HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE TWENTY FIFTH DAY OF NOVEMBER

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL NO: 651 OF 2015

Between:

1. ADUSUMALLI NANCHARAMMA, GUNTUR DT., w/o Laxmaiah, aged About 54 years,
   R/o Pesarlanka village, Koliuru Mandal, Guntur District.

...PETITIONER(S)

AND:

1. STATE OF AP., REP PP AND 3 OTRS., through S.H.O., Tenali Rural Circle
   Guntur District, rep. by Public Prosecutor, High Court, Hyderabad.
2. Satha Nagamani W/o Veera Sankar Rao, aged 28 years, occ: Housewife,
   R/o Pesarlanka village Kolluru Mandal, Guntur District.
3. Satha Veera Sankar Rao @ Sankar S/o Subba Rao, aged 37 years occ: Tractor owner
   R/o Pesarlanka village Kolluru Mandal, Guntur District.
4. Jonnakuti Gopala Krishna S/o Veera Raghavaiah Aged 42 years, occ: Cultivation
   R/o Pesarlanka village Kolluru Mandal, Guntur District.

...RESPONDENTS

Counsel for the Petitioner(s): SYED GHOUSE BASHA

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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Crl.Appeal No.651 OF 2015

Between:-

Adusumilli Nancharamma,
W/o Laxmaiah,
Aged about 54 years,
R/o Pesarlanka Village,
Kolluru Mandal, Guntur District.

....Appellant/
Defacto Complainant.

Versus

1) The State of Andhra Pradesh, through
S.H.O., Tenali Rural Circle
Guntur District, rep. By Public Prosecutor,
High Court, Hyderabad.

2) Satha Nagamani, W/o Veera Sankar Rao,
Aged 28 years, Occ: House-wife,

3) Satha Veera Sankar Rao @ Sankar,
S/o Subba Rao, aged 37 years,
Occ: Tractor owner,

4) Jonnakuti Gopala Krishna,
S/o Veera Raghavaiah,
Aged 42 years, Occ: Cultivation,

Nos. 2 to 4 are R/o Pesarlanka Village,
Kolluru Mandal, Guntur District.

....Respondents/Complainant
& Accused.

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DATE OF JUDGMENT PRONOUNCED : 25.11.2022

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copy of Judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

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C.PRAVEEN KUMAR, J

_____

B.V.L.N.CHAKRAVARTHI, J

***HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**
AND
*** HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

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! Counsel for the Appellant **:** Sri Syed Ghouse Basha

^ Counsel for the Respondent No.1 **:** Public Prosecutor

^ Counsel for the Respondent Nos.2 & 3 : Sri G.L.Nageswara Rao

^ Counsel for the Respondent No.4 : Sri N.Srihari

< Gist:

> Head Note:

? Cases referred:

1. AIR 1934 PC 227

2. 2012 (1) SCC 383

3. 2007 (4) SCC 415

4. AIR 2021 SC 1249

5. (1984) 4 SCC 116

6. (2015) 7 SCC 178

This Court made the following:

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

CRIMINAL APPEAL No.651 of 2015

JUDGMENT: - (Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

This is an appeal filed by the defacto-complainant under Section 372 of the Code of Criminal Procedure (for short hereinafter referred to as "Cr.P.C.,") against the judgment dt.14.05.2015 in Sessions Case No.351 of 2014 delivered by the learned XI Additional Sessions Judge, Tenali, where under the accused No.1 was found not guilty for the offence punishable under Sections 302 of the Indian Penal Code (for short herein after referred to as "I.P.C.,"), accused Nos.2 and 3 were found not guilty for the offence punishable u/s 120-B r/w 302 of the I.P.C., and accused 1 to 3 were found not guilty or the offence punishable u/s 203 of I.P.C., and acquitted them for the said offences u/s 235 (1) of Cr.P.C.,

2. It appears that, the State, represented by the Inspector of Police, Tenali Rural Circle did not prefer any appeal questioning the judgment of the learned Sessions Judge.

