



2023 INSC 411

Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1295 OF 2019**

Dakkata Balaram Reddy & Anr. ... Appellant(s)

Versus

State of Andhra Pradesh & Anr. ... Respondent(s)

J U D G M E N T

Sanjay Kumar, J

1. By judgment dated 30.08.2016 passed in Sessions Case No. 81 of 2012, the learned VI Additional District and Sessions Judge, Sompeta, held the accused therein, viz., Dakkata Balaram Reddy (A1) and Chinapana Gopi (A2), guilty of offences punishable under Sections 302, 397 and 450 IPC and sentenced them accordingly. Their conviction and sentence stood confirmed when the High Court for the State of Telangana and the State of Andhra Pradesh dismissed Criminal Appeal

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No. 915 of 2016 filed by the two accused, *vide* judgment dated 03.10.2018. Aggrieved thereby, both the accused are before this Court.

2. Heard Shri R. Basant, learned senior counsel, appearing for the appellants/accused; Shri Mahfooz Ahsan Nazki, learned counsel, appearing for the State of Andhra Pradesh; and Shri Y. Raja Gopala Rao, learned counsel for the second respondent, viz., the complainant.

3. The case of the prosecution: The complainant, Vetcha Kesava Rao (PW-1), is a resident of Ichapuram and his house is situated on Chinamedaraveedhi, wherein he also did his gold and silver business. A1 is a civil contractor while A2, his brother-in-law, is an ex-serviceman. On 21.08.2008 at about 9.00 pm, in PW-1's absence, A1 and A2 trespassed into his house concealing iron rods under their shirts and brutally killed his son, Vetcha Kiran Kumar (deceased No.1), and his wife, Vetcha Venkatagopala Lakshmi (deceased No.2); robbed gold ornaments, weighing about 3.543 Kgs., and cash of ₹18,340/-. At about 11.00 pm on the same night, PW-1 lodged a written report against them at Ichapuram Town Police Station. Thereupon, Crime No. 61 of 2008 was registered by the Sub-Inspector of Police, Ichapuram Rural P.S. (PW-23), and he informed the Inspector of Police who was holding additional charge of Ichapuram Circle (PW-26). PW-26 immediately took up investigation. He

visited the scene of offence and held an inquest over the dead bodies in the presence of mediators. Upon receiving information, he arrested A2 at 01.15 am on 22.08.2008 at Radhamveedhi, Jagannadhaswamy Temple, Ichapuram, in the presence of mediators and recovered from his possession part of the stolen property, i.e., gold ornaments weighing 1748 grams 750 milligrams and cash of ₹18,340/-. He then arrested A1 at 04.00 am on 22.08.2008 from Gollaveedhi, Ichapuram, and recovered gold ornaments weighing 1794 grams 370 milligrams from his possession in the presence of mediators. Thus, PW-26 recovered the gold ornaments weighing 3.543 Kgs. from the accused along with the cash. He also examined several witnesses. He went to the scene of the offence and prepared a Rough Sketch. At his request, the Inspector of Police, FPB Unit, Srikakulam (PW-24), went to the scene of the offence along with the Clues Team and developed four chance fingerprints. Thereafter, the Inspector of Police, Ichapuram Circle (PW-27), took up further investigation. He visited the scene of offence, examined witnesses and recorded their statements. After completion of the investigation, he filed a charge sheet against the accused. Charges were framed against them under Sections 302, 379, 394 r/w 397, 411 and 450 IPC. They pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined 27 witnesses and marked Exs.P-1 to P-21 in evidence, apart from producing Material Objects (MOs) 1 to 99. The accused did not adduce evidence but were examined under Section 313 Cr.P.C. Upon considering the evidence and the MOs, the learned VI Additional District and Sessions Judge, Sompeta, held the accused guilty of the offences punishable under Sections 302, 397 and 450 IPC. They were sentenced to undergo imprisonment for life under Section 302 IPC and to pay fine of ₹2,000/- each; imprisonment for a period of 10 years under Section 450 IPC and to pay a fine of ₹2,000/- each; and imprisonment for 7 years under Section 397 IPC. Further imprisonment was directed for default in payment of fines.

5. Aggrieved thereby, the accused filed Criminal Appeal No. 915 of 2016 before the High Court. By judgment dated 03.10.2018, a Division Bench of the High Court opined that the circumstantial evidence, in corroboration with the medical evidence, the weapons used and the manner in which the attack was made, established that the accused intended to cause the death of the inmates of the house of PW-1, fulfilling the essential ingredients of the offence under Section 300 IPC, punishable under Section 302 IPC. The High Court, therefore, concluded that there

was no merit in the case and dismissed the same. Hence, this appeal by special leave under Article 136 of the Constitution.

