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GOLAKONDA VENKATESWARA RAO

v.

STATE OF ANDHRA PRADESH

AUGUST 1, 2003.

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[DORAISWAMY RAJU AND H.K. SEMA, JJ.]

Evidence Act, 1872:

C *Section 3—Conviction on the basis of circumstantial evidence—Justification of—Held: Conviction can be based on circumstantial evidence when prosecution establishes circumstantial evidence beyond all reasonable doubts—Such circumstances should be consistent and must point to the guilt of the accused—In the instant case, all circumstantial evidence established thus conviction of accused upheld—Penal Code, 1860—Section 302.*

D *Sections 27 and 3—Voluntary disclosure statement—Recovery of articles—Evidentiary value of—Held: When articles recovered in pursuance to information given is confirmed by discovery of articles of deceased, such information and statement cannot be false—Further investigating officer not sealing material recovered is inconsequential and also the non-production of* E *two articles before the court when others have been proved beyond reasonable doubt.*

According to the prosecution, appellant-accused committed rape of a minor girl and threw her into the well thereby killing her. It is alleged that the appellant buried the torn clothes of the deceased. Two months F **after the incident PW-1-foster father of the deceased came to know through PW-5-a village woman that two months prior to the date of missing she noticed the appellant talking with the deceased. On being asked by the village elders the appellant confessed that he committed rape of the victim, killed her and threw her into the well. PW-1 then lodged FIR. Sessions Judge found the circumstantial evidence established against the** G **appellant-accused and convicted him under Section 302 IPC; he however, acquitted him of the charges under Section 376 and 201 IPC. High Court upheld the order. Hence the present appeal.**

Appellant contended that the prosecution has not established the circumstances appearing against the appellant beyond all reasonable

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doubts; that the identity of the deceased was not established as the Assistant Director who issued Superimposition Report was not examined; that last seen of the deceased with the appellant by PW-5 has not been established by convincing evidence having regard to the discrepancies appearing in the testimony of PW-5 and the FIR; that the disclosure statement and recovery of the articles is doubtful and no reliance can be placed on it; that the materials recovered were not sealed by the police; and that the hairpin and bangles recovered were not produced before the Court.

Dismissing the appeal, the Court

HELD: 1. It is well settled principle of law that in cases where the evidence is purely circumstantial in nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution. [101-D]

2.1. In the facts and circumstances of the case, the prosecution had established the circumstantial evidence beyond all reasonable doubt, thus the conviction of the appellant-accused is upheld. [101-E]

2.2. The Assistant Director who issued the Superimposition report certified that the skull could have belonged to the person in the photograph. Court would not be oblivious of the fact that the identity of the deceased was got tested by superimposition of the skeletal remains of the deceased conducted with reference to the photograph of the deceased. Police official deposed that he had sent the photograph of the deceased for superimposition test by the Laboratory. Doctor who conducted the post-mortem examination of skeletal remains gave the age of the deceased between 15-16 years. This is corroborated by PW-9, the Professor & Scientist working in the laboratory. The opinion of the forensic expert also makes it clear that the skull belonged to a human-being of female sex aged 15 or 16 years. Thus, the identity of the deceased is well established beyond all reasonable doubts and non-examination of the Assistant Director would not itself throw away the otherwise reliable and trustworthy evidence.

[101-F-H; 102-A-B]

2.3. PW-5 was examined after a long gap of four years. It is not expected from a rustic village woman to have remembered the incident that had taken place after a lapse of four years with mathematical

A precision. It is but quite natural that human memories are apt to blur with the passage of time. This witness subsequently had admitted that she does not remember the day on which the appellant and the deceased were talking to each other but she however reaffirmed that they were talking to each other sitting at the place. The fact remains that PW-5 last saw the deceased and the appellant together and this fact has not been demolished B and remains unimpeached. Thus the discrepancy in the FIR and in the statement of PW-5 between 3 months and 2 months and also 11.00 A.M. and 3 P.M is not of a substantial character which would throw the prosecution story, as unbelievable. [102-G-H, F; 103-A]

C 2.4. PW-3-foster mother of the deceased has stated that when the deceased left the house for the last time she was wearing clothes-jacket and langa. It is a matter of common knowledge that women have an inherent sense of identifying the wearing apparels of their daughters who are attached to the mother, particularly commonly attire worn by them in the house. Therefore, wearing apparels of the deceased dug out from D the place at the disclosure of the appellant and identified by PW-3 are the wearing apparels of the deceased at the time she left the house and subsequently missing. [104-F-G]

Jackaran Singh v. *State of Punjab,* AIR [1965] SC 2345, distinguished.

