

THE HON'BLE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1107 of 2013

JUDGMENT: (Per Hon'ble Smt Justice T. Rajani)

This appeal is preferred by the appellant against the judgment of the Family Court cum VIII Additional District and Sessions Judge, Mahabubnagar in S.C.No.181 of 2013 dated 20.09.2013, convicting and sentencing him to undergo rigorous imprisonment for life and pay fine of Rs.1,000/- in default to undergo simple imprisonment for a period of four months for the offence under Section 302 of the Indian Penal Code and undergo rigorous imprisonment for three years and pay fine of Rs.500/- in default to undergo simple imprisonment for a period of two months for the offence under Section 380 IPC.

2. The facts, in brief, as reflected in the charge sheet, are as follows:

On 08.09.2012 at about 11 AM, a report was given by the complainant stating that on that day at about 8.30 AM, he went to Challapur on village visit duty. When he was present at the house of the Ex-Sarpanch, Sharanappa, A3 came along with two others and they asked A3 to tell the complainant what he told them before, about the death of the deceased. On that, A3 stated that on 04.09.2012 at about 3 .30 PM, A1 and A2 consumed toddy and saw the deceased sleeping in her house, in a drunken state, wearing gold gundla danda in her neck and the door was partly closed. They planned to commit theft of her gold gundla danda and entered into her house. A1 put his leg on her neck and pressed and then, her tongue protruded and she

was struggling, then A2 caught hold of her legs. A2 soaked a gunny bag in the water and gave it to A1, who put it on her face and smothered her to death. They took away the gold gundla danda and puste from her neck. On 05.09.2012 A2 disclosed the same to A3 and requested him to dispose of the gold ornaments, for which he demanded Rs.5000/- and promised to keep the offence in secret. On 06.09.2012, he gave Rs.50/- and directed them to go to Kosgi and to wait at Gandhi statue. Later, he also joined them and he tried to sell the gold ornaments in a shop where he mortgaged his wife's gold ornaments earlier, but the shop owner refused to purchase the ornaments. He returned the ornaments to them and promised to sell it in Narayanpet and supported them not to fear. On the same day, the body of the deceased was buried by her relatives. On 07.09.2012, he disclosed the matter to P.Ws.3 and 4 while in a drunken state. On 08.09.2012 at 8 AM, they both took him to the Patwari and Ex-Sarpanch. When the complainant asked A3 to come to the Police Station, he ran away. The complainant informed the same to the brother of the deceased and finally requested him to take necessary action.

Based on the above report, a case in Cr.No.54 of 2012 under Sections 302, 380, 414, 201 read with 34 of the Indian Penal Code was registered by L.W.17.

During investigation, the scene of offence panchanama was conducted and during panchanama, one gold piece, pertaining to gundla danda, 18 black beads and a gunny bag, used for commission of the offence were seized. The body was exhumed for the purpose of inquest and later, it was subjected to inquest and post mortem

examination. The post mortem examination report is to the effect that the death of the deceased was due to smothering. On 11.09.2012, A1 was apprehended and was brought to Doulthabad Police Station and his confessional statement was recorded. He lead the mediators to Jadavaraopally of Maddur Mandal, where A2 was taken into custody. While he was at his in-laws house, his confession was recorded and one gold puste and horizontal gold bits were recovered. On 22.09.2012, A3 was apprehended at Challapur and his confession was recorded. The test identification parade was conducted for the property. A1 to A3 were produced before the Court for judicial remand. The statements of the material witnesses were recorded and after concluding the evidence, charge sheet was laid against the accused for the aforesaid offences.

On appearance of the accused, the Judicial Magistrate of First Class, Kodangal took cognizance of the case under Sections 302, 380, 414, 201 read with 34 IPC and after complying with the legal formalities and as the case is exclusively triable by a Court of Sessions, committed the case to the Sessions Division, Mahabubnagar District by virtue of orders in PRC.No.15 of 2013. The learned Sessions Judge, in turn, made over the case to the Family Court cum VIII Additional District and Sessions Judge, Mahabubnagar for trial and disposal in accordance with law. On appearance of the accused before the Court below, the charges referred to above were framed and read over to the accused, to which the accused pleaded not guilty and claimed to be tried. During trial, in support of its case, the prosecution examined P.Ws.1 to 14 and got marked Exs.P1 to P15 and M.Os.1 and 5. After completion of the prosecution evidence, the accused were

questioned about the incriminating circumstances appearing in the prosecution evidence, when they were examined under Section 313 Cr.P.C. They denied the truth in the prosecution evidence and reported no evidence on their behalf.

