

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.462 of 2013

JUDGMENT (Per Dr.Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973, is filed by the appellant/accused, challenging the judgment, dated 29.06.2012, passed in S.C.No.566 of 2011 by the I Additional District & Sessions Judge, Ranga Reddy District – cum – Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Hyderabad, whereby, the Court below convicted the accused of the offence punishable under Section 302 I.P.C. and sentenced him to undergo Rigorous Imprisonment for life and to pay fine of Rs.100/- and to suffer Simple Imprisonment for one month, in default.

2. Heard the submissions of Ms.Hema Jaiswal, learned Legal Aid Counsel appearing on behalf of accused, learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The learned Legal Aid counsel appearing on behalf of the accused would contend that there is no direct evidence to connect the accused to the alleged offence. Further there is no circumstantial evidence. There is no recovery of weapon alleged to have been used in commission of the offence. Both P.Ws.6 and 7, who are crucial witnesses, turned hostile. There is no iota of evidence to connect the accused with the alleged offence. The

Court below erred in convicting and sentencing the accused for the offence under Section 302 of I.P.C. and ultimately prayed to set aside the conviction and sentence recorded against the accused for the offence punishable under Section 302 of I.P.C.

4. The learned Additional Public Prosecutor representing the respondent-State would submit that there is ample evidence on record to show that the accused had committed the alleged offence. The Court below had rightly convicted and sentenced the accused of the offence under Section 302 of I.P.C. and ultimately prayed to dismiss the Criminal Appeal by confirming the conviction and sentence recorded against the accused by the Court below.

5. In view of the above contentions put-forth by both the learned counsel, the points that arise for determination in this Criminal Appeal are:

1. Whether the accused caused the death of the deceased Venkatesh @ Venkaty?
2. Whether the conviction and sentence recorded by the Court below against the accused for the offence punishable under Section 302 of I.P.C. is liable to be set aside?

6. The case of the prosecution is that the accused is a contract labour in GHMC, Serilingampally Circle. He was residing in a hut at dumping yard, Allwyn X Roads, Miyapur and is native of Alladi village, Basavakalyan, Bidar District of Karnataka State. The deceased Venkatesh @ Venkaty was a rag-picker. The de-facto complainant is the brother-in-law of the deceased. Since the arrival of the deceased, the accused was not getting proper

benefits, as the deceased became a shareholder. So, the accused developed grudge against the deceased and started quarrelling with him and threatened him to leave the place. In this connection, P.W.2 – Md.Nazeeruddin, who is the owner of the hotel by name KGN Kalyani point, warned the accused not to quarrel with the deceased. On 15.11.2010, the accused got annoyed on the deceased and removed his temporarily erected hut. When questioned the same, the accused again picked up a quarrel with the deceased, took out M.O.1 – Spade and hit on the backside of the head of the deceased causing his instantaneous death.

7. On a report lodged with the police by P.W.1, the police registered a case against the accused under Section 302 of I.P.C., completed the investigation and filed charge-sheet before the Magistrate concerned. On committal, the Court below framed charge against the accused under Section 302 of I.P.C., read over the same to him for which, he pleaded not guilty and claimed to be tried.

8. To prove the case of prosecution, P.Ws.1 to 9 were examined and Ex.P.1 – report, Ex.P.2 – Scene of offence cum seizure panchanama, Ex.P.3 – Rough sketch, Ex.P.4 – Inquest report, Ex.P.5 – P.M.E. Report, Ex.P.6 – Signature on confession cum seizure report, Ex.P.7 – Signature on seizure report, Ex.P.8 – signature on confession and seizure report, Ex.P.9 – signature on seizure, Ex.P.10 – F.I.R., Ex.P.11 – F.S.L., were marked. M.O.1 – Spade was also marked.

9. When the accused was confronted with the incriminating material appearing against him in the prosecution evidence and examined under Section 313 of Cr.P.C, he denied the same and pleaded innocence. No oral and documentary evidence has been adduced on behalf of the accused.

