

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

CRIMINAL APPEAL No.146 OF 2012

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

The appellant Nos.1 and 2, Mr. Gorre Raju (A-1) and Mr. Gorre Kiran (A-2), respectively, have been convicted for offence under Section 302, read with Section 34 of IPC, having been sentenced to life imprisonment, have been fined Rs.1,000/-, and have been directed to further undergo simple imprisonment for a period of six months in default thereof, by judgment dated 09.12.2011, passed by the III Additional Sessions Judge, Karimnagar. Similarly, Mr. Mankena Pochaiah, Mr. Saturi Mogili, and Ms. Gorre Amruthamma, appellant Nos. 3, 4 and 5 respectively, (accused No.4, accused No.7 and accused No.11) before the learned Trial Court) have been convicted for offence under Section 302 read with Section 109 IPC, have been sentenced to life imprisonment, have been fined Rs.1,000/- and have been directed to undergo Simple Imprisonment for six months in default thereof, by the same judgment mentioned hereinabove. They have challenged the legality of the said judgment before this court.

Briefly, the facts of the case are that Gorre Bhagya (P.W-1) had lodged a compliant (Ex.P-1) on 18.11.2008 at 2:45 p.m. before the Police Station, Elkathurthi, wherein she claimed that "*they got Ac.2.00 of agricultural land near Banda Cheruvu on the outskirts of Damera village. Her brother-in-law, Gorre Venkataiah (A-10), has his farm adjacent to their land. There is a boundary dispute between her family and the family, of her brother-in-law, Gorre Venkataiah (A-10). On 13.11.2008, Gorre Raju (A-1) and his wife,*

Gorre Amruthamma (appellant No.5; henceforth, referred to as 'A-11', as she appeared as 'A-11' before the trial court), were transporting urea bags from the middle of the land belonging to the complainant. Therefore, the complainant and her husband, Gorre Adam, asked them to go on the boundary ridge of the land. Upon their asking, A-1 and his wife, A-11, abused the complainant and her husband in filthy language.

On 14.11.2008, while the complainant and her husband were in their house, her husband's cousin Gorre Raju (appellant No.1; henceforth, referred to as 'A-1' for short) came to their house and abused the complainant and her husband in filthy language. Gorre Raju (A-1) also threatened them that they will kill them. Therefore, the complainant and her husband approached the village elders namely Kadari Nageshwar Rao (P.W-7), Gorre @ Chukka Komuraiah (P.W-8) and informed them about the said incident. The village elders assured the complainant that they would summon her brother-in-law, his wife and son after two or three days.

On 18.11.2008, while the complainant and her husband and their son Gorre Kumar (P.W-3) were present at their house, some caste elders namely Kadari Sadanandam @ Bingi Sadanandam (A-3), Mankeni Pochaiah (A-4), Gorre Sha Buchaiah (A-5), Saturi Ailaiah (A-6), Saturi Mogili (A-7), Kadari Venkataiah (A-9), Saturi Devaiah (A-8), her brother-in-law Gorre Venkataiah (A-10), his wife Gorre Amruthamma (A-11), their son Raju (A-1) and Gorre Kiran (A-2) came to their house. These persons forced the complainant and her husband to come to their panchayat to settle the land dispute. However, the complainant and her husband told these persons that

they are not willing to come to the panchayat, as their elders were not present. These persons informed the complainant that her family members will be expelled from the caste if they did not attend the panchayat. They forced her husband to pay Rs.1,000/- as advance deposit for holding the panchayat. Accordingly, her husband gave Rs.1,000/- to Kadari Sadanandam @ Bingi Sadanandam (A-3). In turn, Kadari Sadanandam @ Bingi Sadanandam (A-3) gave the money to Saturi Mogili (A-7) in the presence of Gorre Komuraiah (A-18). These persons also threatened that they will harm her husband. Due to the threat, she informed her brother-in-law Gorre Ramesh (P.W-2) about the said incident. Later on, she and Gorre Ramesh (P.W-2) went to Mankani Pochaiah's house at about 1:00 p.m. where she saw that her nephew Gorre Raju (A-1) was beating her husband with a pestle and Gorre Kiran (A-2) was stabbing her husband with knife, while Mankana Pochaiah (A-4), Kadari Venkataiah (A-9), Gorre Amruthamma (A-11) were watching the incident. When A-1 and A-2 noticed the complainant and her brother-in-law Gorre Ramesh (P.W-2), they fled away from the scene of crime, while taking pestle and knife with them. The complainant went near the body of her husband, but by that time he had already died". According to the complainant, Gorre Raju (A-1) and Gorre Kiran (A-2) had killed her husband at the instigation of Kadari Sadanandam @ Bingi Sadanandam (A-3), Mankana Pochaiah (A-4), Gorre Sha Buchaiah (A-5), Saturi Aialiah (A-6), Saturi Mogili (A-7), Saturi DEvaiah (A-8), Kadari Venkataiah (A-9), Gorre Venkataiah (A-10), and Gorre Amruthamma (A-11).

