

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

CRIMINAL APPEAL No.825 OF 2013

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

Mr. Telugu Ramudu (A-1) and Mr. Boya Vijay Naidu (A-2) have challenged the legality of the judgment dated 20.09.2013, in S.C. No. 425 of 2010, passed by the III Additional District & Sessions Judge, Gadwal, whereby the learned trial Court has convicted them for offences under Sections 364-A, 302, 201 IPC. For offence under Section 302 IPC, they have been sentenced to life imprisonment, imposed with a fine of Rs.5,000/-, and further directed to undergo Simple Imprisonment of six months in default thereof. For offence under Section 364-A IPC, they have also been sentenced to life imprisonment, imposed with a fine of Rs.5,000/- and directed to undergo Simple Imprisonment of six months in default thereof. For offence under Section 201 IPC, they have been sentenced to five years of Rigorous Imprisonment, imposed with a fine of Rs.2,000/- and to undergo Simple Imprisonment of six months in default thereof.

Briefly, the facts of the case are that on 12.07.2008, Md. Khaja Bande Nawaz (P. W. 1) lodged a complaint (Ex. P. 1) with the Station House Officer, Shanthinagar Police Station wherein he claimed that *"he is a resident of Shanthinagar village doing cloth business. He has two daughters, and one son, Gishan, aged about seven years. His son is studying in 1st class at Shiva Shivani School at Shanthingar. On 11.07.2008, at about 5:00 p.m., when he was in his shop, his son Gishan returned from school. He sent his son back home along with the servant, Boya Vijay Naidu (A-*

2). He dropped him on a cycle at 6:00 p.m. and returned to his shop. At night at 8:00 p.m., his wife, Waheeda Begum came to shop and told him that his son disappeared. Therefore, he and others searched for his son during the night and even in the morning. About 1:00 p.m., he came to know that the dead body of his son was found in an agricultural well near the Koildinne land of Ashanna. Immediately they went and saw the dead body of the son laid in the well. No external injuries were found on the body. One Ramudu, resident of Waddepally village who was working as a servant at the shop of his younger brother and others are suspected to have caused the death of his son.” On the basis of the said complaint (Ex. P. 1), a formal FIR, namely FIR No.26 of 2008 (Ex. P. 13) was chalked out; the investigation began. On 19.07.2008, Mr. S. Shivalingam, the Sub-Inspector of Police (P. W. 13) apprehended the accused No.1 and accused No.2. They were put up for trial.

In order to support its case, prosecution examined thirteen witnesses, submitted fifteen documents and produced two material objects. After appreciating the evidence, the learned trial court convicted and sentenced the appellants as aforementioned. Hence, this appeal before this Court.

Mr. Vinod Kumar, the learned counsel for the appellants, has raised the following contentions before this Court:-

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

Secondly, but for the suspicion expressed by Md. Khaja Bande Nawaz (P. W. 1) against Telugu Ramudu (A-1), there is no other cogent and convincing evidence against him which has been produced by the prosecution. According to the learned counsel, even a strong suspicion cannot take the place of proof. Therefore, the prosecution has miserably failed to establish its case against Telugu Ramudu (A-1).

Thirdly, as far as Boya Vijay Naidu (A-2) is concerned, the prosecution has relied upon three pieces of evidence against him, namely (a) motive which is said to be proved by the testimony of P.W. 1 and P. W. 2, the parents of the deceased; (b) the evidence of last seen as testified by Haneef (P. W. 9); and (c) the recovery of a handkerchief, a bicycle and wires allegedly recovered at the instance of A-2 from his house.

Fourthly, the motive, although an important evidence in the case of circumstantial evidence, can never be so strong as to convict a person. The motive attributed to Boya Vijay Naidu (A-2) hardly exists. For, according to Md. Khaja Bande Nawaz (P. W. 1), it is Telugu Ramudu (A-1), who had threatened him and not Boya Vijay Naidu (A-2). Therefore, the evidence with regard to the motive is non-existent *qua* Boya Vijay Naidu (A-2).

Fifthly, Haneef (P. W. 9) is a planted witness and is a chance witness. According to him, he had seen the deceased with Boya Vijay Naidu (A-2). However, his testimony is bereft of any details. For, in his examination-in-chief, he fails to inform the Court the date on which he had seen the deceased with A-2, the place where he had seen the deceased with A-2, and the time when he had last

seen the deceased with A-2. Moreover, he has been shattered in his cross-examination. Therefore, he is a highly untrustworthy witness. Hence, even the evidence of last seen does not exist in the present case.

