

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

CRIMINAL APPEAL No.1192 of 2013

16.11.2019

Between

Bindla Prabhu and another.

...APPELLANTS

AND

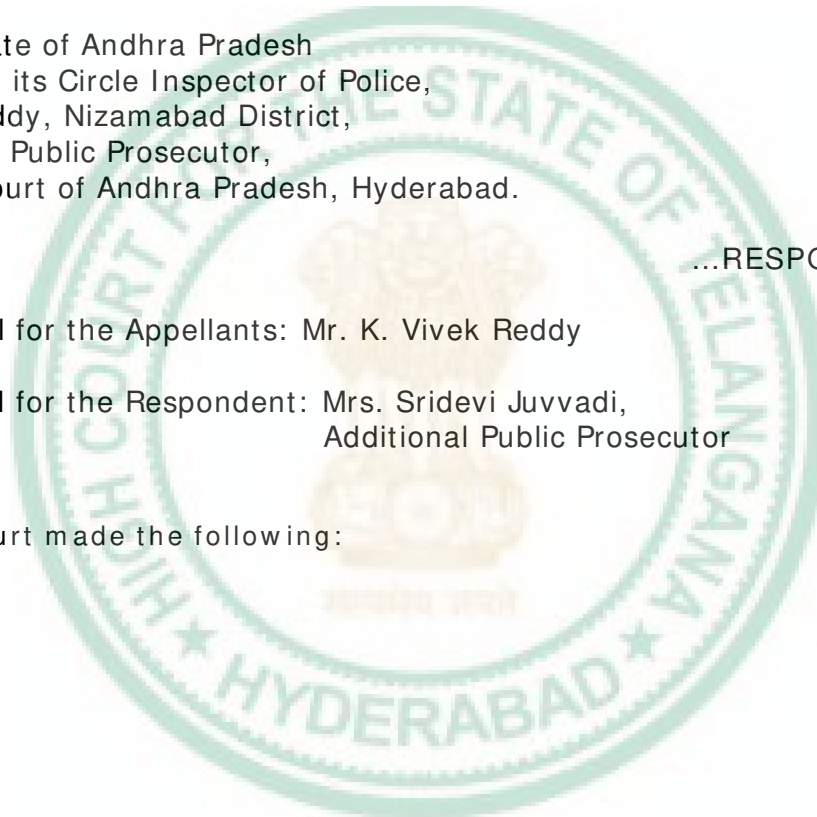
The State of Andhra Pradesh
Rep. by its Circle Inspector of Police,
Yellareddy, Nizamabad District,
Though Public Prosecutor,
High Court of Andhra Pradesh, Hyderabad.

...RESPONDENT

Counsel for the Appellants: Mr. K. Vivek 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)

Bindla Prabhu, A1, having been convicted for the offence under Sections 302 and 379 of the Indian Penal Code, and sentenced to life imprisonment for the offence under Section 302 IPC, and sentenced to undergo imprisonment for a period of one year for the offence under Section 379 IPC, fined for Rs.1,000/- and further directed to undergo simple imprisonment for a period of four months, and Manne Santoshi, A2, having been convicted for the offence under Sections 302 read with Section 34 IPC, and 379 IPC and sentenced to undergo imprisonment for life for the offence under Section 302 IPC, and sentenced to undergo imprisonment for a period of one year for the offence under Section 379 IPC, fined for Rs.1,000/- and further directed to undergo simple imprisonment for a period of four months, have challenged the legality of the judgment dated 31.08.2012 passed by the VI Additional District and Sessions Judge (FTC), Nizamabad at Kamareddy.

