

THE HONOURABLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL APPEAL No.1118 OF 2015

JUDGMENT: (per The Hon'ble Sri Justice K.SURENDER)

The appellant was convicted for the offence under Section 302 and 201 of Indian Penal Code for committing murder of the deceased who is the husband of PW.1.

2. According to PW.1, the deceased Kistappa is her husband. On the date of the incident, PW.9 who was engaged as farm servant by the deceased called the deceased and informed that one person was sleeping in the field. The deceased went to the agricultural field which is an extent of 7 acres, around 9:00 a.m. At 9:30 a.m, when PW.1 tried to call the deceased, the phone was switched off. PW.1 then asked PW.2 who is the mother of the deceased and another person namely Shivappa (given up during trial) to go to the agricultural field and see as to what happened. Later PW.1 came to know that the accused killed her husband in one Manikreddy Patel's fields. When PW.1 and other villagers went to the agricultural field, they found the deceased lying dead. The deceased had received injuries on head, legs and other parts of the body. PW.1 then went to the Police station at 12:30 and lodged

complaint. In the said complaint-Ex.P1 it was stated that PW.9 informed the deceased that some unknown person was obstructing from ploughing the fields, as such the deceased left the house and thereafter she could not contact him on phone. Then she sent PW.2 and Laxmappa to the fields. There, they found that some unknown person had killed the deceased in the lands of Manikreddy (PW.8) and went away. The Police went to the scene of offence and PW.12-Investigating Officer took up investigation on the same day i.e. on 15.05.2014. There PW.12 examined PWs.1, 2, 9 and also Shivappa. Scene of offence-panchanama was conducted and sketch was drawn. Later having concluded inquest proceedings, the body was sent to Government Hospital at Tandur for post-mortem examination.

3. PW.11 who is the post-mortem doctor conducted Autopsy and found the following injuries;

- i) Head injury deep lacerated wound
- ii) Superficial lacerated wound on hands and legs.

According to PW.11, the death was due to head injury by sharp weapon and death occurred due to intra cranial haemorrhage.

4. According to PW.12, PW.4 who is a farmer of the same village informed that the accused belongs to Karankote village and

he used to visit Chandravancha gate for consuming Toddy. On the basis of clue given by PW.4, a special team was formed to go to Karankote village. PW.3 who is the Sub-inspector of Police had shown photographs of old history sheets of criminals to PW.4 who identified the accused who was also involved in another crime No.216/2012 under Section 302 and 301 of the Indian Penal Code of Karankote Police Station. The details of the case in Crime No.216/2012 are not given nor the photograph shown to PW.4 is placed on record.

5. While efforts were going to apprehend the accused, the accused went to PW.7 who is the Sarpanch of the village on 30.05.2014 and confessed that he had killed the deceased since an altercation ensued in between him and deceased in the fields. PW.7 then took the accused to the police station and handed him over to the Police. The accused was interrogated and pursuant to the confession, the accused lead PW.12 and panch witnesses to the scene of offence and showed the axe which was the crime weapon along with the towel of the deceased. The said towel-MO.6 and M.O.7-axe were seized at the instance of the accused. Thereafter, the accused allegedly explained as to how he attacked the deceased. Having concluded investigation, charge sheet was

filed for the offences under Section 302 and 201 of the Indian Penal Code.

6. The learned Sessions Judge framed charges for the said offences and examined PWs.1 to 12 and marked Exs.P1 to P10. MOs.1 to 7 were also brought on record by the prosecution. The learned Sessions Judge on the basis of circumstantial evidence adduced by the prosecution, held that the accused had committed the murder of the deceased and accordingly convicted him.

7. Learned Counsel appearing on behalf of the appellant argued that there were no eye-witnesses to the incident. The only evidence is that of PW.4 and PW.9 who stated that the deceased had taken the appellant towards the village after an altercation in the fields. Only for the reason of the deceased taking the appellant along with him and thereafter finding the dead body of the deceased that itself does not mean that it was the appellant who had committed the murder and none else. The chain of circumstances relied on by the prosecution are not conclusive. Further, PW.7's evidence is not reliable since his version that the accused went to him and confessed regarding the guilt cannot be believed.

