

Akella Subrahmanyam

Vs

State of Andhra Pradesh

Criminal Appeal No. 185 of 1975

(Jaswant Singh, P. S. Kailasam JJ)

27.11.1978

JUDGMENT

JASWANT SINGH, J. –

1. This appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is directed against the judgment and order dated January 16, 1975 of the High Court of Judicature, Andhra Pradesh at Hyderabad whereby the judgment and order dated June 27, 1973 of the Sessions Judge, East Godavari Division at Rajahmundry acquitting the appellant of the offences under Section 392 read with Section 34 and Section 302 read with Section 34 of the Indian Penal Code was set aside and he was convicted for the aforesaid offences and sentenced to seven years' rigorous imprisonment on the first count and life imprisonment on the second count.

2. The case as put forth by the prosecution was : Akella Subbamma, a middle-aged childless widow of Akella Ramamurthy, was living all by herself in her house in village Valluru, five kilometres away from Police Station, Mandapeta, in East Godavari District. Twelve years before his death which occurred sometime in 1966-67, Akella Ramamurthy took the appellant, his brother's son, in adoption. Despite his adoption, the appellant continued living with his natural parents at Rajahmundry where he was studying but paid occasional visits to Valluru to see Akella Subbamma, his adoptive mother. Lured by his adoptive mother's material possessions which consisted of 2 1/2 acres of wet land worth about twenty-five thousand rupees, gold bangles and silverware and actuated by the base desire of hastening the process of devolution and enriching himself expeditiously, the appellant hatched an ignoble plan with Pakala Prasadrao alias Prasad, his bosom friend and co-accused, for robbing the deceased of her valuables and doing away with her. In furtherance of their common intention, the appellant and Prasad left Rajahmundry by bus at 4.30 p.m. on September 23, 1972 for the house of Akella Subbamma in Valluru where they reached the same evening at about 6.30 p.m. With a view to prepare food for the appellant and his friend, Prasad, Akella Subbamma went to the house of a neighbour named Chinthalapudi Subbamma (PW 4) to fetch some burning charcoal. She also asked PW 4 for curds. As PW 4 did not have curds at her house, she went to Janakiratnam (PW 5), purchased curds from her and delivered the same to Akella Subbamma at her house where she saw both the appellant and Prasad present. At the time of delivery of curds, she also saw Akella Subbamma wearing the gold bangles as usual. At about 7.30 p.m. on the same evening when Matyala Ramarao (PW 1) who lived opposite to the house of Akella Subbamma was sitting in his house talking to his farm servant, Chalumuri Bachibabu (PW 2), he heard a groaning sound emanating from the house of Akella Subbamma whereupon he asked PW 2 to go into the lane adjoining the east of Akella Subbamma's house which led to her backyard and find out what the matter was. PW 2 went to the lane as beckoned by PW 1 and came back after a short while and reported to PW 1 that the groaning sound was coming from the window of Akella

