

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

CRIMINAL APPEAL NO.889 OF 2012

JUDGMENT:

Mr. Dodla Mahipal Goud, the appellant has challenged the legality of the judgment dated 23.08.2012, passed by the Principal Sessions Judge, Medak at Sangareddy, whereby he has been convicted of offence under Section 302 IPC, and sentenced to life imprisonment, imposed with a fine of Rs.10,000/-, and further directed to suffer simple imprisonment for six months in default thereof.

Briefly the facts of the case are that on 02.10.2011, at 08:00 A. M., D. Anasuya (P. W. 1) submitted a report, (Ex. P.1), to the Inspector of Police, Police Station, BDL Bhanoor, Medak District. In the report, she claimed that *"she is having two sons and two daughters, elder son was Mallesh Goud doing labour work and younger son Sathesh Goud who is mentally unsound. Her husband Samaiah Goud also mentally unsound, and moving on roads. Her husband Samaiah Goud is having two younger brothers, namely Mahipal Goud and Vittal Goud. Her father-in-law, Balraj Goud was having four acres of agricultural land, and he shared the said land with his three sons; they are cultivating the same. But the land is one the name of Balraj Goud. The land prices are hike due to real boom, due to which her brother-in-law Mahipal Goud with a mala fide intention forcibly took the passbooks of above land from her father-in-law and kept with him. About five years back, her*

younger brother-in-law, Vittal Goud died under suspicious circumstances. Her elder son, Mallesh Goud, who wants to register their share of land on their name and he asked Mahipal Goud to give the passbooks. But he did not give the same and threatened the said Mallesh Goud as he will see his end if he again asked the passbooks. In this regard, the village elders also intervened and asked to give the passbooks, but he refused to do so. On 01.10.2011 at about 23:00 hours her son, Mallesh Goud went to the house of Mahipal Goud to bring the passbooks, but he did not return back. Due to which, she and her husband Samaiah Goud went to the house of Mahipal Goud and found that their son Mallesh Goud on the ground in the boundary of Mahipal Goud house. When they asked, said Mahipal Goud and his wife, Laxmi, says that, they did not know whether their son Mallesh Goud is alive or dead and they caught the legs of Mallesh Goud and dragged him at a distance from their house. When she and her husband Samaiah Goud started hues and cries, the village elders namely Narsimulu, Narayana, Tenugu Laxmi Narayana, Julakanti Samaiah, and some other village elders gathered and on observation, her son Mallesh Goud was found dead and injuries found on neck. Further she added that, her brother-in-law, Mahipal Goud, co-sister Laxmi murdered her son Mallesh Goud by pressing his neck with an intention to grab their share of land. Finally, she requested to take necessary action against her brother-in-law Mahipal Goud, co-sister Laxmi."

On the basis of the said report, (Ex. P. 1), the police chalked out a formal FIR (Ex. P. 8), namely FIR No.106/2011, for offence under Section 302 IPC. During the course of the investigation, the appellant was arrested; he was put up for trial.

In this case, two persons were arrested namely Dodla Mahipal Goud (A-1, the appellant), and Dodla Laxmi @ Indira (A-2). Both A-1 and A-2 were tried by the learned trial court. However, by the impugned judgment, while the appellant has been convicted and sentenced as aforementioned, A-2 was acquitted of offence under Section 302 IPC. Hence, the present appeal is confined only to A-1.

In order to establish its case, the prosecution examined nine witnesses, and submitted nine documents, marked as Exs.P-1 to P-9, and produced four material objects. The defense neither examined any witness, nor submitted any documents. With the completion of the trial, the appellant was convicted and sentenced as mentioned hereinabove. Hence, this appeal before this Court.

Mrs. C. Vasundhara Reddy, the learned counsel appearing for Mr. P. Srihari Nath, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, D. Anasuya (P. W. 1), and D. Sammaiah Goud (P.W. 2) are unreliable witnesses. For, they have improved their versions from what they have stated in their Section 161 Cr. P. C. statements to what they have stated before the learned trial Court.

