

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI**

CRIMINAL APPEAL NO: 547 OF 2015

**Crl.Appeal Under Section 374 (2) of Cr.P.C. aggrieved by the Judgment
dated 13-01-2015 in S.C. No. 39 of 2010 on the file of Special Sessions Judge
for SCs / STS (POA) Act, 1989 – cum- Additional District and Sessions Judge,
L.B.Nagar, Ranga Reddy District**

Between:

**Yenugu Govind Reddy, S/o. Ananth Reddy, aged 38 years, Occ Agriculture ; R/o.
Godamguda village, Dharur Mandal**

...APPELLANT/ Accused

AND

**State Of Telangana, Rep: by its Public Prosecutor, High Court of Telangana
Hyderabad**

...RESPONDENT

Counsel for the Appellant: SMT G. JAYA REDDY

Counsel for the Respondent: THE PUBLIC PROSECUTOR

The Court delivered the following: JUDGMENT

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

CRIMINAL APPEAL No.547 OF 2015

JUDGMENT: (Per Hon'ble Sri Justice N.Tukaramji)

This appeal is directed against the judgment of conviction and sentence dated 13.02.2015 in S.C.No.39 of 2010 on the file of the Special Judge for Trial of Cases under SCs & STs (PAO) Act, 1989-cum-VIII Additional District and Sessions Judge, Ranga Reddy District, whereby, the appellant/accused had been convicted for the charges under Sections 302 and 379 of Indian Penal Code (hereinafter 'IPC') and sentenced to undergo imprisonment for life and to pay fine of Rs.100/- for the offence punishable under Section 302 IPC., and also sentenced to undergo imprisonment for three years for the offence punishable under Section 397 IPC. Both the substantive sentences of imprisonment were directed to run concurrently.

2.1 The prosecution case in brief is that Yenugu Govinda Reddy/convict/accused (hereinafter 'the accused') is the

resident of Godhamguda village had an illicit affair with Pyata Bheemamma/deceased (hereinafter 'the deceased') who belongs to the Scheduled Caste community, since 10 years. On that account, the husband of deceased left her, thereafter the accused used to visit her house and extended help to her family. However, since six months prior to the incident, the accused began to suspect that the deceased had developed bad acquaintance and cautioned her in the presence of J. Anitha/PW-10 and P.Ramulu/PW-11, to give up vices and to avoid frequent visits to Vikarabad, or else he will kill her. Albeit, as she continued, the accused bore grudge and hatched a plan to do away with her life.

2.2 In pursuance thereof, the accused instructed the deceased to meet him at Alpha Hotel, Vikarabad on 12.08.2008 at 2.00 pm. From there he led her to Mahashakti Chowrasta. There he purchased one cheap liquor quarter bottle and made her to consume more alcohol and from there by inducing, taken her in an auto. Meanwhile, on enquiry of one P.Narsimhulu/P.W.12 the accused informed him that they are going to Mominpet to attend some work.

At Mominpet bus stand, the accused purchased one 'short company' cheap liquor bottle, one kinley water bottle, one biryani packet, two plastic glasses and taken her on foot on Vikarabad road and at some distance from Mominpet village, they consumed liquor under a neem tree. Even there the accused made her to consume more liquor and while the deceased was in intoxicated condition, had sexual intercourse, after that he sat on the deceased and throttled her to death.

2.3 After confirming her death, the accused snatched the deceased's ear tops, cash of Rs1,650/- and kept in his shirt pocket. He also took her gold beads, leg chains and kept them in his pant pocket and fled away from the scene to Mominpet bus stand, from there to Vikarabad and reached their village. However found that the gold beads and silver leg chains are missing from his pants pocket. Later on 24.08.2008, he pledged the gold ear tops at the pawn shop of K.Babulal/P.W.13 for Rs.2,000/-.

2.4 After apprehension of the accused and in pursuance of his confessional statement, a pair of ear studs/M.O.7 were recovered from the PW-13 and the accused was remanded to judicial custody. Subsequently, on completion of investigation final report was laid for the offence punishable under Sections 302, 379 IPC., and Section 3(2)(v) of SC/ST (POA) Act, 1989.

3. On examination under Section 239 Code of Criminal Procedure (CrPC), as the accusations were denied, the accused was made to stand trial. The charges were framed under Sections 302, 379 IPC., and Section 3(2)(v) of SC/ST (POA) Act, 1989.

