

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

+ CRIMINAL APPEAL No. 1607 of 2010

%14.03.2017

#Katineni Sreenivasulu

.. Appellant

Vs.

\$ The State of Andhra Pradesh
Rep. by its Public Prosecutor

.. Respondent

! Counsel for the Appellant: Sri S. Ram Sharma

Counsel for Respondent: Public Prosecutor

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>Head Note:

? Cases referred:

1954 AIR (SC) 51



HON' BLE SRI JUSTICE SURESH KUMAR KAIT
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CrI.A. No. 1607 of 2010

JUDGMENT:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This Criminal Appeal is preferred against the judgment dated 29.09.2010 delivered in S.C.No. 111 of 2009 by V Additional District and Sessions Judge, Rayachoty, whereby the appellant - accused was found guilty of the offence punishable under Section 302 IPC, Section 25(1B)(a) and Section 27(1) of Arms Act, 1959. Accordingly, the appellant was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of six months for the offence punishable under Section 302 IPC; convicted and sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of three months for the offence punishable under Section 25(1B)(a) of Arms Act, 1959 and further convicted and sentenced to undergo imprisonment for a period of five years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of six months for the offence punishable under Section 27(1) of Arms Act, 1959

2) In brief, case of the prosecution is that the deceased – K.Hari Prasad and the appellant are real brothers being the sons of one K.Kadiraiah @ Kadirappa through his third wife – Lakshmamma. There were verbal altercations between Atchamma, who is the first wife of Kadirappa and the third wife of Kadirappa. Due to which, Lakshmamma, the mother of the appellant and the deceased, went to her parents house at Narayanavaripalli, H/ o. Gandlapenta Mandal, Anantapur District and was residing there. About five years prior to 12.04.2008, the deceased married Radhamma, the daughter of one Y.C. Reddamma at Katinenivandlapalli village. Since the marriage, the deceased – Hariprasad was insisting on his father to bequeath the property which was acquired by his father through his first wife – Atchamma. But the appellant bluntly refused to give share to the deceased since he was in possession and enjoyment of the land. In that connection, panchayat was held by the village elders, wherein the matter was settled to the effect that 1/3rd share of the property must be given to the deceased, but since two years, both the deceased and the appellant were quarrelling in connection with the share of their properties. Therefore, they were inimical to each other. About six months prior to the commission of the alleged offence, the appellant put

bricks kiln in the disputed land to which the deceased and his wife did not raise any objection. While so, on 11.04.2008, the deceased and his wife - Radhamma cut the firewood in the disputed land, thereupon, the appellant bore grudge against the deceased. As per his previous plan, the appellant, with *mala fide* intention to do away with the life of his brother – Hari Prasad, loaded S.B.M.L. gun, concealed it in the nearby bushes, went to his brother's house and picked up quarrel with him on the ground that his brother cut firewood in the disputed land. Verbal altercations followed between them. In order to fulfil his *mala fide* intention, the appellant made the deceased come to the village elders and took him towards the scene of offence and picked up the loaded S.B.M.L. gun and opened fire on the deceased on his left neck at upper portion of left collar bone, as a result, his brother fell down sustaining pellet injuries and died instantaneously.

3) Meanwhile, Krishnaiah, who is the maternal uncle of the wife of the deceased and one of the witnesses to the occurrence, rushed to the house of the complainant to inform about the occurrence, at which time, the wife and the mother-in-law of the deceased came across him on hearing the sound of opening of fire arms, and then, Krishnaiah informed them about the incident. Immediately, all of them

rushed towards the spot where the deceased died in a pool of blood with pellet injuries. By that time the appellant left the place with the gun challenging that none would object him now and absconded. On the complaint lodged by PW1, the wife of the deceased, a case in Cr.No. 84 of 2008 for the offences punishable under Section 302 IPC and Sections 25 and 27 of Arms Act, was registered by the Inspector of Police, Rayachoty Police Station. After completion of investigation, the police filed charge sheet.

4) Sri S Ram Sharma, learned counsel for the appellant, submits that it is not in dispute that the appellant and the deceased are real brothers. PW2, who is the father of PW1, had bad eye on the appellant's land and falsely implicated him in the case just to grab his land. He further submits that based on Ex.P1 – report of PW1, F.I.R. was registered, however, copy of the same was not sent to the Magistrate, as such, it creates doubt on the prosecution story. He further submits that as stated by PW1 in the cross-examination, Ex.P1 was signed by her on 03.03.2010, whereas, F.I.R. was registered on 12.04.2008.

