

CASE NO.:
Appeal (crl.) 671 of 2003

PETITIONER:
Kojja Sreenu

RESPONDENT:
State of A.P.

DATE OF JUDGMENT: 18/12/2003

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The appellant and two others were charged for an offence punishable under section 302 read with section 34 IPC as also for an offence punishable under section 201 read with section 34 before the Additional Sessions Judge, Khammam, who by his judgment dated 15.10.1998 convicted all the accused persons for offences punishable under section 302 read with section 34 and section 201 and sentenced them to undergo imprisonment for life; for the offence under section 201 IPC, no separate sentence was awarded by him. In appeals filed against the said judgment, the High Court of Judicature Andhra Pradesh at Hyderabad, so far as the appeal of Bunadri Veeraiah A-2 is concerned, it allowed the same and acquitted him of the charges framed against him. So far as the appeal of Moram Sreenu A-3 is concerned, the High Court partly allowed the said appeal and while acquitting him of the charge under section 302 IPC, convicted him of the offence under section 201 IPC and sentenced him to the period already undergone, while the High Court dismissed the appeal of the appellant herein, confirming the conviction and sentence awarded by the trial court, hence, the said accused is before us in this appeal.

The prosecution case, stated briefly, is that all the 3 accused persons and the deceased, Challa Venkanna @ Naddodu were involved in property offences. While the said deceased was in custody for one such offence, between the years 1993 and 1995, the appellant developed illicit intimacy with the wife of the deceased and he eloped with her. On his being released from custody, the deceased having come to know of this relationship, he got his wife to return to him and also allegedly warned the appellant against the said relationship. It is because of this reason there was ill will between the two of them. Prosecution states that the appellant on 29.3.1995, when the deceased and the accused persons had gone to a toddy shop to consume toddy and were returning back, the appellant had an altercation with the deceased in the presence of other accused persons. This was noticed by Kodi Lingaiah, PW-5. It was the further case of the prosecution that from 29th to 31st March, 1995 the deceased was not seen. The prosecution alleges that on 31.3.1995, the appellant went to PW-1 who was working as an attender in the Collectorate and made a confession to him that he and his friend had killed the deceased on 29.3.1995 and thrown his body in a pond near the river Munneru. Having got this information, the brother of the deceased went to the Khammam Rural Police Station and filed a complaint against the accused persons which was registered

as Crime No.60 of 1995 with that Police Station and an offence under sections 302 and 201 read with section 34 IPC was registered against the accused persons. The trial court accepted the evidence of PW-5 to whom the appellant allegedly made an extra-judicial confession. It also took note of the fact that PW-2 had seen the appellant quarrelling with the deceased on 29.3.1995 and accepting the motive as projected by the prosecution found all the accused guilty, as stated above.

The High Court in appeal, accepted the evidence of PW-5 as to the extra-judicial confession allegedly made by the appellant and the evidence of PW-2 in regard to the quarrel that took place on 29.3.1995. It also accepted the prosecution case in regard to the motive as suggested by the prosecution but in the absence of any direct evidence or other material to establish the actual role played by A-2, the High Court found him not guilty of the offence and acquitted him. While in regard to A-3 the High Court came to the conclusion that there was no material adduced by the prosecution as to his role in the murder of the deceased but placing reliance on his statement made under section 313 Cr.P.C. wherein he admitted the fact that he had assisted the appellant in disposing of the body convicted him only for that offence while acquitting him of the charge of murder.

