

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL NO.688 OF 2013

JUDGMENT: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

Aggrieved by the judgment dated 08.07.2013, passed by the VI Additional District and Sessions Judge, Siddipet, the accused-appellants have challenged the same before this Court. By the said judgment, the three accused-appellants namely, Shaik Bhikku Sab @ Sardar (A-1), Shainaj Begum (A-2), and Shaik Akbar Pasha (A-3) have been convicted and sentenced for offences under Sections 302 and 201 of the Indian Penal Code (IPC). Each one of them has been sentenced to life imprisonment, and imposed with a fine of Rs.1,000/-, and in default to undergo a simple imprisonment for a period of three months for the offence under Section 302 IPC. For the offence under Section 201 IPC, each one of them has been sentenced to a simple imprisonment for three years, and imposed with a fine of Rs.500/-, and in default to undergo a simple imprisonment for a period of two months.

Briefly stated, on 04.02.2012, Cheruku Siddi Ramulu Goud (P.W.1) lodged a criminal report with the P.S. Chegunta, wherein he claimed that on 04.02.2012 at 7.00 am, he received a telephonic message, through his village ward member, U.Narsimulu (P.W.2), that a female dead body was found in the outskirts of Masaipet Village, Chetla Thimmaipally Cross Roads on National Highway No.44 u-turn. Immediately, he along with his village servants visited the place and found an unknown female dead body, aged about thirty-five to forty years, which was packed

in plastic bag covering from top to bottom of the body. He further claimed that some unknown persons killed the unknown female some where, and packed her in a plastic bag, and left at the outskirts of Masaipet Village, Chetla Thimmaipally Cross Roads on National Highway No.44 u-turn. On the basis of this complaint, a formal FIR, namely FIR No.17 of 2012 (Ex.P2), was chalked out for offences under Sections 302 and 201 IPC. However, as the place of discovery of the dead body was not within the jurisdiction of P.S. Chegunta, on 23.02.2012, the said FIR was sent for further investigation to P.S. Toopran. The said FIR was renumbered as FIR No.33 of 2012 (Ex.P.13) for the offences under Sections 302 and 201 read with Section 34 IPC.

During the course of trial, the prosecution unfolded the story that the accused No.1, Shaik Bhikku Sab @ Sardar was doing business of scrap; accused No.2, Shainaj Begum, the wife of accused No.1, was working in a spinning mill; accused No.3, Shaik Akbar Pasha is distantly related to accused No.1 and was working as painter. The deceased, Chand Bee happens to be a distant relative of accused No.1. According to the prosecution, accused Nos.1 and 2 had engaged their daughter to one of the sons of Chand Bee. However, after the death of her husband, Chand Bee broke off the engagement; she married her son, Hazi, to another lady. The breaking off of the engagement created animosity between the accused Nos.1 and 2, on the one hand, and Chand Bee, on the other hand. It was further claimed that the deceased, Chand Bee, developed an illicit intimacy with one Yadul. This intimacy became the talk of the town. Therefore, accused Nos.1 and 2 decided to do away with Chand Bee. In order to carry out

the plan, they contacted accused No.3, who was closely related to Chand Bee. It is further alleged that on 29.01.2012, accused Nos.1 and 2 went to Chennoor Village, Nagireddypet Mandal, Nizamabad to attend a marriage. While Chand Bee and Yadul were sleeping in the village, on 02.02.2012, accused Nos.1 and 2 went there and assaulted Chand Bee. It is further alleged that Mohd. Bade Sab (P.W.7) and his wife Pasha Bee (L.W.10) took Chand Bee to their house. Further, according to the prosecution, on the next day, accused Nos.1 and 2 went to the house of Mohd. Bade Sab (P.W.7) and took Chand Bee with them. According to the prosecution, accused No.3 came to the house of accused Nos.1 and 2 in the night of 03.02.2012. It is alleged that accused Nos.1 to 3 strangled the deceased by using an electric wire. The body of the deceased was taken on a motor bike and abandoned at the u-turn at Masaipet – Chetla Thimmaipally Cross Roads in order to destroy the evidence.

During the course of investigation, the three accused-appellants were arrested; and the charge sheet was filed against them for the offences under Sections 302 and 201 read with Section 34 IPC. The accused-appellants were charged with the same set of offences.

In order to prove its case, the prosecution examined seventeen witnesses, exhibited thirteen documents, and submitted eleven material objects before the learned Trial Judge. After appreciating the evidence, as aforementioned, the learned Trial Court convicted and sentenced the accused Nos.1 to 3 for the abovementioned offences.

Smt. A.Gayathri Reddy, learned counsel for the appellants, has raised the following contentions before this Court:-

Firstly, the case is based on circumstantial evidence. However, all the circumstances do not form a complete chain unerringly pointing to the guilt of the accused persons.

