

THE HONOURABLE SRI JUSTICE RAJA ELANGO
&
THE HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL APPEAL No.316 of 2011

JUDGMENT: (Per Hon'ble Sri Justice P. Keshava Rao)

This Criminal Appeal is filed by the appellant-accused No.1 aggrieved over the conviction and sentence imposed by the VII Additional Metropolitan Sessions Judge, Hyderabad, vide judgment dated 9.2.2009 in SC.No.328 of 2008.

2. The case of the prosecution in brief is as follows:

(i) The appellant-A.1 borrowed a sum of Rs. 60,000/- from the deceased-Devineni Kishore. In that connection, the deceased along with PW.4-B. Venkata Naresh Babu went to the appellant-A.1, who was residing in flat No.401 Vahini towers, Kukkatapally Housing Board, demanded to repay the said amount. There ensued some heated arguments between A.1 and the deceased. According to the prosecution, this is the motive for the accused to eliminate the deceased.

(ii) While matter stood thus, on 20.10.2007, the deceased along with PW.2-Narender Kumar and PW.11- Naga Suresh consumed liquor at Ameerpet near the office of P.W.1- Devineni Papaiah, who was the father of the deceased, and thereafter, they started on 2 two wheelers to give send off to the deceased at Ameerpet Bus stand. When they reached Image Hospital at Ameerpet, A.1 and A.2 stopped their motorcycles. The deceased got down from the motorcycle and went along with A.1 and A.2 to

some distance. Then, A.1 stabbed the deceased while A.2 caught hold of the deceased. Later they absconded from the scene of offence. The deceased was shifted to Image hospital, where the doctor noticed that the deceased was brought dead. The same was intimated to the police. On the same night at about 1:30 a.m. PW.1-father of the deceased lodged Ex.P.1-complaint, which was registered as a case in Crime No.753 of 2007 on the file of Panjagutta Police Station, for the offence under Section 302 IPC. The Inspector of Police, Panjagutta took up investigation, visited the scene of offence and observed in the presence of panch witnesses. The Inspector also examined the eyewitnesses and recorded their statements. The inquest was also conducted over the deadbody of the deceased in the presence of panchas. On 5.11.2007, A.1 was taken into custody and his confession was recorded in the presence of panchas and in pursuance of his disclosure statement M.O.1-knife, which was used in commission of the offence was seized. A.2 surrendered before the court below and his custody was given to the police and after recording his confessional statement in the presence of panchas, again he was sent to judicial custody. The Test Identification parade of A.1 and A.2 was also conducted by the Magistrate. After completion of the investigation, the Inspector of police laid charge sheet against the accused.

3. The learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, took the case on file and committed the case to the Court of Session. On such committal, the learned Sessions Judge registered it as SC.No.328 of 2008 and made over it to the learned VII Additional Metropolitan Sessions Judge, Hyderabad.

4. The trial Court framed a charge under Section 302 IPC against A1 and a charge under Section 302 r/w 34 IPC against A2, read over and explained to them, for which they pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws.1 to 18 were examined and Exs.P1 to P16 and M.Os.1 to 3 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

6. On appreciation of oral and documentary evidence, the trial Court found the appellant-A1 alone guilty for the offence under Section 302 IPC and convicted and sentenced him to undergo life imprisonment. A2 was acquitted for the charge leveled against him. Aggrieved by the conviction and sentence imposed by the trial Court against A1, the present appeal has been preferred.

7. The learned Counsel for the appellant submitted that P.Ws.2 and 11, who are alleged eyewitnesses to the occurrence, are the interested witnesses and as per the case of the prosecution itself, P.Ws.2 and 11 were in drunken state at the time of occurrence and therefore, their evidence cannot be relied upon. He further submitted that P.W.3, who is cited as an independent eyewitness to the occurrence did not support the case of the prosecution. Therefore, it is not justified in relying upon the interested and inconsistent evidence of P.Ws.2 and 11.

8. Learned Additional Public Prosecutor submitted that the trial Court has appreciated the evidence in a proper perspective and that the judgment of the trial Court does not warrant any interference by this Court.

9. Now, the point that arises for consideration in this appeal is:
“Whether the conviction and sentence imposed by the trial Court against the appellant warrants any interference by this Court?”

10. The medical evidence establishes that the death of the deceased is homicidal.

11. Now, it has to be examined as to whether there was any motive on the part of the appellant in commission of the offence as alleged by the prosecution, (2) whether the case of the prosecution is supported by the alleged eye witnesses and (3) whether the evidence of the alleged eyewitnesses coupled with the evidence of the Medical officer, establishes the case of the prosecution beyond all reasonable doubt.

12. With regard to the motive for the offence, it is the case of the prosecution that prior to the incident in question, there were disputes between the appellant and the deceased in connection with money transaction. The appellant borrowed the amount from the deceased and when the deceased demanded the appellant to repay the same, the appellant quarreled with the deceased and planned to do away with the life of the deceased and on the date of occurrence, he stabbed the deceased.

