

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.306 OF 2011

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

1. This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.'), is filed by the appellant-accused questioning the judgment dated 29.10.2010, passed in Sessions Case No.301 of 2009 by the V Additional District and Sessions Judge (Fast Track Court), Kurnool at Nandyal (for brevity, 'the trial Court'), whereby the trial Court convicted the accused under Section 235(2) Cr.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for four (4) months for the offence under Section 302 of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.') and also held that the accused is entitled to the benefit of set off under Section 428 Cr.P.C.

2. Heard Smt. A.Gayatri Reddy, learned counsel appearing for the appellant-accused, and Sri. Posani Venkateswarlu, learned Public Prosecutor, appearing for the respondent-State (A.P.).

3. The case of the prosecution, in brief, is P.W.12 K.Venkata Reddy, Inspector of Police, Koilakuntla circle, laid charge sheet against the accused, alleging that the accused is a wine bibber and an idle wander, used to quarrel with his wife and Bandi Raja

Reddy (Hereinafter referred to as 'the deceased'), being his junior paternal uncle, used to pacify the situation and ask the accused to mend his ways but the accused used to pickup wordy quarrels with the deceased and abuse him in filthy language. On 04.07.2008 at about 01:00 p.m., when the accused was quarrelling with his wife and abusing her in filthy language, deceased and Bandi Vasudeva Reddy P.W.2, son of deceased, reprimanded the accused; for which, the accused threatened the deceased with dire consequences, then P.W.2 took the deceased to his house. On 05.07.2008 at about 10:30 a.m., when the deceased was sleeping in the verandah of the house of Masuladari Balaramudu in Revanur village, the accused armed with an axe, attacked the deceased, due to which the deceased sustained grievous injuries. Bandi Sujatamma, P.W.1, daughter-in-law of the deceased, and Bandi Venkata Rami Reddy, P.W.3, brother of the deceased, witnessed the same, the accused fled away from the scene of offence with the axe in his hand. Immediately, the deceased was shifted to Government Hospital, Nandyal and on the M.L.C. intimation, M.N.Karunakar Rao, P.W.11, Sub-Inspector of Police, Revanur Police Station, went to Government Hospital, Nandyal, recorded the statement of P.W.1 and registered the same as a case in Crime No.13 of 2008 initially for the offences under Sections 307 and 324 I.P.C. Thereafter, the deceased was shifted to Government General Hospital, Kunrool; wherein he succumbed to injuries, P.W.11 altered the Section of law to 302 I.P.C., submitted express

F.I.Rs. to all the concerned on 05.07.2008 at 06:30 p.m. On 05.07.2008 at about 06:30 p.m., P.W.12, Inspector of Police, took up further investigation, arrested the accused, on interrogation, the accused voluntarily confessed the commission of offence and took P.W.12 and mediators to the thorny bushes, situated at the hayrick yard of Gatturu Narayana Reddy, seized the blood stained axe and blood stained banian and on 06.07.2008, sent the accused to the Court of Judicial Magistrate of I Class, Koilakuntla for judicial remand. On 06.07.2008, Dr. P. Brahmaji Master, Assistant Professor, Forensic Medicine at Government Medical College, Kurnool, P.W.10, conducted autopsy over the dead body of deceased and issued Ex.P-10, post-mortem examination certificate, opining that the cause of death was due to shock and haemorrhage due to multiple injuries.

4. The learned Magistrate committed the case to the Court of Principal District and Sessions Judge, Kurnool; the Sessions Court, made over the same to the III Additional District and Sessions Judge, Kurnool, and thereafter as per the proceedings of this Court in ROC No.1064/ES/2010, dated 23.06.2010, instant case was transferred to the V Additional District and Sessions Judge (Fast Track Court), Kurnool at Nandyal, i.e., the trial Court. The trial Court framed charge against the accused for the offence under Section 302 I.P.C., for which he pleaded not guilty. The prosecution to substantiate its case examined P.Ws.1 to 12 and marked Exs.P.1 to P.15 and M.O.1; on behalf

of the defence, none were examined but Exs.D-1 and D-2 were marked. The accused was examined under Section 313 Cr.P.C., denied the incriminating evidence. The trial Court, on appreciation of the entire evidence on record, convicted and sentenced the appellant/accused as stated above.

5. Smt. A. Gayatri Reddy, learned counsel for the appellant-accused, would submit that there are material discrepancies in the evidence of P.Ws.1 to 3; P.W.1 had not corroborated with the other witnesses; P.Ws.1 to 3 are interested witnesses; no independent witness was examined to support the case of the prosecution; the evidence of P.W.1 casts a cloud of suspicion as to her presence at the scene of offence; the non-production of weapon alleged to have seized is fatal to the case of prosecution; there is no legally acceptable evidence to believe that the accused hacked the deceased with an axe; the trial Court ought to have extended the benefit of doubt to the accused; and ultimately, prayed to acquit the accused of the charge under Section 302 I.P.C. by allowing the appeal.