6. At the outset, it would be apposite to note the scope of jurisdiction under Article 136 of the Constitution in a case of this nature, where the Trial Court and the High Court have concurrently returned findings of guilt against the accused. In ***Pappu Vs. The State of Uttar Pradesh [(2022) 10 SCC 321]***, this Court pointed out that, in an appeal by special leave under Article 136 of the Constitution against concurrent findings of fact by the Trial Court and the High Court after appreciation of evidence, each and every finding of fact cannot be contested and such an appeal cannot be dealt with as if this Court is another forum for reappraisal of evidence. It was observed that it is only if the assessment by the Trial Court and the High Court can be said to be vitiated by any error of law or procedure or misreading of evidence or in disregard to the norms of judicial process, leading to serious prejudice or injustice, that this Court may, and in appropriate cases would, interfere in order to prevent grave or serious miscarriage of justice, but such a course is to be adopted only in rare and exceptional cases of manifest illegality. It was further observed that such an appeal is not a regular appeal and this Court would not interfere with concurrent findings of fact based on pure

appreciation of evidence and it is not the scope of such appeal that this Court would enter into reappreciation of evidence so as to take a view different from that taken by the Trial Court and approved by the High Court.

7. Earlier, in ***Sambhu Das alias Bijoy Das and another Vs. State of Assam*** [(2010) 10 SCC 374], this Court affirmed that Article 136 of the Constitution does not confer a right of appeal on a party and only confers discretionary power on this Court to be exercised sparingly to interfere in suitable cases where grave miscarriage of justice has resulted from illegality or misapprehension or mistake in reading evidence or from ignoring, excluding or illegally admitting material evidence.

8. This being the settled legal position, the case on hand may now be examined. There are no eye-witnesses to the actual commission of the offence and the case is built on circumstantial evidence. Trite to state, in such a situation, the chain of evidence must be so complete as to not leave any reasonable grounds for a conclusion consistent with the innocence of the accused; the accused 'must be' and not merely 'may be' guilty, before the Court can convict, and the facts established should be consistent only with the hypothesis of the guilt of the accused [See ***Hanumant Govind Nargundkar Vs. State of M.P.*** (AIR 1952 SC 343)].

9. In this context, the following facts may be noted: Vetcha Kesava Rao (PW-1) stated that, on 21.08.2008 at about 05.00 pm, he went to Sompeta for business purposes and received a call from PW-7/LW-8 at about 09.30 pm that the accused went to his house at about 09.00 pm and that they heard loud cries and shouts coming from the house. PW-7 then told him that after some time A1 ran away with small bundles of gold while he and LWs 6 & 7 (PW-4 and PW-6) were watching and A2 fled from upstairs towards the backside portion. PW-1 stated that he returned from Sompeta and reached his house at about 10.00 or 10.30 pm and by that time, people had gathered outside his house and all the doors of his house were open. His son was lying in a pool of blood near the sofa in the shop room and there was an iron rod on the floor, and in the southern side room, his wife was lying in a pool of blood and he found another iron rod near her. All the gold ornaments were missing from the shop almirah and the show case. He then went to the police station and lodged a report (Ex.P-1). PW-1 stated that he told the police that his wife and son were killed by the accused. He also informed the police that he had lost gold ornaments and cash of ₹18,340/-. In his cross-examination, he stated that the accused were his customers and used to purchase gold

or take money from him. He denied knowledge of A1 being a contractor and his financial position.

10. The Civil Assistant Surgeon, Community Health Centre, Ichapuram (PW-19), conducted the post-mortem examination of the body of deceased No. 1. He issued a post-mortem certificate (Ex.P-14) stating that the cause of his death was shock due to brain injury and hemorrhage following a head injury. Another Civil Assistant Surgeon at the Community Health Centre, Ichapuram (PW-20), conducted the autopsy over the body of deceased No. 2 and issued a post-mortem certificate (Ex.P-15) stating to the same effect as to the cause of her death. Both PW-19 and PW-20 denied the suggestion that the injuries on the bodies of the deceased could have been caused by falling from the first floor. In effect, it can safely be said that their deaths were homicidal in nature. More so, as blood-stained iron rods (MOs1 and 2) were found near the bodies.

