HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

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Criminal Appeal No. 310 OF 2016

Between:

Reddy Praveen Reddy … Appellant

And

The State of Telangana,
Rep. by its Public Prosecutor …
Respondent

DATE OF JUDGMENT PRONOUNCED: 14.11.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER
And
THE HON'LE SRI 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 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

_____
ANIL KUMAR JUKANTI, J

* THE HON'BLE SRI JUSTICE K.SURENDER

And

THE HON'LE SRI JUSTICE ANIL KUMAR JUKANTI

+ CRL.A. No. 310 OF 2016

% Dated 14.11.2024

Reddy Praveen Reddy … Appellant

And

$ The State of Telangana … Respondent
Rep. by Public Prosecutor

! Counsel for the Appellant: Sri T.Pradyumnakumar Reddy, Senior Counsel for Sri T.S.Anirudh Reddy

^ Counsel for the Respondents: Sri Arun Kumar Dodla,
Additional Public Prosecutor

>HEAD NOTE:

[1] (2019) 12 Supreme Court Cases 784
[2] 2022 LiveLaw (SC) 169
[3] (2021) 18 Supreme Court Cases 353
[4] (2006) 10 Supreme Court Cases 681

HON'BLE SRI JUSTICE K.SURENDER
And
HON'BLE SRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL APPEAL No.310 OF 2016

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

1. The appellant is the sole accused convicted and sentenced to imprisonment for life under Section 302 of IPC and he is also sentenced to undergo rigorous imprisonment for one year under Section 201 IPC vide judgment in S.C.No.264 of 2014 dated 02.03.2016 passed by the Principal Sessions Judge, Medak at Sangareddy.

2. In all three persons died in the present case, who are parents and elder sister's son of the appellant. Parents will be referred as D1 an D2 and the boy as D3 hereinafter.

3. Briefly, the case of the prosecution is that on 29.08.2013, at around 3.15 a.m, P.Ws.3 and 4 heard screams of the appellant. When they opened the door, they observed the appellant outside his house screaming and they found smoke coming from his house. P.W.3 called the Fire Station in BHEL. Around 3.30 a.m, P.W.9/fire station officer received information that smoke was coming from home of the deceased. Immediately, he along with

his crew took the fire engine and proceeded towards the house of the deceased. There, he found smoke and sprayed water. Around 3.50 a.m, the appellant telephoned to his cousins P.Ws.1 and 2 and asked them to come to his house in BHEL. Immediately, they proceeded to the house and observed a fire engine and fire personnel trying to extinguish the fire. D2 and D3 were shifted in an ambulance to Apollo DRDO Hospital. One more ambulance came and shifted D1 to BHEL Hospital. The accused informed them that he was sleeping in the hall. Around 8.30 a.m, P.W.1 gave report to P.W.21/Sub-Inspector of Police, Ramachandrapuram Police Station. Basing on the said report, P.W.21 registered case in Crime No.395 of 2023 under Section 174 Cr.P.C. Ex.P16 is the original FIR sent to the Court. P.W.21 recorded the statement of P.W.1 in the police Station. P.W.21 found the dead body of D1 in the BHEL Hospital and proceeded to the scene of offence and conducted scene of offence panchanama under Ex.P5 and seized MO1-Bottle containing liquid. P.W.21 conducted inquest over the dead body of D1 in the presence of P.W.10 at BHEL Hospital. Ex.P3 is the inquest report of D1 and shifted the dead body of D1 to Government Hospital, Sangareddy for postmortem examination.

4. P.W.19 conducted autopsy over the dead body of D1 between 1.05 p.m and 2.45 p.m and found one injury. According to the doctor, the cause of death was due to Cardio Respiratory Arrest due to burns and approximate time of death was between 8 to 11 hours prior to postmortem examination. Ex.P13 is the postmortem report of D1. P.W.18 treated D2 and D3 who suffered burn injuries. D2 died in the evening. Ex.P11 is the death summary of D2. On 30.08.2013, P.W.21 went to the Apollo Hospital and conducted inquest over the dead body of D2 in the presence of P.W.11. Ex.P4 is the inquest report of D2. Later shifted the dead body of D2 to Gandhi Hospital for postmortem examination. P.W.21 also recorded the statements of D3, P.Ws.3 and 4.