6. On the other hand, Sri Posani Venkateswarlu, learned Public Prosecutor, would submit that there are no material omissions and contradictions in the evidence of prosecution witnesses; the scene of offence is situated by the side of house of P.W.1; P.W.1 is a natural witness; there is consistency and corroboration in the evidence of prosecution witnesses; the motive to cause the death of deceased is also established; the prosecution proved the guilty of the accused beyond all

reasonable doubt; the finding of the trial Court is based on record; and ultimately, prayed to sustain the conviction and sentence by dismissing the appeal.

7. In view of the contentions put forth by both sides, the following points have come up for determination:

1. Whether the accused caused the death of Bandi Raja Reddy (deceased)?

2. Whether the conviction and sentence recorded against the accused for the offence under Section 302 I.P.C is sustainable?

8. **POINT Nos.1 and 2:** In view of the contentions put forth, it is appropriate to refer the gist of evidence on record. The evidence of P.W.1-Bandi Sujathamma reveals that P.W.2-Bandi Vasudeva Reddy is her husband, P.W.3-Bandi Venkata Rami Reddy is her junior father-in-law, she knows the accused, the deceased is her father-in-law, the accused hacked her father-in-law with an axe, due to that her father-in-law died two years prior to her deposition, on the previous day prior to the incident the accused and his wife were quarrelling, her husband (P.W.2) and her father-in-law (deceased) interfered and tried to pacify them, the accused questioned her father-in-law for interference. Her father-in-law was lying at a distance of 10 to 15 feet from their house on the floor, at that time she was working, it was about 10-30 a.m., then the accused hacked her father-in-law with an axe, on hearing cries, she ran towards her father-in-law, she raised cries, P.W.3 returning from work also came there, the accused

absconded from the scene, thereafter L.W.4-Bandi Raghavendra Reddy and P.W.4-Bandi Tulasi Reddy reached there, they took her father-in-law on a cot to the bus stand, in order to shift him, to the hospital, her father-in-law received hacked injuries on the right side of his ear, behind ear, neck and shoulder, they shifted her father-in-law to Nandyal Government Hospital, as the condition was serious her father-in-law was shifted to Kurnool Government Hospital, she along with her husband came to her house to take money, at about 3-00 p.m., they received death intimation of her father-in-law, the police came to her house, examined her, took her signature on the complaint. Ex.P.1 is the complaint lodged by her with the police.

9. The evidence of P.W.2-Bandi Vasu Deva Reddy reveals that P.W.1 is his wife, the deceased is her father, P.W.3-Bandi Venkata Rami Reddy and L.W.4-Bandi Raghavendra Reddy are his relatives, he knows the accused who is his elder brother by relation, his father-Raja Reddy (deceased) is no more, the accused murdered his father with an axe about three years ago, when he was at his fields he came to the house, by that time his father was shifted to Nandyal Government Hospital, as his father's condition was serious, he shifted his father to Kurnool, but he did not have money so he came back to the house to take money. The accused was quarreling with his wife, his father chastised the accused, the accused questioned his father for interference. Around 2-00 or 3-00 p.m., he came to know the death of his father. The evidence of P.W.3-Bandi Venkata Rami

Reddy reveals that P.Ws.1 and 2 are his daughter-in-law and son by relation, P.W.4-Bandi Tulasi Reddy is his elder brother, L.W.4-Bandi Raghavendra Reddy is his elder brother's son, the accused is also his elder brother's son, the deceased-Raja Reddy is his elder brother, about three years ago, Raja Reddy died, when he was about to go to agricultural fields, he heard cries of P.W.1 and immediately, he rushed to the scene, it is at a distance of 30 feet from his house, he saw the accused absconding from the scene, he found two hacked injuries on the deceased, he along with P.W.1, P.W.2 and L.W.4-Bandi Raghavendra Reddy shifted Raja Reddy in a cot to Nandyal Government Hospital, from there to Kurnool and he was present at the time of inquest panchanama. The evidence of P.W.4-Bandi Thulasi reveals that P.W.1 is his daughter-in-law by relation, P.W.2 is his elder brother's son, P.W.3 is his elder brother, the accused is also his elder brother's son, the deceased is his elder brother, about two years back, the deceased was murdered, around two years back the accused hacked the deceased with an axe at 10-00 a.m. when the deceased was sleeping at the house of Balaram, at that time he was returning from agricultural fields, he along with others shifted the deceased to Nandyal Government Hospital, from there to Kurnool.

