

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

Criminal Appeal No.688 of 2012

Between:

Korra Reddy Mohan @ Mohan

... Appellant

and

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

...Respondent

Date of Judgment Pronounced: 06-11-2018

Submitted for Approval:

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

and

The Hon'ble Sri Justice T.Amarnath Goud

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|--|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the judgments ? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? | Yes/No |

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

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

and

The Hon'ble Sri Justice T.Amarnath Goud

+ Criminal Appeal No.688 of 2012

% Dated 06.11.2018

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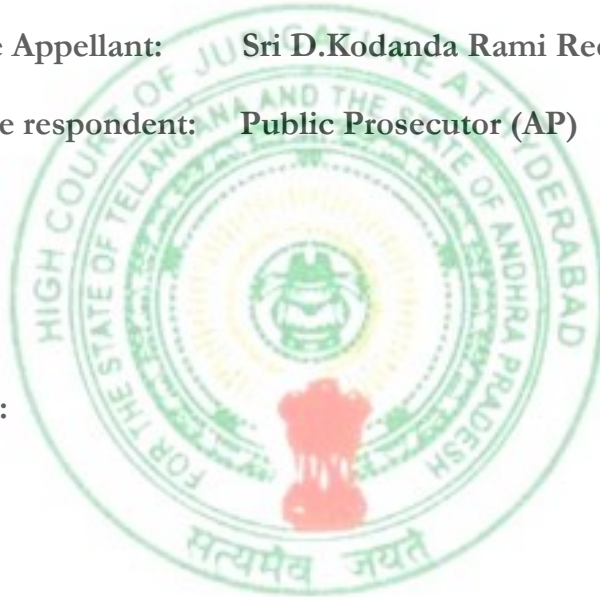
! Counsel for the Appellant: Sri D.Kodanda Rami Reddy

^ Counsel for the respondent: Public Prosecutor (AP)

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? Cases cited:



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

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.688 of 2012

Date: 06.11.2018

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Appellant

and

The State of Andhra Pradesh
Rep. by its Public Prosecutor
High Court of Andhra Pradesh, Hyderabad

...

Respondent

Counsel for the Appellant : Sri D.Kodanda Rami Reddy

Counsel for the respondent : Public Prosecutor (AP)

The Court made the following:



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

The sole accused in Sessions Case No.447 of 2010 on the file of learned II Additional District and Sessions Judge, Chittoor, at Madanapalle, filed this Appeal, feeling aggrieved by his conviction for the offences punishable under Sections 449, 302 and 404 I.P.C., and sentencing him (i) to undergo Rigorous Imprisonment for seven years and also to pay a fine of Rs.500/- and, in default of payment of fine, to suffer simple imprisonment for two months for the offence punishable under Section 449 I.P.C.; (ii) to undergo Imprisonment for Life and also to pay a fine of Rs.500/- and, in default of payment of fine, to suffer Simple Imprisonment for two months for the offence punishable under Section 302 I.P.C. and; (iii) to undergo Simple Imprisonment for a period of two years and also to pay a fine of Rs.300/- and, in default of payment of fine, to undergo Simple Imprisonment for one month for the offence punishable under Section 404 I.P.C. The Court below did not indicate as to whether the sentences shall run concurrently or not.

2. The gravamen of the allegation against the appellant is that on 08.11.2009 at about 2.30 p.m., he caused the death of one Bojanapu Akkulamma (hereinafter referred to as 'the deceased'),

who was the mother of P.W.1 and mother-in-law of P.W.2, and committed the theft of jewellery from her house.

3. Based on the charge sheet filed and the material collected during the investigation by the Police, the Court below framed the following charges.

“Firstly:

That you on or about 08-11-2009 at about 2-30 p.m. committed house trespass by entering into the house of one Bojanapu Akkulamma used as human dwelling in order to commit an offence punishable with death i.e., to commit murder of the deceased Bojanapu Akkulamma and that you thereby committed an offence punishable u/sec.449 of Indian Penal Code and within my cognizance.

Secondly:

That you on the above said date, time and place i.e., Kotlatapalle road, Madanapalle town committed murder intentionally causing the death of Bojanapu Akkulamma by closing her nose and mouth with a pillow by force and that of you thereby committed an offence punishable u/sec.302 of Indian Penal Code and within my cognizance.

Lastly:

That you on the above said date, time and place dishonestly misappropriated certain property i.e., gold ornaments and cash of Rs.89,000/- knowing that such property was in the possession of the deceased Bojanapu Akkulamma at the time of her death and had not since been in the possession of any personal legally entitled to such possession and that you thereby committed an offence punishable u/sec.404 of Indian Penal Code and within my cognizance.”

