**APHC010520802018** **IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI** **[3596]**
**(Special Original Jurisdiction)**

WEDNESDAY, THE 28th DAY OF OCTOBER 2026

**PRESENT**

**THE HONOURABLE SRI JUSTICE K SURESH REDDY**

**THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM**

**CRIMINAL APPEAL NO: 2075/2018**

**Between:**

KATIKALA NAGESWARA RAO, R/O. NAGULAVARAM VILLAGE, MACHARLA MANDAL, GUNTUR DISTRICT

**...APELLANT**

**AND**

STATE OF ANDHRA PRADESH, Rep., by its Public Prosecutor, High Court at Hyderabad

**...RESPODENT**

**Counsel for the Appellant:**

1. A B LALITHA GAYATHRI

**Counsel for the Respondent:**

1. PUBLIC PROSECUTOR (AP)

**The Court made the following**

**JUDGMENT** :- *(Per the Hon'ble Sri Justice K.Suresh Reddy)*

Sole accused in Sessions Case No.299 of 2014 on the file of the Court of X Additional District and Sessions Judge, Gurazala, is the appellant. He was tried by the learned Additional Sessions Judge under the following two charges:-

i. First charge was under Section 302 IPC; and

ii. Second charge was under Section 379 IPC.

**2.** Substance of the charge is that the accused, having incurred debts from various persons owing to his addiction to vices, one Mandala Ranganayakulu (hereinafter referred to as "the deceased"), being engaged in the business of lending money on interest and on 02.07.2013, the deceased, while carrying a sum of Rs.1,60,000/- with him, informed his mother (P.W.2) that he was going to Macherla to meet the accused, whereupon the accused and the deceased consumed alcohol near Bogguvagu Dam and, when the deceased fell unconscious, the accused beat him with a boulder on his head, causing his death, and, in the same process, committed theft of Rs.1,00,000/- in cash from the possession of the deceased, thereby committed offences punishable under Sections 302 and 379 IPC.

**3.** After completion of trial, the learned Additional Sessions Judge, convicted the accused under Section 302 IPC, and sentenced him to suffer Imprisonment for 'LIFE' and also to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of three (03) months. Learned Additional Sessions Judge further convicted the accused under Section 379 IPC and sentenced him to suffer Rigorous Imprisonment for a period of three (03) years and also to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of one month. Both the substantive sentences were directed to run concurrently. Aggrieved by the same, the accused/appellant preferred the present appeal.

**4.** Case of prosecution, as emanated from the evidence of prosecution witnesses, briefly is as follows:-

(i) Accused and all the material prosecution witnesses are residents of Nagulavaram village, Macherla Mandal, Guntur District. The deceased was also resident of the same village. P.W.1 is wife, P.W.2 is mother, P.Ws.3 and 4 are cousins and P.W.6 is brother-in-law of the deceased respectively. Initially, the deceased was engaged in agricultural activities and money lending business. The accused was friend of the deceased, and both of them were jointly carrying on money lending business. In the year 2013, the accused borrowed an amount of Rs.10,000/- from the deceased by way of hand loan. Both

the deceased and the accused used to visit Gurazala for the purpose of gambling. They also used to lend money to gamblers at higher rates of interest. On 02.07.2013, the deceased borrowed an amount of Rs.50,000/- from P.W.3, Rs.60,000/- from P.W.4 and Rs.30,000/- from another person. He also pledged gold ornaments with bank and obtained loan of Rs.20,000/-. At about 4.00 P.M. on the same day, the deceased left his house, informing P.W.2 that he was going to Macherla, as the accused had called him. At the time of leaving the house, the deceased was carrying an amount of Rs.1,00,000/-.

ii) At about 4.45 P.M. on the same day, P.W.3 telephoned the deceased and asked him to repay the amount borrowed from him. The deceased informed P.W.3 that he was at Macherla along with the accused and that, after returning from Macherla, he would meet him and repay the amount. The deceased further informed P.W.3 that he would return home late in the night and asked him to convey the same to P.W.2. As the deceased did not return home, on the next day, i.e., on 03.7.2013, P.Ws.1 and 2 went to the house of the accused and enquired about the whereabouts of the deceased. The accused replied that he did not know the whereabouts of the deceased. Thereafter, no further information about the deceased was received.

iii) While so, on 05.07.2013 at about 4.00 P.M., having received information that the dead body of a male person was lying near Bogguvagu Dam, P.Ws.1 and 2 proceeded to the said place and

identified the dead body as that of the deceased. They also noticed bleeding injuries on the body of the deceased. P.W.1 further noticed that an amount of Rs.1,00,000/- was missing from the pocket of the deceased. Thereafter, P.W.1 went to the police station and lodged a report.

iv) At about 6.00 P.M. on 05.07.2013, P.W.14, the Sub-Inspector of Police, Rentachintala Police Station, received report-Ex.P1 from P.W.1 and registered a case in Crime No.50 of 2013 for the offence punishable under Section 302 read with Section 34 IPC. He issued copies of the FIR to all the concerned. FIR was marked as Ex.P15. On receipt of information from P.W.14, P.W.13, Inspector of Police, took up investigation. He proceeded to the scene of offence situated near Bogguvagu Dam in Kallegunta Reserve Forest and deputed Head Constable to guard the scene of offence.

