

(2013) 1 ALT(Cri) 98

Andhra Pradesh High Court

Case No: Criminal Appeal No. 127 of 2008

Daniyala Venkata Santi
Sagar

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: Nov. 17, 2011**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 30, 302, 380, 394, 411

Citation: (2013) 1 ALT(Cri) 98**Hon'ble Judges:** R. Kantha Rao, J; A. Gopala Reddy, J**Bench:** Division Bench**Advocate:** B. Parameswara Rao, for the Appellant;**Final Decision:** Allowed

Judgement

A. Gopala Reddy, J.

The appellant-sole accused was tried for the offences under Sections 30, 380 and 411 IPC in Sessions Case No. 69 of 2006 on the file of the Metropolitan Sessions Judge-cum-1 Additional District and Sessions Judge, Visakhapatnam, and convicted for the offence u/s 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for one month. However, in view of the conviction u/s 302 IPC, no finding was recorded for the offences under Sections 380 and 411 IPC. The prosecution story as against the accused as unfolded before the trial Court is stated briefly as under:

On Kandregula Bhoolokamma (for short the deceased), who is the mother of P.W. 1, was residing alone in her own house at Chinagantyada High Way Road, Gajuwaka. The appellant-accused used to help the deceased in cooking and attending to other works. P.W. 2 was residing in the first floor portion of the house of the deceased as a tenant. While so, on 28-11-2005 between 9.30 or 10.00 a.m., one Mohd. Azeez (P.W. 3) went into the house portion of the deceased to switch on the motor and noticed the deceased

lying in a pool of blood with injuries and then, he informed the same to P.W. 2, who in turn informed the same to P.W. 1 and within 10 minutes thereafter, P.W. 1 and his brother Ganesh and L.W. 3-Uma reached the place of occurrence and witnessed the deceased with injuries and shifted her to a hospital Chainagantyada and from there to Care Hospital. At about 9.00 p.m. on 29-11-2005, P.W. 1. lodged Ex. P-1 report, on which basis, P.W. 12 registered a case in Crime No. 463/2005 for the offence u/s 394 IPC under Ex. P-12 FIR and forwarded the same to the Court. P.W. 12 visited the scene of offence and as it was late night, he posted a guard and secured the presence of P.W. 1, and recorded his statement and visited Care hospital, where the deceased was undergoing treatment. On the next day, he visited the scene of offence along with P.W. 11 and another and observed the scene of offence and prepared an observation report i.e., Ex. P-11 and seized M.O. 5-blood stained flooring and control flooring and got the scene of offences photographed. He arrested the accused on 11-12-2005 in the presence of mediators and recovered M.Os. 1 to 4 from his possession and referred the accused to the Government Hospital, as there was an injury on his index finger. On receipt of the report under Ex. P-2 from P.W. 1 about the death of the deceased while undergoing treatment in KGH Hospital, P.W. 12 filed a memo before the Court altering the section of law into Sections 302, 380 and 411 IPC. Ex. P-14 is the alteration memo and he visited the KGH in the presence of blood relations and mediators. Ex. P-8 is the inquest report. P.W. 10-Doctor conducted post mortem examination of the deceased and issued Ex. P-10 stating that the deceased would appear to have died of head injury, fracture skull-intracranial hemorrhage and injury to brain associated with other multiple injuries. After receipt of FSL report under Ex. P-15 and the post mortem certificate and on completion of the investigation, P.W. 12 filed charge sheet before the III Additional Chief Metropolitan Magistrate, Visakhapatnam and on committal of the case to the Court of Sessions, the same was taken on file as S.C. No. 69 of 2006 and charges for the offences under Sections 302, 380 and 411 IPC were framed against the accused and read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

2. In order to substantiate its case, the prosecution examined as many as 12 witnesses as P.Ws. 1 to 12 and got marked Exs. P-1 to P-15 and M.Os. 1 to 5 material objects. After completion of the prosecution evidence, the accused was subjected to 313 Cr.P.C. examination and he denied the same and he had not chosen to lead any oral or documentary evidence.