11. Though there were no eye-witnesses to the actual killings, there were three separate witnesses who spoke of seeing one or both of the accused 'running away' from the house of PW-1 at that late hour on the fateful night. PWs 4, 6, and 10 are those witnesses. PW-4 stated that he was also doing gold and silver business and knew PW-1 as well as the accused. He stated that, on 21.08.2008 at about 09.00 pm, he and PW-6

were going to his sister's house at Dabburi Street via Medaraveedhi and at that time, they heard loud voices coming from PW-1's house. They shouted as to what was happening inside the house. A number of people gathered at the house. Then, A1 came out from the house of PW-1 and ran away. After that, the police came to the house of PW-1. Along with them, they all went inside the house of PW-1 and found that the wife and son of PW-1 were lying dead. PW-1's son was lying in the shop room and the body of PW-1's wife was at the bath room which was after the shop room. PW-1 then returned from camp. During the investigation, on 11.12.2008, his statement was recorded under Section 164 Cr.P.C. by the Judicial First Class Magistrate, Sompeta (Ex.P2). At this stage, PW-4 was declared hostile and was cross-examined by the prosecution. He denied having stated before the police that the accused had entered the house of PW-1 and had stolen gold ornaments and cash. In his cross-examination by the defence, PW-4 stated that PW-1's house was in the centre of Chinamedaraveedhi and on both sides, houses were situated. He stated that he did not know whether PW-1 used to advance loans on pledging of gold ornaments.

12. PW-6 stated that, on 21.08.2008 at about 09.00 pm, he and PW-4 were going towards his house and PW-4 was then going to his

sister's house via Chinamedaraveedhi. By the time they reached PW-1's house, they heard cries and shouted as to what happened. In the meanwhile, 10 to 15 people gathered there. Then, A1 came outside from PW-1's house and ran away on a bike with a bag on his shoulder. After 5 or 10 minutes, A2 jumped from the upstairs of PW-1's house to the neighbouring house and from there, he jumped down. At that time, A2 was also holding a bag. After one hour, PW-1 returned to his house and the police also came there. In the first room, i.e., the gold shop, PW-1's son was found in a pool of blood and his wife's body was found near the bathroom towards the backside of the shop. Iron rods were found near the bodies. In his cross-examination, PW-6 stated that about 3 or 4 people were present at PW-1's house by the time they were passing there. He further stated that A1 was a contractor and possessed 8 lorries. He however disclaimed knowledge of A1 doing gold business or having constructed a temple. He could not say the colour of the wearing apparel and the colour of the bags carried by the accused.

13. PW-7 stated that, on 21.08.2008 at about 09.00 pm, he closed his kirana shop and was returning home and by the time he reached PW-1's house, he heard loud sounds coming from PW-1's house and some people had gathered there. He stated that he called PW-1 and

informed him that loud sounds were coming from his house and PW-1 said that he would return home. At about 10.30 pm, PW-1 returned to the house and a police report was given. After the police came, they went inside the house and on the left side near the sofa in the shop room, PW-1's son was lying in a pool of blood. His wife was lying in a pool of blood by the bathroom and iron rods were present near the bodies. He further stated that all the things were shattered in the house of PW-1 and around 4 Kgs. of gold and cash was stolen/lost. In his cross-examination, he stated that, by the time the police came there, he was present outside PW-1's house. Significantly, PW-7 did not say anything about the presence of the accused or about informing PW-1 of their entering and leaving his house.

14. PW-10 resided in the 2nd house opposite the house of PW-1. He stated that, on 21.08.2008 at about 09.30 pm, while he was taking dinner, he heard sounds from outside. When he came out, he saw around 10 people gathered in the street. Meanwhile, A1 ran away from PW-1's house and then A2 ran away from PW-1's house. Both of them were holding bags. Later, he came to know that the accused had murdered PW-1's wife and son and ran away with gold. He stated that PW-1 came to the house within half an hour or one hour. Police also came to the

house. He went to the house and saw the bodies of deceased. In his cross-examination, he admitted that he did not state before the police that A1 and A 2 were holding bags and left PW-1's house in a hurry.

15. Now, coming to the apprehension and arrest of the accused. PW-17 stated that he was the Village Revenue Officer of Koligam Village and on 22.08.2008, at around 01.00 am, he was called to Ichapuram Town Police Station by the Inspector of Police. LW-27 was already there by then. He stated that both of them and the police went to Radham Street near Jagannadhaswamy Temple. At that time, one person was seen running away from that place and the police chased and caught hold of him. He was holding a bag in his hand. He stated that his name was Chinapana Gopi (A2) and he allegedly confessed to commission of the crime. The bag was seized and opened in their presence. They found gold ornaments and cash of ₹18,340/- inside. At about 04.00 or 04.30 am on the same day, he went to Ichapuram Town Police Station and both the accused were present there. The police then seized the blood-stained clothes of both the accused in his presence. In his cross-examination, he stated that he did not remember the colour of the bag seized from A2 or the number of ornaments seized.