8. Counsel relied on the Judgments of Honourable Supreme Court in ***Sahadevan and another v. State of Tamil Nadu***¹; ***Laxman Prasad alias Laxman v. State of Madhya Pradesh***²; ***Kalinga @ Kushal v. State of Karnataka***³ and ***Manharan Rajwade v. State of Chhattisgarh***⁴.

9. The learned Public Prosecutor submits that according to evidence of PWs.4, 5, 6 and 9, the deceased took the appellant towards the village. Thereafter deceased was found dead.

10. PW.4 who was declared hostile to the prosecution case stated that on the date of incident, he and PW.9 went to the agricultural fields of the deceased. There he saw the appellant and questioned as to where he came from. PW.4 asked him to leave the premises. Then the deceased who went there informed PW.4 that he would take the deceased into the village. By saying so the deceased pushed PW.4 aside. PW.4 then went to his fields. Thereafter, accused and the deceased went towards Chandravancha village. PW.5 who is the wife of PW.4 deposed similar to PW.4. She was also declared hostile. PW.6 who was present at the scene identified the accused and stated that the

¹ (2012) 6 Supreme Court Cases 403

² (2023) 6 Supreme Court Cases 399

³ 2024 (4) SCC 735

⁴ 2024 Law Suit (SC) 646

deceased when arrived asked PW.4 to do his work and he took the accused towards Chandravancha village, while PW.9 remained in the fields of the deceased. She was also declared hostile to the prosecution case.

11. PW.7 is the Sarpanch of the village who informed that on 30.05.2014, the accused met him and confessed to the murder of deceased. According to PW.7, accused narrated that there was an altercation with the deceased and accused beat him with an axe on his head. The reason being, accused though asked for a shirt, he was not provided with the shirt by PW.9 and later deceased came there and admonished him. While going towards the village, accused attacked deceased. The accused then took the towel of the deceased and wrapped the axe and threw it in the bushes near the place of incident and went to Tandur town. However, during the course of cross-examination, PW.7 admitted that the accused was not much acquainted with him prior to meeting PW.7 and confessing regarding the crime.

12. PW.8 is the VRO of the village. He witnessed the Police conducting scene of offence-panchanama and inquest proceedings.

13. The other circumstantial witness in the case is PW.9 who had called the deceased to the fields, annoyed with the conduct of the accused, who was causing hindrance to PW.9 in the fields. According to PW.9, when he went to the fields around 5'O clock in the morning, while going to fields he observed the accused was sleeping in the land of the deceased Kistappa. PW.9 questioned him as to who he was and the said person (accused) asked him for his shirt, PW.9 informed that he will not give his shirt and asked him to leave the fields. PWs.5 and 6 went there at that time. PW.9 then called Kishtappa-deceased and told him about the accused and also informed that the accused was not allowing PW.9 to plough the fields. The deceased Kistappa went there and took the accused with him towards the village. PW.4 then informed PW.9 that the accused used to come to Chandravancha gate for consuming Toddy and he was resident of Karankote village. During the day, PW.9 found that some of the villagers were weeping and he observed that the deceased was found dead in the fields of Manik Reddy Patel (PW.8). PW.8 only stated that the dead body of deceased was found in his fields and nothing incriminating against the accused.

14. PW.10 is the witness for confession and seizure of MOs.6 and 7 at the instance of the accused. PW.11 is the post-mortem doctor. PW.12 is the Investigating Officer.

15. The learned Sessions judge convicted the accused on the basis of following circumstances;

- i) The accused sleeping in the agricultural field of the deceased and obstructing PW.9 from ploughing the field.
- ii) PW.9 informed the same to the deceased through mobile phone of PW.5 and asked him to come to the field upon which the deceased coming to his field.
- iii) The deceased alone took the accused with him to his village to produce the accused before the elders i.e. deceased and accused were last seen in the company of the each other.
- iv) Homicidal death of the deceased.
- v) Extra judicial confession of the accused
- vi) Confession of accused leading to seizure of MO.6-towel and M.O.7-Axe.

