

Bail Slip:- The Petitioner / Accused was directed to be released on bail by the Order of the High Court dated 10-09-2015 in Crl.A. M.P. No.1151 of 2015 in Crl.A.No.1240 of 2015

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

**SATURDAY THE TWENTY NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY**

PRESENT

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY**

CRIMINAL APPEAL Nos : 1240 OF 2012 AND 3 OF 2013

Crl.A. No. 1240 of 2012

Appeal Under Section 374 (2) of Code of Criminal Procedure against the Judgment dated 05-12-2012 in S.C. No. 29 of 2010 on the file of the Court of the IX Additional District and Sessions Judge (FTC) Ranga Reddy District at L.B. Nagar, Hyderabad.

Between:

Musthaq Ahmed Khan, (A-1), S/o Late Mahaboob Khan, Occ: Real Estate Business, R/o H.No.18-1-350/22/80, Gulshan Iqbal Colony, Balanagar, Chandrayanagutta, Hyderabad.

... PETITIONER / ACCUSED NO.1 / APPELLANT

AND

State of Andhra Pradesh, represented by its Public Prosecutor, High Court, Hyderabad.

...RESPONDENT/ COMPLAINANT

Counsel for the Appellant: SMT C. VASUNDHARA REDDY

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRL.A. No. 3 OF 2013

Appeal Under Section 374 (2) of Code of Criminal Procedure against the Judgment dated 05-12-2012 in S.C. No. 29 of 2010 on the file of the Court of the IX Additional District and Sessions Judge (FTC) Ranga Reddy District at L.B. Nagar, Hyderabad.

Between:

Mohammed Haji Pasha @ Hajee, S/o. Mohammed Moinuddin, Occ: Salesman, R/o. Naseebnagar, Phoolbagh, Chandrayanagutta, Hyderabad.

...APPELLANT/ ACCUSED NO. 2

AND

State of A.P., represented by the Police of PS. Vanasthalipuram, through Public Prosecutor, High Court of A.P., Hyderabad.

..RESPONDENT/PROSECUTION

Counsel for the Appellant: SRI MOHD SHAFI UDDIN

Counsel for the Respondent: THE PUBLIC PROSECUTOR

THE COURT MADE THE FOLLOWING COMMON JUDGMENT:

COMMON JUDGMENT: (Per the Hon'ble the Chief Justice Sri Ravendra Singh Chauhan)

Both these appeals, namely Criminal Appeal No.1240 of 2012 and Criminal Appeal No.3 of 2013, arise from the same impugned judgment, dated 05.12.2012, passed by the learned IX Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, Hyderabad. Therefore, they are being decided by this common judgment.

By the impugned judgment, while the appellant in Criminal Appeal No.1240 of 2012 ("A-1", for short) has been convicted for offences under Sections 302, 379, 201 I.P.C, he has been sentenced to undergo rigorous imprisonment for life, imposed with a fine of Rs.1,000/-, and to undergo rigorous imprisonment for three months in default thereof, for offence under Section 302 IPC; he has been sentenced to undergo rigorous imprisonment for three years, for offence under Section 379 IPC; he has been sentenced to undergo rigorous imprisonment for seven years, imposed with a fine of Rs.1,000/- and to undergo rigorous imprisonment for three months in default thereof, for offence under Section 201 IPC. All the sentences qua A-1 were directed to run concurrently.

The appellant in Criminal Appeal No.3 of 2013 ("A-2", for short), on the other hand, has been convicted for offence under Section 201 IPC read with Section 302 IPC, and has been sentenced to undergo rigorous imprisonment for a period of seven years, imposed with a fine of Rs.1,000/-, and to undergo rigorous imprisonment for three months, in default thereof. He has been further sentenced to undergo rigorous imprisonment for nine months for the offence under Section 201 IPC read with 379 IPC. Both the sentences were directed to run concurrently.

Briefly, the facts of the case are that on 26.01.2009, around 12:10 PM, M. Ravinder Reddy (P.W.1) lodged a complaint (Ex.P.1) with the Police Station, Vanasthalipuram, wherein he claimed that his brother, Munugala Narsi Reddy @ Narisimha Reddy, who was engaged in real estate business, left the house on 25.01.2019 in order to obtain an agreement for a plot from A-1. While leaving the house, he informed his wife, M. Padmini (P.W.2), that he was carrying an amount of Rs.1,50,000/-. But, ever since then, his brother has not returned to the house. In fact, he has not returned even on the next day morning. There was no response for the call made to the mobile of his brother. Therefore, he sought necessary action. Upon the said complaint, a formal FIR was chalked out by the police, for man-missing case, and entrusted the investigation to Mr. Y. Venkatnarayana (P.W.10).

