

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

Crl.A.Nos.895, 873 and 858 of 2014

09.07.2019

Between

Singireddy Sudhakar Reddy, S/o. Ganga Reddy
Aged 37 years, R/o. Rajarampalli Village,
Peddapalli Mandal, Karimnagar District
and others.

...APPELLANTS

AND

The State of Telangana through CI of Police,
Peddapali (Cr.No.94 of 2011 of PS Dharmaram),
Karimnagar District.,
Rep. by the Public Prosecutor,
High Court, Hyderabad.

...RESPONDENT

Counsel for the Appellants: Mr. M. Ram Mohan Reddy
Mr. K. Venumadhav
Mr. A. Navamohan Rao

Counsel for the Respondent: Public Prosecutor

The Court made the following:

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

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

CrI.A.Nos.895, 873 and 858 of 2014

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

These three criminal appeals viz. CRLA.No.895 of 2014, filed by Accused No.1, CRLA.No.873 of 2014, filed by Accused No.2, and CRLA.No.858 of 2014, filed by Accused No.3, arise out of the same impugned judgment, namely judgment dated 16.07.2014, passed by the IV Additional Sessions Judge (FTC), Karimnagar, whereby the learned trial court has convicted A-1 and A-2 for offences under Section 302 read with 34 of the Indian Penal Code, and A-3 for offences under Section 302 read with 109 of the Indian Penal Code. A-1 and A-2 have been sentenced to life imprisonment, and imposed with a fine of Rs.500/-, and further directed to suffer a simple imprisonment of three months in default thereof. A-3 has also been sentenced to life imprisonment, and imposed with fine of Rs.500/-, and directed to suffer a simple imprisonment for three months in default thereof.

2. Briefly the facts of the case are that A-3, Gaddam Aruna, happens to be the wife of the deceased, Gaddam Ravinder Reddy. According to the prosecution, on 19.05.2011, A-3 lodged a complaint wherein she claimed that she is the resident of Bommareddypalli village. According to her, her husband, Gaddam Ravinder Reddy, left the house on 18.05.2011 at about 4.00 PM with a Tiller, which is required for a generator. The tiller, required for generator, was provided on hire basis to Bhadri Mahender of M/s. Madhava Sounds. The said tiller was required in the "bharaath" (marriage party) of Padmashali's marriage, which was to take place at Kothur village. She further claimed that on 19.05.2011 around 8.00 AM, she was

informed by the husband of her Sarpanch, Gaddam Kondal Reddy that the dead body of her husband, Gaddam Ravinder Reddy, was lying on the outskirts of Village Kothur, on the road, which leads to Katkanapalli. She further claimed that immediately upon receiving the said information, she rushed to the spot by taking an auto. She discovered that her husband was killed by deadly weapons. She further claimed that she suspects that M/s. Madhav Sounds, and the relatives of groom, or the dancers of Godavarikhani are responsible for the death of her husband. On the basis of the said complaint, a formal FIR was chalked out, namely FIR No.94 of 2011 in Police Station, Dharmaram for offences under Sections 302, 201 read with Section 34 IPC. During the course of investigation, the accused Nos.1, 2 and 3 were arrested and put up for trial.

3. In order to support its case, the prosecution examined fourteen witnesses, submitted eleven documents, and produced fourteen articles. At the conclusion of the trial, the learned trial Court convicted and sentenced the accused persons as aforementioned. Hence, these three appeals have been filed by the three accused persons.

4. We shall take these appeals according to the seriatim of the accused persons viz. Accused Nos.1, 2 and 3, although the appeals are differently numbered.

CRL A. No. 895 of 2014:

5. Mr. M. Ram Mohan Reddy, the learned counsel for the appellant/accused No.1, has raised the following contentions before this Court.

Firstly, the case is based entirely on circumstantial evidence, as the dead body of the deceased was discovered on the outskirts of

Kothur village. However, the circumstances presented by the prosecution do not unerringly point towards the guilt of A-1.

