

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.418 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

Ramavath Bheema, a young girl aged 14 years, was found dead on 13.12.2007 at Vanagattu Gutta in the limits of Kummera Village, Mahabubnagar District. She died due to a crush injury to her skull. Sabavath Badya was charged with various offences in relation to her death in Sessions Case No.358 of 2009 on the file of the learned IV Additional District and Sessions Judge (FTC), Mahabubnagar. The charges framed against him read as under:

FIRSTLY:-

That you, on or about the 11th day of December, 2007 at about 12.30 p.m., at Vanagutta in the limits of Kummera Village, committed rape on Kumari Ramavath Bheema, D/o Ramavath Ramulu, Age: 14 years, Caste: Lambada, Occ: Coolie, R/o G.Gutta thanda, H/o Pothireddypally village of Thimmajipet Mandal, and that you thereby committed an offence punishable Under Section 376 (f) of Indian Penal Code and within my cognizance.

SECONDLY:-

That you, on or about the 11th day of December, 2007 at about 12.30 p.m., at Vanagutta in the limits of Kummera Village, did commit murder by intentionally causing the death of Kumari Ramavath Bheema, D/o Ramavath Ramulu, Age: 14 years, Caste: Lambada, Occ: Coolie, R/o G.Gutta thanda, H/o Pothireddypally village of Thimmajipet Mandal, by beating with a boulder on her head, and that you thereby committed an offence punishable Under Section 302 of Indian Penal Code and within my cognizance.

THIRDLY:-

That you accused, during the course of same transaction, at the same time and place mentioned supra in Charge No.1, knowing reason to believe that the offence of Murder punishable Under Section 302 Indian Penal Code has been committed, and caused certain evidence connected with the said offence of murder to disappear, to screen yourselves from legal punishment by bathing and washing his clothes at Waddera Guntha, and that you thereby committed the offence punishable Under Section 201 of Indian Penal Code and within my cognizance.'

The accused denied the charges and claimed to be tried.

During the trial, the prosecution examined 16 witnesses and marked in evidence 14 exhibits. The accused did not lead oral evidence but marked Ex.D1, a portion of the Section 161 CrPC statement of P.W.2. Case properties were shown as M.Os.1 to 14.

By judgment dated 06.04.2011, the Sessions Court convicted the accused under Sections 376, 302 and 201 IPC. He was sentenced to imprisonment for life and payment of fine of Rs.1,000/-, in default of which he was to suffer rigorous imprisonment for six months, for his conviction under Section 302 IPC; to rigorous imprisonment for seven years and payment of a fine of Rs.1,000/-, in default of which he was to suffer simple imprisonment for six months, for his conviction under Section 376 IPC; and to rigorous imprisonment for seven years and payment of a fine of Rs.500/-, in default of which he was to suffer simple imprisonment for three months, for his conviction under Section 201 IPC. Aggrieved thereby, the accused is in appeal under Section 374(2) CrPC.

By order dated 05.06.2017, this Court granted conditional bail to the appellant/accused pending disposal of this appeal.

Heard Sri P.Prabhakar Reddy, learned counsel for the appellant, and the learned Public Prosecutor, State of Telangana.

Ex.P1 complaint was submitted by P.W.1, the mother of the deceased, on 14.12.2007 at 7.00 AM to the Sub-Inspector of Police, Tadoor (P.W.14), wherein she stated that on 11.12.2007, Ramavath Bheema, her daughter, had lunch and took the goats for grazing at about 11.00 AM and went in the direction of Vanagattu. She did not return home thereafter and they searched for her, but in vain. On 13.12.2007, at about 5.00 PM, P.W.3 who had taken his cattle to Vanagattu Gutta for grazing, noticed a foul smell and discovered the dead body of her daughter. Her petty-coat was raised and she was hit on the head with two big rocks, causing bleeding injuries, which led to her death. P.W.1 further stated that as the accused was noticed by P.W.3 on 11.12.2007 afternoon, washing blood-stained clothes at Waddera Guntha and was flustered when questioned by him as to where they came from, she suspected that he may have raped and killed her daughter. She therefore prayed for necessary action to be taken. This complaint was submitted by P.W.1 to P.W.14 when he came to the scene of the offence, where the body was lying, upon receiving a telephonic message from Kummera Thanda villagers about the murder of a female at Vanagattu Gutta. Thereupon, Crime No.105 of 2007 was registered by him under Sections 376, 302 and 201 IPC on the file of Tadoor PS. Ex.P8 is the FIR. The Inspector of Police, Nagarkurnool (P.W.15), then investigated the case.