(v) On the next day, i.e., on 06.07.2013 at about 5.30 A.M., P.W.13 proceeded to the scene of offence and prepared an observation report- Ex.P7, in the presence of P.W.11 and another. He also prepared a rough sketch of the scene of offence- Ex.P13 at the scene of offence. He also got the scene of offence photographed through P.W.7. He also seized M.Os.1 to 12 at the scene of offence. At about 10.00 A.M. on the same day, P.W.13 held inquest over the dead body in the presence of P.W.11 and another. Inquest report was marked as Ex.P8. At the time of inquest, he seized M.Os.15 to 18,

which belonged to the deceased. He also recorded statements of P.Ws.1 to 4. Thereafter, he sent the dead body for post-mortem examination.

(vi) P.W.9-Civil Assistant Surgeon, Government Hospital, Gurajala conducted autopsy over the dead body. He opined the cause of death was due to 'multiple injuries' and fracture of skull. He issued post-mortem certificate-Ex.P5.

(vii) While so, on 15.07.2013 at about 11.30 A.M. the accused approached P.W.5-V.R.O, Gangavaram and confessed about the commission of offence. P.W.5 recorded statement of accused under Ex.P2. Thereafter, he produced the accused before P.W.13 along with Ex.P2. P.W.13 recorded confessional statement of the accused in the presence of P.W.11 and another. During the course of confession, the Investigating Officer seized 47 currency notes of Rs.500/- denomination under a cover of panchanama, Ex.P11. On 16.07.2013 P.W.13 recorded statement of P.W.12 and another. Thereafter, P.W.13 seized 100 currency notes of Rs.500/- denomination, M.Os.13 and 14-shirt and pant under a cover of panchanama-Ex.P12 from the house of accused. He also seized F.D.R-M.O.20 from the house of accused. On 17.07.2013 P.W.13 recorded statement of P.Ws.6, 7 and others. On 27.07.2013 he forwarded the material objects to RFSL Guntur. RFSL report was marked as Ex.P14. After securing all the

documents and after completion of investigation, P.W.13 filed charge sheet.

**5.** In support of its case, prosecution examined P.Ws.1 to 14, marked Exs.P1 to P15 and exhibited M.Os.1 to 20.

**6.** When the accused was examined under Section 313 Cr.P.C., he denied the incriminating evidence appearing against him. On behalf of defence, Exs.D1 and D2-portions of Section 161 Cr.P.C. statements of P.Ws.1 and 4 were marked.

**7.** Relying on the evidence of P.Ws.1 to 3, 5 and 6, learned Additional Sessions Judge convicted the appellant/accused as aforesaid.

**8.** Heard Smt C.Vasundhara Reddy, learned counsel representing Smt A.B.Lalitha Gayathri, learned counsel for the appellant/accused and Sri Marri Venkata Ramana, learned Additional Public Prosecutor representing the Respondent-State.

**9.** Learned counsel for the appellant strenuously contends that there are no eyewitnesses to the alleged incident and that the prosecution case rests on the basis of circumstantial evidence. She further contends that the prosecution has failed to establish even a single circumstance connecting the appellant with the commission of the alleged offence. She further contends that the last seen theory sought to be established through the evidence of P.W.6 cannot be relied on, as P.W.6 was introduced by the investigating agency only on

17.07.2013, though the alleged offence took place on 02.07.2013. She also contends that the alleged extra-judicial confession sought to be established through P.W.5 cannot be relied on, as P.W.5 specifically admitted that he did not know the accused prior to 15.07.2013. Learned counsel further contends that, though the deceased left his house on 02.07.2013, P.Ws.1 and 2 did not choose to lodge any report with the police. She also points out that, even in Ex.P1-report, P.W.1 did not express any suspicion against the appellant. As such, learned counsel for the appellant prays this Court to allow the appeal by setting aside the conviction and sentence recorded by the learned Additional Sessions Judge.

