

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CRIMINAL APPEAL No.1075 of 2012

21.09.2019

Between

Andugula Ravinder

...APPELLANT

AND

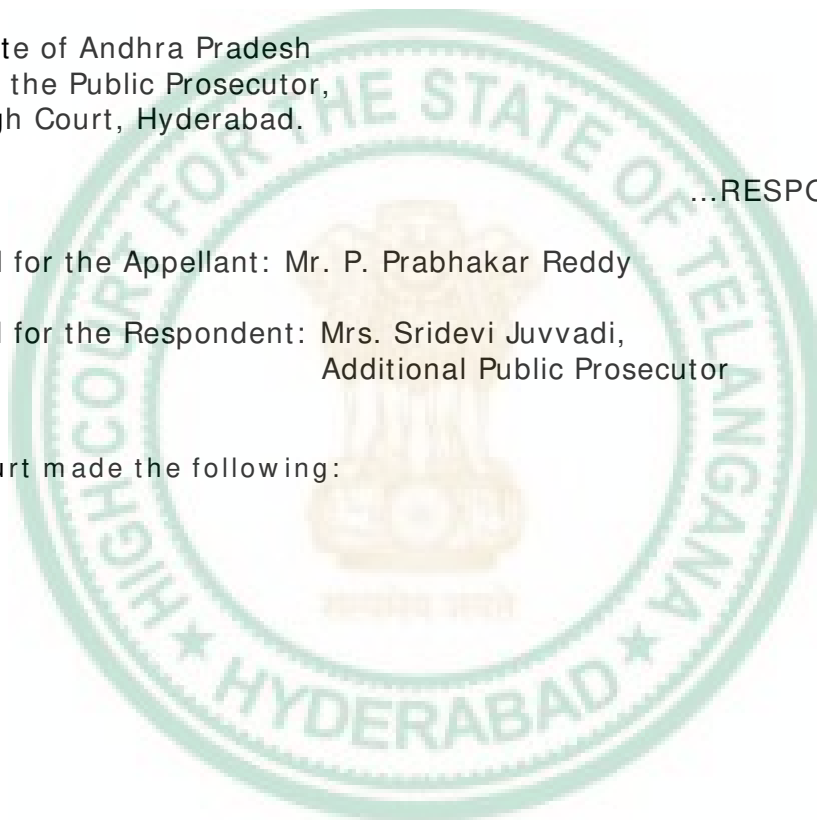
The State of Andhra Pradesh
Rep. by the Public Prosecutor,
A.P. High Court, Hyderabad.

...RESPONDENT

Counsel for the Appellant: Mr. P. Prabhakar Reddy

Counsel for the Respondent: Mrs. Sridevi Juvvadi,
Additional Public Prosecutor

The Court made the following:



JUDGMENT: (Per the Hon'ble the Chief Justice Sri Justice Raghvendra Singh Chauhan)

Having been convicted for the offence under Sections 302, 376 read with 511 and 379 of the Indian Penal Code, having been sentenced to life imprisonment for offence under Section 302 IPC, fined for Rs.5,000/- and directed to further undergo simple imprisonment for a period of one year, having been sentenced to undergo rigorous imprisonment for a period five years for offence under Section 376 read with Section 511 IPC, and having been sentenced to simple imprisonment for a period of three years for offence under Section 379 IPC by the I Additional District and Sessions Judge, Ranga Reddy District cum Metropolitan Sessions Judge, Cyberabad by judgment dated 27.06.2012, the accused-appellant, Andugula Ravinder, has approached this Court.

2. Briefly the facts of the case are that on 05.07.2011, at around 9 PM, the police received a complaint from Manchala Jangaiah, (P.W.1), wherein he claimed that on 05.07.2011 his mother, Smt. Manchala Pentamma, left her house at around 4.00 PM in order to bring the calf and buffalo from the Chelambhavi of Bairagiguda to their home. Around 5 PM, his younger brother, M. Venkatesh, (P.W.2), informed him that he discovered the dead body of their mother, who has been strangled with the help of her saree. Therefore, he suspected that Narender, Ravinder (the accused-appellant) and Ramulu, who have enmity with his family members, may have caused the death of his mother. On the basis of the said complaint, a formal FIR, namely FIR.No.101 of 2011 was chalked out for offence under Section 302 IPC. During the course of investigation, the accused-appellant was arrested, and put up for trial.

