

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.933 OF 2014

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

The appellants, Thimmaraju Brahman (Accused No. 1), and Thimmaraju Jayasri (Accused No. 2), have challenged the legality of the judgment dated 22.07.2014, passed by the VI Additional District and Sessions Judge at Godavari Khani, whereby the learned trial Court had convicted the appellants of offences under Sections 302 r/w 34 of the Indian Penal Code (IPC) and under Section 201 r/w 34 IPC. For offence under Section 302 r/w 34 IPC, they have been sentenced to imprisonment for life, and fined Rs.1,000/-, and further directed to undergo a rigorous imprisonment of three months in default thereof. For offence under Section 201 r/w 34 IPC, they have been sentenced to rigorous imprisonment of seven years, and fined Rs.500/-, and further directed to undergo a rigorous imprisonment of three months in default thereof. Both the sentences were directed to run concurrently.

Briefly, the facts of the case are that B. Shankaraiah (hereinafter referred to as 'deceased'), and Balne Jayasri (A-2) were husband and wife. The deceased used to run dish cable TV in Ambatpalli village. A-2 gave birth to two daughters during their wedlock. Thimmaraju Brahman (A-1) is a photographer of Mahadevpur village, and childhood friend of the deceased. He used to visit the house of deceased at Beglur; later, he developed illegal intimacy with A-2. A-1 used to visit the house of the

deceased in his absence. A-2 worked as customer service provider in Financial Information Network Operation in the village. She used to take amount from coordinator L. Shankar (P.W. 11) and disburse the amount to widows, and old aged persons in the village. On the advice of A-1, the deceased shifted his family to Mahadevapur for better earnings. A-1 continued his intimacy with A-2. However, one day, the deceased observed A-1 in the company of A-2. The deceased beat A-2, and admonished A-1. Later, on one or two occasions, the deceased beat A-1 in front of his house. The deceased used to go to Beglur from Mahadevapur village to collect amount from L. Shankar (P.W. 11) on behalf of his wife (A-2), and distribute the amount to concerned persons. On 20.06.2010, the deceased had taken Rs.2,85,000/- from L. Shankar (P.W. 11), and failed to disburse the amount to the concerned persons; spent it for his personal expenses. L. Shankar (P.W. 11) informed A-2 about the said transaction and pressed the deceased to return the amount. In that regard, and also in regard to illegal intimacy between A-1 and A-2, quarrels arose between the deceased and A-2. As the deceased used to stay most of the time at home, it became difficult for A-1 and A-2. They decided to do away with the deceased. A-1 contacted Rallabandi Sashi @ Sushanth Kumar (P.W. 10), RMP doctor of Repelli village, for getting sleeping pills from him, and sent the same to A-2 through his worker, Keshava Chary (A-3). A-2 used to administer the pills to the deceased by mixing the pills in tea, meals and water so as to facilitate A-1 to meet her in the front room of her house. On 18.8.2010, due to the pressure, the deceased paid Rs.1,40,000/- to L. Shankar (P.W. 11) and his father, Balne Pochamallu (P.W. 1)

executed a note in favour of L. Shankar (P.W. 11) undertaking to pay the remaining debt by 25.8.2010. Meanwhile, the disputes between the deceased and A-1 continued and the deceased threatened to kill A-1. In order to eliminate the deceased, A-2 wrote a letter as if the deceased was committing suicide unable to bear the pressure to return the amount to L. Shankar (P.W. 11). On 01.09.2010, A-1 bought twenty sleeping pills from Rallabandi Sashi @ Sushanth Kumar (P.W. 10), and gave them to A-2 with instruction to administer the same to the deceased. On 04.09.2010 A-2 made a phone call and informed A-1 that the twenty pills were not sufficient, and on that, A-1 collected twenty more sleeping pills from Rallabandi Sashi @ Sushanth Kumar (P.W. 10). On 07.09.2010, evening hours, A-1 instructed A-2 to mix thirty sleeping pills in the meals of the deceased, and after he fell asleep, asked to tie one half saree to iron rod in the front room and hang the deceased. Accordingly, A-2 gave sleeping pills to the deceased and after he fell asleep, she tied half saree to iron pipes. Then, A-1 reached the house of the deceased along with A-3. At that time, the deceased was sleeping in the middle room and children were sleeping on the bench. The accused bolted the doors from inside and put the TV sound high, covered the socks to their hands and with the remaining half saree, A-2 strangled the deceased. The deceased died at 11:00 p.m. They shifted the dead body to the front room, and arranged the scene as if the deceased hanged himself with a saree tied to the iron pipe. At about 11:00 p.m., A-2 informed her neighbour, Gangireddy Sathireddy (P.W. 3) that the deceased committed suicide. So also, A-2 informed the parents of the deceased that the deceased committed suicide.