10. On the other hand, learned Additional Public Prosecutor opposed the appeal contending, *inter alia*, that P.Ws.1 and 3 have categorically stated that, before leaving his house on 02.07.2013 at about 3.00 P.M., the deceased informed them that he was going to Macherla to meet the accused. He further contends that P.W.6, who is none other than brother-in-law of the deceased, had seen the deceased in the company of the accused near the scene of offence while they were proceeding towards the said place. He further contends that there is absolutely no reason to disbelieve the evidence of P.W.5 with regard to the extra-judicial confession made by the accused on 15.07.2013. As such, he requests this Court to dismiss the appeal by confirming the conviction and sentence recorded by the learned Additional Sessions Judge.

**11.** We have carefully scrutinized the entire evidence on record.

**12.** There are no direct eye witnesses in the present case and the prosecution rests its case only on the basis of circumstantial evidence.

**i.** First circumstance relied on by the prosecution is the last seen theory;

**ii.** Second circumstance relied on by the prosecution is the extra judicial confession made by the accused before P.W.5;

**iii.** Third circumstance relied on by the prosecution is the recovery of cash from the possession of accused in his house; and

**iv.** Fourth circumstance relied on by the prosecution is that the conduct of the accused in absconding from 02.07.2013 to 15.07.2013.

**13.** So far as the first circumstance is concerned, the prosecution relies on the evidence of P.Ws.1 to 3 and 6. P.Ws.1 to 3 have categorically stated in their evidence that, on 02.07.2013 at about 3.00 P.M., the deceased left the house informing P.W.2 that he was going to Macherla, as the accused was waiting for him there.P.W.6, in his evidence, stated that at about 5.00 P.M. on 02.07.2013, he noticed the accused and the deceased proceeding on two-wheeler near

Boggavagu Dam, where he was grazing sheep. He further stated that, when he questioned them, both of them informed him that they were going to a place where gambling was taking place. According to him, both of them were proceeding towards Champarajupuram village, where the gambling place was situated in a forest area. P.W.6 is none other than the brother-in-law of the deceased. As the deceased did not return home, P.W.1 went to the police station on 05.07.2013 and lodged Ex.P1-report, basing on which P.W.14 registered a case in Crime No.15 of 2013. Significantly, in Ex.P1-report, P.W.1 did not even express any suspicion against the accused. P.Ws.1 to 3 merely stated that the deceased had informed them that he was going to Macherla to meet the accused. So far as the evidence of P.W.6 is concerned, though he claims to have witnessed the accused and the deceased together at about 5.00 P.M. on 02.07.2013, he did not disclose the said fact to anyone. If really P.W.6 had witnessed the accused and the deceased together at the relevant time, being none other than the brother-in-law of the deceased, he would naturally have informed P.Ws.1 to 3 about the same, particularly when the deceased did not return home. His failure to disclose such a material fact to the family members of the deceased, at the earliest opportunity, creates a serious doubt regarding the veracity of his testimony.

**14.** It is pertinent to note that, though the incident allegedly took place on 02.07.2013, Ex.P1-report was lodged by P.W.1 only on 05.07.2013. Curiously, the fact that P.W.6 had witnessed the accused in the company of the deceased on the fateful day does not find any mention in Ex.P1-report. Further, P.W.13, the Investigating Officer, in his evidence, stated that he recorded statement of P.W.6 for the first time on 17.07.2013, i.e., after the extra-judicial confession made before P.W.5 on 15.07.2013. This delay in recording statement of P.W.6, coupled with the omission of this material fact in Ex.P1-report, creates serious doubt regarding the genuineness of the alleged last-seen circumstance. Having carefully scrutinized the evidence of P.Ws.1 to 3, 5 and 6, we are of the considered view that the prosecution has failed to establish the first circumstance, namely, the last-seen theory, beyond reasonable doubt.

**15.** Coming to the second circumstance, i.e. alleged extra-judicial confession, the prosecution relies on the evidence of P.Ws.5 and 10. According to the prosecution, on 15.07.2013, the accused approached P.W.10 and confessed about the commission of offence. Thereafter, P.W.10 took the accused to P.W.5, the Village Revenue Officer of Gangavaram village. However, P.W.10 did not support the case of the prosecution and was declared hostile. So far as the evidence of P.W.5 is concerned, he deposed that, on 15.07.2013 at about 11.30 A.M., the accused approached him and confessed about the commission of

offence. The said confession was reduced into writing and marked as Ex.P2. Thereafter, P.W.5 produced the accused, along with Ex.P2, before the Investigating Officer, P.W.13. However, P.W.5, in his evidence, has not stated as to why the accused approached him and made such a confession. Further, P.W.5 admitted in his cross-examination that he was not acquainted with the accused prior to the alleged confession. He also admitted that he had acted as a mediator in about twenty cases at Gurajala Police Station. Having carefully scrutinized the evidence of P.W.5, particularly in the light of the fact that P.W.10, who allegedly took the accused to P.W.5, did not support the prosecution, we are not inclined to place reliance upon the alleged extra-judicial confession. The circumstances surrounding the alleged confession do not inspire confidence and the prosecution has failed to establish the second circumstance also.

