

Mallela Seetharmaiah and Another

Vs

State of Andhra Pradesh

Criminal Appeal No. 487 OF 1978

(B. C. Ray, N. D. Ojha JJ)

02.11.1988

JUDGMENT

RAY, J. –

1. This appeal by special leave is against the judgment and order passed on December 9, 1977 in Criminal appeal no. 360 of 1976 by the High Court of Andhra Pradesh dismissing the appeal.
2. The prosecution case, in short, is that the deceased Yasodamma who had been divorced by her husband soon after marriage due to some misunderstanding, was living with her mother Ratnamma at Tadikonda in Guntur District. She inherited 50 acres of land in Ibrahimpatnam of Krishna District from her father and she also inherited 40 acres of land at Tadikonda from her maternal grandfather. Her mother started a High Court School in the name of her father and donated a sum of Rs. 60,000 to the said school. The deceased also started an Oriental College and donated money to the said college. She also established an elementary school in the name of her father Mallela Venkata Subbaiah and nominated PW 18 as its Correspondent and Secretary. The deceased was a wealthy lady.
3. In 1972, appellant (A-1) who was living at Chhattaparru in West Godavri District due to some difference with his wife approached the deceased, her paternal aunt and sought permission to stay at her house and to assist her in the management of her affairs. With the permission of the deceased, A-1 started residing in her house at Tandikonda since 1972 and endeared himself very much to the deceased who cancelled the will executed by her on October 25, 1967 bequeathing all her properties to the educational institutions and registered a will dated December 22, 1973 whereby she bequeathed all her properties to A-1 after her death. Some time after the execution of the said will A-1 and appellant 2 (A-2) who is the son of A-1, were not conducting themselves in the manner expected by the deceased. In 1975, the deceased developed dissatisfaction towards A-1 and A-2 and she was contemplating to cancel the will executed in favour of A-1. Ultimately, on August 23, 1975 the deceased called Nagabhushanam (PW 10) at her house and dictated a will giving all her properties to the educational institutions except giving 5.09 cents of land to A-1, cancelling the will dated December 22, 1973. The will was attested by PWs 10, 11 and 15. It was presented before Mr. K. Venkataratnam Chowdary, advocates and notary (PW 16) who copied the same in his register and after being satisfied about its due execution by the deceased and the attestors, made an endorsement on the back of the will and obtained the signatures of the deceased in the Notary Register and also under endorsement made by him.
4. It is the prosecution case that A-1 was observed all that was taking place and he was conniving with his son, A-2 to do away with the deceased so that the deceased would not be able to cancel the

will executed in his favour. On August 24, 1975, A-2 engaged an auto-rickshaw of Inkellu Nageswarao of Guntur (PW 13) and reached the bus stand at Tadikonda at about 8 p. m. and after leaving the auto-rickshaw there he went on foot to the house of the deceased. A-1 and A-2 were the only person who stayed in the house that night. A-2 left the house of the deceased at about 2 p. m. on August 25, 1975 in the auto-rickshaw of PW 13. On August 25, 1975 at about 3.30 a. m., A-1 went to the houses of neighbours, PW 6 to PW 9 and intimated that that two strangers forcibly broke open the door and after threatening them by showing knives took the keys of the iron chest from the deceased. They, thereafter, unlocked the iron chest and removed cash and gold jewels from there and while going away, they stabbed the deceased to death. PW 6 informed the Tadikola police station by telephone about this murder. The Station Writer at about 5.30 a. m. went to the house of the Sub-Inspector, PW 30 and intimated him about the murder of the deceased. PW 30 came to the police station immediately thereafter and was about to proceed to the house of deceased when A-1 appeared before him and presented a report (Ex. P-66). On receiving the report, PW 30 started writing the FIR. As he had some doubts, he wanted to enquire from A-1 some clarifications but A-1 had already left the police station. He sent PW 26, constable to bring the complainant, A-1. PW 30 registered crime No. 62/75 on the basis of Ex. P-66 and sent intimation to the Inspector of Police, Guntur (PW 31). PW 30 and PW 31 thereafter went to the house of the deceased. PW 26 brought A-1 with him to the house of deceased at about 8 a. m. PW 31 arrested A-1 and interrogated him in the presence of PW 11 and Dada Krishnamurthy (PW 29). A-1 thereupon produced 27 hundred rupees notes (MO 5) and a gold chain of two rows with black beads and red locket (MO 1) after removing them from near his waist. PW 31 seized MOs 1 and 5 under the mediators' report (Ex. P-15). It is also alleged that PW 31 opened the iron safe which was in the northern room behind the central hall in the presence of PW 29 and another and seized Rs. 2870 (MO 24) and some gold jewels and seized them under the mediators' report (Ex. P-65).

