

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.1373 of 2011

Date: 06.08.2018

Between :

Kundarapu Dathadri @ Dathu

... Appellant/Accused

And

The State of A.P., rep. by its Public Prosecutor,
High Court of A.P. at Hyderabad.

... Respondent/Complainant

COUNSEL FOR APPELLANT : Smt. A. Gayathri Reddy,

COUNSEL FOR RESPONDENT : Public Prosecutor (A.P.)

THE COURT MADE THE FOLLOWING:

JUDGMENT: (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This Criminal Appeal, under Section 374(2) of Cr.P.C., arises out of the judgment dated 14.09.2011 in SC/ST S.C.No.127 of 2010 on the file of the Special Judge for Trial of Cases under SCs/STs (POA) Act, Nizamabad.

Aggrieved by the impugned judgment dated 14.09.2011 convicting the appellant/Accused for the offence punishable under Section 302, 379 and 411 IPC and sentencing him to undergo Imprisonment for Life and to pay a fine of Rs.500/- for the offence punishable under Section 302 IPC, in default, to suffer Simple Imprisonment for two months; and also sentencing him to undergo Rigorous Imprisonment for two years and also pay a fine of Rs.200/- each for the offences punishable under Sections 379 and 411 IPC, in default, to suffer Simple Imprisonment for one month each and with a direction that both the sentences were ordered to run concurrently, the appellant/Accused has preferred this Criminal Appeal.

Heard Smt. A. Gayathri Reddy, learned counsel for the appellant/Accused, and the learned Public Prosecutor appearing for the respondent – State.

Learned counsel for the appellant submits that this case is based on circumstantial evidence and the prosecution has failed to prove any of the circumstances beyond reasonable doubt. There is no complete link of chain of circumstances to connect the appellant/accused with the

crime. The prosecution relied upon three circumstances; *firstly*, tracing of call record by PW.10 - Investigation Officer; *secondly*, the recovery of material objects from the scene of offence at the instance of the accused. These two circumstances do not connect the accused with the crime, as the motive for the commission of offence is not established; and *thirdly*, the FSL Report does not connect the accused with the crime as the blood groups of item Nos.2, 3 and 5 could not be determined.

The first circumstance relied on by the prosecution is the call data record. PW.10 – Investigation Officer has called for the call data from Idea and Reliance. After scanning through the call data, he suspected two Cell numbers through which two persons are frequently calling the deceased. Therefore, the Investigation Officer suspected the involvement of Mr. Ayub and Mr. Akbar with the call data. The other reason for suspecting them was that they were not found in the village after commission of offence. PW.10 also collected the particulars of the Cell Phone of the deceased SIM No.97056 23800. PW.10 produced Ex.P.18 – the SIM details pertaining to the deceased Smt.Tokala Gangamani's Cell No.9705623800, Ex.P.19 - the SIM details pertaining to the Accused-Dathu Cell No.9393888735, Ex.P-20 is the call data record of the deceased Cell Phone No.9705623800, and Ex.P-21 is the call data record of the Accused Cell phone No.9393888735.

The prosecution has framed charge against the Accused Kundarapu Dathadri @ Dathu under Section 302 IPC for the alleged murder; Section 379 IPC for stealing the Gold Pustela tadu, one ear top,

one Nokia Cell phone of the deceased, and Section 411 IPC for retaining the stolen property.

On a scrutiny of evidence of PW.10, it reveals that the Investigation Officer suspected that there was frequent communication between the two SIM numbers of the deceased and accused. The call data records are Exs.P.20 and P.21. It is revealed from the evidence of the Investigation Officer that basing on the information in the call data, he apprehended the accused on 24.09.2009 at 7.15 a.m. in the presence of PW.6 and LW.15-Abba Ramulu. He recorded the confessional statement of the accused under Ex.P.14. In pursuance of the confessional statement of the accused, one Pustela tadu weighing about 24 grams, one ear top (single) and Nokia Cell Phone bearing No.IMEI 356444012055935, Auto bearing No.AP-25-U-2752 were recovered in the presence of mediators. Except the Cell Phone MO.5, there is no corresponding article seized from the accused is shown as material object in this case. One stick (MO.4), the alleged crime weapon, was seized in this case. The allegation against the accused is that he beat the deceased with the said stick on her head and stolen her gold and silver property. The Investigation Officer has forwarded the material objects to the FSL.