3. In order to prove its case, the prosecution examined twelve witnesses, submitted twelve documents, and produced two material objects viz. silver waist belt, and gold gundla danda (gold balls which are generally attached to gold chain or thread and are worn by women around their neck). The defence neither produced any witnesses, nor produced any documents. After going through the evidence, the learned trial Court convicted and sentenced the accused-appellant as aforementioned. Hence, this appeal before this Court.

4. Mr. P. Prabhakar Reddy, learned counsel for the appellant, has raised the following contentions before this Court:-

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

Secondly, the learned trial Court has relied on the following evidence in order to convict the accused for the aforementioned offences: (a) on the testimony of P.Ws.1 and 2, the sons of the deceased, who claimed that there was animosity between their family and the accused/appellant, (b) on the testimony of Dr. Sugatha, (P.W.11), who performed the post-mortem on the dead body and on the Post-Mortem Report, (Ex.P6), in order to conclude that the deceased died a homicidal death, (c) on the recovery of a silver waist belt, (M.O.2), from the possession of Asha Ram, (P.W.7), and on the recovery of gold gundla danda, (M.O.1), from the possession of the accused, (d) on the testimony K. Laxamaiah, (P.W.5), who claimed to have seen the dead body of the deceased lying in an open area, (e) on the testimony of P. Kamma, (P.W.6), who claimed that she had met the deceased who enquired about the whereabouts of the calf

and the buffalo, (f) on the confession made by the accused-appellant to the police and (g) lastly, upon four FIR's, which were registered against the accused for different offences in order to convict the accused-appellant.

Thirdly, it is not sufficient for the prosecution to merely prove the death as a homicidal one, in fact, the prosecution is required to prove the fact that the accused-appellant happens to be the author of the murder. However, in the present case, there is no linking evidence to establish the fact that it is the accused, who has caused the death of the deceased.

Fourthly, the recovery of the silver waist belt, (M.O.2), from the possession of Asha Ram, (P.W.7), the testimony of Asha Ram, (P.W.7), and the recovery of the gold gundla danda, (M.O.1), from the possession of the accused do not connect the accused to the alleged offence. For, despite the availability of the gold and silver ornaments, the investigating agency has never subjected the said ornaments to a test identification parade. Therefore, these ornaments have not been identified by M. Jangaiah, (P.W.1), M. Venkatesh, (P.W.2), the sons of the deceased, and A. Manjula, (P.W.3), daughter of the deceased, as the gold and silver ornaments belonging to their mother. Therefore, even if the silver waist belt, (M.O.2), was recovered from the shop of Asha Ram, (P.W.7), and even if Asha Ram, (P.W.7), in his testimony claimed that the silver ornament was pawned by the accused, even then the recovery would not connect the accused to the alleged offence.

Fifthly, in their statement under 161 Cr.P.C, P.W.1 and P.W.2 have not stated that any gold or silver ornament was missing from the dead body of their mother. It is only in their testimony, in the Court,

for the first time, that they claimed that some ornaments were missing from the dead body of their mother. This omission has been pointed out to the witnesses by confronting them with their 161 Cr.P.C statements. Thus, this is an omission which tantamounts to a contradiction.

5. According to the inquest report, (Ex.P4), the dead body was discovered with certain gold ornaments upon it. According to the learned counsel, it is very unlikely that an accused person who wants to commit theft of the ornaments would take away only two ornaments, and would leave the other ornaments on the dead body of the deceased. Even the recovery of the gold gundla danda is highly suspicious. For, according to the confession-cum-recovery panchanama of the accused, (Ex.P5), the said ornament was recovered from the possession of the accused while he was in the police custody. However, no recovery memo has been drawn up by the police. Therefore, even the said recovery is a weak piece of evidence to link the accused to the alleged offence. Therefore, according to the learned counsel, the complete chain of circumstances is conspicuously missing in the present case. Thus, the learned trial Court has erred in convicting the accused for the alleged offence. Hence, the accused deserves to be acquitted by this Court.