3. The case of the prosecution, in brief, is as follows:-

(i) On 13.09.2012 at about 3.30 p.m., when the Asst. Sub-Inspector of Police, Kollur P.S., (P.W.14) was present in the Police Station, Musala Gopi Krishna (P.W.11), a Court Constable came to the Station along with accused No.2 and stated that on the way to the Station, at Musallapadu Village, A2, who was going on a tractor intimated that he received a telephone message from his wife (A1) stating that Adusumilli Prabhu Kishore (deceased) committed suicide in his house. Immediately A.S.I., accompanied by a Head Constable and two Constables along with A2 proceeded to the house of A2 located in Pesarlanka Village and at about 4.00 p.m., noticed the dead body of the deceased lying in the house and public gathered there. Meanwhile, the mother of the deceased (defacto complainant/P.W.1) presented Ex.P1 report stating that she performed the marriage of the deceased with the daughter (P.W.4) of her elder daughter and prior to the marriage the deceased was having illegal intimacy with the wife of A2, who is A1 in the case and after marriage the deceased discontinued his affair. On 13.09.2012 at 11.00 a.m., the deceased came to house, had lunch and taking rest in the house and at about 2.00 p.m., he received a phone call and then he proceeded

towards Nancharamma Temple in the village and at about 4.00 p.m., the defacto complainant came to know that her son was found dead in the house of A1 and A2. Immediately she went there, noticed the dead body of the deceased lying in their house and there are no injuries of any kind over the body, but she noticed swelling over the throat and she suspected that A1 along with others must have killed him on the ground that the deceased was not maintaining intimacy with A1.

(ii) Asst. Sub-Inspector of Police registered Ex.P1 report as F.I.R., (Ex.P6) in Cr.No.78/2012 u/s 174 of the Cr.P.C., of Kolluru P.S., at 6.00 p.m., forwarded the original to the Executive Magistrate and copies to all concerned. He secured mediators P.Radha Krishna Murthy (P.W.12) and another M.Rambabu (L.W.18), proceeded to the scene of offence, observed the same, noticed that the dead body of the deceased was lying supine, a blue colour sari hanging to the rope nearby along with other clothes and said sari was found twisted and he also found a clutch wire and other material objects. He got photographed the scene of offence with the help of a photographer under Exs.P8 to P12, got prepared scene observation report (Ex.P3), prepared sketch showing the topography (Ex.P7), examined P.W.1 and other witnesses,

recorded their statements. On 14.09.2012 he took up further investigation, secured mediators T.Krishna Mohan (P.W.9), A.Venkateswara Rao (L.W.20) and G.Venkateswara Rao (L.W.21), visited the scene of offence, conducted inquest over the dead body of the deceased in the presence of mediators under the cover of inquest report (Ex.P2), examined A.Lakshmaiah (P.W.2), A.Prabhu Kumari (P.W.3), A.Prabhu Jyostna (P.W.4) and one K.Siva Parvathi (L.W.4), recorded their statements and seized material objects. The dead body was sent for post-mortem examination.

(iii) On 02.10.2012 the Sub-Inspector of Police (P.W.15) took up investigation, visited the scene of offence, and verified the investigation conducted by P.W.14, secured the presence of V.Vijaya Lakshmi (P.W.5) and recorded her statement. On 12.11.2012, on receipt of post-mortem examination report to the effect that the deceased died of asphyxia due to strangulation-homicidal, he altered the Section of law from Section 174 of the Cr.P.C., to Section 302 of the I.P.C., and issued altered F.I.R., (Ex.P13). Then Inspector of Police (P.W.16) took up further investigation. On 12.11.2012 at about 11.00 a.m., he proceeded to the scene of offence along with P.Seshagiri Rao (P.W.15), observed the same and on verification found that

the investigation done so far was on correct lines. On 16.12.2012, on credible information about the presence of accused, he along with mediators proceeded to the house of accused at Pesarlanka Village and arrested them, interrogated them, who confessed that they have committed the offence and then he sent the accused for judicial custody. Subsequently, after completion of the investigation, the Inspector of Police, Tenali Rural Circle filed police report (charge sheet) against the accused 1 to 3 for the offence punishable u/s 120-B, 302 sand 201 r/w 34 of the I.P.C.,

4. The learned Magistrate has taken cognizance of the offence as P.R.C.No.44 of 2013, supplied copies of the documents to the accused as required under Section 207 Cr.P.C., As the offence u/s 302 of the I.P.C., is triable by a Court of Sessions, the case was committed to the Court of Sessions, Guntur Sessions Division under Section 209 Cr.P.C., The learned Sessions Judge, Guntur registered it as Sessions Case and made over to the Court of the learned XI Additional Sessions Judge, Tenali for trial and disposal according to law.

5. The learned XI Addl. Sessions Judge, Tenali has framed a charge u/s 302 IPC against A1, u/Section 120-B r/w

302 IPC against A2 and A3 and Section 203 of IPC against A1 to A3, explained the contents of the charges to the accused in Telugu, for which they pleaded not guilty and claimed to be tried.

6. During trial, the prosecution has examined 16 witnesses as P.Ws.1 to 16 and got marked 13 document as Exs.P1 to P13, apart from 06 material objects as M.Os.1 to 6 respectively.

