

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

CRIMINAL APPEAL No.426 of 2013

Between:

Sri Kondapaka Sridhar @ Sidhu ... Appellant
and

The State of Andhra Pradesh
Rep. by its Public Prosecutor. ... Respondent

Date of Judgment Pronounced: 31.03.2018

Submitted for Approval:

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
AND
THE HON'BLE SMT. JUSTICE T. RAJANI**

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

CHALLA KODANDA RAM, J

T. RAJANI, J

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
AND
THE HON'BLE SMT. JUSTICE T. RAJANI**

CRIMINAL APPEAL No.426 of 2013

% Dated 31.03.2018

Between:

Sri Kondapaka Sridhar @ Sidhu ... Appellant
and

The State of Andhra Pradesh
Rep. by its Public Prosecutor. ... Respondent

! Counsel for the Appellant : Sri J. Jaya Reddy

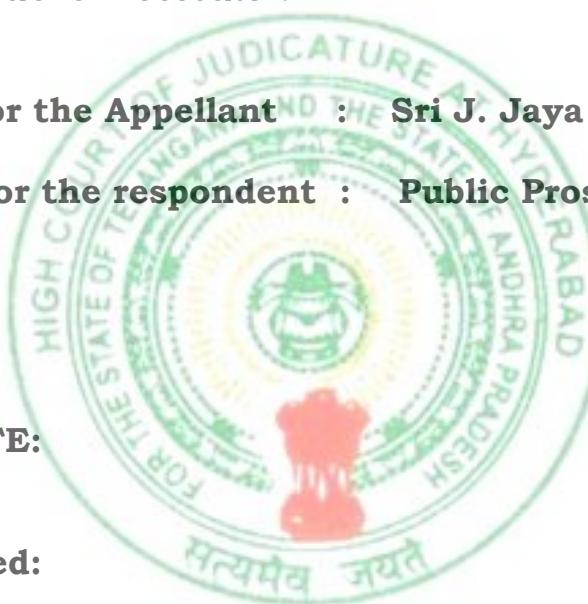
^ Counsel for the respondent : Public Prosecutor

<gist:

>HEAD NOTE:

? Cases cited:

1. Anvar P.V. v. P.K. Basheer (Civil Appeal No. 4226 of 2012)
2. AIR 1947 PC 67



**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
AND
THE HON'BLE SMT. JUSTICE T. RAJANI**

Criminal Appeal No.426 OF 2013

J U D G M E N T : (*per Hon'ble Smt. Justice T. Rajani*)

The judgment, which is assailed in this Appeal, is passed by the III Additional Sessions Judge, Karimnagar, FAC: Judge, Family Court – cum- Additional Sessions Judge, Karimnagar in S.C. No. 502 of 2011 on 13.07.2012, convicting the Appellant / Accused No.1 for the offence punishable under Sections 302 and 201 of the Indian Penal Code (IPC) read with Section 34 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six months for the offence punishable under Section 302 read with Section 34 IPC and rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 201 read with Section 34 IPC.

The facts of the case, as per the charge-sheet, are briefly, as follows:

On 09.01.2007, at 18.00 hours, the complainant came to the police station and gave a report stating that his son (deceased), who left the house on 05.01.2007 on his Passion motor cycle, did not turn up. On the basis of the said report, a case was registered in Crime No. 6 of 2007, under the head 'man missing'. During the course of investigation, look out notices were ordered to all the police stations and a requisition was sent to the authorities of cellular network services, to furnish the list of incoming and outgoing calls to the mobile phone of the deceased. The identity of

the subscribers, who are in contact with the mobile phone of the missing person, was collected. The user was identified as Kondapaka Sridhar, who is the accused in this case. On investigation, it came to light that the accused stayed as tenant at Prashanth Nagar Housing Board Colony and Siripuram Colony of Karimnagar, besides staying at Turkapalli and Medchal of Ranga Reddy District and Gajwel of Medak District. The antecedents of Accused No.2, who is a close associate of Accused No.1, were also collected, which revealed that Accused 1 and 2 had past criminal record.