E 2.5. The recovery of articles is pursuant to the voluntary disclosure statement offered by the appellant. The fact that the recovery is in consequence of the information given is fortified and confirmed by the discovery of wearing apparel and skeletal remains of the deceased which leads to believe that information and the statement cannot be false. [105-E]

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S.C. Bahri v. *State of Bihar,* AIR [1994] SC 2420

2.6. The pieces of langa were found after being dug out and unearthed at the disclosure of the appellant. Jacket, hair, cement pole piece, skeletal remains were not found lying on the surface of the ground G but they were found inside the well, which is 6-1/2 deep of water, with the help of swimmers. It is not found from the place where public can have free access. Therefore, there is no reasonable apprehension with the material exhibits being planted to rope in the appellant with the crime. [105-H; 106-A]

H 2.7. Investigating Officer has not stated in his statement that he has

not fixed a seal on the material so seized. This question was also not put to him in the cross-examination. The village administrative officer has stated that the police took away all the articles seized along with them one hour after completing Ext.P-3 where there is a mention about the pieces of langa being packed there itself and affixing the chits with the signatures of the mediators on that packet. [106-C]

2.8. Non-production of hairpins and bangles before the Court during the course of trial would not by itself disclose tampering of evidence with regard to the recovery of hairpins and bangles inasmuch as the articles recovered have been proved beyond all reasonable doubts. Thus, the non-production become inconsequential and no prejudice also seems to have been caused to the appellant. [106-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 838 of 2002.

From the Judgment and Order dated 29.6.2001 of the Andhra Pradesh High Court in Crl. A. No. 1141 of 2000.

Mahendra Anand Chander Shekhar Ashri for the Appellant.

G. Prabhakar and Ms. T. Anamika for the Respondent.

The Judgment of the Court was delivered by

SEMA, J. The appellant was put to trial for an offence punishable under Sections 376, 302 and 201 IPC before Sessions Judge, Krishna Division at Machilipatnam in Sessions Case No 110 of 1998. After the trial, the learned Sessions Judge found the appellant not guilty under Sections 376 and 201 IPC and he was accordingly acquitted of the charges under the aforesaid Sections. The learned Sessions Judge, however, found the appellant guilty under Section 302 IPC and sentenced him to undergo imprisonment for life and also to pay a fine of Rs. 100 and in default to undergo simple imprisonment for one month. The conviction and the sentence recorded by the learned Sessions Judge were confirmed by the High Court by the impugned judgment under challenge.

Briefly stated the facts leading to the filing of the present appeal are that the appellant, a resident of Sultanagaram and a neighbour of the deceased - Devanaboyina Lakshmi, stated to be a minor girl aged 15-16 years accosted the deceased about two months prior to the incident on 14.7.1996. It is stated

A that the deceased went to graze goats at water canal bund. The appellant noticed the deceased going towards the water canal bund, followed her, and began to talk with her with an evil eye. This fact is stated to have been witnessed by PW-5 Sala Ankamma. It is also stated that having found no one present around the area, the appellant caught the deceased, dragged her to a nearby unused shed, gagged her mouth and committed rape on her against B her will. It is also alleged that all the resistance put up by the victim girl went in vain and the accused over-powered the girl. It is further disclosed, in the process of struggle the upper and inner langa of the deceased were torn. When the appellant left the deceased alone and was about to part from the place of occurrence, the deceased allegedly was said to have told the appellant C that she would bring the matter to the notice of villagers and police. Being frightened by this disclosure, it is alleged, the appellant chased her, caught her and threw her into the well situated in the northeastern corner of the dibba. The appellant also kept a stone in the well so as to prevent the body from floating and also put some caveltry creepers (Guprapu Dekka) with an intention to hide the offence. It is also alleged that the appellant had buried D the torn clothes of the deceased. Since the deceased did not return by the evening, her kith and kin started searching for her without any result. Finally, PW-1 (author of FIR and foster father of the deceased), to whom the deceased was given in adoption by PW-2, came to know through PW-5 Sala Ankamma that two months prior to the date of missing i.e. 14.7.1996 she noticed the E appellant talking with the deceased. Upon this information being given, PW-1 approached the village elders, one of whom, Rajarao was examined as PW-4. On being asked by the village elders the appellant allegedly confessed the guilt of committing rape on the deceased and throwing her into the well. It is only after this information, PW-1 lodged the FIR (Exhibit P-1). In course of investigation the prosecution examined as many as 12 PWs and marked F Exhibits P-1 to P-29 and M.Os. 1-8. None of the DWs were examined on behalf of the appellant. He, however, pointed out three contradictions in the evidence of PW-5 marked Exhibits D-6 to D-8. After the conclusion of the trial, the learned Sessions Judge found the appellant guilty as noticed above.

