

[3449]

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
FRIDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

:PRESENT:

THE HONOURABLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HONOURABLE JUSTICE B.R.MADHUSUDHAN RAO

IA No. 1 OF 2023
IN
CRLA NO: 1100 OF 2023

Between:

1. Achigari Praveen, S/ o. Jangaiah, aged about 25 years, Caste. SC Madiga, Occ. Taxi Driver, R/o. Edulapally Village, Nandigama Mandal
2. Achigari Jangaiah, S/o.Chennaiah, aged about 55 years, Caste. SC Madiga, Occ. Taxi Driver, R/o. Edulapally Village, Nandigama Mandal

...Petitioners/Appellants

AND

1. The State of Telangana, Represented by its Public Prosecutor, High Court of Telangana at Hyderabad Through Circle Inspector of Police PS Nandigama

...Respondent
(Respondents in-do-)

Counsel for the Petitioners : SRI L. ARAVIND REDDY
Counsel for the Respondent : PUBLIC PROSECUTOR

Petition under Section 389 (1) Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to enlarge the Appellant/Accused herein on bail by suspending the sentence recorded in Judgment dated 22.12.2023 on the file of the Hon'ble IX Addl. District and Sessions Judge-Cum-IX Addl. Metropolitan Sessions Judge, Ranga Reddy District at L.B Nagar in Sessions Case No.167 of 2022, pending disposal of CRLA No. 1100 of 2023, on the file of the High Court.

**The Court made the following
ORDER**

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND**

THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

**I.A.NO.1 OF 2023
IN
CRIMINAL APPEAL.NO.1100 OF 2023**

ORDER: (per Hon'ble Justice B.R.Madhusudhan Rao)

1. The petitioners/A1 and A2 seeks suspension of the Judgment dated 22.12.2023 impugned in the Criminal Appeal and release them on bail.
2. The case of the prosecution disclosed in the charge sheet is that G.Manohar Reddy/PW.1 is the Village Sarpanch, Edulapally, has found one unknown female dead body with bones in disrepair well and he found the dead body with clothes i.e., Violet colour Pyzama, Green colour Kurtha and Sandals and lodged a complaint before police on 06.08.2017 at 06.30 hours.
3. The prosecution has examined PWs.1 to 20, got marked Exs.P1 to P31 and MOs.1 to 10, on behalf of defense Exs.D1 to D5 are marked which are of the 161 Cr.P.C. statement of PW.2, PW.4 and PW.5.
4. The Trial Court after analyzing the evidence of the prosecution, convicted the petitioners/A1 and A2 under Section 235(2) of Criminal

Procedure Code (for short 'Cr.P.C.') for the offence under Sections 302 r/w 34 of the Indian Penal Code (for short 'IPC') and sentenced to undergo Life Imprisonment each and also to pay fine of Rs.10,000/- each and in default of payment of fine to suffer Simple Imprisonment for 6 months. In so far as the offence under Section 201 r/w 34 of IPC, petitioners/A1 and A2 were convicted and sentenced to undergo Simple Imprisonment for 7 years each and to pay fine of Rs.5,000/- each, in default of payment of fine to suffer Simple Imprisonment for 6 months.

5.1. Learned counsel for the petitioners/A1 and A2 submits that the entire case of the prosecution rest on extra judicial confession made by A2 to PW.6 on 13.05.2018. As per the evidence of PW.6, A1 and A2 have gone to Tahsil office at 10.30 a.m. on 13.05.2018 and at that time, PW.6 was busy in distributing Rythubandhu cheques to farmers, a part from the farmers there were 18 employees in the office and it is improbable to say that the accused went to the Tahsil office and made extra judicial confession before PW.6, he lodged a complaint before police at 12.00 noon which is marked as Ex.P2. There is no necessity to the petitioners/A1 and A2 to make extra judicial confession as there is no complaint against them and there is no threat of arrest. PW.6 is not connected to the family of the petitioners and the extra judicial confession is a weak piece of evidence, conviction cannot be sustained.

