

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.950 OF 2012

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

The Principal Sessions Judge, Nalgonda, by his judgment dated 12.04.2012, in S.C.No.301 of 2011, has convicted the accused, Tekulapalli Kondal, for offences under Sections 302 and 201 of the Indian Penal Code (IPC), for allegedly causing the death of his brother-in-law. For the offence under Section 302 IPC, the accused has been sentenced to life imprisonment, and imposed with a fine of Rs.5,000/-, and in default, to undergo a simple imprisonment for six months; for the offence under Section 201 IPC, he has been sentenced to rigorous imprisonment for two years, imposed with a fine of Rs.2,000/-, and in default, to undergo a simple imprisonment for six months. It was further ordered that both the sentences and default sentences shall run concurrently.

2. Briefly stated, the facts of the case are that on 21.04.2007 at 8:00 a.m., Bashapaka Yellaiah (L.W.1) lodged a report with the Police, Gudipally Police Station stating that on the same day, he found a male dead body aged about 21-22 years on his village outskirts, near by Dubba Thanda, with injuries on his right cheek, head, right leg and blood was oozing from his ear. Basing on the said report, the Sub-Inspector of Police, Gudipally (P.W.9), registered a criminal case, namely Crime No.46 of 2007, for offence under Section 304(A) IPC. During the course of investigation by subsequent Sub-Inspector of Police, Gudipally (P.W.12), it has been

elicited that the accused is the second son-in-law of the parents of the deceased (Ganaboina Ramalingaiah). The accused was working as a Cleaner of a lorry and married Alivelu, the sister of the deceased. Not satisfied with the dowry given to him in the marriage, the accused used to demand from his parents-in-law i.e., Ganaboina Peddulu (P.W.2) and Ganaboina Narsamma (P.W.3) to convey their part of land in his favour. When Ganaboina Peddulu (P.W.2) and Ganaboina Narsamma (P.W.3) refused the request of the accused on the ground that the land is for their son (deceased), the accused decided that until the deceased is alive, he cannot get the land. Accordingly, he hatched a plan and went to the house of the deceased on 20.04.2007 and asked the deceased to sleep with him at the thrashing floor to watch the paddy. While the accused and deceased were proceeding to the agricultural fields of the accused, Naini Srinivasa Rao (L.W.8) saw them and enquired them as to where they were proceeding. After reaching the agricultural fields, the accused and deceased laid their blankets and fell asleep beside the paddy. While the deceased was sleeping, the accused picked up a boulder and gave blows with it on the chest of the deceased, due to which, the deceased died. Thereafter, the accused wrapped the dead body with the blankets, shifted the corpse, and laid it by the side of road near Dubba Thanda, which is located near his agricultural fields. The accused threw the blood stained blankets by wrapping them with boulder. He threw the blankets into the SLBC canal which is passing through the vicinity of the agricultural lands of the accused. On the next day, when Ganaboina Peddulu (P.W.2) and Ganaboina Narsamma (P.W.3), the

parents of the deceased, enquired about their son, the accused told them that their son had already left for Polkampally village to meet his friends by borrowing Rs.50/- from him. Therefore, Sub-Inspector of Police, Gudipally (P.W.12) altered section of law to Sections 302 and 201 IPC. Thereafter, K.Manohar (P.W.11) took over further investigation in the matter. He arrested the accused on 01.05.2007, and recorded his confessional statement. The accused was put up for trial.

3. In order to support its case, the prosecution examined twelve witnesses, exhibited fourteen documents, and produced ten material objects. After appreciating the evidence brought on record, the learned trial Court convicted and sentenced the appellant as aforestated. Hence, the present appeal.

4. Mr. A. Prabhakar Reddy, the learned counsel for the appellant, has pleaded that the entire case is based on circumstantial evidence, as there is no eye-witness to the alleged crime. He has further pleaded that the circumstances produced by the prosecution do not unerringly point to the guilt of the appellant. For, a complete chain of circumstances has not been produced by the prosecution in the present case. He has further pleaded that the evidence of Pole Venkataiah (P.W.4), Naini Srinivas Rao (P.W.5) and Ramavath Pandu (P.W.8), though inconsistent, based on such testimony of such highly interested witness, recording conviction is illegal. Added to that, it is contended that the learned trial Court failed to accept the contention that the prosecution was unable to establish each and every linking

circumstances to complete the chain of circumstances, without giving any scope for any other hypothesis, thereby committed grave error in finding the appellant guilty. Therefore, the learned counsel has prayed this Court to set-aside the findings recorded by the trial Court, and to acquit the accused for the offence punishable under Section 302 IPC.

