

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SMT. JUSTICE T.RAJANI**

CRIMINAL APPEAL Nos.700 of 2011 & 1238 of 2016

COMMON JUDGMENT : (Oral) *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Since both the appeals arise out of the same judgment dated 4th May 2011 in Sessions Case No.575 of 2010, passed by the Principal Sessions Judge, Kurnool, they are heard together and are being disposed of by this common judgment.

2. By the aforesaid judgment, accused No.1 was found guilty of the charge under Section 302 r/w. 34 of IPC, accused No.2 was found guilty of the charge under Section 302 of IPC. Both of them were further found guilty of the charge under Section 201 of IPC. Accordingly, they were convicted. Challenging their conviction, Criminal Appeal No.700 of 2011 is preferred by accused No.2 and Criminal Appeal No.1238 of 2016 is preferred by accused No.1.

3. The case of the prosecution, in brief, is that accused Nos.1 and 2 are friends. After the murder of one Boya Sanjeevaiah, many people left their village, and among them, were PWs.2 to 4, the deceased Ediga Kosigi Narasappa and the accused. Appellants/A-1 and A-2 were working in hotels. Accused No.1 fell in love with one Reshma with whom the deceased was already in love and was talking to her over telephone. A-1 could not tolerate the same. Having fed-up with the attitude of the deceased, A-1 and A-2 decided to kill him.

4. While so, on 22nd April 2008, the deceased went to the house of PW-2 for distributing wedding cards of his sister and stayed in the room of PW-2 on that night. On 23rd April 2008, the deceased went to the house of A-2 and served wedding card to him. Thereafter, A-2 and the deceased went to Santhosh Nagar to distribute wedding cards. After distribution, they returned to the house of A-2. In the meanwhile, A-1 also reached the house of A-2. There, A-1 and A-2 hatched up a plan to kill the deceased in the house of A-2. Thereafter, A-2 went to the brandy shop, purchased brandy and took the deceased to the scene of offence on the pretext of consuming liquor. After consuming liquor, the deceased tried to take a nap keeping his shirt behind his head as a pillow. A-2 stabbed the deceased with a dagger on his stomach and throat. During the scuffle, A-2 sustained injury to his right hand. The deceased died instantaneously. Then, the accused set ablaze the dead body of the deceased and threw the dagger into the bushes and went away. A-1 returned to the room. By then, PW-1 was present there. PW-2 questioned about the blood stained clothes and the whereabouts of the deceased. A-1 suppressed the fact and stated falsehood. A-1 changed the blood stained clothes, kept the same in a bag and left the room along with the said bag.

5. The further case of the prosecution is that basing on the statement of PW-1, a case in Crime No.112 of 2008 was registered at Kurnool IV-Town Police Station for 'man missing'. After receipt of extra-judicial confession of accused, the Section of law was altered from 'man missing' to Sections 302 and 201 of IPC and issued FIR.

6. After filing the charge sheet and receipt of records, the case was taken on file by the Court of Session for the offences under Sections 302 and 201 of IPC and numbered as S.C.No.575 of 2010.

7. Upon hearing and considering the material available on record, the Court of Session framed charge under Section 302 of IPC against A-2, under Section 302 r/w.34 of IPC against A-1 and under Section 201 of IPC against A-1 and A-2, read over to them in Telugu, for which, they pleaded not guilty and claimed to be tried.

8. In support of its case, the prosecution has examined PWs.1 to 11 and marked Exs.P-1 to P-16 and M.Os.1 to 17. On behalf of defence, no witness was examined, however, Ex.D-1 was marked.

9. After considering the evidence on record and the contention of the parties, the trial Judge convicted both the accused as mentioned above. Hence, the present appeals.

10. Learned counsel appearing on behalf of appellants submit that in the present case, there is no eyewitness and the case is based on circumstantial evidence and last seen theory. As per the case of the prosecution, the accused approached PW-7 i.e. V.R.O. and disclosed the offence before him, who took them to the Police Station and thereafter, Police recorded the confessional statements of accused and PW-7 put his signature. The learned counsel submit that neither the appellants confessed the offence before PW-7 nor PW-7 recorded any statement to that effect, but, the Police recorded the confessional statements and PW-7 only put his signature without going through the contents. Therefore,

such confessional statements cannot be made basis for conviction of appellants.

