

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.485 of 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) Accused Nos.2 to 4 in S.C.No.223 of 2008 on the file of the Additional Metropolitan Sessions Judge, Cyberabad at NTR Nagar, Hyderabad, are the appellants herein. Originally accused Nos.1 to 7, were tried for the offences punishable under Sections 302, 201 and 212 read with 34 IPC. Pending trial, the case against accused No.1 abated as he dead. By its judgment dated 14.05.2012, the learned Sessions Judge, while acquitting accused Nos.5 to 7 of all the charges, convicted accused Nos.2 to 4 for the offence punishable under Section 302 read with 34 IPC and sentenced them to suffer imprisonment for life and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for six months. Accused Nos.2 to 4 were also convicted for the offence punishable under Section 201 read with 34 IPC and sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- each in default to suffer simple imprisonment for a period of one month. The substantive sentences were directed to run concurrently.

2) The gravamen of the charge against the accused is that on 25.09.2005 at about 8.30 hours, near Vanga Anantha Reddy Gardens, within the limits of Karmanghat village, accused Nos.1 to 4 caused the death of one Nakka Raghu (hereinafter referred to as "the deceased") by stabbing him with swords and later threw the swords in Saroornagar tank, so as to screen the evidence.

3) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) PW.1 is the brother, PW.2 is the wife and PWs.3 and 8 are the friends of the deceased. The deceased did cable business with accused No.1 on partnership basis for a period of 5 or 6 years. During the said time, disputes arose which lead to division in the areas of operation in cable connection. It is said that the area which fell to the share of the deceased was potentially a collection area, whereas the area allotted to accused No.1, was average in collection. The evidence of PW.2 further show that 10 days after the division, when she was at STD Booth, accused No.1 called her and directed her to send the deceased as he is having some work with regard to cable connection recovery. By that time, the division of the business was over. She informed accused No.1 that her husband was not available in

the house and requested him to telephone to him. In the meanwhile, her husband came and when she just finished informing him about the call from accused No.1, the deceased received a call from accused No.1. This was at 3.30 p.m.

ii) At that time, the deceased also telephoned to PW.8 and informed him the proposal of purchasing a TV on instalments and requested him to come over to his house. Accordingly, PW.8 came to the house of the deceased at 4.30 p.m. Both of them stayed in the house till 5.00 p.m., and at about 6.00 p.m., they went to Nandanavaram area for the purpose of collection. Thereafter, they went to the chicken shop of PW.3, sat there for half an hour and later the deceased and PW.8 started returning home. At that time the deceased was driving his scooter while PW.8 was sitting behind him. When they reached Gayatrinagar cross road, an auto came from behind and dashed the scooter. As a result of which both of them fell down. PW.8 stood up and noticed accused No.1 getting down from the auto. Then the deceased told PW.8 that accused No.1 is going to beat him, as such both of them started running from that place. It is stated that accused No.1 along with accused Nos.2 to 4 attacked the deceased with weapons. PW.8, who escaped from the attack, went to the house of the deceased and

informed PW.2 about the attack. On that the brother of the deceased and PW.8 went there but they did not find the body of his brother. On the same day at about 11.45 p.m., PW.10-the Inspector of Police, Saroornagar Police Station, received a report from PW.1, basing on which he registered a case in Crime No.818 of 2005 of Saroornagar Police Station, for the offence punishable under Sections 302 read with 34 IPC. Ex.P11 is the first information report. He examined PW.1 and recorded his statement. PWs.2 and 8 also came to the police station and they were also examined by PW.10. From there, PW.10 along with his staff went to the scene of offence. He noticed pool of blood and at a distance from that pool of blood, noticed a pair of chappals and also a scooter. The dead body was not available at the scene. It is said that since the dead body was in the middle of the road, the Inspector of Police, L.B.Nagar, who reached the spot earlier to PW.10, shifted the body to the mortuary. On the next day morning at about 7.30 a.m., PW.10 again visited the scene of offence and in the presence of PW.6 and another, prepared a panchanama of the scene and seized a pair of chappals. He also got prepared a rough sketch, which is placed on record as Ex.P3. From the scene of offence, he visited the mortuary of Osmania General Hospital, Hyderabad, got photographed the dead body and

then held inquest over the dead body of the deceased in the presence of PW.6 and another. Ex.P3 is the inquest report. During inquest, he seized the blood stained cloths, which are placed on record as Mos.2 and 3. Thereafter, the body was sent for postmortem examination.

