

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

*** * * ***

CRIMINAL APPEAL No.947 OF 2010

Between:

Mallepally Sridhar

.. Appellant

And

The State of Andhra Pradesh,
Represented by its Public Prosecutor,
Hyderabad

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 04-04-2016

SUBMITTED FOR APPROVAL:

— **THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals
3. Whether their Lordship wish to
see the fair copy of the Judgment?
Yes/No

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

***THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

—

+CRIMINAL APPEAL No.947 of 2010

%Dated 04-04-2016

Mallepally Sridhar

.... Appellant

VERSUS

\$ The State of Andhra Pradesh,
represented by its Public Prosecutor,
Hyderabad

... Respondent

! Counsel for Appellant: Smt. A.Gayatri Reddy

^Counsel for Respondent: Public Prosecutor (TS)

<GIST:

>HEAD NOTE:

? CITATIONS:

2015 (13) SCALE 901

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND**

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Appeal No.947 of 2010

Dated: 04th April, 2016

Between:

Mallepally Sridhar

..Appellant

And

The State of Andhra Pradesh,
represented by its Public Prosecutor,
Hyderabad

..Respondent

Counsel for the appellant: Smt.A.Gayatri Reddy

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND**

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Appeal No.947 of 2010

Dated 04th April, 2016

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This criminal appeal is filed by accused No.1 in S.C.No.149 of 2008, on the file of the learned III Additional Metropolitan Sessions Judge at Hyderabad, whereunder he was convicted for the offence under Section 302 IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/-.

The prosecution case, in brief, is as follows:-

Accused No.1 is a resident of Rama Krishnapur

Village, Adilabad District and so is accused No.2. Accused No.3 is the second wife of the deceased and she developed intimacy with accused No.1. The deceased was running granite businesses and the accused were working under the deceased. The sister of accused No.1 is the neighbour of the deceased and accused No.3. On the day of occurrence, PW.1, the son of the deceased, came to his father's house and stayed in the house after finishing the dinner. At about 2.00 am, on hearing loud voice, PW.1 woke up and went inside the room where the deceased and accused No.3 were sleeping. At that time, accused No.3 was shouting and her hands were tied on her back. PW.1 untied accused No.3 and found the deceased on the floor with bleeding injuries. PW.1 called the police. On 04.03.2005, PW.9, head constable, received Ex.P21 report, recorded statement of accused No.3 and registered a case in Crime No.242 of 2005 under Sections 394 and 392 IPC and issued Ex.P20, FIR. PW.10, Sub-Inspector of Police, Panjagutta on receiving a telephonic message from PW.1, rushed to the scene of offence on 03/04.03.2005 at 3.00 am. PW.10 recorded the statement of accused No.3 and submitted the same to PW.9 at police station. PW.11, Circle Inspector of Police, Panjagutta rushed to the scene of offence and received FIR and took up investigation. He has drafted scene of panchanama in the presence of PWs.10 and 11 and prepared rough sketch of scene of offence with the assistance of PW.10. PW.8 has taken photos of the scene of offence. MOs.1 to 11 were seized at the scene of offence. PW.11 prepared Ex.P22 seizure report and accused No.3 was sent to hospital on 04.03.2005 itself. As she has received injuries, the doctor issued Ex.P26, medical certificate. PW.11 prepared inquest in the

presence of PW.4 and another and sent the dead body of the deceased for post mortem examination.

