THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CRIMINAL APPEAL NO.43 OF 2016

J U D G M E N T: (*per* ***Hon'ble Sri Justice SAMBASIVARAO NAIDU***)

This Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), by the sole accused in Sessions Case No.258 of 2013 on the file of the Principal Sessions Judge, Adilabad. The appeal challenges the sentence of conviction recorded by the trial Court vide Judgment dated 23.11.2015 where under the trial Court found him guilty for the offenses punishable under Sections 302 and 379 of the Indian Penal Code, 1860 (for brevity, 'IPC') and convicted him under Section 235(2) of Cr.P.C.

2. The appellant-accused was sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default of payment of fine, the accused shall suffer simple imprisonment for three months for the offence under Section 302 of IPC and the appellant was further sentenced to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/- in default of payment of fine, he shall suffer simple imprisonment for one month for the offence under Section 379 of IPC. The trial Court directed that both the above referred

sentences would run concurrently and any remand period, if applicable, would be given set off.

3. The appellant has filed the present appeal on the ground that the trial Court committed a grave error by convicting him for the above referred offences on the basis of insufficient evidence. The trial Court failed to recognize that the evidence presented by the prosecution was highly insufficient and did not adequately address the discrepancies and contradictions in the testimony of prosecution witnesses. The appellant also contends that the trial court overlooked their arguments regarding the inconsistency in the evidence of PWs.1, 2, 3 and 16, and should not have accepted the prosecution's case concerning the alleged incident. Consequently, the appellant seeks to set aside the impugned Judgment and requests acquittal.

4. As could be seen from the case facts in the charge sheet that was filed against the appellant, it is alleged that one Nallolla Laxmi (hereinafter referred to as 'the deceased') was a resident of Siddalakunta Village and she is the wife of PW.4 (Nallolla Ganganna) and mother of PW.6 (Nallolla Nikhitha @ Prathyusha). PW.5 (Nallolla Chinna Ganganna) is the brother-in-law and PW.8 (Nallolla Chinna Nadikudaiah) is the father-in-law of the deceased. The prosecution

asserts that the appellant had a distant relationship with the deceased and frequently visited her house.

5. The prosecution alleges that due to PW4's illness, the deceased managed both household affairs and agricultural work, during which she developed an illicit relationship with the appellant. They purportedly engaged in intimate activities, and the appellant requested Rs. 50,000/- from her to buy a harvester. Later, when the deceased's relatives learned about their relationship, she demanded the money back, stating that Pw4 had admonished her. The appellant claimed financial difficulties and refused to repay. When the deceased persisted, the appellant intending to avoid repayment planned her murder.

6. The prosecution has alleged that on 20.03.2012 in between 07.00 A.M. and 08.00 A.M., the deceased again contacted the appellant and requested him to return her money, therefore, the appellant hatched a plan to avoid the repayment of loan, decided to eliminate her thereby lured the deceased to Nirmal under the pretense of sexual intercourse and on a promise that he will return her money. The appellant said to have collected a razor blade from his house, and by keeping it in his pocket, reached Nirmal on his motorbike and met the deceased, who was waiting near the Cinema Hall in front of the Nirmal

Bus stand. The appellant took the deceased to the forest area of Chincholi on the pretext of having sexual intercourse. After engaging in sexual activity, the appellant proceeded to beat the deceased with a stick, causing severe bleeding injuries to her, subsequently, he retrieved a blade from his pocket and slit her throat, resulting in her falling down with severe bleeding. The appellant then disposed of the blade in the forest, believing the deceased to be dead. Additionally, he stole cash amounting to Rs. 300, a gold kuthikattu, and a gold chain from the deceased before leaving the scene of the crime.

7. The prosecution alleges that the deceased, struggling for life, managed to walk about one kilometer to BT road from the scene of offense. There, she encountered a group of people who enquired her details, she was not in a position to speak but she could convey to them that she belongs to Siddalakunta. Subsequently, PW 2 who was present among them, called PW1, a resident of Siddalakunta, informing him about the injured lady's presence and requesting his assistance. PW 1 arrived at the scene as a result. Additionally, it is alleged that when questioned by the gathered individual, unable to speak, the deceased purportedly conveyed her name, the appellant's name and a mobile number by writing them on a paper slip provided by PW 3.

