

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

CrI.A. No. 935 of 2012

JUDGMENT:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

1) This Criminal Appeal is preferred against the judgment dated 31.07.2012 delivered in S.C.No. 47 of 2011 by the Family Court-cum-Additional District and Sessions Judge, Rajahmundry, East Godavari District, whereby the appellants – A1 to A3 were found guilty of the offence punishable under Section 302 IPC, and accordingly, convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- each, in default, to suffer Simple Imprisonment for a period of three months each.

2) In brief, case of the prosecution is that the deceased – Ithireddy Parameswara Rao and the appellants – A1 to A3 had disputes *inter alia*. The deceased owned Ac.02.00 cents of land. About eight years prior to the incident, the deceased borrowed Rs.88,000/- from A1, and later repaid an amount of Rs.60,000/- towards interest. But, A1 demanded Rs.8.00 lakhs from the deceased. Then, LWs.9 and 10 (Kone Ramu and Thambattula Paleswara Rao), elders interfered and settled the matter between them at Rs.1,20,000/- in addition to the amount of Rs.60,000/- paid by the deceased. Accordingly, four months prior to the incident, the deceased

paid Rs.1,20,000/- to A1 towards settlement of the issue, and promissory note was returned to the deceased. Thereafter, A1 and his family members used to abuse the deceased and raised a dispute for tying the cattles at their houses and manhandled him. There was also a dispute between the father of A2 and the deceased in connection with some landed property. Thus, A1 and A2 had common enmity with the deceased, and so, A1, with an intention to take away the life of the deceased, hatched a plan with A2. Accordingly, on 05.04.2010, A1 asked A2 to bring the deceased to his coconut garden and A2 could persuade the deceased to come to the garden. A1 provided a knife and sent it to the fields through A3. Accordingly, they brought the deceased to the fields of A1, and on the pretext of giving liquor party, A1 to A3 made the deceased to consume liquor heavily. Thereafter, A3 beat him with a stick on the rear side of the neck. A1 hacked the deceased with the knife on his right ear, as a result, the deceased died. Thereafter, they pulled him to the jasmine garden, removed his shirt and covered his dead body with dried leaves and plants. On 06.04.2010, PW1, on information, went to the jasmine garden and found his father dead and gave a report to the police which was registered as a case in Cr.No. 53 of 2010.

3) After investigation, the Investigation Officer filed charge sheet against the accused.

4) Charge was framed against the appellants for the offence under Section 302 IPC and the accused pleaded not guilty.

5) To bring home guilt of the appellants, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P14 and M.Os.1 to 24. On behalf of the defence, Ex.D1 was marked and no defence witnesses were examined.

6) After closure of the prosecution evidence, the appellants were examined under Section 313 Cr.P.C. wherein they denied the incriminating material surfaced against them. The trial Court, on appreciation of oral and documentary evidence, convicted the accused. Hence the appeal. As per submission of the learned counsel for the appellants, A2 died pending appeal. Hence, appeal of A2 is dismissed as abated.

7) Smt. T.V.Sridevi, learned counsel for the appellants, submits that the death of the deceased occurred on 05.04.2010. Being summer season, there was day-light from 05:00 A.M. The evidence of PWs.2 to 8 is to the effect that they all saw the deceased at 05:30 A.M. As per the evidence of PW1, there were several persons gathered near the dead body of the deceased. Even before they reached the scene of offence, the police arrived at 08:00 A.M. F.I.R. was

lodged at 11:30 on suspicion. There was inordinate delay in lodging the F.I.R. which shows suspicion on the veracity of the F.I.R. She further submits that the crucial witness, Bittu, who saw the dead body of the deceased for the first time, was not examined. LWs. 18, 21 and other residents, who live near the scene of offence, were not examined. Inquest report does not disclose presence of mud on the body of the deceased. Therefore, inference can be drawn that inquest report was drafted in the police station without there being any observation of the body. The appellants were arrested on 19.04.2010 and recovery of knife and other objects on confession statements also too artificial.

8) The learned counsel for the appellants has contended that motive is not strong to come to a conclusion that A1 committed murder of the deceased in respect of settlement of the dispute. Joining of A2 with A1 for commission of offence due to family disputes is also not established by cogent evidence. The presence of A3 is not probable. Thus, the prosecution has cooked up a story inasmuch as the dead body of the deceased was covered with dry leaves. There is no direct witness to the alleged crime and the case entirely rests on the circumstantial evidence. Thus, the appellants deserve to be acquitted.

9) On the other hand, the learned Public Prosecutor appearing on behalf of the respondent-State, submits that though there is no eye-witness to the offence and the entire case rests upon the circumstantial evidence, still the evidence of PW3 shows that when he was coming with the deceased on motorcycle after repairing his bore, A2, who was coming on bicycle, met the deceased on the way and asked him to resolve the issue regarding payment of coolies. PW3 advised the deceased not to go anywhere as it was already 09:00 P.M., however, the deceased went along with A2 and PW3 returned to the village. Thereafter, PW3 came to know from one Bittu that a dead body was lying in the fields of PW10 which were taken on lease by A1, and on hearing the same, he immediately rushed to the scene of offence and found the dead body of the deceased.

10) The learned Public Prosecutor submits that in cross-examination of PW3, nothing could be elicited in favour of the defence which indicates that his testimony was unshattered. He further argued, when PW9 and his mother went to fetch water, they saw the deceased consuming liquor in the company of the appellants and they identified them in the torch-light. The aforesaid evidence of PWs.3 and 9 clearly establish last seen theory i.e. in the presence of PW3, A2 took the deceased to settle the disputes and further, PW9 and his

mother seeing the deceased in the company of accused which is relevant to connect the appellants with the crime.

