

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.589 OF 2011

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

By Judgment dated 28.04.2011 in S.C.No.94 of 2009, the learned I-Additional Sessions Judge, FAC Principal Sessions Judge, Ongole (for short, the Court below), found the sole accused guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860, convicted him under Section 235(2) of the Criminal Procedure Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for six months. Aggrieved thereby accused preferred present appeal under Section 374(2) of Criminal Procedure Code.

2. The case of the prosecution in brief is as under:-

The accused by name Devarakonda Sudhakar @ Bujji, Occupation: Butcher (vendor of pig meat) is a resident of Prakash Nagar, Chirala, Prakasam District. Battu Sekhar (herein after referred to as deceased), is a resident of Vykuyntapuram, Sreeram Nagar, Chirala, Prakasam District.

On 3.08.2008 at about 6.15 hours, the deceased and his friend Pw.3 who is a rickshaw puller started from their house for getting black soil for plantation and also to purchase pig meat. They went to the meat shop of the accused at 8.00 hours and in the process of buying pig meat, a quarrel arose between the vendor of the pig meat/accused and purchaser of

meat/deceased and when the deceased intended to buy meat from the next shop, the accused stabbed the deceased in his stomach with a butcher knife, due to which, the deceased sustained severe bleeding injuries and fell on the ground. Pw.3 who was present there, shifted the deceased to the Government Hospital, Chirala and he informed the incident to Pws.1 and 2 and the entire incident was witnessed by Pws.4 to 9.

On receiving intimation from the Hospital, Pw.14 Woman Head Constable of Chirala I Town Police Station, Proceeded to the Hospital and recorded the statement of the deceased on 3-08-2008 at 9.30 hours and subsequently, the deceased was referred to Government General Hospital, Guntur. Basing on the statement of the deceased, Pw.17 Sub Inspector of Police, Chirala I Town Police Station registered a case under Section 307 I.P.C., and he examined Pws.3, 6 to 9 and recorded their detailed statements. He visited the scene of offence in the presence of Pw.10 and Lw.11 Kandimalla Sreenivasa Rao and seized the blood stained earth and control earth and also prepared an observation report. He also seized blood stained shirt of the deceased at Government Hospital, Chirala. The deceased died on 3.08.2008 at 11.45 hours while undergoing treatment in Government General Hospital, Guntur. On receiving the death intimation, Pw.18 Inspector of Police, Chirala Proceeded to the Hospital and obtained death intimation. Pw.16 altered the section of law from Section 307 I.P.C., to 302 I.P.C., and submitted express F.I.Rs., to all concerned. Pw.18 also conducted inquest over the dead body of the deceased in the presence of Pw.11 and Lws.13 and 14 Akurthi Srinivasa Rao and

Sagu Lakshmi Siva Satyanarayna. Pw.18 examined the witnesses and recorded their detailed statements and sent the dead body for Post Mortem Examination. Pw.12 conducted autopsy over the dead body of the deceased and issued Ex.P21 Post Mortem Certificate, stating that the deceased died due to hemorrhagic shock due to stab injury. Pw.18 arrested the accused on 7.08.2008 in the presence of Pw.10 and Lw.11 Kandimalla Sreenivasa Rao and basing on the confession statement of the accused, he seized the blood stained T shirt and one Butcher knife under a cover of panchanama and sent the accused for remand. He sent the material objects to Regional Forensic Science Laboratory, Guntur for analysis and the Director of the said Laboratory has opined that the blood on item Nos.1, 3 to 7 is of human origin and blood group on item No.5 is of 'AB'. Pw.19 who succeeded the office of Pw.18 has investigated into the case and filed charge sheet.

3. On committal, the trial Court framed a charge under Section 302 I.P.C., against the accused. The accused pleaded not guilty for the said charge and claimed to be tried. The trial Court examined Pws.1 to 20 and got marked Exs.P1 to P31.

4. The salient points emerged from the evidence may now be noted as follows:-

Pw.1 is the wife of the deceased. She stated that Pw.2 is her father and Pw.3 is a rickshaw puller working in the flour mill of Pw.2. She further stated that on 3.8.2008 at 8.00 AM., the deceased and Pw.3 went to get chicken and some mud for their garden. Subsequently between 9.00 to 9.15 AM., she received a

phone call from Pw.2 asking her to come to Government Hospital, Chirala. Pw.1 went to the Hospital along with her children and saw her husband with bleeding injuries lying on a cot in the Hospital and was undergoing treatment and there was a bandage around his stomach. Subsequently, he was referred to Government Hospital, Guntur for better treatment. By the time she visited the Hospital, the police were also present. On the way to Government Hospital, Guntur in Ambulance, Pw.2 informed her about the details of crime occurrence. On reaching the Government Hospital, Guntur, the doctors declared that her husband was already dead. Pw.1 has identified M.O.1 shirt, M.O.2 lungi and M.O.3 under garment of the deceased. In her cross examination, Pw.1 has confirmed that Pw.3 is an employee of Pw.2 and that on 3-8-2008 the deceased went to get chicken without taking breakfast.