8. Upon being informed by PW.2 about the incident, PW.16, the Station House Officer of Sarangapur Police Station, rushed to the scene and relocated the deceased to Government Hospital, Nirmal. As the deceased was unable to communicate, a dying declaration was not obtained. Instead, the case was registered based on a note reportedly written by the deceased in the presence of PWs.1 and 3, as well as a complaint lodged by PW.1. Crime No.22 of 2012 was registered at Sarangapur Police Station under Section 307 of the IPC, and the FIR copies were submitted to all the concerned. Due to the critical condition of the deceased, she was transferred to District Hospital, Nizamabad, for advanced treatment, but unfortunately, she succumbed to her injuries.

9. Upon receiving notification of her death from the hospital, the police changed the section of law from Section 307 of the IPC to Section 302. The prosecution alleged that during the investigation, the appellant was found to have absconded from the village and later surrendered before the Additional Judicial Magistrate of the First Class in Nizamabad. Subsequently, he was remanded to judicial custody. PW.17, the former Inspector of Police at Nirmal Rural Police Station, took custody of the appellant from the trial court and reportedly interrogated him in the presence of mediators. The appellant confessed

to the crime and admitted to both the offence of murder and theft committed by him. He is said to have presented the weapons used during the crime along with the stolen property to the authorities. Following this, PW.19 took over the investigation from PW.17 and, upon completion, filed a charge sheet against the appellant, accusing him of the murder of the deceased and the theft of gold ornaments. Therefore, the appellant is being charged under Sections 302 and 379 of the IPC.

10. Based on the charge sheet filed by PW.19, initially registered as P.R.C. No. 16 of 2013, and upon committal proceedings and receipt of records from the Committal Court, the case was re-registered as S.C. No. 258 of 2013. The trial court, after examining the appellant, framed two charges under Sections 302 and 379 of the IPC. Throughout the trial, the prosecution presented evidence from PWs.1 to 19, along with exhibits P.1 to P.44, D.1, and D.2, and Mos.1 to 16 which were marked. Following the examination of the appellant under Section 313 of the Cr.P.C., and after hearing both parties, the trial Court concluded that the prosecution had successfully proven the guilt of the appellant for both charges. Consequently, he was convicted under Section 235(2) of the Cr.P.C. and sentenced to serve the imprisonment as specified.

11. When the appeal was taken up for arguments, the learned counsel for the appellant pointed out various contradictions. He argued that the prosecution was not able to prove the case against the appellant beyond all reasonable doubt. The prosecution could have collected important and available evidence such as the call data of the deceased and the call data of the appellant. The prosecution could not explain whether the appellant actually borrowed money and purchased a harvester as alleged by the prosecution witnesses, or the recovery of MOs.4 and 7. Therefore, the prosecution failed to prove the guilt of the accused beyond all reasonable doubt, and sought acquittal of the appellant.

12. The learned counsel further argued that the prosecution failed to conduct the identification of property in accordance with the Criminal Rules of Practice. Therefore, the recovery of the gold ornaments from the possession of the appellant itself is doubtful.

13. The Learned Public Prosecutor argued before this Court that the evidence of PWs.1 to 3, who have no personal acquaintance with the deceased and are not interested witnesses, categorically testified to how they knew the details of the involvement of the appellant herein. PW.1 lodged the complaint and another report of PW.4, *vide* Ex.P.4, was

presented to the Investigation agency. PWs.4, 5, 6, and 8 categorically deposed about the gold ornaments which the deceased was wearing at the time of leaving the house, and the evidence of independent mediators and investigating officers proved the recovery of the said gold ornaments from the appellant herein. PW.3 has no motive to speak falsely about the appellant herein, and they categorically speak about the deceased having written the name of the appellant herein along with a mobile number. Therefore, while supporting the findings of the impugned Judgment of the trial Court, the Public Prosecutor sought confirmation of the sentence of conviction.

14. In view of the allegations made in the charge sheet and as per the evidence of material witnesses, who are related to the deceased, it is the specific case of the prosecution that the deceased developed illegal intimacy with the appellant herein. Taking advantage of this intimacy, the appellant is said to have borrowed an amount of Rs.50,000/- from the deceased. Subsequently, the deceased was admonished by family members about her illegal intimacy with the appellant. As a result, she pressurized the appellant to return her money. The appellant then allegedly asked her to come to a forest area where they frequently met, under the pretext of returning the money.

