The Public Prosecutor, High Court of A.P. Vs Shaik Khader and Others

Court: Andhra Pradesh High Court

Date of Decision: Feb. 1, 2002

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Penal Code, 1860 (IPC) â€" Section 114, 302, 34, 376, 498A

Citation: (2002) 1 ALD 830 : (2002) 1 ALD(Cri) 830 : (2002) 1 ALT 494 : (2002) 1 ALT(Cri) 179 : (2002) 1 APLJ 209 : (2002) CriLJ 1764

Hon'ble Judges: Gopalakrishna Tamada, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: Public Prosecutor, for the Appellant; M. Ravindranath Reddy, for the Respondent

Judgement

Gopalakrishna Tamada, J.
This appeal filed by the State of Andhra Pradesh is against the judgment in Sessions Case No.120 of 1999 on

the file of the Court of I Addl. Sessions Judge, Nellore, by which the respondents herein (for convenience, they are referred to as ''accused'') who

were tried as accused 1 to 3 for the alleged offences punishable under Sections 376 read with 511, 376 read with 511 and 114 and 302 of the

Indian Penal Code, and were acquitted.

2. The substance of the charge framed against the accused by the learned Sessions Judge was that (1) on or about 13th day of June 1998 at about

10.30 P.M., and since two months prior thereto at the house of A-1 to A-3, who are inter-related, the 1st accused attempted to have sexual

intercourse with Shaik Sharmila Begum, W/o Shaik Shafi and brother of A-1, against her will and consent; (2) A-2 and A-3 who are the parents

of the 1st accused and the parents-in-law of the said Shaik Sharmila Begum (hereinafter referred to as ''the deceased'') encouraged and abetted

the 1st accused to have sexual intercourse with her against her will and consent; and (3) all the three accused committed the murder of the said

Shaik Sharmila Begum while A-2 and A-3 holding her firmly to enable A-1 to strangulate her to death, A-1 strangulated her to death with a plastic

rope, thinking that she may complain the said acts committed by the accused to the elders in the village.

3. The case of the prosecution, according to the evidence let in during the course of trial, is that accused 2 and 3 are husband and wife and the 1st

accused is their younger son. The deceased Shaik Sharmila Begum is the wife of the eldest son by name Shaik Shafi and daughter-in-law of A-2

and A-3. P.Ws.1 and 2 are the parents of the deceased and all of them are residents of Kodavalur village. Two years prior to the date of offence,

the marriage between the deceased and Shaik Shafi was performed and at the relevant point of time, the husband of the deceased and the 1st

accused, who are brothers, were working as Tailors at Kuwait. For marriage, the husband of the deceased came to India and one month after the

marriage, he left for Kuwait and since then, the deceased was staying with her in-laws (i.e., A-2 and A-3) in their house. At the time of marriage,

A-1 was not in India and eight months prior to the date of offence, he came to India. After he came to India, he started harassing the deceased and

making advances towards the deceased by forcing her to have sexual relationship with him and A-2 and A-3 instead of discouraging the same,

encouraged A-1 to have sexual contact with her. When the deceased informed the same to her mother, i.e., P.W.2, who in turn informed it to

P.W.1, both of them went to the house of the accused and questioned them about the behaviour of the 1st accused and also the attitude of A-2

and A-3. Though A-2 and A-3 promised the parents of the deceased that they would take care of the girl and requested them not to precipitate

the matter, refused to send the deceased to their house on the pretext that their elder son i.e., the husband of the deceased, is coming to India.

4. While so, on 13-6-1998 night, when A-1 tried to have sexual relationship with the deceased forcibly and she resisted the same, all the three

accused killed the deceased by strangulation fearing that she may reveal the same to her parents and neighbours. On the next day morning i.e., on

14-6-1998 at about 8.00 A.M., A-2 went to the parents'' house of the deceased i.e., P.Ws.1 and 2 and informed them that the deceased

committed suicide. Immediately, P.Ws.1, 2 and others proceeded to the house of the accused and found the dead body of the deceased on a cart

in a room and found ligature mark around the neck and other injuries on her body. Basing on a complaint given by P.W.1, marked as Ex.P-1, the

Head Constable in charge of Kodavalur Police Station (P.W.13) registered a case in Crime No.52 of 1998 for the offences punishable under

Sections 498-A and 302 read with 34 of the Indian Penal Code and issued Express F.I.Rs. to all the concerned. The F.I.R. is marked as Ex.P-7.

