

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

**TUESDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL APPEAL NO: 775 OF 2017

Appeal filed under Section 374(2) of Cr.P.C against the judgment dated 12-08-2016 in SC.No.190 of 2014 on the file of the Court of the Judge, Family Court-cum-Additional Sessions Judge at Karimnagar.

Between:

Kukatla Komuraiah S/o. Ailaiah, aged about 48 years, R/o. Somaram (V) Saidapur (M) Now - Appanapeta (V) Peddapalli (M), Karimnagar District, T.S.

...APPELLANT/ACCUSED

AND

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

...RESPONDENT/RESPONDENT

Counsel for the Appellant: Sri Md Sadath Hussain (Legal Aid)

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

The Court delivered the following JUDGMENT:

**THE HON'BLE SRI JUSTICE K.SURENDER
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

CRIMINAL APPEAL No.775 OF 2017

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

This criminal appeal is filed aggrieved by the judgment dated 12.08.2016 in S.C.No.190 of 2014 on the file of the Judge, Family Court-cum-Additional Sessions Judge, Karimnagar, convicting the appellant/accused for the offence under Sections 302 and 380 of Indian Penal Code, 1860 (for short, 'IPC') and sentencing him to undergo imprisonment for life and to pay fine of Rs.100/-, in default of payment of fine, to suffer simple imprisonment for one month for the offence under Section 302 IPC and further sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.100/-, in default of payment of fine, to suffer simple imprisonment for one month for the offence under Section 380 IPC.

2. Heard Mr. Md. Sadath Hussain, legal aid counsel for the appellant/accused, and Mr. Arun Kumar Dodla,

learned Additional Public Prosecutor for the respondent-State.

3. The case of the prosecution is that PW.1, who is the son of the deceased, went to the police station and lodged complaint on 04.10.2013 stating that his mother was found dead in the house and her gold and silver jewellery were missing. The said complaint was filed at about 10.30 P.M., and Crime No.260 of 2013 was registered for the offences punishable under Sections 302 and 380 IPC. Having received the complaint, PW.14-Investigating Officer went to the scene of offence, conducted panchanama, examined PWs.1 to 5 and recorded their statements. The body was sent for post mortem examination. Thereafter, on 21.10.2013, the appellant/accused was arrested at Sulthanbad. The appellant was interrogated and in the presence of PW.12 and another, confession was recorded and jewellery MOs.1 to 3 were recovered from the possession of the appellant. Immediately, after recovery of MOs.1 to 3, according to PW.12, independent witness, and PW.14, Investigating Officer, the appellant took them

to Elkathurthi Village and showed the case property of two other crimes. PW.14 seized the said case property and the appellant was taken back to the police station. Thereafter, the appellant was produced before the concerned Magistrate.

4. PW.1, who is the son of the deceased, stated that he found the deceased dead and her jewellery was missing and therefore, lodged Ex.P1 – complaint. PW.2, who is the neighbor, was declared as hostile to the prosecution case since she stated that she did not know the reason of the death. PW.3 is also a neighbor, who stated that the deceased was found dead. PW.4, who is the photographer, also stated on similar lines, that the deceased was found dead in her house and jewellery was missing. PW.5, who is the daughter of the deceased, stated that her mother was found murdered and her jewellery was missing. PW.5 identified MOs.1 to 3 as the jewellery of the deceased. PW.7 stated that one day prior to the death of the deceased, he saw the appellant near the house of the deceased. He further stated that the deceased was the owner of the house and she let out two rooms on rent.

PW.7 and the appellant were staying in two separate rooms as tenants.

5. 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

¹ (1984) 4 SCC 116

show that in all human probability, the act must have been done by the accused.”

6. The circumstances relied on by the prosecution are as follows:

1. The appellant was earlier a tenant in the house of the deceased.
2. The appellant vacated ten days prior to the incident. However, according to PW.7, the appellant was found near the house of the deceased one day prior to the death of the deceased,
3. After his arrest on 21.10.2013, MOs.1 to 3 were recovered from the pocket of the appellant.