16. The accused was a stranger to PW.9 and also the deceased. Since the accused was found in the fields of deceased and creating nuisance in his fields, PW.9 called the deceased. The deceased went there and took the accused along with him stating that he would be taken to the village elders. Strong reliance is placed on the deceased being seen last together with the accused and both

of them were going towards the village. Manik Reddy (PW.8) is the land owner in whose land the dead body was found by the villagers around 10.30 A.M. PW.9 did not state the time as to when the deceased and appellant left. However, he stated that after sunrise, he called the deceased to his fields. PWs.4, 5 and 6 also speak about the presence of the appellant in the fields and the deceased going to the fields and taking the appellant towards the village. However, PWs.4 to 6 and 9 did not speak about the time when the deceased took the appellant towards the village.

17. The case is one of circumstantial evidence. The prosecution has to prove each of the circumstance relied on by them beyond reasonable doubt. The law is well settled in ***Sharad Birdhichand Sarda v. State of Maharashtra***⁵ and ***Shailendra Rajdev Pasvan v. State of Gujarat***⁶. The five golden principles constituting ‘panchsheel’ to prove a case based on circumstantial evidence were summed up in **Sharad Birdhichand Sarda’s case**, which reads as follows:

“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

⁵ (1984) 4 SCC 116

⁶ (2020) 14 SCC 750

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 Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri)1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“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 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.”

18. The prosecution though relied on the seizure of the axe and the blood stained towel, however, the prosecution failed to prove as to from where the said Axe was picked up by the accused to attack the deceased. The seizure is consequent to the alleged extra-judicial confession made to PW.7. PW.7 is the sarpanch of the village who states that the accused went to him on 30.05.2014 and confessed before him that accused had committed the murder of the deceased, in turn, PW.7 took him to the Police. Thereafter, PW.7 also speaks about the recovery of the Axe and towel M.Os.6 and 7 at the instance of the appellant.

19. PW.7 admitted that he is not well acquainted with the appellant. In such circumstances, the evidence of PW.7 that the appellant approached him and confessed regarding the crime that too, 15 days thereafter, it raises any amount of doubt. There are no reasons as to why the appellant had gone to him and confessed. Though PW.14 investigating officer stated that the accused was identified on the basis of photographs in another case, the details of case or photographs shown to PW.4 by PW.3 is not placed on record. No reasons are given as to what steps were taken by Police after the accused was identified by PW.4 in the photograph, until the alleged confession to PW.7. It is not the case that the Police went to the home of accused or that accused was absconding. Though PW.14 stated that PW.3 has shown photographs of accused and others, however PW.3 did not speak about any such investigation done by him.

20. The Honourable Supreme Court in ***Sahadevan's case (supra 1)*** held at para-16 of the Judgment that extra judicial confession is a weak piece of evidence and unless the same inspires the confidence, it cannot be relied on. Para-16 is extracted below;

“16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession and admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

- i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the Court with greater care and caution.
- ii) It should be made voluntarily and should be truthful.
- iii) It should inspire confidence.
- iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- vi) Such statement essentially has to be proved like any other fact and in accordance with law.

21. It cannot be said that when PW.7 is not well acquainted with the accused, the accused going to PW.7 and confessing regarding the alleged murder does not inspire confidence and it appears that PW.7 who is the sarpanch of the village had deposed only to help the Police.

22. The witnesses PWs.4 to 6 and 9 speak about the deceased and appellant leaving together. However, such evidence in itself would not suffice to draw the inference that the appellant was the person who had committed the murder. As already discussed, it is not known as to where the appellant secured the Axe and no one had seen the appellant till the alleged confession made to PW.7, 15 days after the murder.

23. Section 106 of the Indian Evidence Act cannot be raised to shift the burden on to the appellant in the present circumstances of the case.

24. There are several missing links in the case of prosecution and only on the basis that the death was homicidal and the unreliable testimony of PW.7 to whom the alleged confession was made, on the basis of such evidence, it cannot be conclusively said that it was the appellant alone and none else who was responsible for homicidal death of the deceased.

25. Accordingly, Criminal Appeal is allowed setting aside the conviction recorded by the learned Additional District and Sessions Judge, Vikarabad, in S.C.No.301/2014, dated 30.09.2015. The appellant/accused is acquitted. Since the appellant is in jail, he is directed to be released forthwith, if not required in any other case.

K.SURENDER, J

ANIL KUMAR JUKANTI, J

Date: 29.10.2024
Note: Dispatch to-day.
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