

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.937 OF 2010

Between:

Gudavalli Bhavani Shanker

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad

... Respondent

DATE OF JUDGMENT PRONOUNCED: 19.10.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|----------------------------------------------------------------------------|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.A. No. 937 of 2010

% Dated 19.10.2022

#Gudavalli Bhavani Shanker

... Appellant

And

\$The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad

... Respondent

! **Counsel for the Appellant:** Ms. Indira

^ **Counsel for the Respondent:** Public Prosecutor

>HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.937 of 2010****JUDGMENT:**

1. The appellant was convicted for the offence under Section 304-Part-II and Section 309 of IPC and sentenced to undergo rigorous imprisonment for a period of two years and three months respectively vide judgment in SC No.491 of 2009, dated 09.07.2010 passed by the Special Judge for Trial of offences under SCs. & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad. Aggrieved by the same, present appeal is filed.

2. The case of the prosecution is that P.W.1 who is the owner of the premises where the deceased was found dead filed complaint on 30.03.2009 at 10.30 a.m stating that one of the portion was let out to the person by name Rajasheker (examined as P.W.3). P.W.3 stays alone in that portion. Around 9.30 a.m, he found the deceased was killed in the said room and requested to take action. The police, on receiving complaint, commenced investigation and identified the deceased as G.Chaitanya. On the same day, the elder brother P.W.2 and matrimonial uncle, who was not examined, went to the police station and informed that

the deceased was friendly with the appellant herein namely Bhavani Shanker. They suspected that since the appellant expressed love for the deceased, he might have killed her. On the basis of the said suspicion, the appellant was apprehended by the police on 07.04.2009 and having recorded the confession in the presence of independent mediators, the appellant was sent to judicial custody.

3. P.W.1 who is the owner of premises did not speak anything about the appellant being present in the room on the previous day or on the day when the dead body was found. He specifically stated that it was P.W.3, who was staying in the rented room. No witnesses are examined to speak about the presence of the appellant anywhere near the room where the dead body was found on the day of incident, previous day or at any time.

4. P.W.2 is the brother of deceased, who suspected that the appellant might have murdered the deceased and tried to commit suicide as the deceased refused to marry the appellant.

5. The only evidence available to the Court was the confession of the appellant and consequently producing the rod alleged to have been used to beat the deceased.

6. The other circumstance was that the appellant consumed sleeping pills on 30.03.2009 and was taken to the hospital about 7.00 p.m and 8.00 p.m. when he went to police station. However the prosecution has not produced any medical record to show that he was sent to the hospital. In the absence of any medical record or Doctor being examined who treated the appellant, the said version of the prosecution that the appellant went to the police station in drowsy condition, cannot be accepted. If the appellant had gone to the police station and stated that he was responsible for the death of the deceased, the appellant would have been detained at the police station itself or sent to hospital along with a constable. It was an afterthought to connect the appellant to the crime, the version was created to say that the appellant went to the police station having consumed 30 sleeping tablets.

7. The case of the prosecution entirely rests upon the suspicion that was expressed by P.W.2, who is the brother of the deceased. The other circumstances are that the rod was produced by the appellant from his house nearly one week after the death. There is no explanation by the prosecution regarding the period from 30.03.2009 to 07.04.2009, why the appellant was

not apprehended and details are not known as to what transpired in those days. No witness was examined to state that the appellant stayed in the premises where the rod was found.

8. In cases of circumstantial evidence, the prosecution has to prove beyond reasonable doubt every circumstance to convince the Court that it was the appellant who had committed the murder of the deceased and all the circumstances when viewed collectively forms a complete chain to rule out the possibility of the appellant being innocent or un connected. One of the three circumstances as stated above regarding the appellant going to the police station appears to have been fabricated at a later date to suit the prosecution case. Further, the rod which was produced was in the house and it cannot be said that the said recovery can form the basis for determining that this appellant had committed the murder. The exclusive possession of the premises is not proved and that no one else was staying in the said house in the one week between the incident and recovery.

9. Though it is the case of the prosecution that the appellant had cut his wrists after committing murder of the deceased, there is no evidence forthcoming to show that any wounds were on his wrists or blood to have been found at the scene in the event of

wrists being cut. Blood would have been found at the scene. Though the wearing apparel of the deceased and the blood found at the scene were sent to the FSL, it could not determine that the blood of the appellant was present at the scene of offence.

10. In view of there being no evidence of being last seen anywhere near the scene of offence and the appellant being arrested after nearly seven days, it casts a doubt on the prosecution case being correct. More so, in the back ground of the prosecution coming up with a false statement of the appellant going to the police station in a drowsy state. For the said reasons, benefit of doubt is extended to the appellant.

11. In the result, the conviction of the appellant vide judgment in SC No.491 of 2009 dated 09.07.2010 is set aside and the appellant is acquitted. Since the appellant is on bail, his bail bonds shall stand cancelled.

12. Accordingly, the Criminal Appeal is allowed.

K.SURENDER, J

Date: 19.10.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.937 OF 2010

Dated: 19.10.2022

kvs