On the basis of the said complaint (Ex.P-1), the police registered a formal FIR (Ex.P-22) namely Cr. No.182 of 2008 of

Elkathurthy Police Station for offence under Sections 148, 302 read with Section 109 and 34 of IPC. During the investigation, eleven persons were arrested, namely Gorre Raju (A-1), Gorre Kiran (A-2), Kadari Sadanandam @ Bingi Sadanandam (A-3), Mankena Pochaiah (A-4), Gorre Sha Buchaiah (A-5), Saturi Aialiah (A-6), Saturi Mogili (A-7), Saturi Devaiah (A-8), Kadari Venkataiah (A-9), Gorre Venkataiah (A-10) and Gorre Amruthamma (A-11). They were put up for trial.

While A-1 and A-2 were charged for offence under Section 302 read with Section 34 IPC, A-3 to A-11 were charged for offence under Section 302 read with Section 109 IPC. They denied the charges and prayed for a fair trial.

In support of its case, the prosecution examined twenty three witnesses, submitted twenty four documents and produced ten material objects. The defence, in turn, neither examined any witness nor submitted any documents. After going through the evidence, by the impugned judgment, the learned trial court convicted and sentenced the appellants as aforementioned, but acquitted accused Nos.3, 5, 6, 8, 10 of offence under Section 302 read with Section 109 IPC. Hence this appeal before this court.

Mr. K. Ranga Reddy, the learned counsel for the appellants, has raised the following contentions before this court:-

Firstly, large number of independent witnesses namely Kadari @ Mangali Pochamma (P.W-4), Gorre Tirupathi (P.W-6), Kadari Nageshwar Rao (P.W-7), Gorre @ Chukka Komuraiah (P.W-8), Jangama Ravi (P.W-10), Kavvampalli Lachamma (P.W-11),

Esampalli Babu Rao (P.W-12), Gajula Sadanandam (P.W-14), Gorre Venkataiah (P.W-17), and Gorre Komuraiah (P.W-18) have turned hostile; they have not supported the case of the prosecution. Hence, there is no direct evidence with regard to the commission of offence by the appellants. The prosecution, in fact, has relied only on the testimony of Gorre Bhagya (P.W-1), Gorre Ramesh (P.W-2) and Gorre Kumar (P.W-3) in order to prove its case. However, all these three witnesses happen to be related to the deceased. Thus, they are inimical witnesses. Hence, their testimony cannot be believed without corroboration from independent and convincing evidence.

Secondly, Gorree Bhagya (P.W-1), the wife of the deceased, clearly admits in her cross-examination that she did not see the actual incident. By the time she reached the house of A-4, her husband had already fallen down. A-1 and A-2 were running away from the house of A-4, by the time she reached the house of A-4. Thus, she is not a true eye-witness of the incident.

Thirdly, Gorre Ramesh (P.W-2) also claims that he went to the house of A-4 along with Gorre Bhagya (P.W-1). Therefore, even Gorre Ramesh (P.W-2) is not an actual eye-witness of the incident. According to Gorre Kumar (P.W-3) he was in the school. Therefore, he was not an eye-witness of the incident.

Fourthly, however, the learned trial court has relied on the testimony of Gorre Bhagya (P.W-1), Gorre Ramesh (P.W-2), Gorre Kumar (P.W-3), in order to convict the appellants. But, as these three witnesses were not the actual eye-witnesses, the case revolves around circumstantial evidence. But, the prosecution has

not adduced convincing and cogent evidence, which would unerringly point to the guilt of the accused persons. Therefore, the appellants deserved to be acquitted in the present case.

