

**HON'BLE DR. JUSTICE G. RADHARANI
AND
HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**

CRIMINAL APPEAL No.327 of 2014

JUDGMENT:(Per GAC, J)

This appeal is arising out of the judgment dated 29.01.2014 in S.C.No.450 of 2012 on the file of the VIII Additional District and Sessions Judge, Medak.

2. The appellant is the sole accused. A charge sheet is filed against the accused for the offences punishable under Sections 376 (f) and 302 of IPC. The trial Court, after considering the evidence on record, convicted the appellant under Section 235(2) of Cr.P.C. for the offences punishable under Sections 376(f) and 302 of IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- for the offence punishable under Section 302 of IPC and to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- for the offence punishable under Section 376(f) of IPC. Both the sentences shall run concurrently.

3. The brief case of the prosecution is that on the date of incident i.e. 02.10.2011 the deceased aged about 8 years, studying 3rd class, was sent to fetch toddy from the toddy shop. The accused watched a blue film on his phone by inserting a memory card and after watching the said film, dragged the victim girl into a old building, committed rape, beat her on the face and forehead and murdered her with a suspicion that she would inform about the rape to others. Later, he sat near the market yard and after sometime he showed the dead body to the uncle of the deceased i.e. PW-2 who was searching for the girl. Further, PW-2 and accused informed about the dead body of the deceased to the grandmother of the deceased. On that, the grandmother of the deceased and other villagers went to the scene of offence. Basing on the report/Ex.P-1 given by PW-1, the Station House Officer of Jogipet P.S./PW-10 registered a case in Crime No.143 of 2011 for the offences punishable under Sections 376 (f) and 302 of IPC, who in turn issued express FIRs. to all the concerned.

4. During the course of investigation, PW-11/investigating officer conducted inquest panchnama over the dead body of

deceased in the presence of panchayatdars, prepared the crime detail form and later forwarded the dead body of the deceased for postmortem examination. Further, he recorded the statements of witnesses and collected material objects/M.Os.1 to 5 from the scene of offence. During the course of investigation, PW-11 apprehended the accused and on interrogation, the accused confessed his guilt in the Police Station, in the presence of PWs.7 and 8 and pursuant to the confession, PW-11 recovered M.Os.6 to 8 and later produced the accused before the Magistrate, for judicial remand.

5. The Doctor/PW-9 who conducted postmortem examination over the dead body of the deceased, found 5 external injuries over the dead body of the deceased and issued portmortem report/ Ex.P-7. Further, basing on the Forensic Science Laboratory report i.e. Ex.P-6, opined that the cause of the death of the deceased was due to head injury and the deceased was subjected to sexual intercourse before her death. After receiving the postmortem report of the deceased and on completion of the investigation, the

investigating officer filed the charge sheet against the accused for the offences punishable under Sections 376(f) and 302 of IPC.

6. During the course of trial, charges were framed against the accused for the offences punishable under Sections 376(f) and 302 of IPC, read over and explained to him, for which, he pleaded 'not guilty' and claimed to be tried.

7. On behalf of the prosecution, PWs.1 to 11 were examined and Exs.P-1 to P-8 and M.Os.1 to 8 were marked. The accused was examined under Section 313 Cr.P.C. and he denied the incriminating evidence of the prosecution. Exs.D-1 to D-3 were marked on his behalf.

8. It is relevant to mention the relationships between the witnesses for better appreciation of the facts. The deceased/girl, aged about 8 years and was studying in 3rd class. PW-1 is the grandmother of the victim, who saw the dead body of the deceased without cloths, after receiving the information from PW-2 and the accused. PW-2 is the son of PW-1 and uncle of the deceased, who initially saw the dead body of the deceased along with the accused

and later informed it to PW-1. PW-3 is the toddy shop owner from whom, the deceased purchased three toddy bottles on the date of incident. Ex.D-2 is the contradiction marked from the 161 Cr.P.C. statement of PW-3. PW-4 is the mother of the deceased. M.Os.1 and 2 i.e. the bloodstained hand bag and light green colour middy of the deceased which were marked through PW-4. PW-5 is a villager who saw the dead body of deceased at the scene of offence.

9. PW-6 is the panch witness to the scene of offence, rough sketch, seizure panchanama and inquest panchanama i.e. Exs.P-2 and P-3 respectively. M.Os.3 to 5 are the blood stained earth, control earth and boulder i.e. the crime weapon seized from the scene of offence through seizure panchanama/Ex.P-2.

10. PW-7 is the panchayatdar for the confession of the accused, but he turned hostile. M.Os.6 to 8 are alleged to have been seized pursuant to the confession of the accused, which are the T-shirt, blue colour pant, cell phone and memory card of the accused. PW-8 is also the panch witness for the confession of the accused.

