HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

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CRIMINAL APPEAL No.631 OF 2015

Between:

Pallapu Chinnaiah, S/o. Venkati,
Aged 50 years, Occ: Stone Cutter,
Agril Cooli, R/o. Santhoshnagar
Colony, Armoor

.. Appellant/Accused

And

State of Telangana, rep., by
Public Prosecutor, High Court of
Judicature at Hyderabad

..Respondent/Complainant

Date of Judgment Pronounced: 01.08.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SURENDER
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

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 Reports/Journals? (Yes/No)

3. Whether their Lordship/ Ladyship wish to see the fair copy of the Judgment? (Yes/No)

_____

K.SURENDER, J

_____

ANIL KUMAR JUKANTI, J

THE HON'BLE SRI JUSTICE K.SURENDER
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

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! Counsel for appellant : Ms. C. Vasundhara Reddy

^ Counsel for respondent : Mr. Jithender Rao Veeramall1a, learned Addl. Public Prosecutor for the State of Telangana

<GIST:

> HEAD NOTE:

? Cases referred
1. 2024 LiveLaw (SC) 60
2. (2018) 8 SCC 24
3. (2024) 2 SCC 176

THE HON'BLE SRI JUSTICE K.SURENDER
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL APPEAL No.631 OF 2015

JUDGMENT: *(per Hon'ble Sri Justice K.Surender)*

This criminal appeal is filed aggrieved by the judgment dated 05.06.2015 in S.C.No.32 of 2015 on the file of VIII Additional Sessions Judge at Nizamabad, convicting the appellant for the offence under Section 302 of Indian Penal Code (IPC) and sentencing him to undergo imprisonment for life and to pay fine of Rs.500/- and in default, to undergo simple imprisonment for one month and for the offence under Section 449 of IPC and sentencing him to undergo rigorous imprisonment for ten years and to pay fine of Rs.500/- and in default, to undergo simple imprisonment for one month.

2. Heard the learned counsel for the appellant/accused and Sri Jithender Rao Veeramalla, learned Additional Public Prosecutor for respondent-State.

3. Briefly the case of the prosecution is that the deceased was having illicit intimacy with the daughter-in-law of the appellant/accused. On account of the said suspicion, there

was a quarrel between the appellant and the deceased, three months prior to the incident.

4. It is the further case of the prosecution that PW.5, who is the neighbor of the deceased, on the intervening night of 06/07-07-2014, got up at 2:30 A.M. and went to attend nature call and he saw the appellant/accused coming from the side of the deceased house and going towards bus stand. Then he went back to sleep and on the next day morning, he went on to his daily work at 6:30 A.M.

5. PW.1 is the maternal uncle of the deceased. He lodged a complaint stating that he found the dead body of the deceased in his house and he was suspecting that the appellant/accused would have caused death of the deceased since deceased was having illicit intimacy with accused daughter-in-law. However, the father of the deceased, who was examined as PW.2, turned hostile to the prosecution case and stated that there was no rivalry between the appellant and the deceased.

6. On the basis of the appellant having motive to commit murder of the deceased, charge sheet under Sections 302 and 449 of IPC was filed against the appellant/accused.

7. Learned Sessions Judge examined the prosecution witnesses PWs.1 to 10 and relied on the following circumstances adduced by the prosecution:

i) PW.5 had seen the deceased at 2:30 A.M. on the intervening night of 06/07.07.2014 and on the next day morning at about 6:30 A.M., the body of the deceased was found by PW.1.

ii) PW.1 specifically stated about a quarrel between the deceased and the appellant on the ground that the deceased was having illicit intimacy with the daughter-in-law of the appellant.

iii) The appellant absconded from the village from date of death i.e., 06/07.07.2014and later was arrested on 16.07.2014.

iv) On 17.07.2014, his confession was recorded and at his instance, the police recovered MO.1 – knife and MO.2 – bloodstained shirt, which is admissible under Section 27 of the Evidence Act.

v) MO.2 blood stained shirt of the accused was seized and the blood group of the blood found on MO.2 was the blood group of the deceased.

8. On the basis of the said circumstances, the learned Sessions Judge opined that a complete chain of circumstances was formed to prove the case against the appellant and accordingly, convicted the appellant.

