

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

CRIMINAL APPEAL No.580 of 2012

JUDGMENT : (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has assailed the judgment dated 20th March 2012, passed by the IV-Additional District and Sessions Judge (FTC), Mahabubnagar, in Sessions Case No.17 of 2012, whereby, the appellant was found guilty for the offence punishable under Section 302 of IPC and was accordingly convicted and sentenced to suffer imprisonment for life and pay a fine of Rs.200/-, in default, to suffer simple imprisonment for one month.

2. Case of the prosecution is that the deceased was an Agriculturist and resident of Ippatoor village. He got two sons and 5 daughters. All are married. The elder son Narayana i.e. the appellant is residing along with his wife and children at Veerapuram of Kulkacherla Mandal. About 5 years prior to the incident, he went there and eking livelihood by doing their caste profession. The younger son Balaiah was residing at Mahabubnagar along with his family. The deceased, his wife and grand daughter Nagalakshmi were residing at Ippatoor village. The deceased disposed of his agricultural land. From the sale proceeds amount, he paid Rs.1,00,000/- each to his two sons. Some amount was paid to his daughters and the remaining amount was kept with him for his future life. About one week prior to the incident, the appellant/Narayana, along with his children, came to Ippatoor village, picked up quarrel with the deceased demanding some more amount out of the sale proceeds of

agricultural land. He also threatened his father with dire consequences of doing away with his life, if he was not given some more amount. The incident was witnessed by PW-2 and LW-4/Nagalaxmi. On 08.07.2011, again, the appellant went to Ippatoor village and remained in the house of his parents. On 09.07.2011, PW-2 and LW-4/Nagalaxmi left Ippatoor for Pothanapalli village to attend a function. At that time, the deceased and the appellant alone were present in the house. PW-1 requested PW-2 to serve food to the deceased and her son on the night of 09.07.2011. Accordingly, on the night of 09.07.2011, PW-2 served food to the deceased and the appellant when they were present in the house. On the night of 10.07.2011, taking advantage of loneliness of the deceased, the appellant again demanded further amount from his father. When he refused, the appellant attacked and hit on the head of the deceased with a pestle, causing severe bleeding injuries resulting in his death on the spot. On the next day morning at about 7.30 a.m., while the appellant was leaving Ippatoor village in a hurry state, PW-4 witnessed him while she was returning home after attending calls of nature. Thereafter, PW-2 went into the house of deceased to provide tea to the deceased and found him dead on the cot with bleeding head injury. She came out and made screams, upon which, neighbours rushed there. PW-5 contacted PW-1 over phone and informed about the incident. When the Police made efforts for searching the appellant, he absconded from Veerapuram village. On 13.07.2011, the appellant appeared before PW-6, who is the village elder of Ippatoor village and made extra-judicial confession about

commission of offence and requested him to rescue him from Police case. PW-6 assured to help him advising to surrender before the Police.

3. Learned counsel appearing on behalf of appellant submitted as follows:

(i) PW-1/wife of the deceased deposed in the cross-examination that their sons Narayana (appellant) and PW-3/Balaiah used to visit their house to enquire their welfare. There were no disputes between her husband and their sons. She further deposed that after selling the land, her husband distributed amount equally to the appellant and PW-3/Balaiah. After distributing amount to the appellant and PW-3, the appellant had not asked money from herself or from her husband. In her presence, the appellant never threatened to kill her husband.

(ii) PW-2, the neighbour of PW-1, deposed that she has not seen the appellant or PW-3/Balaiah quarrelling with their father. As per the request of PW-1, she served food to the deceased and appellant on the night of the date of incident. She did not particularly saw where exactly the brain matter of deceased fell in the house. She had not witnessed the appellant killing his father Jangaiah. After noticing the dead body of Jangaiah at the house, she came out of the house by weeping, and in the meanwhile, neighbours gathered there. In her presence, the appellant never threatened to kill his father Jangaiah. It was not in her knowledge whether there were any quarrels between the appellant and his parents.

