



**HIGH COURT OF ANDHRA PRADESH**  
FRIDAY ,THE THIRD DAY OF SEPTEMBER  
TWO THOUSAND AND TWENTY ONE

**PRESENT**

**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR**  
**THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN**  
**CRIMINAL APPEAL NO: 780 OF 2014**

**Between:**

1. BODABANDLA RAVI, CHITTOOR DT. & 4 OTHERS S/o. Late Bodabandla Venkatesh, Aged about 38 years, R/o. Jobi Kothur Village, Near Gandarmakulapalli, V. Kota Mandal, Chittoor District.
2. M. Muneppa, S/o. M. Chinnabba, Aged about 48 years, R/o. Jobi Kothur Village, Near Gandarmakulapalli, V. Kota Mandal, Chittoor District.
3. Poojari Anjanappa @ Anjappa @ Venkatesh, S/o. Danappa, Aged about 30 years, R/o. Bommaganipalli Brahmasamudram Mandal, Anantapur District.
4. Velukuru Eswaramma, W/o. V. Venkatesh, Aged about 38 years, R/o. Jobi Kothur Near Gandarmakulapalli, V. Kota Mandal, Chittoor District.
5. Gorasandra Hanumanthappa, S/o. Late G. Thippanna, R/o. Gonabhavi Village, Gummagatta Mandal, Near Rayadurgam, Ananthapur District. ( Accused 1 to 5)

**...PETITIONER(S)**

**AND:**

1. STATE OF A.P., REP. BY P.P., CHITTOOR DT. High Court of A.P. Hyderabad through Inspector of Police, Chandragiri P.S., Chittoor District. (Complainant)

**...RESPONDENTS**

**Counsel for the Petitioner(s): M CHALAPATI RAO**

**Counsel for the Respondents: LEGAL AID**

**The Court made the following: ORDER**



**HIGH COURT OF ANDHRA PRADESH: AMARAVATHI.**

**CRIMINAL APPEAL NO. 780 OF 2014**

Between:

Bodabandla Ravi and others

... Appellant

Vs.

State of Andhra Pradesh, rep. by its Public Prosecutor

.... Respondents

Date of Judgment Pronounced: 03.09.2021

Submitted for Approval:

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
HON'BLE SRI JUSTICE B. KRISHNA MOHAN**

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



**\* HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
\* HON'BLE SRI JUSTICE B. KRISHNA MOHAN  
+ CRIMINAL APPEAL NO. 780 OF 2014**

% 03.09.2021

# Bodabandla Ravi and others

... Appellants

Vs.

\$ State of Andhra Pradesh, rep. by its Public Prosecutor

.... Respondents

! Counsel for the petitioners: SRI M.CHALAPATHI RAO

Counsel for the Respondents: SRI S.DUSHYANTH REDDY

<Gist :

>Head Note:

? Cases referred:





**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
HON'BLE SRI JUSTICE B. KRISHNA MOHAN**

**CRIMINAL APPEAL NO. 780 OF 2014**

**JUDGMENT:** *(per Hon'ble Sri Justice B.Krishna Mohan)*

The appellants herein are A1 to A5 in S.C.No.327 of 2012 on the file of III Additional District & Sessions Judge, Tirupati, Chittoor district. The accused 1 and 5 were tried for the offences punishable under Sections 302 and 201 IPC and A2 to A4 were tried for the offences punishable under Sections 302 r/w 34 and 201 IPC.

2. By its judgment dated 06.06.2014 the learned Sessions Judge convicted A1 and A5 for the offence punishable under Section 302 IPC and sentenced them to suffer imprisonment for life and pay fine of Rs.1,000/- each, in default of payment of fine to undergo simple imprisonment for a period of six months. A2 to A4 are convicted and sentenced to undergo imprisonment for life and pay fine of Rs.1,000/- each in default of payment of fine to undergo simple imprisonment for a period of six months each for the charge under Section 302 r/w 34 IPC. Further A1 to A5 were sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.500/- each in default of payment of fine to undergo simple imprisonment for a period of one month each for the charge under Section 201 IPC. The remand period



undergone by the accused were directed to be given set off. Challenging the same the present appeal came to be filed.