As per the FSL Report - Ex.P.28, the following items were analysed:

Item No.1, a Plastic Jar, labelled as 'unkown female in Crime No.173/2009 of PS, Balakonda' containing stomach piece of intestine,

liver, kidney in brownish turbid liquid. No poisonous substance was found.

Item No.2 – a Plastic Jar containing cotton swab with dark brown stains.

Item No.3 – a plastic jar labeled as cotton swabs with dark brown stains.

Item No.4 – a plastic jar labeled as Dattadri containing whitish turbid liquid,

Item No.5 – a cloth piece containing a plastic jar containing earth with dark brown stains,

Item No.6 – a plastic jar, labeled as Crime No.173/2009 of PS, Balakonda, containing earth.

The FSL Report reveals that human blood is detected on Item Nos.2, 3 and 5 and their blood group could not be determined. Item No.4 is white turbid liquid pertaining to accused, a cloth piece containing plastic jar as Crime No.173/2009 of PS, Balakonda, on which semen is detected, but spermatozoa is not detected.

Item Nos.1, 2, 3 belong to unknown female in Crime No.173/2009 of PS, Balakonda, is the deceased herein.

Item No.4 belongs to Accused – Dattadri.

Item No.5 is the blood stained earth at the scene of offence.

Item No.6 is controlled earth at the scene of offence.

On item Nos.2, 3 and 5 blood was detected

On those Item Nos.2, 3 and 5, blood group could not be determined.

On Item No.4, sperm was detected, whereas on Item Nos.2 and 3, there was no sperm or spermatozoa detected.

Therefore, there is literally nothing to connect the accused with the crime by FSL analysis of the blood and the sperm.

PW.10 has not stated anything in his evidence with regard to how FSL Report connects the accused with the crime, except stating that he forwarded the material objects for FSL Report. The Investigation Officer has not stated anything as to how the blood detected on Item Nos.2, 3 and 5 and spermatozoa detected on Item No.4 connect the accused with the crime. The material objects seized in this case are, MO.1 – broken pieces of beer bottle, MO.2 - control earth, MO.3 – blood stained earth. There is no material on record to show that there is any semen detected on either the clothes or any part of the body of the accused or deceased. Therefore, the prosecution could not connect the accused stating that he had sexual intercourse with the deceased. Except, MO.3 blood stained earth corresponding to Item No.5, which contains blood stains of human organ, there is no other material to connect the accused with the crime. MO.4 is the stick alleged to have been seized in pursuance of the confession of the accused, but it was not forwarded to FSL. Therefore, there is no material on record to show that MO.4 stick was used for commission of the offence.

MO.4 – stick is alleged to have been recovered from the accused. It is a discovery of fact. The stick was not forwarded to FSL. There is no material on record to show that the stick has got any stains of blood. The alleged confession of the accused about the commission of offence

is inadmissible in evidence, as it is hit by Sections 25 and 26 of Indian Evidence Act. The recovery of stick alone is not sufficient to draw an inference that the accused has caused the injuries to the deceased with the stick.

