

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE P. KESHAHA RAO**

CRIMINAL APPEAL No.489 of 2011

JUDGMENT: (Per the Hon'ble Sri Justice P. Keshava Rao)

The appellant/accused, who was tried for the offence under Sections 302 and 201 IPC in S.C.No.212 of 2009 on the file of the Court of VII Additional Sessions Judge, Kakinada, convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.100/-, in default simple imprisonment for ten days for the offences under Section 302 IPC and further sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.100/-, in default to suffer simple imprisonment for ten days for the offence under Section 201 IPC vide judgment, dated 13.01.2011, preferred this appeal challenging the above conviction and sentence recorded against him.

2) The prosecution story as narrated during the course of trial briefly stated as follows:

The appellant is the son of the first wife of the deceased. After demise of his mother, the deceased got married second time and the second wife is also no more. The appellant married and got two daughters and a son. They are residing in an old tiled house. The deceased has got Ac.2.45 cents of land at Gokivada and Jagapathirajapuram. The appellant was addicted to drinking and used to quarrel with the deceased about money and property. The appellant used to visit the makam shed of the deceased and brought meals carrier to his father. However, due to the dilapidated condition of the tiled house of the accused, he

requested the deceased to give one of the rooms at the makam shed for which the deceased refused. Therefore, the appellant quarreled for the said landed property and gold ornaments of his mother and several times warned the deceased that he will see his end. The appellant also visited the house of PW.4, who is the niece of the deceased, and told about the dispute between him and his father. On 05.10.2008, the deceased visited PW.4 house to pledge the necklace of appellant's mother for constructing new thatched house and PW.4 gave Rs.500/- to the deceased. On 07.10.2008, PW.4 pledged the necklace for Rs.3,000/- with pawn broker and gave Rs.1,500/- to the deceased. On 08.10.2008, PW.4 came to the house of the deceased and advised him to give one of the rooms to the appellant in the newly constructed house, whereupon the deceased bluntly refused. On the same night the appellant killed the deceased by beating indiscriminately and brought the dead body to the bund of the new canal besides to Gokiwada to Jagapathirajapuram and threw the dead body at that place and covered with Calotropies Gigantic (Jilledu) plants and waste material. On 10.10.2008, around 10.00 a.m. PW.1, who is the Village Revenue Officer of Gokiwada, Pitapuram Mandal, received information from the village servant i.e., PW.2 about the death of the deceased. At about 10.30 a.m., he reported the matter to the police and the said report is Ex.P1. In pursuance of the said report, the Head Cosntable i.e., PW.15 registered a case in Crime No.227 of 2008 for the offences under Sections 302 and 201 IPC. On 12.10.2008, at about 12.00 noon, PW.2 accompanied by the appellant came to the police station and reported about the extra judicial confession made by the appellant before him about

admitting the offence i.e., he murdered his father and was produced before the police station and the appellant was arrested on 12.10.2008. On receipt of the message from PW.15, PW.16 took up investigation, examined the scene of offence, drafted occurrence reports through PWs.1 and 12, drawn rough sketch, examined LWs.1 to 11 and through PW.11 got photographs of the scene of offence.

3) After completion of investigation, PW.16, C.I. of Police, filed the charge sheet against the appellant before the Judicial First Class of Magistrate, Pitapuram, who registered it as PRC.No.4 of 2009 and later committed to the Court of Sessions. The VII Additional Sessions Judge, Kakinada, registered the same as S.C.No.212 of 2009 and framed charges against the appellant for the offences under Sections 302 and 201 IPC. The said charges were explained to the appellant, who, in turn, pleaded not guilty and claimed to be tried. The said charges read as under:

“That you, on 08.10.2009 night, at Makam shed of the deceased Kodavati Sathiraju @ Sathiyya at Gokawada Village, did commit murder by intentionally or knowingly causing the death of Kodavati Sathiraju @ Sathiyya, your father – to wit – beat the deceased indiscriminately with stout wooden stick, as a result the deceased died instantaneously, and thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.

That you, on the same day and at the same time as stated supra, knowing that certain offence punishable under Section 302 IPC has been committed, did cause certain evidence of the said offence to disappear to wit – with the intention of screening the dead body of the deceased Kodavati Sathiraju @ Sathiyya shifted it to the bund of new canal besides Gokiwada to Jagapathirajapuram road and threw the dead body at that place and covered with calotropies gigantic (Jilledu) plants and waste material, from legal punishment and thereby committed an offence punishable u/s.201 of the Indian Penal Code, and within my cognizance.”

4) To substantiate the guilt of the accused, the prosecution has examined PWs.1 to 16 and marked Exs.P1 to P23 and M.Os.1 to 10. For defence, Ex.D1, dated 10.10.2008, which is the relevant

portion in 162 Cr.P.C. statement of PW.4 recorded by the police, is marked. After closure of the evidence, the appellant was examined under Section 313 Cr.P.C. on the incriminating evidence to which he denied and reported no defence evidence on his side.

