

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Criminal Appeal Nos.1057 of 2011 & 1675 of 2018

Date: 18.07.2018

Crl.A.No.1057/11

Between:

Talari Krishnaiah

... Appellant/accused No.1

and

State of A.P.,
Rep. by its Public Prosecutor
High Court, Hyderabad

...Respondent

Crl.A.No.1675/18

Between:

Etepogu Manikyamma

... Appellant/accused No.3

and

State of A.P.,
Rep. by its Public Prosecutor
High Court, Hyderabad

...Respondent

Counsel for the appellants:

Smt.C.Vasundhara Reddy

Counsel for the respondent:

Public Prosecutor (TS)

The Court made the following:

Common Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These two Criminal Appeals arise out of Judgment, dated 16.08.2011, in Sessions Case No.624 of 2009 on the file of the IV Additional District and Sessions Judge (FTC), Mahabubnagar (for short 'the lower Court').

While accused No.1 filed Crl.A.No.1057 of 2011, accused No.3 filed Crl.A.No.1615 of 2018 against the aforementioned Judgment whereby accused No.1 and accused No.2 (since deceased) were convicted for the offences punishable under Sections 302 & 379 IPC and accused No.3 was convicted for the offences punishable under Sections 302 r/w 34 & Section 379 IPC and sentenced to undergo Imprisonment for Life for the former offences and Rigorous Imprisonment for a period of two years for the latter offence. Accused Nos.1 to 3 were also sentenced to pay a fine of Rs.500/- each, and in default of payment thereof, to suffer Simple Imprisonment for a period of three months.

The case of the Prosecution, in brief, is stated hereunder:

In the afternoon on 31-07-2008, when PW.1, who is the elder son of Rangamma (hereinafter referred to as 'the deceased'), was present at his agricultural fields, LW.8- Munnur

Ramulu informed him that the deceased was killed by some unknown persons in the village; that immediately, PW.1 rushed there and found the dead body of the deceased lying beside the house of one Madiga Ramanna; that PW.1 also found her gold ornaments *viz.*, Pusthela samanu (3 tolas) and ear tops (4 masas) missing; that he noticed the neck of the deceased swollen, her ears bleeding due to the forcible removal of the ear tops and also the drag marks from the side of the house of accused No.2; that suspecting that accused No.2 and her paramour- accused No.1 would have committed the offence as they borrowed a sum of Rs.10,000/- from the deceased and failed to repay the same inspite of repeated demands, PW.1 gave Ex.P.1-complaint against them to PW.9- Sub-Inspector of Police, Koilkonda Police Station, who registered the same as Crime No.59 of 2008 for the offences punishable under Sections 302 and 379 IPC.

That after registering the Crime, PW.9 sent express FIRs to all the concerned Officers, besides intimating the same to PW.10- Circle Inspector of Police, Mahabubnagar Rural, over phone; and that as the offence was grave in nature, PW.10 took up the investigation, observed and got photographed the scene of offence in his own camera, conducted scene of offence

panchanama and drawn the rough sketch of the scene of offence under the cover of Ex.P.3- Scene of offence Panchanama in the presence of PW.7 and LW.10- Baliaholla Madhavareddy Reddy, recorded the statements of PWs.2 to 4, held inquest over the dead body of the deceased in the presence of mediators- PW.7, LW.10- Balaiaholla Madhavareddy Reddy and LW.11- Yeddumetla Venkateshwaramma from 08.00 to 10.00 hours under the cover of Ex.P.4- Inquest Panchanama, sent the dead body to the Government Head Quarters Hospital, Mahabubnagar, for Postmortem Examination and recorded the statements of LW.5- Chinna Ramanna, PW.5, PW.6 and LW.8- Munnur Ramulu.

That PW.11- Civil Assistant Surgeon, Government Headquarters Hospital, Mahabubnagar, who conducted autopsy over the deadbody of the deceased, preserved the viscera and forwarded the same to the Director, Forensic Science Laboratory, Hyderabad, for chemical examination. PW.11 issued Ex.P.12 – Postmortem Examination report opining that the cause of death of the deceased was due to cardio respiratory arrest secondary to manual strangulation or throttling. The Assistant Director, Forensic Science Laboratory, issued

Ex.P.11- report to the effect that items 1 to 3 were analysed, but, no poisonous substance was found therein.