The Investigation Officer has recorded the confessional statement of the accused. As per his confession, he came into contact with the deceased over cell phone and continued his acquaintance with her. He used to call her frequently in the month of August 1st week of 2009. Prior to the incident, once the deceased asked the accused to meet her as she wants to see him. He disclosed his financial problems and expressed his inability to come. The deceased assured a financial help. On 29.08.2009 he met the deceased and she promised to arrange Rs.10,000/- on 01.09.2009. The accused went to Kunchepalli and took the deceased in his Auto AP 25U 2752, which was taken on lease by him from LW.10 – Sri Tenugu Ashok (who is not examined as a witness in this case to prove the fact). The accused saw the deceased wearing gold ornaments and planned to kill her to steal them and also he did not return the amount of Rs.10,000/-. As per his plan, the accused took the deceased in his auto and taken her to several places and lastly reached Koyagunta area, where the accused consumed liquor and had sexual intercourse with the deceased with her consent in the auto itself. After that the accused asked the amount of Rs.10,000/-, but the deceased stated that she had no money. On that the accused grew wild and pushed her out of the auto and beat her with beer bottle on her head. The deceased became unconscious. Then the accused beat on her head

with a wooden stick, which is being used as jack to lift the auto. After she died, he committed theft of gold pustela tadu, one gold ear top and Nokia Cell Phone of the deceased. He kept the stolen articles under the seat of his auto and was waiting to dispose of them.

In pursuance of the confessional statement of the accused, PW.10 has recovered the above stolen articles shown in panchanama.

The Investigation Officer has called for a Potency Test Report of the accused from the Civil Assistant Surgeon, Government District Hospital, Nizamabad. Accordingly, the Medical Officer has conducted Potency Test and opined that there is nothing to suggest that the above subject under examination is not capable of performing sexual act. The report-Ex.P30 of the Medical Officer reveals that the accused is capable of performing sexual act. This examination is also not connecting the accused with the crime that he had sexual participation with the deceased, except that he is capable of having sex. Though PW.10 - Investigation Officer has made efforts to seize many material objects, like gold Pustela tadu, one ear top, and Auto, they were not marked by the trial Court in the evidence. Ex.P.14 is the Confession-cum-Recovery Panchanama, which reveals that MOs.1 to 4 were recovered, but they are not going to connect the accused with the crime. MO.4- stick was not forwarded to the Forensic science laboratory for analysis. MO.5, which is the Cell Phone alleged to have been seized from the possession of the accused, also do not connect the accused with the offence.

The investigation proceeded on the premise that the accused had sexual intercourse with the deceased in the auto and later he killed her. To prove the said allegation, the potency test was conducted. It is not the case of the prosecution that the accused has committed rape on her. Nothing was proved against the accused by conducting the potency test.

The entire case of the prosecution is based on suspicion of the complainant, witnesses, Investigation Officer and lastly the learned Magistrate. The prosecution has relied mainly on the circumstantial evidence. The circumstances as per the testimony of PW.4 (brother of the deceased) are that the son of deceased informed PW.4 that the deceased has not returned to the house that day and enquired PW4 whether the deceased came to the house of PW4. When PW4 informed that she did not come to his house, they went to police station and lodged a complaint of missing of the deceased. Thereafter, when PW.4 received information from the police about one female dead body near Balkonda village, PW.4 and his brother went to the scene of offence and identified the deceased as his sister. Then PW.4 asked the son of deceased about suspicion on any person and expressed suspicion on two persons, namely Ayub and Akbar for the death of the deceased, but they were not found in the village. The investigation officer (PW.10) requisitioned the Reliance Company and the Idea company to send the Call Data Records pertaining to the Cell Phone No.9705623800 of the deceased, and analysed and found that the deceased frequently communicated with the Cell phone number 9393888735 which pertains to the accused. The testimony of PW.10 reveals that as per his

investigation, the call data record of both the deceased and accused shows that the deceased has communicated with the accused. There is no material on record to show as to what was the communication between the accused and the deceased. The recording of conversation between the accused and deceased is not available. Merely because the deceased communicated with the accused and *vice versa*, does not implicate the accused in the commission of the offence. The material objects recovered from the possession of the deceased are not produced before the Court, except MO.4 stick and MO.5 Cell Phone. The prosecution has failed to explain the connection between the material objects and the accused in the offence. Basing on the confessional statement of the accused, the prosecution has tried to establish the guilt against him. The evidence of the prosecution is very vague in this case and raises any amount of doubt about the version of the prosecution.

