

THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No. 225 OF 2012

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973, is filed by the appellant/A.2 challenging the judgment, dated 16.02.2012, passed in S.C.No.167 of 2011 by the III Additional Sessions Judge (Fast Track Court), Adilabad at Asifabad, whereby, the Court below convicted A.2 of the offence punishable under Section 302 of I.P.C. and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs.1000/- and to undergo Rigorous imprisonment for six months, in default.

2. Heard the submissions of Smt. G.Vasundhara Reddy, the learned Legal Aid Counsel appearing on behalf of A.2, the learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The learned Legal Aid counsel appearing on behalf of A.2 would contend that the Court below relied on circumstantial evidence and convicted and sentenced A.2. The prosecution has relied on the evidence of P.Ws.1 to 4, who are highly interested witnesses. There is no voluntary extra judicial confession by A.2. A.1 in this crime was acquitted by the Sessions Court. There was no recovery of ornaments

belonging to the deceased Sharada. The Court below did not appreciate the facts and circumstances of the case in proper perspective and erroneously recorded conviction against A.2 and ultimately prayed to allow the Criminal Appeal by setting aside conviction and sentence imposed against A.2 for the offence under Section 302 of I.P.C.

4. The learned Additional Public Prosecutor representing the respondent-State would submit that there is cogent and convincing evidence to prove the guilt of A.2 for the offence under Section 302 of I.P.C. The evidence of P.Ws.1 to 4 is admissible under Section 30 of the Indian Evidence Act, 1872. Accused No.1 in this case was already acquitted by the Court of Session. The Court below has properly appreciated all the facts and circumstances of the case and convicted A.2 for the offence punishable under section 302 of I.P.C. basing on the material evidence on record. There are no omissions and contradictions in the evidence on record. There is ample evidence on record to prove the guilt of A.2 and ultimately prayed to dismiss the Criminal Appeal by confirming the conviction and sentence imposed against A.2 by the Court below.

5. In view of the above contentions put-forth by both the learned counsel, the points that arise for determination in this Criminal Appeal are:

1. Whether A.2 caused the death of the deceased Sharada ?

2. Whether the conviction and sentence recorded by the Court below against A.2 for the offence punishable under Section 302 of IPC is liable to be set aside?

6. The case of the prosecution is that the deceased Sharada and A.1 are wife and husband. Their marriage was performed on 14.05.2007. Thereafter, A.1 started harassing the deceased Sarada alleging that she had illegal intimacy with another person. About 8 days prior to the date of incident, the deceased Sharada was brought to her maternal home at Goegaon by her parents. On 14.09.2007, at about 06:00 PM, A.1 went to Goegaon in his auto and stayed for the night and on the next day morning at about 08:00 AM, he left from Goegaon village and telephoned the deceased Sharada and asked her to come to Asifabad Bus Stand. Accordingly, the deceased Sharada went to Asifabad Bus Stand and met her husband/A.1. On 16.09.2007, A.1 again came to Goegaon village and asked the parents of the deceased Sharada to send the deceased along with him. On that, the de-facto complainant (brother of the deceased Sharada), parents of the deceased and other villagers suspected some foul play by A.1 about the whereabouts of the deceased Sharada. After repeated questioning, A.1 confessed before them that he, along with A.2, took Sharada by his auto to the outskirts of Manikguda Forest Area, both of them committed rape on her, killed her by throttling and committed theft of silver and gold ornaments worn by her after causing death. A.1 further confessed that he would show the place of offence. On that,

all of them proceeded to the scene of offence and found the dead body of the deceased in thick bushes at Manikguda Forest area. While they were in shock and weeping, A.1 escaped from there. On a report lodged by P.W.1 (brother of the deceased), the police registered the crime, investigated into and filed Charge-sheet before the Magistrate concerned. The learned Magistrate has taken cognizance and committed the case to the Court of Session under Section 209 Cr.P.C., since the offence under Section 302 of I.P.C. is exclusively triable by the Court of Session. On committal, the learned Sessions Judge registered the case as S.C.No.167 of 2011 for the offences under Sections 302, 376, 379 and 201 read with 34 of I.P.C., and made over the case to the Court below for trial and disposal in accordance with law. The Court below framed charges under Sections 302, 376, 379 and 201 of I.P.C. against A.2, read over the same to him for which, he pleaded not guilty and claimed to be tried.