9. Learned counsel appearing on behalf of the appellant would submit that the Sessions Court had committed an error in convicting the appellant when the circumstances, which were culled out by the prosecution during the course of trial, were not enough to point towards the guilt of the appellant. In a case of circumstantial evidence, circumstances should be conclusive in nature and should point towards the guilt of the accused. In the instant case, the only basis is the bloodstained shirt – MO.2, which was recovered at the instance of the appellant. Learned counsel argued that according to the report of the Forensic Science Laboratory, the blood group of the stains on the shirt was that of the deceased, which is not sufficient proof to convict the appellant. She relied on the judgment of the Hon'ble Supreme Court in ***Raja Naykar vs. State of Chhattisgarh***[1], wherein the Hon'ble Supreme Court held that mere matching of blood group taken from the scene of offence and the

[1] 2024 LiveLaw (SC) 60

accused/appellant, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt. Learned counsel also relied on the judgment of the Hon'ble Supreme Court in ***Sonvir Alias Somvir vs. State (NCT of Delhi)***[2], wherein the Hon'ble Supreme Court had acquitted the accused on the ground that recovery of the weapon was from an open place.

10. On the other hand, learned Additional Public Prosecutor submits that the circumstances relied upon by the prosecution during the course of trial regarding the appellant being seen at the residence of the deceased and later absconding would suffice to infer that it was the appellant alone who had committed the offence. Further, the blood found on shirt of the accused tallied with blood group of the deceased.

11. The observations of the Hon'ble Supreme Court in ***Raja Naykar***'s case (1 supra), which are relevant, read as under:

> "8. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a Court can convict the accused. It has been held that there is not only a

[2] (2018) 8 SCC 24

> 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 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 further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.
>
> 9. It is settled law that the suspicion, however strong it may be, cannot be the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt."

12. The Hon'ble Supreme Court at paragraph Nos.7 and 8 held as under:

> "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 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.

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

8. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. 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 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 further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused."

13. According to PW.8, independent witness to seizure of MO.1, the appellant confessed the commission of offence and had taken the police to the place of MO.1 – knife which was underneath the Neem tree and police recovered the same. However, according to PW.8, the place where MO.1 was recovered has easy access to public as it was an open place. The observations made in ***Raja Naykar'***s case (1 supra), amply apply to the facts of the present case.

14. In ***Sonvir Alias Somvir***'s case (2 supra), the Hon'ble Supreme Court held that in a case of circumstantial evidence mere recovery of the bloodstained shirt and recovery of weapon would not suffice to form a complete chain of circumstances. Accordingly, the accused was given benefit of doubt.

15. Another circumstance, which creates any amount of doubt of conduct of PW.5, is that PW.5 saw the appellant in the night at 2:30 A.M. According to PW.1, the body was discovered at 6:30 A.M. In fact, if the dead body was found at 6:30 A.M., the natural course would be that PW.5 would have

informed PW.1 regarding the appellant being seen near the house. The complaint – Ex.P1 was lodged by PW.1 at 11:45 A.M. There was no mention about PW.1 in the said complaint. The said circumstance also creates any amount of doubt regarding correctness of the prosecution version. It appears that the statement of PW.5 was later pressed into service to support the case of the prosecution.

16. The Hon'ble Supreme Court in **Sekaran v. State of Tamil Nadu[3],** held that abscondance of accused after registration of FIR, cannot be held to be proved guilt of the accused, unless there are other circumstances, which conclusively point towards guilt of accused. It is for the prosecution to prove each and every circumstance with convincing and admissible evidence. When the circumstances relied on by the prosecution are suspicious and unreliable, the question of such circumstance framing a complete chain to infer guilt of the accused, does not arise.

17. In view of the prosecution failure to connect the circumstances conclusively to make out a case pointing towards the appellant, benefit of doubt is extended to the appellant.

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[3] (2024) 2 SCC 176

18. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed against the appellant/accused by the learned VIII Additional Sessions Judge at Nizamabad *vide* judgment dated 05.06.2015 is hereby set aside and the appellant/accused is acquitted for all the charges. The fine amount, if any, paid shall be refunded. Since the appellant is on bail, bail bonds shall stand discharged.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand cancelled.

K.SURENDER, J

ANIL KUMAR JUKANTI, J

Date:01.08.2024

Note: L.R. Copy be marked.
(B/o)
KH