

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1013 of 2011

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

The sole accused in Sessions Case No. 237 of 2010 on the file of the II Additional District and Sessions Judge, Chittoor at Madanapalle, is the appellant herein. He was tried for the offences punishable under Sections 302 and 404 IPC, for causing the death of one Spai Eeswaramma @ Chitti @ Reshma. Vide judgment dated 06.04.2011, the learned Sessions Judge found the accused guilty of the charge under Section 302 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of three months. He was also found guilty for the offence punishable under Section 404 IPC and sentenced him to suffer rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month. Both the sentences against the accused were directed to run concurrently.

2. The gravamen of the charge against the accused is that on 13.01.2010, at about 2 p.m., the accused caused the death of one Spai Eswaramma @ Chitti near a newly constructed dhaba at the lands of Thahir Ali on Madanapalle-Vayalpad road, Vayalpad Town and Mandal, by strangulating her with a chunni, and thereafter, misappropriated gold properties which were in her possession.

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

PW2 is the mother of the deceased, while PW3 is the brother of the deceased. It is stated that the deceased used to eek out her livelihood by rearing goats, and during such time, she fell in love with the accused, who was a washer man and resident of Nagaripalle. When PW2 refused the proposal of the deceased to marry the accused, the accused married another girl. The deceased was sent to Kuwait by the elder daughter of PW2, as the deceased was feeling bad, since the accused married another girl. In Kuwait, the deceased married one Rafi, who is a native of Mumbai. It is stated that after marriage, both of them came down to her village, where the said Rafi dropped the deceased at the house of PW2 and left, saying that he will come after some time and take back his wife. During her stay in the house of PW2, the deceased renewed her affair with the accused and started talking to him frequently on cell phone. It is stated that though the deceased was pregnant by three months, she was maintaining illegal contact with the accused. It is stated that during the said period, she stayed with the accused at Madanapalli. Thereafter, PW2 brought the deceased back to her house.

4. While so, PW2 sent the deceased to Mumbai, with a request to join her husband. Accordingly, the deceased joined her husband at Mumbai and gave birth to a male child. It is stated that the deceased returned to the house of PW2 along with the child, who

was aged five months old. PW2 was insisting the deceased to go back to her husband, but, she was postponing the same, on one pretext or the other. On one day, i.e., on the day of Bhogi festival (13.01.2010), at 9 a.m., the deceased handed over her child to PW2 and went to Kalikiri cross roads, stating that she would bring some biscuits for the child, but, she did not return.

5. The evidence on record further show that on 13.01.2010, at about 9 a.m., PWs 5, 8 and 10 saw the accused and deceased proceedings in a white colour Bajaj scooter towards Madanapalli. According to them, the deceased was wearing light green colour dress at that time.

6. On 14.01.2010, at about 8 a.m., while PW1-the Village Revenue Officer of Valmikipuram village, was present in his office, he was informed about a female dead body in a hanging position near an under construction dhaba, which is situated near the railway track, in the fields of one Tahir, to the west of Vayalpad. On that, he proceeded to the spot and noticed the dead body of a woman with chunni around her neck, and her body tied to a trunk of a eucalyptus tree. Immediately, he proceeded to Valmikipuram Police station and lodged a report before the police. Ex.P1 is the said report.

7. Basing on Ex.P1, PW12-the Assistant Sub Inspector of Police registered a case in Crime No. 4 of 2010 under Section 174 Cr.P.C. Ex.P12 is the original First Information Report. Thereafter, he proceeded to the scene of offence, which was situated in the fields

of PW11. He also got prepared a rough sketch of the scene, which is marked as Ex.P13, apart from conducting a panchanama of the scene. During the said process, he examined PW1 and recorded his statement. EX.P14 is the police proceedings. Later, he conducted inquest over the dead body of the deceased. Ex.P11 is the inquest report. After conducting the inquest, the body was sent for post mortem examination.

8. On 14.01.2010, PW14-the Civil Assistant Surgeon, Community Health Centre, Vayalpad conducted autopsy over the dead body of the deceased and issued Exhibit P16-the Post Mortem Report. According to him, the cause of death was due to pressure over the neck, which must have taken place within 18 to 36 hours prior to the post mortem examination.