2. Briefly the prosecution case is that on 29.10.2011 at about 10.00 AM, Borancha Ramaswamy, (P.W.1), lodged a written report before the Sub-Inspector of Police, Lingampet, wherein he claimed that he is working at GTN Spinning Mills Draping Balm, Patancheruvu, Hyderabad, for the last ten years. According to him, his parents, Agamaiah and Pochavva (his mother, the deceased in the present case), stay at their home. And that *“However, my father has taken agricultural lands of Kapu people at Yellareddy on Kowl basis and doing the same. My mother does grazing of our four goats. Yesterday dated 28-10-2011 in the morning at 10-00 a.m., as usually, (sic), my mother Pochavva took our goats to our village Shetpalli sivar for grazing. Yesterday night goats returned to home but our mother did not return home. Hence, for my mother’s whereabouts, since*

yesterday night searched in surroundings of our village, in the house of our relatives, yet my mother's whereabouts could not be traced out. Meanwhile, today i.e. 29-10-2011 morning at 8-00 a.m. I came to know that my mother fell in the agricultural-well of one Laxmikanth Reddy, situated in our village sivar. As such, we went and saw the same to be true that my mother fell in the well and died. When my mother was taken out of the well and observed, one tula gunlu (beads), 30 tulas silver leg kadas, padigelu (ear ornament) of ears, etc. were not found on the person of my mother. But, somebody, for the sake of gold ornaments, somebody killed my mother, took away the ornaments and pushed my mother into the well. I have suspicion over Baindla Prabhu S/o Ramulu, Age:25 years, R/o Kondapur villag, who for the sake of ornaments, killed my mother and thrown her."

On the basis of the said complaint, the police chalked out a formal FIR, namely, FIR.No.91 of 2011, for offence under Sections 302 and 379 IPC and commenced the investigation. During the course of investigation, A1 and A2 were arrested; they were put up for trial.

3. In order to support its case, the prosecution examined twelve witnesses, submitted nine documents, and produced eight articles. Although the defence did not examine any witness, but it submitted four documents. After going through the evidence, the learned trial Court convicted and sentenced A1 and A2 as aforementioned. Hence, this appeal before this Court.

4. Mr. K. Vivek Reddy, 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 the complete chain of

circumstances, which would unerringly point towards the guilt of the accused.

Secondly, the learned trial Court has read only three pieces of evidence against the appellants: firstly, the alleged extra-judicial confession made by A1 before Jangani Ramulu, (P.W.8), and Ketavath Teekya Naik, (P.W.9). Secondly, on the evidence of last seen as testified by Surna Devaiah, (P.W.4), and lastly, on the alleged recovery of ornaments at the instance of A1 and A2, as testified by Jangani Ramulu, (P.W.8), and Ketavath Teekya Naik, (P.W.9), and as identified by Borancha Agamaiah, (P.W.2).

Thirdly, the alleged extra-judicial confession made to Jangani Ramulu, (P.W.8), does not pass the test of admissibility of an extra-judicial confession. For, Jangani Ramulu, (P.W.8), clearly admits in his cross-examination that, in fact, he happens to be a relative of Borancha Agamaiah, (P.W.2), the husband of the deceased. Therefore, it is highly unlikely that A1 would have made extra-judicial confession to a person who is related to the deceased. Moreover, the said alleged extra-judicial confession took place while A1 and A2 were in police custody. Therefore, the said alleged confession is hit by Section 25 of the Evidence Act. Furthermore, there is a discrepancy and contradiction between the testimony of Jangani Ramulu, (P.W.8), and Ketavath Teekya Naik, (P.W.9) with regard to the ornaments, which were recovered from A1 and A2 at the time when allegedly they made the extra-judicial confession. Therefore, the extra judicial confession, in fact, should have been rejected by the learned trial Court. Hence, the learned trial Court has erred in accepting the alleged extra-judicial confession as a piece of evidence to be read against A1 and A2.

