HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

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CRIMINAL APPEAL No. 93 OF 2015

Between:

Marepally Shyamalamma
W/o.Marepally Hanumaiah
Age:48 years Occ:Coolie,
R/o.Vishwanathpur Village of Yalal Mandal
R.R.District

... Appellant/
Accused

And

The State of Telangana rep. by its
Public Prosecutor, High Court,
Hyderabad.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED: 25.07.2023

Submitted for approval.

THE HONOURABLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

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

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K.SURENDER, J

_____

J. SREENIVAS RAO, J

*** THE HONOURABLE SRI JUSTICE K.SURENDER**
AND
THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ CRL.A. No. 93 OF 2015

% Dated 25.07.2023

Marepally Shyamalamma
W/o.Marepally Hanumaiah
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R.R.District

...Appellant/
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Hyderabad.

... Respondent/
Complainant

! Counsel for the Appellant: Sri M.K.Ratnam

^ Counsel for the Respondents: Public Prosecutor for State

>HEAD NOTE:

? Cases referred

[1] (1984) 4 SCC 116

THE HONOURABLE SRI JUSTICE K.SURENDER
AND
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CRIMINAL APPEAL No.93 OF 2015

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

1. This appeal is filed aggrieved by the judgment dated 16.10.2014 in S.C.No.180 of 2014, on the file of Additional District and Sessions Judge, Vikarabad, R.R.District.

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

3. The appellant was convicted for the offence under Section 302 of IPC and sentenced to undergo life imprisonment.

4. The allegation against the appellant/accused is that she had strangulated her grandson on 17.11.2013. P.W.1 is the husband of the appellant who filed telugu written complaint on 17.11.2013 stating that his daughter married earlier and her husband died by committing suicide. Thereafter, she eloped with someone else. However, a child was born who was being taken care of by P.W.1 and the appellant. The deceased boy was living in their house. On 17.11.2013, P.W.1 took his son Balraj to the hospital leaving the child in the house along with

the appellant. On returning home at 12 noon, he found that the boy was dead. Thereafter, he went to the Police Station around 7:00 p.m. and filed written complaint. The Police investigated the case and filed charge sheet against appellant for the offence under Section 302 of IPC.

5. Learned Sessions Judge after framing charge examined the witnesses P.W.1 to P.W.10 and found favour with the version of the prosecution that it was the appellant who was responsible for throttling the deceased boy. Even in the post mortem examination report, it was mentioned that the boy died due to asphyxia and cardio pulmonary arrest due to manual strangulation and strangulation mark was found on the throat of the boy. According to the Doctor, the death was caused on account of manual strangulation. Deceased was in the house of appellant and she alone was responsible for causing the death.

6. Learned counsel appearing for the appellant would submit that prosecution has relied on the evidence of P.W.1 who merely stated that he had suspicion regarding his wife causing death of the child. The complaint was filed on 17.11.2013, however, as seen from the endorsement of the Magistrate of the concerned Court, FIR reached the Court on 23.11.2013 with a delay of 6 days. The said delay was not explained by the prosecution. In

the absence of explanation by the prosecution regarding the Police sending the FIR, it is fatal to the prosecution case. Further, no reason was given as to why appellant would inform the villagers that she had killed the boy. Even in the inquest, it is mentioned that on the basis of evidence of witnesses, there was suspicion that the appellant might have throttled the grandson Masappa and killed him. During inquest, P.Ws.1, 2 and 3 were examined, however according to their version, during inquest report, they suspected that the appellant had killed the boy. However, none of the witnesses who were examined during inquest had stated that appellant had made any confession regarding throttling of the boy to death. Counsel further submits that neither in Ex.P.1/complaint nor in the evidence of P.W.1, there is any mention about the presence of the appellant when P.W.1 had found the boy dead.

7. On the other hand, learned Public Prosecutor would submit that the appellant had stated to P.Ws.2 to 4 that she had strangulated the boy, further, in the Court below when the Court questioned after convicting the appellant, she stated that she has nothing to say. Since she was the person who was present in the house, the Court has rightly convicted the appellant.

8. Admittedly, there are no witnesses to the alleged strangulation of the boy. It is a case of circumstantial evidence. The circumstances relied on by the prosecution are:-

1. The elopement of the daughter of the appellant leaving behind the child.

2. The appellant was angered on account of conduct of the daughter.

3. The boy was in the house when P.W.1 left to the hospital taking his son.

4. When P.W.1 returned, boy was found dead.

9. The Hon'ble Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra[1],** laid principles as to the acceptance of circumstantial evidence and the basis to record conviction, which read as under:-

> "1. the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;
> 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

[1] (1984) 4 SCC 116

> be explained on any other hypothesis except that the accused is guilty;
>
> 3. the circumstances should be of a conclusive nature and tendency;
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> 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."

10. It is not mentioned in Ex.P.1/complaint which was lodged with the Police at 7:00 p.m., though body was found at 12 a.m. that the appellant was present in the house along with the deceased either at the time of P.W.1 going to the hospital or when he came back from the hospital. In fact, it is mentioned in Ex.P.1 that the deceased boy was playing near the house. The said complaint was sent to the concerned Magistrate with a delay of 6 days and there is no explanation by the prosecution as to why the said delay occurred. Witnesses P.Ws.2 to 4 who narrated before the Court that the appellant had confessed regarding throttling the boy, though examined in inquest, they did not state anything about the said confession made by the appellant.

11. Scene of offence panchnama/Ex.P.2 was conducted at 7:40 p.m. on 17.11.2013. Inquest/Ex.P.3 was conducted on 18.11.2013 at 12 noon. At the earliest point of time on 17.11.2013 and 18.11.2013, it was stated that P.W.1 suspected that the boy was killed by the appellant. P.W.1 did not state about appellant being present when he went out of the house or when he came back. P.Ws.2 to 4 though examined during inquest, the next day, did not say that the appellant informed/confirmed that she had killed the deceased. The complaint/Ex.P.1, which reached the Court after 6 days also does not reflect that the appellant was alone present in the house or that she had admitted to killing of the deceased. The version of admitting or confessing by appellant was developed later. No inference of guilt can be drawn only for the reason of the appellant not explaining to Court when she was convicted, as argued by the Public Prosecutor. The prosecution case has to stand on its own legs.

12. The prosecution can succeed in cases of circumstantial evidence when all the circumstances are proved beyond the reasonable doubt, when the said circumstances are collectively looked into. As already discussed, the circumstances relied on by the prosecution regarding anger of the appellant for the

reason of eloping of the daughter and also leaving behind the child, cannot form basis to record conviction when there is no evidence regarding presence of the appellant along with the boy on the date of incident. The case of the prosecution should not leave any shadow of doubt or suspicion regarding correctness of the prosecution version. The case is one of suspicion without proof. Suspicion, however strong, cannot take the place of legal proof. There are several discrepancies which are un-explained by the prosecution, as such, benefit of doubt is extended to the appellant.

13. Appeal is allowed setting aside the conviction and the appellant is acquitted. Since the appellant is on bail, bail bonds shall stand discharged.

K.SURENDER, J

J. SREENIVAS RAO, J

Date: 25.07.2024
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