

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRIMINAL APPEAL No.59 of 2013

Between:

Bollikonda Venkanna and another

..... APPELLANTS

VERSUS

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

.... RESPONDENT

JUDGMENT PRONOUNCED ON : 21.02.2018

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE MS. JUSTICE J. UMADEVI

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

C. PRAVEEN KUMAR, J

J. UMADEVI, J

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.59 OF 2013

ORDER :

%Dated 21.02.2018

1. Bollikonda Venkanna, S/ o. Yellaiah,
Age: 32 years, Occ: Agriculture,
R/ o. Gunjalur Village, Chivvemla Mandal,
Nalgonda District

2. Bachalakuri Sudhakar
S/ o. Lachaiah, Age: 28 years,
Occ: Lorry Driver, R/ o. Chivvemla Village
and Mandal, Nalgonda District

..... APPELLANTS

VERSUS

\$ The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

..... RESPONDENT

! Counsel for Appellants : Smt. A. Gayathri Reddy

^ Counsel for Respondents : P.P. for the State of A.P.

< GIST :

> HEAD NOTE :

? Cases referred :

(2006) 10 SCC 172

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.59 of 2013

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

1) Accused Nos.1 and 2 in Sessions Case No.524 of 2011 on the file of the II Additional Sessions Judge, Nalgonda, Suryapet, are the appellants herein. They were tried for the offences punishable under Sections 302 and 201 IPC. By judgment, dated 06.12.2012, the learned Additional Sessions Judge, convicted both the accused under the said counts and sentenced them to suffer 'imprisonment for life' for the offence punishable under Section 302 IPC and directed them to pay a fine of Rs.5,000/- each, in default to suffer simple imprisonment for a period of three months and also sentenced to suffer rigorous imprisonment for a period of seven years for the offence punishable under Section 201 IPC and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for a period of one month. Both the sentences were directed to run concurrently.

2) The gravaman of the charges against the accused is that on the intervening night of 1st/2nd day of September, 2009 at 1.30 a.m., in the house of accused No.2 at Chivvemla Village, Nalgonda District, the accused caused the death of one Daida Vijaya (hereinafter referred to as "the deceased") by strangulating her to a wooden beam and thereafter caused disappearance of the

evidence by moving the body to the outskirts of Vallabhapuram Village.

3) The facts, as disclosed, in the evidence of the prosecution witnesses, are as under:

i) PW.3 is the mother, PW.4 is the sister and PW.5 is the brother of the deceased. PW.9 is the maternal uncle of the deceased and the other witnesses are resident of Gunjaloor Village. The deceased was a married woman, having three children. On 04.06.2008, the husband of the deceased, by name Srinivas, died accidentally due to fall from a toddy tree. After the death of Srinivas, PWs.3 and 4 brought the deceased along with her children to their house and since then she has been staying with them. About four or five months prior to her death, she developed illicit intimacy with accused No.1. On coming to know about the same, PWs.3 and 4 warned her not to continue the relationship, as she is having three children. But, neither accused No.1 nor the deceased paid any heed to their advice. As they suspected that the land admeasuring Ac.4.00, which stood in the name of the deceased, may be alienated, they approached PW.8, who is an elder person, and PW.9, who is the father-in-law of the deceased, requesting them to transfer the land, which is standing in the name of the deceased, in favour of her minor children, as the deceased was moving with other persons in the village, including accused No.1. Pursuant thereto, PWs.8 and 9, along with Laxmaiah, PW.3 and the deceased went to Sub-Registrar Office, Suryapet, and

transferred the said land in favour of her minor children. It is said that about 15 days prior to the date of tracing the body, the deceased left the house along with the pass books of the land in question. It is said that from that day onwards, the deceased and accused No.1 were not seen in the village.