Fourthly, the prosecution has examined Surna Devaiah, (P.W.4), in order to establish the evidence of the last seen. However, the said witness is a fabricated one. For, in his examination-in-chief, the witness clearly admits that he was examined by the police after three days of the incident. A witness who claims to be a witness of the last seen, a witness who claims that on the next day he came to know that Pochavva was killed, has maintained studied silence for three days. Therefore, the witness has been fabricated by the prosecution in order to create the evidence of "the last seen". Furthermore, although the witness claims that he saw A2 with the deceased, with regard to A1, he merely claims that "he saw A1 providing water to the cattle". On the one hand, the witness claims that he does not know A1, and yet, on the other hand, he claims that he saw A1 watering the cattle. If A1 is a total stranger to the witness, surprisingly, A1 has not been subjected to a test identification parade wherein the witness would have had a chance to identify A1. Moreover, the statement that he saw "A1 providing water to the cattle" is a vague statement. For, the witness does not tell the Court whether he was providing water to the cattle near about the place of the scene of the crime, or somewhere else. Therefore, there is no evidence of "the last seen" as far as A1 is concerned. Furthermore, as far as A2 is concerned, there is a long gap of time and space between the last seen and the recovery of the dead body of the deceased. According to the witness, he saw A2 with the deceased at 1:00 PM, and the body was not recovered from the well till the next morning. Considering the fact that the scene of the crime is near a road, considering the fact that there is time gap, it cannot be inferred logically that A2 is the culprit, who has committed the murder of the deceased. For, any other person would have easy access to the scene of the crime, and given the duration of time, the alleged murder could be committed by any third person.

Hence, the learned trial Court is not justified in accepting the testimony of Surna Devaiah, (P.W.4), as the gospel truth.

Fifthly, although the prosecution claims that the ornaments were recovered from A1 and A2, there is a discrepancy with regard to the number of ornaments recovered from A1 and A2. There is a contradiction in the testimonies of Jangani Ramulu, (P.W.8), and Ketavath Teekya Naik, (P.W.9). Moreover, the said ornaments have never been subjected to a test identification parade. Relying on the case of *ANDUGULA RAVINDER v. STATE OF AP* [CrI.A.No.1075 of 2012 dated 21.09.2019.] the learned counsel submits that in case an article of theft has not been subjected to a test identification parade, the recovery loses its significance. Furthermore, the ornaments have been identified by Borancha Agamaiah, (P.W.2), but the said identification has been done, for the first time, in the Court. But identification of an article or a person, for the first time, in the Court is no identification at all. Therefore, the prosecution has miserably failed to establish a link between the alleged ornaments of the deceased, and the alleged recovered from A1 and A2. Therefore, the alleged recovery from A1 and A2 cannot be read as a piece of evidence to convict them for the alleged offence. Hence, A1 and A2 deserve to be acquitted.

5. On the other hand, Smt. Sridevi Juvvadi, the learned Additional Public Prosecutor, has vehemently contended that according to Borancha Ramaswamy, (P.W.1), there was already an animosity between the families, as A1 had allegedly killed his cousin. Moreover, A1 and A2 wanted to steal the gold ornaments worn by the deceased. Therefore, A1 and A2 had a motive for killing the deceased.

Secondly, Surna Devaiah, (P.W.4), has clearly testified that he has seen A1 and A2 with the deceased a day prior to the recovery of the dead body. Hence, there is evidence of the last seen.

Thirdly, that Borancha Ramaswamy, (P.W.1), the complainant, had mentioned the fact, even in the FIR, that the gold ornaments worn by the deceased were missing.

Fourthly, according to Jangani Ramulu, (P.W.8), and Ketavath Teekya Naik, (P.W.9), the said ornaments were recovered from the possession of A1 and A2.

Lastly, according to Dr. Sadanandam, (P.W.10), the deceased died a homicidal death, as the cause of the death is "Asphyxia". Hence, the prosecution has established the fact that A1 and A2 had a motive for committing the murder, the ornaments were recovered from their possession, and the death of the deceased was a homicidal one and not an accidental one. Therefore, the prosecution has succeeded in establishing the case against A1 and A2. Learned Additional Public Prosecutor, therefore, has supported the impugned judgment.