When she reached the spot as per his instructions, he took her to the forest area, had sex with her, and then killed her by beating her with a stick on the head and cutting her throat with a razor blade. After injuring her, he allegedly stole her gold ornaments and some cash before escaping from the scene of the offense.

15. According to the evidence placed before the trial Court and as per the depositions of PWs.1 to 3, it was found that the deceased traveled one kilometer from the actual scene of offence to the road by foot with the bleeding injuries over head and throat. It may be a fact that the Medical Officer who treated the deceased deposed before the trial Court, that she can manage to reach the place where PWs.1 to 3 are there, by walk. However, in this case according to the allegations averred in the charge sheet the appellant having beat her on her head and after causing a severe injury since not satisfied with that he cut her throat with a razor blade and thereafter, removed the gold ornaments.

16. If the appellant, who had acquaintance with the deceased, was uncertain about her death, he would not have left her with injuries if his intention was to kill her. In that case, she would not have been able to reach the road, which is one kilometer away from the scene, in such a critical condition. The prosecution attempted to establish the

appellant's guilt based on circumstantial evidence because there were no eyewitnesses to the alleged offense. When the prosecution relies on circumstantial evidence, it must be able to establish the same, and the chain of circumstances must be complete without any gaps. According to the prosecution, when PW.2 found the deceased with a cut injury on her throat and a bleeding injury on her head and tried to get information from her, the deceased is said to have written the name of her village on the earth. Subsequently, PW.1 was called, and upon arrival, PWs.1 to 3 conducted an inquiry and attempted to gather information about the deceased. Their evidence indicates that PW.3 provided paper and asked the deceased to write details. Accordingly, the contents of Ex.P.1 and Ex.P.9 (a photocopy of Ex.P.1) included the words 'Bagaram,' 'Nagulapet Dasu,' 'lakshmi,' and a mobile phone number written on a paper slip.

17. Even though PWs.1 to 3 claimed that the deceased identified Dasu as her assailant, in cross-examination, PW.1 stated that the deceased did not orally mention the name Nagampet Dasu as she was unable to speak. He further stated that she did not indicate through signs that the person whose name was written in Ex.P.1 caused her injuries. This admission suggests that merely because the name and mobile number of the appellant were written on the slip, it cannot be concluded that the appellant caused the deceased's injuries and is her

assailant. The evidence presented before the trial Court through PWs.4, 5, 6 and 8 indicates that the deceased had a relationship with the appellant and allegedly developed intimacy with him. Another possibility is that the deceased informed the nearby individuals to call the person whose name was noted on the slip in order to get help, such as shifting her to the hospital, especially considering that the mobile number was also mentioned in the paper slip, Ex.P.1. However, the investigating officer did not show any interest in obtaining details of the owner of the mobile phone number written by the deceased in Ex.P.1.

18. PW.17 deposed before the trial court that when he tried to contact the said mobile number, it was found switched off. As per the evidence of the witnesses, the deceased had a mobile phone and she used to contact the appellant on her phone. However, the investigating officer did not show any interest in collecting the call details of the deceased or the call details of the appellant herein. Even if he found the phone number noted in Ex.P.1 was switched off, he could have collected the details of call data from the service provider. In light of the evidence from other witnesses who are also acquainted with the appellant, it should not be difficult for the investigating officer to collect the appellant's mobile phone.

19. It is not known why the investigating officer, who conducted the investigation of the murder case, particularly based on circumstantial evidence, did not show any interest in obtaining the call data of the deceased or the appellant. Therefore, the only presumption that can be drawn from the circumstances stated above is either the investigating officer deliberately suppressed the call data records, or the call data records were not favorable to the prosecution in proving the involvement of the appellant herein. The most readily available and accessible evidence, such as the call data records of the deceased and the appellant, were suppressed from the court. It is not the prosecution's case that the deceased did not have a mobile phone, thus there was no opportunity to obtain the call record. Considering the specific case that the deceased left the house only to meet the appellant in a particular place, it is quite natural for both the appellant and the deceased to have had some conversation over the mobile phone.

