IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE NINETEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL APPEAL NO: 605 OF 2016

Appeal under Section 374 (2) of Cr.P.C. against the Judgment dated 19-05-2016 made in S.C. No. 41 of 2015 on the file of the Court of the VIII Additional Sessions Judge, at Nizamabad, Nizamabad District.

Between:

Nayakapodu Ramesh, S/o. Sathyanarayana Aged about 24 years, Occ: Meason R/o H.No. 5-39, Tenuguwada, Pachala Nadukuda Village, Velpoor Mandal, Nizamabad District. (CT.No. 8609, District Jail, Nizamabad)

...Appellant / Accused

AND

The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad

...Respondent

IA NO: 1 OF 2024

Petition under Section 389 (1) of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order passed in S.C.No. 41 of 2015 on the file of the VIII Additional Sessions Judge, at Nizamabad and grant bail to the petitioner till the disposal of the above Criminal Appeal No. 605 of 2016.

Counsel for the Appellant : **Sri Shaik Karimulla**

Counsel for the Respondent : **Sri Arun Kumar Dodla**
Additional Public Prosecutor

The Court delivered the following Judgment :

THE HONOURABLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SRI JUSTICE J. ANIL KUMAR

CRIMINAL APPEAL No.605 OF 2016

JUDGMENT: *(per Hon'ble Sri Justice K.Surender)*

1. This appeal is filed aggrieved by the judgment dated 19.05.2016 in S.C.No.41 of 2015, on the file of the VIII Additional Sessions Judge, at Nizamabad, Nizamabad District, convicting the appellant for the offence under Section 302 of IPC and sentenced to life imprisonment for committing murder of husband of P.W.6 namely Shaik Saheb Hussain.

2. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for respondent-State.

3. The case of the prosecution is that on 29.05.2015, the deceased shifted from Mamidipally village to Pachala Nadukuda village and there he unloaded his household articles. The deceased decided to stay in a tin shed. However, on the next day morning, his dead body was found. P.W.7 is the person who stated that on the night of previous day of dead body being found, he along with some others including the deceased and appellant played cards at the poultry farm of one Gudala Ramesh and the appellant lost his money in the game. Thereafter, they left. On the next day, the said Saheb Hussain

was found dead in the tin shed, where he arrived on the previous day along with household articles.

4. During the course of investigation, the Police arrested the appellant on 15.06.2014. At his instance, M.Os.1 and 2 which are cell phones along with hammer/M.O.7 were seized, after, the confession of the appellant was recorded.

5. Learned Sessions Judge placing reliance on the evidence of recovery of M.Os.1, 2, 8/cell phones and M.O.7/hammer which were in possession of the appellant found that mobile phone of the deceased/M.O.1 was being used by the appellant by inserting his sim which was taken in the name of his mother. M.O.1 was identified by P.W.6/wife of the deceased.

6. The case is one of circumstantial evidence. The Hon'ble Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra**[1], laid principles as to the acceptance of circumstantial evidence and the basis to record conviction, which read 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;

[1] (1984) 4 SCC 116

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 explained 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."

7. Apart from the alleged recovery of cell phone/M.O.1 from the accused after his arrest on 15.06.2014, no other evidence is placed on record by the prosecution. Though P.W.7 states that all of them, he along with appellant, accused and some other persons played cards and left, however, it is not stated by P.W.7 that there was any quarrel or that the appellant stayed back or followed the deceased to his house. There are no witnesses who have seen the appellant near the house of the deceased on the day before his dead body was found.

8. The case of the appellant is one of denial. The prosecution has not collected any evidence as to where from the cell phone was purchased by the deceased. In fact, sim card

that was used in M.O.1 was that of mother of the appellant. Even assuming that the cell phone of the deceased was in possession of the appellant, the only circumstance cannot form basis to suggest that it was the appellant who had committed murder of the deceased. At most, the case is one of being in possession of theft article. The said possession of theft article is punishable under Section 411 of IPC.

9. Accordingly, conviction under Section 302 of IPC is hereby set aside while convicting the appellant under Section 411 of IPC and sentenced to undergo two years of rigorous imprisonment. Since, it is informed that the appellant is in jail, in view of completion of serving two years of imprisonment, he shall be released forthwith, if he is not required in any other case.

10. In the result, the Criminal Appeal is partly allowed.

Sd/- A.V.S.S.C.S.M. SARMA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

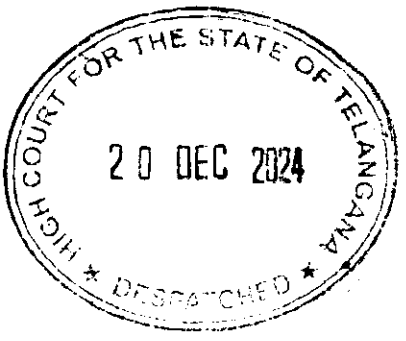
To,

1. The VIII Additional Sessions Judge, at Nizamabad, Nizamabad District (with records, if any)
2. The Additional Judicial Magistrate of First Class, Armoor, Nizamabad District
3. The Superintendent, District Jail, Nizamabad (By Speed Post)
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana, Hyderabad [OUT]
5. One CC to Sri Shaik Karimulla, Advocate [OPUC]
6. Two CD Copies

VA

HIGH COURT

DATED:19/12/2024



JUDGMENT

CRLA.No.605 of 2016

PARTLY ALLOWING THE CRLA

20/12/2024