

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SMT JUSTICE T.RAJANI**

CRIMINAL APPEAL No.565 OF 2012

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

A.1 and A.2 in Sessions Case No.207 of 2008 on the file of I Additional Sessions Judge at Nizamabad, are the respondents herein. They were tried for an offence punishable under Section 302 read with 34 IPC, for causing the death of one Gurudu Naveen (hereinafter referred to as "the deceased") on 02.06.2007 at about 10:00 AM. Vide judgment, dated 28.01.2011, the learned Sessions Judge acquitted A.1 and A.2 for the said offence. Assailing the same, the present appeal came to be filed by the State, represented by the Public Prosecutor for the State of Andhra Pradesh, under Section 378 (3) (1) Cr.P.C.

2. The substance of charge against A.1 and A.2 is that on 02.06.2007 at about 10:00 AM, A.1 met the deceased at a toddy shop near Srinikethan School at Rajramnagar, where A.2 joined and later on both the accused took the deceased to a hillock in search of peacock eggs and committed murder by throwing a big boulder on the head of the deceased.

3. The facts, in issue, are as under:

P.W.1 is sister of the deceased. On 02.06.2007 at about 10:00 AM, the deceased left the house on a Rajdooth motorcycle driven by A.1 to meet his friends, but did not turn up. At about 3:00 PM, P.W.1 contacted the deceased, who informed her that he will come after an hour. But, the deceased did not turn up. On

the next day, she telephoned to A.1, who told her that the deceased went to Navipet Village and he will return after two days. Giving one day's gap, she again telephoned to A.1, who gave the same information which was given on previous date and promised to bring the deceased in two days. Thereafter, there was no proper response from A.1. Hence, she made enquiries with the friends of the deceased including A.2, who informed that they do not know the whereabouts of the deceased. Thereafter, A.1 and A.2 were also not available. On 07.06.2007, she lodged a report with P.W.5, the Sub-Inspector of Police, Armoor Police Station, regarding missing of the deceased, furnished a photograph of the deceased and also gave particulars of the clothes wore by him on the date of the incident. Basing on the said report, he registered a case in Crime No.179 of 2007 as Man missing case. Ex.P.6 is the F.I.R. He recorded the statement of P.W.1 on the same day and gave intimation to all police stations regarding the man missing case. On 23.06.2007 at about 6:00 AM, he received credible information about the presence of suspected persons mentioned in the report at Dhobighat, Armoor. He along with staff proceeded to Dhobighat and found both the accused and telephoned to P.W.4 and S.Narayana (L.W.13) to come over to Dhobighat to act as mediators. The said aspects were interrogated, and basing on the information furnished, a Rajdooth Motorcycle was seized under M.O.4 and thereafter, the section of law was altered from man missing to 302 read with 34 IPC. Further investigation in the case was taken up by P.W.6, the Circle Inspector of Police, who is said to have interrogated the accused. He arrested the accused,

proceeded to Boggula Gutta along with mediators and recovered the dead body of the deceased from the open place, which was in between boulders. He conducted the scene of offence panchanama in the presence of P.W.4 and another. He also seized blood stained clothes i.e., Jeans pant and shirt under M.Os.1 and 2. He collected blood stained stones (M.O.3) under the cover of Ex.P.4. He also got photographed the scene of offence as well as dead body with the help of P.W.2 as in Ex.P.2. He then, conducted inquest over the dead body of the deceased in the presence of same mediators under Ex.P.5. Later gave a requisition to the Medical Officer, Armoor, to conduct spot postmortem examination. PW.7, the Civil Assistant Surgeon, Government Hospital, Armoor, on receipt of requisition from P.S. Armoor, proceeded to the spot and conducted autopsy over the dead body of the deceased. According to him, the dead body was in decomposed state. Only skull was present and the skin and muscles were scattered here and there. He also noticed the presence of maggots over the dead body. On examination of skull, he found fracture of left parietal and right temporal bone. He also found blood clots at the fractured points. Ex.P.9 is the postmortem examination report. P.W.6, who took up investigation from P.W.5, examined P.Ws.1 to 3 and recorded their statements. P.Ws.1 and 2 claimed to have identified the dead body as that of the deceased based on the clothes found on the dead body. He came back to the police station, effected the arrest of the accused and produced them before the concerned Court seeking judicial remand. After collecting the F.S.L reports, he filed a

charge sheet, which was taken on file as P.R.C.No.3 of 2008 on the file of Judicial Magistrate of First Class, Armoor.

4. On appearance of A.1 and A.2, copies of the documents were furnished to them, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as Sessions Case No.207 of 2008.

5. On consideration of material placed on record and on appearance of the accused, the charge referred to above, came to be framed, read over and explained to A.1 and A.2, to which, they pleaded not guilty and claimed to be tried.

6. To substantiate the case, the prosecution examined PWs.1 to 8 and got marked Exs.P.1 to P.9, besides MOs.1 to 4.

7. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. But they did not adduce any oral evidence, except getting marked Exs.D1 and D2.