4. As the plea of the appellant was one of denial, he was subjected to trial, during which, the Prosecution examined P.Ws.1 to 12, got Ex.P-1 to P-15 marked and produced M.Os.1 to 21. On behalf of the defence, no evidence was let in.

5. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as indicated above.

6. We have heard Mr.D.Kodanda Rami Reddy, learned Counsel for the appellant, and the learned Counsel representing the learned Public Prosecutor (A.P.) appearing for the respondent-State.

7. This is a case based on circumstantial evidence. P.Ws.1 to 5 are the crucial witnesses. The occurrence, allegedly, took place on 08-11-2009 at 2.30 p.m., and Ex.P.1- report was given to the Police at about 8.00 p.m. As per the case of the Prosecution, P.W.1 was residing in the ground floor and the appellant along with his family, the deceased along with her family and the families of P.Ws.3 and 4 were residing in different portions of the second floor of the same building, while P.W.2 was residing in another building adjacent thereto.

8. In her evidence, P.W.2 deposed that on the date of occurrence, there was rain; that when she went to the terrace of her

building to clear the rainwater sullage at the outlet pipe, she noticed the appellant jumping from the grills of her mother-in-law's portion with a bag in his hand to the terrace of her building; that she approached the appellant and asked him about the contents of the bag and as to why he was jumping over the grills, but, he did not reply; and that, therefore, P.W.2 caught hold of the appellant, took him to the house of P.W.1, woke up P.W.1 as he was sleeping and informed him about the acts of the appellant and his carrying the bag. P.W.1 took the said bag, opened it and found therein some cash and certain jewellery belonging to the deceased; that they questioned the appellant as to what happened to the deceased, but he did not reply; that P.W.1 and herself hurriedly proceeded to the portion of the deceased; that when they tried to open the main door, the same was found locked from inside; that herself and P.W.1 gained entry into the house of the deceased through the grills and found the beeruva opened and the articles of the deceased lying on the floor here and there; that when they further went inside the house, they found the dead body of the deceased lying on a mat on the floor; that they started crying and that later, when they came to the ground floor in search for the appellant, he was not found.

9. P.W.1 also came out with a similar version as that of P.W.2.

In Ex.P.1- Police report given by PW.1, the proposed narration of the manner, in which the offences were allegedly committed, was made throwing suspicion against the appellant. Interestingly, the Police have registered Ex.P.7- FIR under Section 174 Cr.P.C., by showing the appellant as suspect. If PWs.1 and 2 were eye witnesses and they have produced the cloth bag containing certain jewellery along with cash of Rs.89,000/-, which were, allegedly, seized from the possession of the appellant on the date of occurrence itself, we do not find any reason for the Police not to register the case for the same offences, as were subsequently included in the altered FIR, when it was originally registered.

Be that as it may, the conduct of PWs.1 and 2 raises a serious doubt as to whether they have come out with the true version. In the first place, when the appellant, who was the resident of one of the portions adjacent to the portion in which the deceased was residing, committed the offence, there was no need for him to jump to the adjacent building in which PW.2 was residing. If PW.2 has really caught the appellant along with the jewellery bag and took him to PW.1 residing in the ground floor of the adjacent building, no person of ordinary prudence would let him go without taking proper precaution to confine him before handing him over

to the Police. While the occurrence has taken place on 08-11-2009, the Police have not apprehended the appellant till 16.11.2009. In his cross-examination, PW.9- Sub-Inspector of Police, I Town Police Station, Madanapalle, admitted that PW.2 has stated to him that the children of the deceased were residing separately and that PW.2's house is situated in Rajanagar at Neerugattuvaripalle. He, however, added that the building of PW.2 is situated adjacent to the building of the deceased, but, he admitted that he has not collected any documents in support of the said fact. On a careful scrutiny of the evidence of PWs.1 and 2, the same does not inspire confidence. Though the occurrence has taken place at about 2.30 p.m., Ex.P.1 was lodged at 8.00 p.m. The building, in which the occurrence has taken place, and the Police Station are situated in the same town. It has come out in the evidence of PW.9 that the distance between the scene of offence and I Town Police Station, Madanapalle, is around 2 kms. The Prosecution has failed to explain the reason for the delay of 5½ hours in lodging the Police report. This unexplained delay would give rise to a serious suspicion that the Police report was given after consultations and confabulations projecting PWs.1 and 2 as eye witnesses.