5. P.W.20 conducted autopsy over the dead body of D2 between 10.45 a.m and 1.00 pm and observed one injury. According to the Doctor, the death was due to 92% burns. Ex.P14 is the postmortem examination report of D2 and Ex.P15 is the final opinion.

6. On 13.09.2013, in the morning, the appellant went to P.W.14 who is a resident of Tellapur village and made an extrajudicial confession stating that due to family disputes, he

killed D1 by pouring petrol on him and lit fire. During the said process, D2 and D3 also received burn injuries. P.W.14 then informed the police Inspector/P.W.21. P.W.21 recorded the statement of P.W.14 basing on which he altered the Section of law to Section 302 and 201 of IPC. Ex.P17 is the alternation memo. Thereafter, he handed over the investigation to P.W.22. On the same day, P.W.22 arrested the appellant. On interrogation, the appellant confessed to the crime in the presence of P.W.16 and in pursuance of the confession, P.W.22 seized MO2 empty plastic can from the house of the appellant. Exs.P8 and P9 are confession and seizure report respectively. Thereafter, P.W.22 recorded the statement of P.W.5, who worked as cashier in the petrol bunk from where the appellant purchased petrol in a can.

7. On 1.10.2013 at 4.30 p.m, P.W.22 received intimation that D3 died while undergoing treatment at Apollo Hospital. Ex.P12 is the death summary of D3. P.W.22 conducted inquest over the dead body of D3 in the presence of P.W.13. Ex.P6 is the inquest report of D3. Then he shifted the dead body of D3 to Gandhi Hospital, Secunderabad for postmortem examination. P.W.17 conducted autopsy over the dead body of D3 and found one

injury. According to him, the death was due to burns. Ex.P10 is the postmortem report of D3. Thereafter, P.W.22 obtained FSL report Ex.P18. After completing investigation, P.W.22 filed charge sheet.

8. In order to prove the case of the prosecution, P.Ws.1 to 22 were examined. P.Ws.3 and 4 neighbours of appellant did not completely support the case of the prosecution and declared hostile to the prosecution case. Exs.P1 to P18 and MOs.1 and 2 were marked.

9. Learned Sessions Judge on the basis of circumstantial evidence of P.Ws.1 to 6 coupled with medical evidence, convicted the appellant as stated supra.

10. Sri T.Pradyumnakumar Reddy, learned Senior Counsel appearing on behalf of Sri T.S.Anirudh Reddy, learned counsel for the appellant would submit that the motive as put forth by the prosecution is that the appellant would be considered for compassionate appointment if D1, who was working in BHEL expires while in service. In this regard, the prosecution examined P.W.6, who was an employee in BHEL. P.W.6 stated that D1 and the appellant met him in August, 2013 and D1 requested for the

recruitment of the appellant in BHEL. He argued that another motive suggested by the prosecution is that ten days prior to the incident, D1 and the appellant had quarreled regarding loss in the work shop business of the appellant. In this regard, the prosecution examined P.W.7-father of D3 and P.W.8-mother of D3.

11. Learned Senior Counsel further argued that originally, the FIR Ex.P16 was registered by P.W.21 under Section 174 Cr.P.C on a report given by P.W.1 on 29.08.2013. Thereafter, Section of Law was altered to Sections 302 and 201 of IPC basing on the extrajudicial confession made by the appellant to P.W.14 on 13.09.2013. However, P.W.14 turned hostile to the prosecution case. It is held by the Hon'ble Supreme Court in several judgments that extrajudicial confession is a weak piece of evidence and should be corroborated by other evidence on record. He further argued that basing on the confession of the appellant in the presence of P.W.21 and P.W.16, who is panch for confession and recovery, MO2-empty plastic can was seized from the backyard of his house. He submitted that the incident happened on 13.09.2013 and the recovery was made on 13.09.2013 i.e., after 15 days of the incident. Admittedly, P.W.21

conducted scene of offence panchanama Ex.P5 on 29.08.2013, but MO2 was not found or seized by P.W.21.