5. The Inspector of Police, Kovvur, who was examined as P.W.14, took up investigation and visited the scene of offence, where two constables

were posted to guard the scene of offence by P.W.13. As it was late in the evening, he did not proceed with further investigation on that day. On

the next day morning at 6.00 A.M., he prepared an observation report in the presence of P.W.10 and another and prepared a rough sketch of the

scene of offence. The observation report and rough sketch were marked as Exs.P-3 and P-8 respectively. He further seized M.O.1 (rope) and

M.O.2 (bangle pieces) from the scene of offence. The Mandal Revenue Officer at Kodavalur, who was examined as P.W.9, on requisition

conducted inquest at 7.00 A.M. on the body of the deceased in the presence of P.W.10 and others and the inquest report was marked as Ex.P-2.

During the course of inquest, he examined P.Ws.1, 4, 8 and some others. At the same time, P.W.14 examined P.Ws.1 to 5 and recorded their

statements and later in the evening, he examined P.Ws.6, 11 and some others. The accused were absconding at the time of inquest. The Civil

Assistant Surgeon, Allur, who was examined as P.W.12, and the Dy. Civil Surgeon, Allur, who was examined as P.W.15, conducted post mortem

examination on the body of the deceased and the post mortem report was marked as Ex.P-4. The final report was marked as Ex.P-5. According

to them, the death was due to asphyxia due to strangulation. The viscera of the deceased was sent for chemical analysis and the report of the

Forensic Science Laboratory was marked as Ex.P-6. During his further investigation, P.W.4 examined P.Ws.7, 8 and others and arrested A-1 to

A-3 on 22-6-1998 at Rajupalem. After completion of the investigation, he filed charge sheet.

6. In support of its case, the prosecution examined P.Ws.1 to 15 and marked Exs.P-1 to P-8 and M.Os.1 and 2. The plea of the accused is one

of total denial and they further pleaded alibi. In support of their alibi, they examined D.Ws.1 and 2 and got marked Exs.D-1 to D-4.

7. The learned Public Prosecutor appearing for the State has vehemently submitted that the prosecution has proved the guilt of the accused beyond

reasonable doubt but the learned Sessions Judge erred in acquitting them. According to her, when there is a conflict between the evidence of the

Doctors who were examined and the statute i.e., medical jurisprudence, the Doctors" evidence must be given preference to that of the statute.

Whereas, in the instant case, the learned Sessions Judge discarded the evidence of the Doctors on the ground that it is contrary to the medical

jurisprudence. She has drawn our attention to the evidence of the Medical Officers, who were examined as P.Ws.12 and 15, according to whom

the deceased would have died of asphyxia caused by strangulation and that the death in this case is not possible by hanging. Further, according to

them, no ligature mark was found on the body and even in hanging cases there will be possibility of ligature mark disappearing after the death. The

learned Public Prosecutor further relied on the Judgments of the Supreme Court reported in State of Maharashtra Vs. Manglya Dhavu Kongil, ,

Shri Kishan Vs. State of Haryana, , Godabarish Mishra v. Kuntala Mishra 1997 (1) SC 941 and Mohd. Zahid v. State of T.N (1999) 6 SCC

1202. The learned Public Prosecutor particularly drew our attention to the observations of the apex court in the following cases.

8. In the judgment reported in State of Maharashtra v. Manglya (1 supra), the apex court held thus:

... The whole story of the respondent is a tissue of lies and it is rather surprising that the High court should have unnecessarily drawn on its own

medical knowledge that Asphyxia is also possible in case of poisoning and that possibility had not been completely eliminated by the medical

evidence.

(14) The High court appears to have thought from the contents of the post-mortem examination report that Dr. Khatri did feel that the contents of

the viscera were necessary to be examined with a view to detect if there was any poison. There is no basis for this in the evidence. Dr. Khatri has

nowhere stated that he had kept the viscera with a view to examine its contents for poison. The High court seems to have come to this conclusion

from the forwarding report made to the Police Sub-Inspector by the Medical Officer which reads as follows:

'' Viscera has been preserved. It may please be stated immediately whether examination by the Chemical Analyser is necessary or it is to be

destroyed. ''

From this, it appears, the High court concluded that the Medical Officer had his own doubts and that was the reason why the viscera had been

preserved. With respect the High court has completely misread the report.

