

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
&
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

CRIMINAL APPEAL No.1131 OF 2013

JUDGMENT: *(Per Hon'ble Sri. Justice Abhinand Kumar Shavili)*

1. The present appeal is preferred by the appellant-sole accused aggrieved by the conviction and sentence imposed for the offence under Section 302 IPC by the learned I Additional Sessions Judge, Adilabad, in Sessions Case No.405 of 2012 on 11.11.2013.

2. Heard Smt. C. Vasundhara Reddy, learned Counsel for the appellant and the learned Public Prosecutor for the respondent.

3. Brief facts of the case are as follows:

The accused and deceased are the residents of Arli (T) village and they are friends. The deceased used to run tent house business at Arli (T) village, whereas the accused used to assist him in his profession. On 8.4.2012 at about 12:00 hours, the accused went to the house of deceased and took him and both of them proceeded to the house of LW12/Vasanth, collected an amount of Rs.500/- from the said Vasanth as advance towards tent house material and after that, both of them went to a belt shop and consumed liquor and thereafter, both of them went to the house of Mesram Shyamala and there,

the accused demanded the deceased for money to consume liquor again, but the deceased refused for the same. On that, the deceased got angry. An altercation took place between the accused and deceased, during which process the accused picked up a cement brick and beat the deceased on his head, resulting in his death. On the report lodged by P.W.1, a case in Crime No.25 of 2012 was registered and investigated into. During the course of investigation, inquest and post-mortem examinations were held over the dead body of the deceased. The doctor who conducted autopsy over the dead body of the deceased opined that the cause of death is due to Intracranial Hemorrhage due to head injury. After completion of the investigation, charge sheet was filed before the Judicial Magistrate of First Class (Mobile Court), Adilabad. The learned Magistrate after following the procedure committed the case to the Court of Sessions, Adilabad. The learned Sessions Judge took it as a Sessions Case and made over the same to the learned I Additional Sessions Judge, Adilabad, for disposal.

4. The learned I Additional Sessions Judge framed a charge for the offence under Section 302 IPC against the appellant-accused, read over and explained the same to him, for which, he pleaded not guilty and claimed to be tried.

5. In order to substantiate its case, the prosecution examined P.Ws 1 to 13 and got marked Exs.P-1 to P-9 besides

M.Os 1 to 7. After closure of the prosecution evidence, the appellant-accused was subjected to examination under section 313 Cr.P.C. by putting incriminating evidence brought on record against him. The plea of the accused is of total denial. No oral or documentary evidence was adduced on behalf of the appellant-accused.

6. On appreciation of oral and documentary evidence, the learned Additional Sessions Judge having found the accused guilty of the offence under Section 302 IPC, convicted and sentenced him to undergo Life imprisonment and also to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for a period of three months. Aggrieved by the same, the present appeal has been preferred by the appellant.

7. The learned Counsel for the appellant vehemently contended that there was absolutely no evidence to establish the case of the prosecution and that the evidence of the prosecution witnesses is not consistent and corroborative. She further contended that the evidence of P.W.4 is also not in corroboration with the case of the prosecution, and it cannot be relied upon, and that there is no connectivity in the circumstances alleged by the prosecution and that the Sessions Court has convicted the appellant on the last seen theory and that the trial Court failed to appreciate the evidence on record in

a proper perspective, and therefore, the conviction and sentence imposed by the trial Court are liable to be set aside.

8. On the other hand, the learned Public Prosecutor contends that the Court below after elaborate consideration of the evidence rightly found the accused guilty of the offence under Section 302 IPC and there are no grounds to interfere with the judgment under appeal.

9. Now, the point that arises for consideration in this appeal is as to whether the prosecution was able to bring home the guilt of the appellant-accused, beyond all reasonable doubt.

10. In the instant case, in all the prosecution examined P.Ws.1 to 13 as witnesses. P.Ws.1 to 3 and 5 to 9 are not the direct eye witnesses to the occurrence and they are circumstantial witnesses. P.W.8 is the panch witness for the inquest and P.W.9 is the circumstantial witness. P.W.10 is the doctor who conducted autopsy over the body of the deceased and P.Ws.11 to 13 are the Police officials, who registered the case and conducted investigation.

11. The entire case of the prosecution rests upon the evidence of P.W.4, who is the alleged independent and direct witness to the incident, as well as the circumstantial evidence. Let us now examine the veracity of the evidence of P.W.4.