10. PW.3 is a hearsay witness. Therefore, his evidence does not have much evidentiary value. The Prosecution, however, heavily

relied upon the evidence of PW.4- a child witness, who happens to be the son of PW.3. He deposed that he was residing in one portion of the house of the deceased; that the appellant and his parents were residing in another portion; that on the date of occurrence at about 10.30 a.m., he was present at his house and his parents were not present at that time; that at about 1.00 a.m., the appellant approached him and gave Rs.2/- asking him to get two Boomers (Chewing Gums); that he went to the shop to get the chewing gums; that on his return after 10 minutes, he did not find the appellant at his house; and that he searched for the appellant in the upstairs, but could not find him. He further stated that one can enter the house of the deceased from their portion. The defence was able to elicit certain crucial omissions from the evidence of PW.9 and the evidence of PW.4. PW.9 stated that PW.4 did not specifically state before him that the appellant asked him to bring the chewing gums and that after bringing the chewing gums, he searched for the appellant. PW.9 further stated that as per column No.4 of Ex.P.4- Inquest Report, the deceased was last seen alive by the neighbours on the date of occurrence at about 12.00 noon. The evidence of PW.4, thus, suffers from material omissions throwing any amount of doubt about its veracity. Even assuming that PW.4 was speaking truth, the appellant being the resident of the adjacent portion in which PW.4 was living, the presence of the

appellant at the building on the date of occurrence is not unusual and the same by itself cannot give rise to a presumption that the appellant might have entered the portion in which the deceased was living, from the portion of PW.4. Thus, the evidence of PWs.1 to 4, projected as circumstantial witnesses, does not connect the appellant to the occurrence.

11. Apart from the ocular evidence of PWs.1 to 4, the Prosecution has heavily relied upon the alleged extra-judicial confession of the appellant before PW.5 and the alleged recovery of MOs.7 to 9- gold ornaments from him. As the Prosecution case goes, PW.5 had best acquaintance with the appellant as both their families were residing in the same building belonging to the deceased as tenants; that on 16-11-2009 at about 8.30 p.m., when PW.9 was at the Police Station, PW.5 accompanied by the appellant came there and presented a report; that Ex.P.10 is the said report; that after going through the contents of Ex.P.10, PW.9 re-registered the case by altering the Section of Law from Section 174 Cr.P.C., to Sections 302 and 380 IPC and issued Ex.P.11- altered FIR. That on being informed, PW.10- Inspector of Police, Urban Circle, Madanapalle, came to the Police Station at about 9.00 p.m., and took up further investigation, during the course of which, he seized MOs.7 to 9- gold ornaments shown to him and MO.21-

cash from the appellant under the cover of Ex.P.8- Proceedings. Though PW.5 has turned hostile, the Prosecution has got his signature on Ex.P.10- report marked as Ex.P.2.

12. PWs.7 and 8 are Panch witnesses to Ex.P.6- admissible portion of arrest-cum-seizure Mahazarnama. PW.7- Revenue Inspector of Ponnutipalem Village deposed that on 16-11-2009, while he was present at the MRO office, Madanapalle, the Inspector of Police, Madanapalle Urban Circle, sent for him through one Constable; that he, accordingly, went to the Police Station where the appellant was present; and that the Inspector of Police informed him that he has seized one pair of jumkis, one finger ring, one dollar and Rs.700/- from the appellant; and that Ex.P.6- Seizure-cum-arrest panchanama was drafted, which was signed by him. PW.8 also deposed in the same vein. Significantly, neither of these witnesses spoke about the presence of PW.5, who, allegedly, produced the appellant along with the jewellery. It is the case of the Prosecution that PW.5 has recorded the confessional statement of the appellant. The Prosecution heavily relied upon Ex.P.10- report of PW.5 wherein he has claimed that the appellant approached him and confessed the commission of offence showing MOs.7 to 9 and the fact of his surrendering the appellant to the Police along with the jewellery. The said report was stated to have

