

(2015) 06 KAR CK 0039

In the Karnataka High Court

Case No : Criminal Appeal Nos. 470, 469, 393, 512, 444, 575, 485/2011 and 36/2012

Siddaraju and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 149, 201, 302, 399

Citation : (2015) 06 KAR CK 0039

Hon'ble Judges : Mohan M. Shantana Goudar and Budihal R.B., JJ.

Bench : Division Bench

Advocate : Hashmath Pasha for Hashmath Pasha and Associates, Advocate, for the Appellant; Vijaykumar Majage, HCGP, for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—The judgment and order of conviction dated 24.3.2011, passed by the Fast Track Court-IV, Bangalore Rural District, Bangalore in S.C. No. 182/2010 is the subject matter of these appeals.

All the accused were charged for the offences punishable under Sections 143, 302, 201 r/w. Section 149 of IPC.

2. The trial Court on evaluation of the material on record, convicted accused Nos. 1, 2, 3 and 7 for the offences with which they were charged. However, accused Nos. 4, 5 and 6 are acquitted of the offence punishable under Sections 302 r/w. Section 149 of IPC and are convicted for the offences punishable under Sections 143 and 201 r/w. Section 149 of IPC.

3. Criminal Appeal No. 470/2011 is filed by accused No. 3; Criminal Appeal No. 469/2011 is filed by accused No. 1; Criminal Appeal No. 393/2011 is filed by accused No. 6; Criminal Appeal No. 512/2011 is filed by accused No. 4; Criminal Appeal No. 444/2011 is filed by accused No. 5; Criminal Appeal No. 575/2011 is filed by accused No. 2; and Criminal Appeal No. 485 is filed by accused No. 7. The State has filed Crl. A. No. 36/2012 praying for enhancement of sentence

imposed against accused Nos. 4, 5 and 6 who are convicted for the offences punishable under Sections 143, 201 r/w. 149 of IPC.

4. Case of the prosecution in brief is that accused Nos. 1 and 3 are friends of the deceased; accused Nos. 1, 3 and the deceased are from the same village, i.e., Shanuboganahalli Village, Magadi Taluk, Ramanagara District; other accused are friends of accused Nos. 1 and 3; they are from different places; the accused did not have money for meeting their habits and expenses and hence, they thought of committing murder of the deceased who was wearing a gold chain and a gold ring; about 4 to 5 days prior to 18.6.2009, the deceased Narayana, son of P.W. 1-complainant left his house; however he did not return to his house subsequently, thereafter, neither the complainant nor any of the family members of the deceased made attempt to lodge the complaint with regard to alleged missing of Narayana; all the family members of the deceased, including his father P.W. 1 kept quiet till 1.12.2009.

It is further case of the prosecution that the accused were apprehended in connection with Crime No. 236/2009, registered against them for the offences punishable under Sections 399 and 402 of IPC (Ex. P15 is the first information report pertaining to the said crime). During the investigation of the said crime i.e., Crime No. 236/2009, it was found that the accused had committed the murder of Narayana. Thus, on 1.12.2009, the accused were apprehended in the present Crime No. 589/2009; prior thereto, police had called P.W. 1 (complainant) to the Police Station and got his statement/complaint as per Ex. P1 at 5.15 p.m. on 1.12.2009 and based on which, complaint in Crime No. 589/2009 came to be registered for the offence punishable under Section 302 of IPC; the voluntary statements of the accused Nos. 1 to 3 were recorded as per Exs. P17, P18 and P19 by P.W. 13, the Inspector of Police; based on which, they went to the spot wherein the dead body was buried; the dead body was exhumed; however, only the portion of skeleton was found in the grave yard; the scene of panchanama as per Ex. P2 was drawn; thereafter, the gold chain and ring are recovered under panchanama at Ex. P3 on 1.12.2009; ultimately, charge sheet came to be filed against all the accused for the offences punishable under Sections 302, 201 r/w. Section 149 of IPC, as aforementioned.

