

**IN THE HIGH COURT FOR THE STATE OF TELANGANA:
HYDERABAD**

* * *

CRIMINAL APPEAL No.676 of 2014

Between:

Bolli Kurumurthy.

Appellant

VERSUS

State of Telangana

Rep. by its Public Prosecutor

Respondent

JUDGMENT PRONOUNCED ON: 22.04.2024

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**
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THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU
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! Counsel for Petitioner(s) : Mr.P. Prabhakar Reddy

^Counsel for the respondent(s) : Learned Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred

1) (2023) 6 SCC 605

2) (1984) 4 SCC 116

3) (1973) 2 SCC 793

4) 2022 SCC OnLine SC 1080

5) (1997) 7 SCC 156

6) (2019) 15 SCC 666

THE HONOURABLE SRI JUSTICE P. SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

Criminal Appeal No.676 of 2014

JUDGMENT: *(per the Hon'ble Sri Justice P. Sam Koshy)*

The instant is an appeal preferred by the appellant / accused under Section 374(2) of Criminal Procedure Code, 1973 aggrieved by the judgment and conviction dated 10.03.2014 in Sessions Case No.464 of 2013 passed by the III Additional District and Sessions Court, Gadwal, Mahabubnagar District (for short, 'the impugned judgment').

2. Heard Mr.P. Prabhakar Reddy, learned counsel for the appellant, and the learned Public Prosecutor for the respondent-State.

3. *Vide* the impugned judgment, the III Additional District and Sessions Court, Gadwal has found the appellant / accused guilty of the offences under Sections 302 & 379 of Indian Penal Code and sentenced the appellant / accused to undergo life imprisonment with fine of Rs.1,000/- for the offence under Section 302, and a further sentence to undergo rigorous imprisonment for five years with fine of Rs.5,000/- for the

offence punishable under Section 392 of Indian Penal Code, 1860, and that both the sentences to run concurrently and with default stipulation.

4. The brief case of prosecution is that on 17.07.2012, the appellant / accused, in order to rob the deceased of his cash around Rs.1,500 to 2,000 and also his mobile phone, committed murder of the deceased in the cattle shed of one Sudershan Reddy within the limits of Atmakur. It is stated that the appellant / accused had assaulted the deceased with a stone on his head and on his face. A complaint was lodged by Smt. K. Laxmamma (PW.3) (mother of the deceased) who stated that the deceased left his house on the early morning of 17.07.2012 to go to Atmakur for getting income and the local certificate for his daughter. However, he did not return back on that day. The next day morning she was informed that her son (the deceased), viz., Chandraidu, was found dead in the cattle shed of Sudershan Reddy in the limits of Atmakur. Immediately, the family members rushed to the spot including the complainant and found the deceased lying in a pool of blood with his head smashed and few of his teeth broken and blood oozing out. Later on, it was found that the mobile phone of the deceased was missing.

5. During the course of investigation, it was found that from the mobile phone of the deceased, the last call was made to one Sri Kondanna (LW.10). Upon enquiry from the said Kondanna, he informed that he had received a call from the appellant / accused from his mobile phone stating that he wanted to sell the mobile phone at half the price to meet some family exigency as the appellant / accused was facing financial crunch. Basing on the same, the appellant / accused was apprehended on 01.08.2012 and thereafter LWs.13 and 14 were called before him and confessional statement was recorded where the appellant / accused stated to have confessed about committing the offence for the mobile phone and the cash that was there in the hands of the deceased.

6. Later on, charge-sheet was filed and the matter was put to trial before the III Additional Sessions Judge, Gadwal where the case was registered as Sessions Case No.464 of 2013. The prosecution in all examined 12 witnesses i.e., PWs.1 to 12. In turn, two witnesses were examined on behalf of the defence, i.e., (DWs.1 and 2), and Exhibits P.1 to P.4 were marked on behalf of the prosecution, and the relevant portion of the contradictory statement elicited during cross-examination of PW.6 was marked as Ex.D.1. Subsequently, the statement of the appellant /

accused was recorded under Section 313 of the Criminal Procedure Code, 1973.

7. Thereafter, the Trial Court passed judgment and conviction dated 06.03.2014 in Sessions Case No.464 of 2013, holding the appellant / accused guilty of the charges.

8. Assailing the same, the present appeal is filed by the appellant / accused.

9. Learned counsel for the appellant / accused contended that the entire case of the prosecution is based on circumstantial evidence with no direct evidence strong enough for implicating the appellant / accused in the said commission of offence. He further contended that except for an alleged mobile phone which is said to have been seized from the possession of the appellant / accused, there does not seem to be any concrete evidence available with the prosecution by which it could be conclusively held that it was the appellant alone who could have committed the offence and not anybody else. He further contended that the prosecution has miserably failed to establish : (i) that the mobile phone which is stated to have been seized in fact did belong to the deceased; (ii) whether the appellant had robbed the deceased in order to secure possession of the said mobile phone; and (iii)

whether the statement made by Sri Kondanna (LW.10) was trustworthy as there is a possibility of having robbed the mobile phone or purchased it from the deceased and thereafter changed hands with the appellant / accused, cannot be ruled out; and that there is no investigation carried out on this aspect nor is there any evidence by the prosecution in this regard.