8. In the absence of any evidence establishing the circumstances i.e., motive, the accused being last seen in the company of the deceased and recovery of dead body at the instance of the accused, connecting the accused with the crime, the learned Sessions Judge, acquitted the accused. Challenging the same, the present appeal came to be filed by the State.

9. The point that arises for consideration is whether the circumstances relied upon by the prosecution are proved and if, proved, whether they are sufficient to convict the accused?

10. Learned Public Prosecutor for the State of Telangana would submit that though there are no eyewitnesses to the incident, the circumstances relied upon by the prosecution viz., motive, accused being last seen with the deceased and the recovery of the dead body at the instance of the accused, are proved and hence, the trial Court erred in acquitting the accused.

11. As seen from the record, there are no eyewitnesses to the incident and the case solely rests on the circumstantial evidence. It is well established principle of law that in a case of circumstantial evidence, the prosecution has to establish each and every circumstance by leading cogent evidence and the circumstances so proved should form a chain of events connecting the accused with the crime.

12. In ***Dhan Raj @ Dhand v. State of Haryana***¹ the Apex Court held as under:

“In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any chance of surmise or conjecture and must also be consistent with the guilt of the accused.”

¹ (2014) 6 SCC 745

13. The Apex Court, in **BODHRAJ v. STATE OF J&K**², while dealing with a case arising out of circumstantial evidence and more particularly with regard to the theory of last seen, held as under:

“31. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

Keeping the guidelines laid down by the Apex Court, we shall deal with the three circumstances, relied upon by the learned Public Prosecutor, namely, motive, the accused being last seen with the deceased on 02.06.2007 and recovery of dead body on 23.06.2007 from the hillock.

14 Insofar as the motive is concerned, it is to be noted that the entire case of the prosecution rests on the evidence of P.Ws.1 and 8. P.W.1, who is sister of the deceased, in her evidence deposed that on the date of incident at about 10:00 AM, the deceased left the house in order to meet the friends, but did not turn up. At about 3:00 PM, she contacted the deceased over phone, who informed her that he will come after an hour, but, did

² (2002) 8 Supreme Court Cases 45

not turn up. On the next day, P.W.1 contacted A.1, who told her that the deceased went to Navipet Village and will return after two days. Since, the deceased did not return home even after three days, she contacted A.1, who also gave the same reply and thereafter, he started evading P.W.1. Then P.W.1 tried to talk with other friends including A.2, who pleaded ignorance about the whereabouts of the deceased. Hence, a report was lodged on 07.06.2007, which was registered as man missing. Later on, on 23.06.2007 i.e., nearly 20 days after the deceased left the house, the dead body was traced. It is to be noted here that P.W.8, who is cell phone repairer at Armoor, deposed that on 02.06.2007, at about 10:00 AM, the deceased came to his shop for repair of his cell phone. Meanwhile, A.1 came on a motorcycle, called the deceased and took him on his motorcycle. From the evidence of P.Ws.1 and 8, it appears that on 02.06.2007, at about 10:00 AM, the deceased and A.1 left on a motorcycle. In the cross-examination, P.W.1 admits that she came to know that the deceased went on motorcycle, which was driven by A.1. She admits that police did not ask her as to the person with whom the deceased went, as such, she did not disclose the same, while giving report.

15. A reading of F.I.R. lodged by P.W.1 on 07.06.2007 nowhere indicates suspicion against any person. The F.I.R. only speaks about the search being made for the deceased and the fact that the cell phone of the deceased was switched off. It was also mentioned that the relatives of P.W.1 searched for the deceased and in that process the delay has occurred in lodging the report. In the F.I.R.,

P.W.1 neither expressed any suspicion against A.1 nor expressed any motive against A.1 and A.2, for causing death of the deceased. On the other hand, the admissions made by P.W.1 show that the deceased went on a motorcycle driven by A.1. The only information that was elicited in the cross-examination of PW.1 was that a telephone call was made to the deceased, but the same was switched off. However, she claims to have informed the police about the conversation of the deceased over phone while drafting Ex.P.1-report and also while recording the first statement, but the same was not mentioned in Ex.P.1. In the cross-examination, she admits that in Ex.P.1, she did not state about the conversation with the deceased. She denied to have stated to the police while drafting Ex.P.1 about the missing of A.2 after enquiring about the missing of the deceased. However, P.W.5, the Investigating Officer, in his evidence admits that P.W.1 neither stated before him nor was it mentioned in Ex.P.1 regarding the fact of she calling the deceased over telephone, and talking with A.1 etc. P.W.1 also did not state before him that when she called A.1, he stated that the deceased went to Navipet village and the said fact was cross-verified by P.W.1 with the friends of the deceased namely Chakri and Sudheer. He further admits that P.W.1 did not state before him that when she called A.1 for the second time, he promised to bring the deceased within two days. He further states that P.W.1 did not express any suspicion with the accused, but, however, stated that the deceased was missing from the day on which both the deceased and the accused consumed toddy. PW.1 also did not state before him that she called A.2 to her house and made

enquiries about the whereabouts of the deceased and also did not state that she telephoned to A.2 to find out the whereabouts of deceased. P.W.1 admits that she never stated about missing of A.2 from the village on the date of lodging of report.

