

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

**FRIDAY THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE K. SUJANA**

CRIMINAL APPEAL NO: 1089 OF 2015

Criminal Appeal Under Section 374(2) of Crl.P.C, 1973 against the Judgment Dated 31-7-2015 in S.C.No. 23 of 2014 on the file of the Court of the Principal Sessions Judge, Adilabad.

Between:

Dasari Ramesh, S/o. Malkanna,
Occ: Agriculture Coolie, R/o. Mallapur Village,
Dilawarpur Mandal, Adilabad District.

...APPELLANT/ACCUSED

AND

The State of Telangana,
rep. by the Public Prosecutor,
High Court at Hyderabad.

...COMPLAINANT/RESPONDENT

Counsel for the Appellant : Smt B. Vaijyanthi

**Counsel for Respondent : Sri Muthyala Muralidhar,
Additional Public Prosecutor**

The Court delivered the following:

THE HON'BLE SRI JUSTICE K.LAKSHMAN

AND

THE HON'BLE SMT JUSTICE K. SUJANA

CRIMINAL APPEAL NO.1089 OF 2015

JUDGMENT: *(per Hon'ble Smt Justice K.Sujana)*

This appeal is filed by the appellant/accused against the judgment in S.C.No.23 of 2014 on the file of Principal Sessions Judge at Adilabad wherein the appellant is convicted for the offence punishable under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced to suffer life imprisonment and to pay fine of Rs.1,000/-, in default of payment of fine to suffer simple imprisonment for three months. The appellant is also convicted for the offence under Section 382 of the IPC and sentenced to suffer rigorous imprisonment for a period of seven years and to pay fine of Rs.1,000/-, in default of payment of fine to suffer simple imprisonment for three months and he is further convicted for the offence under Section 201 of the IPC and sentenced to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/-, in default of payment of fine to suffer simple imprisonment for three months. All the sentences of imprisonment were directed to run concurrently.

2. The case of the prosecution is that the deceased-Rodda Rajavva and the appellant/accused are resident of Mallapur village of Dilawarpur Mandal. The family of the deceased is having Ac.2.04 guntas of agricultural land. Earlier for about 10 years the appellant worked as farm servant with the deceased and in that process, he developed intimacy with the family members of deceased and they completely believed him. Thereafter, the appellant left the services of the family of deceased as farm servant and started working in Sangvi Village, where he worked for about five years. Later the accused used to attend daily coolie work in the fields of villagers, but he was not in a position to maintain his family due to insufficient income. The accused thereby decided to gain money illegally and kept an evil eye on the gold ornaments of the deceased, but due to fear of his identity, he decided to commit murder of the deceased. Accordingly, on 28.09.2012 in the morning the accused was called by the deceased for spraying pesticide to her cotton crop. Accordingly, accused attended the said work till noon hours. Later when the accused asked for coolie amount, the deceased replied that she will pay later, due to which the accused became angry, picked up quarrel with her and threatened to see her end. The same was witnessed by Pws.2, 5

and 6. On the next day, when the deceased was alone in the field, the accused killed her and thrown in the well and stolen gold articles of the deceased.

3. To prove the case, prosecution examined Pws.1 to 14 and got marked Exs.P.1 to P.33 and M.Os.1 to 10 are marked. Basing on the evidence on record and after hearing both sides, the trial Court convicted the accused as stated supra.

4. Heard Smt B.Vyjayanthi, learned counsel for the appellant and Sri Muthyala Muralidhar, learned Additional Public Prosecutor for the respondent-State.

5. Learned counsel for the appellant would submit that there is no evidence on record to prove that accused is responsible for the death of deceased and there are no eye witnesses to the incident, except recovery of stolen articles to connect the accused with the offence. Mere recovery of stolen articles from the possession of appellant is not sufficient to prove the offence under Section 302 of the IPC. Therefore, prayed the Court to set aside the judgment of trial Court by acquitting the appellant.

6. On the other hand, learned Additional Public Prosecutor would submit that though there is no eye witness to the incident,

there is evidence on record to prove that there is quarrel between the deceased and accused with regard to payment of coolie amount. Further the stolen articles were recovered from the possession of accused which is sufficient to prove the offence against him. As such, prayed the Court to dismiss the appeal.

7. Now, the point for consideration is whether the prosecution proved the guilt of the accused for the offences under Section 302, 382 and 201 of the IPC ?

