

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.273 of 2012

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

1) Accused Nos.1 and 2 in Sessions Case No.48 of 2009 on the file of the Special Sessions Judge for Trial of Cases under Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act-cum-VII Additional District and Sessions Judge, Mahabubnagar, are the appellants herein. They were tried for the offences punishable under Sections 302, 201 read with 34 IPC and Section 3 (2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act'). Vide judgment, dated 27.01.2012, the learned Sessions Judge, convicted A1 and A2 for the offences punishable under Section 302 read with 34 IPC and sentenced them to suffer 'rigorous imprisonment for life'. They were further convicted for the offence punishable under Section 201 IPC and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for one month. A1 and A2 were further sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,000/- each for the offence punishable under Section 3 (2) (v) of the Act, in default, to suffer simple imprisonment for one month.

2) The substance of the charge against the accused is that on 19.04.2008 at about 12.15 noon at Hillocks of Naganool Village, Mahabubnagar District, A1 and A2 intentionally caused the death of one Bhasker (hereinafter referred to as "the deceased").

3) The facts as culled out from the evidence of the prosecution witnesses are as under:

PW.1 is the father of the deceased, while PW.2 is the sister of the deceased. The marriage of the deceased was fixed with A3(Juvenile), who was studying 9th class and who developed illegal intimacy with A1. Though A1 and A3 intend to marry, but they could not convince their parents, hence, they hatched a plan to do away with the life of the deceased. In that process, A3-Juvenile called the deceased to come over to the hillocks of Naganool Village. Accordingly, the deceased went there, where A1 and A2 pounced upon the deceased and beat him indiscriminately with sticks. As a result of which, the deceased died. Thereafter, they pushed the dead body into a small rocky valley, and covered it with grass with an intention to screen the evidence. After the said incident, A1 to A3 left the place. When the deceased did not return home, the family members of the deceased searched for about two days and thereafter, PW.1 lodged a report on 23.04.2008 at 6.00 p.m. before PW.8-the Sub-Inspector of Police, who inturn registered the same as a case in Crime No.108 of 2008 as Man missing. Ex.P15 is the first information report.

According to PW8, on reliable information, he proceeded to Nagarkurnool bus station along with staff and apprehended A1. When questioned, A1 is said to have admitted the commission of the offence. Then PW8 secured PW4 and another, the mediators and in their presence recorded the confessional statement of A1. Thereafter, PW8 along with staff and A1 proceeded to Naganool village, where the incident took place. A1 is said to have shown the dead body which was covered under heap of stones and bushes. The dead body was removed and a requisition was sent to the doctor for conducting post mortem examination. PW.8 also observed the scene of offence and prepared Ex.P5 the scene observation report. PW8 also recovered a stick produced by A1, which is marked as MO.1. He also held inquest over the dead body of the deceased in the presence of mediator (PW4). Ex.P6 is the inquest report. PW.6-the Civil Assistant Surgeon, Government Hospital, Nagarkurnool, proceeded to the scene of offence and conducted autopsy over the dead body of the deceased. Ex.P9 is the postmortem certificate. According to him, the cause of death was "due to multiple injuries". Thereafter, he filed a memo before the Court for altering the provisions of law. Ex.P16 is the Alteration Memo.

PW.7, who is also one of the Investigating Officers, examined PWs.1 to 3 and others and recorded their statements. He seized clothes from the dead body, collected blood stained earth and controlled earth from the scene of offence and got the dead body and scene of offence photographed. He prepared a scene of

observation panchanama in the presence of mediators. Ex.P5 is the scene observation report. He arrested A1 and A3-Juvenile and produced them before the Court. On 5.5.2008, the Assistant Sub Inspector of Police, Nagarkurnool, produced A2, who also confessed about the commission of the offence. He recorded the confessional statement of A2 in the presence of PW.4 and another. A2 has also shown the scene of offence and produced a stick, used in the commission of the offence. Mo.2 is the stick. He then arrested A2 and produced him before the Court. He sent the material objects to the Forensic Science Laboratory and collected printed wedding card and call particulars of Cell phone No.9951715477 belonging to the deceased and Coin Box No.929110333. Ex.P11 is the call particulars of the cell phone belonging to the deceased. Ex.P12 is call particulars of Coin Box from Nagarkurnool. A2 produced the cell phone belonging to the deceased. MO.3 is the Cell Phone. After collecting all the material, PW.7 filed the charge sheet before the Court of Judicial Magistrate of First Class, Nagarkurnool, who in turn, committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.48 of 2009. A separate charge sheet was filed against A3 before the Juvenile Court.

