

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

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.637 of 2012

Date: 30.10.2018

Between:

Vadithya Ravi @ Sreenu and another

....Appellants

And:

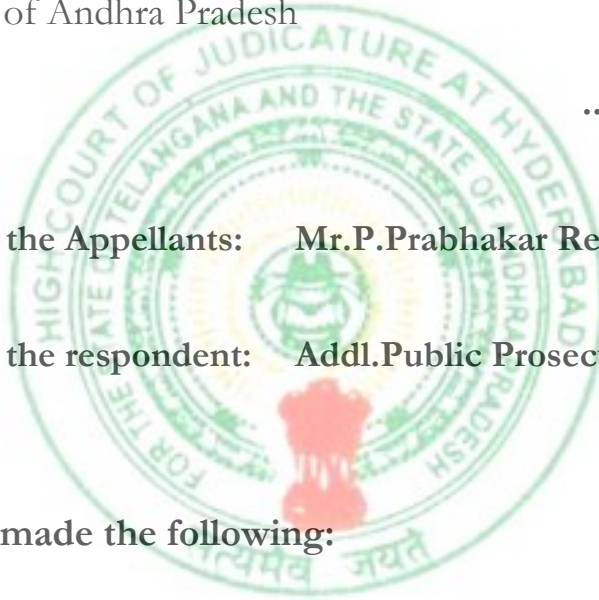
The State of A.P.,
Through rep. by State Public Prosecutor
High Court of Andhra Pradesh
Hyderabad.

....Respondent

Counsel for the Appellants: Mr.P.Prabhakar Reddy

Counsel for the respondent: Addl.Public Prosecutor(TS)

The Court made the following:



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

This Criminal Appeal is filed against Judgment, dated 04-07-2012, in S.C.No.49 of 2012, on the file of the Principal Sessions Judge, Medak at Sanga Reddy, whereby the appellants/accused Nos.1 and 2 were found guilty of the offences punishable under Sections 302 and 380 IPC and sentenced to suffer Rigorous Imprisonment for Life and also to pay a fine of Rs.10,000/- each for the offence punishable under Section 302 IPC, and in default of payment of fine, to suffer Rigorous Imprisonment for a period of three months. Both the sentences were directed to run concurrently.

In short, the case of the Prosecution is that, on 12.04.2011, the appellants killed the deceased and committed theft of gold ornaments. Based on the charge sheet filed by PW.17, the lower Court has framed the following charges:

“Firstly:

That you (A.1 and A.2) on the intervening night of 12/13-04-2011 at House No.4-74, Muthanhi committed murder intentionally causing the death of the deceased Mitaigari @ Pulaboina Mallamma, by strangulation with a Lungi and thereby committed an offence punishable under Section 302 IPC and within my cognizance.

Lastly:

That you on the date, time and place mentioned supra in Charge No.1, committed theft of gold ornaments after committing murder of Mitagigari @ Pulaboina Mallamma and thereby committed an offence punishable under section 380 IPC and within my cognizance.”

As the appellants denied the charges, they were subjected to trial, during which the Prosecution examined PWs.1 to 18, got Exs.P.1 to P.11 marked and produced MOs.1 to 4. On behalf of the appellants, no evidence was adduced.

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

Mr.P.Prabhakar Reddy, learned Counsel for the appellants, submitted that the Prosecution case is solely based on circumstantial evidence and that except the finger prints and the alleged recoveries, it has not adduced any other cogent evidence constituting vital links in the chain of circumstances to prove the guilt of the appellants beyond reasonable doubt. That as the evidence relating to finger

prints and recoveries suffers from serious lacuna, the lower Court fell into a serious error in basing the conviction of the appellants on such weak and laconic evidence.

Opposing the above submissions, the learned Additional Public Prosecutor for the State of Telangana, submitted that the judgment of the Court below is based on strong evidence adduced by the Prosecution and cogent reasons and that therefore, the same is not liable for interference.

We have considered the submissions of the learned Counsel for both parties with reference to the evidence on record.