7. The learned Sessions Judge, after conclusion of the evidence for the prosecution, examined the accused 1 to 3 under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which the accused denied and pleaded that they were falsely implicated in the case. No oral or documentary evidence was adduced on behalf of any of the accused.

Summary of findings of Sessions Judge:-

8. Relying upon the evidence on record, the learned Sessions Judge opined that the case of the prosecution was developed mainly on the basis of confession alleged to have been made by the accused before the investigation officer, which is

not admissible in law; there are several neighbours to the house of the accused and the scene of offence is located in a busy area of the village and on the date of the incident, the paternal aunt of A2 died and ceremonies were held in a house opposite to the house of the accused, but none of them observed anything from the house of the accused; as per the evidence of the Medical Officer, the features are possible even in the case of hanging and therefore, death is possible by way of suicide and the injury on the neck of the deceased is not possible with a clutch wire (M.O.3). The petechial hemorrhage found adjacent to the ligature mark is also possible in hanging. Extravagation of blood in the subcutaneous tissues of the neck are also possible in hanging by suicide. Therefore, death of the deceased is also possible by hanging. Theory of the prosecution that homicide was committed by strangulation with a clutch wire is proved to be incorrect.

The said version of theory of suicide by hanging with a sari pleaded by the defence is also possible as P.W.14 deposed that at the scene of offence they found a twisted sari hanging to the wire as if it was used for hanging in the house. All the household articles in the house were not disturbed and

even the dress worn by the deceased was not disturbed indicating that it is not a case of homicide.

As per the evidence of mediator/P.W.12, the cell phone was found in the shirt pocket of the deceased as mentioned in Ex.P3 and the A.S.I., also admitted that all the seized articles were found at the scene of offence and household articles available in the house were not disturbed and they were intact and the police did not collect any call data record from the mobile phone of the deceased showing that he went to the house of A1 after receiving call from A1 and further there is no evidence to show that the deceased went to the house of the A1 on her request.

The material on record is indicating that on that day the deceased was intending to have the company of A1, for which she refused. Then the deceased to threaten her under the guise of suicide, attempted suicide, as a consequence he might have died. There is no evidence at all showing the presence of A2 and A3 at the time of alleged incident showing their involvement, in those circumstances, the learned Sessions Judge came to an opinion that the contention of the prosecution that accused were found absconding is false as A1 informed to A2 about the incident and then A2 brought the police to his

house and in the said circumstances delivered the judgment, as mentioned supra.

Summary of Appeal Grounds:-

9. The defacto complainant (P.W.1), who is mother of the deceased, preferred the appeal contending that the judgment of the learned Sessions Judge is contrary to the evidence and probabilities of the case. The prosecution proved the guilt of the accused beyond all reasonable doubt. The circumstances show that the deceased had illegal intimacy with A1 and the husband of A1 i.e., A2, who came to know about the same, conspired with the other accused and murdered the deceased, therefore, the motive was established by the prosecution beyond all reasonable doubt.

It is further contended that the evidence of doctor (P.W.13) shows that the cause of death of the deceased was due to homicide and the dead body was found in the house of the accused 1 and 2, as such the contention of the defence that the deceased committed suicide cannot be believed.

The appellant also contended that there is no reason for the deceased to commit suicide in the house of the accused. Merely because there was no disturbance to the dress worn by the deceased and household articles available in the

house were not disturbed, it cannot be held that the deceased committed suicide. Therefore, the learned Sessions Judge failed to consider these circumstances and erred in holding that the prosecution failed to prove the charges. Further presence of broken bangle pieces at the scene of offence indicate that there was some resistance made by the deceased to escape from the accused and it also supports the case of the prosecution and therefore, the judgment of the learned Sessions Judge is liable to be set aside and accused shall be convicted for the charges framed in the case.

Submissions of counsel for appellant:-

10. The learned counsel for the appellant submitted that admittedly the dead body of the deceased was found lying in the house of the accused 1 and 2 on 13.09.2012, by the time A.S.I., reached the place of offence and it was also proved by the evidence of P.Ws.1 to 4 and others examined for the prosecution. He further submitted that the accused did not give any proper explanation for the same and the evidence of P.W.3 shows that at the time of incident on 13.09.2012 she noticed A3 visiting the house of A1 and then leaving their house in perturbed mood around 2.00 p.m., He also submitted that another suspicious circumstance from the evidence of P.W.3 is