4. During trial, the prosecution got examined the complainant/P.w.14, circumstantial witnesses/P.Ws.2 to 12 and 17, the pawn broker with whom the accused pledged the ear tops of deceased/P.W.13, panch witnesses for confession and recovery/P.Ws.15 and 16, panch witness for scene of offence and inquest/P.W.18, panch witness for the identification parade of gold ear tops/ P.W.19, the doctor

who conducted autopsy over the dead body of the deceased/P.W.20 and the investigating officer/P.W.21 and marked Exs.P1 to P25 and material objects 1 to 12.

5. On the conclusion of prosecution evidence, the incriminating material has been put to the accused under Section 313 CrPC and the same was denied, but no defence evidence was placed.

6. The trial Court on considering the oral and documentary evidence and other material on record, convicted and sentenced the accused as stated above.

7. We have heard Smt. G. Jaya Reddy, learned counsel for the appellant and the learned Public Prosecutor and carefully perused the evidence and the materials on record.

8. The learned counsel for the appellant/accused would plead that the prosecution case is based on circumstantial evidence and the evidence placed by the prosecution is full of discrepancies and contradictions and far from establishing essential factual links. However, the trial Court convicted

the appellant based on presumptions, surmises and conjectures. Further as the prosecution failed to conclusively establish the presence of the accused much less his involvement in the offence, the accused is entitled for acquittal.

9. Learned Public Prosecutor would submit that the evidence placed by the prosecution is establishing the motive for the accused to commit the offence. Further the accused and deceased were last seen together before the incident. The recovery of ornament/M.O.7 of the deceased from the appellant is leaving no other possibility except his involvement in the offence. Therefore, the trial Court had properly analysed the evidence and rightly found guilt and convicted the accused. Thus, prayed for confirmation of the impugned judgment.

10. In these rival pleadings, the points that arise for determination are:

- i) *Whether the death of Bheemamma/deceased is homicidal?*

- ii) *Whether the prosecution is able to establish the involvement of the appellant in the offence beyond reasonable doubt?*

11. **(A) Point No. (i):** The PW-1/K.Venkataiah, PW-2/B.Ramaiah residents of Mominpet village deposed that six years ago on knowing through villagers they went to the outskirts of Mandhagudda, found a female deadbody. The PW-2 deposed that he dug a pit as per the directions of police, buried the deadbody. The PW-18/Narsimhulu, mediator for scene of offence panchanama and the entries in Ex.P-11/ scene of observation report narrating that the decomposed deadbody of a woman is found in Sy.No.384 of Mominpet village under a neem tree and at the scene they have collected wearing apparel of the deadbody, bangles, silver anklet and plastic chappal. The PW-3/brother of deceased/Sathaiah and his brother-in-law as PW-4/P.Yadaiah, son-in-law of the deceased as PW-5/J.Sangaiah, daughter of the deceased PW-10/J.Anitha, son of the deceased PW-11/P.Ramesh, the neighbours PWs.6 to 9 (K.Laxmamma, Y.Yadaiah, S.Narsimulu, and M.Srinivas respectively) in one voice

stated that they came to know about the unknown deadbody found in the outskirts of Mominpet and they went to police station, identified material objects belonging to the deceased.

12. The Doctor/PW-20/Dr.Pavan Kumar deposed that on 21.08.2008 at request of the Station House Officer, he visited the scene of offence where he found a decomposed and mutilated deadbody by wild animals. Further the skull and soft tissues are decomposed, upper limbs are mutilated and only bones were present. Thus, as the deadbody was in highly marred condition, he could not give any opinion as to the cause of death.

13. By this evidence, finding a female deadbody in the outskirts of Mominpet/Mandhagudda and by the identification of material objects found on the deadbody by the witnesses, it can safely be concluded that the deadbody found is of the person Pyata Bheemamma/deceased and as the medical evidence is not clear, it shall be held as the death other than the natural circumstances.

14. **(B) POINT NO.(ii):**

The core prosecution case is that the accused had illicit affair with the deceased/Bheemamma and as he suspected that she developed other relationships, warned her and as she did not heed the words, bore-grudge and committed the offence.

15. To prove the accusation the prosecution has been relied on circumstantial evidence. In regard to appreciation of circumstantial evidence, the Hon'ble Supreme Court in large number of cases annunciated the guiding principles to be followed and consistently held that while considering the circumstantial evidence, such evidence must satisfy the conditions enumerated in the dictum of Sharad Birdhichand Sarda v. State of Maharashtra¹.

