

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH  
\*\*\*\*\*

Criminal Appeal No.97 of 2012

Between

1. Thipparam Chinna Ramulu, S/o Nadipi Sailu,  
Aged 29 years, Occ: Cooli, R/o Aragonda Village,  
Tadwai Mandal, Nizamabad District
  2. Kyaram Raju, S/o Kyaram Girnila Basavaiah,  
Aged 26 years, Occ: Cooli, R/o Aragonda Village,  
Tadwai Mandal, Nizamabad District
- ... Appellants/Accused 1 and 2
- and

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

... Respondent

DATE OF JUDGMENT PRONOUNCED: 30-12-2017

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

- |   |  |        |
|---|--|--------|
| 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 Reports/Journals       | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

\* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ Criminal Appeal No.97 of 2012

% 30-12-2017

# 1. Thipparam Chinna Ramulu, S/o Nadipi Sailu,  
Aged 29 years, Occ: Cooli, R/o Aragonda Village,  
Tadwai Mandal, Nizamabad District

2. Kyaram Raju, S/o Kyaram Girnila Basavaiah,  
Aged 26 years, Occ: Cooli, R/o Aragonda Village,  
Tadwai Mandal, Nizamabad District

... Appellants/Accused 1 and 2

Vs.

\$ The State of Andhra Pradesh,  
Rep. by its Public Prosecutor,  
High Court of A.P., Hyderabad

... Respondent

! Counsel for the Appellants: Smt. C.Vasundhara Reddy  
& Mr. M.Chalapathi

Counsel for the Respondent: Public Prosecutor  
(Telangana)

< Gist:

> Head Note:

? Cases referred:

1. 2014 (2) ALD (CrI.) 441 (SC)
2. 2017 (2) ALD (CrI.) 1015

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Criminal Appeal No.97 of 2012

Judgment: (per V.Ramasubramanian, J.)

Challenging the conviction for offences under Sections 302, 379 read with Section 34 IPC and Section 201 IPC, accused 1 and 2 have come up with the above appeal.

2. Heard Smt. C.Vasundhara Reddy, learned counsel for the appellants and the learned Public Prosecutor (Telangana).

3. The appellants, along with two other persons, were charged with the commission of offences under Sections 302, 379 read with Section 34 IPC and Section 201 read with Section 34 IPC in connection with the death of one Shirmishetty Venu. The prosecution examined 13 witnesses and marked 14 documents as exhibits. 13 objects were marked as material objects.

4. The facts based upon which the appellants were chargesheeted were that on 15-5-2008, one Smt. Shirmishetty Sujatha examined as P.W.1 lodged a complaint with the Sub Inspector of Police, Tadwai Police Station, alleging that on 08-12-2007 she along with her deceased husband were returning from Kamareddy village; that on the way he received a phone call and told the caller that he will come later; that immediately after the call he informed her that the person who called him was Thipparam Chinna Ramulu/accused No.1; that after reaching home, her

husband left the house saying that accused No.1 wanted to meet him; that later she came to know that accused 1 and 2 and her husband had tea in a hotel belonging to Mangalapalli Shankar situate near Hanuman Temple; that all of them later left on a motorcycle towards Shanthaipet village; that later her husband did not return; that when she launched a search for her husband, his motorcycle bearing registration No.AP09AL-7929 was traced on the outskirts of Yendriyal village; that therefore she gave the photograph and physical features of her husband apart from the details of the clothes worn by him; that the said complaint was taken on record in Crime No.56 of 2008 and investigation was taken up; that the Police thereafter apprehended accused 1 and 2 and interrogated them in the presence of panchas and recorded their confessions; that the confessions lead to the recovery of a pelvic bone, femur bone, two more bone pieces, one white shirt having iron marks, red colour belt pieces, two stones, one Rayban black colour glasses, one Rayban glass frame, two black colour plastic chappals and one sweater; that they were seized under the cover of panchanama; that accused No.1 lead the Investigating Tem to the shop of one Annoju Venkata Swamy, Vani Jewellery Work Shop at Kamareddy and pointed out the person to whom he sold the gold ring for Rs.3,600/-; that the owner of the jewellery shop was examined in the presence of the panchas, then he confessed to the purchase of the gold ring about five months ago from

accused No.1; and that on the basis of the confessions of accused 1 and 2, the provisions of law were altered from Section 174 Cr.P.C to Sections 302, 379 and 201 IPC and Section 411 read with Section 34 IPC; and that the Investigating Officer later seized a Nokia Cell Phone in the presence of panchas from Nagaraju Ramulu under a cover of panchanama on 27-4-2008; that thereafter accused No.3 was taken into custody and he also gave confession and that therefore a charge-sheet was being laid against all of them.