that A1 and A2 did not go to the ceremony conducted in front of their house for the death of the paternal aunt of A2 during noon time on that day. He also submitted that the above fact indicates that the accused 1 and 2 were very much present inside their house at that time and therefore, the prosecution proved that the accused 1 to 3 with a plan invited the deceased to the house and committed murder of the deceased by strangulation using the clutch wire and later A2 went away from the house and fabricated the story, which cannot be believed and the evidence of Medical Officer supported by Ex.P5 post-mortem report shows that the death was due to homicide and the evidence of the doctor in the cross-examination cannot be considered in the light of Ex.P5. It shows that the death was due to strangulation and it is a homicide and in that circumstance the burden is on the accused to explain the circumstances as per Section 106 of the Indian Evidence Act, but they failed to give a reasonable explanation and therefore, adverse inference shall be drawn against the accused and hence, the opinion of the learned Sessions Judge is not all possible, and hence, liable to be set aside.

Submissions of counsel for A1 & A2:-

11. The learned counsel for the accused 1 and 2 submitted that the case of the prosecution is that cell phone was found in possession of the deceased at the time A.S.I., visited the scene of offence at 4.00 p.m., and it was seized during inquest, but the police for the reasons best known to them, did not collect any C.D.R., of the cell phone to prove that A1 made a call to the deceased inviting him to the house at about 2.00 p.m. Admittedly, as per the case of the prosecution the Court Constable found A2 at Musallapadu Village while coming on a tractor carrying bricks and A2 informed him that A1 made a phone call to him intimating that the deceased committed suicide in their house, and if it is false story, the investigation officer can seize the cell phone of A1 and A2 showing that no phone call was made by A1 to A2 and the prosecution did not explain anything about the same.

He further submitted that there is no evidence to disbelieve that part of the case of the prosecution that A2 was noticed by the constable at Musallapadu Village at about 3.30 p.m., carrying bricks load in a tractor and therefore, there is no evidence to probable the case of the prosecution that A2 was present in the house at the time of alleged incident. Further it

is the case of the defence that deceased came to the house of A1 in the absence of A2 and pressurized her to continue illicit intimacy and for that A1 refused and then the deceased in order to threaten A1, made an attempt to commit suicide with a sari seized at the scene of offence, which was in a twisted position and in that process he died. The story of the prosecution that the deceased died due to strangulation committed by the accused with clutch wire (M.O.5) was proved to be false by the evidence of doctor (P.W.13), who conducted post mortem examination and the evidence of the medical officer probable the plea of the defence that the death of the deceased was due to hanging and further the doctor categorically deposed that the death was not at all possible by using M.O.5 clutch wire.

He also submitted that, as such, the case of the prosecution failed and when prosecution failed to prove their case of homicide, question of shifting the burden onto the accused u/s 106 of the Indian Evidence Act would not arise.

Submissions of counsel for A3:-

12. The leaned counsel for A3 submitted that there is no evidence on record to show the presence of A3 at any time in the house of A1 and A2 on 13.09.2012, and there is no evidence to show that A3 met A1 and A2 at any time prior to the alleged

incident and further it is the evidence of P.W.3 that she saw A3 on that day at about 2.00 p.m., when A3 went to the house of A1 and after 20 or 25 minutes he came out in a perturbed mood and hurriedly left the house on his bike is an afterthought story and if it is true, this fact should have been found place on 13.09.2012 itself in the statement recorded by the A.S.I., or on 14.09.2012 when the Sub-Inspector of Police came to the scene of offence, examined and recorded their statements, and on that day itself the police would have suspected the role of A2 and A3 and they would not register the case under Section 174 of the Cr.P.C., and on that day itself police would register the case for the offence punishable u/s 302 of IPC against the accused, but the story was developed after the alleged arrest of the accused shown on 16.12.2012 under the guise of confession, and therefore, no credibility can be attached to the testimony of P.W.3 and as such there is no iota of evidence against A3 to connect him with any of the charges in the case.

13. The learned Sessions Judge upon consideration of evidence for the prosecution came to an opinion that the prosecution failed to prove that death of deceased is a homicide and that it was caused by the accused in pursuance of a conspiracy and found the accused 1 to 3 not guilty for the

offence punishable u/s 302 IPC against A1, Sec.120-B r/w 302 IPC against A2 and A3 and Section 203 of IPC against A1 to A3.

14. Hon'ble Privy Council in **Sheo Swarup and others Vs. The King-Emperor**[1] held as under,

> *"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has " obstinately blundered," or has " through incompetence, stupidity or perversity "reached such " distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result."*

The Privy Council further held as under,

> *"…in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1.) the views of the trial judge as to the credibility of the witnesses; (2.) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3.) the right of the accused to the benefit of any doubt; and (4.) the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and*

[1] AIR 1934 PC 227.

principles well known and recognized in the administration of justice."