9. PW13-the Sub Inspector of Police took up investigation from PW12 on 16.01.2010, verified the investigation done by him and found it to be in correct lines. On the same day, PWs 2, 3 and 5 came to the police station carrying a newspaper clipping containing the photograph of the deceased-Eeswaramma. PW13 showed the clothes of the deceased, which were marked as M.Os 1 to 3 and her photograph Ex.P2 to PWs 2, 3 and 5, who identified it to be that of the deceased. On that, PW13 examined them and recorded their statements. On 20.01.2010, at about 2 p.m., PW4 approached PW13, while he was with PW15, and handed over the accused, along with a report, which is placed on record as Ex.P7. Basing on

Ex.P7, PW13 altered the section of law to 302 and 379 IPC. Ex.P15 is the altered F.I.R.

10. Further investigation in the case was taken up by PW15-the Inspector of Police, Piler. According to him, on 20.01.2010, at about 3.15 p.m., PW13 approached him along with two others, presented a copy of the altered F.I.R., and introduced PW4 and the accused to him. PW15 examined PW4 and recorded his statement. In the presence of PW1, he interrogated the accused, and basing on the confessional statement of the accused, he prepared a confessional statement, the seizure mahazar, and also seized two receipts for Rs.3,500/- and Rs.15,000/- (Ex.P3 and Ex.P4) under the cover of the said confession-cum-seizure mahazar. Pursuant to the confession made, PW15 arrested the accused and then, the accused took them to the shop of PW6 at Kalikiri. PW15 examined PW6 at his shop and recorded his statement. From the shop of PW6, the police officials seized a pair of ear studs (M.O.5) and one gold finger ring (M.O.6) under Ex.P5. Thereafter, they proceeded to the shop of PW7, and after recording the statement of PW7, seized one black beads neck chain (M.O.7) under Ex.P6. Thereafter, he returned to his office, sent the accused to judicial custody, and M.Os 5 to 8 to PW1 through constables, with a request to conduct test identification of the properties. PW1 is said to have conducted test identification proceedings and sent the identification mahazar (Ex.P19) to PW15.

11. After collecting all the necessary documents, a charge sheet came to be filed, which was taken on file as PRC No. 4 of 2010 on the file of the Judicial First Class Magistrate, Vayalpad. On appearance, copies of the documents were furnished and after satisfying the requirements of Section 207 of Cr.P.C., and since the case is triable by the Court of Sessions, the same was committed to the Court of Sessions, wherein it came to be numbered as S.C.No. 237 of 2010 on the file of the II Additional District and Sessions Judge, Chittoor at Madanapalle. Basing on the material available on record, charges for the offences punishable under Sections 302 and 404 IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

12. In support of its case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P21 and M.Os.1 to 8. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. Ex.D1 came to be marked by the accused in support of his defence.

13. Relying on the circumstance of last seen, supported by the evidence of PWs 5, 8 and 10, coupled with the recovery of the gold ornaments from the possession of the accused, the learned Sessions Judge convicted the accused under Sections 302 and 404 IPC. Challenging the same, the present appeal came to be filed.

14. The learned counsel for the appellant, Ms. Anjali appearing on behalf of Indus Law Firm mainly contends that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events, connecting the accused with the crime. According to her, the circumstance of last seen, even if proved, cannot be made the basis to convict the accused. She would further contend that there is any amount of doubt with regard to the recovery of the gold ornaments made, at the instance of the accused, since PWs 6 and 7, from whom these ornaments were recovered, were not asked to identify the same before the court. Apart from that, though PW15, in his evidence, spoke about the identification proceedings being conducted under Ex.P19 by PW1, the evidence of PW1 nowhere indicates holding of test identification parade of properties. Having regard to the above, she would contend that since the recovery of the ornaments at the instance of the accused is not proved through the evidence of PWs 8 and 9, their identification loses significance.

15. On the other hand, the learned Public Prosecutor opposed the same, contending that though there are no eye witnesses to the incident, the circumstances relied upon by the prosecution do form a chain of events connecting the accused with the crime. According to him, the theory of last seen, coupled with the recovery of gold ornaments belonging to the deceased, which were identified by PW1, is sufficient to base a conviction.

