

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.348 OF 2012

DATED 23RD OCTOBER, 2018

Between:

Bandi Chennaiah & Another ... Appellants

AND

State of A.P., rep. by its Public Prosecutor
High Court of A.P., Hyderabad. ... Respondent

Counsel for the appellants : Smt.A.Gayatri Reddy

Counsel for the respondent : Public Prosecutor (A.P)

THE COURT MADE THE FOLLOWING

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

The two accused in Sessions Case No.517 of 2010, on the file of the VI Additional District & Sessions Judge (Fast Track Court), Markapur, filed this appeal feeling aggrieved by the judgment, dated 21.02.2012, whereby they were convicted for the offences punishable under Sections 364 and 302 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each for the former offence and with life imprisonment and to pay a fine of Rs.3,000/- each for the latter offence. In default to pay the fine amounts, the appellants were to suffer simple imprisonment for a period of two months and three months, respectively. Both the sentences were directed to run concurrently.

The prosecution pleaded that A.1 is the friend of the deceased as well as A.2 and the latter is the cousin of the former. That the wife of A.1 developed illicit intimacy with the deceased, that on 17.11.2008 at about 3.00 pm., the appellants have abducted the deceased, took him to Marripudi bus stand and from there, to a cave near Bakkaiah Kunta in order to kill him and that at 5.00 pm., the appellants committed murder of the deceased with knife by cutting his throat and private parts and hitting him with a stone on his face.

As the plea of the appellants was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 17, got Exs.P.1 to P.27 marked and produced M.Os.1 to 3. On

behalf of the appellants, D.Ws.1 and 2 were examined, but no documents were marked.

On appreciation of the oral and documentary evidence, the lower Court has disposed of the case in the manner as noted above.

We have heard Smt.A.Gayatri Reddy, learned counsel for the appellants and the learned Public Prosecutor, representing the State of Andhra Pradesh.

This is a case based on circumstantial evidence. The prosecution has put forth motive, last seen theory, finger prints and recovery of M.Os.1 to 5-a knife and blood stained shirts and lungies of the appellants, to buttress its case against the appellants. The lower Court has believed the version of the prosecution on all the above aspects.

P.W.1, the father of the deceased, has not claimed that he personally knew about the alleged illicit intimacy between the deceased and the wife of A.1. He deposed that his enquiries revealed that his son was killed by the appellants suspecting illicit intimacy between the deceased and the wife of A.1. Thus, P.W.1 did not have any personal knowledge about the alleged illicit intimacy.

P.W.2, the brick-kiln owner under whom the deceased, A.1 and A.2 were working, also did not claim any personal knowledge about the alleged illicit intimacy. All that he has deposed is that since the time of missing of the deceased, rumours were rife in the village that

the appellants might have killed the deceased suspecting illicit intimacy between the deceased and A.1's wife and that they did not give much credence to the said rumours. No other witness was examined by the prosecution to speak about the alleged illicit intimacy between the deceased and the wife of A.1.

As discussed above, P.Ws.1 and 2 did not claim any personal knowledge about the illicit intimacy and their information on the said aspect was based on some rumours. In the absence of any evidence from which the alleged illicit intimacy could be presumed with reasonable degree of certainty, it is highly unsafe to accept the highly equivocal statements of P.Ws.1 and 2 to conclude that the deceased has illicit intimacy with the wife of A.1.

The lower Court, evidently, with a preconceived mind, got itself swayed away by the stray statements made by P.Ws.1 and 2 in their testimony regarding the alleged illicit intimacy. We have, therefore, no hesitation to hold that the prosecution failed to prove the allegation of motive for the appellants to commit murder of the deceased.

With respect to last seen theory, P.Ws.3, 4 and 10 were examined to speak to the same. P.Ws.3 and 4 have turned hostile. However, P.W.10 supported the case of the prosecution. He has deposed that one week prior to the tracing of the dead body of the deceased, he has disappeared, that at that time, he visited the tyres

shop of P.W.4 to have water, that there he has noticed P.W.3 with whom he spoke for ten minutes and during that time, he noticed A.2 and the deceased in an auto proceeding towards Marripudi from Podili bus stand centre and that thereafter, he has not seen the deceased till the dead body was traced.