ii) On 04.09.2009, in the morning hours, while PW.2 was proceeding to Durajpally from his thanda and when he reached SRSP Canal, he noticed bad smell emanating from the said place. He also noticed a dead body of a female person lying there and blood was oozing from her ear. Immediately thereafter, he went to Khasimpet village and informed PW.1, the Sarpanch of the village, about seeing a dead body near SRSP Canal. On the basis of the information given by PW.2, PW.1 went to the said place and saw the dead body. He noticed the body of the deceased swelling and blood oozing from the nose and mouth. Pursuant thereto, he went to the police station and lodged a report before PW.9-the Sub-Inspector of Police. Ex.P1 is the report. Basing on the said report, a case in Crime No.160 of 2009 came to be registered for the offence punishable under Section 302 IPC against un-known persons. Ex.P13 is the first information report. PW.19 handed over the investigation to PW.20-the Inspector of Police. On receipt of the information, PW.20 immediately rushed to the scene along with clues team. He verified the investigation done by PW.19 at the scene. Thereafter, he enquired about the identification of the dead body with the villagers, who gathered there. He examined PW.2 and recorded his statement at the spot. In the presence of

PWs.12 and 13, he conducted scene of offence panchanama and also drafted a rough sketch. During the course of scene observation, he seized hair, which was found in the right hand between 3rd and 4th finger of the deceased, and also seized control earth and blood stained earth by the side of the deceased. He got photographed the scene through PW.11. Ex.P4 is the scene of offence panchanama and Ex.P5 is the rough sketch of the scene. Later, he conducted inquest over the dead body in the presence of PW.12 and 14. Ex.P6 is the inquest panchanama. Thereafter, he shifted the body to Area Hospital, Suryapeta, for preservation. He got published the photographs of the deceased in newspaper and also sent radio messages.

iii) On 05.09.2009, PW.18-the Civil Assistant Surgeon, Area Hospital, Suryapeta, conducted autopsy over the dead body of the deceased and issued Ex.P12-the postmortem certificate. According to him, the body was completely putrefied; unable to identify any external injuries and did not notice any internal injuries even when the body was opened. He further states that, at the time of conducting postmortem examination, the dead body of the deceased was not in identifiable position and there was no requisition from the police to collect the bones of the deceased for DNA Test. He further states that, during postmortem examination, he found that the hyoid bone of the deceased intact. In the absence of injuries on the body, he concluded stating that it was a case of natural death and not due to strangulation or throttling.

iv) On 05.09.2009, a news item appeared in the newspaper with the photograph of the deceased stating that an un-detected body was lying in the mortuary of Area Hospital, Suryapeta. Though PWs.3 and 4 could not identify the body as that of the deceased, basing on the photograph, but, however, they went to Area Hospital, Suryapeta, and noticed the same in the mortuary room. By that time, postmortem examination was conducted. On seeing the saree on the body and also ring toes and anklets, the family members of the deceased identified the body as that of the deceased. PW.20 handed over the dead body of the deceased to PW.3, who is the mother of the deceased, for conducting funerals.

v) On 06.09.2009, PW.20 visited Gunjaluru village and recorded the statements of PWs.8 to 11. On 15.09.2009, on receipt of credible information that accused No.1 was available in the house of accused No.2, PW.20 along with PW.19 and other staff rushed to the village, where he apprehended accused Nos.1 and 2. On interrogation, accused No.1 voluntarily confessed that he committed the offence with the help of accused No.2. PW.20 recorded the confessional statements of accused Nos.1 and 2 in the presence of PWs.15 and 16 and remanded them to judicial custody. Pursuant to the said confession, PW.20 seized the motor cycle and saree used for hanging the deceased. After seizure, the accused lead the police to SRSP Canal where they concealed the dead body after killing the deceased. On 29.09.2009, PW.20 filed a requisition before the Judicial Magistrate of First Class, Suryapeta, to send the seized hair to the F.S.L., for D.N.A. analysis. On

02.10.2009, PW.20 sent the hyoid bone of the deceased, which was preserved by PW.18, to F.S.L. After collecting D.N.A. report and the relevant material, PW.21 filed charge sheet before the Judicial Magistrate of First Class, Suryapet, who, in turn, committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.524 of 2011.

