

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NOS.1186 OF 2014 AND 580 OF 2015

DATED: 26.03.2019

1. CRL.A.NO.1186 OF 2014

Between:

Diddikadi Srinivas.

...APPELLANT

And

The State of Telangana,
Rep.by the Public Prosecutor,
Hyderabad.

...RESPONDENT

Counsel for the Appellant: Mr. P. Prabhakar Reddy

Counsel for the Respondent: Public Prosecutor

2. CRL.A.NO.580 OF 2015

Between:

Diddikadi Anjilamma.

...APPELLANT

And

The State of Telangana,
Rep.by the Public Prosecutor,
Hyderabad.

...RESPONDENT

Counsel for the Appellant: Ms. Ammaji Nettem

Counsel for the Respondent: Public Prosecutor

The Court made the following:

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NOS.1186 OF 2014 AND 580 OF 2015

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

Both the appeals, namely CrI.A.Nos.1186 of 2014 and 580 of 2015, arise from the same impugned judgment, namely judgment dated 05.11.2014, in S.C.No.10 of 2012, passed by the Additional District and Sessions Judge, Vikarabad, Ranga Reddy District, whereby the learned Judge has convicted both the appellants for the offences under Sections 302 and 201 of the Indian Penal Code (IPC), sentenced each of them to life imprisonment for the offence under Section 302 IPC, imposed them with a fine of Rs.10,000/- each; for the offence under Section 201 IPC, sentenced each of them to seven years, and imposed them with a fine of Rs.5,000/- each. Both the sentences were directed to run concurrently.

In a nutshell the story of the prosecution is that on 17.08.2011 around 11:30 AM, Mr. Diddikadi Pedda Narsimulu (P.W.1) lodged a complaint (Ex.P.1) with the Sub-Inspector of Police, Mohammadabad Police Station, wherein he claimed that his elder son, Diddikadi Ramulu, went to the farm on 16.08.2011 at night, but did not come back home at night. On 17.08.2011, his son was found dead with small injuries on his body under suspicious circumstances. He suspected that Diddikadi Anjilamma-accused No.1, his daughter-in-law, may have caused his death. Therefore, he requested that proper action should be taken against her. On the basis of the said complaint (Ex.P.1), a formal FIR (Ex.P.13), namely FIR.No.74 of 2011, was chalked out

under Section 174 of the Code of Criminal Procedure (Cr.P.C.) for suspicious death. Subsequently, after the confession of Diddikadi Anjilamma, accused No.1, the offence was altered from one under Section 174 Cr.P.C. to one under Sections 302 and 201 IPC. Thereafter, both the appellants, accused Nos.1 and 2, were arrested by the police; they were put up for trial.

In order to support its case, the prosecution examined sixteen witnesses, submitted fifteen documents, and produced five material objects. After going through the evidence produced by the prosecution, and as no evidence was produced by the defence, the learned Trial Court convicted and sentenced both the appellants as aforementioned. Hence, these two appeals.

Mr. P. Prabhakar Reddy, the learned counsel for the first appellant-accused No.2, and Ms. Ammaji Nettem, the learned counsel for the second appellant-accused No.1, have raised the same set of contentions, namely:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish a complete chain of circumstances which would unerringly point towards the guilt of the accused-appellants.

Secondly, the entire case is based on the confessional statement of the appellant No.1 made to the police. However, "*the confessional statement*" made by the appellants cannot be read either against her or against the appellant No.2.

Thirdly, the entire case of the prosecution hinges on the testimony of the sole eye witness, namely Mr. K. Ram Reddy (P.W.7), who claimed in his examination-in-chief that on the fateful evening, he had seen the accused No.1 going to her farm at 05:00

PM, and also seen the accused No.2 following the accused No.1. He was carrying a bundle of electrical wire. However, according to the learned counsel, K. Ram Reddy (P.W.7) is not a witness of sterling worth. For, in his cross-examination, he has clearly admitted that he was present when the panchanama was carried out. Yet he did not utter a single word to the police when the body was discovered on the next day. Moreover, he maintained a studied silence for about ten days. Furthermore, he admits that *“he had seen the accused No.2 carrying the electric wire from a distance about 100 yards or more”*. His studied silence for ten days clearly reveals that he is a fabricated witness. Therefore, the learned Trial Court has erred on relying upon his testimony in order to convict the appellants.

Lastly, the entire case of the prosecution is based on surmises and conjectures. Allegedly, the accused Nos.1 and 2 had eloped from the village for a period of three months. However, a conviction cannot be based on strong suspicion of existence of a probable motive. Therefore, the learned counsel has prayed that the impugned judgment dated 05.11.2014 should be set aside, and the appellants should be acquitted of the offences alleged against them.

