

**HON'BLE SRI JUSTICE SANJAY KUMAR**  
**AND**  
**HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**CRIMINAL APPEAL No. 228 OF 2011**

**JUDGMENT:** (*Per Hon'ble Dr. Justice Shameem Akther*)

1. This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.') questioning the judgment dated 17.11.2009, passed in Sessions Case No.182 of 2008 by the V Additional Sessions Judge (Fast Track Court), Nalgonda at Miryalguda (for brevity, 'the trial Court'), whereby the trial Court convicted the appellant-accused under Section 235(2) Cr.P.C. and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.100/- (Rupees one hundred only), in default, to suffer simple imprisonment for three (3) months for the offence under Section 302 of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.'), giving liberty to set off the remand period already undergone by him.

2. Heard the learned counsel appearing for the appellant and the learned Public Prosecutor appearing for the State.

3. The case of the prosecution, in brief, is as follows:

(a) This is a case of homicidal death of a boy aged 3 years, by name, Thari Ravi (Hereinafter referred as 'deceased'), by drowning him in the water of N.S.P. Water Channel of Narsimhulagudem, committed by his father, who is the appellant herein, on 19.10.2007, suspecting the fidelity of his wife and the paternity of his son-Ravi (deceased).

(b) The marriage of the appellant and his wife-Thari Kotamma (P.W.6) took place about 7 years prior to the incident. One year after the marriage, the appellant addicted to alcohol, used to quarrel with his wife frequently and beat her suspecting her fidelity. Several panchayats were held in that connection. During their conjugal life, they were blessed with two children, *i.e.*, one daughter and son, Thari Ravi (deceased), who was the younger one. P.W.6-wife of the appellant along with her son-Ravi stayed at Boyagudem village for about 10 days and thereafter, her aunt took her to Rentachinthala village of Guntur District for Dasara festival. Thereafter, on 18.10.2007, the appellant went to Rentachinthala village convinced his wife-P.W.6 and son-Ravi to take them back to his house and when they started along with P.W.7-Kotra Praveen, reached the house of P.W.4-V.Srinivasulu at Nidmanoor and halted there for night. On 19.10.2007 at 7-00 a.m., the appellant left along with Ravi to take tea, went to the shop of P.W.8-M.Veeresham, studied newspaper and later went to Dolphin Hotel and had a cup of tea, from there he went to the house of P.W.9-J.Bharathamma and consumed liquor and later went to barber shop of P.W.10-V.Venkanna and stayed there for some time. Thereafter, he along with his son-Ravi started to Guntukagudem and on the way, he decided to kill his son due to the suspicion that he was not born to him, when reached near N.S.P. Water Channel at Narsimhulagudem, outskirts of Nidmanoor village drowned Ravi in that canal, due to which Ravi died. After confirming the death

of Ravi, the appellant brought the dead body to Guntukagudem at 12-00 hours on 19.10.2007.

(c) On the report given by P.W.1-Bollempally Yesu, brother-in-law of the appellant, P.W.13-Sub Inspector of Police, Nidamanoor Police Station, registered a case in Crime No.70 of 2007 for the offence punishable under Section 302 I.P.C. against the appellant and issued Ex.P.10-F.I.R. to all concerned. P.W.15-T.Manohar Reddy, Inspector of Police, took up investigation, examined the witnesses, recorded their statements, recovered the material object, conducted inquest over the dead body in the presence of the witnesses and sent the dead body for postmortem examination. P.W.14-Civil Assistant Surgeon, Government Hospital, Miryalguda conducted autopsy over the dead body of the deceased on 20.10.2007 and issued Ex.P.11-postmortem examination report opining that the cause of death was due to drowning. After completion of investigation, P.W.15 filed charge sheet against the appellant for the offence punishable under Section 302 I.P.C.

4. After the case was committed to the trial Court by following due procedure, the prosecution to substantiate its case, examined P.Ws.1 to 15 and marked Exs.P.1 to P.11 and M.O.1. The appellant did not adduce any evidence. The trial Court, on appreciation of the entire evidence on record, convicted and sentenced the appellant as stated hereinabove.