In *Anwar Ali and another vs. State of Himachal Pradesh*², the Hon'ble Apex Court in reiteration held that in determining the guilt, the circumstances taken cumulatively should form a chain so complete that there is no escape

¹ AIR (1984) SC 1622

² 2020(10) SCC 166

from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

16. In the light of these principles, the materials placed on record need examination.

To establish the culpability of the accused, the prosecution put-forth **(a)** the motive, **(b)** the evidence of last seen together, **(c)** the confessional statement and the recovery of ornament/M.O.7 from the accused. These circumstances need careful examination to deduce the guilt.

17. **(a) Motive:**

The brother/PW-3, son-in-law/PW-5, daughter/PW-10, son/PW-11 of the deceased testified that the accused and the deceased have developed illegal intimacy. The neighbour/resident of same village/PW-9 deposed that the

accused used to visit the house of the deceased. However, the other neighbours PWs.5, 6, 7 and 8 did not refer to any such acquaintance between the accused and the deceased.

It is pertinent to note that the prosecution specifically referred that six months prior to the occurrence, the accused developed suspicion over the conduct of the deceased and one month prior to the incident in the presence of her daughter/PW-10 and son/PW-11 warned her to stop her movements, otherwise he will kill her. In the evidence the daughter/PW-10 deposed that the accused came to the agricultural field and warned her mother that she had developed illegal contacts with others. Whereas PW-11 stated that six months prior to the date of death of the deceased, the appellant came to their agricultural field and warned his mother that he will kill her if she had any illegal affairs with others.

Thus, though the neighbours/PWs.3 to 8 did not approve the alleged illicit affair, the family members of the deceased consistently specified the affair between the deceased and the accused, except the variance in time and

the words used by the accused in dialogue. Even if these aspects are accepted, the same cannot be read as substantive material to incriminate the accused unless the other circumstances are conclusively point the involvement of the accused.

18. **(b) Last seen together:**

The foremost plea of the prosecution is that on the date of the occurrence the accused and the deceased were seen together. The neighbour/PW-6 deposed that on one day an auto came to the house of the deceased and she boarded in the auto. As per the auto driver/PW-17 in the year 2008 the deceased boarded his auto at the village and gone to Vikarabad. Further the PWs.3 and 5 stated that the deceased went to Vikarabad. As per the PW-4 the deceased went to the Market, Vikarabad. The neighbour/PW-7 stated that the deceased left her house. S.Narsimhulu/PW-8 stated that P.Narsimhulu/PW-12 informed him that the accused and deceased went to Vikarabad to purchase pesticides. The son/PW-11 stated that on that day his mother informed him that she is going to Vikarabad but she did not return.

However, the PW-12 deposed that he had seen the deceased and the accused at MRP Petrol Bunk and when he informed about his daughter's marriage, the deceased conveyed that she will attend the marriage.

19. In these testimonies, except the versions of PWs.6, 17 and 12 the other testimonies are hearsay. By the version of PWs.6 and 17 the deceased had left alone to Vikarabad. It is pertinent to note that the prosecution case is that on the instructions of the accused the deceased went to Vikarabad to meet him at Alfa Hotel. No witness including the PW-12 referred to this aspect. As per the PW-12, he saw the deceased and the accused at MRP Petrol Bunk. To note, the PW-12 also stated that after receiving information about the death of the deceased, the police had arrested and beat him indiscriminately and thrown him at his house. For discussion, if this statement is considered, it is suggesting that the police also speculated the involvement of PW-12 in the offence. When it is so, in normal course of conduct, he/PW-12 should have informed the police about he noticing the deceased and accused together at MRP Petrol Bunk,

Vikarabad, no such act has been claimed. Further the prosecution case is that the PW-12, saw the deceased boarding the auto at MRP Petrol Bunk to go to Mominpet along with the accused, which is not spoken by the witness/PW-12.

20. It is noteworthy that in the evidence of Doctor/PW-20 who conducted post mortem examination of the putrefied body of the deceased, specifically stated that the death would have been caused 4 to 6 days prior to autopsy. As per the prosecution the incident occurred on 12.08.2008. If the medical evidence is taken into account the death should have possibly occurred on 15.08.2008 but not 12/13.08.2008. In that case, even last seen together on 12.08.2008 is taken as it is, as there is a long gap of 2 to 3 days, the possibility of contact with other persons cannot be ruled out.

21. In this context, a mentionable authority of Hon'ble Supreme Court between **Bodh Raj @ Bodha and others v**

State of Jammu and Kashmir³, wherein the last seen theory has been explicated in para 31 as under:

"The last seen theory comes into play where the time gap between pointing out that the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes improbable himself. It would be even in some cases to positively establish that the deceased was last seen with the accused, when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to complete that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of the guilt in those cases."