been received at 8.30 p.m., on 16-11-2009 and at the same time, PW.7 also claimed to have gone to the Police Station on being summoned by the Inspector of Police. As noted above, PW.7 did not speak about the presence of PW.5. When PW.5 has turned hostile and denied his stating to the Police that the appellant approached him & confessed the commission of offence and his drafting report & surrendering the appellant to the Police, it is not possible to accept the testimony of PWs.9 and 10- Police Officers alone, more so, when PWs.7 and 8 did not speak about the presence of PW.5 at the Police Station. If the Police were coming out with truth about PW.5 surrendering the appellant, they should have ensured PW.5's presence when PWs.7 and 8 reached the Police Station to witness the seizure. As discussed above, by the time PWs.7 and 8 reached the Police Station, the appellant was in the custody of the Police without there being any one else including PW.5. Therefore, the theory putforth by them that PW.5 has produced the appellant along with the jewellery remained unsubstantiated. Hence, it is not possible for the Court to accept the version of the Prosecution that the jewellery were seized from the possession of the appellant. In the absence of PW.5, there was every possibility for the Police to plant the jewellery. In these circumstances, the alleged confessional statement of the appellant has no evidentiary value, as it did not satisfy the requirement of

Section 27 of the Indian Evidence Act, 1872, as per which, the confession must lead to recovery. The alleged recovery, in the instant case, is self-serving one as no witness has seen the Police seizing MOs.7 to 9 from the possession of the appellant following his confession.

Another crucial link in the chain of circumstances *viz.*, identification of the jewellery also suffers from legal lacuna. Under Rule 35 of the Criminal Rules of Practice, specific procedure is laid down for Identification of the case property. This provision reads as under:

“35. Identification of property:- (1) Identification parades of properties shall be held in the Court of the Magistrate where the properties are lodged.

(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or five similar objects.

(3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not be allowed to communicate with the witness not yet called in.”

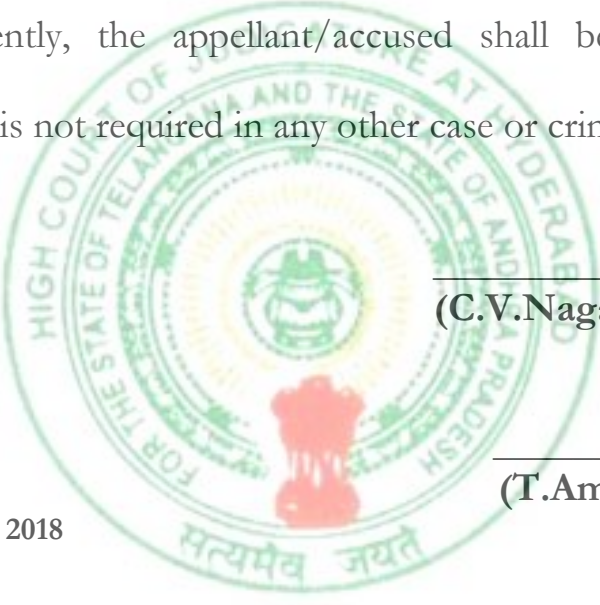
13. PW.10- Investigating Officer stated that after seizure of MOs.7 to 9 from the appellant, he has sent them to PW.7- Village Revenue Officer, Ponnutipalem Village, with a request to conduct Test Identification Parade (TIP) for identification of those items by PW.1 and that PW.7 conducted TIP and submitted report to the

effect that PW.1 identified the said jewellery. However, the alleged report of PW.7 was not filed. Interestingly, PW.7, in his evidence, did not raise a whisper about his conducting TIP with PW.1 and the latter identifying the jewellery. PW.1, however, made a vague statement in his evidence that after 15 days of the incident, some person approached and asked him to accompany to identify the gold jewellery of the deceased; that he was taken to some place in the presence of some elders; and that he identified the same.

14. In our opinion, the Prosecution completely bungled in getting MOs.7 to 9, allegedly, seized from the appellant properly identified. Even if, for any reason, PW.7 was asked to conduct the TIP instead of a Magistrate, as noted above, no proceedings for such identification were drawn and even PW.7 did not claim that he has conducted the same. Unless the Prosecution has adduced acceptable evidence to show that the jewellery, allegedly, seized from the appellant did belong to the deceased, it will not be able to establish the crucial link in the chain of circumstances in connecting the appellant to the murder. In our opinion, the Court below has got swayed away by the self-serving and laconic evidence placed by the Prosecution in holding the appellant guilty of murder. On a careful consideration of the case in its entirety and for the aforementioned reasons, we have no hesitation to hold that the

Prosecution failed to prove the guilt of the appellant beyond all reasonable doubts.

15. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused for the offences punishable under Sections 449, 302 and 404 IPC in the Judgment, dated 23.05..2012, in Sessions Case No.447 of 2010 on the file of the II Additional District & Sessions Judge, Chittoor at Madanapalle, are set aside. The fine amount, if any, paid by him shall be refunded to him. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.



(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Dt: 6th November, 2018

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