Assuming that P.W.10 was a truthful witness, and even if his testimony is taken on its face value, he has last seen the deceased in the company of A.2 at 3.00 pm on 17.11.2008. As per charge No.2, the deceased was done to death at 5.00 pm on 17.11.2008. In Ex.P.10-postmortem report, the doctor who conducted autopsy on 26.11.2008, opined that the death must have occurred about 72 hours prior to the postmortem examination. P.W.9, who conducted autopsy, spoke to the contents of Ex.P.10. The prosecution has not re-examined him in order to elicit whether his opinion on the time of death was final and correct. In the light of Ex.P.10, the Court has no option other than concluding that the deceased might have been killed earliest on 23.11.2008. But, as noted above, the charge is to the effect that the deceased was killed on 17.11.2008. Thus, the entire case of the prosecution is thrown haywire by the doctor's opinion.

In order to succeed in establishing the last seen theory, the prosecution has to prove that there is not much time gap between the time when the deceased was last seen and the time of death to rule out intervention by a third party. The time gap between 17.11.2008

and 23.11.2008 being too long, the case of the prosecution regarding last seen theory is wholly unacceptable.

With regard to fingerprints, P.W.16-the Investigating Officer, deposed that he has seized three empty quarter liquor bottles of old tavern whisky, two disposable glasses and driving license of the deceased under the cover of observation report duly signed by the mediators, that he sent a requisition to the fingerprint expert to depute clues-team to the scene of offence to develop chance prints available on M.O.6 (three empty liquor bottles) and that the District Clues Team developed fingerprints. He further deposed that on 27.11.2008, he has received a report from P.W.14 and, on credible information about the whereabouts of the appellants, he arrested them on 28.11.2008 and got the fingerprints of the appellants taken in the police station and sent to the fingerprint expert for comparison. The prosecution failed to exhibit the purported report dated 27.11.2008 of P.W.14 spoken to by P.W.16. No panchanama was prepared for taking the fingerprints of the appellants in the police station. Interestingly, P.W.14, in his cross-examination, stated that he has received standard impressions of suspects on 26.11.2008 i.e., after two days before their arrest. This unexplained discrepancy throws any amount of doubt about the claim of the prosecution regarding fingerprints. Moreover, P.W.14 admitted that the original developed chance prints were not available in the Court record, that

he furnished the comparison table of thumb impressions examined by him to the Inspector of Police and that he does not know whether these charts were filed or not. Thus, the prosecution has failed to file original developed chance prints and the comparison table of thumb impressions examined by him before the Court which, in our opinion, is a serious lacuna. In the face of the above serious shortcomings in the case of the prosecution, as pointed above, it is wholly unsafe to rely upon the plea of the prosecution relating to fingerprints.

Coming to the last aspect, namely, the alleged recovery of M.Os.1 to 5, P.Ws.12 and 13, the panch witnesses for recovery, turned hostile. Ex.P.27-RFSL Report, shows that blood was detected on items 1, 3, 4, 6, 7, 8 and 9 only, that blood on items 3, 4, 6, 7, 8 and 9 is of human origin, that the origin of blood on item No.1 could not be detected and that blood group of blood stains on items 3, 7, 8 and 9 is of 'A' group. Item No.4 is the wearing apparel of deceased No.4 and the same is not shown as material object. Items 5 and 6 are wearing apparels of appellant No.1 and items 7 and 8 are wearing apparels of appellant No.2 and they correspond to M.Os.2 to 5. Though the blood group of blood stains on M.O.1-knife, and M.Os.2 to 5 was detected as 'A' group, the blood group of the deceased has not been determined. Therefore, mere recovery even if believed, would not prove that the blood on M.Os.1 to 5 is of the deceased

and hence it is not possible to connect the recovery of the said material objects with the killing of the deceased. When the whole case of the prosecution turned topsy-turvy on the time of death, the appellants are entitled to benefit of doubt. The lower Court, based on mere suspicion, convicted the appellants without there being any credible evidence. The law is well settled that howsoever strong suspicion may be, it will not take the place of proof.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants in the judgment under appeal are set aside. The appellants are acquitted of all the offences with which they are charged. The fine amounts if any paid by them shall be returned to them. They shall be released forthwith from the jail, if they are not required in any other case or crime.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

Date: 23.10.2018
TJMR