

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CrI.A.Nos.570 of 2012, 576 of 2016 & 597 of 2012

Date: 25.09.2018

CrI.A.No.570 of 2012

Between:

Akkinapelly Srinivas (A-4),
S/o.Brahmachary,
Aged 25 years, Kamsali,
R/o.Gudur.

... Appellant

And

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

... Respondent

Counsel for the Appellant : Mrs.A.Gayathri Reddy

Counsel for the Respondent: Public Prosecutor (TS)

CrI.A.No.576 of 2016

Between:

Guddala Murali (A-3),
S/o.G.Agaiah, Aged 29 years,
Kamsali
R/o.Gudur, Warangal district

... Appellant

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court of Judicature, Hyderabad

... Respondent

Counsel for the Appellant : Mrs.A.Gayathri Reddy

Counsel for the Respondent: Public Prosecutor (TS)

Crl.A.No.597 of 2012

Between:

1.Jerupula Thirupathi (A-1),
S/o.Badya, Aged about 30 years,
Occ: Agriculture, R/o.Kharampodi Thanda
of Bhupathipeta, Gudur mandal.

2. Jerupula Umlee @ Uma @ Jhansi @ Bujji (A-2),
W/o. Thirupathi Aged about 22 years,
R/o.Kharampodi Thanda of Bhupathipeta,
Gudur mandal.

3. Jerupula Narsamma (A-5),
S/o.Badya, Aged about 55 years,
R/o.Kharampodi Thanda of Bhupathipeta,
Gudur mandal.

Appellants

And

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

Respondent

Counsel for the Appellants : Mr.P.Prabahakar Reddy for
Appellants No.1 and 3

Mr.B.Parameswara Rao for
Appellant No.2

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

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

These appeals arise out of the judgment dated 12.06.2012 in Sessions Case No.226 of 2009 on the file of VIII Additional Sessions Judge (FTC), Warangal, whereby he has found A-1 to A-4 guilty of the offences punishable under Sections 449, 302 I.P.C., A1, A3 and A4 were found guilty of the offence punishable under Section 380 I.P.C., A2 was found guilty of the offence punishable under Section 381 I.P.C. and A5 was found guilty of the offence punishable under Section 411 I.P.C. The court below acquitted A1 to A4 for the offence punishable under Section 201 I.P.C. and A5 for the offence punishable under Section 212 I.P.C. A1 to A4 have been sentenced for life imprisonment for the offence punishable under Section 302 I.P.C., apart from payment of fine of Rs.1000/- each and in default of such payment, to undergo simple imprisonment for two months. For the offence punishable under Section 449 I.P.C. A1 to A4 were also sentenced to life imprisonment and also to pay a fine of Rs.1000/- each and in default, to undergo simple imprisonment for two months. A1, A3 and A4 were also sentenced to undergo simple imprisonment for six months and also to pay a fine of Rs.1000/- and in default of such payment, to undergo simple imprisonment for two months for the offence punishable under Section 380 I.P.C. A2 was sentenced to undergo simple imprisonment for six months and also to pay a fine of Rs.1000/- and in default of such payment, to undergo

simple imprisonment for two months for the offence punishable under Section 381 I.P.C. A5 was sentenced to undergo simple imprisonment for six months and also to pay a fine of Rs.1000/- and in default of such payment, to undergo simple imprisonment for two months for the offence punishable under Section 411 I.P.C. All the sentences in respect of A1 to A4, were directed to run concurrently. Feeling aggrieved by the said judgment, A1, A2 and A5 filed Criminal Appeal No.597 of 2012, A3 filed Criminal Appeal No.576 of 2016 and A4 filed Criminal Appeal No.570 of 2012.

2. The case of the prosecution in brief, is stated as hereunder:

One Chidurala Vijayapal Reddy (hereinafter referred to as 'the deceased') was a resident of Dayanand Colony, Warangal, whereas A1, A2 and A5 were the residents of Karampoodi tanda of Bhupathipet and A3 and A4 were the residents of Gudur village. PW-1 was the wife of the deceased and they were blessed with two children. As their younger daughter was working in Hyderabad, PW-1 was frequently going to Hyderabad and the deceased was always away from the house on his business works, except coming home in the night. A2, the maid servant of the deceased and who used to look after the house in the absence of the deceased and PW-1 developed an evil eye over the valuables freely available in the house. A1, the brother-in-law of A2, had illicit relationship with the latter and they used to talk to each other over the land phone in the absence of the

