

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

Criminal Appeal Nos.383, 407 & 442 of 2012

Crl.A.No.383 of 2012

Between:

Motukuri Siva

... Appellant/accused No.3

Vs.

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

...Respondent

DATE OF JUDGMENT PRONOUNCED: 04.09.2018

SUBMITTED FOR APPROVAL:

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

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to
see the fair copy of the Judgment? | Yes/No |

C.V. Nagarjuna Reddy, J

Gudiseva Shyam Prasad, J

***The Hon'ble Sri Justice C.V.Nagarjuna Reddy**
and
The Hon'ble Sri Justice Gudiseva Shyam Prasad
+Criminal Appeal Nos.383, 407 & 442 of 2012
%04.09.2018

Crl.A.No.383 of 2012

#Motukuri Siva

... Appellant/accused No.3

Vs.

\$The State of A.P.,
Rep. by its Public Prosecutor
High Court of Andhra Pradesh
Hyderabad

...Respondent

! Counsel for the appellants: Mr.C.Sharan Reddy

^ Counsel for respondent: Public Prosecutor (AP)

<GIST:

>HEAD NOTE:

?CASES REFERRED:

1. (2015) 12 SCC 644
2. (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146
3. 1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59
4. (1997) 8 SCC 158 : 1997 SCC (Cri) 1249
5. 2017(2) ALT (Crl) (DB)
6. 2009(17) SCC 273
7. 2014(14) SCC 609
8. 2015(11) SCC 178

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Criminal Appeal Nos.383, 407 & 442 of 2012

Date: 04.09.2018

Crl.A.No.383 of 2012

Between:

Motukuri Siva

... Appellant/accused No.3

and

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

...Respondent

Crl.A.No.407 of 2012

Between:

Durgada Lovaraju and another

... Appellants/accused Nos.1 & 2

and

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

...Respondent

Crl.A.No.442 of 2012

Between:

Raasamsetti Nagamani @ Ammulu

... Appellant/accused No.4

and

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

...Respondent

Counsel for the appellants: Mr.C.Sharan Reddy

Counsel for respondent: Public Prosecutor (AP)

The Court made the following:

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

These three Criminal Appeals arise out of Judgment, dated 17-04-2012, in S.C.No.6 of 2011 on the file of the VIII Additional Sessions Judge (FTC), East Godavari District at Rajahmundry.

Accused Nos.1 and 2 filed Criminal Appeal No.407 of 2012, Accused No.3 filed Criminal Appeal No.383 of 2012 and Accused No.4 filed Criminal Appeal No.442 of 2012.

For convenience, the parties are referred to as they are arrayed in the Sessions Case.

The case of the Prosecution, as narrated in the chargesheet, is briefly stated hereunder:

Accused Nos.1 and 2 are brothers. They are residents of Mallam Village of Pithapuram Mandal. Accused No.3 is their cousin and accused No.1 is the paramour of accused No.4. Accused No.4 performed the marriage of her daughter PW.11- Durga Jyothi with her younger brother- Chittedi Krishna, who is a resident of Katravulapalli Village. PW.11, who had love affair with one Pinagadi Veera Nageswara Rao @ Nani (hereinafter referred to as 'the deceased'), continued the same even after her marriage. On accused No.4 informing accused No.1 about the same, the latter reprimanded PW.11, but she paid a deaf

ear and eloped with the deceased to some unknown place. The husband of accused No.4 gave a complaint in Pithapuram Police Station, which was registered as Crime No.22 of 2009 as woman missing case and investigated into. On suspicion that the deceased, who was a barber by profession, might have enticed PW.11, accused No.4 provoked accused No.1 to do away with the life of the deceased. In the meantime, the whereabouts of the deceased and PW.11 were traced out by the Police and on 13-06-2009 both the deceased and PW.11 came in a train to Samalkot Railway Station. On receipt of the said information, accused No.1 went to Samalkota, took both the deceased and PW.11 to the house of his younger brother- Durgada Bujji Babu in Madhuranagar, Kakinada, counselled both of them and asked the deceased to leave PW.11, for which he refused. Accused No.4 insisted accused No.1 to send PW.11 with her and get rid of the deceased.

