

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRIMINAL APPEAL No.162 of 2013

Date:17.02.2018

Between:

Mallaram Shiva Krishna,
S/o Late Anjaneyulu

..... Appellant

And:

The State through SHO, P.S Keshampet,
Mahabubnagar District, repled by the Public
Prosecutor.

.....Respondent

Counsel for the appellant: Ms. Ammaji Nethem

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:

0 JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

The sole accused in Sessions Case No.569 of 2012 on the file of the Court of the learned Sessions Judge, Mahabubnagar filed this Criminal Appeal feeling aggrieved by judgment, dated 21.12.2012, whereby he was convicted for the offences punishable under Sections-302, 404 and 201 IPC and sentenced to suffer imprisonment for life for the offence under Section-302 IPC and to suffer rigorous imprisonment for one year each for the offences under Sections-404 and 201 IPC. All the sentences were directed to run concurrently.

The case of the prosecution, as reflected from the charge sheet filed by the Police, is briefly stated hereunder:

On 23.5.2012 at 12 hours, P.W-1- de facto complainant lodged a written complaint stating that about four years ago, he migrated to Keshampet for earning livelihood and was running a hotel styled as 'Annapurna Mess' at Keshampet; that about 20 days back, his co-brother-Ganipesetti Venkat Rao has come down to Keshampet in a tractor for ploughing the land on hire and had been residing with him; that his co-brother has brought the tractor driven by a person by name Mallaram Shiva Krishna (the appellant) to plough the lands in the surrounding villages; that on 21.5.2012, at about 8 pm., after ploughing the lands belonging to Mangali Santosh and Jagan at the outskirts of Alwal Village, his co-brother returned home and took the food parcel to the driver; that since then, his co-brother was missing; that while searching for him, on 13.5.2012, at about 11 am., he found the dead body of his co-brother in the agricultural lands of Mangali

Santosh and Jagan buried and the bramble was set on fire; and that immediately, he removed the soil and found the shirt and towel and identified them as that of his co-brother. Based on the said complaint, a case in Crime No.24 of 2012 was registered and investigation was taken up.

During the course of investigation, PW-10 examined and recorded the statement of P.W-1 and requisitioned P.W.7-Tahsildar, Keshampet, to issue orders to disinter (exhume) the dead body and to visit the scene of offence for conducting inquest over the dead body of the deceased, who rushed to the scene of offence and conducted inquest panchanama over the body of the deceased in the presence of PW-3 and LW.5-Battu Bazar. On finding the injuries on face and other parts which were caused by blunt object, PW-10 altered the Section of law from 174 Cr.P.C. to Sections-302 and 201 I.P.C. and submitted the altered F.I.R to all the officers concerned. Further investigation was taken up by L.W-17-Mohd, Shakir Hussain, Circle Inspector of Police, who secured the presence of the mediators, conducted the scene of offence panchanama, drafted the rough sketch of the scene of offence, seized the M.Os.2, 4, 7, 8 and 9 under the cover of panchanama duly affixing the signed chits of L.W.9-Lankala Suresh Reddy and PW-6, got the scene of offence and the dead body of the deceased photographed by P.W-4, held inquest over the dead body of the deceased in the presence of L.W.9-Lankala Suresh Reddy and PW-6, seized M.Os.1 and 3; and that as the dead body was highly decomposed, it was not possible to shift the same to mortuary room

and hence, he requisitioned P.W-9 to visit the scene of offence for conducting autopsy. Accordingly, PW-9 conducted autopsy over the dead body of the deceased and opined that the cause of death was due to head injury. Thereafter, PW-11 perused the investigation done by PW-10 and LW-17- Mohd, Shakir Hussain, Circle Inspector of Police and examined P.W-8 and recorded his statement.

During the course of further investigation, on receipt of credible information about the presence of the appellant near a Petrol pump under construction at Keshampet Village, PW-10 along with his staff reached the said spot, apprehended the appellant and produced him before PW-11. On interrogation, the appellant confessed the commission of the offence and his confessional statement was recorded in the presence of L.W.11-Devi Reddy Chenna Reddy and PW-3, in pursuance of which MO-5-one Nokia Cell phone of the deceased and MO-6-iron rod used in commission of the offence were seized under the cover of Ex.P-4-Seizure Panchanama.