5. On getting information from K. G. Paul, the DSI Lalapet (PW 30) that A-2 pledged a gold Chandraharam with B. Sambasivarao of Guntur (PW 28) on the morning of August 25, 1975, PW 31 visited the shop of PW 28 at about 6 p. m. of August 26, 1975. He examined the counterfoil book (Ex. P-64) maintained in his shop and waited there till about 7.30 p. m. when A-2 came. On seeing police party, A-2 tried to run away but he was caught and arrested. PW 31 recovered from the pocket of his bush shirt the Pawan Chit (MO 18), 20 hundred rupees notes (MO 17) and 104 hundred rupees notes (MO 16) and a gold chain (MO 2) in the presence of T. Sambhi Reddy (PW 22) and another. PW 31 then seized chandraharam (MO 15) from PW 28 under the mediators' report (Ex. P-32) in the presence of PW 22 and another.

6. The accused A-1 and A-2 were charged under Section 302 read with Section 34 of Indian Penal Code. A-1 was further charged under Section 404 IPC and Sections 201 and 182 IPC. A-2 was charged under Section 404 IPC.

7. The accused denied the charges levelled against them. The case of A-1 was that he did not give the report (Ex. P-66) to the Sub-Inspector of Police (PW 30), that A-2 did not visit the house of the deceased in the night of August 24, 1975 and that on that night he went to see a picture and on his return from cinema hall he found the deceased dead. He informed PWs 6 to 9 about this incident and came back to the house of the deceased where he was waiting till the arrival of PW 30 and PW 31. He was arrested at 1 p. m. by PW 31 on that day without any reasonable ground. He denied to have produced MOs 1 and 5 and he was also not pulled by the dogs. A-2 pleaded that he did not know anything about the murder of the deceased and he did not go to Tadikonda on August 24, 1975. He was in his native village Chhattaparru on that day. He further stated that he attended the college at Eluru on August 25, 1975 and that while he was reading in his house in the night, the

police came to him at about 9 a. m. and took him to the house of PW 14 where he was known to PW 14. According to him, he was taken to the Tadikonda police station in a car in the early hours of August 26, 1975 by PW 30 and PW 31 and some other police officers. He learnt about the murder of the deceased only through PW 11 after he reached Tadikonda.

8. The Additional Sessions Judge, Guntur acquitted both the accused of the charges under Section 302 read with Section 34 IPC as the prosecution failed to prove the same either by direct or circumstantial evidence. The Additional Sessions Judge, however, convicted appellant 1(A-1) of the offence under Sections 404 and 201 IPC and sentenced him to suffer RI for three years on each count. The sentences however, were directed to run concurrently. The Additional Sessions Judge, however, did not consider it necessary to give any finding to the offence under Section 182 IPC. A-2 was convicted under Section 404 IPC and was sentenced to undergo RI for three years.

9. Against this judgment of conviction and sentence both the accused filed Criminal Appeal No. 360 of 1976. The State also filed Criminal Appeal No. 603 of 1976 against the order of acquittal of the accused from the charges under Section 302 read with Section 34 IPC. The High Court of Andhra Pradesh dismissed both the appeals.

10. Aggrieved by the said judgment of the High Court in Criminal Appeal No. 360 of 1976, the instant appeal on special leave has been filed.

