THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CRIMINAL APPEAL No.272 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice P.Sam Koshy)*

This appeal was listed for consideration of I.A.No.1 of 2024 seeking suspension of sentence.

2. Taking into consideration the fact that the appeal is of the year 2017 and the appellant-accused has undergone 8 years and 18 days incarceration and also taking note of the fact that the conviction of the appellant was only on the circumstantial evidence, we thought it proper to decide the appeal itself on merits rather than deciding the application for suspension of sentence. Learned counsels appearing on both sides advanced their hearing, accordingly, we proceed to decide the appeal on merits.

3. The instant appeal has been filed assailing the Judgment of conviction dated 19.12.2016 passed by the learned VIII Additional District & Sessions Judge, Miryalaguda in S.C.No.620 of 2011. Vide the said

impugned Judgment, the trial Court has found the appellant guilty for the offence punishable under Section 302 of Indian Penal Code (*for short "IPC"*) for two counts, and for the offence under Section 364 of IPC for two counts. The accused has been sentenced to undergo Rigorous Imprisonment for life along with fine of Rs.1,000/- on each count under Section 302 IPC, and for the offence under Section 364 of IPC, the appellant has been sentenced to undergo Rigorous Imprisonment for seven (7) years with fine of Rs.1,000/- for each count with default stipulations for both the punishments.

4. As per the prosecution case, on 21.01.2009, PW1 lodged a written report before the Garidepally police station, which was registered as Crime No.5 of 2009, wherein, it was informed that two children born to PW1 and his wife-PW2 were found missing since 20.01.2009 after the school hours. There was a suspicion drawn against the present appellant in the missing of two children. Subsequently, on 22.01.2009, the police authorities in the course of search, found dead body of the minor-Swetha in the reservoir of the village and later on

the dead body of the boy also was found in Nayakangudem tank.

5. Meanwhile, the statement of PW6-Bachalakuri Mattaiah was recorded on 22.01.2009, wherein, he has stated that the appellant-accused made an extra judicial confession before him in respect of killing of the two children. It was also confessed by the appellant-accused before PW6 that he had killed two children in order to develop intimacy with the mother (PW2-Nelapatla Anjamma) of two children. On the basis of statement of PW6 in respect of extra judicial confession made, the appellant herein was taken into custody wherein there was also a confession statement made by the appellant-accused. Meanwhile, the dead bodies recovered from the reservoir and the tank nearby, were sent for post-mortem. In the post mortem, the cause of death assigned by the Doctor who conducted post mortem was “asphyxia” due to drowning. The charge sheet was thereafter filed and the matter was put to trial before the VIII Additional District & Sessions Judge, Miryalaguda vide S.C.No.620 of 2001.

6. The prosecution in all examined 26 witnesses. Five (5) witnesses were examined on behalf of the defence. Thereafter, after recording of 313 Cr.P.C., statement of the accused, the impugned Judgment was delivered on 19.12.2016 holding the appellant-accused found guilty for the offence punishable under Section 302 of IPC and also for the offence under Section 364 of IPC.

7. Learned counsel appearing for the appellant at the threshold itself contends that the prosecution has miserably failed to prove its case beyond reasonable doubt, so as to hold the appellant guilty for the offence under Section 302 of IPC and also for the offence under Section 364 of IPC. The learned counsel contended that the entire conviction was based upon circumstantial evidence and that the circumstances relied upon by the trial Court was too week an evidence, to convict the present appellant or holding him guilty for the offence charged. According to him, the prosecution has failed in so far as collecting the entire chain of events and connecting them in a manner with which the only conclusion of the offence to have been done by the appellant is missing from the prosecution case.

He further contends that the prime witnesses-PWs 3 to 5 who were principle witnesses to support the case of the prosecution so far as the last scene theory is concerned. But, all the (3) aforesaid witnesses i.e., PWs 3 to 5 have not supported the case of the prosecution before the Court and have turned hostile. Thus, the material evidence relied upon by the prosecution collapsed there itself. Therefore, the trial Court could not have held the appellant-accused guilty for offence both under Section 302 of IPC and also for the offence under Section 364 of IPC.

8. It was also the contention of learned counsel for the appellant that a perusal of witnesses examined on behalf of the prosecution would by itself go to show that there are material omissions made by them in the course of their evidence being recorded before the trial Court. Thereby, the statement of all these witnesses becomes highly doubtful. Further, it was contended that the reliance by the trial Court to the statements made by PWs 6 and 15 again is most inappropriate as the evidence of these two witnesses does not give enough confidence and strength to the case of prosecution so as to hold the

appellant-accused guilty of the offences for which he was charged. For all these reasons, learned counsel for the appellant prayed for quashment of the impugned Judgment and also prayed for exoneration of the appellant from the charges leveled against him.