10. The evidence of P.W.5-Dudekula Hussain reveals that he was present when inquest was conducted over the dead body of the deceased on 06.07.2008, there were other persons during inquest panchanama, he did not know how Raja Reddy died and

Ex.P.2 is his signature. The evidence of P.W.6-Avula Mallikarjuna reveals that he was present when inquest was conducted over the dead body of the deceased at Government Hospital, Kurnool, there were three other persons, he found injuries over the back of the head, on the ear and also on the shoulder, one cut banian and lungi were seized during inquest, he opined that the death was caused due to injuries and Ex.P.3 is the inquest. The evidence of P.W.7-G.Narayana Reddy reveals that on 05.07.2007 at about 3-00 p.m., he went to street of Bandi Rajavaru near the house of Masuldarigiri, he found bloodstains, he along with others observed the scene, the police drafted scene of offence panchanama and seized bloodstained stones and he attested the scene of offence panchana Ex.P.4. The evidence of P.W.8-Bandi Narayana Reddy reveals that the police seized bloodstains from the house of Masuldari Balaramudu after death of Raja Reddy, he attested the observation and seizure of panchanama, it was drafted by the Sub Inspector of Police, Ex.P.4-observation panchanama bears his signature, on the same day evening the Inspector of Police found the accused, basing on the confession made by the accused, bloodstained crime weapon was seized, the police obtained his signature and Exs.P.7 and P.8 are the arrest panchanama and seizure panchanama respectively.

11. The evidence of P.W.9-G. Govinda Raju reveals that he was Head Constable, on 05.07.2008 at about 12-20 p.m., he received MLC intimation from Prasad, Male Nursing Assistant,

relating to the admission of Raja Reddy in the hospital with injuries and Ex.P.9 is the MLC intimation received by him. The evidence of P.W.10-Dr. P. Brahmaji Master reveals that he conducted autopsy over the dead body of the deceased on 06.07.2008 at about 10-50 a.m., on examination he found the following ante-mortem injuries:

1. Chop wound present on the right temporal region of scalp, bone deep clean margins, size : length is 7 cms, width in the middle is 2 cms and at the heel and toe and the width is 1 cm, brain exposed, 3 cm behind the right ear.
2. Chop wound present on the right side of neck, front and lower part of right ear, size: length is 7 cms, width at heel end is 3 cms and width at toe and is 1 cm, depth is 4 cms, muscle deep.
3. Chop wound present on the right side of the throat, 4 cms away to midline of throat, muscle deep, margins are irregular, sizes: Length and width is 8 x 3 cms, width of toe-1 cm dept is 1 cm.
4. Cut laceration present on the top of (upper part) right shoulder bone exposed, margins are clean cut, size: Length x width is 12 x 5 cms.
5. Cut laceration present on the upper and lateral part of right shoulder, Head of femur is exposed and cut fracture and head is separated, size is 14 x 7 cms, depth is 5 cms, margins are irregular.

And he opined that the cause of death was shock and hemorrhage caused due to multiple injuries and Ex.P.10 is the post-mortem examination report issued by him. He deposed that the above injuries are possible with a heavy sharp edged weapon like axe. As per hospital records, the death was caused on 05.07.2008 at 2-20 p.m.

12. The evidence of P.W.11-M.N. Karunakar Rao, Sub Inspector of Police, reveals that on 05.07.2008, when he was in police station at about 11-00 a.m., he received information about the incident of Raja Reddy being hacked by Harinath Reddy (accused), immediately he left the police station and reached Revanur village and visited Bandi Vari Street, he also visited the scene of offence, he learnt that the accused caused injuries to the deceased due to family disputes, he found bloodstains near the house of Masaldari Bala Ramudu, which is near the house of the deceased, he recorded statement of P.W.1 in Ex.P.1 and registered a case in Crime No.13 of 2008 for the offences under Sections 324 and 307 I.P.C. after reaching police station at 2-30 p.m. on that day. He also deposed about the conduct of scene of offence panchanama in the presence of mediators-P.W.7 and P.W.8, he prepared rough sketch of the scene of offence in Ex.P.12, Ex.P.11 is the F.I.R. issued by him, the scene of offence is situated in the verandah of Masaldari Bala Ramudu's house bearing house No.4-55 and Ex.P.4 is the scene of offence panchanama conducted by him. P.W.11 also deposed that he assisted P.W.12-Inspector of Police in conducting investigation in

this case. P.W.12-K.Venkata Reddy, Inspector of Police, deposed about the recovery of axe pursuant to the confession made by the accused as shown in Exs.P.7 and P.8 in the presence of P.W.7 and P.W.8.

