

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

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

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI**

CRIMINAL APPEAL NO: 987 OF 2024

Appeal filed under Section 419(4) of BNSS, against the Judgment dated 07.10.2022 passed in S.C.No. 189 of 2017 on the file of the Court of the Principal Sessions Judge, at Bhongir.

Between:

Gayam Mahender Reddy, S/o. Late Krishna Reddy, Aged 54 years, Occ. Employee, R/o H.No. 13-43-38/902, Sai Hills Colony, Medipally, Medchal-Malkajgiri District.

...Appellant

AND

1. The State of Telangana, Rep. by the Public Prosecutor, High Court of Judicature for the state of Telangana at Hyderabad.

...Respondent/Complainant

2. Chippalapalli Srinu, S/o. Buchaiah, Aged about 40 years, Occ: Coolie, R/o Vangala H/o Thurkalshapuram, Gundala Mandal, Nalgonda District.
3. Chippalapalli Madhu, S/o Papaiah, Aged about 26 years, Occ. Coolie, R/o Vangala H/o Thurkalshapuram, Gundala Mandal, Nalgonda District.
4. Gayam Jayaprada, W/o Late Krishna Reddy, Aged about 65 years, Occ. Home Maker, R/o Vangala H/o Thurkalshapuram, Gundala Mandal, Nalgonda District.
5. Veeraboina Veeraiah, S/o Lingaiah. Aged 67 years, Occ. Agriculture, R/o Vangala H/o Thurkalshapuram, Gundala Mandal, Nalgonda District.

...Respondents/Accused No. 1 to 4

Counsel for the Appellant : Sri Rapolu Bhaskar

**Counsel for Respondent No.1 : Mr. M. Ramachandra Reddy,
Additional Public Prosecutor**

Counsel for Respondent Nos. 2 to 5 :

The Court delivered the following: JUDGMENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI
CRL.A.No.987 OF 2024

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

Heard Mr. Rapolu Bhaskar, learned counsel for the appellant/complainant and the Mr. M.Ramachandra Reddy, learned Additional Public Prosecutor for respondent No.1/State. Perused the record.

2. The present is an appeal which has been filed under Section 419(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

3. The challenge is to the judgment dated 07.10.2022 passed by the learned Principal Sessions Judge, at Bhongir in Sessions Case No.189 of 2017.

4. Vide the impugned judgment, the learned trial Court has found respondent Nos.2 to 4/accused Nos.1 to 4 in the aforementioned sessions case to be not guilty for the offences with which they were charged i.e., under Section 302 IPC read with 34 IPC so far as accused Nos.1 and 2 are concerned, under Sections 302, 201 read with Section 109 IPC so far as accused No.3 is

concerned and as far as accused No.4 is concerned, as he was charged only for the offence under Section 212 IPC, the trial Court did not found materials to substantiate the said charge and found him not guilty of the said offence.

5. The present is an appeal by Gayam Mahender Reddy, the complainant, at whose instance the prosecution case was initiated against the respondents/accused Nos.1 to 4. The date of incident in the instant case is said to be 13.05.2016. The deceased Soma Shekhar Reddy is the son of accused No.3 and brother of the complainant. It is said that the deceased was for a considerable period of time subjecting accused No.3 to high level of ill-treatment and cruelty and when the cruelty became unbearable, accused No.3, the mother, is said to have colluded with accused Nos.1 and 2 in eliminating the deceased. In the process, accused Nos.1 and 2 are said to have taken the deceased along with them in the garb of having alcohol and subsequent to consumption of liquor, accused Nos.1 and 2 are said to have assaulted the deceased in order to kill him and from there, they went to the house of accused No.4 and later on threw the body of the deceased Soma

Shekhar Reddy into the well situated adjacent to the house of accused No.3. The complainant, the brother of the deceased, having come to know about the said body of the deceased lying in the well, after ascertaining the same, is said to have gone to the police and lodged the complaint on the basis of which Cr.No.28 of 2016 was registered and investigation began.

6. Accused Nos.1 and 2 were charged for the offences punishable under Section 302 read with Section 34 IPC, accused No.3 was charged for the offence punishable under Sections 302, 201 read with Section 109 IPC and accused No.4 was charged for the offence punishable under Section 212 IPC. The crime was registered as Cr.No.28 of 2016 and subsequently the charge sheet was filed making the four accused persons responsible for the death of the deceased and the matter was put to trial before the learned Principal Sessions Judge, at Bhongir where the case was registered as Sessions Case No.189 of 2017.

