

High Court for the State of Telangana

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.508 of 2015

Date: 06-03-2019

Between:

Sistla Sudhir @ Sudhir S.S.

...Appellant

and

State of Telangana
Rep. by Public Prosecutor
High Court of A.P., Hyderabad

...Respondent

Counsel for the appellant:

Smt. Syamala Kumari (party-in-person)
Mr. P.Prabhakar Reddy,
Amicus curiae

Counsel for the respondent:

The Public Prosecutor

The Court made the following:

Judgment: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Although this case comes up in the category of “interlocutory”, with the consent of both the learned counsel for the parties, this case is being decided at this stage itself.

The appellant, has challenged the legality of judgment dated 14-05-2015, passed by the XIII Additional District and Sessions Judge –cum- XIII Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Ranga Reddy District, whereby the learned Judge has convicted the appellant for the offence under Section 302 IPC, sentenced him to undergo Life Imprisonment, imposed a fine of Rs.5,000/- and further directed to suffer simple imprisonment for a period of six months in default thereof.

In a short compass the facts of the case are that on 01-10-2012, the appellant lodged a complaint with the Police Station Neredmet, wherein he claimed that on 30-09-2012 at 9.00 a.m., his father had called his mother. However, there was no response. In fact, all the doors of the house were closed from inside. Therefore, they went along with the neighbours into the house. When they opened the door,

they found their mother lying on the floor with a head injury. She was unconscious. Therefore, they called their neighbour, Dr. P. Prasad (P.W.2), who declared her dead. Hence, it is assumed that she had slipped and fallen, due to which, there is an injury on the head, which resulted in her death. On the basis of the said complaint, the Police registered an FIR, namely F.I.R.No.385 of 2012 (Ex.P.12) initially under Section 174 Cr.P.C. After receipt of Post-Mortem Examination Report (Ex.P.10), the section of law was altered to Sections 302 and 498-A IPC. During the investigation, the Police arrested not only the appellant (accused No.1), but also his father, Mr. Sistla Radhakrishnamurthy (accused No.2). Both the accused were put up for trial.

In order to substantiate its case, the prosecution examined sixteen witnesses, submitted eighteen documents, and produced one material object, the telephone chord. In defence, although the appellant did not examine any witness, he submitted a single document. After appreciating the evidence, by the judgment under appeal, while acquitting the father, Sistla Radhakrishnamurthy (accused No.2), of the

offences under Sections 302 and 498-A IPC, and the appellant (accused No.1) of the offence under Section 498-A IPC, the learned trial court convicted the appellant under Section 302 IPC as aforementioned. Hence, this Appeal before this Court.

Mr. P. Prabhakar Reddy, the learned Amicus curiae, has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to produce a complete chain of circumstances, which would unerringly point to the guilt of the accused.

Secondly, the entire judgment is based on surmises & conjectures and on strong suspicions. However no matter how strong a suspicion may be, it does not take the place of proof.

Thirdly, the prosecution has not produced any evidence to show that the appellant was “last seen” in the vicinity of the scene of crime, or that he had access to the scene of crime. But, merely on conjectures, the learned Judge has concluded that since the back door was not broken through, since the appellant happens to be the only son of the

deceased, it is he, who had entered the house and killed his mother.

Fourthly, nothing has been recovered at the instance of the appellant so as to connect him to the alleged offence.

Fifthly, the investigating agency has not even picked up his finger prints from the scene of crime, in order to prove his presence thereat. Therefore, the learned trial Court has erred in not granting the benefit of doubt to the appellant and in not acquitting him.

On the other hand, the learned Public Prosecutor has vehemently pleaded as under:-

Firstly, there was a property dispute between the appellant and his mother as she was not permitting the appellant's father to sell off the property. In order to pre-empt the appellant and his father from selling off the property, she has filed a civil suit. Thus, a motive does exist for the appellant to get rid of his mother.

Secondly, the defence had pleaded that the back door had to be broken through in order to discover the position of the appellant's mother, who failed to respond to the call made by his father. However, according to the site plan, the

door was in tact. Therefore, the learned trial Court was justified in concluding that a person with easy access to the house of the deceased had entered the house. But for her son, the appellant, no one would have had easy access to her house.

Thirdly, despite the fact that the appellant had seen the dead body of his mother, despite the fact that the body did have a ligature mark on the neck, the appellant had lodged a false complaint with the Police, and claimed that his mother had fallen and died. Thus, sufficient evidence does exist to connect the appellant to the alleged offence. 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 the case of **Bodh Raj @ Bodha v. State of Jammu and Kashmir**¹, the Hon'ble Supreme Court has laid down the principles to be applied while dealing with a case of circumstantial evidence. The principles are as under:-

¹ AIR 2002 SC 3164

“(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.”

