

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

Criminal Appeal No.1362 OF 2008

Between:

Ganta Narender

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad.

... Respondent.

DATE OF JUDGMENT PRONOUNCED: 07.07.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.1362 of 2008

% Dated 07.07.2022

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... Appellant

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High Court for the State of A.P,
Hyderabad.

..Respondent.

! **Counsel for the Appellant:** Madireddy Shanker

^ **Counsel for the Respondent:** Public Prosecutor

>**HEAD NOTE:**

? **Cases referred**

¹ (2020) 10 Supreme Court Cases 166

21984 AIR 1622

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.1362 OF 2008

JUDGMENT:

1. The appellant aggrieved by the conviction under Section 304 Part-II of IPC and sentenced to undergo rigorous imprisonment for a period of five years vide judgment in S.C.No.347 of 2007 dated 29.10.2008 passed by the learned IV Additional Sessions Judge, Ranga Reddy District (for short 'the learned Sessions Judge'), the present appeal is filed. Altogether three accused were tried for the offence under Section 302 IPC, however, the learned Sessions Judge acquitted A2 and A3 of the offence under Section 302 of IPC.

2. The case of the prosecution according to final report is that the appellant herein and his deceased wife loved each other and got married at Yadagirigutta temple, without the knowledge of P.Ws.1 and 2, who are the parents of the deceased. Both A1 and the deceased shifted to quarters in Crystal poultry at Ghatkesar. On 16.10.2006, the deceased asked A1 to take her to hospital as she was not well. However, this appellant and A2 and A3 refused to take her to the

hospital. For the said reason, the deceased got frustrated and closed doors of her quarter from inside. At that time, one Nandesh(PW4) and Prashanth(PW5) knocked the doors of the quarter of the deceased and she did not open, as such, both of them opened the doors forcibly and found the deceased lying in sitting position by the side of almirah with a saree tied around her neck. Accordingly, it was informed to others in the quarters and they brought her out and laid her in the verandah. Since the investigation revealed that there is no harassment by the accused, the charge sheet was laid for the offence under Section 306 of IPC.

3. The Court, however, after going through the charge sheet and other material filed under Section 178 of Cr.P.C, came to the conclusion that the case is one of murder punishable under Section 302 of IPC on the basis of injuries found on the deceased and accordingly, the learned Sessions Judge framed charge as follows:

“That you Narender (A1) along with A2 Chakri and A3 Sarasthi, on 6.10.2006 in the morning hours intentionally killed your wife Manjula, at your quarter in a poultry farm at Ghatkesar by beating and strangulation with saree and thereby you have committed the

offence 'murder' punishable under Section 302 IPC, within my cognizance."

4. Learned counsel appearing for the appellant would submit that the finding of the learned Sessions Judge is based on assumptions and not supported by any evidence brought on record. The learned Judge assumed that A1 did not state any reason for his absence in the poultry when informed to P.W.3, the owner of poultry. Further, when there was blood stained stone found at the scene of offence, the conclusion that A1 beat the deceased in between 7.00 am to 8.30 a.m and by the reason of the said injuries, the deceased gradually lost her conscious and died has no basis. At the same breath, learned Sessions Judge found that there is no evidence on record to prove that the accused harassed the deceased and there was ill motive or intention on the part of the accused to kill the deceased.

5. Learned counsel for the appellant relied upon the judgment in the case of **Anwar Ali v. State of Himachal Pradesh**¹, wherein their Lordships found that in all the cases

¹ (2020) 10 Supreme Court Cases 166

of circumstantial evidence, when the prosecution fails to prove the complete chain of events, the accused would be entitled to acquittal. He also relied on the judgment of Delhi High Court in the case of **Shyam Sunder @ Pappu v. State** [Criminal Appeal No.31 of 2005], dated 30.09.2013, and **Dehal Singh v. State of Himachal Pradesh** [Criminal Appeal No.1215 of 2005], dated 31.08.2010, wherein the Hon'ble Supreme Court held that Section 313 Cr.P.C statement of the accused is recorded without administering any oath as such it cannot be treated as evidence within the meaning of Section 3 of Evidence Act.

6. On the other hand, learned Public Prosecutor submits that the finding of the learned Sessions Judge cannot be interfered with for the reason of the learned Sessions Judge, having found that the circumstances in the present case ruled out any other possibility except the accused committing offence. For the said reason, the finding of the Sessions cannot be interfered with.