5. Before the Sessions Court, P.Ws.3, 4 and 8 turned hostile to the prosecution. P.W.1 was the *de facto* complainant and the wife of the deceased. P.W.2 was the brother of the deceased. P.W.5 was the Videographer who allegedly recorded the confession. P.Ws.8 and 9 are the panchas for confession and recovery. P.W.11 was the Sub Inspector of Police who registered the crime, P.W.12 was the Investigating Officer and P.W.13 was the Circle Inspector of Police who filed the charge-sheet.

6. The Sessions Court, believing the oral testimony of P.Ws.1 and 2, came to the conclusion that the statements of P.Ws.3 and 4 stood reiterated through their evidence. P.W.1 claimed in her testimony that her husband received a phone call said to have been made by accused No.1 and that the villagers confirmed on the next day that her husband was last seen in the company of accused No.1. Therefore, the Sessions Court held that the failure of the accused 1 and 2 to



explain as to why P.Ws.3 and 4 gave evidence against them showing their link with the deceased, was fatal to the case of the defence. The Sessions Court chose to believe the statements of P.Ws.5, 8 and 9 for establishing the link between accused 1 and 2 with the deceased and proceeded to convict the accused 1 and 2 on the basis of the recovery made pursuant to the confession. Therefore, accused 1 and 2 have come up with the above appeal.

7. As seen from the statements of P.Ws.1 and 2, the deceased was last seen by P.W.1 on 08-12-2007. But admittedly, she lodged a complaint nearly after about six months on 15-5-2008. It is quite strange that P.W.1 the wife of the deceased and P.W.2 the brother of the deceased, kept quiet for a full period of six months from 08-12-2007 when the deceased went missing, up to 15-5-2008 to lodge a complaint. Though a very vague statement is made by P.W.1 that she was searching for her husband, there are no details as to where and how she launched a search for her husband.

8. In any case, what was said to have been recovered pursuant to the confessions allegedly made by accused 1 and 2 were the pelvic bone, femur bone, two more bone pieces, one white shirt having iron marks etc. But unfortunately, no efforts were made by the prosecution to identify the bones as that of the deceased. In cases of this nature where the recovery was only of bones, it is the duty of the prosecution to

establish by other evidence, that the bones were that of the deceased.

9. In ***Dharam Deo Yadav v. State of U.P.***<sup>1</sup>, what was recovered was a skeleton of the body of the deceased kept in a wooden box and sealed. The skeleton was recovered from the house of the accused. The prosecution established through DNA sample got from the skeleton that the skeleton was that of the deceased by matching it with the blood sample of the father of the deceased. Thereafter, the Supreme Court shifted the burden on the accused, since the skeleton was actually recovered from his house.

10. But in the case on hand, no DNA test was conducted and no attempt was made to correlate the bones recovered from the alleged scene of occurrence, with that of the deceased.

11. A Division Bench of this Court had an occasion to consider a similar issue in ***Gopu Srinivas Reddy @ Parandamulu v. State of Andhra Pradesh***<sup>2</sup>. It is held therein that when the whole case is based on circumstantial evidence and it was not possible to identify the dead body, the prosecution had a duty to subject the remnants of the body recovered from the alleged scene of occurrence for proper identification by following the required procedure to conduct DNA test. In this case, no DNA test was conducted and we do not know how from a few pieces of bones such as pelvic bone,

---

<sup>1</sup> 2014 (2) ALD (CrI.) 441 (SC)

<sup>2</sup> 2017 (2) ALD (CrI.) 1015

femur bone and two more bone pieces, the remnants could be identified as that of the deceased.