Ms. J. Sridevi, the learned Public Prosecutor, has raised the following counter-arguments:-

Firstly, the testimony of Diddikadi Pedda Narsimulu (P.W.1) and Diddikadi Gopal (P.W.2), the father and brother of the deceased, clearly reveals that the appellant Nos.1 and 2 had developed an illegal intimacy, and had eloped from the village for a period of three months. When both of them returned back to the

village, according to G. Chinnaiah (P.W.6), the panchayat had convinced the appellant No.2 to return back to her matrimonial home. Three months later, under suspicious circumstances, the deceased died. According to the testimony of Dr. R. Sudha (P.W.16), the deceased had suffered a number of injuries, on his body, caused by electrocution. The cause of death is electrocution along with head injury. Thus, obviously, the deceased had suffered a homicidal death.

Secondly, according to K. Ram Reddy (P.W.7), in the evening of 16.08.2011, he had seen the accused No.1 going to her field at 05:00 PM. She was followed by the accused No.2 carrying a bundle of wire. Since the deceased had died due to electrocution, obviously, the accused Nos.1 and 2 had conspired to cause the death of the deceased. They had succeeded in their design. Hence, the learned Trial Court is justified in convicting both the appellants for the offences under Sections 302 and 201 IPC. Therefore, the learned Public Prosecutor had vehemently defended the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record available before this Court.

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

¹ AIR 2002 SC 3164

circumstances concerned must or should and not may be established;

(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 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 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, the Hon'ble Supreme Court has also held that "*suspicion, howsoever 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 has also held that the prosecution must prove its case beyond a 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 towards the guilt of the accused. Such a chain of circumstances does not admit of any hypothesis, which may point towards his/her innocence.

Moreover, although a conviction can be based on the testimony of a sole eyewitness, the sole eyewitness has to be a witness of his sterling worth. If his testimony suffers from defects, then it is highly unsafe to convict the accused relying on the testimony of an untrustworthy witness.

In the present case, Diddikadi Pedda Narsimulu (P.W.1) does claim that the accused Nos.1 and 2 had not only developed an illegal intimacy, but had also eloped for three months from the village. He further states that when both of them came back to the village, the panchayat of the village elders convinced the accused No.1 to return to her matrimonial home. He further claims that on

17.08.2011, when they discovered the dead body of his son, Ramulu, he suspected that his daughter-in-law, the accused No.1, is the culprit. Similar facts were also narrated by Dindikadi Gopal (P.W.2), the brother of the deceased. Therefore, the prosecution has succeeded in establishing a possible motive for the accused Nos.1 and 2 to get rid of the deceased, the husband of the accused No.1.

According to the testimony of Dr. R. Sudha (P.W.16), when she carried out the post-mortem examination of the deceased on 18.08.2011, she discovered *“transversely placed linear electric burnt marks over the left side of the neck just below angle of the mandible measuring 7 x 2 cms, a linear electric burnt mark on the left side of the neck of 5 cms below the angle of mandible measuring 6 x 2 cms, two electric circular burnt marks on the left side of the neck measuring 2 x 1 cms, and an electric burnt mark just above sternal notch of 3 x 2 cms”*. She further discovered a *“contusion on the left temporo parietal region of the scalp of 6 x 5 cms with subarchanoid hemorrhage”*. According to her, the cause of death was *“by way of electrocution and the head injury”*. Thus, the prosecution has also succeeded in establishing that the deceased died a homicidal death, rather than an accidental one.

However, the issue before this Court is as to who are the culprits who had caused the homicidal death of the deceased?

In order to reveal the culprits, the prosecution has relied solely on the testimony of K. Ram Reddy (P.W.7). Hence, the entire case hinges on the testimony of the sole eyewitness. In his testimony, he informs the Court that *“Ramulu died about three years ago. The accused No.1 normally goes to the fields in the*

morning and returns in the evening. But on the date of the offence i.e. about three ago while I was in my fields I saw her going towards the agricultural fields in the evening at about 5:00 PM. Later I also saw the accused No.2 carrying electrical wire in his hands, and going towards the fields behind accused No.1. I remained in the fields till 7.00 PM but neither accused No.1 nor accused No.2 returned from the fields. On the next day in the morning I came to know that Ramulu died near the bore-well in his fields. As such I went to the said place and saw the dead body of Ramulu and found him with injuries on his throat etc. As such, I suspected that Ramulu was murdered and hence, I stated the same to the police".

At this stage, the Public Prosecutor requested the Trial Court to declare the said witness as having turned hostile. From his cross-examination by the learned Public Prosecutor, he claims that he did tell the police that the accused Nos.1 and 2 may have killed Ramulu by electrocution, as he was coming in the way of their illegal intimacy.

However, in his cross-examination by the defence counsel, this witness clearly admits that he was present when the "panchanama" was held, and the body was sent for the post-mortem examination. Yet, he did not utter a single word to any one, prior to his statement recorded by the police. Most importantly, he admits that he was not examined for about seven to ten days after the offence had occurred. He further admits that he saw the accused No.2 carrying the electrical wire from a distance of 100 yards. He further admits that it was little dark at that time.

