

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T.RAJANI

CRIMINAL APPEAL No.65 of 2012

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

The sole accused in Sessions Case No. 60 of 2011 on the file of the Court of the Additional Sessions Judge, Hindupur, is the appellant herein. He was tried for the offences punishable under Sections 302 and 380 IPC, for causing the death of one Sunkaiah on the intervening night of 12th and 13th July, 2010 and thereafter, committing theft of cash amounting to Rs.1,10,000/- and 7 tolas of gold ornaments worth Rs.1,80,000/-. By its judgment dated 11.07.2011, the learned Sessions Judge convicted the accused on both counts and sentenced him to suffer 'imprisonment for life' under Section 302 IPC and to suffer imprisonment for three years for the offence punishable under Section 380 IPC. Both the sentences were directed to run concurrently.

2. The case of the prosecution, as culled out from the evidence of the prosecution witnesses, is as under:

PW1 is the son of the deceased while PWs 2 and 3 are known to the accused and deceased. PW2 was running a hotel near the house of PW1, and the accused is none other than the son of the junior

paternal uncle of PW1. The case of the prosecution is that PW1 is doing rice business while the deceased was working as a carpenter. PW1, his wife and the deceased were residing together near Market Street at Dharmavaram and they are natives of Nyamaddela village of C.K.Palli Mandal who have settled down in Dharmavaram. By the date of incident, the wife of PW1 left to her parents' place for delivery and as such, PW1 and the deceased were alone present in the house. On 10.07.2010, the accused came to the house of PW1 and asked him to come along with him to Tirupathi. On 11.07.2010, PW1, along with the accused, went to Tirupathi leaving the deceased alone in the house. PW1 is said to have informed the deceased, in the presence of the accused, to be cautious about the gold and cash kept in the house. PW1 and the accused boarded the train at Dharmavaram railway station to go to Tirupathi. It is stated that the accused got down from the said train at Kadiri in order to bring a water bottle, but, later he told PW1 that he would not come to Tirupathi along with PW1, as he had some work. According to PW1, he alone went to Tirupathi in the same train. On 12.07.2010 evening, while he was returning from Tirupathi, he got down at Kadiri bus stand. At that time, PW2 called PW1 on his cell phone and informed him about the death of his father (deceased). At about 9 p.m., PW1 reached his house and found injuries on the person of the deceased. It appeared that the deceased was beaten with a wooden reaper. He also noticed theft of cash of Rs.1,10,000/- and 7 tolas of gold. Having regard to the

above, he lodged a report-Ex.P1 with PW7-the Circle Inspector of Police.

3. Basing on Ex.P1, a case in Crime No. 210 of 2010 came to be registered under Sections 302 and 380 IPC of Dharmavaram Urban Police Station. Exhibit P7 is the FIR. After registering the crime, PW7 rushed to the scene of offence and posted a guard at the scene, as it was late in the night. On the next day morning, i.e., on 13.07.2010, he brought a tracking dog from the clues team. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW5 and others, which is placed on record as Ex.P2. During the inquest proceedings, he examined PWs 1, 2, 3 and 4. Apart from that, he also prepared a rough sketch of the scene, which is placed on record as Ex.P8. During inquest, he found blood stains around the place, on the walls and clothes, and also found a broken thread meant for hanging clothes. He found the steel almirah meddled and opened forcibly, and also a blood stained wooden reaper at the scene. During inquest, he seized a railway ticket which exhibits that two adults travelled in the train from Dharmavaram to Tirupathi. The said ticket is marked as Ex.P9. He also seized the clothes of the deceased. After completing the inquest proceedings, the dead body was sent for postmortem examination.

4. PW6-the Civil Assistant Surgeon, Government Hospital, Dharamavaram conducted autopsy over the body of the deceased and issued Ex.P6-the Post Mortem Report. According to him, the

injuries 2 to 4 would be sufficient to cause the death of a person in ordinary course of nature.

5. During the course of inquest proceedings, a suspicion was entertained against the accused who is a close blood relative of the deceased as he was found absconding. On 14.07.2010, on credible information, PW7 went to Penukonda Railway Station and arrested the accused when he tried to run away on seeing the police. On interrogation, he is said have confessed about his involvement in the crime. Ex.P3 is the relevant admissible portion in the arrest mahazar of the accused. PW7 is said to have seized Rs.5,000/- from the accused, but, however, failed to mention the numbers of the said currency notes. Pursuant to the confession made, the accused led the police and mediators to Gasikavaripalli, Bukkapatnam Mandal and took out the concealed stolen property from a red box from a nearby Indiramma house belonging to them. On opening of the said box, they noticed gold ornaments. Ex.P5 is the Seizure Mahazarnama, which was also signed by the accused. Later, the accused led the police and mediators to Market Dharmavaram town, from where he took out the concealed weapon- blood stained hammer with wooden handle and M.O.7 Pidasani Chakka, which was recovered under Ex.P13. PW7 also seized the blood stained clothes of the accused-M.O.8 under Ex.P14.

