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Shaik Feroz Khan Vs The State of Andhra Pradesh

Criminal Appeal No. 1771 of 2009

Court: Andhra Pradesh High Court

Date of Decision: March 13, 2014

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 174#Penal Code, 1860 (IPC) â€" Section 302

Citation: (2014) 03 AP CK 0043

Hon'ble Judges: M.S.K. Jaiswal, J; L.N. Reddy, J

Bench: Division Bench

Advocate: Nazeer Khan, Advocate for the Appellant

Judgement

L. Narasimha Reddy, J.
The appellant herein is the accused in S.C. No. 327 of 2008 on the file of the Principal Sessions Judge,

Warangal. He was tried for the offence of causing death of one Mohd. Rahmath Khan on 30.10.2007 at 17.30 hours. The trial Court, through its

judgment, dated 09.11.2009 convicted the accused for the offence punishable u/s 302 IPC and sentenced him to undergo imprisonment for life

and to pay a fine of Rs. 25,000/- and in default to undergo simple imprisonment for VA years.

2. The sequence of events, as provided by the prosecution, to connect the death of the deceased with the accused, is as under:

Sameena Begum - P.W.-2 is from Charbouli area of Warangal. As many as three persons i.e. the accused, the deceased and another person, by

name, Afroz Khan, are said to have fallen in love with that woman. Ultimately, the marriage of P.W.-2 took place with the deceased, who is the

brother of P.W.-1 and bother-in-law of P.W.-3.

3. According to the prosecution, the accused wanted to discuss the matter pertaining to the relationship between Afroz Khan and P.W.-2, with the

deceased and in that context, he telephoned P.W.-8, another brother-in-law of the deceased, to hand over his phone to the deceased and asked

him to go over to Warangal on 30.10.2007. Acceding to the request, the deceased is said to have come to Warangal. The accused and the

deceased are said to have proceeded to the Waddepally tank, after purchasing a quarter bottle of Bag Piper Whisky, and Gutkha. After some

conversation, the accused is said to have pushed the deceased into the water and not conversant with the swimming, the deceased is said to have

died.

4. P.W.-7 is said to have noticed the dead body in the tank when he want there to answer the nature call and he, in turn, informed the matter to

P.W.-5, a photographer. Both of them are said to have conveyed the message to the Station House Officer, Subedari - P.W.-15. The body is said

to have been recovered and on finding a notebook in the pocket of the deceased, which contains the telephone number of P.W.-4, P.W.-15 is

said to have contacted that gentleman. Thereafter, it emerged that the deceased is the brother of P.W.-1 and message was given to him. P.W.-1

submitted a complaint - Ex. P-1 narrating the entire sequence of events. The scene of offence panchanama was prepared, inquest was conducted

and post mortem was arranged. The accused is said to have made an extra judicial confession before P.W.-10. Taking that and other aspects into

account, P.W.-17 filed charge sheet.

5. The trial Court framed charge and on denial of the same, the trial was conducted wherein P.W.s.1 to 17 were examined and Exs. P-1 to P-18

were filed and M.Os.1 and 2 were taken on record. Exs. D-1 to D-6 were marked on behalf of the defence.

6. Sri Nazeer Khan, learned counsel for the appellant - accused, submits that the case of the prosecution is based only upon imaginations and there

is nothing on record to prove the presence of the accused at the place of occurrence much less his involvement in the death of the deceased. He

contends that the link, sought to be provided through P.W.-8 is totally inadequate, since he has categorically stated that he is not acquainted with

the accused, nor any person was examined to disclose that the deceased ever met the accused. He further submits that once the marriage of P.W.-

2 was performed with the deceased, there was no question of the deceased or for that matter, Afroz Khan discussing anything about their

relationship with P.W.-2. Learned counsel submits that the sole basis for P.W.-15 to contact P.W.-4 is beyond imagination since the question of a

paper being intact after it was in the water continuously for more than two days, does not arise. He submits that the trial Court went mostly by the

conjectures and has stretched the circumstances beyond the permissible limits, to convict the accused. He further submits that the alleged extra

judicial confession said to have been made before P.W.-10 is not at all legally admissible.