According to the aforesaid principles, it is the duty of the prosecution to produce cogent and convincing evidence in the form of a complete chain of circumstances, which would unerringly point to the guilt of the accused. If there are breaks in the chain, or gaping holes in the story of the prosecution, *ipso facto* the benefit of doubt has to be given to the accused.

Moreover, it is a settled principle of law that suspicion, no matter how strong, cannot take the place of proof.

Furthermore, conviction has to be a legal one, and cannot be a moral one. Thus, a conviction cannot be based on conjectures, surmises and assumptions, especially, where presumptions are not warranted by law.

In the present case, the prosecution has produced Mr. G. Arun Kumar (P.W.7), the Advocate, who had filed the civil suit on behalf of the deceased. against the appellant's father (accused No.2) and the buyer for preventing him from selling the property that stands in his name. But if there is any animosity that may have cropped up, it would have been between the deceased and her husband (accused No.2). Hence, it cannot be presumed that there was sufficient motive for the appellant (accused No.1) to kill his mother.

The prosecution has not even produced any evidence to show that on the fateful day, the appellant (accused No.1) was seen by any witness either near the place of occurrence, or while entering the house at the relevant time. Despite the fact that the prosecution has examined Naganna Naidu (P.W.1) and Dr. P. Prasad (P.W.2) as the neighbours, neither of them claim that they had seen the appellant while entering

the house of the deceased on the fateful day around the relevant time. In fact, Dr. P. Prasad (PW.2) informs the Court that he was asked to go and see the condition of the appellant's mother. He had gone to the house of the deceased, checked her, and realising the fact that there was no pulse and no heart beat, he had pronounced her dead. Even this witness did not say that he had observed any ligature mark on the body of the deceased. Thus, there is not even the evidence of the last seen available with the prosecution.

According to the prosecution, the deceased lived a life of a recluse. She was separated from her husband, and lived separately from the appellant, her son. According to the prosecution, she kept the house very dirty, and would not even open the curtains of the house to let the sunshine in. She never ventured out and never mingled with the neighbours. According to the site plan, the house was littered with newspapers and trash. It is only a part of the house that was kept clean. Although the learned Judge concludes that a part of the house was cleaned by the appellant, but the prosecution has failed to establish this fact

by cogent and convincing evidence. As neither P.W.1 nor P.W.2 informed the Court that after 30th September, 2012, or on 1st of October, 2012, they had seen the appellant entering the house of the deceased.

Although it is true that, according to Naganna Naidu (P.W.1) and Dr. P. Prasad (P.W.2), the back door of the house had to be broken, but according to the site plan, the back door was in tact. Therefore, there is a possibility that some one, who had an easy access to the house of the deceased from the back door, could have entered the house therefrom. However, there is no presumption in law that the only son of the family would have easy access to the house from the back door. Therefore, the presumption made by the learned trial Court that it is the appellant, and only the appellant, who could have easy access to the house of the deceased, is unwarranted by law. In the absence of evidence of “the last seen”, such a presumption could not have been raised by the learned trial Court.

The learned trial Court has also commented on the conduct of the appellant by observing that it is surprising that the son did not see a ligature mark on his mother's neck

before lodging the FIR before the Police. But there is no presumption in law that everyone is highly observant. In fact, the power of observation varies from person to person. There is no presumption in law that the complainant has to examine the body of the deceased before lodging the F.I.R. Instead, there is a distinct possibility that the appellant may have been over-whelmed by the sudden death of his mother. Thus, even if he has not mentioned the existence of the ligature mark, it does not necessarily point to his guilt.

Lastly, even when the appellant was in the Police custody, the Police has not recovered any material object at the instance of the appellant. Thus, there is no recovery that would instantly connect the appellant to the alleged offence.

Since gaping holes exist in this prosecution case, the prosecution has failed to prove its case against the appellant.

For the reasons stated above, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused No.1, Mr. Sistla Sudhir, S/o. Sistla Radhakrishna Murthy, for the offence punishable under Section 302 IPC in the Judgment, dated 14.05.2015, in

Sessions Case No.73 of 2013 on the file of the XIII Additional District & Sessions Judge's Court –cum- XIII Additional Metropolitan Sessions Judge's Court, Cyberabad at L.B.Nagar, Ranga Reddy District, are set aside. The fine amount, if any, paid by him shall be refunded to him. Consequently, Mr. Sistla Sudhir, S/o. Sistla Radhakrishna Murthy shall be set at liberty forthwith, if he is not required in any other criminal case.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, J)

(T.Amarnath Goud, J)

Dt: 6th March, 2019
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