

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

CRIMINAL APPEAL No.642 OF 2012

JUDGMENT: (per Hon'ble Sri Justice A.V.Sesha Sai)

The accused in Sessions Case No.330 of 2011 on the file of the IV Additional Sessions Judge at Karimnagar is the appellant in the present Criminal Appeal, filed under Section 374(2) of Cr.P.C.

In this appeal, challenge is to the judgment dated 16.03.2012 rendered by the said Court in S.C.No.330 of 2011. By way of the said judgment, the learned Additional Sessions Judge convicted the appellant/accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default to suffer Simple Imprisonment for three months.

Heard Smt. D. Madhavi, learned counsel appearing for the appellant-accused, and the learned Public Prosecutor representing the respondent-State, apart from perusing the material placed before the Court.

It is contended by the learned counsel for the accused that the impugned judgment is contrary to law, weight of evidence and probabilities of the case and that in the event of the same being allowed to stand and sustain, it would occasion failure and miscarriage of justice.

Learned counsel for the accused further contends that the learned Sessions Judge grossly failed to appreciate the material available on record; that in view of the contradictions in the evidence of prosecution witnesses, the benefit of doubt should have been given to the accused and the accused ought to have been acquitted; that PW.3, who is the sister of the deceased, only stated about the quarrel between the accused and the deceased, but did not state that the accused brought pestle and attempted to beat the deceased; that PW.4 stated that the deceased and the accused did beat each other with hands and then brought a stick; that there is a contradiction between the evidence of PWs.4 and 5 as to the weapon which the accused alleged to have held; that the evidence of PW.2 is not trustworthy and that he is a chance witness planted by the prosecution.

On the contrary, it is argued by the learned Public Prosecutor that there is neither any error nor any infirmity in the impugned judgment and in view of the complete corroboration in the evidence of prosecution witnesses, the learned Sessions Judge is perfectly justified in convicting the accused and no interference of this Court under Section 374(2) of Cr.P.C. is warranted.

In the above back-drop, now the issues that emerge for consideration by this Court are (i) whether the finding of the learned Sessions Judge that the prosecution established the guilt of the accused beyond reasonable doubt is sustainable in

the facts and circumstances of the case? and (ii) whether the impugned judgment warrants any interference by this Court or not?

PW.1 is the complainant and the wife of the deceased; PW.2 is an Auto driver; PW.3 is the sister of the deceased and the accused; PWs.4 and 5 are the persons, who attended the marriage in the house of PW.3. The learned Sessions Judge, in order to convict the accused, relied on the evidence of PWs.2, 4 and 5 and held that the evidence of PWs.1, 3 and 5 with regard to the incident occurred at the time of marriage prior to the occurrence of offence completely corroborated with the evidence of PW.2 for the second incident.

PWs.3, 4 and 5 are not eye-witnesses for the commission of offence. A perusal of the evidence of PW.3, sister of the accused and deceased shows that she only deposed about the quarrel that took place between the accused and the deceased prior to the incident and sending of accused with PW.4 and his departure to his house. It is very much significant to note that PW.3 never stated that the accused was holding either stick or pestle or any other weapon in his hand, while leaving the place. Coming to the evidence of PW.4, he stated that after completing the meals at the house of PW.3, when he and others were returning, they found the accused and the deceased quarrelling and beating each other with hands. He also deposed that he and others separated them and then the accused went to some distance and brought a stick and wanted to beat the accused,

but they separated the accused and on the request of PW.3, he took the accused on his motor cycle and dropped him in his house. PW.5, who is the co-brother of the deceased, who also happened to attend the marriage in the house of PW.3, though spoken in the same manner, stated that there was a quarrel between the accused and the deceased after the marriage and he along with PW.1, LWs.4 and 5 stopped the quarrel. He also stated that they sent the accused on motor cycle of LW.4 to his house and also sent the deceased to his house. According to him, on the next day, when he went to the house of the deceased, PW.2 came there and told that the deceased was found near Bus Stand and thereafter he along with PWs.1 and 3 went there and saw the dead body of the deceased.

PW.2 is obviously a prime witness for the prosecution and he is an Auto driver. According to him, when he was taking the passengers in his Auto from 5-Incline to the Bus Stand, he stopped his Auto at the Jeep Stand to pass urine and found that there was a quarrel going on and that the accused beat the deceased with pestle and then he went away from there. He further stated that on the next day in the morning at 8.00 a.m., when he was going in Auto in the same route, he found certain people gathered near Jeep Stand and he stopped the Auto and found the dead body of the deceased and informed to PW.1. According to him, the quarrel took place between 10.00 to 11.00 p.m. on the main road of Karimnagar to Mancherial. It is also his evidence that Sulabh Complex remain closed during nights

and no urination can be made and that there were three passengers in his Auto, but he did not tell anything to the passengers in the Auto. He also stated that the Traffic Police Station is just by the side of scene of offence.