Subbamma's house opening into the eastern lane. Thereafter both PW 1 and PW 2 went into the lane and cried out enquiring as to who was in Akella Subbamma's house. At this, the appellant came out of the house through the door opening into the aforesaid lane. On seeing the appellant emerging out of his adoptive mother's house, PW 1 questioned him about the groaning sound whereupon the appellant replied that he and his friend were rollicking which produced the groaning sound. PW 1 then asked the appellant to call his friend. Upon this, the appellant called out his friend addressing him as 'Prasad' but the latter replied from inside that he was having his food. Upon PW 1's asking the appellant where Akella Subbamma was, the latter told him that she had gone to the lavatory. Thereafter the appellant went inside the house and closed the door. PW 1 also returned to his house but as he had some sort of premonition, he instructed PW 2 to remain in the lane till the return of Akella Subbamma. PW 2 waited in the lane for 10 or 15 minutes but seeing no sign of Akella Subbamma's return, he came back and reported the matter to PW 1. As PW 1's suspicion deepened, he went along with PW 2 to the house of Chembrolu Parasurama Sastry (PW 3), another neighbour, and all three of them proceeded to the main entrance of the house of Akella Subbamma but finding it bolted from inside and nobody responding to their tapping, they went to the backyard door which they found ajar. Going inside the house which was plunged in darkness, they made search for Akella Subbamma in all the rooms of the house which were bolted from outside and ultimately found her with the help of torchlight lying dead on her back in the kitchen with some abrasions on her neck and a coir rope (MO 4) lying by her side. By the side of the door opening into the backyard they found a green handbag (MO 1) containing a silver plate (MO 2) and silver vessel (MO 3). PW 1 thereupon deputed PW 2 to go and inform the village Munsif named Rimmalapudi Suryanarayan Ramarao (PW 9). After a short while, PW 9 came to Akella Subbamma's house and recorded the statement (Ex. P 1) PW 1 and sent the same with his note (Ex. P 4) to the Police Station, Mandapeta. On receipt of Ex. P 1, the Head Constable of the police station named Syed Ahmed (PW 16) forthwith registered the same as Crime No. 68 of 1972 under Section 302 of the Indian Penal Code and proceeded to Vallur. Next morning, P. Sriharirao, Circle Inspector (PW 18) also reached the scene of the occurrence and held inquest over the dead body of Akella Subbamma, seized the green handbag (MO 1) containing the silver plate (MO 2) and the silver vessel (MO 3) and the coir rope as well as a pair of chappals which were found lying in the hall of the house. The blood found in the kitchen near the dead body was also seized by the Circle Inspector. After completing these formalities, the Circle Inspector sent the dead body for post-mortem examination to the Government Hospital at Ramachandrapuram where Dr. V. Syamala, Lady Assistant Surgeon (PW 14) conducted the post-mortem examination to the and opined that Akella Subbamma appeared to have died of asphyxia due to strangulation about 20 hours prior to the post-mortem examination. It was not before 4.30 p.m. on September 25, 1972 that the Circle Inspector succeeded in effecting the arrest of the appellant at Korukonda bus-stand. On being interrogated, the appellant led the police to the Fort Gate and showed his co-accused Prasad who was preparing to leave for the railway station. The Circle Inspector arrested and interrogated Prasad who took him to Manda Nageswararao (PW 7), a dealer in gold at Nalla Mandu Sandu stating that he had sold the two gold bangles to him i.e. to PW 7 on the previous day for Rs. 125. On being questioned by PW 18, PW 7 produced gold bangle (MO 6), and four pieces of another broken gold bangle (MO 7), which were seized by PW 18 in the presence of Vinukonda Babji (PW 10) and a teacher. During the course of further investigation, the gold bangles, the silver plate and the silver vessel were identified as belonging to Akella Subbamma and the pair of chappals and green bag as belonging to Prasad. On the evening of September 26, 1972, the Magistrate before whom the appellant and Prasad were produced for remand directed that they be kept in the judicial lock-up. On September 27, 1972, PW 18 made an application before R. N. Patro, Principal Munsif Magistrate, Ramachandrapuram, requesting him to record the statement of the appellant and his co-accused, Prasad, under Section