11. Learned counsel for appellants further submit that the weapon of offence shown in the present case is M.O.14/dagger, but it has nothing to do with the crime as none of the witnesses could establish that dagger was used in committing the murder of deceased.

12. Learned counsel submit that, in addition to above, the dead body could not be identified to be of the deceased. For identification of dead body, DNA of the mother of the deceased was taken, however, it could not be matched with that of the deceased. Learned counsel further submit that there is no motive in the present case; as the case rests upon the circumstantial evidence, the entire chain has to be proved. In the present case, first of all, there is no motive and chain of circumstances has not been proved by the prosecution. The deceased was missing since 23rd April 2008. Thereafter, the marriage of the sister of deceased was performed in the absence of deceased, and only thereafter i.e. on 2nd of May 2008, a missing report was given to the Police and that was accordingly recorded for a man missing.

13. Learned counsel further submit that the evidence of PW-11/Inspector of Police has no evidentiary value because the said deposition has not been proved by the FSL report. The evidence of PW-11 does not show as to from whom the material objects and articles were seized. Therefore, it does not help the prosecution to establish that the appellants have committed murder of deceased. Despite that, the learned trial Court, without taking the aforesaid facts into consideration, convicted the

appellants. Therefore, the present appeals deserve to be allowed by setting aside the conviction order.

14. On the other hand, learned Public Prosecutor submits that the learned trial Court has relied upon the evidence of PWs.1 to 6 and the last seen theory. The deceased was last seen with A-1 on 23rd April 2008, and thereafter, the deceased did not come to the house. Therefore, burden is upon the appellants under Section 106 of the Indian Evidence Act to explain as to what had happened thereafter with the deceased when A-1 and deceased were together on 23rd April 2008. Regarding the motive, the learned Public Prosecutor submits that the deceased had intimacy with one Reshma, with whom, A-1 also had intimacy. Therefore, A-1 planned to do away with the life of deceased. He further submits that though the said Reshma has not been examined as a witness, however, that is not fatal to the prosecution case. He further submits that the appellants had confessed their guilty before PW-7, who took them to the Police Station and the Police accordingly recorded their confessional statements. Thereafter, pursuant to their confessional statements, recovered the articles and bones from the place where the deceased was burnt after being killed. PW-1 had identified the articles of the deceased. Thus, the articles recovered established that those articles were of the deceased and the bones recovered from the place of offence were of the deceased. Therefore, even if the DNA could not be matched due to lack of evidence, that is not fatal for the prosecution case.

15. We have heard the learned counsel for the parties and perused the record.

16. PW-1 deposed that on 22nd April 2008, the deceased went to Kurnool from Kotekal village to distribute the wedding cards of his sister to PWs.2 to 4. This fact has been corroborated with the evidence of PW-2, who deposed that on 22nd April 2008 at around 8 p.m., the deceased came over to Kurnool from Kotekal village for distribution of his sister's wedding cards and on that night, PW-2, the deceased and A-1 slept in the shed. On the next day morning at 7 a.m., A-1 and the deceased went to the house of A-2, PWs.5 and 6 for distributing wedding cards.

17. PWs.2 and 3 deposed that on 19th April 2008, PWs.2 to 4 went to Kotekal village for Kesavaswamy Jaatra to be held on 20th April 2008 and again, they returned back to Kurnool on the evening of 22nd April 2008. They reached the room at 2 p.m. At around 2.30 p.m., A-1 came to the room with blood-stained clothes and when enquired A-1 about his blood-stained clothes and injury to right hand and what happened to the deceased, A-1 replied that the deceased, after distributing wedding cards, left the village and he alone returned to Kurnool.

18. PW-4 has corroborated the evidence of PWs.2 and 3 about their visit on 19th April 2008 to Kotekal village to view Kesavaswamy Jaatra to be held on 20th April 2008; that they were there on 20th, 21st and 22nd of April 2008; PW-2 returned home on 22nd April 2008, by then, A-1 was present in the room, when PW-2 enquired A-1, he replied that he did not go anywhere; that on the same day at 9 p.m., the deceased came there; when PW-2 enquired, the deceased stated that he went to distribute the

wedding cards and on that night, PW-2, the deceased and A-1 slept in the shed; that in the early morning, the deceased and A-1 went to distribute wedding cards to A-2 and PWs.5 and 6.