16. PW-16, the Village Revenue Officer, Purushottapuram, Ichapuram Mandal, stated that, on 22.08.2008 at about 02.30 am, the Inspector of Police, Ichapuram, called him and LW-25 and both of them, along with the Inspector of Police and other police staff, went to Gollaveedhi in a police jeep. On seeing the police jeep, one person started running but the police chased and caught hold of him. He was brought before the Inspector of Police and on questioning as to why he was running, he identified himself as Dakkata Balaram Reddy (A1). He allegedly confessed to having killed PW-1's wife and son and taking gold ornaments. Upon being questioned about the ornaments, he brought the ornaments in a bag from his room, i.e., about 30 items. PW-16 further stated that, at about 04.40 am on the same day, the Inspector of Police called him to the Police Station and he along with LW-26 went there. The police seized the yellow T-shirt (MO 97) and light cement-coloured jeans pant (MO 98) of A1 along with the blood-stained jeans of cement color (MO 99) of A2.

17. PW-26 worked as the Inspector of Police at Sompeta from 13.10.2006 to 19.09.2008. He stated that, on 21.08.2008, while he was holding additional charge of Ichapuram Circle, he received information from the Sub-Inspector of Police, Ichapuram Rural Police Station (PW-23)

about the subject crime. He immediately rushed there and also flashed radio messages for conducting vehicle checking to apprehend the accused. He visited the scene of offence at 11.45 pm and noted the dead bodies. In the meanwhile, he received information about the movement of the culprits and left the scene of the offence. He secured two mediators and along with his staff, he went to Radhamveedhi, Jagannadhaswamy Temple, at about 01.15 am and noticed one person, carrying a hand bag, trying to escape upon seeing the police. He apprehended the person (A2) and questioned him about the contents of the bag. He interrogated him and he confessed to the commission of the offence. The bag carried by him was verified and gold ornaments along with cash of ₹18,340/- were found therein. Then, PW-26, along with the accused, his staff and mediators, rushed to the house of the other accused, Dakkata Balaram Reddy, situated on Gollaveedhi of Ichapuram Municipality, and upon seeing the police, one person (A1) tried to escape. He was apprehended and interrogated in the presence of mediators. He also confessed to commission of the offence and corroborated the version given by the other accused. PW-26 stated that he then questioned him about the stolen property and he fetched a bag from the side room of the house along with blood-stained clothes and handed over the same to him. The bag

contained gold ornaments. PW-26 then arrested A1 at about 04.00 am and brought both the accused to the police station along with the seized property. Upon further questioning as to their clothes at the time of the offence, they disclosed that they were wearing the same clothes at the time of offence. He then secured some other clothes and seized their blood-stained clothes.

18. PW-27 stated that he worked as the Inspector of Police, Ichapuram, from 09.02.2008 to 09.05.2010. He stated that he took up further investigation in the case on hand on 31.08.2008 and that PW-26 had conducted investigation till then. He spoke of the Test Identification Parade of the seized gold ornaments conducted in the presence of mediators.

19. The Inspector of Police, FPB Unit, Srikakulam, was examined as PW-24. He stated that, on receipt of a telephone message from the Police Station, Ichapuram, he visited the scene of offence along with a Clues Team on 22.08.2008 at about 06.00 am and developed four chance fingerprints on a glass show case and one chance fingerprint on a cream-coloured plastic box. He stated that he found photocopies of two of the chance prints unfit for comparison but the chance prints marked as A, D and E were fit for comparison. The fingerprints marked as A and E

tallied with the fingerprints of the two accused. In his cross-examination, he stated that he did not receive the specimen fingerprints of the accused through the Court but from the Investigating Officer.

Insofar as this fingerprint evidence is concerned, we find that the same was liable to be eschewed from consideration as the accused were already in custody by the time the so-called chance fingerprints were lifted from the scene of the offence. More importantly, the prescribed procedure was not followed in gathering this so-called evidence. No report was drawn up at the time of lifting of these chance prints in the presence of credible witnesses. Similarly, no report was prepared even at the time the specimen fingerprints of the accused were taken. Therefore, PW-24's evidence that two of the chance prints tallied with the fingerprints of the accused cannot be given any weightage. Failure in following the due procedure rendered the findings of PW-24 wholly unreliable.