7. PW.12 is the independent witness, who stated that he went to the iron shop at Indiranagar, Sulthanbad, on the instructions of the Mandal Revenue Officer, where the appellant was present in safari dress. Appellant confessed about the murder of the deceased and the appellant produced MOs.1 to 3 from his pocket. From the said old iron shop situated at Indiranagar, the appellant led the police officers near Elkathurthy, where another iron

shop was situated, and from there a box was shown relating to property of other offences. According to PW.12, independent witness, and PW.14-Circle Inspector, the recovery was made from the pocket of the appellant in the iron shop. It is not stated as to where the appellant was arrested and where he was interrogated prior to the appellant taking them to the old iron shop at Indiranagar. If at all MOs.1 to 3 were in the pocket of the appellant till arrival of the independent witness-PW.12, no reason is given as to why the appellant was taken to the iron shop at Indiranagar. Admittedly, nothing was recovered from the iron shop, since MOs.1 to 3 were recovered from the pocket of the appellant. The said narration of recovery as projected by the prosecution is doubtful.

8. There is no clarity as to why the jewellery was not recovered if it was in the pocket of the appellant, when the appellant was arrested. If at all the appellant was arrested at some place and taken to the Police Station, the ornaments would have been recovered at the very first instance, when he was arrested or when he confessed. However, the police have shown that the recovery was at

iron shop and that too from the pocket of the appellant. As already discussed, it was not stated by the Investigating Officer - PW.14 as to when the appellant was arrested and details of his confession leading to the iron shop at Indiranagar. In the facts and circumstances of the present case, it appears that the case was made up against the appellant insofar as recovery of MOs.1 to 3 are concerned. The recovery is not believable. Further, PW.5 - daughter of the deceased identified MOs.1 to 3. But, it is not stated as to when Test Identification Parade of the ornaments was done. The ornaments should have been identified in accordance with Rule 35 of the Criminal Rules of Practice, 1990. But, no Identification Parade of the property was conducted in accordance with the procedure. It is not stated as to when the jewellery MOs.1 to 3 were shown to PW.5 after the alleged recovery on 21.10.2013. The evidence of recovery of MOs.1 to 3 is unconvincing.

9. Another aspect of the case is that PW.14- Investigating Officer had called PW.12 to act as witness to the seizure. As already discussed, the seizure from the

pocket of the appellant at the iron shop is not convincing. From the said iron shop, according to PWs.12 and 14, the appellant took them to another place where jewellery of other crimes were recovered as pointed out by the appellant. PW.14-Investigating Officer has shown recovery of ornaments in three cases against the appellant, on the same day. PW.14 has stage-managed the entire recoveries in all the three cases (case vide Crl.A.No.739 of 2017, Crl.A.No.614 of 2017 and the present case).

10. Further, as seen from the photographs - Ex.P3, the deceased has a gold chain around her neck. It is not explained why the appellant had not taken the gold chain which is in the photographs and collected only MOs.1 to 3 which are nanu, ear studs and silver kadiums. As already discussed, the entire evidence is wholly unconvincing.

11. Accordingly, Criminal Appeal is allowed. The appellant/accused shall be released forthwith, if he is not required in any other case. His bail bonds shall stand cancelled.

Miscellaneous Petitions, if any, pending in this
Criminal Appeal shall stand cancelled.

Sd/- C.V. MALLIKARJUNA VARMA
JOINT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The Judge, Family Court-cum-Additional Sessions Judge at Karimnagar.(with records, if any)
2. The Superintendent, Central Prison, Cherlapalli, Hyderabad.
3. The Member Secretary, High Court Legal Services Committee, High Court for the State of Telangana at Hyderabad.
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad.[OUT]
5. One CC to Sri Md. Sadath Hussain, Legal Aid Counsel [OUT]
6. Two CD Copies

VH/gh



HIGH COURT

DATED: 28/01/2025

JUDGMENT

CRLA.No.775 of 2017



ALLOWING THE APPEAL

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