

*** HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

HON'BLE SMT JUSTICE ANIS

+ CRIMINAL APPEAL No.611 OF 2010

% 06-08-2015

Madaboina Thuljaram, S/o Ramaiah and another.

.... Appellant (s)/ Accused

Vs.

\$ The State of Andhra Pradesh,

Through Public Prosecutor,

High Court of Judicature at Hyderabad.

.... Respondent (s)

! Counsel for the Appellant (s) : Sri B. Vijaysen Reddy.

Counsel for the Respondent: Public Prosecutor (TG)

< Gist :

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE SMT JUSTICE ANIS

CRIMINAL APPEAL No.611 OF 2010

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Criminal Appeal has been preferred by two accused, who have been tried for the offences punishable under Sections 302 and 302 read with 109 I.P.C respectively, by the III Additional District & Sessions Judge, Medak, in Sessions Case No.451 of 2007. A.1 was found guilty for the offence punishable under Section 302 I.P.C, while A.2 was found guilty for the offence punishable under Section 302 read with 109 I.P.C. They were both sentenced to undergo imprisonment for life apart from imposing of fine of Rs.100/- each.

2. The case of the prosecution is that the deceased and A.2 have jointly purchased certain lands nearly an extent of Ac.8-00. But, however, they have divided them amongst themselves subsequently. In the land that has fallen to the share of the deceased, there was a bore well dug and similarly in the land that fell to the share of A.2 also, there was a bore well dug. However, it appears, the bore well that was dug in the land of the deceased was giving good yield, whereas the bore well dug in the land of A.2 was not producing sufficient quantity of water for irrigating the land of A.2. It is alleged that the deceased is switching off the bore wells operated in his neighbouring lands to avoid severe power fluctuations resulting in damage to his bore well. It is, further alleged that the land owners of the neighbouring lands, who all belong to Mupparam village, bore grudge against the deceased and planned to do away with him and as a consequence of this design, A.2 entered into an arrangement

with A.1 for killing the deceased.

3. On behalf of the prosecution, 16 witnesses were examined and Exs.P1 to P11, have been marked. Material objects 1 to 5, which were recovered during the course of investigation were got marked. Ex.D1 is the relevant portion of the statement made by PW.7 under Section 161 of Cr.P.C.

4. PW.1 is the wife of the deceased, while PW.2 is their son. PW.3 is the elder brother of the deceased. PW.4 was the farm servant of the deceased. PW.5 is the nephew of the deceased. PW.6 is the resident of the same village as that of the deceased. PW.7 is another nephew of the deceased. PW.8 is the resident of Thamploor village, who knows both the deceased as well as the accused. PW.9 is a tailor in the village. He was examined by the prosecution in support of the plea that he was the one, who has last seen the deceased in the company of A.1. PW.10 is another resident of the village, who also witnessed the company of the deceased and A.1 at the shop of PW.9. PWs.11 & 12 attested the scene of offence panchanama. PW.13 was a Village Revenue Officer (V.R.O) of a neighbouring village, who has been summoned by the Circle Inspector of Police, for recording the extra-judicial confessional statement made by A.1 & A2. PW.14 is the Sub-Inspector of Police, who has registered the First Information Report as Cr.No.11 of 2007. PW.15 is the Civil Assistant Surgeon, who has conducted the postmortem examination. PW.16 is the Circle Inspector of Police-cum-Investigating Officer.

5. PW.1 has deposed that based upon her complaint, the police have registered the First Information Report. She reiterated the contents of the First Information Report. She has also added that in view of certain disputes between the deceased and A.2 with regard to water sharing, she suspected that A.2 has caused the death of her husband. PW.2, the son of the deceased, has also reiterated the same view point. PW.3 spoke of the animosity existing between the deceased with A.2. PW.4, who is the farm servant of the deceased, has stated that on the date of the incident, he attended the work in the morning hours at the cattle shed at the residence of PW.1 and as per the direction of PW.1, some time later on he was proceeding to the agricultural fields of the deceased as the deceased stayed back the previous night at the agricultural fields, obviously for operating the bore well and enroute he came to know that

the deceased has been killed by someone. It is PW.4, who informed PW.3 about the death of the deceased. This witness has been declared to have turned hostile by the Public Prosecutor and he has been subjected to cross-examination. The cross-examination has not produced any contradictions of significance to be taken note of by us. This witness merely dis-owned the contents of the statement said to have made earlier by him to the local police.