13. In this regard, it is the case of the prosecution that when the deceased along with P.W.4 went to the appellant to demand the amount lent by him prior to the incident in question, there was some heated exchange of words between the deceased and the appellant. In this regard, P.W.4 in his chief-examination stated as follows:

“The deceased told him that the person residing in Flat No.401 borrowed Rs.60,000/-from him and he wanted to demand him for return of the said amount. In that regard, the deceased took him to flat No.401. There were some exchange of words between the deceased and the said person, who borrowed the amount. After some time, while P.W.4 and the deceased were returning, again the deceased went to the fourth floor where that flat is located, and P.W.4 followed him and noticed that flat No.401 was locked. While they were returning and also after reaching home there was conversation between the deceased and the said person, who borrowed the amount on mobile. Later, the deceased told him that he was leaving for Vijayawada.

In his cross-examination, P.w.4 stated that he is not personally aware of the money transactions between the deceased and A1 and he had no prior acquaintance with A1 earlier to the date of occurrence. He did not disclose to the police the descriptive particulars of A1 when the police examined him and he identified A1 in the police station.

The evidence of P.W.4 as to the money transaction between the deceased and the appellant is contrary to his statement in his chief-examination. Further, the identification of A1 by P.W.4 in the police station is contrary to the procedure as contemplated under the Evidence Act.

14. Insofar as the motive for the offence is concerned, the evidence of P.w.4 is alone available. He also did not know as to whether there were any money transactions between the

deceased and the appellant prior to the incident in question. If really, P.w.4 and the deceased went to the house of appellant prior to the incident in question twice on the same day and at the same time, for demanding the amount, he should be in a position to depose in his evidence as to the actual verbatim of the words, so as to know the gravity of the words/altercation for drawing any inference with regard to the motive for commission of the offence of this nature.

15. The evidence of P.w.4 is also silent as to the time when he accompanied the deceased to the house of the appellant at Flat No:401 situated at 4th floor of Vahani Towers, Kukatpally. If really, P.w.4 accompanied the deceased to the house of the appellant and at that time, there was wordy altercation between them, it would generally attract the attention of the neighbours either in the 4th floor or in the entire apartment including the Watchman. But, the prosecution has failed to examine any of the neighbours or the watchman of the said apartment. Therefore, the non-examination of the neighbours or the watchman of the apartment, is fatal to the case of the prosecution as to the motive for the offence.

16. Now, it has to be examined as to whether the prosecution is able to prove the guilt of the appellant.

17. In this regard, the prosecution mainly relied on the evidence of P.Ws.2 and 11. P.W.2 and 11 are the close friends of the deceased. As a matter of fact, according to them, they also did not know the appellant prior to the commission of the offence.

18. The evidence on record goes to show that at the time of the incident, the alleged eyewitnesses and the deceased were in drunken state. It is relevant to go through the entire evidence of P.Ws.2 and 11 for consideration.

19. P.W.2 stated that on 20.10.2007 after consuming liquor at Ameerpet near the office of P.W.1, himself, deceased and Naga Suresh started on 2 two wheelers to give send off to the deceased at Bus stand Ameerpet. When they reached Image Hospital, Ameerpet, two persons stopped their motorcycles. The deceased got down from the motorcycle and went along with the said two persons to some distance. One person caught hold of the deceased and another person stabbed the deceased. The deceased was stabbed on his chest twice with a knife. The deceased fell down and on noticing the same, himself and Naga Suresh ran away from the scene of offence; whereas P.W.11 stated that on noticing the incident, himself and P.W.2 rushed to the deceased and shifted him to the Image Hospital.

20. P.W.2 further stated that Test Identification parade was conducted at Chanchalguda Central Prison and he identified the accused in the presence of the Magistrate. Police examined him and recorded his statement. In his cross-examination, he deposed that on the date of occurrence, they consumed moderate quantity of liquor. He had no prior acquaintance with the accused earlier to the date of offence. He is not aware who called on the deceased on mobile while they were consuming liquor. But, this aspect is silent

in the evidence of P.W.11 and the charge sheet. For the first time in the cross examination only, P.W.2 stated that while they were consuming alcohol, the deceased received the phone calls. Therefore, this part of evidence can be said to be an improvement.

21. P.W.2 further stated that the accused took the deceased aside and there was no scope for them to intervene. Within three minutes of taking away the deceased, the deceased was stabbed by A1. But, according to the prosecution, the incident took place at 22.45 near Image Hospital. P.W.2 did not state as to whether there were any lights on, on the road at the time of commission of the offence or whether the darkness was prevailing at that point of time. According to the prosecution, at the time of commission of the offence, the appellant and another accused were present. If that being the case, that too when the appellant and another accused are strangers to the witnesses and when they were alleged to have taken the deceased aside, in the absence of any material as to the lighting at the place of occurrence, it is much difficult to understand as to how either P.W.2 or P.W.11, who were in the state of intoxication, could be able to watch the stabbing by a particular person.

