

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1350 of 2011

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

The appellant who is the sole accused in S.C.No.450 of 2010 on the file of the Special Judge for Economic Offences cum VIII Additional Metropolitan Sessions Judge, Hyderabad, was convicted for the offences punishable under Sections 302 and 380 of the Indian Penal Code and sentenced to under rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months for the offence punishable under Section 302 IPC. He was further sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.500/- in default to undergo simple imprisonment for three months for the offence punishable under Section 380 IPC.

2. The facts, as culled out from the evidence of the prosecution witnesses, are as under:

P.W.1 is a sweeper in Lotus Esplendido Apartments, RoadNo.1, Banjara Hills, Hyderabad; P.W.2 is the resident of a house situated opposite to Lotus Esplendido Apartments; P.W.3 is a resident of Flat No.501 in the same apartments. P.W.4 is the niece of the deceased Smt. Susheela Devi while P.W.10 is the son of the deceased.

In the year 2007, P.W.3 took the property of the deceased and her two daughters, for development and developed flats under the name of Lotus Esplendido Apartments. He is stated to have developed

15 flats, out of which seven flats viz. 102, 103, 201, 301, 403, 502 and 503 were given to the deceased and her daughters. The deceased occupied and lived in flat No.103 while he was residing in flat No.501. P.W.5, who was doing real estate business, stated that six months prior to the date of offence, on the basis of advertisement in the daily news paper, he went to the apartment and met the people working in the office in the fifth floor. He is stated to have arranged the flat of the deceased for rent and in this regard, he was paid commission of half month rent by way of cheque by the deceased.

P.W.6, who is a carpenter, used to work under one Ashok Kotari residing in flat No.201 in the same apartment and that Ashok Kotari informed him to attend the carpentry work in flat Nos.403, 201 and 301 which also belong to the deceased. He gave quotation for the said work as Rs.1,63,000/-. P.W.6 claimed to have done the carpentry work along with one Hemanth and Rajesh, while the polishing work was entrusted even in flat No.103. According to him, the accused commenced polish work in flat No.103 also and on completion of the wood work, P.W.6 is said to have gone to the flat of the deceased on 26.04.2010 at 10.00 AM for payment. At that time, the deceased was going out with other persons, as such she requested P.W.6 to meet her on the next day. On the next day i.e. 27.04.2010 at about 10.00 AM, P.W.6 went to the flat of the deceased and received payment of Rs.25,000/-. The deceased is stated to have informed P.W.6 that the polish work is not completed. He telephoned the accused, who replied that he would go within two hours and complete the unfinished polish work. P.W.6 left the flat of the deceased to attend the work at

Narayanaguda. On that day, at about 5.00 PM, P.W.6 received a call from the wife of Ashok Kotari stating that the deceased was murdered in her flat. Then he telephoned the accused to know as to whether he was aware of the same since the accused told him that he was going to flat of the deceased. The accused replied that he had not attended any polish work and claimed ignorance about the murder of the deceased.

The evidence of P.W.11 is that during the relevant point of time, he worked in the apartment as waterman and attending the generator whenever the electricity was put off. He stated that on 27.04.2010 at about 12.30 PM to 1.00 PM, one Ramesh, who was doing polish work in flat No.103 of the deceased came to the apartment complex. The said Ramesh left the apartment around 1.30 PM. He came to know about the death of the deceased at about 4.00 PM.

P.W.15, who was working as Security Guard in the said apartment, stated that on 27.04.2010 while he was on duty, the accused came to the apartment around 1.30 PM and left at 3.00 or 3.30 or 3.45 PM. Thereafter, he came to know that an old woman living in flat No.103 was killed for the sake of property.

The evidence of P.W.1 is that on the date of the incident at about 4 PM, three persons came to the said apartment and tapped the door on the first floor. When she questioned them, they replied that the woman inside is not responding and as such they are tapping the door. P.W.1 opened the door, entered the house and found one old

woman lying on her back. She came down and informed one Devdas, who is the supervisor of the flats about the incident.