That on 04-08-2008 at 7.30 hours, on reliable information, P.W.10 along with his staff apprehended accused Nos.1 to 3 at the New Bus Stand, Mahabubnagar, interrogated them, recorded their confession statements in the presence of mediators- LW.12- P.Rajasekher Reddy & PW.8 and recovered the gold ornaments marked as MOs.1 to 4 from them under the cover of Exs.P.5 to P.7- confession and recovery panchanamas, caused their arrest and sent them to judicial custody.

That on his transfer, PW.10 handed over the investigation to his successor- LW.17- Circle Inspector of Police, Mahabubnagar Rural, who upon verification of the investigation done by PWs.9 and 10 laid the chargesheet against the accused under Sections.302, 379, 201 r/w 34 IPC.

That during the course of investigation it came to light that the deceased used to do petty money lending business in Ankilla Village; and that she has two sons, who, having married, were living separately. That accused No.1 is a private medical practitioner; that accused No.2 is his concubine; that accused No.3 is the sister of accused No.2; that accused Nos.1 and 2,

having deserted their respective spouses, got married at Manyamkonda Temple; that both of them borrowed a sum of Rs.10,000/- from the deceased; that they evaded to repay the same. That thereafter, accused No.2 left for Hyderabad; and that accused No.1 used to go to Hyderabad frequently to meet her. That about one month prior to the date of the incident, accused Nos.2 and 3 came to the village; that the deceased insisted accused No.2 to repay the amount; that in order to evade payment of the amount, accused Nos.1 and 2 hatched a plan to do away with the life of the deceased, in pursuance of which, they invited her to their house on 31-07-2018 and that accused No.1 gave her an injection with sedative drug on the pretext that it would cure her weakness and gave her toddy, as a result of which, she became unconscious. That while accused No.3 was on guard outside the house, accused No.1 placed the deceased on the ground; that accused No.2 sat on the legs of the deceased; and that accused No.1 shut the mouth of the deceased and killed her by throttling her neck. That the accused took away the gold ornaments from the dead body of the deceased; that after ensuring that the neighbours were not available, they shifted the dead body to the place behind the house of one Madiga Ramanna and covered it with leaves; that

meanwhile, PW.3, who came with firewood, noticed them and raised cries; that immediately, accused Nos.1 to 3 went to the house of accused No.2, locked the house and proceeded to Ankella Village. That the villagers, who gathered there, identified the deceased; and that PW.4 along with some other villagers rushed and tried to drag accused No.2 from the bus which she has boarded, but she along with accused Nos.1 and 3 escaped.

Based on the charge sheet and the material produced before it, the Court below has framed the following charges:

“FIRSTLY:-

That you A-1 and A-2, on or about 31st day of July, 2008 at about 1.00 p.m., in the house of you A-2, did commit murder by intentionally causing the death of Smt.Rangamma W/o Chenna Reddy, Age 60 yrs, R/o Ankilla village of Koilkonda Mandal, by pressing the neck, and that you thereby committed an offence punishable U/s. 302 of Indian Penal Code and within my cognizance.

SECONDLY:-

That you accused 3, during the course of same transaction, at the same time and place mentioned in Charge No.1, in furtherance of common intention, did commit murder by intentionally causing the death of Smt.Rangamma W/o Chenna Reddy, Age 60 yrs, R/o Ankilla village of Koilkonda Mandal, by pressing the neck, and that you thereby committed an offence punishable U/S 302 r/w 34 of Indian Penal Code and within my cognizance.

THIRDLY:-

That you accused 1 to 3, during the course of same transaction, at the same time and place mentioned supra in Charge No.1, intending to take it dishonestly committed the theft of Gold Pusthela Samanu Consisting 26 Gold (gundlu) Wg About 4.950 gr, 22 Gold Small designed Palakalu weighing about 6800 grams, Gold Pusthe weighing about 430 milligrams, One Gold Nanu studded with red stone wg. About 21.930 grams and paid ear tops studded with white stones weighing about 2.780 grams all in worth Rs.35,000/-, by taking it out of the possession of deceased Smt.Rangamma without her consent, and that you thereby committed the offence punishable Under Section 379 of Indian Penal Code and within my cognizance.

