
Koyeda Sanjeev Vs The State of Andhra Pradesh

Criminal Appeal No. 1750 of 2009

Court: Andhra Pradesh High Court

Date of Decision: March 12, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 161#Evidence Act, 1872 â€” Section 114#Penal Code, 1860 (IPC) â€” Section 302, 380, 454

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

Bench: Division Bench

Advocate: A. Manohar Reddy, Advocate for the Appellant

Judgement

L. Narasimha Reddy, J.

A1 and his mother, A2, were tried by the Court of the III Additional Sessions Judge, Karimnagar in S.C. No.

124 of 2009 for the offences punishable under Sections 454, 380 and 302 I.P.C. Through its judgment, dated 15.10.2009, the trial Court

acquitted A2, but convicted A1 for all the three offences. Sentence of imprisonment for life and fine of Rs. 2,000/-, in default to undergo rigorous

imprisonment for a period of six months was imposed for the offence punishable u/s 302 I.P.C. Sentence of two years rigorous imprisonment and

fine of Rs. 1000/-, in default to undergo rigorous imprisonment for three months was imposed for the offence punishable u/s 380 I.P.C. For the

offence punishable u/s 454 I.P.C, punishment for one year rigorous imprisonment and fine of Rs. 500/-, in default to undergo rigorous

imprisonment for one month was imposed. All the sentences were directed to run concurrently. This appeal is preferred by A1.

2. P.W.1 is the resident of Pathagudur Village of Karimnagar District. Apart from doing agriculture, he runs a pesticides shop at Dharmaram

Village. On 04.12.2008, he is said to have left his house for Dharmaram at 9.00 a.m. and when he was in the pesticides shop, he is said to have

received a phone call at about 3.00 p.m. from his wife, L.W.2, to the effect that she i.e. L.W.2 left for the fields at 11.00 a.m. and when she came

back in the afternoon, she found Almirah in the house opened and the contents thereof in a pell-mell condition and that the mother of P.W.1, an old

woman of 80 years, was found dead in the kitchen. P.W.1 is said to have rushed to the village immediately and he found his mother dead and the

house, is in a burgled condition, Neighbours are also said to have arrived at. According to him, he gave information to the Sub-Inspector of Police,

Velgatoor, P.W.11, through phone and thereupon, the police reached his house. A written complaint, Ex. P1, is also said to have been given.

3. The Circle Inspector of Police, P.W.13, took up the investigation and said to have taken the help of Dog Squad. The sniffer dog led them to the

house of A1 and A2, which is very near to the house of P.W.1. The information is also said to have been given to the finger print expert.

4. On the next day, the scene of offence panchanama was prepared and inquest and post-mortem were caused. A1 is said to have apprehended

on 11.12.2008 at Peddapally and various ornaments said to have been stolen from the house of P.W.1 are stated to have been recovered, in the

presence of P.Ws.7 and 8. After completion of the investigation, P.W.13 filed a charge sheet.

5. To prove its case, the prosecution examined PWs.1 to 14 and Exs. P1 to P19 were marked. M.Os.1 to 11 were also taken on record.

6. Sri A. Manohar Reddy, learned counsel for A1, submits that there is any amount of doubt as to how P.W.1 passed on the information to the

police. He contends that the first person said to have noticed the incident is the wife of P.W.1 and for the reasons best known to them, the

prosecution has given up that witness and inference as provided for u/s 114 of the Indian Evidence Act deserves to be drawn. Learned counsel

further submits that though there is no mention of availing the services of Dog Squad in the charge sheet, P.Ws.1 and 13 referred the same. He

submits that there is no material to disclose the summoning of the Dog Squad, much less, a report of the operation, was made part of the record.

He contends that a totally false case was foisted against A1, a poor unemployed, residing in the village.