6. PW.5 is a very important witness examined by the prosecution. Through this witness, the prosecution intended to establish the motive of A.2 to do away with the life of the deceased and the planning that has gone in that regard. PW.5 is a nephew of the deceased. Since he also own lands adjoining to the lands of the deceased and A.2, he was not merely a chance witness, but he is supposed to be a credible witness examined by the prosecution. It is this witness, who had stated that at about nearly 20 days prior to the date of death of the deceased he had attended a wedding of one Galappa at Mupparam village. A.2 is the resident of the said Mupparam village. The marriage was also attended by A.2 as well as PW.7. It is at this marriage, A.2 is said to have blurted out the design to do away the life of the deceased. It is this witness, who heard A.2 mentioning the design to do away with the life of the deceased for, the deceased was switching off the bore wells of the neighbouring land owners of his land, unauthorisedly. In view of this disturbing piece of information coming to his knowledge, he appears to have cautioned his maternal uncle, the deceased, to be wary of the designs of villagers of Mupparam in general and in particular of A.2. In view of what he had heard at the marriage, he suspected the hand of A.2 in the death of his maternal uncle, the deceased. During the course of cross-examination of this witness PW.5, he has stated that the deceased used to switch off the bore wells of the neighbouring land owners of his land due to power fluctuations. Except bringing out a piece of information, which he has gathered while attending to a marriage in the neighbouring Mupparam village, this witness did not set out that A.2 himself wanted to do away with the life of the deceased. Therefore, except to establish the motive of the accused to do way with the life of the deceased, not much significance can be attached to the deposition of PW.5.

7. In our opinion, the next important witness examined on behalf of the prosecution is PW.7, who is another nephew of the deceased. Most

significantly, PW.7 has deposed that on the date of the incident, this witness and A.2 have proceeded to Hyderabad to collect money representing the sale proceeds of the paddy sold earlier. PW.7 travelled along with A.2 to Hyderabad. But, however, the person, who is required to make the payment, was not available at Hyderabad. Consequently, he and A.2 stayed back for the night at Hyderabad and next day while he was proceeding to his native village, he was informed over telephone the news of the death of the deceased. Since the hand of A.2 was suspected in the death of the deceased, it is this witness who has requested one another person by name Shabuddin for fetching A.2 from Hyderabad to the village. When Shabuddin contacted A.2 on telephone and informed him about the death of the deceased and that the villagers were suspecting the hand of A.2, it is stated that Shabuddin was told by A.2 that he has hired A.1 for killing the deceased and hence he will not return to the village. During the course of cross-examination, the contradiction in his earlier statement has been got marked as Ex.D1. It was also further elicited during the course of cross-examination that it is Shabuddin, who also accompanied himself (PW.7) and A.2 to Hyderabad. It is stated by PW.7 in the course of cross-examination that he has returned to the village from Hyderabad on 12th March, 2007 at 10:00 a.m. From the deposition of this witness, it has clearly emerged that A.2 was not present in the village on the day of the incident. On the other hand, A.2 left the village on that day to Hyderabad and stayed back in Hyderabad as the person to whom he sold the paddy was not available to make the payment. This far, there is no difficulty. This statement clearly keeps A.2 away from the actual commission of the offence. Therefore, the prosecution has developed the theory that A.2 has entered into an arrangement with A.1 to do away with the life of the deceased. The consideration for this arrangement was stated to be Rs.5,000/-, which A.2 has lent earlier to A.1, which amount A.1 was unable to repay. Hence, PW.8 has spoken of the arrangement and the obligation of A.1 to commit the offence on behalf of A.2. To lend further support to this theory, PW.9 has been examined. It is stated by PW.9 that A.1 came to his shop at about 8:00 p.m on the date of the incident and that A.1 purchased a beer bottle. It is subsequently thereafter that the deceased came to his shop and hence the deceased, PW.9 the witness and the accused/A.1 together have consumed one glass of beer each. Thereafter, it is the deceased, who has left the shop of PW.9 first. During the cross-examination of this witness, he has

