

**HON'BLE SRI JUSTICE K.C. BHANU
AND
HON'BLE MRS JUSTICE ANIS**

CRIMINAL APPEAL No.558 of 2015

JUDGMENT:- (per Hon'ble Sri Justice K.C. Bhanu)

This Memorandum of Criminal Appeal, under Section 378 (3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 14.11.2011, in Sessions Case No.617 of 2010 on the file of V Additional Sessions Judge, (II – Fast Track Court), Warangal, by the State whereunder and whereby, the respondents/accused Nos.1 and 2 were acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, "I.P.C.").

2. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

On 28.09.2009 at about 12.10 p.m., the complainant came to know that her son Md.Khaja Pasha (hereinafter, referred to as 'the deceased') fell down at Bhemmaram stage and was immediately shifted to MGM Hospital, Warangal in 108 ambulance. By the time the complainant reached the said hospital, her son was found dead. On enquiry, she came to know that prior to the death of her son, there was a quarrel between two persons i.e. Ward Member Raju (A-1) and Chakali Ravinder (A-2) at Bhemmaram bus stage and hence the accused were suspected for the death of her son. Accused Nos.1 and 2 were arrested by P.W.15 and after completion of investigation, the police filed charge sheet.

3. The trial Court framed the charge under Section 302 read with Section 34 of I.P.C. against accused Nos.1 and 2

4. When the above charge was read over and explained to accused Nos.1 and 2 in Telugu, they pleaded not guilty and claimed to be tried.

5. To substantiate the charge, prosecution examined P.Ws.1 to 16 and got marked Exs.P-1 to P-14 besides case property - M.Os.1 to 4.

6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. Exs.D-1 to D-3 were got marked on behalf of defence.

7. Upon appreciation of the evidence on record, the trial Court came to a conclusion that the deceased met with an unnatural death; due to inordinate delay in submission of complaint as well as shifting of scene of offence and failure to conduct test identification parade of the accused and material contradictions in the evidence of alleged witnesses and in view of the citations submitted by the counsel for the defence, the trial Court opined that it is unsafe to convict the accused basing on evidence of P.Ws.3 to 6, and accordingly, found them not guilty of the charge leveled against them. Challenging the same, the State filed the present appeal.

8. The point for determination is:

“Whether the prosecution proved its case beyond all reasonable doubt for the charge under Section 302 read with Section 34 of I.P.C against the accused or not?”

9. **POINT:-** Learned Public Prosecutor for the State of Telangana contended that P.Ws.3 to 6 are the eye witnesses present at the time of the incident and their presence at the time of the incident is established beyond all reasonable doubt and the trial Court has not taken into consideration the evidence of P.Ws.3 to 6, as they are chance witnesses to the incident. Therefore, he prays to admit the appeal.

10. P.W.12 is inquest mediator who was present when police conducted

inquest on the dead body of the deceased. Ex.P.7 is the inquest report.

11. P.W.14 is the Doctor, who conducted postmortem examination on the dead body of the deceased. He opined that the deceased died due to head injury. He issued Ex.P.10-postmortem report. The medical evidence as testified by P.W.14, as exhibited in Ex.P.10, remained unchallenged. Therefore, the homicidal nature of death of the deceased is established beyond all reasonable doubt.

12. Now it has to be seen whether the accused is assailant of the deceased or not?

13. There is a presumption under law that the accused is presumed to be innocent until contrary is proved. That presumption is further strengthened by the order of acquittal.

14. In an appeal against the order of acquittal, ordinarily, this Court would not interfere with the findings of the trial Court unless the findings are perverse or not based upon any admissible evidence, as the presumption of innocence of the accused is fortified by the order of acquittal. In a decision reported in ***Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)***^[1], the following principles have to be kept in mind by the appellate Court while dealing with the appeals particularly, against the order of acquittal:

(i) There is no limitation on the part of the Appellate Court to review the evidence upon which the order of acquittal is found.

(ii) The Appellate Court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The Appellate Court can also review the Trial Court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the Appellate Court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the Appellate Court is first required to seek an answer to the question whether finding of the Trial Court are palpably wrong, manifestly, erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of Ballistic Experts etc., the Appellate Court is competent to reverse the decision of the Trial Court depending on the materials placed.

Keeping the above principles in mind, it has to be seen whether there are any compelling or substantial reasons to interfere with the order of acquittal and whether the appeal can be admitted or not.

15. As seen from the judgment impugned in this appeal, there are four eye witnesses to the incident. The reason for disbelieving their evidence was that they are the chance witnesses. Merely, because they are the chance witnesses, it doesn't mean that their evidence has to be disbelieved on that ground. Their evidence has to be appreciated like that of the evidence of any other witnesses. This aspect of the case has been clearly explained by the Supreme Court in ***Rana Pratap Vs. State of Haryana***^[2], wherein it is held at para No.3 as under:

There were three eye witnesses. One was the brother of the deceased and the other two were a milk vendor of a neighbouring village, who was carrying milk to the dairy and a vegetable and fruit hawker, who was pushing his laden cart along the road. The learned Sessions Judge and the learned Counsel described both the independent witnesses as chance witnesses implying thereby that their evidence was suspicious and their presence at the scene doubtful. We do not understand the expression 'chance witnesses'. Murders are not committed with previous notice to witnesses; soliciting their presence. If

murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses', even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence.

16. The reason given by the trial Court was that they identified the accused as the assailants of the deceased for the first time in the Court. Basically, the test identification parade is a part of investigation. Since the witnesses P.Ws.3 to 6 are strangers to the accused, the investigating agency ought to have conducted a test identification parade, by giving a requisition to the jurisdictional Magistrate. But, the investigating officer has not filed any memo to hold such test identification parade. The Inspector of Police/investigating officer has not given any explanation for not taking steps to conduct test identification parade. In view of the fact that P.Ws.3 to 6 identified the accused for the first time in the Court and further the accused are totally strangers to these witnesses, the identification by these witnesses for the first time before the Court is valueless. The witnesses have not stated as to how they could be in a position to identify the assailants after a lapse of long time. There are no striking features on the accused so as to identify them even after a lapse of long time by the witnesses.

17. Therefore, the trial Court has rightly placed no reliance on the evidence of P.Ws.3 to 6. Barring the evidence of P.Ws.3 to 6, there is no other evidence to go to show that the accused are the assailants of the deceased. That is the reason why the trial Court, after recording convincing reasons, rightly acquitted the accused. As there are no

compelling or substantial reasons to admit the appeal, the appeal is liable to be dismissed at the stage of admission.

18. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 14.11.2011, in Sessions Case No.617 of 2010 on the file of the V Additional Sessions Judge, (II Fast Track Court), Warangal.

19. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE K.C. BHANU

JUSTICE ANIS

Date: 24.06.2015
vhb

[\[1\]](#) 2010 (6) SCC 1

[\[2\]](#) AIR 1983 (SC) 680