4) On appearance, charges under Sections 302, read with 34, 201 IPC & Section 3 (2)(v) of the Act were framed, read over and explained to the accused, to which they denied and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs. 1 to 8 and got marked Exs.P1 to P16 and M.Os.1 to 3. After the closure of evidence, the A1 and A2 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, no oral or documentary evidence was adduced.

6) PW.3, who is the circumstantial witness, did not support the case of the prosecution and was treated hostile. Basing on the evidence of PWs. 1 and 2, the learned Sessions Judge, convicted A1 and A2 for the offences punishable under Sections 302 read with 34, 201 IPC and Section 3 (2)(v) of the Act and sentenced them as stated supra. Assailing the said conviction and sentence, the present Criminal Appeal came to be filed.

7) Learned counsel for the appellants mainly submits that A1 died on 14.01.2018 and in support of the said submission, the inquest report of A1 is filed. Insofar as A3 is concerned, she was treated as a juvenile and tried separately. According to him, there is no legal evidence connecting the accused with the crime, except the confession which is inadmissible in evidence.

8) On the other hand, learned Public Prosecutor would submit that the evidence of PWs.1, 4 and 7 amply establish the involvement of A1 and A2 in the commission of offence.

9) The point that arises for consideration is whether the accused-A1 and A2 are responsible for the incident, and if so,

whether they are liable to be convicted for the offences punishable under Sections 302 read 34, 201 IPC and Section 3 (2)(v) of the Act.

10) Admittedly, there are no eye witnesses to the incident. PWs. 1 and 2 are the relatives of the deceased. They were not the eye witnesses to the incident. According to them, the marriage of the deceased with A3-Juvenile was fixed and three days prior to the incident, A3 called the deceased on cell phone to come over to Naganool Village. Believing her version, the deceased left the house. As the deceased did not return to the house, PW.1 searched for two days and then lodged a report on the third day. PWs. 1 and 2 were informed by the police about tracing the dead body in the hillocks of Naganool Village, where they identified the deceased, based on the clothes worn by him. Therefore, their evidence may not be useful to establish the guilt of the accused, except identifying the dead body of the deceased as that of son of PW1 and brother of PW2. It is their evidence that A3 had illegal contacts with A1, but there is no evidence to prove the said fact.

11) PWs. 7 and 8 are the investigation officers. The evidence of PW8 would show that he registered the report lodged by PW1 and on receipt of information, on 24.4.2008, he proceeded to Nagarkurnool bus stop, and apprehended A1, who confessed about the commission of offence. PW7 is another investigating officer, who deposed that A1 showed the dead body of the deceased which was concealed under a heap of stones, situated in a hillock at Naganool village. He claims to have held inquest over the dead

body, prepared scene observation panchanama, sent requisition to the Doctor for post mortem examination. He deposed further that on 5.5.2008, on production of A2 before him, he secured the presence of PW4 and another, before whom, A2 also confessed about the commission of the offence along with A1. At this stage, it is to be noted that PW4, who is the panch witness, in his evidence stated that on 24.4.2008, police called him to Nagarkurnool Police Station, where A1 was in the custody and at that point of time A1 confessed about the commission of offence. Therefore, their evidence with regard to recovery of the dead body at the instance of A1 in the presence of PW.4 and recovery of Mos.1 and 2 sticks, stands doubtful. However, it is brought to the notice of this Court that A1 died.

12) Now, the case revolves around A2 only. Pursuant to the confession made by A1 only, A2 was arrested. A1 is alleged to have made confession before PW4 and another in the presence of PW7 about his involvement in the commission of offence, which lead to recovery of cell phone and stick. But neither PW.1 nor PW.2 were asked to identify as to whether the cell phone, which has been recovered from the accused No.2, is that of the deceased. The prosecution did not collect any material to show that the cell phone which was recovered from the accused No.2, is that of the deceased. There is no positive evidence to show that the cell phone is that of the deceased, except the alleged confession made before the police which is inadmissible in evidence. Further, the evidence of PW.7 does not indicate as to the place from where the

accused No.2 was arrested. In the absence of any other evidence, in view of the evidence of PW.4, which renders the confession of Accused No.1 (which lead to arrest of A2 also) doubtful, and as the prosecution failed to establish the link in the circumstances relied upon by the prosecution namely motive and confession leading to recovery of dead body by adducing legal evidence, we intend to extend the benefit of doubt to the accused.

13) In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 27.01.2012 passed in S.C.No.48 of 2009 on the file of the Special Sessions Judge for Trial of Cases under SCs & STs (POA) Act-cum-VII Additional District and Sessions Judge, Mahabubnagar, for the offences punishable under Section 302, 201 read with 34 IPC and Section 3 (2) (v) of the Act, are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime.

14) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

18.04.2018
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