

HON'BLE SRI JUSTICE K.C.BHANU

AND

HON'BLE SMT JUSTICE ANIS

CRIMINAL APPEAL No.488 OF 2015

J U D G M E N T: *(per Hon'ble Smt Justice Anis)*

This Criminal Appeal is filed by the State under Section 378 (3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), against the Judgment dated 22.10.2010 passed in Sessions Case No.114 of 2009 on the file of the V Additional Sessions Judge, (III Fast Track Court), Nalgonda at Miryalaguda, whereunder and whereby, the respondent/accused was found not guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, "I.P.C."), and accordingly, acquitted of the said offence.

2. The brief facts that are necessary for disposal of the appeal are that on 29.04.2008 at about 9:00 p.m, PW.1 gave a complaint to the police in Telugu stating that on 27.04.2008 at about 08:00 P.M., his younger brother Nagilla Laxmaiah (hereinafter referred to as 'the deceased') and the accused quarreled with each other due to disputes arose regarding the share of coolie amount. Following the same, the accused beat the deceased with hands and also beat on his stomach with an iron hook used for pulling the gunny bags resulting the deceased sustained severe internal injury and fell down on the ground and later, on 29.04.2008 at about 4:00 p.m, he died when he was about to shift to Government Area Hospital, Miryalguda. On receiving the report, PW.14-Head Constable registered the same as a case in Crime.No.30 of 2008 for the offence punishable under Section 302 I.P.C and issued express First Information Report to all concerned. Thereafter, PW.15-the Investigating officer took up investigation, recorded the statements of the witnesses, visited the scene of offence, conducted inquest over the dead body of the deceased, sent the dead body for postmortem examination and after receiving the relevant reports and after completion of investigation, he filed the charge sheet against the accused into the Court.

3. On appearance of the accused, the trial Court framed a charge for the offence punishable under Section 302 I.P.C against him. When the said charge

was read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

4. To substantiate the charge, the prosecution examined P.Ws.1 to 15 and got marked Exs.P.1 to P.11, besides the material object MO.1.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C, with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses. He denied the same and reported no oral or documentary evidence on his behalf.

6. The trial Court after hearing both sides and taking into consideration, the oral and documentary evidence available on record, acquitted the accused of the offence, with which he was charged holding that the evidence of PWs.5 & 13, who are the eye witnesses to the incident, cannot be believed and their presence at the time of incident is also doubtful as PW.5 has not stated about the presence of PW.13 and PW.13 also has not stated about the presence of PW.5 at the time of incident and witnessing the incident. The trial Court also held that the prosecution is not able to explain the delay of two days in giving report to the police and that the prosecution failed to prove the guilt of the accused beyond reasonable doubt. Aggrieved by the said order of acquittal, the present appeal is preferred by the State.

7. Now, the points for determination are:

1. Whether the prosecution able to prove its case beyond all reasonable doubt against the accused of the offence punishable under Section 302 I.P.C?

2. Whether the Judgment of the trial Court is correct, legal and proper?"

8. The learned Public Prosecutor appearing for the State argued that PW.5 is the eye witness to the incident, clearly stated that the accused attacked the deceased with an iron hook and the trial Court failed to consider the said evidence; that the trial Court erred in holding that the evidence of PWs.1 to 4 is artificial in nature and finally argued that the evidence of PWs.1 to 5 is sufficient to convict the accused for the offence punishable under Section 302 I.P.C and prayed the Court to allow the appeal by setting aside the judgment of the trial Court.

9. On the other hand, the learned counsel appearing for the respondent/accused argued that the trial Court after considering the evidence of prosecution rightly held that the evidence of PWs.5 & 13 and their presence at the time of incident is doubtful in nature. It is also argued that the prosecution is not able to explain the delay in giving the complaint to the police and the other evidence produced by the prosecution is not sufficient to prove the ingredients of Section 302 I.P.C. Therefore, the trial Court rightly disbelieved the evidence of prosecution and held that the prosecution failed to prove the guilt of the accused beyond reasonable doubt and acquitted the accused and the said finding needs no interference and prayed the Court to dismiss the appeal.

10. **P O I N T S:** To prove the guilt of the accused before the trial Court, the prosecution has examined as many as fifteen witnesses and got marked Exs.P1 to P10 and MO.1 on its behalf. Ex.P1 is the report given by PW.1. PW.1 is the brother of the deceased, lodged the said complaint on 29.04.2008 at 9:00 p.m stating that on 27.04.2008 at 8:00 p.m, accused and his deceased brother quarreled with each other regarding the share of coolie amount; that during the said quarrel, the accused beat the deceased with hands and also beat him on his stomach with an iron hook used for pulling the gunny bags and caused severe injury due to which his brother fell down on the ground and died on 29.04.2008 at 04:00 p.m, when he was about to shift to Government Hospital, Miryalaguda. PW.1 in his evidence supported the contents of the complaint Ex.P1. To prove the guilt of the accused, the prosecution is mainly relying upon the evidence of PWs.5 & 13 who are eye witnesses to the incident. A perusal of the evidence of PWs.5 & 13 shows that they were present at the time of incident and they have witnessed the accused attacking the deceased due to which the deceased fell down on the ground and later died. PW.5 has not stated about the presence of PW.13 when accused was attacking the deceased, likewise PW.13 also has not stated regarding the presence of PW.5 at the time of incident. Furthermore, PW.5 stated that after the incident, he sent the injured to his house in the rickshaw of PW.2, whereas PW.13 stated in her evidence that she called the brother of deceased and he took the deceased with him. Therefore, the presence of PWs.5 & 13 at the time of incident seems to be unnatural and as such, the trial Court after considering the evidence of both

witnesses, clearly held that they are the chance witnesses. The evidence of other witnesses is formal in nature and the evidence of those witnesses is not helpful to the prosecution to prove the guilt of the accused beyond reasonable doubt for the offence punishable under Section 302 I.P.C.

11. Now, coming to the aspect of giving report-Ex.P1 to the police is concerned, admittedly, there is a delay of two days in lodging the report. The incident was occurred on 27.04.2008 at 8:00 p.m, whereas the report was given on 29.04.2008 at 9:00 p.m. Further, the prosecution is not able to explain the said delay in giving the report. Therefore, that aspect also leads to doubt about the incident.

12. Thus, in these circumstances, we are of the view that the prosecution has failed to establish the guilt of the respondent/accused for the offence punishable under Section 302 I.P.C, beyond all reasonable doubt and the trial Court after proper appreciation of the evidence on record, rightly acquitted the respondent/accused of the said offence under Section 235(1) Cr.P.C and therefore, there are no perverse findings in the Judgment recorded by the trial Court to interfere with the same.

13. Accordingly, the Criminal Appeal is dismissed at the stage of admission confirming the Judgment dated 22.10.2010 passed in Sessions Case No.114 of 2009 on the file of the V Additional Sessions Judge, (III Fast Track Court), Nalgonda at Miryalaguda. Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE K.C.BHANU

JUSTICE ANIS

Date: 09.06.2015.

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