6. After obtaining the FSL report, the successor of PW7 filed the charge sheet, which was taken on file as PRC No.30 of 2010 on

the file of Judicial First Class Magistrate, Dharmavaram. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 60 of 2011 on the file of Court of the Additional Sessions Judge, Hindupur. Basing on the material on record, charges for the offences punishable under Sections 302 and 380 IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

7. To substantiate their case, the prosecution examined PWs.1 to 7 and got marked Exs.P1 to P16 and M.O.1 to 8. 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 behalf of the accused in support of his defence.

8. Relying upon the evidence of PW1, coupled with the evidence of PWs 2 and 3, which establish the fact that the accused was last seen in the company of the deceased and also the recoveries made basing on the confession made by the accused, the trial court convicted the accused for the offences punishable under Sections 302 and 380 IPC. Challenging the same, the present appeal came to be filed through legal aid.

9. The learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution, even if established, do not form a

chain of events connecting the accused with the crime. She would further contend that the failure on the part of the prosecution in getting the gold ornaments marked or getting them identified in the court through PW1 raises a doubt as to whether these articles were really seized and whether these articles belong to the family of PW1. In the absence of the same, she would submit that the connecting link is missing and merely because the accused was seen in the company of the deceased at 7 p.m., that by itself cannot be ground to convict the accused.

10. On the other hand, the learned Public Prosecutor would contend that the fact that the panchanama was prepared after the seizure of gold ornaments at the instance of the accused, which is supported by PW5, the same is sufficient to say that the recovery of gold ornaments was at the instance of the accused. The fact that the court had returned the said articles to PW1 will further prove that these articles belong to the family of PW1. In view of the fact that the accused was last seen with the deceased at 7 p.m., and thereafter, recovery was made at the instance of the accused, he would submit that these two circumstances are sufficient to connect the accused with the crime.

11. The point for consideration is: whether the accused is responsible for the death of the deceased.

12. As seen from the record, there are no eye witnesses to the incident and the case rests on circumstantial evidence. It is well established that in case of circumstantial evidence, prosecution

has to prove each and every circumstance beyond reasonable doubt, and the circumstances so proved shall form a chain of events connecting the accused with the crime. Therefore, the question would be as to whether the circumstances relied upon by the prosecution form a chain of events.

13. It is an admitted fact that the accused is closely related to PW1 and the deceased. He is the son of the junior paternal uncle of PW1. It has come on record through the evidence of PW1 that the accused was regularly visiting the house of PW1. In view of their acquaintance, the accused is said to have asked PW1 to accompany him to Tirupathi, pursuant to which both of them boarded a train at Dharmavaram to go to Tirupathi. But, the accused got down at Kadiri. The fact that both of them boarded the train at Dharmavaram is established through the railway ticket, which is placed on record as Ex.P9. The evidence of PW1 is also to the effect that though the accused got down at Kadiri and did not accompany him further, he alone proceeded to Tirupathi and after having darshan of God, he was returned to his village on 12.07.2010. On the way, he is said to have received a telephone call from PW2, stating that the deceased died. PW1 reached home by night and then lodged a report on the next day. In the FIR given by PW1, it is stated that on 12.07.2010, while he was returning from Tirupathi, he got a call from PW2, stating that the deceased is unwell and he is vomiting. On which PW1 requested PW2 to take the deceased to the hospital. He further informed that the deceased is having money, which version finds place in the FIR

given by PW1. That being the position, the version given by PW1 in the FIR requires to be tested with the evidence of PW2.

14. In his evidence, PW2 deposed that he was running a tea stall near the house of the deceased. On 12.07.2010, at about 7 p.m., he claims to have noticed the presence of the accused and deceased in front of the house of the deceased and both of them were talking together and both went inside the house. Thereafter, he closed the hotel and went away. The next day morning, though he opened the tea stall in the morning, the deceased did not come out of the house till evening. Suspecting some foul play, he went to the house of the deceased, peeped through the grill of the house and found the deceased lying with injuries on his body. In his evidence, PW2 never stated as to the time when he saw both the accused and deceased together. Though PW2 was cross-examined, nothing useful came to be elicited.

15. PW3, who stays opposite to the house of PW1 stated that on 12.07.2010, he noticed PW1 and accused together at about 8 a.m., going to Tirupathi, and on the same day, he found the accused in the company of the deceased in front of the house of the deceased, both of them had tea and were talking to each other. After some time, the deceased and accused together entered the house of the deceased. Though, in the chief examination, PW3 did not speak about the time as to when he saw the accused and deceased together, in the cross-examination, it has been elicited that the accused came to the house of the deceased at 7 p.m.