Secondly, the evidence read against A-1 by the learned trial Court are the testimonies of the witnesses viz. Gaddam Mallavva (P.W.1), the mother of the deceased, Panaganti Ramulu, (P.W.3), who happen to be the neighbour of the deceased, Baikani Mallaiah, (P.W.4), Neelam Ramulu, (P.W.5), who happen to be a pujari, and Nalimela Ram Reddy, (P.W.6), in order to convict A-1.

Thirdly, although the axe, allegedly used as the weapon of crime, was allegedly recovered at the instance of A-1, according to the FSL Report, (Ex.P11), no blood group could be detected on the axe. Therefore, even the alleged recovery does not connect A-1 to the alleged offence.

Lastly, although the prosecution claims that the motive for killing the deceased by A-1 is the extra-marital affair that A-1 allegedly had with A-3, the wife of the deceased, the said motive has not been established by any of the witnesses. According to the learned counsel, the star witness about the extra-marital affair would have been Gaddam Mallavva, (P.W.1), the mother of the deceased, and hence, the mother-in-law of A-3. However, in her testimony she is silent with regard to the alleged extra-marital affair between A-1 and A-3. Therefore, motive is conspicuously missing in the present case. Hence, the prosecution has miserably failed to establish its case against A-1. Therefore, according to the learned counsel, the conviction of A-1 deserves to be set aside by this Court.

6. On the other hand, Smt. Juvvadi Sri Devi, the learned Additional Public Prosecutor, has pleaded that according to Gaddam Mallavva, (P.W.1), there were disputes between the husband and the wife.

According to Panaganti Ramulu, (P.W.3), A-3, the wife had left her matrimonial home, and had settled in Dharmaram village. According to these witnesses, the murder had taken place due to the illicit intimacy between A-1 and A-3. Similar is the deposition of Baikani Mallaiah, (P.W.4). Moreover, Neelam Ramulu, (P.W.5), the priest, clearly stated that it is A-1, who had come to him, and “had requested him to perform black magic on the husband of his niece”. Nalimela Ram Reddy, (P.W.6), also testifies about the intimacy that had developed between A-1 and A-3. Thus, the prosecution has established the motive for the crime.

Secondly, according to Mutyala Jalapthi Reddy, (P.W.10), A-1 had led the police to the Bajarpalli canal, and had shown the axe lying near the bush the very axe which was used for committing the crime. Thus, the recovery also points to the involvement of A-1 in committing the murder of the deceased. Hence, according to the learned Additional Public Prosecutor, there is sufficient evidence produced by the prosecution for convicting A-1.

7. In rejoinder, Mr. M. Ram Mohan Reddy submits that even in their examination-in-chief, Panaganti Ramulu, (P.W.3), Baikani Mallaiah, (P.W.4) and Nalimela Ram Reddy, (P.W.6), clearly state that they have come to know about the intimacy between A-1 and A-3 only on the basis of “being told about such intimacy”. Therefore, their testimonies tantamount to hearsay evidence. Hence, it could not be relied upon by the learned trial Court for convicting A-1.

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

9. Admittedly, the case is based on circumstantial evidence as the body of the deceased, Gaddam Ravinder Reddy, was discovered on the

outskirts of the Kothur village. Repeatedly the Hon'ble Supreme Court has prescribed the principles assessing the evidence in a case of circumstantial evidence. 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.”

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. The said principle has to be kept in mind while assessing the evidence in the present case.

10. The prosecution has tried to establish the motive for the alleged murder of Gaddam Ravinder Reddy on the ground that A-1 and A-3 have an illicit extra-marital affair. In order to establish the said fact, the prosecution has examined Gaddam Mallavva, (P.W.1), Panaganti Ramulu, (P.W.3), Baikani Mallaiah, (P.W.4) and Nalimela Ram Reddy,

¹ AIR 2002 SC 3164

(P.W.6). However, interestingly, the Gaddam Mallavva, (P.W.1), the mother of the deceased, is absolutely silent with regard to the alleged illicit relationship between A-1 and A-3. The only statement she makes in her examination-in-chief is that "*Disputes arose between my son and A-3 after birth of children*". She further claims that "*initially they suspected the people from Kothur village had killed her son. Subsequently we suspected the hand of A-3*". Besides this vague statement, she does not testify against A-1.