11. It has been contended on behalf of the appellants that the alleged recovery of MOs 1 and 5 as mentioned in the mahazarnama (Ex. P-15) from the person of A-1 was not at all proved. It has been further contended in this connection that in the early morning of August 25, 1975, A-1 after giving information of the murder of the deceased by some strangers who forcibly entered into the house by breaking open the doors, was waiting in the house of the deceased for arrival of the police. He denied that he went to the police station and submitted a report (Ex. P-66). He further denied that he absconded and PW 26, the constable, brought him to the house of the deceased, Yasodamma at about 8 a. m. before PWs 30 and 31. He also denied that PW 31 arrested him and recovered from him MOs 5 and 1 i. e. 27 hundred rupee notes and a gold chain of two rows with black beads and red locket as alleged by the prosecution. Mahazarnama (Ex. P-15) wherein MOs 1 and 5 were mentioned was signed by Venkatakrishnarao (PW 11) and Doddi Krishnamurthy (PW 29). PW 31, T. Venkateswara Rao, CI of Police stated in his evidence that A-1 after his arrest by him produced MO 5 (27 hundred rupee notes) and MO 1 (a gold chain with black beads and red locket) from his waist in the presence of PW 11 and PW 29 and he seized them under the cover of Ex. P-15. PW 11 Gogineni Venkatakrishnarao stated in his deposition that he came to the house of Yasodamma by 7.30 a. m. on August 25, 1975. By then A-1 was in the house of Yasodamma. He further stated that the Inspector of Police informed him that MO 1, black beads chain and MO 5 (27 hundred rupee notes) were found in the pocket of A-1 and asked him to scribe a mahazarnama to the effect that they were found in the pocket of A-1 in their presence and accordingly he signed Ex. 15, mahazarnama, the numbers on MO 5 hundred rupee notes were noted in Ex. P-15. In cross-examination, PW 11 further stated that police did not question A-1 and he did not say anything to the police in his presence. He further stated that on that day, he learnt that A-2 was brought to Tadikonda and he was kept in police station. PW 11 was not at all cross-examined as to whether MOs 1 and 5 were recovered from the person of A-1 in his presence or not. The other witness to the mahazarnama, PW 29 did not say anything about the production of MOs 1 and 5 by A-1 in his examination-in-chief that the CI of Police told him that there was a cash of Rs. 2870 of various denominations in the iron safe and that it was seized by him and he asked him to sign in the mahazarnama, Ex. P-65. So he signed in it. He further stated in his examination-in-chief that it was

not true that the CI of Police searched the iron safe in his presence and seized MO 24 in his presence. Therefore, the case of the prosecution regarding the recovery of the gold chain with black beads and as well as 27 hundred rupee notes from the person of A-1 was not proved by any independent witness. PW 30, SI who was present at the time when the alleged recovery was made also does not say in his evidence that the MOs 1 and 5 as referred to in mahazarnama, Ex. P-15, were recovered in his presence from the person of A-1 and the same were seized by PW 31. In these circumstances, it is difficult to hold that the jewels and cash (MOs 1 and 5) as mentioned in the mahazarnama had actually been recovered from the person of A-1. Furthermore, the prosecution story of A-1 having absconded and PW 26, the police constable finding him at the Tadokonda cross-road and bringing him to the house of the deceased, Yasodamma at 8 a. m. and producing him before PW 30 and PW 31 has also been negated by the evidence of PWs 6, 8, 11 and other witnesses who stated categorically that A-1 was in the house of the deceased at 6.30 a. m. when they reached there and PW 30 and PW 31 were present there. The charge under Section 404 was, therefore, not proved beyond reasonable doubt against A-1.