The testimony of PW.4 – brother of the deceased reveals that they found one ear stud and a watch on the dead body of his sister. If this is a case of murder for gain, the person who murdered the deceased would not have left one ear stud and a watch at the scene of offence on the dead body of the deceased. This raises any amount of doubt about the version of the prosecution that it is a case of murder for gain. PW.4 suspected some persons and furnished the names of suspected persons Ayub and Akbar to the police, however, the said persons were not found in the village. The investigation officer got the call data record of the deceased and found that the deceased communicated with the accused. Merely because the accused was contacting the deceased or *vice versa*, it is

not sufficient to connect the accused with the crime. The Call Data Record Ex.P20 pertaining to the deceased would show that the deceased was contacting many other phone numbers apart from the phone number of the accused.

The material object Bajaj Auto, Item No.5 is in custody of the police. Auto was used by the accused while committing the offence as per the Ex.P.14 – Confession-cum-recovery panchanama and nobody claimed the said property. Therefore, the property was ordered to be confiscated to the State after appeal time is over. The reasons for not marking all material objects seized at the instance of the accused as material objects in the case raises any amount of doubt about the version of prosecution. The benefit of doubt should go to the accused.

PW.7 - Medical Officer conducted autopsy over the dead body of the deceased and opined that the cause of death was due to cardio respiratory arrest due to head injury i.e., depressed fracture of frontal and orbital bone on the left side with extra dural hematoma noted on the left side of the temporo parietal region. Ex.P.15 is the PME Report. It is revealed in the cross-examination of PW.7 that the Post-mortem Examination was conducted 3 or 4 days after the death of the deceased. The prosecution has not elicited through PW.7 that the said head injury can be caused by a metal object, like MO.4 – stick. Therefore, a doubt arises as to whether a stick was only used in the commission of offence or by any other object. Hence, the version of the prosecution is suffering with many reasonable doubts. Therefore, the charges framed against the accused under Sections 302, 379 and 411 IPC are not proved

beyond reasonable doubt and, hence, the accused is entitled for the benefit of doubt in this case.

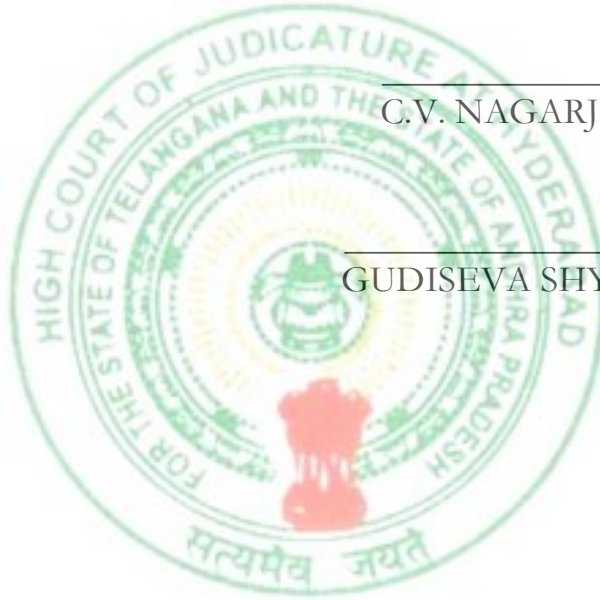
IN THE RESULT, the Criminal Appeal is allowed, by setting aside the impugned judgment dated 14.09.2011 in SC.No.127 of 2010 and the appellant/accused is acquitted of the offences with which he was charged.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

06.08.2018
Msr



HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.1373 of 2011

(P.D. Judgment prepared by
Hon'ble Sri Justice Gudiseva Shyam Prasad)



06.08.2018
Msr