5. In order to prove its case, the prosecution in all examined 15 witnesses and got marked 29 Exhibits and 5 Material Objects. On behalf of the defence, one document came to be marked as per Ex. D1. As aforementioned, the trial Court acquitted accused Nos. 4, 5, 6 for the offence punishable under Section 302 r/w. Section 149 of IPC. However, they are convicted for the offences punishable under Section 143, 201 r/w. Section 149 of IPC. Accused Nos. 1, 2, 3 and 7 are convicted for all the offences with which they were charged.

6. Sri Hasmath Pasha, learned advocate appearing for the appellants in Criminal Appeal No. 470/2011 and Criminal Appeal No. 469/2011, taking us through the entire material on record, submits that the Court below is not justified in convicting all the accused, inasmuch as no material, much less reliable material

is collected by the prosecution against all the accused; there are no eye witnesses to the incident in question; case of the prosecution rests only on circumstantial evidence; the only circumstances relied upon by the prosecution are "motive" and "recovery of gold ornaments as well as recovery of remains of the dead body". According to him, neither of the two circumstances are proved by the prosecution and hence the trial Court is not justified in convicting all the accused.

The arguments of Sri Hasmath Pasha are supported by Sri Kallesh Gowda and Sri B. Anand as well as Sri H.C. Hanumaiah, learned advocates appearing on behalf of the other appellants-accused.

7. P.W. 1 is the complainant. He is the father of the deceased Narayana. He has deposed that Narayana left his house 4 to 5 days prior to the incident, saying that he will be going for work; the deceased was wearing one ring and a gold chain; at that point of time, the complainant (P.W. 1) was in the house; though P.W. 1 returned to his house after four days, Narayana did not come back; about 5 to 6 months later, Bangalore Rural Police came and informed P.W. 1 about the gold ornaments of the deceased Narayana; accordingly, complainant went to the Police Station, wherein ring and gold chain of the deceased were shown by the police in the Police Station; thereafter P.W. 1 lodged the complaint as per Ex. P1, on the basis of which, Crime No. 589/2009 came to be registered and the investigation commenced.

P.W. 2 is the witness for exhumation proceedings as per Ex. P6. Through him, MO. Nos. 2 and 3 i.e., mud are marked. He is also the witness for inquest panchanama at Ex. P7.

P.W. 3 is the witness for accused Nos. 1 to 7 showing the place in Rudrachari's house at Hosakote wherein they had allegedly buried the dead body of Narayana and from that place, the accused took panchas and the police to burriyal ground, Hoskote wherein they showed the place in which the dead body of Narayana was buried subsequent to shifting from Rudrachari's house. The police recovered bones and skull from the grave yard, Hoskote under panchanana at Ex. P8.

P.W. 4 is the relative of the deceased. He is the witness for mahazar at Ex. P8. His evidence is almost on par with the evidence of P.W. 3

P.W. 5 Gowramma is the friend of accused Nos. 3 and 4. She has deposed that a year prior to her deposition, accused Nos. 3 and 4 had come to her house and asked her to pay money by getting the gold ornaments (gold chain and ring) pledged. However, she refused to accept the said gold ornaments for herself, but she took them to Muthoot Finance Corporation for getting the gold ornaments pledged. The gold ornaments were pledged in Muthoot Finance Corporation accordingly and accused received Rs. 20,000/-. She has further deposed that after ten months, the police came with two accused and asked with whom the gold ornaments were pledged. Ex. P3 is the mahazar relating to recovery of gold chain and ring and Ex. P9 is the photograph of the said chain and ring.

P.W. 6 is the doctor who collected the blood samples of Revanna and Ramakka, the parents of the deceased and she issued certificates as per Exs. P10 and P11.

P.W. 7 is the Officer of Muthoot Finance Corporation. He has deposed that on 1.12.2009, J.J. Nagar Police Station, Bangalore, came with accused Mohan Kumar and four others to his shop and asked to produce gold chain and ring; he produced the same which were seized under Ex. P3; he is also the signatory to Mahazar at Ex. P3; he identified the gold ornaments in the photograph as per Ex. P9.