12. Learned Senior Counsel further submitted that P.W.21 though recorded the statement of D3, but for the reasons best known to the prosecution, the said statement has never seen the light of the day. According to the charge, the appellant poured kerosene on the deceased and set fire, but however, the case of the prosecution, the appellant poured petrol on the deceased and set fire. The prosecution examined P.W.5 to show that the appellant got filled 3 liters of petrol in MO2 plastic can on 25.08.2013 i.e., three days prior to the incident. The prosecution ought to have conducted test identification parade to prove that P.W.6 could identify the appellant. However, P.W.5 stated that no receipt was given to the appellant and he further deposed that they would fill petrol in cans only when the vehicles are air locked and in the cross-examination, he stated that only diesel cars will be air locked. He submitted that P.W.21 failed to prepare the rough sketch of scene of offence.

13. Learned Senior Counsel further submitted that the learned Sessions Judge convicted the appellant on the basis that

appellant did not offer any explanation as to how the fire engulfed in the bedroom of the deceased. In a case of circumstantial evidence, absence of explanation or false explanation will amount to an additional link to complete the chain, provided the prosecution proves its case beyond reasonable doubt.

14. Learned Senior also relied on the judgments of Hon'ble Supreme Court in the case of **Raju Manjhi v. State of Bihar**[1] wherein it was held as follows:

> "**13.** The other ground urged on behalf of the appellant is that the so-called confessional statement of the appellant has no evidentiary value under law for the reason that it was extracted from the accused under duress by the police. It is true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Evidence Act provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning the alleged offence, such statement can be proved against him. It is worthwhile at this stage to have a look at Section 27 of the Evidence Act:
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> "**27. *How much of information received from accused may be proved***.— Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a 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."
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> **17.** Moving on to the other limb of argument advanced on behalf of the appellant that the appellant-accused had no motive and the courts below have failed to consider the fact that the evidence on record is not sufficient to establish motive of the accused. Undoubtedly, "motive" plays significant role in a case

[1] (2019) 12 Supreme Court Cases 784

based on circumstantial evidence where the purpose would be to establish this important link in the chain of circumstances in order to connect the accused with the crime. But, for the case on hand, proving motive is not an important factor when abundant direct evidence is available on record. The confessional statement of the appellant itself depicts the motive of the team of the accused in pursuit of which they committed the robbery at the house of the informant and the appellant being part of it."

15. In **Satye Singh & another v. State of Uttarakhand**[2], the Hon'ble Supreme Court held as follows:

"15. Applying the said principles to the facts of the present case, the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by learned advocate Mr. Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused.
In Shambu Nath Mehra vs. State of Ajmer , AIR (1956) SC 404, this court had aptly explained the scope of Section 106 of the Evidence Act in criminal trial. It was held in para 9:
"9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty.
On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. Emperor [AIR 1936 PC 169] and Seneviratne v. R. [(1936) 3 All ER 36, 49]"

[2] 2022 LiveLaw (SC) 169

16. In **Parubai v. State of Maharashtra**[3], the Hon'ble Supreme Court held as follows:

> *"**16.** Further the mere suspicion would not be sufficient, unless the circumstantial evidence tendered by the prosecution leads to the conclusion that it "must be true" and not "may be true". In that regard, it is necessary to take note of the decision of this Court in Devi Lal v. State of Rajasthan [Devi Lal v. State of Rajasthan, (2019) 19 SCC 447 : (2020) 3 SCC (Cri) 719] , wherein this Court on noting the decision of Sharad Birdhichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] has held as hereunder : (Devi Lal case [Devi Lal v. State of Rajasthan, (2019) 19 SCC 447 : (2020) 3 SCC (Cri) 719] , SCC p. 453, paras 17-19)*
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> *"17. It has further been considered by this Court in Sujit Biswas v. State of Assam [Sujit Biswas v. State of Assam, (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] and Raja v. State of Haryana [Raja v. State of Haryana, (2015) 11 SCC 43 : (2015) 4 SCC (Cri) 267] . It has been propounded that while scrutinising the circumstantial evidence, a court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straitjacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.*
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> *18. On an analysis of the overall fact situation in the instant case, and considering the chain of circumstantial evidence relied upon by the prosecution and noticed by the High Court in the impugned judgment [Babu Lal v. State of Rajasthan, 2009 SCC OnLine Raj 333] , to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.*
> *19. That apart, in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. All the judicially laid parameters, defining the quality and content of the circumstantial evidence, bring home the guilt of the accused on a criminal charge, we*

[3] (2021) 18 Supreme Court Cases 353

find no difficulty to hold that the prosecution, in the case in hand, has failed to meet the same."