3. On appreciation of oral and documentary evidence, the learned Sessions Judge found the accused guilty of the charge u/s 302 IPC and convicted and sentenced him as stated supra.

4. Learned Counsel for the appellant contends that there is delay of more than 36 hours in lodging the complaint by P.W. 1 and that none of the witnesses speaks that the accused was the person who was present in the house along with the deceased and was helping her on the date of the incident or on the previous day and further M.Os. 1 to 4 were not identified by any of the witnesses and there is no credible evidence on recorded

to connect the accused with the commission and therefore, the conviction recorded by the Court below is liable to be set aside.

5. On the learned Public Prosecutor contends that the Court below has appreciated the evidence in a right perspective and it has rightly concluded that the accused is guilty of the offence and liable for conviction and therefore, the judgment of the Court below needs no interference.

6. P.W. 1, who is the son of the deceased, stated that the accused used to work under his mother for cooking food and attending to some other work and on 28-11-2005 his mother was killed and by that time, the accused was not working under his mother and that P.W. 1 was residing at Sramikanagar, Gujuwaka and on receipt of information on 28-11-2005 through P.W. 2, he rushed to the place of occurrence along with his brother and sister-in-law and found his mother with injuries and noticed ear studs. Mati and Push the lathadu missing and immediately, they shifted the deceased to a hospital at Chinagantyada from there to Care hospital and lodged a complaint before the police under Ex. P-1 and that his mother succumbed to injuries while undergoing treatment and he informed the same under Ex. P-2 and he was examined by the Inspector on two occasions and he was present at the time of inquest over the dead body of the deceased. In cross-examination, he deposed that he came to know that the accused was in police station on 29-11-2005. But, he had not seen him in the police station and that there are no specific identification marks on M.Os. 1 to 4, but on seeing M.Os. 1 to 2, he can identify them.

7. P.W. 2, who is the tenant of 1st floor portion of the house of the deceased, deposed that the accused was helping the deceased in cooking and attending to other work. He further deposed that one Mohd. Azeez was working under him as a sales man and about a year ago, at about 9.30 or 10 a.m., Mohd. Azeez went into the house portion of the deceased to switch on the motor and immediately returned and informed them that the deceased was with injuries and lying in a pool of blood and immediately he went there and saw the deceased with injuries and then, he informed about the same to P.W. 1 and his brother and within 10 minutes, P.W. 1 and brother-Ganesh and Uma reached the place of occurrence and witnessed the deceased with injuries and shifted her to hospital from there to Care Hospital. He deposed that he found the gold ornaments viz., ear studs of deceased missing, and also noticed the household articles in pell-mell condition.

8. P.W. 3 who was working in the shop of P.W. 2 as a salesman, stated about informing the death of the deceased to P.W. 2. In his cross-examination, he deposed that the deceased removed the accused from service as he was not cooking food properly and in time and he does not know as to how the deceased received injuries.

9. P.W. 4-photographer stated that he took photographs at the scene of offence and Ex. P-2 to P-5 are the photographs along with negatives.

10. P.W. 5-is the mediator to the report prepared under Ex. P-6. He stated about the recovery of M.Os. 1 to 4 from the accused on 1-12-2005.

11. P.W. 6, who weighed gold ornaments, speaks about the accused accompanying the police. He deposed that he weighed M.Os. 1 to 4 and gave weight particulars in writing under Ex. P-7

12. P.W. 7 speaks that on the date of the incident, he was a watchman to the shop of one P. Ramu, which is in front of the shop of P.W. 2 and he used to stay at the shop as watchman from 7 p.m., to 7 a.m. He deposed that on the date of incident, he saw the accused coming out from the house of the deceased during early hours. He also deposed that he does not know as to how the deceased received injuries and died and that he cannot see the distant objects unless person comes nearer to him due to old-age and that the shop where he is working as watchman is at a distance of 50 yards. He further deposed that he did not inform the children of the deceased about noticing, witnessing the accused coming out of the house of the deceased on the date of incident in the early hours and on that day, he did not inform the same to anybody.