P.Ws.1 to 3 are crucial witnesses for the prosecution. However, there are material discrepancies and variations in their testimony giving rise to the clear possibility of the case against the accused being improved from stage to stage. At the outset, it may be noticed

that according to P.W.1, the mother of the deceased, the deceased went missing on 11.12.2007 and her body was found only on the evening of 13.12.2007. Despite the same, P.W.1 did not even lodge a police complaint as to her young daughter going missing. She seems to have taken no steps whatsoever in this regard, except claiming that they searched here and there for her. When she specifically mentioned in Ex.P1 that her daughter went towards Vanagattu, she failed to explain as to why she did not at least search for her on Vanagattu Gutta. This is one aspect of the matter. Her testimony before the Sessions Court shows that P.W.1 had every reason to suspect that something untoward had happened to her daughter. She admitted that in the evening, some goats taken for grazing by the deceased returned to their Thanda and that she brought them to her house and then went in search of her daughter in the morning. According to her, P.W.3 found the body of her daughter three days later. This was not so and it is difficult to believe that, being the mother of the deceased, she would not even be aware of how many days passed before the body of her daughter surfaced. In her cross-examination, P.W.1 stated that P.W.2 saw the body of her daughter on the 13.12.2007 in the evening at about 6.00 PM and informed her while he was returning with his cattle. She said that they telephoned and informed the police and they came and enquired with her and also P.W.3, P.W.2 and Sabavath Tukya (L.W.5) and recorded their statements. This version of P.W.1 indicates that information was given to the police on 13.12.2007 itself and not on 14.12.2007. According to her, the police brought dogs the next day to the scene and the dogs caught Mudavath Sevyra, who was surprisingly not even shown in the list of witnesses, let alone being examined by the

prosecution. The evidence brings out that Mudavath Sevyia is none other than the maternal uncle of the deceased. His role, if any, however remains unexplained. P.W.1 again volunteered that the dog went to the house of the accused afterwards and caught him. This statement is however contradicted by P.W.12, the Investigating Officer. She further stated that the body of her daughter was brought down at about 1.00 PM after the police took away the accused. She denied the suggestion that she had not stated before the police that the dogs went to the accused and caught him and that she was saying so for the first time before the Court. When a specific question was put to her as to whether on the said day the accused was also present with P.W.2 and saw the dead body, she answered that the accused himself showed the dead body to P.W.2 on that day. When P.W.2 informed her about the incident, the police took the complaint from her. She said that on 11.12.2007 at about 5.00 PM, her brother-in-law, P.W.3, saw the accused. She denied the suggestion that she stated before the police that P.W.3 informed her of the accused taking a bath at about 5.00 PM and P.W.3 questioned him and he ran away without answering. She denied the suggestion that there was mud in the pit and claimed that people also drank water from the pit. She denied the suggestion that she had not stated that there was blood on the body of her daughter and the petty-coat. She admitted that till P.W.2 informed her about the body of her daughter on Vanagattu Gutta, she did not go searching for her daughter to the hillock. She admitted that there were no disputes between the accused and her family. She also admitted that stones like M.Os.1 and 2 would be available on the hillock. She further stated that the accused and Sabavath Tukya (L.W.5) were agnates and they were not

on talking terms due to disputes but denied the suggestion that at his instance, she was deposing falsely.