20. The alleged motive for the commission of the offense is a loan of Rs.50,000/- arranged by the deceased to the appellant herein. According to the evidence of PW.4, even though he stated before the trial court during his chief examination that the appellant borrowed Rs.50,000/- from his wife and did not return the money as of the date of the alleged offense, and that his wife went to Nirmal saying that the

appellant will return the money of Rs.50,000/-, in the cross-examination of the same witness, he testified that he does not know anything about his wife lending an amount of Rs.50,000/- to the appellant herein, and she never informed him about the same. PW.4 admitted before the trial court that Ex.P.10 was drafted by the police, and whether Ex.P.10 contains his thumb impression and the contents were not read over to him, and that the report was prepared by one Additional Sub-Inspector, who briefed him on what he has to depose before the trial court, including the evidence regarding the loan of Rs.50,000/- and gold, etc. PW.4 categorically admitted before the trial court that he did not state anything about Rs.50,000/- and gold in Ex.P.10, at the time of inquest and in his statement recorded by police under Section 161 of Cr.P.C. In a recent Judgment between ***Manikandan vs. State by the Inspector of Police***, in Criminal Appeal No.1609 of 2011, the Hon'ble Apex Court made the following observations:

> *"8. Thus, the scenario which emerges is that precisely a day before the evidence of PW-1 to PW-5 was recorded before the Trial Court, they were called to the Police Station and were taught to depose in a particular manner. One can reasonably imagine the effect of "teaching" the witnesses inside a Police Station. This is a blatant act by the police to tutor the material prosecution*

witnesses. All of them were interested witnesses. Their evidence will have to be discarded as there is a distinct possibility that the said witnesses were tutored by the police on Criminal Appeal No.1609 of 2011 Page 7 of 8 the earlier day. This kind of interference by the Police with the judicial process, to say the least, is shocking. This amounts to gross misuse of power by the Police machinery. The Police cannot be allowed to tutor the prosecution witness. This conduct became more serious as other eyewitnesses, though available, were withheld."

21. In the case on hand also as could be seen from the evidence of PW 4, one ASI from the concerned police station took pains to prepare a report and also to accompany the witnesses and to tutor them as to what they have to depose before the court. Therefore, such evidence shall be scrutinized with great care and caution.

22. According to the evidence of PW.4, his wife left the house, stating that she would meet the appellant as he promised her to return the money. However, in light of the cross-examination wherein he admitted that he does not know anything about the loan transaction and did not mention the proposed payment of Rs. 50,000/- by the appellant, it raises considerable doubt about whether PW.4 actually had knowledge of these matters.

23. In order to connect the appellant herein with the above said offense, the prosecution relied on the recovery of gold ornaments from the appellant. Therefore, the prosecution intends to rely on the evidence of PWs.4, 5, 6, and 8. However, in light of PW.4's admissions, it is evident that he had no knowledge at to the time the deceased left the house regarding whether she was wearing any gold.

24. PW.6, the daughter of the deceased, through whom the prosecution attempted to demonstrate the presence of gold ornaments on the deceased, testified that she left for school at 07:00 A.M. and returned at 01:00 P.M. PW.6 had no opportunity to see what gold ornaments her mother was wearing when she left the house.

25. PW.5, the brother-in-law of the deceased, residing in a separate house, testified that the deceased used to wear one kuthikattu, weighing about 45 grams, and one gold chain, weighing about 10 grams, and on the date of the incident, she wore the same and left home. These gold ornaments were absent from her body when he saw the deceased at the Government Hospital in Nirmal. According to his testimony, the deceased went to Nirmal to purchase gold, and while leaving the house, she reportedly informed PW.8 that she was going to Nirmal as the appellant called her for purchasing gold. However, PW.5 was not present

when the deceased was leaving the house, thus the evidence of PW.5 that he found his sister-in-law wearing gold ornaments is highly improbable and unbelievable. It was revealed from this witness that the deceased had a mobile phone, and she used to carry it with her. However, the prosecution did not attempt to seize the said mobile phone, and it is unknown what happened to it.