His evidence disclose that the accused confessed in the Police Station, in his presence and Ex.P-5 is the confession statement of the accused.

11. As stated supra, PW-9 is the Doctor who opined that the deceased died due to head injury and was subjected to sexual intercourse prior to her death. PWs.10 and 11 are the Police officials who registered and investigated the case and later filed charge sheet against the accused for the alleged offences.

12. It is important to note that the confession given to the Police is hit under Section 25 of Indian Evidence Act. The evidence of PWs.7 and 8 clearly disclose that they were called by the C.I. of Police, Jogipet on 03.10.2011 at 1.00 p.m. and by the time they reached the Police Station, accused was present and on interrogation, the accused confessed his guilt and produced M.Os.6 to 8. However, PW-7 turned hostile and his signature on the confession panchanama/Ex.P-5 was marked as Ex.P-4. It is specifically deposed by PW-8 that the confession panchanama was already prepared in the Police Station before their arrival and they

signed on it. Further, the material objects were also present in the Police Station.

13. Heard the legal aid counsel Ms.D.Madhavi for the appellant and the learned Additional Public Prosecutor. Perused the record.

14. It is urged by the learned counsel for the appellant that the appellant is innocent and he was falsely implicated in the case. The trial Court convicted the accused basing on his statement under Section 313 Cr.P.C., which is bad in the eye of law, and therefore, the conviction is liable to be set aside.

15. On the other hand, the learned Additional Public Prosecutor contended that the prosecution has proved the guilt of accused beyond reasonable doubt for the charged offences and therefore, prayed to confirm the judgment of the trial Court. Further, it is contended by the learned Additional Public Prosecutor that the victim was aged 8 years at the time of incident and no lenient view can be taken to extend benefit of doubt to the accused.

16. Now, the point for determination is;

Whether the trial Court is correct in convicting the accused/appellant for the offences punishable under Sections 376(f) and 302 of IPC and whether the prosecution has proved the guilt of the appellant beyond reasonable doubt for the said offence?

17. The criminal law was set into motion basing on the information given by PW-1, who is the grandmother of the victim. The report given by her is Ex.P-1. It is important to mention that the entire case of prosecution rests on the circumstantial evidence as none of the witnesses witnessed the alleged rape and murder that is said to have been committed by the appellant.

18. In order to prove an offence punishable under Section 302 of IPC, it is for the prosecution to prove that the death of the deceased was caused by the appellant maliciously, with a specific motive, the bodily injury caused by the offender is within the knowledge that such an injury might cause the death of the deceased and further, the injury inflicted is sufficient to cause the death of the deceased. Further more, for the offence under Section 376(f) of IPC, it is for the prosecution to prove that whoever, being the relative, guardian or teacher or the person in position of trust or

authority towards the woman, commits rape on such a woman, is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

19. Admittedly, there is no evidence on record to prove that the accused/appellant is neither the relative/guardian or teacher nor a person in a position of trust or authority in the present case.

20. It is important to note that charge was framed against the appellant under Section 376(f) of IPC only and not under Section 376(3) of IPC. None of the witnesses have spoken about the relationship between the victim/deceased girl. Therefore, it can be safely construed that Section 376(f) of IPC does not attract to the appellant, though the offence under Section 376 (3) attracts.

21. Furthermore, it is for the prosecution to prove that the accused is capable of doing sexual act against the victim girl in order to prove the ingredients under Section 376 of IPC. In the present case, though the investigating officer testified that the accused was referred to potency test, but there is no evidence either

oral or documentary on record, to prove that the accused is capable of doing sexual act. In the absence of oral or documentary evidence, it can be construed that the prosecution miserably failed to connect the accused with the alleged crime i.e. committing rape of the victim by the appellant.

22. The evidence of PW-9/Doctor is crucial to prove whether the death of the deceased is homicidal or natural. His evidence discloses that basing on the requisition of Jogipet P.S., dated 03.10.2011, he conducted postmortem examination on the dead body of the deceased girl and found the following external injuries:

1. Multiple lacerations over neck (scratch marks).
2. Split laceration over left ear $\frac{1}{2}$ cm X $\frac{1}{2}$ cm.
3. Contusion over the left frontal region 2 X 3 cm.
4. Contusion over frontal region 1 X 1 cm.
5. Split laceration over left nostril region 1 X 1 cm.