16. The point for consideration is whether the circumstances relied upon by the prosecution are sufficient to base a conviction.

17. As seen from the record, the prosecution relied upon three circumstances, viz., (1) the accused being last seen in the company of the deceased on 13.01.2010 at about 9 a.m., (2) the alleged extra judicial confession said to be have been made by the accused before PW4 on 20.01.2010, and (3) the recovery of gold ornaments from the shops of PWs 6 and 7, at the instance of the accused.

18. Coming to the first circumstance viz., the accused being last seen in the company of the deceased, the prosecution relied upon the evidence of PWs 5, 8 and 10. PW5, in his evidence, deposed that on 13.01.2010, at about 9 a.m., while he was taking tea at a tea stall, which was situated near Indiramma Colony near Kalikiri cross road, he noticed the accused and deceased proceeding towards Madanapalli on a white Bajaj scooter. According to him, the deceased was wearing a light green colour dress at that time. He further deposed to have identified the accused, as he was having acquaintance with both the accused and deceased. It was further stated that on 16.01.2010, he noticed PW2 searching for the deceased and when she enquired about the same, he is said to have informed her about noticing the deceased and accused on 13.01.2010.

19. Though PW5 was subjected to lengthy cross-examination, nothing incriminating came to be elicited to disbelieve his version

in the chief. But, in the process of cross-examination, it was elicited that himself and the son of Dasari Lakshmi Devi are accused in the murder case filed, in the case of the death of the daughter-in-law of Lakshmi Devi. He further admits that he did not disclose the fact of noticing the deceased to anybody till he informed the said fact to PW2.

20. Coming to the conduct of PW5 in not informing anybody about the accused and deceased, and he, being an accused in another criminal case, the counsel for the appellant urges that no credence can be given to his evidence. It is to be noticed that question of PW5 not disclosing the information about the deceased to anyone, does not arise, as he was not aware about the missing of the deceased. On coming to know about the same, he informed PW2 about witnessing the accused and deceased going on a Bajaj scooter. Further, the fact that PW5 is an accused, along with another person, in a murder case, cannot throw any doubt on his veracity, since there is no animosity between the accused and PW5 and no reason for him to speak false against the accused.

21. PW8 is also a resident of Kalikiri and he was working as an accountant in Market Yard in Kalikiri. According to him, on 13.01.2010, at 1 p.m., he came to Madanapalle on his personal work, and while he was present in the front of Hotel Gongura at Madanapalle, he noticed the accused and deceased proceeding on a scooter towards Tirupati. According to him, he knows the deceased, as his house and the house of the deceased were at a

distance of one furlong. He further deposed that only on 16.01.2010, after reading the newspaper, he came to know about the death of the deceased. He further admits that he did not disclose to anybody about seeing the accused and deceased on 13.01.2010. In the cross-examination, he admits that he worked as a Reporter for Andhra Bhoomi Daily newspaper during 2010-2011. The suggestion that he did not see the accused and deceased on 13.01.2010, was denied. The suggestion that he did not mention to the police about his standing in front of Gongura Hotel, was denied by him.

22. PW10 is the other witness who was examined to speak about seeing the accused and deceased on 13.01.2010, while they were proceeding on a scooter towards Madanapalle. Though PW10 was cross-examined, nothing useful came to be elicited to discredit his testimony.

23. The argument of the learned counsel for the appellant that no credence can be given to the evidence of PWs 5, 8 and 10 with regard to the circumstance of last seen, cannot be accepted, as these witnesses did not inform about the same to the police, since they were not aware of the missing of the deceased. By this, it cannot be inferred that these witnesses have been set up by the prosecution to speak to the said circumstance. Having regard to the above, we feel that the circumstance of the accused being last seen in the company of the deceased on 13.01.2010, stands established.

24. The second circumstance relied upon by the prosecution is the alleged extra judicial confession said to have been made by the accused before PW4 on 20.01.2010. But, PW4, in his evidence, did not support the fact of the accused approaching him, making a confession and disclosing the commission of the offence. Though he admits that he scribed and signed Ex.P7, but, according to him, the same came to be prepared in the police station. He further admits that he does not know the accused herein. Having regard to the above, this circumstance of accused making extra judicial confession, which came to be reduced in writing under Ex.P7, and then, PW4 presenting the accused before the police, cannot be believed.

