

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

Criminal Appeal No.444 OF 2009

Between:

Kotte Raghu

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 28.07.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 444 of 2009

% Dated 28.07.2022

Kotte Raghu

... Appellant

And

\$ The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad

..Respondent.

! **Counsel for the Appellant:** C. Mohan Prakash

^ **Counsel for the Respondent:** Public Prosecutor

> HEAD NOTE:

? Cases referred

¹ 2018 (1) ALD (CrI.) 74

² 1984 AIR 1622

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.444 OF 2009

JUDGMENT:

1. The appellant is convicted for the offence under Section 304 Part-II of IPC and sentenced to undergo rigorous imprisonment for a period of four years vide judgment in S.C.No.591 of 2008 dated 17.03.2008 passed by the I Additional Sessions Judge, Karimnagar. Aggrieved by the same, present appeal is filed.

2. The case of the prosecution is that the deceased is the son of P.W.1. The deceased and the appellant went to Punjab for doing labour work and they came back. There were disputes between the appellant and the deceased at Punjab regarding lifting of cotton bags. The son of P.Ws.1 and 2 was found dead on 15.02.2008 at a club and the Manakundur, Karimnagar District registered a case under Section 302 of IPC suspecting that it was the appellant who had killed the deceased by beating him on his head with stone keeping previous enmity in mind. The police having concluded

investigation filed charge sheet for the offence under Section 302 of IPC against the appellant.

3. The learned Sessions Judge examined P.Ws.1 to 17 on behalf of the prosecution and marked Exs.P1 to P14 and also M.Os.1 to 9 during the course of trial.

4. The learned Sessions Judge found that the appellant is liable to be convicted under Section 304-II IPC on the basis of the circumstantial evidence.

5. The learned counsel for the appellant submits that this is a case of circumstantial evidence and the prosecution failed to prove that any kind of disputes that were in between the appellant and the deceased. He submits that the prosecution witnesses never saw the deceased and the appellant together prior to his death. There are no eye witnesses to the incident and only on the basis of the alleged recovery of stone and clothing, the learned Sessions Judge came to a conclusion that the appellant was guilty for the offence under Section 304 Part-II IPC.

6. Learned counsel for the appellant relied upon the judgment of the Division Bench of this Court in the case of *State v. Junugari Devender*¹, wherein it is held as follows:

“51. On the aforesaid facts, the case of the prosecution, resting solely on circumstantial evidence, cannot be accepted. The prosecution failed to establish an unbroken chain of events unerringly pointing to the guilt of A1 and A2 obviating any scope for inferring their innocence. On the other hand, the investigation seems to have been engineered and manipulated from the start as is evident from the delay in registration of the FIR and the ambiguity as to when A1 and A2 were apprehended.

52. Further, this is not a case attracting the ‘last seen’ theory as the evidence of PW2, which purports to bring in the said theory, cannot be treated as creditworthy. As pointed out by the Supreme Court in *Nizam v. State of Rajasthan, 2015 (2) ALD (CrL.) 898 (SC)= (2016) 1 SCC 550*, the ‘last seen’ theory should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being last seen. In the present case, the evidence of PW.2 fails to inspire confidence and the circumstances in which he claims to have been at the scene of the offence are not believable. The question of applying the ‘last seen’ theory to the present case therefore does not arise.”

7. The present case is of one of circumstantial evidence. In the case of circumstantial evidence, the circumstances have to be proved beyond reasonable doubt to infer the guilt of

¹ 2018 (1) ALD (CrL.)74

accused. The Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda vs State Of Maharashtra**² held as follows:

"The following conditions must be fulfilled before a case against an accused can be said to be fully established by circumstantial evidence:

- (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 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 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.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

8. In the instant case, P.Ws.1 and 2 who are parents state that they suspect the appellant for committing murder of their son, there is no evidence to show that the appellant and the deceased being seen together prior to the death of the deceased. The only evidence is that of hostile witness P.W.3, who stated that around 4.00 p.m, the accused purchased toddy and went away and declined even to acknowledge that he knew the deceased.

² 1984 AIR 1622, 1985 SCR (1) 88

9. The only evidence on the basis of which the court convicted the appellant regarding the complicity of the appellant on the basis of the evidence of P.W.11 who is the panch witness to the seizure of material objects, i.e., M.O.1 is the blood stained shirt, M.O.2 is the pant (blood stained), M.O.3 is the cut drawer, M.O.4 is the round stone and blood stained earth and controlled earth, M.O.5 is the filter, M.O.6 is the blood stained earth, M.O.7 is the controller earth and seized them. P.W.12 is the panch for seizure of pant and shirt of the accused allegedly worn at the time of incident. Both the clothes of the deceased and the appellant were sent for FSL examination vide Ex.P14. In the FSL report, it was mentioned that both the clothes of the appellant and the deceased contained blood stains of blood group 'O'.

10. The dead body was already found and the wearing apparel of the dead body was seized. It is not the case of the prosecution that the appellant had pointed out the scene of offence pursuant to confession. The only circumstance which the prosecution is relying upon the blood that was found on

the wearing apparel of the deceased and the accused and the blood being group 'O'. Apart from the said circumstances, there are no other incriminating circumstances to say that the appellant had committed murder of the deceased. Since there are no witnesses who have seen the deceased and appellant prior together prior to his death, it cannot be inferred that the appellant in any manner is responsible for the death of the deceased only on the basis of blood stains being found on the wearing apparel of accused. The police has not sent the sample blood of accused for any blood test nor any DNA testing was done to prove that the blood found on the clothes of accused was that of accused.

11. The motive which gives prominence in the case of circumstantial evidence, is not proved by the prosecution. Except P.Ws.1 and 2 saying that the deceased informed that there were differences while the deceased and the appellant worked at Punjab, there is no other evidence or incident which had taken place after the appellant and the deceased returned from Punjab. It is not clear from the case of the prosecution as

to the exact time and details of the accused and deceased working in Punjab together. Further, there is also no evidence as to how many days prior to the said incident, the appellant and the deceased worked together. According to P.W.1, during chief examination, he stated that ten years back his son along with the accused and three others went to Punjab to eke out their livelihood and they stayed for three months and returned and on return, it was informed that a quarrel took place between him and the accused in Punjab. The motive as suggested is too far fetched, as the alleged quarrel in between the appellant and the deceased was approximately eight years prior to his death. As stated by P.W.1, the appellant and the deceased stayed in Punjab ten years previously for three months and came back and the death was 1 ½ years prior to his statement in the Court.

12. In the said circumstances, the prosecution has failed to prove beyond reasonable doubt that this appellant was responsible for causing death of the deceased.

13. In the result, the conviction imposed by impugned judgment in S.C.No.591 of 2008, dated 17.03.2009 is set aside. Since the accused is on bail, his bail bonds stand cancelled.

14. Accordingly, the Criminal Appeal is allowed.

K.SURENDER, J

Date: 28.07.2022

Note: LR copy to be marked

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HON'BLE SRI JUSTICE K.SURENDER

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Date:28.07.2022.

kvs