16. From the evidence of the above two witnesses, the only circumstance which emerges is that both of them have claimed to have seen the deceased and accused together at about 7 p.m. on 12.07.2010. But the evidence of PW2, who is said to have seen the deceased lying with injuries, is silent as to the telephone call said to have been made to PW1, informing him about the ill-health and the death of the deceased. On the other hand, the evidence of PW1 shows that he received a call from PW2 about the health condition of the deceased, and on receiving such information, he requested PW2 to take the deceased to the hospital and also informed him about the money with the deceased. If the version in the FIR, which is now given a go-by, is accepted, it is clear that PW2 was in a position to take the deceased to the hospital. It is not the case of PW1 nor was it mentioned in Ex.P1 that the possibility of PW2 taking the deceased to the hospital would not arise, as the door was bolted from inside or that it was locked from outside. The contents of the FIR do not also indicate that initially, PW1 asked PW2 to take the deceased to hospital, and within no time, he received a call from PW2 that the deceased died. This circumstance throws any amount of doubt with regard to the conduct of PW1, more so, when he failed to mention this circumstance, in his evidence in court. IN other words, the evidence of PW1, that when he peeped through the window, he saw the deceased lying dead, is falsified by the evidence of PW1, as the evidence of PW1 shows that PW2 saw the deceased even while he was alive. If really PW2 was not in a position to go inside

the house, he would have expressed his inability in taking the deceased to the hospital when PW1 requested him to do so.

17. The other circumstance which is sought to be relied upon by the prosecution is the theory of accused and deceased being last seen in the company of each other. It is not the case of the prosecution that the accused was a stranger to the family of the deceased. On the other hand, it is clear from the evidence of PW1 that the accused used to visit the house of PW1 quite regularly and even on the morning of the date of incident, the accused came to the house of PW1. This fact gets ample corroboration from the evidence of PW1, who, in categorical terms, speaks about the accused visiting his house. Therefore, the circumstance of accused and deceased being seen at 7 p.m., and thereafter, both of them entering the house of the deceased, cannot be a vital circumstance to connect the accused with the crime, more so, in view of the evidence of PW2, who claims to have seen the deceased lying with injuries on the next day evening. Therefore, it is clear that there was a time gap of twenty hours between the deceased and accused being last seen and the time when the body of the deceased was traced.

18. The Apex Court, in BODHRAJ v. STATE OF J&K¹, while dealing with a case arising out of circumstantial evidence and more particularly with regard to the theory of last seen, held as under:

¹ (2002) 8 Supreme Court Cases 45

“31. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased, A-1 and A-2 were seen together by witnesses i.e. PWs 14, 15 and 18; in addition to the evidence of PWs 1 and 2.”

19. The learned Public Prosecutor tried to contend that it is not a case based only on the theory of last seen, and that there is ample evidence to show that recovery of gold ornaments made at the instance of the accused. It is true that subsequent to the confession made by the accused, the police were able to recover some gold ornaments in the presence of mediators under Ex.P5. But, strangely, these material objects were not produced before the court. At least, these ornaments were not subjected to any test identification parade proceedings during the course of investigation. No explanation is forthcoming from the prosecution as to why they have not adhered to the said procedure, so as to

establish the culpability of the accused in the crime, more so, when it is a case arising out of circumstantial evidence. Though the learned Public Prosecutor would contend that there is a reference to the gold ornaments in the mahazar and that the said ornaments were returned to PW1, unless these material objects were subjected to identification either during the course of investigation or at least during the trial, it is very difficult to say that these ornaments belong to PW1 and that these ornaments were recovered at the instance of the accused. Therefore, the said circumstance relied upon by the prosecution is not sufficient to connect the accused with the crime.

20. Coming to the recovery made, the prosecution has mainly relied upon the blood stained spade and the blood stained shirt of the accused. But, as seen from the record, the seizure of the blood stained shirt came to be made vide Ex.P10 and no separate proceedings came to be prepared at the time of seizure of proceedings. No independent proceedings were prepared, except the police proceedings which were conducted at the time of seizure. In fact, no independent witness was examined to speak to the said seizure. Even otherwise, the blood which is said to have been found could not be traced to that of the deceased. Similar is the recovery of spade used in the commission of the offence. The prosecution was not able to prove that the blood on the spade was that of the deceased.

21. In view of the above, we feel that the three circumstances relied upon by the prosecution are not proved and even if the theory of last seen is proved, that by itself, is not sufficient to convict the accused, in view of the judgment of the Apex Court, referred to above.

22. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 11.07.2011 in Sessions Case No.60 of 2011 on the file of the Additional Sessions Judge, Hindupur, for the offences punishable under Sections 302 and 380 I.P.C., is set aside and he is acquitted for the said offences. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case. Miscellaneous applications pending, if any, stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE SMT. T. RAJANI

27.01.2018
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