

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No. 1615 OF 2010:

JUDGMENT: (oral)

(Per HON'BLE SRI JUSTICE SURESH KUMAR KAIT)

Vide present Criminal Appeal, the appellant/accused challenges the judgment dated 04.06.2010 passed in SC.No.759 of 2009 by the learned First Additional Sessions Judge, Guntur, whereby the appellant/accused was found guilty for the offences punishable under Sections 302 and 307 IPC and accordingly he was convicted, and sentenced to undergo life imprisonment for the offence punishable under Section 302 IPC and to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for one week and, further, the appellant/accused was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.100/- in default to undergo simple imprisonment for one week for the offence punishable under Section 307 IPC. The benefit under Section 428 Cr.P.C. has been given to the appellant/accused.

The case of prosecution is that the appellant/accused was an auto driver. During October, 2008, he was arrested in connection with Crime No. 78 of 2008 for an offence punishable under Section 394 IPC of Nagarampalem Crime Police Station, Guntur. One Bandaru Nagabhushanam, the deceased, is the maternal grand father of the appellant/accused. He was a real estate broker. The deceased had six daughters and two sons.

P.W.1 is the only healthy son while the other son was not maintaining sound mental health. The appellant/accused is the son of the fourth daughter of the deceased. The deceased owns five portioned tiled house in Srinivasaraopeta, Guntur. He was living with P.W.4—Alakunta Lakshmi and her daughter in a portion of that house. The appellant/accused with his mother and wife was residing in one of the portions of the house of the deceased while P.W.1 with his family was residing in another portion of the same house. Two portions were remaining vacant. The accused was addicted to bad vices. Therefore the deceased and P.W.1 did not pay attention on the appellant/accused when he (appellant/accused) was arrested in connection with crime registered on the file of Police station, Nagarampalem and he was in District Jail, Guntur. The appellant/accused sent a word to the deceased to secure bail for him, but the deceased did not respond. So the appellant/accused bore grudge against the deceased. While so, the deceased bequeathed 100 square yards of site situate in Srinivasaraothota wherein house is situate to PW.1, retaining remaining land for himself. The appellant/accused having come to know the same, demanded the deceased for a share in the property. However, the deceased and P.W.1 opposed the same. So the appellant/accused was contemplating to do away with P.W.1 and the deceased so that he could get the property and was waiting for an opportunity.

Further case of the prosecution is that on 08.03.2009, the appellant/accused came to his house in a drunken state at about

2.30 pm and picked up quarrel with P.W.1 in connection with the property. Then an altercation took place between them. The appellant/accused took an iron kitchen knife available in the house and attempted on the life of P.W.1 by hacking on his neck. In the said attack, P.W.1 received bleeding injury and when raised alarm, the deceased came to his rescue. The appellant/accused hacked the deceased indiscriminately on his neck and head with iron kitchen knife and fled away. The appellant/accused went to the guard room of the old mirchi yard, threw away the blood stained clothes in the bushes and left Guntur. Meanwhile, P.W.1 was shifted to the Government General Hospital, Guntur in 108 ambulance. Thereafter, statement of P.W.1 was recorded by the police. Accordingly P.W.12 registered a case in Crime No. 61 of 2009 while P.W.10 took up investigation.

It is the further case of prosecution that during the course of investigation, the scene of offence was inspected and observation report was drafted and prepared in the presence of P.W.5 and another. The blood stained iron kitchen knife used for commission of offence was seized from the scene of offence. The scene of offence was got photographed by P.W.8 and a rough sketch was prepared at the scene of offence. Inquest was conducted over the body of the deceased in the presence of P.W.6 and another. The body of the deceased was sent for postmortem examination. P.W.7 who conducted postmortem over the body of the deceased opined that the deceased died due to multiple chop

injuries. P.W.1 was examined by P.W.9 who reported that the injury sustained by him was simple in nature.

On 12.03.2009, the appellant/accused was arrested in the presence of PW.5 and others. On questioning, he made a confession and in pursuance of his confession, his blood stained clothes were seized from the bushes near the guard room of old mirchi yard and after completion of investigation, a charge sheet under the above sections of law was filed before the Special Mobile Magistrate, Guntur.