P.W.2 stated before the Court that P.W.3 had informed him that the accused was washing his blood-stained clothes in a water pit by the side of Vanagattu Gutta. He claimed that when he went for grazing the cattle to Vanagattu Gutta, he observed the dead body. He stated that the deceased was murdered with boulders by throwing them on her face and that her face was covered with a long skirt. He identified M.Os.1 and 2 as the stones seen by him at the scene. In his cross-examination, P.W.2 said that he did not remove the long skirt from the face of the deceased to see her face when he saw the dead body. He admitted that he informed the police that he suspected the body to be that of the deceased. He said that he did not go near the body nor did he take out the long skirt for the purpose of identification. He denied the suggestion that he had not stated before the police that P.W.3 informed him about the accused washing blood-stained clothes in the pit near Vanagattu Gutta. He denied stating before the police as in Ex.D1 portion of his Section 161 CrPC statement. He said that he informed his parents around 6.30 PM about finding the body and that the police also came on the same day. He stated that on the same night, the police examined them and recorded their statements and P.W.1 lodged a complaint. He also admitted that P.W.1 was his sister-in-law. The police was stated to have come again in the morning with dogs and the dog caught Mudavath Sevy, the uncle of the deceased. At that time, the accused and his parents were in their house and they did not come to the scene. He denied the suggestion that the accused was also there with the police and the dogs throughout.

P.W.3 claimed that on the day the deceased went to Vanagattu Gutta for grazing her goats, the accused was already on the hillock. He said that she took two of his sheep to the hillock as he had leg pain and he remained at the bottom of the hillock. He further stated that at about 3.00 PM on hearing the sound of sheep, he woke up and found the accused washing blood-stained clothes and drying them. He claimed that he shouted for the deceased but there was no reply. The accused allegedly addressed him as brother-in-law in a hurry instead of addressing him as uncle as usual and so saying he left the place. On the next day, the accused and P.W.2 went for grazing to the hillock and the accused observed the dead body due to the bad smell and showed it to P.W.2. Upon a specific question put to him by the Court, P.W.3 stated that he came to know about the body of the deceased on the hillock from one Boddugadu who came and informed them in Jee Gutta Thanda at the instance of P.W.2 and they immediately went to see it. He said that the body was covered with a long skirt and the murder was committed by striking the head with boulders. He identified M.Os.1 and 2 as the boulders at the scene. In his cross-examination, P.W.3 said that the police came on the evening of the day when the dead body was seen by P.W.2 upon receiving telephonic information. He further stated that the police examined him on the next day after conducting a panchanama and recorded his statement. He denied the suggestion that the water in the pit was not useful for washing clothes or for bathing. He denied that at the instance of Sabavath Tukya (L.W.5), he was deposing against the accused as good relations were not there between them.

Juxtaposing the depositions of the aforestated witnesses, it is clear that there is no consistency in the versions put forth by them.

Significantly, P.W.2 did not state that the accused was with him when he found the dead body. This contradicts the versions of P.Ws.1 and 3 that it was the accused who showed the dead body to P.W.2. Further, all three of them spoke of the police arriving at the scene of the offence on the day when the body was found. Therefore, the very submission of Ex.P1 complaint on 14.12.2007 at 7.00 AM and the registration of Ex.P8 FIR thereafter are rendered doubtful.

P.W.4, a panch witness to the scene of the offence panchanama (Ex.P10) and also a witness to the inquest proceedings, introduced a new element. He stated that the private parts of the deceased appeared to have been pierced with a stick. M.O.8 is the stick. He further stated that there were three hairs in the right hand of the deceased; three hairs below her hand and the menses clothes of the deceased were hidden under a boulder. He identified M.O.3 as the orange skirt, M.O.4 as the green coloured inner skirt, M.O.5 as the jacket, M.O.6 as the bra and M.O.7 as the pair of slippers belonging to the deceased. In his cross-examination, he admitted that the deceased was his younger sister by relation but denied the suggestion that no panchanama was conducted in his presence and that he signed the same at the police station when his father took him there.