3. The facts of the case as culled out from the evidence of the prosecution witnesses is as under:

PW1 is the *de facto* complainant and watchman of the mango garden of PW2 where the alleged incident had taken place. He deposed that A1 to A5 joined as coolies in the mango garden and on 26.06.2011 i.e., the date of incident. A1 brought one lady and told him that she was his wife and there was an altercation between them. He and his owner chastised them. Next day morning A1 to A5 were not found. He informed to the owner. On 28.06.2011 owner and himself went to the mango garden and while walking towards kasim kaluva saw chappals of a lady and heap of newly placed sand and found foul smell coming. PW1 further deposed that he gave Ex.P1 report to the police. Police came and dead body was exhumed by MRO and he identified the body as that of wife of A1. PW2, who is the owner of Mango and Mausambi gardens and police constable by profession, admits that PW1 is the watchman of the mango garden and A1 to A4 were working as coolies and once in a week he used to go and pay coolies amount to A1 to A4. He further deposed that on 27.06.2011 PW1 informed that A1 to A5 and wife of A1 went away. On 28.06.2011 PW2 went to mango garden along with PW1 and they found sand heap with foul smell. PW1 gave report; police and MRO came there and exhumed the body.



PW2 further admits in cross examination that on 27.06.2011 he worked in Bakhapet Police Station. PW3 speaks about arranging A1 to A5 as coolies in PW2's mango garden at the request of PW2/owner. PW4 speaks about acting as Panch to exhume the dead body and in cross-examination he deposes that the dead body was on a canal bund whereas in chief deposes that the body was in a covered pit. PW5 the maternal aunt of the deceased speaks about deceased developing illicit relationship with one Mutyalu/PW6 in Chekka Bajans at Tirumala and further deposes that 2 years prior to her death she discarded her husband and eloped with PW6 and that A1 gave police report and police brought her back but deceased again lived with MUtyalu/PW6 since then. PW6 Mutyalu who is a coolie deposes that he was having acquaintance with the deceased since three years prior to marrying her and he married her in 2008. He further deposed that on 26.06.2011 i.e., on the date of the incident deceased went to santha to purchase vegetables and did not return home. He further deposed that he informed to his manager, PW5 and another person and also deposed that his company people informed him that the relatives of the deceased took her. Four days later, after 26.06.2011 he was informed that she died. He further deposed that three years prior to the death A1 gave report to the police that his wife Eeshwari/deceased was having illegal contact with PW6 and police called him and handed over her to A1. Again after 20 days she joined him. Further PW6 admits in



cross-examination that he did not give any report to the police about missing of the deceased from 26.06.2011.

PW7 auto driver deposed that he took A1 to A3 and one lady to mango garden in his auto and male person in the auto was having galata with the lady in the auto. On 28.06.2011 on coming to know about the death of the lady went to the mango garden and identified the body as that of the lady whom he dropped in his auto on 26.06.2011. In the cross-examination he admits about knowing of PW1 who is working as watchman in the mango garden and admits that he does not know A1 to A3 prior to 26.06.2011. He also admitted in the cross-examination that he got acquaintance with the police.

PW8/Sarpanch speaks about extra judicial confession by A1 on 10.07.2011, who came along with A2 to A5 while he was waiting near Vinayaka temple. A1 told him that his wife was having illicit intimacy with one person and he saw his wife in Santha in Chandragiri on 26.06.2011 and brought her to the mango garden and tried to convince her not to live with that person but she did not agree hence A1 to A5 together killed her by throttling her neck. Then they left to Bangalore and on coming to know that police are searching, they came to him as he is Sarpanch of the village. He further deposed that he asked A1 to A5 to wait near the temple and came to police station and gave a report to the police. He came with police and VRO around 03:30 PM to Vinayaka temple and A1 to A5 were waiting, police arrested and interrogated them. Ex.P2 is the recovery panchanama portion with





regard to recovery of MO9 crowbar, MO10 spade, seizure panchanama is Ex.P3. In the cross-examination he admitted that he had no prior acquaintance with A1 to A5 prior to 10.07.2011 and further admitted that he has no acquaintance with PWs.1 and 2.

PW9/VRO speaks about inquest being held on the dead body in his presence and recovered MOs.3 to 5 and found MOs.1, 2, 6 and 8. Police prepared inquest report Ex.P4. He also deposed that he is a witness to the arrest mahazar with regard to recovery of MOs.9 and 10. He deposed that accused went into the shed and brought them from inside the shed and he was standing outside. He is panch witness to Ex.P2, P3, P4. PW9 speaks of exhuming the dead body. PW10/Tahsildar also speaks of exhuming the dead body and conducting inquest. He deposed that on 28.06.2011 he proceeded to mango garden of PW2 around 01:00 PM and got exhumed the dead body by PW4 and another which was buried by the side of Kasim Kaluva. He conducted inquest in the presence of PW9 and another. Ex.P4 is the inquest report. Opined death was due to throttling or by other way making her breathless. Seized MOs.1 and 2 and handed over to police.