P.W. 8 is the Taluka Executive Magistrate. He has deposed that on receiving the information, he went to burrial ground and got the dead body exhumed; the police recovered the skull and bone of the deceased; Ex. P6 is the report of the Taluka Executive Magistrate under which MO. Nos. 2 and 3 (mud) was collected.

P.W. 9 is the doctor who conducted autopsy over the remains of the dead body. The said autopsy was conducted in burrial ground, Hoskote. The report is at Ex. P12. Since the adequate material is not found to furnish the cause for the death, the said doctor did not furnish the same.

P.W. 10 is the Assistant Engineer who drew the scene of sketch as per Ex. P13.

P.W. 11 is the Manager of Muthoot Finance Corporation. He has also deposed that the police of J.J. Nagar Police Station came to his shop on 1.12.2009 along with three persons and one Gowramma and told him that those persons have pledged the gold ornaments in Muthoot Finance Corporation. Accordingly, P.W. 11 took out the gold chain and ring and gave them to police. He has further deposed that these gold ornaments were pledged by Gowramma about six months prior to the said date and that he had paid Rs. 20,000/- as mortgaged consideration. He is the signatory to mahazar at Ex. P3.

P.W. 12 is the Sub-Inspector of Police attached to J.J. Nagar Police during the relevant point of time. According to him, on 30.11.2009 at 12.45 a.m., he received a credible information that seven persons were preparing to commit dacoity and therefore he apprehended those persons. The report is at Ex. P14. He registered Crime No. 236/2009 against seven persons for the offences punishable under Sections 399 and 402 of IPC.

P.W. 13 is the Sub-Inspector of Police of J.J. Nagar Police Station who took the investigation of Crime No. 236/2009, registered for the offences punishable under Sections 399 and 402 of IPC. During the investigation of the said crime, accused Nos. 1 to 3 gave voluntary statements as per Exs. P17 to P19 about the burrial of dead body. So also, accused Nos. 4 to 6 have given voluntary statements.

P.W. 14 is the Inspector of Hosakote Police Station who registered the first information on 1.12.2009 for the offence punishable under Section 302 of IPC in Crime No. 579/2009, based on the complaint at Ex. P1. He sent FIR to the jurisdictional Magistrate as per Ex. P22.

P.W. 15 is another Investigating Officer who completed the investigation and laid the charge sheet.

8. Out of the aforementioned two circumstances, the important circumstance is recovery of dead body pursuant to the voluntary statements of accused Nos. 1 to 3 as well as recovery of the gold ornaments as shown in Ex. P.9.

9. It is relevant to note that gold ornaments were never brought before the trial court for identification. Only Ex. P.9-photograph of the ornaments is shown to be recovered and the same is marked. According to the prosecution, gold ornaments were seized from the shop of P.Ws. 7 and 11 and were seized under mahazar. However, absolutely, no material is brought on record to know as to what has happened to the said gold ornaments subsequently. Not even a piece of paper is produced before the Court to show that those gold ornaments were released in favour of anybody including P.W. 1. Oral evidence is also silent to that effect. Neither P.W. 1 nor the investigating officer have disclosed in their evidence as to whether the gold ornaments were in existence or not. It is also not clear as to why they were not produced before the court. Astonishingly, only a photograph showing a gold chain and a ring was produced before the court at the time of deposition and the same is marked. In that view of the matter, it is contended by the learned advocate for the defence that the recovery is concocted and after thought. The police have not recovered gold ornaments from any source much less from the shop of P.Ws. 7 and 11. Secondly, recovery panchanama is falsely created in order to suit the case of prosecution. However, it is to be mentioned here itself that the gold ornaments are subjected to PF No. 129/2009 in crime No. 236/2009. The said crime is not related to the present case on hand. Crime No. 236/2009 was registered against certain accused for the offences under Sections 399 and 402 of IPC on 30.1.2009. Merely because the gold ornaments were subjected to PF in that case, the same cannot be relied upon in this case. There was no hurdle for producing those ornaments if they really belonged to the family of P.W. 1. Admittedly, the complainant in the matter on hand is not a witness or an aggrieved party, or a complainant in crime No. 236/2009. If that is so, there is no reason as to why those gold ornaments which were subjected to PF in crime No. 236/2009 were photographed and said photograph is marked in this case. On the other hand, if really, the gold ornaments were seized in this case, they could have been subjected to PF in the special case i.e., crime No. 589/2009 i.e., in the case on hand.