5) The learned counsel for the appellant further submits that the weapon of offence marked as M.O.1 could not be identified whether it was a licensed weapon or

company made or country made weapon. PW9, scientific officer, deposed that it was a company made gun (U.K. company), whereas, PW10 – Investigation Officer, deposed that it was country made. However, he voluntarily says that since he is not a ballistic expert he has no knowledge whether M.O.1 is a country made or company made gun.

6) The learned counsel for the appellant has further argued that the deceased was a police informer and living in naxalite area, therefore, he might have been killed by someone else. He further submits that the mother of the deceased, who is a material witness, and in whose presence naxalites took away the deceased, was deliberately not examined. Had the prosecution examined her, truth would have come out.

7) To strengthen his argument on the issue of non-examination of material witness, he relied upon a judgment rendered by the Supreme Court of India in the case of *Habeeb Mohammad v. State of Hyderabad*¹ wherein it is held that as per Section 252 Cr.P.C. and Section 114 of Indian Evidence Act, 1872, if the material witness is not examined, it casts a serious reflection on the fairness of the trial. Thus, he argued, the Court may draw an adverse inference and extend

¹ 1954 AIR (SC) 51

benefit of doubt to the appellant. He further submits that ballistic expert has not been examined, and thereby, it is not established whether the appellant fired with the fire arm i.e. M.O.1 - country S.B.M.L. gun or not. It is also not clear that the weapon of the offence was triggered by the appellant. Thus, the appellant is innocent and falsely implicated, as such, the appeal may be allowed.

8) On the other hand, Sri Posani Venkateswarlu, learned Public Prosecutor appearing for the respondent – State, submits that as per the evidence of PW9 – Scientific Officer, he has opined in Ex.P5 - F.S.L. report dated 27.06.2008 as under:

Item 1 is a company made SBML gun

Item 1 was fired previously. However, the exact date when it was last fired cannot be ascertained.

Item 1 is in working order.

The hole on the skin piece item 2 could have been caused by the entry of any firearm projectiles, such as item 3.

Item 3, the stone/ glass piece could have been discharged on firing from item 1

Item 1 comes under the purview of Arms Act.

9) He further submits that as per Item 3 above, the stone / glass piece, could have been discharged on firing from item 1 i.e. weapon of the offence. He submits that even it is established from Ex.P3 – post-mortem certificate that the appellant used the weapon. He submits that PWs.2 and 3 are

eye-witnesses and PW4 is a circumstantial witness who heard fire noise, and thus, all the witnesses supported the prosecution case and consequently the appellant was found guilty of the charged offences and accordingly convicted and sentenced as stated supra.

10) We have heard the learned counsel for both the parties as above.

11) The point for determination is whether the conviction and sentence passed by the trial Court are factually and legally sustainable?

12) As per the prosecution case, there was land dispute between the appellant and the deceased. On 11.04.2008, when the deceased cut some firewood in the disputed land, dispute arose between them. Consequently, the appellant bore grudge against the deceased and planned to kill him. In the process, he acquired one loaded S.B.M.L. gun, concealed it in the nearby bushes, went to the house of the deceased and picked up quarrel with him. On 12.04.2008, at about 07:00 a.m., at the request of the appellant, when the deceased came out to attend before elders for panchayat, the appellant picked up the loaded gun and opened fire on him on his left side of the neck, upper portion of left color bone, as a result of, the deceased fell down sustaining pellet

injuries and died instantaneously. On seeing the same, K. Svaiah rushed towards the house of the wife of the deceased. Meanwhile, the wife of the deceased and mother-in-law of the deceased came across him. Then, K. Svaiah informed them about the appellant opening fire arm against the deceased. Immediately, the wife and mother-in-law of the deceased rushed to the spot, by which time, the appellant left the scene challenging that none would object him now and absconded.

a) During the course of the investigation, inquest and autopsy were conducted over the dead body of the deceased. Subsequently, the appellant was arrested on 14.04.2008 in the presence of panchayatdars at 04:00 p.m. at Diguvagottiveedu cross-roads. The appellant confessed the offence in the presence of panchayatdars which was reduced into writing under a panchanama. The appellant led the police and the panchayatdars to Koraigutta and picked up a country made gun from the concealed place and produced it before the police. The S.B.M.L. gun was seized under cover of mahazarnama at 05:30 p.m. on 14.04.2008 duly attested by the panchayatdars.

