

HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL APPEAL NO.734 OF 2013

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

The present Criminal Appeal is preferred by the appellant/sole accused challenging the judgment in S.C.No.83 of 2009, dated 15.04.2013 on the file of II Additional District & Sessions Judge, Visakhapatnam whereby he was found guilty for the offence under Section 302 I.P.C. and was sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to suffer Rigorous Imprisonment for three months.

2. Heard the learned counsel appearing for the appellant and the learned Public Prosecutor for the respondent-State.

3. The case of the prosecution is that the accused is a resident of Bhalighattam Village, Narsipatnam Mandal. He was eking out his livelihood by selling toddy. The deceased was also a resident of the same village and by profession he was a motor mechanic. On 01.04.2008, one lorry driver came to the mechanic shop of the deceased and called Pilli Chinna, who is having toddy shop and requested him to bring toddy. Whereupon the deceased asked the said lorry driver not to consume toddy at his shop and asked him to go to the shop of said Pilli Chinna. On the same day, at about 21.30 hours, when the deceased was in his house, the accused came and requested him to accompany him to his house as the motor-cycle of one of his relatives require repairs. Believing the version of the accused, the deceased followed him and when they reached the stockyard of B.P.L, the deceased asked one Dadi

Naga Nooka Raju, who was working as Security Guard in B.P.L., to follow them to the house of the accused to attend the repairs to motor-cycle. However, the accused informed the deceased and the said Dadi Naga Nooka Raju that he would bring the motor-cycle to that place. After some time, the accused returned and informed that the vehicle has been taken away by its owner. On that the deceased suspected the attitude of the accused and returned back to his house and informed to his wife (P.W.2). Later on, the deceased, his wife and his son-G.Mohan Krishna (P.W.1) went to the house of the accused and questioned him as to why he called the deceased. On that, an altercation took place and in the process, the accused threatened the deceased saying that he would see his end. On 02.04.2008 at about 11.35 hours, the accused took the deceased on his cycle and when the deceased went to the village after attending the repairs of the motor-cycle of Shaik Subhan, the accused hacked on the left side of the neck of the deceased with a knife which is used for tapping toddy and caused a deep cut injury from the centre of the throat to the left side back of the neck measuring about 14 cms and depth of 5 cms. Having sustained the above grievous cut injury, the deceased ran to his shed and fell on the ground and informed the incident to P.Ws.1 and 2. Thereafter, he became unconscious. Immediately, the deceased was shifted to Area Hospital, Narsipatnam, where he was declared dead by the medical officer. In those circumstances, the son of the deceased i.e. P.W.1 gave a report with the Station House Officer of Narsipatnam Police Station resulting in registration of Crime No.25 of 2008 under Section 302 I.P.C. After registration of the crime, P.W.9 took up the investigation. He inspected the scene of offence in the presence of P.W.5 and prepared rough sketch of scene of

offence and also observation report. Later he conducted inquest over the dead body of the deceased in the presence of P.Ws.1,2,5 and one A.Appaji Rao and examined P.Ws.1,2 and others and recorded their statements. Thereafter, the dead body was forwarded to the Medical Officer, Area Hospital, Narsipatnam for post-mortem examination. P.W.7, who is the medical officer and Civil Assistant Surgeon, conducted autopsy over the dead body of the deceased and gave opinion that the deceased appear to have died due to haemorrhage and shock due to injury to the major blood vessel. P.W.9 arrested the accused on 06.04.2008 in the presence of P.W.8 and one S.Balam Naidu under a cover of confessional statement of the accused. Thereafter P.W.9 seized M.O.1 i.e. the knife which was used by the accused in the commission of offence under the cover of seizure report. Thereupon the accused was produced before the Judicial First Class Magistrate, Narsipatnam for remand. P.W.9 sent the seized bloodstained clothes of the deceased and M.O.1-knife to R.F.S.L, Visakhapatnam for chemical analysis. After completion of investigation, P.W.9 filed the charge sheet.

4. After appearance of the accused, he was furnished with the copies of documents relied on by the prosecution in compliance of Section 207 of Cr.P.C. On committal to the Court of Sessions, the Principal District and Sessions Judge, Visakhapatnam registered the case as SC.No.83 of 2009 and made over the same to the Court of II Additional District and Sessions Judge, Visakhapatnam. On appearance of the accused before the Sessions Court, the charge for the offence under Section 302 I.P.C. was read over and explained to him in Telugu, for which, he pleaded not guilty and claimed to be tried.

5. The prosecution, in order to bring home the guilt of the accused, in all, examined P.Ws.1 to 9 and marked Exs.P.1 to P.11 apart from material objects as M.Os.1 and 2. After closure of evidence, when the accused was examined under Section 313 of Cr.P.C. explaining the incriminating material available on record, he denied the same.