21. *The High Court holding the appellant guilty of pouring kerosene around the deceased and her children and setting them on fire since the appellant had failed to explain the reason for eruption of fire in view of such obligation to explain under Section 106 is also not sustainable in the present circumstance. As held in Sharad Birdhichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] the failure to explain can only be held as an additional link to complete the chain of circumstance. In the instant case, since the other circumstances in the chain are not established, the same cannot be held against the appellant. On the other hand, the case itself is that the fire had erupted at midnight when the appellant and others were sleeping and she came out shouting. The explanation for the cause of fire by the appellant would have arisen only if there was any other evidence to the effect that the appellant was already awake and was outside even before the fire erupted."*

17. On the other hand, Sri Arun Kumar Dodla, learned Additional Public Prosecutor would submit that the appellant was present in the house when the incident has taken place. Duty is cast upon him to explain as to how the fire engulfed in the room where D1 to D3 were sleeping. They received burn injuries. Even assuming that D3, son of P.Ws.7 and 8 did not make statement, it cannot be said that the appellant is not guilty. The prosecution has proved its case by laying foundation to invoke Section 106 of the Evidence Act whereby the burden has been shifted on to the appellant. The appellant failed to discharge his burden except saying that he was not responsible, nothing is brought on record to believe his evidence.

18. The main argument advanced by the learned Senior Counsel is that D3 was examined during inquest proceedings and survived for nearly one month. However, his statement though recorded by P.W.21 was suppressed, which creates any amount of doubt regarding prosecution case. D3 was boy aged 13 ½ years who received injuries and suffered for one month before he died. His statement will be of no consequence. The incident happened in the early hours around 3.30 a.m to 4.00 a.m and the boy would be in deep sleep. Appellant could not convince this Court as to how prejudice was caused if the alleged statement of D3 recorded by P.W.21 was not provided during investigation. No request was made by appellant during examination of P.W.21 to either furnish the alleged statement or ask the Court to look into the CD file when P.W.21 deposed.

19. The case is one of circumstantial evidence. The prosecution has to prove all the circumstances without any reasonable doubt for the Court to infer that it was the appellant who had committed the murder of the deceased. Presumption under Section 106 of Evidence Act can be raised only in the event of the prosecution laying foundation that the appellant was responsible

to shift the burden on to the appellant to explain his defence and the circumstances under which the deaths occurred.

20. The incident happened in the early hours of 29.08.2013 around 3.00 am to 4.00 am according to the witnesses P.Ws.1 to 4. P.W.1 is the cousin of the appellant and P.W.2 is another cousin. Both of them were informed on phone by the appellant that D1 to D3 received burn injuries. Both P.Ws.1 and 2 went to the house of the appellant and found that D1 to D3 received severe burn injuries. When P.Ws.1 and 2 asked about the incident, the appellant informed them that he was sleeping in the hall and does not know as to how D1 to D3 were burnt.

21. P.Ws.3 and 4 are the neighbors of the house where the incident has taken place. P.W.3 stated that around 3.15 a.m, he heard the appellant shouting for help and he called the Fire Station in BHEL. The fire engine arrived and thereafter, P.Ws.1 to 3 went inside and saw that all the three deceased D1 to D3 received severe injuries, who were shifted to the BHEL General hospital. Similar is the evidence of P.W.4, who is another neighbor. He also stated that around 3.00 a.m, he heard the appellant shouting and he went out and PW.3 called for the fire

engine and public gathered and they found D1 to D3 burnt in the house and they were shifted to the hospital.