22. Thus, in absence of the reliable evidence particularly the unconvincing evidence of PW-12 that the deceased and the accused were seen together finding of the body of the deceased in a open and accessible place drawing any inference against the accused would be unjustified. For these reasons, the circumstance of last seen together put-

³ AIR 2002 SC 316

forth by the prosecution basing on the evidence of PW-12 is lacking foundation and not inspiring confidence to rely on.

23. **(C) Confessional statement and recovery of the material objects:**

The Investigating Officer/PW-21 deposed that the appellant made the statement of admission in the presence of PWs.15 and 16 and recorded the statement of accused as in Ex.P-20/panchanama (relevant portion had been marked). Thereupon, a receipt Ex.P-2 and cash of Rs.1620/- were seized from the possession of the appellant. In furtherance thereof, the appellant led them to Jai Bhavani Pawn Brokers shop and shown the receipt to the shop owner/PW-13/Babulal. Thereupon, a pair of ear studs/MO.7 were shown by the shop owner/PW-13 and it was seized under Ex.P-21 panchanama. However, both the mediators PWs.15 and 16 did not support the prosecution version and categorically stated that their signatures were obtained by the police on white papers, however identified their signatures. Nonetheless, the confessional statement of the accused during the course of investigation made in the

presence of police cannot be proved against him as the same is hit by the Section 25 of the Indian Evidence Act.

24. With regard to recovery of pair of ear studs/M.O.7, the pawn broker/PW-13 deposed that six years ago the accused pledged the pair of ear studs/M.O.7 under receipt Ex.P-2 and police came to his shop along with the accused and seized the ear studs/M.O.7. However, in the cross examination stated that he issued Ex.P-2 receipt to the police when police brought the accused to him and as the accused pledged the articles in the night of 23.08.2008, he could not hand over the receipt, and yet, on the next day i.e. 24.08.2008 when the police brought the accused, the receipt/Ex.P-2 was handed over, as such he could not obtain the counter signature of the accused on the duplicate receipt.

25. When this evidence is carefully considered, as per the investigating officer/PW-21 the accused was apprehended by the police on 01.09.2008 at 11 a.m. Whereas the evidence of Pawn broker/PW-13 is that the accused was brought to

him on 24.08.2008. Thus the custody and the issuance of receipt on 24.09.2008 to the police when they came along with the accused is giving scope to entertain any amount of doubt as these aspects are shaking the foundation of the prosecution case.

26. Therefore, we are of the considered opinion that the circumstances projected by the prosecution i.e. last seen together, confessional statement and recovery of material objects are as standing open ended, falling short to bear up against the legal scrutiny, resultantly it shall be held that the prosecution had failed to establish the chain of circumstances giving rise to the hypothesis to conclusively hold that it is the accused alone and none else has committed the offence in consequence the benefit of doubt shall be extended and accordingly the accused is entitled for acquittal.

27. **In the result**, the appeal is allowed. The judgment of conviction and sentence dated 13.02.2015 in S.C.No.39 of 2010 on the file of the Special Judge for Trial of Cases under SCs & STs (PAO) Act, 1989-cum-VIII Additional District and

Sessions Judge, Ranga Reddy District are hereby set aside and the appellant/accused is acquitted of the charges with which he is charged. The accused shall be set at liberty forthwith, if he is not required in any other case or crime. The fine amount, if any, paid by the appellant/accused shall be refunded.

As a sequel, miscellaneous petitions pending if any in this Appeal, shall stand closed.

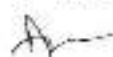
Sd/- B.S. CHIRANJEEVI,
JOINT REGISTRAR

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SECTION OFFICER

To

1. The Special Sessions Judge for Cases Under SCs / STs (POA) Act 1989 cum VII Additional District & Sessions Judge at L.B.Nagar , Ranga Reddy District. (with record)
2. The Judicial First Class Magistrate , Vikarabad, Ranga Reddy District
3. The Station House Officer , Mominpet Police Station, Ranga Reddy District.
4. The Superintendent, Central Prison, Cherlapally, Ranga Reddy District. (By Special Messenger)
5. One CC to Smt. G. JAYA REDDY Advocate [OPUC]
6. Two C.D.Copies



HIGH COURT

DRSAJ & NTRJ

DATED:30/12/2022



JUDGMENT

CRL.APPEAL No.547 of 2015

ALLOWING THE CRL.APPEAL

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MA

31/12/23