

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 No.754 OF 2015

Date: 26.03.2019

Between:

Smt. Rathan Aruna

...Appellant

and

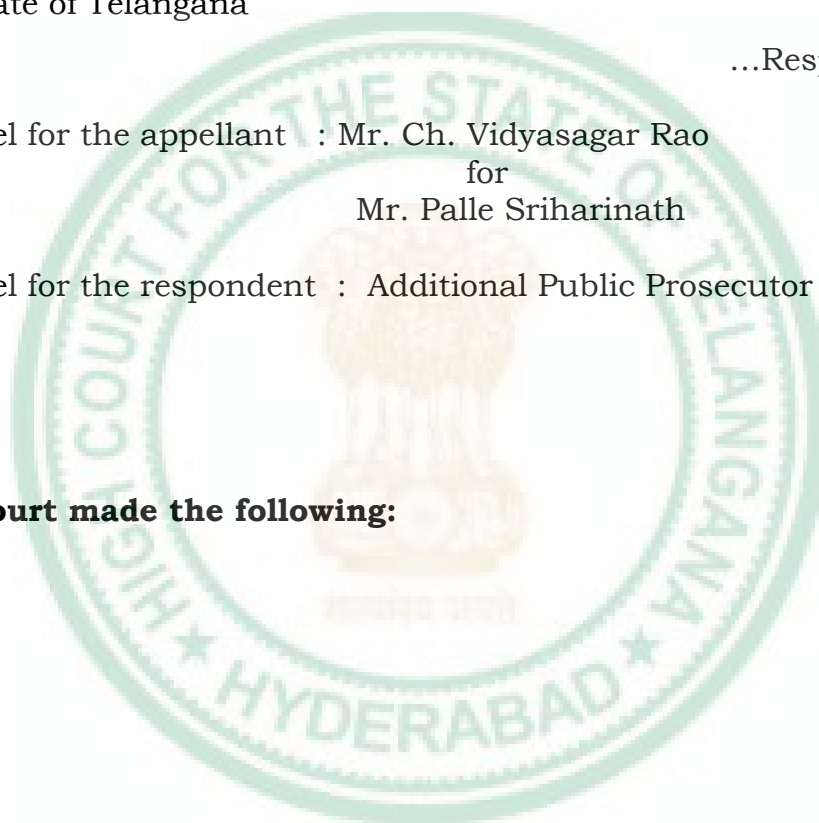
The State of Telangana

...Respondent

Counsel for the appellant : Mr. Ch. Vidyasagar Rao
for
Mr. Palle Sriharinath

Counsel for the respondent : Additional Public Prosecutor

The Court made the following:



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

Having been convicted for the offence under Section 302 and Section 201 IPC, having been sentenced to life imprisonment for the offence under Section 302 IPC, imposed with the fine of Rs.1,000/- and directed to further undergo simple imprisonment of six months in default thereof, and further convicted for the offence under Section 201 IPC, directed to suffer a rigorous imprisonment of six months, imposed with the fine of Rs.200/- and further directed to undergo a simple imprisonment of three months in default thereof, the appellant, Smt. Rathan Aruna, has challenged the legality of the judgment dated 15.07.2015 in S.C.No.281 of 2013 passed by the learned Principal Sessions Judge, Medak at Sangareddy.

Briefly, the facts of the case are that on 13.12.2012 around 11:00 PM, Chawan Narsing Rao (P.W.1) lodged a report (Ex.P.1) with the Sangareddy Police Station that on 13.12.2012, at about 8:15 PM, he came to know that one Rathan Vijaya Laxmi has died. Upon receiving this information, he went to her house, and noticed that she had expired. According to him, some unknown persons have hit her on the head with an unknown object. He also discovered that the household articles were lying scattered in the room. According to him, the brother of the deceased, Tulasidas, Smt. Rathan Aruna, the accused in this case, and her son were residing in the adjacent house. There were some disputes between the deceased, Vijaya Laxmi, and her brother, Tulasidas. Therefore, he suspects that Tulasidas and Aruna may have killed Vijaya Laxmi. On the basis of the said report, a formal FIR (Ex.P.11), namely F.I.R.No.341 of 2012, was chalked out for the offence

under Section 302, and Section 201 IPC. During the course of investigation, the appellant, Smt. Rathana Aruna, was arrested. Due to her alleged confessional statement, subsequently, the police arrested Gana Jayamma (A-2). Both the accused persons were put up for trial.

