

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

**TUESDAY, THE THIRTY FIRST 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: 515 OF 2017

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the Judgment dated 09-03-2017 passed in S.C.No.26 of 2016 on the file of the Court of the Additional Metropolitan Sessions Judge, Cyberabad, at L.B.Nagar.

Between:

1. Bablu, S/o.Pagla, Aged 23 Years, Cast Mavasi, Occ Marble Polishing Work, R/o.Meeran Residence, Om Vihar Colony, Medipally, N/o.Andhiyara(V), Baranda(Tq), Satna District, Madhya Pradesh State.
2. Rajman @ Karan, S/o.Sukhlal, Aged 28 Years, Cast Mavasi, Occ Marble Polishing Work, R/o.Meeran Residence, Om Vihar Colony, Medipally, N/o.Andhiyara(V), Baranda(Tq), Satna District, Madhya Pradesh State.

...Appellants/Accused

AND

The State of Telangana, Through Inspector of Police, Cyberabad, at Rajendranagar, Represent by Public Prosecutor, High Court of Telangana and Andhra Pradesh, Hyderabad.

...Respondent/Complainant

Counsel for the Appellants : Sri Pendiya Suhasini Reddy

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

The Court delivered the following: Judgment

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

CRIMINAL APPEAL No.515 OF 2017

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

This appeal is filed aggrieved by the judgment dated 09.03.2017 passed in S.C.No.26 of 2016 on the file of the Additional Metropolitan Sessions Judge, Cyberabad, at L.b.Nagar, convicting the appellants/accused Nos.1 and 2 for the offence punishable under Section 302 of Indian Penal Code (for short 'IPC') and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default of payment of fine, to undergo simple imprisonment for three months.

2. Heard Smt. Pendiya Suhasini Reddy, learned counsel for the appellants/accused and Sri Arun Kumar Dodla, learned Additional Public Prosecutor for respondent-State.
3. Briefly, the case of the prosecution is that appellants were working as marble polishing workers under the deceased namely Ram Singh. On account of some financial disputes in between the deceased and the appellants, it was

alleged that on 02.06.2014, the appellants committed murder of the deceased in the pent house, where they were staying along with the deceased in the under construction building and threw him into the duct of the building. PW5 was also working in the under construction building where the appellants were working. While PW5 was fixing the doors of the bathroom on 05.06.2024, he noticed bad smell was emanating from the ventilator of the bathroom and found dead body in the duct. PW5 informed PW4, who was the Supervisor of the under construction building. PW4 informed the Police. After the Police arrived, they went to the pent house and found blood stains on the walls of the pent house.

4. During the course of investigation, the Police came to know that the appellants were working under the deceased as marble polishing workers and the appellants were absconding since the date of the offence. Efforts were made to trace the appellants and they were arrested on 12.06.2014 in Madhya Pradesh.

5. Confession of the appellants was recorded by PW11 in the presence of PW10 that they admitted to committing the murder of the deceased and fleeing thereafter. At the

instance of appellants, Rs.1,500/- each was seized from them. According to the prosecution case, the appellants, after committing the murder of the deceased and throwing him in the duct, took the keys of his house, went to his house and committed theft of Rs.10,000/- and shared Rs.5,000/- each.

6. Charge Sheet was filed on the basis of circumstantial evidence for the offences punishable under Sections 457, 380, 302 and 201 of IPC. Charges were framed against the appellants as under:

CHARGE-1: Whereas, on 2-6-2014 A1, A2 of you entered in to the house of Ram Singh Yadav @ Ram Shaka Yadav, for the purpose of committing theft of money and thereby you committed the offence of lurking house trespass or house breaking by night, punishable U/sec. 457 IPC, with in my cognizance?

CHARGE-2: Whereas, on the same day, at about 1 mid night Ram Singh Yadav @ Ram Shaka Yadav was in deep sleep, you committed theft of Rs. 10,000/- from the house of the above person by killing him and when the money was kept in a bag of shelf and both of you divided into Rs. 5,000/- each and thereby went away by boarding Secunderabad to Patna train and thereby you committed theft in the house where Ram Singh Yadav @ Ram Shaka Yadav was residing i.e. Alwyn Colony, Jeedimetla, and thereby committed offence punishable U/sec.380 IPC, with in my cognizance?

CHARGE-3: Whereas, A1, A2 of you on the above date and time and having known that the deceased have money in his house, you killed the deceased Ram Singh Yadav with a spade upon his head, and caused his death and thereby committed offence of murder punishable U/sec. 302 IPC, with in my cognizance.