According to the prosecution, on 07.02.2009, around 5:00 AM, A-1 was arrested at Bandameedipalli Village, Mahaboobnagar District. Moreover, during the course of investigation, at the instance of A-1, the police had recovered Rs.55,000/-, one cell phone, without SIM card, and a motor cycle allegedly belonging to the deceased.

In order to establish its case, the prosecution examined thirteen witnesses, submitted nine documents, and produced five articles before the learned trial Court. After appreciating the evidence, as mentioned hereinabove, the learned Tribunal convicted and sentenced both A-1 and A-2. Hence, both these appeals before this Court.

Ms. C. Vasundhara Reddy, the learned counsel for A-1, has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish its case, even on the basis of the preponderance of evidence, against A-1.

Secondly, the prosecution has heavily relied upon the alleged confession made by A-1, while he was in police custody. However, the said confession cannot be read against A-1, except for the limited extent of discovery of fact under Section 27 of the Evidence Act. Therefore, the entire story of the prosecution, claiming that it is A-1, who took the deceased to his house, killed him in his house, disposed of his body thereafter in a dust bin, and burnt his body, cannot be read against A-1. It is only the discovery of fact under Section 27 of the Evidence Act which can be read against A-1.

Thirdly, the prosecution has claimed that blood samples were lifted from the scene of offence. However, the lifting of the blood samples is shrouded in mystery. For, the prosecution has failed to examine the scientific officer, who had lifted the blood samples. Therefore, the prosecution has withheld a material witness from the purview of the trial Court. Hence, the withholding of the material witness should be read adversely against the prosecution. Moreover, the place from where the blood samples were lifted is unclear. According to P. Madhumohan (P.W.12), the Investigating Officer, the blood samples were lifted from a windowpane, after the blood samples were wiped with a cloth. But, according to the panchanama (Ex.P.5), the bloodstains were lifted from the wall. Further, according to the learned counsel, curiously, N. Rajani Kanth (P.W.8), the recovery witness, is absolutely silent in his testimony with regard to the lifting of the blood samples from the scene of the crime. Therefore, except for

the statement of P. Madhumohan (P.W.12), the Investigating Officer, there is no cogent and convincing evidence with regard to the lifting of the blood samples.

Fourthly, although the prosecution has relied upon the DNA report (Ex.P.9), in order to establish that the blood samples lifted from the scene of the crime contained the same DNA as that of the parents of the deceased, but even the parents of the deceased have not been examined. Hence again, the material witnesses have been withheld by the prosecution. Thus, an adverse inference should be drawn against the prosecution. Since the very recovery of the blood samples is shrouded, even the DNA report (Ex.P.9) loses all its significance. Thus, the alleged recovery of the blood samples from the scene of the crime fails to connect A-1 to the alleged crime.

Fifthly, although the prosecution claims that an iron rod was recovered at the instance of A-1, since the iron rod was not subjected to an FSL examination, since there is no blood recovered on the iron rod, the mere recovery of an iron rod is an irrelevant fact. For, the recovery does not connect A-1 to the alleged crime.

Sixthly, similarly, although the prosecution claims that a cell phone was recovered at the instance of A-1, the same was never subjected to Test Identification Parade, despite the fact that the prosecution did have the availability of the wife, and the brother of the deceased. Therefore, even this recovery loses its significance and is an irrelevant fact.

Lastly, even if the police had recovered a motor cycle, allegedly belonging to the deceased, the said motor cycle was not identified by the wife or the brother of the deceased, as belonging to the deceased. Moreover, the prosecution has not produced any

documentary evidence to show that the motor cycle was, indeed, registered in the name of the deceased. Therefore, even the said recovery, allegedly at the instance of A-1, is an irrelevant fact. Hence, the prosecution has miserably failed to establish its case against A-1.

Mr. Mohd Shafiuddin, the learned counsel for A-2, has adopted the arguments of Ms. C. Vasundhara Reddy, the learned counsel for A-1. He has further pleaded that as far as A-2 is concerned, there is no cogent and convincing evidence to establish the fact that he had helped A-1 in disposing of the body of the deceased. Thus, A-2 could not have been convicted for offence under Section 201 IPC.

On the other hand, Ms. Juvvadi Sridevi, the learned Additional Public Prosecutor, has vehemently contended that prior to leaving his house, the deceased had informed his wife (P.W.2) that he had a meeting with A-1 and that he was carrying Rs.1,50,000/-. Subsequently, the police had recovered Rs.50,000/- from the possession of A-1. Thus, treating his statement to the wife as a dying declaration, the learned trial Court is justified in treating his statement as a linking evidence to convict A-1 for offence under Section 302 IPC. Moreover, the testimony of M. Padmini (P.W.2) was further corroborated by the testimony of M. Ravinder Reddy (P.W.1).