On 15-05-2009, accused Nos.1 and 4 met accused No.2 at his house and conspired to kill the deceased. In pursuance of the same, they misrepresented the deceased that they would allow him to live with PW.11 and offered to purchase a good cot and made him go to Jaddangi Annavaram in the auto of accused No.2 followed by accused No.1. Accused Nos.1 and 2 purchased one

liter petrol from a petrol bunk and one full bottle Officer's Choice Whisky at Yeleswaram, went to J.Annavaram; They took along with them accused No.3, secured two more quarter whisky (O.T.) bottles, 10 water packets, 4 disposable glasses and food stuff from Jaddangi Annavaram. At about 6.30 p.m., accused Nos.1 to 3 took the deceased in their auto towards Jaddangi village, diverted the auto to a distance of about 50 yards into the forest and consumed whisky. They made the deceased consume more whisky and the deceased collapsed due to intoxication. At about 8.00 p.m., accused No.1 picked out the handkerchief of the deceased, twisted it around the neck of the deceased and strangled him. While accused No.2 caught hold of the legs of the deceased, accused No.3 focused the battery light. However, as the deceased did not die, accused No.1 cut off his throat with a knife. After confirming the death of the deceased, accused No.3 removed the silver ring & copper kadium from the hand of the dead body of the deceased and kept it in his shirt pocket. Accused Nos.1 to 3 removed the shirt and pant of the deceased, placed those clothes on the face and chest of the deceased, covered the dead body with dried plants and grass, poured petrol and set fire to it. Accused No.1 threw away the knife and waited there till the face of the deceased was completely burnt. Thereafter, accused

Nos.1 to 3 returned in the same auto and they dropped accused No.3 at Jaddangi Annavaram and returned to Yeleswaram at about 11.40 p.m. Accused No.1 informed accused No.4 about the murder of the deceased through phone they returned to the house of accused No.2 at Kakinada. Accused No.1 told PW.11 that the deceased went to Hyderabad as his brother was sick and that he would return 5 or 6 days later.

That on 16.05.2009, at 11.00 a.m., PW.1- Village Revenue Officer of Cherukumpalem Village reported to the Police, Jaddangi Police Station, that an unidentified dead body was found at the scene of offence. LW.35- Assistant Sub-Inspector of Police, Jaddangi Police Station, registered the same as Crime No.14 of 2009 under Sections 302 & 201 IPC at 12.00 noon and dispatched the copies of FIRs to all the concerned officers.

That PW-17 - Inspector of Police, Addateegala (I/c) Rajavommangi Circle, took up the investigation, recorded the statement of PW.1, proceeded to the scene of offence along with PW.1 and LW.8- Addala Rambabu, seized three two rupee Indian coins, one five rupee Indian coin, one half rupee Indian coin, one foreign coin relating to Turkey country, one empty whisky full bottle, two 180 ML quarter bottles, two will flakes cigarettes, 4 disposable glasses, six empty water sachets, three thumbs up bottle

caps, one 5000 empty gutka packet, semi burnt shirt and towel and the burnt cell phone remnants including a SIM card on the chest of the dead body and collected the blood stained earth & controlled earth separately under the cover of Ex.P.2- Scene Observation report, prepared Ex.P.18- rough sketch of the scene of offence and got the same photographed by PW.3- private photographer. He conducted inquest over the dead body of the deceased from 2.00 p.m., to 4.30 p.m., in the presence of PWs.2 & 3, LW.3- Annika Nageswara Rao, LW.4- Kotcha Srinu, LW.5- Dasari Yesubabu, LW.6- Pamanthi Tataji under the cover of Ex.P.3- Inquest Report, recorded their statements and sent the dead body for Post Mortem Examination to the Government Head Quarters Hospital at Rajahmundry.

On 17-05-2009, PW-18 - Circle Inspector, Rajavommangi, took the charge of the case, recorded the statements of LW.10- Moyya Nukaraju and LW.11- Addala Ramu.