11) The learned Public Prosecutor further submits that regarding the motive, though the matter was settled for an amount of Rs.1.20 lakhs, however A1 bore grudge against the deceased on the ground that though he promised to pay Rs.8.00 lakhs, but paid only Rs.1.20 lakhs. Thus, the prosecution has successfully proved the guilt of the appellants, and accordingly, the trial Court rightly convicted the appellants for the offence punishable under Section 302 IPC.

12) We have heard the learned counsel for both the parties and perused the material place on record.

13) It is not in dispute that the present case rests on the circumstantial evidence. There is no eye-witness to the incident. The star witnesses in the present case are PWs.3 and 9. As per the evidence of PW3, when the deceased was called by A2 to settle a dispute regarding payment of loan, the deceased went along with him despite PW3 raising objection that it was already late in the night. Thereafter, PW3 came to know through one Bittu about the death of the deceased, and immediately rushed to the fields of PW10 and found the dead body.

14) Regarding the veracity of his evidence, when PW3 witnessed that one day before the date of the alleged incident, the deceased was taken by A2 at 09:00 P.M. and on the next day on information he found the dead body of the deceased was lying in the fields of A1, his natural conduct should be that he should immediately transmit this information to the family members of the deceased and the police. Instead of doing so, he straight away went to the fields and slept there the whole day, and thereafter, at 04:00 P.M. his statement was recorded by the police. It was quite unnatural that when the dead body was lying in the field, he waited till arrival of the police to record his statement. Thus, his evidence does not infuse confidence. As far as PW9 is concerned, as per the Post-mortem and R.F.S.L. reports, liquor was not found as consumed by the deceased. The clarification of the Public Prosecutor on this issue is that though the deceased was found in the company of the appellants, he might not have consumed liquor, but PW9 has specifically stated that they all consumed liquor, and they saw them in a drunken condition. Thus, PWs.3 and 9 are not natural witnesses, and in our considered opinion, they were planted witnesses.

15) Regarding the motive, it is explained by the prosecution that the deceased agreed to pay an amount of

Rs.8.00 lakhs, however the matter was settled at Rs.1.20 lakhs, therefore, A1 bore grudge against the deceased and planned to liquidate him, and accordingly, asked A2 to bring the deceased to the fields where they killed the deceased. It is the case of the prosecution that the deceased and A1 decided to settle the dispute with regard to the loan amount. As per A1, he demanded an amount of Rs.8.00 lakhs. However, the matter was referred to the elders who decided that the deceased should pay an amount of Rs.1.20 lakhs. Accordingly, the deceased paid the amount to A1, and thereafter, A1 returned the promissory note to the deceased. If the matter was settled before the elders and the promissory note was returned to the deceased, there was no question of A1 still nurturing grudge against the deceased and the appellants liquidating the deceased on that issue. Thus, we find doubt in the prosecution story.

16) PW4 deposed that he went to canal to answer nature calls and found the dead body of the deceased and informed PW5 about it. PW5 informed him that the branches of the trees taken by A3 and the dry sticks found on the dead body of the deceased are one and the same. However, in cross-examination, he deposed that he neither went to the scene of offence nor informed anybody except Peetala Raju about the death of the deceased.

17) PW5 deposed that he saw A3 dragging dry sticks and leaves to the land of A1. However, in cross-examination, he deposed that PW4 informed him about the death of the deceased and went to the village, but PW5 remained at the scene of offence.

18) PW7 deposed that A1 purchased MO4 - Old Admiral Brandy of 1 litre. In cross-examination, he deposed that MO.4 is available in any wine shop and there is no proof that A1 purchased the brandy from his shop. He admitted that he was examined ten days after report was lodged.

19) PW8, member of Ex-Gram Panchayat, deposed that quarrel took place between the deceased and A1 and he settled the matter. Four days prior to the alleged incident, A1 threatened to kill the deceased. In cross-examination, he deposed that he was examined by the police 13 days after the death of the deceased. He did not say anything before the police.

20) PW11, who is the owner of Ac 0.20 cents, deposed that he leased out his land to A1. He was not present at the time of the occurrence of the incident. When a suggestion was made, he deposed that he was kept in custody for one week.

21) PW13, Dr.Nalini Mohan, deposed that no alcohol was found in the body. Thus, it falsifies the version of the prosecution that the deceased with A1 and A2 had consumed liquor on the date of the incident.

22) PW17, Circle Inspector, in cross-examination, deposed that RFSL report does not disclose the presence of any alcohol either in two empty plastic bottles or in disposal bottle. As per the report, blood stains are not found on item No.21 and MO.24. The blood detected on other M.Os. was of human origin but blood group was not determined.

23) As per the evidence of PW1, one person, namely Bittu saw the dead body of the deceased for the first time, however the above named person was not examined by the prosecution. LWs.18, 21 and other residents, who live near the scene of offence, were not examined.

24) The appellants were arrested on 19.04.2010 and recovery of knife and other objects on confession statements was too artificial.

25) The trial Court has ignored the R.F.S.L. and Post-mortem reports and has not read the depositions of PWs.3 and 9 in right perspective, however wrongly convicted the appellants. Hence, the findings recorded by the trial Court in the impugned judgment are based upon the presumptions and assumptions.

26) Accordingly, the criminal appeal is allowed and the Judgment dated 31.07.2012 delivered in S.C.No. 47 of 2011 by the Family Court-cum-Additional District & Sessions Judge, Rajahmundry, East Godavari District, is hereby set aside and the appellants – A1 and A3 are acquitted of the offence punishable under Section 302 IPC.

27) Consequently, the jail authorities concerned are directed to release the 1st and 3rd appellants / A1 and A3 forthwith if they are not required in any other case.

28) As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

28.03.2017

SURESH KUMAR KAIT, J

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U.DURGA PRASAD RAO, J