

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

Crl.A.No.816 of 2011

Date: 13.03.2018

Between:

Mohd. Bachan, S/o.Yakub,
Aged 20 years, Muslim,
R/o.Adarshnagar, Karimnagar ... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of A.P., Hyderabad ... Respondent

Counsel for the Appellant : Mrs. A.Gayathri Reddy

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

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

The sole accused filed this appeal against judgment dated 17.01.2011 in Sessions Case No.89 of 2010 on the file of I Additional Sessions Judge, FAC: V Additional Sessions Judge, Karimnagar, whereby he was convicted for the offence punishable under Section 302 I.P.C. and sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/- and in default of payment of fine, to undergo simple imprisonment for three months.

2. The case of the prosecution, as set out in the charge sheet, is briefly stated as hereunder:

The accused is an auto driver by profession and is the third among the four brothers and he was earlier involved in a case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and one robbery case along with his concubine Chand Bee @ Shabana and were arrested and sent to judicial remand. That the deceased was a woman Home Guard deputed to work in Women's Prison, District Jail, Karimnagar on 01.05.2009 and she told the accused that she knows many advocates and would ensure bail for his concubine. That the accused used to meet the deceased with a request to get bail for his concubine and the deceased told him that an expenditure of Rs.4000/- would be incurred for bail; that the accused managed to pay Rs.1800/-, but an amount of Rs.2,200- was due and as such, the deceased did not take interest in getting the

sureties and though the accused called her on mobile several times, she did not respond and when he met her in jail, she demanded Rs.2,200/- and uttered that she will collect the money by sexually exploiting his younger sister to various persons; that since then, the accused developed grudge against the deceased and that his concubine expressed her anger for his negligence in getting her bail.

That on 10.07.2009 at 0830 hours, PW-1 lodged a complaint at II Town P.S., Karimnagar, stating that she is a resident of Banjepalli, Mangalithanda of Machareddy mandal in Nizamabad district and she had three sons and five daughters and her third daughter Bharathi was working as Home Guard and staying in Karimnagar, whereas her husband was staying at his native village by doing agriculture. That in the evening hours of 09.07.2009, she received information over phone through one Thangallapalli Shankar, Home Guard, PW-3, that some one killed her daughter by cutting her throat in her rented room and when she came to Karimnagar, she found her daughter's body with cut injury on throat. That PW-3 revealed that in the afternoon hours of 07.07.2009, he went to the rented house of the deceased to discuss about the case of the accused; that the deceased made a call to an advocate who was engaged in the case of the accused, about the release of his wife; that after some time, the accused came there and demanded PW-3 to go out from the room and that as the accused alone was with the deceased, they might have quarreled and during the discussion of the case, he might have killed

the deceased by cutting her throat. That the accused is having past crime history and went to jail in a theft case and that PW-1 came to know about the same, on enquiry with others also. That based on the complaint, PW-16, SI of Police, II Town Police Station, Karimnagar, registered a case vide Crime No.247 of 2009 u/s. 302 IPC and took up the investigation and issued express FIRs to all concerned, examined PW-1 and recorded her statement. On the same day i.e. 10.07.2009, PW-17, C.I of Police, Karimnagar Town, took up further investigation, examined witnesses, recorded their statements, got the photographs of the deceased taken through PW-5, observed the scene of offence, drafted the findings at the scene, conducted inquest over the body in the presence of the panchas, PWs-6, 13 and one Malothu Ammi, and shifted the body to Government Headquarters Hospital, Karimnagar, for conducting post-mortem examination. PW-15, who conducted postmortem examination, opined that the death was caused because of severe bleeding and shock due to the cut injury over the neck. That, based on the statements of PW-3 and the house owner of the deceased – PW.4, the involvement of the accused was strongly suspected. That PW-4 witnessed the accused leaving the rented portion of the deceased on 07.07.2009 at 11.30 p.m. by locking the door from outside. That on verification of the antecedents of the accused, it came to light that he was earlier involved in other offences and was arrested twice and sent to judicial remand. That the accused was arrested on 17.07.2009 and

interrogated in the presence of the mediators and the accused voluntarily confessed that he killed the deceased on the night of 07.07.2009 and that he along with his brother-in-law and two others, also killed one Vengala Bharath on 03.07.2009 at 7.30 p.m., due to personal grudges and that the same is the subject matter of another crime No.248 of 2009.

