

BAIL SLIP : The Petitioner / Accused was directed to be released on bail by the Order of the High Court dated 21-10-2022 in I.A. No. 1 of 2019 in CrI.A. No. 1171 of 2015

[3419]

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

**THURSDAY, THE SEVENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

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

CRIMINAL APPEAL NO: 1171 OF 2015

Criminal Appeal under Section 374 (2) of Cr.P.C. against the Judgment and Sentence dated 13-11-2014 made in Sessions Case No. 151 of 2013 on the file of the Court of the Additional District and Sessions Judge, Vikarabad.

Between:

Tallari Bhasker, S/o. Babaiah Aged about 30 years, Occ. Labour, R/o. Shabad Village and Mandal, Ranga Reddy District

...Appellant / Accused

AND

The State of Telangana, Rep. by it Public Prosecutor

...Respondent / State

**Counsel for the Appellant : Sri Ravi Kumar Veluri
Legal Aid**

**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.1171 OF 2015

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

1. This appeal is filed aggrieved by the judgment dated 13.11.2014 in S.C.No.151 of 2013, on the file of Additional District & Sessions Judge, Vikarabad. The appellant is convicted for the offences under Sections 302 and 436 of IPC and sentenced to life imprisonment under both counts.
2. Since the counsel on record was not appearing continuously, retired District Judge, Sri Veluri Ravi Kumar is appointed as Legal Aid Counsel to argue the case. Accordingly, heard the learned Legal Aid Counsel and the learned Additional Public Prosecutor for respondent-State.
3. Briefly, the case of the prosecution is that on 06.09.2012, P.W.1 who is the brother of the appellant lodged a complaint at 10 a.m. with the Police alleging that the appellant had inflicted injury on the head of his mother for not providing Rs.200/- for liquor. The said information regarding the injury that was caused was given by the elder

sister of the deceased namely Chowdamma (not examined since she died).

4. On the basis of the complaint that was received, the Police went to the scene of offence and conducted scene of offence panchnama. Further, sketch was also prepared under Ex.P.5. According to the case of the prosecution, having committed the murder of the deceased, the house was burnt to wipe off any evidence of the acts of the appellant. There are two houses, one is an old house with thatched roof and the other house is a concrete house. According to the prosecution, the deceased was staying in the old house which was burnt, however, the dead body was found in the new house.

5. The post mortem examination Doctor/P.W.7 had found injuries both on legs and head region, however, there were no burn injuries on the body of the deceased.

6. The Police arrested the appellant on 11.09.2012 i.e., 6 days after the incident. In the presence of P.W.6, the confession of the appellant was recorded and thereafter, stick/M.O.1 was recovered at his instance. Ex.P.7 is the

confession-cum-seizure panchnama drafted in the presence of P.W.6/V.R.O. of Kesaram Village.

7. Having concluded the investigation, charge sheet was filed. Charges for the offences under Sections 302 and 436 of IPC were framed by the trial Court.

8. Learned Sessions Judge having framed the charges, examined witnesses and also documents relied on by the prosecution were brought on record. Learned Sessions Judge convicted the appellant on the basis of circumstantial evidence.

9. Learned Legal Aid counsel submits the following:-

(1) Both the witnesses P.Ws.1 and 2 have turned hostile to the prosecution case.

(2) There is no eye witness account of the alleged offence committed by the appellant.

(3) P.W.3 on whom the trial Court had heavily relied on, his name was not mentioned in the complaint filed by P.W.1. He was planted subsequently.

(4) According to the prosecution case, the appellant beat his mother in the old house, however, the body

was found in the new house. There is no explanation as to how the body was found in the new house.

(5) The trial Court had relied on the admission under Section 313 Cr.P.C examination that he was present on the night of 05.09.2012. On the said basis, conviction was recorded which is erroneous.

10. On the other hand, learned Additional Public Prosecutor submits that the appellant was in fact present in the house when the incident had taken place. When the presence is admitted, burden shifts on to the appellant under Section 106 of the Evidence Act to explain under what circumstances death occurred and failure to explain the same, adverse inference has to be drawn which was rightly done by the learned Sessions Judge.