That on 03-08-2009, PW-19 - Inspector of Police, Rajavommangi Circle, who assumed the charge, caused inquiries to know the identity of the deceased; that with the help of PW.4- owner of 'M/s.S.S.Telephone Services', Vijayawada, he found that the burnt SIM recovered from the dead body of the deceased pertains to cell Number: 900083681. Accordingly, he traced out

the address of the customer *i.e.*, PW-5. He examined PW-5, secured the presence of PWs.6 and 7, LW.14- Vennapu Veerababu, LW.16- Pati Veerababu, LW.18- Pinagadi Satyanarayana, LW.19- Pinagadi Veeraraghava, LW.20- Bondada Satyaveni, LW.21- Pasupuleti Venkata Ratnam and LW.22- Donda Nageswara Rao, recorded their statements, during which they had seen the photograph of the dead body of the deceased and unanimously opined that it might be of 'Nani @ Pinagadi Veera Nageswara Rao'.

Apprehending danger in the hands of the Police, accused No.1 approached LW.31- Village Revenue Officer, Mallam Village and confessed about his commission of the offence. LW.31 prepared a report, surrendered accused No.1 to the Sub-Inspector of Police, Pithapuram Police Station, who, in turn, passed a message to Jaddangi Police Station by phone.

That on 08-10-2009 at 7.00 a.m., PW.19- Inspector of Police, Rajavommangi Circle, having received the message through phone, went to Pithapuram along with his staff, PW.1 and LW.32- Panchayat Secretary of Jeddangi Village, caused the arrest of accused No.1 in their presence, recorded his confessional statement, seized one black coloured cover of Nokia make and

recorded the statement of LW.31- Village Revenue Officer, Mallam Village.

Thereafter, PW.19- Inspector of Police, proceeded to the house of accused No.2, recorded his confessional statement, seized the auto bearing No.AP 05TT5131, which was used for the commission of offence under the cover of Ex.P.5- mediators report and recorded the statements of PWs.9 & 10, LW.28- Amaradi Bhavani & LW.29- Nedipudi Rambabu.

That PW-19-Inspector of Police proceeded to Jaddangi Annavaram Village along with mediators and staff, arrested accused No.3 at his house, recorded his confessional statement and seized the silver ring, copper kadiyam and DIGI LED Battery light of Nippo Company under the cover of Ex.P.6- mediator's report. In pursuance of the confession made by accused Nos.1 to 3, PW-19 along with his staff and mediators went to the scene of offence and seized the knife from the bushes under the cover of Ex.P.7- mediators report.

That on 09-10-2009 at 6.00 a.m., PW-19- Inspector of Police arrested accused No.4 in the presence of the Mediators, recorded her confessional statement, seized the cell phone Nokia 1100 Model Cell Idea SIM No.9010850984 under the cover of Ex.P.8- mediators report, recorded the statement of PW.11 and sent

accused No.4 for remand. He summoned the parents of the deceased and got conducted the test identification parade by the mediators on the pial of the Jaddangi Panchayath Office, during which the blood relatives of the deceased asserted that the silver ring and copper kadiyam belonged to the latter. On a request made by PW-19, PW-13- Judicial First Class Magistrate, Rampachodavaram, recorded the statement of PW.4 under Section 164 Cr.P.C., on 26.10.2009. PW-14- Medical Officer, who conducted autopsy over the dead body of the deceased, issued Ex.P.16- Post Mortem Examination Report opining that the deceased died 'due to massive Haemorrhage due to incised wound on the left side of the neck.

On the basis of the evidence collected during the course of his investigation, PW-19- Inspector of Police added Sections 120 (B) and 109 IPC in the First Information Report.