iii) PW.9-the Associate Professor, Department of Forensic Medicine, Osmania Medical College, conducted autopsy over the dead body of the deceased and issued Ex.P10 the postmortem certificate. According to him, the cause of death to the best of his knowledge and belief was “due to multiple injuries”.

iv) On an information that accused Nos.1 to 4 were remanded in connection with a Excise Case, PW.10 filed a requisition before the II Metropolitan Magistrate on 30.09.2005 for P.T.warrant. As per the P.T.Warrant, accused Nos.1 to 4 were produced and on his requisition, police custody was granted. On 10.10.2005 at 10.15 a.m., in the presence of PW.7 and another, PW.10 interrogated accused Nos.1 to 4 and they confessed about the commission of offence. Exs.P5 to P8 are the admissible portions of their confessional statements. Pursuant to the confession, PW.10 seized the auto. He also recorded the statements of PWs.4

and 5 on the same day. On 10.10.2005 he produced the accused before the Court.

v) After collecting all the necessary documents, PW.10 filed a charge sheet before the Court of II Metropolitan Magistrate, Cyberabad at L.B.Nagar, which was taken on file as P.R.C.No.33 of 2007. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 of Cr.P.C., which came to be numbered as S.C.No.223 of 2008.

4) Basing on the material available on record, charges under Sections 302, 201 and 212 read with 34 IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P28 and MOs.1 to 4. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced on behalf of the accused.

6) Believing the evidence of PWs.2 and 8 coupled with the evidence of PWs.4 and 5, the learned Sessions

Judge, convicted accused Nos.2 to 4 in the manner referred to above, while acquitting accused Nos.5 to 7 of all charges. Challenging the same, the present appeal is filed.

7) Learned counsel for the appellants mainly submits that the evidence on record even if accepted to be true, is not sufficient to connect the accused with the crime. According to him, PW.8, who is examined as an eye witness to the incident, did not mention about the presence of accused Nos.2 to 4 along with accused No.1 at the time of the incident, as these three accused were strangers to PW.8. No effort was made by the prosecution to hold the test identification parade. He further submits that even the evidence of PWs.1,2 and 8 only speak about the presence of the deceased and PW.8 at the spot and that by itself is not sufficient to connect the accused with the crime. He also submits that the first information report which was lodged on the same day at 11.45 p.m., shows that the police have prior information about the incident and came to the scene of offence even prior to lodging of the report.

8) On the other hand, the learned Public Prosecutor would contend that the evidence of PW.8, who is an eye witness to the incident, cannot be disbelieved. It is his case that in view of the strong motive for the accused to cause

the death of the deceased, the evidence of PWs.1 and 2 corroborate the evidence of PW.8 in all respects. He further submits that the evidence of PWs.4 and 5 also show that on the date of incident, accused No.2 took the vehicle from PW.5 on hire and returned the vehicle on the same day with front portion of the vehicle being damaged. Having regard to the above, he submits that the presence of accused No.2, usage of vehicle on the date of incident and the evidence of PW.8 amply establish that it was these accused, who were responsible for the incident.

9) The point that arises for consideration is whether the appellants were responsible for incident in question.

10) In order to appreciate the rival submissions, it would be necessary to refer to the evidence of PWs.1 to 3, 5 and 8. PW.1 is none other than the brother of the deceased. He is not an eye witness to the incident, but in his evidence he deposed about the deceased carrying cable connection business with accused No.1. Both of them did business jointly for two or three years and thereafter disputes arose between them. His evidence is relevant only to the extent of the business done by accused No.1 and deceased prior to the incident and disputes leading to division of the business.