10. Secondly, we find that the evidence of recovery mahazar witnesses is shaky and unbelievable. According to the case of prosecution, on the basis of voluntary statements of accused Nos. 1 to 3 recorded on 1.12.2009, police took them to Rudrachari's house wherein dead body was allegedly buried earlier. After digging the place, to certain extent, the police did not get any clue except few bones. Thereafter, the police took the accused to a burial ground and to a place, which was shown by the accused, wherein they allegedly buried the dead body. Subsequently, in the presence of Taluka Executive Magistrate, the remains of the

body was exhumed as per Ex. P.6. After this, inquest proceedings were completed. The accused allegedly took the police and panchas to the house of Gowramma and thereafter, to Muthoot Finance Corporation shop of which P.Ws. 7 and 11 were employees. So the case of prosecution is that recovery of gold ornaments was made after completing the aforementioned procedure of recovery of remains of the dead body.

11. Case of the prosecution as mentioned supra is falsified by the evidence of P.W. 1 complainant, who is none other than father of deceased. He is also the signatory to recovery mahazar Ex. P.3. In the examination in chief itself, he has deposed that after five months of the incident, police called him to the police station on the ground that there is clue relating to his son. Accordingly, P.W. 1 went to police station wherein he was shown a gold chain and a ring. He identified those gold ornaments as the one which were being worn by the deceased. Such identification was on 1.12.2009 i.e., prior to the lodging of the complaint. P.W. 1 further narrates that after coming to know that the deceased is murdered by the accused including accused Nos. 1 to 3 who are his friends, he lodged the complaint as per Ex. P.1 and he identified his signature on the complaint as per Ex. P. 1(a). According to him, the accused took him to Rudrachari's house. Thereafter, to a grave yard and then to Muthoot Finance Corporation. From the aforementioned evidence, it is clear that even prior to lodging of the complaint as per Ex. P.1, the police had called the complainant-P.W. 1 to police station and shown gold ornaments to him and the same were identified by him. Thereafter, P.W. 1 lodged the complaint. If that is so, the alleged recovery of gold ornaments as made out in the case is unbelievable. Since the gold ornaments were very much available in the police station even prior to filing of complaint, it appears that the police have created a story of recovery of gold ornaments subsequently, under panchanama Ex. P.3.

12. P.W. 5 Smt. Gowramma was the mediator between the Muthoot Finance Corporation and accused for getting the gold ornaments pledged in the corporation. She has deposed before the court that, one year earlier to her deposition, accused Nos. 3 and 4 came to her house and told her that they got gold chain and ring and that they may be pledged since they are in need of money. Accordingly, she took accused Nos. 3 and 4 to Muthoot Finance Corporation shop situated at Hoskote, pledged gold ornaments for Rs. 20,000/- and the money was handed over to accused. After ten months of such incident of pledging, the police came along with two accused and enquired with her. She admitted that the gold ornaments were pledged by her. Thereafter, Gowramma went along with police and accused to Muthoot Finance Corporation. She personally re-paid Rs. 20,000/- to Muthoot Finance Corporation and got back the aforementioned two gold ornaments and handed over the same to police. She identified the gold ornaments on the basis of the photograph Ex. P.9. She is also a witness for recovery mahazar Ex. P.3.

In the cross examination, she admits that she does not know the contents of Ex.

P.3 panchanama. She does not know as to when other mahazar witnesses have signed mahazar Ex. P.3. She has further deposed that she does not remember as to how many years prior to her deposition, she has made her signature to Ex. P.3 and she does not remember the date.

