

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

**AND**

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL APPEAL No.1190 OF 2013**

**JUDGMENT:** *(per Hon'ble Sri Justice A.V.Sesha Sai)*

Heard learned counsel for the appellant and the learned Public Prosecutor for the prosecution, apart from perusing the entire material available on record.

2. In the present Criminal Appeal, filed under Section 374(2) Cr.P.C., challenge is to the judgment, dated 23.10.2013, rendered by the learned VI Additional District & Sessions Judge, Godavarikhani in Sessions Case No.87 of 2013.

3. By way of the said judgment, the learned Sessions Judge convicted the accused for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and imposed fine of Rs.500/- and, in default, simple imprisonment for three months.

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

The accused brought labourers, including P.Ws.7 and 8, from Gadchiroli District of Maharashtra State for coolie work in the fields of one Sri Chirla Thirupathi Reddy and they were staying in temporary huts. The deceased, i.e.

the father-in-law of P.W.7, also came from Maharashtra for coolie work and he took shelter in the hut of his daughter-in-law and, while he was sleeping in the hut of P.W.7, the accused, who did not like the same, in drunken state at about 8.30 p.m., on 06.03.2012, came there, picked up quarrel and beat the deceased on his head and forehead with a stick. P.W.7 escaped from the scene of offence by throwing a pestle on the accused and went to the hut of P.W.8 and slept there and on the next day, on receipt of information, police came to the scene of offence and P.W.7 lodged Ex.P6-complaint on 07.03.2012, which was registered as Cr.No.27/2012 under Section 302 IPC. After investigation police laid charge sheet under Section 302 IPC.

5. During the course of trial, prosecution examined P.Ws.1 to 10 and marked Exs.P1 to P8 apart from M.Os.1 to 6. No oral or documentary evidence was adduced on behalf of the accused.

6. The learned Sessions Judge framed the following point for consideration:

*Whether the death of Nanaiah is homicidal  
 and whether the accused intentionally caused  
 the death of Nanaiah?*

7. The learned Sessions Judge, by way of the impugned judgment, convicted the accused for the offence

under Section 302 IPC. The present appeal challenges the validity and legal sustainability of the said judgment.

8. The only eye witness as per the prosecution is P.W.7 and, according to her oral evidence, she is the daughter-in-law of the deceased, who also came from Brahmanapalli, Gadchiroli District of Maharashtra State for coolie work in the fields of one Sri Gopal. She deposed that she worked in the land of P.W.2 and the deceased came to Brahmanapalli, a nearby village, to do coolie work. She further stated that, on the date of the incident, her father-in-law came to her hut in the evening and, after having food along with her, he slept in her hut and the accused came there in drunken state and questioned the deceased as to why he came to her hut and, while saying so, accused beat the deceased on head and forehead with a firewood stick and, when she tried to rescue the deceased, the accused threatened her to kill and she ran away throwing a pestle on him and went to P.W.8 and slept there and on the next day morning she went to her hut and observed that her father-in-law died.

9. According to the accused, he left to his native village two days prior to the incident. There is no dispute with regard to the fact that the accused is a physically challenged person and does not have his left hand. It is also significant to note that P.W.7, who is the star witness to the prosecution, during the course of cross-examination,

stated categorically that there were no disputes between the accused and deceased and denied the suggestion that she picked up quarrel with the accused prior to the incident.

10. Another star witness for the prosecution is P.W.8 who, according to the prosecution, is a co-labourer and, according to her, there are some fields in between her hut and that of P.W.7 and she also stated that he had no acquaintance with P.W.7 prior to the incident and that there were other workers along with her in the hut and that at that time P.W.7 told them also about the death of her father-in-law and that she received threat from the accused. She denied the suggestion that P.W.7 did not come to her hut at all. This evidence creates any amount of suspicion on the case of the prosecution. There is no reason as to why P.W.7 came to the hut of P.W.8 when the fact remains that there was no earlier acquaintance between P.Ws.7 and 8 as per the deposition of P.W.8. It is also pertinent to note that, though a number of people were there at the hut of P.W.8, by the time P.W.7 went there, none of them were examined by the prosecution. It is also important to note that it is very much common that, if there were number of people in the hut of P.W.8, they would have certainly reported the police during that night because it was not midnight and it was only between

7.00 and 8.00 p.m. These aspects create any amount of doubt on the prosecution case. Therefore, in the considered opinion of this Court, it is not safe to give credence to the evidence of P.Ws.7 and 8, who are the main witnesses of the prosecution. It is also significant to note that in Ex.P6/complaint, P.W.7 stated that the accused, after the incident, went to the thatched shed of Maddela Banamma and Soma Ramreddy and the reason for their non-examination is also not forthcoming.