ALTERNATIVELY:-

That you A-1 to A-3 during the course of same transaction, at the same time and place mentioned in Charge No.1, dishonestly received or retained stolen property i.e., Gold Pusthela Samanu Consisting 26 Gold (gundlu) Wg About 4.950 gr., 22 Gold Small designed Palakalu weighing about 6800 grams, Gold Pusthe weighing about 430 milligrams, One Gold Nanu studded with red stone wg. About 21.930 grams and pair ear tops studded with white stones weighing about 2.780 grams all in worth Rs.35,000/- belonging to Smt.Rangamma, knowing or having reason to believe that such property was stolen property and that you thereby committed an offence punishable U/S 411 of the Indian Penal Code and within my cognizance.”

As the plea of the accused was one of denial, they were subjected to trial during which the Prosecution examined PWs.1

to 11, got Exs.P.1 to P.12 marked and produced MOs.1 to 4.

No evidence was let in on behalf of the accused.

On appreciation of oral and documentary evidence, the lower Court has disposed of the case in the manner as noted herein before.

Mrs.C.Vasundhara Reddy, learned Counsel for the appellants, submitted that this case is based on circumstantial evidence; that no circumstances were established by the Prosecution to connect the accused to the murder of the deceased; that the alleged recovery of MOs.1 to 4 from the accused is not legally sustainable as the Police failed to hold identification parade for identification of the stolen gold ornaments; and that the contents of Exs.P.5 to P.7- alleged confession –cum- recovery panchanamas of accused Nos.1 to 3 respectively varied from the evidence of PW.8, who is the panch witness.

Mr.C.Pratap Reddy, learned Public Prosecutor for the State of Telangana, opposed the above submissions and sought to sustain the Judgment of the lower Court.

We have considered the respective submissions of the learned Counsel for the parties with reference to the record.

As the Prosecution case goes, accused No.2 owed money to the deceased; that in connection with recovery of money, the deceased went to the house of accused No.2 where accused Nos.1 to 3, with common intention, caused the death of the deceased by squeezing her neck; and that after dragging the dead body, threw the same near the house of LW.5- Chinna Ramanna. The Prosecution examined PWs.1 to 6 to prove this aspect.

PW.1 is the elder son of the deceased. According to his testimony, at the time of the alleged incident, he was in the agricultural fields and that after hearing the news about the death of his mother, he reached the village and saw the dead body. Therefore, his testimony does not help the Prosecution to establish its case.

PW.2 is the husband of the deceased. He deposed that on the date of occurrence, he was at his house at about 10.00 a.m.; that the deceased left the house at 10.00 a.m., along with papers to the house of accused No.2 as the latter told that she intends to repay the debt; that accused Nos.1 to 3 killed the deceased

and threw the dead body near the house of LW.5; that he saw the deadbody and noticed injuries on her neck and ears; and that he also found that the gold ornaments worn by the deceased were missing. Except the claim of PW.2 that the deceased left for the house of accused No.2 at 10.00 a.m., his evidence does not throw much light on the involvement of the accused in commission of the offence.

PW.3 deposed that her house is situated in Harijana Colony; that about two years back, one day in the afternoon, she went to the forest for getting firewood; that when she was returning to her house at about 3.00 p.m., she noticed the dead body of the deceased covered with cheeky bushes near her house; that she also observed some drag marks from the house of accused No.2 to the place where the dead body was found; that when she raised cries, the villagers gathered there; and that herself and the villagers noticed accused Nos.1 to 3 running away from the house of accused No.2.

The statement of PW-3 that she along with other villagers noticed the dead body of the deceased, and also found accused Nos.1 to 3 running away from the house of accused No.2 is not corroborated by any other witness. On the contrary, while

Ex.P1 is silent about the accused, allegedly, running away from the house of accused No.2, PWs.1, 2, 5 and 6 did not state the same in their evidence. Therefore, we have no hesitation to hold that PW-3 has come out with a false version.

