

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMA DEVI

CRIMINAL APPEAL No.17 of 2013

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

Assailing the judgment in Sessions Case No. 217 of 2010 on the file of the III Additional Sessions Judge, Tirupati, wherein the accused were acquitted for offences punishable under Sections 147, 120-B, 364, 201, 203 read with 302 IPC., the State of A.P preferred this appeal.

2. The substance of the charge against the accused is that on 05.07.2007, all the accused hatched a conspiracy, and in pursuance of the said conspiracy entered into between them, they kidnapped the deceased, by name Avuleti Venkatesu and killed him on 06.07.2007.

3. The facts, as per the averments of the charge sheet are that one Venkatesu, resident of No.I Balupalli village, Renigunta was the husband of A2. On 06.07.2007, at about 11 p.m., one A.Gopal-PW6 saw an unidentified dead body of a middle age person at Kazhanipakkam village bridge. Accordingly, he visited Pallikonda Police Station, Vellore District, Tamil Nadu State and lodged a

report-Ex.P3 before PW36-Inspector of Police. Basing on the said report, a case in Crime No. 225 of 2007 came to be registered under Section 302 IPC. Ex.P53 is the FIR. PW36 took up the investigation, visited the scene of occurrence and posted a guard at the dead body, as it was late in the night. On 07.07.2007, at about 6.30 a.m., he resumed investigation, visited the scene of occurrence which is situated at Kazhinipakkam village and noticed the dead body towards the southern side of the culvert, on the slope of the stones. He also prepared an observation mahazar in the presence of PWs 11 and 12. Ex.P55 is the Mahazar. Ex.P19 is the translated copy of the Mahazar. He prepared a rough sketch of the scene, which is placed on record as Ex.P56. During the course of the said proceedings, he seized yellow velvet cloth, blood stained stones and control stones. Ex.P57 is the translated copy of the seizure mahazarnama attested by PWs 11 and 12. M.Os. 3, 4 and 5 are the velvet cloth, blood stained stones and control stones respectively.

4. Thereafter, PW36 conducted inquest over the dead body in the presence of PWs 13 to 16. Ex.P20 is the inquest report and Ex.P59 is its translated copy. During the course of inquest, he examined PW6 to 12 and recorded their statements. He also got photographed the dead body of the deceased. Ex.P38 is the negative of the photographs of the dead body. Thereafter, he requested the Professor, Forensic Medicine, Government Medical College, Vellore to keep the body of the deceased for the purpose

of identification. Accordingly, the body was forwarded to Government Medical College, Vellore.

5. On 11.07.2007, at about 2.45 p.m., PW29-the Assistant Professor, Department of Forensic Medicine, Government Medical College, Vellore received a requisition from PW36 to conduct post mortem examination. Accordingly, he conducted post mortem examination and issued Ex.P40-the post mortem certificate. According to him, the body was decomposed with bloated face, tongue protruding out, abdomen distended, scrotum and penis bloated, greenish black discoloration on the abdomen, chest, face and limbs. After obtaining the report of the department of toxicology, he gave his opinion stating that the cause of death appears to be due to strangulation. The report also disclosed presence of alcohol in viscera. Ex.P42 is the opinion.

6. Subsequently, the successor of PW36 filed a requisition before the court to transfer the case to Renigunta police, on the ground of jurisdiction, and accordingly, the case was sent to Tirupati. On 11.07.2007, at about 11 a.m., while PW37-the Sub Inspector of Police, Tirupati was present at the police station, A2, who is the wife of the deceased, came to the police station and lodged a report informing him about the missing of her husband. Ex.P62 is the report given by A2. Basing on the said report, PW37 registered a case in Crime No. 72 of 2007 of Renigunta Police Station and submitted Ex.P63-the FIR. He examined A2 and recorded her statement. After registering the crime, he visited the

scene of occurrence, i.e., the house of A2, collected two photographs of the missing person, which are placed on record as Ex.P46 and Ex.P47. He also drew a rough sketch of the house, which is placed on record as Ex.P64. He examined PWs 1 to 5 and recorded their statements. He made enquiries in the surrounding villages, but, could not trace the whereabouts of the husband of A2 (deceased). However, basing on the evidence collected on 11.07.2007 itself, A1 and A2 were shown as suspects.