15. The Hon'ble Supreme Court in **Murugesan, S/o Mujttu and others Vs. State and others**[2] after referring to the principles laid down by the Hon'ble Privy Council, in **Chandrappa and others Vs. State of Karnataka**[3] held that, an appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded and the Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law and that an appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused and firstly, the presumption of innocence is available to him under the fundamental principle of Criminal Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law and secondly the accused having secured his acquittal, the presumption of innocence is further reinforced, reaffirmed and strengthened by the trial Court and further held that if two reasonable

[2] 2012 (1) SCC 383
[3] 2007 (4) SCC 415

conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

16. In the light of the above principles laid down by the Hon'ble Privy Council and Hon'ble Supreme Court, if two reasonable views are possible based on the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. Therefore, the appellate Court can disturb the finding of acquittal recorded by the trial Court only when the view of the trial Court is not even possible view. Hence the appellate Court shall frame a point for consideration whether the view taken by the trial Court is not a possible view?

17. In the light of the above principles of Criminal Jurisprudence, the point for consideration in the case on hand is:

"Whether the view taken by the trial Court is not a possible view?"

POINT:-

Role of Accused No.1:-

18. It is the case of the prosecution that on 13.09.2012 at about 2.00 p.m., the deceased received a phone call from A1,

then he visited the house of A1 and later his dead body was found in the house of A1. It is an admitted fact that A2 is the husband of A1. The material on record shows that the A.S.I., (P.W.14) has seized the mobile phone (M.O.5) of the deceased at the scene of offence.

19. A.Nancharamma (P.W.1) is the mother of the deceased. She in her evidence deposed that on 13.09.2012 at about 2.00 p.m., deceased received a phone call, on which her husband woke him up and the deceased while talking on phone left towards the house of A1. Therefore, she deposed as if the deceased received a phone call from A1 and went towards the house of A1. A.Lakshmaiah (P.W.2) is father of the deceased. P.W.2 in his evidence deposed that on 13.09.2012 at about 2.00 p.m., the deceased received a phone call, then he (P.W.2) woke up the deceased informing about the phone call and while talking through cell phone the deceased left the house towards the house of A1. Therefore, he also deposed on the same lines as that of P.W.1 on this aspect. In the cross-examination, P.W.2 admitted that he did not speak to the caller on the cell phone before handing over the phone to the deceased. A.Prabhu Kumari (P.W.3), sister of the deceased deposed that on 13.09.2012 at about 2.00 p.m., her brother received a phone

call and her father woke up the deceased, handed over the phone and then deceased while talking on phone left towards the house of A1.

20. The above evidence established that P.W.2 noticed ringing of mobile phone of the deceased and then he handed over the phone to the deceased, but his admission in the cross-examination shows that he did not verify who was calling the deceased at that time. P.Ws.1 and 3 also did not depose that they have verified the mobile phone of the deceased while it was ringing and found that A1 was calling the deceased. Hence, it is their assumption that A1 made a phone call to the deceased at that time, inviting him to her house. In the said circumstances, a duty is cast upon the prosecution to prove the same beyond reasonable doubt, since their case is that A invited the deceased to her house in pursuance of the conspiracy. **It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt**. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt. It is the specific case of the prosecution that M.O.5 was the mobile phone of the deceased and it was seized at the scene of offence.

21. The investigation officer did not take any steps to get the Call Data Record (CDR) of the SIM card found in the mobile phone of the deceased. If the call data record is produced before the Court, if would have shown A1 making a call to the deceased at about 2.00 p.m., on 13.09.2012, which may prove the case of the prosecution and would corroborate the evidence of P.Ws.1 to 3. Then it is for A1 to explain why she made a call to the deceased and if she fails to give proper reply, section 106 of Evidence Act may help case of the prosecution. Unfortunately, the prosecution, for reasons best known to them, did not produce the call data record of the SIM available in the mobile phone of the deceased at the scene of offence. Hence, the prosecution failed to produce the best evidence available in the case. Therefore, the prosecution failed to prove that deceased went to the house of A1 on her invitation.