5. Learned counsel for the appellant would submit that the trial Court erred in relying on the evidence of P.Ws.1, 2, 4 and 6

and erroneously came to the conclusion that the appellant is responsible for the death of his son Ravi. P.W.3 is inimical to the appellant and the alleged extra judicial confession said to have been made before P.W.3 is absolutely weak and un-reliable. The prosecution failed to prove the guilt of the appellant beyond all reasonable doubt. The entire prosecution case is based on circumstantial evidence. The chain is incomplete and there are material contradictions in the evidence of P.Ws.1 to 4 and 6 and it is un-safe to rely on their testimony and ultimately prayed to set-aside the conviction and sentence recorded against the appellant for the offence under Section 302 I.P.C. by allowing the Appeal.

6. On the other hand, the learned Public Prosecutor (T.G.) appearing for the State would contend that P.Ws.1 to 4 and 6 are reliable witnesses. The trial Court Judge has rightly convicted and sentenced the appellant basing on the evidence on record. There are no circumstances to take a different view and ultimately prayed to dismiss the Appeal sustaining the conviction and sentence recorded against the appellant.

7. In view of the rival contentions put forth, the following **points** have come up for determination:

- 1) Whether death of Thari Ravi (deceased) is homicidal?**
- 2) Whether the appellant had caused the death of deceased?**

**3) Whether the conviction and sentence recorded  
against the appellant is liable to be set-aside?**

8. **POINT Nos.1 to 3:** The specific case of the prosecution is that the appellant used to suspect the fidelity of his wife and the paternity of his son Ravi (deceased in this case) and as such caused the death of his son by throwing him into N.S.P. water channel at Narsimhulagudem, at the outskirts of Nidmanoor village, on 19-10-2007. Admittedly, there are no direct witnesses to speak about the appellant causing the death of his son by drowning in the N.S.P. water channel situated at Narsimhulagudem. Under these circumstances, it is apt to refer the decision of the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra***<sup>1</sup>, wherein it was held as hereunder:

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

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
- (iii) 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 none else; and
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be

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<sup>1</sup> AIR 1984 SC 1622

consistent with the guilt of the accused but should be inconsistent with his innocence.

The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) they should exclude every possible hypothesis except the one to be proved; and
- (v) 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."

11. The conditions required to prove the guilty of the accused based on circumstantial evidence are enunciated in the following cases also:

**"1. Hanumant Govind Nargundkar Vs. State of M.P.:**

AIR 1952 SC 3442.

**2. Sharad Birdhichand Sarda Vs. State of Maharashtra :** (1984) 4 SCC 116 : AIR 1984 SC 1622.

**3. C.Chenga Reddy Vs. State of A.P.:** (1996) 10 SCC 193."

9. The evidence of P.W.1 B.Yesu, who is *de-facto* complainant and brother-in-law of the appellant, is that the marriage between the appellant and P.W.6, his sister, took place

about 7 years prior to his examination. Thereafter, the appellant addicted to alcohol and regularly used to quarrel with his wife. Several times the matter was placed before the elders. His specific evidence is that on 20.10.2007, he received a phone call about the appellant killing his son. On that, he went to Boyagudem village and found the dead body of deceased, his sister P.W.6 was in an unconscious condition, he shifted her to Miryalguda hospital and thereafter presented Ex.P-1 report to the police. In cross-examination PW.1 stated that due to non availability of buses at night, the appellant along with his wife and deceased slept at his relative's house at Nidmanoor. Nothing is elicited in the cross-examination of P.W.1 to believe that there was any enmity between him and the appellant or any other reason for P.W.1 to depose falsely against the appellant.

10. The evidence of P.W.2 M.Muthamma is that she went to Boyagudem village and found the dead body of the deceased and came to know that the appellant had caused the death of the deceased. Admittedly, the evidence of PW.2 is hearsay and she is not a direct witness to the commission of the offence. In cross-examination P.W.2 denied that she was deposing false.

11. The evidence of P.W.3 G.Purushotham reveals that on 19.10.2007 the appellant came to Guntikagudem along with the dead body of the deceased and when he questioned the appellant, the appellant confessed the commission of the offence and stated that the appellant suspecting the fidelity of his wife and also the paternity of the deceased killed the deceased. In

cross-examination, P.W.3 denied that there are disputes between himself and the appellant and also denied that he was deposing falsely.