5) The learned VII Additional Sessions Judge, after analyzing the oral and documentary evidence, convicted the accused and sentenced him to imprisonment as aforementioned vide judgment, dated 13.01.2011, in S.C.No.212 of 2009. Questioning the same, the present appeal is filed by the appellant/accused.

6) Sri N. Raghava Reddy, learned counsel appearing on behalf of the appellant, strenuously contended that the entire case of the prosecution rests upon the circumstantial evidence and therefore the chain of events have to be established to prove the guilt of the accused, more so, with regard to the time difference about reporting the information to the police by PW.1 and the contradictions in the evidence of the prosecution witnesses i.e., PWs.1 and 21 apart from other aspects. According to him, the trial Court has not considered the evidence in proper perspective and erred in holding that the death of the deceased was homicidal. Further, since the entire case of the prosecution rests only upon the circumstantial evidence, he relied on the judgment of this Court in **Koki Prabhakara Reddy and others v. State of A.P. rep., by its Public Prosecutor**¹. He also contended that the prosecution has not established the links for the circumstantial evidence and placed reliance on the judgment of this Court in

¹ 2006 (3) ALT (Crl.) 179 (D.B.) (A.P.)

Kompala Mallaiah and others v. State of Andhra Pradesh². He also contended that the extra judicial confession made before PW.12 cannot be believed and that the appellant is entitled to acquittal.

7) On the other hand, learned Public Prosecutor sustained the judgment of the trial Court and submitted that the conviction and sentence recorded against the appellant do not call for any interference by this Court and that the witnesses are examined after two years and the time difference cannot make out any doubt over the evidence let in by the prosecution. PWs.6, 7 and 8 are independent witnesses and no motive is attributed to them. Therefore, contended that the conviction and sentence imposed on the appellant is to be sustained.

8) We have heard the counsel appearing for the appellant as well as the learned Public Prosecutor and have also gone through the entire evidence.

9) The point that arises for consideration is:

Whether the prosecution is able to bring home the guilt of the accused beyond all reasonable doubt and the conviction and sentence recorded against the appellant are liable to be set aside or modified?

10) The entire case of the prosecution rests upon the circumstantial evidence as there are no eye witnesses on the incident. The prosecution depended on the evidence of PWs.6 to 8, who are the independent witnesses. The dispute between the deceased and the appellant was also proved by the evidence of PWs.3 and 4, who were the sister-in-law and niece of the deceased,

² 2016 (2) ALD (Crl.) 606

and the galata was proved by the evidence of PW.5, who is the land owner near the makam shed of the deceased and also by the evidence of PW.10. The prosecution put a lot of trust on the aspect of the appellant admitting about causing death of his father before PWs.6 to 8, which is an extra judicial confession. That apart, PW.12, who was the former Member of MPTC, deposed that the accused gave the documents to him and confessed about commission of offence. That apart, the doctor, who was examined as PW.14, also categorically deposed that all the injuries sustained by the deceased are possible with the M.Os. and gave the certificate under Ex.P14.

11) The case of the prosecution in brief is that the appellant is the son of the deceased and he was demanding for the property more particularly to accommodate him in the makam shed. The appellant was also demanding the deceased to give the ornaments of his mother, who is the first wife of the deceased. The appellant was also in the habit of drinking and he used to be always in a drunken state. Since the deceased refused to give the property, he bore grudge against him. In furtherance of the same, the deceased gave a necklace to his niece i.e., PW.4 with a request to pledge for money for constructing a thatched house. PW.4 gave Rs.400/- and pledged the necklace with the pawn broker and got Rs.3,000/- and gave Rs.1,500/- to the deceased. On 08.10.2008, the appellant brought carrier to the deceased and quarreled with him about the property and gold ornaments and also one room in the makam and threatened the deceased that he will kill him and went away. PW.4, who is niece of the deceased, advised the deceased to give one room to the appellant, but he refused for the same.

12) The specific case of the prosecution is that on the fateful night the appellant came to the thatched house of the deceased and while he was sleeping on the cot, he killed him by beating indiscriminately and with a view to cause disappearance of the evidence on the scene of offence, he shifted the dead body to the bund of the new canal and covered the same with Jilledu plants and waste material and went away. Subsequently, he has informed the villagers that he killed his father for the property. As far as this aspect is concerned, PWs.6 to 8 categorically deposed about the statement of the appellant about killing his father and escaped from the scene. PW.2, who visited the scene of offence on 10.10.2008, found the dead body and informed the same to PW.1, who, in turn, reported the matter to the police. Basing on the report, PW.15 registered a case in Crime No.227 of 2008 for the offences under Section 302 and 201 IPC. On 12.10.2008, PW.1 received information from the police station and after going to the police station he noticed the presence of PWs.12 and 13 along with the appellant where he recorded the statement of the appellant and seized M.O.No.5, blood stained shirt, under Ex.P5 report and at the instance of the appellant, he also seized M.O.No.6, stout wooden stick, and other material objects.