While referring to the evidence of PW.2, it is contended by the learned counsel for accused that the said evidence is not trustworthy and he is a planted witness of the prosecution and in view of the contradictions in his version, his evidence cannot be given any credence. Even according to PW.2, in Section 164 Cr.P.C. statement recorded by the Magistrate, he stated that he did not make any effort to give a complaint to the Police on that night and that he saw the news about the death of the deceased in the Newspaper and then informed to the Police. He also stated that in his Section 164 Cr.P.C. statement, he did not state that on the next day morning he saw the dead body of the deceased and went to the house of PW.1 and informed her about the incident.

The learned Public Prosecutor, however, submits that Section 164 Cr.P.C. statement of this witness was recorded by the learned Magistrate on 16.12.2010, whereas the news item was published on 17.12.2010, while the incident occurred on 15.12.2010. PW.2 states that on seeing the news item on 17.12.2010 in the Newspaper, he informed to the Police. The statement of this witness in the cross-examination improbably his version in the chief-examination. In chief-examination, he stated that on the next day of the incident i.e.,

on 16.12.2010, he went to the house of the deceased and informed the matter to PW.1. Therefore, the prosecution could not explain the discrepancy in the evidence of this witness with regard to informing of incident to PW.1 and also informing of incident to the Police.

It is also significant to note that, even according to the evidence of PW.2, there is a Traffic Police Station near the scene of offence, but the fact remains that he neither raised cries nor made any effort to inform the Police, which clearly raises any amount of doubt about the credibility of this witness. He further stated that he has got a Cell Phone, but he did not inform either to the Police or to any other person with regard to the alleged incident. The silence on the part of this witness as to failure to inform about the incident to anybody, either to the Police or to any other person, would raise any amount of doubt about his credibility.

Another aspect, which needs to be mentioned here, is that, even as per the evidence of PW.2, to reach his house from the Bus Stand, he has to pass through the house of PW.1, but he did not make any effort to tell PW.1 about the incident on the same night.

Coming to the medical evidence, the prosecution examined one Dr. Anil Kumar, Medical Officer, as PW.11, who conducted autopsy on the dead body of the deceased. The Medical Officer found the following injuries on the dead body of the deceased.

1. Small abrasion over the left side of the chest.
2. Small contusion 2 cm x 2 cm in diameter just below the chin on right side.
3. Bleeding from mouth.

He issued Ex.P.6 – Postmortem Report. As per the testimony of the Medical Officer, he found fractures of 1st, 2nd, 3rd, 4th, 5th and 6th on ribs on right side and internal injury to right lung due to fracture of ribs and internal bleeding (Haemo thorax).

He stated that the deceased died between 15 to 16 hours prior to Post-mortem Examination. The important aspect in the evidence of Medical Officer, which raises any amount of doubt in the case of the prosecution, is that the cause of death was “crush injury chest” caused respiratory distress and death.

At this juncture, it is appropriate to refer to the defence taken by the accused in this case. According to the defence, the deceased might have received the injury due to the hitting of any vehicle while he was at the Bus Stand. It is revealed in the cross-examination of PW.11 – Medical Officer that there was a possibility of the deceased receiving such an injury as referred above, either due to the sudden blow given or hitting of any vehicle to him. The testimony of the Medical Officer in the cross-examination reveals that there are two possibilities of the deceased receiving such an injury, and the first possibility is receiving of blow with a blunt object and the second possibility is even by dashing of a vehicle. Since the testimony of PW.2, who is said to be an Auto driver, does not appear to be reliable in

view of the contradictions in his evidence, his testimony is not of much help to the case of the prosecution. The testimony of the Medical Officer also raises any amount of doubt with regard to the cause of death, whether the deceased died on account of the injuries received by pestle or due to the hitting of the vehicle at a lonely place in Bus Stand. Except the sole testimony of PW.2, there is no other witness coming forward to state about the occurrence of offence. No doubt, there may be motive for commission of this offence and it was established by the witnesses. A dispute took place prior to the incident and after the marriage in the house of PW.3 with regard to the sale of property. Whether the said motive, if any, leads to the commission of this offence by the accused, who is none other than the own brother of the deceased, is doubtful in this case. In view of the feeble evidence of PW.2 and the possibility of two versions in the medical evidence, doubt arises in this case with regard to the version of the prosecution. When there are two possibilities present before the Court for the commission of offence, the version in favour of the accused needs to be taken into consideration.

