

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL Nos.245 of 2011 and 247 of 2012

COMMON JUDGMENT: (*Per Hon'ble Sri Justice C. Praveen Kumar*)

1) Both these appeals are filed against the judgment dated 14.02.2011, passed in S.C.No.488 of 2010 on the file of the XI Additional District Judge (FTC), Guntur at Tenali. The sole accused in sessions case, was tried for the offences punishable under Sections 302 and 380 IPC. Vide judgment, dated 14.02.2011, the learned Sessions Judge, while acquitting the accused for the offences punishable under Sections 302 and 380 IPC, convicted him for the offence punishable under Section 411 IPC and sentenced him to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of six months. CrI.A.No.245 of 2011 was filed by the accused against his conviction and sentence for the offence punishable under Section 411 IPC while CrI.A.No.247 of 2012 was filed by the State against the acquittal of the accused for the offences punishable under Sections 302 and 380 IPC.

2) The substance of the charge against the accused is that on 09.02.2010 at about 10.00 p.m., the accused is said to have strangled one Challa Kanaka Durga (hereinafter referred to as "the deceased") by tying a cotton thread around the neck and

thereafter committed theft of gold kasikayala chain, four gold bangles, two gold rings and ear studs, which were on her body.

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

i) PW.1, who is the daughter of the deceased, was working as a Senior Assistant in Fisheries Department, Ponnur. The deceased was blessed with three sons and three daughters. Out of them two sons expired. Her elder brother Challa Ramesh (not examined) is alive. The three daughters of the deceased lived separately at different places. PW.1 is a spinster. The evidence on record would show that the deceased and PW.1 used to live at Tenali and PW.1 used to shuttle between Tenali and Ponnur in pursuit of her employment. On 09.02.2010, PW.1 left to her office at 9.30 a.m. and returned home at 5.45 p.m. In normal course, her mother used to sit in their threshold and wait for her, but on that day she did not find her mother in their threshold. She went inside the house and searched for her. She found that her mother lying on tape woven cot on her back. She also found her hands and legs tied with a wire. She found an injury on her neck apart from injuries on the wrist and ears. She also found that the gold ornaments worn by her mother were missing and cash, which was kept in the box, also missing. Immediately, she informed the incident to her relatives and lodged a report with PW.6-the Sub-Inspector of Police on 09.02.2009 at 8.00 p.m. Basing on the report (Ex.P1), PW.6 registered a case in Crime No.21 of 2010 for

the offences punishable under Sections 380 and 302 IPC and issued Ex.P12-the first information report.

ii) Further investigation in this matter was taken up by PW.8-the Inspector of Police. According to him, on receipt of Ex.P12-the first information report, he visited the scene of offence which is situated by the side of Amma Hospital, opposite to Judge Quarters, Kothapet, Tenali and recorded the statement of PW.1. Since it was late in the night, he arranged night guard at the scene of offence. In the early hours on 10.02.2010, he again visited the scene of offence, recorded the statements of family members, prepared a scene observation report and also a rough sketch of the scene. During the said process he seized M.O.8. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW.2 and another. Ex.P3 is the inquest report. After completing the inquest proceedings, he sent the body to District Hospital, Tenali, for postmortem examination.

iii) PW.5-the Civil Assistant Surgeon, District Hospital, Tenali, conducted autopsy over the dead body of the deceased and issued Ex.P7-the postmortem examination report. According to him, the cause of death was "due to asphyxia due to strangulation".

iv) On 26.02.2010 PW.2 came to the Circle Office, Tenali, presented Ex.P4 statement along with Ex.P5-covering letter and the accused. PW.8 examined and recorded the statement of the accused in the presence of PW.7 and another. Basing on the

confessional statement, the accused lead them to his house situated at Lenin Road, Gandhi Nagar, where Mos.1 to 4 were said to have been recovered. The accused also showed a paper pocket containing about one meter long white cotton thread (M.O.9). Ex.P15 is the panchanama relating to V.C.D. of the confessional statement of the accused and seizure of Mos.1 to 4 and 9. After completing the investigation and after collecting all the material papers, he filed a charge sheet before the Court of the I Additional Judicial Magistrate of First Class, Temnali, who inturn 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.488 of 2010.

4) Basing on the material available on record, charges under Sections 302 and 380 IPC were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5) In support of its case, the prosecution examined PWs.1 to 8 and got marked Exs.P1 to P16 and M.Os.1 to 9.

6) After the closure of prosecution 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. No oral evidence was adduced on behalf of the accused, but Ex.D1-form-66 containing Mos.1 to 4 was marked.

7) After considering the oral and documentary evidence, the learned Sessions Judge found the accused guilty for the offence

punishable under Section 411 IPC and acquitted him of the charges under Sections 302 and 380 IPC. Challenging the same, these two appeals came to be filed.

8) The main ground urged by the learned Additional Public Prosecutor is that though there are no eye witnesses to the incident but the recovery of Mbs.1 to 4, from the accused is sufficient to draw a presumption that it was the accused alone who committed the offence. He further submits that the descriptive particulars of the gold ornaments were given in first information report itself and during the course of trial the interim custody of the gold ornaments was also given to PW.1. As the accused has not been claimed any ownership of the ornaments, he would submit that a presumption under Section 114 of the Evidence Act can be drawn to hold that the accused is responsible for the death of the deceased.