13) The case of the prosecution rests on the direct evidence of PWs.2 and 3. They deposed that they have

witnessed the appellant opening fire on the deceased with S.B.M.L. gun from a short range and caused the death of the deceased. They stated that when they were in their respective fields for watering their lands situated between Venkatapuram and Katinenivandlapalli villages on the date of the offence around 07:00 a.m., the deceased and the appellant were altercating each other forcibly on the road near their fields. Then, PWs.2 and 3 and one Balagangadhar questioned as to why they were quarrelling and suggested them to settle their disputes amicably by approaching the elders. Meanwhile, the appellant picked up a loaded S.B.M.L. gun from the nearby bushes and shot dead Hariprasad. The gun shot hit below the throat on the left side near collar bone of the deceased, due to which, the deceased fell down on the road side and died on the spot. PW3 stated in his evidence that when the deceased fell down in the wayside canal, he rushed to Katinenivandlapalli and informed the villagers about the incident. Then, PW2 rushed to the village where the house of the mother-in-law of the deceased is located. He stated in his deposition that on witnessing the incident, he rushed out of fear to Kondakindapalli village where PW1 was residing in the house of her mother. When he informed PW1 about the incident, PW1 and her mother rushed to the scene

of offence. The appellant warned PW1 that nobody should come in his way and left towards Venkatapuram village. The evidence of PW2 is thus corroborating with the evidence of PWs.1 and 4 who are the wife and mother-in-law of the deceased. PW1 in her evidence has clearly stated that the appellant came to her mother's house on that day at about 07:00 A.M. and questioned the deceased as to why he cut the trees in the disputed land. When her husband informed the appellant that he (appellant) himself first cut the trees, the appellant threatened her husband and asked him to come to the elders for mediation. Thereafter, her husband followed the appellant to the village noted above to attend before the mediators. Five minutes thereafter, she heard some gun-shot sound and immediately she and her mother - PW4 came out from the house. By that time, PW2 came and informed her that the appellant shot dead her husband with a gun. When they were running to the scene of offence, the appellant came opposite to them by holding a gun and proclaimed that he shot dead her husband and would kill who comes in his way.

14) PW4 – mother of PW1, deposed that five minutes after the appellant took the deceased along with him, they heard a gun-shot sound. When she and PW1 came out from

the house, PW2 came opposite to them by running and informed them that the appellant shot dead the deceased. When she and PW1 rushed to the place, the appellant came opposite to them by holding a gun in his hand and stated that he shot dead the deceased and who are there to come in his way and ran away.

15) As discussed hereinabove, based on the evidence of PWs.1 to 4, the prosecution has established the guilt of the appellant beyond all reasonable doubt for the offence punishable under Section 302 IPC. Based on the evidence of PWs.1 to 4, PW7 – panchayatdar and PW10 – investigating officer, it is established that the appellant was in possession of fire arm which was used for murdering the deceased – victim. Their evidence could not be shattered in the cross-examination.

16) As per Section 3(1) of Arms Act, “no person shall acquire, have in his possession, or carry any fire-arm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of Arms Act, 1959 and the Rules made thereunder. As per Section 25(1B)(a) of Arms Act, whoever acquires, or has in his possession or carries any fire arm or ammunition in contravention of Section 3 of Arms Act, shall be punishable with imprisonment for a term which

shall not be less than one year, but which may extend to 3 years and shall also liable to fine.

17) In view of the evidence of PWs.1 to 4, 8 and 9, it is established that the appellant has committed the offence punishable under Section 25(1-B)(a) of Arms Act, 1959. Since he was in possession of M.O.1, which is fire arm, at the time of commission of the offence, he produced the same to PW10 in the presence of PW7 and one other panchayatdar under Ex.P7 –seizure mahazarnama dated 14.04.2008.

18) As per the evidence of PW9 – scientific officer (ballistic expert), M.O.1 is company made S.B.M.L. gun which was fired previously and it is in working order. The hole on the piece of the skin sent to him could have been caused by the entry of any fire arm projectiles. PW9 also deposed that stone/ glass pieces sent to him could have been discharged on firing from M.O.1. He also deposed that M.O.1 comes under the purview of Arms Act. However, PW9 has not stated that M.O.1 is within the purview of prohibited arms covered under Section 7 of Arms Act.