13. P.W. 9-Doctor, who examined the accused and issued Ex. P-9 certificate stated that the age of injury is about one week prior to his examination.

14. P.W. 10-Doctor, who conducted post mortem examination over the dead body of the deceased, deposed that he found as many as 20 injuries and issued Ex. P-10 post mortem certificate. P.W. 11 is the mediator to the observation report.

15. P.W. 12-Investigating Officer arrested the accused on 1-12-2005 in the presence of the mediators and recovered M.Os. 1 to 4 from his possession. He admitted in the cross-examination that in Exs. P-3 to P-5 photographs M.O. 5 is not seen and in Ex. P-13-rough sketch of the scene of offence also the place from where M.O. 5 seized, was not shown. He admitted that there is delay of 24 hours in giving FIR in the present case and he denied the suggestion that by the time of P.W. 1 giving Ex. P-1 report, the accused was in his custody. He did not get identified M.Os. 1 to 4 in test identification parade by any witness.

16. Admittedly, P.W. 1- son of the deceased is residing away from the deceased. According to him, the accused used to work under his mother and as on the date of incident, the accused was not working under his mother, whereas P.W. 2, who is the tenant in the first floor stated that the accused was helping the deceased in cooking and attending to her other works. P.W. 3 who was working under P.W. 2 deposed that the deceased removed the accused from service on the ground that he was not cooking food properly. The evidence of P.Ws. 1 to 3 clearly establishes that the accused was not working in the house of the deceased as on the date of the incident.

17. P.W. 5 stated that he is one of the mediators to Ex. P-6 report, under which the police recovered M.Os. 1 to 4 from the accused on 1-12-2005. The evidence of P.W. 1, who

lodged the report at about 9.00 p.m. on 29-11-2005, deposed in his cross-examination that he came to know that the accused was in police station on 29-11-2005 but he had not seen him in the police station. This evidence clearly probabilises that on recovery of gold ornaments from the accused, a report has been taken from P.W. 1 at 9 p.m., on 29-11-2005. Even in the said report, it is stated that some unknown person beat the deceased and forcibly snatched away the gold ornaments viz., ear studs, Chempaswaralu and gold chain worth about Rs. 18,000/-. Further, P.W. 1 or his brother or the daughter of the deceased did not identify M.Os. 1 to 4 gold ornaments of the deceased-mother. P.W. 12-Investigating Officer admitted that he did not get identified M.Os. 1 to 4 in test identification parade by any witness. The gold ornaments recovered in the present case are common in every house. Merely because they were recovered from the accused, it cannot be taken as a basis for convicting the accused for commission of murder having regard to the fact that those ornaments were not identified by any of the witnesses as that of the deceased. Therefore, it is not sufficient to connect the accused with the commission of the offence, in the absence of identification of the said ornaments by any of the witnesses.

18. The evidence of P.W. 7 is very inconsistent and it does not support the case of the prosecution because P.W. 7 clearly stated in his evidence that he cannot see any distant objects. In the same breathe, he stated that on the date of the incident, he saw the accused coming out from the house of the deceased and he did not inform the said fact to the children of the deceased or anybody. The testimony of P.W. 7 does not appear to be a bona fide and trustworthy and therefore, much weight cannot be attached to it.

19. There is no dispute as to the death of deceased and the missing of gold ornaments on the body of the deceased. Even the M.Os. seized by the police, which are said to have been belonging to the deceased, are not identified by any of the family members. At the same time, it is apparent on the face of the record that the accused was not working under the deceased. If that being the case, in the absence of any iota of evidence, liability of a grave offence of this nature could not be fastened on the accused. Viewed in any angle, we are of the considered opinion that even there is no circumstantial evidence to connect the accused with the offence in question and therefore, the calendar and judgment of the Court below are liable to be set aside. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed by the Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge, Visakhapatnam, against the appellant-accused for the offence u/s 302 IPC in S.C.No. 69 of 2006, dated 16-5-2007 are hereby set aside. The appellant-accused shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any paid by him, shall be refunded.