

* HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

+ CRIMINAL APPEAL No. 3 of 2017

%22.02.2017

The State of Telangana rep. by the
Public Prosecutor

...Appellant/
Complainant

Vs.

\$ Syed Dasthagir

.... Respondent/
Accused

! Counsel for the Appellant : Public Prosecutor

Counsel for Respondent: Sri N. Parameswara Reddy

<Gist :

>Head Note:

? Cases referred:

2015(2) ALT (Crl.) 6 (SC)



HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

CrI.A.No. 3 of 2017

JUDGMENT:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This Criminal Appeal is preferred by the State against the judgment and order dated 03.10.2016 delivered in S.C. PCS No. 129 of 2015 by 1st Additional Metropolitan Sessions Judge-cum-Special Judge for Trial of Cases Under Protection of Children from Sexual Offences Act, 2012, Hyderabad, whereby the accused was found not guilty of the offences punishable under Sections 363, 376, 377, 302 and 201 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012, and accordingly, acquitted from all the charges.

2) In brief, case of the prosecution is that on 12.08.2015, at 06:00 hours, PW1 lodge a complaint stating that her daughter – Huda Begum was found missing, accordingly, a case in Cr.No. 112 of 2015 was registered by PW19 – Sub-Inspector of Police and handed over to PW20 – Inspector of Police. During investigation, on 14.08.2015, at Aman Nagar-B, at Mohd. Ali's new house, which was under construction, PW20 found dead body of a girl floating in water sump in ground-floor and identified it as that of the daughter of elder brother of PW4. On receipt of the above complaint,

the offence punishable under Section 302 IPC was added in the crime, and investigation was handed over to PW21.

3) During the course of investigation, PW21 visited the scene of offence; conducted panchanama; drawn rough sketch in the presence of PWs.12 and 13; seized material objects under scene of offence panchanama; recorded the statements of panch witnesses; took photographs of the dead body and the scene of offence; sent the dead body to Osmania General Hospital, Hyderabad where post-mortem examination was conducted and statements of witnesses were recorded. While so, on 21.08.2015 at 08:00 hours, the Inspector of Police apprehended the accused, and on his confessional statement, seized blue colour shirt from the house of the accused and pant wearing by him at the time of committing crime. The doctor, who conducted post-mortem examination, opined that the cause of the death was due to ligature strangulation.

4) The investigation further revealed that on 11.08.2015, the accused and his friend went to a wine shop, consumed alcohol from 16:00 to 18:00 hours and they separated from each other. After reaching Murad Mahal Road near beef shop the accused saw the victim girl proceeding alone beside Quba Mosque lane. When the accused caught her hand, she made hue and cry, but he forcibly took her to a

dark and barren place in a house under construction. While struggling herself, the girl said that she would inform the same to her parents, but the accused forcibly committed rape on her by having unnatural sex. Thereafter, strangled her to death and concealed her body in the water sump with an intention to escape from the public view. After completing the investigation, the police filed charge sheet.

5) The trial Court framed charges against the accused for the offences punishable under Sections 363, 376, 377, 302 and 201 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012, read over and explained to the accused in Telugu, however, he pleaded not guilty and claimed to be tried.

6) To substantiate the case of the prosecution, it examined PWs.1 to 22 and got marked Exs.P1 to P28 and M.Os.1 to 5.

7) After closing the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. wherein he denied the incriminating evidence led against him. However, no defence witnesses were examined nor got marked any documents on behalf of the accused. The trial Court, on appreciation of evidence, held the guilt was not established and accordingly acquitted the accused. Hence, the appeal by the State.

8) The learned Public Prosecutor appearing on behalf of the appellant – State submits that the learned trial Court ought to have seen that the ingredients to constitute the offences punishable under Sections 363, 376, 377, 302 and 201 IPC and Section 6 of P.O.C.S.O. Act are made out by the prosecution against the accused. Thus, the findings of the trial Court are not correct because PW9 has clearly stated that on 14.08.2015, at about 09:00 a.m., when the police called him, to act as witness, at the scene of offence, he observed human hair and one shirt button near the sump and the police seized them in his presence and panchanama was drafted to that effect. Chits were also affixed to the material objects, however nothing is elicited in cross-examination to show that PW9 is speaking falsehood. There is not even a suggestion that no such hair or button was recovered from the scene of offence at the time of conducting panchanama.