22. It is the defence of the accused that the deceased was pressurizing A1 to continue the alleged illicit intimacy and on that day he visited the house of A1 in the absence of A2, and pressurized A1 to continue the illicit intimacy and then A1 refused for the same. Therefore, the deceased with an intention to coerce her under the guise of committing suicide, made an attempt to commit suicide using the sari hanging to the wire

and in that process he died. A1 out of fear informed her husband (A2), who was outside the village and then A2 found the Police Constable (P.W.11) who was coming from the Court and going to Kollur P.S., Then both of them went to the Police Station and informed A.S.I., (P.W.14) and later all of them came to the house at about 4.00 p.m., and then noticed the neighbours at the house, including P.Ws.1 to 3 and others and dead body in the house.

23. It is the case of the prosecution that A1 and deceased had illicit intimacy and it was known to his parents and they chastised him. Later they performed marriage of the deceased with A.Prabhu Jyostna (P.W.4), who is the niece of the deceased. A2 also came to know about the illicit intimacy and then A1 informed her husband that the deceased was insisting her to continue the illicit intimacy. Thereupon A1 and A2 along with A3 entered into a conspiracy to kill the deceased and in pursuance of the agreement A1 made a phone call inviting the deceased to her house and at that time A2 and A3 were hiding in the house, and all the accused murdered the deceased by strangulation with the use of clutch wire (M.O.3) in the house.

Medical Evidence:-

24. The Hon'ble Apex Court in a recent judgment in **Shivaji Chintappa Patil Vs. State of Maharashtra**[4] held that the law regarding conviction based on circumstantial evidence has been very well crystalized in the judgment of the Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda V State of Maharashtra**[5].

25. The facts in the case of **Shivaji Chintappa Patil** case (cited supra) are that the doctor who conducted autopsy along with a Senior Medical Officer issued an advance death certificate opining that the probable cause of death was asphyxia due to strangulation and the post-mortem report opining that death was due to cardio respiratory arrest due to asphyxia due to hanging and in the cross-examination the doctor admitted that in both cases of suicidal or homicidal hanging the ligature mark around the neck shall go upwards ears and in the case of homicidal hanging or homicidal strangulation the bodily resistance would have reflected other recorded injuries. In the light of said evidence, the Hon'ble Apex Court held as under,

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[4] AIR 2021 SC 1249
[5] (1984) 4 SCC 116

"15. It is thus clear, that the medical expert has admitted, that in both the cases of suicidal or homicidal hanging, the ligature marks around the neck shall go upwards ears. He has further admitted, that after consulting his senior medical officer and going through the books, he concluded that it was a case of hanging. He has further admitted, that Article No. 1 which is a rope, which is found on the spot, can be used for suicidal hanging. He has further admitted, that in case of homicidal strangulation, the bodily resistance would have been reflected.

16. It will be apposite to refer to the judgment of this Court in the case of Eswarappa alias Doopada Eswarappa (supra), wherein this Court relied on Modi's Medical Jurisprudence and Toxicology and observed thus:-

"7. In Modi's Medical Jurisprudence and Toxicology, 23rd Edn., p. 572 it is observed as follows:

"Homicidal hanging, though rare, has been recorded. Usually, more than one person is involved in the act, unless the victim is a child or very weak and feeble, or is rendered unconscious by some intoxicating or narcotic drug. In a case, where resistance has been offered, marks of violence on the body and marks of a struggle or footprints of several persons at or near the place of the occurrence are likely to be found." None of the well-known signs referred to by the learned author are present in this case."

17. In the present case also, admittedly, there are no marks on the body which would suggest violence or struggle. In any case, the medical expert himself has not ruled out the possibility of suicidal death. On the contrary, the Post-Mortem Report shows, that the cause of death was 'asphyxia due to hanging'."

26. In the case on hand, the evidence of the doctor, who was examined by the prosecution as P.W.13, shows that she conducted post-mortem examination on the dead body of the deceased on 14.09.2012 from 3.30 p.m., onwards and as per

Ex.P5 post-mortem report issued by her, she found the following external injuries on the body of the deceased:-

Rigormortis present. Face is swollen cyanosed, lips swollen. Two abrasions of ½" x ¼" present below the lower lip left side. Bleeding from knows present. Hypostasis present on the neck front and back of the neck. Scrotum swollen. Neck – A blackish pressure mark seen on the front of the neck at the level of hyoid measuring 6" in length x ½" width starting 2" below the left ear extending up to the angle of the mandible on the right side.

