

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

**MONDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

CRIMINAL APPEAL NO: 833 OF 2024

**Crl.Appeal Under Section 378 (3) & (1) of Cr.P.C. against the Judgment in
S.C.No. 30 of 2023 dated 28-03-2024 on the file of the Principal District &
Sessions Judge, Narayanpet**

Between:

The State of Telangana, rep. by the Public Prosecutor, High Court for the State of
Telangana, Hyderabad - 500066. **...APPELLANT/ Complainant**

AND

1. Chiluka Gopai @ Pattidar Gopal, S/o. Ramulu, aged 35 years, Occ. Agriculture,
R/o. Pedda Jatram Village of Utkur Mandal.
2. Darpally Amrutha @ Amruthamma, W/o. Kistappa Occ: Agriculture R/o.
Pedirepadu Village of Maddur Mandal

...RESPONDENTS/ Accused

**Counsel for the Appellant: SRI M. RAMACHANDRA REDDY, ADDITIONAL PUBLIC
PROSECUTOR**

Counsel for the Respondents: NONE APPEARED

The Court delivered the following Judgment:

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU
RAJESHWAR RAO**

Crl.A.No.833 OF 2024

JUDGMENT: *(per Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. M.Ramachandra Reddy, learned Additional Public Prosecutor for the appellant/State. Perused the record.

2. The present is an appeal which has been filed under Section 378(3) & (1) of the Criminal Procedure Code seeking leave to appeal as also challenging the judgment of acquittal dated 28.03.2024 passed by the learned Principal District and Sessions Judge, Narayanpet in S.C.No.30 of 2023.

3. Vide the said impugned judgment, the learned trial Court i.e., Principal District and Sessions Judge, Narayanpet has found the two accused persons not guilty of having committed the offences punishable under Sections 302 and 379 read with Section 34 IPC.

4. The challenge to the said judgment of acquittal is primarily on the ground that the trial Court has not properly appreciated the

evidence of P.W.4 which gives the material pertaining to the last seen theory so far as the circumstantial evidence is concerned. It was also the contention of the learned Additional Public Prosecutor that pursuant to the statement of P.W.4, suspicion had been raised against the two accused persons who were apprehended and on their confessional statement, ornaments, worn by the deceased which were removed by the accused persons, were recovered. It is, according to the Additional Public Prosecutor, sufficient to indicate motive on the part of the accused persons for having committed the said offences. The ornaments recovered were identified by P.W.1, the son of the deceased, which further proves the case of the prosecution so far as recovery made on the confessional statement, and for this, the learned Additional Public Prosecutor prayed for setting aside of the impugned judgment of acquittal and to hold the accused persons guilty of having committed the said offences punishable under Sections 302 and 379 read with Section 34 IPC.

5. However, perusal of the material available with the appeal, it is clearly reflected that the prosecution in order to prove its case

had examined as many as 14 witnesses i.e., P.Ws.1 to 14. Likewise, the prosecution also had exhibited 15 documents i.e., Exs.P-1 to P-15 in the course of the evidence on behalf of the prosecution. Further, M.Os.1 to 5 were the material objects also produced and marked during the course of trial. There was no evidence lead in defence nor was there any documents exhibited in support of the defence.

6. Considering the evidence that has come on record as evidence by the prosecution, what is evidently reflected is that except for the statement of P.W.4, there is no material collected so far as linking the accused persons with the deceased and also in the course of the accused persons committing the crime of murder of the deceased. P.W.4 is also a witness allegedly establishing the last seen theory. However, there is no conclusive or strong material elicited in the course of his deposition of having known the accused persons as also the deceased person since long or having interacted with them during the course they were last seen together and also distinctly remembering the entire ornaments that were worn by the deceased when he had last seen the deceased in the

company of the accused. The statement of P.W.4 if it is to be relied upon that he has seen the accused in the company of the deceased on the previous night was for a very brief moment and during the said period, it is difficult for any person to so distinctly remember the entire ornaments that a person was wearing on her body which gives rise to great element of doubt on the statement of P.W.4. Further, what is also reflected is that P.W.1 is said to have identified the ornaments recovered from the house of accused No.1 and claims to be the ornaments which the deceased, his mother, was wearing at the time of the murder, also does not seem to have been sufficiently proved by the prosecution and moreover these articles recovered also have not been proved as is otherwise required under the Criminal Rules of Practice. Mere oral statement made by the family member of the deceased, in the opinion of this Bench, is not sufficient enough to identify an item found on the body of the deceased, particularly when it is jewels and ornaments. The incident is said to have occurred on the intervening night of 07.05.2021 and 08.05.2021. The accused persons have been arrested only on 13.11.2021 i.e., after a gap of six months. The prosecution has not been able to show any

substantial material which was collected in the course of this six months period which gave rise to the strong suspicion against the accused. The basis for suspecting the accused persons and the basis for having been investigated before the accused persons were apprehended, is again missing from the prosecution case. In the absence of these fundamental and foundational material linking the accused with the deceased at the first instance and holding the accused persons alone to have been the persons who could be responsible of having committed the said offence, cannot be held to have been properly proved by the prosecution entailing conviction of the accused for the offences charged.