11) PW.2 is the wife of the deceased. Her evidence also refers to the cable business done by her husband along with accused No.1 for a period of 5 or 6 years. She further states that on one occasion accused No.1 beat the deceased due to disputes in the partnership firm. It is said that about 10 days after the said incident, when she was at the STD booth, accused No.1 called on phone and asked her to send the deceased, as he was having some work with regard to cable connection recovery. She informed accused No.1 that her husband was not available in the house and requested him to call half an hour thereafter. In the meanwhile, her husband came and when she was informing him about the call made by accused No.1, the deceased received a call from accused No.1. Thereafter her husband and PW.8 left the place to meet accused No.1. According to her, the deceased left the house at 3.30 p.m. At about 5.30 p.m., she received a call from her husband informing that accused No.1 and others are following him on two wheelers and he does not know the reason. Later he again telephoned to her and stated that his scooter was dashed by an auto in which accused Nos.1 to 4 are travelling. When she tried to talk him on phone the same was switched off. Later on PW.8 came and informed to her that accused Nos.1 to 4 attacked her husband with knives.

12) From the evidence in chief of this witness it would show that she not only spoke about the earlier disputes between her husband and accused No.1, but also deposed about the calls received from her husband at 5.30 p.m., and also just prior to the incident, wherein he is said to have informed that accused Nos.1 to 4 are following his scooter and his scooter being dashed by the auto. In the cross-examination she admits that she did not state before the police that accused No.1 and others following in the auto. She further admits that she did not state before the police about she calling again to the cell phone of her husband, but it was switched off. She further admits that in the earlier statement she did not state that PW.8 referred the names of accused Nos.2 to 4, when informed about the incident. She further admits that accused Nos.2 to 4 are not partners in the cable business of her husband and they are strangers. She also admits that she did not state before the police that she can identify accused Nos.2 to 4, if shown.

13) From the evidence of this witness more particularly from the admissions made by her in the cross, show her version with regard to deceased calling her and informing about the accused chasing him and also dashing his motor cycle with their auto, is an improvement from what she has stated in the Court. She never disclosed all

these facts in her earlier statement recorded by the police. Therefore, her evidence may not be of relevant except to the extent of disputes between accused No.1 and the deceased.

14) Coming to the evidence of PW.3, his evidence is only to the effect that on the date of incident, the deceased and PW8 came to his shop and stayed there for one hour. His evidence may not be of any help to the prosecution.

15) PW.4 is a vegetable vendor, who owns an auto. According to her, it was purchased by her for Rs.12,000/- about 6 years back by availing finance. According to her, the said vehicle was given to accused No.2 on hire from 9.00 a.m., to 5.00 p.m., at Rs.120/- per day. On the date of incident, accused No.2 came with the auto at 7.00 p.m., and left the same stating that he will pay the amount on the next day. She noticed the front portion of the auto being damaged. Later, the auto was taken by the finance people. In the cross-examination she admits that by the time the police came to her, the financier already taken away the said vehicle. She further admits that though the auto was registered in her name, she is not in possession of the registration certificate of the auto. Therefore, this evidence of PW.4, which is sought to be relied upon to show

that the vehicle was taken on hire by accused No.2 on the date of incident, does not show that she was the owner of the vehicle as she failed to produce the R.C. Book and her evidence is also silent as to the date on which accused No.2 took her vehicle on hire from 9.00 a.m., to 5.00 p.m., at Rs.120/- per day.

16) PW.5 was carrying auto consultant business. In his evidence, he deposed that he sold the auto bearing No. AP 11 W 864 to PW.4 for Rs.11,000/- about 7 years back. An amount of Rs.5,000/- was paid by PW.4 and remaining Rs.6,000/- was taken as loan. It is said that as PW.4 committed default in payment of the said amount, the said auto was delivered back about 20 or 25 days after the sale. About one or two days thereafter the Saroornagar police came and informed him that the auto was involved in a murder case.