12. As regards the allegation that A-2 pledged chandraharam with PW 28, the pawn broker at about 8 a. m. on August 25, 1975 as per MO 18 chit corresponding to its counterfoil, Ex. P-64 as well as the recovery of MO 2 - a gold chain, MO 16 - 104 hundred rupee notes and MO 18 pawn broker chit from his pocket as Ex. 32, mahazarnama, A-2 specifically denied the recovery of the said articles from his person and he also denied having pledged with PW 28, chandraharam on August 25, 1975 at 8 a. m. It has been contended on behalf of A-2 that on August 25, 1975 he attended C. R. Reddy College, Eluru as will be evident from Ex. D-12, entry in the attendance register of the college. He further stated that he attended the college in the morning at 10 a. m. and also in the evening that Eluru is 63 miles away from Guntur. It has been contended that it was not possible for A-2 to pledge chandraharam at 8 a. m. in the shop of PW 28 on the said day and to attend the college on that day at 10 a. m. It has also been contended on behalf of A-2 that the story of his going to the shop of PW 28 at about 7.30 p. m. on August 25, 1975 is also false and the recovery from his person the properties mentioned in the mediators' report (Ex. P-32) in the presence of PW 22 and another is also false. A-2 was in fact arrested at his house of Chhattaparru on the night of August 25, 1975 while he was studying and he was brought to Tadikonda police station by PW 30 and PW 31 and other police officers in a car in the early morning on August 26, 1975 and was kept there. There is no occasion for his going to the shop of PW 28, the pawn broker and the alleged recovery of the properties from his person by PW 31. PW 28 who is pawn broker stated in his evidence that at about 8 a. m. on August 25, 1975, A-2 came to his shop and offered to pledge chandraharam for a loan of Rs. 6000. He further stated that he agreed to pay Rs. 5000 in view of the value of the jewel and he paid Rs. 2000 in cash and asked him to come on the following day when the balance will be paid. He further stated that then A-2 pledged MO 15 jewel after putting his signature on MO 18 chit and counterfoil, Ex. P-64. He gave MO 18 chit to A-2. He further stated that he suspected and so he sent information to Lalapet police station on the morning of August 26, 1975 about this matter. In his cross-examination he stated that the value of MO 15 jewel would be about Rs. 9000. This story of pledging MO 15 is difficult to believe firstly because under the Shops and Establishments Act, shops are not open generally at 8 a. m., secondly if he knew that the value of the chandraharam was Rs. 9000 and this raised his suspicion then it will be natural for him to inform the police station immediately without allowing A-2 to leave his shop. Instead of doing that he is alleged to have intimated the police station on the morning of next day i. e. August 26, 1975 in the evening after payment of Rs. 2000 in cash. All these create suspicion about the alleged pledging of MO 15 with PW 28 at 8 a. m. on the said date by A-2. Moreover, it was not mentioned in the MO 18 chit nor in the counterfoil of Ex. P-64 that A-2 was asked to come on the next day in the evening

to take payment of the balance amount. The seizure of MO 15 was mentioned in Mediators' Report, Ex. P-32 and it was signed by PW 22 and another. PW 22 is a police mediator as he admitted in his cross-examination that he acted as mediator and signed a mediatorsnama in regard to several cases referred to therein. He further stated that he might have deposed once or twice in criminal cases filed by the police in the last three years. This obviously proves that he is a police mediator and he is called by the police whenever it is necessary to have a mediatorsnama signed by a witness in whose presence the alleged recovery of articles is made. There is no independent witness to the alleged seizure. Considering these facts and circumstances, the alleged prosecution story of pledging chandraharam, MO 15 with PW 28, the pawn broker as well as the recovery of various properties from the person of A-2 by PW 31 on August 26, 1975 after arrest of A-2 in the shop of PW 28 at 7.30 p. m. has not been proved beyond reasonable doubt by the prosecution.

13. We have held hereinbefore that the submission of report (Ex. P-66) in the police station at about 5.30 a. m. on August 25, 1975 by A-1 and his absconding therefrom soon thereafter has not also been proved inasmuch as PWs 6, 8, 11 and other witnesses clearly stated in their evidence that they saw A-1 present in the house of the deceased Yasodamma at 6.30 a. m. when they saw the police officers PW 30 and PW 31 to be present there.

14. On a conspectus of all these facts and circumstances as well as the assessment of the evidence on record we are constrained to hold that the prosecution failed to prove the charges under Section 404 read with Section 201 of the Indian Penal Code against A-1 (appellant 1). The prosecution also failed to prove the charge under Section 404 of the Indian Penal Code against A-2 (appellant 2). The appeal is, therefore, allowed. The orders of conviction and sentence passed by the High Court as well as by the Additional Sessions Judge are hereby set aside. Bail bonds are directed to be discharged and the appellants need not surrender.

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