In the cross-examination he deposed that dead body was buried in the government land adjacent to mango garden of PW2. PW11/doctor says that on 29.06.2011 at 09:00 AM requisition Ex.P5 was received from PW10 to conduct spot post mortem and having conducted post mortem found that hyoid and thyroid cartilage were intact and opined



that death was about 2 to 3 days prior to post mortem examination and cause of death is “undetermined” as wound over head not sufficient to cause death and no poisonous substance in the viscera and the body is in the putrefaction. Final opinion is Ex.P8 and admits in the cross-examination that symptoms of throttling or smothering were not found.

PW12 is the Investigating Officer. He speaks about registering the complaint Ex.P1 on 28.06.2011 at 02:00 PM. PW10 came to the scene of offence at 03:15 PM and conducted exhumation of the dead body and conducted further investigation. He admits in the cross-examination that the name of A1 is there in Ex.P1 report. Even he was present while PW10 exhumed the body. He further admits that he did not secure the residence of locality to act as mediators since mediators were available with him.

4. On appearance of the accused copies of all the documents as required under Section 207 CrPC were furnished. As the offence is triable by a court of Sessions the case was committed to the Court of Sessions under Section 209 Cr.PC. On appearance of the accused, a charge under Section 302 r/w section 34 IPC and Section 201 IPC came to be framed, read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

5. In support of its case the prosecution examined PWs.1 to 12 witnesses and got marked Exs.P1 to P13 besides marking MOs.1 to 10. After completion of prosecution evidence the accused were examined



under Section 313 CrPC with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses to which the accused denied but however did not adduce any defence evidence.

6. Relying upon the evidence adduced by the prosecution the trial court convicted A1 and A5 for the offence punishable under Section 302 IPC, convicted A2 to A4 under Section 302 r/w 34 IPC and convicted further all the accused under Section 201 IPC. Assailing the same the present appeal came to be filed.

7. Sri M.Chalapati Rao learned counsel for the appellants, would contend that, the case being a case of circumstantial evidence, motive is not established, prosecution failed to prove the chain of evidence consistent with the guilt of the accused and the circumstances are not conclusive in nature. PW8 Sarpanch and PW9 VRO are interested witnesses and the evidence is untrustworthy as they were obliged to support the case of police in view of their proximity.

8. The extra judicial confession of the accused/appellants and recovery of MOs 9 and 10 from the shed of PW1 and PW2 at their instance more than 15 days after the commission of the offence ought to have been disbelieved by the court below. He further submitted that the ocular evidence and medical evidence are inconsistent with each other and that evidence of PW1 with regard to giving of Ex.P1 report indicates that complaint was given prior to identifying the dead body as



it was exhumed later and the name of the deceased is mentioned in the Ex.P1 report without seeing the dead body. Last seen theory cannot be believed without any corroboration.

9. The same is opposed by the learned Public Prosecutor contending that the evidence of PWs.2, 5 and 6 would establish motive of A1 and prosecution was also able to prove that the deceased was last seen alive in the company of A1 to A5. Extra judicial confession of A1 before PW8 led to recovery of MOs.9 and 10 would unerringly point out towards the guilt of the accused.

10. The point that arises for consideration is whether the prosecution proved the guilt of the accused beyond reasonable doubt?

**POINT: -**

11. A reading of the evidence of the prosecution witnesses, it is clear that in the case on hand there are no eye witnesses to the incident. The case is based on circumstantial evidence. The circumstances relied upon by the prosecution before the trial court were as follows:

1. Motive.
2. Last seen together.
3. Medical evidence.
4. Recovery of MOs 9 and 10 spade and crowbar.
5. Extra judicial confession before Sarpanch.



12. On the concept of motive the Hon'ble Supreme Court in **R.SHAHJI V. STATE OF KERALA**<sup>1</sup> held that absence of motive in the case depending entirely on circumstantial evidence is a factor that weighs in favour of the accused as it “often forms the fulcrum of the prosecution story”.