(iii) PW-3/the brother of the appellant and son of the deceased deposed that they were having 2½ acres of ancestral land, which was sold by his

father. His father gave Rs.1,00,000/- each to himself and his brother Narayana, the appellant. His father also gave some amount to his sisters and was having remaining amount with him. His brother Narayana/appellant used to visit his parents' house at Ippatoor village. He does not know whether his brother Narayana used to demand money from his father. The appellant used to visit his parents to enquire about their welfare. The appellant was having good relationship with his parents. He admitted the suggestion that his father gave Rs.1,00,000/- each to himself and the appellant. After that, his brother Narayana never demanded his father to pay further amount. He had no knowledge as to who killed his father.

(iv) PW-4 deposed that PW-2 is her grand daughter. Her house at Ippatoor village is situated by the side of the house of PW-1. In her cross-examination, she deposed that the appellant used to visit his parents' house at Ippatoor village to enquire about their welfare. She denied the suggestion that the appellant used to sleep at the house of his relatives. Her house is very near to the house of the deceased and in between the two houses, there is a vacant place. Police has not inquired her about the death of the deceased. She has not asked the appellant on the next day morning as to where he was going.

(v) PW-5 deposed in his cross-examination that he does not know as to who were present at the house of deceased/Jangaiah during the night of the date of incident. He admitted that the deceased Jangaiah used to

consume Toddy. However, he denied the suggestion that the deceased/Jangaiah used to fell on the ground in intoxicated state.

(vi) PW-6 deposed in the cross-examination that two days prior to the death of Jangaiah, he witnessed the appellant and his father covering the roof of their house with stones. He admitted the suggestion that the appellant was having cordial relations with his parents and brother. He does not know about any disputes between the appellant and his father. He did not inquire the appellant as to how much amount his father paid to him and how much still he requires to pay.

4. Based on the above evidence, learned counsel appearing on behalf of appellant submits that all the witnesses mentioned above deposed that the appellant had very cordial relations with his parents and his brother/PW-3. He was staying in a different village with his wife and children. He used to come to the village of his parents to enquire their welfare. He got equal amount along with his brother out of the sale proceeds of agricultural land from his father, therefore, there was no dispute regarding the money, and hence, there was no motive or purpose to kill his father. Despite that, the learned trial Court has over-sighted the depositions made by the witnesses mentioned above and convicted the appellant for the offence under Section 302 of IPC.

5. It is further submitted that there was no eyewitness to the incident and the case of the prosecution rests on circumstantial evidence. The prosecution has to establish every link between the chain of circumstances relied upon to come to the conclusion that except the

appellant, there was no possibility for others to kill the deceased. PW-1/Narsamma and PW-3/Balaiah have categorically stated that the appellant was having cordial relations with his deceased father and the prosecution failed to prove the motive for the offence. There were number of omissions in the chief-examination of PW-4/Chakali Balamma and the prosecution failed to prove its case beyond reasonable doubt. Thus, he prayed that the appellant deserves to be acquitted.

6. On the other hand, learned Public Prosecutor appearing on behalf of the State argued that the evidence of PWs.1 to 4 coupled with the medical evidence and also the evidence of PW-6 has established that the deceased was last seen alive with the appellant and the appellant made extra-judicial confession before PW-6. The medical evidence also supports the ocular evidence produced by the prosecution. He submitted that since PWs.1 to 4 are inter-related with the appellant, they deposed before the trial Court contrary to the prosecution, whereas, in their chief-examinations, they supported the case of the prosecution. Therefore, the trial Court has ignored the contradictions, which are not material, and in favour of the appellant, convicted the appellant for the offence under Section 302 of IPC. There is no merit in the present appeal and it deserves to be dismissed.

7. Having heard learned counsel for the parties, we have perused the record.

8. PW-1/Narsamma, who categorically stated that when she was at Pothanapally village, her villager informed that her husband died.

On that, she returned to her village and saw the dead body of her husband inside the house lying on the cot with head injury. Even the evidence of PW-2/Uma Devi, who first saw the dead body of Jangaiah, also shows that the deceased was lying dead on the cot in his house with grievous head injuries. Further more, PW-3, another son of the deceased, also stated that after receiving information about the death of his father, he came to Ippatoor village and saw the dead body of his father lying on the cot in their house. He further deposed that he noticed grievous head injury on the dead body of his father.