POINT :

8. Pw.1 is the husband of deceased, Pw.2 is the son, Pw.5 is daughter-in-law of the deceased, Pw.6 is the person residing in the house opposite to the house of deceased and Pw.3 is the person who is also having Ac.4.00 of land in the village and used to go to the fields at 8.00 a.m., and he saw the deceased at about 8.00 a.m., while going to her field. His evidence is that on the date of incident he went to Kanjera Village to attend funerals of his relative and his wife went to the field. The deceased used to go to the field by 8.00 a.m, and return back at 12.00 or 1.00 p.m., and after having food, she again used to go to the field and return by 6.00 p.m. On the date of incident also at 8.00 a.m., she went to field and in the afternoon his son informed over phone that his

wife did not return from the field. Thereafter his son went to the field and searched for his wife, but she could not be traced and in the evening when he returned to the village he along with his son went around their field but could not trace her. On the next day morning by 5.00 a.m., himself, his sons and other villagers went to their field and searched for his wife. While searching they have noticed some dragging marks of a body in the field and they have also noticed beans on the way and dragging marks up to the well. Then, they searched in the water with iron hooks and bucket and they found deceased body floating on the water. He further deposed that his wife was wearing gold poosalu, Savukulu, gold ear studs, budeelu, side sticks and Kathera Baleelu, but the same were not found on the body. He also deposed that the accused worked with him for seven years as farm servant and he left the services and two years thereafter, he came to attend coolie work in his field and one day prior to the incident he quarreled with his wife for coolie amount and threatened her to see her end. Therefore, he suspected the accused.

9. Pw.2 is the son of deceased. He also deposed on the same lines as that of Pw.1.

10. Pw.3 is the neighbour and he deposed that on the date of incident, he saw the deceased at 8.00 a.m., while going to her field along with a basket. At that time, he observed gold ornaments on her body which were regularly worn by her. In the evening he came to know that the deceased has not returned home, on that he went to field and by then all the villagers were searching for her. They also noticed broken maize plants suggesting dragging of a person and also noticed beans and half burnt beedi piece in the field and dragging marks upto the well. He further deposed that as it became dark, they returned to homes and on the next day they searched in the well, where the dead body of the deceased was found.

11. PW.4 is a photographer who took photographs of the scene of offence. PW.5 is the daughter-in-law of deceased and she also deposed on the same lines as that of PW.1. She also deposed that on 28.09.2012 accused attended the Coolie work of spraying the pesticides in their field along with her mother-in-law. In the evening he requested her mother-in-law for payment of coolie amount. Her mother-in-law said that she has no money and that she will pay the same later. On that the accused threatened her to see her end.

12. PW.6 is a neighbour and he deposed that on the previous day of the incident he saw quarrel between the deceased and accused. PW.7 is the Kirana shop owner and he deposed that accused is in the habit of smoking Beedies and he used to purchase Vani Beedies from his shop.

13. PW.8 is the adjacent field owner and he deposed that the deceased used to go to her field in the morning at 8.00 A.M and his field is adjoining to the field of deceased. She came to the field a bit earlier to him and he saw the deceased while cutting beans. The accused came to the field of deceased on the earlier day and he did not notice accused on the date of offence in the field of deceased. On the date of missing, he also went to the field of deceased, searched for her and noticed damage caused to the maize crop and also noticed dragging marks up to the well.

14. PW.9 is the panch for scene of offence. Pw.10 is the panch for confession and his evidence is that accused confessed commission of offence and also shown the gold ornaments M.Os.1 to 7 and the same were seized by the police. The police also seized full shirt of the accused. Pw.11 is the Tahsildar and he conducted panchnama for identification of the property. He issued notice for conducting panchnama for identifying the properties.

15. Pw.12 is the investigating officer; Pw.13 is the doctor who conducted post mortem examination. According to him, the death of the deceased is due to Asphyxia due to throttling of neck. Pw.14 is the investigating officer who filed charge sheet after completion of investigation.

16. The prosecution tried to connect the accused with the offence on the following grounds :

- i. Basing on the confession of accused and recovery of M.Os.1 to 8.
- ii. Basing on the evidence of Pws.2, 5 and 6. According to Pws.2, 5 and 6, one day prior to the incident when the accused asked for coolie amount, the deceased did not pay the same, on which the accused threatened her to see her end.
- iii. Basing the evidence of Pw.3 that on the date of incident, he saw the deceased going to the field with a basket. According to him, he saw the deceased on the date of incident working in the field and she is cutting beans. He further deposed that he saw the accused on the previous day, but he has not seen him on the date of incident and;
- iv. Recovery of M.O.8 half burnt beedi.