164 of the Code of Criminal Procedure whereupon PW 15 sent a requisition to the Superintendent, Sub-Jail, Ramachandrapuram, asking him to produce the accused before him at 1.00 p.m. on that day. Accordingly the Sub-jail Superintendent caused the accused to be produced before PW 15 who put them some preliminary questions warning them that they were not bound to make confessional statements and anything that they would state might be used against them, gave them two days' time for reflection and sent them back to the Sub-jail with the direction that they be produced again before him at 11.00 a.m. on September 29, 1972 and meanwhile measures be taken to prevent any prisoner or person belonging to the Police Department from having access to them. On the accused being produced before him in accordance with his directions on September 29, 1972, PW 15 again administered the necessary warning to the appellant and his co-accused and after being satisfied that the accused were prepared to make voluntary statements recorded their confessional statements (Exs. P 23 and P 25). In the course of his confessional statement (Ex. P 23), the appellant besides admitting the material particulars of all the incriminating circumstances appearing against him in depositions of PWs 1, 2, 3 and 4 made further disclosures to effect that when his aunt (the deceased) was pouring oil in the pan and frying 'vadiyalu' both he and Prasad went into the kitchen; that while proceeding to the kitchen Prasad took a coconut rope lying in the 'vasara'; that on Prasad's giving a signal to him, he caught hold of the hands of the deceased whereupon she cried aloud; that Prasad tried to tie the hands of the deceased but did not succeed in doing so as the latter struggled; that while he held the hands of the deceased firmly, Prasad removed her bangles and placed the silver plate and the vessel in a bag; that thereafter Prasad removed the electric bulb of the kitchen and while Prasad was busy doing so, he left the deceased; that on hearing the cries raised by his aunt, somebody come calling "Subbamma Garu" "Subbamma Garu"; that Prasad thereupon bolted the door of the kitchen and asked him to go and answer the person; that accordingly he went into the lane and saw three persons including Matyala Ramarao and a farm servant; that on Matyala Ramarao's addressing him as "Daffudu Guru" and going near him as desired by Matyala Ramarao, he answered his query about the cries by telling him that he and his relative's son were cutting jokes with each other; that in answer to Matyala Ramarao's further query as to where his aunt was, he told him that she had gone to the latrine; that thereafter Matyala Ramamrao and another person went away leaving the farm servant in the lane with instructions to remain there till Akella Subbamma's arrival; that by the time he returned he saw Prasad running away; that putting off the bedroom bulb that was burning, he walked away to Dwarapudi Railway Station where he met Prasad and while leaving, he left the backyard door of the deceased's house ajar. After recording the aforesaid confessional statements, PW 15 remanded the accused back to the Sub-Jail.

3. On completion of the investigation, the accused were proceeded against under Section 302 read with Section 34 and Section 392 read with Section 34 of the Indian Penal Code in the Court of the Additional Judicial First Class Magistrate, Ramachandrapuram, who committed them to the Court of Session, East Godavari Division, Rajahmundry to stand their trial for the aforesaid offences. By his judgment and order dated June 27, 1973, the Sessions Judge found the appellant and his co-accused not guilty and acquitted them of the aforesaid charges. Aggrieved by the judgment and order of the Sessions Judge, the State preferred an appeal under Section 417 of the Code of Criminal Procedure, 1898 before the High Court of Judicature, Andhra Pradesh which was allowed and both the appellant and his co-accused, Prasad, were convicted and sentences alike as stated above.

4. Appearing in support of the appeal, Mr. A. Subba Rao, counsel for the appellant, has contended that the impugned judgment and order cannot be sustained as the confessional statement (Ex. P 23) was the result of the pressure that was brought to bear on the appellant during the prolonged police custody that preceded the making of the confession and the circumstantial evidence falls short of the requisite standard of proof.

5. Mr. P. P. Rao has, on the other hand, urged that the evidence adduced by the prosecution unmistakably establishes the guilt of the appellant under both the aforesaid counts.