11. Panaganti Ramulu, (P.W.3), informs the Court that "*the dispute arose between Gaddam Ravinder Reddy and A-3 that A-1, as Sudhakar Reddy, was visiting the house of Gaddam Ravinder Reddy frequently. A-3 left Gaddam Ravinder Reddy and lived at Dharmaram village in a rented house. Again Ravinder Reddy brought back A-3 to his house*". In cross-examination, he further admits that "*It came to light that due to illicit intimacy between A-3 and A-1, A-3 got killed deceased ...*". Therefore, even this witness does not claim to be an eye-witness of the alleged visitation of A-1 to the house of A-3. Similarly, even Baikani Mallaiah, (P.W.4), states in his cross-examination that "*he came to know that the accused killed the deceased, Gaddam Ravinder Reddy*". He further "*came to know that due to illicit intimacy between A-1 and A-3, A-3 got killed the deceased*". However, even the said statement is based on hearsay evidence. Likewise, even Nalimela Ram Reddy, (P.W.6), states in his examination-in-chief that "*I came to know that A-1 was visiting the room of A-3 now and then...*". Since the testimonies of these witnesses are based on hearsay, obviously, the hearsay evidence cannot be read against A-1.

12. Hence, the prosecution has failed to prove the existence of motive - a strong element in the case of circumstantial evidence - in the present case.

13. The prosecution has also examined Neelam Ramulu, (P.W.5), in order to establish that A-1 had sought the help of this witness, the pujari, for using black magic in order *“to kill the husband of his niece”*. The said witness in his examination-in-chief states that *“About three years back A-1 came to me alleging that the husband of her (sic) niece was harassing her. The first accused asked me to do black magic to kill the husband of his niece. I refused to oblige.”* In his cross-examination, he admits that A-1 does not belong to his village and he had no prior acquaintance with A-1. Interestingly, in his examination-in-chief he does not name the husband, or the niece of A-1. Thus, it is absolutely unclear as to who is “the husband of the niece” on whom A-1 wanted the pujari, (P.W.5), to use black magic. Therefore, even the testimony of P.W.5 is too weak a piece of evidence to conclude a motive for A-1 to eliminate the deceased.

14. The only other piece of evidence which allegedly exists against A-1 is the alleged recovery of the axe at his instance. In order to prove the alleged recovery, the prosecution has examined Mutyala Jalapathi Rao, (P.W.10). The witness states that he knows the deceased, Ravinder Reddy, who belonged to his village. He further states that *“About 2 ½ years back at Bommareddypalli x-road, I was in Mango garden. Police was present there at about 3:30 pm. We found A-1 and A-2 in the custody of police. We also found bike there. Police interrogated the accused in our presence. The accused informed us that police suspected them to be culprits. Then we alleged that the accused No.1 and 2 are the killers of Ravinder Reddy. On our proceeding, A-1 and A-2 confessed that they assaulted Ravinder Reddy with axe and iron rod and thrown the weapons. Accused led us to the Bajarpalli canal and A-1 shown the axe near the bush, and A-2 shows the iron rod near the same place. M.O.8 is the*

axe recovered under identity slips affixed. M.O.9 is the iron rod recovered under identity slips affixed...".

15. Thus, according to the prosecution, upon the statement made by A-1, an axe was recovered from the bush near the canal. However, according to the FSL report, (Ex.P11), blood could not be detected from the axe. Therefore, even the alleged recovery of the axe at the instance of A-1 does not connect A-1 to the alleged offence. Hence, the prosecution has miserably failed to establish its case against A-1. Therefore, the conviction of A-1 is legally unsustainable.