According to the prosecution, MO.1 – Pestle, which is alleged to have been used in the commission of offence, was seized from the house of PW.3. There is no evidence on record to show that the accused carried the pestle along with him after the incident that occurred after the marriage and preserved the

same in the house of PW.3. Therefore, the recovery of the pestle from the house of PW.3 also appears to be improbable.

On consideration of the evidence of the prosecution, it is obvious that the entire case is based on the circumstantial evidence. Since the testimony of PW.2 is not trustworthy and devoid of credibility, the important link in the commission of offence is missing to connect the accused with the crime. The alleged incident occurred in the Bus Stand between 10.00 and 11.00 p.m. The incident was reported on the next day morning at 8.00 a.m. There is a gap of nearly ten hours after occurrence of the alleged incident. The prosecution has not explained about the said gap of ten hours and as to whether the dead body was lying at the place where he received injuries, and whether anybody noticed the dead body during this ten hours period, that too when it is a Bus Stand where the people will be moving here and there and the vehicles will be moving. This raises any amount of doubt with regard to the version of the prosecution.

It is also to be seen from the evidence of PW.4 that there is a discrepancy with regard to the weapon used in the commission of offence. According to PW.4, the weapon, which he found in the hands of the accused, was a stick, whereas the entire version of the prosecution is that the accused was holding a pestle and attempted to beat the deceased. The prosecution could not explain this discrepancy, which also raises a doubt about its version. The evidence of PW.12 - Investigation Officer reveals that PW.1 did not state in her Section 161 Cr.P.C.

statement that she stayed in the house of LW.3 in that night and went to her house in the early morning. He further stated that PW.5 did not state in his Section 161 Cr.P.C. statement that on the early hours of the morning, he went to the house of the deceased. From the evidence of this witness, it clearly reveals that the panch witnesses do not belong to the subject locality. Therefore, the very recovery becomes doubtful. It is also obvious from his cross-examination that he did not enquire any other person in that locality to come as a witness, which raises a doubt about MO.1 in this case.

It is also revealed from the cross-examination of this witness that he did not enquire anybody near the Jeep adda, where the alleged incident had occurred. This fact clearly shows that the Investigating Officer did not do investigation at the scene of offence to find out as to how the incident had occurred. Therefore, the very case of the defence that the pestle is planted in this case is more probable.

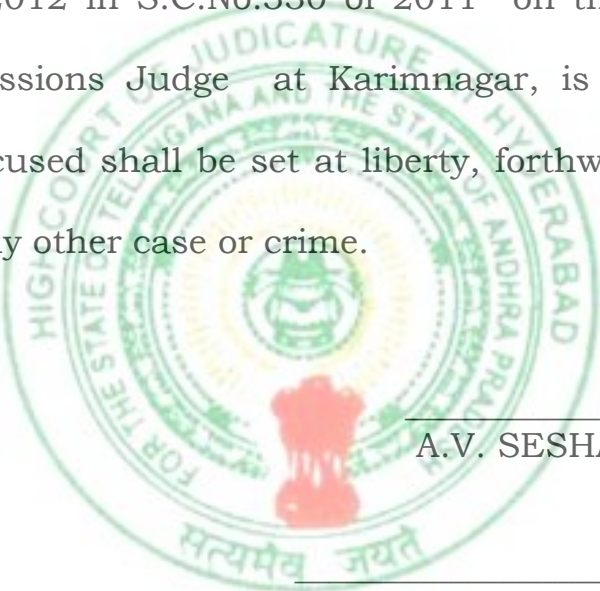
Therefore, on consideration of evidence available on record, we are of the considered opinion that this is a fit case where the benefit of doubt can be extended to the accused. There are two versions present before the Court, one in favour of the accused and the other in favour of the prosecution. As per the decision in *KORSA SEETHARAMULU v. STATE OF A.P.*¹, when two views are reasonably possible on the evidence adduced by prosecution,

¹ 2010 (3) ALT (Cri.) 315 (DB)(A.P.)

one in favour of accused and the other in favour of prosecution, the view favourable to the accused has to be adopted.

In the result, the Appellant/Accused is found not guilty for the offence punishable under Section 302 IPC and is acquitted for the said offence.

Accordingly, the Criminal Appeal is allowed and the conviction and sentence recorded against the Appellant/Accused for the offence punishable under Section 302 IPC vide judgment dated 16.03.2012 in S.C.No.330 of 2011 on the file of the IV Additional Sessions Judge at Karimnagar, is set aside. The Appellant/Accused shall be set at liberty, forthwith, if he is not required in any other case or crime.



A.V. SESA SAI, J

GUDISEVA SHYAM PRASAD, J

16.12.2017.
Msr



THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.642 OF 2012



16.12.2017
Msr