G Undisputedly, there is no eyewitness to the occurrence and conviction of the appellant is solely based on the circumstantial evidence.

The learned Sessions Judge, and in our view correctly, has formulated the following circumstantial evidence appearing against the appellant on appreciation of evidence:

H (i) "The identity of the deceased was established; (ii) The deceased

was last seen in the company of the accused; (iii) The accused made an extra judicial confession before P.W.4 and another village elder to the effect that he committed rape on the victim, killed her and threw her in the well; A

(iv) Recovery of the articles and skeletal remains of the deceased pursuant to the disclosures of the information furnished by the accused himself; and B

(v) The accused failed to adduce any evidence to the contra to prove the so-called oblique motive of P.Ws. 4 and 6 to implicate him in a false case nor state anything mitigating in his Sec.313 Cr.P.C. a false wholesale denial." C

The learned Sessions Judge having regard to and after considering the evidence on record and exhibits found circumstances nos. 1, 2 and 4 well established against the appellant.

By now it is well settled principle of law that in cases where the evidence is purely circumstantial in nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution. D

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Mr. Mahendra Anand, learned senior counsel, vehemently submits that the prosecution has not established the aforesaid circumstances appearing against the appellant beyond all reasonable doubts. It is his contention that the identity of the deceased was not established beyond all reasonable doubts inasmuch as the Assistant Director (F.S.L), who issued Exhibit P-29, was not examined. Undisputedly, Exhibit P-29 Superimposition Report was sent to the Regional Forensic Science Laboratory, Vijayawada. The Assistant Director, who issued Exhibit P-29 certified that the skull in item 1(one) could have belonged to the person in the photograph in item No.2(two). Court would not be oblivious of the fact that the identity of the deceased was got tested by superimposition of the skeletal remains of the deceased conducted with reference to the photograph of the deceased. PW-12 deposed that he had sent the photograph of the deceased for superimposition test by the Forensic Science Laboratory, Hyderabad. PW-7 Dr.S.Rama Brahmam, conducted the post-mortem examination of skeletal remains (Exhibit P-7). In the said report he gave the age of the deceased between 15 - 16 years based on his medical knowledge. PW-9 Dr. P. Vijaya Kumar, a professor and scientist, working in F G H

A the forensic laboratory examined the skeletal remains in the court and stated that they showed the feminine characteristics and the age of the person concerned would be around 15 to 16 years. This apart, Exhibit P-9 is the opinion of the forensic expert which also makes it abundantly clear that the skull belonged to a human-being of female sex aged 15 or 16 years. In the facts and circumstances stated above, we have no doubt in our mind, that the B identity of the deceased is well established beyond all reasonable doubts and non-examination of Assistant Director who issued Exhibit P-29 would itself throw away the otherwise reliable and trustworthy evidence of PWs 7, 9 and 12. We have no reason to take a view different from the view taken by two courts concurrently.

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The next contention of Mr. Anand, learned senior counsel, is that last seen of the deceased with the appellant by PW-5 has not been established by convincing evidence having regard to the discrepancies appearing in the testimony of PW-5. It is the contention of the learned counsel for the appellant that in the FIR lodged by PW-1 (Exhibit P-1) it is stated that two months D prior of her death she was missing and this information was given to them by PW-5 Sala Ankamma that about 11.00 A.M. she saw the deceased talking with the appellant at Puranamvari Cheruvu whereas PW-5 Sala Ankamma when examined before the Court has stated as under:-

E "The deceased died about 3 years ago. The deceased was found missing 3 months prior to her death. At that time at about 3-00 P.M., I had been to canal bank for collecting firewood. There I found the accused and the deceased talking with each other. I told the fact of seeing the accused and the deceased talking with each other two months ago to the parents of the deceased."