As the case of the Prosecution goes, two months prior to the occurrence, appellant No.1 joined as a tenant in the house of the deceased at Muthangi; appellant No.2 used to come to the house of appellant No.1 and consume liquor together; that appellant No.1 closely observed the deceased, who was residing in another portion of the said house and noticed the gold ornaments worn by her; and that appellant No.1, taking advantage of the loneliness of the deceased,

hatched a plan to commit theft of her gold ornaments with the help of appellant No.2. It is the further case of the Prosecution that on 12-04-2011, appellant No.2 came to the room of appellant No.1 and that while they were chitchatting, appellant No.1 revealed his intention to commit theft of gold ornaments from the deceased, for which, appellant No.2 also agreed. That they purchased two beer bottles and returned to the room at 21-30 hours; that at about 22.00 hours, on noticing about the closing of the doors of his neighbours, the appellant went to the portion of the deceased and found the doors open and also the deceased lying on a mat and moving. That the appellants waited for some time, entered the house of the deceased, went into the kitchen, consumed beer and went near the mat where the deceased was sleeping; and that while appellant No.1 closed the mouth of the deceased, appellant No.2 committed theft of gold ornaments from her. That later, appellant No.1 suspected that the deceased might identify him and asked appellant No.2 to bring one lungi from his room; that appellant No.2 did accordingly; and that while appellant No.2 was holding the legs of the deceased, appellant No.1 strangulated her with lungi. That thereafter,

the appellants broke open the lock of almirah with the help of a knife and screw driver and searched, but, found nothing and that out of the stolen ornaments from the body of the deceased, MO.4- gold pusthelathadu was retained with appellant No.2 and the remaining ornaments were kept with appellant No.1. PW.8- one of the tenants of the deceased was examined. He deposed that he saw the appellants outside the house at about 3.00 p.m., on 12-04-2011 and that they were going in a hurried manner. The obvious intention of the Prosecution in examining PW.8 is to establish the presence of the appellants at the scene of offence. Appellant No.1 being the tenant, there is nothing unusual in his being seen at the house of which he is tenant along with a friend at about 3.00 p.m. i.e, a few hours before the alleged occurrence.

As rightly submitted by the learned Counsel for the appellants, the Prosecution has based its case on the finger prints on two beer bottles and recovery of gold ornaments. Therefore, we shall examine these aspects carefully.

It is stated in Ex.P.2- scene of offence panchanama that on being summoned, the finger print experts have

collected the finger prints from the two empty beer bottles found in the kitchen of the deceased. It is also stated therein that one knife, two beer bottles and two lids were seized by affixing the chits containing the signatures of panchas. The Prosecution has produced beer bottles and their lids. PWs.10 and 11, who are the panch witnesses to Ex.P.2, did not support the case of the Prosecution. Both of them were declared hostile and during their cross-examination, they have denied the Police seizing the two beer bottles in their presence. Surprisingly, PW.17 has not made any whisper about his finding two beer bottles, taking the finger prints and sending them to finger print expert for analysis. However, PW.18- Sub-Inspector of Police, who conducted the scene of offence panchanama, stated that he has issued a requisition for the dog squad and the clues team to go to the scene of offence and that the clues team developed some chance prints on the two kingfisher beer bottles, which were marked as Ex.P.8. PW.5- finger print expert deposed that PW.17 has sent the finger prints of the appellants, which were compared with the chance prints; that in the forwarding letter the name of one of the appellants was mentioned as Heeralal (appellant No.2) and that the finger prints of the

appellants matched with the chance fingerprints. In his cross-examination, PW.5 stated that a written requisition was issued to his office, but, he does not have with him any written requisition and that his senior officials instructed him over phone. The above discussed evidence shows that the contents of Ex.P.2 remained unproved as PWs.10 and 11-panch witnesses turned hostile. The Prosecution failed to place credible evidence such as the Panchanama evidencing taking of finger prints of the appellants, the written requisition allegedly sent by PW.17 to the office in which PW.5 is working *etc.*

The learned counsel for the appellants has submitted that though no specific procedure has been laid down for collecting the finger prints of the suspects, as a matter of procedure, the Police have been following the practice of collecting the finger prints in the presence of the jurisdictional Magistrate. In support of this submission, he relied upon the judgment of this Court in **Mayank Bohra v. State of A.P.**¹. Paragraph 15 of the said judgment, which is relevant in this context, reads as under.

¹ 2009 (3) ALT (Crl.) 184 (D.B.) (A.P.)