22. P.W.2 further stated that himself and P.W.11 were giving send off to the deceased to go to Vijayawada. P.Ws.2 and 11 stated that at the time of sending off, the deceased consumed alcohol heavily. In this regard, the tenor of the witnesses i.e., P.Ws.2 and 11 as to their giving send off to an heavily intoxicated person-deceased, is quite unnatural.

23. Apart from that, the evidence of P.Ws.2 and 11 is inconsistent with regard to the material aspects. According to them, the offence took place at 10.30 P.M; whereas according to the F.I.R the offence took place at 10.45 P.M. In the first instance, the deceased was alleged to have been brought to the Image Hospital at 11 P.M. P.W.15, the Medical Officer of the Image Hospital stated that according to their records, the deadbody of the deceased was brought to the Hospital at 11 P.M. on 20.10.2007 and Dr. Supriya found a wound on the left side of the Chest and the injury was incised and the age of the injury was one hour. If that being the case, the incident might have been taken place at 10 P.M. Therefore, there are many discrepancies as to the time of occurrence also. In view of the inconsistencies in the evidence of P.Ws.2 and 11, it is not safe to rely on their testimonies.

24. According to the prosecution, the deceased received stab injuries. According to the medical evidence i.e., P.W.12, the Medical Officer who conducted autopsy over body of the deceased, he found three stab injuries and they are clean cut injuries and they can be caused by a double edged weapon. He also opined as under:

“M.O.1 is single edged weapon. If any injuries caused by knife like M.O.1 we can find one side of injuries bruise.”

25. The evidence of two Medical Officers is very inconsistent and at the same time, the evidence of P.W.12 gives rise to a doubt

whether the injuries found on the body of the deceased could be caused by M.O.1.

26. The evidence of Panch witness P.W.9 and the Investigating Officer- P.W.13 is also inconsistent as to the recovery of M.O.1.

27. On the conspectus of the entire evidence on record, it is revealed that there are inconsistencies in the evidence of PWs.2 and 11 who were with the deceased at the time of the alleged incident. That apart, PW-4 who was examined for the purpose of proving the motive has not stated anything with regard to the motive for causing the alleged incident. It is relevant that what all PW-4 stated is that there are heated arguments between the deceased and the accused No.1 and thereafter they have returned. Except this, there is no forthcoming evidence from for any of the prosecution witnesses that there was a motive for the appellant to cause the death of the deceased. As far as PW-3 who is examined as an eyewitness has not supported the case of prosecution. In his statement, except stating that he heard some noise, he did not notice anything. Apart from that he stated that he cannot identify whether the accused are the same persons who were present at the Image Hospital at that relevant point of time. As far as the evidence of PWs.2 and 11 is concerned who were accompanying the deceased, there is inconsistency with reference to the crucial aspect of witnessing the incident, more particularly with regard to the material aspects such as not only the deceased, they were also in an intoxicated condition whereby and whereunder there is any doubt with regard to identification of the

accused. Further, PW-2 in his evidence has categorically stated that after witnessing the alleged incident, they have run away from the scene of offence. However, per contra, PW-11 has stated that on noticing the incident he was shell shocked and went to the deceased. As far as the evidence of PW-12 is concerned, he is a medical officer who conducted an autopsy over the deadbody of the deceased and on his examination, he found three stab injuries which are clean cut injuries and they can be caused by a double edged weapon. However, he has opined that M.O.1 is a single edged weapon, if any injuries caused by knife like M.O.1, one can find one side of the bruise injuries. Admittedly, in the case on hand, the stab injuries are clean cut injuries. In the light of these contradictions in the evidence of material witnesses who were examined by the prosecution to substantiate the guilt of the accused throws any amount of doubt for implicating the accused.

28. As such, in the light of the inconsistencies, a benefit of doubt can be given to the accused. Be that as it may, the court below with great respect failed to appreciate these crucial aspects in proper perspective.

29. In view of the inconsistency in the evidence of the P.Ws.2, 4, 11 and P.Ws.12 and 15, this Court is of the view that the trial Court has failed to consider all these aspects in its proper perspective and as such, the judgment of the trial Court, insofar as the conviction and sentence of the appellant is concerned, warrants interference by this Court and consequently, the conviction and sentence imposed on the appellant are liable to be set aside.

30. In the result, Criminal Appeal No.316 of 2011 is allowed. The conviction and sentence recorded by the trial Court in its judgment, dated 9.2.2009, in Sessions Case No.328 of 2008 on the file of the VII Additional Metropolitan Sessions Judge, Hyderabad against the appellant/sole accused for the offence punishable under Section 302 I.P.C are set aside and he is, accordingly, acquitted of the said offence. The appellant/sole accused shall be released forthwith, if he is not required in any other case.

Date:21.9.2017
Nn/ccm



JUSTICE RAJA ELANGO

JUSTICE P. KESHAVA RAO

THE HONOURABLE SRI JUSTICE RAJA ELANGO
&
THE HONOURABLE SRI JUSTICE P. KESHA VA RAO



CRIMINAL APPEAL No.316 of 2011

(Judgment of the Bench delivered by
Hon'ble Sri Justice P. Keshava Rao)

Date:21.09.2017

Nn/ccm