4, would clinchingly prove that the accused is the person, who committed the murder of the deceased.

7. Based on the above arguments and material on record, we need to consider the following points:

1. Whether the extra-judicial confession made before P.W.8 can be taken into consideration with regard to the involvement of A1 in the murder of the deceased.
2. Whether the evidence of last seen together of the deceased and the accused, by P.W.6 would suffice to prove the guilt of the accused
3. Whether the judgment of the Court below is sustainable.
4. To what result.

POINT No.1:

8. P.W.8 speaks about the extra-judicial confession made by the accused before him. The accused, in fact, did not approach him directly but they were produced by one Sanjeevappa, who was unfortunately not examined by the prosecution. For an extra-judicial confession to be made before a person, an element of confidence is required. P.W.8 seems to be the VRO of Mannila Village and he does not know any of the two accused prior to their coming to him, for making extra-judicial confession and he is not in a position to help the accused. He did not surrender any of the accused in any criminal case prior to this case. The accused never asked him for help and he did not

call others when the accused were brought before him. The accused, as can be understood from the evidence, hail from Anantapur town. But, the reason, as to why the accused approached P.w.8 and as to who is the village servant Sanjeevappa and as to whether there was such relationship between the said Sanjeevappa and the accused, which would prompt them to approach P.W.8 and make a confession, is not brought forth. Apart from the above, as spoken to by P.W.8, the confession has come from both the accused in common and there is no separate confession made by each of the accused, explaining their role in the murder of the deceased. Moreover, the report, Ex.P6, which was prepared by P.W.8, does not contain the signatures of the any of the accused, proving without any doubt, that the said report was prepared based on the confession made by the accused. When the possibility of assuming that the extra-judicial confession might not have been made by A2 was seen by the Court below, the same possibility would be there for A1 also. If the Court below had considered that the extra-judicial confession was not sufficient to fix the complicity of A2, it ought to have extended the same reasoning in respect of A1 also, since the confession before PW.11 and the recovery is also joint. His evidence shows that when they went to the place of recovery of iron rod and started searching, one constable found it and when it was shown to the accused, they identified it. Then, the assumption has to be that both of them used the rod for killing the deceased. But here, A2 was not found guilty. In *MANTHURI LAXMI NARSAIAH v. STATE OF A.P* CrI.A.Nos.2111-2112 of 2008, the Supreme Court declined to rely on the evidence of recovery, considering that the extra judicial confession was a joint confession by

the accused. Hence, in view of the above, we do not feel it safe to rely on the extra-judicial confession, which was disbelieved, in respect of A2.

The point is answered accordingly.

POINT No.2:

10. The only circumstance which points towards the involvement of the accused in this offence is his being seen in the company of the deceased lastly by P.W.6. According to P.W.6, on 06.08.2010, A1 took away the deceased along with him on his bike, saying that there is some work at the bus stand. While going, they told him that they would return within ten minutes, but they did not return. Having waited for about one hour, he went home. Next day morning, P.Ws.3 and 5 came to him and enquired about the deceased. He stated that A1 took the deceased along with him on the previous evening. He further states that five or six days later, P.W.5 told him that A1 Venkatesh killed the deceased at Chingicherla channel.

11. P.W.5 is the tractor driver as well as compressor worker. On 06.08.2010, while he was in his house, his elder sister-in-law, P.W.3, who is the wife of the deceased, came to their house and told him that the deceased had gone to attend work in the morning. Next morning also she came to their house and told him that the deceased, who had gone to work, did not return to the house during that night. Then himself and P.W.3 went to the house of P.W.5 and enquired him about the deceased. P.W.3 told them that on the previous evening, A1 took away the deceased from a tea hotel, on his bike. They searched for the deceased but both A1 and the deceased

were not found. Later, on coming to know that A1 was working at Yatakallu after Kalyandurgam, himself and P.W.3 went there and enquired with A1. He stated, that as the deceased, while working with him, attempted to commit rape on his second wife, himself and A1 killed the deceased at Chigicherla channel and so saying he ran away. Then he went to Rapthadu police station and informed the same to C.I. and on that, CI has shown one jeans pant, one shirt and one Thayathu and they were identified as belonging to the deceased.

In the cross-examination, he states that when they went to the house of A1, his house was found locked and he was not found for ten days. When they enquired the neighbours of A1, they stated that on 5th he had gone away. They did not tell them to where he went. He also pleads ignorance about the deceased attempting to outrage the modesty of second wife of A1.

Even the evidence of P.Ws.5 and 6 does not make out exclusive complicity of A1 in the alleged offence, as the information given by him is that, himself and A2 killed the deceased and the said evidence was not found to be sufficient against A2 by the Court below.

In the cross-examination of P.W.5, it was pointed out that the information given by P.W.6 that the deceased was taken away by A1 from a tea hotel and that on the previous day in the evening and also on the next day, P.W.3, informed about the deceased going to work and not returning and that both of them went to the house of A1 and enquired him, is pointed as an omission. In the cross-examination of

P.W.3, her evidence that A1 took away her husband from their house is pointed as an omission.

12. The evidence of P.W.6, no doubt, can be believed to the extent of the deceased being seen along with the accused on the previous day i.e. 06.08.2010. But, would that circumstance suffice, to link him up with the offence, needs to be examined. The evidence of the Doctor, examined as P.W.7, shows that the approximate time of the death of the deceased is about 48 hours prior to the post mortem examination. The post mortem was conducted on 09.08.2010. The report given by P.W.1 is on 07.08.2010 i.e. the date on which the dead body was found. The delay in conducting post mortem examination is not explained by the prosecution. The time of death, being 48 hours prior to the post mortem examination, may be any time prior to 48 hours, which may be from 06.08.2010 to 07.08.2010. The time gap between P.W.6 seeing the deceased and the accused together, which is on 06.08.2010, then would be two days. Hence, it cannot be said that the accused was the only person, who could have been in the company of the deceased at the time of his death. Moreover, the evidence of last seen is a weak piece of evidence and cannot be made a sole basis for the guilt of the accused, unless it is corroborated by other circumstances. The iron rod, which was allegedly recovered at the instance of the accused also cannot be linked up, as it is recovered from the bushes which are accessible to everyone and no incriminating evidence is collected from the said iron rod to show that it was used in the commission of offence. It is by now well-settled that in a case relating to circumstantial evidence the

chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case with several broken links in the chain of circumstances. Hence, in view of the above, we need to extend the benefit of all the above lapses in the prosecution case, to the accused.

The point is answered accordingly.

POINT No.3:

13. Hence, in view of the conclusions that were drawn under points Nos.1 and 2, the judgment of the Court below cannot be sustained.

POINT No.4:

In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant-accused in S.C.No.108 of 2011 dated 07.05.2013 on the file of the Additional Sessions Judge, Hindupur are set aside. The appellant-accused is acquitted of the offence under Section 302 IPC and she shall be set at liberty forthwith, if he is not required in any other case.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

T. RAJANI, J

September 27th, 2018

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith.

(B/o) DSK