“15. Learned Senior Counsel argued that the specimen hand writing and specimen finger prints are obtained neither in the presence of Magistrate nor under the orders of the Court and therefore the opinion of the Scientific Officers who have been examined as P.W.18, 20 and 24 is of no avail to the prosecution. Indisputably the specimen handwritings and fingerprints of A1 were taken neither in the presence of the Magistrate nor under the orders of the Court. The specimen handwritings, finger prints and chance fingerprints and standard handwritings were sent to the scientific officers by P.W.25 on 5.2.2002. He did not claim to have properly packed the specimen handwritings, fingerprints, chance prints and standard writings while being forwarded to the Scientific Officers. Even P.W.24 Smt.Rajani, Scientific Officer who has examined the standard writings and the disputed writings did not speak of her receiving the material from the Investigating Officer in a properly sealed manner. There is a gap of nearly a month between collecting the material and forwarding the same to the Scientific Officer. What proper care the Investigating Officer has taken to keep the incriminating material intact is not evident from the record. In these circumstances, we find it difficult to give any authenticity to the report submitted by the Scientific Officers. Even if this piece of evidence is discarded, the other circumstances which have been referred to supra gave ample corroboration to the

testimony of P.W.2. Therefore, the conviction of A1 for the offences u/s 302, 397, 364-A, 307 and 506-Part II of IPC does not warrant any interference in this Criminal Appeal.”

No doubt, no principle as such was laid down by this Court in **Mayank Bohra** (1 supra) that collection of finger prints in the presence of the jurisdictional Magistrate is mandatory. Even in the absence of either statutory requirement or a judicial dicta, we are of the opinion that it is always proper and desirable that the investigation agency collects the finger prints or signatures, as the case may be, only in the presence of the jurisdictional Magistrate, in order to rule out the possibility of any manipulations leading to false implications. Be that as it may, even assuming that the Police collected the signatures/finger prints of the appellants, the prosecution failed to produce the written requisition allegedly issued by the Investigation Officer. Neither P.W.7 nor P.W.8 referred to such requisition. When the panch witnesses to the seizure panchanama turned hostile and the prosecution failed to produce the two beer bottles, on which chance finger prints were allegedly taken before the Court, and in the absence of the prosecution producing the written requisition, it is highly

unsafe to rely upon Ex.P-8 – chance prints, produced by P.W.5, more so, in the absence of any record, such as panchanama evidencing collection of finger prints from the appellants.

As regards recovery of M.Os.1 to 4, it is the case of the prosecution that M.Os.1 and 3 were seized from appellant No.1, M.O.2 was seized from appellant No.2 and M.O.4 was seized from P.W.7, at the instance of appellant No.3. P.Ws.13 and 14 are the panch witnesses to the confessional and recovery panchanamas marked as Exs.P-9 and P-10.

P.W.13 deposed that at the request of the Police, they went to the Police Station, interrogated the appellants, who were in the custody of the Police, and the appellants confessed to the commission of the offence and based on such confession, M.Os.1, 2 and 4 were recovered. As this witness was declared as partly hostile, he was subjected to cross-examination by the prosecution. In the cross-examination, the witness denied the suggestion that based on the confession of appellant No.1, M.Os.1 to 3 were seized and that appellant No.1 lead the Police and the panch witnesses to his house and handed over a *lungi* with the help

of which, he killed the deceased. At this stage, it is of relevance to note that on 07.05.2012, after P.W.13 was subjected to cross-examination by the Public Prosecutor and also by the counsel for the appellants, his evidence was closed and after the remaining prosecution witnesses including P.Ws.17 and 18 were examined, P.W.13 was recalled for further chief-examination on 27.06.2012. During his further chief-examination, Exs.P-9 to P-11 were marked through him, of which Ex.P-11 is the alleged receipt seized from appellant No.2. We shall advert to this aspect a little later.

P.W.14 also deposed that in his presence all the gold ornaments i.e., M.Os.1 to 4 were recovered from appellant No.2. This witness was also treated as partly hostile witness and was subjected to cross-examination.

P.W.17 deposed in his chief-examination that on the confession of appellant No.1, he recovered M.Os.1 and 3 and M.O.2 is an obvious mistake for M.O.4, from the gold shop of P.W.7 since as per the charge sheet filed by the Police, M.O.4 was recovered on the alleged confession by appellant No.2. However, P.W.17's evidence contradicts the

prosecution case and proceeds on the premise that M.O.4 was recovered on the confession of appellant No.1. The stand alone evidence of P.W.17 as regards recovery of M.Os.1 and 3 from appellant No.1 is contradicted by the evidence of P.Ws.13 and 14, as noted hereinbefore, who stated that all the recoveries were made based on the confession of appellant No.2 only.

Coming to Ex.P-11, as rightly submitted by the learned counsel for the appellants, this was evidently created after P.Ws.17 and 18 were examined. Ex.P-11 is the alleged receipt given by P.W.7 to appellant No.2 in token of his receiving M.O.4 and paying Rs.60,000/- to him. P.W.7 deposed that the Police shown the receipt to him, upon which, he handed over M.O.4. No panchanama was conducted evidencing the receipt of MO.4 by the Police. Even if by inadvertence, the prosecution did not produce Ex.P-11 before its evidence was closed, the most appropriate witness through whom it should have been marked was either P.W.7 or at least P.W.17 – the Investigation Officer. P.W.13, being only the panch witness to the seizure and that too declared as partly hostile witness, he cannot be said to be

concerned with Ex.P-11 receipt. Hence, delayed production of Ex.P-11 through a witness, who was not properly concerned with it, shows any amount of doubt as to the version of the prosecution as regards recovery of M.O.4 from P.W.7 allegedly at the instance of appellant No.2.