7. Learned Public Prosecutor, on the other hand, submits that though P.W.1 gave the information to the Police on phone, he has also submitted a

written complaint and there is no inconsistency between them. He submits that failure to examine L.W.2 is not at all detrimental to the case of the

prosecution. Learned Public Prosecutor further contends that the circumstantial evidence on record is so consistent and complete, that it is

sufficient to sustain the conviction of A1.

8. The information about the death of the deceased and theft in the house was furnished to the police by P.W.1. However, there is serious

discrepancy in the evidence. P.W.1 stated that he gave a phone call to the Sub-Inspector of Police, P.W.11, and on that, the police officials have

arrived at the scene of offence from Velgatoor. He has also referred to the submission of complaint, Ex. P1.

9. P.W.11, who registered the crime, stated in his chief-examination, as under:

I am working as Sub-Inspector of Police, Velgatoor since 26.02.2008. On 04.12.2008, at 17.00 hours, P.W.1, Satyanarayana Rao, came to the

police station and presented a written complaint, which is Ex. P1. Basing on that, I registered a case in Crime No. 141 of 2008 under Sections

454, 380, 302 I.P.C. and issued Express FIR. I have sent the original FIR to Hon"ble Judicial Magistrate of First Class, Peddapalli through

PC.2947. The said Express FIR is Ex. P8. I have submitted the copies of the FIR to my higher authorities. The investigation was taken up by the

Circle Inspector of Police, Peddapalli (L.W.20) and I handed over the CD file. I assisted my Circle Inspector in the further investigation.

There is no reference to the phone call said to have been made by P.W.1.

10. What happened after the complaint was registered is also of much significance. P.W.11 is said to have handed over the case for investigation

to the Circle Inspector of Police, P.W.13. It means, that both of them have taken steps in tandem, P.W.13 stated that after reaching the scene of

offence, he first requisitioned the services of finger print expert and the expert is said to have reached the scene immediately. In addition to that, he

is said to have availed the services of Dog Squad and that the sniffer dog led them to the house of A1 and that, no one was found in the house.

P.W.1 has also made a reference to the Dog Squad. However, P.W.11 did not make any mention of it. In the detailed charge sheet filed by

P.W.13, he did not make any mention of the services availed from the Dog Squad.

11. The basis for P.W.13, to suspect the involvement of A1 was naturally the clues furnished by the sniffer dog. Barring that, he did not state any

other basis. If in fact the services of the Dog Squad were availed, P.W.13 was supposed to file the requisition letter and the report prepared by the

handler of the Dog Squad. Here itself, it is relevant to mention that P.W.13 filed Ex. P9, the requisition given to the finger print expert. Not only the

finger print expert report, Ex. P10, was made part of the record, but also the expert was examined as P.W.12. No such steps were taken as

regards the report of the Dog Squad. Therefore, a serious lapse comes to be noticed.

12. Failure of prosecution to examine L.W.2 is another important aspect, left unexplained by the prosecution. She was the lady, who is said to

have first noticed the death of the deceased and other acts that took place in the house. P.W.1 depended upon her information. For the reasons

best known to it, the prosecution did not examine L.W.2.

13. As regards the arrival of L.W.2 to the house from the fields, there is serious discrepancy. According to P.W.1, she is said to have arrived at

the house at about 2.40 p.m. However, P.W.2, the neighbour, stated that it was about 1.30 p.m. that L.W.2 came to him. The clarification about

this would have emerged, if only L.W.2 was examined.

14. Ex. P1 was submitted to the Police at 5.00 p.m. According to P.W.1, the submission thereof was after he reached the home. Though he made

some broad description in Ex. P1 about the items that are said to have been stolen or missing, he gave the details thereof, only in the chief-

examination. However, such description was not present even in the statement recorded from him u/s 161 Cr.P.C. When these many

discrepancies are noticed, it cannot at all be concluded that the murder of the deceased and the theft in the house of P.W.1 was committed by A1.