9. In Godabarish Mishra v. Kuntala Mishra (3 supra), it was held that:

In our view, the case of committing suicide by self-strangulation by the deceased must be ruled out. Both in Modi''s Medical Jurisprudence and

Toxicology and in Taylor''s Principles and Practice of Medical Jurisprudence, to which our attention was drawn by Mr Ranjit Kumar, it has been

clearly indicated that suicide by self-strangulation is very rare. For committing suicide by self- strangulation, the person committing suicide must

take aid of a contrivance so as to ensure application of sufficient force until death by strangulation. Without such contrivance, sufficient force cannot

be applied because initially with the application of force, insensitivity will develop for which the hands pulling the ends of the string must get

loosened. In the instant case, no contrivance was noticed either by Public Witness 6 and Public Witness 7 who had come to examine the deceased

on hearing the alarm. The accused has also not seen any contrivance at the place of incident and in her statement u/s 313 Criminal Procedure

Code, she has not disclosed any fact, which was within her special knowledge, in support of a case of suicide by self-strangulation.

10. She also drew our attention to the observations of the apex court in Mohd. Zahid v. State of T.N. (4 supra), which read as under:

We are aware of the fact that sufficient weightage should be given to the evidence of the doctor who has conducted the post mortem, as

compared to the statements found in the text books, but giving weightage does not ipso facto mean that each and every statement made by a

medical witness should be accepted on its face value even when it is self-contradictory. This is one such case where we find that there is a

reasonable doubt in regard to the cause of death of Jabeena and we find it not'' safe to rely upon the evidence of PW-8, solely for the purpose of

coming to the conclusion that Jabeena''s death is proved by the prosecution to be homicidal.

11. Learned Public Prosecutor further strongly contended that the evidence of P.Ws.8 and 11, before whom an extra-judicial confession was

made, clinchingly establishes that A-1 has committed the murder of the deceased and the trial court erred in not accepting the same. According to

her, the delay, if any, in reporting the matter to the police is not at all fatal in the light of the facts and circumstances of this case.

12. On the contrary, the learned counsel Mr. M. Ravindranath Reddy, appearing for the accused, has vehemently opposed the said submissions

stating that there is abnormal delay in lodging a report which throws any amount of doubt on the case of the prosecution. His further submission is

that the alleged extra-judicial confession spoken to by P.Ws.7, 8 and 11 is to be totally disbelieved in view of the fact that it was never informed

by them to the father of the deceased i.e., P.W.1 and the normal conduct would be to inform the parents of the deceased who are very much

present in the village. In view of the fact that it was never informed to P.W.1, the trial court is justified in not accepting the extra-judicial confession

alleged to have been made by the 1st accused to P.Ws.8 and 11. His further submission is that if really an extra-judicial confession was made and

the same was informed to P.W.1, P.W.1 while reporting the matter to the police, would have definitely made a mention about the same in Ex.P-1

and as Ex.P-1 does not contain anything about the alleged extra- judicial confession, it is to be totally disbelieved.

13. As there are no eye witnesses to the scene of offence and the entire case rests on circumstantial evidence, we have to go through the evidence

of the witnesses scrupulously so as to come to the conclusion that the entire chain is complete and the prosecution is able to establish the guilt of

the accused. Before going into the evidence of the witnesses, it is necessary for us to discuss the case law on the aspect of circumstantial evidence.

14. In Hanumant Vs. The State of Madhya Pradesh, the apex court held that

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be

drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the

accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the

one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been

done by the accused"".

15. Similarly, in Bhagat Ram Vs. State of Punjab, , it was held that -

In a case depending on the conclusions drawn from circumstances, it is well settled that the cumulative effect of the circumstances must be such

as to negative the innocence of the accused and to bring the offences home to him beyond any reasonable doubt. "" (para 5)

... that the defence put forward by the accused cannot be said to have been disproved or to be so improbable that his guilt must be taken to have

been established beyond reasonable doubt. ""(para 9)

... the Courts below in taking the contrary view failed to keep in mind the fundamental rule relating to the proof of guilt based on circumstantial

evidence and proceeded on conjectures in a case where statedly the circumstances were more or less equally balanced. "" (para 14)

16. In S.P. Bhatnagar Vs. State of Maharashtra, , it was held that:

(21) ... The rule is to the effect that in cases depending on circumstantial evidence, there is always the danger that conjecture or suspicion may

take the place of legal proof. In such cases the mind is apt to take pleasure in adapting circumstances to one another, and even in straining them a

little, if need be, to force them to form part of one connected whole; and the more ingenious the mind of the individual, the more likely it is,

considering such matters, to over-reach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its

previous theories and necessary to render them complete.