6. On the other hand, Smt Sridevi Juvvadi, learned Additional Public Prosecutor, has strenuously pleaded that according to the testimony of M. Jangaiah, (P.W.1), M. Venkatesh, (P.W.2) and A. Manjula, (P.W.3), the children of the deceased, there was animosity that existed between their family, and the accused. Hence, there is a strong motive for the accused to get rid of the deceased. Secondly, according to the testimony of Asha Ram, (P.W.7), the silver waist belt, (M.O.2), was recovered from his shop by the police. In his testimony,

he identifies the silver waist belt, (M.O.2), as the very same one, which was recovered by the police from his shop. According to this witness, the said ornament was pawned by the accused. In fact, this witness had given Rs.9,000/- for the said ornament to the accused. Therefore, there is linking evidence available to connect the accused to the alleged offence. Thirdly, it is in the special knowledge of the accused as to how he came in possession of the silver waist belt worn by the deceased. According to Section 106 of the Evidence Act, it is for the accused to explain the circumstances under which he came in possession of the ornament. Yet, the said burden has not been discharged by the accused. Therefore, his silence connects him to the alleged offence. Lastly, according to the testimony of Dr. Sugatha, (P.W.11), the deceased had died due to strangulation. Hence, it is a homicidal death. Therefore, according to the learned Additional Public Prosecutor, the prosecution has well established its case against the accused. Hence, the learned Additional Public Prosecutor has supported the impugned judgment.

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

8. In the case of *Bodh Raj @ Bodha v. State of Jammu and Kashmir*¹, the Hon'ble Supreme Court has laid down the principles 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 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

¹ AIR 2002 SC 3164

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."

Thus, it is imperative that the prosecution must establish a chain of circumstances, which would unerringly point towards the guilt of the accused, and would be inconsistent with his innocence.

9. It is the settled principle of criminal jurisprudence that the distance between 'may be true' and 'must be true' is a long distance which the prosecution is required to cover. In case, the prosecution fails to cover the said distance, the benefit of doubt has to be given to the accused by the Court. The said principles have to be kept in mind while assessing the evidence in the present case.

10. M. Jangaiah, (P.W.1), in his examination-in-chief, clearly states that *"we got suspicion on accused and on his family members for the death of my mother as old grudges are there between our family and the family of the accused."* He further states that *"Immediately myself, my brother Venkatesh and other family members visited Chelam Bavi and there we found the dead body of my mother in suppanie position facing towards sky and also the neck being strangulated with saree frill. We have also noticed the missing of personal gold and silver ornaments of my mother on her dead body."*

11. The first statement quoted hereinabove, deposed by P.W.1, has further been corroborated by M. Venkatesh, (P.W.2) and

A. Manjula, (P.W.3). This witness was cross-examined on the point whether he had stated to the police with regard to the missing of the gold and silver ornaments from the body of the deceased and in the statement recorded under 161 Cr.P.C statement. In his cross-examination, although he denies that he had failed to mention this fact or the fact that his mother was wearing the said ornaments, but once he was confronted with Ex.P.1, his complaint, he admits that such fact is not mentioned in his complaint. Therefore, the said omission does amount to a contradiction.

12. Asha Ram, (P.W.7), does inform the Court that *"I am Pawn broker and I am running Pawn brokering business at Maheshwaram. I know the accused since he visited my shop about 7 or 8 months ago and offered to sell silver waist belt as he is in need of money for the treatment of his wife. Then I weighed that silver waist belt having approximate weight of 25 tulas and I gave Rs.9,000/- and odd amount to the accused as value of the said article. After 4 or 5 days, the police, Kandukur came to my shop along with the accused and enquired me about the sale of silver waist belt to me and they have taken away the silver waist belt by conducting baramath stating that this is robbed from the dead body of the deceased. M.O.2 is the same silver waist belt sold by the accused to me on that day."* Therefore, the silver ornament was recovered from the possession of Asha Ram. Undoubtedly, the said ornament was discovered at the instance of the accused. Moreover, according to the confession-cum-recovery panchanama of the accused, (Ex.P.5), at the time of interrogating the accused, he has produced the gold gundla danda, allegedly, belonging to the deceased.