The dead body was, allegedly, seen for the first time by PW-4 along with PW-3. PWs.5 and 6 stated that there were drag marks from the house of accused No.2 to the place where the dead body was found. PW-7 has deposed that the distance, between the house of accused No.2 and the place where the dead body was lying, is 50 feet. But, Ex.P3 - Scene of offence Panchanama did not refer to any such drag marks. The rough sketch referred therein also does not show any drag marks. It is also worth noticeable that no separate Scene of offence Panchanama was held at the house of accused No.2. It is nobody's case that the deceased was seen entering the house of accused No.2 or that her body was being dragged from the house of accused No.2 to the scene of offence. Moreover, the incident allegedly took place at around 3.00 p.m. in a public street. It is highly improbable that the incident could not have been noticed by anyone else in the locality. In the light of these facts, it is not possible for this Court to rely upon the testimonies of PWs.1 and 2, who are highly interested witnesses,

and that of PW.3, which lacks credibility. As regards the evidence of PWs. 4 and 7, even if the same is accepted, it does not link the accused with the commission of the offence. The version of PWs.5 and 6 on the alleged drag marks is not supported by Exs.P.3 and rough sketch.

The only remaining evidence, that could connect the accused to the commission of offence is, the alleged recovery of the gold ornaments. As per the evidence of PW-10- Investigation Officer, he has recovered gold pustela samanu consisting of 26 gold balls, 22 gold small plates and gold puste from accused No.1, one gold nanu from accused No.2 and one pair of ear tops with white stones from accused No.3 at New Bus Stand, Mahabubnagar, on 04.08.2008 at 7.30 a.m. Exs.P.5 to P.7 are the alleged confession -cum- recovery panchanamas of accused Nos.1 to 3 respectively. It is stated therein that the Police, after apprehending the accused at the Mahabubnagar Bus Stand, recorded their confessional statements and seized the aforementioned items from them in the presence of Panchas- LW.12- P.Rajasekher Reddy and PW.8; and that thereafter, effected their arrest. However, we find a varied version from PW.8- one of the panch witnesses examined by the Prosecution. In his chief examination, he has stated that

three days after the incident, when he went to APSRTC Bus stand at Mahabunagar at about 7.30 a.m., he saw accused Nos.1 to 3 there; that after seeing him, the accused tried to run away; and that at that time, the Police came and caught hold of the accused. He has further deposed that the Police asked himself and one Rajashekhara Reddy to come to the Police Station along with the accused; that accordingly, they went to the Police Station, where, on enquiry by the Police in their presence, the accused confessed about the commission of offence and that thereupon, the Police have seized the gold ornaments from the respective accused. Thus, PW.8, who is the only panch witness examined by the Prosecution, has not corroborated the testimony of PW-10 regarding the place at which the gold ornaments were seized from the possession of the accused, as mentioned in Exs.P.5 to P.7- confession -cum- recovery panchanamas.

Another serious lacuna in the case of the Prosecution pertains to the identification of the gold ornaments. No specific identification parade, as envisaged under Rule 35 of the Criminal Rules of Practice, was initiated by the Prosecution for identification of the gold ornaments by the witnesses. For the first time, the gold ornaments were placed before PW.1 in the

Court. Significantly, in his cross-examination, after re-examination, PW.1 has admitted that the Police have shown MOs.1 to 4 to himself and his father and that they have not shown the same to his younger brother. When the very recovery of the gold ornaments is shrouded with serious suspicion in view of the fact that PW-8 has not corroborated the evidence of PW.10 and the contents of Ex.P5, the candid admission of PW-1 that the Police had already shown them the gold ornaments, no credibility can be attached to the recovery. Unless the gold ornaments, allegedly, seized from the accused were proved to be belonging to the deceased, by following the prescribed legal procedure, the case of the Prosecution that the same belonged to the deceased, is not worthy of acceptance. Therefore, the Prosecution failed to connect the accused to the offence through the alleged recovery of the gold ornaments.

For the aforementioned reasons, the conviction and sentences recorded against (i) accused No.1 for the offences punishable under Sections 302 & 379 IPC and (ii) accused No.3 for the offences punishable under Sections 302 r/w 34 IPC and Section 379 IPC in Judgment, dated 16.08.2011, in Sessions Case No.624 of 2009 of the IV Additional District and Sessions Judge (FTC) at Mahabubnagar, are set aside. The fine amount,

if any, paid by accused Nos.1 and 3 shall be refunded to them and they shall be released forthwith from the Jail, if they are not required in any other case or crime.

Both these Criminal Appeals are, accordingly, allowed.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 18th July, 2018
lur/msb