Sixthly, the mere recovery of common objects like, a handkerchief, wires, and a bicycle do not *ipso facto* connect A-2 to the alleged offence. For, all these three objects are not such unusual objects which cannot be found at the homes of the people. Moreover, even the wire allegedly recovered from the house of Boya Vijay Naidu (A-2) does not connect him to the alleged offence of murder. For, according to the Post-Mortem Report (Ex. P. 10), there is no ligature mark which was discovered on the neck of the child. Therefore, the recovery of the wire is irrelevant as it does not support the case of the prosecution.

Lastly, despite the fact that there are gaping holes in the story of the prosecution, A-2 has been convicted erroneously by the learned trial Court. Hence, the impugned judgment dated 23.09.2013 deserves to be quashed and set aside by this Court.

On the other hand, the learned Public Prosecutor has raised the following counter-arguments:-

Firstly, the child, who is seven year old, has been murdered by A-1 and A-2 in mysterious circumstances.

Secondly, Haneef (P. W. 9) has clearly testified that he had seen the deceased with A-2. Thus, there is the evidence of the last seen. Moreover, A-2 has not explained as to what became of the deceased after the deceased was last seen with him, in his

statement under Section 313 Cr.P.C. Therefore, his silence speaks volumes about his culpability.

Lastly, the prosecution has produced sufficient evidence, both in the form of the testimony of K. Ramakrishna (P. W. 7), who was witness to the recovery of the material objects and the seizure panchanama (Ex. P. 5) in order to establish that the police had recovered the handkerchief, the wire and the bicycle from the house of A-2. Thus, there is sufficient linking evidence to connect A-2 to the alleged offences of murder and kidnapping. Therefore, the learned trial Court was justified in convicting both the accused persons for the offences under Sections 364-A, 302 and 201 IPC. 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 **Sharad Birdichand Sarda v. State of Maharashtra**¹, the Hon'ble Supreme Court has laid down the principles for appreciating the evidence in case of circumstantial evidence. It would be fruitful to quote the principles, which are as under:-

1. *The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
2. *The facts so established should be consistent with the hypothesis of guilt and 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;*

¹ (1984) 4 SCC 116

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.*

Therefore, the issues before this Court are:-

(1) Whether the prosecution has succeeded in establishing links of circumstances which would unerringly point towards the guilt of the accused persons or not?

(2) Whether there are sufficient breaks in the chain which could possibly point to the innocence of the accused persons or not?

As far as A-1 is concerned, the prosecution has relied on the testimony of Md. Khaja Bande Nawaz (P. W. 1). In his examination-in-chief, he informs the Court that *"I am having cloth business at Shanthinagar. The accused No.2 was working as gumastha in my cloth shop at the time of incident. The accused No.1 worked as gumastha in the supplier company of my brother Jahangir Basha. My brother removed the accused No.1 from the job as the accused No.1 is having bad habits. My son was studying Ist standard in Shiva Shivani school, Shanthinagar. The accused No.1 worked as driver for the school van of Shiva shivani school. The school management removed the accused No.1 from the job and on that the accused No.1 joined as a driver for B.S.N.L. Jeep. One week prior to the incident the accused No.1 came to my shop and asked cloth for pant and shirt on credit basis. I refused to gave the cloth on credit as the accused No.1 had not cleared the previous*

balance. The accused No.1 went away by saying that “NEE KATHA CHOOSUKUNTA” (I will see your story).” He further informs the trial Court “at about 7.45 p.m. my wife telephoned me stating that my son was missing. On that I closed the shop and searched for my son. I suspected accused No.1 and went to the house of accused No.1 with the help of police constable. The accused No.1 was drinking liquor in the upstairs of the house and he came down. We enquired the accused No.1 about my son. The accused No.1 told that he do not know about my son.” He further states that “I told the police that I am having suspicion against the accused No.1 and lodged complaint before the police. Ex. P1 is my complaint.The accused No.2 asked amount prior to the incident. Both the accused killed my son to extract money from me.” But for the suspicion expressed by Md. Khaja Bande Nawaz (P. W. 1), the prosecution has not produced any evidence whatsoever against A-1. It is, indeed, trite to state that suspicion no matter how strong, cannot take the place of proof. Therefore, the prosecution has failed to establish its case against A-1.