23. All the above injuries are ante-mortem in nature. It is specifically deposed by PW-9 that he preserved the regional swab culture for sperm examination by Forensic Science Laboratory and after receiving Forensic Science Laboratory report/Ex.P-6, he opined that the cause of the death of the deceased was due to head injury and there is evidence of sexual intercourse before death of

the deceased and the postmortem report of the deceased is Ex.P-7. On perusal of Ex.P-6/FSL report, it is evident that semen and spermatozoa are detected on item Nos.8 to 11. Item No.8 are two glass slides with dried smear, item No.9 is a cotton swab, item No.10 is a cotton swab and item No.11 is a turbid liquid, which are said to be collected by PW-9 during the course of autopsy from the dead body to know whether the deceased was subjected to sexual intercourse or not prior to her death. But the said report disclose semen and spermatozoa are not detected on item Nos.1 and 3 to 7. Item No.1 is the soil containing dark brown stains, item No.3 is a stone, item No.4 is a colour plastic bag with PC and dark brown stains, item No.5 is a torn light green colour polyester middy PC with dark brown stains, item No.6 is the white colour half sleeved T-shirt and item No.7 is a blue colour jeans pant. Admittedly, item No.3 is the middy of the victim girl and item Nos.6 and 7 are the clothes of the accused which are alleged to have been worn at the time of the offence, which do not contain the semen and spermatozoa on them. Therefore, the prosecution has failed to prove that the accused cloths contain semen and spermatozoa and

also that of the clothes of the victim girl i.e. item No.5/the middy of the victim girl, to connect the accused with that of the crime.

24. On perusal of Exs.P-6 and P-7, it can be construed that the death of the deceased is a homicide and it is not a natural one. The cardinal principles of the criminal justice system are that:

1. The burden is always on the prosecution to prove the guilt of the accused.
2. Accused shall be presumed to be innocent till the guilt is proved.

25. Basing on the said cardinal principles, it is for the prosecution to prove that the appellant has committed the rape and murder of the deceased. The evidence of PWs.1 to 5 only disclose that they suspect one Chinna/accused and Teku Shekar to have committed the offence. Mere suspicion cannot be the basis for conviction. PWs.6 to 8 are only the panch witnesses to the scene of offence, inquest and for recovery of the material objects. But PW-7 has turned hostile.

26. It is for the prosecution to prove that the crime objects are connected with the accused and pursuant to the confession, the

crime objects were recovered. But as per the evidence of PW-7 and PW-8, M.Os.6 to 8 were in police station along with the accused. Therefore, the prosecution has miserably failed to prove that recovery was made under Section 27 of Indian Evidence Act. Further, the confession of the accused to Police is hit by Section 25 of the Indian Evidence Act.

27. The evidence of PW-11/investigating officer disclose that the material objects which were seized, were sent to FSL for examination. But Ex.P-6/the FSL report does not disclose that the blood stains of the deceased were found on the cloths of the accused. Hence, it can be construed that the Prosecution has miserably failed to connect the accused with the crime.

28. Admittedly, the evidence of PW-2 i.e. the uncle of the victim discloses that the accused met him and took him to the old building and showed the dead body of the deceased, in the mobile phone light and further, they both went to PW-1 and informed about the incident. As per the evidence of PW-1, the accused as well as PW-2 informed her that they saw something in the old house of

Janardhan. On that, she along with the villagers, went to the scene of offence and found the dead body with bleeding injuries and later she preferred a report i.e. Ex.P-1.

29. The recitals of Ex.P-1 disclose that the accused and PW-2 informed her that white cloths were found outside the bungalow. On that, she along with her sons and villagers, visited the scene of offence at 9 p.m. and noticed the dead body of the deceased. It is important to note that Ex.P-1 do not disclose the name of the accused even as a suspect. The 161 Cr.P.C. statements of PWs.1 to 5 are also silent as to who is the suspect including the accused. It is relevant to mention that neither Ex.P-3/inquest report nor Ex.P-2/the scene of offence and seizure panchanama do not disclose that the panch witnesses have suspected the accused to connect him with the crime. Admittedly, there were improvements in the evidence of PWs.1 to 5.

30. In the judgment of Hon'ble Supreme Court in **Sudhakar @ Sudershan Vs. State rep. by Inspector of Police, Srirangam Police Station, Tiruchi**¹, it is held in para 17 as under:

¹ (2018) 5 SCC 435

“Then, next comes to the question what is the difference between a related witness and an interested witness ? The plea of “interested witness”, “related witness” has been sufficiently explained by this Court that “related” is not equivalent to “interested”. The witness may be called “interested” only when he or she derives some benefit from the result of litigation in the decree in a civil case, or in seeing an accused person punished. In this case at hand, PWs.1 and 5 were not only “related witnesses” but also “interested witnesses” as they had pecuniary interest in getting the accused punished. (refer State of U.P. v. Kishan Pal²). As the prosecution has relied upon the evidence of “interested witnesses”, it would be prudent in the facts and circumstances of this case to be cautious while analyzing such evidence. It may be noted that other than these witnesses, there are no independent witnesses available to support the case of the prosecution.”