P.W.5, another witness to Ex.P4 inquest report, admitted that he was also a near relation, as P.W.1 was her husband's younger sister. She denied the suggestion that she signed the inquest report in the police station at the instance of the police and had never visited the scene during the inquest proceedings. Significantly, this witness is none other than the wife of Mudavath Sevy, the elusive maternal uncle, who is not even shown in the list of witnesses but was targeted by the police dog squad.

P.W.6 was the scribe of Ex.P1 complaint and stated that he drafted it between 10.00 AM and 11.00 AM on that day. This statement further weakens the claim as to submission of Ex.P1 complaint and the consequential registration of Ex.P8 FIR. Be it noted that according to these documents, Ex.P1 complaint was submitted at 7.00 AM on 14.12.2007 leading to the registration of Ex.P8 FIR at 8.00 AM.

P.Ws.8 and 9 were witnesses to the confession-cum-recovery panchanama (Ex.P11). They turned hostile and did not support the prosecution. However, P.W.9 admitted in his cross-examination by the prosecution that basing on the confession of the accused, they went to his house and M.O.9 trousers, M.O.10 shirt and M.O.11 underwear were recovered and seized. In his cross-examination by the defence, P.W.9 stated that the accused was present when the police came with the dogs and that the dogs caught Mudavath Sevy.

P.W.11 conducted the post-mortem examination of the body of the deceased. He spoke of the skull being crushed irregularly with a blunt object and of contusions on the neck and the left thigh. He confirmed that the death of the deceased would have occurred 3 to 4 days before the post-mortem examination. He commenced the post-mortem examination on 14.12.2007 at 3.00 PM. He identified Ex.P9 as his post-mortem examination report and opined that the cause of death was a crush injury to the skull with a heavy object. Significantly, no suggestion was put to him as to whether there was any possibility of rape having been committed upon the deceased.

P.W.12, the Investigating Officer, was cross-examined at length. Various significant facts were disclosed by him, which are completely antithetical to the prosecution's case. These aspects may

now be noted. He denied the suggestion that on 13.12.2007, in the evening hours itself, he along with P.W.10, the Head Constable, who registered the crime and P.W.14, the Sub-Inspector of Police, went to Vanagattu Gutta on receiving telephonic information about the death; received Ex.P.1 complaint from P.W.1; and recorded the statements of witnesses. He admitted that in the remand report it was mentioned that the pond (Waddera Guntha) was with dirty water and normally it is not used for washing clothes or for bathing. He admitted that though there were agricultural fields between the pond and the edge of Vanagattu Gutta, he has not examined the owners of those agricultural fields. He denied the suggestion that though he examined them, they did not support the prosecution's case and at the instance of Sabavath Tukya (L.W.5), a false case was registered against the accused. He admitted that he did not find any mud marks on the clothes of the accused seized by him. He admitted that a dog squad was brought on 14.12.2007 but denied that the dogs had caught Sevy. He however admitted that the dog squad also did not catch the accused and claimed that he did not see the accused when the dog squad came. He denied the suggestion that the accused was with them when the dog squad came. He denied the suggestion that after he reached the police station, he instructed the Sub-Inspector of Police to register the FIR by suppressing the earlier complaint given by P.W.1 and also the statements recorded by the Sub-Inspector. He however admitted that Ex.P8 FIR reached the Court, as per the endorsement thereon, only at 5.30 PM on 14.12.2007. He did not offer any explanation for this long delay, as admittedly the said FIR was registered at 8.00 AM on that date. Needless to state, delay in the lodging of the FIR which remains

unexplained would be fatal to the case of the prosecution [See **A.SHANKAR V/s. STATE OF KARNATAKA**¹ and **MEHARAJ SINGH V/s. STATE OF U.P.**²]. He admitted that P.W.2 did not state before him that he had removed the outer skirt that covered the face of the deceased and saw her face. He said that P.W.2 claimed that he went along with animals to Vanagattu and there he saw the dead body at Padiripadu Gunta. He also admitted that P.W.2 did not state before him that P.W.3 had informed him that he saw the accused washing blood-stained clothes near Vanagattu Gutta. He asserted that P.W.2 had stated before him as in Ex.D1. He also admitted that he did not examine Boddu to whom P.W.2 informed, in the first instance, about seeing the dead body. He denied the suggestion that the confession and recovery panchanama was prepared at the police station at the instance of Sabavath Tukya (L.W.5) and that the accused was innocent and was falsely implicated.

