

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.624 of 2012

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

1) The sole accused in Sessions Case No.38 of 2010 on the file of the IV Additional District and Sessions Judge (Fast Track Court) at Sddipet, is the appellant herein. He was tried for the offences punishable under Sections 302 and 379 IPC, for causing the death of one Shaik Shadullah (hereinafter referred to as "the deceased") on 17.06.2009, by beating him with beer bottle on his head, and thereafter committed theft of cell phone of the deceased. Vide judgment, dated 21.07.2011, the learned Sessions Judge, convicted and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.1000/- in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 302 IPC. He was further convicted and sentenced to suffer imprisonment for six months and to pay a fine of Rs.500/- in default to suffer simple imprisonment for one month for the offence punishable under Section 379 IPC. Both the sentences were directed to run concurrently.

2) The case of the prosecution in brief is as under:

i) PWs.1 and 3 are the sons while PW.2 is the wife of the deceased. In the morning of the date of incident PW.1 came to know through his mother-PW.2 that his father left to Doulthabad. At 11.00 a.m., when PW.2 telephoned to the deceased, he informed that he had purchased a plastic sheet to cover the hut and will come back to Doulthabad in the evening, but the deceased did not return on that day. At about 11.00 p.m., PW.1 received a phone call from his father's mobile number. The caller identified himself as an accused and informed that his father met with lorry accident and found dead near Ponnala Dhaba hotel. Immediately, PW.1 informed the same to PW.2 and his brothers and as it was late night, they could not go. On the next day morning PW.1 again received a call from his father's cell phone, who asked them to come immediately as the dogs are trying to eat his father's dead body. Immediately he along with his relatives went to Ponnala Dhaba and found the dead body of his father, in a supine position on a garbage heap. He also found injuries on the face and stomach of the deceased. The testicles of the deceased was cut and found by the side of the dead body. He also observed a towel belonging to the deceased near a tamarind tree, one broken empty beer bottle and broken glass pieces found scattered. According to him, there was previous enmity between the accused and deceased, but he does not

know the details. According to him, his mother informed him that the villagers beat the accused as he committed theft, wherein the deceased also beat the accused along with the villagers. On 18.06.2009 at about 10.00 a.m., while one K.Madhulatha, Sub-Inspector of Police was present in the police station, received a written report from PW.1, basing on which, he registered a case in Crime No.125 of 2009 and issued Ex.P10-the first information report, which bears the signature of K.Madhulatha. PW.10-the Inspector of Police identified the signature of K.Madhulatha.

ii) PW.10-the Inspector of Police, who took up investigation, visited the scene of offence which is situated at Ponnala Dhaba. In the presence of PW.6, he is said to have conducted a panchanama of the scene. During the course of it, he seized Mos.3 to 14 under Exs.P4 to P6 at the scene of offence-cum-seizure panchanamas. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW.6 and another. Ex.P7 is the inquest report. During inquest, PW.10 secured the finger prints expert and collected blood stained control earth and also finger prints on the broken beer bottle. Later, the dead body was sent for postmortem examination.

iii) PW.8-the Civil Assistant Surgeon, Government Area Hospital, Siddipeta, conducted autopsy over the dead body of

the deceased and issued Ex.P8-the postmortem examination report. According to him the cause of death was “due to poly trauma hemorrhage shock”.

iv) On the same day at about 4.00 p.m., PW.10 arrested the accused at Irkode Village. On interrogation, the accused confessed about the commission and his confession lead to recovery of M.O.1-Nokio Cell Phone, blood stained shirt and pant (Mos.18 and 19) which were seized under Ex.P9. After collecting all the necessary documents, PW.10 filed a charge sheet before the Court of Additional Judicial First Class Magistrate, Sddipet, which was taken on file as P.R.C.No.65 of 2009. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 of Cr.P.C., which came to be numbered as S.C.No.38 of 2010.

3) On appearance, charges under Sections 302 and 379 IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P16 and MOs.1 to 19. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the

evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on his behalf, in support of his defence.

5) After considering the oral and documentary evidence on record, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the case is based on the circumstances. She further submits that the circumstances relied upon by the prosecution do not form a chain of events connecting the accused with the crime.

7) Learned Additional Public Prosecutor opposed the same contending that the evidence of PWs.1 to 3 and 11 coupled with the recovery and call data established the involvement of the accused.

8) Though there are no eye witnesses to the incident, the entire case rests on the evidence of PWs.1 to 3 and 5 to speak to the chain of events connecting the accused with the crime. PW.1 in his evidence deposed as under:

“I am resident of Rangampet village. I know the accused. We are four brothers and four sisters. About two years ago in the morning I came to know through

my mother that my father Shaik Shadullah left Doulthabad village. At about 11.00 a.m., she telephoned to my father over phone, that my father informed to my mother that he is at Siddipet and he has purchased a plastic sheet to cover the hut and will come back to Doulthabad. My father did not return on that day. On that day at about 11.00 p.m., I received a phone call to my mobile number 9701959083 from my father's cell phone No. 9701960483. The caller informed that his name Shaik Shabuddin. I identified him as accused. The caller further informed me that my father Shadullah met with lorry accident and found dead near Ponnala dhaba hotel. Then Immediately I informed the same to my mother and my brothers as it was late night we could not go. The next day morning again I received a call from my father's cell phone to my cell phone asking us to come immediately as dogs are trying to eat my father's dead body. Then immediately I along with my relatives went to Ponnala Dhaba. I found the dead body of my father was in supine position on garbage. I noticed injuries on the face of my father and also on his stomach. The testicles of my father was cut and found by the side of the dead body. I also observed near tamarind tree a towel of my father and one broken empty beer bottle and broken glass pieces were found scattered. I did not find the caller Shaik Shabuddin and also I did not find the mobile phone of my father. There were previous enmity between the accused and my father. I do not know the details of enmity. My mother told me that the accused was beaten by the villagers alleging that he committed theft wherein my father also beat the accused along with the villagers and keeping in mind the accused bore grudge and committed murder of my father."

9) Though PW.1 was cross-examined, nothing useful came to be elicited to discredit his testimony.

10) PW.2 is the wife of the deceased. Her evidence is to the effect that on the date of incident at about 11.00 a.m., when she telephoned to her husband, her husband told her that he purchased the plastic sheet to cover the hut and he will be reaching home by evening. In the midnight, PW.1 received a phone call from the accused, who informed him that the deceased met with an accident and dead body was lying at Ponnala Dhaba. The accused is said to have telephoned to the mobile of PW.1 through the cell phone of the deceased. In the morning the accused again called through the mobile phone of the deceased to PW.1 and informed him to come immediately and take the body, as the dogs are trying to eat the dead body. At about 9.00 a.m., she along with PW.1 and other children went to Ponnala Dhaba and found the dead body lying in a supine position on a garbage heap. The accused was not present and the mobile phone of the deceased was also not present. They noticed the testicles of the deceased cut and thrown by the side of the dead body. They also found bleeding injuries on the face and hands. Her evidence is to the effect that the accused has a motive to cause the death of the deceased, because of the earlier incident, wherein the accused was beaten by the

deceased, on an allegation of theft. The cross-examination done to PW.1, is no help to the accused as all the suggestions given to her were denied.

11) Coming to the evidence of PW.3, who is the second son of the deceased, in his evidence she deposed that on one day morning while they were at Indupriyal, his mother came to them and told them that his father went to Siddipet to purchase plastic sheet. According to him, on that day night PW.1 received a phone call from the mobile of the deceased stating that his father met with an accident and died near Ponnala dhaba. On the next day morning again PW.1 received a phone call from the mobile of his father asking them to come immediately as the dogs are eating the dead body of his father. Then immediately himself, PWs.1 and 2 and others went to Ponnala Dhaba, where they found the dead body of the deceased on a garbage heap. He also observed the testicles of his father cut and placed by the side of the dead body.

12) From the evidence of these three witnesses, it is clear that the accused was in possession of cell phone of the deceased and he is said to have furnished information to PW.1 about the body lying near Ponnala Dhaba. Apart from that the evidence of these three witnesses also shows existence of motive for the accused to commit the crime, as the deceased

is said to have beaten the accused along with other villagers, when the accused was found to be committing thefts in the village. On the same day at about 11.00 a.m., a report came to be lodged and thereafter the law was set into motion. On the same day, PW.11 arrested the accused at 4.00 p.m. and seized the cell phone of the deceased from the possession of the accused.

13) Apart from that, the evidence of the expert, who is examined as PW.11 would show that on 18.06.2009 at about 7.00 a.m., he received information from the C.I. of Police, Siddipet, about the murder and asking him to come over to the scene for collecting the chance prints. Immediately, he proceeded to Siddipet and reached the scene of offence situated at Ponnala Dhaba. He collected two chance prints from used Bacardi Breezer bottle. The chance prints were marked as 'A' and 'B'. He also collected the finger prints of the deceased Sadullah. He compared the finger prints and they remain un-identified. The chance prints were un-identified when compared with the records of Sangareddy and also of Hyderabad city State finger prints bureau. On 25.06.2009 the Inspector of Police, Siddipet Rural, send the finger prints of accused for comparison. Accordingly, he compared the chance prints marked as 'A' and 'B' with that of the finger prints of the accused and found that chance print

marks 'A' is identical with right thumb finger impression and chance print marked 'B' is identical with right index finger impression on the finger print slip of the accused. Ex.P14 is the report of the expert and Ex.P17 is the identical chart of the finger prints.

14) From the evidence of PW.11 coupled with Ex.P14, it is very clear that the accused was present at the scene, and also consumed alcohol. Hence, the circumstances namely motive, calls made by the accused from the cell phone of the deceased to PW.1 at 11.00 p.m., in the night, recovery of cell phone of the deceased from the possession of the accused on the same day and the finger prints of the accused at the scene, in our view establish the link to connect the accused with the incident in question.

15) Accordingly, the Criminal Appeal is dismissed, confirming the conviction and sentence imposed against the accused in Sessions Case No.38 of 2010 on the file of the IV Additional District and Sessions Judge (Fast Track Court) at Siddipet. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

T. RAJANI, J

08.08.2018
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