11. Having gone through the record, the complainant/P.W.1 who is the brother of the appellant has turned hostile to the prosecution case. The alleged incident happened at 10 p.m., on 05.09.2012. Further, the complaint was filed on the next day at 10 a.m. on the basis of the information given by the elder sister of the deceased namely Chowdamma. The complaint itself is hearsay in nature.

Unfortunately, due to the death of Chowdamma, she could not be examined. Heavy reliance is placed on the evidence of P.W.3 who stated that on the morning of 06.09.2012, he found the appellant outside the house and when questioned about his house being burnt, the appellant allegedly informed that the house caught fire accidentally and his mother/deceased went out for work. However, P.W.3 found blood which was flowing from beneath the door.

12. Firstly, when P.W.3 had noticed blood and house being burnt, his immediate reaction must be either to lodge a complaint with the Police or to inform about the same to near relatives or village elders. He has neither informed the closed kith and kin of the deceased nor village elders. He has not even gone to the Police. It appears that services of P.W.3 were subsequently taken to speak against the appellant. The dent in the prosecution case is non-explanation of body being found in new house whereas alleged incident of beating by the appellant was in the old house which was burnt. If at all the case of the prosecution is that the house was burnt to see to that the act of the appellant in committing murder of his mother had to be concealed, it has to be explained as to how dead body was found in the other house. If the body was

found in the other house, the question of burning the old house in order to conceal any evidence would not arise.

13. The other evidence is that of recovery of stick. The said recovery was made in the presence of P.W.6. Admittedly, appellant was arrested 6 days after the alleged incident. From where the stick was brought or produced by appellant is not stated by P.W.6. Apparently, the stick was seized in the presence of P.W.6. When the confession was made, Section 27 of the Evidence Act cannot be invoked since there is no discovery of any new fact. Apparently, the appellant was found with the stick in the Police Station and the Police had seized it. Entire version stated by P.W.6 regarding confession cannot be looked into since it is barred under Section 25 of the Evidence Act.

14. The Hon'ble Supreme Court in **Pulukuri Kottaya vs. King-Emperor**¹'s case, which has been constantly followed till date held that any confession made to the Police cannot be considered and only that part of new fact being discovered can be used as evidence before the Court.

¹ 19th December, 1946

15. Learned Legal Aid counsel appearing for the appellant relied on the judgment of the Hon'ble Supreme Court in **Mohan Singh vs. Prem Singh And Anr**². The Hon'ble Supreme Court while dealing with the situation where the accused had made both inculpatory and exculpatory statements under Section 313 Cr.P.C. examination held that the Court cannot rely on inculpatory statement only while discarding the exculpatory statement of the accused.

16. The appellant though stated in his statement under Section 313 Cr.P.C examination, he was present in the night on 05.09.2012, however denied being involved in causing injury to his mother or burning the hut. Unless prosecution proves as to where the actual incident of beating had taken place and if it is old house where the appellant beat his mother, it is the bounden duty of the prosecution to explain dead body being found in the new house. No one has seen the appellant in the house when it was burnt and the dead body being found in the new house. As already discussed the evidence of P.W.3 cannot be relied on.

² AIR 2002 SC 3582

17. Apart from the alleged confession, there is no other evidence in the case to remotely suggest that the appellant was involved in committing the murder of the deceased. Though it was claimed by the prosecution that the appellant was absconding, the only circumstance of absconding, cannot form basis to convict the appellant.

18. In view of the above findings, invariable conclusion is that the conviction has to be set aside.

19. Accordingly, the Criminal Appeal is allowed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Additional District & Sessions Judge, Vikarabad
2. The Judicial First Class Magistrate, Shabad
3. The Station House Officer, Shabad PS, Vikarabad District
4. The Superintendent, Central Prison, Cherlapalli, Ranga Reddy District
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana, Hyderabad [OUT]
6. One CC to Sri Ravi Kumar Veluri, Advocate [OPUC]
7. Two CD Copies

VA/gh *Yx*

HIGH COURT

DATED:07/11/2024

JUDGMENT

CRLA.No.1171 of 2015



ALLOWING THE CRLA

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