19) As per Section 2(1)(i), if pressure is applied on the trigger of the fire arm, missile continues to be discharged until pressure removed from the trigger so designed. The fire arm comes under the purview of prohibited arms. But, in the

present case, M.O.1 was designed in such a manner that pressure has to be applied on the trigger of M.O.1 over and over again for release of loaded gun powder for each fire. Thereafter, M.O.1 in this case cannot be said to be falling within the definition of prohibited arms. Since M.O.1 is not satisfied, the definition of prohibited arms as per Section 2(1)(i) of Arms Act will not fall under the purview of Section 7 of Arms Act.

20) It is pertinent to mention here that to prosecute any person for any offence punishable under Sections 25 and 27 of Arms Act, there must be sanction from the Central Government. In this case, PW8 – Junior Assistant, Collectorate Office, Kadapa deposited that on 28.08.2008, at the request of the Superintendent of Police, Kadapa, the District Collector-cum-District Magistrate, Kadapa, after perusing the record and considering the opinion of the Additional Public Prosecutor, accorded sanction to prosecute the appellant. Consequently, sanction order dated 05.10.2008 was issued by the then District Collector. So, there is official sanction from the Central Government to prosecute the case.

21) The issue raised by the learned counsel for the appellant is that ballistic expert is not examined on the specific lines. Moreover, the mother of the deceased is not

examined, if examined, she would have disclosed the truth. In the present case, PWs.2 and 3 are the eye-witnesses and PW4 is a witness who heard the fire arm. These witnesses have not only seen the appellant, but the appellant also threatened them that nobody should come in his way and he was found to be in possession of the fire arm in his hand at the time of commission of offence. In such a situation, these two witnesses are sufficient apart from PW9, who established that the weapon was recovered at the instance of the appellant. The appellant, it appears, has not taken steps to examine the mother of the deceased to establish his defence plea. Hence, he cannot raise that argument.

22) The learned counsel for the appellant has contended that as per the prosecution, the F.I.R. was registered on the report given by PW1, however PW1, in cross-examination stated that one week before she adduced her evidence, she signed on Ex.P1 –report of PW1.

23) It is true that the report of PW1 given to the police under Ex.P1 was not received by the Magistrate along with the original F.I.R. under Ex.P11 and Ex.P1 was received by the trial Court only after commencement of trial on 17.03.2010, whereas, PW10 - investigation officer, deposed that Ex.P1 was

forwarded to the Court along with the original F.I.R. He further deposed that he was under the impression that Ex.P1 was also sent along with F.I.R. under Ex.P11 as usual. But, Ex.P1 was not sent to the committal Court along with the F.I.R.

24) We note that when PW1 was adducing her evidence in chief examination, on 03.03.2010, the trial Court found that the report submitted to the police by PW1 was not on record, as such, the trial Court deferred her examination to some other day. Subsequently, the trial Court received the original report/ statement of PW1 dated 12.04.2008 from the Inspector of Police, Rayachoty Police Station on 17.03.2010 along with photocopy of printed F.I.R. with covering letter stating that after verification, they found the original report of PW1 in the case bundle at the office of the Superintendent of Police. The original F.I.R. was marked as Ex.P11. The contents of Ex.P1 were incorporated in the F.I.R. under Ex.P11. Ex.P1 was in fact registered as F.I.R. under Ex.P11. The contents of Ex.P1 – report are tallying with the contents of the report as noted in the F.I.R. under Ex.P11. The signature of PW1 was also found on Ex.P11 –the original F.I.R. If at all no report was lodged by PW1 as on the date of Ex.P1, the contents of F.I.R under Ex.P11 pertaining to the report

lodged by PW1 would not have been tallied with the contents of Ex.P1.

25) In view of the clinching evidence of PWs.2 and 3 and other material witnesses, who have corroborated the documentary evidence, we are of the view that the prosecution has successfully brought home the guilt of the appellant. Hence, we find no illegality or perversity in the findings recorded by the trial Court, and the judgment under appeal is perfectly justified and does not warrant any interference by this Court.

26) Hence, the Criminal Appeal is devoid of merit and the same is accordingly dismissed.

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

28) Before parting, we hereby place on record our appreciation to the learned Legal Aid counsel, Sri S. Ram Sharma who ably rendered assistance in the present case.

14.03.2017

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

Note: L.R. Copy to be marked
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