13. In the instant case the criminal law is set into motion by a complaint given by PW1/watchman of the mango garden of PW2 who is a police constable merely on both of them seeing of a dead body covered with a heap of sand and chappals of lady lying near the heap of sand, assuming the body to be that of the deceased and surprisingly the name of the accused is reflected in the Ex.P1 report on mere suspicion that A1 with his other associates might have killed the deceased and absconded.

14. As time and again reiterated by the Hon'ble Supreme Court in catena of decisions that motive being a double edged weapon and that it could be used by either party to wield the weapon of motive against each other. In the instant motive to implicate the accused is more clearly evident from the fact that PW1 and PW2 on seeing the dead body covered with sand without identifying the dead body went on to lodge Ex.P1 report implicating the accused assuming the body to be that of the deceased even before exhuming the dead body. The motive to

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<sup>1</sup> (2013) 2 ALD (Crl.) 153 SC



implicate the accused is clearly established rather than motive of the accused to connect to the crime.

15. In the case on hand the prosecution put forward a specific motive of A1 to commit the offence as that since wife of A1 i.e., deceased eloped with PW6 and not willing to join him in spite of his efforts. The evidence of PW5 who is younger maternal aunt of the deceased would go to show that deceased developed intimacy with PW6 three years prior to her death and eloped with PW6 since then living with him even though police brought her back she went again and lived with PW6. The evidence of PW6 would also go to show that deceased was living with him since two years prior to her death and that they both had acquaintance 3 years prior to her marriage. The crucial witness to establish motive being PW6 has not expressed any ray of doubt or suspicion against the accused in his evidence to establish the motive of the accused. In fact he is silent and admits that he has not even given any complaint to the police of any suspicion or involvement of the accused. He simply deposed that his wife went to Santha on 26.06.2011 to bring vegetables and did not return home and he informed the same to the company manager and the company people who went to Santha informed that relatives of the deceased took her away and four days after 26.06.2011 he was informed that the deceased died. He admitted in cross-examination that he did not give any complaint to the police. Silence on the part of PW6 who married deceased after having come to know that deceased was missing and later not giving any complaint to



the police after coming to know about the death of his wife or not even raising any suspicion on the accused shows failure on the part of the prosecution to establish motive.

16. Further contention of PW6 that A1 gave report to the police and that deceased Eeshwari was having illicit relationship with him admitted that the same is not produced before the court. Moreover it is admitted by the evidence of PW5 and 6 that deceased and PW6 are living together more than two years prior to her death. So the immediate cause of death is not established and therefore cannot be said that the alleged motive was proved by the prosecution.

17. The Hon'ble Supreme Court has time and again laid down the ingredients to be made out to prove the last seen theory beyond reasonable doubt. It must be borne in mind that close proximity between the last seen evidence and the death should be clearly established. In **NIZAM V. STATE OF RAJASTHAN**<sup>2</sup> the Hon'ble Supreme Court held that when there is time gap between last seen and recovery of body it would be unsafe to base conviction without any corroborative evidence.

18. On the aspect of last seen theory, the evidence of PWs.1 to 3 & 7 were put forth by the prosecution. The evidence of PWs.1 to 3 goes to show that PW2 is the owner of the mango garden and police constable; PW1 is the watchman; PW3 brought A1 to A4 and one Chandramma

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<sup>2</sup> (2016) 1 SCC 550



wife of A2 as coolies and handed over them to PW1. PW1 further depose that A1 brought his wife on 26.06.2011 and there was a galata between A1 and his wife and he told the same to the owner/PW2 on which he and PW2 on phone chastised them. Whereas owner PW2 is silent on this aspect. PW7 auto driver was examined who deposed that he brought A1 to A4 and lady in auto and dropped in the mango garden. Two days later he came to know of the death a lady and he identified the body as that of the lady who traveled in his auto seems to be highly unbelievable, does not inspire confidence and cannot be relied upon as the auto driver being a stranger it is impossible for him to identify the body of the passenger who traveled in his auto two days prior to his seeing the dead body. Admittedly last seen theory cannot be said to have been established by merely seeing all the accused and deceased together on 26.06.2011 evening and on recovering the dead body two days later on 28.06.2011 around 02:00 PM after exhuming the dead body without establishing the fact of the accused seen along immediately after the incident or seen alone at the place of incident. Moreover, the time gap of more than two days between the point of time when accused and deceased were last seen alive and deceased found dead is not so small that possibility of any other person other than the accused being the author of the crime cannot be ruled out. According to the prosecution, PW1 deposed that he saw accused and deceased together on 26.06.2011 evening and identified the dead body after exhuming on 28.06.2011 and gave Ex.P1 report at 02:00 PM.





