

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.707 OF 2014

Date: 06.02.2019

Between:

Karrewar Raju and others

...Appellants

and

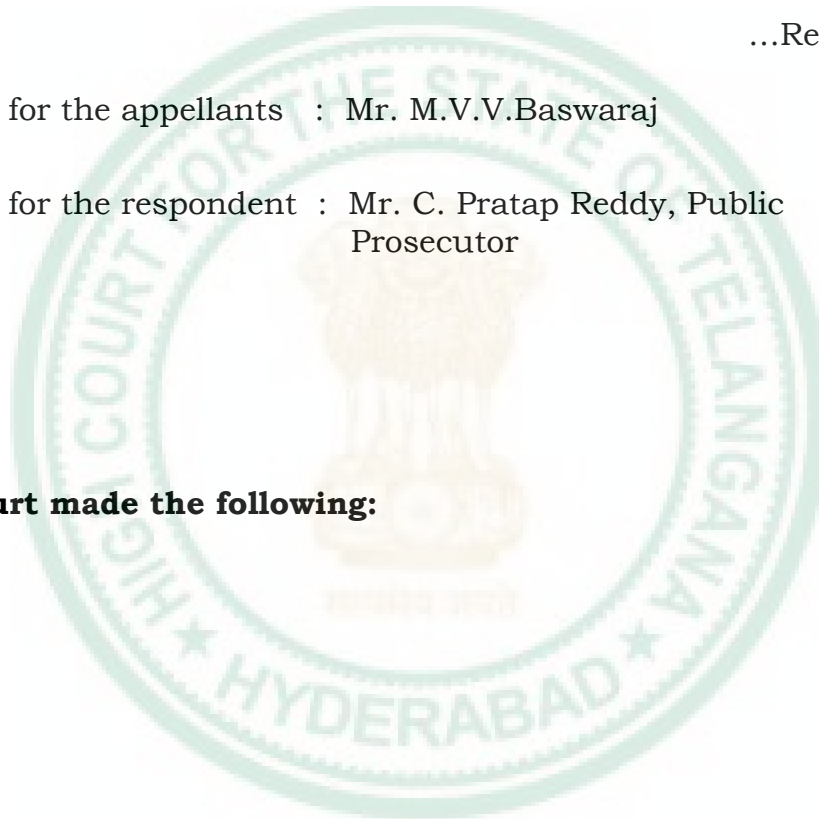
State of Telangana

...Respondent

Counsel for the appellants : Mr. M.V.V.Baswaraj

Counsel for the respondent : Mr. C. Pratap Reddy, Public
Prosecutor

The Court made the following:



JUDGMENT: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

With the consent of the parties, this case is being decided at this stage itself.

The appellants, Karrewar Raju (A-1), Bethalwar @ Mangali Laxman (A-2), and Hajare Nagurao (A-3) have challenged the legality of the judgment dated 11.07.2013, in Sessions Case No.20 of 2013, passed by the Court of Sessions, Nizamabad Division, Nizamabad, whereby the learned Trial Court has convicted them for offence under Section 302 read with Section 34 IPC, and has sentenced them to life imprisonment, imposed a fine of Rs.1,000/- on each one of them, and further directed them to undergo simple imprisonment for a period of one month in default thereof. They have also been convicted for offence under Section 201 IPC read with Section 34 IPC, and sentenced to suffer two years of rigorous imprisonment, imposed with a fine of Rs.100/- each, and to undergo a simple imprisonment of one month in default thereof. The sentences were directed to run concurrently.

Briefly the facts of the case are that one year prior to the alleged incident, A-1 had migrated from Gundekallur Village to Mallapur Village. He initially stayed with his joint family. Subsequently, he separated from his family. Since he was facing financial difficulties, he borrowed an amount of Rs.2,000/- from his paternal uncle, and went to Mallapur Village. After dinner, A-1 went to the house of his sister-in-law, Laxmibai. There, he found that the doors were closed. He also discovered that the footwear of Maankare Baburao (the deceased) were lying in front of the door. Therefore, he suspected that Maankare Baburao had an illicit affair with his sister-in-law.

Meanwhile, A-2 had also developed intimate relationship with Laxmibai. Therefore, Maankare Baburao had warned A-2 to keep away from Laxmibai. A-2 informed A-1 and A-3 about the warning he had received from Maankare Baburao. Thus, A-2 also bore a grudge against Maankare Baburao.

