

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
CRIMINAL APPEAL NO.1416 OF 2014
09.07.2019

Between:

Konda Mada Swamy and another

...Appellants

and

The State of Telangana

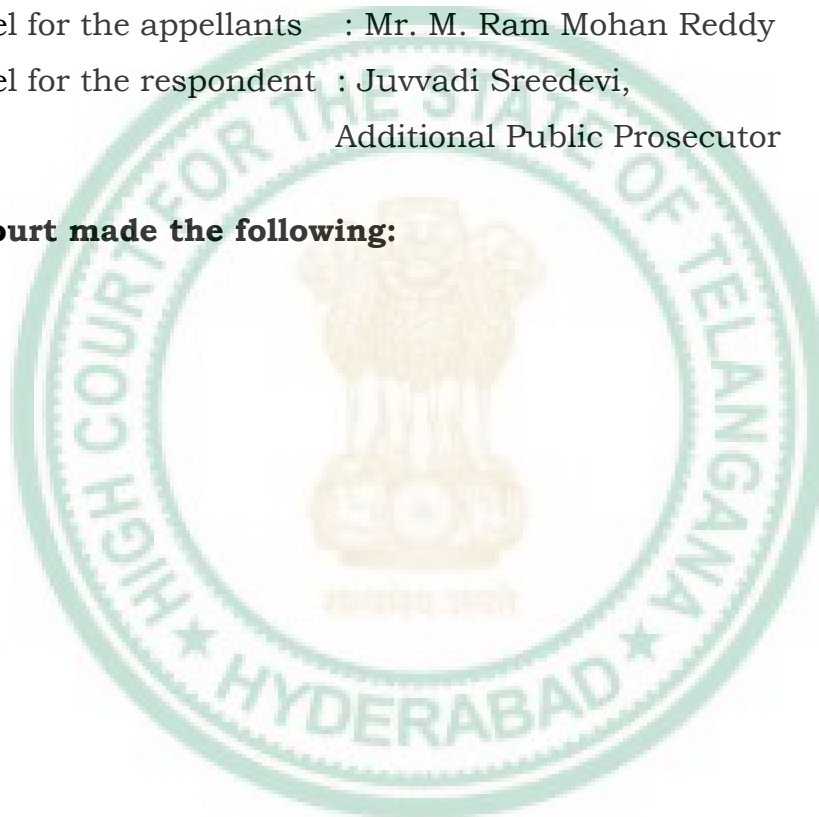
...Respondent

Counsel for the appellants : Mr. M. Ram Mohan Reddy

Counsel for the respondent : Juvvadi Sreedevi,

Additional Public Prosecutor

The Court made the following:



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

The appellants have challenged the legality of the judgment dated 20.11.2014, passed by the learned VI Additional District & Sessions Judge, Godavarikhani, whereby the learned Judge has convicted both the appellants-A-1 and A-2 for offence under Section 302 read with Section 34 I.P.C, and has sentenced them to life imprisonment, imposed them with a fine of Rs.500/-, and directed them to undergo simple imprisonment for a period of three months in default thereof.

Briefly, the case of the prosecution is that on 23.10.2011, Manikyam Chellamma (P.W.1) lodged a complaint before the Sub-Inspector of Police, NTPC Police Station, wherein she claimed that on 16.10.2011, her husband, Manikyam Ratnam, and she came to see their daughter, D. Thirupatamma, and their son, Krishna, who are staying at Crusher Nagar, NTPC. On 22.10.2011, around 6:30 pm, Konda Mada Swamy (A-1), who resides near the place, came to their house, and told her husband that he had some disputes with his son, Konda Raju (A-2). He further told her husband that there is a panchayat. Therefore, he took her husband, Manikyam Ratnam, to his house. However, her husband did not come back. Therefore, at 8:30 pm, she along with her daughter-in-law, Madeena, went to the house of Konda Mada Swamy (A-1). They noticed that her husband was lying with severe injuries on his face, head and knees, in front of the house of A-1. Immediately, they shifted her husband to their house, and called 108 Ambulance on phone. However, while her husband was being shifted, the Ambulance staff informed her that her husband has died. According to her, her husband was beaten by Konda Mada

Swamy (A-1) and by his son Konda Raju (A-2). On the basis of the said report, a formal F.I.R, namely F.I.R.No.153 of 2011, was chalked out, for offence under Section 302 read with 34 I.P.C; the investigation commenced. During the course of investigation, both the appellants-A-1 and A-2 were arrested by the police.

In order to support its case, the prosecution examined eighteen witnesses, and submitted twenty-five documents. After going through the evidence of both the prosecution and the defence, the learned trial Court convicted and sentenced the appellants-A-1 and A-2 as mentioned hereinabove. Hence, this appeal before this Court.

Mr. M. Ram Mohan Reddy, the learned counsel for the appellants, submits that the entire case is based on circumstantial evidence, as the deceased was discovered by his wife and a few other witnesses in injured condition. Therefore, it is imperative for the prosecution to establish a chain of circumstances, which would unerringly point towards the guilt of the appellants. But, the prosecution has singularly failed to do so. The only evidence that the prosecution has submitted before the learned Trial Court is the testimony of Manikyam Chellamma (P.W.1). According to her, her husband was taken by A-1. Subsequently, she discovered him lying in injured condition in front of the house of A-1. Since the prosecution has also pleaded that even A-1 was found in injured condition, there is no evidence to establish the fact that A-1 had assaulted the injured, who eventually died.