On 10.03.2005, PW.11 seized some articles at the scene of offence and sent the same for chemical examination. PW.11 examined PWs.13 and 14, collected Exs.27, 28 and 29 call particulars of the phones of accused No.1 and accused No.3 and based on those documents, PW.11 suspected accused No.1 and arrested him on 14.03.2006 at his sister's house. On interrogation, accused No.1 confessed about the incident before PW.5. The confession was reduced to writing and marked as Ex.P30. PW.11 arrested accused No.2 and recorded Ex.P31 his confessional statement-cum-seizure panchanama. MO.14 was recovered from accused No.1's house and Ex.P33 is the seizure panchanama. PW.11 has recovered gold ornaments from the house of accused No.1. He has also recovered MO.23 at the instance of accused Nos.1 and 2. On 14.03.2005, accused No.3 was arrested. Accused Nos.1 to 3 were sent for medical examination. PW.7 examined the accused and also collected their hair strands. PW.7 handed over the collected hair strands to PW.11 who has forwarded the same to the FSL for DNA test. PW.6, Assistant Professor in the Department of Forensic Medicine, Gandhi Medical College, Hyderabad conducted autopsy over the dead body of the deceased and opined that the cause of death is due to stab injuries caused by a sharp weapon and issued Ex.P13, post mortem certificate. PW.12, Joint Director, FSL, Hyderabad received Ex.P24 requisition on 15.03.2005 to collect the blood samples from the accused and he has issued Ex.P25, report. PW.13, Assistant Director, FSL Hyderabad received Ex.P12 requisition from PW.11 for analysis of item Nos.1 to 18 including, item

Nos.12 and 13 'two strands of hair' each and submitted Ex.P37 report. PW.14, Joint Director, FSL, Hyderabad gave Ex.P38, opinion. After completion of the investigation, PW.11 filed the charge sheet.

In support of its case, the prosecution examined PWs.1 to 14 and marked Exs.P1 to P38, besides producing MOs.1 to 26. On behalf of the defence, no evidence was adduced.

On appreciation of oral and documentary evidence, the lower Court has acquitted accused Nos.2 and 3 of all the charges and accused No.1 (appellant) of charge under Section 120-B IPC. However, accused No.1 was convicted for the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life and pay fine as noted hereinbefore.

I have heard Smt.A.Gayathri Reddy, learned counsel for the appellant, and the learned Public Prosecutor (TS).

At the outset, it is worth mentioning that the lower Court held that the prosecution has failed to prove the illicit intimacy between the appellant and accused No.3 and also the criminal conspiracy arising out of such intimacy. This was mainly because of the reason that the prosecution failed to examine any person connected with the service provider to prove the authenticity of Exs.P27 to 29, call details emanating from the cell phones belonging to the appellant and accused No.3. On this premise, the lower Court acquitted accused Nos.2 and 3 as in the absence of conspiracy, the evidence on record was not sufficient to connect both these accused to the offence.

With regard to the appellant, the lower Court has mainly relied upon Exs.P25 and 38, the two FSL reports, dated 26.05.2005 and 04.05.2005 respectively, and found

that these reports prove that the hair strands which were recovered from the two palms of the deceased have matched with the blood of the appellant. Accordingly, the lower Court held that he was involved in the killing of the deceased. We have carefully gone through the entire evidence. In this regard, it is relevant to note that Ex.P22 is the observation panchanama of scene of offence. PW.4 is one of the two panchadars to the said document. It is stated therein that there is a pillow beneath the body of the deceased and that upon minute examination, three strands of black hair were collected from the right hand palm and two strands of black hair from the left hand palm of the deceased under the signature of the panchadars. PW.4 has turned hostile.

In his evidence, PW.11, the Investigation Officer, has stated that he has collected three black hair strands from the right hand palm and two black hair strands from the left hand palm of the deceased. He has further stated that on 10.03.2005, he has sent the seized material objects to the F.S.L for analysis. Ex.P38 is the analysis report marked through PW.14. This report shows that he received item Nos.12 and 13, two strands of hair each, in plastic covers. His opinion shows that he is silent about item No.13. As regards item No.12, all that PW.13 has opined is that the hair is of human origin. This report does not show that he has compared item Nos.12 and 13 with any other hair or blood belonging to any person. Therefore, this report does not throw any light on the involvement of the appellant in the offence. The only other report that was produced by the prosecution in this regard is Ex.P25, which is another FSL report. This report was submitted in pursuance of Ex.P24, requisition sent by the XXIII

Metropolitan Magistrate, Hyderabad. This report was given by one G.Pandu, Scientific Assistant (DNA Fingerprinting Expert). A perusal of this report shows that he has analyzed the blood samples collected from the accused. In his evidence, PW.7, the Professor of Forensic Medicine, deposed that as per Ex.P17, the order of the XXIII Metropolitan Magistrate, Hyderabad, he has collected hair from the accused. He has stated that on Ex.P17, requisition from the XXIII Metropolitan Magistrate, he has examined the appellant for injuries and for collecting sample of hair or blood from him and handed over the same to PW.8. The witness is silent as to whether he has collected blood samples also and handed over the same along with hair to PW.8. In fact, in Ex.P24, requisition, the Director, FSL, Hyderabad was asked to draw blood samples and no requisition was given for collecting the hair for FSL examination.