It is further alleged that on 30.03.2012 around 6:00 pm, A-2 called Maankare Baburao, invited him to a shop, and promised him that he along with A-1, A-3 and Maankare Baburao, will go to the village tank and share a few drinks. Allegedly, A-1 brought four bottles of beer; the four persons consumed the beer. Subsequently, they went to the “dhaba” of Raju Patel. They bought more bottles of beer from the shop of Raju Patel. On the way to Rishigaon Shivar, all of them, including Maankare Baburao, consumed the beer.

It is further alleged that A-2 signalled A-1 to kill Maankare Baburao. Consequently, A-1 strangulated Maankare Baburao with a towel. Allegedly, the towel was torn into pieces. A-1 to A-3 threw the beer bottles in the cotton fields, and absconded.

On 31.03.2012 at 5:30 pm, Maankare Lalitha (P.W.1), the wife of Maankare Baburao, lodged a complaint (Ex.P.1) before J. Ananda Rao (P.W.6). According to her, on the previous day around 6:00 pm, A-1 to A-3 had contacted her husband on the phone and asked him to come to a “dhaba”. Although Maankare Baburao went to the dhaba, but he did not come back. At 8:00 pm, when she called her husband on his cell phone, he informed her that he was going with A-1 and A-3 to the “dhaba”. But, he never came back. On the next morning, at 8:00 am, she tried to contact her husband on his cell phone; the cell phone was switched off. Therefore, she suspected that A-1 to A-3 may have killed her husband, Maankare Baburao. She started searching for him. She was informed by Raju Patel that

a dead body was discovered at Rishigaon Shivar. When she went to Rishigaon Shivar, she found that the dead body was that of her husband. On the basis of the said complaint, a formal F.I.R, namely F.I.R.No.28 of 2012, (Ex.P.13) was chalked out, for offence under Section 302 IPC, by the police, Madnoor Police Station. During the course of investigation, the appellants were arrested by the police. They were put up for trial.

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

Mr. M.V.V.Baswaraj, the learned counsel for the appellants, has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence, as there is no eye-witness to the alleged crime.

Secondly, the circumstances produced by the prosecution do not unerringly point to the guilt of the appellants. For, a complete chain of circumstances has not been forged by the prosecution in the present case.

Thirdly, only three pieces of evidence were produced by the prosecution. The first piece of evidence is in the form of testimonies of Maankare Arjun (P.W.3) and Kadagale Ashok (P.W.4), who claimed that they had last seen the deceased in the company of the appellants. But the evidence of “last seen” is too weak an evidence for convicting the accused. The second piece of evidence presented by the prosecution is the alleged recovery of the cell phone at the instance of A-1. However, the cell phone was never subjected to a Test Identification Parade. Therefore, even the said recovery does not

connect the appellants to the alleged offence. The third piece of evidence is the medical evidence.

Therefore, the learned trial Court has not legally convicted the appellants, but has morally convicted them. Thus, the appellants deserve to be acquitted by this Court.

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 appellants to explain as to what became of the deceased after he was seen in the company of the appellants. However, none of the three appellants have given any cogent explanation in their statement recorded under Section 313 Cr.P.C. Therefore, the silence speaks volumes about their guilt. Hence, the prosecution has succeeded in establishing the case. Thus, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties and perused the impugned judgment and the record.

In the case of **Bodh Raj @ Bodha v. State of Jammu and Kashmir [AIR 2002 SC 3164]**, 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) 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.”

Hence, it is the duty of the prosecution to produce cogent and convincing evidence, which would unerringly point to the guilt of the accused, and which would not be in consonance with his innocence. In case, there are missing links in the evidence produced by the prosecution, the accused would be entitled to the benefit of doubt.

In the case of **Nizam v. State of Rajasthan [(2016) 1 SCC 550]**, the Hon'ble Supreme Court has also opined that the last seen evidence cannot form the sole basis for conviction. For, the evidence of last seen is a weak sort of evidence. Therefore, an accused cannot be convicted only on the basis of the evidence of the last seen.