Secondly, as far as A-2 is concerned, the only evidence produced by the prosecution is the testimony of Mankiyam Chellamma (P.W.1), who claimed in her deposition that when she

reached the place of offence, she saw A-2 running away. According to the learned counsel, absconding is a very weak sort of evidence to support a conviction. For, even innocent persons run away from the scene of crime. Therefore, the guilt of A-2 cannot be deduced on the mere fact that P.W.1 has seen him running away from the scene of crime. Thus, according to the learned counsel, the prosecution stands on a very weak wicket. Hence, the learned trial Court is unjustified in convicting the appellants-A-1 and A-2 for the aforementioned offences. Therefore, according to the learned counsel, the impugned judgment deserves to be set aside, and the appellants deserve to be acquitted by this Court.

On the other hand, Ms. Juvvadi Sreedevi, the learned Additional Public Prosecutor, has strenuously contended that according to Manikyam Chellamma (P.W.1), A-1 had taken her husband with him to his house. Subsequently, her husband was discovered in injured condition in front of the house. Therefore, it was for A-1 to explain as to how the injuries were received. According to a few of the witnesses, there was an altercation broken out between A-1 and A-2 on one side, and the deceased on the other side. Since A-1 and A-2 assaulted him, eventually the deceased expired. Therefore, the prosecution has established its case.

In rejoinder, Mr. M. Ram Mohan Reddy, the learned counsel for the appellants, submits that according to the prosecution, A-1 had taken the deceased to his house to act as a mediator between A-1 and A-2, who were father and son, and between whom certain disputes had arisen. Thus, there is no motive for A-1 and A-2 to

kill the mediator, who had come there to settle the disputes between the parties.

Secondly, the alleged eye witnesses, namely Nikodi Laxmi (P.W.2) and Boyira Vimala (P.W.3), and the other witnesses, Devasahayam Thirupathamma (P.W.4), Perumalla Janaki (P.W.5), Manikyam Krishna (P.W.6), Elluri Pavani (P.W.7), Manikyam Durga (P.W.8), Suripogu Ramulamma (P.W.9), Suripogu Aharun (P.W.10), Suripogu Narayana (P.W.11), Chiluka Shankar (P.W.12), Esarapu Shankar (P.W.13), and Katheramalla Shankar (P.W.14), have turned hostile. Therefore, there is no evidence to establish the fact that there was any altercation that had broken out between A-1 and A-2 on one side, and the deceased on the other side.

Heard the learned counsel for the parties and perused the impugned order.

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

¹ AIR 2002 SC 3164

(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 the essential duty of the prosecution to establish a complete chain of circumstances which would unerringly point towards the guilt of the accused, and which would be inconsistent with the innocence of the accused. The said solitary principle has to be kept in mind while assessing the evidence.

In the present case, Manikyam Chellamma (P.W.1) has been examined to establish the evidence of the last seen. According to her, “while we were present at the house of my Son Krishna, A-1 came there at about 06-00 P.M., A-1 saying that my husband has to intervene in the disputes between him (A-1) and his Son (A-2), took my husband along with him. As my husband was unable to walk, A-1 carried my husband on his back. I waited for my husband to return from the house of A-1. I was in the habit of taking food only after serving to my husband. As my husband did not turn up, I, along with my daughter-in-law Madeena went to the house of A-1. There I found my husband lying in front of the house of A-1 with injuries on his forehead, face and all over the body.” She subsequently informs that “Janaki, her second daughter, observed that my husband was still alive. Narayana called 108 ambulance, which came in 30 minutes. Staff of the ambulance examined my husband and said that he died. I pointed to A-1 who was lying on the ground due to influence of alcohol. I told the ambulance staff that A-1 and A-2 beat my husband. I saw A-2 running away. Later

ambulance staff took A-1 in the ambulance to the hospital. On the same day night I gave report to the police. Ex.P1 is my report.”

Thus, according to Manikyam Chellamma (P.W.1), A-1 had taken her husband for the purpose of mediating between A-1 and A.2. However, it is a settled position of law that the evidence of last seen is a too weak an evidence for pegging a conviction. Moreover, according to the prosecution, even A-1 was found in injured condition, and had to be taken to the hospital. Thus, it is unclear as to who caused the injuries on A-1. Most importantly, the prosecution has failed to explain the injuries on A-1. Hence, the genesis of the case is shrouded in mystery. This aspect also weakens the case of the prosecution against A.1.

Interestingly, though Manikyam Chellamma (P.W.1) claimed that her daughter-in-law, Madeena, was present along with her at the scene of the crime, the prosecution has not even chosen to examine the said witness. Therefore, the prosecution has withheld an important witness from the Court. Hence, an adverse inference has to be drawn against the prosecution. Furthermore, although the prosecution has examined Perumalla Janaki (P.W.5), the daughter of the deceased, but, she has turned hostile, and has not supported the case of the prosecution. Thus, the prosecution has failed to establish its case sufficiently to unerringly point towards the guilt of A-1. Hence, benefit of doubt would have to be given to A-1.

The only evidence stacked against A-2 is the statement of Manikyam Chellamma (P.W.1) that A-2 ran away from the scene of crime. However, even innocent persons run away from the scene of offence. Therefore, merely because A-2 ran away, and was seen

to run away, it would not necessarily point to his guilt. Thus, the learned trial Court is unjustified in convicting A-2 for offence under Section 302 read with 34 I.P.C.

For the reasons stated above, the criminal appeal is hereby allowed. The conviction and sentence recorded against the appellants - Konda Mada Swamy (Accused No.1) and Konda Raju (Accused No.2), in S.C.No.94 of 2012 on the file of the learned VI Additional District & Sessions Judge, Godavarikhani, *vide* judgment dated 20.11.2014, 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. The appellants-accused Nos.1 and 2 shall be released forthwith, if not wanted in any other criminal case.

Miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

T. AMARNATH GOUD, J

09th July, 2019
JSU

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