9) The learned Public Prosecutor further submits that the trial Court also over-looked the important fact that only on account of CCTV footages, the role of the accused had come to light and it is clear that from the date of the offence the accused was not in the vicinity of the city. After his arrest, on confession, a ticket, which was in possession of the accused was seized which goes to show that he had traveled from Bahalki to Hyderabad in the mid-night of 19.08.2015.

The trial Court has not discussed regarding this piece of evidence nor any proper reasoning had been given on this aspect. Even without any cross-examination, the trial Court, on assumptions and presumption, had drawn adverse inferences.

10) Learned Public Prosecutor further submitted, PW17 clearly stated that the police recovered one bus ticket from the accused and he led them to his house where one full-hands shirt in black and blue colour and one light blue colour jeans pant were recovered at the instance of the accused. On examination, the Assistant Director of FSL found that the hair seized at the scene of offence tallied with that of the accused and the button matched with that of the clothes of the accused. So also the blood stains on jeans pant of the accused tallied with those of the deceased.

11) The learned Public Prosecutor, while concluding his arguments, submits that the trial Court overlooked the scientific evidence which connects the accused with the crime and only taking into consideration the insignificant lapses on the part of investigation, the trial Court acquitted the accused which is unjustified in law.

12) Per contra, learned counsel for respondent/ accused supported the judgment arguing that the trial Court considered both oral and documentary evidence

meticulously and came to the conclusion that prosecution utterly failed to connect the accused to the offence and accordingly acquitted him, and there were no merits in the appeal and prayed to dismissed the appeal.

13) We have heard the learned counsel for the Public Prosecutor and Sri N.Parameswara Reddy, learned legal aid counsel for the respondent-accused and perused the material placed on record.

14) The point for determination is:

“Whether the judgment of the trial Court is factually and legally sustainable?”

15) Keeping in view the issues raised by the learned Public Prosecutor, we feel it is not necessary to discuss the oral evidence of all the prosecution witnesses, however we are confined only to the issues raised by the appellant.

16) It is not in dispute that the prosecution has bounden duty to establish last seen theory in respect of the persons present at the scene of offence. To explain the same, the prosecution relied on the evidence of PWs.13, 14 and 15 identifying the person of the accused. As per the observations of the trial Court, CC TV footage was exhibited in the open Court, and on verification of the same, the Court observed that one man and a woman were walking in the street, but their faces were not legible. PW13 admitted in the cross-examination that as per the contents of Ex.P10 –

Compact Disk, a female and two male persons were walking in the lane and denied a suggestion that he cannot correctly identify them.

17) However, as per the evidence of PW14, the trial Court verified CC TV footage and observed that two male persons were purchasing wine from a wine shop. During cross-examination of PW14, some omissions are confronted to him in respect of photographs and also about the obtaining of CC TV footage with the assistance of Technician.

18) The trial Court recorded that though these aspects are elicited, these are not material particulars in the evidence of PW14 and 15, and are not sent to the Expert for comparison, which was essential in this case in establishing the last seen theory.

19) Moreover, the prosecution tried to establish the motive on the part of the accused to commit offence with the victim/deceased girl, but no evidence has come on record to that effect from the material witnesses, more particularly PWs.1 to 4, relatives of the deceased.

20) In the case of *Tomasco Bruno and another v. State of U.P.*¹ the Apex Court has held that in every case based upon circumstantial evidence, the question that needs to be determined is whether the circumstances relied on by the prosecution are proved by reliable and cogent evidence

¹ 2015(2) ALT (CrL.) 6 (SC)

and whether all the links in the chain of circumstances are complete so as to rule out the possibility of innocence of the accused. It is further held that the conviction can be based solely on the circumstantial evidence. But, it should be tested on the touchstone of the law relating to circumstantial evidence.

21) The settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

22) It is not in dispute that the case in hand is based on the circumstantial evidence and there is no direct evidence connecting the accused to the crime. To establish the same, the prosecution relied on Exs.P10 and P11 –CC TV footage and expert evidence and also on the confession statement of the accused.