7. At the instance of PW37, the SDPO, Srikalahasthi addressed a letter to the Director, Forensic Science Laboratory, Hyderabad to fix a date for conducting lie detection test in respect of A1 and A2. Thereafter, notice came to be issued to A1 and A2 to appear before the Director, Forensic Science Laboratory, Hyderabad on 06.08.2007. Accordingly, they proceeded to Hyderabad and lie detection test was conducted on 06.08.2007. On 23.08.2007, PW37 received the opinion of the Assistant Director, Forensic Science Laboratory, Hyderabad through SDPO, Srikalahasthi. Ex.P43 is the lie detection test report.

8. While things stood thus, on 31.10.2007, PW37 visited Nadavalur Harijanawada of Ramachandrapuram Mandal, examined PWs 17 and 18, and basing on their statements, altered the section of law to Section 364 read with 34 and 109 IPC. Ex.P65 is the altered FIR. On the same day, he received credible information about the involvement of A1 in the offence. Accordingly, he proceeded towards Karakambadi-Tirupati road and found A1 driving

a jeep from Tirupati. He stopped him and informed him about the grounds of his arrest, and accordingly arrested him in the presence of PWs 20 and 21. Ex.P28 is the mahazar of arrest. On 01.11.2007, PW37 arrested A2 in front of her house at about 7.30 a.m., in the presence of PWs 23 and 24, under Ex.P29. A2 is said to have confessed about her illicit intimacy with A1 and about the plan to kill the deceased. She is also said to have confessed about paying Rs.5,000/- to A1 for kidnapping her husband. The confession of A2 is marked as Ex.P29. A1 and A2 were brought to the police station and kept under surveillance.

9. On 07.01.2008, at about 10.40 a.m., A1 appeared before PW19-the Tahsildar while he was in office and informed him that he intended to tell about the death of the deceased. He further stated that as the police are harassing him, he intends to give statement before him and asked him to record his statement. The statement of A1 was recorded, which was signed by A1 and endorsed by PW19. Ex.P26 is the statement of A1. PW19 forwarded Ex.P26 to the Station House Officer with a covering letter, which is marked as Ex.P27. However, A1 is said to have left the place.

10. Basing on the covering letter dated 07.01.2008, the section of law was altered to Sections 302, 364 and 201 read with 34 and 102 IPC. Ex.P66 is the FIR sent to the court. PW38-the Deputy Superintendent of Police took up investigation in the manner. On the same day, at about 5.15 p.m., he interrogated A1 in the

presence of mediators, who confessed about his role and the role of others in the commission of the offence. Basing on the confession made by A1, the Sub Inspector of Police, along with PW38 and mediators PWs 22 and 25 went to Puttur to the house of Muruga, but found the house locked. On the next day morning, at about 6 a.m., while they were proceeding to APSRTC bus stand at Puttur, they noticed two persons standing near Naidu tea stall. A1 identified them as Murugan and Doraivelu, A3 and A5 respectively. With the assistance of the staff, PW38 apprehended A3 and A5, who disclosed their identity and also the role played by them in the commission of the offence. Pursuant to the confession made by them, M.O.7 is said to have been seized. Similarly, on the very same day, A6 was also arrested when he tried to escape, on seeing the police. On interrogation, he too confessed that his car was engaged by A3 and on 06.07.2010, and at about 2.30 a.m., he took the car and used it in the commission of the offence. Ex.P32 is the mahazar prepared for the arrest of A6. M.O.1 is said to have been seized pursuant to his confession. Then, A3 and A5 led the police to a bridge near Kazhanpakkam and stated that the body of the deceased was thrown there. The same was recorded in the presence of PWs 22, 25 and 15, under Ex.P21. PW38 also drew a rough sketch, which is placed on record as Ex.P68. A3, A5 and A6 also showed the place where they had thrown the nylon rope, which was noted under Ex.P16 and Ex.P17. M.O.2 is the nylon rope seized by PW38.