13. However, despite the availability of both the gold and silver ornaments, in spite of the availability of the children of the deceased

viz. M. Jangaiah, (P.W.1), M. Venkatesh, (P.W.2) and A. Manjula, (P.W.3), the investigating agency has not subjected the said ornaments to test identification parade. Needless to say, it is not just sufficient to recover an article at the instance of the accused, it is most important that the article, so recovered, especially ornaments, should be subjected to test identification parade in order to discover the veracity of the testimony of the witnesses, and in order to cogently establish the connection between the accused and the offence. Therefore, the police was legally bound to carry out the test identification parade of the alleged recovery of gold and silver ornaments. The ornaments should have been mixed with similar looking ornaments by a Judicial Magistrate and M. Jangaiah, (P.W.1), M. Venkatesh, (P.W.2) and A. Manjula, (P.W.3), should have been asked to identify the alleged recovered ornaments in the test identification parade. It is only when the witnesses have successfully identified the ornaments as belonging to their mother, that a cogent and convincing evidence would have existed in the present case to link the accused to the alleged offence. But, in the absence of such cogent evidence, the recovery of the alleged ornaments, even at the instance of the accused, loses its significance.

14. Of course, the gold ornament was identified by A. Manjula, (P.W.3), in the Court for the first time. However, the identification of the ornament in the Court for the first time is meaningless. For the ornament was kept in isolation. Therefore, it can easily be identified by the witness. Thus, even the identification of the ornament, for the first time in the Court, has no evidentiary meaning to connect the accused to the alleged offence.

15. Although it is true that according to Dr. Sugatha, (P.W.11), the deceased had died a homicidal death, for the cause of the death in

the post-mortem report, (Ex.P.6), has been shown as “due to ligature strangulation, an asphyxial death”. However, the prosecution does not succeed merely by establishing that the death is a homicidal one. In fact, in order to cover the distance between ‘may be true’ and ‘must be true’, the prosecution is duty bound to establish that the death was caused only by the accused, and by none else. This part of proof the prosecution has failed to carry out. Therefore, the prosecution has failed to connect the accused to the death of the deceased.

16 P. Kamma, (P.W.6), does inform the Court in her examination in chief that *“About 7 or 8 months ago i.e. on the date of murder of Pentamma, I was proceeding to my house from my agricultural land on the way Pentamma met me and enquired from me about the whereabouts of her buffaloes and calfs (sic). Then I told that I have not seen the cattle by saying so I went to my house.”* However, even the said statement cannot be termed as the evidence of “the last seen”. For the deceased is not seen for the last time in the company of the accused. Therefore, the testimony of Kamma, (P.W.6), is an insignificant one.

17. The learned Additional Public Prosecutor has emphasized that there is a motive for the appellant to get rid of the deceased. However, an animosity is a double edged sword. Therefore, there is a distinct possibility that a false case is being foisted upon the appellant by the complainant. Moreover, mere existence of a motive in the absence of other cogent evidence cannot form the basis of a conviction.

18. For the reasons stated above, the prosecution has not established a complete chain of circumstances, which would unerringly point towards the guilt of the accused. Thus, this Court has no other option, but to give the benefit of the doubt to the accused.

For the reasons stated above, this criminal appeal is hereby allowed. The conviction and the sentence recorded against the appellant in S.C.No.550 of 2011 dated 27.06.2012 by the I Additional District and Sessions Judge, Ranga Reddy District cum Metropolitan Sessions Judge, Cyberabad are set aside. Since the accused happens to be on bail, his bail bond shall stand discharged.

Pending miscellaneous applications, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

T. VINOD KUMAR, J

September 21, 2019
DSK