17. The trial Court convicted the accused relying on the evidence of prosecution that the accused is responsible for the death and motive for the commission of offence is as he was unable to maintain his family, he committed theft of gold articles and as he is a known person to screen the evidence he killed the deceased. The prosecution relied on the first circumstance that quarrel between the deceased and accused one day prior to the incident and later recovery of gold ornaments from the possession of accused basing on his confession, whereas there is no evidence on record to prove the previous conduct of accused as he worked with the deceased family as a farm servant for about 10 years. Pw.1 or Pw.2 have not deposed anything against the accused about his conduct during his tenure as a farm servant, except the quarrel that took place between the accused and deceased a day prior to the incident which according to Pws.1, 2 and 6 is that he threatened the deceased that he will see her end.

18. Further there is no evidence to show that accused and deceased were last seen together or the accused was seen in the field of deceased on the date of incident though, the prosecution tried to prove the same with the help of the evidence of Pw.8. Pw.8 clearly deposed that accused was not present in the field on the date of incident and he was declared as hostile to that extent by

the prosecution. In cross-examination also he denied that he stated to the police that accused was present in the field of deceased along with her on the date of incident.

19. The only evidence on record in this case is recovery of stolen articles from the possession of accused. The contention of learned counsel for the appellant is that mere recovery of stolen articles is not sufficient to connect the accused with the offence. In support of the same, learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in **Dhan Raj Alias Dhand Vs State of Haryana**¹, wherein the Hon'ble Apex Court while discussing about this issue, relied on the previous judgments in **Mano V State of Tamilnadu**² and also **Madhu V State of Kerala**³ and observed that it is not safe to draw inference that the person in possession of stolen property had committed murder also. The recovery of looted articles at the instance of accused could not be relied upon in the absence of any details as to when and where such recovery was made and in the absence of any confession of commission of offence by the accused. In the present case prosecution case is that accused robbed the gold articles of the deceased as he is known person to her and committed murder of

¹ (2014) 6 Supreme Court Cases 745

² (2007) 13 SCC 795

³ (2012) 2 SCC 399

the deceased. To prove the confession-cum-recovery, Pw.10 was examined and his evidence is that they enquired accused in the presence of police and he confessed the commission of offence and shown the articles which are kept in his house, whereas in cross-examination he admitted that police enquired the accused but not by them. Further he has not stated that what are the gold articles recovered from accused. Therefore, the evidence of Pw.10 cannot be relied wholly to prove the recovery. The Court has to examine entire evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from the evidence is the guilt of accused. If more than one inference can be drawn then the accused must have the benefit of doubt as it is not the Court's job to assume and only when guilt beyond reasonable doubt is proved, then it is fair to record conviction. In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any chance of surmise or conjecture and must also be consistent with the guilt of the accused as observed by the Apex Court in **Munish Mubar V State of Haryana**⁴.

⁴ (2012) 10 SCC 464

20. Further, the prosecution also tried to connect the accused with M.O.8 half burnt beedi and also examined Kirana shop owner to connect the accused with the offence. But the said evidence cannot be relied on as the accused is not only person to smoke Vani Beedies in that village. As such, the said evidence is not helpful to the prosecution to connect the accused with the offence. Except recovery of gold ornaments, there is no evidence on record to connect the accused with the offence. The trial Court basing on the said evidence erroneously convicted the accused as observed by the Hon'ble Supreme Court that mere recovery of stolen articles is not sufficient to connect the accused with the offence. Therefore, the prosecution failed to prove the guilt of the accused for the offence under Section 302 of IPC. As such he is entitled for the benefit of doubt. Accordingly, the point is answered.

21. IN THE RESULT, the Criminal Appeal is allowed and the appellant/accused is found not guilty for the offences punishable under Sections 302, 382 and 201 of the IPC. Hence he is acquitted of the said offences and the judgment dated 31.07.2015 in S.C.No.23 of 2014 passed by the Principal Sessions Judge, Adilabad is set aside. The bail bonds of the accused shall stand cancelled. The appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

Miscellaneous applications, if any, pending in this Criminal
Appeal shall stand closed.

Sd/- B.S. CHIRANJEEVI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Sessions Judge, Adilabad. (With records)
2. The Superintendent Central Prison, Adilabad (By Speed Post)
3. The Additional Judicial First Class Magistrate, Nirmal.
4. The Station House Officer, Nirmal Rural Police Station, Nirmal.
5. Two CCs to Additional Public Prosecutor, High Court for the State of
Telangana at Hyderabad. (OUT)
6. One CC to Smt. B. Vijayanthi, Advocate [OPUC]
7. Two CD Copies

DL



HIGH COURT

DATED:29/12/2023

ORDER

CRLA.No.1089 of 2015



ALLOWING THE CRIMINAL APPEAL

10
K. S. RAO
29/12/2023