3. The Court below, after considering the evidence and the material on record, passed the impugned judgment against which the present appeal is preferred on the following and other grounds that were urged at the hearing:

The Court below ought to have seen that there are no eye witnesses to the incident and there are several contradictions in the case of prosecution; it erred in convicting the accused only on the evidence of P.Ws.1 and 15 without any supporting evidence and it failed to consider the infirmities in the case of the prosecution. Based on the above, the appellant seeks this Court to set aside judgment of the Court below.

4. Heard the counsel for the appellant and the learned Public Prosecutor.

5. The counsel for the appellant contends that there is absolutely no evidence linking up the accused with the alleged offence. Recovery evidence is also very weak. The Court below convicted the appellant based on the alleged information given by A3, to all the witnesses, while acquitting A3 for all the charges.

6. Learned Public Prosecutor, on the other hand, contends that the evidence of the recovery witnesses would suffice to render support to

the evidence of the witnesses, who stated that A3 informed them about A1 and A2 committing the offence.

7. Based on the above arguments and material on record, we need to consider the following points:

1. Whether the information given by A3 to the witnesses inspires confidence and whether the same can be relied upon.
2. Whether the recovery of gold ornaments from A1 and A2 is proved beyond all reasonable doubt.
3. Whether the judgment of the Court below is sustainable.
4. To what relief.

POINT No.1:

8. The evidence of P.Ws.1 to 4 would show that the offence committed by A1 and A2 came to light through the information given by A3, with regard to A1 and A2 seeking his assistance to sell the gold ornaments, which were robbed from the body of the deceased. The information was not given to all the witnesses at the same time and at the same place.

9. P.W.1 is the Village Revenue Officer of Challapur village. According to him, A3 came to him while he was in the house of Ex-Sarpanch, Sharanaiah. He came along with P.Ws.3 and 4 – Nagappa and Rajappa and told him that A1 and A2 killed the deceased and snatched away the gold chain. A1 throttled the neck of the deceased with his legs and A2 held the legs of the deceased. They asked him to dispose of the gold. They went to Kosigi and made

efforts to sell the gold chain but in vain. A3 told P.Ws.3 and 4 about their efforts in selling gold chain. In turn, P.Ws.3 and 4 informed P.W.1 about the incident. A3 also made a confession before him in the same manner. He drafted a written complaint on 08.09.2012. The death of the deceased is stated to be on 04.09.2012.

In the cross-examination, it was pointed out that in Ex.P1, that portion regarding stealing away gold and jewellery, was incorporated in between two lines without giving normal gap and he admitted the same. His evidence does not show that he took A3 along with him, while lodging the report. He does not give any explanation as to why he did not take A3 along with him.

10. P.W.2 is the toddy vendor at Erlapalli. After the cremation of the deceased, A3 informed him, while he was in his shop, that A1 and A2 snatched the gold chain of the deceased and killed her. He told him that he witnessed the incident in which they killed the deceased. Then P.W.2 came to Challapur and informed the villagers, including P.Ws.3 and 4. Police recorded his statement. Three months after the incident, the police showed him the chain but they have not shown the other items. He identified the gold chain.

The witness does not state as to what identification he made with regard to the chain. Whether he identified it to be the gold chain or whether he identified it to be the chain belonging to the deceased, is not known. He simply stated that he identified the gold chain, which statement does not carry any meaning.

In the cross-examination, it was suggested to him that he did state before the police that A3 informed him about the involvement of

A1 and A2 in the death of the deceased. It was elicited that he did not find any external injuries on the body of the deceased, though he found blood oozing from the nose of the deceased.

11. P.W.3 is Nagappa, who was referred by P.Ws.1 and 2. His evidence is that one day after cremation of the dead body of the deceased, A3 took A1 and A2 to Kosigi, to sell the gold chain of the deceased and their efforts turned in vain. In the evening of the next day, A3 came to his house and informed him and P.W.4 that A1 and A2 asked him to assist in selling gold chain. On their phone call, P.W.1 came to panchayat office and about ten persons gathered there on the information of P.W.1. Police came to the village. A1 and A2 threatened A3 to see his end if he reveals their efforts in selling the gold chain. The said gold chain is stated to be belonging to the deceased.

In the cross examination, it was elicited that they did not suspect anybody for missing of the gold chain on the dead body. It was suggested that the deceased died by consuming adulterated toddy brought from the shop of P.W.2.

12. P.W.4 is Rajappa, who is another person, who came along with A3, to P.W.1. According to his evidence, A3 came to him while he was present at his house, at about 1 PM and told him that A1 and A2 killed the deceased. He took A3 to the village elders, including P.W.1.

In the cross examination, he stated that he was at his house alone, when A3 came to his house and he was not in a drunken state. He took A3 to the house of Sarpanch, Sharanaiah. Then P.W.1 was called to the house of the Sarpanch. Three of them were present in the

house of the Sarpanch, along with A3. On the same day, P.W.1 informed the police. On believing the version of A3, P.W.1 gave a complaint and they did not probe further.