Secondly, since they are related to the deceased, as they are the mother and father of the deceased, and since they would stand to gain if the appellant were to be convicted, they are “interested” and “inimical witnesses”. Thus their testimonies can be accepted, if and only if, their testimonies were corroborated by other evidence. In order to distinguish between an “interested witness”

and a “related witness”, the learned counsel has relied on a case **Sudhakar Alias Sudharasan v. State [(2018) 2 SCC (Cri) 777]**.

Thirdly, however, their testimonies are not corroborated either by oral, or by documentary evidence. Therefore, the learned trial Court has erred in relying upon their testimonies for convicting the appellant.

Fourthly, besides D. Anasuya (P. W. 1) and D. Sammaiah Goud (P. W. 2), the only other alleged eyewitness is Tenugu Laxmi Narayana (P. W. 3). However, as he has turned hostile, there is no eyewitness in this case. Hence, the entire case rests on circumstantial evidence. But the prosecution has failed to establish a complete chain of events which would unerringly point to the guilt of the accused. Therefore, the appellant could not be convicted on the basis of circumstantial evidence.

Fifthly, the only circumstance that can be read remotely against the appellant is the fact that there are “dragging marks” outside the house of the appellant. Since according to the prosecution, the body of the deceased was picked up from the lane, and brought to the house of the complainant, even the “dragging marks” do not connect the appellant to the alleged crime.

Sixthly, the story of the prosecution that the deceased’s body was first seen by P.W. 1 and P.W. 2 inside the house of the accused, and then the accused dragged the body outside the house, the said story is belied by the medical evidence. For, according to P.W. 1 and P. W. 2, the entrance of the house of the accused had three steps to it, the accused has dragged the body from inside his inner courtyard, over the steps, and through the *kachha* lane, and left the body out in the lane. However, if the

body were to be dragged over the steps, there would be some abrasions on the back of the body or on the arms of the body. Yet according to the medical evidence, namely the Post-Mortem Report (Ex. P. 5), the deceased had suffered minor injuries of abrasions and bruises and that too only on his face. Therefore, the medical evidence belies the case of the prosecution.

Seventhly, the actual cause of death is unknown in the present case. For, Dr. D. Suman Praveen, (P. W. 7) has stated a general cause of death, namely "death by mechanical asphyxia". However, the said term is a general one, as mechanical asphyxia can be caused by variety of reasons, such as throttling, strangulation, and even by drowning. Therefore, the specific cause of death is unknown. Moreover, according to this witness, mechanical asphyxia can also be caused by bronchitis or by acute oedema. Even before this witness was examined, the defense has already suggested, through Tenugu Laxmi Narayana (P. W. 3), that the deceased was suffering from asthma. Therefore, a distinct possibility does exist that the deceased had died due to natural cause and not a homicidal death.

On the other hand, the learned Public Prosecutor has strenuously pleaded as under:-

Firstly, since D. Anasuya (P. W.1) and D.Sammaiah (P. W. 2) are the parents of the deceased, they would not leave out the real culprit, and falsely implicate the appellant who happens to be the real brother of D.Sammaiah Goud (P. W. 2), the uncle of the deceased.

Secondly, according to D. Anasuya (P. W. 1), the house of the accused is merely 1500 yards away from her house. According to

D. Sammaiah Goud (P. W. 2), if there is a fight (*galata*) at the house of the accused, the same can be heard at the house of this witness. It is only when they heard the hues and cries of the deceased, they rushed to the house of the accused. They found the dead body of the deceased inside the compound of the house of the accused. The accused dragged the body from inside the compound, and threw the body out into the lane. Therefore, these two witnesses are reliable witnesses.

Thirdly, their testimonies with regard to the appellant dragging the body into the lane is corroborated by the site plan (Ex. P. 3), which clearly shows the existence of “dragging marks”.

Fourthly, according to D. Anasuya (P. W. 1), the appellant had throttled the deceased. The said allegation made in the FIR is corroborated by the testimony of Dr. D. Suman Praveen (P. W. 7). For, according to the doctor, the deceased had died due to mechanical asphyxia.

Fifthly, the medical evidence clearly establishes that the deceased had died a homicidal death. Therefore, the prosecution has established its case both through direct and circumstantial evidence. Hence, the learned counsel for the State has supported the impugned judgment.