26. In order to connect the gold ornaments and the appellant to the case, the prosecution relied on the evidence of PW.8, who is the father-in-law of the deceased. PW.8 testified that the appellant borrowed an amount of Rs.50,000/- and three tulas of gold from the deceased. On the date of the offense, the deceased wore two gold articles and left the house, informing him that the appellant called her to purchase gold. PW.8 further stated that three hours later, he learned through PW.1 that the deceased had suffered a cut injury on the throat and head injury, and she was shifted to the Government Hospital in Nirmal. It is evident that PW.8 attempted to bolster the case by claiming that his daughter-in-law lent an amount of Rs.50,000/- and three tulas of gold to the appellant, a claim not made by other witnesses.

27. During the cross-examination of PW.8, he admitted that he did not inform the police that the deceased informed him that the

appellant asked her to come to Nirmal for purchasing gold. This suggests an improvement made by PW.8 during the trial. Although PW.8 denied that he did not inform the police that the deceased wore gold ornaments while leaving the house and they were missing on the date of the incident, the cross-examination of the investigating officer clearly shows that there were improvements made by this witness in an attempt to connect the appellant with the murder of his daughter-in-law. The evidence of these four material witnesses indicates that they are uncertain about whether the deceased wore gold ornaments while leaving the house on the date of the incident. They attempted to testify before the trial court as if she left the house with gold ornaments that were not found on her person, and the recovery of the gold ornaments from the appellant is also highly doubtful.

28. According to the evidence of PW.13, who purportedly acted as a mediator, the appellant allegedly produced stolen ornaments before him. He stated that he knew the other mediator and was called to the Nirmal Rural Police Station. Upon arrival, he found a person in custody but couldn't identify the person. He did not inquire further, and the said person did not confess any offense in his presence. The Learned Public Prosecutor declared the person as hostile and attempted to suggest that the appellant made a confession and produced the gold ornaments in

his presence. However, PW.13 flatly denied these suggestions. PW.13, an independent witness before whom the appellant allegedly produced the stolen property, did not support the prosecution.

29. PW.14 is purposed to be another mediator to the alleged confession. He testified that about 18 to 20 months prior to his evidence before the trial court, the police called him and PW.13 to the Rural Police Station in Nirmal. They found a male person in police custody, but he did not identify the said person as the appellant before the trial court at the time of his evidence. Additionally, PW.14 stated that the person allegedly confessed to committing theft from the deceased's body. Since he did not identify the appellant as the person who confessed to the theft of gold and its production, the Learned Public Prosecutor declared him as hostile and cross-examined him. However, he did not support the prosecution's case and denied the suggestions put to him. Therefore, the two important independent mediators before whom the appellant allegedly confessed to the theft and production of gold ornaments did not support the prosecution's case, casting doubt on the evidence provided by the investigating officer.

30. Another crucial aspect concerning the confession of the appellant is the recovery of the weapons allegedly used by the appellant.

According to the evidence of PW.17, who conducted a significant portion of the investigation, soon after the appellant surrendered before the concerned Magistrate, PW.17 obtained police custody of the appellant and purportedly interrogated him in the presence of independent mediators. The appellant is said to have confessed to committing the murder and produced the weapons. However, as per the evidence of PW.16, who initiated the investigation, he recovered the stick in the presence of PW.10. According to the evidence of PW.10, who witnessed the crime details form, on 20.03.2012, he and LW.17 (Shaik Rafeek) were present at the Chincholi forest area and acted as mediators, drafting the scene of the offense mahajar. The police observed the scene of the offense and seized items M.Os.1 to 7 in their presence. Although Ex.P.15 did not mention the recovery of the stick, marked as M.O.7, there is a mention about the seizure of M.O.4 under Ex.P.15.

