

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

CRIMINAL APPEAL Nos.798 & 851 OF 2012

COMMON JUDGMENT: (Per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Both these criminal appeals, namely Criminal Appeal No.798 of 2012, and Criminal Appeal No.851 of 2012, arise out of the same impugned judgment, dated 23.07.2012, passed by the X Additional District and Sessions Judge (FTC), Ranga Reddy District, in Sessions Case No.529 of 2009, whereby the learned Judge has convicted Kandadi Raveena (A-1), appellant in Criminal Appeal No.798 of 2012, for the offence under Section 302 IPC and convicted Thurugopu Krishnam Raju @ Krishna (A-2), the appellant in Criminal Appeal No.851 of 2012, for the offence under Section 302 read with Section 109 IPC. For the offence under Section 302 IPC, and for the offence under Section 302 read with 109, the appellant Nos. 1 and 2, respectively, have been sentenced to life imprisonment and with fine of Rs.1,000/-, and in default, to undergo simple imprisonment for one month.

Since both these appeals arise out of the same judgment, they are being decided by a common judgment.

Briefly stated the facts of the case are that on 17.06.2007, Kandadi Malla Reddy (P.W-1) filed a compliant (Ex.P-1) before the Inspector of Police, Uppal Police Station, wherein he claimed that for the last two years his elder son, K. Jagan Mohana Reddy, aged about 35 years, was living separately along with his wife and children in his own house at Bhimareddy Nagar. On 16.06.2007

at 7:00 p.m, his son talked with him and went away. On 17.06.2007 at 3:00 a.m, his daughter-in-law K. Raveena (A-1) contacted him on telephone and informed that his son, K. Jagan Mohan Reddy, died in Secunderabad Yashoda hospital. Then, they immediately went to that hospital and found K. Jagan Mohan Reddy's dead body. He is suspicious about his daughter-in-law, K. Raveena (A-1), and her paramour, Krishna (A-2).

On the basis of the said report, initially, FIR was registered under Section 174 Cr.P.C. However, according to Mr. B. Ravinder, S.I. of police (P.W-17), when K. Raveena (A-1) and T. Krishnam Raju @ Krishna (A-2) were produced before the Police Station by Mr. B. Ramireddy (P.W-16), he altered the Section of law from 174 Cr.P.C. to 302 IPC. Subsequently, K. Raveena (A-1) and T. Krishnam Raju @ Krishna (A-2) were arrested by the police; thereafter, they were put up for trial.

In order to support its case, the prosecution examined nineteen witnesses, submitted seventeen documents, and marked four material objects. The defense, in turn, neither examined any witness, nor submitted any documents. After completing the trial, the learned Trial Court convicted and sentenced the appellants as aforementioned. Hence, these two appeals before this Court.

Mr. Sharad Chandra, the learned counsel for Ms. A Gayathri Reddy, learned counsel for the appellant No.1, has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish all the links in the

chain of events, which would unerringly point to the guilt of K. Raveena (A-1).

Secondly, according to the prosecution, K. Raveena (A-1) had administered poison to K. Jagan Mohana Reddy, the deceased, due to which he expired. Thus, it is a case of death by poison. Relying on the case of **Sharad Birdhichand Sarda v. State of Maharashtra**¹, the learned counsel has pleaded that in case of death by poison, the prosecution is required to prove three facts namely, the procurement of the poison by the alleged offender; secondly, the alleged offender had an opportunity to administer the poison; thirdly, the deceased has died due to the poison so administered to him/her. However, in the present case, procuring of the poison by K. Raveena (A-1) is doubtful. For, according to Kandari Spoorthi (P.W-4), the daughter of K. Raveena (A-1) and K. Jagan Mohana Reddy, the deceased, her mother had gone with her to procure an insecticide. However, in her cross-examination, she clearly states that she does not remember the place or the shop from where the insecticide was procured.

Thirdly, Mr. R. Balvanth Reddy (P.W-6), who allegedly sold the poison to K. Raveena (A-1), clearly states in his testimony that *“since so many persons come and buy insecticide at his shop, it is not possible for him to remember the faces of his customers.”* Therefore, he has failed to identify K. Raveena (A-1) as the person who had bought insecticide from his shop. Therefore, the prosecution has failed to prove the element of procurement of the poison by K. Raveena, appellant No.1.

