

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MS. J. UMA DEVI

CRIMINAL APPEAL No.1548 of 2017

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

Assailing the judgment in Sessions Case No. 127 of 2016 on the file of the IX Additional District and Sessions Judge, Wanaparthi, acquitting the accused for the offences punishable under Sections 302 and 379 IPC, the present appeal came to be filed by the State of Telangana under Section 378(3) and (1) Cr.P.C.

2. The averments in the charge sheet show that on 25.08.2015, at about 0530 hours, the investigating agency apprehended the accused, who confessed about killing the deceased. Pursuant to the confession made, the accused lead the investigating officer and mediators to his house situated at Ramnagar Colony, Wanaparthi and produced gold and silver ornaments of the deceased, including two cell phones, which were seized by the investigating officer in the presence of the said witnesses. The charge sheet filed by the police was taken on record as PRC No. 2 of 2016 on the file of the Judicial Magistrate of First Class, Wanaparthi. As the offence is under Section 302 IPC which is exclusively triable by the Court of

Sessions, the same was committed to the Court of Sessions and the same came to be numbered as S.C.No. 88 of 2011 on the file of IX Additional District and Sessions Judge, Wanaparthi. After appearance of the accused, the Sessions Court examined him under Section 228 of the Code of Criminal Procedure, to which he pleaded not guilty and claim to be tried.

3. To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P13 and M.O.1 to 26. 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.

4. As seen from the record, there are no eye witnesses to the incident and the case is based only on circumstantial evidence. The prosecution has sought to rely upon the evidence of PWs 1, 2, 4, 7 and 9 to prove that the circumstances, so as to connect the accused with the crime. However, the trial court found that the evidence of PWs 1, 2, 4, 7 and 9 will not be of any help to the prosecution, as it only leads to the presence of the body of the deceased at the scene of offence. Coming to the recovery, the court believed the fact that by the time PW10 went to the police station, the accused was already in police custody. Therefore, the trial court disbelieved the confession and the recoveries made, on the ground that the confession made by an accused before a police

officer as inadmissible in evidence. Challenging the said acquittal, the present appeal came to be filed.

5. The learned Public Prosecutor would contend that the circumstances relied upon by the prosecution do form a chain of events connecting the accused with the crime.

6. Admittedly, this case is completely based on circumstantial evidence. The evidence of PWs 1, 2, 4, 7 and 9 is of not much help to the case of the prosecution, as their evidence is restricted to their finding the dead body at the scene of offence, witnessing the scene of offence panchanama and inquest over the dead body etc. The only evidence which require consideration in this case is the evidence of PWs 3, 6, 10 and 12.

7. PW3, who is admittedly the mother of the deceased, gave her evidence that her daughter, Vasantha (deceased) was given in marriage to one Narender, but, the marital life was not fruitful due to early death of Narender. According to PW3, even the parents of Narender denied share to her daughter and therefore, she filed a civil case against them in one of the Courts at Mahabubnagar. It is her evidence that about two years ago and on one day, which was a Saturday, she went to Mahabubnagar along with her daughter where some unknown persons made calls to her daughter. On enquiry with her daughter about the person making such calls, she replied that one person made a call to her and that she wants to meet him. So saying, she left her in the Court. On perusal of the evidence of PW3, there is nothing to suggest the role of the

accused in the commission of offence. Hence, the trial Court did not give any importance to her evidence. Even the evidence of PW4 is not helpful, as his evidence was that on one occasion he conducted a mediation between the said Vasantha and her in-laws regarding the property dispute.

8. PW6, in his evidence, deposed that about one and half years back, the accused came to Vasavi Gas Station in which he was working as a cashier and purchased petrol worth of Rs.80/-. But, in the cross examination, he admits that he did not issue any receipt to show purchase of petrol by the accused, nor he filed any documents to show his employment in the Gas station as a cashier. PW6 also admits in the cross examination about his incapacity to remember each and every customer, who visits the gas station every day. Such admission would throw any amount of doubt in the evidence. Moreover, it was not the evidence of PW6 that he has any acquaintance with the accused, so that he could identify him and remember him. Therefore, the trial court rightly disbelieved the evidence of PW6. Even PW12, i.e., the investigating officer admits in his cross examination about his failure to collect any receipts and other documents to show such purchase of petrol by the accused and also evidence showing PW6's employment as a cashier in the Gas station.

9. In the absence of any evidence, we hold that the circumstances relied upon by the prosecution remained un-proved

and they cannot be made the basis to reverse the findings given by the trial court.

10. Having regard to the above, the acquittal of the accused for the offences under Sections 302 and 379 IPC imposed by the IX Additional District and Sessions Judge, Wanaparthy in Sessions Case No. 127 of 2016 dated 07.07.2017 warrants no interference.

11. Accordingly, the Criminal Appeal is dismissed at the admission stage. Miscellaneous petitions pending, if any, stand closed.

06.02.2018
DMG



JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI