

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL APPEAL No.135 OF 2013

JUDGMENT: (per Hon'ble Sri Justice A.Shankar Narayana)

Aggrieved over the conviction recorded under Section 235 (2) of Code of Criminal Procedure, 1973 (for short 'Code'), for the charge under Section 302 of Indian Penal Code, 1860 (for short 'IPC') and the sentence of Imprisonment for Life inflicted and fine of Rs.5,000/- imposed, in default, to suffer simple imprisonment for six (6) months, by judgment, dated 13.12.2012, in Sessions Case No.515 of 2012 passed by the learned Special Sessions Judge for Trial of Cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-Additional Sessions Judge, Khammam, the appellant-accused preferred the present Criminal Appeal under Section 374 (2) of the Code.

2. Heard Ms. Ammaji Nettem, Legal Aid Counsel, appointed by the High Court Legal Services Committee, Hyderabad, for the appellant, and the learned Public Prosecutor for the State of Telangana.

3. Before advertng to the submissions made by the learned counsel for the appellant as well as the learned Public Prosecutor,

certain relevant facts, which are necessary for adjudication of the controversy herein, require advertence.

4. The deceased, Kodirekkala Yaladri, is the father of the *de facto* complainant, who was examined as P.W.1. Admittedly, the appellant is brother-in-law of the deceased. Since the appellant used to harass his wife, who is none other than the sister of the deceased, by subjecting her to physical cruelty, the deceased used to warn the appellant not to harass his sister. But, paying a deaf ear, the harassment had been continued by the appellant. It is not in dispute that the sister of the deceased died about five years prior to the date of incident, as per the evidence of witnesses. However, differences between them did not come to an end. The prosecution alleges that the appellant was waiting for an opportunity to put an end to the life of the deceased and he found such an opportunity on 21.03.2012.

5. The appellant was residing along with P.Ws.5 and 6 after the death of his wife. On 21.03.2012, P.W.5-Nelluri Laxmi did not attend the duty at granite factory, where it appears that she was employed, due to ill-health. At about 1:00 PM, her husband, who is P.W.6, returned home and both of them had lunch and slept in the house by closing the doors. Prosecution story is that at the time when P.W.6 arrived at his house, he found that the appellant and the deceased were sitting under a tree in front of their house and chit-chatting with each other in a drunken state. As planned earlier, the appellant alleged to have called the deceased to the house of P.W.5 in the afternoon and

got consumed alcohol in high quantity and when the deceased slept on a wooden *nawar* cot, the appellant axed him on the neck with an axe, resulting in the deceased sustaining severe bleeding injuries and later succumbing to injuries. When the appellant was axing the deceased, the deceased appears to have raised the cries or noise and on hearing the same, P.Ws.5 and 6 rushed out of the house and found the appellant running away from the scene of offence with an axe. Even two more witnesses i.e., P.Ws.3 and 9, who were passers-by at that time, heard the cries and went to the scene and witnessed the incident.

6. Criminal action was initiated on the complaint lodged by P.W.1 basing on which First Information Report (FIR) was issued. Other due formalities of recording evidence of all the relevant witnesses, holding the scene of occurrence panchanama, collecting controlled earth and blood stained earth, arresting the appellant, recording his confessional panchanama in the presence of mediators, recovery of axe at the instance of the appellant in the presence of very same panch witnesses under a cover of panchanama, were all observed and after completion of investigation, charge sheet was laid.

7. The learned Additional Sessions Judge, on appearance of the appellant, examined him under Section 229 of the Code for the charge under Section 302 IPC. Since the appellant pleaded not guilty, the learned Sessions Judge proceeded with trial.

8. During trial, the prosecution, to prove the charge of murder, examined as many as 16 witnesses i.e., P.Ws.1 to 16 and marked Exs.P.1 to P.12 besides exhibiting material objects M.Os.1 to 5. On behalf of the defence, though, no oral evidence was adduced, the relevant portion in the statement of P.W.2 recorded under Section 161 of the Code, was marked as Ex.D.1.

9. Admittedly, in the present case, there are no eyewitnesses, who had actually witnessed the appellant attacking the deceased. Thus, the entire case rests on circumstantial evidence. It is no doubt true, the trial Court found that the circumstantial evidence placed before it was convincing to convict the appellant and accordingly, convicted him and inflicted Life Imprisonment as aforestated. But, being an appellate Court, this Court is obligated with the duty of re-appreciation of evidence on record and to examine the findings recorded by the trial Court as to whether such findings are based on proper appreciation of evidence on record or whether they do suffer from any legal infirmities.

10. (a) Adverting to the submissions made by the learned counsel for the appellant herein, firstly, the learned counsel submits that the evidence on record is not convincing at all. Learned counsel also places reliance on a recent decision as to what would be the degree of proof, where the prosecution case wholly rests on circumstantial evidence in order to prove the charge. Learned counsel would submit that the evidence of P.W.2, when examined in its entirety, would

completely condemn the case of the prosecution. To substantiate the submissions, she would point out the answer given by P.W.2 in her cross-examination to the effect that to her knowledge, L.W.6 i.e., P.W.6, killed her husband and implicated the appellant. This has been one of the circumstances pointed out by her in order to view the case of the prosecution with suspicion. No doubt, the learned Public Prosecutor has come up with the submission that what was stated by P.W.2 in her cross-examination, while giving that answer, was only to the extent of her knowledge. This, we would like to advert to at an appropriate stage.

(b) The second submission is, when examined the evidence of P.W.5, it is highly improbable that in a broad day light, the appellant would kill the deceased. What was asserted by P.W.5 in her chief-examination is that she found the appellant running away from the scene of offence. According to the learned counsel, it is highly improbable. When once the appellant committed the act of murder, he will not stay there and he would flee away from the place of occurrence and would not resort to changing the clothes thereat.

(c) Touching the evidence of P.W.6, learned counsel would submit that as much as P.W.6 admits in his cross-examination that the appellant was found near the cot on the date of incident and on the directions of the police, he picked up the axe and kept it in jeep, it would completely improbabilises basic case of the prosecution. So far

as recovery is concerned, incidentally it is her submission that the evidence of P.W.12, one of the mediators to the recovery panchanama, is not convincing, for the reason that in his cross-examination, he answered to the question that he signed the panchanama at the police station, though, the place of recovery is not the police station and according to the prosecution, it is bushes nearby Kaikondaigudem cross roads.

(d) Yet another submission made by the learned counsel relates to the arrest of the appellant, as projected by the Investigating Officer or the prosecution, as the case may be. Learned counsel would point out that the answer given by P.W.6 in his cross-examination would show that when himself and his wife-P.W.5, were taken to police station by the concerned police, they found the appellant already present at the police station, but the arrest of the appellant was shown as having been made on 27.03.2012, which was six days after the date of incident.

(e) Thus, all these circumstances, according to the learned counsel, would break the links in the chain and the evidence let in by the prosecution, are not convincing to convict the appellant.

11. (a) *Per contra*, the learned Public Prosecutor would mainly base on the 'last seen together' circumstance i.e., the appellant and the deceased together. Learned Public Prosecutor mainly relied on the evidence of P.Ws.5 and 6, who asserted that they found the appellant

and the deceased engaged in chitchatting in front of their house at the relevant time. As already stated above, P.Ws.5 and 6 had their lunch inside the house. Learned Public Prosecutor would submit that when the prosecution clinchingly establishes the last seen theory, the onus rests on the appellant to explain it away. When he was examined under Section 313 of the Code, he just pleaded not guilty, rather than giving any explanation at all. Therefore, it is his submission that it cannot be said that the prosecution failed to prove the charge of murder beyond all reasonable doubt. That has been the settled law according to the learned Public Prosecutor.

(b) This apart, the learned Public Prosecutor also would submit that the chain of events having taken place in succession without there being any time lag, itself would inspire the confidence of the Court and, therefore, the case projected by the prosecution cannot at all be viewed with suspicion. According to the learned Public Prosecutor, the incident had taken place at about 2:30 PM on 21.03.2012 and about an hour prior thereto, P.Ws.5 and 6 found the appellant and the deceased together on a cot under a tree, who are the crucial witnesses. The inquest was held on the very same day i.e., on 21.03.2012 between 4:30 PM and 6:00 PM. The post-mortem examination was conducted on 22.03.2012 i.e., on the immediate next day, at about 12:20 PM and thus, entire exercise was completed within 24:00 hours. The Doctor, who conducted post-mortem examination, spoke that the death of the deceased must have occurred between 12:00 to 24:00

hours before his examination, which also completely suits the time of incident and therefore, it cannot be said that the prosecution failed to let in any convincing evidence to prove the guilt of the appellant.

(c) Concerning recovery, the learned Public Prosecutor would submit that admissible portion of Ex.P.8 would clearly show that the appellant did state to the panchayatdars that in case, they come along with him, he would show the place where he had thrown away the axe. Therefore, the answer given by P.W.6 in his cross-examination that on the directions of the police he has taken the axe from the place of occurrence and kept it in jeep does not merit. It is also his alternative submission that even excluding the recovery, the 'last seen circumstance' certainly, cannot be disbelieved and, therefore, it cannot be said that the order of conviction recorded by the Court below suffers from any patent illegality nor there is any legal infirmity and thus, requests to maintain the conviction and sentence inflicted against the appellant.

12. Learned counsel for the appellant places reliance in **Kanaparthi Saidulu v. State of Andhra Pradesh**¹ rendered by this Court and **Sujit Biswas v. State of Assam**² rendered by the Hon'ble Apex Court in order to bring to the notice of this Court, the distinction between proof beyond reasonable doubt and suspicion and the principles enunciated by the Hon'ble Apex Court and as to when the

¹ 2016 (1) ALD (CrL.) 150

² (2013) 12 Supreme Court Cases 406

conviction can be solely be based on circumstantial evidence and the principles that are to be followed. Learned counsel also places reliance in **Ganpat Singh v. State of Madhya Pradesh**³, wherein it was held that a strong suspicion is not sufficient to lead to a conclusion that the guilty of the appellant stands established beyond all reasonable doubt; and in case of circumstantial evidence, the law postulates a two-fold requirement, the first being every link in the chain of circumstances to establish the guilt of the appellant, must be established by the prosecution beyond all reasonable doubt; second, all the circumstances must be consistent only with the guilt of the appellant.

13. Relying on the aforesaid decisions, learned counsel would submit that in view of the submissions she made, referred to above, the learned trial Court went wrong in convicting the appellant just basing on the 'last seen circumstance' overlooking the inconsistencies and discrepancies in the evidence of prosecution witnesses as pointed out earlier and, therefore, seeks to set side the conviction and to allow the instant appeal.

14. On the basis of the aforesaid submissions, the points that arise for determination before us are:

³ 2017 (3) ALT (Crl.) 347 (SC)

- 1) Whether the death of the deceased is homicidal?
- 2) Whether the prosecution is able to prove the guilt of the appellant-accused beyond all reasonable doubt by establishing the chain of circumstances? and,
- 3) Whether there is any infirmity in the conviction recorded and the sentence inflicted against the appellant by the Court below?

15. Now, we would like to once again turn to the submissions and examine them in the light of the evidence on record and the rulings relied on. So far as the first submission made by the learned counsel for the appellant is concerned, it is true in her cross-examination, P.W.2 gives a definite answer that to her knowledge L.W.6 i.e., P.W.6, killed her husband (the deceased) and implicated the appellant. This submission made by P.W.2, in her cross-examination, can be given weight or to be scored out, as contended by both sides respectively. One thing pertinent to mention here is that after P.W.2 made the said statement of fact who is no other than the wife of the deceased, learned Public Prosecutor before the trial Court ought to have treated this witness hostile and with the permission of the Court ought to have cross-examined. But, strangely, we do not find any such attempt being made. In such an event, when such an answer is given in the cross-examination, certainly, it cannot be excluded more particularly, when such answer was given not by someone else, who is

un-connected to the parties herein, but by the wife of the deceased, certainly, it cannot be thrown out. When the wife of the deceased herself expresses suspicion that P.W.6 implicated the appellant, the same cannot be sidelined. It is not as though we are arriving at such a view, just basing on this answer given by P.W.2 alone, but we are justified from the answers given by P.W.6, in his cross-examination which would vitally affect the basic story or the genesis of the prosecution case. The first is finding of axe near the cot, and under the directions of police, P.W.6 keeping the axe in the jeep. The learned Public Prosecutor did not make any attempt to declare PW.6 hostile and to cross-examine on these aspects of the case with the permission of the Court. The second aspect is finding the appellant person at the police station and PWs.5 and 6 were being taken to police station. One thing, which remains un-explained by the prosecution is whether the Investigation Officer picked up these two witnesses to the police station in his jeep for interrogation purpose or to record the statements of these witnesses which is not forthcoming. Therefore, these answers given by P.W.6, in his cross-examination, would give some sort of suspicion and makes us not to sideline the answer given by P.W.2 in her cross-examination as to her knowledge that P.W.6 might have killed her husband and implicated the appellant.

16. The next circumstance, which drives us to view the prosecution case with some sort of suspicion is, with regard to arrest of the appellant by P.W.15, the Investigating Officer. According to P.W.15, the appellant was arrested on 27.03.2012 and remanded to judicial custody on 28.03.2012. Again the answer given by P.W.1 was, at a later part of his cross-examination, to the effect that the police apprehended the appellant on the same day of incident and he was handed over to the police on the same day of the incident. Thus, not only the arrest, but also recovery projected by the prosecution is not that convincing.

17. Turning to the recovery part, not only the answer given by P.W.6 but, even P.W.12, who is the Village Revenue Officer, answers in his cross-examination that he signed the panchanama at the police station and he cannot say who scribed the panchanama. It is no doubt true, this witness again stated that he signed in panchanama at Kaikondaigudem cross roads, but the fact remains is that he is unable to say who scribed the panchanama. That itself would give rise to any amount of doubt as to the manner in which the recovery was alleged to have been effected by the Investigation Agency, as projected by the prosecution.

18. In view of the answers given by P.W.6 afore-referred to, we find that they all would give rise to a serious doubt over the very genesis of the case placed by the prosecution. Therefore, in our view, it is difficult for us to accept that the principles laid down by the

Hon'ble Apex Court referred to above, relied on by the learned counsel for the accused, are really satisfied. The Hon'ble Apex Court in **Sujit Biswas' case**² in regard to circumstantial evidence and appreciation of circumstantial evidence held that the judgment remains essentially inferential, that inferences are drawn from established facts, as the circumstances lead to particular inferences that the Court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question and all the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

19. We have also pointed out certain circumstances from which inferences based on the evidence of P.Ws.2, 5 and 6 primarily and P.W.12 are invariably to be drawn against the prosecution case.

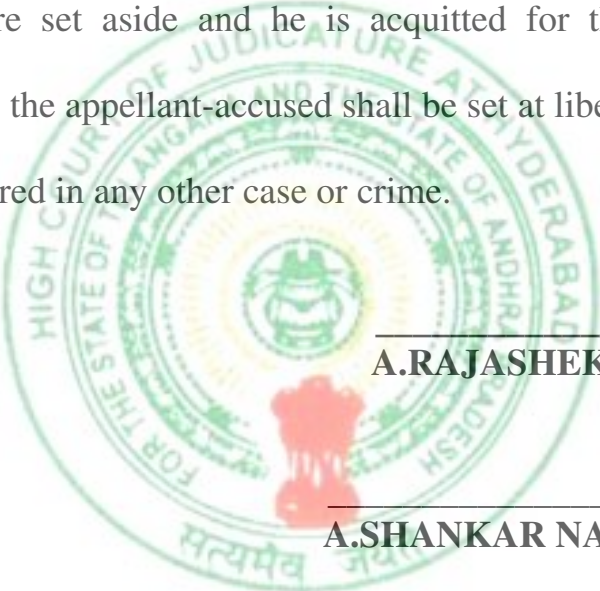
20. Turning to the 'last seen together theory', on which the prosecution wholly relies to support the order of conviction recorded by the Court below, it is no doubt true, P.Ws.5 and 6 did state the presence of the appellant at the place of incident and P.W.6 has seen the appellant and the deceased together in front of their house sitting on a cot and P.W.5 saw the appellant leaving the place from a distance of 100 yards from the place of occurrence. This circumstance constitutes the 'last seen together theory' one of the main link in the

chain. The other links which the prosecution tried to project relying on were not convincing as has been discussed by us in the above. Even in regard to the first link in the chain, in so far as the motive is concerned, the evidence is not convincing to hold that the prosecution could establish it. The motive, according to the prosecution case, is, the appellant has bore grudge against the deceased as the deceased used to physically assault his wife, who is none other than the sister of the deceased, whenever the wife of the appellant used to complain, but, even according to the prosecution, the death of the sister of the deceased had taken place five years prior to the date of incident. Therefore, it is too difficult to view or convince ourselves with regard to the grudge that the appellant did bear while his sister was alive would have continued to go to the extreme so as to kill the deceased.

21. The evidence of P.Ws.2 and 5 would also clearly point out that the appellant and the deceased were on cordial terms and, therefore, it is difficult to hold that the prosecution is able to prove every link in the chain to drive us to hold that the order of conviction recorded by the trial Court does not suffer from legal infirmity, in view of improper appreciation of evidence on record. Thus, viewed from the discussion, we made herein above, certainly, the case projected by the prosecution suffers from inherent improbabilities giving rise to enormous doubt, to which benefit the appellant-accused is entitled. We, therefore, accord that benefit of doubt to the appellant-accused

holding that the prosecution failed to prove the charge under Section 302 IPC beyond all reasonable doubt.

22. In the result, the appeal is allowed. The conviction recorded and the sentence of Imprisonment for Life inflicted, including the fine amount imposed, on the appellant-accused by judgment, dated 13.12.2012, in Sessions Case No.515 of 2012 on the file of the Special Sessions Judge for Trial of Cases under SCs and STs (POA) Act-cum-Additional Sessions Judge, Khammam, for the charge under Section 302 I.P.C., are set aside and he is acquitted for the said charge. Consequently, the appellant-accused shall be set at liberty forthwith, if he is not required in any other case or crime.



A.RAJASHEKER REDDY, J

A.SHANKAR NARAYANA, J

Date: 03.03.2018

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