Based on the chargesheet and the material produced by the Prosecution, the Court below has framed the following charge:

“That all of you on 15.-5.2009, A.1 and A.4 met A.2 at his house and conspired and agreed themselves to kill the deceased by intentionally or knowingly causing the death of deceased, by name Pinagadi Veera Nageswara Rao @ Nani, S/o. Satyanarayana @ Sattibabu, R/o. Mallam Village and on the same day after sunset at 6.30 p.m., A.1 to A.3 took the deceased in their auto from Jaddangi Annavaram towards Jaddangi Village and passed on the way and diverted the auto to 50 yards distance

in to the forest in Bornagudem, H/o.Chelukumpalem of Rajavommangi Mandal, where A.1, A.2 and A.3 together with deceased drunk the Whisky and during the drink session A.1 to A.3 made the deceased to drink excessively, as a result of which the deceased collapsed down in intoxication and at 8.00 p.m., when A.1 picked out the hand kerchief of the deceased, twisted it around the neck of the deceased and pulled while A.2 held the legs of deceased and A.3 focused the battery light. Though A.1 strangled twice the deceased did not die. Then A.1 cut off the throat of the deceased with a knife and caused his death. After confirmation of his death A.1 to A.3 decided to remove the signs of their offence and A.3 removed the silver ring and copper kadiyam from the hand of the dead body of the deceased and kept in his shirt pocket. A.1 to A.3 removed the shirt and pant of the deceased placed the clothes on the face of the deceased on his chest and covered the dead body with dried plants and grass. Poured the petrol and set fire to the dead body. A.1 thrown away the knife which he used to cut the throat of the deceased and waited there till the fact of the deceased was completely burnt and the marks are completely disappeared. A.1, A.2 and A.3 returned by the same auto from the place of offence to Jaddangi Annavaram, where A.3 was dropped and A.1 and A.2 came back to Yeleswaram about 11.40 p.m., and from there A.1 informed the information of murder of deceased to A.4 by phone and there after returned to the house of A.2 at Kakinada. and thereby you committed an offence punishable u/sections.302 IPC for punishment of murder, u/Section 201 IPC for punishment of disappearance of evidence, u/Section.109 IPC for punishment of abetment and u/Section 120(B) IPC for punishment of criminal conspiracy r/w.34 IPC within the cognizance of this Court.”

As the plea of the accused was one of denial, they were made to stand trial, during which the Prosecution examined PWs.1

to 19, got Exs.P.1 to P.18 marked and produced MOs.1 to 12. The accused has got examined the Sub-Divisional Engineer of BSNL as DW.1 and got Exs.D.1 marked on their behalf and Exs.X-1 to X-3 were marked through Court.

On appreciation of the oral and documentary evidence, the trial Court has convicted accused Nos.1 to 4 (i) for the offence punishable under Section 302 r/w 34 IPC and sentenced them to undergo Rigorous Imprisonment for Life and also to pay a fine of Rs.5,000/- each and, in default of payment of fine, to suffer Simple Imprisonment for a period of one year; (ii) for the offence punishable under Section 302 r/w 109 IPC and sentenced them to undergo Rigorous Imprisonment for Life and also to pay a fine of Rs.5,000/- each and, in default of payment of fine, to suffer Simple Imprisonment for a period of one year; and (iii) for the offence punishable under Section 120(B) r/w 34 IPC and sentenced them to undergo Rigorous Imprisonment for a period of six months and also to pay a fine of Rs.100/- each and, in default of payment of fine, to suffer Simple Imprisonment for a period of fifteen days. The trial Court has further convicted accused Nos.1 to 3 for the offence punishable under Section 201 r/w 34 IPC and sentenced them to undergo Rigorous Imprisonment for a period of seven years and also to pay a fine of

Rs.2,000/- each, and, in default of payment of fine, to suffer Simple Imprisonment for a period of three months.

We have heard Mr.C.Sharan Reddy, learned Counsel appearing for the accused, and Mr.Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh.

At the hearing, learned counsel for the appellants/accused submitted that the case of the prosecution was mainly founded on the last seen theory, extra-judicial confession and recoveries, that PW.9 examined for proving the last seen theory having turned hostile, the prosecution failed to establish the same, that even PW.11, who allegedly eloped with the deceased to constitute motive for the accused to commit the offence, also turned hostile, that the alleged extra-judicial confession before PW.13, apart from being in conflict with the evidence of PW.1, also suffers from inherent weaknesses completely improbablising the prosecution case in that regard, that the prosecution failed to prove the alleged recoveries and that even if those recoveries were held proved, the prosecution failed to establish the link between the accused and the murder of the deceased. Learned counsel for the appellants/accused further submitted that the prosecution failed to establish the identity of the body of the deceased, which proved fatal to its case.