22. P.Ws.1 to 4 specifically spoke about the presence of the appellant in the house when the incident has taken place. Appellant informed P.Ws.1 and 2 that he was sleeping in the hall of the house and it is not known how D1 to D3 were engulfed in the fire. Admittedly apart from the appellant no one else was in the house when the incident happened. P.Ws.1 to 4 were not cross-examined by the defence and their evidence is not disputed about presence of appellant in the house apart from D1 to D3. P.Ws.3 and 4, who are the independent witnesses also speak about the appellant shouting for help when they went to the house and found smoke and after fire engine came and extinguished flames, they saw three bodies burnt. During Section 313 Cr.P.C examination also, in support of the evidence of P.Ws.1 to 4, except stating that the evidence of P.Ws.1 to 4 is false, no explanation is given by the appellant. Even the Court asked if he intended to say anything during examination under Section 313 Cr.P.C, he only stated that a false case was filed against him. Initially, P.Ws.1 to 4's cross-examination was treated as nil as there was no representation by counsel. However, the defence

counsel appeared and cross-examined all the other witnesses and no attempt was made to recall P.Ws.1 to 4 for cross-examination. Appellant did not plead prejudice for not cross-examining P.Ws.1 to 4.

23. In **Trimukh Maroti Kirkan v. State of Maharashtra**[4], the Hon'ble Supreme Court held as follows:

> *"**15.** Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."*

24. The evidence against the appellant is that he was present in the house when the incident has taken place. There was no one else apart from D1 to D3 and the appellant in the house, which fact was not disputed. It is not the case of appellant that there was accidental fire. As to how fire engulfed in the room where D1 to D3 were sleeping has to be explained by the appellant and also as to how there was no fire in the place where he was sleeping in the room. According to Ex.P5, scene of offence panchanama, the

[4] (2006) 10 Supreme Court Cases 681

bodies of D1 to D3 were lying in the eastern side bed room which was 10 x 10 feet. The other room in the house is 10 x 10 bed room No.2 and hall 10 x 12 feet. Appellant's case is that he was sleeping in the hall adjoining bed room. The hall leads to both bed rooms and the kitchen. According to the Investigating Officer, at the scene, petrol was found floating on water. According to the prosecution version, the appellant had purchased petrol from P.W.5 on 25.08.2013.

25. The entire house was very small house and in between the hall and the bed room, there is one door and the appellant was sleeping in the hall which would have hardly been at a distance of 10 to 15 feet. It cannot be said that the appellant was ignorant of the fire which engulfed in the bed room where D1 to D3 were sleeping. Admittedly, the appellant had not made any attempt to rescue D1 to D3 nor he received any burn injuries.

26.The prosecution has proved through the evidence of P.Ws.1 to 4that the appellant was alone present in the house, which is not disputed by the appellant. It is not the case of appellant that any third person entered into the house and lit fire. It is not the case of appellant that the fire was accidental. The prosecution has laid foundation to shift the burden on to the appellant under Section

106 of the Evidence Act. The motive though was suggested is of no consequence since the appellant failed to discharge his burden which was shifted on to him under Section 106 of IPC. Similarly, the hostility of P.W.14, to whom the alleged extrajudicial confession was made, is of no help to the appellant nor a dent in the prosecution case. Though the case of the prosecution is that the appellant went to P.W.14 and confessed to him on 13.09.2013, however, P.W.14 not stating about the confession, will not in any manner help the appellant nor is it a missing link in the case of the prosecution. The contradictions in the case of the prosecution which are projected by the learned counsel regarding seizure of the can/MO2 and the other discrepancies are minor in nature, having no bearing on the case of the prosecution. When the evidence on hand, relied on by the prosecution is consistent pointing guilt only against the appellant, minor discrepancies which creep in during the trial which will not affect the prosecution case or go to the root of the prosecution case, such discrepancies can be ignored. We do not see any reason to set aside the conviction recorded by the learned Sessions Judge.

27. Accordingly, Criminal Appeal is dismissed. Since the appellant is on bail, the trial Court is directed to cause appearance of the appellant and send him to prison to serve out the remaining period of sentence. Consequently, miscellaneous applications, if any, shall stand closed.

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K.SURENDER, J

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ANIL KUMAR JUKANTI, J

Date : 14.11.2024
Note: LR copy to be marked.
B/o.kvs