6. The learned Sessions Judge, after appreciation of the evidence and the material on record, by judgment dated 15.04.2013 convicted the appellant and sentenced him to life imprisonment apart from payment of fine of Rs.1,000/-, in default to suffer rigorous imprisonment for three months. Aggrieved by the same, the present appeal is filed.

7. The learned counsel appearing for the appellant contended that the Court below erred in convicting the appellant without appreciating the evidence brought on record in proper perspective. There are inconsistencies in the statements of witnesses under Sections 161 and 164 of Cr.P.C. and material irregularities throwing a suspicion with regard to the occurrence of the offence as projected by the prosecution and as such there is miscarriage of justice in convicting the appellant. The Court below grossly erred in noticing the material contradictions, irregularities and the material omissions with regard to the procedure followed by the prosecution.

8. On the other hand, the learned Public Prosecutor appearing for the respondent-State supported the impugned judgment and contended that the evidence of P.Ws.1 and 2 coupled with the evidence of P.W.7 clinchingly established the case of the prosecution in proving the guilt of the accused beyond all reasonable doubt.

9. The prosecution examined the son of the deceased as P.W.1. He deposed that his father used to work as a motor-cycle mechanic. On 01.04.2008, the accused came to the work shop of his father and raised a dispute as to why he was not allowing the customers of the toddy shop to consume toddy in front of his shop. The said fact was also informed by the deceased to his mother. On the same day at about 10.00 p.m., the accused came to their house and informed his father that the motor-cycle of one of his relatives require repairs and took the deceased to the work shop. After some time, the deceased returned to his house and informed that the motor-cycle was not available at his shop. On suspicion, PW-1 along with the deceased and his mother went to the house of the accused and questioned him as to why the deceased was unnecessarily called, upon which, the accused threatened the deceased that he would see his end. On 02.04.2008, at about 11.45 a.m. when P.W.1 went to the shop of his father, but he was not available. When enquired, he was informed that the accused took away his father on his cycle. In the meanwhile, the deceased came to his shop running with a cut injury on the left side of his neck and on enquiry, the deceased informed that the accused hacked him with a knife and he fell unconscious. Immediately, the deceased was shifted to the Area Hospital, Narsipatnam, where he was declared dead. Thereafter, he went to Narsipatnam Police Station and gave a report i.e. Ex.P.1. Though he was cross-examined at length, nothing contra is elicited to discredit his testimony more particularly with regard to the time and the distance between the mechanic shop and the police station. P.W.2, the wife of the deceased deposed on similar lines and corroborated the evidence of P.W.1. Except giving suggestion that the accused never went to the

house of the deceased, no other aspect has been elicited so as to doubt the veracity of her testimony.

10. P.W.3 deposed that he know the deceased and the accused. He worked as a Security Guard in the depot of Bhadrachalam Paper Limited. On 01.04.2008 some persons were consuming toddy in front of the shop of the deceased and on seeing them, the deceased asked them not to consume toddy in front of his shop. Thereafter the accused came and quarreled with the deceased questioning him on what authority he was not allowing his customers to consume toddy. He also deposed that on the same day, at about 10.00 p.m., he has seen the accused and the deceased together going from the house of the deceased and when he enquired, the deceased informed him that he was going with the accused for the purpose of attending repairs to a motor-cycle of one of the customers of the accused. In the cross-examination, the above said evidence is not disputed. Though a suggestion was put to him that on 01.04.2008 no incident took place, the same was denied.

11. P.W.5, who was Sarpanch of Bhalighattam village deposed that on 02.04.2008, P.W.9 conducted scene of offence panchanama and held inquest over the dead body of the deceased in his presence vide Exs.P.2 and P.3. He also deposed that the deceased was having stab injury on the left side of his neck. Though a suggestion was put that he was not present when Exs.P.2 and P.3 were prepared, the same was denied. It is relevant that P.W.7, who was working as Civil Assistant Surgeon in Area Hospital, Narsipatnam deposed that on 03.04.2008 he conducted autopsy over the dead body of the deceased and found injuries on the left side of neck to front of the neck measuring 14x6x6 cms. on cut section external

carotid artery and the internal carotid artery and a cut at major blood vessels. Trachea was cut. There was fracture of the 3rd cervical vertebra. He opined that the cause of the death was due to haemorrhage and shock due to injury of the major blood vessels like carotid artery, Jugular vein. The said injury is possible due to a sharp edged object like case property which is M.O.1. It is relevant that in his cross-examination, it is elicited that a person, who receives such an injury can also walk and talk.