9. *Per contra,* the learned Prosecutor appearing on behalf of the State admitted that even though PWs 3 to 5 the main witnesses who were the witnesses so far as last scene theory is concerned have turned hostile, and as such they are not supporting the prosecution case. However, the case of the prosecution stands still established from the evidence of PWs 6 and 15 read with statement of the other witnesses examined on behalf of the prosecution. It was also the contention of the learned Prosecutor that so far as the prosecution case is concerned, it has amply established the motive for the appellant, for committing the said offence. The subsequent chain of events collected during the course of investigation leads to the only inference of the offence to have been committed, none other than the appellant himself. There was no other possibility or different story which could have been available for the

defence to shift the burden upon anybody else other than the appellant himself.

10. For all the aforesaid facts and circumstances, learned prosecutor prayed for the rejection of the appeal and for confirmation of the Judgment of conviction.

11. Having heard the contentions put forth on either side and on perusal of material papers available on record, we find that there is a material contradiction at the first instance itself in the case of the prosecution as is reflected in the charge sheet, which is different than the case of the prosecution presented by PW26-Investigating Officer- K.N.Vijay Kumar, Inspector of Police, CCS, Detective Department. The material contradiction here is that as per the charge sheet, the police authorities on suspicion raised by PW2 had taken the appellant-accused into custody and on the basis of his confessional statement, the dead bodies were recovered, followed by statement of PW6-Bachalakuri Mattaiah before whom there was an extra judicial confession made. Whereas, in his evidence PW26 states that it was his statement which was recorded first, where there was a statement of extra judicial

confession recorded and on the basis of which the dead bodies were later recovered from the reservoir in the village.

12. Undoubtedly, PW3-Manga Sunitha, PW4-Manga Shirisha and PW5-Chemakuri Hemalatha have not supported the case of prosecution and have turned hostile. Hence, the evidence so far as the last scene theory is concerned is not available on record and there is no other proof lead by the prosecution in this regard.

13. So far as PW15 is concerned, there are material omissions made by him when compared to 164 Cr.P.C., statement that he had given at the first instance. In his 164 Cr.P.C., statement, PW15 did not reveal that the appellant-accused had brought two children to his shop, left them there for some time, came back and then took them again and went towards Garidapally. Whereas, in the Court statement, PW15 in his examination in chief has made a categorical statement that on the fateful day in the evening at 05:30 p.m., the appellant-accused had brought the two children on his motor bike to his scooter repair shop, stopped there, left the children at the shop for some time, after a while he came back and picked the children

and left. This clearly seems to be an improvised statement given by PW15 which was not available till now with the prosecution i.e., till he was examined before the trial Court on 25.11.2014. Thus, the said statement of PW15 also becomes highly improbable to be accepted. The statement of PW15 also becomes more improbable for the reason that in his cross examination, PW15 has said that the police inspector came to village after four (4) days from the recovery of the dead bodies, and it was during that time, PW15 informed the police authorities in respect of appellant-accused taking the children on his motor bike. Surprisingly, even during the time when PWs 1 and 2 along with other villagers were searching for the two children, PW15 did not divulge to anybody, more particularly to PWs 1 and 2 in respect of his having seen the two missing children in company of the appellant-accused. For all these contradictions and omissions PW15 has made, his evidence becomes highly unreliable.

14. From the post-mortem report that is available on record, there is a categorical finding that there was no internal or external injuries found on the dead bodies of

two deceased children. The cause of death also has been indicated as “asphyxia” “due to drowning”. There is no material other than the said finding to disbelieve or disprove the post-mortem report of the two deceased children not having died due to drowning or having died due to any other reason other than drowning.

15. Coming to the statement of PW2, the mother of two deceased children with whom it is alleged that there was some extra marital relationship which the appellant-accused was maintaining. It would show that there was no incident that had occurred immediately preceding 21.01.2009 to give an indication that the appellant-accused would have committed the offence for any such reason that happened immediately before the date of incident.