27. The doctor opined that the deceased would appear to have died of asphyxia due to strangulation and in Ex.P5 she mentioned that it is a homicidal. It is pertinent to note down that on 13.09.2012 the A.S.I., registered Ex.P1 report presented by P.W.1 as Ex.P6 F.I.R., u/s 174 of Cr.P.C., but not for the offence punishable u/s 302 IPC, and as per the evidence of P.W.14, there is no proper evidence to come to an opinion whether it is suicide or homicide, hence they waited for the opinion of the doctor. Therefore, he registered F.I.R., u/s 174 of the Cr.P.C., Hence, it is very clear as per his evidence that on the date of incident when he visited the house of the accused, he did not find any material to suspect the role of the accused

to register a case for the offence punishable u/s 302 of IPC against the accused. Further, he deposed that he found a sari twisted and a small belt hanging to the wire at the scene of offence, apart from clutch wire. He admitted that except the injury to neck, there was no other injury found over the body. The evidence is that the deceased was a well-built man of 6-feet height. The doctor (P.W.13) in the cross-examination deposed that the clutch wire is measuring 0.5 cm., and the injury found on the neck is half inch, means in medical terminology it is 1.25 cm., and the injury in the case is not possible with the clutch wire shown to her. Therefore, the doctor ruled out use of M.O.3 wire for strangulation of the deceased. The doctor in her evidence deposed that subcutaneous tissues under the mark are dry and hard and they are possible in suicide also and the petechial hemorrhages found adjacent to the mark are possible in hanging also, and the extravasation of blood in the subcutaneous tissues of the neck are also possible in hanging by suicide. The deceased was a well built person and due to struggle or resistance in the attempt of strangulation, there may be chance for sustaining other injuries, but in this case there are no other injuries on the body either while fighting with the persons or by contacting with any object.

28. In the light of above evidence, admittedly, there are no marks on the body which would suggest violence of struggle. The above evidence also is not reflecting any bodily resistance. The evidence shows that the deceased was well built and 6 feet toll person. Therefore, medical evidence beyond all reasonable doubt not establishing that death of the deceased was due to homicide.

Role of A2 & A3:-

29. Accused No.2 has taken the plea that he went to Penumudi on his tractor for loading sand and from there with a load of sand he was going to Musallapadu Vantena and that he was away from his house and on the way he received phone call from his wife i.e., A1 that the deceased came to the house and insisted her to continue the illicit intimacy, but she refused for the same and then the deceased with an intention to coerce her under the guise of suicide used the twisted sari hanging to the wire and as a result he died.

30. At this juncture, the evidence of Police Constable (P.W.11) is relevant. In his evidence he deposed that on 13.09.2012 he attended Court work at Tenali and returning to Kolluru Police Station on his motor cycle, and on the way when

he reached Musallapadu bridge, at about 3.30 p.m., he found A2, who stopped him from his tractor and intimated that while he was going on the tractor with a load of sand, he received a phone call from his wife that the deceased committed suicide in their house and asked him to get police to their house. Then both of them went to the Police Station and informed the same to A.S.I., (P.W.14) and later they came to the house of A2. Therefore, the evidence of the Police Constable is establishing that he found A2 near Musallapadu Village with a tractor having sand load. The Investigating Officer did not choose to seize the mobile phone of the accused 1 and 2 to collect call data records of the SIMs available in their mobile phones. If the prosecution collected the call data records of the mobile phones of the A1 and A2. They may prove two things, firstly, whether A1 made call to the deceased at about 2.00 p.m., on 13.09.2012, and secondly, whether A1 made a call to A2 around 3.00 p.m., or 3.30 p.m., on that day as stated by A2 to the Police Constable. Unfortunately, the investigating officer for reasons best known to him, did not choose to collect the call data records of the deceased, A1 and A2, thereby the prosecution failed to produce the best evidence available in the case**. Men may lie but not**

the circumstances. The Hon'ble Supreme court in **Thomaso Bruno and another Vs. State of U.P.,**[6] observed that,

> *".....it is for the prosecution to have produced the best evidence which is missing. Omission to produce CCTV footage, in our view, which is the best evidence, raises serious doubts about the prosecution case."*

31. It is not the case of the prosecution that call record details could not be collected in spite of best efforts. **As per Section 114 (g) of the Evidence Act if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him**. This raises serious doubts on the prosecution case. Therefore, the prosecution failed to prove that A2 and A3 were present in the house of A1 and A2 at the time of incident.

32. The Hon'ble Apex Court in **Shivaji Chintappa Patil** case (cited supra) on Section 106 of Indian Evidence Act held as under,

> *"22. It could thus be seen, that it is well-settled that Section 106 of the Evidence Act does not directly operate against either a husband or wife staying under the same roof and being the last person seen with the deceased. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary*

[6] (2015) 7 SCC 178

burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused."

33. In the case on hand, as discussed supra, the prosecution failed to prove beyond reasonable doubt, that the death of the deceased was homicidal.

