

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CRIMINAL APPEAL No.243 OF 2013

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

Originally there were four accused in the crime. As A3 and A4 were found absconding, police filed charge sheet only against A1 and A2, splitting the case against A3 and A4. Vide judgment dated 11.01.2013, learned Sessions Judge, Mahabubnagar, convicted A1 and A2 for an offence punishable under Section 302 I.P.C. A1 was also found guilty for an offence punishable under Section 379 IPC, while A2 was further found guilty for an offence punishable under Section 376 IPC. Accordingly, A1 is sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- for the offence punishable under Section 302 IPC and in default to undergo Simple Imprisonment for three months. A1 is further sentenced to suffer RI for three months for the offence punishable under Section 379 IPC. A2 was also sentenced to undergo rigorous imprisonment for ten years for an offence punishable under Section 302 read with Section 34 IPC and is further sentenced to undergo RI for a period of one year for the offence punishable under Section 411 IPC. The sentences were directed to run concurrently.

2. The substance of the charge against the accused is that on intervening night of 07/08.11.2011, within the limits of

Burugula Village, A1 and A2 are alleged to have caused the death of one Kalyankar Shyamala (D2) while A3 and A4 are alleged to have committed rape on one Sura Alivelu @ Rangamma (D1) and thereafter caused her death.

3. The facts of the case, as culled out from the evidence adduced by the prosecution, are as under:

(i) PW4 is the mother of D1, PW5 is the mother-in-law of D1. PW6 is the sister of D2, PW7 is the daughter of D2.

(ii) The evidence on record shows that on 08.11.2011 at about 07.30 a.m., PW12 the CI of Police, Shadnagar, received a report from PW1, basing on which he registered a case in Crime No.518 of 2011 and issued Ex.P10 the FIR. The averments in the report show that on 08.11.2011, at about 05.30 a.m., while PW.1 was at his house, one Nagaiah (PW2) resident of Kashireddyguda, H/o.Burgula Village, informed him on phone stating that two dead bodies of unknown female persons were lying on the eastern side of S.R. Petrol Pump beside the metal road leading from NH7 towards Kashireddyguda. Immediately, PW1 went there and noticed the two female dead bodies lying on the road side opposite to petrol bunk in the land of one Susheela Kumari Jain. According to PW1, the ages of the deceased were around 30 and 28 years. He also found empty sachet of gutkha, two condoms by the side of the bodies. He noticed that one dead body was found tied with a brasserie around the neck and

there were reddish color injuries around the neck of another dead body. According to him, some unknown persons brought the ladies for the purpose of prostitution and then killed them. Basing on the information received by PW1 – VRO from PW2, PW12 the CI of Police proceeded to the scene of offence, situated opposite to S.R.Petrol Bunk in the outskirts of Burugula village, got photographed the scene of offence and also prepared scene observation report in the presence of PW10. Ex.P4 is the panchanama of the scene of offence. At the time of conducting panchanama, he seized MOs.1, 2, broken pieces of bangles apart from empty cigar and gutka packets and one ball pen, which are placed on record as MOs.5 to 8. Thereafter, he conducted inquest over the dead bodies in the presence of PW10 and another, vide Exs.P5 and P6. After conducting inquest, the bodies were shifted to Government Hospital, Shadnagar, for post mortem examination. At the scene of offence, PW12 examined PWs.2, 3 and others. The doctor, who conducted post mortem examination of the two dead bodies, was not examined. However, the two post mortem certificates are placed on record as Exs.P11 and P12.

(iii) The evidence of PW12, the investigating officer shows that on 13.11.2011, he examined and recorded the statements of PWs.4 and 5, who identified the deceased. The evidence of PW12 further discloses that on 14.01.2012, on receiving information, he, along with the staff, proceeded to

Raikal village, found A1 and apprehended him in the presence of PW11 and another. On questioning, A1 confessed about commission of the offence and produced nokia cell phone MO3, which was seized under Ex.P7. A1 also lead them to Indiranagar, Jadcherla, went to the house of A2 and apprehended A2, pursuant to which MO4 was produced by A2, which was seized under Ex.P8. A1 and A2 again led them to the scene of offence wherein the statement of PW9 was recorded.

(iv) After collecting all the reports and on completing investigation, PW12 filed a charge sheet before the Judicial Magistrate of First Class, Shadnagar, which was taken on file as PRC No.76 of 2012.

(v) On appearance of the accused, copies of the documents were furnished to them, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.622 of 2012.

(vi) On consideration of material placed on record, the charge as stated above came to be framed, read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

(vii) To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P12 and

M.Os.1 to 8. Out of the 12 witnesses examined, PWs. 8 and 9 did not support the prosecution case and were treated hostile by the prosecution.

(viii) After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses, to which they denied, but, however, did not place on record any defence evidence.

(ix) Basing on the evidence of PWs.4 to 7, coupled with evidence of PWs.11 and 12, learned Sessions Judge convicted the accused. Assailing the same, the present appeal came to be filed.

4. Learned counsel for the petitioners mainly submits that there are no eye witnesses to the incident and the case rests on circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form chain of events to connect the accused with the crime.

5. On the other hand, learned public prosecutor would contend that the evidence of PWs.7 and 11 show that the first accused was living along with one of the deceased and because of disputes, he has killed the deceased.

6. The points that arise for consideration are whether the accused are responsible for the death of the deceased and whether the circumstances relied upon by the prosecution

namely identification of the body of the deceased, motive for commission of the offence and the recovery of MOs.3 and 4 are proved and if proved, whether they are sufficient to connect the accused with the crime?