(23) THE principle that inculpatory fact must be inconsistent with the innocence of the accused and incapable of explanation on any other

hypothesis than that of guilt does not mean that any extravagant hypothesis would be sufficient to sustain the principle, but that the hypothesis

suggested must be reasonable. (See "Govinda Reddy v. State of Mysore")

17. In another case reported in Kishore Chand Vs. State of Himachal Pradesh, , it was held that -

(4) The question, therefore, is whether the prosecution proved guilt of the appellant beyond all reasonable doubt. In a case of circumstantial

evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so

established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature

and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one

proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the

accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form unbroken chain

of events leading to the proof of the guilt of the accused. If those circumstances or some of ''them can be explained by any of the reasonable

hypothesis then the accused must have the benefit of that hypothesis.

(5) In assessing the evidence imaginary possibilities have no role to play. What is to be considered are ordinary human probabilities. In other

words when there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied

on must be fully established. The chain of events furnished by the circumstances should be so far complete as not to leave any reasonable ground

for conclusion consistent with the innocence of the accused. If any of the circumstances proved in a case are consistent with the innocence of the

accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt.

(6) In assessing the evidence to find these principles, it is necessary to distinguish between facts which may be called primary or basic facts on one

hand and inference of facts to be drawn from them, on the other. In regard to the proof of basic or primary facts, the court has to judge the

evidence in the ordinary way and in appreciation of the evidence in proof of those basic facts or primary facts, there is no scope for the application

of the doctrine of benefit of doubt. The court has to consider the evidence and decide whether the evidence proves a particular fact or not.

Whether that fact leads to the inference of the guilt of the accused or not is another aspect and in dealing with this aspect of the problem, the

doctrine of benefit would apply and an inference of guilt can be drawn only if the proved facts are inconsistent with the innocence of the accused

and are consistent only with his guilt. There is a long distance between may be true and must be true. The prosecution has to travel all the way to

establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accused and those circumstances should be

of conclusive nature and tendency and they should be such as to exclude all hypothesis but the one proposed to be proved by the prosecution. In

other words, there must be a chain of evidence so far consistent and complete as not to leave any reasonable ground for a conclusion consistent

with the innocence of the accused and it must be such as to show that in all probability the act must have been done by the accused and the

accused alone.

18. In Balwinder Singh v. State of Punjab AIR 1996 SC 606, the apex court further held thus -

In a case based on circumstantial evidence, it is now well-settled that the circumstances from which the conclusion of guilt is to be drawn should

be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events

must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the

accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger

of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations,

howsoever strong they may be, to take the place of proof. It is in the context of the above-settled principles, that we shall analyze the evidence led

by the prosecution.

When in a criminal trial of the father for the murder of his daughters, trial Court got swayed by emotional considerations and allowed suspicion,

surmises and conjectures to take the place of legal proof because though the prosecution relied on, the evidence of last seen together based on

evidence of his wife and others, the extra judicial confession made by the accused, the recovery of dead body of a child from canal and disclosure

statement made by accused leading to recovery of bones of a child from place when the accused had cremated the dead body of the child,

however, the evidence led by the prosecution to establish the circumstance of "last seen together" was not established beyond a reasonable doubt,

inasmuch as there were 5 days, delay in lodging FIR from the day when the wife was asserting to have last seen the accused with the daughters

and her conduct was also unnatural for a mother to be silent when accused with the daughters and her conduct was also unnatural for a mother to

be silent when accused had taken the daughters from her telling that he is taking them away for killing them, and the extra judicial confession was

surrounded by suspicious circumstances as the complaint was lodged by the person to whom the accused was alleged to have made the

confession, after delay of 3 days and the fact relating to the recovery of dead body or it being claimed by the accused or the alleged disclosure

statement by accused was also not established, the finding of guilt by the trial court was not sustainable in law.

19. In the light of the above case law, we shall now proceed to look into the evidence as to whether the prosecution has established all the chain of

events to come to the conclusion that the accused, the accused alone are responsible for the death of the deceased.

20. Before adverting to the medical evidence to establish the guilt of the accused, first of all it is necessary for us to go into the other circumstances

such as delay, extra-judicial confession etc. Accordingly, we deal with the aspect of delay.