19. The evidence of PWs.2 to 4 is reliable, trust worthy, corroborated, consistent and establishes that on 19th April 2008, PWs.2 to 4 went to Kotekal village for Kesavaswamy Jaatra to be held on 20th April 2008. They were in Kotekal village on 20th, 21st and 22nd of April 2008. On 23rd April 2008, PW-3 alone returned to Kurnool and reached the room at 2 p.m. At around 2.30 p.m., A-1 came to the room with blood-stained clothes and when enquired him about the blood-stained clothes, the injury to his hand and as to what had happened to the deceased, then, A-1 replied that himself and the deceased left home for distribution of wedding cards and after distribution of cards, the deceased left to the village. On the night of 22nd April 2008, PW-2, A-1 and the deceased slept in the room. In the early morning at 7 a.m., A-1 and the deceased together went to the houses of A-2 and PWs.5 and 6 for distribution of wedding cards.

20. In addition to above, the evidence of PW-1 is that on 23rd April 2008, at around 8 p.m., PWs.2 and 3 telephoned and enquired whether the deceased returned to Kotekal village or not. Then PW-1 replied that the deceased did not return and he was there in Kurnool itself. PW-2 informed PW-1 that on 22nd April 2008 at around 2.30 p.m., A-1 alone returned to the room with blood-stained clothes and when PW-3 enquired A-1 about the blood-stained clothes, the injury to his hand and as to what

had happened to the deceased, A-1 replied that he fought with the auto driver and sustained bleeding injury and accordingly, his dress was drenched with blood. At around 7.30 p.m., PW-2 returned to the home where they were and enquired A-1 about the deceased, A-1 replied that the deceased left to his village. The evidence of PWs.2 to 4 also corroborates with the evidence of PW-1 that PWs.2 and 3 made a call to PW-1 from the coin box at around 9 p.m. and informed that A-1 and the deceased together left the room at 7 a.m. for distribution of wedding cards; that only A-1 returned with blood-stained clothes; that at around 12 in the mid night, after receiving the phone call, PWs.1 and 4 came over to Kurnool from Kotekal village, enquired PWs.2 and 3 as to what had really happened; then they replied that though A-1 and the deceased left the room, only A-1 returned with injury to his right hand and blood-stained clothes; and then they suspected something had happened to the deceased.

21. The evidence of PWs.2 to 4 is material, which corroborates with the evidence of PW-1 that A-1 and the deceased left the room for distribution of wedding cards to A-2 and PWs.5 and 6, but only A-1 returned home with injury to his hand and also with blood-stained clothes. When enquired about the deceased, A-1 replied that after distribution of wedding cards, the deceased left to the village, and that in a fight with an Auto driver, he sustained injury on his hand. A-1 smeared blood of his hand with the lungi, changed the dress and left the room with the blood-stained clothes in a carry bag, saying that he was going to Mantralayam to attend a marriage. Suspecting the behaviour of A-1,

PWs.2 and 3 made a call to PW-1 and enquired about the deceased, who replied that the deceased did not return. PW-1 further informed them that in the month of January 2008, A-1 made a call to him and threatened that in case the deceased happens to come over to Kurnool, he will not return back. Then PW-1 entertained a doubt. Therefore, on the next day morning, they went to the house of A-2 at Muzaffar Nagar and found that his house was locked.

22. PW-3 informed PW-2 about his returning to the room at 2 p.m. and at around 2.30 p.m., A-1 went to the room with blood-stained clothes, changed his clothes and left the room by carrying his blood-stained clothes in a bag. The evidence of PWs.2 to 4 further corroborates with the evidence of PW-1 that on the next day morning, PWs.1 to 4 together went to the house of A-2 situated at Muzaffar Nagar and found that it was locked. Then, they went to the house of PW-5. When PW-1 enquired PW-5 about the deceased, PW-5 informed that A-1, A-2 and the deceased came there and went away after giving wedding card to him. The evidence of PW-5 corroborates with the evidence of PWs.1 to 4 that on 23rd April 2008, A-1, A-2 and the deceased went to his house for distribution of wedding cards and the deceased invited PW-5 for the marriage of his sister on 26th and 27th of April 2008. Expecting that the deceased would attend the marriage of his sister, PWs.1 to 3 and one Adeppa came to his room and enquired whether the deceased came, and then, he replied that the deceased came to him, gave wedding card and went away.