16. There is no whisper in the evidence of P.W.1 with regard to the existence of motive for the accused to cause the death of the deceased. On the other hand, as observed earlier, the evidence of P.W.1 appears to be a complete improvement. Her evidence in chief goes to show that on 02.06.2007 at about 10:00 AM, P.W.1 and the deceased left the house on a motorcycle belonging to A.1, but, during the cross-examination, she admits that she came to know that the deceased went on motorcycle driven by A.1. It would be appropriate to extract this portion of the evidence in the words spoken to by P.W.1, which is as follows:

“On 02.06.2007 at about 10:00 AM left from the house by saying that he would meet the friends and he did not turn up. The deceased left the house on Rajdooth motor cycle rode by Irfan A.1 at about 3-00 p.m.

My second statement was recorded by the C.I. at the place of the dead body. I came to know that the deceased went on the motor cycle rode by A-1. The police did not asked me as to his last company and I did not state to the Police when they examined me while giving complaint. I also did not mentioned the same fact in my complaint.”

From the answers given above, it cannot be said with certainty that P.W.1 saw the deceased leaving the house on the motorcycle of A.1.

17. Further the evidence of P.W.1 coupled with the evidence of P.W.5, the Investigating Officer, who initially recorded the

statement of P.W.1 makes it clear that P.W.1 never stated anything in her earlier statement. Her evidence in Court is a complete improvement from what she stated in her earlier statement

18. The prosecution examined P.W.8 to speak about the deceased and A.1 leaving his cell phone shop on 02.06.2007. P.W.8 was examined after the evidence of Investigating Officer was recorded. In his evidence, he stated that, on that day, the deceased came to his shop for the repair of his cell phone. Meanwhile, A.1 came on his motorcycle, called the deceased and took him on his motorcycle. He further stated that the deceased left the shop while he was setting the tones to the cell phone. In the cross-examination, P.W.8 admits that he has no prior acquaintance with A.1 and that he did not state to the police about the deceased leaving him after handing over the cell phone for repair, as in Ex.D.2. According to him, the police called him to police station, shown A.1 and A.2 and as such he identified A.1, as the person who took the deceased on his motor cycle. He denied the suggestion that he is speaking false because of relationship with the deceased family. But, one thing to be noted here is that no opportunity was given to the accused to test the veracity of evidence of P.W.1, through the Investigating Officer. No explanation was forthcoming as to why P.W.8 was examined after the evidence of the Investigating Officer. Even otherwise, P.W.8 in his evidence states that he has no prior acquaintance with A.1 and that he identified A.1 as he was shown in the police station by the police. Therefore, the evidence of P.W.8, who was examined to corroborate the evidence of P.W.1, in our view sans merit and the

same cannot be accepted. Hence, the second circumstance, which is relied upon by the prosecution to establish that the guilt of the accused is being last seen in the company of the deceased, is not proved by any legal evidence.

19. The only other circumstance, which is relied upon by the prosecution is the recovery of dead body at the instance of A.1. It is to be noted here that the deceased was missing from the house from 02.06.2007 and dead body was traced in a hillock on 23.06.2008. It is not the case of the prosecution that the dead body was concealed in a scheduled place, which is accessible to A.1 only or that there was no possibility for others reaching the place. In fact, the evidence on record would show that even the accused searched for the dead body along with the police for about 40 minutes. P.W.4 is the panch witness, who was examined to speak about the confession leading to recovery of dead body. In his chief-examination though he says that both the accused lead them along with the police to Boggulagutta, but in cross, he admits that the accused searched for 40 minutes and ultimately shown the dead body in a depth of 15 to 20 feets, at a place between the boulders, on the Boggulagutta hillock. If really the accused were aware of the place, where the dead body was, and if it was within their exclusive knowledge, they would not have taken time and search the place along with the police, to trace out the dead body. This piece of evidence of P.W.4 in our view gives suspicion of accused knowing the place of concealment of the dead body. In the absence of any motive, the circumstance of last seen of the deceased with the company of A.1 and the recovery of dead body at

the instance of the accused being doubtful, we feel that the prosecution failed to establish the chain of circumstances connecting the accused with the crime. Hence, we hold that there are no grounds to interfere with the findings arrived at by the trial Court.

20. Accordingly, the Criminal Appeal is dismissed confirming the findings in the judgment, dated 28.01.2011, passed in Sessions Case No.207 of 2008 on the file of I Additional Sessions Judge at Nizamabad.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T. RAJANI

AUGUST 06, 2018.
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