12. A perusal of the evidence of P.W.4, who is the alleged independent and direct witness, goes to show that on hearing some sounds, he went to the scene of offence and found the accused beating the deceased with cement brick and on seeing the same, due to fear, he went away from that place. He further deposed that the place where the incident took place, was nearer to his house, which is situated opposite to the vacant house site of one Shyamala. He informed the incident to the wife of the deceased (P.W.2) and thereafter, came back to the place of offence along with the villagers by which time, the accused was caught by others and he was tied with a rope. During his cross examination, P.W.4 deposed that he heard dispute between the accused and the deceased for about 5 to 10 minutes and at that time, nobody was present in the house which was situated beside the vacant house of Shyamala. He also admitted in his cross examination that there were no disputes between the accused and the deceased prior to the incident in question. Further, in the cross examination P.W.4 stated to have heard the sounds of quarrel between the accused and the deceased for about 5 to 10 minutes, stated that he did not know the reason for the dispute leading to cause the death of the deceased. The evidence of P.W.4 is also silent as to the motive for the offence in question. Further more, the prosecution was not able to elicit the time of incident from P.W.4. Further, P.W.4 stated that he saw the accused

beating the deceased with cement brick. Normally a prudent person would intervene with the fight and try to disburse them. But the version of P.W.4 that he ran away from the scene of offence appears to be very unnatural and untrustworthy. In view of the same, much credence cannot be attached to the evidence of P.W.4.

13. Now, the only evidence of P.Ws.1 to 3, 6 and 7 who are not the direct witnesses and who are the circumstantial witnesses, remains for consideration.

14. Insofar as circumstantial evidence is concerned, the case of the prosecution is to be examined in the light of the tests as laid down in ***Padala Veera Reddy Vs. State of A.P. & Others***¹ wherein the Apex Court held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

¹ AIR 1990 SC 79

Having regard to the above principle of law enunciated by the Apex Court, let us examine the circumstances appearing in this case.

15. The evidence of P.Ws.1 to 3, who are brother, wife and son of the deceased respectively, is on last seen theory. P.W.1, N.Panduranga, who is the brother of the deceased deposed that on the date of the incident, the deceased went along with the accused on the bike of the deceased. P.Ws.2 and 3 who are the wife and son of the deceased also deposed the same. But, their evidence is silent as to the time when the deceased accompanied the accused on the bike. Apart from that, during the course of their cross examination, P.Ws.1 to 3 categorically admitted that there were no disputes between the accused and the deceased prior to the incident. In addition to that, they stated that there is cordial relationship between the accused and the deceased.

16. It is pertinent to note that the circumstance that the accused and the deceased were 'last seen together' cannot be the only ground for holding accused guilty. The connectivity must be established as the circumstance of "last seen together" does not by itself lead to the inference that it was the accused who committed the crime. Therefore, it cannot be said that the last seen theory set up by the prosecution on the basis of

evidence of P.Ws.1 to 3 and P.Ws.6 and 7 has direct nexus with the chain of circumstances so as to connect the accused with the crime.

17. Coming to the evidence of P.Ws.5, 6 and 7 for consideration. P.W.5 is the Photographer and his evidence is in no way helpful to bring home the guilt of the accused. P.Ws.6 and 7 are alleged to have tied the accused at the scene of offence. But, they did not depose any incriminating circumstances against the accused. P.Ws.6 and 7 deposed that they were playing cards at the belt shop at the time when the accused and deceased came there, purchased liquor and consumed the same. Then, P.Ws.6 and 7 stated to have left for having lunch. But, they did not depose as to the time when they saw the accused and the deceased together. P.W.6 further deposed that one hour thereafter, P.W.4 informed him that the accused was killing the deceased whereas P.W.7 deposed that half an hour thereafter, P.W.4 informed him that the accused was killing the deceased. The medical evidence also does not support the version of P.W.6 and 7. P.Ws.6 and 7 stated that the accused and the appellant consumed liquor, whereas P.W.10-Medical Officer stated that no alcohol content was found in the body of the deceased. The evidence of P.Ws.6 and 7 is very inconsistent and is not corroborative on the material aspects. Therefore, this Court is of the view that it

is not safe to rely on their evidence to connect the accused with the crime either in the form of last seen theory or as the circumstantial evidence.

18. In view of the inconsistencies and contradictions in the evidence of the prosecution witnesses as discussed above and in view of the fact that the prosecution failed to prove the motive for commission of the offence, this Court is of the view that the prosecution miserably failed to prove that it is the accused who is responsible for commission of the offence beyond all reasonable doubt. Therefore, the accused is entitled to the benefit of doubt. Thus, this point is answered in favour of the accused and against the prosecution.

19. In the result, the conviction and the sentence imposed on the appellant-accused for the offence under Section 302 IPC by the learned I Additional Sessions Judge, Adilabad, in Sessions Case No.405 of 2012 vide judgment dated 11.11.2013 are set aside and he is acquitted of the said charge.

20. Appellant-accused shall be set at liberty forthwith, if he is no longer required in any crime.

21. Fine amount, if any paid by the appellant-accused, shall be refunded after expiry of statutory period.

22. M.Os.1 to 7 and unmarked property, if any, shall be destroyed after expiry of appeal time.

23. Accordingly, the Criminal Appeal is allowed.

Justice Sanjay Kumar

Justice Abhinand Kumar Shavili

Dated: 15th December, 2018
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(Judgment delivered by *Hon'ble Sri. Justice Abhinand Kumar Shavili*)



15.12.2018

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