Apart from the above, in the cross examination, the defence counsel has not extracted any relevant information pertaining to the crime.

Pw.2 in his chief examination deposed that on 3-8-2008 at about 8.30 to 9.00 am, while he was in his house, Pw.3 came and informed him that the deceased was murdered and asked him to start immediately to go to Government Hospital, Chirala as Pw.3 has admitted the deceased in the Hospital. Immediately, Pw.2 and his wife proceeded to the Hospital in the rickshaw of Pw.3. By the time, they reached the Hospital, they found the deceased with bandage around his stomach and police constables were present there. Initially, Police did not allow them to meet the deceased and later, when asked about the

incident, Pw.3 explained him and within half an hour, Pw.1 reached the Hospital and deceased was taken to the Hospital at Guntur in 108 Ambulance. Himself, his wife, Pw.1 and a constable traveled in the Ambulance to Guntur and on reaching the Government Hospital, Guntur, the doctors in the said Hospital, examined the injured (deceased) and declared that he was already dead. On the way to the Hospital, Pw.2 has explained Pw.1 about the crime occurrence. Later police examined him about the incident.

In the cross examination, the defence counsel has not obtained any relevant information in his defence with regard to the contradictions or denial of the chief examination by Pw.2.

Pw.3 is an eye witnesses to the crime occurrence and in his statement under Section 161 Cr.P.C., recorded by Pw.18 under Ex.P3 he has categorically narrated about the crime occurrence and the manner in which the accused stabbed the deceased with a butcher knife meant for cutting pork. However, in his chief examination, pw.3 turned hostile and has not identified the deceased, Pws.1 and 2 and in the cross examination, he stated that he does not know why he was summoned to the Court and he deposed ignorance about the crime.

Pws.4 to 9 are the persons present around the scene of offence and witnessed while the accused stabbing the deceased, have turned hostile and they did not support the case of the prosecution. They stated that they do not know the accused or other witnesses.

Pw.10 is the Village Revenue Officer in Devangapuri village, Chirala Mandal. He confirmed about the crime and stated that he was called to the Government Hospital, Chirala on 3-8-2008 by the Sub Inspector of Police, I-Town at about 11.00 AM., and he found Lw.11 K.Srinivasa Rao in the police station and in their presence, Pw.3 has removed a blood stained shirt from a polythene cover and handed over to the police and Pw.10 has identified the shirt as M.O.1. Pw.10 further stated that on 7-8-2008, the accused came and surrendered before him and on his request, Pw.10 produced him before the police.

Pw.11 is the witness to the inquest report and in his presence, it came to light that the death of the deceased was due to stab injury and he signed the inquest report Ex.P20. He stated that all panchayatdars are from the same village including the deceased.

Pw.12 is the Professor, Forensic Medicine Department, Guntur Medical College. He deposed that on 4-8-2008 he conducted Post Mortem Examination between 9.45 AM., to 10.45 AM., and confirmed that the deceased died due to haemorrhage and shock as a result of the stab injury in the stomach and confirmed that the said injury was possible with a knife like M.O.4 and he issued Ex.P21 Post Mortem Certificate. In the cross examination Pw.12 has expressed that M.O.4 was not shown to him previously by the police.

Pw.13 is the doctor who worked as Civil Assistant Surgeon in Area Hospital, Chirala and he deposed that he preliminarily treated the deceased on 3-8-2008 and he recommended for

higher medical treatment. Ex.P22 is the intimation sent by him to the police. In the cross examination, the details of entries in the registers have been confirmed.

Pw.14 is the Head Woman Constable and she deposed that on 3-8-2008 around 9.15 AM., she received Ex.P22 intimation from the Area Hospital, Chirala, upon which, she proceeded to the Hospital after making an entry in Police Station Diary and found the deceased undergoing treatment and the doctor was present by his side. After having confirmed the condition of the patient from the doctor, she recorded the statement of the injured (deceased). As both hands of the injured were injected with saline, she obtained his thumb mark on the statement Ex.P23 and the statement was recorded in the presence of Pw.15 and Pw.15 also made endorsement on the said statement. She handed over the said statement to the Sub Inspector of Police, Chirala after returning to the Police Station. In the cross examination, Pw.14 stated that she has not mentioned in Ex.P23 that the doctor was present through out recording the statement and patient was mentally fit to give his statement. By the time, Pw.14 visited the Hospital, she noticed Pw.1 and other relatives present and she sent them out to proceed with the formalities. Pw.14 confirmed about the presence of the doctor and recording of the statement and health condition of the deceased and she denied the suggestions which are contrary to the chief examination.