7. To prove the case of prosecution, P.Ws.1 to 14 were examined and Ex.P.1 – Original complaint, Ex.P.2 – 161 Cr.P.C., statement of P.W.2, Ex.P.3 – 161 Cr.P.C. statement of P.W.2, Ex.P.4 – Scene of offence panchanama, Ex.P.5 – Crime detail form, Ex.P.6 – Rough sketch map, Ex.P.7 – Inquest panchanama, Ex.P.8 – Signature of P.W.8 on confessional panchanama, Ex.P.9 – Signature of P.W.9 on confessional panchanama, Ex.P.10 – F.I.R., Ex.P.11 – P.M.E. Report, Ex.P.12 to P.17 – Photos, Ex.P.18 – Negatives, Ex.P.19 –

Confessional panchanama of A.2, Ex.P.20 – Recovery panchanama and Ex.P.21 – FSL Report, were marked. M.O.1 – Bangle pieces, M.O.2 – Ladies purse, M.O.3 – Small stone, M.O.4 – Small pipe, M.O.5 – Blood stained saree, M.O.6-Blood stained langa and M.O.7-Blood stained blouse were also marked.

8. When A.2 was confronted with the incriminating material appearing against him and examined under Section 313 of Cr.P.C, he denied the same and pleaded innocence. No oral and documentary evidence has been adduced on behalf of A.2.

9. P.W.1 is the brother of the deceased Sharada. His evidence reveals that A.1 along with A.2 (appellant herein) took his sister Sharada near Sunnambatti Manikguda forest, committed rape and murdered her. It is also his evidence that both the accused raped the deceased. It is also the evidence of P.W.1 that A.2 took away the gold ornaments of the deceased after the commission of rape and murder. The dead body of the deceased was shown to P.W.1 and others by A.1. A.1 also confessed commission of offence and took P.W.1 and others to the scene of offence, where the dead body of the deceased Sharada was found.

10. P.Ws.2 and 3 also deposed on same lines as P.W.1. Admittedly, P.Ws.1 to 3 are not eye-witnesses to the alleged murder and theft of gold ornaments belonging to the deceased. Their evidence is only hearsay evidence. A.2 did

not confess commission of offence either in the presence of P.Ws.1 to 3 or before any other person.

11. P.W.8 is cited as a mediator for the confession and recovery of M.Os.1 and 2-bangle pieces and ladies purse, respectively. He did not support the case of prosecution. There is no mention in his evidence that A.2 confessed commission of the offence and pursuant to it, M.Os.1 and 2 were recovered. Therefore, except hearsay evidence of P.Ws.1 to 3, there is no other evidence on record to connect A.2 with the instant case. In the course of submissions, it has come to the notice of this Court that no appeal was preferred by the State challenging the acquittal of A.1 in the instant case. Extra-judicial confession is weak piece of evidence. It is required to be acted upon with great care and caution. P.W.1 is none other than the brother-in-law of A.1 and brother of deceased Sharada. He is a highly interested witness. The evidence of P.W.1 corroborates the contents of Ex.P.1 –report lodged by him. Except the evidence of P.W.1, there is no other evidence to connect A.2 with the death of deceased. P.W.1 is not a direct witness to the commission of the offence by A.2. As per the prosecution case, A.1 alleged to have confessed commission of the subject death of deceased Sarada along with A.2. When all the material witnesses turned hostile and did not support the case of prosecution and when P.W.1 is brother of the deceased, it is unsafe to act on his evidence and hold that A.2 is responsible for death of

deceased Sarada. The prosecution has to prove the guilt of the accused beyond all reasonable doubt. There is no such evidence on record. In these circumstances, A.2 is entitled to benefit of doubt. The trial Court ought not to have convicted A.2 of the offence punishable under Section 302 IPC acting upon the evidence of P.Ws.1 and 2. Therefore, the conviction and sentence recorded against A.2 for the offence punishable under Section 302 IPC is liable to be set aside and A.2 are liable to be acquitted of the said charge.

12. In the result, the Criminal Appeal is allowed and the conviction and sentence recorded against A.2 for the offence under Section 302 of I.P.C. by the III Additional Sessions Judge (Fast Track Court), Adilabad at Asifabad, by judgment, dated 16.02.2012, passed in S.C.No.167 of 2011 are set aside. A.2 is acquitted of the offence punishable under Section 302 of IPC and he shall remain at liberty unless he is required in any other case.

P. NAVEEN RAO, J

Dr. SHAMEEM AKTHER, J

21st April, 2018
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