4) On appearance, charges under Sections 302 and 201 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) To substantiate its case, the prosecution examined PWs.1 to 20 and got marked Exs.P1 to P13 and MOs.1 to 11. After the closure of evidence, the accused 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. No oral or documentary evidence was adduced on behalf of the accused.

6) Placing reliance on the circumstantial evidence, adduced by the prosecution, the learned Sessions Judge convicted the accused for the offences, referred to above. Challenging the same, the present appeal came to be filed.

7) Learned counsel for the appellants mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. She would further contend that when the identification of the deceased itself is not

established, the question of convicting the accused would not arise. It is her plea that though the deceased was missing since 15 days, no efforts were made by the family members of the deceased to lodge a report. It is her plea that because of alleged illicit relationship with accused No.1, a false report has been given suspecting the involvement of the accused in the commission of offence. Coming to the recovery of hair from the hands of the deceased, it is her plea that in the absence of examination of forensic expert, the said report has no evidentiary value. Since the science in the said field is growing, the contents of the said report cannot be accepted as its face value, as no opportunity was given to the accused to cross-examine the expert on technical aspects. Apart from that, it is further contended that there is absolutely no explanation from the prosecution with regard to abnormal delay in sending the hair, alleged to have been seized from the hands of the deceased, to the expert. It is thus her plea that there is absolutely no evidence connecting the accused with the crime.

8) On the other hand, the learned Public Prosecutor would submit that since the accused and deceased were seen together and in view of the report of the expert, the said circumstance can be made the basis to convict the accused. He would further submit that the fact that the body was in a putrefied condition, pails into significance, in view of the other circumstances, more particularly, identification of the articles on the body as that of the deceased.

9) Now, the point that arises for consideration is whether the accused are responsible for the death of the deceased.

10) Admittedly, in this case, there are no eye witnesses to the incident and the case rests on circumstantial evidence. The prosecution mainly relied upon four circumstances, namely; 1) the accused being last seen in the company of the deceased, (2) recovery of saree of the deceased from the house of accused No.2, (3) presence of hair of accused No.1 in the hands of the deceased and (4) the motive for the accused to commit an offence.

11) It is to be noted that a reading of the evidence of PWs.3,4,5 and 8 shows that the husband of the deceased by name Srinivas died accidentally, on 04.06.2008, when he fell down from a toddy tree. Thereafter, the deceased was brought to the house of PWs.3 and 4, along with her three children. About four or five months prior to her death, the deceased is said to have developed illicit intimacy with accused No.1. The evidence of PW.8, who is an elder of the village, shows that PW.3 came to him and informed him that her deceased daughter is moving closely with several persons and she is also moving with accused No.1 and that she was not listening her advice. Their evidence also discloses that couple of weeks prior to her death, she took pass books and other documents relating to the land admeasuring Ac.4.00, which stood in her name, and left the house. These facts are spoken to by all the family members, including PW.9, who is the father-in-law of the deceased. Apprehending that the deceased may sell away the

property and misuse the money, the family members approached PW.8, the elder, and requested him to see that the property is registered in the name of the minor sons of the deceased. Accordingly, all of them approached PW.9, who accepted their request and the property was registered in the name of minor children at the Sub-Registrar Office, Suryapet.

12) Insofar as illicit intimacy, PW.4, in her cross-examination, admits that though they informed village elders about the intimacy, they never called accused No.1 to the panchayat. It was further admitted by them that the deceased never informed to them that she had illicit intimacy with accused No.1. She further admits, in the cross-examination, that they are not suspecting the character of the deceased. The relevant portion in the cross-examination is as under:

“My sister was developed illegal intimacy with A1, we informed to the village elders Janaki Ramulu (PW8) and Bollikonda Laxmaiah (PW.9) and we never called A1 to the Panchayat. My sister during her life time she never informed to me nor my mother that she has developed illegal intimacy with A1.

