

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.1031 AND 1041 OF 2012

Dated: 12.03.2019

1. CRL.A.NO.1031 OF 2012

Between:

Mussapuri Krishna.

...APPELLANT

And

The State of A.P., Through the CI of Police,
Eturnagaram P.S., Tadvai, rep.by PP,
High Court of AP, Hyderabad.

...RESPONDENT

Counsel for the Appellant:

Mr. P.Prabhakar Reddy

Counsel for the Respondent:

Public Prosecutor

2. CRL.A.NO.1041 OF 2012**Between:**

Kudurupaka Sharada.

...APPELLANT

And

The State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad.

...RESPONDENT

Counsel for the Appellant:

Ms. Savithri Devi for Mr. Balla
Ravindaranath

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.1031 AND 1041 OF 2012

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

Both these appeals, namely CrI.A.No.1031 of 2012 and CrI.A.No.1041 of 2012, arise from the same impugned judgment, dated 09.08.2012, passed by the V Additional Sessions Judge (II FTC), Warangal, whereby the learned Judge has convicted both Kudurupaka Sharada, W/o.Rambabu (accused No.1) and Mussapuri Krishna, W/o.Ramchendrudu (accused No.2), for the offence under Section 302 read with Section 34 of the Indian Penal Code, sentenced both of them to life imprisonment, imposed a fine of Rs.1,000/- on each of them, and further directed both of them to undergo a simple imprisonment of two months in default thereof.

Briefly stated the case of the prosecution is that on 05.05.2011 at 07:30 P.M., Jaligapu Raghupathi (P.W.1) lodged a Telugu written complaint (Ex.P.1) before the Station House Officer, Tadvai Police Station, wherein he claimed that he and his wife are agriculturists. He further claimed that *"yesterday in the morning at 10:00 A.M. I left my son Jaligapu Rakesh, nine year old studying IInd Class back at home. Myself and my wife, Sarojana, went to the agricultural farm. When returned back to the house evening at about 06:00 P.M., our son Jaligapu Rakesh found dead in the verandah of the house. On verification, the neck of our son found crushed. There is a doubt about the death of our son. Therefore, prayed to do justice to us by conducting panchanama"*. On the

basis of the said complaint (Ex.P.1), the Police Station, Tadvai, registered a formal FIR (Ex.P.7) under Section 174 of the Code of Criminal Procedure. However, after the arrest of accused Nos.1 and 2, the FIR was altered to the offences under Section 302 read with Section 34 of the Indian Penal Code.

In order to buttress its case, the prosecution examined sixteen witnesses, and submitted ten documents. The defence neither examined any witness, nor submitted any documents. By judgment dated 09.08.2012, the learned Trial Court convicted and sentenced the appellants as aforementioned. Hence, both these appeals before this Court.

Mr. P. Prabhakar 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 a complete chain of circumstances, which would unerringly point towards the guilt of the appellants.

Secondly, although the prosecution claims that motive for killing the nine-year old child is the fact that he may have been an eyewitness for the illicit intimacy which had developed between the accused Nos.1 and 2, but even the said plea raised by the prosecution is misplaced. For, according to the prosecution, and according to the testimony of Jaligapu Raghupathi (P.W.1), he had quarreled with his sister, the accused No.1, with regard to the alleged illicit affair she had developed with the accused No.2. Moreover, according to the prosecution, the elders of the village had heard the dispute with regard to the alleged illicit relationship between the accused Nos.1 and 2. They had advised the accused

No.2 not to visit the house of the accused No.1, but he continued to do so. Therefore, the illicit affair between the two had already become the talk of the town. Hence, there was no need for the accused Nos.1 and 2 to get rid of the deceased. Therefore, the motive pleaded by the prosecution is highly misplaced.

Thirdly, according to Solam Venkateshwarlu (P.W.10), the accused Nos.1 and 2 had come to his office and made an extra-judicial confession with regard to commissioning of the offence by them. However, according to the learned counsel for the appellants, since the accused Nos.1 and 2 were not intimately related to or known to Solam Venkateshwarlu (P.W.10), the veracity of the extra-judicial confession is rather slim. Furthermore, although Solam Venkateshwarlu (P.W.10) claims that he handed over the custody of the accused Nos.1 and 2 to the police, Jaligapu Raghupathi (P.W.1) claims that the police dogs had come to his house, and it is the police dogs who had caught the accused Nos.1 and 2. Thereafter, the police arrested the accused Nos.1 and 2 and took them to the Police Station. Hence, the testimony of Solam Venkateshwarlu (P.W.10) is contradicted by the testimony of Jaligapu Raghupathi (P.W.1). Therefore, Solam Venkateshwarlu (P.W.10) is a fabricated witness. Thus, the learned Trial Court should not have relied upon the testimony of Solam Venkateshwarlu (P.W.10) with regard to the alleged extra-judicial confession made by the accused Nos.1 and 2 to the said witness.

