

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T.RAJANI

CRIMINAL APPEAL Nos.612 of 2011 & 733 of 2011

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

A1 and A2 in Sessions Case No. 369 of 2009 on the file of the VI Additional District and Sessions Judge (FTC), Nizaambad at Kamareddy are the appellants. Challenging the conviction and sentence imposed by the trial Court, A1 preferred CrI.A.No. 733 of 2011 and A2 preferred CrI.A.No. 612 of 2011. Both the accused were tried for the offences punishable under Section 302, 201 read with Section 34 IPC. By its judgment dated 19.04.2011, the learned Sessions Judge convicted A1 under both the counts and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of four months for the offence punishable under Section 302 IPC, and to suffer imprisonment for a period of three years and also pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of four months for the offence punishable under Section 201 IPC. Both sentences were directed to run concurrently. The learned Sessions Judge convicted A2 for the offence punishable under Section 201 IPC and sentenced him to undergo simple imprisonment for a period of three years and also pay a fine of

Rs.1,000/- in default to undergo simple imprisonment for a period of four months.

2. The substance of the charge against the accused is that on 22.07.2008, at about 5 p.m., the accused are said to have caused the death of one Tirupathi Kondaiah and thereafter, caused disappearance of the evidence by throwing his dead body in a dry well.

3. The facts, as culled out from the evidence of the prosecution witnesses are as under:

PW1 is the wife of the deceased. PWs 2, 3 and 12 are residents of Muthyampet village of Domakonda Mandal. PW2 is the father-in-law and PW3 is the mother-in-law of the accused, while PW5 is the brother-in-law of the accused. On the date of incident, i.e., on 22.07.2008, one Saddi Anjaiah came to the house of PW1 and called the deceased for playing cards. Accordingly, the deceased went along with him for playing cards. After some time, PW1 is said to have gone to the terrace of the house and observed the deceased playing cards with the said Saddi Anjaiah, A1 and A2. As the deceased did not return home, PW1 enquired with the said Saddi Anjaiah, but he did not give proper reply.

4. A week thereafter, i.e., after the body of the deceased was traced, PW1 is said to have lodged a report on 29.07.2008 with PW14-the Head Constable, Domakonda Police Station. Ex.P1 is the said report. Basing on the said report, a case in Crime No. 37 of 2008 was registered under Sections 302 and 201 IPC. EX.P14 is the

F.I.R. Subsequent investigation in this case was taken up by PW15- the Circle Inspector of Police. On 30.07.2008, PW15 received the express F.I.R from the Head Constable. On receipt of the same, he proceeded to the scene of offence, i.e., the well belonging to Nakka Chandram and conducted a panchanama of the scene in the presence of PW11 and another. Ex.P8 is the scene of offence observation report. He also prepared a rough sketch of the scene and got the scene of offence photographed through PW5. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW6. Exhibit P7 is the inquest report. After completing the inquest proceedings, the dead body was sent for post mortem examination.

5. PW10-the Civil Assistant Surgeon, Area Hospital, Kamareddy conducted autopsy over the body of the deceased and issued Exhibit P16-the Post Mortem Report. According to him, as the dead body was in a mutilated condition, no opinion could be given as to the cause of death.

6. PW15 continued with the investigation, and on 06.08.2008, at about 2 p.m., he is said to have received a telephone call from PWs 8 and 9 that both the accused have confessed before them about the commission of the offence. Thereafter, PW15 is said to have arrested both the accused and recorded their confessional statement in the presence of PW13 and another. Pursuant to the confessional statement of A1, he seized M.Os 1 and 2.

Subsequently, he also got recorded the statements of PWs 6, 7, 8, 9, 10 and 12 under Section 164 Cr.P.C.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.47 of 2009 on the file of Judicial First Class Magistrate, Kamareddy. 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.364 of 2009 on the file of Court of the VI Additional District and Sessions Judge (FTC)., Nizamabad at Kamareddy. Basing on the material on record, charges for the offences punishable under Sections 302, 201 read with Section 34 of IPC were framed, read over and explained to the accused, to which they denied and claimed to be tried.

8. To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P17 and M.Os.1 and 2. Out of the ten witnesses examined by the prosecution, PWs 6, 8, 9 and 13 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.

9. Basing on the evidence of PWs 1, 6 and 7 coupled with the extra judicial confession made by the accused before PW12 and the

recovery made under Ex.P10, the trial Court convicted the accused for the offences under Sections 302 and 201 IPC. Challenging the same, the present appeals came to be filed.

10. The learned counsel for the appellants mainly contends that the evidence adduced by the prosecution do not establish the guilt of the accused. He further submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. It is further urged that there is abnormal delay in lodging the report and even in the belated report, there is no reference to the participation of the accused in the commission of the offence, though PW1 was informed about the incident by PW6, who claims to have seen the accused together with the deceased. Since the circumstances relied upon are not established beyond reasonable doubt, it is said that the conviction imposed against the accused warrants interference.

11. On the other hand, the Public Prosecutor would contend that the evidence of PWs 1 coupled with the evidence of PWs 6 and 7 amply establishes the involvement of the accused in the commission of the offence, and as such, the judgment in challenge requires no interference.