Charge-4: Whereas, A1, A2 of you quarrel with a deacease when he asked for return of money and thereby caused his death on the above date during mid night about 1 am, and thereby you tried to dispose of the dead body by taking keys from the Watchman from the apartment and when he refused to give the keys A1, A2 of you pushed the dead body into the duct of the Apartment and you washed the beans of the duct by pouring sand with the help of wiper and water and thereby you concealed the cloths spade and wiper in the bathroom of the deceased and thereby you suppressed the evidence of commission of murder punishable U/sec. 201 IPC, with in my cognizance. Do you plead guilty or claimed to be tried?"

7. PW1 to 13 witnesses were examined and Ex. P1 to P9 documents were marked on behalf of prosecution. Learned Sessions Judge found that the appellants' abscondance from 02.06.2014 and recovery of Rs.1,500/- each from the appellants were sufficient evidence to infer that it was the appellants who committed the murder of the deceased and absconded.

8. The case is one of circumstantial evidence. The alleged scene of offence is the penthouse, where the accused attacked the deceased and killed him according to PW13 Investigating Officer. However, no investigation was done to know whether there were any blood stains on the walls of the penthouse or blood was spilled on the floor of the penthouse. The reason given is that blood stains were washed. Even if blood stains were washed, it can be detected by way of scientific tests. Nothing incriminating was found in the pent house, where the alleged murder took place.

9. The motive as projected by the prosecution is that there were disputes in between the deceased and the appellants for money. None of the witnesses have spoken about the alleged disputes or whether there was any fight in between the appellants and the deceased at any point of time regarding the amount outstanding to the appellants. Merely on the ground that there was seizure of Rs.1,500/- each from the appellants, would not mean that they have committed theft of money from the house of deceased after committing the murder of the deceased. Strange claim of the prosecution is that the appellants, having committed the murder of the

deceased in the pent house, took his house keys, went to his house and committed theft in the absence of his wife. No witnesses have been examined to state that the appellants were found anywhere near the house of the deceased. It is not explained as to why the deceased was staying in the under construction house when he had a house and his wife was staying in the house.

10. When there are no eye witnesses to the incident of murder or theft, the evidence of motive, last seen and abscondance have to be looked into. It was not specifically proved by prosecution that death happened on 02.06.2014.

11. The only evidence of appellants absconding cannot be made basis to convict them since the motive as projected was also not established by the prosecution. Though it was stated that the appellants were last seen on 02.06.2014, however, when the complaint was filed, the names of the appellants were not stated nor any suspicion was expressed by Supervisor or any of other workers against the appellants. It was not even stated that the deceased was staying along with the appellants.

12. 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;
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."

13. The evidence of the prosecution regarding absconding of the appellants solely cannot form basis to convict the appellants. The evidence of last seen together is also

¹ (1984) 4 SCC 116

doubtful. Pw12/doctor did not specify the time of death but stated that the cause of death was due to crush injury on the head. In the absence of any specific time frame being given as to when the death was caused, it cannot be assumed that the death was caused on 02.06.2014 by the appellants. The circumstances relied on by the prosecution are not sufficient to infer guilt of the appellants. Accordingly, benefit of doubt is extended.

14. Criminal Appeal is allowed and the conviction and sentence imposed against the appellants in S.C.No.26 of 2016 on the file of the Additional Metropolitan Sessions Judge, Cyberabad, at L.B.Nagar, is hereby set aside. Since it is informed that the accused are in jail, they shall be released forthwith from prison, if not required in any other case.

//TRUE COPY//

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Additional Metropolitan Sessions Judge, Cyberabad, at L.B.Nagar
2. The Superintendent, Central Prison, Cherlapally, Medchal – Malkajgiri (by speed post)
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
4. One CC to Sri Pendiyala Suhasini Reddy, Advocate [OPUC]
5. Two CD Copies

ADK/gh

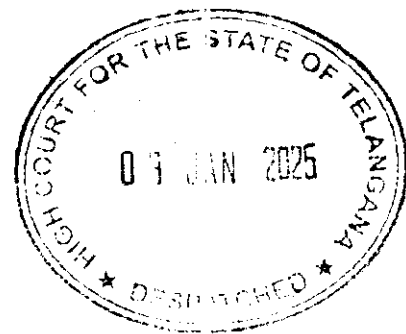
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HIGH COURT

DATED:31/12/2024

JUDGMENT

CRLA.No.515 of 2017



ALLOWING THE CRLA

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