D. Anasuya (P. W. 1) informed the Court that *“I am resident of Ghanapur Village. The deceased is my son. A1 is my brother-in-law, and A2 is his wife. My husband has two brothers. They inherited land from their father. The passbooks pertaining to the said lands are in the custody of A1. The deceased went to the house of the accused in order to get the passbook. The house of the accused is located near my house. On hearing the cries of my son,*

myself and my husband rushed to the house of the accused. We saw the deceased lying on the ground, inside the compound of the house of the accused. A1 dragged the deceased by his legs and threw him out of the compound. We were crying. This incident occurred at about 11.00 P.M. We brought the deceased to our house. The deceased lost his breath at the house of the accused itself. On the next morning at about 8.00 A.M. we went to the police station and I gave a report to the police. Ex. P1 is the report. My statement was also recorded by the police.”

However, in her cross-examination, she was confronted with the statement given by her under Section 161 Cr.P.C. (Ex. P. 1). For, in the said statement, she did not mention that she and her husband had gone to the house of the accused upon hearing the hues and cries of the deceased. However, when she was confronted with the said statement, she has denied the same. Thus, clearly she has embellished her testimony.

Secondly, in her examination-chief she admits that *“we saw the deceased lying on the ground”*. Even in her cross-examination, she admits that *“the deceased was already lying on the ground by the time we went there. He was lying flat on his back”*. Thus apparently, this witness did not see the appellant kill the deceased.

However, D.Anasuya (P. W. 1) is contradicted by her husband D.Sammaiah Goud (P. W. 2). For, according to P. W. 2, *“by the time we went there the deceased was alive”*. Moreover, according to this witness, *“A1 beat the deceased on his temple with his chappal on which he lost his breath.”* Therefore, according to this witness, the cause of death is a hit on the head of the deceased.

Interestingly, according to P. W.1, the entrance of the appellant's house has two or three steps. Further, according to P. W. 1 and P. W. 2, the deceased was lying on the compound of the appellant's house. The appellant had dragged the body from the compound, through over the three steps, dragged the body onto the lane, and left it there. Obviously, the dragging of the body should have produced some bruises or abrasions on the body. Yet, according to the Post-Mortem Report (Ex. P. 5), the bruises and abrasions are only on the face of the deceased, and not on any other part of the body. Furthermore, according to these two witnesses, the appellant had helped these witnesses to carry the body of the deceased to their house. In case, the appellant were the real culprit, it would be highly unusual for the culprit to help the complainant to carry the body of the deceased to the complainant's house. In normal circumstances, the offender would have tried to run away from the scene of the crime. Curiously, according to S.R. Damodar Reddy (P. W. 9), the appellant was arrested on 04.10.2011 from his house. Thus obviously, even after the lodging of the FIR, the appellant did not try to escape from the village, but continued to live in his house. Thus, these factors cast a shadow of doubt on the veracity of the testimonies of P. W. 1 and P. W. 2

According to Dr. D. Suman Praveen (P. W. 7), the cause of the death of the deceased is mechanical asphyxia. However, the term "mechanical asphyxia" is a general medical term. It merely indicates that there is an obstruction in the flow of oxygen to the lungs. However, the said obstruction can be caused by various factors, such as throttling, strangulation, total hanging or partial

hanging, or by drowning. Yet this witness has not specified the cause for the obstruction in the flow of oxygen to the lungs. Furthermore, even D. Anasuya (P. W.1) and D. Sammaiah Goud (P. W. 2) do not claim that they saw the appellant throttling the deceased. Moreover, D. Anasuya (P. W. 1) does not claim, as she did in the FIR, that the accused throttled the deceased. Thus, the omission in her testimony amounts to a contradiction. Further, according to D. Sammaiah Goud (P. W. 2), the deceased had died due to being hit on the head with a "*chappa*". But this statement is not corroborated by the Post-Mortem Report (Ex. P. 5). Thus the actual cause of death of the deceased is unknown. Furthermore, Dr. D. Suman Praveen (P. W. 7) does admit in his cross-examination that mechanical asphyxia can be caused by bronchitis or by acute oedema. The defense did suggest to P. Laxmi Narayana (P. W. 3) that the deceased was suffering from asthma. Therefore, the possibility that the deceased may have collapsed and died due to natural cause like asthma cannot be ruled out.