12. The entire prosecution theory has its origin to a phone call allegedly emanating from accused No.1 to P.W.1's husband, when both of them were returning from Kamareddy village on 08-12-2007. Though the prosecution had taken call records from the service provider and marked the call records as Ex.P-13, there is no whisper from any of the witnesses including the Investigating Officer as to what was the telephone number of accused No.1. Unless the telephone number of accused No.1 or the telephone number of the person from whose mobile accused No.1 allegedly made a call to the deceased on 08-12-2007 is established, the call records filed as Ex.P-13 would remain as a mere paper. Interestingly, P.W.1 had come to the conclusion that her husband must have died on 08-12-2007, since he did not return home thereafter. According to P.W.1, she came to know later through villagers that they had seen her husband with accused 1 and 2. But Ex.P-13 call records shows that several calls had materialized from and out of that number even after 08-12-2007 up to 28-12-2007. No efforts were made by the prosecution as to the mobile or landline phones from which and into which, calls were made from the mobile number of the deceased.

13. The Sessions Court has mostly gone on last seen theory. But in the case on hand, the last seen theory itself is



only hearsay. P.Ws.1 and 2 merely stated that some villagers told them that they had seen the deceased with accused 1 and 2. Therefore, it was only hearsay.

14. As held by the Supreme Court in ***Dharam Deo Yadav***, the last seen theory comes into play when the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the perpetrator of the crime becomes impossible. In this case, P.W.1 last saw her husband on 08-12-2007. The date on which the other villagers told her about seeing the deceased with accused 1 and 2 is not known. Ex.P-13 call records show that calls had emanated to and from the telephone up to 28-12-2007. This is apart from the fact that Ex.P-13 call records was not accompanied by a certificate as required by Section 65B of the Indian Evidence Act, 1872 as amended by the Information Technology Act, 2000. Therefore, the last seen theory itself may not be applicable to a case of this nature.

15. Hence, we are of the considered view that the conviction handed over to the appellants/accused 1 and 2 by the Sessions Court was completely contrary to the evidence on record and law and that the prosecution miserably failed to establish the guilt of accused 1 and 2 beyond reasonable doubt.

16. In the result, the criminal appeal is allowed and the impugned judgment of conviction and sentence, dated 20-9-2011, in Sessions Case No.165 of 2010, passed by the IX Additional Sessions Judge, Kamareddy, Nizamabad District against the appellants/accused 1 and 2 is set aside. The appellants/accused 1 and 2 shall be released forthwith unless they are detained in connection with any other offence. The amount of fine, if any, paid by the appellants/accused 1 and 2 shall be refunded to them.

---

V.RAMASUBRAMANIAN, J.

---

CHALLA KODANDA RAM, J.

30<sup>th</sup> December, 2017.

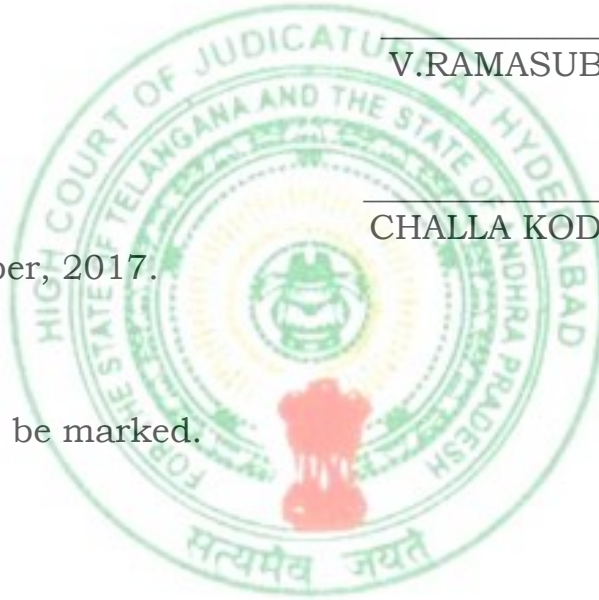
Ak

Note:-

L.R. Copy to be marked.

(B/o)

Ak



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Criminal Appeal No.97 of 2012  
(per VRS, J.)



30<sup>th</sup> December, 2017.  
(Ak)