Lastly, the prosecution has examined Anumala Nagamani (P.W.7) in order to buttress its plea that there is the evidence of the last-seen. According to the learned counsel, the evidence of the

last-seen is a weak form of evidence, as it cannot form the basis for convicting the accused. Further, since the accused No.1 happens to be the aunt of the deceased, who was living near the house of the deceased, there is nothing unusual for an aunt to visit the house of the deceased in the middle of the afternoon. Therefore, merely because she and the accused No.2 allegedly went to the house of the deceased does not unerringly point towards the guilt of the accused Nos.1 and 2. Thus, according to the learned counsel for the appellants, the prosecution has failed to establish its case against the accused Nos.1 and 2.

On the other hand, Ms. J. Sridevi, the learned Public Prosecutor, has vehemently raised the following contentions before this Court:-

Firstly, although the case is based on the circumstantial evidence, the prosecution has succeeded in establishing its case against the accused Nos.1 and 2.

Secondly, according to Anumala Nagamani (P.W.7), the deceased had gone to the house of the accused Nos.1 and 2 and had come back to his own home. Thus, there is distinct possibility that the deceased may have witnessed the illicit relationship that existed between the accused Nos.1 and 2. Moreover, there was already animosity between the father of the deceased, Jaligapu Raghupathi (P.W.1) and the accused No.2. As Jaligapu Raghupathi (P.W.1) had fought with the accused No.2 and told him not to visit the house of the accused No.1. Thus, a strong motive does exist for the accused Nos.1 and 2 to get rid of the deceased.

Thirdly, since Solam Venkateshwarlu (P.W.10) was the MPTC and was known to the accused No.1. Hence, there is nothing

unusual in the accused Nos.1 and 2 making the extra-judicial confession to Solam Venkateshwarlu (P.W.10). After all he being a public servant, there was fond hope that he would save them from the offence.

Fourthly, merely because the testimony of Solam Venkateshwarlu (P.W.10) has been contradicted by Jaligapu Raghupathi (P.W.1) with regard to the arrest of the accused Nos.1 and 2 by the police, such a contradiction would not weaken the trustworthiness of the testimony of Solam Venkateshwarlu (P.W.10). Therefore, the learned Trial Court could safely rely on the testimony of the said witness with regard to making of the extra-judicial confession to him.

Lastly, according to Anumala Nagamani (P.W.7), it is not only that she had seen the accused Nos.1 and 2 entering the house of the deceased, but she had also heard the cries of the child. This clearly points to the distinct possibility that the accused Nos.1 and 2 had killed the child. Hence, according to the learned Public Prosecutor, the prosecution has succeeded in proving its case beyond the shadow of doubt against the appellants. Therefore, the learned Public Prosecutor has supported the impugned judgment.

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

In catena of judgments, the Hon'ble Supreme Court had laid down the principles which are applicable while assessing the evidence in a case based on circumstantial evidence. The principles are as under:-

Needless to say, the distance between "*may be true*" and "*must be true*" is a distance which the prosecution is required to

cover. In case the prosecution fails to cover such distance, the prosecution case would be based merely on surmises and conjunctions. However, convictions cannot be based on the strong suspicion. Conviction has to be based upon cogent and convincing evidence. In the case of circumstantial evidence, the circumstances must be so interlinked as to unerringly point to the guilt of the accused. Thus, while appreciating the evidence in the present case, these fundamental principles of criminal jurisprudence would have to be kept in mind.

Jaligapu Raghupathi (P.W.1), the father of the deceased, informs the Court that the accused No.1 is his sister. Although his sister was married to one Mr. Rambabu, she had left her husband as he is an alcoholic. She, along with her two children, came from the husband's house, and was living near his house. He further claimed that she had an illicit intimacy with the accused No.2. When he warned her, she had quarreled with him. Panchayat was also conducted in the village wherein the accused No.2 was warned in the said panchayat. In spite of this, the relationship between the accused Nos.1 and 2 was continued. *"He also informed about the relationship to Jaligapu Bhadraiah (L.W.5) and to my sister. Again, panchayat was conducted and in that panchayat, the accused No.1 and my other sister, the wife of Nimmala Komuraiah (P.W.4), beat him and his wife on the allegation that they are making false allegations against the accused No.1"*. He further claimed that, as he was objecting to the relationship of the accused Nos.1 and 2, he suspects that his son has been killed only by them.

A bare perusal of his testimony clearly reveals that the alleged illicit relationship between the accused Nos.1 and 2 was an

open secret in the village. Not only Jaligapu Raghupathi (P.W.1) had fought with his sister, the accused No.1, over the said issue, but even the village panchayat had been convened on two occasions. Therefore, the prosecution is not justified in claiming that the deceased was done to death by the accused Nos.1 and 2, as they were afraid that the child may expose their clandestine relationship to the family and to the public at large. Hence, the existence of motive is conspicuously missing in the present case.