12. As seen from the cross-examination of P.W.3, there is no animosity or reason to depose falsely against the appellant. Nothing is brought on record to discard the testimony of P.W.3. There is specific evidence of P.W.3 that on 19.10.2007 the appellant went to his village along with the dead body of the deceased and on his questioning, the appellant confessed about the commission of the offence and stated that suspecting the fidelity of his wife-P.W.6 and also that the deceased was not his son, he killed the deceased. As per the material available on record, by that time no first information was lodged with the police, no police personnel were present and none forced or influenced the appellant to confess the commission of the offence. It is not the case of appellant that under threat, promise or any inducement he confessed the commission of offence. Admittedly, P.W.3 has no authority over the appellant and there was no force or pressure on appellant to confess that he caused the death of the deceased. Furthermore, even it is not put to P.W.3 that the appellant did not confess the commission of the offence in this case. The evidence of P.W.4 V.Srinivasulu reveals that on 18.10.2007 the appellant, his wife (P.W.6) and P.W.7 came to his house at Nidmanoor at 07:30 p.m. and slept in his house. On the next day morning the appellant left his house along with the deceased. Thereafter, he came to know that the

appellant killed his son Ravi (deceased) by drowning him into water canal and he saw the dead body of deceased. The evidence of P.W.5 P.Shankar reveals about his taking photographs of the deceased. Ex.P-2 is positive photos with negatives.

13. The evidence of P.W.6 T.Kotamma, who is the wife of the appellant, reveals that she married the appellant about 7 years ago. She further stated that after marriage, the appellant addicted to alcohol and used to beat her frequently suspecting her fidelity and several panchayats were held on that issue. It is her specific evidence that one week prior to death of her son, she went to her parents' house along with P.W.1 and from there she went to Rentachinthala of Guntur district. After one week, the appellant came to Rentachinthala. On 18.10.2007 she along with her son, appellant and P.W.7 went and stayed in the house of P.W.4. On the next day morning, when she was sleeping, the appellant along with his son went outside and later she came know the death of her son Ravi. Immediately, she went to Guntukagudem and found the dead body of her son. Her evidence further reveals that the appellant suspected her fidelity and also suspected that that the deceased was not his son. She denied a suggestion that the deceased fell into the water while playing and died. In cross-examination she reiterated what she stated in her chief-examination.

14. The evidence of P.W.7 K.Praveen corroborates with the evidence of P.Ws.4 and 6. The specific evidence of P.W.7 is that

on 19.10.2007 the appellant along with deceased went outside the house of P.W.4 and thereafter he came to know the death of deceased and on knowing the same, he went to Guntukagudem village and saw the dead body of deceased. He further stated that appellant used to consume alcohol and beat his wife and the matter was placed before the elders. In cross-examination he reiterated the same.

15. P.Ws.8 to 10 turned hostile and did not support the case of prosecution.

16. The evidence of P.W.11 G.Muthaiah reveals that he came to know about the appellant causing the death of the deceased suspecting the fidelity of P.W.6. His further evidence reveals that on 20.10.2007 at 11:30 a.m. he attested Ex.P-6 scene of offence panchanama and Ex.P-7 inquest panchanama along with L.W.13 Dubba Sivaiah.

17. The evidence of P.W.12 B.Satish reveals that on 29.10.2007, on the information given by the appellant, police recovered M.O.1 purse, which contained the photograph of the appellant and deceased, at the canal situated at Narasimhulagudem and thereafter he attested Ex.P-8 confessional panchanama and Ex.P-9 recovery panchanama along with L.W.16 Medisetty Shekar.

18. P.W.13 E.Ravinder, Sub-Inspector of Police, Miryalguda reveals that on 20.10.2007 P.W.7 lodged Ex.P-1 report and

thereafter he issued Ex.P-10 F.I.R. in Crime No.70 of 2007 and sent to all the concerned.

19. The evidence of P.W.14 Dr. G.Veeranjaneyulu, reveals that he conducted autopsy over the dead body of deceased on 20.10.2007 and gave Ex.P-11 post mortem examination report, opining that the cause of death was due to drowning and the time of death was 24 to 36 hours prior to his postmortem examination.

20. The evidence of P.W.15 T.Manohar Reddy, Circle Inspector of Police, reveals that he conducted investigation, recorded the statements of P.Ws.8, 9, 10 and other witnesses and filed charge sheet against the appellant for the offence punishable under Section 302 I.P.C.

