

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

Crl.A.No.799 of 2012

Date: 20.11.2018

Between:

Akula Surender @ Chinni (A-4)

...

Appellant

and

The State of Andhra Pradesh
Rep. by its Public Prosecutor
High Court of Andhra Pradesh, Hyderabad

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Respondent

Counsel for the Appellant : Smt.A.Gayathri Reddy

Counsel for the respondent : Addl. Public Prosecutor (TS)

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Criminal Appeal is filed by accused No.4 in SC.No.488 of 2009 on the file of the II Additional Sessions Judge, Warangal, against Judgment, dated 28-07-2012, passed therein, whereby he was convicted for the offences punishable under Sections 363, 201 and 302 IPC and sentenced (i) to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/- for the offence punishable under Section 363 IPC; (ii) to undergo two years Imprisonment and to pay a fine of Rs.500/- for the offence punishable under Section 201 IPC; and (iii) to undergo Imprisonment for Life and to pay a fine of Rs.500/- for the offence punishable under Section 302 IPC. In default of payment of fine, he was further directed to suffer Simple Imprisonment of three months each. All the sentences were directed to run concurrently.

The case of the Prosecution in substance is that the appellant/accused No.4 has helped accused Nos.1 to 3 and 5 in the aforesaid Sessions Case to take the deceased in his auto and in doing away with his life for a consideration of Rs.5,000/-

Based on the chargesheet filed and the evidence collected by the Police during the investigation, the trial Court has framed the following charges:

Charge No.1: That you A.1 to A.5 on 10.11.2007 at about 4.00 p.m at Mallikudurla Village were a member of an unlawful assembly, and in prosecution of the common object of the said assembly, namely, to commit murder of Jakkula Yadagiri, committed an offence of rioting punishable u/s. 147 IPC and within the cognizance of this Court.

Charge No.2: That you A.1 to A.5 during the course of same transaction mentioned in charge No.1, were a member of unlawful assembly and did, in prosecution of the common object of that assembly, in committing murder of Jakkula Yadagiri committed the offence of rioting and at that time were armed with a deadly weapon i.e. a sharp edged knife, which is likely to cause death and thereby committed an offence punishable u/s. 148 IPC and within my cognizance.

Charge No.3: That you A.1 to A.5 during the course of same transaction mentioned above, kidnapped Jakkula Yadagiri and thereby committed an offence punishable u/s. 363 r/w 149 IPC and within my cognizance.

Charge No.4: That you A.1 to A.5 during the course of same transaction mentioned above, committed murder of Jakkula Yadagiri by strangulation and by cutting his neck and thereby caused his death and thereby you committed an offence punishable u/s. 302 r/w 149 IPC and within my cognizance.

Charge No.5: That you A.1 to A.5 during the course of same transaction mentioned above, knowing or having reason to believe that the offence, namely, murder, punishable with death and imprisonment for life and fine has been committed, caused certain evidence connected with the said offence, thrown the dead body in a ditch and clothes in a different

places, to disappear with intention to screen yourselves from legal punishment and thereby committed an offence punishable u/s.201 r/w 149 IPC and within my cognizance.”

As the plea of the appellant was one of denial, he was subjected to trial, during which, the Prosecution examined PWs.1 to 4, got Exs.P.1 to P.26 marked and produced MOs.1 to 8. On behalf of the Defence, Exs.D.1 and D.2 were marked. During pendency of the trial, accused No.3 in the Sessions Case died.

On appreciation of the oral and documentary evidence, the trial Court acquitted accused Nos.1, 2 and 5 and convicted and sentenced the appellant/accused No.4 in the manner as noted herein before.

We have heard Smt.A.Gayathri Reddy, learned Counsel for the appellant, and the learned Additional Public Prosecutor for the State of Telangana.

The Prosecution mainly relied upon the alleged oral extra-judicial confession of the appellant spoken to by PW.3 and Ex.P.8-panchanama regarding the alleged confession made by the appellant, which, allegedly, lead to recovery of the dead body of the deceased. The trial Court, while acquitting accused No.1, who, allegedly, nursed the motive to kill the deceased and the other

alleged collaborators *viz.*, accused Nos.2 and 5, however, convicted the appellant only based on Ex.P.8 and recovery of the dead body of the deceased. We shall, therefore, consider these two aspects.

Ex.P.8 is the Panchanama regarding the alleged confession made by the appellant. PW.7, who is a Bill Collector in Gram Panchayat Office, Dharmasagar, is one of the panch witnesses thereto. In his chief-examination, this witness deposed that, in the year 2007, he went to the Police station on being called by the Police at about 6.00 a.m.; that he saw the appellant in the Police Station along with an auto, which was kept outside the Police Station; that the appellant surrendered himself before the Police one day before his visit to PW.3; that the appellant confessed before them that he was offered Rs.5,000/- by accused No.1; that accordingly, he brought the deceased; that as per the confession, the deceased and the accused consumed alcohol; that when the deceased went for urination, the accused mixed sleeping tablets in alcohol; that after the deceased consumed the same, he was taken to the Gabbeta gutta; that in pursuance of the confessional statement, the appellant has taken the Police and others to the said gutta where they saw the dead body of the deceased and also the remaining accused being present there. In his cross-examination, PW.7 stated that he did not apply for leave on the day when he

went to the Police Station; that a Constable came to his house and informed him that he was called by the Sub-Inspector of Police; that in the Police Station, the statement of the appellant was recorded by one writer; that he does not know the latter's name; that the statement was dictated by the Sub-Inspector *viz.*, S.Raju; that himself and another Panch witness went in an auto to the Gutta; and that 20 or 25 Police Officers were already present there.

The hollowness in the case of the Prosecution regarding the alleged confessional statement of the appellant leading to recovery is thoroughly exposed by the above noted answers elicited by the Defence from PW.7. The fact that Ex.P.8 was prepared to the dictation of the Police Officer makes it fall in the teeth of Sections 25 and 26 of the Indian Evidence Act, 1872 (for short 'the Evidence Act'). It also shows that Ex.P.8 was not voluntary. The further statement of PW.7 that by the time they went to the Gutta, where the dead body was found, there were already 20 or 25 Police apart from 15 to 25 villagers, would clearly prove that the alleged confession of the appellant did not lead to recovery as the Police already knew the place where the dead body of the deceased was lying. Therefore, the alleged confession does not fall under Section 27 of the Evidence Act, and hence, the same is not admissible. In our opinion, the trial Court has fallen into a serious error in basing its conviction solely on Ex.P.8 and the recovery of

the dead body of the deceased, purportedly, at the instance of the appellant. When the Court below has acquitted the main accused *i.e.*, accused No.1 and his other collaborators *viz.*, accused Nos.1, 2 and 5 , it ought not to have convicted the appellant solely based on the alleged confession leading to recovery of the dead body of the deceased. Hence, we are of the view that the conviction and sentence of the appellant are not sustainable.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused No.4 are set aside. The fine amount, if any, paid by him shall be refunded to him. The bail bonds of the appellant shall stand cancelled. The appellant/accused No.4 shall immediately surrender before the Superintendent, Central Prison, Warangal, to enable him to complete the formalities for his release, if he is not required in any other case.

(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 20th November, 2018
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