16. On the contrary, from the reading of statement of PW2, it appears that the appellant-accused and PW2 were known to each other. The appellant-accused also had been visiting the house of PW2. As per the version of PW2, it was around more than (6) months prior to the date of incident that the appellant-accused expressed his desire to

have physical relationship with PW2 which was refused by PW2 after which the accused is said to have left. It is also the statement of PW2 that he again came after sometime with the same desire which was again refused by PW2. It was then that the appellant-accused is alleged to have threatened PW2 with dire consequences including the threat of life of PW2 and her children. Thus, the statement of PW2 also does not repose enough strength and confidence for the case of the prosecution, so as to complete the chain of events required in matters where the evidence is circumstantial.

17. It is well settled proposition of law that in the case where prosecution relies upon only on circumstantial evidence, the links and chain of events should be so interconnected that it leads to a complete conclusion of the offence to have been committed only by the accused alone and could not have been by any other person. It is this chain of events and the links which are missing in the case of prosecution. Neither is there any strong piece of evidence put forth by the prosecution to substantiate their case of the appellant-accused firstly having a motive to eliminate

the two children, secondly of his having any extra marital relationship with PW2.

18. Further, there is no evidence in respect of the two children being in company of the appellant-accused on the fateful day either in the village or anywhere close by to the reservoir where the dead bodies were recovered.

19. In the absence of strong and cogent evidence to establish the guilt against the appellant-accused beyond all reasonable doubt, it is difficult to uphold the Judgment of conviction in the given factual background.

20. As has been discussed earlier, there seems to be a material contradictions in the case of prosecution, so far as the contents of the charge sheet is concerned as compared to the evidence of PW26-Investigating Officer is concerned. There are also material discrepancies so far as the arrest of the appellant-accused and his confessional statement being recorded. As per PW6, he made the confessional statement to the police authorities on 22.01.2009 at around 06:00 p.m., whereas, as per the statement of PW26-Investigating Officer, he took the appellant-accused into custody first and recorded his

confessional statement which is said to have been recorded at around 16:10 hours i.e., 04:10 p.m and the entire panchanama proceedings were concluded by 06:00 pm. This is in direct contradiction to the statement of PW6 himself, who says that his statement was recorded at around 06:00 p.m., and thereafter, the proceedings had commenced. The aforesaid discrepancies also go against the prosecution and the benefit of which goes in favour of the appellant-accused.

21. The case of the prosecution also gives rise to an element of doubt when we read the statement of PW9-Aanthu Venkanna, wherein the PW9 has stated that when PW2 had raised an alarm that the two children were missing, the accused also joined the group of villagers in search of the missing children, which again is just in contradiction to the statement given by PW26-Investigating Officer, and also the contents of the charge sheet wherein it was reflected that it was the appellant-accused, who was taken into custody first and thereafter, the dead bodies were recovered at the instance of appellant-accused.

22. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point.

23. In the above case, the prosecution's evidence against the appellant was predominantly circumstantial. However, the evidence produced failed to form a complete and coherent chain of events leading to the conclusion that the accused alone is guilty. This is a crucial requirement when dealing with circumstantial evidence, as it must exclude every reasonable hypothesis except that of guilt.

24. The prosecution's failure to establish a motive for the appellant, or solid evidence of his presence with the children on the day of the incident, severely weakens their case. The contradictions and discrepancies in the testimonies of key witnesses i.e. (PW6 & PW15) also cast significant doubt on the prosecution's version of events. Moreover, the post-mortem report indicating that the cause of death was "asphyxia" “due to drowning”, and that no internal or external injuries were found on the bodies of the deceased children, does not support the prosecution's

claim of violence. In addition, the inconsistencies in the sequence of events concerning the arrest of the appellant and the recording of his confessional statement further erode the credibility of the prosecution's case. The prosecution's inability to reconcile these inconsistencies serves to highlight the insufficiency of their evidence. Therefore, given the insurmountable gaps in the chain of circumstantial evidence and the glaring discrepancies in the prosecution's narrative, it would be unjust to uphold the conviction of the appellant. There are series of decisions holding that no one can be convicted on the basis of mere suspicion, however, strong it may be. Though we feel it not necessary to recapitulate all those decisions, we will refer on this point.

25. The Hon'ble Supreme Court in the case of **Ram Sharan Chaturvedi vs. State of Madhya Pradesh**[1] in paragraph Nos.26 held as under

> **"26.** In accepting the story of the prosecution, the Trial Court, as well as the High Court, proceeded on the basis of mere suspicion against the Appellant, which is precisely what this Court in

[1] 2022 SCC OnLine SC 1080

Tanviben Pankajkumar Divetia v. *State of Gujarat*[2], had cautioned against:

> *"**45**. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure*

[2] (1997) 7 SCC 156

conclusions. (Jaharlal Das *v.* State of Orissa *(1991) 3 SCC 27)"*

26. Further, the Hon'ble Suprme Court in the case of **Sharad Birdhi Chand Sarda vs. State of Maharashtra**[3] laying down the basic principle of circumstantial evidencein paragraph Nos.153 and 154 as 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 where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]
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> "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

[3] (1984) 4 SCC 116

> 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
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> (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.