6. Surna Devaiah, (P.W.4), claimed, in his examination-in-chief, that he does not know A1. He further claimed that, *"I was driving the sheep for grazing. A-2 has asked me to drive the sheep away. But I remained at the same place by requesting her. In the meanwhile deceased Pochavva came there while driving her four (4) Goats and A-2 and the deceased sat under a tree and were talking to each other. A-2 has threatened me to drive away my Sheep. I have seen A-1 while he was providing water to cattle. I left the place. I do not know what was happened. Next day morning I was told that Pochavva was killed."*

I have seen the dead body in the Well. I do not know how she died. I was examined by the police after three days”.

In his cross-examination, he claims that, “*..It took about 1 PM when A-2 asked him to go out, deceased came there with her goats and again A-2 threatened me to leave that place..*”

7. A bare perusal of the testimony of this witness clearly reveals that A1 is a stranger to this witness. Moreover, he does not tell the Court the place where he saw A1 watering the cattle. Thus, there is no evidence to show that A1 was last seen with the deceased. Moreover, it is unclear whether A1 was watering the cattle near the scene of the crime, or somewhere far away. Therefore, there is no evidence of last seen as far as A1 is concerned.

8. It is, indeed, a settled principle of law that a witness who does not speak immediately about the incident to the Investigating Agency, and a witness who keeps a studied silence over the incidence becomes suspect himself. According to Surna Devaiah, (P.W.4), he was examined by the police after three days. Yet, surprisingly, he claims that he has seen the dead body in the well. Obviously, when the dead body was discovered, according to the testimony of Borancha Ramaswamy, (P.W.1), and Borancha Agamaiah, (P.W.2), people had gathered at the well. Yet, this witness remained mum when he was there at the well with other persons. Had he really seen A2 with the deceased a day earlier, he is expected to have revealed the said information to the son and husband of the deceased, namely, Borancha Ramaswamy, (P.W.1), and Borancha Agamaiah, (P.W.2). Yet, this witness chose to remain silent for three days. Thus, obviously, the witness is a concocted one by the police. The fact that his examination-in-chief is devoid of any concrete detail

also points to the fact that he is a concocted witness. Therefore, the learned trial Court has erred while relying upon the testimony of Surna Devaiah, (P.W.4), in order to conclude that there is sufficient evidence of the last seen.

9. Admittedly, according to the prosecution, the occurrence had taken place on 28.10.2011. Yet, the body was not discovered till the morning of 29.10.2011. According to the scene of offence and the seizure panchanama, (Ex.P.3), the well from where the body was discovered is near a road. Considering the fact that there is a gap between the time when Surna Devaiah, (P.W.4), claimed to have seen A2 with the deceased, and the time when the body of the deceased was discovered, considering the fact that the well is near a road, the learned counsel for the appellants is well justified in contending that there is a distinct possibility that a third person may have killed the deceased, as there is a gap in time and space. Therefore, the learned trial Court is unjustified in concluding that there is a strong evidence of "the last seen" as testified by Surna Devaiah, (P.W.4).

10. The prosecution has examined Jangani Ramulu, (P.W.8), and Ketavath Teekya Naik, (P.W.9), in order to establish the recovery of ornaments from A1 and A2. According to Jangani Ramulu, (P.W.8), *"..About 9 or 10 months ago at about 9 AM I was called to Ramagoud Hotel at Shetpally Village. LW-13, CI of Yellareddy, SI of Lingampet and A-1 were also present"*. He further claims that, *"..He, (A1), has shown me Kalla Kadiyalu (anklets worn on legs), Cheyi Kadem (anklet worn on hand) and Padigelu (ear ornament). He, (A1), has led us to his sister's house in the same village ... She has produced Gundla Pusthe (Beads necklace worn around the neck to signify marital status). I can identify them. MO-1 to 3 are seized from A-1 and MO-4 to 6 were seized from A-2"*. In his cross-examination, he claimed that

he is a relative of Borancha Agamaiah, (P.W.2). He further claimed that, *"...The panchanamas were scribed by the constable. Signatures were taken on two papers which were scribed. I am illiterate therefore I do not know what is scribed on them. There are no signatures of either myself or of L.W.13 on first two sheets of Ex.P6 panchanama ..."*.