On 18.04.2007, on reliable information about the presence of Accused No.1 at Mancherial Cross Roads, police rushed to the said place and apprehended him. On interrogation, he confessed about the offence, stating that he, along with Accused No. 2, killed the deceased, after committing theft of his gold ornaments and later, they concealed the dead body in a man-hole tank at Siripuram Colony and reinforced the man-hole with cement. Based on the confession statement, investigation was conducted and ATM cards of the deceased were recovered from the accused and after concluding the investigation, charge-sheet was laid against the accused, for the offences punishable under Sections 302, 201, 379 and 120-B read with Section 34 IPC. The Additional Judicial Magistrate of I Class, who took cognizance of the case for the above offences, committed the case to the Sessions Division, Karimnagar, by virtue of the orders in P.R.C.No. 37 of 2008, as the offences are exclusively triable by the Court of Sessions. The Sessions Court Judge, Karimnagar, in turn, made over the case to the III Additional Sessions Judge, Karimnagar for trial and disposal according to law. The said Court, after conducting trial of

the case, passed the impugned judgment against which, this Appeal is preferred on the following grounds:

The Court ought to have seen that the prosecution could not prove the guilt of the accused beyond reasonable doubt and ought to have seen that some of the witnesses did not support the prosecution case and that there are no witnesses to the incident.

Heard counsel for the appellant and learned Public Prosecutor.

The counsel for the appellant contends that there is absolutely no legal evidence pointing to the guilt of the accused and except the confession of the accused, the prosecution did not collect any evidence, which would create nexus between the accused and the death of the deceased. The Public Prosecutor, on the other hand, submits that the recovery of ATM cards, made from the accused, would clinchingly prove that it could be the accused alone, who could have committed the offence.

Based on the above arguments and the material on record, we framed the following points for determination:

- 1) *Whether the circumstances proved by the prosecution would suffice to prove the guilt of the accused for the offences with which he was charged and found guilty.*
- 2) *Whether the judgment of the lower Court is sustainable.*
- 3) *To what result.*

POINTS No.1 & 2: P.W.1 is the father of the deceased, who reported to the police about the missing of the deceased on 09.01.2007. The deceased was, in fact, found missing from 05.01.2007. The reason for lodging the report with a delay of four days is no where explained by P.W.1 or the prosecution. P.W.1 only states that before lodging the report, he searched for the deceased in the neighbouring villages and he could not found him, but does not state that as a reason for the delay. The dead body of the deceased was found in a septic tank, after he lodged the report i.e. on 18.04.2007. He stated that the deceased was wearing gold bracelet, gold rings, gold chain while leaving the house. After about one month of the deceased leaving the house, he received a message through mobile phone of his son, informing that his son was kidnapped and demanding him to deposit Rs.5 lacs in HDFC or Andhra Bank, and stating that otherwise his son would be killed. Then, he deposited Rs.5,000/- in Andhra Bank and again Rs.2 lacs in the same bank at the Main Branch, Karimnagar into the account of his son and the said amount was withdrawn by the culprits on four occasions. On one occasion, some amounts were withdrawn in Karimnagar and on another occasion, some more amounts were withdrawn at Siripuram Colony and later, some amount was withdrawn at Hyderabad and some at Secunderabad. He again received another message, directing to deposit another sum of Rs.25 lacs and that they would send the clothes of his son for identity. The mobile phone, through which he received the message, was also handed over to the police. He could not, however, give the mobile number of his son, though he could identify the mobile phone. He also identified the ATM card and the motor cycle of his son. Nothing material was elicited in the

cross-examination of P.W.1. But, the evidence of P.W.1, except speaking about the message that he received, does not speak about the complicity of the accused. P.W.2 is the wife of the deceased. She also speaks about what she was informed by P.W.1 regarding the messages on the mobile of the deceased and his depositing amounts. P.W.3 is the mother of the deceased. She also lent support to the evidence of P.Ws.1 and 2. P.W.4 is a resident of Siripuram Colony who knows the accused. He stated that the accused and Geetha, who is Accused No.2, used to reside in a house opposite to his house. Accused No.2 used to come to his house and have talks with his wife and she was in the habit of using his land phone often. From 02.01.2007 onwards, the house in which the accused and said Geetha used to reside, was found locked and they were not seen.

P.W.5 is the person, who let-out the house to the accused and Geetha. According to him, the house belongs to the daughter of his co-son-in-law, but since he was residing at Godavarikhani along with his wife, P.W.5 let-out the house to the accused and the house was under his care. The accused and one Geetha, together, took the house. Geetha was introduced as the junior maternal aunt of the accused. On one occasion, the land lady of the house came and went to the house of the accused and told P.W.5, that candles were being manufactured in the said house. According to the evidence of P.W.5, the accused and Geetha lived as tenants for more than one year. On 02.04.2007, when he went to the house for collecting rent, he found that the doors were curtained. On that, he made inquiries with the neighbours, who stated that they were not seen since long time. Then he broke open the locks and let-out the house to some other persons. On 18.04.2007,

police, along with the accused came to the house, which was let-out to the accused and inquired about the owner. On that, the neighbours told the police, that the said house belongs to P.W.5 and later, a constable came to his rice mill and he went to the said house along with him. There, the accused was present along with the police and he made a confession. Though P.W.5 speaks about the accused making confession, he does not speak about the recovery of the dead body from the septic tank, at the instance of the accused.