23) However, none of the suspicious circumstances were cogently established. Ex.P6 – scene of offence panchanama was drawn on 14.08.2015 at 09:30 hours. Ex.P7 – Rough sketch was drawn at 09:00 hours. There is no date

under the signature on Ex.P21. But, Ex.P6 shows date under the signature. There is correction at “shirt obtained as black” and it appears that “black” is added and at the time of giving signature which is drawn as Inspector of Police under Ex.P6, but in Ex.P7 – Rough sketch, it is drawn as Sub-Inspector of Police under Ex.P7 and in Ex.P6, name of the scribe is shown as B.Ramesh, but in Ex.P7, name of the scribe is not shown. However, as per record, it is established that both Exs.P6 and P7 are drawn at the same time, but Ex.P7 is in different ink when compared with Ex.P6 which created doubt in the mind of the Court. At the same time, Ex.P7 is covered with some panchas and scribed by B. Ramesh showing as Sub-Inspector of Police, but Ex.P6 is not tallying with Ex.P7 which is in English. But, Ex.P6 is in Telugu writing and there is no possible explanation from the prosecution why these documents differ with each other and why two inks are used for preparing Exs.P7 and P6. The descriptive particulars of LW13 are also not tallied with Exs.P6 and P7. Ex.P8 – inquest report does not refer to the theory of rape.

24) Moreover, F.S.L. report refers two dates, one is 20.08.2015 and another is 31.08.2015. The case of the prosecution is that the hair of the accused was collected for obtaining report from Forensic Science Laboratory, but there is no reference in the scene of offence panchanama in respect

of the hair. There is no explanation from the prosecution more particularly from PW21 – Investigation officer as to the custody of the seized property from 14.08.2015 to 21.08.2015 till it was sent to FSL laboratory.

25) It is well known that the link relating to the custody of the property is very essential, but Ex.P13 - bus ticket does not contain the name of the accused. Ex.P14 – admissible portion of confession panchanama, is also doubtful about the scene of offence in respect of the alleged rape and Ex.P13 is previous bus ticket and Exs.P23 and P24 are letters of advice dated 20.08.2015 and 21.08.2015 respectively.

26) It is also not in dispute that the accused was arrested prior to 21.08.2015, as such, the dates are changed and more particularly the confession statement though it was recorded on 21.08.2015. The prosecution tried to prove the same with the assistance of PW17 – Assistant Director, who issued FSL report, but the confession statement has been in detail and reflected the total investigation done so far and it gives doubt in the mind of the Court as to how and when the accused person was arrested. There were doubts in the investigation in respect of missing of the victim from her house and the details of the house under construction which cannot be ruled out. Subsequent recovery is also doubtful. There is no expert opinion in respect of the role of rape and

sexual intercourse. PW18 - Doctor is silent about the injuries if any on the part of the deceased's genital organs but he preserved vaginal and anal swabs and failed to make the Court understand as to how he collected such things from the dead body and there is no positive answer from the prosecution side. Inquest report and post mortem report are silent to that effect. Though the prosecution tried its best to prove bus ticket of the accused, but could not do so. The presence of the accused is not established at the scene of offence. To that extent there is no evidence, particularly Exs.P10 and P11 are not supporting the prosecution case on the ground that one was at 4' O clock i.e. by that time the victim was at the house and another was at 07:30 p.m. but the report shows that the victim left the house at 07:30 p.m. In addition to the above, there is suspicion in the evidence of the prosecution that the accused took the victim forcibly, and it does not support the version of the prosecution. Exs.P6 and P14 appear to have been fabricated for the purpose of implicating the accused. There is no seizure of hair and black button at the scene of offence and Ex.P6 is fabricated by making some addition in respect of black button and hair which is doubtful.

27) Accordingly, the trial Court ruled out the last seen theory on the ground that Ex.P23 – letter of advice gives various dates i.e. 20.09.2015, 21.08.2015 and again

20.08.2015 and there is no proper explanation for the seized property on 14.08.2015.

28) Keeping in view the facts recorded above, the learned trial Court opined that though the prosecution has successfully established the death of the deceased, but failed to connect the accused by giving cogent and convincing evidence in respect of the last seen theory and also the motive on the part of the accused as the total case of the prosecution differs with the evidence. The trial Court held, the prosecution failed to establish the case against the accused for the alleged offences.

29) It is pertinent to mention here that the trial Court gave its opinion that the documents might have been fabricated for the purpose of implicating the accused in the present case.

30) After perusal of the trial Court judgment, and the evidence of the prosecution witnesses and other material on record, we are of the considered opinion that there is no perversity and illegality in the opinion of the trial Court whereby the accused has been acquitted.

31) Accordingly, we confirm the judgment dated 03.10.2016 delivered in S.C. PCS No. 129 of 2015 by I Additional Metropolitan Sessions Judge-cum-Special Judge for

Trial of Cases under Protection of Children from Sexual Offences Act, 2012.

32) We find no merit in the Criminal Appeal, and the same is accordingly dismissed.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

22.02.2017

U.DURGA PRASAD RAO, J

Note: L.R. Copy to be marked
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