7. Learned Assistant Public Prosecutor submits that though there were no clues when the dead body of the deceased was noticed, as and how the

investigation progressed, the suspicion was pointed out towards the accused and ultimately, on the basis of the evidence on record and the

confession of the accused his involvement was proved to the satisfaction of the Court. She submits that the accused had a clear motive to liquidate

the deceased since P.W.-2 married the deceased in preference to him.

8. The death is said to have taken place around 5.00 p.m. on 30.10.2007. This however, was assessed on the basis of the condition of the body.

The dead body is said to have been noticed first by P.Ws.5 and 7 and thereafter, the information was passed on to P.W.-15. The case was

registered soon after receipt of the information u/s 174 Cr.P.C. No person, much less the accused, were named in it.

9. The manner in which the prosecution sought to link the accused to the crime is indeed farfetched. P.W.-15 is said to have noticed a notebook in

the pocket of the deceased and it is with the telephone number that was present in the notebook, that he is said to have contacted P.W.-4.

Surprisingly, the notebook was not preserved nor it was made part of record. One just cannot imagine that a piece of paper drowned in the water

for a period of two days, would reflect anything written upon it.

10. P.W.-4 is said to be acquainted with the deceased and his other relatives. On the basis of that, P.W.-1 and others are said to have been

alerted. P.W.-1 filed Ex. P-1. He narrated the sequences of events. He is the brother of the deceased. According to him, the deceased and one

Mr. Afroz Khan fell in love with P.W.-2 and out of them, it is only the deceased who married P.W.-2. Though P.W.-1 and deceased are natives

of Wrangal, the deceased and his wife P.W.-2 are said to have shifted to Jammikunta where P.W.-8, brother-in-law of P.W.-1 and the deceased

were living. P.W.-3 is another brother-in-law of P.W.-1. It was mentioned in Ex. P-1 as well as in the evidence of P.W.-1 that P.W.-8 received a

call on 30.10.2007 on his cell phone from a stranger and on being asked, he gave the mobile to the deceased. The deceased is said to have been

asked by the caller on the telephone to go over to Warangal to discuss the matter pertaining to Afroz Khan. The deceased is said to have gone to

Warangal on receiving the call. In his cross examination, P.W.-8 clearly admitted that he is not acquainted with the accused. He did not say as to

how he felt that it is the accused, who called the deceased on his phone. Barring this, there is no other link, which the prosecution has provided.

11. The call was said to have been made to a mobile phone of P.W.-8. It would not have been difficult for the prosecution to trace out the caller,

through the number. No effort was made in that direction. The basis for the prosecution to suspect the involvement of the accused is his alleged

extra judicial confession. One hardly needs any effort to discard an extra judicial confession, unless it is supported by any other evidence. The

record discloses that P.W.-8, the person before whom the extra judicial confession is made, is a relative to the deceased i.e. his senior paternal

uncle. Without any hesitation, the said confession deserves to be ignored.

12. P.W.-2 made an effort to involve the accused in the crime. Even her evidence is as vague as it can be, and if one takes into account the affairs,

which she is said to have indulged with as many as three individuals, it is not difficult to imagine her credibility. There is a serious discrepancy in the

context of the arrest of the accused. He is said to have been arrested on 01.11.2007 as per P.W.-2. However, the arrest was said to be only after

extra judicial confession made to P.W.-10 and that has taken place on 04.11.2007 at 10.30 a.m. It is impossible to reconcile these serious

inconsistencies. We, therefore, allow the appeal.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 327 of 2008 on the file of the Principal

Sessions Judge, Warangal, dated 09.11.2009, against the appellant-accused, are set aside. The appellant-accused shall be set at liberty forthwith,

unless his detention is needed in any other case. The fine amount, if any, paid by the appellant-accused shall be refunded to him.