25. The third circumstance which is strongly relied upon by the prosecution is the recovery of gold ornaments at the instance of the accused. As stated by us earlier, the arrest of the accused came to be shown on 20.01.2010, on which day PW4 is said to have approached PW13-the Inspector of Police along with the accused and handed over the accused along with the report Ex.P7. As observed by us earlier, PW4 did not support this version. On the other hand, his version is to the effect that the said report was prepared in the police station. Therefore, a doubt arises as to the arrest of the accused on 20.01.2010 after 3 p.m. It is the version of PW15-the investigating officer that at about 3.15 p.m., on 20.01.2010, PW13 produced the accused along with PW4, and thereafter, the accused is alleged to have made a confession, which led to the recovery of gold ornaments from the shops of PWs

6 and 7. According to PW15, the accused took them to the shop of PW6, where M.Os 5 and 6 were recovered, and later, to the shop of PW7, from where M.O.7 was recovered under Ex.P5 and Ex.P6 respectively.

26. PW6, in his evidence, states that he is the owner of Sri Mahalakshmi Pawn broker shop, and Ex.P3, the receipt for Rs.3,500/- said to have been produced by the accused, was issued by him and contains the signature of the accused. As per Ex.P3, the accused is said to have pledged six red stones studded cross finger ring and a pair of ear studs and took a sum of Rs.3,500/-. But, it is to be noted here that PW6 was not asked to identify the gold ornaments which were said to have been seized from his shop. Further, the ornaments which were recovered from the accused vide M.O.s 5 to 8 do not refer to the finger ring containing six red stones, which was marked as M.O.6.

27. Coming to the evidence of PW7, he is the owner of Sri Dhanalakshmi Pawn Broker Shop at Madanapalle. According to him, under Ex.P4, the accused pledged one black beads gold chain and received Rs.15,000/- from him. He admits that Ex.P4 contains his signature and also the signature of the accused. On 20.01.2010, he is said to have handed over Ex.P4 to the police personnel. However, PW7 was also not asked to identify the ornaments, as the ornaments which were seized from his shop.

28. Apart from that, the evidence of PW15-the investigating officer shows that after these gold ornaments were seized, he

requested PW1 to conduct test identification of the properties. Though the procedure which was sought to be adopted for identification of the properties is contrary to the criminal rules of practice, but, PW1, in his evidence nowhere states about holding any test identification of MOs 5 to 8. On the other hand, speaks about PW1 holding test identification of properties. It would be useful to extract the relevant portion of PW15, which is as follows:

“Then I sent M.O.5 to 8 to PW1 through constables with a request to conduct Identification proceedings. PW1 conducted identification proceedings and handed over identification mahazar to me. Ex.P19 is the Identification mahazar.”

29. That being the position, it is very strange as to how Ex.P19-identification mahazar, which contains the signature of PW1, came to be prepared. In fact, it was not even suggested to PW1 that Ex.P19 was prepared at his instance.

30. Further, at the time of preparing seizure panchanama at the shops of PWs 6 and 7, though number of persons gathered around the said shops, no signatures of any one of those persons were taken on the mahazar.

31. Therefore, in view of the evidence of PWs 1, 6 and 7, a doubt arises as to whether the gold ornaments which were seized at the instance of the accused, if any, are the ornaments of the deceased.

32. The Apex Court in *Anjan Kumar Sarma and others v. State of Assam*¹ held that the only circumstance of last seen by itself is not sufficient to connect the accused with the crime, in the absence of any other circumstance. As held by us, in the instant case, the prosecution was only successful in proving the circumstance of accused being last seen in the company of the deceased on 13.01.2010. In view of the judgment of the Apex Court, we feel that the same is not sufficient to connect the accused with the crime.

33. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 06.04.2011, in Sessions Case No.237 of 2010, on the file of the II Additional District and Sessions Judge, Chittoor at Madanapalle, for the offences punishable under Sections 302 and 404 I.P.C. is set aside and he is acquitted for the said offences. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

30.07.2018
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¹ (2017) 14 SCC 359