7. As regards the cases based on circumstantial evidence, it is by now a well settled proposition of law that in a case of circumstantial evidence, the chain of links has to be complete so as to reach to the only conclusion of the offence to have been committed by none other than the accused. The Hon'ble Supreme Court in the case of **SHARAD BIRDHI CHAND SARDA vs. STATE OF MAHARASHTRA**¹ laying down the basic principles

¹(1984) 4 SCC 116

of circumstantial evidence held at paragraph Nos.153 and 154 as under:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807; SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.

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

8. The Hon'ble Supreme Court further in the case of **MAJENDERAN LANGESWARAN vs. STATE (NCT OF DELHI)**² considering the case of conviction based on circumstantial evidence held as under:

"The legal issue under consideration was whether the circumstantial evidence presented in the case was enough to sustain the conviction.

The court made clear that in cases where the evidence is of a circumstantial nature, certain rules must be adhered to. Firstly, the circumstances from which the conclusion of guilt is drawn must be fully established. This means that each fact that points to the guilt of the accused must be proven individually and beyond a reasonable doubt.

Further, the court emphasized that the proven circumstances should be consistent only with the hypothesis of the accused's guilt. This means that the facts established should point towards the guilt of the accused and no one else. Moreover, these circumstances should be of such a conclusive nature and tendency that they exclude every other hypothesis but the one proposed to be proved.

In this context, the court cited several past judgments. For instance, in the case of Hanumant Govind Nargundkar v. State of M.P.³, the court observed that there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

²(2013) 7 SCC 192

³(1952) 2 SCC 71

The court also referred to the case of Padala Veera Reddy v. State of A.P.⁴, where it was stated that circumstantial evidence, in order to sustain conviction, must be complete, conclusive, and incapable of explanation of any other hypothesis than that of the guilt of the accused.

This key principle was reinforced in a series of other cases, such as C. Chenga Reddy v. State of A.P.⁵, Ramreddy Rajesh Khanna Reddy v. State of A.P.⁶, and Sattatiya v. State of Maharashtra⁷.

In the case of G. Parshwanath v. State of Karnataka⁸, the court went a step further and explained that while dealing with circumstantial evidence, a distinction must be made between primary or basic facts and inferences of facts to be drawn from them. This means that the court must not only evaluate whether a fact is proven, but also whether that fact leads to an inference of the accused's guilt."

9. For the said reasons, we do not find any error committed by the trial Court in reaching to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. The appeal, therefore, fails.

10. Another reason why this Bench is reluctant to interfere with the said judgment is that it is always presumed that an accused person to be innocent unless otherwise proved and when there is a

⁴1989 Supp (2) SCC 706

⁵(1996) 10 SCC 193

⁶(2006) 10 SCC 172

⁷(2008) 3 SCC 210

⁸(2010) 8 SCC 593

judgment of acquittal in favour of the accused person, the burden all the more falls upon the appellant who challenges the judgment of acquittal to establish his case warranting interference to the judgment of acquittal.

11. So far as interfering with the judgment of acquittal in an appeal by the trial Court, it has been held by the Hon'ble Supreme Court in a catena of decisions that unless there is substantial strong evidence which is not been appreciated by the trial Court and where the commission of offence by the accused is glaringly established, the judgment of acquittal is not be interfered as a matter of routine. The Hon'ble Supreme Court in the case of **Ballu and Another v. State of Madhya Pradesh**⁹ in paragraph Nos.6 to 9 observed as under:

"6. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of *Sharad Birdhichand Sarda v. State of Maharashtra*¹⁰, wherein this Court held thus:

⁹ 2024 SCC Online SC 481

¹⁰ (1984) 4 SCC 116 = 1984 INSC 121

"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

7. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

8. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of

judgments on the issue, we will only refer to two judgments which the High Court itself has reproduced in the impugned judgment, which are as reproduced below:

"13. In case of *Sadhu Saran Singh v. State of U.P.* (2016) 4 SCC 357, the Supreme Court has held that:—

"In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. Appellate Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded."

14. Similar, In case of *Harljan Bhala Teja v. State of Gujarat* (2016) 12 SCC 665, the Supreme Court has held that:—

"No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after re-appreciating the evidence. If the charge is proved beyond reasonable doubt on record, and convict the accused."

12. In the given factual backdrop and the judicial precedents flowing from the Hon'ble Supreme Court on the subject matter and also on interfering with the judgment of acquittal and for the reasons narrated in the preceding paragraphs, we find it difficult to interfere with the judgment of acquittal.

13. For the all the aforesaid reasons, we are of the considered opinion that the trial Court has not committed any error of law or on facts while reaching to the said conclusion and the prosecution on the other hand has miserably failed to establish its case.

14. The appeal fails and is, accordingly, rejected.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

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Sd/- T. KRISHNA KUMAR
DEPUTY REGISTRAR

SECTION OFFICER

To

1. The Principal District and Sessions Judge, Narayanpet , Narayanpet District.
2. The Judicial First Class Magistrate, Narayanpet.
3. The Station House Officer, Dhanwada Police Station, Narayanpet.
4. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad (OUT)
5. Two CD Copies

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HIGH COURT

DATED:02/12/2024

ORDER

Crl. Appeal .No.833 of 2024



REJECTING THE CRL.APPEAL.

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