11. Another important aspect is, admittedly, the accused is handicapped as his left hand was amputated. The injuries found on the dead body are six in number alleged to have been caused by a blunt object. The accused being handicapped may not be able to inflict those injuries on the deceased, which are very grievous in nature and one of the injuries which lead to the death of the deceased. Therefore, the version of the prosecution, with regard to the information for the cause of those injuries, also creates any amount of doubt.

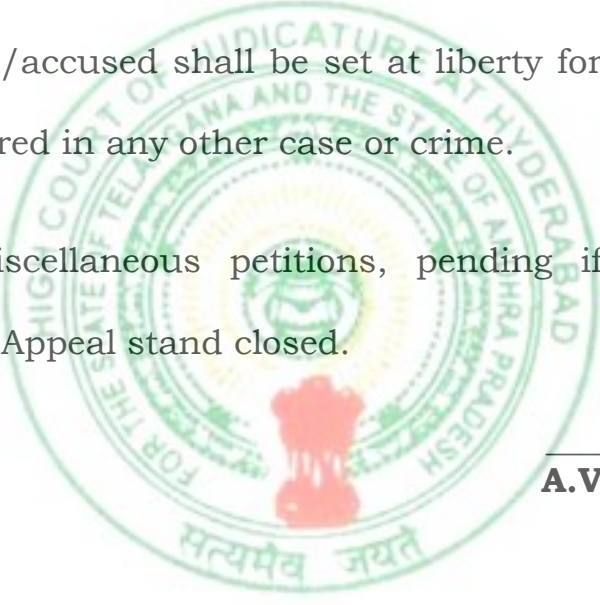
12. The prosecution relied on recovery of the Material Objects from the scene of offence, which are M.Os.1 to 6. The material objects 2 to 4 belong to the deceased. M.O.1 is a piece of firewood. All these Material Objects 1 to 4 were seized from the scene of offence and they were sent to the Forensic Science Laboratory and the FSL report-Ex.P.8

reveals that human blood was detected on item Nos.2, 3, 4 and 6. The blood group of the blood stains of 1 to 3 is of 'O' group. No doubt, the blood group on these items show that it is a blood group of 'O'. There is no evidence to show that the said blood group is that of the deceased. Moreover, M.O.1-piece of firewood corresponds to item 6 of Ex.P8/FSL report and is alleged to have been used by the accused. The said M.O.1 was recovered from the scene of offence. Therefore the accused cannot be connected to the commission of this offence in view of the recovery of M.O.1 from the scene of offence. Moreover, the blood group on the M.O.1 could not be detected except the finding that it was a blood of human origin. Therefore, the recovery made from the scene of offence and the recovery of M.O.1 cannot be used to connect the accused with the crime. The important circumstance in this case is the recovery of the Material Objects from the scene of offence apart from the evidence of eye witness-P.W.7. The testimony of P.W.7 is not trustworthy for the reasons afore-stated. Therefore, there is no material to connect the accused with the commission of the offence. The prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Therefore, the accused is extended the benefit of doubt and is acquitted.

13. Appellant/accused is found not guilty for the offence punishable under Section 302 IPC and is acquitted for the said offence.

14. Accordingly, Criminal Appeal is allowed and the conviction and sentence recorded against the appellant/accused, for the offence punishable under Section 302 IPC, vide judgment, dated 23.10.2013 in S.C.No.87 of 2013 on the file of VI Additional District and Sessions Judge, Godavarikhani, is set aside. The appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

15. Miscellaneous petitions, pending if any, in this Criminal Appeal stand closed.



**A.V.SESHA SAI, J**

**GUDISEVA SHYAM PRASAD, J**

24<sup>th</sup> November, 2018

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