17) It is to be noted here that the evidence of PW.5 does not anywhere show that the said vehicle was damaged. He further admits that the said auto was not transferred in the name of PW.4, which is contrary to the evidence of PW.4, who in her evidence stated that the vehicle was registered in her name. In view of the inconsistency, more particularly, accused No.2 taking the vehicle on the date of

incident; damage to the front portion of the vehicle; no documentary evidence to show that the vehicle was given on hire or purchase of the vehicle by PW.4, we feel that this evidence does not conclusively establish that the said vehicle was given on hire to accused No.2.

18) The only other evidence, which remains now to be considered, is the evidence of PW.8, who was examined as an eye witness to the incident. According to him, since two or three years, the deceased and accused No.1, were carrying cable business jointly. Subsequently, disputes arose between them. On the intervention of elders, the cable distribution area was apportioned among the deceased and accused No.1 and since then they have been carrying on business in their respective areas. On 25.09.2005 at about 3.00 p.m., the deceased telephoned to PW.8 and informed him the proposal to purchase a TV on instalments and requested him to come to his house. Accordingly, PW.8 went to the house of the deceased. He stayed there till 6.00 p.m. and thereafter, both of them proceeded to Nandanavaram area for the purpose of collection and thereafter to the chicken shop of PW.3, where they stayed for ½ hour. While they were returning home and when the scooter, which was driven by the deceased, reached Gayathinagar cross road, an auto came on back side and

dashed the scooter. As a result of which, both of them fell down and then accused No.1 got down from the auto. Seeing him the deceased informed PW.8 to run away as accused No.1 may attack them. It is said that accused Nos.1 to 4 armed with weapons attacked the deceased. PW.8 who claims to have escaped, went to the house of the deceased and informed PW.2 about the incident. In the cross-examination PW.8 admits that he has no prior acquaintance with accused Nos.2 to 4, but he knew their names in view of their residence at Chanchalguda area. But however, admits that he did not state to the police about the names of accused Nos.2 to 4. He further admits that he has not furnished the descriptive particulars of accused Nos.2 to 4 as well to the police. He further admits that in his 161 Cr.P.C. statement recorded by the police during the course of investigation, he never disclosed about accused Nos.2 to 4 attacking the deceased with weapons. He states that he ran in one direction and the deceased ran in another direction. It was further admitted by him that the place where both of them fell down is not the place where the attack took place and that he was attacked at a distance from that place. He further states that no test identification parade was conducted and that he saw accused Nos.2 to 4 on that day and again on the date of giving evidence.

19) From the evidence of this evidence, it is very clear that accused Nos.2 to 4, were strangers to him. Though he claims to know the names, never disclosed the same to the police. He also failed to give any descriptive particulars of accused Nos.2 to 4. Since PW.8 not only failed to give the descriptive particulars but also their names and also failed to mention the specific role played by accused Nos.2 to 4 in attacking the deceased with weapons, a doubt arises as to whether really he was present and witnessed the incident. Apart from that his own admissions show that the place where both of them fell down from the scooter is not the place where the attack took place. He also admits that after they fell down, both of them ran in two different directions. Therefore, the possibility of PW.8 witnessing the accused attacking the deceased would not arise. Further, he never deposed about the deceased calling his wife and informing her about the accused following them. Even otherwise, according to PW.2, the deceased is said to have called her at 5.30 p.m., and informed about the accused following them but the evidence of PW.8 would reveal that he along with the deceased left the house of the deceased at 6.00 p.m. Hence, a doubt arises as to whether PW.8 was present along with the deceased and also as to whether accused Nos.2 to 4 participated in the commission of

offence. Therefore, extending the benefit of doubt, the appeal is allowed acquitting the appellants.

20) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/ accused Nos.2 to 4 for the offences punishable under Sections 302 and 201 read with 34 IPC in S.C.No.223 of 2008 on the file of the Additional Metropolitan Sessions Judge, Cyberabad at NTR Nagar, Hyderabad, are set aside. Consequently, the appellants/ accused Nos.2 to 4 shall be set at liberty forthwith, if they are not required in any other case or crime.

21) Consequently, miscellaneous petitions, if any, pending shall stand closed.



C. PRAVEEN KUMAR, J

T. RAJANI, J

01.08.2018

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