20. Shri R. Basant, learned senior counsel, would contend that there is no evidence of any light being available outside the house of PW-1, whereby the witnesses could have seen the accused running away with bags. We are of the opinion that it would not be open to the accused to raise this factual aspect at this late stage. It was never put in issue that the area in question did not have adequate street lights, whereby the

evidentiary value of the statements of witnesses as to what they had seen could be attacked. More so, as it has come on record that apart from the jewellery shop of PW-1, there were other jewellery shops in the vicinity and the police station itself was just half a kilometer away. If that was so, it is difficult to believe that there would be no street lighting in such an area. In any event, this Court does not propose to initiate an inquiry into this factual aspect, which was not raised either before the Trial Court or before the High Court.

21. Undeniably, there are some discrepancies and contradictions in the prosecution's case. There is no clarity as to the sequence of events at the scene of offence on the fateful night. Witnesses gave differing versions of the time of the arrival of the police and as to what they saw and said. There is no corroboration of PW-1's statement that it was PW-7 who informed him of the accused entering and exiting his house, as PW-7 said nothing to that effect. Further, recovery of the clothes worn by the accused at that time is also shrouded in doubt. One version is that they were still wearing them at the police station and they were seized there by the police, after providing them other clothes, while the other is that A1 handed over blood-stained clothes to PW-26 along with the bag of ornaments at his house. However, some differences in the testimonies of

witnesses as to what they saw and said are to expected given the passage of time. Be it noted that the subject incident occurred on the night of 21.08.2008 and the depositions of the witnesses were recorded by the Trial Court in the later part of 2015. In any event, as already noted hereinbefore, this Court would not undertake a roving inquiry on factual issues or reappreciate the evidence, unless it is brought out that there is some perversity in appreciation of evidence by the Trial Court or the High Court, leading to manifest miscarriage of justice. Trivial defects in investigation or process are not enough, in themselves, to disbelieve the prosecution's case. To acquit solely on the ground of defective investigation would be adding insult to injury [See ***Karnel Singh Vs. State of M.P.*** {(1995) 5 SCC 518}]

22. Similarly, identification of the gold ornaments by PW-1 during the TIP does not raise any red flags. Order 474 of the Andhra Pradesh Police Investigation Manual, Part I, Vol. IIA, provides that identification of properties has to be done in the Court premises, under the order of the Magistrate, either by the Magistrate or through independent witnesses, if the properties are already sent to Court, and in other cases, independent witnesses should conduct the process of identification of the property in the absence of the police, under a Panchnama. The properties to be

identified should be mixed with similar articles and the witnesses should be asked to identify them. This being the procedure that was followed in the case on hand, there is no reason to doubt PW-1's identification of the seized gold ornaments as those taken from his shop.

23. In this regard, it may also be noted that A2 was found in possession of a bag carrying some of the stolen ornaments and, therefore, such possession itself speaks against him, in terms of Section 114 (a) of the Indian Evidence Act, 1872. Being a fact especially within his knowledge, it was for A2 to explain as to how he came to be in possession of those stolen ornaments, under Section 106 of the Indian Evidence Act, 1872. However, no explanation was offered by him. As regards A1, it is the prosecution's case that he confessed to commission of the crime and upon being questioned as to the stolen gold ornaments, he himself went into the other room in his house and brought out a bag containing the gold ornaments. This part of his confession would, therefore, be admissible under Section 27 of the Indian Evidence Act, 1872, as it led to the recovery of the stolen gold ornaments.

24. No doubt, recovery of this stolen property from the accused would not be sufficient in itself to convict them for murder. However, the weight of the evidence on record, taken cumulatively, unerringly points to

the guilt of the accused, leaving no room for second thoughts. The inescapable fact remains that PWs 4, 6, and 10, who were witnesses independent of each other and who had no animosity or enmity with the accused, spoke in unison about seeing them running away from the house of PW-1 of the fateful night with bags in their possession. No explanation is forthcoming as to why three separate witnesses would choose to implicate the accused falsely.

25. Given the totality of the case, which demonstrates that the sequence of events unfolded in quick succession during the intervening night of 21.08.2008 and 22.08.2008, leading to not only identification of the accused by the witnesses present but also their apprehension and arrest, apart from seizure of the stolen gold ornaments and cash from their possession, it is amply clear that there was no time or possibility for the police to hoist a false case upon them. Minor discrepancies and shortcomings in the statements made by witnesses after passage of a few years would necessarily have to be discounted in such a scenario.

27. Viewed thus, we find no patent illegality or manifest injustice having been committed by the Trial Court and the High Court, warranting exercise of discretionary jurisdiction under Article 136 of the Constitution.

The Criminal Appeal is, therefore, found to be bereft of merit and it is dismissed accordingly.

.....,J
(Dinesh Maheshwari)

.....,J
(Sanjay Kumar)

April 21, 2023
New Delhi.