

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

* * * *

Crl.A.No.1446 of 2011

Between:

Shai Pashamiya

... Appellant

And

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

... Respondent

DATE OF JUDGMENT PRONOUNCED:20-08-2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE P. KESHA RAO

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

P. KESHA RAO, J

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

and

The Hon'ble Sri Justice P.Keshava Rao

+Criminal Appeal No.1446 of 2011

% 20.08.2018

Shai Pashamiya

..Appellant

and

\$ The State of Andhra Pradesh,
Rep. by its PP., High Court
Hyderabad

..Respondent

! Counsel for the Appellant: Mr.Ravi Kumar Vadlakonda

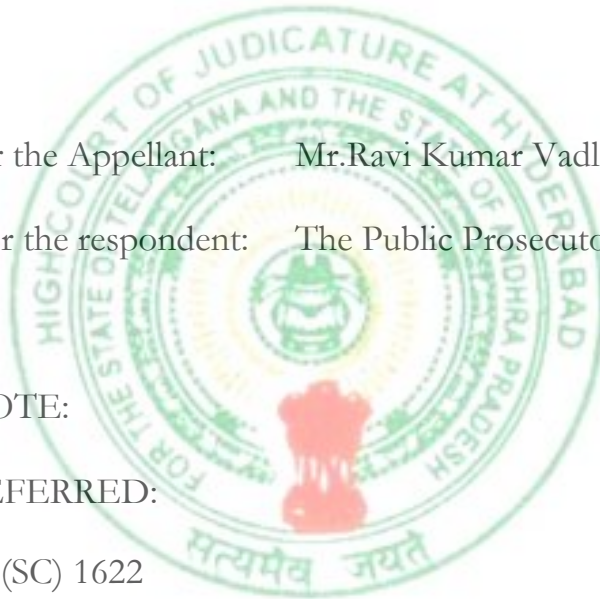
^ Counsel for the respondent: The Public Prosecutor (AP)

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? CASES REFERRED:

1. AIR 1984 (SC) 1622
2. (2004) 11 SCC 346
3. (2011) 4 SCC 779
4. 2012 (4) SCC 124



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

and

The Hon'ble Sri Justice P.Keshava Rao

Criminal Appeal No.1446 of 2011

Date: 20.08.2018

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The State of Andhra Pradesh,
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Counsel for the Appellant: Mr.Ravi Kumar Vadlakonda

Counsel for the respondent: The Public Prosecutor (AP)

The Court made the following:



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

The sole accused in Sessions Case No.283 of 2010 on the file of the VII Additional District and Sessions Judge, (FTC), Vijayawada, filed this Criminal Appeal against Judgment, dated 03-06-2011, passed therein, whereby he was convicted for the offences punishable under Sections 302 and 411 IPC and sentenced to undergo Imprisonment for Life and also to pay a fine of Rs.500/-, and in default of payment of fine, to suffer Simple Imprisonment for three months for the former offence and to undergo Rigorous Imprisonment for one year for the latter offence.

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

The appellant/accused belonged to Vallabhapuram Village in Nakirekallu Mandal of Nalgonda District. He had no fixed place of abode and used to stay at Dargahs for his health. One Indana Chiranjeevi (hereinafter referred to as D.1.) was the BSF Security guard at Kondapalli Khilla and Md.Rahiman (herineafter referred to as 'D.2') was the resident of Bommala Colony, Khilla Road, Kondapalli. The appellant developed grudge against D.1 as the latter refused

his entrance into Galib Shaheed Dargah situated in the premises of Kondapalli Khilla and against D.2 as the latter spoiled his marriage with one Nazeema of Gunadala. About one week prior to the incident, there was a quarrel between the appellant and D.2 on that count.

On 16-06-2010 at about 1.00 p.m., PW.1, who is the caretaker of Kondapalli Khilla, gave Ex.P.1- Police Report to the effect that at about 10.00 a.m., on that day, the Chowkidar of Galib Shaheed Dargah informed him that he noticed the dead bodies of D.1 and D.2 with head injuries at the door way and the restroom respectively of the Dargah. Immediately, PW.1 went to the said Dargah and saw the dead bodies of D.1 and D.2 and a bloodstained cement brick present by the side of D.2 and the appellant was suspected to be responsible for the same. PW.13- Sub-Inspector of Police, Ibrahimpatnam Police Station registered the same as Crime No.267 of 2010 for the offence punishable under Section 302 IPC and submitted express FIRs to all the concerned officers.