In order to support its case, the prosecution examined fourteen witnesses, submitted twelve documents, and produced seven material objects. After appreciating the evidence, the learned trial Court acquitted A-2, but convicted and sentenced the appellant, by the impugned judgment dated 15.07.2015 as aforementioned. Hence, this appeal before this Court.

Mr. Ch. Vidyasagar Rao, the learned counsel representing Mr. Palle Sriharinath, the learned counsel for the appellant, 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 chain of circumstances, which would unerringly point towards the guilt of the appellant.

Secondly, although the prosecution claims that there was a property dispute between Tulasidas and his sister, Vijaya Laxmi, the prosecution has curiously attributed the motive to get rid of Vijaya Lakshmi to the appellant. According to the learned counsel, if there were property disputes between Vijaya Laxmi and her brother, Tulasidas, then the needle of suspicion would point towards Tulasidas. For, it is he, who would be the gainer of the property belonging to the family, if Vijaya Lakshmi were to die. However, as the appellant happens to be a living partner of Tulasidas, she would not gain even monetarily from the death of

Vijaya Laxmi. Therefore, the motive attributed by the prosecution to the appellant stands on a very weak wicket.

Thirdly, although the prosecution has relied upon the alleged “confessional statement” made by the appellant to the police, the same cannot be read against her.

Fourthly, although a wooden “belan” (rolling pin) and a steel utensil have been recovered at the instance of the appellant, although they had been found to be stained with blood, but, according to the FSL Report (Ex.P.12), only “human blood” can be detected on them. Since the prosecution has failed to establish the existence of the blood belonging to the deceased, the mere recovery of a wooden belan (rolling pin) and a steel utensil, which can be found in every house, do not connect the appellant to the alleged offence. Therefore, the learned trial Court has erred in convicting the appellant only on the basis of surmises and conjectures.

Lastly, on the basis of the same evidence, while the learned trial Court has acquitted A-2, it has convicted the appellant. Therefore, the impugned judgment deserves to be set aside and the appellant deserves to be acquitted by this Court.

On the other hand, the learned Additional Public Prosecutor, Ms. J. Sreedevi, has pleaded that Vijaya Laxmi and her brother, Tulasidas, and the appellant used to live in the same building, although in a separate portion of the building. Since Vijaya Laxmi was killed at the dead of the night, it is for the appellant to explain the cause of her death. Yet, the appellant maintained a studied silence. Therefore, her silence also points towards her guilt.

Secondly, since the appellant had confessed to her crime, the needle of suspicion does not point towards Tulasidas. In fact, the

prosecution has established its case against the appellant, as it has established the recovery of the wooden “belan” (rolling pin) and the steel utensil only at the instance of the appellant. Furthermore, according to the testimony of Dr. Sumana Praveen (P.W.10), the deceased had suffered as many as eight injuries, including laceration of the right temple, laceration of the right parietal region of the scalp, laceration of the right frontal region of scalp, comminuted fracture of the right frontal bone of the skull, and fracture of the right parietal bone of the skull. According to this witness, the cause of the death is the laceration injury to the right frontal and right parietal lobes of brain. Furthermore, according to this witness, the injury could be caused by the two material objects produced by the prosecution, namely the wooden “belan” (rolling pin) and the steel utensil. Therefore, the prosecution has succeeded in establishing its case against the appellant. Hence, the learned Additional Public Prosecutor has strongly supported the impugned judgment, the conviction and the sentence of the appellant.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record produced before this Court.