10. P.W.1 – U.Bharathi is the sister-in-law of the deceased. She lodged a report with the police. She deposed that she came to know through one Iqbal the commission of murder of the deceased by the accused. She deposed that she was also informed that the accused beat the deceased with a Spade and caused the subject death.

11. The evidence of P.W.2 – Md.Naseeruddin reveals that he is running a hotel by name KGN Kalyani Point, which is near to the scene of offence. One Iqbal, who was working in his hotel, informed him the murder of the deceased by the accused.

12. The evidence of P.W.3 – U.Ganapathi is that he is a resident of Lingampally and he corroborated the testimony of P.W.1. P.W.4 – J.Venu is a Panch witness. P.W.5 is the doctor who conducted Post Mortem over the dead body of the deceased. P.Ws.6 and 7 are also Panch witnesses to the confession and seizure of M.O.1 – Spade. They did not support the case of prosecution. They did not state that M.O.1 – Spade was recovered, pursuant to the confession made by the accused. P.Ws.8 and 9 are the investigating officers of the crime. They deposed about conducting investigation, filing of charge-sheet, examination of witnesses etc.

13. As seen from the entire material on record, there are no eye-witnesses to the alleged incident. P.Ws.6 and 7 are the crucial witnesses examined by the prosecution to prove the recovery of M.O.1 – Spade, pursuant to the confession made by the accused. Both these witnesses did not support the case of prosecution. There is evidence of P.W.5 – doctor who conducted Post-mortem examination on the dead body of the deceased, who stated that the subject death is a homicidal death. The Post-mortem report was marked as Ex.P.5. There is inconsistency in the evidence of the prosecution witnesses (P.Ws.1 to 3) and evidence of P.W.5 with regard to the injuries suffered by the deceased. However, the injuries found on the dead body of the deceased were not spoken by any prosecution witnesses. Further, there is no recovery of weapon alleged to have been used in the commission of offence. None of the witnesses stated that the deceased and the accused were last seen together. Even the rivalry between the accused and the deceased with regard to the collection and selling of waste papers and plastic bottles was not established by the prosecution by leading cogent and convincing evidence.

14. The Court below, while dealing with the accusations levelled against the accused, acted upon the evidence of P.Ws.1 and 2 and held that they were informed about the alleged incident by Iqbal and said Iqbal might have witnessed the offence, i.e., deceased being hit by the accused with M.O.1 – Spade. To substantiate the same and to believe that said Iqbal witnessed the commission of offence by the accused, the

prosecution did not bring the said Iqbal into the witness box and got him examined. Had he been examined, the other side would have got an opportunity to cross-examine him. Thus, in the absence of examination of said Iqbal, the evidence of P.Ws.1 to 3 is only hearsay evidence, which has no value and not admissible. Even there are no circumstances to believe that the accused had caused the death of the deceased. The motive part with regard to the presence of rivalry between the accused and the deceased also has not been proved by the prosecution. In such an event, the Court below ought not to have convicted the accused for the offence punishable under Section 302 of I.P.C. The submissions made on behalf of the accused merit consideration. Under these circumstances, the accused is entitled for acquittal of the charge under Section 302 of I.P.C. framed against him and the Criminal Appeal deserves to be allowed.

15. In the result, the accused is acquitted of the charge framed against him under Section 302 I.P.C. and consequently, the conviction and sentence recorded against him for the said offence by judgment, dated 29.06.2012, passed in S.C.No.566 of 2011 by the I-Additional District & Sessions Judge, Ranga Reddy District-cum-Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Hyderabad, is set-aside. In view of the acquittal, the Superintendent, Central Prison, Cherlapalli, Ranga Reddy District, is directed to set the accused at liberty forthwith, if he is not required in any other case. The Criminal Appeal is allowed accordingly.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

P.NAVEEN RAO, J

Dr. SHAMEEM AKTHER, J

21st April, 2018
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