

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

Criminal Appeal No.1018 of 2012

03.09.2019

Between:

Kore Ramulu and others

...Appellants

and

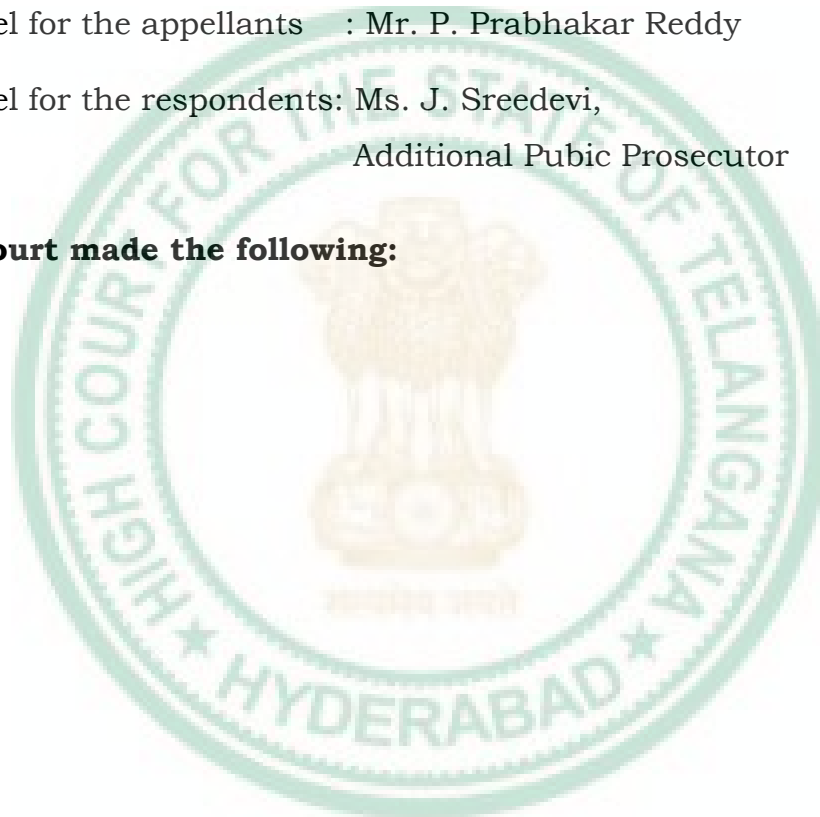
State of A.P

...Respondent

Counsel for the appellants : Mr. P. Prabhakar Reddy

Counsel for the respondents: Ms. J. Sreedevi,
Additional Public Prosecutor

The Court made the following:



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

The appellants (A-1 to A-3) are aggrieved by the judgment dated 26.09.2012, passed by the learned Special Sessions Judge for Trial of Cases under S.Cs and S.Ts (Prevention of Atrocities) Act-cum-VII Additional District and Sessions Judge, Mahabubnagar, in S.C.No.23 of 2012, whereby the appellants have been convicted for offences under Sections 364, 302, 201 read with Section 34 IPC. For offence under Section 302 IPC, they have been sentenced to life imprisonment, imposed with the fine of Rs.1,000/-, and further directed to undergo simple imprisonment of one month in default thereof. For offence under Section 364 IPC, they have also been sentenced to suffer a rigorous imprisonment of ten years, imposed with the fine of Rs.1,000/-, and further directed to undergo a simple imprisonment of one month in default thereof. For offence under Section 201 IPC, they have been sentenced to suffer a rigorous imprisonment of ten years, imposed with the fine of Rs.1,000/-, and further directed to undergo a simple imprisonment of one month in default thereof. All the sentences were directed to run concurrently.

Briefly stated the facts of the case are that Pandi Lingamaiah (P.W.1) belongs to Madiga community, a scheduled caste. He is the husband of the deceased, Smt. Kadala Madhavi, who belonged to a non-scheduled caste. A-1, A-2 and A-3 are the maternal uncles of the deceased. A-4 is an elderly person of the community, A-5 is the mother of the deceased, A-7 is the brother-in-law of the deceased, and son-in-law of A-5, and A-8 is an auto driver.

According to the prosecution, Kadala Shankamma (A-5) had three daughters. The deceased was the third daughter,

studying in the IX Class, at the ZPH School, Kakanoor Village. While studying, she had fallen in love with the complainant (P.W.1), Pandi Lingamaiah. When the family noticed the fact that she was in love with a person of a lower caste, they sent the deceased for her further studies to Rajapur Village. The deceased completed her studies upto X Class at the Rajapur Village. After having completed her S.S.C, she was admitted in Girls Junior College at Badepally, Jadcherla. She used to commute to the college from Rajapur. Furthermore, according to the prosecution, on 19.11.2010, when the deceased was going to her college, the complainant abducted her on the promise of marrying her. Consequently, on 06.12.2010, the mother of the deceased (A-5) lodged a complaint at Balanagar Police Station. The police registered a case, namely Crime No.270 of 2010, for offence under Section 366-A IPC against the complainant.

Consequently, on 08.12.2010, the complainant was arrested. The deceased was also recovered. Since she was a minor, she was produced before the learned Judicial First Class Magistrate, Jadcherla. The learned Magistrate sent the deceased to the State Home. Upon reaching her majority, the deceased was released from the State Home. She went back to the complainant's village. Since she did not go back to her parental home, but, instead, went to the house of the complainant, this was seen as an affront by the family of the deceased. Therefore, according to the prosecution, the family members of the deceased decided to get rid of her. Furthermore, according to the prosecution, on 04.05.2011, all the accused persons, namely A-1 to A-7, met at the house of A-1 and

hatched a plan to eliminate the deceased. They kept an eye on the movements of the complainant.

It is further alleged that on 05.05.2011 at 6:30 AM, when the complainant went to the fields to answer the call of nature, allegedly A-1 to A-5 went to the house of the complainant and forcibly took the deceased away. While A-1 to A-5 tried to forcibly take away the deceased, they were resisted by the sister-in-law of the deceased, by the daughter of the sister-in-law, and another relative. However, A-1 to A-5 abused them in filthy language touching on their caste. It is further alleged that A-6 called an auto driver (A-8). They took away the deceased in the auto, and proceeded towards Kondareddipally Village. It is further claimed that they stopped the auto near Kondareddipally Village, A-2 purchased petrol from a kirana shop, and the accused persons along with the deceased reached near Modampally Village. While A-8 kept a watch over the auto, the prosecution claims that the accused persons took the deceased towards Yeduguttala hillocks. Moreover, according to the prosecution, A-2 to A-7 hit the deceased on her chest. She fell down on the ground, A-2 took a boulder, and hit on her head. A-7 also hit her with the same stone, due to which the deceased sustained bleeding injuries on her head, and died on the spot. Thereafter, A-7 poured petrol on the dead body, A-2 burnt the dead body and all the accused persons fled away.

On 05.05.2011, the husband of the deceased, Pandi Lingamaiah (P.W.1), lodged a complaint with the Keshampet Police Station, wherein he claimed that A-1 to A-4 had forcibly taken his wife out of his house, and although he searched for her, he could not locate her. On the basis of the said complaint, a formal FIR,

namely F.I.R.No.55 of 2011, was chalked out for offence under Sections 448 and 363 IPC. Subsequently, on the same day i.e on 05.05.2011, Pandi Lingamaiah (P.W.1) lodged another complaint with the same police station, wherein he claimed that A-1 to A-7 had taken away his wife. They had taken her to the outskirts of Modampur Village of Balanagar Mandal, where they beat his wife, Kadala Madhavi, hit her with a boulder and killed her, and then the dead body was set ablaze. Later, he came to know that the auto was driven by Yadagiri (A-8). Therefore, subsequently, the offence under Sections 302 and 201 IPC was added.

In order to prove its case, the prosecution examined twenty-one witnesses, and submitted thirty documents. However, the defence neither examined any witness, nor submitted any documents. After appreciating the evidence produced by both the sides, by the impugned judgment, the trial Court convicted the appellants (A-1 to A.3). However, it acquitted A-4 to A-8. Hence, the present appeal.

Mr. P. Prabhakar Reddy, the learned counsel for the appellants, has raised the following contentions before this Court:-

Firstly, the case is entirely based on circumstantial evidence. However, the prosecution has failed to establish a complete chain of circumstances, which would unerringly point towards the guilt of the appellants.

Secondly, the learned trial Court has relied only on two pieces of evidence to convict the appellants. Firstly, the existence of a strong motive for getting rid of the deceased, as she had insulted the honour of the family by marrying a person of a lower caste. Secondly, according to Pandi Jayamma (P.W.2), Kadapa

Bikshapathi (P.W.7) and Pandi Vasantha (P.W.9), they had last seen the deceased in the company of A-1 to A-3 and A-5. Thus, there is only the evidence of last seen to remotely connect the accused to the alleged offence.

Thirdly, although Kadapa Bikshapathi (P.W.7) claimed that he had last seen the deceased in the company of A-5, and Pandi Vasantha (P.W.9) claimed that A-5 had also come to their house to take away the deceased, on the basis of the same evidence, the learned trial Court has acquitted A-5, while convicting the appellants (A-1 to A-3). Therefore, the learned trial Court has committed an illegality in convicting the appellants (A-1 to A-3) only on the basis of the last seen evidence.

Lastly, if there was any person, who would have a strong motive for killing the deceased, it would be A-5, the mother of the deceased, and not A-1 to A-3, who are the maternal uncles of the deceased. Therefore, even the element of strong motive would point only to A-5. But, A-5 has already been acquitted by the learned trial Court. Therefore, the prosecution has failed to establish sufficient evidence, which would unerringly point towards the guilt of the appellants. Hence, the appellants deserve to be acquitted by this Court.

On the other hand, the learned Additional Public Prosecutor, Ms. J. Sreedevi, has vehemently pleaded that according to the testimony of Pandi Jayamma (P.W.2), A-1 to A-3 had come to her house and taken away the deceased. According to the testimony of Pandi Vasantha (P.W.9), A-1 to A-3 and A-5 had come to her house and taken the deceased away. According to Kadapa Bikshapathi (P.W.7), he had seen the deceased in the company of A-1 to A-3

and A-5. Hence, the prosecution has succeeded in establishing the evidence of the last seen.

Secondly, according to the prosecution, the deceased was taken out of her matrimonial home at 6:30 AM. Her body was discovered at 2:00 PM on the same day. Therefore, the time gap between the evidence of the last seen, and the discovery of the body is too short.

Thirdly, the appellants have not offered any explanation, except total denial of the evidence produced by the prosecution. According to the learned Additional Public Prosecutor, under Section 106, it was the bounden duty of the appellants to explain as to what became of the deceased, when she was last seen in their company. Therefore, their silence speaks volumes about their guilt.

Lastly, the evidence of the last seen is also coupled with the element of strong motive to get rid of the deceased, as the honour of the family was hurt. Hence, the learned trial Court is justified in convicting the appellants for the aforementioned offences. Thus, the learned Additional Public Prosecutor has strenuously defended the impugned judgment.

Heard the learned counsel for the parties and 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 enunciated 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.”

It is, indeed, trite to state that a conviction cannot be based on strong suspicion. In fact, the prosecution is duty bound to establish a complete chain of circumstances, which would unerringly point towards the guilt of the accused.

In the present case, there are only two pieces of evidence, which have been produced by the prosecution in order to convict the appellants. Firstly, the evidence of existence of strong motive. According to the prosecution, since the deceased had married a person of a lower caste, while she belonged to the upper caste, there was a strong motive to get rid of the deceased, as the honour of the family had been hurt. However, the strong motive would have existed in the mind of the mother. But, whether the strong motive also exists in the minds of the maternal uncles (A-1 to A-3) is a doubtful proposition. For, the maternal uncles do not even belong to the paternal family of the deceased. In fact, it would be

the paternal family of the deceased that may be hurt, as the honour of the family was allegedly adversely affected by her marriage to the person of a lower community. Therefore, the learned trial Court is not justified in reading the element of strong motive against A-1 to A-3.

According to Pandi Jayamma (P.W.2), while she and the deceased were in the house, around 7:00 AM, A-1 to A-3 came to her house and took away the deceased from her house. According to Vasantha (P.W.9), while she, her mother and the deceased were at their house, A-1 to A-3 and A-5 came to their house and called the deceased to accompany them, but the deceased refused. Upon her refusal, they abused her in filthy language, and especially with regard to the fact that she had married a person of a lower caste. According to this witness, when she and her mother objected, they were pushed aside and A-1 to A-3 and A-5 forcibly took the deceased away. According to K. Bikshapathy (P.W.7), while he was standing on the road in the village, he saw that A-1 to A-3 and A-5 were taking the deceased away from the house of P.W.1 and P.W.2. Thus, the prosecution has established only the evidence of the last seen.

Although it is true that, in their statement recorded under Section 313 Cr.P.C, the appellants (A-1 to A-3) have merely denied the fact of the last seen, and have not offered any explanation, but merely this evidence of the last seen does not unerringly point to their guilt. It merely raises a suspicion. But no matter how strong the suspicion may be, it cannot take the place of proof. But for the evidence of the last seen, there is no other evidence, which has been led by the prosecution against the appellants. Therefore,

even the evidence of the last seen is too weak an evidence for convicting the appellants (A-1 to A-3) for the alleged crime.

For the reasons stated above, this criminal appeal is hereby allowed. The convictions and sentences recorded against the appellants (A-1 to A-3), by the learned Special Sessions Judge for Trial of Cases under S.Cs and S.Ts (Prevention of Atrocities) Act-cum-VII Additional District and Sessions Judge, Mahabubnagar, *vide* judgment dated 26.09.2012 in S.C.No.23 of 2012, for offences punishable under Sections 364, 302, 201 read with Section 34 IPC, are hereby set aside. Since the appellants (A-1 to A-3) are on bail, their bail bonds shall stand discharged.

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

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

03rd September, 2019
JSU

High Court for the State of Telangana**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN****AND****THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY****Criminal Appeal No.1018 of 2012****(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)****Date: 03.09.2019****JSU**