11. On 09.01.2008, on credible information, PW38, along with PW25 and another proceeded to Airport and when they reached Kavamma temple circle, they observed A7 and A8 present therein, who tried to run away on seeing the police. However, they were arrested, and on interrogation, they confessed about the role played by them in the commission of the offence. PW38 seized two cell phones from A7 and A8, which are marked as M.O.9 and M.O.10 respectively. PW38 brought A7 and A8 to Renigunta police station and after following the necessary formalities, he sent them for remand.

12. After completing the investigation, PW38 filed the charge sheet, which was taken on file as PRC No.54 of 2009 on the file of Additional Judicial Magistrate of First Class, Tirupati. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 217 of 2010 on the file of Court of the III Additional Sessions Judge, Tirupati. Basing on the material on record, charges for the offences punishable under Sections 147, 120-B, 364, 201, 203 read with 302 IPC were framed, read over and explained to the accused, to which they denied and claimed to be tried.

13. To substantiate their case, the prosecution examined PWs.1 to 38 and got marked Exs.P1 to P73 and M.Os.1 to 10. Out of the 38 witnesses examined by the prosecution, PWs 1, 5 to 24, 27, 31 and 32 did not support the prosecution case and were treated

hostile by the prosecution. 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. No oral or documentary evidence was adduced on behalf of the accused in support of their defence.

14. Since there was no admissible evidence connecting the accused with the crime, the trial court acquitted the accused. Challenging the same, the present appeal came to be filed by the State.

15. The learned Public Prosecutor submits that though there are no direct witnesses to the incident, the circumstances relied upon by the prosecution do form a chain of events connecting the accused with the crime. Since all the witnesses turned hostile, the learned Public Prosecutor places reliance on the extra judicial confession made before PW19, the NARCO Analysis test conducted on A1 and A2 and the motive spoken, so as to connect the accused with the crime.

16. On the other hand, the learned counsel for the respondents/ accused would submit that the three circumstances which are relied upon by the prosecution cannot be relied upon, in view of the evidence adduced by the prosecution, and even if the said circumstances are proved, the same would not connect the accused with the commission of the offence.

17. The trial court discussed the entire evidence on record at length and acquitted the accused. In substance, the gist of the prosecution case is that A1 is having illicit relationship with A2, and husband of A2 (deceased), on coming to know about the said fact, warned A2, and on that, A1 and A2 decided to eliminate the deceased. Accordingly, A1, A2 conspired with A3, A5, A7 and A8 and hired them by giving some money. On the intervening night of 05.07.2007 and 06.07.2007, the deceased was called out on the pretext of repairing a car. He came out to attend to the repair work of Indica Taxi Car No. AP-03TV-4036. While the deceased was checking the wires in the taxi car, A3 and A4 strangled the deceased, and later, the dead body was taken in the car driven by A6, along with A3 to A5, and abandoned the same by the side of the road near a bridge at Pallikonda. Subsequently, on suspicion, A1 and A2 were arrested and their confession led to the arrest of the other accused.

18. Coming to the first circumstance relied upon by the learned Public Prosecutor, viz., the extra judicial confession, the same is based on the evidence of PW19. PW19, in his evidence, deposed that on 07.01.2008, at about 10.40 a.m., A1 made a confession about the commission of the offence, pursuant to which PW19 reduced the same into writing, which is placed on record as Ex.P26. Thereafter, he forwarded the said statement to the Station House Officer, Renigunta with a covering letter, which is marked as Ex.P27. His evidence is to the effect that after making the said statement, A1 left the place, and on the same day, at 3

p.m., the Inspector of Police recorded his statement. In the cross-examination, he admits that he had acquaintance with A1 as he is the Vice-President of Mandal Praja Parishath, Renigunta. He further admits that as per his statement, A1 was taken by the police to Bangalore for NARCO analysis test. He, however, admits that he does not know whether the NARCO analysis test revealed the involvement of A1 in the crime. He further admits that the writing in the body of Ex.P26 and signatures of A1 are different, and that the round seal of the Tahsildar's Office, Renigunta was not affixed on Ex.P26. He further admits that A1 did not endorse on Ex.P26, accepting the contents of the statement.