11. In his examination-in-chief, Ketavath Teekya Naik, (P.W.9), informs the Court, that, *"...On 03.11.2011 at about 10 AM A-1 Bindla Prabhu got down from Bus at Shetpalli Bus Stand. Yellareddy CI and Lingampet SI have caught hold of him. I was present at that time along with PW-8 near Ramagoud Hotel, which is at the Bus Stand. Police caught hold of him and myself and PW-8 have took him aside and asked him on which he told us that he belong to Kondapoor Village of Tadwai Mandal and came to Shetpalli Village on request of his sister A-2 ..."*. According to this witness, *"..A1 had produced Padigelu (ear ornament), Budigelu (ornament/stud worn on the top of the ear), Ringulu (Rings), Kalla Kadiyalu (anklets worn on legs) and Dande Kadiyam (anklet worn between the shoulder and elbow)..."*. He claimed that he can identify them. And then, he identified M.Os.1 to 5 as the ornaments shown by A1. According to this witness, *"...Then we went to the house of A-2 wherein she has stated that MO-1 to 5 are taken by A-1 and she has produced MO-6. Panchanamas were written and the contents were read over to us on which myself and PW-8 have signed. Ex.P-6, 7 are confessional and recovery panchanamas of A-1 and A-2 respectively ..."*. But, in his cross-examination, this witness clearly claimed that he does not know the contents of Exs.P6 and P7.

12. A bare perusal of this deposition clearly reveals certain interesting facts: firstly, despite the fact that the police is supposed to associate an independent witness for the purpose of recovery of

articles, the police has associated Jangani Ramulu, (P.W.8), who admittedly is a relative of Borancha Agamaiah, (P.W.2), the husband of the deceased. Thus, the police has not even adhered to the procedure established by law. Secondly, there is a contradiction between these two witnesses with regard to the ornaments which were produced by A1. While Jangani Ramulu, (P.W.8), claimed that only three articles were produced by A1, Ketavath Teekya Naik, (P.W.9), claimed that five articles were produced by A1. Therefore, it is unclear as to how many ornaments were produced by A1. Thirdly, despite the fact that the Investigating Agency is required to draw up the site plan of the place of recovery of the articles, the police has failed to do so and there is no site plan of the place of the recovery. Lastly and most importantly, although the prosecution claimed that gold ornaments were recovered from A1 and A2, the Investigating Agency has never subjected these ornaments to a test identification parade. According to the testimony of Borancha Agamaiah, (P.W.2), he has identified the ornaments by claiming, in his examination-in-chief, that, “..My wife was wearing MO-1 to 6...”. Further, the ornaments have been identified, for the first time, in the Court. It is a settled principle of law that the identification in the Court, for the first time, is no identification in the eyes of law. For, the ornaments have been produced before the witness in isolation, and not as part of a group of ornaments for the witness to identify the ornaments. Therefore, the alleged recovery of the ornaments from A1 and A2 loses its legal sanctity and significance. Hence, the alleged recovery does not connect A1 and A2 to the alleged offence. Therefore, the learned trial Court is unjustified in relying on the evidence of the alleged recovery in order to convict A1 and A2 of the alleged offence.

For the reasons stated above, this criminal appeal is hereby allowed. The conviction and sentence recorded against the appellants – Bindla Prabhu (A1), S/o. Ramulu and Manne Santoshi (A2), W/o. Shanker, in S.C.No.161 of 2012 dated 31.08.2012 by the VI Additional District and Sessions Judge, (FTC), Nizamabad, are set aside. Bindla Prabhu (A1), S/o. Ramulu is acquitted of the offence punishable under Sections 302 and 379 of the Indian Penal Code, and Manne Santoshi (A2), W/o. Shanker is acquitted of the offence punishable under Sections 302, 379 and 34 of the Indian Penal Code. The appellants/accused shall be set at liberty forthwith, if not wanted in any other criminal case.

Pending miscellaneous applications, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

November 16, 2019
DSK