5. On the other hand, Mr. C. Pratap Reddy, the learned Public Prosecutor, has pleaded that since the prosecution had succeeded in establishing the evidence of the last seen, it was for the appellant to explain as to what happened to the deceased as he was last seen in the company of the appellant. He has further pleaded that when the prosecution proved each and every circumstance of the case, more particularly, all the links in chain of circumstances, the Court can record conviction of the appellant. That apart, Pole Venkataiah (P.W.4), Naini Srinivas Rao (P.W.5) and Ramavath Ganesh (P.W.6) are independent witnesses, and there was nothing to prove that they are interested witnesses. Moreover, the answer given by the accused to Ganaboina Peddulu (P.W.2) and Ganaboina Narsamma (P.W.3) when enquired about their son, the accused stated that their son went to Polkapally village to meet his friends is a lie. Such a wrong explanation is a strong evidence for establishing the *mens rea* of the appellant. Therefore, this Court should not interfere with the fact findings recorded by the learned trial Court, unless the findings are manifestly perverse, or without any evidence by exercising power under Section 374(2) Cr.P.C. Thus, the learned Public Prosecutor has requested this Court to confirm

the conviction and sentence imposed upon the appellant for the offences punishable under Sections 302 and 201 IPC.

6. Before adverting to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case, there is no direct evidence to connect the accused with the offence in question; the prosecution rests its case solely on circumstantial evidence. The case of prosecution is totally based on circumstantial evidence, since the incident allegedly took place in the agricultural fields of the accused/appellant, and it is never the case of the prosecution that the incident was witnessed by any witness. It is the duty of prosecution to establish each and every circumstance to complete the chain of circumstances unerringly pointing to the guilt of the accused/appellant, and such circumstances should be inconsistent with his innocence.

7. When the case is based on circumstantial evidence, burden of proof is always on the prosecution to prove all the circumstances from which conclusion of guilt is to be drawn must be fully established and the facts so established must be consistent with hypothesis of guilt of accused, and any circumstance consistent with innocence of accused, he is entitled to benefit of doubt. (Ref. to **Kishore Chand v. State of Himachal Pradesh**¹).

8. The Apex Court while discussing the scope of Section 3 of the Evidence Act, more particularly, circumstantial evidence held that, in a case of murder when the prosecution relying on circumstantial evidence, it is for the prosecution to prove all the incriminating

¹ AIR 1990 S.C. page 2140

facts and circumstances and the circumstances which are incompatible with innocence of the accused to draw inference of guilt and such evidence should be tested by touch-stone of law relating to circumstantial evidence laid down by Supreme Court (Ref. to **Syed Hakkim & another v. State**²).

9. In view of the principles stated above, to connect the accused/appellant with the offence punishable under Section 302 IPC, we deal with the circumstances in the order of circumstances hereinafter.

10. Ganaboina Peddulu (P.W.2) is the father of the deceased. He deposed that *“about four years and six months back at about 9:00 pm., the accused came to my house and requested my deceased son to follow him to go to his fields for watching the paddy heaps at his fields. Later my son and accused left my house in order to go to the fields of accused. Accused took my son on the night of Friday. On the next day morning at about 6:00 am., accused alone returned back to my house. My son did not return back to my house along with the accused. Then I enquired accused about my son. Accused informed me that my son went to Polkampally village with a view to meet his friends, and he would return back to the house after some time. My son did not return back to the house till evening of that day. We waited for our son throughout the day. On the next day i.e., on Sunday, Ex-Sarpanch Venkataiah came to my house and informed me that one unknown dead body was found on road of Nagarjunasagar to Hyderabad near Dubba thanda. Further he*