PW.14- Circle Inspector of Police, Ibrahimpatnam Police Station, took up the investigation, inspected both the scenes of offence near the dead bodies of D.1 and D.2 in the

presence of PW.11 and LW.15- Nakka Ramakrishna, prepared Ex.P.12- rough sketch of the scenes of offence, got the same photographed and videographed by the clues team and under the cover of Ex.P.5- scene observation report, seized the blood stained red colour cotton towel, white and light rose colour bed sheet stained with blood, blue colour and light colour flowers designed mat, blood stained black and white colour polish stone pieces and control black and white colour polish stone pieces from the place where the dead body of D.1 was lying and one cement brick, biscuit colour and red colour striped soiled bed sheet with blood stains, blood stained cement flooring pieces and control cement flooring pieces from the place where the dead body of D.2 was lying.

PW.14 held inquest over the dead bodies of D.1 and D.2 in the presence of PW.11, LW.15- Nakka Ramakrishna and LW.16- Gobbi Someswara Rao from 15.00 hours to 16.30 and 16.30 to 18.00 hours respectively and sent both the dead bodies for Post-Mortem Examination. PW.8- Medical officer, who conducted autopsy on the dead bodies of D.1 and D.2, issued Exs.P.3 and P.4- Post-mortem

Certificates of D.1 and D.2 respectively opining that the deaths were due to head injuries and its complications.

PW.15- Circle Inspector of Police took up further investigation, forwarded the material objects to the RFSL, Vijayawada, for chemical analysis *vide* Ex.P.14- letter, apprehended the appellant at Railway Station, Kondapalli, on 13-09-2010 at 15.00 hours, recorded his confessional statement in the presence of the mediators- PWs.11 and 12 under the cover of Ex.P.8- Mediators report, went to the shop of Khaja jewellers at Sivalayam street, Vijayawada, led by the appellant, where the latter sold the gold ring stolen by him from D.2, seized the gold ring under the cover of Ex.P.9- Mediators report, arrested the appellant and sent him to judicial custody.

Based on the charge sheet and the incriminating material collected during the course of investigation, the Court below framed the following charges:

“FIRSTLY:

That you/accused on 16.02.10 at Galibh Shaheed Dargah, Kondapalli Khilla, Kondapali with a common intention did commit murder by intentionally causing the death of Indana Chiranjeevi and that thereby you/Accused

committed an offence punishable under Sec.302 IPC and within my cognizance.

SECONDLY:

That you/Accused on 16.02.10 at Galib Shahed Dargah, Kondapalli Khilla, Kondapalli committed theft of Gold ring belonging to the deceased and that thereby you/Accused committed an offence punishable under Sec.380 IPC and within my cognizance.

THIRDLY:

That you/Accused on 16.02.10 at Galib Shaheed Dargah, Kondapalli Khilla, Kondapalli dishonestly received stolen property belonging to Indana Chiranjeevi knowing the same to be stolen property and that thereby you/Accused committed an offence punishable under Sec.411 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 17, got Exs.P.1 to P.15 marked and produced MOs.1 to 11. No evidence was let in on behalf of the defence.

On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted herein before.

Mr.V.Ravi Kumar, learned Counsel for the appellant, submitted that the Prosecution failed to produce any

incriminating evidence proving the guilt of the appellant for the offence punishable under Section 302 IPC; that having acquitted him of the charge for the offence under Section 380 IPC, the Court below has committed a serious error in convicting him for the offence of murder; that Section 411 IPC, which relates to the offence of receiving stolen property with dishonest intention, is not attracted to the appellant as even according to the case of the Prosecution, it is PW.10, who has received the stolen property *i.e.*, MO.1- gold ring from the appellant; and that when the appellant was acquitted of the charge of theft, the question of charging him or any one else for the offence under Section 411 IPC does not arise.

Opposing the above submissions, the learned Public Prosecutor for the State of Andhra Pradesh has sought to strongly defend the judgment of the lower Court.

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

This is a case based on circumstantial evidence as there was no eye witness to the alleged offences. As rightly referred to and relied upon by the lower Court, the parameters in a case based on circumstantial evidence were luminously laid down by the Apex Court in **Sharad Birdhchand Sarada vs. State of Maharashtra**¹, and they are as follows:

- “1. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
2. The circumstances should be of a conclusive nature and tendency.
3. They should exclude every possible hypothesis except the one to be proved, and
4. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

From a perusal of the judgment of the lower Court, it could be seen that it has held the appellant guilty of the offence of murder mainly based on motive and recovery of MO.1- gold ring, which, allegedly, belonged to D.2.