5.2. Learned counsel further submits that the evidence of PWs.1, 7, 8 and 14 is not reliable. Pw.18 deposed that exact cause of death of the deceased cannot be given and the petitioners are entitled for grant of bail, in support of his contentions he relied on decisions reported in (1) Sardar Hussain Vs. State of U.P.¹ (2) Laxman Vs. State of Chhattisgarh² (3) Khem Chand @ Khema Vs. State of Haryana³ (4) Bhupender Nath Prasad Vs. State of Bihar⁴ (5) Ganpat Singh Vs. State of M.P.⁵ (6) Sahadevan and another Vs. State of U.P.⁶ (7) Chandrapal Vs. State of Chhattisgarh⁷ (8) Padala Veera Reddy Vs. State of A.P.⁸

6. Learned Additional Public Prosecutor submits that A1 has married the deceased Rajeshwari and the evidence of PW.2, who is the mother of the deceased deposed about the marriage of A1 with that of the deceased. He further submits that A1 and the deceased fell in love with each other, when A1 refused to marry the deceased then PW.2, PW.4 and PW.5 have requested accused No.1 to marry the deceased Rajeshwari but he refused to do so, thereby, when PW.2 has decided to lodge a complaint before the police then A1 married the deceased Rajeshwari by exchanging the Garlands. To that effect, prosecution has marked MO.9 - photograph of accused No.1 and the

¹ 1988 (Supp) SCC 623

² 2017 SCC Online Chh 1029

³ 2012 SCC Online P&H 21929

⁴ 1992 (3) SCC 547

⁵ 2017 (16) SCC 353

⁶ 2012 (6) SCC 403

⁷ 2022 SCC Online SC 705

⁸ 1989 Supp (2) SCC 706

deceased exchanging Garlands. The evidence of PW.6 is material to the case of the prosecution and the petitioners have not made out any case for grant of bail and the decisions cited by the petitioner's counsel are not applicable to the case on hand.

7. Heard learned counsel for the petitioners and the learned Additional Public Prosecutor, perused the record.

8. Section 389(1) of the Cr.P.C. provides for suspension of sentence by the Appellate Court pending an Appeal by a convicted person and for enlargement on bail. The only requirement is that the Appellate Court must record its reasons in writing for invoking the power under that provision.

9. We note the law laid down by the Supreme Court that in an application under Section 389(1) of the Cr.P.C., the Appellate Court should also consider the criminal antecedents of the convict: Atul Tripathi Vs. State of U.P.⁹

10.1. G.Manohar Reddy/PW.1 has lodged Ex.P1 complaint on 06.08.2017 before the police that it is informed to him by PW.8 that one unknown female dead body was found with bones at disrepair well. The mother of the deceased/Rajeshwari is examined as PW.2, she gave evidence that during the lifetime of Rajeshwari, she has informed her that she is in affair with petitioner No1./A1 and he

⁹ (2014) 9 SCC 177

refused to marry her, on that herself, PW.9 went to Shadnagar and requested petitioner No.1/A1 to marry Rajeshwari, he refused to do, she was about to lodge a complaint before police on that petitioner No.1/A1 has married Rajeshwari in a Temple by exchanging Garlands. PW.2 further deposed that she enquired with the petitioner No.1/A1 about her daughter's whereabouts, in turn, A1 replied that her daughter by name Rajeshwari left to Rapally village 6 months back, she went to police station to lodge a complaint, in the meanwhile, police has informed her that they found a dead body in a well at Edulapally containing wearing clothes and apparels and requested her to identify the dead body. PW.2 has called PW.3, PW.5 and PW.9 to the police station and they identified MOs.1 to 5 belongs to her daughter.