Fifthly, although the prosecution claims that P.W-1, P.W-2 and P.W-3 were actual eye-witnesses, but their testimony is belied by the medical evidence. For, these three witnesses would have the court believe that A-2 had caused stab wound on the body of the deceased, Gorre Adam. But according to Dr. R. Vidyasagar (P.W-20), the deceased did not suffer any sharp edged injury. Therefore, the deceased did not suffer any incised wound caused by a knife. Hence, the ocular testimony is belied by the medical testimony. Hence, these three witnesses are concocted witnesses.

Sixthly, although the prosecution claims to have recovered the pestle and the knife, allegedly used by A-1 and A-2, but the FSL report (Ex.P-24) clearly indicates that the blood group of the blood on the pestle and the knife could not be determined. Therefore, even the recoveries allegedly made at the instance of Gorre Raju (A-1) and Gorre Kiran (A-2) do not connect them to the alleged offence.

Seventhly, A-4, A-7 and A-11 namely appellant Nos. 3, 4 and 5 respectively, and A-3, A-5, A6, A8, A-10 were charged for the same set of offences, namely offence under Section 302 read with Section 109 IPC. However, without distinguishing the cases of A-4, A-7, A-11 from the other co-accused persons mentioned hereinabove, the learned trial court has acquitted A-3, A-5, A-6, A-8, A-10 while convicting A-4, A-7 and A-11. Since the case of A-4, A-7, A-11 stands on the same identical footing as the case of A-5,

A-6, A-8, A-10, therefore, A-4, A-7 and A-11 also deserve to be acquitted for the offence under Section 302 read with Section 109 IPC.

Lastly, there is no evidence produced by the prosecution to prove that A-4, A-7, A-11 had abetted A-1 and A-2 for committing the alleged murder of the deceased.

On the other hand, Mr. C. Pratap Reddy, the learned Public Prosecutor, has pleaded, firstly, merely because Gorre Bhagya (P.W-1), Gorre Ramesh (P.W-2), Gorre Kumar (P.W-3) happen to be related to the deceased, their testimonies cannot be thrown out, only on the ground that they are inimical witnesses. Since they happened to be the wife, the brother and the son of the deceased, they would not ignore the actual culprit, and falsely implead the appellants.

Secondly, Gorre Bhagya (P.W-1), Gorre Ramesh (P.W-2) and Gorre Mallamma (P.W-5) have described the incident in detail. Therefore, the appellants can be convicted on the basis of their testimonies.

Thirdly, their testimonies are further supported by the testimony of Dr. R. Vidyasagar (P.W-20), who has clearly stated that the deceased had suffered six injuries, and the cause of death was "*due to cardio respiratory failure due to multiple skull bone fractures and injury to vital organs*".

Fourthly, according to P.W-1 and P.W-2, A-1 had struck the deceased repeatedly with a pestle on the head, a vital part of the body. Therefore, A-1 clearly had the intention to cause the death

of the deceased. Thus, the learned trial court was justified in convicting A-1 and A-2 for offence under Section 302 read with Section 34 IPC. There is a strong motive for the appellants to get rid of the deceased, as according to Gorre Bhagya (P.W-1), Gorre Ramesh (P.W-2) there is land dispute between the parties. Hence, the learned Public Prosecutor has supported the impugned judgment.

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

Gorre Bhagya (P.W-1) in her examination-in-chief claims that there was a land dispute between her family and the family of the appellants. She further stated that *“on the date of incident at about 7:00 am, A-3 Bingi Sadanandam @Kadari Sadanandam, and Sathuri Mogili (A-7), came to my house and enquired about my husband saying they were sent to bring my husband to A-10 and that time my husband Adam was not in the house. I informed the same to A-3 and A-7. They went away and after some time A-3 again came, and asked me to go and bring my husband. When I informed A-3 that I did not know where my husband has gone, he did not believe my words. He went away. Again A-7 came to my house, along with Sha Bachaiah (A-5). They informed there would be a panchayath at the house of Bingi Mallamma. At about 9:00 am my husband returned to home. Then I informed my husband about the panchayat and coming of A-3, A-7 and A-5 to our house. My husband went to attend panchayath. The house of Bingi Mallamma, is situated nearer to our house. The house of Mallamma is visible from our house. I was standing in front of my house.*