19. From the evidence of PW19, it is clear that the alleged extra judicial confession was made on 07.01.2008 at about 10.40 a.m., while he was in his house, and after making the said confession, A1 left the place. No effort was made by him to retain A1 in his office. In the cross-examination, he admits A1 being in police custody when he was taken to Bangalore for NARCO analysis test. He further admits that Ex.P26 does not contain the signatures of the accused, nor does it contain the seal of the Tahsildar's Office. Keeping this evidence in the background, we intend to refer to the evidence of PW38, with regard to the arrest and confession made.

20. PW38, in his evidence in chief, deposed that on 07.01.2008, at about 5.15 p.m., he interrogated A1 in the presence of mediators, wherein A1 confessed about his role in the commission of the offence, more particularly, the manner in which the offence

was committed. Ex.P30 is the alleged confession made by A1 before PW38. He further states that as A1 was already arrested and released on bail, he did not arrest A1 after interrogation.

21. From the evidence of PW38, it appears that even before the extra judicial confession was made, A1 was arrested and released on bail. Subsequent to his release, he appears to have approached PW19 and made the confession, apprehending threat in the hands of police. When the accused was already arrested and released on bail by a competent court, the question of apprehending further harassment in the hands of police would not arise. Apart from that, the evidence of PW19 does not, anywhere, indicate that the accused was produced before the police after making the extra judicial confession. When the evidence of PW19 is silent on the said aspect, it is very difficult to believe that A1 would have asked PW38 to record his confession at 5.15 p.m. when he was not apprehending any threat of arrest in the hands of police. Having regard to the above, there arises any amount of doubt as to whether A1 made any extra judicial confession.

22. Coming to the NARCO analysis test, which is the second circumstance pressed into service by the prosecution, the version of PW38 discloses as if A1 was taken to the NARCO analysis test at Bangalore. However, there is sufficient evidence on record through the investigating officer, showing that A1 and A2 were taken to Hyderabad for NARCO analysis test. The admissibility of the said test is now sought to be challenged on the ground that the

same is in contravention to the guidelines laid down by the National Human Rights Commission, wherein an option was to be given to the accused, whether he intends to avail the test voluntarily should be recorded by the Magistrate. It was also stated that the accused should be represented by a lawyer at the time of the said test. Admittedly, no permission of the court was obtained and no option was given to the accused to avail the said test. Further, no assistance of any lawyer was given to A1 and A2. On the other hand, A2 denied giving such a statement before PW30. Hence, we feel that the evidence of PW38 cannot be given much importance to show that the said circumstance stands proved independently. Therefore, the finding of the trial court with regard to the NARCO analysis test warrants no interference.

23. Coming to the motive, the prosecution relies on the evidence of PWs 2 to 4 to show existence of motive for A1 and A2 to kill the deceased. All these three witnesses, in their evidence, deposed that on 06.07.2007 evening, A2 telephoned to them, informing about the missing of her husband and further stated that someone has taken him from the house in the early morning, on the pretext of repairing a car. After receiving the said information, PWs 2 to 4 came to know about the illicit relationship between A1 and A2. Since both of them were having illicit intimacy, they suspected A1 and A2 responsible for missing of the deceased. As seen from the evidence of these three witnesses, they never expressed any suspicion over the intimacy of A1 with A2. Suggestions given to all the witnesses with regard to the relationship between A1 and A2

were denied. Therefore, the third circumstance, viz., motive, which was taken as a link connecting the accused with the crime, remained un-established.

24. Insofar as the involvement of the other accused is concerned, the entire evidence is based on the confession of A1 before the police. The mediators who were present at the time of the confession, viz., PWs 21, 22, 24, 26 and 27 did not support the prosecution case and were treated hostile by the prosecution.

25. Hence, we hold that the circumstances relied upon by the prosecution to connect the accused with the crime remained unproved, and as such, the acquittal of the accused for the offences punishable under Sections 147, 120-B, 364, 201, 203 read with 302 IPC in Sessions Case No. 217 of 2010 dated 25.02.2011 on the file of the III Additional Sessions Judge, Tirupati warrants no interference.

26. Accordingly, the Criminal Appeal is dismissed. Miscellaneous petitions pending, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

29.01.2018
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