P.W.2, who is a doctor living in the house opposite to the apartment, stated that the supervisor of the apartment came and informed her that the deceased was found lying in the kitchen in her flat. As a Doctor, she went and saw the deceased lying in the kitchen. She examined her but found no pulse and B.P., her tongue was protruding with lips turning bluish. She came to the conclusion that the deceased was dead. Someone informed 108 Ambulance Service, who came and examined the deceased and declared her dead. She noticed the cell phone of the deceased, found the name of one Uma in the call list, called her and informed about the death of the deceased. The said Uma (P.W.4) informed her that she is the relative of the deceased.

The evidence of P.W.5, who is said to have arranged the flat of the deceased for rent, would reveal that on 27.04.2010 at about 2.30 PM himself and one Yakub went to meet the deceased to arrange the flat on rent to a Company. At that time, he pressed the bell continuously but there was no response from inside the flat of the deceased. Under the belief that the deceased must be sleeping they left. Again on the same day between 3.30 PM and 4.00 PM, they went and rang the bell of the flat of the deceased, but there was no response. Then the sweeper came and enquired us for ringing the bell. They told her that they need to meet the deceased with regard to availability of the flat for rent. On their request, the sweeper opened

the door, entered inside the flat and informed about the deceased lying in the kitchen.

P.W.4, who is the niece of the deceased, came to the house of the deceased on receiving information about the death of the deceased. She was declared hostile by the prosecution as she did not give descriptive particulars of the jewellery, which were found on the body of the deceased and in the house.

The evidence of P.W.10, who is the brother of the deceased, is to the effect that on 27.04.2010 at about 4.45 PM, he received a telephone call from P.W.4 about the death of the deceased. Immediately, he rushed to the flat and noticed the deceased lying dead on the floor of the kitchen, nearby the door and that her tongue was protruding out. He stated that the gold chain and gold bangles which are usually worn by the deceased are missing. According to him, cash of Rs.55,000/- was also missing. They suspected one person, who was doing polish work, might be responsible for the incident.

P.W.16, who was the Inspector of Police at the relevant point of time, stated that on 27.04.2010 at about 5.00 PM, while he was on patrolling duty, received information about the murder in flat No.103 of the apartment. Upon receiving the information, he rushed to spot at 6.00 PM and received written report from P.W.10. On the basis of the instructions given by him P.W.14, the Sub Inspector of Police, Panjagutta, registered a case in Cr.No.379 of 2010 under Sections 302 and 380 IPC and issued Ex.P12, FIR. On receipt of FIR, P.W.16 took up investigation by securing the presence of two mediators P.W.12 and

another and in their presence searched and examined the scene of offence with the help of clues team. Ex.P7 is the observation panchanama and Ex.P8 is the rough sketch of scene of offence. On examination of the body of the deceased, scratch injuries were found on the neck regions and rear side of the head was swollen. There was a small fruity bottle with some water lying near by the scene of offence. He seized one fruity bottle and one pair of chappal (M.O.14) under the cover of panchanama. On the same day, he seized the visitors register, Ex.P10, in the presence of mediators under a cover of panchanama Ex.P9. On the next day, i.e. on 28.04.2010, he examined P.Ws.10, 1, 5, 6 and two others at the police station. He examined P.Ws.2, 3, 4, 15 and 11 at the scene of offence on the same day. He then proceeded to the Gandhi Hospital Mortuary and in the presence of P.W.13 and another conducted inquest over the dead body of the deceased. Ex.P11 is the inquest report. Thereafter, he got issued requisition to the Medical Officer (P.W.7), Gandhi Hospital and got the post mortem examination (Ex.P7) conducted over the dead body of the deceased.

After recording the statements, during the course of investigation, P.W.16 arrested the accused on 29.04.2010 at about 1.30 PM at Care Hospital, Road No.1, Banjara Hills. On examination, the accused admitted the commission of offence and theft of gold ornaments and cash of Rs.55,000/- from the almaraiachs in the house of the deceased. Thereafter, the accused lead the police and mediators to his house and produced M.Os.1 to 10 before them which were seized under Ex.P5. P.W.16 referred the injured accused to Gandhi

Hospital for treatment and the Medical Officer, P.W.8, issued would certificate Ex.P2.