Secondly, the prosecution has heavily relied on the testimonies of P.Ws.4 and 7 in order to create the evidence of the last seen. However, there is a clear-cut contradiction between the testimonies of these two witnesses. Despite the contradiction in the testimonies of P.Ws.4 and 7, the learned Trial Court has relied on their testimonies in order to convict the accused persons.

Thirdly, according to the Post-Mortem Report (Ex.P11), the post-mortem examination as carried out on 04.02.2012. Moreover, the deceased expired fourteen to sixteen hours prior to the carrying out of the post-mortem examination. But, according to the prosecution, the deceased was allegedly last seen alive, with the accused persons, on 29.01.2012. Therefore, the Post-Mortem Report (Ex.P11) does not support the case of the prosecution with regard to the time of the death of the deceased.

Fourthly, the prosecution claimed that the burka of the deceased was discovered pursuant to a statement under Section 27 of the Evidence Act, 1872. But even the said evidence is rather weak for convicting the accused persons. According to P.W.4, the son of the deceased, he was not living with his mother. In fact, he and his mother were residents of two different villages. Hence, according to the learned counsel for the appellants, the chain is an incomplete one. Therefore, the Trial Court is unjustified in

convicting the accused persons for the offences under Sections 302 and 201 read with Section 34 IPC.

On the other hand, Ms. Sridevi Juvvadi, the learned Additional Public Prosecutor, has raised the following contentions:-

Firstly, P.Ws.4 and 7 have corroborated the testimonies of each other. Since P.W.7 happens to be a rustic and illiterate person, even if there were certain omissions in his testimony, they would not dilute the evidentiary value of his testimony. According to P.W.7, accused Nos.1 and 2 had quarrelled with the deceased, and had taken her with them. Hence, there is sufficient evidence with regard to the last seen.

Secondly, it is upon the statement of the accused that the burka of the deceased was discovered by the police.

Thirdly, there is sufficient evidence with regard to the motive for committing the crime. Since the deceased and accused No.1 are related, since the deceased had entered into an illicit affair with one Yadul, her conduct had caused embarrassment to the family. Moreover, since the deceased had broken off the engagement of the daughter of accused Nos.1 and 2 with her son, animosity had developed. Thus, there is sufficient motive for accused Nos.1 and 2 to get rid of the deceased. According to the learned Additional Public Prosecutor, these pieces of evidence are sufficient to unerringly point to the guilt of the accused persons. Hence, she has supported the judgment impugned.

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

While dealing with cases based on circumstantial evidence, certain principles have to be kept in mind as enumerated by the Hon'ble Supreme Court in various decisions.

In the case of **G.Parshwanath v. State of Karnataka**¹, the Hon'ble Supreme Court has opined as under:-

“The evidence tendered in a Court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eye-witness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum.

In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is not derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that “men may tell lies, but circumstances do not”.

Further more, in the case of **Madhu v. State of Kerala**², the Supreme Court observed as follows:-

“The care and caution with which circumstantial evidence has to be evaluated stands recognized by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial

¹ (2010) 8 SCC 593

² (2012) 2 SCC 399

evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt.”

In the case of **Subhash Chand v. State of Rajasthan**³, the Hon’ble Supreme Court held as under:-

“The Court has to proceed to examine each of the pieces of incriminating circumstantial evidence so as to find out if each one of the circumstantial evidence is proved individually and whether collectively it forges such a chain of incriminating circumstances as would fasten the guilt on the accused beyond any shadow of reasonable doubt.”

Therefore, while appreciating the evidence produced by the prosecution, these principles have to be applied.

A bare perusal of the impugned judgment clearly reveals that according to the learned Trial Court, the testimonies of P.Ws.4 and 7 corroborated each other on material facts of the incident. However, the said conclusion is belied by the record. For, P.W.4 would have the Court believe that his mother, Chand Bee, had gone to attend a marriage at Chennoor Village, at the house of P.W.7. He further claims that P.W.7 had informed him that his mother has been taken away by accused Nos.1 and 2. However, in his cross-examination, P.W.7 clearly states that *“the deceased did not attend the marriage function at his house as he did not invite her”*. In fact, the families were not on talking terms for the last one year. According to P.W.7, the quarrel had taken place in a house a

³ (2002) 1 SCC 702

kilometer away from his house. It is only on information given by P.W.4, he came to know that quarrel had taken place between the deceased and accused Nos.1 and 2. Therefore, clearly, even on material facts, P.Ws.4 and 7 do not corroborate each other. Therefore, the conclusion reached by the learned Trial Court is clearly based on mis-appreciation of evidence.