7. The prosecution in all examined 16 witnesses as P.Ws.1 to 16, in the course also it marked 26 exhibits i.e., Exs.P-1 to P-26. Sixteen M.Os were also marked i.e., M.Os.1 to 16. No witnesses

were examined in support of the defence neither were there any documents marked or material objects produced Court. After the conclusion of the trial, vide the impugned judgment, the learned trial Court passed the judgment of acquittal holding that the prosecution has failed in proving the case by leading cogent, substantial evidence in the course of the trial and as a consequence found accused Nos.1 to 4 not guilty of the said charges that were levelled against them.

8. The judgment was one which was passed on 07.10.2022. The State i.e., the prosecution has not preferred any appeal against the said judgment of acquittal. The appeal has now been preferred by the brother of the deceased, the complainant (P.W.1).

9. The learned counsel for the complainant took the Court through a position and the evidence which has been collected by the prosecution in the course of trial and submitted that there were enough material to show that accused Nos.1 and 2 being responsible for the assault made on the deceased and further submits that accused Nos.1 and 2 have been instrumental in eliminating the deceased at the instance of accused No.3, the

mother. It was further contended that the evidence was not properly appreciated by the trial Court and the judgment of acquittal has been passed in a mechanical manner.

10. However, perusal of the pleadings and the evidence which have come on record, *prima facie*, the complainant P.W.1 himself in his evidence before the trial Court has turned hostile and has not supported the case of the prosecution in any manner. So also, the evidence of P.Ws.2 to 12 i.e., all the material witnesses upon whom the prosecution was heavily relying upon to establish their case have all turned hostile and have not supported the case of the prosecution. Further, from the cross-examination that the prosecution has done so far as P.Ws.2 to 12 are concerned, it would, in fact, reveal that except for a one line cross-examination which was in the same nature was put to all the 11 witnesses i.e., P.Ws.2 to 12, there does not seem to be any sound enough which the prosecution could get elicited from these witnesses. In the absence of any independent witnesses supporting the case of the prosecution, further in the absence of any material witnesses eliciting materials contrary to what they have stated in their

examination-in-chief and in the cross-examination that was conducted, it becomes difficult for the trial Court to reach to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt.

11. It is well settled principle of law that in order to give a finding of the charge having been proved in a criminal case, the standard of proof required is that of it being proved beyond reasonable doubt. In the instant case, there is not one witness examined by the prosecution can be said to be an independent witness who has supported the case of the prosecution or from whose cross-examination enough could be elicited to hold that the statement given by him is false or it being established that he was a material witness and he has proved his case from his cross-examination. These facts are lacking in the instant case. Lacking to extent of even the complainant/appellant himself not supporting the case of the prosecution and in the said circumstances, it was difficult for the learned trial Court to have reached to the conclusion that the chain of circumstances or the depositions of the material witnesses are all linking the charges leveled against the

accused persons, neither can it be said that from the materials, which are brought during the trial is strong enough to reach to the conclusion that the offence having not been done by any other person, but by the accused alone.

12. Having thoroughly perused the records, we even do not find any strong motive available for the accused persons to have committed the said offence except for the vague allegation by the complainant of cruelty and ill-treatment of accused No.3 at the hands of the deceased. We cannot brush aside the fact that the relationship between the deceased and accused No.3 is that of son and mother.

13. 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 Pradesh¹ 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 Maharashtra², wherein this Court held thus:

“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

¹ 2024 SCC Online SC 481

² (1984) 4 SCC 116 = 1984 INSC 121

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."

14. 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.

15. This Court, after considering the aforesaid legal proposition, as also the depositions of the material witnesses i.e., P.Ws.1 to 12, does not find any error on the part of the trial Court in reaching to the said conclusion of holding respondent Nos.2 to 5/accused Nos.1 to 4 not guilty of the offences with which they were charged.

16. The appeal thus fails and is, accordingly, rejected.

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

//TRUE COPY//

A.V.S.S.C.S.M. SARMA
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Principal Sessions Judge, at Bhongir, Yadadri Bhuvanagiri District.
2. The Judicial Magistrate of First Class, Alair, Yadadri Bhuvanagiri District.
3. The Station House Officer, Gundala Police Station, Yadadri Bhuvanagiri District.
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
5. One CC to Sri Rapolu Bhaskar, Advocate [OPUC]
6. Two CD Copies

Njb/gh

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HIGH COURT

DATED:09/12/2024

JUDGMENT

CRLA.No.987 of 2024



REJECTING THE CRIMINAL APPEAL

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