23. PW-6 has corroborated the evidence of PWs.1 to 4 that about three years back, A-1 and deceased came to his house for distribution of wedding cards. On the next day, PW-3 came to the house and enquired about the deceased. He informed that after distributing the wedding card, they left to their home and that he heard from villagers that A-1 and A-2 murdered the deceased.

24. Accordingly, the evidence of PWs.1 to 6 is that after suspecting something had happened to the deceased, they went, enquired at the places where the deceased went to distribute the wedding cards. From the evidence of PWs.5 and 6, it is very clear that on the morning of 23rd April 2008, A-1 and the deceased went to the house of A-2, gave wedding card and from there, A-1, A-2 and the deceased went to the houses of PWs.5 and 6, distributed wedding cards to them, and thereafter, the whereabouts of the deceased were not known. It is important to note that during the cross-examination as well as in the chief-examination, PWs.5 and 6 have clearly stated that on 23rd April 2008, A-1, A-2 and the deceased went to the houses of PWs.5 and 6, distributed the wedding cards there, and thereafter, A-1, A-2 and the deceased together went away from the houses of PWs.5 and 6.

25. The consistent evidence of PW-1 corroborated with the evidence of PWs.5 and 6 establishes that about 3 years prior to the incident, PWs.2 to 6, the deceased and one Adeppa shifted to Kurnool from Kotekal village after the murder of Sanjeevaiah in the year 2005. PW-5 worked as a coolie in a granite factory under a contractor. Similarly, PWs.2 to 4

also shifted to Kurnool about 3 years back and they started business in old iron scrap, and now and then, he used to meet the said persons. Similarly, A-1 and A-2 also shifted to Kurnool and A-2 started working as a parota master in Chinnamma hotel. In the initial stage, A-2 and PW-5 lived at one place in separate rooms, and 6 months thereafter, A-2 shifted to another room in the same locality. Accordingly, the evidence of PWs.2 to 6 establishes that PWs.1 to 4 and one Adeppa used to do iron scrap and old plastic business. The evidence of PW-6 is corroborated with the evidence of PWs.2 to 4 that they visited their village on business purposes and PW-6 also used to visit their room. Similarly, A-1 and A-2 also used to visit the room of PW-6. PW-6 also corroborated the evidence of PWs.1 to 3 that PWs.1 to 3 went to him and enquired about the deceased. Therefore, the evidence of PWs.1 to 6 is corroborated and consistent to the effect that after the death of Sanjeevaiah in the year 2005, due to faction in the village, though PWs.1 to 6, A-1 and A-2 and the deceased were having landed properties at Kotekal village, they shifted to Kurnool and started iron scrap and old plastic business by moving from village to village on bicycles. It is also the clear evidence of PWs.1 to 6 that when there was no agricultural work, the deceased also used to come over to Kurnool and do iron scrap and old plastic business.

26. The evidence of PWs.1 to 4 is consistent, corroborative and reliable, which proves that on 22nd April 2008, after A-1 and A-2 left the room of PWs.2 and 3, they went to the house of A-2 and from there, A-1, A-2 and the deceased went to the houses of PWs.5 and 6, distributed the

wedding cards, and only thereafter, the deceased was not seen from 23rd April 2008. This, coupled with the threat given by A-1 over telephone to PW-1 in the month of January 2008, are the strong circumstances to suspect A-1 and A-2.

27. In addition to above, the evidence of PWs.1 to 3 is that they went to the house of A-2 at Muzaffar Nagar and found that it was locked. From there, they went to the houses of PWs.5 and 6. When they enquired with PW-5 about the deceased, PW-5 replied that the deceased, along with A-1 and A-2 came to him, distributed wedding cards and from there, they went to the house of PW-6 for distributing wedding cards. The evidence of PW-4 is that later, they went to their relatives' houses and when they enquired, the relatives stated that they do not know and they thought that the deceased would return for his sister's marriage scheduled to be held on 26th and 27th of April 2008. Then they all returned to Kotekal village, but the deceased did not attend the marriage of his sister.