P.W.6 is the Manager (Administration), Legal Department, IDEA Cellular Company. He received requisition from the Inspector of Police, Karimnagar in the month of March 2007, requesting him to furnish the call data of the mobile phone IMEI, as such, he furnished the details. Though he states that he filed the call details along with a memo, the same is not marked in his evidence, as they did not contain the date of issue, signature of the issuing authority or any other competent person or the seal of office which furnished the call details. Ex P6 is call details of mobile number 9912578108, which contains an endorsement of the court, that it is marked through PW.6. The same stands to be a discrepancy. However, the IMEI number, in Ex.P6 is not the same as stated by PW.6 and hence it cannot be said to have been issued by him. Be it so, he does not file the certificate required by Section 65-B of the Indian Evidence Act for which reason Ex.P6 cannot be relied upon. In **Anvar P.V vs P.K.Basheer**, Civil Appeal No.4226 of 2012, the Apex Court held “An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under **Section 65B** are satisfied.

Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.”

The call details pertaining to the IMEI number stated by P.W.6 were not marked,

P.W.7 is a classmate of the deceased. But his evidence does not seem to be material as he does not state about any fact which is helpful to prove the guilt of the accused.

P.W.8 is the land-lord of the house in which, allegedly, the accused resided along with one Geetha. He came to know that in the month of April, 2006, police raided the house in which the accused and Geetha stayed as tenants and took them to the police station in a brothel case. Immediately thereafter, they vacated the house and went away.

P.W.9 is a witness, who purchased the house where Geetha resided, from one Kalavathi, who was the original owner of the said house.

P.W.10 is a hostile witness, who went to Siripuram Colony for cleaning the septic tank, which is situated in front of the house of the deceased. He again corrects himself stating that the septic tank is situated in front of the house in which the accused stayed. He was declared hostile as he did not support the case of the prosecution that he knows that the accused and Geetha killed the deceased.

P.W.11 is an X-Ray Technician in Sairam Hospital, Karimnagar. He joined as a tenant in the house in Siripuram Colony on 14-4-2007, in which house the accused was a tenant earlier. On 18.04.2007, police came to the said house and removed the dead body from the septic tank, in his presence. According to him, there is a compound wall around his house. He was standing outside the compound wall, while the dead body is being recovered from the septic tank. He admitted that he does not know what happened at his house, as he was out of the compound wall and that he was giving the name of the accused as Sridhar as instructed by the police.

P.W.12 is a scavenger, who dug the septic tank and removed the dead body from the same. P.W.13 is a photographer, who photographed the proceedings of recovery of the dead body from the septic tank. P.W.14 is a witness for the confession made by the accused. He speaks about the recovery of two ATM cards, mobile phone and money purse from the possession of Accused No.1. P.W.15 is the Civil Assistant Surgeon, District Headquarters Hospital, Karimnagar, who stated that the body, which was exhumed, was sent to MGM Hospital for Post-Mortem examination. P.W.16 is a photographer, who photographed the dead body of the deceased.

P.W.17 is the Assistant Manager in Andhra Bank Main Branch, Karimnagar. His evidence is material as the deceased was holding an account in the said bank and the money deposited by P.W.9 was in the said account. Hence, he is the witness, who can lend support to the evidence of P.W.1, with regard to the withdrawal of amounts. But, unfortunately, the evidence of

P.W.17 does not lend support to P.W.1's evidence and on the other hand, it contradicts the said evidence. According to P.W.1, initially, he deposited Rs.5,000/- in Andhra Bank and later, Rs.2 lacs in Andhra Bank, Main Branch, Karimnagar where P.W.17 is working. According to P.W.1, there were four withdrawals after he deposited the amount. The deposit was made by P.W.1, one month after missing of the deceased on 05.01.2007 which would be around 05.02.2007. But the evidence of P.W.17 shows that as per the statement of account in respect of Account No. 18381 which is in the name of the deceased, P. Surender, withdrawal of a sum of Rs.59,800/- in total was there. The first withdrawal was on 06.01.2007 for Rs.300/- i.e. the next day after the deceased left the house and on 06.02.2007, Rs.5,000/- was withdrawn. The same would corroborate the evidence of P.W.1, as he deposited Rs.5,000/- around that time. As to when P.W.1 deposited Rs.2 lacs is not stated by P.W.17, but it is subsequent to the deposit of Rs.5,000/- which is after one month from 05.01.2007. The next withdrawal was only on 12.03.2007 which is for Rs.10,000/- and on the same day, another Rs.10,000/- was also withdrawn and on 13.03.2007, another Rs.10,000/- was withdrawn. The other withdrawals stated by P.W.17 are on 16.12.2006 for Rs.5,000/-, on 18.12.2006 for Rs.10,000/- and on 26.12.2006 for Rs.9,500/-. The above-said last three withdrawals are prior to the deceased leaving the house and hence, they cannot be linked up to this case. The withdrawals that are made after the missing of the deceased are only to an extent of Rs.35,300/-. Hence, there is absolutely no corroboration between the evidence of P.W.1 and P.W.17 with regard to the amounts withdrawn. The date of death of the deceased could not be assessed as the body was putrefied by the