¹ AIR 1984 SC 1622 = (1984) 4 SCC 116

Fourthly, the recovery of the pesticide bottle from the house of K. Raveena (A-1) is highly doubtful. For, according to the prosecution, the said bottle was recovered on 17.06.2007. The said recovery was witnessed by Mr. D. Dayakar Reddy (P.W-9) and Mr. Kothur Kumar (P.W-14). However, both of them have turned hostile. Therefore, they have not supported the alleged recovery of the pesticide bottle, Mc. Dowell bottle and the lungi allegedly worn by the deceased K. Jagan Mohan Reddy. The recovery is furthermore doubtful as according to Mr. A. Mohan Reddy (P.W-12), who was the witness to the recovery of the steel tumbler on 24.06.2007, claims that the pesticide bottle was recovered from the house of K. Raveena (A-1) on 24.06.2007. Thus, it is unclear whether the pesticide bottle was recovered on 17.06.2007 or 24.06.2007.

Fifthly, even the recovery of the steel tumbler on 24.06.2007 is highly doubtful. For, Mr. N. Narsimha Reddy (P.W-11) and Mr. A. Mohan Reddy (P.W-12), the two recovery witnesses for recovery on 24.06.2007, admit the fact that they are closely related to the complainant K. Malla Reddy (P.W-1). Hence, the police has not involved independent witnesses in order to carry out the recovery on 24.06.2007.

Sixthly, the recovery is further aggravated by the fact recorded in the recovery memo (Ex.P-9), and the fact recorded in the FSL Report (Ex.P-14). According to the recovery memo (Ex.P-9), the police allegedly recovered a bottle containing insecticide poison, yet, according to the report of the FSL (Ex.P-14), the FSL received an empty plastic bottle containing a label 'HYCROPHOS'.

Therefore, it is unclear whether the FSL had actually received the insecticide bottle, allegedly recovered by the police from the house of K. Raveena (A-1).

Seventhly, the prosecution is not only bound to establish the recovery of the plastic bottle, allegedly containing the insecticide, but is also bound to prove that the recovered objects were kept safely in the property room of the police station, to prove that the sealed objects were safely carried from the police station to the FSL, to prove that the sealed objects were duly handed over to the FSL, and that the FSL found the seals on the sealed cover intact. However, in the present case, the linking evidence with regard to the safe custody of the recovered objects and its safe delivery to the FSL is conspicuously missing. For, according to the prosecution, the plastic bottle was allegedly recovered on 17.06.2007. Yet, it is not received by the FSL till 09.07.2007 i.e., after the delay of twenty-three days. Moreover, Mr. M.K. Abdul Ali (P.W-13), the Investigating Officer, does not reveal, in his testimony, anything about the safe custody of the plastic bottle, and its transit from the property room of the police station to the FSL. In fact, the prosecution has not examined the police personnel, who carried the plastic bottle and other seized items from the property room of the police station to the FSL. Furthermore, there is no indication in the FSL report (Ex.P-14) that the samples were received in intact condition. There is not even an endorsement that the seal produced by the police match the seal on the sealed containers which contain the recovered objects. Therefore, it is absolutely unclear whether a plastic bottle was, indeed, recovered from the house of K. Raveena (A-1), whether the said bottle was kept safely

in the property room of the police station and was safely handed over to the FSL for its clinical report. Hence, the conclusion of the FSL that they had found the presence of Organo Phosphate in all the items received by them namely, the plastic bottle, the Mc. Dowell bottle, the piece of lungi and the steel glass, the said finding becomes highly doubtful.

Eighthly, the prosecution has also tried to rely on an alleged extra-judicial confession made by K. Raveena (A-1) and T. Krishnam Raju @ Krishna (A-2) before Mr. B. Ramireddy (P.W-16). However, the said witness has turned hostile. Therefore, the alleged extra-judicial confession cannot be relied upon in order to convict K. Raveena (A-1).

Lastly, since the prosecution has failed to prove the three elements required for convicting the accused in a case of death by poisoning, the learned Trial Court is unjustified in convicting K. Raveena (A-1) for offence under Section 302 IPC.

On the other hand, Mr. P. Prabhakar Reddy, the learned counsel for Mr. Nimmagadda Satyanarayana, the learned counsel for the appellant No.2, has pleaded that there is no evidence that T. Krishnam Raju @ Krishna (A-2), is the paramour of K. Raveena (A-1). Moreover, there is no evidence that they have an illicit affair. Furthermore, there is no evidence to prove that A-2 had instigated K. Raveena (A-1), to commit the murder of her husband. Therefore, the learned Trial Court has erred in convicting T. Krishnam Raju @ Krishna (A-2), appellant No.2, for the offence under Section 302 read with Section 109 IPC.

