

A UPPALA BIXAM @ BIXMAIAH
v.
THE STATE OF ANDHRA PRADESH
(Criminal Appeal No (s). 1548 of 2010)

B OCTOBER 11, 2018

[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Penal Code, 1860: ss. 302 and 201 – Murder – Prosecution case that a shepherd took his sheeps for grazing and did not return home – On basis of confessional statement of appellant, recovery of the dead body of the shepherd and sheeps – Conviction of appellant u/ss. 302/201 and imposition of life imprisonment by the courts below – Sustainability of – Held: Prosecution case needs to be examined whether the circumstances are established and that they form a complete chain in establishing the guilt of the accused – On facts, death of the shepherd was homicidal – No evidence to show that the sheep recovered from the witness carried any distinct mark so as to identify the same as which belonged to the deceased – Circumstance of recovery of the dead body allegedly based on the alleged confessional statement may raise a suspicion against the appellant that he might be involved in the incident but mere suspicion itself cannot take itself the place of proof – There is a wide gap between ‘may be’ and ‘must be’ – Thus, the conviction u/s.302/201 not sustainable more so, when the motive attributed for the murder has been theft of the sheep, and appellant has been acquitted of the same – Thus, the order passed by the High Court set aside.

F *S.D. Soni v. State of Gujarat (1992) Supp 1 SCC 567;*
Venkatesan v. State of Tamil Nadu (2008) 8 SCC 456;
Raj Kumar Singh alias Raju Alias Batya v. State of Rajasthan (2013) 5 SCC 722 – referred to.

Case Law Reference

G (1992) Supp. 1 SCC 567	referred to	Para 6
(2008) 8 SCC 456	referred to	Para 6
(2013) 5 SCC 722	referred to	Para 10

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 1548 of 2010.

From the Judgment and Order dated 27.02.2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in CrI. Appeal No. 479 of 2004.

Annam D. N. Rao, A. Venkatesh, Rahul Mishra, Advs. for the B
Appellant.

S. Udaya Kumar Sagar, Mrityunjai Singh, Mrs. D. Bharathi Reddy, Advs. for the Respondent.

The Judgment of the Court was delivered by

BANUMATHI, J.: 1. This appeal arises out of judgment and C
order dated 3rd July, 2015 passed by the High Court of Punjab and Haryana at Chandigarh in Andhra Pradesh at Hyderabad in Criminal Appeal NO.479 of 2004 in and by which the High Court has affirmed the conviction of the appellant under Section 302 I.P.C. and also Section 201 I.P.C. and sentence of life imprisonment imposed upon him. D

2. As per prosecution case, on 27.01.2000, deceased-Ramesh, a shepherd, took his 19 sheep for grazing in the outskirts of Beebigudem village; but did not return home. On 28.01.2000, while PW-1 and his family members were searching for the deceased, they found three sheep in possession of Shaik Naseem (PW-9) who informed them that Lingaiah (PW-5) had sold him those sheep. When they made enquiries from E
Lingaiah (PW-5), whereupon he informed them that the appellant-Uppala Bixam had sold those sheep by receiving an advance of Rs. 100/- from him. On 29.01.2000, appellant-accused was arrested and a case registered against him under Section 379 of the Indian Penal Code. In course of investigation the appellant allegedly confessed to the crime of F
murdering the deceased, after which a Case was registered against the accused under Sections 302/201 I.P.C. as well. It is the case of the prosecution, based on the confessional statement made by the appellant-accused, that the dead body of the deceased was recovered from under a culvert.

3. Upon consideration of the evidence, in particular, the evidence G
of recovery of the sheep and that recovery of the dead body of the deceased-Ramesh on the basis of the alleged confessional statement of the appellant (which had been denied by the appellant under Section 313 of the Criminal Procedure Code), the Trial Court convicted the appellant under Section 302 I.P.C. and sentenced him to undergo life imprisonment. H

A For the conviction under Section 201 I.P.C. the appellant was sentenced to undergo imprisonment for a period of six months. The conviction and sentence of imprisonment of the appellant was affirmed by the High Court.

B 4. We have heard learned counsel for the parties and also perused the impugned judgment and the evidence and the materials on record.

C 5. The conviction of the appellant-accused was mainly based upon the circumstances: (i) The body of the deceased-Ramesh was recovered at the instance of the appellant-accused; (ii) The appellant-accused was said to have sold three sheep to Lingaiah (PW-5) who in turn had sold to Shaik Naseem (PW-9). On being enquired, Shaik Naseem (PW-9) told that he purchased the sheep from Lingaiah (PW-5) who in turn purchased the same from the appellant and the rest of the sheep were kept in the house of PW-8, sister of the appellant-accused.

D 6. It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. [Vide: S.D. Soni v. State of Gujarat, (1992) Supp 1 SCC 567 and Venkatesan v. State of Tamil Nadu (2008) 8 SCC 456]

E 7. In the light of the well-settled principles of circumstantial evidence, the case of the prosecution needs to be examined whether the circumstances are established and that they form a complete chain in establishing the guilt of the accused.

F 8. Admittedly, the death of Ramesh was homicidal. The prosecution mainly relies upon the circumstances that the appellant-accused sold three sheep to Lingaiah (PW-5) and his evidence that he purchased the sheep from the appellant-accused. As per the prosecution case, three sheep were actually found in the Shandy of Nemmikal and they were in the possession of PW-9. On being asked, PW-9 told that he purchased the sheep from Shaik Naseem (PW-5); who in turn told that he purchased the said three sheep from the appellant-accused. PW-10 and other witnesses who have been examined by the prosecution for recovery of

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the sheep have stated that there was no specific identification mark on the sheep for identifying those sheep which were recovered. Nothing is brought on record to show that the sheep which were recovered from Lingaiah (PW-5) carried any distinct identification mark so as to identify those sheep as the same ones as those of the deceased-Ramesh. The prosecution has also relied upon the recovery of the sheep from the house of the sister of the appellant-accused. Here again, nothing is brought in evidence to show that the sheep recovered from PW-8 carried any distinct mark so as to identify the same as those which belonged to the deceased-Ramesh. The Trial Court acquitted the appellant of the charge under Section 382 of the I.P.C.

9. The only other circumstance relied upon by the prosecution is the recovery of the dead body of the deceased-Ramesh on the basis of the confession of the appellant accused. In our considered view this only circumstance by itself may not be sufficient to establish the guilt of the accused. It was also submitted on behalf of the appellant-accused that in his questioning under Section 313 Cr.P.C. the appellant-accused has denied making of any confessional statement and recovery of dead body of the deceased-Ramesh at his behest. It was further argued that recovery of the dead body of the deceased-Ramesh after two days of the occurrence also raises doubt about the prosecution' case.

10. The circumstance of recovery of the dead body on the basis of confession may indicate that the accused might have been involved in the incident. However, as held in *Raj Kumar Singh alias Raju Alias Batya v. State of Rajasthan*, (2013) 5 SCC 722 that suspicion however grave but cannot take the place of the proof. There is a wide gap between "may be" and "must be". In the present case, the circumstance of recovery of the dead body allegedly based on the alleged confessional statement may raise a suspicion against the appellant-accused that he might be involved in the incident but mere suspicion itself cannot take itself the evidence of proof. In our view conviction under Section 302/201 I.P.C. cannot be sustained, more so, when the motive attributed for the murder has been theft of the sheep, and the accused-appellant has been acquitted of the charge of theft.

11. In the result, the impugned order is set aside and the appeal is allowed. The appellant is acquitted of all the charges and is ordered to be released forthwith unless his presence is required in any other case.