time it was recovered. Hence, whether the withdrawals on 12.03.2007 were made while the deceased was alive or not cannot be known, so as to link up the said withdrawals with the accused.

Next incriminating circumstance is the recovery of ATM cards. In the light of the above pointed out discrepancies, the evidence with regard to the recovery of ATM cards from the accused should be free from any doubt. But, P.W.14, who is a witness for the recovery of ATM cards, states that by the time he was called by the police, the accused was in the custody of the police and the ATM cards were recovered from the possession of Accused No.1 on the spot, which appears to be highly improbable. It cannot be expected that the accused would be moving with the ATM cards, even after the deceased was murdered. It cannot also be assumed that he would be in possession of the ATM cards, expecting that further amounts would be deposited in the account of the deceased for him to withdraw the same with the help of the ATM cards. On the other hand, the statement of account of the deceased, Ex.P7, strangely, shows Rs.1,70,528 as the balance, as on 23-3-2007. The said fact, dismantles the entire case, as motive stands diluted. If it was for gain, that the deceased was kidnapped and if the accused had the ATM cards and if he is the person who had withdrawn the earlier amounts, there cannot be expected any balance, to remain, in the account. In all probability, the accused would withdraw the entire amount, with the amount of time that he had at his disposal, before he was arrested. The contention of the appellant's counsel that the ATM cards might have been planted with the accused, in the light of the above doubtful circumstances, cannot be brushed aside.

The investigation as regards the call details of the mobile phone of the deceased is perfunctory and scanty. Though P.W.21, Inspector of Police, Janagaon Rural, who, at the relevant point of time, worked as the Inspector of Police, Karimnagar, states that on 09.10.2007, he collected the details of SMS sent by the accused to the wife of the deceased through mobile No. 98853 66605 and that he also collected the details of SMS sent by the accused to the father of the deceased, he does not file the same into the Court which shows the perfunctory nature of the investigation. The investigation does not seem to have been in the direction in which it ought to have been. The important link in the chain of circumstances i.e. the messages sent to P.W.1, is missing in this case.

The dead body, no doubt, was recovered from a place not accessible to everyone and of which only, the person committing the murder, could, in all probability, have knowledge. But section 27 of the Indian Evidence Act permits, only that part of the confession, which leads to the recovery of a fact, to be relied upon.

The Privy Council in **Pulukuri Kottayya V. Emperor¹** (19th December, 1946), illuminated the scope and ambit of section 27 in the following words,

“ It is fallacious to treat the “fact discovered” within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were

¹ AIR 1947 PC 67

discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

If the recovery of the dead body, in this case, is appreciated on the above lines, it would rest the proof at the point of the accused having knowledge of the place where the dead body was concealed, but it does not by itself, prove that he committed the murder of the deceased. No further links are gathered to such knowledge of the accused. The only link collected, i.e. the ATM cards, do not gather our confidence, for the aforementioned reasons.

The principle that when a case rests on the circumstantial evidence, the circumstances collected by the prosecution should be in such a manner that a strong chain should be formed by the circumstances, without any missing links and all the circumstances should unerringly point towards the guilt of the accused, is very well-settled. The circumstances should not leave any scope for even a hypothesis of the innocence of the accused and should not leave any loose ends to tie. But, in this case, not only the important link in the chain of circumstances, but several other links, which could have lent support to the case of the prosecution, are found missing. Hence, in the above circumstances, we do not feel it safe to uphold the verdict of the lower Court. The points are answered accordingly.

POINT No.3: In the result, the judgment dated 13.07.2012 in S.C. No.502 of 2011 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Karimnagar is set aside. The Appeal is therefore, allowed and the appellant shall be set at liberty forthwith, if he is not required in any other case.

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

CHALLA KODANDA RAM, J

T. RAJANI, J

Date: 31st March 2018
ksld