¹ AIR 1984 (SC) 1622

In a case based on circumstantial evidence, motive undoubtedly plays a very prominent role and indeed, it constitutes one of the strong links in the chain of circumstances, but the same is not the be-all and end-all. The other links in the chain of circumstances connecting the accused to the offence must necessarily be established in order that the Court reaches to the irresistible conclusion that they are incompatible with the innocence of the accused. (See: **N.J.Suraj vs. State, rep. by Inspector of Police², Rukia Begum Vs. State of Karnataka³, Sampath Kumar vs. Inspector of Police, Krishnagiri⁴**)

In the instant case, it is the consistent evidence of all the Prosecution Witnesses that the offences have allegedly taken place after 6.00 p.m., on 16.03.2010 at Kondapalli Khilla, an archaeological site where both the deceased alone were staying. Indeed, PW.3- sweeper at Kondapalli Khilla deposed that at 6.00 p.m., she has seen D.1- Security Guard and D.2 at the Khilla. The Prosecution, however, failed to examine any witness, who saw the appellant in the company of the deceased so as to link him to the alleged offences.

² (2004) 11 SCC 346

³ (2011) 4 SCC 779

⁴ 2012 (4) SCC 124

Seizure of stone/boulder from the scene of offence, the FSL report and the medical evidence would at best prove that the deaths are homicidal. But the question, which begs the answer, is how to link the appellant to the alleged offences.

The only link on which the Court below has placed reliance is the seizure of MO.1- gold ring, which, allegedly belonged to D.2. PW.6- son of D.2, allegedly, identified MO.1 under Ex.P.10- Identification of property report, which was prepared at the Police Station by the Police. Rule 35 of the Criminal Rules of Practice and Circular Orders, 1990, laid down the procedure for identification of Property. This provision 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 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 witness not yet called.”

For the reasons best known to the Investigating Officer, he has not followed the aforesaid procedure. Therefore, no sanctity could be attached to Ex.P.10 and the evidence of PW.6 in this regard. Even MO.1 was not directly seized from the appellant. While the incident has taken place on 16-06-2010, the appellant, allegedly, sold MO.1 to PW.10 on 03-09-2010. PW.10 claimed that he was running a gold jewellery shop under the name and style of Raja Jewellery at shop No.10, Shivalayam Street, Vijayawada. He deposed that on 03-09-2010, the appellant came to his shop, stated that he was ill and as he had no money, he wanted to sell gold ring; and that accordingly, he has taken the ring and paid Rs.6,500/- to the appellant. He further deposed that MO.1 is the said ring; that on 13.09.2010, the Ibrahimpatnam Police came along with the appellant and two persons to his shop; that they questioned him as to whether he knows the appellant; that he informed the Police that he knows the appellant as he sold the gold ring to him; that the Police have seized the gold ring in the presence of the appellant and the other two persons. In his cross-examination, PW.10 admitted that he does not have license to run the shop; that he is not paying sales tax or commercial

tax; and that the Police have neither weighed the ring nor issued any acknowledgment for having seized the ring. He had also admitted that he did not obtain the signatures of the appellant at the time of purchase of the ring in his register.

The evidence of PW.10, in our opinion, is untrustworthy as he did not show any evidence of his running a jewellery shop. He had also failed to produce any material such as the receipt issued by him to the appellant or the register, which is expected to be maintained by a person running jewellery shop in proof of his purchase of MO.1 from the appellant. The Prosecution failed to conduct Test Identification of Property to this witness also. Thus, the Prosecution miserably failed to prove that MO.1- gold ring belonged to D.2 and that the appellant pledged the same to PW.10. Further, in the absence of any person witnessing the appellant in the company of both the deceased, before the alleged murders, the Prosecution failed to lead the evidence, which would complete the chain of circumstances. The Court below has mainly relied upon the motive factor, which, as already noted herein before, cannot be the sole circumstance to convict the accused in a case based on

circumstantial evidence. The Court below, in our opinion, has fallen into a serious error in convicting the appellant based on suspicion rather than on proof beyond reasonable doubt.

For the aforementioned reasons, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused for the offences punishable under Sections 302 and 411 IPC in the Judgment, dated 03.06.2011, in Sessions Case No.283 of 2010, on the file of the VII Additional District & Sessions Judge (FTC), Vijayawada, are set aside. The fine amount, if any, paid by him shall be refunded to him. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

(C.V.Nagarjuna Reddy, J)

(P.Keshava Rao, J)

Dt: 20th August, 2018

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