F Learned Counsel contended that there is discrepancy in Exhibit P-1 and in the statement of PW-5 between 3 months and 2 months and also 11.00 A.M. and 3 P.M. Apart, the discrepancy as pointed out is not of a substantial character which would throw out the prosecution story, as unbelievable. The fact remains that the incident said to have occurred on 14.7.1996 and PW-G 5 was examined on 23.5.2000 after a long gap of four years be taken note of. It is not expected from a rustic village woman to have remembered the incident that had taken place after a lapse of four years with mathematical precision. It is but quite natural that human memories are apt to blur with the passage of time. This witness subsequently had admitted that she does not remember the day on which the appellant and the deceased were talking to H each other but she however reaffirmed that they were talking to each other

sitting at the place. The fact remains that PW-5 last saw the deceased and the appellant together and this fact has not been demolished and remains unimpeached. The appellant, as already noticed, brought to the notice of the Court three contradictions in the evidence of PW-5 marked as Exhibits D-6 to D-8. Exhibit D-6 is with regard to contradiction in the evidence of PW-5 that PW-5 saw the deceased last being in the company of the accused three months ago whereas in Exhibit P-1, PW-1 has stated that the deceased was found missing only two months prior to the discovery of death. Exhibits D-7 and D-8 relate to the contradictions in the statement of PW-5 which suggest that her mother, herself and her sister happened to be at the place of incident whereas in her cross-examination she stated that she alone had seen the deceased and the accused together at that point of time. We have gone through the contents of Exhibits D-6 to D-8 which have been placed on record and we are in full agreement with the concurrent finding of two courts that the contents of Exhibits D-6 to D-8 do not relate to PW-5 having seen the deceased and the appellant together. Therefore, Exhibits D-6 to D-8 do not in any way detract from the truth of the assertion of PW-5 that she alone had seen. The trial court has not placed reliance on the extra judicial confession while convicting the appellant. This question, therefore, do not detain us any longer.

The next important circumstance, which weighed with the trial court to base the conviction, is the recovery of MOs 1-8 at the disclosure statement furnished by the accused. The recovery of MOs is preceded by the disclosure statement made by the appellant (Exhibit P-2) which is in his mother tongue (Telgu). The disclosure statement given by the appellant is carved out from the mediator's report. The translated version of admissible portion quoted by the learned Trial Judge reads as follows:-

> "If you come with me, the day how Lakshmi was raped at the bank of Puranam Lake and how Lakshmi was forcibly thrown in the well and killed and at that place in what clothes she was and which Lange (Paiticot) she wear and Lange's pieces were digged and close down in the earth and that place I can show as he said..."
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> (It is stated in the court that translation is not happily drafted)

Section 27 of the Indian Evidence Act provides that only so much of the information as distinctly relates to the fact thereby discovered is admissible. In the instant case the recovery (Exhibit P-2) was made on the basis of the disclosure statement furnished by the appellant. The disclosure statement

A (Exhibit P-2) is proved by the mediator examined as PW-6 who is the village Administrative Officer and also the Inspector of Police examined as PW-12. PW-6 has stated that on the basis of disclosure statement (Exhibit P-2) the accused led the party to a place called "Purnamvari Dibba" where they found a dilapidated tin roofed shed and a well. From inside the well hair, hairpins, bangles were recovered and the police seized those articles under the cover of Ext.P-3. M.O.3 is the hair, MO.4 is the cement pole piece MO.5 is the bones. Then the accused led the party to a spot behind the tin roofed shed. The accused then dug out and unearthed the piece of langa. M.O.6 is the piece of blue langa and M.O.7 is the pieces of green langa. MO.8 is the pieces of mithai coloured langa.

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PW-12 arrested the appellant and questioned him. He stated that on being interrogated in the presence of PW-6 the appellant offered to show the place of occurrence and also where the dead body was thrown. He also offered to show the clothes of the deceased. Pursuant to the disclosure, he took the party to the well and disclosed that the body had been thrown into the well where there was a water level of 6-1/2 feet and with the help of swimmers the body was recovered from the well marked as M.O.3 and M.O.5 i.e. hair and skeletal remains respectively. They also recovered white plastic bangles and M.O.1 Jacket. They also recovered cement pole piece (survey stone) M.O.4. The said stone stated to have been kept to prevent the body from floating. He further stated that the accused then led them to a place towards western side of nearby shed and dug out a spot from where pieces of langa were retrieved marked as MO2, MO-6 and MO-8.

