

*** THE HONOURABLE SRI JUSTICE G. SHYAM PRASAD**
&
THE HONOURABLE SRI JUSTICE M. VENKATA RAMANA

+ CRIMINIAL APPEAL No.874 of 2014

(Per the Hon'ble Sri Justice G. Shyam Prasad)

% DATE: 31-08-2019

Ragi Anjaiah @ Anji

.. Appellant

Vs.

\$ The State of A.P.,

Rep. by its Public Prosecutor.

.. Respondent

<Gist:

>Head Note:

! Counsel for the appellant : Sri K. Rambabu

^Counsel for respondent Nos.1 to 3 : Sri K. Srisai Sanjay

? CASES REFERRED:

1. (1991) CrI.L.J., 330 (SC)
2. (1999) (4) SCC 4861
3. (1991) CrI.L.J 989 (SC)
4. 1999 SCC (Cr) 358
5. AIR 2012 SC 1552
6. (1993) 1 Crimes 1192 (SC)

**HON'BLE SRI JUSTICE G. SHYAM PRASAD
AND
HON'BLE SRI JUSTICE M. VENKATA RAMANA
CRIMINAL APPEAL No.874 of 2014**

JUDGMENT:

(Per Hon'ble Sri Justice G Shyam Prasad)

This appeal is arising out of the Judgment dated 03.06.2014 in SC No.17 of 2014 on the file of the II Additional District and Sessions Judge, Kurnool at Nandyal, wherein, the appellant/A-1 was found guilty of the charges under Section 392, 302 and 201 r/w. 34 IPC , convicted and sentenced as under :

- (i) for the offence U/S 392, sentenced to undergo 10 years imprisonment and to pay a fine of Rs. 1000/-, and in default of payment of fine to suffer simple imprisonment for a period of one month;*
- (ii) for the offence under Section 302 IPC to undergo 'imprisonment for life' and to pay a fine of Rs.2,000/- and in default, to suffer simple imprisonment for a period of two months; and*
- (iii) for the offence under Section 201 read with 34 IPC to undergo imprisonment for two years and to pay a fine of Rs.500/- in default, to suffer simple imprisonment for a period of 15 days.*

2. The case of prosecution is that on 26.2.2013 at about 4.00 p.m. there were rumours in Mahadevapuram by villagers about lying of an unknown female dead body in Lodddivagu hillocks of Nallamala forest area. P.Ws.1 and 2 went to the scene of offence at about 6.00 p.m. and traced out the dead body of unknown female, aged about 50 years having blood stains on her face. P.W.1 returned to the village and sent L.W.5 Pikkili Chanti Narasimhulu to the scene of offence and kept both P.W.2

and the said Chanti Narasimhulu to safeguard the dead body at scene of offence. On 27.2.2013 at about 9.00 a.m. P.W.1 presented a written complaint to Sirivel Police Station and the Inspector of Police, registered the complaint as a case in crime No.12 of 2013 for the offences punishable under Section 302, 392, 376, 201 r/w. 34 IPC. After completion of investigation, the police filed charge sheet and the learned Judicial Magistrate of First Class, Allagadda took the case on file and numbered as PRC No.62 of 2013 against the accused. After furnishing copies to the accused, the PRC was committed to the Court of Sessions, Kurnool and in turn, the PRC was made over to the Court of III Additional District and Sessions Judge, Kurnool at Nandyal.

3. On appearance of the accused, charges under Sections 392, 376, 302, 201 r/w 34 IPC have been framed against him, read over and explained in Telugu language and he pleaded not guilty and claimed to be tried.

4. On behalf of the prosecution, PWs.1 to 12 were examined and got marked Exs.P1 to P20 and MOs.1 to 7.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C.by explaining the incriminating circumstances appearing against him in the prosecution evidence, which he denied as false. The accused has not adduced any oral or documentary evidence.

6. The point for consideration in this appeal is **whether the prosecution proved the guilt of accused beyond reasonable doubt?**

7. Heard learned counsel for the appellant and learned Public Prosecutor appearing for State.

8. Learned counsel for appellant submits that this is a case based on circumstantial evidence. The prosecution has miserably failed to bring home the guilt of the accused beyond all reasonable doubt. The findings of the learned Sessions Judge are not based on the evidence available on record. The circumstances appearing against the accused do not connect the accused with the crime. Therefore, the accused is entitled for benefit of doubt.