A juxtaposition of the testimonies of D. Anasuya (P. W. 1) and D. Sammaiah Goud (P. W. 2), and the testimony of Dr. D. Suman Praveen (P. W. 7) read with Post-Mortem Report (Ex. P. 5) clearly reveals that the medical evidence does not support the testimonies of P. W. 1 and P. W. 2. Therefore, P. W. 1 and P. W. 2 are unreliable witnesses.

Moreover, according to D. Anasuya (P. W. 1) and D. Sammaiah Goud (P. W. 2), there was a property dispute between the appellant and these two witnesses. According to D. Anasuya (P. W. 1) the appellant had two other brothers, namely D. Sammaiah Goud (P. W. 2) and one Vittal. However, Vittal had

died five years prior to the incident. Therefore, if the appellant could be convicted in this case, P. W. 1 and P. W.2 were to gain from the properties belonging to the family. Therefore, P. W.1 and P. W. 2 are “inimical” and “interested witnesses”.

In the case of **Sudhakar Alias Sudharasan** (supra), the Hon’ble Supreme Court has distinguished between a “related witness” and an “interested witness”. According to the Apex Court, *“the plea of “interested witness”, “related witness” has been succinctly explained by this Court that “related” is not equivalent to “interested”. The witness may be called “interested” only when he or she derives some benefit from the result of litigation in the decree in a civil case, or in seeing an accused person punished. In this case at hand PWs 1 and 5 were not only related witnesses, but also “interested witnesses” as they had pecuniary interest in getting the accused petitioner punished. {refer State of U.P. v. Kishanpal}.”*

Even in the present case, P.W. 1 and P. W. 2 would gain an interest in the property of the family if the appellant were to be convicted in the present case. Thus naturally, they are “interested witnesses”.

Rule of prudence demands that the testimony of an interested witnesses should be corroborated by other evidence before it can be relied upon to convict an accused person. In the present case, although D. Anasuya (P. W. 1) and D.Sammaiah Goud (P. W. 2) claim that Tenugu Laxmi Narayana (P. W. 3) had also come to the house of the accused upon hearing the hues and cries, Tenugu Laxmi Narayana (P. W. 3) has turned hostile. Thus he does not corroborate the testimonies of P.Ws.1 and 2.

The only other piece of evidence which the learned trial court has relied upon is the site plan (Ex. P.3) which indicates the dragging marks in front of the house of the appellant. However, as the marks exist outside the house of the appellant, in the lane, the appellant need not offer any explanation for the same. Furthermore, as mentioned hereinabove, the testimonies of P.Ws. 1 and 2 with regard to the dragging of the body of the deceased is already found to be unsupported by the medical evidence. Therefore, the mere existence of some dragging marks, that too outside the house of the appellant, is too flimsy a ground for connecting the appellant to the alleged crime.

Therefore, the prosecution has failed to prove its case through direct or circumstantial evidence. It is, indeed, unfortunate that a young man, 28 years old, has lost his life. But his death seems to be shrouded in a mystery. For, on the one hand, the prosecution has failed to prove the exact place of incident, on the other hand, according to the prosecution, the appellant had helped the complainant to bring the dead body home, and the appellant continued to stay in the same village for over two days. Moreover, despite knowing the fact that Tenugu Laxmi Narayana (P. W. 3) had turned hostile, the prosecution has failed to examine other persons who had allegedly reached the house of the accused upon hearing the alleged hue and cry raised by the deceased. Therefore, the prosecution had withheld material witnesses. Hence an adverse inference can be drawn against the prosecution: if the other witnesses were produced, they would have knocked the bottom out of the case of the prosecution.

Therefore, for the reasons stated above, the appeal is hereby allowed. The appellant is acquitted of offence under Section 302 IPC. The impugned judgment is hereby set aside. Since the appellant was granted bail by this Court by order dated 12.02.2018, the bail bonds shall stand cancelled.

Miscellaneous petitions, if any, pending shall stand dismissed.

RAGHVENDRA SINGH CHAUHAN, J

T. AMARNATH GOUD, J

Date: 21.01.2019

TSR