21. As per the material available on record, the deceased Thari Ravi was 3 years old at the time of his death. There is evidence to the effect that the appellant used to suspect that the deceased was not born through him. There is also the specific evidence of P.W.4 and P.W.7 that the deceased was taken by the appellant from the house of P.W.4 in the early hours on 19.10.2007 and thereafter they found the dead body of deceased. P.W.6, mother of the deceased, also stated the same. Their evidence is that on the pretext of taking tea near a shop, the appellant took the deceased along with him. There is specific evidence of P.W.3, in his presence the appellant made extra judicial confession. When P.W.3 questioned the appellant on seeing the dead body of the deceased, than the appellant confessed that he had caused the

death of deceased suspecting the fidelity of his wife and also the paternity of the deceased. There are no omissions and contradictions in the evidence of P.W.3. There is no reason to doubt the evidence of P.W.3. The evidence of P.W.3 is reliable. The facts and circumstances of the case on hand and the facts of the case in ***State of Rajasthan Vs. Raja Ram***<sup>2</sup> are similar with regard to extra judicial confession made in this case, so the evidence of P.W.3 can be acted upon. Moreover, the appellant took the deceased along with him on the early morning of 19.10.2007 and thereafter the deceased was not seen alive anywhere. The dead body of the deceased was found in possession of the appellant.

22. When this entire incriminating evidence was put to the appellant, under Section 313 Cr.P.C. examination, he has simply stated false (*abaddam*) and do not know (*teliyadu*). Appellant did not lead any defence evidence to rebut the evidence on record or to prove the defence setup by him *i.e.*, the deceased fell accidentally in water canal, while playing and died.

23. As per Section 106 of the Act, the appellant is required to explain the facts within his knowledge. Section 106 of the Act reads as follows:

"106. Burden of proving fact especially with knowledge –  
When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him  
illustrations:

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<sup>2</sup> 2003 (8) SCC 180

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him."

24. In ***State of M.P. Vs. Ratan Lal***<sup>3</sup>, the Hon'ble Supreme Court held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent with his innocence, the absence of such explanation itself is an additional link which completes the chain. Similar are the circumstances in the case on hand. The answers given by the appellant *i.e.*, false and do not know will go a long way in completing the chain of circumstances in establishing his guilt.

25. The circumstances placed on record taken cumulatively form the complete chain that there is no escape from the conclusion that, in all human probability, the death of the deceased was caused by the appellant and none else. The circumstantial evidence is amply clear to sustain the conviction and incapable of explanation of any other hypothesis that of not guilty of the appellant. The evidence adduced by the prosecution is consistent, unerringly pointing towards the guilty of the appellant and it is not inconsistent with his innocence. The prosecution has proved beyond all reasonable doubt that the appellant suspecting the fidelity of his wife, frequently beat her

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<sup>3</sup> AIR 1994 SC 458

and several panchayats were held, and suspected the paternity of his son (deceased), took the deceased to N.S.P. Channel, situated at Narsimhulagudem and drowned him to death. Thereafter, he took the dead body of deceased to his village Guntukagudem and confessed the commission of death of deceased, when he was questioned by P.W.3.

26. All the ingredients of Section 302 I.P.C. are proved by the prosecution beyond all reasonable doubt against the appellant. The appellant setup a false defence that the deceased accidentally fell into the water canal and died. The contentions raised by the appellant do not merit any consideration. The trial Court, while dealing with the matter, had analyzed the entire evidence on record and rightly convicted and sentenced the appellant for the offence under Section 302 I.P.C. There is no infirmity in the judgment of the trial Court and as such the conviction and sentence recorded against the appellant is sustainable. Accordingly, all the points are answered against the appellant and in favour of the prosecution.

27. In the result, the Criminal Appeal is dismissed, confirming the conviction and sentence recorded against the appellant for the offence under Section 302 I.P.C.

28. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed.

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SANJAY KUMAR, J

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Dr. SHAMEEM AKTHER, J

**HON'BLE SRI JUSTICE SANJAY KUMAR**

**AND**

**HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

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**CRIMINAL APPEAL No.228 OF 2011**

(Judgment of the Division Bench delivered by  
Hon'ble Dr. Justice Shameem Akther)

Date.31-08-2017

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