

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

CRIMINAL APPEAL NO.724 OF 2013

DATE:31.12.2018

Between:

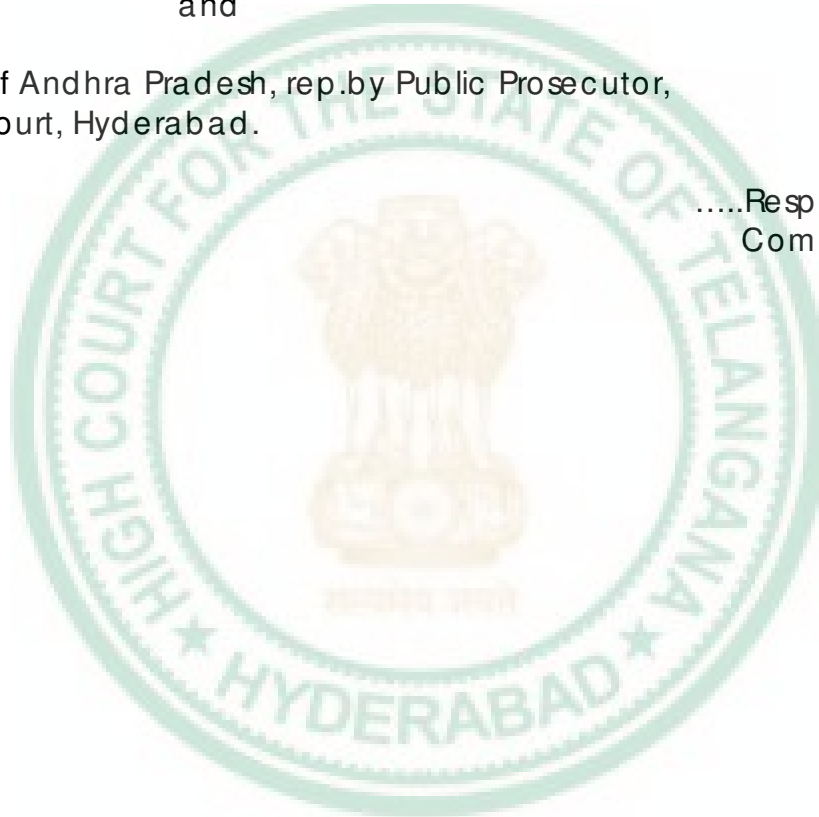
Sigadde Lachanna, s/o. Chinna Rajam, Aged 48 years,
R/o. Gumlapuram, V/o. Kurutla Mandal, Karimnagar
District.

..... petitioner/ Appellant/
Appellant

and

State of Andhra Pradesh, rep.by Public Prosecutor,
High Court, Hyderabad.

.....Respondent/
Complainant



The Court made the following:

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

CRIMINAL APPEAL NO.724 OF 2013

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

Sole appellant in Sessions Case No.82 of 2013 on the file of II Additional District and sessions Judge, Karimnagar at Jagtial preferred this appeal under Section 374(2) of Cr.P.C., challenging the finding of guilt of offence under Section 302 of IPC and convicting him under Section 235(2) of Cr.P.C., sentencing him to undergo imprisonment for life and a fine of 200/-. It is further ordered that in default of payment of fine, he was ordered to undergo simple imprisonment for a period of three months.

2. The case of the prosecution as can be culled out from the material on record is as under:

The deceased-Bheemaiah was a native of Chittithandrapadu village of Mahboob Nagar district and to eke-out livelihood came to Gumlapur village six years ago. The deceased worked as a Coolie. He used to sleep in the abandoned bus shelter of Gumlapur village. The appellant-Sigadde Lachanna was a Carpenter by profession. The deceased and appellant developed friendship and would consume liquor together. It is alleged that the appellant took hand loan of 200/- from the deceased a year prior to the murder of the deceased and failed to repay the same despite several reminders. The deceased raised quarrel several times with the appellant on the ground of non-repayment of the loan taken by him. On 10.11.2012, the appellant made a piston to