Therefore it is not appropriate to convict the accused where his role is not firmly established and there is no corroborating or circumstantial evidence to establish the last seen theory.

19. Further the evidence of PWs.11 and 12 and endorsement on Ex.P10 FIR goes to show that Ex.P1 report was lodged with PW12 by PW1 at 02:00 PM on 28.06.2011. PW10 deposed that he rushed to the mango garden of PW2 at about 01:00 PM as he received requisition from SHO, Chandragiri Police Station to exhume the dead body and conducted inquest from 03:30 PM to 05:30 PM. From the evidence of PW10 it is evident that requisition was given to him by PW12 even before registration of crime. Further it could be seen that there is a mention in Ex.P1 report given by PW1 at 02:00 PM on 28.06.2011 about the name of the deceased and involvement of the accused even before the exhumation of the body and identifying the same as that of the deceased Eeshwaramma since the exhumation of the body admittedly as per the evidence of PWs.10 and 12 is at 03:30 PM.

20. The medical evidence as per doctor PW11 is that the cause of death is “undetermined” and further on requisition by PW12 to answer certain questions PW11 further deposed that there are no symptoms of smothering or throttling found on the body of the deceased. But on further questioning deposed that there are chances of smothering by hands. Prosecution has not established the guilt of the accused as the



medical evidence is also not supporting the case of the prosecution to connect to the crime.

21. The evidence of PW8/Sarpanch that on 10.07.2011 at about 01:00 PM while PW8 was standing near Vinayaka temple A1 to A5 approached him and A1 confessed in this case and there upon PW8 asked A1 to A5 to stay there at the temple and went to the police station and informed the same to the police by way of report. The prosecution tried to put forth extra judicial confession but it is not the case of PW8 that he recorded the confession of A1 to A5, not the case that he obtained signatures of A1 to A5 on the report presented by PW8 to PW12. Therefore the report said to have been given by PW8 was rightly not admitted in evidence by the trial court. On the aspect of oral extra judicial confession the trial court was right in not believing the version of the evidence of PW8 that while he was waiting on the road A1 to A5 who are admittedly not known to PW8 came and confessed before him and he further deposed that he asked them to wait so that he will go and bring the police, brought the police 2-3 hours later and got them arrested does not at all inspire confidence and therefore cannot be relied upon. Admittedly PW8 in his cross-examination deposed that he has no acquaintance with A1 to A5 prior to 10.07.2011 and A1 to A5 also do not know him.

22. The evidence so far as relating to recovery of MOs.9 and 10 implements used to bury the dead body of the deceased were said to



have been recovered by PW12 from the shed belonging to PW2 was rightly not believed by the court below as it was not the case of prosecution that the shed in the mango garden of PW2 was under lock and key of the accused or PW1 and recovery was also not proper and moreover PW1 admitted in the cross-examination that the spade and crowbar like MOs.9 and 10 are available in the shed in the mango garden, therefore, the court below rightly held that recoveries of MOs.9 and 10 cannot be taken as circumstance to point out towards the guilt of the accused. Thus, we find that none of the circumstances relied upon by the prosecution have been established in the case beyond reasonable doubt and the chain of circumstantial evidence is so incomplete that it cannot justify the conviction of the appellants at all.

23. The court below was in error in accepting the circumstantial evidence and convicting the appellants on the basis of flimsy evidence. We accordingly allow the appeal and set aside the conviction and sentence of the appellants and acquit them of all the charges.

24. In the result, the criminal appeal is allowed accordingly. The conviction and sentence recorded against the appellants in the judgment dated 06.06.2014 in S.C.No.327 of 2012 on the file of III Additional District & Sessions Judge, Tirupati, Chittoor District for offence punishable under Section 302 r/w 34 and Section 201 IPC is set aside and the accused shall be set at liberty forthwith if they are not required in any other case or crime.



As a sequel, miscellaneous applications pending, if any, shall stand closed.

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**JUSTICE C. PRAVEEN KUMAR**

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**JUSTICE B. KRISHNA MOHAN**

September 3, 2021  
LMV



**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
HON'BLE SRI JUSTICE B. KRISHNA MOHAN**

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**CRIMINAL APPEAL NO. 780 OF 2014**

July 24, 2021

LMV