9. PW-4/Chakali Balamma, neighbour of the deceased and PW-5/Balraj, a resident of the deceased's village, have also categorically deposed about noticing the dead body of deceased Jangaiah lying on cot with grievous head injury. PW-5 has even deposed that M.O.1/Pestle was lying by the side of dead body of Jangaiah. Further, the evidence of PW-7/Midde Narayana coupled with the evidence of PW-11/Inspector of Police shows that the dead body of Jangaiah was lying on the cot at his house in Ippatoor village and they also noticed M.O.1/Pestle by the side of dead body.

10. The evidence of PW-9/Medical Officer is that on 10.07.2011, as per the requisition of the Inspector of Police, Mahabubnagar (Rural) P.S., he conducted autopsy over the dead body of Jangaiah and found depressed fracture on right frontal temporal parietal region of scalp with exposure of brain. He categorically stated that the cause of death to the best of his knowledge was cardio respiratory arrest due to haemorrhage

shock secondary to injury to vital organ i.e. brain. He also deposed that he conducted autopsy at 3.30 p.m. on 10.07.2011 and the approximate time of death was 6 to 10 hours prior to the post-mortem examination. He also deposed that ante-mortem injuries are possible with pestle like M.O.1. In the cross-examination, he deposed that the external injuries shown in Ex.P-7/autopsy report are not possible when any person falls on sharp edged stone or due to fall of any tiles of dilapidated house.

11. It is to be noticed that PW-1/mother of the appellant and wife of the deceased deposed that on receipt of information about the death of her husband when she returned to the house, the appellant was not in the house. She further deposed that her husband gave Rs.1,50,000/- each to the appellant and her another son Balaiah (PW-3) out of the sale consideration of land, and was having some money with him, but when she returned to the house, she did not find the money which her husband was having. She categorically stated that during the life time of her husband, appellant used to visit their house and also used to demand money from her husband and even the appellant used to commit theft of money. In the cross-examination, she deposed that Eight days prior to the death of her husband, the appellant went to their house along with his wife and demanded her husband to pay money, for which, her husband informed that the said amount was required for his livelihood. She further deposed that the appellant threatened her husband with dire consequences.

12. PW-2/Uma Devi, a neighbour of the deceased, who stated to have first seen the dead body of the deceased, deposed that one day, PW-1/Narsamma went to Pothanapally to attend a function and requested her to serve food to the deceased and appellant, who were there at the house. Due to that, on that day night at about 8.30 p.m., she went and served food to the appellant and deceased when they were at their house. On the morning of 10.07.2011, again she went to the house of the deceased to serve tea as per the instructions of her grand mother. At that time, she noticed the dead body of Jangaiah lying on the cot with grievous injuries on head and a pestle was lying by the side of the dead body. She deposed that she thought that the appellant, who was present in the house along with the deceased on previous day alone has got chance to kill his father Jangaiah. She even deposed that on the morning of 10.07.2011, when she went to the house of the deceased, the appellant was not in the house. In the cross-examination, she admitted that she had not seen the appellant or Balaiah (PW-3) quarrelling with their father. As per the request of PW-1/Narsamma, she served food to the appellant and the deceased on that day and night time as well. When she provided food to them, at that time, the deceased Jangaiah and the appellant were only present at their house. She further deposed that the appellant came to his parents' house one day prior to the death of his father Jangaiah.

13. PW-3/Balaiah, younger brother of the appellant and son of the deceased, deposed that after receiving death message, he came to Ippatoor village and saw the dead body of his father lying on cot with grievous injuries. His father was having about 2½ acres of agricultural

land, which was sold and had given Rs.1,00,000/- each to himself and appellant and also given some amount to his sisters and kept some amount with him. The appellant used to visit his parents' house at Ippatoor village but he does not know whether the appellant used to demand money from his father. In the cross-examination, he denied to have stated before the Police that the appellant was responsible for the death of his father.