Solam Venkateshwarlu (P.W.10) claims in his testimony that *“I am MPTC of Kennepally Village. I know A-1. I know A-1 and A-2 they are residents of my neighbouring villages. On 11.05.2011 while I was in my house at about 11:00 A.M., A-1 and A-2 came to me. A-1 revealed to me that she is having illicit intimacy with A-2 and on that issue panchayathes were also held in their village and that her nephew i.e. son of P.W.1 died, and that the police are searching for her. Further she revealed that she taken away the deceased and killed him. Then, I stated that it is not wrong. Then I brought A-1 and A-2 to P.S. Thadvai and handed over them to S.I. of Police”*. His testimony has been used by the prosecution to establish the fact that the accused No.1 had made an extra-judicial confession to the said witness.

However, before an extra-judicial confession can be accepted by the Court, it must satisfy certain criteria:-

Firstly, the extra-judicial confession was made to a person in whom the accused reposes faith. For, such a confession is generally made to a kith and kin, or to a friend. It is very unlikely that such a confession would be made to a total stranger. After all, the accused is sharing a secret with the person.

Secondly, the extra-judicial confession should be a voluntary one.

Thirdly, the exact words of the extra-judicial confession need to be stated before the Court.

Lastly, the extra-judicial confession must be with regard to the relevant facts.

However, in the present case, it is rather surprising that the accused No.1, a woman, would go all the way to a neighbouring village to make a confession to a person, who is hardly known to her. Moreover, no woman would confess to having an illicit intimacy with a man who is not even her husband. Considering the conservative society in which we live in, it is highly unlikely that a woman would confess to having an illicit intimacy with another man before a stranger. Therefore, the distinct possibility that the accused Nos.1 and 2 had gone to the house of Solam Venkateshwarlu (P.W.10) only to make an extra-judicial confession is rather slim. Therefore, a cardinal factor is conspicuously missing in the present case. The alleged extra-judicial confession is, hence, suspect.

Furthermore, the second part of his testimony that it is he who handed over the custody of the accused Nos.1 and 2 to the police is contradicted by the testimony of Jaligapu Raghupathi (P.W.1). For, in his cross-examination, Jaligapu Raghupathi (P.W.1) claims that after the FIR (Ex.P.7) was lodged, the police had come with a dog-squad, and that it is the dogs who had sniffed and pointed towards the accused Nos.1 and 2. Therefore, the police had arrested both the accused Nos.1 and 2. Since the evidence of Solam Venkateshwarlu (P.W.10) has been contradicted on a

material point, since it is unlikely that the accused No.1 would have made an extra-judicial confession to him, a grave possibility does exist that Solam Venkateshwarlu (P.W.10) is a fabricated witness by the police. Therefore, the learned Trial Court is unjustified in relying on the testimony of Solam Venkateshwarlu (P.W.10). Hence, it has erred in accepting the alleged extra-judicial confession by the accused No.1 to the said witness in order to convict the appellants.

As far as the evidence of the last-seen witness, Anumala Nagamani (P.W.7) is concerned, she stated that *"At about 01:00 P.M. on that day of incident, A-2 came to the house of A-1. The daughters of A-1 gone for playing. A-2 was in the house of A-1. At that time, the deceased came to the house of A-1 and returned to his house after a little time. After some time deceased returned to his house. A-1 and A-2 went to the house of deceased. After a little time I heard the cries of deceased. After some time A-1 and A-2 returned to the house of A-1"*. Although the prosecution has tried to stress on this evidence, suffice it to say that the evidence of last-seen, in the absence of other cogent and convincing evidence, raises merely a great suspicion that the appellants may have committed the murder of the child. However, suspicion no matter how strong cannot take place of proof. Therefore, the evidence of the last-seen has always been considered as a weak sort of evidence. In catena of cases, the Hon'ble Supreme Court has already observed that conviction cannot be based only on the evidence of the last-seen. In the present case, but for the evidence of the last-seen, there is no other cogent and convincing evidence which would unerringly point towards the guilt of the appellants.

Hence, the conviction cannot be based on the singular evidence of last-seen submitted by the prosecution.

For the reasons stated above, the sentence and conviction of the appellants, Mussapuri Krishna, S/o. Ramchendrudu (accused No.2) and Kudurupaka Sharada, W/o. Rambabu (accused No.1), for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code in Sessions Case No.226 of 2012 on the file of the V Additional Sessions Judge (II-FTC), Warangal, are set aside. Both the appellants are acquitted of the offence under Section 302 read with Section 34 IPC. The appellant in CrI.A.No.1041 of 2012, Kudurupaka Sharada-accused No.1 shall be released forthwith, if not wanted in any other case. As Mussapuri Krishna-accused No.2 was already released on bail, his bail-bonds shall stand cancelled. He shall surrender before the prison authorities concerned for completing the legal formalities for his release.

Both the Criminal Appeals are, accordingly, allowed.

Miscellaneous petitions, if any, pending shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

12th March 2019
RRB