After collecting all the documents, P.W.17 filed the charge sheet, which was taken on file as PRC.No.22 of 2010 on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad. On appearance of the accused, the copies of the documents were furnished as contemplated under Section 207 of the Criminal Procedure Code and later, the case was committed to the Court of Sessions under Section 209 Cr.P.C. On committal, the case came to be numbered as SC.No.450 of 2010 on the file of the Special Judge for Economic Offences cum VIII Additional Metropolitan Sessions Judge, Hyderabad. On appearance of the accused, the charges referred to above came to be framed and explained to the accused, to which the accused pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined P.Ws.1 to 17 and got marked Exs.P1 to P14 and M.Os.1 and 10. After completion of the prosecution evidence, the incriminating circumstances against the accused were put to him in the evidence of witnesses, to which he denied. But, however, the accused did not examine any witnesses on his behalf. Believing the evidence of P.Ws.1 to 17 and basing on the circumstances relied upon prosecution; the learned Sessions Judge convicted the accused. Assailing the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and circumstances, relied upon by the prosecution, do not establish the guilt of the accused in the

commission of the offence. According to him, even prior to the arrest of the accused, he was in police station along with others, as he was asked to come to the police station along with 30 to 35 others and as such, the arrest and the recovery made on the next day are artificial. He further submits that the accused was implicated in the case on the ground that he had undertaken to do polish work in the flat of the deceased. He further submits that there is no evidence on record to show that he entered into the flat of the deceased on the date of the incident. The evidence of either P.W.11 or P.W.15 does not establish as to when the accused entered into flat and when he left the flat. According to him, when P.W.1 could open the door, the possibility of anybody entering into the flat, killing the deceased and taking away the gold ornaments from the house cannot be ruled out. He further commented on the delay in depositing the gold ornaments, which were alleged to have been seized from the accused within two days after the incident. Having regard to the circumstances, he would submit that the circumstances relied upon by the prosecution do not form chain of events to connect the accused with the crime.

4. On the other hand, the learned Public Prosecutor would contend that there is absolutely no necessity for the prosecution to foist false case against the accused. The minor lapses on the part of the prosecution, during the course of investigation, cannot be made as the basis to throw out the entire case. In the absence of any explanation given by the accused as to the recovery of gold ornaments from his house and that the recovery is made within two days of the incident,

an inference has to be drawn that it was the accused, who was responsible for commission of the offence.

5. In order to appreciate the rival arguments advanced by both counsel, it would be necessary to refer to the evidence of the witnesses. A perusal of the record would show that case rests on the circumstantial evidence. The question is as to whether the circumstances relied upon by the prosecution viz. last seen theory in the apartment; leaving the premises at 3.00 or 3.30 or 3.45 PM; arrest of the accused on 29.04.2010 and recovery made pursuant to the confession of the accused are proved and if prove, whether they form a chain of events to connect the accused with the crime.

6. In order to prove that the accused was last seen in the apartment or that he has gone to flat No.103 for doing polishing work, the prosecution sought to establish the same through evidence of P.Ws.6, 11 and 15. P.W.6 is not a direct witness to speak about the presence of the accused in the apartment on that day. His evidence is only to the effect that he went to the flat of the deceased for collecting money, where she informed him about pending polish work in her flat. He immediately telephoned to the accused, who replied stating that he would go over there within two hours and complete the unfinished polish work. Later at about 5 PM, he called the accused and enquired about the incident in flat No.103, to which he pleaded ignorance. In his earlier statement before Police, P.W.6 never stated that when he telephoned to the accused, he replied stating that he would go over to the said flat within two hours and complete the unpolished work and

also about the wife of Ashok Kothari telephone him when he was at Liberty junction.