3. Based on the charge sheet and the other material collected during the investigation, the lower Court has framed the following charge against the appellant:

“That on 07.07.2009 at about 11.30 p.m., at Mankammathota, Karimnagar, you have committed murder of Malothu @ Bhukya Bharathi W/o.Deniya, WHG 947 of Karimnagar unit, by cutting her throat with a knife (Ela-peeta) and thereby committed the offence punishable u/s. 302 IPC and within my cognizance.”

4. As the plea of the accused was one of denial, the prosecution has conducted trial, during which, it has examined PWs-1 to 17, got exhibits P-1 to P-7 marked and produced MOs-1 to 3. On behalf of defence, it has got exhibits D1 and D2 marked. On appreciation of oral and documentary evidence, the Court below has disposed of the case, in the manner as noted herein before.

5. We have heard Mrs.A.Gayathri Reddy, learned counsel for the appellant and the learned Public Prosecutor.

6. This is a case based on circumstantial evidence and last seen theory. The law is well settled that in a case of this nature, motive plays very important role. As per the case of the prosecution as set out supra, the deceased claimed that she knows many advocates and she will ensure bail for the appellant's concubine Shabana, who was accused in a theft case and in judicial custody. That, the deceased quoted Rs.4000/- as expenses for bail and the appellant managed to pay Rs.1800/- to the deceased and the balance amount of Rs.2,200/-, is due to be paid, as a result of which, the deceased did not take proper interest in getting the sureties, in spite of the accused making repeated requests in that regard. That, whenever the accused called the deceased on her mobile, the latter did not respond and when the accused met the deceased in jail, she demanded him payment of the balance amount and uttered that she will collect the money by sexually exploiting the younger sister of the appellant. That because of these reasons, the appellant has developed grudge against the deceased and added to this, the concubine of the appellant expressed her anger against the appellant, for his negligence in the matter of securing her bail. Though the prosecution has examined PWs-3, 8 and 9, to prove acquaintance between the appellant and the deceased, none of these witnesses has made any whisper about the deal between the two, regarding securing bail for the concubine of the appellant. Except to the extent of speaking about the deceased talking to an Advocate on phone in the presence of himself and the

appellant, no further details whatsoever were given by PW-3. PWs-8 and 9, who are the home guards and colleagues of the deceased, also, did not depose that they have seen the appellant meeting the deceased in jail. Even PW-17, the investigation officer, did not speak about the motive on the part of the appellant, to kill the deceased, except to the extent of his referring to the confessional panchanama of the appellant and allegedly seizing the knife from the scene of offence. In our opinion, failure of the prosecution to prove the most crucial aspect of motive in this case, completely weakens its case against the appellant. If we discard the motive, we do not find any reason for the appellant to kill the deceased in such a barbaric manner, not only by slitting the throat of the deceased, but also removing her eyes.

7. Coming to the evidence of the witnesses, the prosecution mainly relied upon the evidence of PW-3, the last seen witness and PW-11, the auto driver having acquaintance with the appellant. PW-3 is a Home Guard. But he stated that he and the deceased were not working in the same place and that the deceased was doing her duty in district jail, whereas he was attached to law and order police. In his cross-examination, he has stated that he knows the deceased and the accused. He did not explain as to from how long he knew the deceased and the reason for him to go to the room in which the deceased was staying, on the fateful day. Contrary to what he has

claimed in his chief examination regarding his knowing the appellant, in his cross-examination, he has stated that he knew the appellant on the date of the offence only. This exposes prevaricative nature of the witness. It is thus established from the evidence of PW-3 that appellant was a stranger to him and he saw him only on the day of the alleged occurrence. In such circumstances, ordinarily, the duty lies on the prosecution to arrange for test identification parade. However, it has failed to make such arrangement, as a result of which, any amount of doubt would arise as to whether PW-3 has last seen the accused with the deceased. In his cross-examination, the witness stated that he does not know whether the deceased used to collect money and get bail to the accused in criminal cases. He denied the suggestion that he did not state before the police in his Section 161 Cr.P.C. statement, that he went and saw the deceased and then informed her parents. He has further stated that he stated before the police that he met the deceased along with the accused on the previous day.