categorically stated that 15 minutes after arrival of A.1, the deceased came to his shop and 15 minutes after the departure of the deceased, A.1 has left his shop. Furthermore, importantly, this witness has admitted that the deceased has informed them while leaving the shop that he was going to his home. It is further stated that the agricultural fields of the deceased are lying in the opposite direction of his house. From the statement of PW.9, what emerges is that PW.9 was also one of the persons, who was seen last in the company of the deceased, when he was alive. It is in fact the deceased who has left the shop room of PW.9 first, while A.1 was still present at the same shop for a while thereafter. Therefore if the prosecution thought of placing reliance on the theory of last seen and thus linking up A.1 with the crime, the possibility of the role of PW.9 also should have been explored but no attempt in that regard has been made. This apart, the very presence of the deceased at the shop room of PW.9, was a mere accident or a mere chance. There does not appear to be any arrangement or design between the deceased and A.1 to meet at the shop of PW.9 and also consume a glass of beer there. It is in fact A.1, who came to the shop of PW.9 first and fetched a beer bottle. It is subsequent there to that the deceased chanced upon arriving there. Since A.1 has already purchased a beer bottle and brought it along with him to the shop room of PW.9, all three of them took one glass of beer each (possibly of 250 ml quantity) and it is the deceased, who left the shop room first. Therefore, the theory of last seen set up against A.1 has clearly failed and got broken with the deposition of PW.9 itself. When the deceased has gone to his own home from the shop room of PW.9 and 15 minutes thereafter, A.1 has left the place informing PW.9 that he was also going to his home and when once PW.9 has stated that the fields of the deceased were in the opposite direction of the house of the deceased, the crime having taken place at the fields of the deceased, it is obvious that the deceased and A.1 had not walked hand in hand together towards the fields of the deceased for the prosecution to link A.1 to the crime. If PW.9 is to be believed, he stated that the deceased left the shop of PW.9 by announcing that he is going home. Hence, it is quite possible that the deceased may have gone home and thereafter only left for his field to irrigate them during night time by operating his bore well. In such a case, the theory of A.1 being seen last in the company of the deceased has to fall to ground. We have therefore grave doubts in our mind about the presence of A.1 at the scene of offence. As was already

found by us supra, A.2 was not present in the village on the day of the incident and the link between A.1 and A.2 being too weak and too remote to the incident, we are of the view that the prosecution has failed miserably to establish the crime said to have been committed by the accused.

8. The reason assigned by the learned Sessions Judge to convict the accused is absolutely a strained one. We fail to understand the finding recorded by the learned Sessions Judge in paragraph 63 of the judgment rendered by him. The learned Sessions Judge has rightly construed that PW.13 is a crucial witness for unfolding the links between the accused and the crime. PW.13 is working as a Village Revenue Officer (V.R.O). He was stated to have been summoned by the Circle Inspector of Police, the Investigating Officer and it is in his presence that the accused appear to have made the confessional statement about the offence. During the course of cross-examination PW.13 has stated as below:

“..... Police constable prepared confession panchanama as per the dictation of C.I.P.”

It is a pity that this witness has not even spoken that the confessional panchanama has been prepared as per the statement made by the accused. On the other hand, he has categorically stated that the confessional panchanama has been prepared by the police constable to the dictation of the Circle Inspector of Police, the Investigating Officer. Therefore, it is absolutely unsafe to place reliance upon PW.13 for holding the accused to be guilty of the offence.

9. Thus, we are of the view that the prosecution could not establish the crime to have been committed by the accused/A.1 & A.2 beyond all reasonable doubt for the offences punishable under Section 302 & 302 read with 34 I.P.C respectively and therefore, the conviction and sentence recorded by the trial Court are unsustainable and the accused are entitled for acquittal.

10. Accordingly, the Criminal Appeal is allowed setting aside the conviction and sentence recorded by the trial Court in its judgment, dated 26.03.2010 in Sessions Case No.451 of 2007 on the file of the III Additional District & Sessions Judge, (Fast Track Court), Medak, against the appellants/A.1 and A.2 for the offences punishable under Sections 302 & 302 read with 309 of I.P.C.

and they are, accordingly, acquitted of the said offences and are set at liberty. They shall be released forthwith if they are not required in any other case. Fine amount, if any, paid by them shall be refunded to them. Miscellaneous petitions, pending if any in this criminal appeal shall stand closed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

Date: 06.08.2015

Note:

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