The learned trial judge framed the charges against the appellant/accused for the offences punishable under Sections 307 and 302 IPC, read over and explained to the accused in Telugu. The appellant/accused denied the charges, pleaded not guilty and claimed to be tried.

During trial, P.W.1 to P.W.12 were examined and Exs.P.1 to P.14 were marked and MOs 1 to 6 were exhibited on behalf of Prosecution. No evidence was adduced on behalf of accused. The trial Court found him guilty and accordingly convicted and sentenced him as stated supra.

Learned Counsel appearing on behalf of the appellant/accused submits that even if the prosecution case is believed, there was no intention for the appellant/accused to kill the deceased, but he only wanted to cause injuries to P.W.1,

however due to the circumstances prevailed at that point of time, he attacked the deceased who succumbed to injuries.

Learned Counsel further submits that the deceased was aged about 70 years. The appellant/accused has no intention to kill the deceased and his intention was only to cause injuries and therefore, the learned trial judge ought to have convicted the appellant for the offence punishable under Section 304 Part II IPC instead of convicting under Sections 302 and 307 IPC.



On the other hand, learned Public Prosecutor appearing on behalf of the respondent-State submits that appellant/accused came with an intention to kill the deceased, but as the son of the deceased, i.e. P.W.1 was sleeping on the cot by the side of deceased, he hacked P.W.1 at first and then the deceased indiscriminately and as per the post mortem report (Ex.P.8) the deceased suffered seven injuries on the vital parts of the body which are sufficient to cause death of the deceased, consequently the deceased succumbed to injuries, which all would reveal the intention and knowledge on the part of accused to commit murder. He further submits that the appellant/accused was arrested and thereafter he made confession statement, pursuant to which, blood stained cloths were recovered at his instance from the bushes near the guard room of old mirchi yard.

Learned Public Prosecutor further submits that P.W.1 was the victim who witnessed the crime and he also received injuries

during the course of commission of offence by the appellant/accused. The P.W.9--doctor opined that P.W.1 received simple injuries and recorded in the Wound Certificate, Ex.P.10 that Trachea of P.W.1 was exposed. It would reveal the intention of accused to kill PW.1.

Learned Public Prosecutor would argue that P.W.1 is a star witness and his evidence clinched the offence. He relied on the decision of the Supreme Court in BRAHM SWAROOP Vs STATE OF UTTER PRADESH {(2011) 6 SCC 288} wherein it is held that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailants in order to falsely implicate some one.

The point for determination is whether the judgment of trial Court is factually and legally sustainable ?

After filing the charge sheet, the trial Court framed the charges against the appellant/accused and set the case for trial. P.W.1 deposed that on 8.3.2009 at about 01.20 PM after noon, he slept after returning from church. The appellant/accused came and hacked him on his throat with 'kathipeta'. His father who was sleeping besides him woke up and asked the accused, who also hacked his father indiscriminately, due to which, his father received grievous injuries.

P.W.1 further deposed that the deceased executed 100 yards of house in his favour, due to which, the accused bore grudge for not executing 25 yards of house in his favour. And on that issue, the accused used to say that if both (P.W.1 and deceased) are died, the property would devolve on him; accordingly he attacked him and his father, deceased. In his cross examination, a suggestion was put to him that there were disputes between him (P.W.1) and his father regarding the property, so he (P.W.1) murdered his father, but however, the appellant/accused was falsely implicated in the case. P.W.1 denied the said suggestion. Except giving such suggestion, the accused could not shatter the evidence of PW.1 which amply demonstrates how he perpetrated the crime.

P.W.2 is a formal witness who deposed that he found P.W.1 with cut injury on his throat and the neighbours told that the relation of the deceased caused the murder of deceased. He did not support prosecution case.

P.W.3 is also a neighbour of the deceased. As P.Ws.2 and 3 did not support the case of prosecution, they were declared hostile.