13. P.W. 7-the worker in Muthoot Finance Corporation has deposed differently. He has not at all adverted to the name of Gowramma (P.W. 5), who was the person who mediated between Muthoot Finance Corporation and accused. According to P.W. 7, accused No. 2 and four others came along with the police on 1.12.2009 for the purpose of seizure of gold ornaments. At that point of time, a gold chain and ring was given by C.W. 18 to the police, which was seized under mahazar Ex. P.3. He has also identified gold ornaments on the basis of photograph Ex. P.9.

In the cross examination, P.W. 7 has admitted that he does not know the contents of Ex. P.3 fully; on the other hand, himself and P.W. 11 have signed Ex. P.3 and none others have signed the said panchnama; he has signed Ex. P.3 in the police station. He categorically admits that he has seen accused Nos. 1, 3, 6 and 7 for the first time before the court on the date of his deposition. This evidence of P.W. 7 completely takes away the effect of circumstance of recovery.

14. The evidence of Gowramma P.W. 5 and the evidence of P.W. 7-worker in the Muthoot Finance Corporation run contrary to each other. According to P.W. 5, she went to police station along with the police and pancha, and got released the gold ornaments by personally re-paying Rs. 20,000/-. Per contra, P.W. 7 has not referred to the name of P.W. 5 at all. He has mainly referred to accused No. 2 and four others. In addition to the same, P.W. 7 admits that he has seen accused Nos. 1, 3, 6 and 7 for the first time before court on the date of his deposition and not prior to that which means that accused Nos. 1, 3, 6, and 7 had never come before Muthoot Finance Corporation at any time.

15. In addition to the aforementioned two witnesses, the prosecution has relied upon the evidence of P.W. 11-the Manager of Muthoot Finance Corporation. According to him, on 1.12.2009, the police came along with Gowramma P.W. 5 and three other persons to the shop. Since the police told him that gold ornaments were pledged in the name of Gowramma, he handed over a gold chain and a ring to the police. It is also deposed by him that six months prior to the recovery, P.W. 5 Gowramma had pledged two gold ornaments for Rs. 21,000/-. In the examination in chief, P.W. 11 has categorically admitted that he cannot exactly depose as to whether the three persons, who had come along with the police, on that day, are present before the court or not.

He was treated as hostile witness by the public prosecutor. In the cross examination by the public prosecutor, P.W. 11 has denied suggestion of public prosecutor that accused Nos. 1 to 6 had come along with Gowramma P.W. 5 and police on 1.12.2009. He specifies that he does not know as to the contents of Ex. P.3 and that he has not produced any record to show that two gold ornaments were pledged in the Muthoot Finance Corporation shop.

16. The evidence of P.Ws. 1, 5, 7 and 11 pertaining to recovery of gold ornaments is contradictory and unreliable. Their evidence bristles with inconsistencies. None of these witnesses knew about the contents of Ex. P.3. The witnesses have also failed to identify the accused before the court as the persons who had come to the shop either at the time of pledging the gold ornaments or at the time of recovery. The gold ornaments were not brought before the Court. There is no material to show as to what happened to the gold ornaments.

17. Though P.W. 5 Gowramma is the main witness who allegedly pledged the gold ornaments in her name and received money and who allegedly repaid Rs. 20,000/- for getting gold ornaments released, it is not even spoken to by P.W. 7 worker in the Muthoot Finance Corporation. Even otherwise, the evidence of P.W. 5 Gowramma is quite contradictory to the evidence of P.Ws. 7 and 11. More over as aforementioned, the evidence of P.W. 1 completely destroys the case of prosecution in as much as P.W. 1 has admitted that he has seen gold ornaments in the police station even prior to lodging the complaint. More over the gold ornaments are not subjected to PF in the present crime. The said gold ornaments were subjected to PF in Crime No. 236/2009. Hence the defence is justified in arguing that property recovered in some other crime is shown to have been recovered in this crime also (that too by virtue of a photograph) only to suit the purpose of prosecution. Therefore, the trial court is not justified in concluding that the circumstance of recovery of gold ornaments is proved.