10. Learned counsel for the appellant / accused further contended that the scene of offence wherein the body of the deceased was found was not in any manner connected to the appellant / accused and there was no reason why the appellant / accused would go to that place in order to rob him of his mobile phone and also the cash which was there in the possession of the deceased.

11. *Per contra*, the learned Public Prosecutor defending the judgment and conviction passed by the Trial Court, contended that it was the confessional statement of the appellant / accused made in front of PW.10 which proves the case of the prosecution beyond reasonable doubt inasmuch as the confession that was made before PW.10 and also recovery that was made at the instance of the appellant / accused establishes the case of the prosecution.

12. According to the learned Public Prosecutor, PW.10 has also established the seizure of the mobile phone belonging to the deceased and cash of Rs.300 was the balance of the amount robbed by the appellant / accused from the deceased which further strengthens the case of the prosecution. It was also the contention of learned Public Prosecutor that the appellant / accused, in addition to the said criminal case, was also involved in a few other criminal cases of robbery and theft, viz., Crime No.5 of 2010 under Section 324 of I.P.C., Crime No.52 of 2010 under Section 394 of I.P.C. and Crime No.147 of 2011 under Section 394 of I.P.C., all of which registered at P.S. Atmakur, which further supports the case of the prosecution as the appellant has track record of committing similar nature of offences of robbery. Learned Public Prosecutor further contended that the Forensic Science Laboratory (F.S.L.) report that has been received also had blood stains found and the stone that was thrown away by the appellant / accused was recovered at his instance when he was taken to the scene of offence after being apprehended, which further strengthens the case of the prosecution. Therefore, the learned Public Prosecutor prayed for rejection of the appeal and for confirmation of the judgment of conviction.

13. Having gone through the contentions put forth on either side and on a perusal of the record, what is admitted is the fact that the deceased (Chandraidu) left his house at Hyderabad for Atmakur for getting some certificate from the Office of the Tahsildar, Atmakur for his daughter. As per the version of the family members of the deceased, the deceased was in possession of a mobile phone bearing No.99121 55358 and cash of Rs.2,000/- when he left home on 17.07.2012. However, he did not return on the same day. It was also the contention of the family members of the deceased that the deceased had telephoned PW.5 on having reached Atmakur and that he intends to go to his native place, viz., Tippadampalli, and thereafter, there were no whereabouts of the deceased. The following day there was information which was received by the family members that the deceased was found dead lying in the cattle shed of one Sudershan Reddy at the outskirts of the Atmakur village. Thereafter, the family member along with other relatives rushed to Atmakur and found the dead body lying in the cattle shed with grievous head injuries and also injuries on his mouth with few of teeth broken.

14. What is necessary at this juncture is to verify the fact that PW.12 (the Investigating Officer), in the course of the

investigation, has found that the mobile phone of the deceased with same No.99121 55358, on which number the last call was made to one mobile No.99488 24012. On investigation, it was found that the said mobile No.99488 24012 belonged to one Kondanna (LW.10). Upon questioning the said Kondanna (LW.10), he disclosed that he had received call from the appellant / accused offering to sell his mobile phone at half the price in order to meet certain medical expenses in the family as he was facing certain financial crisis. Except for the statement of Kondanna (LW.10) that he received the last call from the appellant / accused, there is no proof available with the prosecution of what Kondanna has said is correct. It is here that the contention of learned counsel for the appellant that the involvement of Kondanna in removing of the mobile phone from the deceased, cannot be ruled down. Further, the possibility of Kondanna (LW.10) having sold the mobile phone later to the appellant / accused at a throw-away price also cannot be ruled out. The recovery of Rs.300/- from the possession of the appellant / accused from his house is inconsequential for the reason that that much of amount would be available in every household, if not, more. There is no identification of the currency which is said to have been carried with by the deceased

and which got robbed, except for the confessional statement so made.

15. As regards the statement of PW.10, who is said to be the *panch* witness for the confessional statement, the admissibility itself is doubtful for the simple reason that PW.10 was called by the police authorities themselves to act as a *panch*, and when the confessional statement was being made, the police were available. Therefore, the confessional statement loses its genuineness. The prosecution case also becomes doubtful for the reason that there was no evidence available to show that the deceased and the appellant / accused were known to each other. It is difficult to accept that two unknown persons, i.e., the deceased and the appellant / accused would suddenly befriend each other and have toddy at one place followed by beer at another place; and that in order to recover an amount of Rs.200, the deceased would agree to travel with the appellant / accused to his house *en route* when it is claimed that the appellant / accused had murdered the deceased. This story of the prosecution is difficult to accept since there is no sufficient cogent proof firstly of they having toddy together and secondly having beer together which could have been easily ascertained from the respective shops. The possibility of the prosecution

having implicated the appellant / accused basing upon the three criminal cases that were already lodged against the appellant / accused and the police authorities finding it easy for conclusion of the investigation which is still pending and saddle the charge upon the appellant / accused, cannot be ruled out.

