

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.560 of 2012

Date: 24.09.2018

Between :

The State of A.P.,
Rep. by the Public Prosecutor,
High Court of A.P., Hyderabad.

... Appellant

And

Shaik Sadiq and another.

... Respondents/A.1 and A.2

COUNSEL FOR APPELLANT : Public Prosecutor

COUNSEL FOR RESPONDENTS :

THE COURT MADE THE FOLLOWING:

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.560 of 2012

JUDGMENT: (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This Criminal Appeal is arising out of the judgment dated 07.07.2011 in S.C.No.848 of 2010 on the file of the Principal Sessions Judge , Karimnagar, Karimnagar District, finding the respondents/A.1 and A.2 not guilty of the offence punishable under Section 302 r/w. Section 34 IPC and acquitting them of the said offence.

The brief facts as per the case of prosecution are that, on 31.01.2010 at 8.30 a.m., the defacto complainant gave a report in Karimnagar II Town Police Station, Karimnagar District, stating that her husband Mohd. Shoukath Ali was doing Real Estate business in the name of K.G.N. Real Estate, situated at Mancherial 'X' Road, Karimnagar, that on 30.01.2010 at about 5.00 p.m., her husband came home for meals and after having meals, he left the house informing her that he would be back by 11.00 p.m., and that when he did not return even by 12.00 p.m. in the mid-night, she called him to his Mobile number and he informed that he would come soon. On 31.01.2010 at 6.30 a.m., her brother-in-law Shamsheer Ali informed her that he came to know through one Javeed of Chicken Centre, on the way from

Adarshnagar to their house, near Hindu graveyard, her husband was way-laid by some unknown persons and assaulted with deadly weapons and caused grievous injuries. On that information, she along with her relatives rushed to the scene of offence and found her husband lying on the road in a pool of blood, with severe head injuries, and his vehicle Hero Honda Pleasure bearing No.AP-15AL-6094 was also lying near him. She reported that her husband might have been killed due to business rivalry in respect of the real estate issues. Basing on her complaint, the police of Karimnagar II Town Police Station, Karimnagar District, registered a case in Crime No.41/2010, for the offence punishable under Section 302 r/w. Section 34 IPC and conducted the scene of offence panchnama, in the presence of mediators LWs.15 and 16, and after conducting inquest over the dead body of the deceased – Mohd. Shoukath Ali and Post-mortem Examination and after completing investigation, filed charge sheet against the accused A.1 and A.2.

The learned Additional JFCM, Karimnagar, having taken cognizance of the offence against A.1 and A.2 committed the PRC.No.78/2010 to the Sessions Court, Karimnagar. The learned Sessions Judge has framed charges against the accused A.1 and A.2, for which the accused pleaded not guilty and claimed to be tried, for the offence under which they were charged. The learned Sessions Judge, on consideration of the evidence of witnesses PWs.1 to 20 and the

documents under Exs.P.1 to P.15 and the material objects MOs.1 to 9 on behalf of prosecution, found A.1 and A.2 not guilty for the offence punishable under Section 302 r/w. Section 34 IPC and acquitted them. Aggrieved by the impugned judgment of acquittal, the appellant - State has preferred the present Criminal Appeal.

Heard the arguments of the learned Public Prosecutor appearing for the appellant – State and Sri P. Sajan Kumar, learned counsel for the respondents/A.1 and A.2.

The point for consideration in this appeal is, whether the impugned judgment of the Court below is suffering from any infirmity and perversity?

The learned Public Prosecutor appearing for the appellant – State submits that the accused A.1 and A.2 developed grudge against the deceased – Mohd. Shoukath Ali, for selling the house plots of PW.8. Hence the accused A.1 and A.2 way-laid and killed him. It is further submitted that all the material witnesses have consistently corroborated with the case of the prosecution about the accused being attacked the deceased with iron rod, due to which the deceased died on the spot. The crime weapon was recovered at the instance of the appellant in the presence of mediators, therefore, the Court below erred in acquitting the respondents – A.1 and A.2 for the offence with which they were charged.

At the outset, this is a case where the prosecution failed to connect the accused with the commission of offence by any cogent evidence. But there are two presumptions in favour of the accused A.1 and A.2. The first presumption makes the Court to presume the accused to be innocent until the guilt is proved against them. The second presumption is acquitting the accused as they are innocent. Unless the prosecution demolishes these two presumptions by establishing the guilt of accused with cogent and convincing reasons, through the evidence of the material witnesses, the judgment of the Court below cannot be set aside.

The prosecution examined PW.1 – defacto complainant, who is the wife of the deceased, to prove the contents of Ex.P.1 – complaint. In order to prove ‘motive’ for the commission of offence by A.1 and A.2 by developing grudge against the deceased – Mohd. Shoukath Ali and killed him for selling the house plots, the prosecution relied on the evidence of PW.8 – Mahmooda Begum, who is the wife of one Fakeer Mohammed. She stated that Fakeer Mohammed has got another wife, by name Kulsum Begum and they have 2 children viz., Shaik Siddique and Shaik Sadiq, who are A.1 and A.2. Her husband died 15 years back, that 3 years prior to his death, her husband gave his properties by way of HIBA and handed over the possession of the entire properties to her. She requested the deceased – Mohd. Shoukath Ali to sell the said plots as a mediator and she paid commission to him. As

the deceased – Mohd. Shoukath Ali sold the plots on her behalf, A.1 and A.2, who are the children of the first wife of her husband, developed grudge against the deceased and killed him and thereafter they came to her, assaulted her and tried to kill her.