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

¹ AIR 2002 SC 3164

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, a cardinal duty is imposed upon the prosecution to cover the distance between “may be true” and “must be true”. The prosecution is required to establish a complete chain of circumstances, which would unerringly point towards the guilt of the accused. Such evidence should be inconsistent with the innocence of the accused. Even in cases of circumstantial evidence, convictions cannot be based on surmises and conjectures or on strong suspicion. No matter how strong the suspicion may be, it cannot take the place of proof. Any conviction based on surmises and conjectures, or suspicion would tantamount to a “moral conviction” and not to a “legal one”.

While appreciating the facts of the present case, the cardinal principles of criminal jurisprudence, mentioned hereinabove, have necessarily to be kept in mind. Through the evidence of Chawan Narsing Rao (P.W.1), the prosecution has established the fact that there was a dispute between Vijaya Laxmi and her brother, Tulasidas. It has further established the fact that the appellant

used to live with Tulasidas but not as his lawful wedded wife. However, as the appellant was not legally married to Tulasidas, if Vijaya Laxmi were to be disposed of, even then it is only Tulasidas, who would have been benefited by inheriting the family property. Even in such a scenario, it is not the appellant, who would have been the gainer. Therefore, the plea raised by the prosecution that a “strong motive” existed for the appellant to get rid of Vijaya Laxmi is clearly unsustainable. If any person had a clear motive for getting rid of Vijaya Laxmi, obviously it would be Tulasidas. Yet, the police had neither investigated, nor discovered any evidence about the involvement of Tulasidas.

The prosecution has vehemently pleaded that Vijaya Laxmi, Tulasidas and the appellant used to live in the same building. But, according to the evidence produced by the prosecution, Tulasidas and the appellant were living in a separate portion of the building. Therefore, there is no requirement, even under Section 106 of the Evidence Act, for the appellant to explain the sudden death of Vijaya Laxmi. Moreover, there is no evidence produced by the prosecution to show that, at the dead of the night, the appellant had access to the part of the building, where Vijaya Laxmi were sleeping. Hence, her silence cannot be read against her. Therefore, the appellant cannot be connected *ipso facto* to the alleged offence.

The prosecution has also emphasized the fact that it is at the instance of the appellant that the wooden belan (rolling pin) and the steel utensil were discovered. However, the presence of these two goods is not unusual, as the wooden rolling pin and the steel utensil are common objects, which can be found in every house.

Although the prosecution claims that both these material objects were covered with blood, but the FSL Report (Ex.P.12) merely indicates the presence of “human blood”.

It is indeed trite to state that it is the duty of the prosecution not just to establish the presence of the blood, but most importantly to prove that the blood group belonged to the deceased. Moreover, it is the cardinal duty of the prosecution to establish that the weapon of offence contained blood group only belonging to the deceased. However, in the presence case, the prosecution has failed to produce the relevant evidence to show that the blood group was deciphered by the FSL, and the said blood group belonged only to the deceased. Hence, the mere recovery of the common objects like wooden belan (rolling pin) and steel utensil, at the instance of the appellant, does not necessarily connect the appellant to the alleged offence.

Even the alleged confessional statement made by the appellant during the police custody cannot be read against her. For, such a statement is hit by Section 25 of the Evidence Act. Therefore, the prosecution has clearly failed to establish its case with preponderance of probabilities against the appellant.

For the reasons stated above, this Criminal Appeal is hereby allowed. The sentence and conviction of the appellant-Smt. Rathana Aruna, W/o. Tulasidas (accused No.1), for the offences punishable under Section 302 and Section 201 I.P.C, in S.C.No.281 of 2013 on the file of the learned Principal Sessions Judge, Medak at Sangareddy, are set aside. The appellant-accused No.1 shall be set at liberty forthwith, if not wanted in any other case.

The miscellaneous application pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

26th March, 2019
JSU



THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
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