12. The point for consideration is: whether the accused is responsible for the death of the deceased.

13. As seen from the record, PW1, who is the wife of the deceased, in her evidence, deposed that on the date of incident, one Saddi Anjaiah came to her house and took her husband (deceased) for playing cards. After some time, she claims to have gone to the terrace and observed the deceased, accused and the said Anjaiah playing cards. Thereafter, the deceased did not return to his house and a week after he left the house, his dead body is said to have been traced in a putrefied condition in a well. After tracing of the body, a report came to be lodged by PW1. In the cross-examination, PW1 admits that on her request, somebody has scribed a petition wherein she only claims to have stated that her husband was missing and that Saddi Anjaiah had requested her husband over phone and accordingly, he had left the house. She further admits that when Anjaiah called her husband over phone through his mobile, her husband was taking food and after coming closer, she heard their conversation on the phone.

14. From the evidence of PW1, it is clear that though in chief, she states that Saddi Anjaiah came to their house and took her husband, in the cross-examination, she admits that there was a call from the said Anjaiah and pursuant to the said call, her husband left the house for playing cards. Her evidence further discloses that though her husband did not return to the house in the night, no report was given by her for a period of one week, and the report-Ex.P1 came to be lodged only after the body of the deceased was found in the well. Her evidence is also to the effect that on the date of incident, she came on to the terrace of her

house and noticed A1, A2, the deceased and Anjaiah playing cards. Though prosecution examined PWs 2 and 3, nothing useful could be elicited from their evidence.

15. PW4, who is the relative of PWs 1 to 3, in his evidence, deposed that he came to know through PW1 that on 21.07.2008, A1 and A2 came to the house of the deceased and took him with them and that the deceased did not return in the evening. He further deposed that PW1 came to know about the accused and deceased playing cards at the kottam of Satti Anjaiah. From the evidence of PW4, it is clear that the information which was given to him by PW1 was that on 21.07.2008, A1 and A2 came to the house of the deceased and took him, which is totally at variance with the version given by PW1 herself in the court.

16. Coming to the evidence of PW6, though he was treated hostile by the prosecution, in the earlier part of his evidence, he stated that on the date of incident, while he was coming back after watching TV, he found the accused and deceased playing cards in the kottam. He asked them not to play cards at the said place, but, however, as they were in drunken condition, they continued to play cards. After some time, he claims to have heard sounds like "kottaku kottaku". By the time he turned around, he saw A1 armed with a cart peg. He claims to have taken the cart peg from the hands of A1 and threw it on the ground. He further deposed in his evidence that both the accused took the deceased away from the kottam. He is said to have informed the family

members of the deceased on the next day about the quarrel between the deceased and accused. He also deposed that he had not seen the body of the deceased. At that stage, he was declared hostile and was subjected to cross-examination. However, nothing useful came to be elicited in the cross-examination.

17. PW7 is another witness examined by the prosecution, who is said to have deposed that A2 was last seen in the company of the deceased. According to him, himself, A1, A2, Saddi Anjaiah and two others had played cards at the kottam of Saddi Anjaiah. Thereafter, himself and deceased came to the bus stand and purchased two beer bottles from the shop of PW9 and consumed them in the hotel of LW14. Then, A2 joined them and requested the deceased to give one quarter. Accordingly, the deceased purchased one quarter bottle from the shop of PW9. They consumed the liquor and PW7 is said to have stayed back, whereas A2 and the deceased left the place. He further deposed that after eight or ten days, he came to know about the death of the deceased.

18. The other witness on whom the prosecution is relying upon, is PW12-the Sarpanch of Muthyampet village, before whom the accused are said to have made the extra judicial confession, which is placed on record as Ex.P12. These are the witnesses who have been placed by the prosecution on record to connect the accused with the crime.

19. In order to prove that the death of the deceased was a homicidal death, the prosecution examined PW16-the doctor who conducted post mortem examination. He is said to have conducted post mortem examination on 30.07.2008 at 2.30 p.m. In the certificate issued by him, which is placed on record as Ex.P.16, it is stated as follows:

“As per the PME certificate the following observations are made:

1. Head was decaptaded.
2. Skull and mandible.
3. Whole body was swollen.
4. gotts circulating all over the body, chest and obdomal cavity, eaten away my maggets.”

Soon after obtaining the FSL report, PW16 stated that as the body was highly putrefied and mutilated, no opinion could be given as to the cause of death. Therefore, the circumstance as to the cause of death, remained un-established.

20. In order to connect the accused with the crime, the prosecution relied upon the evidence of PWs 1, 4, 6, 7 and 12.

21. As seen from the evidence of PW1, in her evidence in chief, she deposed about Saddi Anjaiah coming to her house and taking her husband with him. But, in the cross-examination, she gives a go-by to the said version and admits that on a telephonic call from Saddi Anjaiah, her husband left the house. Be that as it may, her evidence is also to the effect that when she climbed on to the terrace of the house, she noticed both the accused and Anjaiah

playing cards with her husband. She further admits that she claims to have heard the conversation between Anjaiah and her husband by going closer to the phone, which her husband was holding, which, in our view is highly improbable.