34. The evidence of A.S.I., shows that none of the objects available at the scene of offence were disturbed when he visited the scene indicating a scuffle at the time of alleged incident.

35. P.W.3, sister of the deceased in the chief-examination deposed that on that day death ceremony of Ranga Ratnamma was going on opposite to the house of A1. Admittedly, Ranga Ratnamma is a close relative of the accused. The evidence of Velivela Vijayalakshmi shows that her mother-in-law Ranga Ratnamma died on 12.09.2012, and a ceremony was going in their house on 13.09.2012 and P.Ws.1 to 4 did not attend for lunch, and A1 and A2, who are their relatives also did not attend for the lunch and that they did not invite P.Ws.1 to 4 for the lunch. They invited A1 and A2 for lunch, but they did not attend to the ceremony.

36. The learned counsel for appellant contended that it shows that as accused 1 and 2 were busy in the house in committing murder of the deceased at that time, and therefore, they did not attend the ceremony and that bangle pieces were found at the scene of offence shows there was a scuffle. This argument of the learned counsel for the appellant is farfetched and cannot be accepted since A2 and A3's presence was not established by the prosecution in his house at that time. The deceased was a well-built person of 6-feet height, if so, how come A1 alone can strangulate the deceased. It is a fundamental rule of criminal law that an accused is presumed to be innocent unless otherwise proved by the prosecution.

37. P.W.3 in the chief-examination deposed that on that day at about 2.00 p.m., A3 hurriedly came on his bike to the house of A1 and entered into the house and after 20 or 25 minutes he came out with perturbed mood and left on his bike. Therefore, P.W.3 intends to say that A3 was present in the house of A1 and A2 at the time of alleged incident. It is the case of the prosecution that deceased went to the house of A1 at about 2.00 p.m., on receipt of phone call from A1 and at that time A2 and A3 were hiding in the house as per the theory of conspiracy. P.W.3 deposed that A3 entered the house of A1 at

about 2.00 p.m., which means he entered the house of A1 after deceased entered the house of A1. Further, the A.S.I., conducted inquest on 14.09.2012, and as per his evidence he examined P.Ws.2 to 4 during inquest. If really P.W.3 has seen A3 entering the house of A1 on 13.09.2012 at about 2.00 p.m., she would bring it to the notice of P.W.14 on 13.09.2012 or at least on 14.09.2012, raising a suspicion over the role of A3.

38. It is the evidence of A.S.I., (P.W.14) that as he did not find any suspicious material to confirm either it is a homicide or suicide, hence, he registered the case u/s 174 of Cr.P.C., on 13.09.2012. It shows that P.W.3 for the reasons best known to her, improved the version and deposed against A3. It will not help the case of the prosecution. In view of the above discussion, as rightly opined by the learned Sessions Judge, the case of the prosecution appears to be developed through the evidence of P.W.3 after the arrest of the accused, three months after the incident, in the form of confession statement said to have been made by the accused, which is inadmissible in evidence in view of Section 25 of Evidence Act.

39. The Hon'ble Apex Court in **Shivaji Chintappa Patil** case (cited supra) further held as under,

32. It is more than settled principle of law that if two views are possible, the benefit shall always go to the accused. It will be apposite to refer to the following observations of this Court in the case of Sharad Birdhichand Sarda (supra):-

"163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808, this Court made the following observations : [SCC para 25, p. 820 : SCC (Cri) p. 1060] "Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.""

33. This Court, recently, in the case of Devi Lal (supra) observed thus:-

"19. That apart, in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. All the judicially laid parameters, defining the quality and content of the circumstantial evidence, bring home the guilt of the accused on a criminal charge, we find no difficulty to hold that the prosecution, in the case in hand, has failed to meet the same."

40. In the case on hand, in view of the above facts and circumstances, we are of the considered view that the prosecution has failed to prove the above circumstances relied by the prosecution beyond all reasonable doubt. Therefore, the view taken by the learned Sessions Judge cannot be held as not even a possible view. In that view of the matter, we do not find any ground to interfere with the finding of the learned Sessions Judge that the prosecution failed to prove its case beyond all reasonable doubt. Hence, the appeal shall be dismissed.

41. In the result, the Criminal Appeal is dismissed, confirming the judgment of acquittal made in S.C.No.351 of 2014, dt.14.05.2015 by the learned XI Addl. Sessions Judge, Tenali.

JUSTICE C. PRAVEEN KUMAR

JUSTICE B.V.L.N. CHAKRAVARTHI

Date : 25.11.2022

dvsn

2022:APHC:39993

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

CRIMINAL APPEAL No.651 of 2015

Date : 25.11.2022

dvsn