family members of the deceased at home. A-2 informed A-1 about the richness of the deceased and the availability of ornaments freely in the house of the deceased. A-1 asked A-2 to inform about the suitable time for committing theft in the house of the deceased. When A-2 came to know about PW-1 going to Hyderabad on 06.06.2008, she informed A-1 about the same and A-1 secured the presence of A3 and A-4 and all of them went to Warangal and got down at Venkatrama theatre. After dusk, A-1, A3 and A4 went to the house of the deceased and knocked the main gate. When the deceased enquired about their identity, A1 informed him that they were cotton farmers. The deceased allowed them into the house and after they entered the main hall, A1 removed towel from his shoulder, kept around the neck of the deceased and A1 to A4 by holding both ends, strangled the deceased to death. During the scuffle, the thread of taveez was cut from the neck of A2 and later, A1, A3 and A4 lifted the dead body and laid it on the bed in the bedroom. When A-2 informed them that the valuables were hidden under the bed, the accused lifted the dead body and kept it in the cupboard opposite to the bed and all the accused picked up the gold ornaments and worn them on their persons. They collected gold and silver ornaments, cell phones, electronic goods and cash from the house of the deceased and put them in a zip bag and came out of the house after locking the doors from one side. A1 to A4 got into a bus towards Mahabubabad. A1 got down at Bhupathipet with booty, A3

got down at Gudur and A2 got down at Mahabubabad, with an understanding that the property can be distributed among themselves at a later point of time. A1, after reaching home, narrated the incident to A5, his mother and asked her to keep the bag containing the booty in her custody. On 07.06.2008, A1 took out some cash from the bag and paid Rs.40,000/- to Sreenivasa Enterprises, Narsampet Branch and Rs.62,000/- to Mahindra Finance in Warangal towards his tractor loan.

On 07.06.2008 at 1700 hours, on the report of PW-1, a case in Crime No.128 of 2008 U/s.174 Cr.P.C. (suspicious) was registered by PW-17 and during the investigation, witnesses were examined and their statements were recorded. The scene of offence panchanama was conducted before the mediators i.e. PW-11 and another and physical features were incorporated in Crime detail form, besides drawing the rough sketch of the scene of offence. MOs.22, 23 and 32 were seized from the scene of offence. Inquest was held over the dead body before the same mediators and later the same was sent for postmortem examination. PW-1 further complained about the loss of gold and silver ornaments, electronic goods, cell phones and net cash worth Rs.10,20,000/- on 10.06.2008 and her statement U/s. 161 Cr.P.C. was recorded for the second time. PW-16 who conducted autopsy over the dead body, issued detailed postmortem examination report, with the opinion that the cause of death was 'manual strangulation'. Basing on the further complaint of PW-1 and

postmortem examination report, the provision of law was altered from Section 174 Cr.P.C. to Sections 302 and 380 I.P.C. and alteration memos were forwarded to all the concerned.

PW-15, on receiving credible information about the presence of the suspected persons at Karampoodi thanda, secured the presence of the mediators PW-12 and two others and apprehended A1 to A5 at Karampudi thanda. On interrogation, A1 voluntarily confessed his guilt in commission of the offences along with A2 to A4 and handing over the stolen property to his mother-A5. At his instance, a gold chain was seized from A1's person and MOs. 24 to 27 and two cash receipts paid by him towards tractor loan, were seized from his shirt pocket, under a cover of panchanama before the mediators. A2 confessed her guilt in the commission of the offences along with A1, A3 and A4 and confessed about the plan drawn by her. A gold chain was seized from her person under a cover of panchanama before the mediators. A3, on interrogation confessed his guilt in the commission of the offences along with A1, A2 and A4 and at his instance, a gold chain was seized from his person before the mediators under a cover of panchanama. On interrogation, A4 also confessed his guilt and A5 confessed that A1 handed over the stolen property to her and that she concealed the said property and at her instance, the bag containing stolen property was seized under a cover of panchanama before the same mediators. All the accused were apprehended on 25.06.2008 at 0920 hours and brought to the police station at

2300hours and were arrested by issuing arrest cards and they subsequently were remanded to judicial custody. On 29.06.2008, the identification parade of seized stolen property was conducted before the mediators - PW-14 and another. PW-1 identified all the properties during the identification parade. On investigation it was revealed that A1 was earlier involved in the theft of a TATA Sumo and mangoes and that cases were registered against him for the said offences.