So far as the appellant is concerned, the High Court accepted the prosecution case in toto and confirmed the conviction imposed on him by the trial court. Ms. C K Sucharita, learned counsel appearing for the appellant contended that both the courts below seriously erred in placing reliance on the extra-judicial confession allegedly made by the appellant to PW-5. She contended that the evidence of PW-5 is wholly artificial and his conduct after hearing the confession, shows that if really such a confession had been made to him, he would have first gone to the Police Station rather than going in search of the brother of the deceased. She also contended that the evidence of PW-2 does not help the prosecution in proving the guilt as against this appellant. She submitted that the courts below ought not to have relied upon the statement of A-3 made under section 313 Cr.P.C. to hold the appellant guilty. Per contra, Mr. G. Prabhakar, learned counsel representing the State, contended that though there are no eye witnesses to the actual killing of the deceased, it is clear from the evidence led by the prosecution that the appellant was considering the deceased as a hurdle in the way of his affair with the latter's wife. He also contended that there is sufficient material through the evidence of PW-2 to prove the fact that there was a quarrel between the appellant and the deceased on the day deceased died. He also contend that the appellant had sufficient motive to commit the murder of the deceased. He further contended that PW-5 is an independent witness who has no axe to grind against the appellant and the deceased used to respect him as an elder brother. In such a situation there is nothing suspicious if the appellant had gone to him and made a confessional statement. He rebutted the argument of the learned counsel for the appellant as to PW-5 not going to the Police Station by saying that it is but natural for a witness like PW-5 after hearing the confession to first bring to the notice of the family of the deceased the factum of his death before any further steps could be taken. Learned counsel contended that from the evidence of PW-2 it is clear that immediately before the murder was committed, the appellant had an altercation with the deceased. This coupled with the statement of A-3 made before the court clearly shows that it is the appellant who committed the murder.

As noted above, it is seen that the prosecution relies on the evidence of PWs.2, 5 and the statement of A-3 to prove its charge of murder against the appellant. If we analyse this

evidence independently then we gather the impression that it is unsafe to base a conviction of the appellant on the above material.

PW-5 is a resident of the same locality where the deceased was also residing. This witness is an attender in the District Collectorate at Khammam. He states that about 3 years before his evidence, one morning A-1 came to him and made an extra-judicial confession to him that two days before he along with two other accused persons had committed the murder of the deceased and had thrown his body in a pond and he allegedly requested this witness to help him for which this witness told him to go and surrender to the Police. Having heard the statement of A-1, this witness allegedly proceeded to his office marked his attendance and at about 11-11.30 a.m. left the office without informing anyone to inform PW-1 brother of the deceased about his death. If we analyse his evidence, we note that this witness seems to have taken the information of a murder rather indifferently. He is a government servant. A-1 if known to him well, PW-5 would have known that he is a person involved in property crime and any dealing with such person that too pertaining to murder would put this witness in a difficult position. In spite of the same and even though the police station was on the way to his office, this witness does not bother to inform the police, on the contrary, considers it so important as to leave his office without permission to go to PW-1's house to inform him of his brother's death. This witness did not inform anybody in his office also about the murder committed in a town like Khammam. We find some amount of artificiality in the evidence of this witness. A-1 did not have any special reason to make a confession to this witness which is clear from the evidence, PW-5 himself when he says that he did not know why A-1 made a confession to him. Most of all what makes his evidence doubtful is his not informing the police about the confession even after he told PW-1 about it. In this background the statement allegedly made by A-1 being an extra judicial confession, we think it not safe to rely on the same.

The courts below have then relied on the evidence of PW-2 who stated that on the date of incident he along with some others saw A-1 quarreling with the deceased. From the evidence of this witness, it becomes doubtful whether he knew the accused persons at all because he stated in his evidence that he saw the accused only on the date of incident. He was unable to give the particulars of the dress worn by them. In this background, we think his evidence also cannot be relied on.

That leaves only the statement of A-3, who in his statement under Section 313 Cr.P.C., stated that he helped the appellant in throwing the body in the pond. This statement being in the nature of a confession involving a co-accused, we do not think it safe to place reliance on the same in the absence of any corroboration whatsoever..

For the said reasons, this appeal succeeds, the judgments of the courts below are set aside. The appellant shall be set at liberty forthwith, if not wanted in any other case.

The appeal is allowed.