P.W.13 was the other doctor who, along with P.W.11, participated in the post-mortem examination of the body of the deceased. She stated that at the time of conducting such examination, she preserved vaginal swabs of the deceased and that the cause of death was the crush injury to the skull. In her cross-examination, she admitted that as per Ex.P9 report, the stomach of the deceased was empty and that the entire process of digestion would be within three hours from the time of taking food.

P.W.14 was the Sub-Inspector of Police, Tadoor who received Ex.P1 complaint from P.W.1.

P.W.15 was the Inspector of Police, Nagarkurnool, who took on the investigation from P.W.12 and thereafter laid a charge sheet upon

¹ (2011) 6 SCC 279

² (1994) 5 SCC 188

receiving Ex.P13 FSL report from Hyderabad. In his cross-examination, he admitted that though he tried to examine the land owners near the scene of the offence, they were not available and, therefore, he could not examine them. He also admitted that he did not examine any person to show that the deceased was last seen with the accused. He admitted that the pond was not useful for washing clothes or bathing. He also admitted that he had not examined Boddu and did not know whether his predecessor did so.

P.W.16, a Civil Assistant Surgeon at the Government Area Hospital, Nagarkurnool, issued Ex.P14 certificate confirming that examination of the accused did not suggest that he was impotent.

At this stage, it would be appropriate to consider the Forensic Science Laboratory's Report (Ex.P13) which demonstrates that the hair, under item 9, being that recovered at the scene of the offence, bore dissimilar morphological characters when compared with the hair sample in item 10, the scalp hair of the accused, secured by P.W.12, for testing. Further and most crucially, the vaginal swabs (M.O.14) taken by P.W.13 from the body of the deceased, shown as item 11, did not reflect either the presence of semen or spermatozoa. Similarly, on the accused's underwear (M.O.11), shown as item No.15, neither semen nor spermatozoa were detected. So was the case with his other clothes (M.Os.9 and 10). The stick (M.O.8) was also subjected to examination and was shown at item No.7. However, though blood-stains were found on it, the origin thereof could not be determined. None of the witnesses who saw the body of the deceased spoke of any blood on the private parts of the deceased. The doctors who conducted the post-mortem examination did not find any signs of sexual intercourse, let alone rape having been committed on the

deceased. The hair samples collected from the hand of the deceased and from underneath did not match the hair of the accused. In effect, except for the testimony of P.W.3, who claims to have seen the accused on the hillock at the time the deceased went there with her goats, and his further testimony that he saw him washing blood-stained clothes in the pond nearby, when he woke up, there is nothing to link the accused with the offence. The so-called recovery of the blood-stained clothes from the accused is rendered doubtful, as both the witnesses to the recovery panchanama turned hostile. However, even if the admissions made by PW.9, one of the witnesses to the recovery panchanama, during his cross-examination by the prosecution, are taken into account, the recovery is of no avail to the prosecution as the origin of blood on these clothes could not even be identified. At best, the presence of blood on these clothes could only lead to suspicion against the accused and it is well settled that suspicion, however strong, cannot take the place of legal proof [See **GODDEGUDEM VADENNA V/s. STATE OF A.P³**]. In effect, except for demonstrating that the death of the deceased was a homicidal one, the prosecution has not moved an inch further. To compound matters further, the manner in which the investigation went about, commencing from the actual date and time of receipt of Ex.P1 complaint and the commencement of the investigation process leaves ample scope for consultation, deliberation and manipulation by the police. Even if it is accepted that Ex.P1 complaint was submitted only on 14.12.2007 at about 7.00 AM, resulting in Ex.P8 FIR being registered at 8.00 AM, no explanation is forthcoming as to why the FIR was not forwarded to the Court till 5.20 PM. The overwhelming

³ 2011 (1) ALT (CrI.) 291

evidence of the witnesses is to the effect that Ex.P1 complaint was in fact received by the police on 13.12.2007 itself; that the police came to the scene on that day evening; recorded their statements and also commenced investigation. Further, the witnesses also confirmed that the sniffer dog, pressed into service by the police, implicated Sevyra, the uncle of the deceased, who was not even brought into the picture.