3. Based on the charge sheet and the material collected during the investigation by the police, the court below has framed the following charges:

“1. **Charge No.1:** That you A1 to A4, on the intervening night of 06/07-06-2008 at H.No.16-7-227/1, Dayanand Colony, Warangal, with a common intention committed house trespass by entering into the building in the possession of Chidurala Vijayapal Reddy, used as a human dwelling in order to commit the offence of murder and theft punishable with death and that you thereby committed an offence punishable U/s. 449 r/w 34 of Indian Penal Code, and within my cognizance.

Charge No.2: That you A1 to A4, on the same day, time and place mentioned in Charge No.1, with a common intention committed murder intentionally causing the death of Chidurala Vijayapal Reddy and thereby committed an offence punishable U/s.302 r/w.34 of Indian Penal Code, and within my cognizance.

Charge No.3: That you A1 to A4, on the same day, time and place mentioned in Charge No.1, with a common intention committed theft in a building used for human dwelling and thereby committed an offence punishable U/s.380 r/w. 34 of Indian Penal Code, and within my cognizance.

Charge No.4: That you A2 along with A3 and A4, on the same day, time and place mentioned in Charge No.1, with a common intention committed, being a made servant of deceased Chidurala Vijayapal Reddy committed theft by stealing certain property, namely, cash, gold, silver ornaments, DVD player CDs, cell phones, etc., all worth of Rs.10,20,000/- in the possession of the said deceased Chidurala

Vijayapal Reddy and thereby committed an offence punishable U/s. 381 r/w. 34 of Indian Penal Code and within my cognizance.

Charge No.5: That you A1 to A4, on the same day, time and place mentioned in Charge No.1, with a common intention, causing disappearance of evidence of offence concealed the stolen property i.e. cash, gold, silver ornaments, DVD player, CDs, cell phones, etc., all worth of Rs.10,20,000/- with you A5 with an intention to screen the offence from legal punishment and that you thereby committed an offence punishable under Section 201 r/w. 34 of Indian Penal Code, and within my cognizance.

Charge No.6: That you A5, on the same day, time and place mentioned in Charge No.1, an offence of trespass, murder and theft was committed by you A1 to A4 at H.no.16-7-227/1, Dayanand Colony, Warangal and you A5 harboured (concealed) the said A1 to A4 knowing or having reason that the said A1 to A4 had committed the offences trespass, murder and theft and that you thereby committed an offence punishable under Section 212 of Indian Penal Code, and within my cognizance.

Charge No.7: That you A5, on the same day, time and place mentioned in Charge No.1, dishonestly received or retained stolen property i.e. cash, gold, silver ornaments, DVD player, CDs, cell phones, etc., all worth of Rs.10,20,000/- belonging to deceased Chidurala Vijayapal Reddy, knowing or having reason to believe that such property was stolen property and that you thereby committed an offence punishable under Section 411 of Indian Penal Code, and within my cognizance”.

4. As the plea of the accused was one of denial, they were subjected to trial during which, the prosecution has examined PWs.1 to 17, got Ex.P1 to P20 marked and produced MOs. 1 to 32.

5. On appreciation of the oral and documentary evidence, the court below has disposed of the case in the manner as stated herein before.

6. This is a case based on circumstantial evidence. The murder has taken place in the house of the deceased and PW-1, when the latter was away at Hyderabad. The motive for murder attributed by the prosecution, is to commit theft of the valuables. Based on the alleged

confessional statements vide Ex.P9 to P13 in the presence of PW-12, the police have effected recoveries of MOs. 1 to 32.

7. Most unfortunately, the police have not taken scientific aid by collecting chance finger prints at the scene of offence and compare the same with that of the accused. In the absence of direct or circumstantial evidence, such as the evidence of last seen witnesses, the prosecution heavily banked upon the alleged recoveries.

8. Mr.P.Prabhakar Reddy, Mrs.A.Gayathri Reddy and Mr.B.Parameswara Rao, learned counsel for the respective accused, have submitted and in our view rightly, that even if the recoveries of the valuables from the accused are believed, the prosecution miserably failed to establish that the recovered articles belong to the deceased and PW-1.