28. PW-1 suspected A-1 and A-2 because A-1 returned to the room with blood-stained clothes and after changing the clothes, he went away with the bag containing blood-stained clothes. When A-1 and deceased went to distribute the wedding cards, only A-1 returned. Then A-1 and deceased went to the house of A-2 and from there, A-1, A-2 and the deceased went to the houses of PWs.5 and 6. Hence, they suspected A-1 and A-2 and presented Ex.P-1/report in the Police Station on 2nd of May 2008. On 10th of May 2008, after coming to know that A-1 and A-2

killed the deceased on the river bank of Hundri and burnt the dead body in the bushes, they went there.

29. PW-1 identified the wearing apparels of the deceased. M.O.1 is the half-burnt white cloth banian, M.O.2 is the half-burnt green and white stripes addapancha in two pieces, M.O.3 is the two pieces of red colour waist thread, M.O.4 is the wrist watch and M.O.5 is the burnt shirt collar. During the cross-examination, PW-1 admitted that on 10th May 2008 at 5 p.m., the Police have shown M.Os.1 to 5 near Hundri river and drafted panchanama, whereunder, he signed. PW-4 admitted during the cross-examination that he was not present on 23rd April 2008, when PW-3 returned home at 2 p.m. and A-1 visited their room at 2.30 p.m., so also, when PW-2 left the home at 10 a.m. and returned by 7 p.m. It is not the evidence of PW-4 or his statement before the Police that he was present when PW-3 returned home at 2 p.m. and A-1 visited their room at 2.30 p.m. and also when PW-2 left the home in the morning and returned in the evening. The trial Court accordingly has rightly observed that it is not an improvement or deliberation in the evidence of PW-4 to doubt the truthfulness of his evidence. A suggestion was made to PW-4 that he did not state before the Police about observing injury to the right shoulder of A-1. But, in the 161 Cr.P.C. statement, PW-4 has clearly stated that A-1 sustained injury to his hand. Therefore, the injury sustained by A-1 in no way change or affect the prosecution case.

30. Besides the evidence of PWs.1 to 6, there is the evidence of PW-7, who was an Ex-Corporator of Kallur, who knows PWs.1 to 3 and the deceased. His evidence is that on 9th of May 2008 at 7 a.m., A-1 and A-2

came to him and stated that because of the dispute of a lady, they committed the murder of the deceased and the Police were searching for them and with an apprehension that the Police may beat them, they came to surrender before the Police through him. It is the further evidence of PW-7 that he brought the accused to the Police Station and handed over to the Police. It is the evidence of PW-7 that he did not draft any statements of the accused, but the Police drafted extra-judicial confession statement/Ex.P-9, readover its contents to him and obtained his signature/Ex.P-2 on the said statement dated 9th May 2008. In their statements, the appellants stated that about 5 years back, PWs.2 to 4 and the deceased left Kotekal village to Kurnool and were residing in Janaki Nagar, Kallur, doing iron and scrap business and living. They also stated that A-1 was living in B.R.Reddy colony while working in ice factory and he very often goes to the house of PW-2. The deceased was closely moving with one Reshma, and in that connection, there was a dispute. The deceased left Kallur and went to his village, Kotekal. Most of the time, A-1 used to reside in the room of PW-2 in Janaki Nagar. In the meanwhile, A-2 left his village, came over to Kurnool, worked in the hotel while residing in Muzaffar Nagar and both A-1 and A-2 are good friends. A-1 also fell in love with Reshma and he could not digest while the deceased was talking with Reshma. Apart from that, the deceased also abused A-1 for leaving the village. A-1 discussed the same with A-2 and both of them decided to kill the deceased Narasappa. Though PW-7 stated that Ex.P-9 was not drafted by him and it was drafted by the Police, he admitted its contents that A-1 and A-2 came to him and

admitted before him that they killed the deceased because of a dispute with regard to a lady and they intended to surrender before the Police through him. The contents of Ex.P-9 corroborate with the evidence of PW-7. Apart from Ex.P-9/extra-judicial confession of accused, there is consistent evidence of PWs.1 to 6, which establishes the motive for the offence as the deceased fell in love with Reshma, with whom, A-1 was having love affair. Ex.P-9 is only a corroborative piece of evidence to the evidence of PWs.1 to 6.