22. Further, as seen from the evidence of PW1, the First Information Report came to be filed nearly a week after the incident, that too, after the body of the deceased was traced in a well. In the FIR given by PW1, it is stated that on 22.07.2008, at about 5 p.m., her husband was called by Saddi Anjaiah, and on the request made by the said Anjaiah, the deceased is said to have accompanied him. She claims to have gone to the terrace of Kapu Sangham and noticed the deceased and Anjaiah in the cattle shed of Anjaiah. Since that night, her husband was not seen. On 29.07.2008, the dead body of her husband was traced in a well of one Nakka Chandram. She suspected both the accused, Saddi Anjaiah and two others responsible for the death of her husband.

23. A reading of the report given by PW1 shows that when she went to the terrace of the Kapu Sangham building, she noticed only Anjaiah and deceased being present in the cattle shed of Anjaiah. At the end of the report, she expressed suspicion not only against Anjaiah, but also against A1, A2 and two others. Strangely, the said Anjaiah and the other two persons whose names find place in the report as suspects, were eliminated from the said case.

24. At this stage, it would be useful to refer to the evidence of PW6. Though he was treated hostile by the prosecution, it stands established that he claims to have seen the accused and deceased playing cards, and all of them were in a drunken condition. He also claims to have heard sounds like “kottaku, kottaku” and when he turned around, he noticed A1 armed with a cart peg, which he claims to have thrown on the ground. In his evidence, he also speaks about informing the family members of the deceased about the deceased being seen in the company of the accused on the date of incident. Though PW6 is said to have informed about the presence of the deceased along with A1 and A2, the FIR does not categorically speak about the same, except expressing suspicion not only against the accused but also against two others. In fact, if the version in the FIR about the suspicion against the other accused is to be entertained, there is no reason why PW1 failed to mention about the same in her evidence. Her evidence itself is inconsistent in many aspects. As stated earlier, in one breath she speaks about Anjaiah coming to her house and taking the deceased, and in another breath she claims to have heard the conversation between Anjaiah and deceased on telephone, wherein Anjaiah is said to have asked the deceased to come to his kottam.

25. It is also to be noticed here that though PW1, in her evidence, claims to have gone to the terrace of her house and seen the deceased, accused and Anjaiah playing cards, but in the FIR, she says that she went to the Kapu Sangham building and from there, she saw them. There is no evidence on record to show as to

where the kottam of Anjaiah is, and whether they were playing cards in the kottam (cattle shed) of Anjaiah or elsewhere. Though PW6, in his evidence, speaks about the accused, deceased and Anjaiah playing cards in his kottam, but, in the extra judicial confession alleged to have been made by the accused, A1 told that himself, A2 and the deceased were playing cards at Ragula Galaiah kottam. Whereas the evidence of PW7 shows that they were playing cards in the kottam of Anjaiah. Therefore, there is any amount of doubt with regard to the place where the accused and the deceased were playing cards, thereby creating a doubt with regard to accused being seen in the company of the deceased.

26. Another circumstance to doubt the testimony of PW1 is that PW4, who is a relative of PWs 1 to 3, in his evidence, deposed that PW1 is said to have informed him that on 21.07.2008, A1 and A2 came to the house of the deceased and took him, which is not the case of PW1. The said witness was not treated as hostile by the prosecution. Therefore, it is clear that varying versions are put forth by PW1 as to how and with whom the deceased left the house. Therefore, the theory of accused being last seen in the company of the deceased is not established beyond doubt.

27. Coming to the extra judicial confession made by the accused before PW12, it is to be noted that though in the chief evidence, PW12 did not depose about the said confessional statement, in the cross-examination, it has been elicited that the confessional statement was reduced into writing, vide confessional

panchanama-Ex.P12. But, PW12 himself admits that he is not the scribe of Ex.P9 and there is no signature of the scribe on Ex.P9. That being the position, we find it very difficult to accept the said statement. It is well established that an extra judicial confession is a weak piece of evidence and any statement made by the accused disclosing the commission of offence should be reduced into writing on the same lines on which it was made, and thereafter, the signatures of the persons present there should be taken as a proof of such statement. But, as observed earlier, in the instant case, the extra judicial confession does not contain the signature of the scribe. Therefore, a doubt would arise as to whether the accused has really made any statement and whether the same was reduced into writing in the manner spoken to by the accused.

28. Having regard to the circumstances, we feel that the prosecution has failed to establish the circumstances connecting the accused with the commission of the offence.

29. In the result, the Criminal Appeals are allowed. The conviction and sentence recorded against the appellants/ accused in the judgment dated 19.04.2011 in Sessions Case No.364 of 2009 on the file of the VI Additional District and Sessions Judge (FTC), Nizamabad at Kamareddy, for the offences punishable under Sections 302 and 201 I.P.C., is set aside and they are acquitted for the said offences. Consequently, the appellants/ accused shall be

set at liberty forthwith, if not required in any other case.

Miscellaneous petitions pending, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

27.01.2018
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