15. The accused was also charged with offences punishable under Sections 454 and 380 I.P.C., and he has been found guilty thereof. According

to the prosecution, seven days after the incident i.e., on 11.12.2008, A1 was apprehended by the Inspector of Police, P.W.13, near a mosque at

Peddapalli and in the presence of P.W.8 and another panch witness, A1 is alleged to have confessed having committed the crime and from his

possession, M.Os.1 and 2, which are golden chandraharam and golden gopi chain, were recovered. It was further alleged that A1 led the panchas

and the police to his house and at his instance, his mother, A2, has produced the other articles viz., M.Os.3 to 7.

16. The material evidence on this aspect is that of P.W.8 and the Inspector of Police, P.W.13. If the prosecution can establish that the material

objects that were recovered from the possession of the accused belonged to the complainant and if the accused fails to explain its possession

satisfactorily, presumption can be drawn. Much, however, depends on the evidence and the circumstances of each case. The nature of the

recovered articles, the manner of their acquisition by the owner, the nature of evidence about their identification, the manner in which the articles

was dealt with by the accused, the place and the circumstances of their recovery are some of the important aspects.

17. In the instant case, the theft is said to have taken place on 04.12.2008 from the house of P.W.1 and the gold and silver jewels (M.Os.1 to 7)

were recovered seven days thereafter. If A1 committed the crime on 04.12.2008, he would not have retained the stolen gold ornaments in his

possession for seven days. It is difficult to believe that A1, who is a young man, aged about 20 years, would have carried M.Os.1 and 2 viz.,

golden chandraharam and golden gopi chain for such a long time in his pocket. Usually, if theft of such valuable gold articles takes place, the

person who steals them, tends to dispose of them at the earliest or would alter their shape and identity.

18. The most essential link sought to be provided for establishing the nexus between the theft, and the accused, is the confession and recovery of

the stolen articles. Law mandates that such a confession and search or seizure must be made in the presence of two or more independent

respectable inhabitants of the locality. This is intended to rule out the possibility of false implication or the incriminating objects being planted.

19. P.W.8 is the panch witness in whose presence the accused is alleged to have confessed and produced M.Os.1 and 2 from his pocket. He is a

Ward Member and he is a resident of Pragati Nagar of Peddapalli. The accused is said to have been apprehended near a mosque in Peddapalli.

He is not a resident of that area and he claims to have been called by the Inspector of Police. It appears that he was taken by the Inspector of

Police to the Mosque in Peddapalli in anticipation of apprehension of the accused, his confession and production of the incriminating material

objects. P.W.8 further deposed that at the instance of the Circle Inspector of Police, he enquired A1 and he told them that when he was trying to

sell the gold articles, the police have apprehended him. It is stated that the accused was in the custody of the Inspector of Police even by the time

P.W.8 was called. It is further admitted by P.W.8 that previously he acted as a panch witness for confession in another crime. Therefore, he

cannot be treated as an independent witness or an inhabitant of the locality from where the accused was apprehended and M.Os.1 and 2 were

recovered.

20. The Investigating Officer, P.W.13, fairly admitted that at the place where he apprehended A1, there are several hotels, shops and petty

vendors. He further admitted that he has not called anyone among them to act as panch witness to the proceedings.

21. Recovery of M.Os.3 to 7 from the possession of A2 also suffers from the same infirmity. The police have taken P.W.8 all along with them

from Pedappalli to the house of the accused, which was in Pata Gudur. The residents of Pata Gudur, around the house of the accused, were not

taken as panch witnesses.

22. Hence, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 124 of 2009 on the file of the III Additional Sessions

Judge, Karimnagar, dated 15.10.2009, against the appellant-A1, are set aside. The appellant-A1 shall be set at liberty forthwith, unless his

detention is needed in any other case. The fine amount, if any, paid by the appellant-A1 shall be refunded to him.

23. The miscellaneous petition filed in this appeal shall also stand disposed of.