31. PW.16, the initial investigating officer, testified before the trial court that on 20.03.2012, PW.1 visited the police station at 02:15 P.M. and presented a written report, Ex.P.2. He then registered a case under crime No.22 of 2012 and issued an FIR. Around 12:30 Noon on the same day, he was informed by PW.3 via phone about the presence of the victim with a neck injury by the side of the road. Subsequently, he

and the Station Writer proceeded to the location where the victim was found and transported her to the Government Hospital, Nirmal, for treatment. He also submitted a requisition to the Medical Officer for recording the dying declaration of the victim in the Government Hospital. PW.1 handed over Ex.P.1, a slip said to have been given by the deceased, and PW.16 secured the presence of PW.10 and LW.17, preparing the scene of the offense mahajar along with a rough sketch and seizing M.Os.1 to 7 under the cover of Mahajar. Therefore, the evidence of PW.10 and LW.17 indicates that on 20.03.2012, before the death of the deceased, the initial investigating officer was able to seize the material objects, particularly the weapons used in the commission of the offense, from the scene of the offense under Ex.P.15. Hence, the evidence provided by PW.17, claiming to have obtained custody of the appellant and interrogated him in the presence of mediators where the appellant purportedly confessed to the offense and produced M.Os.4 and 7 as the weapons used by him, is considered false and cannot be accepted.

32. Furthermore, even though PW.17 claimed to have recovered two weapons used by the appellant in the commission of the offense, he did not attempt to refer the material objects for the collection of

fingerprints, if any, on those weapons. If the appellant indeed committed the offense using those two weapons, it would not have been difficult for the investigating officer to obtain the admitted fingerprints of the appellant and refer them to an expert for analysis to determine the presence of the appellant's thumb impressions. However, the investigating officer did not collect any footprints at the scene of the offense, despite the murder taking place in a dense forest. The recovery of M.Os.4 and 7 from a thick plant, purportedly in pursuance of the alleged confession, was proven to be false.

33. In the instant case, the prosecution specifically alleges that on 20.03.2012, the deceased made a call to the appellant, asking about her money, and the appellant promised to return the money, luring her to meet at their usual spot. Allegedly, she went there, where the appellant killed her, removed her gold ornaments, and fled the scene. However, there are no eyewitnesses to this incident. To connect the appellant to the alleged offenses, the prosecution must prove the exchange of calls between the appellant and the deceased, which the investigating officer failed to establish. The motive in the offense is the alleged loan transaction, but there is no evidence to confirm whether the appellant indeed used the borrowed amount of Rs. 50,000/- to purchase a harvester as alleged.

34. Another crucial aspect that escaped the attention of the trial court is motive. According to PW.5, the brother-in-law of the deceased, he warned the deceased about her intimacy with the appellant. However, the prosecution did not investigate whether PW.5 had any motive to eliminate the deceased due to her relationship with the appellant. Simply because the deceased wrote the name of the appellant does not necessarily imply that she conveyed to PWs.1 to 3 that she received injuries at the hands of the appellant. Moreover, when the prosecution alleges that the deceased wrote a phone number on Ex.P.1 slip, it does not absolve the investigating officer from conducting an investigation to ascertain the details of the mentioned phone number. However, it is unclear whether such investigation was explained by the prosecution through PWs.16, 17 and 19.

35. In a case between ***Hukam Singh v. State of Rajasthan***[1], the Hon'ble Apex Court was pleased to observe as follows:

> *"In case of circumstantial evidence, all the incriminating facts and circumstances should be fully established by cogent and reliable evidence and the facts so established must be consistent with the guilt of the accused and should not be capable of being explained away on any other reasonable hypothesis than that of his guilt. In short, the circumstantial evidence should unmistakably point to one and once conclusion only that the accused person and*

[1] AIR 1977 Supreme Court 1063

none other perpetrated the alleged crime. If the circumstances proved in a particular case are not inconsistent with the innocence of the accused and if they are susceptible of any rational explanation, no conviction can lie".

36. In a case between ***Earabhadrappa v. State of Karnataka***[2], the Hon'ble Apex Court was pleased to observe as follows:

"In cases in which the evidence is purely of a circumstantial nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and the facts and circumstances should not only be consistent with the guilt of the accused but they must be in their effect as to be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence".

37. In a case between ***Eradu and others v. State of Hyderabad***[3], the Hon'ble Apex Court was pleased to observe as follows:

"It is a fundamental principle of criminal jurisprudence that circumstantial evidence should point inevitably to the conclusion that it was the accused and the accused only who were the preparators of the offence and such evidence should be incompatible with the innocence of the accused".

