

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1219 of 2011

JUDGMENT: (*per Hon'ble Smt Justice T. Rajani*)

The appellants were convicted for the offence under Section 302 of the Indian Penal Code by the Additional Metropolitan Sessions Judge, Cyberabad, Hyderabad by virtue of judgment dated 10.10.2011 in S.C.No.584 of 2008. This appeal is preferred by the appellants aggrieved by the said judgment.

2. The facts, in brief, as per the charge sheet are as follows:

On 09.08.2007 at about 1630 hrs a statement was recorded from the complainant wherein he stated that the deceased Balbir Singh is his elder brother. There were old grudges between the deceased and A1, Jarnal Singh. On that day, at about 2.30 PM, A1 along with brother in law A2, Jarnal Singh and uncle Baldev Singh, A3 attacked the deceased in front of Great Festival Hotel and brutally stabbed him with knives. Meanwhile, Ravinder Singh, Balmath Singh and Inder Singh intervened and tried to rescue the deceased but in vain as the accused threatened them and managed to flee from the spot. Knowing about the incident through Inder Singh, he rushed to the spot and with the help of Ravinder Singh and Inder Singh shifted Balbir Singh to Osmania General Hospital, Hyderabad but he was declared dead by the duty doctor.

On the basis of the report filed by the complainant, a case was registered in Cr.No.782 of 2007 under Sections 302 and 109 IPC.

After due investigation, charge sheet was laid against A1 and A3 for the offence under Sections 302, 114 read with 34 IPC showing A2 as absconding. A2 was apprehended later on and he was also put to trial along with A1 and A3.

3. The Court below conducted the trial of the case, after recording the plea of not guilty of the accused for the charges that were framed and during trial, the Court below examined P.Ws.1 to 4 and Exs.P1 to P12 and M.Os.1 to 5 on behalf of the prosecution. After concluding the prosecution evidence, the accused were questioned about the incriminating circumstances appearing against them in the prosecution evidence during their examination under Section 313 Cr.P.C. The accused denied truth in the prosecution evidence and stated that they did not commit the offence but they did not choose to examine any witness on their behalf. The Court below, considering the material on record, passed the impugned judgment against which the present appeal is preferred on the following grounds:

The Court below ought to have seen that the entire case rests on the evidence of interested witnesses and there was no motive for the accused to kill the deceased. The Court below failed to see that the presence of P.W.4 was not established by P.Ws.2 and 3. The Court below ought to have seen that P.Ws.5, 6 and 7 did not support the case of the prosecution and ought to have acquitted the accused.

4. Heard the learned counsel for the appellants and the learned Public Prosecutor.

5. The counsel for the appellants contends that there is discrepancy with regard to the time of the incident and she contends that according to P.Ws.2 and 3, the incident occurred between 2 to 3 PM while according to P.W.4, who is the wife of the deceased, the incident occurred at 1.00 PM. She also argues that the presence of P.W.4, at the time of the incident, cannot be believed as P.Ws.2 and 3, who were eye witnesses, did not speak about the presence of P.W.4 and also about the presence of the son of the deceased, who according to P.W.4, was present along with the deceased at the time of the alleged incident. She also contends that according to the confessional statements of the accused, the deceased was the aggressor.

6. Learned Public Prosecutor, on the other hand, submits that even if the evidence of P.W.4 is ignored, there is absolutely no reason to discard the evidence of P.Ws.2 and 3, which is not motivated and consistent. He also contends that the discrepancy with regard to time cannot be allowed to overturn the entire case of prosecution, which stands on credible evidence on two independent and credible witnesses.

7. Now the points that come up for determination by us are:

1. Whether the discrepancy with regard to the time stated by P.Ws.2 and 3 on the one hand and P.W.4 on the other would affect the case of the prosecution?
2. Whether the judgment of the Court below can sustained?
3. To what result?

POINT No.1:

8. The Court below disbelieved the evidence of P.W.4 but in spite of which it took the help of evidence of P.Ws.2 and 3 and convicted the accused for the offence under Section 302 IPC. Hence, it is needful to peruse the evidence of P.Ws.2 and 3 to see whether the appreciation by the Court below went on appropriate lines.