At that time A-1 Raju threatened my husband saying he would kill him and see that my husband would not sleep with me. At that time A-2 to A-11 were also present. Then my husband returned back to my house. Then my husband asked me to go to our well taking food and he would be following me latter/ Then I went to my well. On the way, my husband met me again and I informed him I was taking food for him also. Subsequently my husband came to our well. He came along with our bullock cart. Then he started ploughing the land. Then A-7 Sathuri Mogili came there. He un-yoked the bulls from the plough. Then he forcibly took my husband saying there was a panchayath at the house of Mankena Pochaiah (A-4). I remained at the field. After sometime apprehending danger I also rushed to the house of A-4. I saw Raju A-1 holding a pestle, A-2 was holding a knife, A-10 and A-11 were instigating A-1 and A-2 to kill my husband. Then A-1 and A-2 started attacking my husband with a pestle and knife. My husband started crying requesting them to leave him. In the meanwhile, I went and brought Ramesh (L.W-2) who is the younger brother of my husband. By that time A-1 and A-2 killed my husband and using abusive words they went away. After killing my husband, they themselves telephoned to Ambulance 108. A-4 Mankena Pochaiah and Kadari Venkataiah (A-9) were present when A-1 and A-2 killed my husband. When my husband was brought from agricultural fields to panchayath Kadari Pocham (L.W-7) witnessed the same. The Ambulance people came. As my husband already died the Ambulance returned back. A-2 went to P.S. and informed the Police. Police came to our village. A-1 fled away to Hasanparthi village after killing my husband. My daughter Gorre Rajitha (L.W-4) wrote

the complaint, then I affixed my thumb impression, and gave it to police when they came to our village. There were land disputes between my husband and A-10.”

However, in her cross-examination, she clearly admits that, *“by that time I went to the house of A-4, my husband already fell on the ground. A-1 and A-2 were running away from the house of A-4. By the time I reached the house of A-4, they were running away from the house of Veeresham”*. She further admitted that *“I have not stated before the police that after seeing A-1 and A-2 attacking my husband at the house of A-4, I rushed and brought L.W-2 Ramesh. The witness again says while coming to the house of A-4 from the field I brought Ramesh (L.W-2) with me. I have not stated before the police that when A-1 and A-2 were assaulting my husband with pestle and knife I prayed them to leave my husband. It is not true to say I did not bring Ramesh at all with me.”* Thus, clearly Gorre Bhagya (P.W-1) is not an eye-witness and has not seen the actual assault allegedly made by A-1 and A-2 upon her husband, the deceased. She has merely seen them running away from the scene of the crime. Therefore, her testimony given in the examination-in-chief describing the actual incident is untrustworthy. Hence unacceptable.

Gorre Ramesh (P.W-2) claims that *“on the date of the incident at about 12:30 p.m. in the afternoon P.W-1 came to my house from the agricultural well and she informed me that while herself and her husband Adam were at the well, Sathuri Mogili (A-7) went to the well and he brought Adam on the ground there was a panchayat the house of Mankena Pochaiah (A-4). Then myself and P.W-1 went to the house of A-4 Mankena Pochaiah. After reaching the house of*

Mankena Pochaiah (A-4), myself and P.W-1 saw A-1 beating my brother, Adam with pestle, and A-2 Kiran stabbing my brother Adam with a knife. We also saw A-4 Mankena Pochaiah, A-9 Kadari Venkataiah, A-10 Gorre Venkataiah, A-11 Amruthamma and some others were also there, but now I am not in a position to recollect their names. On seeing me and P.W-1, A-1, A-2 fled away. Then we went near the body of my brother Adam we found him dead.” In his cross-examination, he admits that “P.W-1 was ahead of me and I followed her. From my house within 3 or 4 minutes myself and P.W-1 reached the house of A-4. We heard some cries, from the house of A-4. The incident happened in front of the house of A-4 at a corner. After seeing me P.W-1, A-1 and A-2 fled away by jumping the compound wall.” Thus, even this witness reached the place of the incident shortly after Gorre Bhagya (P.W-1) had reached the scene of the crime. Since in her cross-examination, Gorre Bhagya (P.W-1) has admitted that by the time she reached in front of the house of A-4, her husband had already fallen, it can be safely presumed that even Gorre Ramesh (P.W-2) did not see the actual incident, but merely saw the dead body of his brother, the deceased, Gorre Adam.