P.W.4--Alakunta Lakshmi, daughter of the deceased deposed that his father died on 8.3.2009. In the after noon, when she went to cooking work, her daughter-in-law telephoned her that the appellant/accused murdered her father, i.e. deceased. It was further informed that P.W.1 also sustained injuries. She further

deposed that the deceased executed 100 yards to P.W.1 and 25 yards each to his sisters. On that pretext, the accused quarreled with the deceased for executing 100 yards in favour of P.W.1. Thus the appellant/accused bore grudge to do away the life of the deceased. In her cross examination, nothing was elicited to help the accused.

P.W.5 is Nadikuri Dharmarao, who was working as Village Revenue Officer (VRO) of Gunter town since 2007. He acted as mediator in the case. He deposed that on 9.3.2009 at about 7.00 am, he went to Nagarampalem police station as called by C.I. of police and from there, they went to scene of offence and prepared observation report. Police seized M.O.1-- Kitchen knife from the place of offence. Police also seized blood stained earth and controlled earth vide M.Os.3 and 4 from the scene of offence under Ex.P.4--observation report. Another mediator also signed Ex.P.4.

P.W.6--S.K.Nagoor who also acted as mediator. He deposed that grand son of the deceased murdered the deceased due to property disputes. Ex.P.7 is the inquest report.

P.W.7--Dr. Madhusudana Reddy who conducted post mortem on the body of the deceased and found the following injuries.

“ 1. Chapped injury, transverse in direction, measuring 17 x 5 cm brain deep present on posterior aspect of occipital area of scalp. On o/s the injury enters into the brain matter after cutting the skull in the corresponding area.

2. An incised injury, tranverse in direction measuring 16x2x1 cm present 2 cm below the injury No.1.

3. Chop wound, transverse in direction extending from mid posterior aspect of scalp up to 4 cm lateril to rightangle of mouth. On c/s Jugular veins cut are found along with neck muscles.

4. Two incise injuries present over lateral aspect of right shoulders.

5. Chap wound, dutting index, middle ring and little finger over palmar aspect of right hand.

6. Two incised wounds of size 17 x.2.5 x 0.25 cm present on right lateral surface of abdomen.

7. Incised injury of size 7 x 1 x 1 cm present over anterior aspect of left wrist joint.”

P.W.7, based on the above report, deposed that the death of the deceased was approximately 12 to 24 hours prior to post mortem examination. Cause of death, to the best of his knowledge and belief, was due to multiple chap wounds. Ex.P.8 is the post mortem certificate. All the injuries are possible with the weapon like M.O.1

It is stated by the learned Counsel for the appellant/accused that the Doctor-P.W.7 was not sure that all the injuries may not be caused with the weapon like M.O.1 which was recovered from the scene of offence. However, in view of emphatic evidence of P.W.1 that the accused had hacked him and his father with Kathipeeta (Kitchen knife) i.e. M.O.2, the opinion of P.W.7 that all injuries may not be caused with MO.1, cannot be given weight.

P.W.9-Dr.Sk.Masthan Vali who examined injured P.W.1 found bleeding lacerated wound over the neck of P.W.1 measuring 6 x 3 cm. He deposed that Trachea was exposed and opined that injury suffered by P.W.1 was simple, accordingly issued Ex.P.10--Wound Certificate. He deposed that injury might be caused with the weapon like M.O1. In his cross examination, he admitted that there is possibility of injury as in Ex.P.10 if a person falls on sharp and rough edge stone. He further admitted that the injury may be caused with any weapon like M.O.1

P.W.10-K.Malyadri was working as CI of police, Vakadu circle, Nellore District deposed that on 8.3.2009 at about 17.10 hours on information given by Sub Inspector of police, Nagarampalem, he reached the Guntur at about 18.00 hours and took the copy of FIR from the SI of police, Nagarampalem in Cr.No.61 of 2009, Ex.P.11. He examined P.W.1 and recorded his statement in Government General Hospital, Guntur. On 9.3.2009 at about 7.00 am, he visited the scene of offence and inspected the same in the presence of P.W.5 and P.Sudhakararao. The actual scene of offence is Varandah of the house of deceased. He prepared a scene observation report under Ex.P.4 in the presence of mediators and seized M.Os.1, 3 and 4. He prepared rough sketch of scene of offence under Ex.P.12. He secured the panchayatdars, Shaik Baji, P.W.6 and Vemula Narasimharao. He examined Alakunta Laxmi, Pravallika, Bathula Parvathi, Bathula Sreenu, Prasad and Bandaru Venkatakumar and recorded their statements. He conducted inquest over the dead body of the