Meesala Venkati (P.W.3), went to his house to deliver the same. Meesala Venkati paid him 10/- for the same. Venkati and the appellant purchased toddy and started consuming the same. Meanwhile, the deceased came to that place and asked them to provide some liquor to him as well. Venkati replied saying that the liquor they had bought is only sufficient for their consumption and, therefore, cannot provide the same to him and asked him to go away. The deceased then demanded the appellant to pay the hand loan taken from him. The appellant replied by saying that the said loan was already paid and why he was asking about the same again. A quarrel then occurred between the deceased and the appellant. Meesala Venkati (PW3), N.Devamma (PW4) and Nuthipalli Narsingh intervened to stop the fight by imposing a condition that the appellant has to keep his carpentry machinery at Meesala Venkati's house and on repayment of the loan he can take his machinery. On the same day at 9.00 p.m., the appellant and the deceased met each other at the Gumlapur bus shelter and another quarrel took place between them on the issue of repayment of loan and the deceased forcibly took the bicycle of the appellant and asked him to take his bicycle after repayment of the loan. The deceased took the bicycle and kept it beside him and slept inside the bus shelter. The appellant bore grudge against the deceased and on the same night beat the deceased on his face with a small stone at first and when the deceased did not lose his breath with that beating, then the appellant by lifting a big stone threw it on the head of the deceased due to which the deceased died instantly. Thereafter, the appellant threw both the

stones in the nearby bushes and went away taking his bicycle. He washed his hands before reaching his house at a bore well and after reaching his house removed the blood stained clothes. In the morning hours on 11.11.2012 he went to the house of the Meesala Venkati and took his carpentry machinery and paid a deaf ear to Meesala Venkati who was informing him about the death of the deceased and in a hurried manner vanished from the village for about three days.

3. Based on the complaint of the Village Revenue Officer dated 11.11.2012, Korutla Police registered crime for the offence under Section 302 of IPC. During the course of investigation, the appellant was arrested. On questioning, appellant confessed to the crime. He lead to recover the bloodstained clothes from his house.

4. After conducting investigation, Police laid charge sheet alleging that appellant committed murder of deceased. The learned Judicial Magistrate of First Class, Metpally took cognizance of the charge-sheet, committed the case to the Sessions Division at Karimnagar. The Principal District and Sessions Judge registered the same as Sessions Case No.82 of 2013 and made over to the Court of II Additional Sessions Judge, Karimnagar at Jagtial.

5. On behalf of prosecution, 12 witnesses were examined; marked 18 exhibits; and marked 11 Material Objects. After closure of prosecution evidence, appellant was examined under Section 313 of Cr.P.C., explained the incriminating material that appeared

against him in the testimony of prosecution witnesses and evidence brought on record. The appellant denied the same.

6. On appreciation of entire evidence, more particularly evidence of P.Ws.3, 4, 10, 11 and 12, and on scrutiny of documents and material objects, the Sessions Court held the appellant guilty.

7. Heard Sri C.Vasundhara Reddy, learned counsel (Legal Aid Counsel) for appellant/appellant and learned Additional Public Prosecutor for the State.

8. According to learned counsel for appellant, there is no legal evidence to implicate the appellant.

9. The trial Court erred in relying on circumstantial evidence to hold appellant guilty. It is settled law that the circumstances should lead to only one irresistible conclusion which is incompatible with innocence, whereas prosecution miserably failed to lead to such assumption.

10. Prosecution could not prove even through circumstantial evidence the fact of appellant committing alleged murder.

11. Mere presence of blood of Group-'A' on the cloths of appellant and the deceased cannot lead to an inference that appellant committed murder. More so, when blood group of deceased was not ascertained.

12. Learned Additional Public Prosecutor supports the appreciation of evidence and conclusions arrived at by the trial

Court. He would contend that evidence produced on behalf of prosecution is credible. The appellant bore grudge against the deceased for demanding to return the money borrowed from him, pledging his carpentry instruments with third party at the instance of deceased and seizing his bicycle and therefore planned to kill the deceased. The appellant was seen with the deceased few hours before the incident. The fact that bloodstained clothes were recovered at his instance from his house and the fact that blood on recovered clothes of appellant and on the clothes on the body of deceased were of the same blood group leads to irresistible conclusion that appellant committed the murder.