Lastly, adopting the arguments of Mr. Sharad Chandra, learned counsel for the appellant No.1, he has pleaded that, since the prosecution has failed to establish the offence under Section 302 IPC, the question of convicting T. Krishnam Raju @ Krishna (A-2), for offence under Section 302 IPC read with Section 109 IPC, would not even arise. Therefore, both the learned counsel for the appellants are *ad-idem* that the impugned judgment, dated 23.07.2012, deserves to be set aside, and both the appellants deserve to be acquitted by this Court.

On the other hand, Mr. C. Pratap Reddy, the learned Public Prosecutor for the State, has vehemently argued that firstly the plastic bottle containing the insecticide was recovered from the house of K. Raveena (A-1).

Secondly, K. Jagan Mohan Reddy, the deceased, had died at the dead of the night. Since the deceased and K. Raveena (A-1), were residing together, it is for K. Raveena (A-1), to explain as to how her husband had died. She has not offered any explanation. Therefore, her silence tantamounts to a link in the chain of circumstances unerringly pointing towards her guilt.

Thirdly, the prosecution has clearly proven the fact that the plastic bottle containing insecticide was recovered from the house of K. Raveena (A-1). K. Raveena (A-1), has not offered any explanation as to how a bottle of insecticide was recovered from her house.

Fourthly, according to the testimony of Ms. Kandari Spoorthi (P.W-4), she and her mother had gone to buy insecticide from a shop. According to Mr. R. Balvanth Reddy (P.W-6), he had sold the

insecticide to K. Raveena (A-1). Thus, the prosecution was successful in proving the fact that K. Raveena (A-1), had obtained the poison bottle from the shop of Mr. R. Balvanth Reddy (P.W-6).

Fifthly, according to the report of FSL (Ex.P-14), the FSL had discovered the presence of Organo Phosphate not only in the plastic bottle, but also in the McDowell bottle, on the lungi and the tumbler, all of which were recovered from the house of the K. Raveena (A-1). Moreover, according to the final opinion of Dr. W. Sandhya Mahahar (P.W-15), the deceased had died due to Organo Phosphate.

Lastly, according to Ms. Kandari Spoorthi (P.W-4), T. Krishnam Raju @ Krishna (A-2) was living as a paying guest in the house of K. Jagan Mohan Reddy, the deceased. Even according to the testimony of Mr. Kandadi Srinivas Reddy (P.W-2), the brother of the deceased, T. Krishnam Raju @ Krishna (A-2) used to visit the house of the deceased and A-1 during the absence of the deceased. His parents, therefore, warned T. Krishnam Raju @ Krishna (A-2) and asked him not to visit the house of K. Raveena (A-1) in the absence of the deceased. Thus, the prosecution has succeeded in proving that there was an illicit relationship between A-1 and A-2, although A-1 was already married to the deceased. Hence, the prosecution has proven the ingredients of Section 109 IPC. Therefore, the learned Trial Court was legally justified in convicting A-2 for offence under Section 302 IPC read with Section 109 IPC.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

In the case of **Bodh Raj @ Bodha v. State of Jammu and Kashmir**², the Hon'ble Supreme Court has laid down the principle to be applied while dealing with a case of circumstantial evidence. The principles are as under:-

“(1) 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,

(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 very possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so compete 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.”

In catena of cases, the Hon'ble Supreme Court has also opined that the distance between may be true and must be true is a long distance, which the prosecution is required to cover. Moreover, in catena of cases, the Hon'ble Supreme Court has also held that suspicion however strong cannot take place of legal proof. Furthermore, a person cannot be convicted on the basis of surmises and conjectures.

² AIR 2002 SC 3164

In **Shivaji Sahebrao Bobade v. State of Maharashtra**³, the Hon'ble Supreme Court made the following observations:-

"(1) Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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."

In catena of cases the Hon'ble Supreme Court also held that the prosecution must prove its case beyond reasonable doubt in the case of direct evidence, but in case of circumstantial evidence, the prosecution needs to probablise its case, to the extent that the chain of circumstances unerringly point to the guilt of the accused. Such a chain of circumstances does not admit of any hypothesis, which may point towards his/her innocence.

In the case of **Sharad Birdhichand Sarda**¹ (supra), the Hon'ble Supreme Court had clearly stated that in case of death by poisoning, the prosecution is required to prove four factors: (i)

³ 1973(2) SC 793 = AIR 1973 SC 2622

there is a clear motive for an accused to administer poison to the deceased (ii) that the deceased died of poison said to have been administered (iii) that the accused had the poison in his possession; (iv) that he had an opportunity to administer the poison to the deceased. Subsequently, the Hon'ble Supreme Court has also opined that the procurement of the poison by the accused has to be established.