9. According to prosecution, this is a case of murder of a female that took place in a forest area. On tracing the dead body, the investigation has been commenced. The entire case of prosecution is based on circumstantial evidence. The circumstances are as follows:

1. Last Seen Theory
2. Extra Judicial Confession of Accused No.1
3. Recovery of material objects.
4. Identification of accused
5. Identification of property

1. Last seen theory :

10. According to prosecution, PW.4 is a stranger to the deceased and he was running liquor shop in the street. He says in his evidence that he saw the accused going with the deceased in an auto. The Test Identification Parade was conducted for identification of the accused A1 and in which PW.4 identified A1 and a juvenile offender.

11. In fact, the deceased went in search of his brother by showing his photograph to several persons and seeking the help for tracing his brother. She went to a shop of PW.4 and showed the photograph of his brother A-1 and a juvenile boy who took her in an auto to the forest in order to show her brother.

12. If the evidence of PW.4 is evaluated- PW.4 is the last seen witness. In fact, he saw the accused and Juvenile boy going along with the deceased lady together on 25th February 2013. In fact, as per his testimony on that day between 5.30 to 6.00 p.m. an old woman aged about 50 to 60 years came to his shop and showed her missing younger brother's photo and enquired about his whereabouts. Then the accused Anji came along with another person Bujji who was aged about 14 or 15 years and told that they saw the person in the photograph at Kotakonda village and informed her that if she gives money to them they will take her to that village. She went along with them in an auto towards Gajulapalli side.

13. Thereafter, he has not seen the deceased again. Later police came to them showing the photo of the dead body of the said woman and enquired the matter. PW.4 stated that they have identified the said woman in the photo.

14. If really PW.4 had seen the deceased, he would have given the descriptive particulars of the deceased, like her colour, dress, height and any other striking features in her face. The defence has cross-examined on this aspect wherein PW.4 has clearly admitted that he did not give any descriptive particulars of the deceased woman to the police. Therefore, the very identification of the deceased by PW.4 becomes doubtful and thereby the very genesis of the involvement of the accused in the crime becomes doubtful.

15. In fact, no Test identification parade was conducted for identification of the deceased lady, who went with the accused in an auto, at least by showing her photographs, except showing the photograph of the dead body of the deceased. Admittedly, PW.4 could not give the identification marks of the deceased. Therefore, there is a doubt as to the identity of the deceased who had accompanied accused.

16. Therefore, there was no possibility for PW.4 referring to deceased going with accused in an Auto. The test identification parade was not conducted by prosecution for identity of the deceased by PW.4. Therefore, the identification of the deceased by PW.4 adversely effects the last seen theory.

2. Extra judicial confession :

17. The prosecution entirely relied on the extra judicial confession made by the accused in the presence of PW.6 under Ex.P.3. A perusal at the extra judicial confession Ex.P.3 does not inspire any confidence to believe that it was made voluntarily by the accused, as the very language used in drafting of the complaint, and the length of the Panchanama-Ex.P.3 makes it unbelievable. A reading of the Panchanama-Ex.P.3 clearly reveals that it was drafted by an expert and it does not appear that it was in the words of the accused.

18. The very foundation of the case of the prosecution rests on the theory of last seen together, the extra judicial confession and the recovery. The very theory of last seen together is demolished as it was elicited in the cross examination that PW.4 could not even give the descriptive particulars of the deceased. In fact, the deceased went in search of his brother showing his photograph to everyone and enquired about the deceased. The accused have seen the deceased only at the time of her enquiry about the deceased. To test the memory of P.W.4, Test Identification Parade was not conducted. The very testimony of PW.4, therefore, cannot be believed and hence, the entire case of the prosecution falls to ground. Therefore, the Prosecution failed to prove the guilt of the accused beyond reasonable doubt for the offence punishable under Sections 302, 392 and Section 201 r/w 34 IPC.

3. Recovery of material objects :

19. The recovery of the material objects—Mos. 4 and 5 do not incriminate the accused solely on the basis of the recovery. There must be corroborative evidence apart from the recovery of material objects. The material objects are commonly available in the market. The material Object No.6 is Cash of Rs.900/- can be planted since the serial number of currency has not been noted during investigation. In the similar manner, the Red Colour Disco Chain with Silver Wire can also be planted as it is commonly available material in the market and it has no distinctive identification marks that they belong to deceased only. Such articles can easily be planted to prove the case of the prosecution. PW.3 is said to have identified the material objects as they belong to his mother. He being the son of the deceased, he is an interested witness. Therefore, his evidence in the light of the said recovery is not reliable.