Opposing the above submissions, the learned Public Prosecutor appearing for the respondent – State submitted that the extra-judicial confession and the recoveries made based on the confession statements of the accused are sufficient to hold the accused guilty of the murder beyond reasonable doubt.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

Extra-judicial confession :

The prosecution has examined PW.13 - Village Revenue Officer, G. Medapadu Village, to prove the extra-judicial confession. In his evidence, PW.13 has stated that on 08.10.2009 in the morning time, A.1 came to his office and confessed the commission of offence by himself, A.2 and A.3 and that he has recorded the confessional statement of A.1. However, the witness has volunteered to state that he did not record the statement of A.1. He further stated that he himself handed over A.1 to Pithapuram Police Station along with Ex.P.15 – Report. In the cross-examination, the witness stated that one Constable came to his office and obtained Ex.P.15 – Report from him. He denied the suggestion that on the dictation of the police, he drafted Ex.P.15 – Report. He also admitted that he put the date as 08.10.2008 in the first line of Ex.P.15 and that on 08.10.2008 the S.I. of Police, Pithapuram, received Ex.P.15 – Report. He further admitted that he did not have acquaintance with A.1 prior to Ex.P.15 – Report and that

he does not remember as to whether he has obtained permission from the M.R.O., Pithapuram, before recording Ex.P.15 – Report or subsequent thereto. He also admitted that he did not enquire from A.1 with regard to the contents of Ex.P.15 – Report and that he did not obtain acknowledgement from Pithapuram Police regarding his handing over of A.1 to them. He denied the suggestion that he subscribed his signature on Ex.P.15 – Report after drafting it as per the instructions of the police and that he put the date underneath his signature subsequently as per the instructions of police.

On a close examination of the testimony of PW.13, we noticed serious self contradictions in his stand. As noted hereinbefore, in one breath, he said that he has recorded the confessional statement of A.1 and immediately thereafter, he said that he did not record the statement. While in his chief-examination, he stated that he himself has handed over A.1 to Pithapuram Police Station along with Ex.P.15 – Report, in the first sentence of his cross-examination, he stated that one Constable came to his office and obtained Ex.P.15 – Report from him. At a later part of his cross-examination, he contradicted his earlier statement by stating that on 08.10.2008, the S.I. of Police, Pithapuram Police Station, received Ex.P.15 – Report. In addition to the above inherent inconsistencies in the testimony of PW.13, he candidly admitted that he has no prior acquaintance with A.1.

Extra-judicial confession is a weak piece of evidence and the Courts have to view it with greater care and caution. In VIJAY SHANKAR v. STATE OF HARYANA¹, the Supreme Court held that, for extra-judicial confession to form the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities, that to rely upon extra-judicial confession, the prosecution has to establish that the person before whom extra-judicial confession is made is a person of influence with the police, so that he would be able to have a say to the police and that otherwise, it would be highly doubtful that the accused would have approached such a person for making extra-judicial confession. In SAHADEVAN v. STATE OF TAMIL NADU², the Apex Court observed that as the extra-judicial confession is a weak kind of evidence, it has to be examined by the Court with greater care and caution, that it should be made voluntarily and should be truthful, that the same must inspire confidence and that it must be corroborated by other prosecution evidence.

In BALWINDER SINGH v. STATE OF PUNJAB³, the Apex Court observed that extra-judicial confession requires great deal of care and caution before acceptance and there should be no suspicious circumstances surrounding it.

¹ (2015) 12 SCC 644

² (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146

³ 1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59

In PAKKIRISAMY v. STATE OF T.N.⁴, the Apex Court observed that there has to be independent corroboration for placing any reliance upon extra-judicial confession.

On a careful consideration of the evidence of PW.13, as observed hereinbefore, it suffers from serious self-contradictions and prevarications. Moreover, being a Village Revenue Officer, PW-13 cannot be said to be a man of influence with the Police so as to save the accused. We are therefore of the opinion that it is highly improbable for A.1 to approach PW.13 and make extra-judicial confession, moreso when they had no prior acquaintance with each other.

Last seen theory :

Admittedly, the only piece of evidence relied upon by the prosecution to prove the last seen theory is the evidence of PW.9, who turned hostile. Therefore, the prosecution failed to prove its part of the case.

Corpus delecti :

Corpus delecti literally means the body or substance of the crime. In law, the term refers to proof establishing that a crime has occurred. In **Mekala Muralimohan @ Murali Vs. State of A.P.**⁵ a Division Bench of this Court speaking through one of us (CVNR,J) held as under :

⁴ (1997) 8 SCC 158 : 1997 SCC (Cri) 1249

⁵ 2017(2) ALT (Crl) 247 (DB)

“... In a case based on circumstantial evidence, *corpus delecti* i.e., body of crime, should be conclusively established with reference to the person who is killed. In the absence of proper identification of the dead body, which constitutes a crucial link in the chain of circumstances, the case of the prosecution gets substantially weakened. One line of cases propounded that conviction need not necessarily depend upon *corpus delecti* being established and that if the prosecution is able to prove the death of the deceased as a homicide and produced clinching circumstantial evidence unerringly leading to the inference that the victim met a homicidal death at the hands of the accused, the Court can convict the accused (See: *Ram Chandra v. State of U.P.* (1) AIR 1957 SC 381; *Ram Nand v. State of H.P.* (2) (1981) 1 SCC 511, *Shambhu Nath Mehra v. State of Ajmer* (3) AIR 1956 SC 404, *Ram v. State of H.P.*(4) (1973) 2 SCC 808, *Bandhu v. Emperor* (5) 1924 All.L.J. 340, *State v. Sardara* (6) 19784 Crl.L.J. 43). The aforementioned judgments related to cases where *corpus delecti* was not established and the prosecution has let in strong circumstantial evidence to prove the guilt of the accused.....”

PW.1 in her evidence stated that the dead body was burnt and it has turned black and unidentifiable. PW.14 – Doctor, who conducted autopsy, deposed that the body was completely burnt from head to thighs with all first degree burns and that the body is completely unidentifiable. He further deposed that the DNA Test is the best scientific method to determine the identity of a particular person. Admittedly, no DNA Test was conducted on the body of the deceased. The only piece of evidence on which the prosecution heavily placed reliance for identifying the body of the deceased is MO.9 – Half burnt SIM Card allegedly belonging to the deceased. To substantiate its case, the prosecution examined PWs.4 and 5. PW.4 is a Mobile Mechanic Shop owner. What all he has stated in his evidence is, that on 17.09.2009 Jaddangi Police came to his shop and showed him one

half-burnt SIM card, that he inserted the copper colour SIM card in some other Mobile and activated it and based on it, he has detected the number of the SIM card and also call data, such as dialled numbers, missed calls and phone book. Nowhere in his evidence, he had referred to the Mobile Number relating to the said SIM card. As if to fill this lacuna, PW.19 – Investigating Officer stated that PW.4 demonstrated the functioning of MO.9 and found the Cell number as 90008 36815.

PW.5, a friend of the deceased, stated that at the request of his brother, he gave a photocopy of his Ration Card to him as residential proof for obtaining AIRTEL SIM card.

In our opinion, the prosecution has produced half-baked evidence, which is not sufficient to establish that the SIM card allegedly seized from the scene of offence belonged to the deceased. Indeed, PW.4 has not specified the Mobile number relating to MO.9. Due to this reason, the version of PW.19 – Investigation Officer remained uncorroborated. If at all it is PW.4, who is the proper person to speak about the Mobile Number.

Even assuming that MO.9 was connected to Mobile No.90008 36815, as spoken to by PW.1, the prosecution failed to connect the said number to the Mobile number of the deceased. It failed to examine the person, who sold the SIM card to the deceased, and also the service provider in order to establish that the Mobile

No.9000836815 belonged to the deceased. In the absence of this crucial evidence, the prosecution miserably failed to establish the identity of the deceased. Unfortunately, it has also failed to take any steps to subject the dead body of the deceased to the DNA Test. The prosecution has also not taken any steps for getting the burnt dead body identified by super-imposition of photograph of the deceased, though it was available during investigation and filed in the Court.