**16.** Coming to the third circumstance, namely, recovery of cash from the possession of the appellant at his house, the same, in our considered view, does not incriminate the appellant in any manner. The prosecution has failed to furnish any particulars regarding the cash recovered, including the denominations and currency details, to establish that the said cash belonged to the deceased. In the absence of any such identifying particulars or evidence connecting the recovered cash with the deceased, the alleged recovery cannot be treated as an incriminating circumstance against the appellant. Further,

the prosecution has also failed to establish how the recovery of F.D.R., marked as M.O.20, connects the appellant with the commission of the offence. Therefore, recovery of cash and F.D.R.-M.O.20 does not advance the case of the prosecution and cannot be relied upon as an incriminating circumstance against the appellant.

**17.** Coming to the last circumstance, namely, the alleged absconding of the appellant from 02.07.2013 to 15.07.2013, the same also does not incriminate the appellant in any manner. A careful perusal of the evidence of the prosecution witnesses would disclose that there is absolutely no material to establish that the appellant was absconding from the village during the said period. On the contrary, P.Ws.1 and 2, in their evidence, categorically stated that, on the very next day, i.e., 03.07.2013, they went to the house of the accused, where he was present. This evidence clearly indicates that the appellant was very much available in the village even after the alleged date of the offence. In such circumstances, the learned Additional Sessions Judge ought not to have treated the appellant's alleged absconding from the village between 02.07.2013 and 15.07.2013 as an incriminating circumstance. Thus, the prosecution has failed to establish any of the circumstances relied upon by it to connect the appellant with the commission of the alleged offence. Consequently, the chain of circumstances is not established, and the conviction recorded against the appellant cannot be sustained.

**18.** It is relevant to trite the dictum of the Hon'ble Supreme Court in **Anand Jakkappa Pujari @ Gaddadar Vs. State of Karnataka**[1] wherein it was held as under:-

> *"41. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case, the courts should look for some corroboration.*
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> *42. In State of U.P. v. Satish, (2005) 3 SCC 114 : 2005 SCC (Cri) 642, this Court observed:-*
>
> > *"22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by*

[1] 2026 SCC OnLine SC 716

*witnesses PWs 3 and 5, in addition to the evidence of PW 2."*

*(Emphasis Supplied)*

*43. By now, it is a well settled position of law that the circumstance of "last seen together" does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. The Courts should look for some corroboration.*

**19.** In the case on hand, admittedly, the deceased left his house on 02.07.2013 and his dead body was traced only on 05.07.2013. Thus, there is a considerable time gap between the alleged last-seen circumstance and the tracing of the dead body. In such circumstances, and in the absence of any other reliable incriminating evidence connecting the appellant with the commission of offence, the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt.

**20.** In this connection, it is trite that the Hon'ble Apex Court in a catena of judgments including the decision in **Sharad Birdhichand Sarda v. State of Maharashtra**[2], has laid down five (5) golden principles, which govern a case based only on circumstantial evidence:

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

[2] (1981) 4 SCC 116

*(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 followed, 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."*

**21.** In the light of the above principles and on an overall consideration of the evidence on record, this Court is of the considered view that the prosecution has failed to establish the chain of circumstances so as to bring home the guilt of the appellant beyond reasonable doubt. Consequently, the conviction and sentence recorded against the appellant/accused are liable to be set aside, and the Criminal Appeal is liable to be allowed.

**22.** In the result, the Criminal Appeal is allowed by setting aside the conviction and sentence recorded against the appellant/accused under Sections 302 and 379 IPC by the learned X Additional District and Sessions Judge, Gurazala, in Sessions Case No.299 of 2014 dated 15.05.2018. Consequently, the appellant/accused is acquitted of both

the charges. Fine amount, if any paid by the accused shall be refunded to him. As the appellant/accused was released on bail by order, dated 15.04.2019 vide in I.A. No.1 of 2019, his bail bonds shall stand cancelled.

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

**JUSTICE K.SURESH REDDY**

**JUSTICE SUMATHI JAGADAM**

Dt. 28.10.2026
SAB

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**THE HON'BLE SRI JUSTICE K.SURESH REDDY**

**AND**

**THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM**

**Criminal Appeal No.2075 of 2018**

*(Per Hon'ble Sri Justice K.Suresh Reddy)*

Date: 28.10.2026
SAB