Pw.15 who is working as Civil Assistant Surgeon in Area Hospital, Chirala, in his chief examination confirmed the

statement of Pw.14 about his presence on 3-8-2008 at 9.30 AM., and treating the deceased and also his endorsement on Ex.P23.

In the cross examination, Pw.15 has denied the suggestions which are contrary to the chief examination.

Pw.16 who worked as Assistant Sub Inspector of Police in Chirala I-Town Police Station stated that initially he registered the case under Section 307 I.P.C., and after receipt of the death intimation Ex.P24 with a covering letter from the Chief Medical Officer of Government General Hospital, Guntur, he altered the section of law from Section 307 I.P.C., to 302 I.P.C., and issued Ex.P25 FIRs., to all concerned officers.

Pw.17 who worked as Sub Inspector of Police in Chirala I Town Police Station deposed that on 3-8-2008 he received the Hospital intimation Ex.P22 and statement of the injured Ex.P23 from Pw.14 and registered a case in Crime No.184 of 2010 for the offence under Section 307 I.P.C., and he issued Ex.P26 First Information Report. Thereafter, Pw.17 proceeded to the Hospital and examined Pw.3 and seized M.O.1 blood stained shirt under a cover of panchanama Ex.P14. He further proceeded to scene of offence and prepared the sketch Ex.P27 and also collected M.O.6 blood stained earth and M.O.7 control earth from the scene of offence. In the cross examination, the suggestions with regard to visiting scene of offence and collecting M.Os.6 and 7 were denied.

Pw.18 Circle Inspector of Police, Chirala deposed that he proceeded to the Government General Hospital, Guntur on knowing about the crime and admission of the injured in the

Hospital, by completing the formalities in the police station and he made endorsement on Ex.P24 death intimation. He also directed to alter the section of law from Section 307 to 302 I.P.C. Later, he secured the presence of panchayatdars and conducted inquest over the dead body of the deceased. He further deposed that he sent M.Os. 1 to 7 with a letter of advice Ex.P29 to Regional Forensic Science Laboratory, Guntur for analysis.

Pw.19 who worked as Circle Inspector of Police, Chirala deposed that he took up investigation in this case from Pw.18 and he received the RFSL report Ex.P30 and he further deposed that Ex.P1 statement of Pw.3 was recorded by the Magistrate Pw.20 under Section 164 Cr.P.C., and he filed charge sheet in this case.

6. Heard the learned counsel appearing for the appellant/accused and the learned Public Prosecutor appearing for the respondent/State.

7. The learned counsel for the appellant in support of his case has argued that there are no eye witnesses to the occurrence and the only eye witness Pw.3 has turned hostile to the prosecution case. The dying declaration of the deceased cannot be relied as the same has been recorded by the Head Constable at 10.40 AM., and the incident took place at 8.00 AM and the requisites of dying declaration under Indian Evidence Act have not been complied with as no signature was obtained on the dying declaration and it was only Pw.3 who passed on the information to Pw.2 and in turn Pw.2 passed the said information to Pw.1. The Extra Judicial Confession made to

Pw.10 Village Revenue Officer, cannot be relied as he is a stock witness and no Magistrate has recorded the dying declaration of the deceased. When the Courts at Chirala were available, the assistance of the Magistrate at Chirala ought to have been taken. It is only a case which runs around hearsay evidence. Pws.1 to 3 have not mentioned the name of the accused and the other witnesses Pws.4 to 9 who are the vendors in the vicinity have not supported the prosecution case.

The learned counsel for the appellant relied on the decision reported in **Khushal Rao Vs. State of Bombay**¹ and **K.Ramachandra Reddy and another Vs. The Public Prosecutor**² about the dying declaration and the manner in which it has to be recorded. He further relied on a decision reported in **MAKHAN SING Vs. STATE OF PUNJAB**³ for recording extra judicial confession, which cannot be relied as the V.R.Os., are acting as stock witnesses.

The learned counsel for the appellant further placed reliance on the decision reported in **Jain Karan Vs. State of (N.C.T.Delhi)**⁴, **Pathan Shafi Vs. State of Andhra Pradesh**⁵ and **State of Gujrat Vs. Jayrajbhai Punjabhai Varu**⁶.