16. For the reasons stated above, this criminal appeal is hereby allowed. The conviction and the sentence recorded against A-1 in S.C.No.190 of 2013 dated 16.07.2014 by the IV Additional Sessions Judge, Karimnagar are set aside. Since A-1 happen to be in jail, it is directed that A-1 be set at liberty forthwith, if not wanted in any other case.

CRLA.No.873 of 2014:

17. Mr. K. Venumadhav, learned counsel for the appellant – Accused No.2 has raised the following contentions before this Court:

18. Firstly, that although the case is based on circumstantial evidence, there is hardly any evidence that would connect A-2 to the alleged crime. Despite the fact that A-2 has been convicted for the offences under Section 302 read with 34 IPC, there is no evidence to point to the common intention between A-1 and A-2 for allegedly committing the murder of the Gaddam Ravinder Reddy. Secondly, the only evidence that has been read against A-2 is the alleged “confession” made by A-3, while she was in police custody. However, the said “confession” cannot be read against A-2. Moreover, the alleged recovery of the iron rod was made in the presence of

Mutyala Jalapathi Reddy, (P.W.10). However, according to the learned counsel even the said recovery falls apart. For the FSL report, (Ex.P11), merely states that “human blood was found on the iron rod”. Since the prosecution has not established the blood group of the human blood, there is no evidence whatsoever to connect the alleged recovery to the alleged offence. Hence, the prosecution has failed to prove its case against A-2.

19. On the other hand, the learned Additional Public Prosecutor has vehemently contended that according to the testimony of P.W.10, it is A-2 who had led the police to the Bajarpalli canal and had recovered the iron rod near the said place. Hence, A-2 was well aware of the fact as to where the iron rod had been hidden by him after committing the alleged crime. Thus, there is sufficient evidence to connect him to the alleged crime.

20. Heard learned counsel for the parties and perused the impugned judgment.

21. According to the testimony of Mutyala Jalapathi Reddy, (P.W.10), he went along with the police to the house of A-3. She apparently made “a confessional statement” wherein she claimed that she took the help of A-1 and A-2. It is on the basis of this alleged “confessional statement” that the learned trial Court has convicted A-2. However, needless to say that such “confessional statement” cannot be read against A-2. Moreover, according to the statement of this witness, A-2 had led the police party to a place near the Bajarpalli canal, and had recovered an iron rod from near the place. Although the FSL report, (Ex.P11), claims that there is “blood on the said iron rod”, but according to the report it is merely “human blood” on the said iron rod.

22. It is, indeed, trite to state that it is the duty of the prosecution to eliminate the possibility that the blood found on the weapon of offence is not that of the accused, and to firmly establish that the blood found on the weapon, indeed, belongs to the deceased. However, in the present case, the investigating agency has not collected the blood of the deceased; it has certainly not eliminated the possibility that the "human blood" found on the iron rod does not belong to the accused. Mere presence of human blood cannot lead to a logical inference that the blood belonged to the deceased. Therefore, the FSL report, (Ex.P11), does not strengthen the case of the prosecution.

Hence, the prosecution has failed to establish its case against A-2. Therefore, the conviction of A-2 on the basis of flimsy evidence is clearly legally unsustainable.

23. For the reasons stated above, this criminal appeal is hereby allowed. The conviction and the sentence recorded against A-2 in S.C.No.190 of 2013 dated 16.07.2014 by the IV Additional Sessions Judge, Karimnagar are set aside. Since A-2 happen to be in jail, it is directed that A-2 be set at liberty forthwith, if not wanted in any other case.