10.2. The evidence of PW.6 is material to the facts of the case, his evidence goes to show that on 13.05.2018 at about 10.30 a.m. while he was in office and busy in distributing Rythubandhu cheques, at that time, A1 and A2 came to him informing that A1 was forced to marry Rajeshwari against his will. A1 and A2 killed Rajeshwari by strangulating her with a towel and took the dead body of the deceased to the dilapidated well and thrown her in the well, then he called the Typist from his office, prepared a complaint and lodged the same before the police.

11. The evidence of PWs.4 and 5 is similar to that of the evidence of PW.2.

12. The evidence of PW.10 is to the extent that petitioner No.1/ A1 had love affair with the deceased Rajeshwari.

13. PW.18 deposed that he conducted Autopsy over the unknown female dead body with bones, body is mutilated cannot be recognized and he issued Ex.P23-PME Report, cause of death cannot be given.

14.1. In Sardar Hussain¹ case supra, the Apex Court has held that the post-mortem examination was conducted on skeleton and the Doctor failed to give his opinion on cause of death and time of death, similar view was taken in the case of Laxman², Khem Chand³. In Bhupender Nath Prasad⁴ case supra, the Apex Court held that when there is doubt with regard to the cause of death, conviction cannot be sustained.

14.2. The decisions cited by the petitioner's counsel stated supra were distinguished by the learned Additional Public Prosecutor and contended that the facts in the above decisions are completely different with that of the case on hand, in view of the fact that the prosecution witnesses deposed that petitioner No.1/A1 fell in love with Rajeshwari, as he has refused to marry her, then PW.2 was about to lodge a complaint before the police then petitioner No.1/A1 married Rajeshwari in a Temple by exchanging Garlands. The

decisions cited by the petitioner's counsel are not applicable to the case on hand and the contentions raised there on have to be looked into at the time of final hearing.

15.1. Learned counsel for the petitioners has submitted that the prosecution case is based on circumstantial evidence. In Ganpath Singh's⁵ case, the Apex Court has held that every link in chain of circumstances is necessary to establish the guilt of the accused by the prosecution beyond reasonable doubt, which view is also taken in Sahadevan⁶, Chandrapal⁷ (supra).

15.2. In Padala Veera Reddy⁸ case, the Apex Court has held that evidence must satisfy (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) 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.

16. Learned Additional Public Prosecutor submits that the evidence of PWs.2, 4 and 5 coupled with the evidence of PWs.6 and 10 has supported the case of the prosecution in its entirety and the chain of circumstances has been established.

17. The evidence of PWs.2, 4, 5, 6 and 10 supports the circumstances of the case that petitioner No.1/A1 was in affair with Rajeshwari and he married her in a Temple by exchanging Garlands. The evidence of PW.6 supports the case that A1 and A2 have confessed before him that they have committed the offence. Hence, the decisions cited by the petitioner's counsel are not applicable to the case on hand and they have not made out any case for grant of bail.

18. We are conscious of the fact that the petitioners have been convicted of murder and the Apex Court in such cases has cautioned that the Court should consider all relevant factors including nature of accusation against the accused. The petitioners are not entitled for suspension of sentence and grant of bail and we hold that this is a fit case where the rival contentions of the parties should be weighed and adjudicated in the main appeal.

19. IA.No.1 of 2023 is dismissed accordingly.

20. We are proposed to hear the Criminal Appeal without any delay.

**SD/-N.SRIHARI
DEPUTY REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. Principal Junior Civil judge-cum-Judicial First Class Magistrate at Shadnagar.
2. IX Addl. District and Sessions Judge-cum-IX Addl. Metropolitan Sessions Judge, R.R. Dist, L.B.Nagar.
3. The Superintendent, Central Prison, Cherlapally Jail.
4. One CC to L. ARVIND REDDY Advocate [OPUC] ✓
5. Two CCs to PUBLIC PROSECUTOR, High Court at Hyderabad(OUT)
6. One spare copy

HIGH COURT

MBJ
&
BRMRJ

DATED:25/04/2025

ORDER

IA.NO. 1 OF 2023
IN
CRLA.No.1100 of 2023

SUSPENSION