Secondly, according to the M. Padmini (P.W.2), when the witness tried to contact A-1, his mobile was switched off, and he was untracable. Furthermore, according to the prosecution, A-1 was arrested on 07.02.2009 and, that too, in Mahaboobnagar District. Thus, he absconded from the scene of crime, after having

allegedly committed the murder. Therefore, his absconding from the scene of crime clearly reveals his guilty mind.

Thirdly, the blood samples were lifted by the police from the apartment of A-1. According to the FSL report (Ex.P.9), the DNA and the blood samples match the DNA of the parents of the deceased. Therefore, there was a clinching evidence that the deceased was lastly seen in the apartment of A-1 where the crime was committed. Despite the fact that the said blood sample was collected from his apartment, A-1 has not offered any explanation, under Section 106 of the Evidence Act. Therefore, he has failed to discharge a burden, which has shifted upon him, during the course of the trial. Hence, his silence also points to his guilt.

Thirdly, the prosecution has also succeeded in establishing the fact that the iron rod was recovered at the instance of A-1. It has further succeeded in establishing the fact that the motor cycle belonging to the deceased was recovered at the instance of A-1. Therefore, the prosecution has well established its case against A-1 and A-2. For, all the links in the chain unerringly point towards the guilt of A-1 and A-2. Hence the learned Additional Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

M. Ravinder Redddy (P.W.1) informed the Court below that *"Munugala Narsireddy is my elder brother. About two year ago, my elder brother left the house but, he did not turn up even in the night. While leaving the house he took Rs.1,50,000/- and he was proceeded to one Musthaq in connection with the real estate deal. There was no response from him even in the night and his mobile was found switched off. Therefore, I presented a report to police.*

My report is Ex.P1. About 10 days after my report, I came to know that my brother was killed and his dead body was burnt to ashes. Police examined me".

Similarly, M. Padmini (P.W.2) informed the Court below that *"my husband Narsimhareddy use to do real estate business. On 25-01-2009, in the evening time my husband told me that one Musthaq had real estate transactions with him he want to settle the deal and left the house by taking 150000/- with him. He left the house on his motor bike bearing AP28 AF 3238. While leaving the house he was in cream colour shirt, black colour pants. He was having one gold chain. Since my husband did not turn up I tried to contact him on his phone, but, I found his mobile was switched off. Since my husband told me that he was proceeding to meet one Musthaq I searched for his mobile number I traced the mobile number of Musthaq. But, when I tried to contact said Musthaq that phone was also found switched off. I have informed about the missing of my husband to my parents and PW1. PW1 presented a report to police. About 8 days there after I came to know that my husband was no more. Police examined me."*

Thus, according to both the witnesses, at the time of leaving the house, the deceased did inform his wife that he was going to meet A-1. Therefore, the said statement can certainly be treated as his dying declaration. However, the mere statement that the deceased was about to go and meet a person, Musthaq, cannot be the sole basis for convicting A-1, until and unless the prosecution succeeds in producing cogent and convincing evidence as other links in the chain of circumstances.

Therefore, the issue before this Court is whether there are sufficient links in the chain of circumstances, which would unerringly point towards the guilt of A-1 or not?

The prosecution has made much of the fact that not only the blood samples were lifted from the scene of the crime, but even the DNA report clearly establishes that the blood belongs to the deceased. According to the panchanama (Ex.P.5), the blood samples were lifted from the wall. But, according to P. Madhumohan (P.W.12), the blood samples were lifted from the windowpane. Although this seems to be a minor contradiction in the case of the prosecution, but surprisingly N. Rajani Kanth (P.W.8), the recovery witness, is absolutely silent about the lifting of any blood samples either from the wall or from the window glass. According to his testimony, *"on 06-02-2009, police Vanasthalipuram called me and one Satyanarayana reddy to police station"*. Furthermore, according to this witness, A-1 had made a confessional statement before the police wherein he informed the police that he had "cleaned" the bloodstains on the sofa and kept the bloodstained clothes at the house of his "father-in-law". In his examination-in-chief, he does not reveal the fact that the police had recovered any blood samples from the house of A-1. Even in his cross-examination, he stated that *"except showing the sofa the police did not do anything in my presence. The police did not remove any portion of the cover of the said sofa by cutting it in my presence."* Therefore, it is unclear as to wherefrom the blood samples were lifted by the police.

Interestingly, the prosecution has not examined the scientific officer who had lifted the blood samples from the house of A-1. Therefore, the prosecution has withheld a material witness.