13. P.W.11 found the following injuries on the body of the deceased.

- i) Fracture of frontal bone on the both side of the skull
- ii) Depressed fracture of left temporal bone of skull
- iii) fracture of left zygomatic bone
- iv) fracture of left mandibular temporal joint

He has also noticed avulsion of left eye ball. Further, there was an internal injury which was contusion and hemorrhage of frontal temporal left. As can be seen from Exs.P2 to P10-photographs, Ex.P11-inquest report, and Postmortem Examination report (Ex.P15), it is apparent that cause of death is homicidal.

14. There was no eyewitness to the incident. The quarrel took place in the evening hours of 10.11.2012 and as deposed by P.Ws.3 and 4, both went in different directions. Appellant was not seen

with the deceased at the time of the incident or just before the incident. Based on the circumstantial evidence, prosecution sought to allege that appellant committed the crime. Revenge against the deceased for demanding money and creating gallata on the previous day is attributed as motive for the appellant to kill the deceased. Further, to establish that appellant killed the deceased, the confession by the appellant and the recovery of bloodstained clothes marked as MO.10 (full sleeve shirt) and MO.11 (cotton lungi) from the house of appellant and that the appellant led to his house to recover those clothes relied by trial Court. According to prosecution, FSL report would clearly point out the bloodstains on Banian and pant recovered from the deceased and the shirt of appellant, (MOs.5, 6 and 10) belong to same blood group i.e., 'A' and that there was no explanation from the appellant as to how blood group on his shirt (MO.10) matched with the blood group of blood found on MOs.5 & 6 recovered from the deceased.

15. The question for consideration is:

“Whether in the absence of witness to the incident, the alleged quarrel on the previous day and recovery of bloodstained clothes from the house of appellant at his instance can lead to the presumption of appellant committing crime ?

16. The trial Court observed that with the evidence of P.Ws.10 and 12, prosecution established the recovery aspect and as per FSL report (Ex.P18), the bloodstains found on MOs.5, 6 and 10 matched and there was no explanation from the appellant as to how the bloodstains matching with the bloodstains found on the clothes of deceased. The trial Court also accepted the case of prosecution

on the issue of motive to commit crime and during the investigation the appellant confessed the crime committed by him.

17. As noted above, no one has seen the crime alleged to have been committed by the appellant. From the deposition of Medical Officer and Postmortem Examination Report (Ex.P15), it is apparent that death occurred 7 to 8 hours before conducting of postmortem examination. As per Ex.P15 death appears to have occurred in early morning of 11.11.2012. The postmortem examination report contradicts the case of prosecution that death occurred in the previous night. Further, though the prosecution recovered two boulders from the scene of offence containing bloodstains, which were stated to have been used to kill the deceased, the finger prints on those boulders were not taken and were not subjected to forensic examination. Further, as per the FSL report, the blood found on the boulders could not be ascertained. Further, though blood group on shirt recovered from the appellant as well as blood group of MOs.5 & 6 matched, but no material is brought on record to show that the deceased blood group was 'A'. Further no endeavour was made by the prosecution to ascertain the blood group of appellant. Further, the FSL report was also vague with reference to the blood group. For all blood groups, there is positive or negative, whereas report only talks about 'A' group. It does not say whether it is positive or negative. It is appropriate to note that though lungi (MO.11) stated to have been recovered from the house of appellant, at his instance, also contained bloodstains, but report of the FSL would show that blood group of bloodstains on

lungi (MO.11) could not be determined. No explanation is forthcoming as to why FSL could not ascertain the blood group of bloodstains on lungi (MO.11) recovered from the appellant's house and on the boulders.