13. P.W.1 in her cross-examination reiterated what she has stated in chief-examination and denied that he was deposing falsely. She also give the other details of the commission of the offence, taking the deceased to the hospital and her returning back to her house along with her husband to take money. She also denied that the place of sleeping of her father-in-law was not visible from *Rastha* (passage). She also denied that her father-in-law has got many enemies as was a womanizer. There is specific evidence of P.W.1 that she heard cries of her father-in-law, reached the scene of offence, which is by the side of her house and she found the accused hacking her father-in-law with an axe. She also deposed that her father-in-law interfered in the quarrel that took place between the accused and his wife one day prior to the incident and the accused questioning her father-in-law for interference. There is also specific evidence of P.W.1 the distance where her father-in-law was lying and her house is 10 to 15 feet. As per the other evidence on record, the scene of offence is by the side of the house of P.W.1. When a distance is 10 to 15 feet only, any hue and cry made from that distance is audible from the house of P.W.1. P.W.2-husband of P.W.1 was not present at the time of commission of offence, later he came and deposed about the motive for the accused to hack his father

to death. There is also specific evidence of P.W.3 that he heard the cries of P.W.1 and immediately, he rushed to the scene which is at a distance of 30 feet from his house, he saw the accused absconding from the scene. There is also evidence of P.W.3 that he found two hacked injuries on the deceased. P.W.3 stated that he heard the cries of P.W.1 and immediately he rushed to the scene, which is 30 feet away from his house. There is also evidence of P.W.3 that he along with P.W.1 and others shifted the deceased to Nandyal Government Hospital. P.W.4 also clearly and categorically stated in his evidence that the accused hacked the deceased with an axe while the deceased was sleeping at the house of Balaramudu around 10-00 a.m., at that time he was returning from the agricultural fields. He also deposed about the presence of P.Ws.1 to 3 at that time. He also stated that he shifted the deceased to the Government Hospital, Kurnool. P.Ws.1 to 4 are all the relatives of the accused. The deceased is also the relative of these witnesses. Though these witnesses were subjected to lengthy cross-examination, no animosity or any other reason is brought on record to discard their testimony. The evidence of all these witnesses is consistent and cogent and there are no material omissions and contradictions, except P.W.4 telling the presence of P.W.2 at scene of offence at the time of commission of offence, it appears this discrepancy occurred due to the time gap of two years and above between the date of offence and his date of examination.

14. Ex.D.1 was marked through the evidence of P.W.8 who is a witness to confession leading to recovery of the weapon used for commission of the offence. Ex.D.2 is the property form dated 06.07.2010, which reveals the deposit of bloodstained white colour banian in the instant case. When there is direct evidence of P.W.1, P.W.3 and P.W.4, Exs.D.1 and D.2 loses significance and they are not fatal to prosecution case. There is no reason for P.Ws.1 to 4 to depose falsely against the accused. The motive for commission of the offence is that when the deceased interfered a quarrel that was going on between the accused and his wife one day prior to the offence, the accused bore grudge against the deceased and hacked him on neck and other parts of the body with an axe in order to cause the death. The intention to cause death is very much present in this case.

15. When the accused was examined under Section 313 Cr.P.C. with regard to the incriminating evidence appearing against him in the evidence on record, he simply denied the same. The defence set up by the accused is that the deceased was a womanizer and he is having so many enemies in the village. The evidence of prosecution witnesses is consistent, cogent and reliable and there are direct witnesses to the commission of offence by the accused. There is no reason for any of the prosecution witnesses to falsely implicate the accused in this case.

16. In ***Joginder Singh v. State of Punjab***¹, the Hon'ble Supreme Court observed, merely because witnesses are relatives of the deceased, their evidence cannot be *per se* discarded. The evidence of P.Ws.1, 2, 3 and 5 do not suffer from any infirmities, omissions and material contradictions. They are natural witnesses. It is also to be noted that the accused is also a relative of the said witnesses. Their evidence is inspiring confidence and it is not impeached in cross-examination. Their evidence is credible and acceptable.

17. The evidence of the Medical Officer and the post-mortem report clearly establishes the cause of death and the time of death, which is consistent with the oral and documentary evidence and it clinchingly proves the guilt of the accused beyond all reasonable doubt in causing the death of the deceased. There is no infirmity between the oral and medical evidence. No other conclusion is possible. The accused is not entitled to any benefit of doubt. The trial Court has analyzed the entire evidence on record in correct perspective and recorded a finding of guilty of the accused for the offence under Section 302 I.P.C. The finding is based on record. There is nothing to substitute other opinion. Under these circumstances, both the points are answered against the accused.

18. In the result, the conviction and sentence recorded against the accused for the offence under Section 302 I.P.C. by the trial

¹ 2009(2) ALT (Crl.) 282 (SC) = 2009(4) SCJ 460

Court in Sessions Case No.301 of 2009, *vide* judgment dated 29.10.2010, is confirmed and the appeal is dismissed.

19. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall also stand dismissed.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 06-10-2017
Dsh/siva



HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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CRIMINAL APPEAL No.306 OF 2011

(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 06-10-2017

DSH