It is a settled principle of Criminal Jurisprudence that if a person is not examined for a number of days after the incident, he is an unreliable witness. Interestingly, this witness was present when the panchanama was prepared by the police, yet the witness kept quiet for about ten days. If he were a witness of "*the last-seen*", he had actually seen the accused No.2 carrying electric wire to the fields of the deceased, this witness was expected to speak up when the police was present. But this witness chose to remain silent as long as ten days. Moreover, this witness readily admits that in the evening hour when it was little dark, he saw the accused No.2 carrying a bundle of wire from a distance of hundred yards. It is rather surprising that from a distance of hundred yards or above, this witness could identify the accused No.2 carrying a bundle of wire with him. The fact this witness has kept mum for ten days probabalizes the possibility that he is a fabricated witness who has custom-tailored testimony to the Post-Mortem Report (Ex.P.15) which revealed that the deceased had died due to electrocution. Needless to say, a fabricated witness cannot be relied upon, especially when he happens to be the sole eye witness produced by the prosecution. Therefore, the learned Trial Court has erred on relying upon the testimony of K. Ram Reddy (P.W.7) in order to convict the appellants.

A bare perusal of the impugned judgment also reveals that the learned Trial Court has also relied on "*the confessional statement*" made by the accused No.1 to the police. However, the said confessional statement could not be read against the accused No.1 or the accused No.2 in the light of Section 25 of the Evidence Act.

Section 25 of the Evidence Act is as under:

Confession to police officer not to be proved – *No confession made to a police officer, shall be proved as against a person accused of any offence.*

In the case of **Raja Ram Jaiswal v. Bihar**³, the Apex Court had held that Section 25 of the Evidence Act was enacted to eliminate from consideration confessions made to an officer who, by virtue of his position could extort by force, torture or inducement a confession.

In the case of **Raj Kumar Karwal v. Union of India**⁴, the Hon'ble Supreme Court has clearly opined that the purpose of restriction imposed under Section 25 of the Evidence Act on admissibility of confessional statement made to a police officer is two fold, namely, (i) to protect the person accused of a crime from third degree treatment, and (ii) to ensure a proper and scientific investigation of the crime with a view to bring the real culprit to book.

In the case of **Bheru Singh v. State of Rajasthan**⁵, the Hon'ble Supreme Court had also opined that Section 25 of the Evidence Act not only bars proof of admission of an offence, but also of other incriminating facts relating to the offence. By virtue of the provisions of Section 25 of the Evidence Act, a confession made to a police officer under no circumstance is admissible in evidence against the accused. According to the Apex Court, Section 25 of the Evidence Act is based on the ground of public policy. However, the only part of the confession statement that can be read against

³ AIR 1964 SC 828

⁴ (1990) 2 SCC 409

⁵ (1994) 2 SCC 467

the accused is the one permissible under Section 27 of the Evidence Act.

Whatever information is given by the accused in consequence of which a fact is discovered, only such information is protected by Section 27 of the Evidence Act. Thus only such part of confession statement is admissible as evidence against the accused. The basic idea embodied under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in the discovery of a fact it becomes reliable information. The “*fact discovered*” as envisaged under Section 27 embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [Ref. to: **Pawan Kumar v. State of U.P.: (2015) 7 SCC 148**].

In the case of **Kripal Mohan Virajmani v. S.D. Mishra Intelligence Officer**⁶, this Court has also opined that “*the intention of the legislature for enactment of Section 25 of the Evidence Act, it appears was to prevent extortion of confessions and the inventions facilitating the procuring of convictions, which the police officers were considered likely to employ. The purpose of enacting Section 25 of the Evidence Act was to put a stop to the extortion of confessions by the police officers by malpractices.*”

⁶ (1990) 2 APLJ 10 (DNC) (DB)

Therefore, the learned Trial Court has misapplied the law to the facts, on two pieces of evidence, namely the testimony of K. Ram Reddy (P.W.7), and the alleged “*confessional statement*” of the accused No.1 to the police. The prosecution has failed to lead any other cogent and convincing evidence against the appellants. Therefore, the prosecution has failed to complete the chain of circumstantial evidence which would unerringly point towards the guilt of the appellants.

For the reasons stated above, the sentence and conviction of the appellants-Diddikadi Srinivas, S/o. Narsimulu (accused No.2) and Diddikadi Anjilamma, W/o. Ramulu (accused No.1), for the offences punishable under Sections 302 and 201 of the Indian Penal Code in Sessions Case No.10 of 2012 on the file of the Additional District and Sessions Judge, Vikarabad, Ranga Reddy District, are, hereby, set aside. Both the appellants are acquitted of the offences under Sections 302 and 201 IPC. Both the appellants-Diddikadi Srinivas, S/o. Narsimulu (accused No.2) and Diddikadi Anjilamma, W/o. Ramulu (accused No.1) shall be released forthwith, if not wanted in any other case.

Both the Criminal Appeals are, accordingly, allowed.

Miscellaneous petitions, if any, pending shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

26th March 2019
RRB