The prosecution has examined Kandari Spoorthi (P.W-4) and Mr. R. Balvanth Reddy (P.W-6) in order to establish that K. Raveena (A-1) had procured an insecticide. In her testimony, Kandari Spoorthi (P.W-4) states that *"on 16.06.2017 I and A-1 went to the vegetable market and bought some vegetables. While we were returning, A-1 purchased an insecticide poison bottle by telling the shop keeper that the same was required for protecting the tomato plants from insecticides."* However, in her cross-examination, she clearly admits that *"I do not know the name of the shop from which A-1 purchased insecticide poison."*

Mr. R. Balvanth Reddy (P.W-6) states in his examination-in-chief that, *"the police had brought K. Raveena (A-1) to his shop at 11:00 a.m. and asked her as to what was the insecticide poison bought by her from his shop. K. Raveena (A-1) showed her finger at one insecticide poison bottle something was returned by the police and they obtained his signature underneath the same. So many people purchased the insecticide poison bottle from their shop and he cannot identify them particularly."* In his cross-examination, he further states that *"it is true that the police came to my shop on 18.06.2007. A-1 was under the custody of the police by that time. It*

is true that I am required to enter the details of the sales made by me to the consumers in a register maintained by me. The police did not seize the register from me.” Therefore, this witness does not identify K. Raveena (A-1) as the customer, who had bought the poison from his shop. Therefore, the prosecution has failed to prove that K. Raveena (A-1) had procured the poison from the shop belonging to Mr. R. Balvanth Reddy (P.W-6).

The recovery of the plastic bottle is shrouded in mystery. For, according to the prosecution, on 17.06.2007 the plastic bottle, McDowell bottle, and a lungi were allegedly recovered from the house of K. Raveena (A-1). Although, the prosecution has examined Mr. D. Dayakar Reddy (P.W-9) and Mr. Kothur Kumar (P.W-14), in order to prove the recovery of 17.06.2007, but both these witnesses have turned hostile. Therefore, they have not supported the case of the prosecution. It is only Mr. M.K. Abdul Ali (P.W-13), the Investigating Officer, who claims that “*on 17.06.2007 the police had recovered three items while searching the scene of crime, namely the white colour plastic small bottle containing insecticide poison, a quarter bottle of McDowel whisky, and a lungi cloth.*” Further, in order to prove this recovery, the prosecution has relied upon panchanama of scene of offence (Ex.P-9).

However, according to the confessional panchanama (Ex.P-6), K. Raveena (A-1) informed the police that if they were to take her to her house, they could recover the insecticide poison, and a steel tumbler. On the basis of this statement made by K. Raveena (A-1), under Section 27 of the Evidence Act, she was taken to her

house. But the police recovered only a steel tumbler, and not a plastic bottle containing an insecticide. Similarly, Mr. A. Mohan Reddy (P.W-12), recovery witness of the recovery made on 24.06.2007, claims in his examination-in-chief that *“the police seized one steel glass emitting poison smell, and one poison bottle from the house of A-1.”* Therefore, there is a clear-cut contradiction between the testimony of Mr. M.K. Abdul Ali (P.W-13) who claims that the plastic bottle was seized on 17.06.2007, and the testimony of Mr. A. Mohan Reddy (P.W-12) who claims that the plastic poison bottle was recovered on 24.07.2007. Therefore, the recovery of the plastic bottle is highly unclear; it is highly suspicious.

Mere recovery of an object is immaterial, until and unless the recovered object is subjected to examination by the FSL. And the FSL report is made available to the Trial Court. Moreover, it is imperative that the prosecution must prove that after due recovery of material object, the material object was duly sealed at the place of recovery; it was kept under **safe** custody by the police; it was sent from the police station to the FSL through a police personnel, who safely deposited the recovered object with the FSL. Furthermore, the FSL must record that the object was received in a sealed condition, and the seal produced by the police personnel who brought the object tallied with the seal on the sealed container/package. This entire process is essential in order to eliminate the possibility of tampering with the material object, or in order to eliminate the possibility that the evidence, relevant for the case, does not disappear. In order to prove the safe custody, transportation, and depositing of the seized object not just the person who took the seized object to the FSL necessarily has to be

examined, but even the relevant documentary evidence of the movement of the person has to be submitted by the prosecution before the learned Trial Court. The testimony of such a police personnel further needs to be corroborated by the FSL report in order to establish that the FSL had safely received the material object in a sealed condition, and subsequently having examined the recovered object the FSL was in a position to give its finding.