9. P.W.2 is a resident of Sikh Chavani area along with P.W.1 and the deceased. He identified A1 to A3 and stated that they are also residents of Sikh Chavani. Narrating the incident, he stated that on the date of the incident, which is four years back, while he along with L.Ws.3 and 4 was returning from Bahadoorpur after completion of work, when they reached the hotel near Hanuman temple at Ring Road, they noticed A1 to A3 stabbing the deceased by knives. He further stated that when the deceased was standing by the side of the road, they went to rescue the deceased, A1 to A3 threatened them with knives. P.W.2 tried to hurl stones at A1 to A3 but they escaped. The deceased sustained stab injuries all over his body and fell down. L.W.3 went to the house of P.W.1 and brought him to the spot. On his arrival, P.W.2, L.Ws.3 and 4 along with P.W.1 shifted the deceased to Government Hospital in an auto but the doctors declared him dead.

10. The version of P.W.2 receives strong corroboration from P.W.3, who corroborated his evidence on all aspects. He further explained that A3 can be caught hold of the deceased while A1 and A2 stabbed him by using knives. The cross-examination of P.Ws.2 and 3 does not succeed in eliciting any fact, which should belie their credibility, which is reflected in their chief examination. Only one omission was

pointed out in the earlier statement of P.W.2 that he did not speak before the police that he hurled stones on accused and that they escaped. The same omission was pointed out in the evidence of P.W.3 also. P.W.1 came to spot on being informed by L.W.3 i.e. P.w.3 and saw the deceased with bleeding injuries lying on the ground.

11. The evidence of P.W.4 is that on the date of the incident at about 1.00 PM, the deceased, their son and she went on Hero Honda motor cycle and at Hanuman temple junction, she got down as she felt uneasy since she was carrying six months pregnancy. After that the deceased and her son proceeded on the motor cycle towards the hotel near temple for purchasing maize corn. The incident occurred when the deceased was purchasing maize corn. She spoke about the commission of offence by A1 to A3 and states that she fell down on seeing the same. She also speaks about P.W.1 taking the deceased to the hospital with the help of P.Ws.2 and 3. But as already observed, her presence is not reflected by the evidence of P.Ws.2 and 3. Hence, no credence can be given to her evidence.

12. The other contention of the counsel for the appellants is that with regard to recovery of knives she contends that only one, as against three knives, was recovered from the accused. The learned Public Prosecutor in support of his contention submits that the same would not affect the case of the prosecution and relies on the decision of the Supreme Court in YOGESH SINGH v. MAHABEER SINGH¹ wherein it was observed as under:

¹ AIR 2016 SC 5160

“47. The next line of contention taken by the learned Counsel for the Respondents is that the recovery evidence was false and fabricated. We felt no need to address this issue since it had already been validly discarded by the Trial court while convicting the Respondents. In any case, it is an established proposition of law that mere non-recovery of weapon does not falsify the prosecution case where there is ample unimpeachable ocular evidence ...”

Hence, in the light of the above legal position, the non-recovery of knives from the other accused cannot be allowed to affect the other credible evidence available on record.

13. As regard the motive, P.W.1 speaks about the same stating that that there were disputes and enmity between the deceased and A1 and there were cases also pending between them. P.W.4 also supports the said version. But, however, even if it is considered that no motive was proved, learned Public Prosecutor relied upon the aforesaid judgment, which held as under:

“... It is settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to the commission of an offence, motive loses its significance ...”

14. With regard to weight of ocular evidence, the learned Public Prosecutor relies on a decision of the Supreme Court in ANJAN DASGUPTA v. STATE OF WEST BENGAL². The Supreme Court in the above decision brushed aside the discrepancy between the

² AIR 2016 SC 510

inconsistency with regard to the timings by observing that the High Court has rightly discredited the minor contradictions and has rightly come to the conclusion with regard to the incident. Hence, in view of the consistent and credible evidence of P.Ws.2 and 3 against whom no motive was elicited, we opine that there is absolutely no discrepancy that would affect the case of the prosecution.

The point is accordingly answered.

POINT No.2:

15. In view of the conclusion drawn under point No.1, we do not see any reason to set aside the judgment of the Court below.

The point is accordingly answered.

16. Learned Public Prosecutor submitted that the appellants are granted bail vide order dated 22.11.2016 in CRLAMP.No.1805 of 2016.

POINT No.3:

In the result, the criminal appeal is dismissed upholding the conviction and sentence imposed on the appellants/accused in SC.No.584 of 2008 dated 10.10.2011 by the Additional Metropolitan Sessions Judge, Cyberabad, Hyderabad. The period of detention/imprisonment undergone by the appellants/accused before trial and after trial shall be set off against the term of imprisonment. The appellants/accused, who are on bail, are directed to surrender before the trial Court, which shall commit them to the concerned jail for undergoing the remaining period of imprisonment.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

C. PRAVAEEN KUMAR, J

T. RAJANI, J

June 3, 2018

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith.

(B/o) DSK