12. P.W.8, who was working as Village Revenue Officer of the village, deposed that in his presence, the accused was arrested when he was sleeping in a temple and confessed that due to some dispute, he hacked the deceased with a sickle on his neck. The accused disclosed the knife used by him in the commission of the offence and the same was recovered at his instance from the heap of palmyra leaves stored on the north side of his house. It is marked as M.O.1. Along with M.O.1, M.O.2 i.e. bloodstained shirt of the accused was also recovered and seized. The investigation officer was examined as P.W.9. He has deposed the sequence of events that have taken place during the course of investigation with regard to the arrest of the accused, recovery of M.Os.1 and 2 etc.

13. Now, it is to be seen that whether the accused is the assailant of the deceased or not and whether the prosecution was able to establish the guilt of the accused beyond all reasonable doubt. Admittedly, the entire case rests upon the circumstantial evidence. There are no eye-witnesses to the incident. In a case of circumstantial evidence, the prosecution has to establish all the circumstances cogently and all the circumstances should unerringly point out the guilt towards the accused.

14. The evidence of P.Ws.1 and 2 establish the enmity between the deceased and accused with regard to consumption of toddy in front of the shop of the deceased. On 01.04.2008, the deceased, P.Ws.1 and 2 went to the house of the accused, whereat a quarrel took place. P.W.3, who is an independent witness, categorically deposed that on 01.04.2008, at about 10.00 p.m., he saw the accused and deceased together going on the cycle for doing repairs to the motor-cycle of one of the customers of the accused. Though he was cross-examined, nothing has been elicited. P.W.8, who was working as Village Revenue Officer, deposed that in his presence the accused was arrested and M.Os.1 and 2 have been recovered and seized at the instance of the accused in his house. That apart, P.W.7, who conducted the post-mortem stated the nature of injuries sustained by the deceased, which are in complete corroboration with the evidence of P.Ws.1 and 2. Further though the counsel for the appellant strenuously contended that a person, who sustained the injury similar to the deceased cannot walk and talk, it is elicited in the cross-examination of P.W.7 itself that a person who received an injury similar to the deceased can walk and also talk. Therefore, the contention of the learned counsel for the appellant that there was no possibility for the deceased to go to his shop after receiving the injury, cannot be countenanced. Thus, relying on the evidence of P.Ws.1, 2, 3, 7 and 8, this Court is of the opinion that though the entire case rests upon circumstantial evidence, the prosecution has established the chain of events leading to the culpability of the accused with regard to the commission of offence, as stated supra.

15. The information given by the deceased to P.W.1 before he became unconscious can also be treated as an oral dying declaration. The Apex Court in *Nelluri Subba Rao and another v. State of A.P.* (AIR 1979 {SC} 1513) dealing with the similar issue, held as under:

“2. The entire conviction of the appellant is founded on the oral dying declaration made by the deceased Nalluri Vankatanarasamme to P.W.s 1 and 2. PW 1 was the brother of the deceased and P.W.2 owner of the shop where P.W. 1 used to work. According to the prosecution the relations between the husband, accused 2 and the deceased wife were not very cordial and even though there was some sort of a compromise, the wife used to live in a separate portion of the house. According to the dying declaration made by the deceased, the two appellants appear to have forcibly administered lethal dose of endrine poison which ultimately resulted in the death of the deceased. The oral dying declaration is fully supported by P.W.1 and 2 who stated in their evidence that the deceased had clearly mentioned that endrine poison was forcibly administered to her. The deceased was taken to the Hospital, but as she was not fully conscious no statement could be recorded at the hospital. The Doctor who examined the deceased and performed post-mortem examination sent the viscera for chemical analysis and according to the report, the viscera did contain endrine poison. Both the Courts below have after careful examination of the facts and circumstances of the case believed the evidence of P.W. 1 and 2 and held that the dying declaration made by the deceased has been proved and was true. The dying declaration received intrinsic support from the number of injuries found on the person of the deceased which show that both the appellants used force. After going through the evidence we fully agree with the findings given by the Courts below.”

16. Therefore, this Court is of the opinion that the prosecution has established the sequence of events to connect the accused with the commission of offence. The evidence let in by the prosecution cogently established the guilt of the accused beyond all reasonable doubt. After consideration of the entire evidence on record, the lower Court rightly

found the accused guilty for the offence under Sections 302 I.P.C. There are absolutely no grounds to interfere with the conviction and sentence imposed by the lower Court.

17. In the result, the Criminal Appeal is dismissed confirming the judgment of the lower Court in all aspects.

Miscellaneous Applications, if any pending, shall stand closed.

P. NAVEEN RAO, J

P. KESHA VA RAO, J

Date:31-12-2018.
Tsr.



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AND
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CRIMINAL APPEAL NO.734 OF 2013

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

Date:31.12.2018

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