18. On matching of blood group, in somewhat similar facts the issue was considered by the Supreme Court in *Radhey Shyam v. State of Rajasthan*¹. Supreme Court observed as under:

"25. It is the prosecution case that the clothes of the appellant were bloodstained and that blood group of the blood found on the clothes of deceased Rajkanta was the same as the blood group of the blood found on the clothes of the appellant. The blood found on the clothes of Rakesh is stated to be of 'O' group. Pertinently, the pancha to the seizure panchnama under which the clothes of the appellant and deceased children were seized, has turned hostile. PW 1 Kajod who is signatory to the panchnama of seizure of clothes denied that the clothes of the appellant were seized before him. The blood groups of the appellant, deceased Rajkanta and deceased Rakesh were not ascertained.

26. To establish its case, the prosecution should have brought on record blood group of the appellant, blood groups of the deceased children and the medical record of the appellant from the hospital in which he was admitted. Moreover, the prosecution case that the blood found on the clothes of the appellant was of the same group as that of the blood found on the clothes of Rajkanta, was not put to the appellant in his statement recorded under Section 313 of the Criminal Procedure Code. This is the most vital circumstance which, if established, would have linked the appellant to the crime in question. It was obligatory on the part of the prosecution to put it to the appellant so that he could have offered explanation for the same. The prosecution failed to do so. This is a serious lacuna which cannot be condoned."

(emphasis supplied)

19. In the instant case also, prosecution failed in establishing that deceased blood group is 'A', blood group of appellant was not 'A' and blood found on the clothes of appellant i.e., MOs.10 and 11 do not belong to appellant. The issue was not put to the appellant while recording his statement under Section 313 of the Cr.P.C.

¹ (2014) 5 SCC 389

20. It is also appropriate to note the deposition of P.W.3, who is star witness of the prosecution. He only assumes that appellant could have committed the crime. He said that "I expressed my doubt over the appellant herein as responsible for the death of that Bheemaiah". He was not sure whether appellant was responsible for committing the crime. The same is the deposition of P.W.4. According to the deposition of P.W.4, "it cannot be said as to who murdered that Bheemaiah and either appellant or some one else might have murdered him". Their assumption is based on the fact of gallata in the evening of 10.11.2012. It is not even their case that appellant threatened to take revenge on deceased. A person cannot be held guilty on presumption and assumption of witnesses as per their understanding.

21. It is true that there was quarrel between the appellant and the deceased on the previous day, but according to depositions of P.Ws.3 and 4, they pacified the quarrel, the carpentry instruments of the appellant were kept in the custody of P.W.3, and appellant and the deceased went in two different directions. There is no evidence to point out that they met after that incident, there was further quarrel between them, provoking the appellant to commit the crime of killing the deceased.

22. Having regard to the depositions of P.Ws.3 and 4, no endeavour was made by the prosecution to rule out the possibility of committing of crime by any other person. It is also appropriate to note at this stage that deceased do not belong to Gumlapur village. There were serious differences between the deceased and

his wife. Due to differences with his wife, he migrated to Gumlapur village and living all alone in bus shelter by doing daily coolie work.

23. At this stage, it is pertinent to note the deposition of Investigating Officer-P.W.12. According to his deposition, in the cross-examination, he admitted that appellant had no past criminal record; his investigation revealed that appellant was not in the habit of picking up quarrel even when he is in intoxication condition.

24. In view of the inconsistencies in the evidence of prosecution witnesses, this Court is of the view that the trial Court has failed to consider all these aspects in its proper perspective and as such, the judgment of the trial Court, insofar as the conviction and sentence of the appellant is concerned, warrants interference by this Court and consequently, the same are liable to be set aside.

25. In the result, the criminal appeal is allowed. The conviction and sentence recorded by the trial Court in its judgment, dated 05.06.2013, in Sessions Case No.82 of 2013 on the file of the II Additional Sessions Judge, Karimnagar at Jagtial against the appellant/sole accused for the offence punishable under Section 302 I.P.C are set aside and he is, accordingly, acquitted of the said offence. The appellant/sole accused shall be released forthwith, if he is not required in any other case.

P. NAVEEN RAO,J

P. KESHAVA RAO, J

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



CRIMINAL APPEAL NO.724 OF 2013

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

Date:31.12.2018

Kkm/ccm