Initially, on the report of A-2, a formal FIR, namely FIR No. 82 of 2010, was registered for offence under Section 174 Cr.P.C. However, on receipt of the final opinion of the doctor with regard to cause of death, section of law was altered to Section 302, 201 r/w 34 IPC. During the course of investigation both the appellants were arrested, and put up for trial.

In order to support its case, the prosecution examined twenty-two witnesses, submitted thirty-three documents, and five material objects. On the other hand, the defense examined one witness, and submitted one document. After appreciating the evidence, by judgment dated 22.07.2014, the learned trial Court convicted and sentenced the appellants as aforementioned. Hence, the present appeal before this Court.

Mr. M. Ram Mohan Reddy, the learned counsel for the appellants, has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish all the links in the chain of events, which would point unerringly towards the guilt of the accused persons.

Secondly, with regard to A-1, there is no evidence produced by the prosecution to show that on the fateful night of 07.09.2010, A-1 was seen anywhere near the scene of crime. Therefore, his conviction is based on surmises and conjectures, and on the strong suspicion that due to an alleged illicit relationship between A-1 and A-2, A-1 may have helped A-2 to get rid of her husband. But suspicion, no matter how strong, does not take the place of proof.

Thirdly, since Rallabandi Sashi @ Sushanth Kumar (P.W. 10) has turned hostile, there is no evidence from the side of the prosecution to establish the fact that A-1 had bought sleeping pills from this witness. Hence, there is no linking evidence to connect A-1 to the alleged offence.

Fourthly, the defense has constantly pleaded that due to the amount owed by the deceased to L. Shankar (P.W. 11), the deceased had committed suicide. However, in order to falsely implicate the appellants in this case, the suicide note, which was recovered by the police, was never presented by the prosecution before the trial Court. Therefore, the prosecution has suppressed material evidence. Hence, the case of the prosecution is suspicious.

As far as A-2 is concerned, it is not possible for a woman to strangle a man, and then to place his body in such a manner to create an impression that the deceased had hung himself. Therefore, there is no evidence to connect A-2 to the alleged offence. Thus, the learned trial Court has erred in convicting A-1 and A-2 for the alleged offences. Hence, they deserve to be acquitted by this Court.

On the other hand, Ms. J. Sri Devi, the learned Additional Public Prosecutor, has pleaded that according to the testimony of Balne Pochamallu (P.W. 1), the father of the deceased, there was an illicit relationship between A-1 and A-2. Thus, there is a strong motive for them to get rid of the deceased, the husband of A-2.

Secondly, according to the evidence of Balne Pochamallu (P.W. 1), when he reached his son's house, he found his son having an old saree around his neck and the saree was tied to a rod which

was above the deceased. He noticed that his son's feet were touching the floor. According to the learned Public Prosecutor, in case of suicide, the feet can never touch the floor as the body has to hang in mid-air. Therefore, the plea of defense that the deceased had committed suicide is highly misplaced.

Thirdly, in their confession made to the police, A-1 and A-2 had admitted their guilt.

Fourthly, according to the testimony of Dr. G. Naresh Kumar (P.W. 20), who performed the Post-Mortem, he discovered multiple injuries on the body of the deceased. The presence of these injuries clearly indicate that the deceased must have put up a fight before being strangled. Moreover, the presence of these injuries belie the case of suicide as pleaded by the defense. Furthermore, according to this witness, the cause of death was "mechanical asphyxia due to strangulation". Hence, the prosecution has succeeded in proving that the death of the deceased was a homicidal one.

Fifthly, in order to hide her illegal act, A-2 had intentionally given a wrong explanation for his death to the police. According to the complaint (Ex. P. 23) submitted by A-2, her husband had "committed suicide". Since a wrong explanation has been offered by her, it is a strong link pointing unerringly towards her guilt.

Lastly, since the death had occurred in the house of A-2, under Section 106 of the Evidence Act, it is for her to explain as to how the death had occurred. Since she has failed to explain how the deceased had died, her silence is a strong indication of her involvement in the commission of crime. Therefore, the learned

Additional Public Prosecutor has supported the impugned judgment.

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

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 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 very possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so compete 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, in catena of cases, the Hon'ble Supreme Court has also held that suspicion, however strong, cannot take place of legal proof. Furthermore, a person cannot be convicted on the basis of surmises and conjectures.