38. In a case between ***State of Uttar Pradesh v. Sukhbasi and others***[4], the Hon'ble Apex Court was pleased to observe as follows:

[2] AIR 1983 Supreme Court 446
[3] AIR 1956 Supreme Court 316

"In a case in which the evidence is of a circumstantial nature, the facts and circumstances from which conclusion of guilt is sought to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and circumstances so established should not only be consistent with the guilt of the accused, but they must be entirely incompatible with the innocence of the accused and must exclude every reasonable hypotheses consistent with his innocence."

39. In a case between ***Balwinder Singh v. State of Punjab***[5], the Hon'ble Apex Court was pleased to observe as follows:

"In cases in which the evidence is purely of a circumstantial nature, the fact and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt, and the fact and circumstances should not only be consistent with the guilt of the accused, but they must be such in their effect as to be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis, consistent with his innocence."

40. In a case between ***Ashok Kumar Chatterjee v. State of Madhya Pradesh***[6], the Hon'ble Apex Court was pleased to observe as follows:

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[4] AIR 1985 Supreme Court 1224
[5] AIR 1987 Supreme Court 350
[6] AIR 1989 Supreme Court 1890

"When a case rests upon circumstantial evidence such evidence must satisfy the following tests:

1) *The circumstances, from which an inference of guilt is sought to be drawn, must be cogently and firmly established.*

2) *Those circumstances should be of a definite tendency unerringly towards guilt of the accused.*

3) *The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and no one else, and*

4) *The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*

41. Therefore, when the prosecution aims to prove the case based on circumstantial evidence, all incriminating facts and circumstances must be fully established without leaving any gaps in the chain of circumstances. As previously mentioned, the recovery of the weapons allegedly used by the appellant has been proven to be false. PWs.10 and 16 testified before the trial court that PW.16 seized M.Os.4 and 7 on 20.03.2012, whereas the police claimed to have seized them subsequent to the interrogation of the appellant by PW.17. Similarly, the

recovery of the deceased's gold ornaments marked as M.Os.11 and 12 from the appellant's possession, purportedly in pursuance of his confession, is not proven as both independent mediators did not support this recovery.

42. The crucial and readily available evidence, such as the call data records of the deceased and the appellant, was not produced before the trial court. The investigating officer failed to collect the fingerprints of the appellant and did not attempt to compare the fingerprints on the weapons allegedly used by the appellant with the appellant's fingerprints for expert opinion. Moreover, the evidence provided by PWs.4, 5, 6 and 8 is not believable enough to conclude that the deceased wore M.Os.11 and 12 while leaving the house on the date of the incident. Therefore, the trial court erred in finding the appellant guilty of the offenses punishable under Sections 302 and 379 of the IPC. Consequently, the appellant is entitled to acquittal, and the aforementioned convictions must be set aside.

43. Based on the findings recorded, this Criminal Appeal is allowed, and the sentence of conviction imposed against the appellant/accused, as per the Judgment dated 23.11.2015 passed in S.C.No.258 of 2013 by the trial Court, is set aside. Consequently, the

appellant/accused is acquitted of the said offenses and is set at liberty, provided he is not required to be detained for any other offense. M.Os.11 and 12, the gold ornaments, which were returned to PW.6, remain valid. Additionally, M.O.15, the motorcycle returned to PW.12, shall also stand valid. Any fine amount already paid by the appellant, if applicable, shall be refunded after the expiry of the appeal period.

JUSTICE P.SAM KOSHY

JUSTICE SAMBASIVARAO NAIDU

Dated 03.04.2024

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% 03.04.2024

Between:

Bheemanolla Dasu @ Ramadasu.

Appellant

Vs.

The State of Telangana represented by its Public Prosecutor.

Respondent

! Counsel for Appellant : Smt.Vasundhara Reddy

^ Counsel for Respondent : Mr. T.V.Ramana Rao,
Additional Public Prosecutor.

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> HEAD NOTE:

? Cases referred

1) The Hon'ble Apex Court Judgment in Criminal Appeal No.1609 of 2011

2) AIR 1977 SUPREME COURT 1063

3) AIR 1983 SUPREME COURT 446

4) AIR 1956 SUPREME COURT 316

5) AIR 1985 SUPREME COURT 1224

6) AIR 1987 SUPREME COURT 350

7) AIR 1989 SUPREME COURT 1890