Further, the learned counsel for the appellant also pleaded for conversion of the charge from Section 302 to Section 304 Part-II IPC., stating that the incident occurred due to sudden provocation/sudden quarrel and modify the sentence to the period already undergone by the appellant as sufficient. He also

¹ AIR 1958 Supreme Court 22

² (1976) 3 Supreme Court Cases 618

³ 1988 (Supp) Supreme Court Cases 526

⁴ AIR 1999 Supreme Court 3512

⁵ 2016(2) ALD (CrL.) 621

⁶ 2016 (2) ALD (CrL.) 392 (SC)

placed reliance on the decision reported in **SHANKAR DIWAL WADU Vs. STATE OF MAHARASHTRA**⁷.

8. As seen from Ex.P23 – statement of the deceased, the manner in which the accused has attacked the deceased was unwarranted and because the deceased intended to buy meat from the neighbouring shop when the accused denied to supply the meat to the choice of the deceased. It is not the case of sudden provocation and therefore, conversion of charge from Section 302 I.P.C., to Section 304 Part-II I.P.C., cannot be considered.

9. The learned Public Prosecutor for the State of Andhra Pradesh has categorically submitted that the accused has stabbed the deceased in his stomach with a butcher knife and due to the injuries caused thereby, the deceased fell down and due to heavy blood loss, though he was initially treated in Government Hospital, Chirala, he was shifted to Government General Hospital, Guntur for better treatment and by the time when he reached Government General Hospital, Guntur, he was declared dead by the doctors.

10. There is no lacuna on the part of the prosecution in conducting the investigation. Pw.3 who is an eye witness to the incident though turned hostile, gave a statement before the Magistrate under Section 164 Cr.P.C., that he witnessed the accused stabbing the deceased. Apart from that on the date of incident he gave a statement under Section 161 Cr.P.C., to the investigating officer that he witnessed the occurrence. On

⁷ (2007) 12 Supreme Court Cases 518

observing the condition of the deceased and the doctor who was present there also informed that the patient is in fit condition to give the declaration, Pw.14 recorded the statement of the deceased in Chirala Hospital and later he was shifted to Guntur General Hospital and there, he died. Thus, the statement of the deceased has to be treated as Dying declaration and there are no infirmities in recording the dying declaration Ex.P23. Ex.P30 Regional Forensic Science Laboratory Report confirms that the blood stains are of human origin and Ex.P21 Post Mortem Report discloses that the cause of death is due to haemorrhage and shock as a result of stab injury to abdomen. The investigating officer Pw.17 stated that he registered the crime, rushed to the Hospital, initially provided first aid treatment in Government Hospital, Chirala and thereafter shifted the injured to Government General Hospital, Guntur for better treatment. When there was no time to call for a Magistrate and in view of the serious health condition of the patient, his statement was recorded after obtaining the endorsement of doctor. Even in the cases of witnesses hostile, certain admitted portions have to be taken into account and simply on the ground of witnesses hostile, the entire statements cannot be brushed aside. The statement of the deceased has to be considered and further it is to be treated as dying declaration and weightage has to be given to the investigation made by the police in such cases and accused has to be punished.

11. The learned Public prosecutor has relied on **BHAGIRATH Vs. STATE OF HARYANA⁸** and **STATE OF KARNATAKA Vs. SHARIFF⁹** with regard to consideration of dying declaration and conviction to be accorded to the accused and that Head Constable can also record the statements and the same can be treated as dying declaration.

With regard to consideration of relevant portion of the statement of the witness though turned hostile, the prosecution has placed its reliance on **RAMESH AND OTHERS Vs. STATE OF HARYANA¹⁰** and argued that the accused has to be convicted and the sentence passed by the Court below has to be confirmed.

12. The Judgment of the Court below is well considered and the Court below has appreciated the evidence and also relied on catena of Judgments in support of its findings that the accused is guilty. There are no infirmities in the Judgment passed by the Court below. The accused cannot take advantage of witnesses being turned hostile and the importance of the statement recorded in Ex.P1 as well as the statement of the deceased Ex.P23, confirmed that the accused stabbed the deceased with a butcher knife on the naval portion of the abdomen and it got pierced into the stomach and caused deep bleeding and as a result and inconsonance with the Post Mortem Report, the cause of death as opined by the doctor Pw.12 have to be taken into consideration.

⁸ (1997) 1 Supreme Court Cases 481

⁹ (2003) 2 Supreme Court Cases 473

¹⁰ (2017) 1 Supreme Court Cases 529

13. In view of the above, the Judgment of the Court below is upheld by confirming the conviction and sentence of the accused and the appeal is dismissed. The bail granted during the pendency of the Criminal Appeal shall stand cancelled. The appellant/accused shall surrender forthwith before the Superintendent, Central Prison, Nellore and suffer the rest of the sentence as confirmed by this Court. In the event of his failure to do so, the Court below shall initiate steps in accordance with law to apprehend and incarcerate him for the balance period as per the confirmed sentence.

SURESH KUMAR KAIT, J

T.AMARNATH GOUD, J

Date: -01-2018.
Shr