18. Moreover in the matter on hand, there is no reliable/acceptable material to show the recovery of the dead body. Though the deceased had left his house about 4 to 5 days prior to 18.6.2009 and though he did not return back subsequently, none of the family members of the deceased including the complainant (father of the deceased) did make attempt to lodge the complaint alleging atleast missing of the deceased Narayana. They kept quiet till 1.12.2009. The complaint came to be lodged only after the arrest of the accused in connection with another Crime viz., Crime No. 236/2009. Thus the complaint came to be lodged on 1.12.2009. Thereafter the Investigating Officer went to the spot wherein the dead body was buried and exhumed the remains of the dead body in presence of the Taluka Executive Magistrate by drawing the panchanama.

P.W. 8 is the Taluka Executive Magistrate. He has deposed about the recovery of remains of skull and bones of the person. Ex. P6 is the report of the Taluka Executive Magistrate. P.W. 9 is the doctor who conducted autopsy over the remains of the dead body. Ex. P12 is the Post-Mortem report, which clearly reveals that there was no adequate material to furnish the cause of death. Hence the doctor did not furnish his opinion as to the cause of death. The post-mortem report - Ex. P12 further clarifies that the cervical vertebrae are missing; sternum is missing; hand & finger bones and foot & toes bones are missing; and only certain bones are identifiable. It is further specified in the post-mortem report that only a small portion of right side of skull bone is present and it would be insufficient to be used for superimposition photography. The doctor has opined

that the exact age of the deceased could not be assessed as most of the skull bones are missing and even the exact time of death also could not be made out since many parts of the limbs and all other soft tissues were decomposed and were missing. Thus it is clear that the post-mortem report as well as the evidence of the doctor who conducted the post-mortem examination would not be of any help to the prosecution to prove the recovery of the dead body of the deceased Narayana. From the material on record, it cannot be said that the bones and portions of the skull which came to be exhumed are of the deceased Narayana. Hence in our considered opinion, the recovery of the dead body is also not proved.

19. It is the specific case of prosecution that it is the murder for gain. According to the prosecution, the accused committed the murder of deceased for the purpose of getting gold ornaments shown in Ex. P.9 photograph. But the circumstances relating to recovery of gold ornaments is not proved by prosecution beyond reasonable doubt. The deceased had left house 4 to 5 days prior to 18.6.2009. He did not even report back to house thereafter. Not even a missing complaint is lodged by any of his family members till 1.12.2009 i.e., till the complainant was called to police station by the police, which means none of the family members suspected role of the accused in committing the murder of deceased. Since accused Nos. 1 and 3 were the friends of the deceased, complaint could have been lodged at least against them suspecting their hands in missing of the deceased. It is the case of prosecution that motive for committing murder is to get gold ornaments of the deceased and the same is not proved because of the aforementioned reasons. Discussion as made supra would lead to only conclusion that the prosecution has not proved its case beyond reasonable doubt. The main circumstance relied upon by the prosecution i.e., recovery of gold ornaments, is not proved. Recovery of dead body of the deceased is also not proved beyond reasonable doubt. No other circumstance is forthcoming against the accused. We find that the conclusion arrived at by the trial court is based on assumption and not based on legal evidence. We do not approve the reasons assigned by the trial court. Therefore, the judgment and order of conviction is liable to be interfered with. Accordingly, the following order is made:

"(a) CrI. A. Nos. 470/2011, 469/2011, 393/2011, 512/2011, 444/2011, 575/2011 and 485/2011 are allowed.

(b) CrI. A. No. 36/2012 filed by the State stands dismissed.

(c) Accused Nos. 1 to 7 are acquitted of all the charges leveled against them.

(d) Since accused Nos. 1-Gopalakrishna @ Girish @ Dadeeya @ Gunda, accused No. 2-Mohan Kumar @ Dasa and accused No. 3-Siddaraju @ Arun Kumar. M are in custody, they shall be released forthwith in case they are not required in any other case.

(e) The bail bonds of accused Nos. 4 to 7 shall stand cancelled.

(f) I.A. No. 1/2015 and Misc. Cvl. 2810/2011 in CrI. A. No. 469/2011 do not survive for consideration. Accordingly, they are dismissed.

(g) The operative portion of this order shall be communicated to the concerned prison authorities forthwith."