P.W.11 stated that on 27.04.2010 at about 12.30 to 1.00 PM, one Ramesh, who was doing polish work in flat No.103, came to the apartment and his evidence is to the effect that at about 1.30 PM, the said Ramesh left the apartment. He identified the accused as the person, who came to the apartment. However, to a suggestion in the cross-examination that he had not stated before the I.O. that Ramesh came to the apartment between 12.30 PM and 1.00 PM and that he left at 1.30 PM, was denied. But P.W.16, the I.O., in his evidence deposed that P.W.11 never stated before him that one Ramesh came to the apartment between 12.30 PM and 1.00 PM for doing polish work and left at 1.30 PM.

7. From the above the version of P.W.11 that the accused came to the apartment between 12.30 PM and 1.00 PM and left at 1.30 PM appears to be an improvement. He never stated the said fact in his earlier statement. Coming to the evidence of P.W.15, as it appears, he was working as a Security Guard in the said apartment and on 27.04.2010, while he was on duty, the accused present in the Court came to apartment at 1.30 PM and left the apartment at 3.00 PM or 3.30 PM or 3.45 PM. Later, he came to know about the death in flat No.103. Though he claimed to be maintaining register, making entries with regard to entry and exit of the persons to the apartment, the register, which was seized, does not contain the said entry with respect to the accused. An explanation is sought to be given by P.W.15 that since the accused was a regular visitor, his name was not entered

into the register. But, a perusal of the evidence of P.W.16, I.O., would show that P.W.15 never stated before him that accused left the apartment at 3.00 or 3.30 or 3.45 PM. P.W.15 also did not state before the I.O., that he was on duty in the apartment on 27.04.2010. P.W.15 also did not give the descriptive particulars of the accused. It would be useful to extract the relevant portion, as spoken to by the witness, which is as under:

“... P.W.15 did not state before me that the accused left Lotus apartments by 3.30 p.m. 3.00 pm. or 3.45 pm. I have not collected any document or examined any one to show that P.W.15 who was working in the Baba Viswanath Security agency and was posted at Lotus Apartments on the date of offence. P.W.15 did not state before me the door number of his house at his native place and also is contact telephone number. P.W.15 did not state before me that he was on duty in the lotus apartments on 27.4.2010 ...”

8. From the evidence of the above three witnesses viz. P.Ws.6, 11, and 15, who were examined to speak about the accused being present in the apartment during the relevant point of time, we feel that the prosecution was not able to establish beyond reasonable doubt that the accused was in the apartment during that time, for the reason, that though in the Court, all the witnesses speak about the accused entering the apartment at 1 pm., or 3.00 or 3.30 or 3.45 pm, but none of them have stated this fact in their earlier statements. In fact, the evidence of P.W.11 and P.W.15 is mutually inconsistent with each other, since P.W.11 in her evidence deposed that the accused left the apartment at around 1.30 PM while P.W.15 deposed that the accused left the apartment at 3.00 or 3.30 or 3.45 PM.

In view of the inconsistency in the evidence, a doubt arises as to whether the accused was really present at the scene of offence.

9. Coming to the arrest and recovery made, which is main circumstance, relied upon by the prosecution to connect the accused with the crime, the evidence of P.W.16 would show that the accused was arrested on 29.04.2010 at about 1.30 PM and pursuant to the confession made by him, P.W.16 seized gold ornaments and cash of Rs.55,000/- from the house of the accused in the presence of P.W.9.

10. To meet the main plank of the argument that the recoveries are fabricated to connect the accused with the crime, learned counsel for the appellant took us through the evidence of P.W.6 to show that the accused was in the police custody even prior to his arrest. As stated earlier, P.W.6 was a carpenter by profession and he was doing some work in the said apartment. In his cross-examination, he admits that on the next day of murder at about 11 AM, he went to the police station wherein he was made to wait till 1 AM in the midnight. According to him, in connection with this murder, about 30 to 35 persons working in the apartment were called to the police station and kept waiting. On recall, he was further cross-examined, wherein he admitted that by the time he went to the police station about 30 to 35 persons and among them, the watchman, security guard of the apartment and accused were also present. It is stated that 30 to 35 persons were present in the first floor of the police station and he has seen the accused at 5 PM or 6 PM in the police station. The SI of Police along with three or four policemen was enquiring the persons present there. He stated that he stayed in the police station till midnight and

during which period 35 persons also stayed in the police station including the accused. His evidence is also to the effect that he also attended the police station in the morning of 29.04.2010 and saw the accused in the station at that time.