7. In the case of **Sharad Birdhi Chand Sarda vs State Of Maharashtra [1984 AIR 1622]**, the Hon'ble Supreme Court

framed the following golden principles in the case of circumstantial evidence, which are as follows:

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully 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 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 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.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

8. It is pertinent to note that during the course of investigation, the police found that the deceased was last seen by L.W.4-Smt.Guggilla Parvathi, however, she was given up and not examined during the course of trial. Further, from the statement of P.Ws.4 and 5 during investigation it was stated that they forcibly opened the door and found the deceased in the quarter with a saree tied around her neck, as such, from the evidence available and the circumstances, the Investigating Officer found that beating by A1 to A3 was frivolous and fabricated. For the said reasons, murder of the

deceased was ruled out and charge sheet was filed under Section 306 of IPC.

9. Ex.P1 is the complaint in which P.W.1/father of the deceased stated that his daughter married A1 after they eloped three months prior to the incident. On receiving phone call from the manager of poultry farm that the deceased committed suicide, P.W.1 and others went to the quarter and found her dead. However, injuries were found on the forehead and bangles were broken, as such, P.W.1 suspected that A1 to A3 committed murder of his daughter. As stated above, the police after investigation found that the door was locked from inside and the same was forcibly opened, for which reason, murder was ruled out.

10. During the course of examination, P.W.1 and 2 parents of deceased narrated the facts as stated in the complaint.

11. The evidence of P.Ws.4 and 5 is crucial to the case. P.W.4 stated that they had seen the deceased was alive at 7.00 a.m while she was washing her clothes. Both P.Ws.4 and 5 further stated that they did not know any quarrel that took

place between A1 and the deceased and so also the other family members of A1. Further, PW.5 specifically stated that about 10.00 a.m, while they were playing outside, the deceased closed the doors and at that time, no other person except deceased was present in the house. The said statement of P.Ws.4 and 5 made on oath before Court was not disputed by the prosecution.

12. The approach of the learned Sessions Judge in concluding that the charge under Section 302 IPC had to be framed though the police had ruled out that the deceased was murdered, appears to be misconceived and contrary to the record and evidence collected during investigation.

13. The learned Sessions Judge was of the opinion that on the basis of the circumstances that (i) A1 had gone to the poultry work and informed P.W.3, the owner of the poultry that deceased would not come, (ii) the admission by the accused in his Section 313 Cr.P.C examination that there was a stone drained in blood at the scene of offence, were sufficient

linking circumstances to prove that the deceased was murdered.

14. Assumptions, presumptions and fanciful thinking cannot be made basis to arrive at conclusions in a criminal case. Prosecution witnesses P.Ws.4 and 5 have stated that when they were playing in front of the house of the deceased, the deceased was washing cloths and subsequently by 10.00 a.m, went inside and closed doors. Further, there was no one in the house except the deceased. It is not in dispute that door was forced open to get the deceased out and she was laid in the verandah.

15. The facts of the case and eye witnesses account would rule out that when the appellant went to work, the deceased was either injured or any altercation took place. The evidence of P.Ws.4 and 5 is not disputed by the prosecution and the same cannot be brushed aside by the trial Court without giving reasons. The view taken by the learned Sessions Judge that the accused might have injured the deceased in between

7.00 a.m to 8.30 a.m that she was slowly died at 10.00 a.m is totally erroneous, without basis and result of fanciful thinking.

16. Any injuries found on the deceased have to be explained by the prosecution and in absence of such explanation, the accused cannot be suspected or asked to explain in the background of the evidence of PW4 and 5. For the said reasons, benefit of doubt has to be extended to the appellant and accordingly, the conviction of accused under Section 304-Part-II IPC is set aside.

17. In the result, the Criminal Appeal is allowed. The impugned judgment dated 29.10.2008 in S.C.No.347 of 2007 is set aside. Since the appellant is in jail, he shall be set at liberty forthwith, if he is not required in any other case.

As a sequel thereto, miscellaneous petitions, if any, pending, shall stands closed.

K.SURENDER, J

Date: 07.07.2022

kvs

HON'BLE SRI JUSTICE K.SURENDER

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