8. The defence was able to extract omission from the evidence of PW-17. He has admitted that PW-3 did not state before him that he met the deceased and the accused on the previous day. On a careful reading of the evidence of PW-3, any amount of doubt would arise on its credibility. When PW-3 and the deceased were working in different places and when the former was unable to state about the nature of their acquaintance and the purpose for which he went to

the place of stay of the deceased on the day of occurrence and more so, in the light of the omission extracted from the evidence of PW-17 regarding the witness meeting the deceased on the previous day, we are of the opinion that PW-3 was planted, to set up and prove the last seen theory.

9. As regards the evidence of PW-11, he was examined to lend corroboration to the evidence of PW-3. PW-11 claims to be an auto driver. According to his deposition, the appellant has approached him over 14 months back, with a request to transport the dead body of the deceased in his auto, along with her belongings. He admitted in his cross-examination that he and the accused parked their autos in Indiranagar Auto Stand. The evidence of PW-11 eludes naturality, for the simple reason that as the appellant himself is an auto driver, plying auto on lease, there was no need for him to request PW-11 to transport the dead body in the latter's auto. Being a person with long criminal record, it was not difficult for the appellant himself, who allegedly indulged in barbarious act of killing and removing the eyes of the deceased, to help himself, without involving any third party such as PW-11 and disclosing the commission of offence to him, in transporting the body. We have, therefore, no hesitation to hold that even PW-11 was planted by the police to lend corroboration to the evidence of PW-3.

10. If we eschew the evidence of PWs-3 and 11, the only other evidence which may link the accused with the offence, is the alleged

recovery of MO-1 – knife. PW-17 in his evidence, stated that he visited the scene of offence on 10.07.2009, took the photographs through PW-5 and prepared the rough sketch of the scene of offence. He also examined the recorded statements of the witnesses and on 10.08.2010 at 7 a.m., he arrested the accused for interrogating him, that in the course of interrogation in the presence of PW-14 and LW-23, the accused confessed commission of offence and that the confessional panchanama was prepared and the knife was seized from the scene of offence. In his cross-examination, PW-17 admitted that no seizure panchanama was prepared for seizing MOs1 to 3. MO.1- knife was not seized from the possession of the accused. It was allegedly seized on the confession of the accused from the scene of offence, over which the appellant had no control. On the contrary, it was the place of living of the deceased. As discussed above, even before the appellant was arrested, PW-17 had visited the scene of offence and prepared a rough sketch, apart from examining the witnesses. If MO-1 was lying near the scene of offence, there was no reason why, he has not noticed and seized the same under the cover of panchanama, even before the appellant was arrested and taken to the scene of offence. That MO-1 would not have been seized following the confessional statement of the accused, is further supported by the fact that no seizure panchanama was prepared in the presence of the mediators. In the absence of such seizure panchanama, no sanctity could be attached to the statement of PW-

17 about the seizure of MO-1, based on the confessional statement of the accused. Moreover, the prosecution is silent as to whether any blood stains were traced on MO-1 and if so, whether MO-1 was sent for FSL examination.

11. In the aforementioned facts and circumstances of the case, we are of the opinion that the prosecution failed to bring out the guilt of the accused beyond all reasonable doubts. The Court below has convicted the appellant, merely based on suspicion, without there being any proof of his guilt beyond all reasonable doubts.

12. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 17.01.2011, in Sessions Case No.89 of 2010, on the file of the learned I Additional Sessions Judge, FAC: V Additional Sessions Judge, Karimnagar, for the offence punishable under Section 302 I.P.C., are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 13th March, 2018

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