It is true that after disappearance of my sister we have not conducted any panchayat by suspecting that A1 might have taken and killed. It is true that the dead body of my sister was unidentified condition.”

13) If, really, such an illicit relationship was there, definitely the family members would have called accused No.1 and mediated the issue. When panchayats were held, non-summoning of accused No.1 appears to be un-usual, more so, in a village, where the elders would normally try to settle the issue when they come to know the said aspect.

14) From the evidence adduced, it appears to be an apprehension that accused No.1 developed intimacy with deceased only to acquire the property. None of the witnesses anywhere deposed about accused No.1 proclaiming or informing that he has developed intimacy only for the sake of property. Therefore, the motive aspect, that the accused developed intimacy with the deceased and subsequently killed her only for the sake of property is not established with positive evidence.

15) Before dealing with the theory of last seen, it is to be noted that the deceased left the house along with the pass books, couple of weeks prior to tracing of the dead body. The evidence, which is now spoken to by the witnesses, is that the deceased was having illicit intimacy with accused No.1 and because of the said intimacy, both of them left the village. But, PW.8, in his evidence, categorically admits that after the death of the husband of the deceased, PW.3, who is the mother of the deceased, came and informed PW.8 about her daughter moving closely with several other persons and also with accused No.1 and that she is not listening to her words. Hence, requested for transfer of the land situated at Namavaram Village in the name of minor sons of her daughter. The relevant portion in the evidence of PW.8 is as under:

“It is true that I stated in my chief examination that after the death of husband of deceased Vijaya, PW.3 mother of deceased came and informed to me that her daughter is moving closely with several persons and also moving with accused No.1 and she is not listening her words and asked us to transfer the lands situated in Namavaram in the name of minor sons of her daughter.”

16) From this piece of evidence, it can be gathered that the deceased was moving not only with accused No.1 but with several other persons in the village.

17) Keeping this circumstance in the background, we shall now proceed to deal with the evidence of PW.10, who claims to have seen the accused and deceased together on first of 2009 in a month (name of the month not spoken to by the witness).

18) In his evidence, PW.10, who is a Upa Sarpanch of Gunjaloor village, deposed as under:

“On 1st day of 2009 in one month I do not remember the name of the month. I started from my village Gunjaloor in the after noon and reached Chivvemla at 3 p.m., since I got some work in Tahasildhar Office. After completion of my work at Tahasildar Office, I kept my vehicle Passion Motor Cycle in Tahasildar Office, Chivvemla, I went to Khammam, on my personal work. I completed my work at Khammam in the midnight. I boarded the lorry at Khammam and got down at Chivvemla in the night at 1.30 a.m., I took my vehicle from Tahasildar office, while I was proceeding to Gunjaloor village, at Khasimpet road, one Passion Motor Cycle came in opposite direction, the road passing to Thimmapuram on that three persons were traveling. Out of three persons I identified A1 Bollikonda Venkanna and also deceased Vijaya was traveling on that vehicle and Bollikonda Venkanna was driving the said motor cycle and Vijaya was sitting in the middle and other male person was also traveling, but I did not identify that person since it was late night, so I did not enquire them. Three or four days after that I came to know that the deceased was died and her dead body was lying in the Area Hospital, Suryapet.”

19) From the evidence in chief, it is clear that PW.10 though claims to be Upa Sarpanch of the village , fails to mention the exact date on which he has seen the accused and deceased together (month). His evidence further discloses that he is said to have gone to Chivvemla as he was having some work in Tahsildar office and after completing his work, he kept his vehicle in Tahsildar Office, went to Khammam on personal work. He claims

to have completed his work in Khammam and boarded a lorry at Khammam and got down at Chivvemla in the night at 1.30 a.m. Thereafter, he took his vehicle from the Tahsildar's Office and, while proceeding to his native village, claims to have seen three persons traveling in a motor cycle and out of three persons he is said to have identified accused No.1 and the deceased. Three or four days thereafter he came to know that the deceased died.