² 2009 Cr.L.J. page 1891

asked me to go to the police station. We went to Gudipally police station. Myself, Ex-Sarpanch Venkataiah, my daughter Alivelu and my relatives went to Gudipally police station. Police had shown me some clothes in the police station. Then I Identified those clothes as that of my deceased son. Later, police took me to Government Hospital, Devarakonda. I identified the dead body as that of my son. ...After eight days thereafter, at about 8:00 am., I found a congregation at Nagarjuna Sagar Canal. On seeing congregation, I also went there. I found two bed sheets and one stone over the bed sheets in the water in the canal. I observed those two bed sheets. One bed sheet belonged to my son, and another bed sheet belongs to the accused. Later I took those two bed sheets to Gudipally police station. On seeing those two bed sheets, I suspected the accused that he might have killed my son Ganaboina Ramalingaiah. Accused himself took my son from my house and I have seen my son lastly with the accused and that I suspected the accused that he might have killed my son Ramalingaiah. Six months prior to the incident, accused demanded me to convey my landed property in his favour. I informed the accused that I have already conveyed land in his favour long back and at present I was unable to convey any land in his favour. Accused also demanded my deceased son Ramalingaiah to convey land. My son also refused to convey any land in favour of the accused. Myself and my son refused to convey landed property in favour of accused, and accused might have killed my son Ramalingaiah. ...My son-in-law was responsible for the death of my son Ramalingaiah.” Ganaboina Narsamma (P.W.3) also supported the version of Ganaboina Peddulu (P.W.2). Pole Venkataiah

(P.W.4), Ramavath Ganesh (P.W.6), Mohd. Jahn (P.W.7) and Ramavath Pandu (P.W.8) are panch witnesses and they supported the case of the prosecution.

11. Coming to the evidence of Naini Srinivas Rao (PW.5), who is an independent witness, he deposed that *"I know P.Ws.1 to 4, accused and also the deceased Ramalingaiah. About four years and six months back, at about 9:00 pm., while I was returning back to my house from my irrigation well and agricultural field, I found the accused and deceased while they were going to the field of P.W.2. On seeing them, I enquired the deceased Ramalingaiah about going towards their fields. Then the deceased informed me that he was going along with the accused towards his field for watching paddy heaps. On the morning of following day, I came to know that the deceased was murdered."*

12. From the above depositions, it is clear that on the fateful day, the accused and the deceased went to the agricultural fields of the accused. On the next day, the accused only return to the home, but the deceased did not. When Ganaboina Peddulu (P.W.2) and Ganaboina Narsamma (P.W.3) questioned the accused about the missing son, the accused stated that the deceased left for Polkampally village to meet his friends by borrowing Rs.50/- from him. If the version of the accused that the deceased went to Polkamapally village to meet his friends, the deceased would have left his blanket at the fields of the accused. But, the blanket of the deceased and the accused were found in the canal. There is no explanation from the accused in that regard. Therefore, it is clear

that in order to escape from the crime, the accused woren a wrong story.

13. Where the evidence of witness shows that the accused had last seen with the deceased, he has to explain about the circumstances leading to the death of the deceased. P.W.5 is the independent witness and there is no material to disbelieve his evidence. He clearly deposed that he has seen the deceased in the company of the accused for some time prior to the incident.

14. As per Section 106 of the Indian Evidence Act, 1872, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In the present case, the accused failed to prove his innocence. As per Section 27 of the Indian Evidence Act, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. In the present case, the Material Objects were recovered at the instance of the accused under recovery of panchanama. Hence, there is no cogent explanation, as to how the accused can lead to the recovery of Material Objects.

15. Now coming to the motive aspect. As per the evidence of P.Ws.2 and 3, the accused used to demand that they should convey a part of their land, but they refused to do so. Therefore, in the facts and circumstances of the present case, it can be safely

presumed that the accused killed the deceased with a view to grab the landed property of Ganaboina Peddulu (P.W.2) and Ganaboina Narsamma (P.W.3). The accused, in the examination under Section 313 Cr.P.C., has not explained about the incident, except denying the charge leveled against him. There is no reason to disbelieve the evidence of P.Ws.2, 3 and 5. When the Court re-appreciated entire evidence and tested by touchstone of law relating to circumstantial evidence, we find no error in the finding recorded by the learned trial Court, as the motive, each and every circumstance relied upon by the prosecution form chain of events so as to connect the appellant with the crime beyond a reasonable doubt.

16. For the reasons stated above, the Criminal Appeal is dismissed. The conviction and sentence recorded against the appellant/accused for the offence punishable under Sections 302 and 201 IPC in the Judgment, dated 12.04.2012, in Sessions Case No.301 of 2011, on the file of the Principal Sessions Judge, Nalgonda, are hereby confirmed.

17. As the appellant/accused is on bail, his bail bonds shall stand cancelled. He is directed to surrender before the Superintendent, Central Prison, Cherlapally, for serving the remaining period of sentence.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 26.02.2019
TJMR