9. To buttress its case regarding recovery, the prosecution relied upon Ex.P9, the confessional and seizure panchanama. PW-12 is one of the panch witnesses to the said panchanama. While there could be no reason to disbelieve the theory of recoveries set up by the prosecution, we are however, disappointed to notice that the recovered articles were not identified in accordance with the procedure laid down by law. Rule 35 of the Criminal Rules of Practice and Circular Orders, 1990, envisages the procedure for identification of property. This rule reads as under:

“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 five 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 in”.

10. Contrary to the procedure laid down in the above reproduced rule, the prosecution claimed that the police arranged identification of the properties in the presence of PW-14, a private employee. In his chief-examination, this witness deposed that on 29.06.2008, while he was passing through Dayanand Colony, he was called by the C.I. of Police (PW-15) along with LW-18; that they were taken to Little Masters Public School, Dayanand Colony Warangal at 10 a.m. and that the police informed that they recovered the valuable properties from the persons who killed the deceased and requested them to act as mediators for identification of properties by PW-1 in the school. That, the police called PW-1 from her house to the school; that the police mixed the properties of PW-1 with some other properties and asked her to identify her properties and that she accordingly, identified the properties.

11. As noted herein before, for reasons not known, the police have not followed the procedure laid down under Rule 35 of the Criminal Rules of Practice and Circular Orders, 1990. When the law lays down a procedure, the persons acting under the said law, shall scrupulously

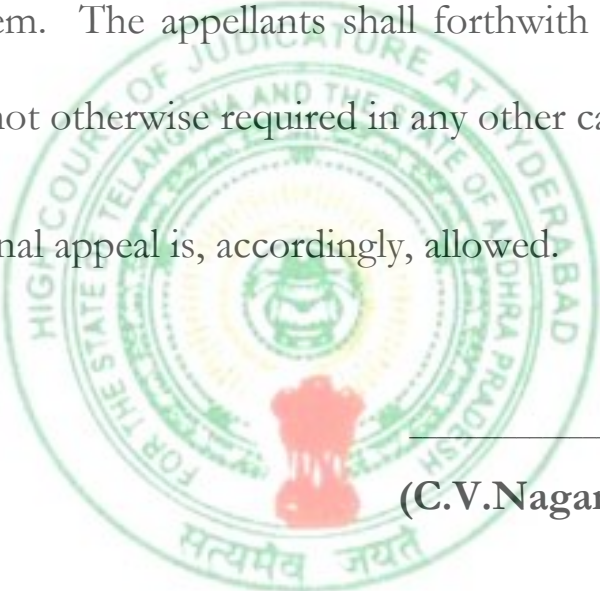
follow the procedure so laid down. No explanation is forthcoming from the police as to why the recovered properties were not lodged before the jurisdictional Magistrate and the procedure laid down under Rule 35 was not followed. In the absence of any other corroborative piece of evidence, the prosecution failed to connect the accused to the offences with which they were charged, as it has failed to follow the procedure laid down in Rule 35 and thereby, it has failed to legally prove that MOs.1 to 32 recovered from the accused, belonged to the deceased and PW-1. When the only link in the present case, namely, recovery of properties allegedly belonging to the deceased and PW-1 is not established, the accused cannot be convicted, merely based on suspicion. The law is well settled that howsoever strong suspicion may be, it cannot take the place of proof. Though the accused are alleged to have done away with the life of a person for wrongful gain in a brutal manner, due to inefficiency and negligence of the police, they failed to establish the involvement of the accused by adducing acceptable evidence.

12. Therefore, this Court is left with no option, other than acquitting the accused of all the offences with which they are charged. However, we hasten to add that this judgment should not be understood, as this court holding that the recovered property does not belong to the deceased and PW-1. This court is constrained to set aside the conviction, only on the ground that the prosecution failed

to follow the procedure laid down in law, to establish the link between the accused and the offence. Further, this judgment would not preclude PW-1 from receiving the recovered properties and if she has already received, it would not affect her right to retain the properties.

13. For the aforementioned reasons, the judgment under appeal is set aside and the appellants are acquitted of the offences for which they are charged. The fine amount, if any, paid by them shall be refunded to them. The appellants shall forthwith be released from Jail, if they are not otherwise required in any other case or crime.

14. The criminal appeal is, accordingly, allowed.



(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 25th September, 2018

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