deceased, which is Ex.P.7 in the presence of panchayatdars at about 0930 hours to 1230 hours. The panchayatdars opined that the accused indiscriminately hacked the deceased with kitchen knife on neck and head resulting instant death of the deceased. He secured the presence of P.W.2, Sd.Mahaboob Bhasha, Sk. Muneer and P.W.8 and recorded their statements.

He further deposed that P.Ws.2 and 3 stated before him as in Exs.P.2 and P3. Before examining the witnesses, he sent the dead body of the deceased for post mortem examination to Government General Hospital, Guntur. On 12.3.2009 at 6.30 hours he arrested the appellant at Narasaraopet bus stand in the presence of P.W.5 and P.Sudhakararao and drafted mediator report in their presence. On the confession given by the appellant/accused, he along with mediators, accused and staff reached the old mirchi yard guard room, where the accused produced M.Os.5 and 6. Accordingly he seized M.Os.5 and 6 under a mahazar in the presence of mediators duly attested by them. On 31.3.2009 he sent the seized properties for chemical analysis through SDPO, Guntur. Ex.P.13 is the Regional Forensic Science Laboratory report. After that, investigation was continued by his successor. On 9.3.2009 he received Ex.P.8 from the Professor, Government General Hospital, Guntur.

He was cross examined at length, however, nothing could be elicited which would help the defence of appellant.

P.W.11 is the subsequent Investigating Officer who filed charge sheet before the Court. He obtained the case record from his predecessor and also obtained wound certificate of P.W.1, vide Ex.P.13 and thereafter filed charge sheet on 25.6.2009 after receiving the analysis report.

P.W.12 was working as Inspector of Police, Guntur ACB. He deposed that on 8.3.2009 he received hospital intimation-- Ex.P.14 from Government General Hospital, Guntur. He went there and recorded the statement of P.W.1 under Ex.P.1. Accordingly, registered Ex.P.1 as a case in Cr.No.61 of 2009 and issued Ex.P.11--FIR.

Thus on a conspectus of evidence on record, P.W.1 has proved the presence of appellant at the scene of offence. He also proved that the appellant/accused caused injury to him (P.W.1) at first and later fatal injuries to his father, the deceased. P.W.5 has proved that the police in the presence of mediator and accused recovered the blood stained cloths from the thorny buses near old mirchi yard at the instance of the appellant/accused. P.W.7 who conducted post mortem on the dead body of the deceased on 9.3.2009 found injuries on the vital parts of the deceased and opined that death of the deceased was due to multiple chap wounds. P.W.9 who examined P.W.1 on 8.3.2009 issued Ex.P.10 wound certificate and deposed that trachea of P.W.1 was exposed and P.W.1 suffered lacerated wound over his neck.

It is argued by learned Counsel for the appellant/accused that the case falls under Section 304 Part I IPC and not under Section 302 IPC. However, he had caused seven fatal injuries to the deceased, which are sufficient to cause death. Had he not having intention to kill the deceased and had only intention to cause injury to P.W.1, there was no reason for the appellant/accused to cause fatal injuries indiscriminately on the deceased who was aged about 70 years.

In view of the above discussion, we are of the considered opinion that there is no perversity or illegality in the judgment dated 4.6.2010 in SC No. 759 of 2009 passed by the learned First Additional Sessions Judge, Guntur. We therefore confirm the conviction and sentence passed by the trial Court and consequently dismiss the Criminal Appeal.

Miscellaneous petitions pending consideration if any in the Criminal Appeal shall stand closed in consequence.

JUSTICE SURESH KUMAR KAIT

JUSTICE U.DURGA PRASAD RAO

DATED 15th FEBRUARY, 2017.
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