¹ AIR 2002 SC 3164

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 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 also held that the prosecution must prove its case beyond 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 should 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.

It is, indeed, a settled principle of law that no matter how strong a suspicion may be, it does not take the place of proof. Moreover, since every person is presumed to be innocent until he is found guilty, the burden of proof is upon the prosecution to establish the guilt of the accused with cogent and convincing evidence.

In the present case, except the statements of Balne Pochamallu (P.W. 1), and Chella Odelu (P.W. 8), there is nothing to

² 1973(2) SC 793 = AIR 1973 SC 2622

suggest that there was an illicit intimacy between A-1 and A-2. But, in the absence of any evidence to show that A-1 was seen at the scene of offence on the fateful night, his involvement in the commission of crime cannot be presumed. However, the learned trial Court, has merely presumed that “it is not possible for a woman to strangle her husband. Therefore, she must have been aided by A-1, her alleged paramour”. It is, indeed, trite to state that a conviction cannot be based on presumptions, surmises and conjectures. In fact, the prosecution has not brought any evidence on record to show that A-1 was, indeed, seen on the fateful night in the house of A-2. Therefore, his conviction is not a legal one, but a moral one. Hence, the conviction of A-1 is unsustainable.

As far as A-2 is concerned, the following facts point unerringly towards her guilt:-

Firstly, the deceased died in his own house during the presence of A-2.

Secondly, although her husband had died in the dead of the night, A-2 did not discharge her burden during the trial.

Thirdly, in fact, A-2 offers a wrong explanation for the death of her husband by claiming that he had committed suicide. However, such an explanation is belied by the Post-Mortem Report (Ex. P. 18), which clearly shows that the deceased had seven injuries on his body. These injuries are as under:-

“1. Contusion 2x7 cm, 2x7 cm, 1x4 cm, left arm, possible by blunt object and ante mortem.

2. Contusion 3x4 cm, 3x5 cm, 1x2 cm, right arm, possible by blunt object and ante mortem.

3. Contusion (brussel) 2x6 cm, 2x7 cm, 2x3 cm, left and right forearm, possible by blunt object and ante mortem.

4. 2 Abrasions (scratching) 2x4 cm, 2x3 cm, 1x2 cm, backside two (scapular borders), it is ante mortem in nature.

5. Contusion 10x14x16 cm, backside below the neck, possible by blunt object and ante mortem.

6. Multiple nail bites are present over the right side of the neck and behind the right eye, possible by blunt object and ante mortem.

7. Abrasion over the right ankle region 3x4 cm (traumatic), possible by blunt object and ante mortem.

The presence of contusions on the left arm, right arm, left and right forearm, the multiple nail bite injury (laceration) present behind the left ear, clearly indicate that there was a struggle put up by the deceased before he died. If the story of the prosecution is believed that A-2 had mixed sleeping pills with the food served to the deceased, the deceased might have put up a feeble struggle. But nonetheless, it is not a case of suicide. For, a person, wanting to commit suicide, would not self-inflict the injuries mentioned hereinabove. Therefore, the defense of suicide is highly misplaced.

Fourthly, according to the Post-Mortem Report (Ex. P. 18), the cause of death is “mechanical asphyxia due to strangulation”. Hence, the death is clearly a homicidal one. Thus, the prosecution has produced ample evidence to prove the guilt of A-2.

For the reasons stated above, the conviction and the sentence recorded against the appellant-A-1, Thimmaraju Brahman, S/o. Kistaiah, in Sessions Case No. 409 of 2011 on the file of the learned VI Additional District and Sessions Judge, Godavarikhani, vide judgment dated 22.07.2014, for offences under Sections 302, 201 r/w 34 IPC, are hereby set aside. The appellant-A-1 shall be released forthwith, if not wanted in any other criminal case. The fine amount, if any, paid by the appellant-A-1 shall be refunded to him.

However, the conviction and sentence recorded against the appellant-A-2, Balne Jayasri, W/o. Shankaraiah, for offences under Sections 302, 201 r/w 34 IPC, are hereby confirmed.

