

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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CRIMINAL APPEAL No.239 OF 2016

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JUDGMENT:

Aggrieved by the Judgment in Sessions Case No.213 of 2011 passed by the VI Additional District and Sessions Judge (Fast Track Court), Narasapur, West Godavari District, wherein and whereunder the Court while acquitting the accused ordered confiscation of Material Objects 1 to 7 and 11 to 13, the present appeal is filed.

2. Appellants 1 and 4 are daughters, appellants 2 and 3 are wife and son of the deceased respectively.

3. The case of the prosecution is that on the afternoon of 06.01.2010 A.1 and A.2 approached Akoju Nageswara Rao (Deceased) and delivered Rs.1,000/- out of Rs.1,300/- towards advance of rent. On the intervening night of 7/8.01.2010, some unknown offenders approached him to be as tenants, pounced upon him smothered him with turkey towel forcibly and caused death. Thereafter, the culprits i.e., A.1 to A.3 opened the almyrah and committed theft of gold jewels from his house. Basing on these allegations, a case in Crime No.6 of 2010 came to be registered. Subsequently, police investigated into the matter and filed a charge sheet, which was taken on file as P.R.C.No.40 of 2010 for the offences punishable under Sections 302, 120-B and 380 IPC by the Additional Judicial Magistrate of First Class, Narsapur.

4. After appearance of the accused, copies of documents were furnished to the accused under Section 207 Cr.P.C. Thereafter,

case was committed to the Court of Sessions, wherein it came to be numbered as Sessions Case No.213 of 2011 on the file of the District and Sessions Judge's Court, Eluru. After appearance of the accused, charges were framed. During the course of trial, prosecution has examined PWs.1 to 17 and got marked Exs.P.1 to P.25. After recording the evidence, trial Court while acquitting the accused ordered confiscation of M.Os.1 to 7 and 11 to 13. Challenging the judgment to the extent of ordering confiscation of M.Os.1 to 7 and 11, the present appeal came to be filed.

5. PW.1, who is daughter of the deceased, deposed in her evidence that on 06.01.2010 she went to her father's house. On that day as the maid servant was not present, she assisted her father in cleaning the house. Later, on 08.01.2010 she received a phone call at 9:00 A.M., from the neighbours informing that her father was murdered by somebody. Immediately, she went to her father's house and saw her father dead. She also found all the articles scattered, almyrah doors opened and also found gold chain was from the body of the deceased. She identified M.Os.1 to 7 as belonging to them. During cross-examination, it was suggested to PW.1 that M.Os.1 to 7 were planted for the purpose of this case, which was denied by her.

6. PW.2, who is grand mother of PW.1, also deposes about the incident and also missing of gold items from the house of the deceased.

7. From the case of the prosecution and the suggestions made in the cross-examination, it is clear that the accused never claimed ownership of M.Os.1 to 7 and 11. On the other hand, the accused denied the recovery from them. The record further shows that the incident took place in the house of the parents of

PW.1 and gold ornaments were found missing from the house. A report came to be lodged immediately after the incident referring to the missing of gold ornaments and cash.

8. Learned Public Prosecutor submits that the gold articles, which have been seized from the accused, are stolen from the house of the deceased. It is not the case of the prosecution that the cash and gold, which are seized from the accused belongs to some other crime. In the light of the above, the appellants are entitled to return M.Os.1 to 7 and 11.

9. Accordingly, the Criminal Appeal is allowed directing the trial Court to take steps in accordance with law for return of M.Os.1 to 7 and 11 to the appellants under proper acknowledgement.

Consequently, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

Date:11.04.2016

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