As far as A-2 is concerned, as mentioned hereinabove, only three pieces of evidence have been led against him. However, as far as motive is concerned, there is no evidence worth the salt to show the existence of motive for A-2 to kill the son of his employer. In his testimony Md. Khaja Bande Nawaz (P. W. 1) did not even mention any ill-will or ulterior motive for which, A-2 would have killed his son. Therefore, the element of motive is conspicuously missing *vis-à-vis* A-2.

Both the prosecution as well as the learned trial Court have heavily relied on the testimony of Haneef (P. W. 9), in order to

establish the evidence of last seen. Haneef (P. W. 9) in his examination-in-chief states that *“I am resident of Shanthinagar. I know PW.1, the deceased boy, accused No.2. About four years ago during evening hours I noticed the deceased boy in the company of the accused No.2 and both were going in a cycle. Two days after that I came to know that the deceased boy died and the dead body of the deceased boy was found in a well. Police examined me.”* Interestingly, this witness tends to remember a fleeting moment of having seen the accused with the deceased even after the lapse of four years. Despite the strong memory of seeing the deceased with A-2, the witness is unable to tell the Court the place where he had seen them going together, the date on which he had observed their going together, and the time when he had seen them going together. Thus his testimony is bereft of essential details which are expected from a witness.

In his cross-examination, he admits that his native place is “Chagadona village of Ghattu Mandal. His native place is situated at a distance of 30 k.ms. from Shanthinagar”. Despite the fact that he comes from a different village, situated 30 k.ms. away, in his examination-in-chief, he does not offer any explanation as to what brought him to Shanthinagar on the fateful day. Therefore, the learned counsel for the appellants is justified in claiming that this witness is not only a chance witness, but is also a planted witness by the police. Since this witness has been shattered in his cross-examination as in his examination-in-chief, he claims to be resident of Shanthinagar, but in his cross-examination, he claims to be a resident of Chagadona village, since he is a chance witness, obviously, such a witness is an untrustworthy one.

Therefore, the learned trial court could not have relied on the vague testimony of an untrustworthy witness for convicting A-2.

According to the seizure panchanama (Ex. P. 5), both the panch witnesses, namely Komalapadu Ramakrishna (P. W. 7) and Dhandhanmoodi Ravikrishna Chowdary (not produced as a witness), accompanied the police to the house of A-2. A-2 went into the east side of the room and brought a handkerchief, a plastic binding rope from a bag, and one cycle. Thus, these three material objects were recovered by the police at the instance of A-2. The recovery panchanama (Ex. P. 5) has been proven by the testimony of Komalapadu Ramakrishna (P. W. 7).

However, besides producing the plastic binding wire piece and the cycle, M.O. 1 and M.O. 2 respectively, the prosecution has not led any evidence to link the recovery to the alleged crime. Although the prosecution would have the court believe that the wire was used to throttle the child, interestingly, according to the Post-Mortem Examination Report (Ex. P. 10), there is no ligature mark on the neck of the child. Therefore, the recovery of the wire does not connect the accused to the act of throttling the child. Moreover, the handkerchief, and the cycle are common objects which can be recovered from any house. The prosecution has failed to establish their relevancy to the case. Hence, the recovery of these three material objects fails to connect A-2 to the alleged Crime.

It is, indeed, a settled principle of criminal jurisprudence that there is long distance between “may be true” and “must be true”. It is a distance that the prosecution is required to cover

even in a case of circumstantial evidence. The only way for the prosecution to cover this distance is to produce impeccable, cogent and convincing evidence, which would unerringly point towards the guilt of the accused person. Although unfortunately, a seven year old child has lost his life, even then, the prosecution has failed to establish its case beyond mere suspicion. However, suspicion, no matter how strong it may be, cannot take the place of proof. Needless to say, conviction cannot be based on surmises and conjectures. For, in criminal jurisprudence, there is no place for moral conviction of a person.

For the reasons stated above, the criminal appeal is hereby allowed. The impugned judgment, dated 20.09.2013, passed by the III Additional District and Sessions Judge, Gadwal, in Sessions Case No.425 of 2010, is set aside. Mr. Telugu Ramudu S/o. Mareenna (A-1) is acquitted of the offences punishable under Sections 364-A, 302 and 201 IPC, and Mr. Boya Vijay Naidu S/o. Eadanna (A-2), is acquitted of the offences punishable under Sections 364-A, 302 r/w 34 and 201 IPC. They shall be set at liberty, forthwith, if they are not wanted in any other criminal case.

RAGHVENDRA SINGH CHAUHAN, J

T. AMARNATH GOUD, J

Date: 13.02.2019
Tsr/Mrkr