Hence, an adverse inference has to be drawn against the prosecution. In case the scientific officer were to be produced by the prosecution, he would have deposed against the prosecution itself.

Moreover, the prosecution has heavily relied on the FSL Report (Ex.P.9) to stress on the fact that the blood samples were collected from the house A-1, and the DNA therein match the DNA of the parents of the deceased. But the fact remains that even the parents of the deceased have not been examined by the prosecution. Therefore, again the prosecution has withheld material witnesses from the trial Court. Thus again, an adverse inference has to be drawn against the prosecution. Perhaps, if the parents were examined by the prosecution, they would not have supported the case of the prosecution that any blood samples were taken from them in order to carry out the DNA identification.

In the light of the fact that neither the scientific officer, nor the parents of the deceased have been examined as witnesses, the FSL Report (Ex.P.9) loses its significance. For, it is unknown where the blood samples of the deceased were picked up from, and whether the blood samples of the parents of the deceased were taken or not? Therefore, the mere report, which claims that there is a matching of the two blood samples, loses its veracity and significance.

The prosecution has, of course, relied on the recovery of the cell phone allegedly belonging to the deceased. However, the said cell phone has never been subjected to a Test Identification Parade, despite the fact that the police had the availability of M. Ravinder Reddy (P.W.1), the brother of the deceased, and M. Padmini (P.W.2), the wife of the deceased. Since neither of these witnesses

have ever identified the cell phone, so recovered from the appellant, as belonging to the deceased, the mere recovery of a cell phone is an irrelevant fact.

Likewise, even if the prosecution has claimed that the motor cycle belonging to the deceased was recovered at the instance of A-1, even the said motor cycle has never been identified either by M. Ravinder Reddy (P.W.1), the brother of the deceased, or by M. Padmini (P.W.2), the wife of the deceased. Moreover, the prosecution has not produced any documentary evidence, which could have been collected from the Regional Transport Office to establish the fact that the motor cycle, allegedly recovered at the instance of A-1, was in fact registered in the name of the deceased. Therefore, even the documentary evidence, which would have been helpful to the prosecution, is conspicuously missing.

Furthermore, although the prosecution claims that police had recovered an iron rod at the instance of A-1, as the said rod has never been subjected to FSL examination, the recovery does not connect A-1 to the alleged crime.

Lastly, it is settled principle of law that mere absconding of A-1 cannot be read as an incriminating evidence against him. Therefore, even if A-1 was arrested on 07.02.2009, i.e almost after thirteen days of the incident, and that too in the village of his cousin sister, the said fact does not necessarily point to the guilty mind of A-1.

As far as A-2 is concerned, the prosecution has not produced any convincing evidence to establish the fact that A-2 had helped A-1 in disposing of the dead body of the deceased. Therefore, A-2 has been convicted merely on surmises and conjectures. Needless to say, the prosecution has to cover the long distance

between "may be true" and "must be true". However, in the case of A-2, the prosecution has failed to cover the said distance. Hence, the conviction and sentence of A-2 is legally untenable.

For the reasons stated above, both these criminal appeals are, hereby, allowed.

The conviction and sentence recorded against the appellant (A-1) in Criminal Appeal No.1240 of 2012 by the learned IX Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, *vide* judgment dated 05.12.2012 in S.C.No.29 of 2010, for offences punishable under Sections 302, 379, 201 I.P.C, are hereby set aside. Since the appellant (A-1) is incarcerated in jail, he shall be set at liberty forthwith, if not wanted in any other case.

The conviction and sentence recorded against the appellant (A-2) in Criminal Appeal No.3 of 2013 by the learned IX Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, *vide* judgment dated 05.12.2012 in S.C.No.29 of 2010, for offence punishable under Section 201 read with Sections 302, 379 IPC, are hereby set aside. Since the appellant (A-2) is on bail, his bail bonds shall stand discharged.

SD/-K GANGADHAR RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The IX Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B. Nagar, Hyderabad.
2. The VII Metropolitan Magistrate, Hayathnagar, Ranga Reddy District.
3. The Station House Officer, Vanasthalipuram Police Station, Ranga Reddy District.
4. The Superintendent, Central Prison, Cherlapally, Ranga Reddy District
5. The Superintendent, Central Prison, Warangal.
6. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
7. One CC to Smt. C. Vasundhara Reddy, Advocate (OPUC)
8. One CC to Sri Mohd. Shafiuddin, Advocate (OPUC)
9. Two C.D. Copies

MP

25.

HIGH COURT

DATED:29/02/2020



JUDGMENT

CRL.A.Nos.1240 of 2012 & 3 OF 2013

ALLOWING BOTH THE CRIMINAL APPEALS

11
22/7/20
HVT