However, in the present case, the prosecution has failed to examine the police personnel who has allegedly taken the recovered plastic bottle containing the insecticide and had produced the same before the FSL. Even Mr. M.K. Abdul Ali (P.W-13) does not claim, in his testimony, that the plastic bottle, McDowell bottle, and the lungi were kept in the safe custody of the property room available in the police station, and that they were sent through a police personnel in a sealed condition. This witness does not even mention the name of the police personnel who may have taken the sealed material object to the FSL. Moreover, even the FSL report (Ex.P-14) is silent on the point whether the recovered objects were received by the FSL in a sealed condition or not. Furthermore, according to scene of offence panchanama (Ex.P-9), the police had recovered a bottle containing the insecticide. Yet, according to the FSL report (Ex.P-14), the FSL had received "*an empty bottle*" which did not contain any insecticide.

Since the prosecution has failed to categorically prove the safe custody of the recovered bottle, since there is dichotomy between the bottle allegedly recovered by the police which is said to

contain the insecticide, and “*the empty bottle*” received by the FSL, the recovery of the bottle, its safe custody, and its non-tampering by the police has not proven by the prosecution. Therefore, the opinion of the FSL, as expressed in the FSL report (Ex.P-14), that all the four items contained Organo Phosphate, the said finding cannot be relied upon in order to convict K. Raveena (A-1) of offence under Section 302 IPC.

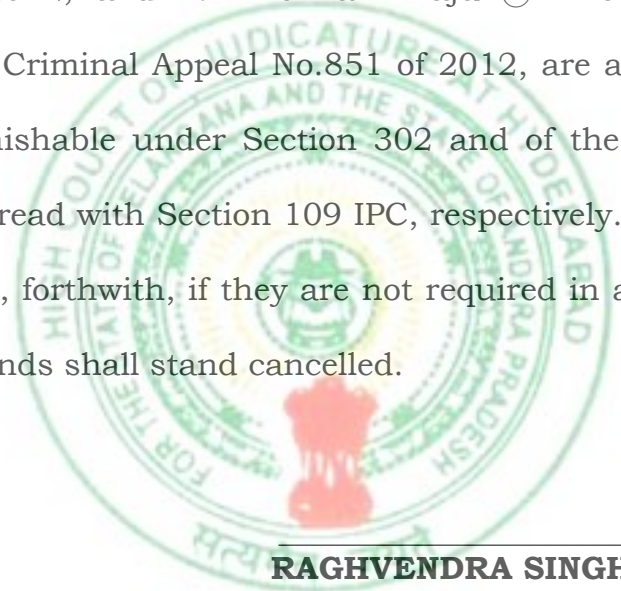
Another piece of evidence relied by the prosecution against K. Raveena (A-1) and T. Krishnam Raju @ Krishna (A-2) is the alleged extra-judicial confession made by them to Mr. B. Ramireddy (P.W-16). However, Mr. B. Ramireddy (P.W-16) has turned hostile. This evidence of extra-judicial confession falls apart. Therefore, a holistic appreciation of the record clearly reveals that the prosecution has failed to establish the essential factors in a case of death by poisoning. Hence, the learned Trial Court was unjustified in convicting K. Raveena (A-1) of the offence under Section 302 IPC.

Although Kandari Spoorthi (P.W-4) claims that T. Krishnam Raju @ Krishna (A-2) “*lived in their house as a paying guest*”, although Mr. Kandadi Srinivas Reddy (P.W-2) claims that “*A-2 used to visit the house of K. Raveena (A-1) during the absence of her husband*”. even then, their testimonies do not lead to the conclusion that K. Raveena (A-1) and T. Krishnam Raju @ Krishna (A-2) had an illicit relationship.

Moreover, the learned counsel for A-2 is clearly justified in pleading that there is no evidence to show that A-2 had instigated A-1 to administer poison to her husband and to kill him. Thus,

there is no evidence available on record to show abatement of crime under Section 109 IPC. Therefore, the Trial Court is unjustified in convicting A-2 for offence under Section 302 read with Section 109 IPC.

For the reasons stated above, both the criminal appeals are allowed. The impugned judgment, dated 23.07.2012, passed by the X Additional District & Sessions Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar, in Sessions Case No.529 of 2009, is set aside. K. Raveena (A-1), appellant in Criminal Appeal No.798 of 2012, and T. Krishnam Raju @ Krishna (A-2), the appellant in Criminal Appeal No.851 of 2012, are acquitted of the offences punishable under Section 302 and of the offence under Section 302 read with Section 109 IPC, respectively. They shall be set at liberty, forthwith, if they are not required in any other case. Their bail bonds shall stand cancelled.



RAGHVENDRA SINGH CHAUHAN, J

M. SATYANARAYANA MURTHY, J

Date: 21.12.2018

MRKR