16. Yet another blunder which appears to have been committed by the prosecution is the stone with which the head of the deceased was crushed was not sent for fingerprint expert's opinion so as to ascertain whether the stone had any fingerprint of the appellant / deceased. The conviction based upon just one seizure of a mobile phone by itself is difficult to accept and it is also difficult to accept that the prosecution has been able to prove its case beyond all reasonable doubt by only relying upon the recovery of a mobile phone at the instance of the appellant. The possession of the mobile phone, belonging to the deceased, with the appellant at best could be a case of robbing the deceased of his mobile phone. Though there is no evidence to connect or link the appellant / accused with the death of the deceased, that too the place of incident being in the cattle shed of one Sudershan Reddy with whom the appellant / accused has got association, there was no reason for the appellant / accused

to have taken the deceased to the cattle shed for snatching his mobile phone and cash.

17. In **Nikhil Chandra Mondal v. State of W.B¹**, the Hon'ble Supreme Court held as under :

“10. We may gainfully refer to the following observations of this Court in Sharad Birdhichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra², (1984) 4 SCC 116 (SCC p. 185, paras 153-54)

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra³: where the following observations were made : (SCC para 19, p. 807)

19. ... Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between “may

¹(2023) 6 SCC 605

²(1984) 4 SCC 116

³(1973) 2 SCC 793

be” and “must be” is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

11. *It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned “must or should” and not “may be” established. It has been held that there is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency*

and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the light of these guiding principles, we will have to consider the present case.

13. The prosecution case rests basically on the extra-judicial confession alleged to have been made by the appellant before Manick Pal (PW 10), Pravat Kumar Misra (PW 11) and Kanai Ch. Saha (PW 12).

16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence.”

18. Similarly, the Hon'ble Supreme Court in the case of **Ram Sharan Chaturvedi vs. State of Madhya Pradesh**⁴ in paragraph Nos.26 held as under

“26. In accepting the story of the prosecution, the Trial Court, as well as the High Court, proceeded on the basis of mere suspicion against the Appellant, which is precisely what this Court in Tanviben Pankaj kumar Divetiav. State of Gujarat⁵, had cautioned against:

“45. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the

⁴2022 SCC OnLine SC 1080

⁵(1997) 7 SCC 156

important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between “may be true” and “must be true” and the same divides conjectures from sure conclusions. (Jaharlal Das v. State of Orissa (1991) 3 SCC 27)”

19. Likewise, the Hon’ble Supreme Court in the case of **Chandru vs. State (represented by Deputy Superintendent of Police CB CID⁶** in paragraph Nos.9 and 10 held as under:

“9. Admittedly, there are no eyewitnesses to the case and this is a case based on circumstantial evidence. The law with regard to appreciation of circumstantial evidence has been clearly enunciated in Hanumant v. State of M.P. (1952) 2 SCC 71, wherein this Court held as follows: (AIR pp. 345-46, para 10)

“10. ... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of

⁶ (2019) 15 SCC 666

guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

10. *This law has been consistently followed and has been repeated in a catena of authorities. It is not necessary to refer to all the authorities. However, we may refer to Sir Alfred Wills' book *Wills on Circumstantial Evidence* (Chapter VI) [*Butterworths, Seventh Edn., at pp. 296-329.*], in which he has laid down the following Rules specially to be observed in the case of circumstantial evidence:*

“RULE 1.—The facts alleged as the basis of any legal inference must be clearly proved, and beyond reasonable doubt connected with the factum probandum....

RULE 2.—The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability....

RULE 3.—In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits....

RULE 4.—In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt....

RULE 5.—If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.”

20. In view of the aforesaid facts and circumstances of the case, and also the legal principles narrated in the decisions cited above, we have no hesitation in reaching to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt so far as the death of the deceased to have occurred at the hands of the appellant / accused. The benefit of doubt that prevails has to go in favour of the appellant / accused. Therefore, we find it difficult to sustain the judgment and conviction passed by the Trial Court as regards the appellant / accused. Accordingly, the judgment and conviction dated 10.03.2014 in Sessions Case No.464 of 2013 passed by the III Additional District and Sessions Court, Gadwal, Mahabubnagar District is set aside. The appellant / accused

stands acquitted of the charges leveled against him, and it is directed that the appellant / accused be released from jail subject to his not being required in any case.

21. Accordingly, the appeal stands allowed. No costs.

22. As a sequel, miscellaneous applications pending if any, shall stand closed.

P.SAM KOSHY, J

SAMBASIVARAO NAIDU, J

Date : 22.04.2024

Note: LR Copy be marked.
B/o.Ndr