

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.195 of 2012

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

1) Accused Nos.1 and 2 in S.C.No.100 of 2011 on the file of the Principal Sessions Judge, Adilabad, are the appellants herein. They were tried for the offence punishable under Section 302 read with 34 IPC. Vide judgment, dated 21.02.2012, the learned Sessions Judge, convicted both the accused for the offence punishable under Section 302 read with 34 IPC and sentenced them to suffer 'imprisonment for life' and to pay fine of Rs.200/- each in default to suffer simple imprisonment for a period of one month each.

2) The substance of the charge against the accused is that on 22.09.2010 at Sandralpadu village bus stage, in furtherance of common intention, accused No.1 axed the throat, hands, face and other parts of the body of Dutta Mallesh (hereinafter referred to as "the deceased") while accused No.2 cut the throat of the deceased with knife and separated the head from the trunk.

3) The case of the prosecution is as under:

PW.1 is the son of the deceased. The deceased was working as contractor labour in Orient Cement Company, Devapur and used to attend his duties from his native place Sandralpad. Accused Nos.1 and 2 are his friends. Accused No.2 runs a tailoring shop in

the same village while accused No.1 used to work in the said shop. PW.1 was suffering from illness since one month prior to the offence, for which the deceased suspected accused Nos.1 and 2 doing sorcery on PW.1 and blamed both the accused for practicing witchcraft. In that connection, the deceased used to quarrel with the accused. As such, both the accused are said to have hatched a plan to eliminate the deceased. On 22.09.2010 at about 6.00 p.m. accused No.1 armed with an axe and accused No.2 holding a knife, proceeded to Sandralpad bus stage, hide the weapons in the bushes, went to Kasipet village and then returned to Sandralpad bus stage at 10.00 p.m. Within half an hour the deceased got down from a lorry and started walking towards the village. Then accused No.2 intercepted him while accused No.1 axed on the neck from the back side. As such the deceased fell down on the ground. Immediately, accused Nos.1 and 2 dragged him into the nearby cotton fields, where accused No.1 is said to have axed on the throat, hands, face and other parts of the body indiscriminately. It is further said that when accused No.1 kept his feet on the head of the deceased, accused No.2 cut the throat with knife and separated the head from the body.

As the deceased did not return from duty on 22.09.2010, PW.1, telephoned to the Supervisor, who intturn informed him the deceased left the office after completion of his duty. Thereafter, PW.1 and his family members came to know that somebody killed his father and the dead body is lying in the fields. Himself and his brother went and found the dead body. PW.1 lodged a report

before PW.15-the Head Constable of P.S.Kasipet. Ex.P1 is the report. Basing on the said report, PW.15 registered a case in Crime No.60 of 2010 for the offence punishable under Section 302 read with 34 IPC and issued Ex.P20-the first information report.

On the same day, PW.17-the Inspector of Police took up investigation, visited the scene of offence, where he held inquest over the dead body of the deceased in the presence of PW.11. Ex.P10 is the inquest panchanama. During inquest, he recorded the statements of PWs.1,3 and others. He got photographed the scene of offence. He also observed the scene of offence and also prepared a rough sketch in the presence of PW.11 and another. Ex.P12 is the rough sketch. During scene observation, PW.17 seized MOs.5 to 8, 9, 10, 12, 13 and 14. Thereafter he sent the dead body for postmortem examination.

PW.13-the Civil Surgeon, Community Health Centre, Bellampally, conducted autopsy over the dead body of the deceased and issued Ex.P18-the postmortem certificate. According to him, the cause of death was “due to hemorrhage and shock, as a result of decapitation associated with multiple injuries over the body”.

On 28.09.2010, the S.I. of Police, Kasipet, arrested the accused. On interrogation, both the accused confessed about the commission of offence. After completing the investigation and obtaining final report, PW.17 filed a charge sheet before the Court of I Additional Judicial First Class Magistrate, Mancherial, who

inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.100 of 2011.

4) On appearance, charge under Section 302 read with 34 IPC was framed, read over and explained to the accused, to which they denied and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P21 and M.Os.1 to 28. 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. On behalf of the accused, no oral evidence was adduced but the medical certificate of accused No.1 was marked as Ex.D1.

6) Out of 17 witnesses examined by the prosecution, PWs. 3, 5, 6, 7, 9 and 10 did not support the prosecution case and they were treated hostile by the prosecution. Relying upon the evidence of PWs.1 and 2, coupled with the recovery of articles of the deceased from the accused, the trial Court convicted the accused. Assailing the said conviction and sentence the present Criminal 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 connecting the accused with the crime.

8) On the other hand, the learned Public Prosecutor would contend that the extra judicial confession made by the accused before PW.12-the V.R.O. and also the information furnished to PW.8 is sufficient to base a conviction.

9) In order to appreciate the rival contentions, it would be useful to refer to the evidence of PWs. 1 and 2.

10) In his evidence, PW.1, who is the son of the deceased, deposed that his father was working in Orient Cement factory, Devapur as a Contract Labourer. He used to go to duty at 6.30 a.m., and return at 8.30 p.m.. On 22.09.2010 he went to work but he did not return, as such, he telephoned to the Supervisor, who informed that the deceased left, after completion of the duty. Subsequently, on the next day morning he came to know that somebody killed his father and the dead body was lying in the agricultural fields. Immediately, PW.1 and his brother went there and found the dead body. They noticed the head separated from the trunk. They also found a stainless steel tiffin box, yellow colour helmet and match box near the dead body. The evidence of PW.1 further discloses that the deceased was having enmity with the accused, as he suspected the accused practicing sorcery on PW.1. It is said that because of the enmity, the accused might have eliminated the deceased. Basing on the suspicion he gave a report to the police.