Given the totality of these circumstances, this Court has no doubt in its mind that the entire process of investigation was manipulated from the start and no evidence, much less clinching evidence, is available with the prosecution to prove beyond reasonable doubt that the accused caused the death of the deceased. In a case resting on circumstantial evidence, the prosecution must invariably establish a chain of unbroken events unerringly pointing towards the guilt of the accused and none other [See **HANUMANT GOVIND NARGUNDKAR V /s. STATE OF M.P.**⁴, **PADALA VEERA REDDY V/s. STATE OF A.P.**⁵, **C. CHENGA REDDY V/s. STATE OF W.B.**⁶, **RAMREDDY RAJESH KHANNA REDDY V/s. STATE OF A.P.**⁷, **MAJENDERAN LANGESWARAN V/s. STATE (NCT OF DELHI)**⁸ and **SHARAD BIRDHICHAND SARDA V/s. STATE OF MAHARASHTRA**⁹].

It is clear from the record in the case on hand that the prosecution failed to do so. Conviction of the accused under Section 302 IPC is therefore wholly unsustainable. As no evidence whatsoever was let in by the prosecution to establish commission of the offence of rape, his conviction under Section 376 IPC is equally unsustainable. As the guilt of the accused in having committed any offence is not proved

⁴ AIR 1952 SC 343

⁵ 1989 Supp (2) SCC 706

⁶ (1996) 10 SCC 193

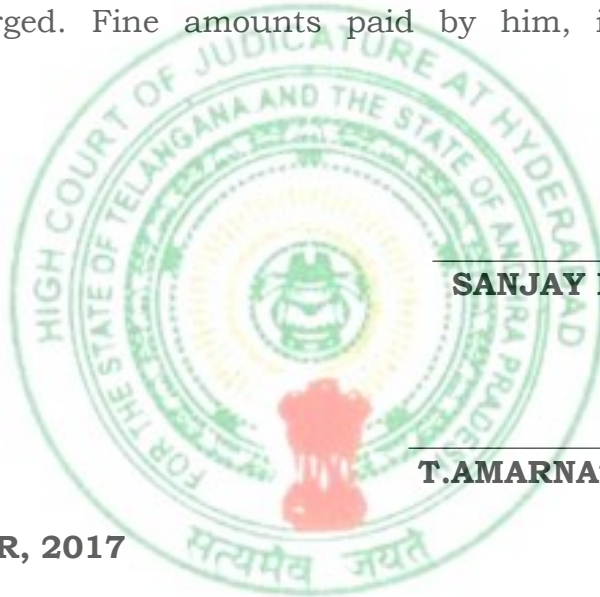
⁷ (2006) 10 SCC 172

⁸ (2013) 7 SCC 192

⁹ AIR 1984 SC 1622 : (1984) 4 SCC 116

beyond reasonable doubt, the question of his causing disappearance of evidence thereof does not arise. His conviction under Section 201 IPC therefore cannot stand and is also set aside.

On the above analysis, the appeal is allowed setting aside the judgment dated 06.04.2011 passed by the learned IV Additional District and Sessions Judge (FTC), Mahabubnagar, in Sessions Case No.358 of 2009. The appellant/accused who is now on bail shall present himself before the authorities concerned for completion of the necessary formalities in the light of his acquittal. Bail bonds furnished by him at the time of his securing conditional bail shall stand discharged. Fine amounts paid by him, if any, shall be refunded.



SANJAY KUMAR, J

T.AMARNATH GOUD, J

24th OCTOBER, 2017

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