Gorre Kumar (P.W-3) clearly admits in his examination-in-chief, *“at the time of the murder of my father, I was in the school at Mulkanur. On information I rushed to Damera village. I found the dead body of my father in front of the house of A-4 Mankena Pochaiah”.* Therefore, clearly this witness is not an eye-witness of the incident.

Gorre Mallamma (P.W-5) is the mother of the deceased, Gorre Adam. She has given a self-contradictory testimony. For, in

the initial part of the examination-in-chief, she claims that *“after I came to know that my son was found dead in the house of A-4 I also rushed there along with other villagers.”* But in the later part of her examination-in-chief, she claims *“I saw A-1 beating the deceased, Gorre Adam with a pestle and A-2 sat on the deceased and stabbed the deceased Gorre Adam, then they fled away”*. Furthermore, in her cross-examination, she admits that *“P.W-1 rushed to my house and informed us about the galata (fight) at the house of A-4 only myself rushed to the house of A-4. By that time I rushed the house of A-4 many people gathered”*. Thus, according to this witness, she reached the house of A-4 only after she was informed by Gorre Bhagya (P.W-1). Therefore, apparently she could not have seen the actual incident of A-1 beating the deceased, Gorre Adam, with pestle, and A-2 sitting on the body of the deceased and stabbing him as claimed in her part of examination-in-chief. Therefore, the part of her examination-in-chief, that *“she rushed to the house of A-4 only after being informed that the dead body of her son was found in the house of A-4”* appears to be the more truthful narration of facts. Thus, even this witness is not an eye-witness as projected by the prosecution.

Therefore, the case is reduced to be one of circumstantial evidence. The only circumstance presented by the prosecution against the appellant Nos. 1 and 2 is the alleged recovery of the pestle at the instance of A-1 by recovery memo Ex.P-18, and the alleged recovery of knife by recovery memo Ex.P-19. Although Saturi Rajamouli (P.W-19) has supported the recovery of the pestle from the possession of A-1, and the recovery of knife from the possession of A-2, but even these recoveries do not support the

case of the prosecution. For, according to the FSL report (Ex.P-24), although these two material objects contained human blood, but the blood group of the blood on these two objects could not be determined. Merely because these two objects contained human blood does not connect the appellants (A-1 and A-2) to the alleged crime. In order to connect A-1 and A-2 to the alleged crime, the prosecution should prove that the material objects were stained with particular blood group of the deceased. In the absence of the blood group of the blood found on these two material objects, the prosecution has failed to provide the linking evidence between the recovery and the alleged crime.

The mere existence of a motive cannot lead to the conviction of a person. For, although motive is a linking evidence in the case of circumstantial evidence, but it cannot form the sole basis for convicting a person in a case of circumstantial evidence.

In a case of circumstantial evidence, the court has to be circumspect that it is not swayed by emotions, and that it does not record conviction on the basis of surmises and conjunctures.

In the case of **Bodh Raj @ Bodha v. State of Jammu and Kashmir**¹, 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,

¹ AIR 2002 SC 3164

(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.

In **Shivaji Sahebrao Bobade v. State of Maharashtra**², 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

² 1973(2) SC 793 = AIR 1973 SC 2622

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.

However, in the present case, mere recovery of the pestle, and knife, at the instance of A-1 and A-2 does not unerringly point to their guilt, especially when the blood group of the blood on the material object is unknown.

As far as A-4, A-7 and A-11 are concerned, suffice it to say that their case is similar to the cases of A-3, A-5, A-6, A-8, A-10, who have been acquitted by the trial court. Moreover, this court has already opined that Gorre Bhagya (P.W-1), Gorre Ramesh (P.W-2) are not eye-witnesses to the actual incident. Therefore, there is no evidence that A-4, A-7 and A-11 abetted the commission of the alleged murder.

For the reasons stated above, the criminal appeal is hereby allowed. The impugned judgment, dated 09.12.2011, passed by the III Additional Sessions Judge, Karimnagar, in Sessions Case No.348 of 2009, is set aside. Mr. Gorre Raju (A-1) and Mr. Gorre Kiran (A-2), are acquitted of the offences punishable under Section 302 read with Section 34 IPC and Mr. Mankena Pochaiah (A-4), Mr. Saturi Mogili (A-7) and Ms. Gorre Amruthamma (A-11), appellants 3, 4 and 5, are acquitted of the offence punishable under Section 302 read with Section 109 IPC. 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:31.12.2018

MRKR