

(1995) 02 SC CK 0029

In the Supreme Court Of India

Case No : Criminal Appeal No. 716 of 1992 with Spl. Leave Petition (Cri.) No. 2479 of 1989

Pathan Fathima and others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 202, 34, 449

Citation : AIR 1995 SC 1958 : (1995) CriLJ 3613

Hon'ble Judges : G. N. Ray, J; Faizan Uddin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.N. Ray, J.—This appeal is heard with SLP (Cri.) No. 2479 of 1989 because both are filed against the common judgment dated 19-8-89 passed by the Andhra Pradesh High Court in Criminal Appeal No. 31/89 and Criminal Appeal No. 32/89. Criminal Appeal No. 31/89 was preferred by accused No. 3 namely the appellant in Criminal Appeal No. 716/92 before this Court and Criminal Appeal No. 32/89 was preferred before the High Court by accused Nos. 2 and 3 against their conviction passed by the learned Sessions Judge. The High Court by the aforesaid judgment dated 19-8-89 confirmed the conviction and sentence passed against accused No. 3 namely the appellant in Criminal Appeal No. 716/92 and the petitioner in SLP (Cri.) No. 2479/89 by dismissing their appeals. But Criminal Appeal No. 32/89 was allowed in part by the High Court by acquitting accused No. 2.

2. Four accused persons were tried before the learned Sessions Judge, Nellore in Sessions Case No. 17/88 for various offences including conspirator and causing the murder of one Pathan Mahaboob Khan alias Basheer on the night of 20th and 21st May, 1986. The learned Sessions Judge, inter alia, came to the finding that accused No. 1 and accused No. 2 murdered the said Basheer and accused No. 3 actively participated in causing the said murder. Accordingly, the learned

Sessions Judge convicted accused No. 1 and accused No. 2 on the charge of murder of said Basheer and also convicted accused No. 3 u/s 302 read with Section 34, I.P.C. for active participation in committing the said murder. The learned Sessions Judge also convicted the accused Nos. 1 and 3 u/s 120B, I.P.C., for conspiring to murder the deceased and the learned Sessions Judge also convicted accused Nos. 1 and 2 u/s 449, I.P.C. for having trespassed into the house of the deceased in order to commit the murder of the deceased. The fourth accused however, was not found guilty of the offence u/s 202, I.P.C. and she was acquitted by the learned Sessions Judge. As aforesaid, the accused Nos. 1 and 2 preferred Criminal Appeal No. 32/89 before the High Court against their conviction and accused No. 3 preferred Criminal Appeal No. 31/89 against her conviction. But the High Court acquitted accused No. 2 but confirmed the conviction and sentence passed against accused Nos. 1 and 3. It may be stated here that this is a case of murder established by circumstantial evidence.

3. According to the courts below the prosecution had led unimpeachable evidence clearly establishing the circumstances which make a complete chain of events from which the only irresistible conclusion could be drawn about the commission of offences charged against the appellants i.e. the accused No. 1 and accused No. 3 had committed the murder of the deceased between the night of 20th and 21st May, 1986. There is convincing evidence given by the neighbours namely P.Ws. 8 and 9 that on the fateful night they heard loud cries of the deceased and P.W. 9 had seen from his own house which is just at the back of the house of the deceased that the deceased was lying on the ground and accused No. 3 namely the wife of the accused was holding his legs. He also noticed two other persons standing near the door inside the house of the deceased. P.W. 8 mother of P.W. 9 also noticed that two persons are standing near the door when she and her son got up after hearing cries of the deceased. There is also the evidence of P.W. 10 who is another neighbour residing just across the road. It transpires from the evidence of P.W. 10 that he had seen accused Nos. 1 and 2 coming out of the house shortly after the said murder was committed and they were seen off by accused No. 3. There is also evidence by P.Ws. 1, 2, 3 and 4 that accused No. 3 made extra-judicial confession before them about the commission of the said murder by accused Nos. 1 and 3. There is also the evidence of P.W. 13, the daughter of the deceased. P.W. 13 stated that on the fateful night when she got up to drink water she found the presence of accused No. 1 and accused No. 2 in their house and although her father had gone to sleep on a cot at the backside of the house, she found the cot was empty and on enquiry the mother told her that the father had gone to some other place in the early morning. She also stated that she found blood-stains in the kitchen and on enquiry the accused No. 1 had stated that he was cutting the onion to help her mother and by that process he cut his thumb on account of which blood came out. The accused No. 1 had also showed her his injured thumb. She also stated that she heard accused No. 1 telling her mother that they killed her father. When on hearing this she and her brother cried, accused No. 1 threatened them

that they should also be killed if they would talk about it. From the said evidence it clearly transpires that at the time of the incident, accused Nos. 1 and 2 were present in the house along with accused No. 3 and P.W. 13 heard accused No. 1 saying that he had murdered her father. This part of the evidence clearly gets support from the extra-judicial confession made by accused No. 3 which was also proved by P.Ws. 1, 2, 3 and 4. The High Court has given benefit of doubt to accused No. 2 and has acquitted the said accused. But the High Court has accepted the conviction and sentence passed by the learned Sessions Judge so far as accused Nos. 1 and 3 are concerned and has given cogent reasons as to how the circumstances establishing the complicity of the said accused in committing the murder were proved beyond all reasonable doubts.

4. We have been taken through the evidences by the learned Counsel appearing for the parties and considering the same, we are in agreement with the High Court that the case against accused No. 1 and accused No. 3 have been clearly established and no interference against the impugned judgment is called for. Mr. Madhava Reddy, learned senior Counsel appearing for the appellants has, however, contended that the evidence of the daughter of the deceased (P.W. 13) should not be accepted because she did not make any statement when the police recorded her statement when the dead body was discovered. But she deposed only after two and a half years in the Court. It may be indicated here that P.W. 13 was under the custody of the mother and from her evidence it transpires that she had to suffer great trauma on account of a licentious and misguided mother and despite all imploration. She could not persuade her mother to lead dignified life. She had to live with her mother and accused No. 1 and it is not at all unlikely that at the initial stage she did not dare making any statement about the said murder but when she was cited as a witness, she wanted to make clean breast of the relevant facts and stated the truth. Her evidence gets corroboration from the depositions "of other witnesses and also from the extra-judicial confession proved by P.Ws. 1, 2, 3 and 4. We, therefore, do not find any reason to discard the evidence of P.W. 13. In the aforesaid circumstances, this appeal and the SLP must fail and they are dismissed.