31. Above discussed evidence has established that there is continuous chain of circumstances from 22nd April 2008 till 2nd May 2008, on which date, report was given to the Police. The deceased was last seen by PWs.5 and 6 on 23rd April 2008 in the company of A-1 and A-2, and before that, PWs.2 and 3 had seen the deceased in the company of A-1 on 22nd April 2008 while they were going to the house of A-2, and from there, all of them went to Muzaffar Nagar to the house of A-2, and from there, to the houses of PWs.5 and 6. Ex.P-9 coupled with Ex.P-15/ relevant portion of confession of A-1, led the Police party and PW-9 to the scene of offence, and at his instance, the Police seized M.O.14/dagger and other belongings of the deceased at the scene of offence. The same were identified by PW-1 as M.Os.1 to 5 and M.O.14. With the help of the said material objects, PW-1 identified the dead body of the deceased, which was set ablaze. PW-1 also identified the reminiscence remained at the scene of offence, as noted in Ex.P-6/observation report. Therefore, there is no reason in the suggestion put to PW-1 by the defence that the deceased is still alive.

32. It is important to note the evidence of the Doctor/PW-8, who stated that on 19th May 2008 at 10 a.m., he examined A-2 and found an injury on his right hand. He issued Ex.P-4/wound certificate. Before PW-8, A-2 stated that he sustained injury about one month back. As per PW-8, the said injury sustained by A-2 appears to be a bit, but he was unable to say whether it was a dog bite or human bite, but the injury is on the right palm. In Ex.P-9, A-1 has clearly confessed that A-2 also sustained injury to his right hand. Therefore, the contents of Ex.P-9 are corroborated with the evidence of PW-8. Further, Ex.P-4 establishes that during the scuffle, A-2 sustained injury to his right palm.

33. The evidence of PW-11 is that he secured the presence of PW-9 and another and then interrogated A-1 and A-2. A-1 stated before him that he will show the place of murder if they follow him. Accordingly, A-1 led them to the scene of offence. The relevant portion of confession of A-1 stating that he will show the scene of offence, is marked as Ex.P-12. It is the further evidence of PW-11 that in pursuance of Ex.P-12, A-1 led them to the scene of offence and in the presence of PW-9 and one S.Ramanaiah, he drafted Ex.P-6/observation of scene of offence and seized M.Os.1 to 17. He also prepared Ex.P-13/rough sketch of scene of offence. Thus, the evidence of PWs.9 and 11 was corroborated and supported by Exs.P-6 and P-12. Accordingly, the seizure of property at the instance of A-1 in pursuance of Ex.P-12 under Ex.P-6 is proved.

34. As argued by the learned counsel for appellants that the DNA of the mother of deceased could not establish that the burnt body was of the

deceased. But, it is not in dispute that because of lack of evidence, the said fact could not be established. The material objects recovered by the Police and identified by PW-1, establish that the said dead body was of the deceased. Had the accused, who are appellants before this Court, not committed the murder of the deceased, they would not have the knowledge where the dead body was burnt. It is not in dispute that at their instance, the place of offence was detected, and from there, the bones of the deceased were recovered in addition to the articles and wearings of the deceased, which were identified by PW-1.

35. The aforesaid evidence and facts and circumstances of the case establish that it is only the accused/appellants, who had killed the deceased. Accordingly, we find no illegality or perversity in the judgment passed by the trial Court. Therefore, we confirm the same.

36. Both the appeals are accordingly dismissed.

37. Accused No.2 i.e. the appellant in Criminal Appeal No.700 of 2011 is on bail pursuant to order dated 28th November 2016. He shall forthwith surrender before the trial Court, for undergoing the remaining sentence of imprisonment.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

T. RAJANI, J

19th March, 2018
ajr