The next crucial question that requires to be considered is whether the prosecution was able to prove through legal evidence that M.Os.1 to 4 belong to the deceased. P.W.1 is the son-in-law and P.W.2 is the daughter of the deceased. Interestingly, neither of the two witnesses was made to identify M.Os.1 to 4. It is only P.W.3, who testified that she can identify the ornaments of the deceased, and that M.Os.1 to 4 were the ornaments which the deceased was wearing regularly. In this context, Rule 35 of the Criminal Rules of Practice, 1990 is relevant, which reads as under.

“35. Identification of property:-

(1) Identification parades of properties shall be held in the Court 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 allowed to communicate with the witness not yet called.”

Apart from the fact that the panch witnesses failed to follow the mandatory procedure of Rule 35 of the Rules, even the deposition of P.W.3 does not prove the manner in which M.Os.1 to 4 were put to P.W.3 for identification.

In **Kothareddi Aswartha Reddy vs. State of Andhra Pradesh**², while dealing with a similar situation relating to the identification of a crime weapon, a Division Bench of this Court speaking through one of us (CVNR,J) made the following observations:

“A perusal of the evidence of these witnesses shows that they have deposed that they can identify the weapon if it is shown to them. Accordingly, on being shown the crowbar, they have deposed that the same weapon was used by appellant No.1 in the commission of the offence. This procedure looks to us to be very strange. When only one weapon was

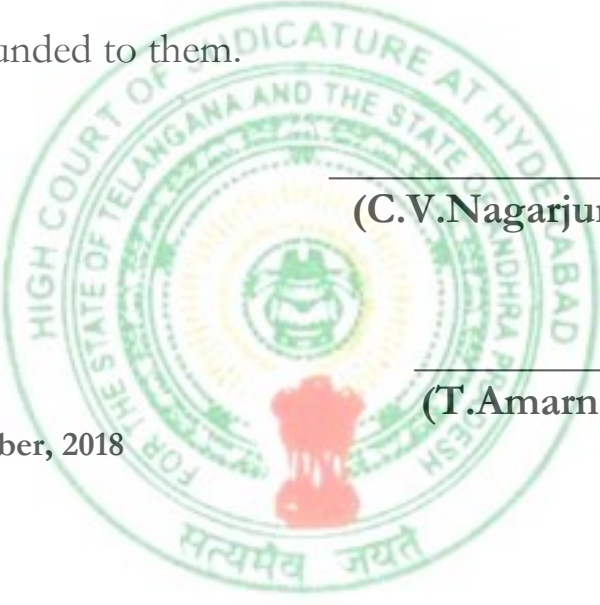
² Judgment, dated 09.03.2018, in Criminal Appeal No.620 of 2011

produced by the prosecution in the Court without being mixed up with other weapons, that by itself is suggestive of the fact that the prosecution seeks to project the same as crime weapon. Therefore, it is not difficult for any prosecution witness to take the hint and identify such weapon as the crime weapon. Indeed, to avoid such a situation, Rule 35 of the Rules envisaged the Identification parade of the properties in the presence of the Magistrate. Such a test does not appear to have been conducted.”

As noted above, in the instant case, it is not known on what basis, P.W.3 could identify M.Os.1 to 4 as belonging to the deceased. Thus, the prosecution miserably failed not only to prove the recovery from the appellants much less at their instance or that gold ornaments allegedly recovered belong to the deceased. Consequently, the prosecution failed to establish the nexus between M.Os.1 to 4 and the deceased. Once it fails to prove that M.Os.1 to 4 belonged to the deceased, even assuming that the recovery is proved, the appellants cannot be connected with the alleged murder of the deceased.

For the aforementioned reasons, we are of the opinion that the prosecution failed to prove its case beyond all reasonable doubt.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused Nos.1 and 2, in judgment under appeal are set aside. The appellants are acquitted of all the offences with which they were charged. They shall, accordingly, be set at liberty forthwith if they are not required in any other case(s) or crime(s). The fine amount, if any, paid by them shall be refunded to them.



(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Dt: 30th October, 2018
Lur/ghn