It is further stated in the charge sheet that the investigation reveals that the deceased offered an amount of Rs.9,000/- per month to drive the tractor but the appellant demanded to pay an amount of Rs.2,000/- as advance, to which the deceased agreed. While so, on 10.5.2012, the deceased and the appellant left Chimatavaripalem and reached Keshampet in the evening. Since 12.5.2012, both used to plough the land for Rs.1,200/- per acre and ploughed land of 30 acres at various places. Since the deceased was dodging to pay the money on one pretext or the other, the appellant decided to do away with the life

of the deceased and to steal the plough of the tractor and was waiting for an opportunity. On 21.5.2012 evening, while ploughing the land at the outskirts of Alwal village, the tyre of the tractor was punctured, on that, the deceased has kept the appellant at the agricultural land and went to the hotel of P.W-1 at 8 pm and took food parcel for both of them on TVS XL moped, reached the ploughing land at 9 pm, and both of them had dinner and slept there itself. That since the concubine of the appellant was forcing him to send the amount and the deceased was not paying the amount, the appellant decided to kill the deceased and that, on the intervening night of 21/22-5-2012, at about 2.30 pm, the appellant woke up and noticed the deceased in deep sleep and taking advantage of the same, the appellant took a square shape iron rod from the tool box of the tractor and forcibly hit the deceased on his head and face with it, as a result, the deceased sustained severe bleeding injuries and died on the spot. Thereafter, the appellant searched the pockets of the deceased and since he did not get any money, he intentionally stole the Nokia Cell Phone from the pocket. Later, the appellant tied the deceased in a bed-sheet and buried the body in a ditch which was already dug. On the next day morning, i.e., on 22.5.2015, pretending as an innocent man, he took the TVS XL moped of the deceased and parked it in front of the hotel of P.W-1. Thereafter, he got the punctured tyre of the tractor patched by P.W-5 and when the latter demanded for money for attending the puncture work, the appellant informed him that his master will pay

the amount and got the tyre fixed to the tractor and subsequently, took the tractor and parked the same near the hotel and fled away.

Based on the charge sheet filed by the Police, the learned Sessions Judge, Mahabubnagar framed the following charges:-

- “1. That you accused on the intervening night of 21/22-5-2012, at about 2.30 am in the outskirts of Alwal Village of Keshampet Mandal, intentionally caused the death of Ganipisetty Venkat Rao by beating him with square iron rod which was taken from the tool box of tractor bearing No.AHJ-7973, due to which, he died on the spot, and that committed the said murder as he was not paying the amount to you, and that you thereby committed an offence punishable under Section-302 IPC and within my cognizance.
2. That you accused on the same day, time and place as mentioned above, dishonestly committed theft of Nokia Cell Phone (N-1112) from the pocket of Ganipisetty Venkat Rao without his consent and thereby committed an offence punishable under Section-379 IPC and within my cognizance.
3. That you accused on the same day, time and place as mentioned above, having committed the offence of murder of Ganipisetty Venkat Rao, in order to disappear the evidence of the said offence, tied the deceased in the bed sheet and buried in the ditch with an intention to escape from legal punishment and that you thereby committed an offence punishable under Section-201 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 P.Ws.1 to 12, got Exs.P-1 to P-11 marked and produced M.Os.1 to 9. On behalf of the appellant, no evidence was adduced.

On consideration of the oral and documentary evidence, the Court below has disposed of the case in the manner as stated hereinbefore.

At the hearing, Ms. Ammaji Netham, learned counsel for the appellant, submitted that the Court below convicted the appellant in the absence of any evidence connecting him to the alleged offence; that the case is based on circumstantial evidence and the prosecution failed to place on record credible evidence pointing to the guilt of the appellant beyond all reasonable doubt; and that the Court below has based the conviction of the appellant only on suspicion but not on proof.

Opposing the above submissions, Mr. C.Pratap Reddy, the learned Public Prosecutor for the State of Telangana, has commended corrections of the impugned judgment of the Court below.

We have carefully considered the respective submissions of the learned counsel with reference to the evidence on record.

This is a case based on circumstantial evidence which requires the prosecution to establish all the links in the chain of circumstances for holding the appellant guilty of the offences for which he was charged.