14. PW-4/Chakali Balamma, neighbour of the deceased and resident of Ippatoor village has deposed that on the next day of incident in the early morning, when she was going towards open fields to attend calls of nature at about 7.00 a.m., appellant went out of the house of his father Jangaiah. After some time, she asked her grand daughter Uma Devi (PW-2) to go to the house of Jangaiah to serve tea. Then PW-2 went to the house of Jangaiah and returned by weeping that Jangaiah died. She further deposed that 5 to 6 days prior to the death of Jangaiah, the appellant went to the house of deceased and was staying with him. She also deposed that PW-1/Narsamma went to Pothanapally village to attend a function and as per her instructions, her grand daughter served food to the appellant and deceased on that night, and at that time, appellant and his father alone were present in the house. However, she stated that she does not know as to who killed the deceased Jangaiah. In the cross-examination, she admitted that the appellant alone went to his parents' house one week prior to the death of Jangaiah. She asked her grand daughter Uma Devi (PW-2) to provide food to the appellant and the deceased on that night at about 7.00 p.m. However, she denied the

suggestion that the appellant used to sleep at the house of his relative but not in the house of his father whenever he visits his parents' house. She categorically stated that her house is very near to the house of the deceased Jangaiah.

15. PW-5/M.Balraj deposed that on the date of incident at 7.00 a.m., PW-2/Uma Devi was weeping at the house of deceased Jangaiah. On enquiry, he came to know that Jangaiah died and saw the dead body lying in the cot with grievous injuries. His evidence was with regard to noticing the dead body of Jangaiah and also M.O.1 pestle by the side of the dead body. He deposed that at that night time, the appellant was not present in the house.

16. PW-6/Telugu Swamy, a resident of Ippatoor village deposed that his house is situated in the village near bus stop and on the next day of noticing the dead body of deceased, the appellant came to his house at about 7.00 p.m. and on his enquiry, appellant informed him that he killed his father as his father failed to pay full amount to him after selling the land. In the cross-examination, he deposed that two days prior to the death of the deceased, he witnessed the appellant and his father covering the roof of their house with stones. He also deposed that he does not know whether there were any disputes between the appellant and his father.

17. PW-7/Midde Narayana deposed about Police visiting scene of offence, drafting panchanama in crime details form and seizing M.Os.1 to 3 from the scene of offence. In the cross-examination, nothing

favourable to the appellant, was elicited. PW-8/Mohd. Abdullah is the witness signing confessional panchanama marked as Ex.P-6. PW-10/Sub-Inspector of Police deposed about registering the case after receiving complaint from PW-1/Narsamma, which is marked as Ex.P-8.

18. The deposition of PW-11/Inspector of Police is with regard to investigation i.e. on receipt of information about the confession of offence, he visited the scene of offence, conducted scene of offence observation, drafted crime details form in Ex.P-10 and seized M.O.1/pestle with blood stains lying near the dead body of Jangaiah in the presence of mediators. He also deposed about recording the statements of witnesses and sending material objects to the Forensic Science Laboratory, Hyderabad. Ex.P-13 is the F.S.L. report. He further deposed about sending the dead body of deceased to the Government hospital for conducting post-mortem examination. In the cross-examination, some omissions in the evidence of PWs.1 to 4 were elicited, which the trial Court considered to be of not material.

19. It is not in dispute that there was no eyewitness to the incident and the case of the prosecution rests upon the circumstantial evidence. In the case of **Sampath Kumar v. Inspector of Police, Krishnagiri** (Crl.A.No.1950/2009, dated 02.03.2012), the Hon'ble Supreme Court has discussed the legal position regarding the standard of proof and the tests, which the circumstantial evidence must satisfy.

20. In the case of **Sharad Birdhichand Sarda v. State of Maharashtra**¹, the following five tests are held to be satisfied in a case based on circumstantial evidence :

- “1. *The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
2. *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.*
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*
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.”*

21. A piece of circumstantial evidence indirectly by means of certain inferences or deductions to be drawn from its existence and their connection with facts *probantia* (facts that are in issue, that are to be proved) is circumstantial evidence. So, circumstantial evidence ordinarily means a fact from which some other is inferred. Even the prosecution case rests on the theory of last seen together which comes into play whether time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime, becomes impossible.