9) On the other hand, the learned counsel for the accused would contend that mere recovery by itself does not establish that it was the accused, who was responsible for the incident. It is his case that though the incident took place on 09.02.2010, the alleged recovery was made on 26.02.2010, which is nearly 17 days later. Therefore, he submits that it would be improper for the Court to draw a presumption, in view of the lapse of time between the date of incident and the date of arrest and recovery made. In any event he would contend that the trial Court has appreciated the evidence on record and acquitted the accused for the offences punishable

under Sections 302 and 380 IPC and the same warrants no interference. He further submits that in the absence of any test identification parade being conducted with regard to the articles seized from the accused and as no descriptive particulars of the ornaments were given in the first information report, the Court ought to have disbelieved the recovery of the same and the claim of PW.1.

10) The point that arises for consideration is whether the accused is responsible for the incident and whether the material available on record is sufficient to hold him guilty for the offence punishable under Section 411 IPC.

11) Admittedly, there are no eye witnesses to the incident and the case rests on the sole circumstance of recovery of gold articles Mos.1 to 4 from the possession of the accused, 17 days after the alleged incident. It is also to be noted here that the trial Court disbelieved the recovery of M.O.9 which was also affected on the day when M.Os.1 to 4 were recovered. PW.1 in her evidence deposed that along with the deceased she was staying in Tenali. In pursuit of her employment, PW.1 used to go to Ponnuru. As usual on the date of incident ie., on 09.02.2010 at about 9.30 a.m., PW.1 left the house and returned back at 5.45 p.m. By the time she reached her house at 5.45 p.m., she noticed her deceased mother lying on cot with bleeding injuries and her hands and legs were tied. She also noticed missing of the gold jewellery ie. kashikayala golusu, four gold bangles, gold ear studs, two gold

rings, apart from cash of Rs.1,000/- which was kept in the house. Immediately, she informed the same to the family members and then lodged a report. PW.1 was cross-examined at length. The only material that could be elicited in the cross-examination was that she did not specifically state the descriptive particulars of Mos.1 to 4 and no identification parade was conducted insofar as Mos.1 to 4. But however the record discloses that the accused never claimed the ownership of the gold ornaments and these articles were given to PW.1 during the course of trial.

12) PW.2 is the Village Revenue Officer, who was present at the time when scene observation report was prepared and also acted as panch witness for the inquest. Apart from that his evidence also disclosed that on 26.02.2010 while he was present at his office, the accused came to him and informed about the commission of offence. The accused also informed to PW.2 that the police were searching for him and he wanted to surrender to the police through him. Pursuant there to PW.2 is said to have prepared Ex.P4 the statement of the accused and Ex.P5 covering letter. Thereafter, he took the accused to the police and handed over him to the Inspector of Police, who effected the arrest and recorded the confessional statement of the accused, which lead to recovery of Mos.1 to 4.

13) The learned Public Prosecutor relied upon the evidence of PW.2 to connect the accused with the crime. According to him, the extra judicial confession made by the accused before PW.2,

who is a Village Revenue Officer, can be made the basis to connect the accused with the crime. But in the cross-examination it has been elicited that PW.2 did not intimate the Mandal Revenue Officer before proceeding to the office of the Inspector of Police along with the accused. The cross-examination further discloses that except the signature of accused in Ex.P4, the rest of the matter was written by PW.2. Further there is no endorsement made by the accused in Ex.P5 that he was surrendering to the police through PW.2. Having regard to the above, a doubt arises as to whether really the accused made such extra judicial confession before PW.2, seventeen days after the incident. In fact, the evidence on record never discloses any search being made by the police during the said period. Such being the position, it is very difficult to believe that the accused would have gone to the Village Revenue Officer, Tenali, who was a stranger and confess about the offence. It is not the case of the prosecution that PW.2 was known to the accused. Hence, the argument of the learned Public Prosecutor that the extra judicial confession can be relied upon to connect the accused with the crime was rightly rejected by the trial Court.

14) Once the extra judicial confession goes, the other material available on record is recovery of Mbs.1 to 4. Though PW.1 failed to give descriptive particulars of Mbs.1 to 4 in the first information and no test identification parade was conducted in respect of Mbs.1 to 4, the fact remains that the accused never claimed the gold ornaments. Further, during the course of trial the said

property was handed over to PW.1. A reading of the first information report also discloses that the descriptive particulars of the articles were given to certain extent. Therefore, we feel that the argument of the learned counsel for the appellant that there is no material on record to show that these gold ornaments do not belonging to the deceased or PW.1 cannot be accepted.

15) The next question that falls for consideration is whether the recovery of these articles from the possession of the accused would *ipso facto* indicate that the accused was responsible for the incident.

16) It may be true that the accused could not have given a plausible explanation as to why the said ornaments came into his possession, from that it is very difficult to say that these articles came into his possession because of his involvement in the commission of offence. Since the articles were recovered long after the incident and that too from his house, where others also live a presumption cannot be drawn under Section 114 of the Evidence Act to say that it was he who was responsible for the incident. In the absence of any other evidence, we feel that the trial Court was right in convicting the accused for the offence punishable under Section 411 IPC.

17) At this stage, the learned counsel for the appellant would contend that the petitioner was in jail for more than one year and his sentence may be reduced. As seen from the record, the petitioner was in jail for a period of one year and the incident in

question took place in the month of February, 2010. He underwent the ordeal of trial and appeal for a period of eight years. Hence we feel that the ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone by him.

18) Accordingly, both the Criminal Appeals are dismissed. However, the sentence of imprisonment of three years for the offence punishable under Section 411 IPC is reduced to the period already undergone. Consequently, accused shall be set at liberty forthwith, if not required in any other case.

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



C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

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