20) In the cross-examination, PW.10 admits that in his earlier statement, he did not state before the police that he saw them when they were going on a motor cycle. He further admits that he did not identify the persons, who were traveling on the motor cycle on that day. He further says that he did not see any person on motor cycle. It would be useful to refer to the relevant portion which is as under:

"It is true that I did not state before the Police that I saw a person going on the Passion Motor Cycle. I did not identify the persons who were traveling on Passion Motor Cycle on that day. I did not see A1 and deceased Vijaya on that motor cycle on that day. It is not true to suggest that at the instance of Police in my chief examination I stated that I saw A1 and Vijaya were traveling on the motor cycle. It is true that on that day I went to Khammam, but I have not seen any person on any motor cycle."

21) From the evidence of this witness, it is clear that though stated in the chief examination that he saw the accused and deceased going on a motor cycle, failed to mention about it in his earlier statement recorded under Section 161 Cr.P.C. Strangely, the said witness was not treated hostile by the prosecution. Hence, the theory of last seen also becomes doubtful.

22) Insofar as the answers given by the witness, in the cross-examination, the learned Public Prosecutor would contend that since the witness was cross-examined nearly 25 days after his evidence in chief is recorded he went back. He says that as the witness was one over after the adjournment, no credence can be given to the contents of cross-examination and the evidence in chief can be made the basis to establish the link.

23) It is to be noted that all the witnesses in this case were summoned for cross-examination after their evidence in chief was closed. Though no material is there, the learned counsel for the appellant would submit that due to 'telangana agitation', the advocates were abstaining the work and because of which, the Court after examining the evidence in chief closed their evidence and subsequent to the application made, all the witnesses were recalled and were subjected to cross-examination. A perusal of the record would show that all the witnesses including the postmortem Doctor and the other official witnesses were cross-examined only after recall. Therefore, the allegation that the witness was one over because of delay in cross-examination cannot be accepted. Even assuming it to be correct, since the witness was not declared hostile, his admissions in the cross-examination cannot be eschewed from consideration.

24) In *Ramreddy Rajesh Khanna Reddy and another v. State of A.P.*,¹ the Apex Court held as under:

¹ (2006) 10 SCC 172

“The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case courts should look for some corroboration.”

25) In the instant case, the evidence of PW.10 does not categorically disclose as to when he has seen the accused and deceased together. Even assuming for the sake of argument that PW.10 has seen the accused and deceased five days prior to the date of tracing the body, the time gap between the deceased being last seen in the company of the accused and the time when the body of the deceased was recovered, cannot be said to be so small. Therefore, it cannot be said with certainty that the accused are the authors of the crime. Further, as per the postmortem report, issued by the Medical Officer, the time of death was about 7 days prior to the postmortem examination. PW.10 claims to have seen the deceased along with accused No.1 on the intervening night of 01/02.09.2009. If the contents of postmortem report are taken into consideration, namely the death being 7 days prior to the date of conducting postmortem examination, which was done on 05.09.2009, the possibility of PW.10 seeing the accused and deceased together on the intervening night of 1st or 2nd would not arise. Therefore, the circumstances relied upon by the prosecution do not establish that PW.10 seeing the accused and deceased together.

26) Coming to the recovery of hair, on 05.09.2009, PWs. 19 and 20 proceeded to the scene of offence and during the scene of

offence panchanama, PW.20 claims to have seized the hair, which was found on the right hand third and fourth finger of the deceased. In the cross-examination, he states that as per his investigation, the connection of accused Nos.1 and 2 for the death of the deceased is seizure of hair in the hands of the deceased and also the confession of the accused after their apprehension. He further states that he collected the hair of accused No.1 at the scene of offence, prior to the inquest. After the arrest of accused No.1, he claims to have sent the hair of accused No.1 along with the hair, which was seized from the hands of the deceased, to F.S.L., through the Court, for DNA analysis. He further admits that he has not sent the hair of accused No.2 to F.S.L. His explanation appears to be that because of confession made by accused No.1, he has sent the hair of accused No.1 only.