CRLA.No.858 of 2014:

24. Mr. A. Nava Mohan Rao, the learned counsel for the appellant – Accused No.3, has raised the following arguments before this Court:

25. Firstly, A-3 has been convicted for the offences under Section 302 read with 109 IPC. However, the prosecution has failed to prove the fact that she had abetted the murder of her husband, Gaddam Ravinder Reddy. The only evidence that the prosecution has produced against her is the alleged "confessional statement" made by her in the

police custody, in the presence of Mutyala Jalapathi Reddy, (P.W.10). According to the learned counsel, since the said “confessional statement” was made while the accused was in police custody, the “confessional statement” is hit by Section 24 of the Evidence Act. Therefore, the said “confessional statement” cannot be read against A-3.

26. On the other hand, the learned Additional Public Prosecutor has strenuously contended that the prosecution had established the fact that there was an illicit extra-marital affair between A-1 and A-3. Since both of them wanted to get rid of the husband, at the instigation of A-3, A-1 had hired the services of A-2 and carried out the plan to kill the deceased. In order to carry out the plan, they had used axe and iron rod. However, the murder was committed due to the abetment of A-3. Therefore, the learned trial Court was justified in convicting A-3 for offence under Section 302 read with 109 IPC. Thus, the learned Additional Public Prosecutor has supported the impugned judgment.

27. Heard the learned counsel for the parties and perused the impugned judgment.

28. Mutyala Jalapathi Reddy, P.W.10, informs the Court that *“... A-1 and A-2 informed us that A-3 is at hotel near Rajarampalli village. Police and our selfs (sic) proceeded to Rajarampalli village. We found A-3 at Rajarampalli village. We enquired A-3 and on enquiry A-3 stated that A-1 is her brother-in-law and she originally intended to marry A-1 but A-3 parents performed with Ravinder Reddy and after 2 or 3 years of marriage, A-1 started visiting her. A-3 further stated before us that her husband was harassing her, and she want to get rid of him, and once tried to kill her (sic) through electricity shock,*

and she also tried to get rid of her husband through black magic, and she also tried to give sedative material to kill her husband. A-3 again stated that on the date of the incident she took the help of A-1 and A-2 and they by telephoning the deceased and watching the movement of the deceased, kill him near Kothur village with axe and iron rod ...". It is on the basis of this testimony that the learned trial Court has convicted A-3 for the offence under Section 302 read with 109 IPC.

29. However, considering the fact that the said statement was made by A-3 in the presence of police, the said statement is clearly hit by Section 24 of the Evidence Act. The only part wherein she reveals the existence of cell phone, and cell phone was duly recovered is admissible in evidence as falling under Section 27 of the Evidence Act. However, the rest of her statement, mentioned hereinabove, cannot be read by the learned trial Court against her. But for the alleged "confession" made by A-3, while in the presence of police, the prosecution has not produced any other evidence against A-3 during the trial. Therefore, the learned trial Court is unjustified in relying on the alleged "confessional statement" made by A-3 while she is in police custody. Thus, her conviction for the offence under Section 302 read with 109 IPC is clearly unsustainable.

30. For the reasons stated above, this criminal appeal is also allowed. The conviction and the sentence recorded against A-3 in S.C.No.190 of 2013 dated 16.07.2014 by the IV Additional Sessions Judge, Karimnagar are set aside. Since A-3 happens to be in jail, it is directed that A-3 be set at liberty forthwith, if not wanted in any other case.

31. In the result, the conviction and sentence recorded against the appellants – Singireddy Sudhakar Reddy (Accused No.1), Kyatham Prithvi Raju (Accused No.2) and Gaddam Aruna (Accused No.3) in S.C.No.190 of 2013 dated 16.07.2014 on the file of the IV Additional Sessions Judge, (FTC), Karimnagar, are set aside. The appellants/accused Nos.1 and 2 are acquitted of the offence punishable under Section 302 read with 34 of the Indian Penal Code and the appellant/accused No.3 is acquitted of the offence punishable under Section 302 read with 109 of the Indian Penal Code. The appellants-accused Nos.1 to 3 shall be released forthwith, if not wanted in any other criminal case.

The criminal appeals are, accordingly, allowed. Pending miscellaneous applications, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

T. AMARNATH GOUD, J

July 9, 2019
DSK