13. The evidence of the above witnesses brings out several inconsistencies. The first lapse is with regard to A3 being produced before the police along with the report, whereas the evidence shows that A3 went to several persons canvassing about A1 and A2 killing the deceased, which is absolutely incomprehensible. The evidence of P.W.1 shows that P.Ws.3 and 4 came together along with A3, but the evidence of P.W.4 does not show that P.W.3 was along with him at any point of time. He does not even mention his name. According to him, himself, the Sarpanch – Sharanaiah and P.W.1 were the only three persons, who were present with A3. The time stated by P.W.4 is 1 PM, while the time stated by P.W.3 is in the evening. According to P.W.3, A3 came to his house and informed himself and P.W.4, which is not corroborated by P.W.4. P.W.2, who states that he is the person, who informed P.Ws.3 and 4 about the information given by A3, it is not referred to by either P.W.1 or P.W.3 anywhere in their evidence. The evidence of P.W.2 is as if A3 had made confession to him before he made the confession to anyone else. The manner in which A3 gave information to the above witnesses does not inspire confidence and as to what prompted him to reveal the acts of A1 and A2, while he also participated in the crime, by trying to sell the gold ornaments, cannot be deciphered from the evidence. Hence, the information given by A3, which suffers from unnaturality, cannot be solely relied upon.

The point is answered accordingly.

POINT No.2:

14. The witness, who spoke about the recovery of gold ornaments from the accused, is P.W.7. According to his evidence, A1 and A2 were present in the police station when he went to the police station, on the request of the police. It is recorded in the evidence that A1 and A2 told the villagers that they might have killed the deceased. This part of his evidence does not convey any meaning. When it is a confession, either they should state that they have killed or not killed. But the phrase 'that they might have killed' is strange. He also states that A1 and A2 did not show any property to them. However, he was declared hostile by prosecution.

15. The other witness is P.W.8. But his evidence is also not helpful in proving the recovery. He identifies M.Os.1 to 4, which are gold ornaments, but he does not speak about the gold ornaments being recovered from the accused, pursuant to their confession. P.W.9 is a witness for the identification of the gold ornaments by P.W.2. His evidence does not show that the test identification parade for the gold ornaments was conducted in accordance with Rule 35 of the Criminal Rules of Practice. There need not be any witness for the identification made by another witness, when the above rule is not followed. P.W.11, who is the Tahsildar, Doulthabad, during the relevant time, states that he conducted test identification parade for M.Os.1 to 4 and P.W.2 identified the same. His evidence also shows that Rule 35 is ignored. Hence, the evidence of recovery also does not help the prosecution in proving the case.

The point is accordingly answered.

POINT No.3:

16. Apart from the information given by A3 not being confidence inspiring and apart from the recovery evidence being shaky, the other evidence also seems to be weak. P.W.2 states that no external injuries were found on the body of the deceased. P.W.13, who is the doctor, who conducted post mortem examination, states that he found six injuries, which are mentioned in Ex.P13, post mortem examination report. The injuries are in the form of abrasions and contusions. P.W.13 further states that there is possibility of death due to the accidental smothering. But Ex.P13 does not offer any explanation as to how P.W.13 could arrive at the conclusion that the death was due to smothering, based on the injuries. The first injury is an abrasion on the right cheek; the second injury is scratch abrasion over upper part right side of neck below right medallion joint; the third injury is an abrasion below mandible of right eyebrow; the fourth injury is a contusion over upper 1/3 outer right leg; the fifth injury is a contusion scratch over the right fronto parietal region and the sixth injury is a contusion over inner side of middle part of lower lip. None of the above injuries can be connected to smothering. He does not notice any asphyxia, which could have, in all probability, been caused by smothering.

17. P.W.5 states that three days prior to the death, the deceased came to their shop and consumed one bottle of toddy and took away one more bottle of toddy. In the cross-examination, she clarifies that it is on Monday that the deceased consumed toddy and on Tuesday, she did not come to the shop. It was suggested to her that the

deceased died by consuming adulterated toddy. Coupled with the evidence of P.W.5, the evidence of P.W.8 would leave scope for assuming that the death might have been due to accidental smothering also. The above discussion would only point out numerous lapses that exist in the prosecution case. None of the circumstances clinchingly point towards the guilt of the accused. Hence, in view of the above circumstances, the benefit of doubt has to be extended to the accused.

The point is answered accordingly.

POINT No.4:

In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant-accused in S.C.No.181 of 2013 dated 20.09.2013 on the file of the Family Court cum VIII Additional District and Sessions Judge, Mahabubnagar are set aside. The appellant-accused is acquitted of the offences under Sections 302 and 380 IPC and he shall be set at liberty forthwith, if he is not required in any other case.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

T. RAJANI, J

September 27th, 2018

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith.

(B/o) DSK