20. On evaluation of the evidence it appears that to prove the recovery of material objects satisfactorily. The material objects have been seized at the instance of A-1 and the juvenile. The police seized MO.1 blue colour blouse, MO.2- Yellow saree, MO.3-petty coat, MO.4-is the rold gold ear studs, MO.5- red colour disco chain with silver wire, MO.6-cash of Rs.900/- and MO.7-four metal bangles in the presence of mediators under the cover of confessional panchanama.

21. The recovery of material objects from the accused raises any amount of doubt as to why the accused has stolen those articles, which are of no value as they are rold gold articles. It is pertinent to note that the material objects are commonly available articles in the market. The cash stolen by the accused is Rs.6000/- but Rs.900/- is recovered. The number on the currency notes is not mentioned. It is elicited from the cross-examination of PW.6 that the accused was stranger to him and that the Inspector of Police has seized Rs.500/- cash from the possession of the accused and MO.5-chain and rest of the money under M.O.6 seized from the possession of the accused.

4. Identification of accused :

22. Learned counsel for the appellant submits that though the accused are said to have been identified by PW.4 in the Test Identification Parade conducted by PW.12-II Additional Junior Civil Judge, Tirupati in view of the doubt with regard to PW.4 identified the deceased lady going accused raises any amount of doubt with regard to involvement of the accused in the commission of offence. In this regard, it is obvious that the last seen theory itself has not been proved by the prosecution and therefore the identification of the accused in the Test Parade Identification loses its significance.

5. Identification of property :

23. The other circumstance relied on by prosecution is about the identification of property by PW.3. The Test Identification Parade for property MOs.4 & 5 was conducted by PW.7. PW.3, who is the son of deceased had identified the Material Objects- MOs 4 & 5, as the belongings of his mother. PW.7 is the V.R.O., in whose presence the panchanama was conducted for identification of the material objects under Ex.P.4. The MOs.4 and 5 are Rold Gold Ear Studs and Red Colour Disco Chain with Silver Wire alleged to have been seized in the presence of PW.7. In the Test Identification Parade of the property, PW.3, who is son of the deceased identified the material objects as they belong to the deceased.

25. Mr.V.Raghu, is appointed as Legal Aid counsel, who assisted us in this case and we appreciate the efforts made by him in advancing arguments on behalf of appellant in this appeal.

26. On consideration of the material on record, the prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubt. The circumstances appearing against the accused discussed above have not been proved. There is no connecting link the chain of circumstances to prove the guilt of the accused.

27. In **S.D. Soni V. State of Gujarat**¹, it was held that in case of murder in which the conclusion of guilt is drawn by prosecution it must be fully established beyond all reasonable doubt and consistent with the guilt of the accused.

28. In **Arvind v. State (Delhi Admn.)**² it was held that chain of evidence must be complete with fully established circumstances not to leave any reasonable ground for a conclusion consistent with the innocence of accused.

29. In **Kedar Nath v. State of Madhya Pradesh**³, it was held that when there was no evidence as to how death came about, evidence relating to charge of murder was held to be insufficient and unacceptable.

30. In **State of Haryana v. Pradeep Kumar**⁴, it was held that evidence that gun of brother of deceased placed beneath pillow was removed from that place indicate participation in crime.

31. In **Brajendra Singh v. State of Madhya Pradesh**⁵, wherein it was held that circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis, i.e., the guilt of the accused. The circumstances should be conclusive and proved by the prosecution.

¹ (1991) Cr LJ 330 (SC)

² (1999 (4) SCC 4861

³ (1991) Cr LJ 989 (SC)

⁴ 1999 SCC (Cr) 358

⁵ AIR 2012 SC 1552

32. In **A.M. Kunnikoya v. State of Kerala**⁶, wherein it was held that it is well settled that if the evidence of the eye-witnesses are held to be reliable and inspire confidence then the accused cannot be acquitted solely on the ground that some superficial injuries found on the person of the accused concerned, had not been explained by the prosecution.

33. In the result, this Criminal Appeal is allowed, setting aside the conviction and sentence recorded against the Appellant in S.C.No.17 of 2014 on the file of III Additional District & Sessions Judge, Kurnool at Nandyal, for the charges under Sections 302, 392 and Section 201 read with 34 IPC, and the accused No.1 is acquitted. The Accused shall be released forthwith if he is not required in any other crime.

Miscellaneous petition, pending if any, shall stand closed.

JUSTICE G. SHYAM PRASAD

JUSTICE M. VENKATA RAMANA

31.08.2019
Eha/Gvl/Mjl/*

⁶ (1993) 1 Crimes 1192 (SC)

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