Maankare Arjun (P.W.3) informed the Court that he is the resident of Mallapoor Village. He works as a tailor. He knew Maankare Baburao (the deceased), and the appellants (A-1 to A-3). On 31.03.2012, while he was sitting in his shop, which was located on the side of a road, he saw Maankare Baburao going along with A-1 to A-3. He enquired from Maankare Baburao as to “where they were going together?” Maankare Baburao told him that they were going to a “dhaba” to attend a party. On the next day, this witness was going by the house of Maankare Lalitha (P.W.1) and Maankare Lalabai (P.W.2). He found them perplexed. They informed this witness that they were agitated by the fact that Maankare Baburao had not come home at night. Therefore, this witness informed P.W.1 and P.W.2 that he had seen Maankare Baburao in the company of A-1 to A-3. Thereafter, Raju Patel contacted his brother and informed that the

dead body of Maankare Baburao was lying at Rishigaon Shivar. This witness, along with P.W.1 and P.W.2, went to Rishigaon Shivar, and saw the dead body of Maankare Baburao.

Similarly, Kadagale Ashok (P.W.4) informed the Court that he was running a “kirana business” at Mallapur. He also knew the deceased, and A-1 to A-3. According to this witness, about three to four months prior to giving his deposition in the Court, A-1 had come to his shop, and bought some bottles of beer. He had taken these bottles of beer for his personal consumption. He further claimed that A-1 informed him that he was going for a party along with A-2. Subsequently, this witness learnt that Maankare Baburao had expired.

Thus, Maankare Arjun (P.W.3) has been produced in order to establish the evidence of the last seen; Kadagale Ashok (P.W.4) has been produced in order to prove that A-1 had bought bottles of beer from his shop. For, according to the prosecution, the beer bottles were eventually recovered by the Investigating Agency.

However, except for the evidence of the last seen, the prosecution has failed to produce any other cogent and convincing evidence against the appellants. As stated above, the evidence of last seen cannot form the sole basis for a conviction. For, it is too weak an evidence for convicting an accused.

Another piece of evidence produced by the prosecution against the appellants is the alleged recovery of a cell phone at the instance of A-1. However, as the cell phone was never subjected to the test identification parade, the recovery of the cell phone does not connect the appellants to the alleged crime. In the absence of a test identification parade, it cannot be presumed that the recovered cell

phone belonged to the deceased. Thus, the alleged recovery of the cell phone does not connect A-1 to the alleged crime.

The last piece of evidence produced by the prosecution is the testimony of Dr. Sunil Ballurkar (P.W.9), who conducted the autopsy. According to this witness, the cause of death was “*cardio respiratory arrest due to asphyxia due to strangulation*”. Thus, according to the prosecution, the death was an homicidal one. It is only on the basis of these three pieces of evidence that the appellants have been convicted by the learned trial Court.

However, the evidence of last seen is a too weak an evidence for recording conviction against the appellants. The recovery of a cell phone, which was never subjected to the test identification parade, is meaningless, as in the absence of the identification of the cell phone, the alleged recovery does not connect the appellants to the alleged crime. Thus, the prosecution has merely succeeded in establishing that Maankare Baburao had died a homicidal death. However, the prosecution has singularly failed to establish that the appellants had caused the death of Maankare Baburao. Therefore, the evidence submitted by the prosecution does not unerringly point to the guilty of the appellants.

It is, indeed, a settled principle of criminal jurisprudence that suspicion, no matter how strong, cannot take the place of proof. Therefore, even if the evidence of last seen does raise a certain amount of suspicion against the appellants, it cannot take the place of proof. Moreover, a conviction has to be based on cogent and convincing evidence in order to muster the test of being a legal conviction. Conviction can neither be based on surmises or conjectures, nor on morality. A conviction based on suspicion, or on surmises and conjectures, is merely termed as moral conviction.

However, the moral conviction cannot withstand the scrutiny of a Court. Therefore, the learned trial Court was unjustified in convicting the appellants on the basis of evidence, which does not prove their guilt even by a stretch of imagination.

For the reasons stated above, this appeal is hereby allowed.

The sentence and conviction of the appellants-Karrewar Raju, S/o. Gangonda (A-1), Bethalwar @ Mangali Laxman, S/o. Narayana (A-2), and Hajare Nagurao, S/o. Pandari (A-3), for offences punishable under Section 302 read with Section 34 I.P.C, and Section 201 read with Section 34 I.P.C, in S.C.No.20 of 2013 on the file of the Court of Sessions, Nizamabad Division, Nizamabad, are set aside. The appellants-accused Nos.1 to 3 shall be set at liberty forthwith, if not wanted in any other criminal case.

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

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

06th February, 2019
JSU

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
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