27. Likewise, the Hon'ble Supreme Court in the case of **Chandru vs. State (represented by Deputy Superintendent of Police CB CID**[4] in paragraph Nos.9 and 10 held as under:

> **9.** Admittedly, there are no eyewitnesses to the case and this is a case based on circumstantial evidence. The law with regard to appreciation of circumstantial evidence has been clearly enunciated in *Hanumant* v. *State of M.P.* (1952) 2 SCC 71, wherein this Court held as follows: (AIR pp. 345-46, para 10)
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> > "*10*. … It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the

[4] (2019) 15 SCC 666

> conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

10. This law has been consistently followed and has been repeated in a catena of authorities. It is not necessary to refer to all the authorities. However, we may refer to Sir Alfred Wills' book *Wills on Circumstantial Evidence* (Chapter VI) [Butterworths, Seventh Edn., at pp. 296-329.] , in which he has laid down the following Rules specially to be observed in the case of circumstantial evidence:

> "RULE 1.—The facts alleged as the basis of any legal inference must be clearly proved, and beyond reasonable doubt connected with the factum probandum.…
>
> RULE 2.—The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability.…
>
> RULE 3.—In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.…
>
> RULE 4.—In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon

> any other reasonable hypothesis than that of his guilt.…
>
> RULE 5.—If there by any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

28. In the case of **Majenderan Langeswaran vs. State (NCT of Delhi)**[5] the Hon'ble Supreme Court considered the case of conviction based on circumstantial evidence and held as under: (SCC p. 204, para 16-26)

> "The legal issue under consideration was whether the circumstantial evidence presented in the case was enough to sustain the conviction.
>
> The court made clear that in cases where the evidence is of a circumstantial nature, certain rules must be adhered to. Firstly, the circumstances from which the conclusion of guilt is drawn must be fully established. This means that each fact that points to the guilt of the accused must be proven individually and beyond a reasonable doubt.
>
> Further, the court emphasized that the proven circumstances should be consistent only with the hypothesis of the accused's guilt. This means that the facts established should point towards the guilt of the accused and no one else. Moreover, these circumstances should be of such a conclusive nature and tendency that they exclude every other hypothesis but the one proposed to be proved.

[5] (2013) 7 SCC 192

In this context, the court cited several past judgments. For instance, in the case of *Hanumant Govind Nargundkar v. State of M.P*[6]., the court observed that there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

The court also referred to the case of *Padala Veera Reddy v. State of A.P*[7]., where it was stated that circumstantial evidence, in order to sustain conviction, must be complete, conclusive, and incapable of explanation of any other hypothesis than that of the guilt of the accused.

This key principle was reinforced in a series of other cases, such as *C. Chenga Reddy v. State of A.P*[8]*., Ramreddy Rajesh Khanna Reddy v. State of A.P*[9]*., and Sattatiya v. State of Maharashtra*[10].

In the case of *G. Parshwanath v. State of Karnataka*[11], the court went a step further and explained that while dealing with circumstantial evidence, a distinction must be made between primary or basic facts and inferences of facts to be drawn from them. This means that the court must not only evaluate whether a fact is proven, but also whether that fact leads to an inference of the accused's guilt.

As the Hon'ble Supreme Court held that there should be no dispute with regard to the legal proposition that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence where all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else."

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[6] (1952) 2 SCC 71
[7] 1989 Supp (2) SCC 706
[8] (1996) 10 SCC 193
[9] (2006) 10 SCC 172
[10] (2008) 3 SCC 210
[11] (2010) 8 SCC 593

29. For all the aforesaid discrepancies, contradictions and omissions in the case of prosecution, the Judgment of conviction dated 19.04.2016 in S.C.No.620 of 2011 is liable to be set aside/quash. The benefit of doubt is extended in favour of the appellant-accused and he is acquitted of all the charges leveled against him. The fine amount, if any, paid by the appellant-accused shall be returned back after expiry of appeal period.

30. In view of the same, the appeal stands allowed.

Pending miscellaneous applications, if any, shall stand closed.

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JUSTICE P.SAM KOSHY

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JUSTICE SAMBASIVARAO NAIDU

Date: 02.04.2024
PSSK/PLV