13) As far as the disputes between the appellant and the deceased are concerned, PW.5, who is an independent witness and who was present at the time of quarrel between them, has categorically stated in his chief-examination that 5 or 6 days prior to the incident, the deceased and the appellant were quarrelling/altercating near Sathiraju's (deceased) makam. Two

days thereafter, the incident happened. The accused addicted to alcohol and is a drunken person and the deceased was having Ac.3.00 of land and the disputes arose between the appellant and the deceased is with regard to the property. The said version of PW.5 was also supported by PW.9, who is the adjacent land owner. He deposed that about two years back on 8th October there were disputes between the appellant and the deceased and at 10.00 a.m. He heard the altercation between them from his land and he has also observed PW.5 scolding them while going by their side. From the cross-examination of PWs.5 and 9, nothing is elicited to discredit the evidence relating to the existence of disputes between the appellant and the deceased.

14) As far as the evidence of PWs.6 to 8, who are the independent witnesses, are concerned, they have categorically stated that about two years back during Dussehra days the accused came to the centre where Suryanarayana and K.Yesubabu were present and both of them sent PW.6 along with the appellant on the luna of the appellant to verify the statement made by the accused that he killed his father. Accordingly, they went to the land of the deceased near Kotha Kalva where PW.6 saw the dead body of the deceased covered with cloth and garbage. By seeing the same, he got fever and went to his house. Thereafter, he informed the same to Suryanarayana and Yesubabu, who were examined as PWs.7 and 8. They also deposed about the confession made by the appellant before them and also the challenge of the appellant about bet of Rs.500/-. From the cross-examination of these witnesses, nothing is elicited to discredit the said extra judicial confession made by the appellant, but for giving a bare

suggestion. The Doctor, who was examined as PW.14, also confirmed the nature of injuries which are possible with M.O.6.

15) The prosecution examined PW.12, who is a resident of Gokivadu village and also Ex-MPTC Member. He is one of the witnesses of Ex.P2, scene of observation report, and also of Ex.P3, inquest report. He deposed that one or two days after the reports, the accused came along with a cover containing the documents of the land and asked him to give one lakh and also informed that he murdered his father. Then he handed over the accused to police after getting a report prepared by PW.13, as he was unable to write. He also stated that he signed on the said report i.e., Ex.P8 prepared by PW.13. It is also relevant to mention here that when the appellant was produced before the police and when he was asked to show the material objects used during the commission of the offence, the appellant promised to show the same. The appellant has taken PWs.1, 12 and 13 to his house and handed over a shirt with blood stains on it, which was used during the commission of the offence i.e., M.O.5 and the appellant also let them to the thatched shed of the deceased from where he has handed over one wooden folding cot stick and one folding cot cloth i.e., M.Os.6 and 7. He has also handed over Nicker, which he wore on the date of offence, which is M.O.8.

16) Now what is to be seen is that there is no dispute regarding the death of the deceased. To prove that there are disputes between the appellant and the deceased regarding the land, ornaments of his mother, the prosecution has examined PWs.5 and 10, who are the neighboring land owners of the deceased. PWs.6

to 8, who are the independent witnesses, have also deposed about the confession made by the appellant before them about killing of the deceased by him. The evidence of PW.12 also categorically supported the version of the prosecution regarding the appellant handing over of the property documents and also killing of the deceased by him and thereafter the recovery of the material objects in the presence of PWs.1 and 13. Though the entire case of the prosecution rests on the circumstantial evidence and though no eye witnesses are available, the chain of events, which led from the existence of disputes, the altercation between the appellant and the deceased, the confession made by the appellant before PWs.6 to 8 and 12 and the recovery of material objects would clinchingly establish the case of the prosecution. The veracity of the evidence of independent witnesses vide PWs.6 to 8 and 12 is not shaken in any aspect relating to the appellant informing about killing the deceased as well as recovery of the material objects.

17) The prosecution also proved that the appellant after committing the offence under Section 302 IPC, caused disappearance of evidence of commission of offence by keeping the dead body on the canal bund and covering the same with Jilledu plants and waste material in the process of concealing evidence and thereby also committed an offence under Section 201 IPC. In these circumstances, this Court will not find any error in the findings of the Court below and the learned VII Additional Sessions Judge was therefore justified in finding the appellant guilty for the offences under Sections 302 and 201 IPC. Hence, the appellant, in our considered view, is not entitled for acquittal. However, before parting with the matter, we appreciate the efforts made by the

counsel for the appellant in presenting the facts before this Court and the appreciation of evidence available on record with reference to case law.

18) In the result, the appeal is dismissed and the order of conviction and sentence passed by the learned VII Additional Sessions Judge, Kakinada, against the appellant in S.C.No.212 of 2009 vide judgment, dated 13.01.2009, is hereby confirmed.

Miscellaneous petitions, if any, shall also stand dismissed.

JUSTICE SURESH KUMAR KAIT

JUSTICE P. KESHA RAO

Date: 12.04.2018.
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