11. From the evidence of P.W.6, it is clear that the accused along with 30 to 35 persons including P.W.6, security guard and watchman were summoned to the police station and were detained there illegally till midnight of 28.04.2010, which is evident from the evidence of P.W.6. Therefore, when the accused was in the police station right from 28.04.2010 till 29.04.2010, the so-called arrest said to have been made on 29.04.2010 at about 1.30 PM on credible information, appears to be highly suspicious, more so, when the evidence of P.W.6 shows that all 30 to 35 persons were present in the police station even on the next day. If really the police were aware about the involvement of the accused, on 28.04.2010 or in the morning of 29.04.2010, the question of leaving the accused and then affecting arrest at 1.30 PM on 29.04.2010, cannot be believed. It appears that as the accused was entrusted with the work of polishing in the flat of the deceased, he must have been taken into custody and roped in as an accused. If really the accused was released, he would have made himself scarce and would not be loitering near the police station as the arrest was made while he was near Care Hospital, Banjara Hills. Therefore, a doubt arises as to his arrest on 29.04.2010 at 1.30 pm. Then what would be the effect of recoveries made pursuant to the alleged arrest.

12. Though P.W.9 speaks about the recovery of articles from the house of the accused on 29.04.2010, the same, in our view, requires to be viewed with the suspicion vis-à-vis the arrest made.

13. It may be true that the accused was not able to give any explanation with regard to the alleged recovery of gold ornaments and cash. But the question is whether really they were stolen or whether they were planted showing as if they were recovered from the accused. P.Ws.4 and 10 were examined to speak about the articles which the deceased was having on her body and in the flat. As stated earlier, P.W.4, who is the niece of the deceased, did not support the prosecution case. In her chief-examination, she stated that she had no knowledge of the nature of the jewellery on the body of the deceased. But, however, in the cross-examination, she stated that ornaments M.Os.1 to 7 and cash of Rs.55,000/- were missing. When she was not aware about the nature of the jewellery which the deceased was having and when she had no personal knowledge about the articles, it is difficult to believe as to how she could identify the articles stolen from the house of the deceased. It is neither the case of the P.W.4 nor the case of prosecution that P.W.4, who is the niece of the deceased, was acquainted with the ornaments which the deceased was having. In fact, she never stated in her evidence that she was aware about the articles which the deceased was wearing or was having in her flat. Thereafter, we feel that she is not the competent person to identify the articles.

14. P.W.10, who is the brother of the deceased, gave the list of articles, which were missing and stated that he could identify the

jewellery items and cash. It is very difficult to believe as to how P.W.10 could have identified the cash as that of the deceased. Though P.W.10 gave a list of seven items that were missing, neither P.W.4 nor P.W.10 were asked to identify the articles during the course of investigation. Further, it is not the case of the prosecution that P.W.10, who is the brother of the deceased, was residing along with the deceased. His evidence is that he is residing at Pet Basheerbad, Hyderabad. In his cross-examination, P.W.10 admits that he is not stated specifically the missing of M.Os.1 to 10. He further states that he was not aware as to the observations made by the police at the scene of offence. He further admits that after recovery of M.Os.1 to 10, the police showed him and he identified the same. Subsequent to the identification, the police have not examined him. He further admits that neither in Ex.P6 nor before the I.O., he stated that he can identify M.Os.1 to 10. He further admits that M.Os.1 to 9 are available in the market. It would be useful to extract the relevant portion in the evidence of P.W.10 as under:

“... In the scene of offence I have not examined by the police. The police after recovery of M.Os.1 to M.O.10 showed to me and I identified them. Subsequent to my identification the police not examined me. I was visiting the deceased twice in a month. It is in correct to say that I do not know the daily activities of deceased. I have not stated in Ex.P-6 and before the I.O. that I can identify M.Os.1 to M.O.10. Exs.M.Os.1 to M.O.0 are available in the market. I have not specifically stated in Ex.P-6 and I.O., that the deceased was usually wear in gold chain and Bangles and the description of the said items not given. I have not stated in Ex.P-6 about missing of M.Os.1 to M.O.10. It is true that I have not stated in Ex.P-6 that one polishing person might have been suspected in killing the

deceased. It is true that I have not stated before the I.O., that the polishing worker was suspected in killing the deceased ...”