27) It is to be noted here that PWs.12 and 13, who acted as panch witnesses for the scene of offence, categorically deny seizure of any material objects in their presence. PW.12 says that something was written on paper, on which they were made to sign. The witness was not treated hostile by the prosecution. PW.13 deposed that the police got written the contents of Ex.P4 in his presence and the police asked him to attest and he did. Both these witnesses in their evidence nowhere refer to seizure of any hair from the hands of the deceased.

28) Apart from that, it is very strange to note that even before the D.N.A report, the investigating officer came to the

conclusion that the hair, which was alleged to have been seized from the hands of the deceased, was that of accused No.1, which according him is basing on confession of accused No.1. The said version of investigating officer cannot be accepted at its face value, for the reason that though the hair was seized on 05.09.2009, the same was sent to expert 15 days after the arrest of accused No.1. It is also to be noted here that accused No.1 was arrested on 15.09.2009 and the hair, which was recovered from the hands of the deceased along with the hair of accused No.1, was sent to F.S.L., on 29.09.2009. No explanation is forthcoming as to why there was such a delay and also as to whether the hair which was alleged to have been seized was sent to the Court immediately.

29) Apart from that the prosecution has not made any effort to examine the expert, who conducted the DNA analysis. This being a growing field and as the report is only the information based on some scientific examination, definitely an opportunity ought to have been given to the accused to find out the credibility of the seizure, manner in which it is stored and sent and other scientific aspects about the test by cross examining the analyst. In a case of this nature, we feel that non-examination of the analyst would definitely caused prejudice to the accused.

30) Apart from all these facts, as stated earlier, the mediators, who were said to have been present at the time of alleged seizure, never spoke about the seizure of hair. It would be

useful to extract the relevant portion of their evidence, which is as under:

31) PW.12 in his evidence deposed as under:

“The police did not seize any material objects in my presence. The police got written something on that myself and Sudhakar was attested on it.”

32) PW.13 in his evidence deposed as under:

“The police got written the contents of Ex.P4 in my present, when police asked me to attest on Ex.P4, first I refused since the police were stated that since I saw the dead body and the scene of offence and I also present, so asked me to attested, I attested on Ex.P4 along PW.12.”

33) Further, it is to be noticed that both the witnesses were never treated hostile by the prosecution. Therefore, a doubt arises whether really the hair was seized at that time or that the hair was planted subsequent to the arrest of accused No.1, as there is no evidence to show that the said hair was deposited before the Court immediately after the seizure.

34) The fourth circumstance is with regard to identity of the deceased. The Doctor in his evidence categorically states that the body was in a highly putrefied condition and it was also cut in the postmortem examination to find out the internal injuries. Even the witnesses say that the body was in an unidentifiable condition and basing on the toe rings and anklets, they could have identified the body.

35) Learned counsel for the appellant tried to contend that there is any amount of doubt as to whether really the body is that of the deceased. Evening assuming that the body is that of the

deceased, there is no evidence on record to show that these two accused are responsible for the death of the deceased. Infact not even any inkling of material is placed on record to show the involvement of accused No.2 in the commission of offence. Hence, we feel that the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime.

36) In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/ accused Nos.1 and 2 for the offences punishable under Sections 302 and 201 in S.C.No.524 of 2011, on the file of the II Additional Sessions Judge, Nalgonda at Surypaet, are set aside. Consequently, the appellants/ accused Nos.1 and 2 shall be set at liberty forthwith, if they are not required in any other case or crime.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

21.02.2018

Note: L. R. Copy to be marked.

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