¹ (1984) 4 SCC 116

22. In the case in hand, the prosecution has mainly relied upon the theory of deceased last seen alive together with the appellant at his residence in Ippatoor village, for which, it is pertinent to note that it is not suggested to any one of the prosecution witnesses that the appellant had not visited his parents' house on 08.07.2011. It is also not suggested in the cross-examination of prosecution witnesses that PW-1/Narsamma never went to Pothanapally village on the day of death of her husband. Further more, PW-1 categorically deposed that the appellant used to demand money from her husband and her husband was also having some money with him after selling the land. The evidence of PW-1/Narsamma and PW-3/Balaiah clearly show that though they know real facts about the case of death of deceased Jangaiah, they didn't fully come out from the truth, but they deposed that the appellant visited the house of deceased on the fateful day which was denied in their cross-examination. PW-2/Uma Devi had categorically deposed that she went to the house of deceased on the fateful day to serve food, and at that time, she found that deceased and appellant were alone present in the house of the deceased. She also deposed that on the next day morning when she went to the house of deceased to serve tea as per the instructions of her grand mother (PW-4), she found the dead body of deceased lying on the cot with grievous head injury. She also noticed M.O.1/pestle by the side of the dead body.

23. Further more, the evidence of PW-4/Chakali Bamma also connects the link between the chain of circumstances relied on by the prosecution, as she deposed that she saw the appellant coming out from

the house of the deceased in the early morning when she was proceeding to the fields to attend calls of nature. So, it is proved by the prosecution that the appellant was with deceased on the date of the death of deceased in the house, and at that time, nobody else were present.

24. It is also established by the prosecution that the deceased was last seen along with the appellant at his house and on that day, wife of the deceased i.e. PW-1 went to her daughter's village to attend a function. So, the last seen theory comes into play, as the time gap between the point of time when the appellant and deceased were seen last alive and when the deceased was found dead is so small that possibility of any person other than the appellant being the author of crime, has become impossible. When the prosecution, on the basis of reliable evidence, establishes that the deceased was last seen alive in the company of the appellant and was not seen thereafter, it is obligatory on the part of the appellant to explain the circumstances in which the deceased had died. However, the appellant failed to explain those circumstances.

25. It is also the evidence of PW-1/Narsamma and PW-3/Balaiah, who were the mother and brother of the appellant, that the deceased Jangaiah sold the land and distributed some part of sale proceeds to his sons i.e. the appellant and PW-3 and also kept some amount with him. The evidence of PW-1/Narsamma also proves that the appellant demanded her husband to give money kept with him, for which, the deceased told the appellant that money was required for his livelihood. So, the said

version of PW-1 is quite natural and probable and there is no reason to disbelieve her version.

26. There is no evidence on record that PWs.2 and 4 are not neighbours of the deceased, due to that, there is nothing strange in PW-1 requesting PW-2 to serve food to her husband and appellant when she was going out of village. It is established that the appellant went to his parents' village on that day and stayed in the house with the deceased, and on that night, nobody were present in the house. It is also established by the prosecution that the appellant used to visit the house of his parents and used to demand money from the deceased, for which, the deceased refused. The evidence of PWs.2 and 4 shows that the appellant was found in the company of the deceased and was coming out from the house of deceased on the next day morning. It is pertinent to mention here that PWs.3, 5 and 6 have not deposed about any quarrels between the appellant and the deceased, however, it cannot be said that the appellant had no motive to kill his father in view of the evidence of PWs.1 and 3 with regard to demand of money by the appellant. Further, simply because the neighbours of deceased have deposed that the appellant was having cordial relations with his parents, it cannot be ruled out that the appellant had no grudge against his father, as the evidence of PW-1/wife of the deceased is that the appellant demanded some more money from the deceased, out of the sale proceeds. Even there is no denial on the part of the appellant with regard to the distribution of sale proceeds by his father and retaining some amount with the deceased. So, the family members and relatives alone may be aware of quarrels within

the family and neighbours may not have knowledge about the such quarrels or misunderstandings.

27. In view of the evidence discussed above, the prosecution has proved that the appellant had motive to kill his father. The appellant went to the house of deceased on the fateful day and stayed with his father in the house and the deceased was last seen alive together with the appellant and the appellant was also seen coming out from the house of the deceased on the next day morning, for which, there was no explanation on the part of the appellant even in the 313 Cr.P.C. examination.

28. In view of above discussion and in the facts and circumstances of the present case, we find no illegality or perversity in the order and judgment passed by the learned trial Court convicting the appellant for the offence punishable under Section 302 of IPC.

29. Appeal is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

9th February, 2018

ajr

N. BALAYOGI, J