As could be seen from the narrative in the charge sheet filed by the Police, the appellant was allegedly engaged as a driver by the deceased; that the tractor was taken to the hotel of P.W-1, who is the co-brother of the deceased, and therefrom, it was taken to the agricultural fields, which were taken on lease by P.W-8 from the

owner. It is the further case of the prosecution that on the night of 21.5.2012, the appellant has left the hotel being run by P.W-1 by carrying the meals to the deceased and since then his whereabouts are not known. The body of the deceased was traced on 23.5.2012 and the appellant was apprehended on 07.6.2012. MO-6-Iron rod was allegedly recovered from the appellant, following his arrest, from the tool box of the tractor owned by the deceased, for which the appellant was allegedly the driver.

As could be seen from the suggestions put to P.W-1 and other prosecution witnesses by the defence, the appellant has taken the stand that he was not the driver of the tractor in question. None of the witnesses, except P.Ws.5 and 8 allegedly saw the appellant.

P.W-5 runs a Puncture works shop. According to him, about five months prior to his deposition, on one day morning, the appellant asked him to attend the puncture work of the tractor, which was lying in the agricultural fields, belonging to a certain barber's family, within the limits of Alwal Village and he along with the appellant went to the agricultural fields, removed the tyre of the tractor, brought it to his shop, attended the puncture of the tyre and after that the appellant has taken the tyre. He has further deposed that when he asked for money for getting the puncture work done, the appellant informed him that he would get the money from the owner and pay the same. P.W-5 further deposed that on the next day morning, he came to know that the owner of the tractor died. Admittedly, the appellant was a stranger to P.W-5. Being a person running a Puncture works shop,

he must be seeing several customers everyday. Therefore, much credibility cannot be lent to the evidence of such a person unless a test identification parade was conducted. No explanation is forthcoming from the prosecution as to why such a parade was not conducted. In the absence of such a test identification parade, the possibility of the Police planting P.W-5 cannot be ruled out.

No doubt, P.W-8 deposed that from 18.5.2012, the deceased started ploughing work in his land and that the appellant used to drive the tractor. It was suggested by the defence to this witness that the appellant never worked as tractor driver and that he was deposing falsely at the instance of the Police. Even assuming that the appellant has worked as a driver under the deceased, there must be a strong link to connect him with the offence. The only link on which the prosecution has placed strong reliance is the recovery of MO-6-Iron rod under Ex.P-4-Seizure Panchanama. Based on this fact, the prosecution alleged that it is the appellant who killed the deceased with MO-6-iron rod. The offence allegedly took place in the agricultural fields in possession of P.W-8. MO-6-Iron rod was seized from the tool box of the tractor stationed near the hotel of P.W-1. The prosecution failed to establish as to who brought the tractor from the agricultural fields of P.W-8 to the place adjacent to the hotel of P.W-1. Had the appellant brought the tractor, either P.W-1 or any other villager would not have failed to notice the same, which is a crucial link. The prosecution has failed to establish this link.

As regards the seizure of MO-6-Iron rod, if the appellant had killed the deceased with the said Material Object, it is highly improbable that he would have safely preserved the same in the tool box of the tractor and taken the tractor to the place nearby P.W-8's hotel and parked it there. The natural human conduct of any offender would be either to throw away the iron rod at the place of offence or take it away and try to cause its disappearance. More over, in Ex.P-11-Forensice Science Laboratory Report, though it is stated that the blood on MO-6-Iron rod is of human origin, the blood group is not detected. This raises a serious suspicion as to whether the blood on MO-6-Iron rod was that of the deceased.

It is not known as to how the blood group on MOs-1 and 4-Shirt of the deceased and the torn pieces of blanket, respectively, was detected and the blood group on the other Material Objects was not detected. At any rate, failure of detection of blood group on MO-6-Iron rod, the only link between the appellant and the alleged offence, is fatal to the case of the prosecution.

Though the learned Public Prosecutor has contended that the subsequent conduct of the appellant, such as his whereabouts not being known from the time the deceased went missing, would raise a strong suspicion about his involvement in the commission of offence, in our opinion, howsoever strong a suspicion may be, the same will not take the place of proof.

On a careful consideration of the evidence on record and the facts and circumstances of the case, we are of the opinion that the

prosecution failed to prove the guilt of the appellant beyond all reasonable doubt. Hence, the appellant deserves the benefit of doubt.

In the result, the Criminal Appeal is allowed and the judgment, dated 21.12.2012, in Sessions Case No.569 of 2012 on the file of the Sessions Judge, Mahabubnagar, is set aside. The appellant is acquitted of all the charges. He shall be forthwith released, if he is not otherwise required in any other case.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE D.V.S.S.SOMAYAJULU

17th February, 2018
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