31. Admittedly, PWs.1, 4 and 2 are the grandmother, mother and uncle of the deceased respectively. All the three in one tone, stated that they suspect that the accused might have raped and killed the victim girl/deceased. As already stated supra, the initial documents i.e. Ex.P-1/complaint, Ex.P-2/seizure panchanama and Ex.P-3/inquest panchanama are silent about the accused committing the offence. Therefore, the evidence of PWs.1, 2 and 4 can be treated as the evidence of interested witness. The aforesaid judgment of the Hon’ble Apex Court is squarely applicable to the facts of the present case.

² (2008) 16 SCC 73 = (2010) 4 SCC (Cri) 182

32. As per the evidence of PWs.7 and 8, the accused has confessed before the Police, in the Police Station and the confession statement is Ex.P-5, which is hit by Section 25 of the Indian Evidence Act. The said Section envisages that no confession made to a Police officer shall be proved against the person accused of any offence.

33. Further, as per Section 27 of the Indian Evidence Act, when any fact is deposed to as discovered in consequence of information received from the person accused of any offence, in the custody of the Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Thus, as per the said provision, it is only the information which has to be taken into consideration as to the discovery of the fact. But, in the present case, PWs.8 and 9 specifically stated that they saw the material objects i.e. M.Os.6 to 8 in the Police Station and therefore, not much weightage can be given and Section 27 of Indian Evidence Act is not applicable to the present case, as the Police have not

recovered the material objects in the presence of panchayatdars, pursuant to the confession of the accused.

34. In **State of U.P. Vs. Dr.Ravindra Prakash Mittal**³, the

Apex Court held as under :

“The essential ingredients to prove guilt of an accused person by circumstantial evidence are: (1) The circumstances from which the conclusion is drawn should be fully proved; (2) the circumstances should be conclusive in nature; (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence; (4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.

.....As pointed out supra, there is no direct evidence to connect the respondent with this offence of murder and the prosecution entirely rests its case only on circumstantial evidence. There is a series of decisions of this Court so eloquently and ardently propounding the cardinal principle to be followed in cases in which the evidence is purely of circumstantial nature. We think, it is not necessary to recapitulate all those decisions except stating that the essential ingredients to prove guilt of an accused person by circumstantial evidence are:

- (1) The circumstances from which the conclusion is drawn should be fully proved;
- (2) the circumstances should be conclusive in nature;

³ (1992) 3 SCC 300

- (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence;
- (4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.”

35. As already discussed supra, there is no direct evidence on record and the entire case is based on circumstantial evidence. Further, the conviction of the trial Court is based on the confession of the accused, which is inadmissible and the chain of events are incomplete and do not form a ring. Therefore, the conviction is bad in the eye of law. In a case of homicide, it is for the prosecution to prove that the accused has inflicted injuries on the deceased with M.O.5/boulder, which ultimately resulted in the death of the deceased.

36. It is relevant to mention that the accused has specifically stated in his examination under Section 313 Cr.P.C. that he is innocent of the offence and PW-2 has taken him to the scene of offence and shown the dead body of the deceased and the Police have beat him blue and black, due to which, he signed the confession statement.

37. Considering the oral and documentary evidence and the propositions of the Hon'ble Apex Court, this Court is of the considered view that in a case of circumstantial evidence, it is for the prosecution to prove all the chain of events which forms a ring. But, in the present case, there are many missing links, and therefore, it can be safely concluded that the prosecution has miserably failed to prove the charges framed against the accused beyond reasonable doubt, for the offences punishable under Sections 376(f) and 302 of IPC, and therefore, the accused/appellant is entitled for benefit of doubt and the judgment of the trial Court deserves to be set aside.

38. In the result, the Criminal Appeal is allowed. The appellant is found not guilty of the offences punishable under Sections 376(f) and 302 of IPC, and accordingly, the conviction and sentence imposed on the appellant vide Judgment dated 29.01.2014 in S.C.No.450 of 2012 on the file of VIII Additional District and Sessions Judge, Medak (FAC) III Additional District Judge (FTC), Medak, is hereby set aside and the appellant is acquitted of the charged offences. Consequently, the Superintendent, Central

Prison, Cherlapally, is directed to release the appellant forthwith, if he is not required in any other case. M.Os.1 to 8 shall be destroyed after the appeal time is over.

Pending miscellaneous applications, if any, shall stand closed.

Dr. G. RADHA RANI, J

G.ANUPAMA CHAKRAVARTHY, J

Date: 20.01.2023

N.B:

Judgment be forthwith communicated to the jail authorities concerned.

(b/o)

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