PW.7, the brother of the deceased, allegedly identified MOs.3 and 4 viz., Silver Ring and Copper Bracelet Ring, respectively, as belonging to the deceased. They were allegedly recovered from the possession of A.3, under Ex.P.6 – Mediators Report.

It is not the pleaded case of the prosecution that they held Test Identification Parade for identification of the property, as envisaged under Rule 35 of the Criminal Rules of Practice and Circular Orders, 1990, which reads as under:

“35. Identification of property:--

- (1) Identification parades of properties shall be held in the Court of the Magistrate where the properties are lodged.
- (2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or five similar objects.
- (3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not be allowed to communicate with the witnesses not yet called in.”

When the law requires a thing to be done in a particular manner, it must be done accordingly or not at all. When the Statutory provision referred to above requires the property to be identified in the presence of the Jurisdictional Magistrate, the alleged identification by PW.7 in the presence of the police has no legal sanctity and, therefore, it cannot be said that the prosecution has established that MOs.3 and 4 belonged to the deceased. No other evidence has been brought forth by the prosecution to establish that the body allegedly detected by the police was of the deceased, in the present case.

Alleged recoveries :

The police have allegedly recovered 12 Material Objects. But, the prosecution failed to establish either description or recovery of MO.2. Therefore, out of 11 material objects, the learned Public Prosecutor straight away conceded that MOs.1 and 7 – Cell Phones, MO.5 – Torch Light, MO.8 – Auto, and MOs.10 to 12 viz., Demonstrated Cell, control earth and blood-stained earth, respectively, are not helpful to connect the accused to the alleged offence. It is only MOs.6 and 9 viz., Small Steel Knife and Half burnt SIM card, respectively, besides M.Os.3 and 4, which are relevant for connecting the accused to the alleged offence.

We have already dealt with MOs.3, 4 and 9. Therefore, they need not separately be discussed once again. As regards MO.6 – Knife, the learned counsel for the appellants/accused sought to project certain

contradictions in the evidence of PW.1. It is, however, not necessary for us to deal with the same for the simple reason that, even assuming that MO.6 was recovered at the instance of A.1, the Prosecution has failed to show MO.6 to PW.14 – Doctor and elicit from her whether the injuries found on the body of the deceased were possible with a weapon like MO.6. Apart from it, MO.6 did not contain any blood stains and the said weapon was not sent to Forensic Science Laboratory for its report and the same was seized from a public place five months after the occurrence.

In the light of the above lacunae in the case of the prosecution, it is not safe to base conviction of the accused on the alleged recovery of a knife, which is commonly available in the market. Moreover, in the absence of any other corroborative evidence, the accused cannot be convicted merely based on recovery, which could only be one of the links in the chain of circumstances. (See: **Mani Vs. State of Tamil Nadu⁶**, **Vijay Thakur Vs. State of Himachal Pradesh⁷**, **Kiriti Pal Vs. State of West Bengal⁸**).

On the analyses as above, we have no hesitation to hold that the prosecution miserably failed to prove the guilt of the accused beyond reasonable doubt and the Court below wrongly convicted the accused.

⁶ 2009(17) SCC 273

⁷ 2014(14) SCC 609

⁸ 2015(11) SCC 178

In the result, the Criminal Appeals are allowed. Consequently, the judgment dated 17.04.2012 under appeals is set aside and A.1 to A.4 are acquitted of the offences with which they were charged. The fine amount, if any, paid by them shall be refunded to them. The bail bonds of the accused shall stand cancelled and they shall surrender themselves before the Superintendent, Rajahmundry Central Prison, for completing the legal formalities for their release, if they are not required in any other case or crime.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

04.09.2018

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Msr/LUR



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

Criminal Appeal Nos.383, 407 & 442 of 2012



04.09.2018

Msr