15. From the answers elicited in the cross-examination, a doubt arises whether P.W.10 is really stating the truth; though in chief-examination he gives list of articles, which were missing and categorically states that some of the articles were worn by the deceased at the time of the incident but he gives a complete go-bye to the said version by admitting that neither in Ex.P6 nor before the I.O., he spoke about identifying M.Os.1 to 10; the deceased wearing gold chain and bangles and missing of M.Os.1 to 10 in Ex.P6 and also expressing suspicion against the polishing person.

16. Hence, we feel that the argument of the learned counsel for the appellant that these ornaments appear to have been planted so as to fix the accused finds force and the evidence of P.Ws.4 and 10 does not establish that these articles were missing from the flat of the deceased. Coupled with all these circumstances, no explanation is forthcoming from the prosecution as to why it took nearly eight months to deposit the articles in the Court after their seizure. P.W.17, I.O., in his evidence, in the cross-examination, admits as under:

“It is true that I filed Form No.66 on 20.6.2010 before the court. It is true that I filed another Form No.66 on 21.6.2010 before the court. Mos.1 to 10 were deposited by me into the court on 18.12.2010 ... I have not taken steps to get the test identification parade of MOs.1 to 10 ...”

From the above, it is clear that though the articles were seized on 29.04.2010, no effort was made for depositing the same in the Court till 18.12.2010, though Form No.66 was said to have been filed before the Court in the month of June 2010 itself.

17. Learned counsel for the appellant relied upon a decision of the Supreme Court in *MADHU v. STATE OF KERALA*¹ in support of his contention that the ornaments came to be planted only with the object of fixing the accused. The relevant para of the decision is extracted as under:

“71. Coupled with the conclusion drawn by us in respect of the gold chain and the six gold bangles, allegedly recovered at the instance of the accused Madhu and Sibi, we are of the view that it may well be, that the ornaments were never taken away from the person of the deceased Padmini Devi. This view comes to our mind because if the motive had been theft of gold ornaments, then all the gold ornaments would have been taken away, most certainly the earrings which were openly and clearly visible. The accused were poor persons, for them the earrings alone would have meant a lot. If nothing else, the earrings would have balanced (to some extent at least) the spoils in the hands of the accused. It may well be, that the aforesaid ornaments came to be planted only with the object of solving the case in hand. This aspect of the matter also creates a serious doubt in the prosecution case.”

18. In a situation somewhat identical to the case on hand, a Division Bench of this Court in Referred Trial No.2 of 2014 dated 30.09.2016 observed as under:

“Even in a case where the circumstances indicate that the theft of properties and the murder might have been committed at the same time, the Supreme Court held that where the only evidence available was with regard to recovery of such stolen properties, it would not be safe to draw an inference that the person in possession of the stolen properties had committed

¹ (2012) 2 SCC 399

the murder, as suspicion cannot take the place of proof (*STATE OF RAJASTHAN V/ s. TALEVAR*) [(2011) 11 SCC 666]]

19. In view of the above, we feel that the prosecution was not able to establish all the circumstances connecting the accused with the crime.

In the result, the criminal appeal is allowed. The conviction and sentence recorded against the appellant – accused in S.C.No.450 of 2010 on the file of Special Judge for Economic Offences cum VIII Additional Metropolitan Sessions Judge, Hyderabad, are set aside. The appellant/accused is acquitted of the offences punishable under Sections 302 and 380 of the Indian Penal Code and he shall be set at liberty forthwith, if he is not required in any other case. The order of the trial Court in ordering return of M.Os.1 to 10 to the legal heirs of the deceased Smt. Susheela Devi on production of succession certificate stands confirmed.

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

C. PRAVEEN KUMAR, J

T. RAJANI, J

June 26, 2018
DSK