6. The only question that therefore falls for consideration in this case is whether the prosecution has succeeded in establishing the charges of robbery and murder against the appellant. It is true that there is no direct evidence regarding the commission of robbery and murder by the appellant and the High Court has held him guilty of both the charges on the basis of (1) his retracted confession (Ex. P 23) wherein he has admitted his participation in the commission of the offence of robbery and (2) the circumstantial evidence. It has to be seen whether the aforesaid confessional statement was voluntary or not and whether the chain of events furnished by the circumstantial evidence leads beyond reasonable doubt to the conclusion that the appellant was responsible for the aforesaid offences. Although the learned counsel appearing for the appellant has tried to emphasize that the aforesaid confession being involuntary cannot be acted upon, we find it difficult to accede to his contention. There is nothing on the record to impel us to hold that it was made under the influence of the police or that the police kept that appellant in its custody after a substantial part of the investigation was over. According to PW 18, it was on September 25, 1972 that he arrested the accused. Even assuming that the appellant was arrested not on September 25, 1972 as stated period during which he remained in the custody of the police cannot be said to be a prolonged one. In the preliminary statement (Ex P 22) recorded on September 27, 1972 by R. N. Patro, Principal Munsif Magistrate, Ramachandrapuram when in response to his requisition, the Superintendent, Sub-Jail, Ramachandrapuram caused the production of the appellant before him, the appellant clearly admitted that he was remanded to the judicial lock-up on September 26, 1972. During the course of his preliminary examination of September 27, 1972, the appellant was duly warned that he was not bound to answer any question or to make a confessional statement and any such statement made by him might be used against him. In the said preliminary examination, the appellant also stated before the Principal Munsif magistrate that he had not been compelled or advised to confess his guilt; that he had not been subjected to any violence and that he was admitting his guilt as he had committed the offence. It is also to be noted that after the preliminary questioning and warning, the appellant was again remanded to the Sub Jail and was given two days to reflect over the whole matter. Even on September 29, 1972 when the appellant was produced before the Principal Munsif Magistrate, he was again warned that he was not bound to make a confession and if he did so, it might be used as evidence against him. The Magistrate also took care not to remand the appellant to police custody after recording his confessional statement (Ex. P 23) but to custody of the Superintendent of the Sub Jail, Ramachandrapuram. Thus the period for which the appellant remained in the custody of the police can by no means be said to be a prolonged one as sought to be made out on behalf of the appellant nor can the confessional statement (Ex. P 23) made by him be characterised as involuntary or made under the influence of the police.

7. The circumstantial evidence adduced in the case by the prosecution also lends support to the truth of the confessional statement (Ex. P 23) and leads beyond reasonable doubt to the conclusion that in prosecution of the common intention, the appellant committed the offences of robbery and murder. The statement of Chinthalapudi Subbamma (PW 4) shows that the deceased came to her house on the evening of September 23, 1972 and asked her for some burning charcoal. After getting the burning charcoal from Chinthalapudi Subbamma, the deceased came back to her house and asked her to get some curds and that when she went to make over the curds to the deceased after purchasing the same from Janakiratnam (PW 5) she saw the appellant and his co-accused present in the house of deceased who as usual was wearing the gold bangles. The statements of Matyala Ramarao (PW 1) and Chalumuri Bachibabu (PW 2) show that on the evening of September 23, 1972 when they were sitting in the house of the former talking to each other they heard a groaning

sound emanating from the house of the deceased whereupon PW 1 deputed PW 2 to go to the lane and find out what the matter was. It was on the PW 2's reporting to PW 1 that the groaning sound was from the house of the deceased, PWs 1, 2 and 3 went together and knocked at the entrance door of the house of deceased whereupon the appellant came out of the house and on inquiry by PW 1 as to what the groaning sound was about and where the deceased was, he tried to put the witness off the scent by falsely telling him that the groaning sound was the result of rollicking in which he and his friend were indulging. Shortly thereafter when PWs 1 and 3 went into the house of the deceased accompanied by PW 2 on the latter's reporting to them as desired by PW 1 that there was no sign of the deceased coming back from the lavatory, they found the dead body of the deceased lying in the kitchen. They also found the bangles which were usually worn by her missing and the accused not present there. It cannot also be overlooked that it was at the instance of the appellant that the police was able to arrest the other accused in pursuance of whose information the gold bangles belonging to the deceased were recovered. On a conspectus of the entire evidence, we are satisfied that the prosecution has succeeded in bringing home the charges to the appellant.

8. For the foregoing reasons, we do not find any merit in this appeal which is dismissed.

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