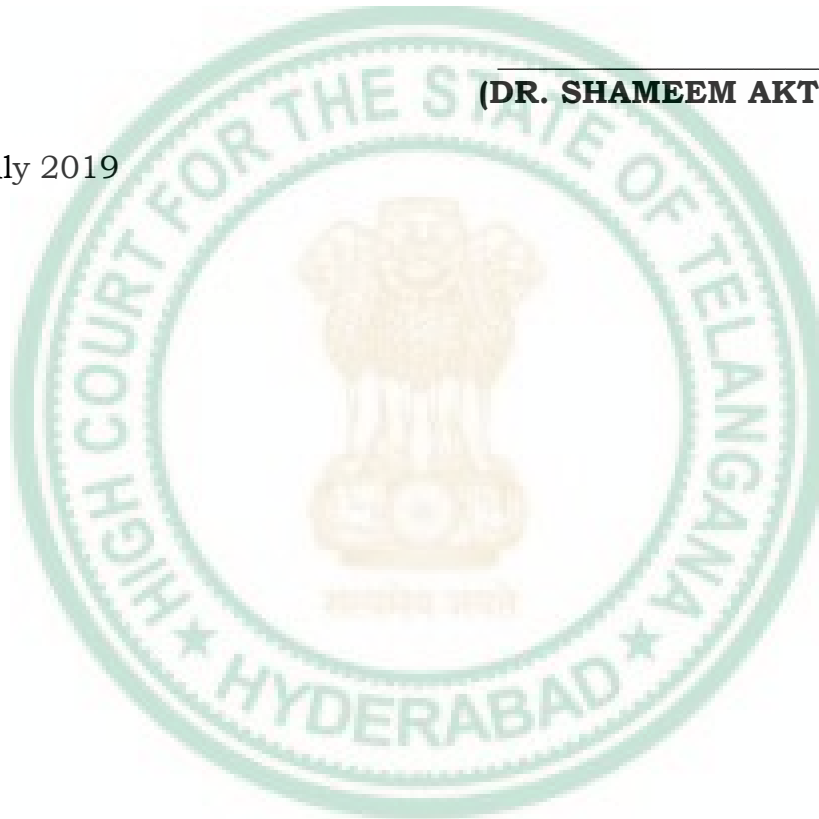
The Criminal Appeal is, accordingly, partly allowed.

Miscellaneous petitions, if any, pending shall stand dismissed.

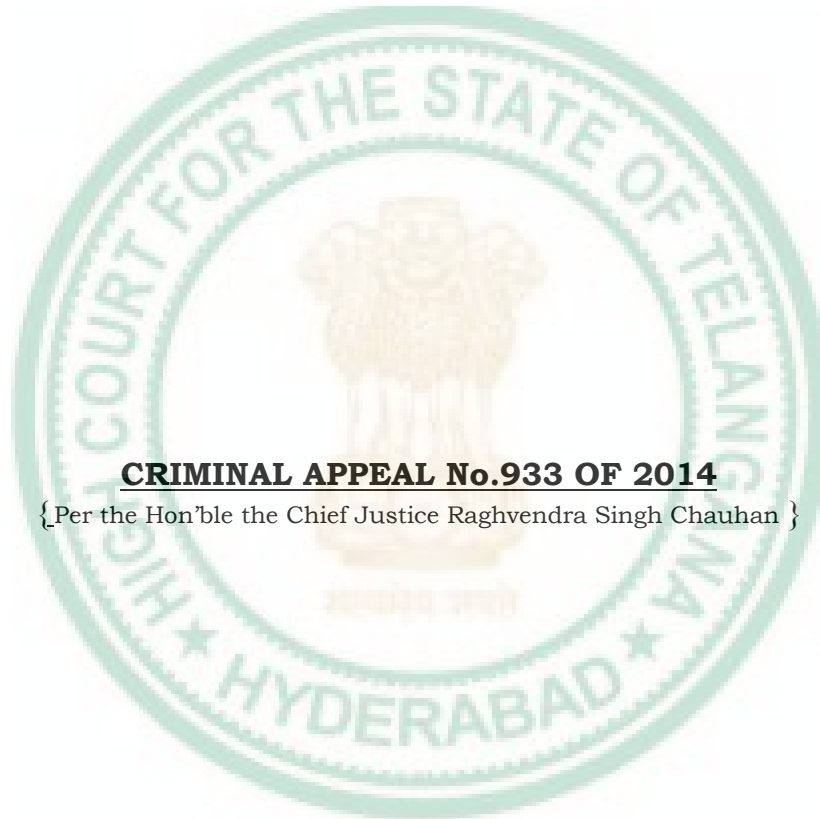
(RAGHVENDRA SINGH CHAUHAN, CJ)

(DR. SHAMEEM AKTHER, J)

25th July 2019
Tsr



THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER



CRIMINAL APPEAL No.933 OF 2014

{ Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan }

27th July, 2019

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