

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY

CRIMINAL APPEAL Nos.602 & 703 OF 2012

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

Both these criminal appeals, namely Criminal Appeal No.602 of 2012 filed by Midde Sathyanarayana (A-4), and Criminal Appeal No.703 of 2012 filed by Vimmudi Anand @ Balamandha Chary (A-2) and Sampangi Ramulu (A-3), arise out of the same impugned judgment, namely judgment dated 20.03.2012, passed by the Additional District and Sessions Judge at Wanaparthy, in Sessions Case No.417 of 2008, whereby the learned trial Court has convicted the appellants for offence under Section 302 IPC, and sentenced them to life imprisonment, and has further imposed a fine of Rs.500/- each, and further directed to undergo a simple imprisonment of three months in default thereof. Accused No. 1 (Pandem Buchi Reddy) had already expired during the course of trial. Since both these appeals arise out of the same judgment, they are being decided by this common judgment.

Briefly stated, the facts of the case are that on 15.07.2003 about 7:00 a.m., Smt. P. Jayamma (P. W. 1) lodged a report (Ex. P. 1) with the Police Station, Weepangandla, wherein she claimed that "*yesterday i.e. on 14.07.2003 around 6:00 p.m., my husband, Ram Reddy ('deceased') completed the work in his farm, and came back home. After taking his bath, he was sitting in the front room along with his brother. Suddenly, at 8:15 p.m., three persons came to our house. Out of the three, one person came near to my*

husband, and asked him about his name. My husband told that person that his name is Ram Reddy. Without waiting for one minute, they asked him to come out of the house. They took him away. They latched the house from outside. Since I, my daughter, Bharati and my husband's brother, and my mother-in-law, Devamma were frightened, started crying together, and ran out of the house through backside doors of the house. We called neighbours and searched for whereabouts of my husband. Today at 6:00 a.m., at some distance from the farm of Ramchandra Reddy, which is situated opposite to my house, the dead body of my husband was discovered. He was murdered. After hearing this, I ran and saw. The three persons, who took my husband out of the house, with sharp "Veta Kodavali" (a type of sickle) like weapon, had caused injuries on his neck, head, chest and bones of the chest and due to this, he died. The three persons, who came to our house, were aged twenty-two to twenty-five years. One of them is black in complexion. They spoke Telugu. Second person's complexion was black and he was thin. The third person was whitish complexion and was wearing Lungi. "Veta Kodavali" like weapon was in his hand. My husband was living in this village for the last twenty years as a Post-Master, and by cultivating agriculture, he was supporting my family. For the last five years, our uncle (Chinnanna) son, Palla Ram Reddy has Ac.15.00 gts. of dry land, and Ac.4.00 gts. of wet land and is doing agriculture in Khoul. Some persons are unhappy with our agricultural activities. My husband was murdered with numerous injuries".

On the basis of the said report, the police registered a formal FIR, namely Crime No. 43 of 2003 for the offence under Section

302 IPC and commenced investigation. During the course of investigation, the police arrested four persons, namely Pandem Buchi Reddy (A-1), Vimmudi Anand @ Balamandha Chary (A-2), Sampangi Ramulu (A-3), and Midde Sathyanarayana (A-4). The accused persons were put up for trial.

In order to support its case, the prosecution examined twelve witnesses, submitted thirteen documents, and marked three material objects, namely the three sickles. The defense, in turn, neither examined any witness, nor submitted any documents. After completing the trial, the learned trial Court convicted and sentenced the appellants as aforementioned. Hence, these two appeals before this Court.

Mr. C. Buchi Reddy, the learned counsel for Accused Nos. 2 and 3 has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish all the links in the chain of events, which would unerringly point towards the guilt of the accused persons.

Secondly, according to the prosecution, Pandem Buchi Reddy (A-1) and the deceased were agnates. They had land dispute between them. Therefore, according to the prosecution, A-1 had contacted A-2 to A-4 in order to kill the deceased. However, the prosecution has not produced any evidence to establish the fact that A-1 had, indeed, hired the services of A-2 to A-4 in order to eliminate the deceased. Yet, still the learned trial Court has concluded that there was a strong motive for A-1 to engage A-2 to A-4 to kill the deceased. In the absence of any

cogent evidence, the element of strong motive can be read only against A-1, and not against A-2 and A-3.

Thirdly, relying on the case of **Subash and Shiv Shankar v. State of U.P.**¹, and on the case of **Shabad Pulla Reddy v. State of A.P.**², the learned counsel has vehemently pleaded that there was an inordinate delay in holding the test identification parade for A-2 and A-3. Although A-2 was arrested on 28.08.2003, the test identification parade did not take place till 22.10.2003 i.e. almost after two months. Moreover, although the prosecution claims that Smt. P. Jayamma (P. W. 1), P. Bharathi (P.W. 3) and P. Ram Reddy (P. W. 4) identified A-2 and A-3 in the test identification parade, but P.W. 1 has admitted in the cross-examination that *“the police shown us two persons. A-2 and A-3 were shown us in the Police Station at the first instance”*. Similar statement has also been made by P.W. 3 in her cross-examination. Therefore, the identification of A-2 and A-3 by these witnesses, in the test identification parade, loses all its significance.

Fourthly, Balaswamy (P.W. 5) and K. Venkat Swamy (P.W. 6), the independent witnesses, merely stated in the examination-in-chief that *“they saw A-1 sitting with three other persons”*. However, they had not identified A-2 and A-3. Therefore, the identification of A-2 and A-3 by Smt. P. Jayamma (P. W. 1), P. Bharathi (P.W. 3) and P. Ram Reddy (P. W. 4) loses all its significance. Since the identification is meaningless, the evidence of the last seen cannot be read against A-2 and A-3.

¹AIR 1987 SC 1222

²(1997) 8 SCC 495

Lastly, although P. Madhukar Swamy (P. W. 12), the investigating officer claims that A-1 to A-3 took him to the house of one Mary in Ettem village, and produced three sickles, which were recovered at their instance, according to F.S.L. report (Ex. P. 13), no blood was discovered on any of these three sickles. Therefore, even the recovery of the three sickles allegedly at the instance of A-2 and A-3 does not connect the accused to the alleged offence. Therefore, the learned trial Court was unjustified in relying upon the evidence of the last seen against A-2 and A-3. Therefore, the prosecution has failed to complete the chain of circumstances, which would unerringly point towards the guilt of A-2 and A-3. Thus, they deserve to be acquitted of offence under Section 302 IPC.

Similarly, Mr. D.V. Srikanth, the learned counsel for Accused No. 4 has raised the following contentions:-

Firstly, he has adopted the contention raised by the learned counsel for A-2 and A-3 with regard to the absence of strong motive.

Secondly, despite the fact that A-4 was arrested by the police, he was never put up for a test identification parade. In fact, P.W. 1 identifies A-4, for the first time, in the Court, that too, after lapse of eight years. According to the learned counsel, the first identification in the Court is no identification at all. For, the culprit stands segregated in the Court. Thus, it is easy for a witness to identify a culprit.

Thirdly, since A-4 has not been identified by any of the witnesses, in test identification parade, it is unclear whether A-4 is

one of the persons, who had taken the deceased away with them. Therefore, the evidence of last seen is conspicuously missing.

Fourthly, no weapon of offence was recovered from A-4. Therefore, there is no cogent evidence to connect A-4 to the alleged offence. Hence, the learned trial Court has erred in convicting A-4 for offence under Section 302 IPC.

On the other hand, Ms. J. Sri Devi, the learned Public Prosecutor, has vehemently argued that according to Balaswamy (P. W. 5) and K. Venkat Swamy (P. W. 6), A-1 and the deceased were cousin brothers, who had a land dispute between them.

Secondly, according to the confession of A-1, he had contacted A-2 to A-4 in order to get rid of the deceased.

Thirdly, P.W. 1, P.W. 3 and P.W. 4 had identified A-2 and A-3 in the test identification parade.

Fourthly, according to P.W. 1, A-4 had come and asked her husband about his name. Therefore, she had sufficient time to see A-4, whom she identified in the Court, as the culprit.

Fifthly, according to Smt. P. Jayamma (P. W. 1), P. Bharathi (P. W. 3), A-3 and A-4 had entered into the house, and enquired from the deceased about his name. They had taken him away. Thus, there is the evidence of the last seen.

Lastly, although the deceased was last seen in the company of A-2 to A-4, the appellants have not offered any explanation in their statement under Section 313 Cr.P.C. about how the deceased died. Under Section 106 of the Evidence Act, it was for them to explain as to how the deceased had died while he was in their

custody. But they have failed to do so. Therefore, the prosecution has succeeded in establishing its case against the appellant Nos.2 to 4.

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**³, the Hon'ble Supreme Court has laid down the principle 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 every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete 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.”

In catena of cases, the Hon'ble Supreme Court has also opined that the distance between “*may be true*” and “*must be true*” is a long distance, which the prosecution is required to cover. Moreover, in catena of cases, the Hon'ble Supreme Court has also held that suspicion, however strong, cannot take place of legal proof. Furthermore, a person cannot be convicted on the basis of surmises and conjectures.

³ AIR 2002 SC 3164

In **Shivaji Sahebrao Bobade v. State of Maharashtra**⁴, the

Hon'ble Supreme Court made the following observations:-

"(1) Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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 every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete 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."

In catena of cases, the Hon'ble Supreme Court also held that the prosecution must prove its case beyond reasonable doubt in the case of direct evidence, but in case of circumstantial evidence, the prosecution needs to probablise its case, to the extent that the chain of circumstances should unerringly point towards the guilt of the accused. Such a chain of circumstances does not admit of any hypothesis, which may point towards his/her innocence.

In the present case, Smt. P. Jayamma (P. W. 1), Bala Swamy (P. W. 5) and K. Venkat Swamy (P. W. 6) claim in their testimony that there was a land dispute between the deceased and A-1. However, except the confessional statement of A-1, the prosecution

⁴ 1973(2) SC 793 = AIR 1973 SC 2622

has not produced any evidence to show that A-1 had entered into any conspiracy, or had hired the services of A-2 to A-4 for eliminating the deceased. Therefore, the element of “a strong motive” can be read only against A-1, but certainly not against A-2 to A-4. Hence, the learned trial Court is unjustified in reading “a strong motive” against A-2 to A-4.

The learned trial Court has also relied on the evidence of the test identification parade. According to the learned trial Court, Smt. P. Jayamma (P. W. 1), P. Bharathi (P. W. 3) and P. Ram Reddy (P. W. 4) had identified A-2 and A-3 in the test identification parade. However, Smt. P. Jayamma (P. W. 1) admits in her cross-examination that *“one week after the death of my husband, the police informed me that they identified the offenders and informed me about the accused that they are A-1 to A-4. Within one month after the death of my husband, the police came from Kollapur and L.Ws. 2 to 5 and shown me the accused. That ten to fifteen days thereafter, the police also called me to the District Jail for test identification parade, and we also identified the accused in District Jail in the presence of the judge. The police showed us two persons. A-2 and A-3 were shown us in the Police Station at the first instance. I am seeing the A-4 for the first time in the Court. After incident, I have not seen A-4 even in test identification parade. Since test identification parade and till date, I have not seen the accused at any place”*.

Similarly, P.W.3 admits in her cross-examination that *“within a week or fifteen days, the police called us to the Police Station that they apprehended the offenders and shown two persons. A-3 was present in Police Station. The other person is not*

present in the Court. Two months thereafter, I have identified two persons in test identification parade in District Jail. A-3 is the same person I identified and another person is not present in the Court". Likewise, P.W. 4 claims in his chief-examination that *"within two months, the police called me and P.Ws 1 to 3, and found two persons in the custody of the police. A-2 and A-3 were found in the custody of the police. Thereafter I did not see the accused at any place".* Thus, it is obvious that all three witnesses clearly admit that prior to the test identification parade, A-2 and A-3 were shown to them in the Police Station. Hence, their subsequent identification in the test identification parade becomes meaningless.

As far as A-4 is concerned, admittedly, he was never subjected to a test identification parade. For the first time, he is identified by P.W. 1 in the Court, that too, after a lapse of eight years. In catena of cases, the Hon'ble Supreme Court has clearly opined that identification of an accused, for the first time, in the Court is no identification in the eyes of law. For, it is easy for any witness to identify a culprit as the culprit stands isolated from the rest of the people in the Court. After all, the culprit stands in a box while the trial proceedings continue in the Court. Therefore, even the identification of A-4 by Smt. P. Jayamma (P. W. 1) is meaningless.

Balaswamy (P. W. 5) and K. Venkat Swamy (P. W. 6) are two independent witnesses. But K. Venkat Swamy (P. W. 6) merely states in his examination-in-chief that he saw A-1, and three other persons talking to each other. Therefore, even he is not in a

position to identify whether the persons with whom A-1 was talking, were, indeed, A-2 to A-4 or not?

Since the very identification of A-2 to A-4 has lost its relevance, the evidence of the last seen also falls apart. Since the evidence of last seen cannot be read against the appellants, A-2 to A-4, there was no need for them to explain as to what happened to the deceased while he was in their custody.

Although the prosecution claims that at the behest of A-2 and A-3, three sickles were recovered from the house of Smt. Mary from Ettem village, the FSL report (Ex. P. 13) clearly reveals that no blood was discovered on these sickles. Sickles are implements, which can easily be discovered in the villages. Since no blood was found on the sickles, their recovery, even at the behest of A-2 and A-3, does not connect the accused persons to the alleged offence. Therefore, the prosecution has failed to complete a chain of circumstances, which would unerringly point towards the guilt of A-2 to A-4. Hence, the trial Court was not justified in convicting the accused, appellants on half-baked truth.

Repeatedly, it has come to the notice of this Court that investigation in cases of circumstantial evidence is extremely poor. In the present case, there is no explanation given by P. Madhukar Swamy (P. W. 12) for not keeping A-2 and A-3 “bapardo” – or under cover after their arrest; no explanation as to why A-2 and A-3 were shown to the witnesses in the Police Station; no explanation as to why there was an inordinate delay of almost two months in holding a test identification parade; no explanation as to why A-4 was not subjected to test identification parade after his arrest; no

explanation as to why bloodstained clothes, which may have worn by the alleged culprits could not have been recovered during the course of investigation. Due to careless investigation, invariably, culprits are being acquitted by the Courts. Therefore, the investigating agency should ensure that an in-depth and a proper investigation is carried out.

For the reasons stated above, both the criminal appeals are allowed. The impugned judgment, dated 20.03.2012, passed by the Additional District & Sessions Judge at Wanaparthy in Sessions Case No.417 of 2008, is set aside. Vimmudi Anand @ Balamandha Chary (A-2), and Sampangi Ramulu (A-3), appellants in Criminal Appeal No. 703 of 2012, and Midde Satyanarayana (A-4), the appellant in Criminal Appeal No. 602 of 2012, are acquitted of the offences punishable under Section 302 IPC. The appellant in CrI.A. No.602 of 2012 (A-4) shall be set at liberty forthwith, if he is not required in any other case. Since the appellants in CrI.A. No. 703 of 2013 (A-2 and A-3) are already on bail, their bail bonds shall stand cancelled.

The fine amount, if any, paid by the appellants (A-2 to A-4) in both these appeals, shall be refunded to them.

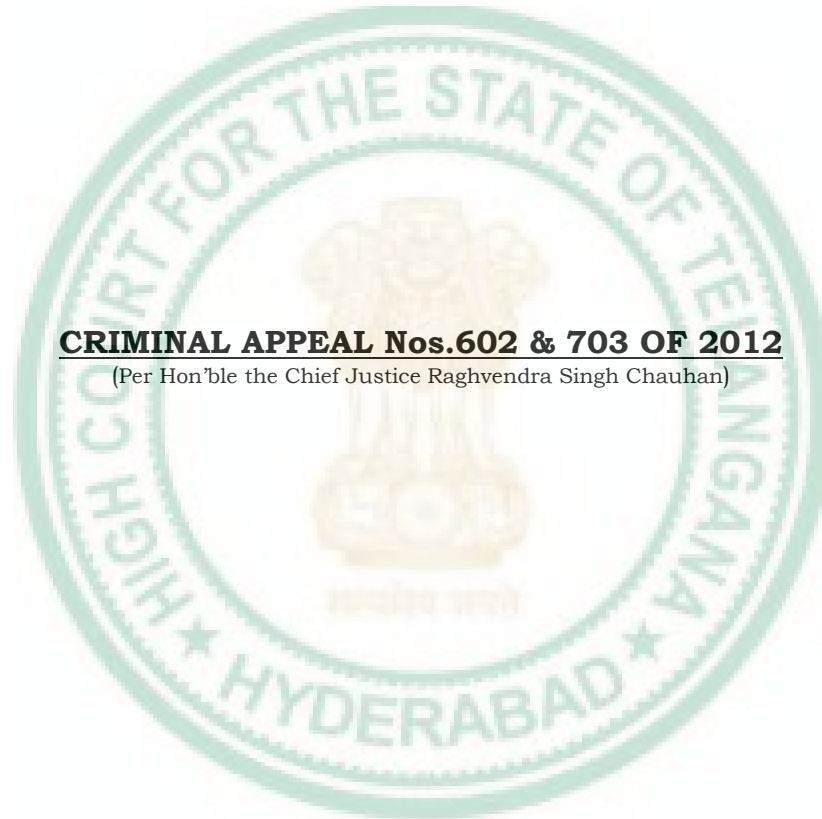
RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

Date: 27.08.2019

Tsr

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
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