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PW-3, who is no other than the foster mother of the deceased has stated that when the deceased left the house for the last time she was wearing clothes MO.1 and MO.2. It is a matter of common knowledge that women have an inherent sense of identifying the wearing apparels of their daughters who are attached to the mother, particularly commonly attire worn by them in the house. We have no doubt in our mind, therefore, that wearing apparels of the deceased dug out from the place at the disclosure of the appellant and identified by PW-3 are the wearing apparels of the deceased at the time she left the house and subsequently missing.

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Learned counsel for the appellant, contended that the disclosure statement and recovery of the articles is doubtful and no reliance can be placed on such disclosure statement and recovery of the MOs. He further contended that the materials recovered were not sealed by the police. Hairpin and bangles said

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to have been recovered were not produced before the Court and these circumstances will make, all the more recovery doubtful. Counsel relied on the decision of this Court rendered in *Jackaran Singh* v. *State of Punjab,* AIR (1995) SC 2345, wherein in paragraph 8 at page SC 2347, it was pointed out that the disclosure statement inspires no confidence because none of the two panch witnesses Yash Pal and Sukhdev Singh have been examined at the Trial and secondly because the disclosure statement does not bear the signatures or the thumb impression of the appellant and also the recovery memo does not bear the signatures or thumb impression of the accused. Every case has to be decided on its own facts. The facts of that case do not fit in the facts of the case at hand. In the present case as already noticed PW-6 and PW-12 were examined to prove the disclosure as well as the recovery pursuant to the disclosure statement of the appellant. In the instant case, while it is true that neither the disclosure statement nor the recovery memo bear the signatures of the accused but the fact remains that pursuant to the disclosure statement MOs have been recovered from the well and dug out from a place which is pointed out by the appellant leaves no manner of doubt that the recovery of MOs has been made on the basis of voluntary disclosure statement. In Jackaran Singh's case (supra) the recovery memo Ex.P.9/A relates to revolver and the cartridges. There the appellant had denied the ownership of the crime revolver and the prosecution had led no evidence to show that the crime weapon belonged to the appellant. The observation of this Court was in that context. In the instant case, as already noticed, the recovery is pursuant to the disclosure statement offered by the appellant. The fact that the recovery is in consequence of the information given is fortified and confirmed by the discovery of wearing apparel and skeletal remains of the deceased which leads to believe that information and the statement cannot be false.

The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. (See *S.C. Bahri* v. *State of Bihar*, AIR (1994) SC 2420 at page SC 2448). As already noticed M.O.3, M.O.4 and M.O.5 were retrieved from the well with the help of swimmers, as there was a water level of 6-1/2 feet. MO.2 MO.6 and MO.8 are the pieces of langa dug out and unearthed at the disclosure of the appellant. These materials were not found lying on

A the surface of the ground but they were found inside the well, which is 6-1/2 deep of water, with the help of swimmers and were found after being dug out and unearthed only after the place was pointed out by the appellant. It is not found from the place where public can have free access. Therefore, there is no reasonable apprehension with the material exhibits being planted to rope in the appellant with the crime.

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Mr. Anand next contended that the Investigating Officer PW-12 did not have fixed the Lac seal on the particulars so recovered and no evidentiary value can be attached to the recovery. We are unable to countenance with the contention of the learned counsel because no where in the statement of PW-12 he has stated that he has not fixed a seal on the material so seized. This question was also not put to PW-12 in his cross-examination. At the same time PW-6 has stated that the police took away all the articles seized along with them one hour after completing Ext.P-3. In Ext.P-3 there is a mention about the pieces of langa being packed there itself and affixing the chits with the signatures of the mediators on that packet.

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Lastly, it is contended by Mr. Anand that hair pins and bangles so recovered at the disclosure statement of the appellant were not produced before the Court. Non-production of hairpins and bangles before the Court would not by itself disclose tampering of evidence with regard to the recovery of MOs inasmuch as MOs 1-8 as noticed above have been proved beyond all reasonable doubts. Non-production of hairpins and bangles before the Court during the course of trial in the facts and circumstances as aforestated become inconsequential. No prejudice also seems to have been caused to the appellant for non-production of hairpins and bangles.

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F For the aforestated reasons we do not find any infirmity in the order under challenge. The appeal, therefore, fails and stands dismissed.

N.J. Appeal dismissed.