11) PW.1 was cross-examined at length, but however nothing useful came to be elicited. In fact, PW.1 was not an eye witness to

the incident and he came to know about the incident only on the next day morning. However, he admits in his cross-examination that his father used to get into the bus at Sandralpad bus stage and get down at the same place. He further admits that there are four other villagers working with the deceased who used to go and return with him.

12) PW.2, who is the Supervisor of the Cement Factory, deposed about the receipt of phone call from PW.1 and informing him about the deceased leaving the company after completion of the work.

13) As stated earlier, PWs. 3, 5, 6 and 7 did not support the prosecution case. PW.8 is resident of Peddanapalli village. He claims to have acquaintance with the accused. According to him, on 22.09.2010, in the night time, accused No.1 is said to have telephoned to him and asked for some money, which he was due to him. As the phone call was at 11.00 p.m., he is said to have disconnected the call. He again called in the midnight and informed him that he was in need of money and he is also said to have made a confession about killing the deceased. On the next day morning he went and saw the dead body of the deceased in the fields of Rajaram.

14) PW.9 is the tractor driver. According to him, he ploughed the lands of PW.8 and he is due a sum of Rs.10,000/- to him towards tractor charges. According to him about 8 or 9 months back accused No.1 called him at 11.00 or 11.30 p.m., to his cell phone and asked for Rs.20,000/-. He told him that he has to

collect the ploughing charges from PW.8. However, he asked him for money as it is required urgently. On the next day morning he came to know about the death of the deceased.

15) PW.12 is the V.R.O. of Kasipet Mandal, before whom the accused are said to have made the extra judicial confession, disclosing the commission of offence.

16) This is the evidence on record to connect the accused with the crime. Admittedly, none of the witnesses examined by the prosecution have seen the incident. Coming to the last circumstance, namely confession made before PW.12, his evidence shows that himself and his village Servant acted as mediators at Somagudem Bridge on 28.09.2010 at about 10.000. At that time the accused, who were in the custody of the police, are said to have disclosed their name and confessed about the killing of the deceased. The axe was produced by accused No.1 while the knife was produced by accused No.2. The relevant portions of confession were marked as Exs.P13 and P14.

17) In the cross-examination PW.12 admits that the axe which was used in the commission of offence was in the hands of a police personnel standing near the grave. Even if the seizure pursuant to confession is established, but there is no material to show that the blood stains which were found on the weapons and also on the cloths that of the deceased are one and the same. The investigating officer in his evidence admits as under:

“The FSL also opined that the blood stains on the clothes of the deceased belong to ‘O’ group. The FSL also opined that blood was detected on light pink colour full sleeved shirt of A-1 and Grey colour Jean pant of A.2. But its origin could not be determined. The FSL also could not determine the blood group of blood stains on item four ‘soil’, item six ‘soil’, and item 8 ‘axe’, and item 9 ‘knife’. The FSL also opined that blood was not detected on the two control earth samples, item 10 black colour pant of A-1 and item 13 black colour shirt of A.2.”

18) From the admissions of the investigating officer coupled with the report of F.S.L., it is clear that the blood stains which were found in the knife and axe and also on the clothes of the accused were not that of the deceased. Further, the confession made by the accused, cannot be relied upon as the accused were in the custody of police when they disclosed about the offence before PW.12.

19) The only other circumstance which remains for consideration is the furnishing of information by accused No.1 to PW.8 about killing the deceased. It is to be noted here that no efforts were made by the police to recover the SIM card to show that such a call was received by him from accused No.1 on the intervening night of 22/ 23.09.2010. Infact, PW.8 himself admits in his cross-examination that the police have taken his phone number but failed to take his SIM Card. He further admits that the person, who called him, disclosed his name as Ram Murthy. He further admits that he is received the phone call at his house at Peddanapalli

village, which information was furnished to the police on 24.09.2010. His admissions also show that there was a police case against him which was closed. He also admits that though he knows the accused but there is no friendship. From the evidence of this witness, it is clear that no investigation was made by the police with regard to the call said to have received by PW.8 on the intervening night of 22/ 23.09.2010. No effort was made to seize SIM Card and send the same to expert, to find out as to whether such a call emanated from the cell phone of accused No.1. It appears that since the caller stated his name as Rammurthy, the witness is trying to fix the culpability on accused No.1. At the same time, it is also to be noted that the evidence of PW.8 appears to be false for the reason that when there was no friendship with the accused, the accused could not have asked for a sum of Rs.7,000/- from PW.8, which he deposited in his chief itself. Therefore, the circumstance of accused No.1 making telephone to PW.8 and furnishing information about killing the deceased appears quite improper. Further, as seen from the record there was no friendship between accused No.1 and PW.8. That being the position, there was no necessity for the accused No.1 to inform PW.8 about killing of the deceased. Therefore, the evidence of PW.8 neither be relied upon, to base a conviction nor can it be used as a link in the chain of circumstances to establish the guilt of the accused.

20) In view of the above findings, we feel that the circumstances relied upon by the prosecution may not be sufficient to connect the accused with the crime.

21) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against accused Nos.1 and 2 in S.C.No.100 of 2011 on the file of the Principal Sessions Judge, Adilabad, are set aside. Consequently, accused Nos.1 and 2 shall be set at liberty forthwith, if not required in any other case.

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

JUSTICE C.PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

09.04.2018
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