The testimony of PW.8 with regard to the proof of ‘motive’ for commission of offence is not corroborated by any other cogent and convincing evidence. There is no corroboration of evidence of PW.1. The contents of Ex.P.1 – complaint coupled with the oral testimony of PW.8 would not advance the case of the prosecution to prove the motive for commission of offence.

When we look into the other circumstances of the case, the prosecution has examined PW.11 – Adi Malleshham, who is a resident of Kapurwada, Karimnagar. He purchased a plot of an extent of Ac.0.04 guntas and odd in Sy.No.1378 at Subashnagar from Fakeer Mohammed through the deceased – Mohd. Shoukath Ali. After the death of Fakeer Mohammed, his wife Mahmooda Begum executed a sale deed in his favour. After obtaining the registered sale deed, 2 or 3 persons filed a suit against him claiming rights over the said plot.

PW.12 – Sk. Jalaluddin, a resident of Hussainipura, Karimnagar, purchased a plot in Subashnagar, which belongs to Fakeer Mohammed. PW.13 – Nisar Ahmed, who is a resident of Sahethnagar, Karimnagar, stated that he gave GPA to PW.11 – Adi Malleshham,

PW.12 – Jalaluddin and one Maruthi Prasad about 1 ½ year back by taking an amount of Rs.5,00,000/- and they agreed to pay Rs.20,00,000/- more for the plot and accordingly they paid to him.

The testimony of these witnesses i.e., PWs.8, 11, 12 and 13 is not going to advance the case of the prosecution any further to prove ‘motive’ on the part of the accused in committing the offence, as they did not support the case of the prosecution.

The prosecution also relied on the evidence of PW.14, a mediator for Ex.P.4 - Inquest Report, to prove recovery of MOs.1 to 8 from the scene of offence.

It is the case of the prosecution that PW.8 - Mahmooda Begum developed illicit intimacy with the deceased – Mohd. Shoukath Ali and with his assistance sold away her lands to several persons without giving any share to the sons of her husband’s first wife, who are A.1 and A.2. As such, they developed grudge against the deceased – Mohd. Shoukath Ali, way-laid and killed him.

In order to connect the accused A.1 and A.2 with the crime, the prosecution has shown recovery of the material objects MOs.1 to 9 from the scene of offence. PW.14 is the panch witness, in whose presence the material objects have been seized from the scene of offence. Basing on the said recovery, the prosecution tried to connect the accused with the crime by relying on their confessional statement

made to PW.15. In fact, PW.15 did not support the version of the prosecution with regard to recovery of MO.9 – Rod alleged to have been used in the commission of offence. The instance of recovery of MO.9 is not proved.

It is fairly a well settled legal proposition that in a case based on circumstantial evidence, recovery of crime weapon constitutes a link in the chain of circumstances. The accused cannot be convicted based on such a solitary instance of recovery.

In SHARAD BIRDHICHAND SARDA v. STATE OF MAHARASHTRA¹, the Hon'ble Supreme Court of India has laid down the following parameters for holding the accused guilty in a case based on circumstantial evidence:

“(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(ii) The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion

¹ (1984) 4 SCC 116

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 a case based on circumstantial evidence, motive places an important role. It is one of the important circumstance to advance the case of the prosecution. As the very motive is only link and not proved, one circumstance is missing in the chain of circumstances. Since the ‘motive’ on the part of the accused for the commission of offence is not established, the other link is the recovery to connect the accused with the crime.

The evidence of witnesses examined by the prosecution to prove the recovery of material objects seized from the scene of offence is not proved as the recovery pancha PW.15 did not support the case of the prosecution. The other instance is the complaint Ex.P.1 lodged by PW.1. In fact, Ex.P.1 was lodged basing on the suspicion that the accused A.1 and A.2 might have killed the deceased due to the previous grudges with the deceased. The previous grudges that he sold away the plots belonging to their father without giving any share to them, is not proved. If at all, it is proved, whether it leads to the commission of the grave offence like murder is to be established.

In *SUJIT BISWAS v. STATE OF ASSAM*², the Supreme Court in para-6 of its judgment held as follows:

² 2013 Cr.L.J. 3140 (SC)

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved, and something that ‘will be proved’. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between ‘may be’ and ‘must be’ is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between ‘may be’ true and ‘must be’ true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between ‘may be’ true and ‘must be’ true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; State through [CBI v. Mahender Singh Dahiya](#), AIR 2011 SC 1017; and [Ramesh Harijan v. State of U.P.](#), AIR 2012 SC 1979).”

As discussed above, the prosecution failed to establish 'motive' by producing any acceptable legal evidence and also any other piece of evidence, which corroborates the incriminating aspect of recovery. In the absence of such corroborative evidence, it is wholly unsafe to base conviction on the recovery of MO.9 - Rod.

The Court below has properly appreciated the evidence of the witnesses and came to the right conclusion in acquitting the accused for the offence with which they were charged. Therefore, we are of the considered view that the findings of the Court below do not require any interference.

In the result, the Criminal Appeal is dismissed confirming the judgment dated 07.07.2011 in S.C.No.848 of 2010 of the Court below in finding the accused A.1 and A.2 not guilty of the offence punishable under Section 302 r/w. Section 34 IPC and acquitting them of the said offence.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

24.09.2018
Msr

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