7. The evidence of PWs.1 to 3 may not be of any help to the prosecution. PW1 is the VRO, who set the law into motion by lodging a report in Shadnagar Police Station, basing on the information furnished by PW2, who saw the two bodies lying by the side of S.R. petrol pump. The evidence of PW3 also shows that information was given to PW2 with regard to two female dead bodies lying opposite to S.R. petrol pump nearer to Kashireddyguda. As stated earlier, the evidence of three witnesses may not be of any help to the prosecution to prove involvement of the accused in the commission of offence. The evidence of PW4, who is the daughter of the deceased – D1 is also of no help to the prosecution, since she speaks about the marriage of D1 with one Seenaiah about 15 years back and only refers to police informing her about the death of the deceased. In her chief evidence, she states that she does not know how D1 died. Coming to the evidence of PW5, her evidence is to the effect that the deceased Alivelu-D1 is her daughter-in-law, who married her son about 15 years back, that her son died about two years back, her daughter-in-law died about a year back and the police informed her about the death by showing her photograph. She further

admits that she does not know how D1 died. PW6, who is the sister of D2, states that she was given in marriage to one Meeraji, about 15 years back, that her brother-in-law died about 12 years back and thereafter her sister-D2 was doing coolie work. She further stated that she does not know as to where D2 was living and she came to know about her death from the police by seeing her photograph. Insofar as PWs.5 and 6 are concerned, their evidence is pressed into service as they identified the bodies of the deceased as that of Rangamma and Shyamallamma. Even the said photographs are not marked as exhibits. However, we feel that their evidence with regard to identification may not be of much help since there is no dispute with regard to the identification of dead bodies.

8. Coming to the evidence of PW7, who is the daughter of Shyamamma-D2, her evidence is to the effect that after the death of her father, herself and her mother were staying in Jadcherla; that she knows A1, who used to come to D2; that both of them were living in her house as husband and wife, but A1 used to abuse and beat her mother. Since a year, PW7 started staying in a Social Welfare Hostel for Girls, Yenmangandla village. According to her, she came to know about the death of her mother-D2, pursuant to which she went to Shadnagar Police Station along with her cousin and identified the dead body as that of her mother by seeing the

photograph of her mother. Even if the evidence of PW7 is to be accepted in toto, she only refers to A1 visiting her house; both A1 and D2 staying as husband and wife, and at times, used to abuse and beat her mother. PWs.8 and 9, did not support the prosecution case and were treated hostile by the prosecution. PW10 acted as panch for two inquests conducted over the dead bodies of the deceased. The prosecution mainly relied upon the evidence of PW11 – VRO, who was present at the time of arrest and recovery made pursuant thereto, to connect the accused with the crime. The evidence of PW11 is to the effect that on 14.01.2012, the police called him along with another near S.R.Petrol bunk situated in the outskirts of Burgula village and found A1 in the custody of police. Thereafter, A1 confessed that he had kept the deceased Shyamala as his mistress and he along with others killed her. A1 confessed that after killing Shyamala, they also killed the deceased Alivelu, on an apprehension that she might reveal the offence and that he also took away Nokia cell phone from D2, while A2 took away ear studs from her. A1 is said to have produced cell phone, which was marked as MO3. Thereafter they went to the house of A2, wherein A2 confessed about the offer of Rs.10,000/- made by A1, to bring the deceased Shyamala to the outskirts and accordingly she was taken to S.R.Petrol Bunk. A2 further confessed that A1 questioned her about her movements, killed her and that he took away the ear studs of

the deceased Shyamala. He produced a pair of ear studs from his house. Basing on this evidence, learned public prosecutor would contend that recovery of MO3 cell phone and MO4 pair of ear studs, amply prove involvement of the accused in the commission of offence. But, it is to be noted here that none of the family members of the deceased were asked to identify these objects as belonging to the deceased. Infact, PWs.4,5 and 6 were never confronted to identify these two objects nor any of the family members were asked to identify as to whether these objects belongs to any of the two deceased. Hence, we feel that the same cannot be made the basis to connect the accused with the crime.

9. The only other evidence is that of the investigating officer. It is to be noted that in his examination, he only spoke about registering the crime, preparing panchanama of the scene, conducting inquest, recovery of MOs.3 and 4 and filing of the charge sheet.

10. From the above, it is clear that there is absolutely no legal evidence to connect the accused with the crime. Even the prosecution miserably failed to establish any motive for the accused to commit the offence. Infact no effort was made by the prosecution to adduce evidence, to prove the motive. Apart from that, no evidence has been adduced to show that the accused and the deceased were seen together at any time prior to the incident, except the evidence of PW7, who spoke

about deceased coming to the house and staying with them now and then. As stated earlier, this evidence of PW7, even if accepted, is not sufficient to establish guilt of the accused in the commission of offence. The evidence of PW11 which is also sought to be relied upon by the prosecution though speaks about recovery of MOs.3 and 4, but no evidence has been adduced to show that these two articles belong to the deceased.

11. Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused No.1, in the judgment dated 11.01.2013, in Sessions Case No.622 of 2012, on the file of the Special Sessions Judge – cum – VII Additional Sessions Judge, Mahabubnagar, for the offences punishable under Sections 302 read with Section 34 and 379 of I.P.C., are set aside and he is acquitted for the said offences. Consequently, appellant/accused No.1 shall be set at liberty forthwith, if not required in any other case.

The conviction and sentence recorded against the appellant/accused No.2, in the judgment dated 11.01.2013, in Sessions Case No.622 of 2012, on the file of the Special Sessions Judge – cum – VII Additional Sessions Judge, Mahabubnagar, for the offences punishable under Sections 302 read with Section 34 and 411 of I.P.C., are set aside and he is acquitted for the said offences. Consequently, the

appellant/accused No.2 shall be set at liberty forthwith, if not required in any other case.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

March 07, 2018
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