Be that as it may, Ex.P25, report, shows that the blood samples collected from all the three accused were tested with reference to item No.4 i.e., two strands of hair, and the said G.Pandu has opined that allelic pattern of item No.4 matches with allelic pattern of item No.1, blood sample of the appellant and the same does not match with the blood samples of the other two accused.

We are at a loss to know the purpose for which the FSL was asked to send its opinion with reference to the blood samples of the accused vis-à-vis the strands of hair, which were evidently collected by PW.7 from the appellant. In order to find out whether any of the accused including the appellant are involved in the commission of offence, their blood samples or hair strands need to be compared with the hair strands recovered from the palms of the

deceased.

As noted above, no such effort appeared to have been made. On the contrary, the two hair strands, which were tested under Ex.P37, report, evidently were recovered from the palms of the deceased and they were not tested against the blood samples or the hair strands of the accused. The lower Court appeared to have lost this crucial fact and simply went by the two FSL reports in order to connect the appellant with the offence. In our considered opinion, in the absence of the specific evidence to show that the DNA test was conducted with reference to the hair strands recovered from the palms of the deceased against the blood samples or hair strands of the appellant, it cannot be held that the prosecution was able to prove the involvement of the appellant in the commission of the offence.

No doubt there are two factors, which appear to militate against the appellant; one is that the recovery of MOs.1 to 7, MO.16, gold Mangalasutram chain, MO.17, black beads chain with locket, MO.18, white beads chain (rolled gold), MO.19, two rolled gold bangles, MO.20, gold small bracelet, MO.21, six pairs of gold ear tops and MO.22, five gold rings, which admittedly belonged to accused No.3, from the possession of the appellant. However, recovery of these articles could not be proved by the prosecution with PW.5, who is one of the panchadars turning hostile. Therefore, no evidentiary value could be attached to Ex.P33, seizure panchanama.

Another factor, which the appellant failed to explain, was his receiving serious injuries. PW.7 has found two serious injuries, which were found sutured, on the right arm of the appellant and he has opined that the injuries

might have been caused about two weeks prior to his examining the appellant, which correlates with the date of occurrence. In the charge sheet, it is alleged that the appellant was treated by LW.4, who is examined by the police. For the reasons best known to them, they failed to examine LW.4 before the Court. He could have been the best witness to speak about the injuries and the reason for the appellant receiving the injuries as per his knowledge. In our opinion, it is the faulty investigation of the police all through which creates reasonable doubts in the mind of the Court about the involvement of the appellant, and based on such investigation and the sketchy evidence, which does not inspire confidence, it is not safe to convict the appellant on strong suspicion.

In **Rajiv Singh v. State of Bihar and others** ^[1], the Supreme Court held as under:

“Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved and “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and

comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense." (Emphasis added)

As held by the Supreme Court, though the injuries to the appellant and some recoveries from him pertaining to the alleged gold ornaments of accused No.3 (though not legally proved, as PW.5 turned hostile) create strong suspicion against the appellant, howsoever strong the suspicion might be, it cannot take the place of proof. The prosecution has left too many loose ends to connect the appellant to the crime disabling this Court to hold him guilty of committing murder.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused No.1 in the judgment, dated 04.08.2010, in Sessions Case No.149 of 2008, on the file of the learned III Additional Metropolitan Sessions Judge at Hyderabad for the offence punishable under Section 302 IPC., are set aside. Consequently, the appellant shall be set at liberty forthwith, if he is not already released and not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

04th April, 2016

VGB/VV
L.R.copies.

[\[1\]](#) 2015 (13) SCALE 901