21. Admittedly, according to the case of the prosecution, the offence took place some time in the night and A-2 informed P.Ws.1 and 2 at about

8.00 A.M., on the next day morning that the deceased committed suicide. In his cross-examination, P.W.1 stated that he got Ex.P-1-report

drafted at about 10.00 A.M. or 11.00 A.M. on the same day. According to P.W.13, the Head Constable in charge of Kodavalur Police Station,

Ex.P-1-report was given by P.W.1 to him at 4 P.M. on that day. According to him, the house of A-2 i.e., the scene of offence is half a kilometer

from the Police Station. When P.W.1 has information about the death of the deceased by 8.00 A.M. itself and rushed to the scene of offence

immediately thereafter, it is not known as to why he did not make a complaint or report to the police immediately thereafter. Of course, in Ex.P-1,

P.W.1 tried to give an explanation for the delay by stating that as he informed the matter to his relatives and all of them waited till their arrival, the

matter was delayed in reporting to the police. Such an explanation in our considered view is not at all convincing. After all, all are residents of the

same village and even according to the prosecution, the Police Station is at a distance of only half a kilometer from the house of P.W1 and it does

not take more than 10 or 15 minutes for P.W.1 to go to the Police Station and to make a complaint. Even if it is accepted to be true that P.W.1

waited for the arrival of his relatives, it cannot be believed that it took eight long hours for P.W.1 to lodge a report. Therefore, in our considered

view, as the report was given eight hours after the incident and the said delay has not been explained by the prosecution satisfactorily, it throws any

amount of doubt. Of course, delay is not fatal to the case of the prosecution in each case but in a case of this nature, in our considered view, the

delay is definitely fatal to the case of the prosecution.

22. Now, we discuss the evidence of the witnesses regarding the extra-judicial confession allegedly made by the 1st accused. According to the

evidence of P.W.8, on the fateful day at about 7.00 A.M., when he and P.W.11 went to the shop of P.W.6 to consume toddy, A-1 came there.

As he was shivering and appeared to be worried, on being questioned, he informed them that when he was trying to have sexual intercourse with

the deceased and as she was not agreeable, he attempted to commit rape and so saying, he left the place. Later, P.W.8 came to know of the death

of the deceased. P.W.11 stated in his chief-examination that in the toddy shop of P.W.6, A-1 informed him and P.W.8 that he made an attempt to

have sexual intercourse with the deceased and when she resisted and created a scene, A-1 informed the same to his parents and later all the three

accused apprehending that the deceased may inform the matter to the villagers on the next day morning, committed the murder of the deceased by

strangulating her to death with a rope. From the above, it is clear that the evidence of P.W.8 is not consistent with the evidence of P.W.11.

According to their further evidence, half an hour thereafter, they went to the house of the accused on information that the deceased is dead. When

we read the evidence of P.W.1 and the evidence of P.Ws.8 and 11 together, all of them are present at the scene of offence by 8.30 or 9.00 A.M.

on that day. If really an extra-judicial confession was made by A-1 to P.Ws.8 and 11 and on going to the scene of offence, where they saw

P.W.1, the normal conduct would be to inform him (i.e., P.W.1) about the alleged extra-judicial confession made by the 1st accused. But, it is

curious to note that nothing was informed to P.W.1. One more circumstance to disbelieve the extra-judicial confession is the non-mentioning of the

extra-judicial confession by P.W.1 in the report given to the police, marked as Ex.P-1. It is settled proposition of law that an extra-judicial

confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extra

judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and looses its importance. When P.Ws.8 and 11, to

whom the extra judicial confession was made by A-1, did not inform P.W.1 at the scene of offence though they met within one hour and non-

mentioning of the same in Ex.P-1 throws any amount of doubt, we have to discard the alleged extra judicial confession made by the 1st accused.

23. As already discussed supra, in cases basing on circumstantial evidence, the guilt of the accused should be drawn conclusively when once all the

circumstances are fully established and the circumstances so established should be consistent only with the hypothesis of the guilt of the accused. It

shall also be remembered that the circumstances so established should be of conclusive nature and tendency and they should be such as to exclude

every hypothesis but the one proposed to be proved i.e., there must be a chain of evidence so far complete as not to leave any reasonable ground

for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have

been done by the accused. Had the prosecution properly explained the delay and established by way of evidence the extra-judicial confession

alleged to have been made by A-1, probably we would have gone into the medical evidence. In the light of the above findings, it is not necessary

for us to delve into the aspect of medical evidence as argued by the learned Public Prosecutor.

24. In the light of the above discussion, we see no reason to interfere with the well-considered judgment of the learned Sessions Judge and

accordingly the appeal fails and the same is liable to be dismissed.

25. In the result, the criminal appeal is dismissed.