As far as the evidence of last seen is concerned, in the case of **Shyamal Ghosh v. State of West Bengal**⁴, the Hon'ble Supreme Court has delineated on the evidence of last seen as under:-

“There should be a reasonable proximity of time between these two events. This proposition of law does not admit of much excuse but what has to be seen is that this principle is to be applied depending upon the facts and circumstances of a given case. This Court in para 21 of Yusuf's case (supra) while referring to the case of Mohd. Azad @ Samin v. State of West Bengal {(2008) 15 SCC 449} and State through Central Bureau of Investigation v. Mahender Singh Dahiya {(2011) 3 SCC 109}, held as under:-

“(Yusuf case, SCC).

21. 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 (Vide Mohd. Azad v. State of West Bengal and State v. Mahender Singh Dahiya).”

52. The reasonableness of the time gap is, therefore, of some significance. If the time gap is very large, then it is not only difficult but may even not be proper for the Court to infer that the accused

⁴ (2012) 7 SCC 646

had been last seen alive with the deceased and the former, thus, was responsible for commission of the offence. The purpose of applying these principles, while keeping the time factor in mind, is to enable the Court to examine that where the last seen together and the time when the deceased was found dead is short, it inevitably leads to the inference that the accused person was responsible for commission of the crime and the onus was on him to explain how the death occurred.”

According to the evidence of Mohd. Bade Sab (P.W.7), “*then A-1 insisted me that he being a brother of Chand Bee took her to the place where her children is residing by saying so A-1 and A-2 took the deceased from my house. Two days later P.W.4 contact me over phone and enquired about the deceased as she came to my house.*” Thus, according to this witness, Chand Bee was taken by the accused Nos.1 and 2 on 29.01.2012. However, according to Cheruku Siddi Ramulu Goud (P.W.1), it is on 04.02.2012 that he was informed by U.Narsimulu (P.W.2) that “*he noticed a female dead body found in a plastic bag by head was exposed at u-turn chourastha Thimmapally Village chourastha*” and he asked him to take action. Immediately, he went to the place of discovery along with Ch.Narsaiah (L.W.4) and Tappa Raju (L.W.5). There, he noticed the dead body in a plastic bag except head was outside. He immediately informed the police. Thus, according to the said witness, the dead body was discovered five days after Chand Bee was last seen with the accused Nos.1 and 2.

The prosecution has not established that Chennoor Village is in close proximity of Masaipet - Chetla Thimmaipally Village Cross Roads, National Highway No.44 where the dead body was

discovered. Hence, the dead body was discovered after five days and that, too, at a distant place. Therefore, the proximity of time and place is conspicuously missing in the present case. Thus, there is a distinct possibility that even if Chand Bee was last seen alive with the accused Nos.1 and 2, she may not have been done to death by them. Instead she may have been strangled by some other unknown person.

This possibility is further strengthened by the fact that according to Dr. C.N.Vijay Kumar (P.W.12), he had conducted the post-mortem of the dead body on 04.02.2012 between 2.30 to 3.30 pm. He found the following ante-mortem injuries:-

- (1) *U shape dark brown colour depressed ligature mark measuring 11 X ½ inch present transversely encircling the neck over the middle of thyroid cartilage seen.*
- (2) *Fracture of thyroid cartilage.*
- (3) *Two inch lineal hemorrhagic line present sub-cutaneously on right side of neck muscle under the ligature mark is seen.*

Additional observation:-

Deep cynosis of head and neck section pupil dilated.

In the opinion of this witness, the death was caused due to strangulation. Most importantly the approximate time of death is fourteen to sixteen hours prior to conducting the post-mortem examination. These facts were also mentioned by him in the Post-Mortem Examination Report (Ex.P11). Thus, according to the medical evidence, Chand Bee was murdered fourteen to sixteen hours prior to her post mortem examination. The testimony of Dr. C.N.Vijay Kumar (P.W.12) read with Post-Mortem Examination

Report (Ex.P11) belies the entire case of the prosecution with regard to the evidence of the last seen.

Hence, none of the pieces of evidence, relied upon by the prosecution, unerringly point to the guilt of the accused. Since there is a lack of complete chain of circumstances, the conviction is based on conjunctions and surmises. However, even in case of circumstantial evidence, a conviction cannot be based on surmises and conjunctions. Therefore, clearly, the judgment dated 08.07.2013 is legally unsustainable.

For the reasons stated above, the sentence and conviction of the appellants-accused Nos.1 to 3 for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code in S.C.No.288 of 2012 on the file of the VI Additional District and Sessions Judge, Siddipet, are set aside. The appellants-accused Nos.1 to 3 shall be released forthwith, if not wanted in any other case.

The Criminal Appeal is, accordingly, allowed. Miscellaneous petitions, if any, pending shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(M.SATYANARAYANA MURTHY, J)

23rd November 2018
RRB