

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[Special Original Jurisdiction]

SATURDAY THE TWENTYSEVENTH DAY OF JANUARY
TWO THOUSAND AND EIGHTEEN

P R E S E N T

HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HONOURABLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL NO. 1270 OF 2012

Between:

Chakali Srinivasulu @ Seenu,
s/o Ampaiah, Occ. Coolie, ...
r/o: Yedurur village, Kurnool Mandal
Kurnool district.

Appellant/Accused in
S.C.No. 151 of 2011 on
the file of the Court of
III-Addl. Sessions Judge
[F.T.C.] Gadwal,
Mahboobnagar district
Telangana State

V/s.

The State of Andhra Pradesh
Represented by the Public Prosecutor
High Court of Judicature for the State of
Telangana & Andhra Pradesh,
Through Station House Officer,
Alampur Police Station,
Mahboobnagar district,
Telangana State.

... Respondent/complainant

Counsel for the Appellant : Sri T.D. Phani Kumar

Counsel for the Respondent : Public Prosecutor [AP]

The court made the following : [Judgment follows]
{Advance order
communicated on
on 27/1/2018, vide
separate order}.

HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HONOURABLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL NO. 1270 OF 2012

JUDGMENT :

The sole accused in S.C.No. 151 of 2011 on the file of the Court of III-Additional District and Sessions Judge {Fast Track Court}, Gadwal, Mahboobnagar district, is the appellant. He was tried for an offence punishable under section 302 of I.P.C., for causing the death of one Mahendra, on 14/05/2010 at about 01:00 p.m., at Kalugotla vagu. Vide judgment dated 21/06/2012, the learned Sessions Judge found the accused guilty of the offence punishable under section 302 of I.P.C., and convicted him under section 235 [2] Cr.P.C., and sentenced him to suffer imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to undergo simple imprisonment for a period of two months. Challenging the same, the present criminal appeal came to be filed.

2. The facts in issue are as under :

The deceased, Mahendra is the son of PW-1 Ramudu. On the date of incident i.e., 14/05/2010 at about 01:00 p.m., the deceased and PW-2 Shekar went to Kalugotla village for

grinding red chillies and jawar in a flour mill. After grinding red chillies and jawar they were returning and when they reached a vanka, on the way to Kalugotla vagu, the accused came from back side and stabbed the deceased on the centre of his neck with knife. At that time PW-2 on his tractor (which was coming) stopped the same and carried the deceased in the tractor to the village and informed the same to PW-1. Initially the deceased was brought in the tractor to the village and from there he was taken to Government General Hospital, Kurnool on the same day. At about 05:00 p.m., PW-10 the Sub-Inspector of Police, Manopad Police Station received information about the death of the injured, from the Govt. General Hospital, Kurnool, pursuant to which he went to the Govt. General Hospital, Kurnool and recorded the statement of PW-1 under Ex.P-1. Basing on Ex.P-1, he registered a case in Crime No. 56 of 2010 and issued Ex.P-10-F.I.R. On the next day, he went to the village and recorded the statements of PWs.2 and 3. On 17/5/2010 night, PW-12 the Sub-Inspector of Police received intimation about the death of the injured while undergoing treatment at Osmania General Hospital, Hyderabad. On the same day at about 09-30 p.m., the Sub-Inspector of Police, who was present at Manopad Police Station submitted a report informing about the death of the deceased. On the basis of the said report, the section of law was altered to 302 I.P.C. Ex.P-11 is the alteration memo. On 18/5/2010, PW-12 went to the Osmania General Hospital, Hyderabad and conducted inquest over the dead

body of the deceased in the presence of PW-5. Ex.P-3 is the inquest report. Thereafter, the dead body of the deceased was sent for postmortem examination. On 18/5/2010, PW-7 the Assistant Professor, Forensic Department, Osmania General Hospital, Hyderabad conducted autopsy over the dead body of the deceased and issued Ex.P-6 the postmortem examination certificate. PW-7 opined that the cause of death was due to stab injury over the neck region. PW-12 secured the presence of witnesses and recorded their statements under section 161 Cr.P.C., inspected the scene of offence situated at the outskirts of Mennipadu village, prepared the rough sketch of scene of offence in the presence of panchayatdars. Ex.P-8 is the crime details form and Ex.P-9 is the rough sketch of the scene of offence. Further investigation in this case was taken up by PW-13/Inspector of Police. On 20/6/2010, PW-13 examined PW-4 and recorded his statement under section 161 Cr.P.C. On 30/7/2010, PW-13 apprehended the accused and in the presence of PW-6, the accused said to have confessed about the commission of offence. Ex.P-4 is the relevant portion of the confession of the accused. Pursuant to the confession, PW-13 recovered MO-1 knife at the outskirts of Kalugotla village, from underneath the boulder. Ex.P-5 is the recovery panchanama. Pursuant to the requisition given by PW-13 the Inspector of Police, PW-8, who was the Judicial Magistrate of First Class, Gadwal, conducted test identification parade of the accused on 04/09/2010 at about 03:30 p.m., in Cr.No.56 of 2010

of Manopad Police Station at District Jail Premises, Mahbubnagar. PW-8 recorded the statements of PW-2 and PW-4, who stated that they will identify the culprit if shown. PW-8 secured five non-suspects with same physical features as that of the accused and mixed the suspect with non-suspects. PWs 2 and 4 are said to have identified the accused. Ex.P7 is the test identification parade proceedings, recorded by PW-8. After completion of investigation, a charge sheet came to be filed.

3. The learned Judicial Magistrate of First Class, Alampur, took cognizance of the offence against the appellant/accused in PRC.No. 26 of 2016 for the offence punishable under section 302 of I.P.C.

4. On appearance of the appellant/accused, copies of documents were furnished to the appellant/accused under section 207 Cr.P.C., and committed the case to the Court of Sessions, Mahbubnagar under section 209 Cr.P.C.

5. Basing on the material evidence, learned Sessions Judge, framed a charge under section 302 of I.P.C. against the accused which was read over and explained to the accused, to which he denied and claimed to be tried.

6. In support of its case, the prosecution examined PWs.1 to PW-13 and got marked Exs.P-1 to P-11 and MO-1. On behalf of the appellant/accused. After the closure of the prosecution evidence,

the appellant/accused was examined under section 313 Cr.P.C., with reference to the incriminating evidence appearing against him. To which, he denied the same but did not adduce any oral evidence except marking Ex.D-1. On appreciation of oral and documentary evidence placed on record, the learned Sessions Judge, Mahbubnagar found the appellant/accused guilty, convicted him for the offence punishable under section 302 of I.P.C. and sentenced him to undergo imprisonment for life.

7. Aggrieved by the conviction and sentence recorded by the learned Sessions Judge, Mahbubnagar, the present criminal appeal came to be filed.

8. The learned counsel for the appellant mainly submits that there is no positive evidence on record to convict the appellant/accused. He submits that without any material on record as to the identity of the accused, the Police arrested the appellant on 30/7/2010. He submits that the alleged extra-judicial confession made by the appellant before PW-4 cannot be accepted since the statement of the appellant/accused was never reduced into writing nor was the appellant/accused produced immediately before the Police. Coming to the identification of the appellant/accused, he would submit that the appellant/accused was shown to PW-2 in the Police Station and as such the identification of the appellant/accused in the test identification parade is of no value.

9. On the other hand, the learned Public Prosecutor would submit that the very admission of the appellant/accused in his 313 Cr.P.C., statement itself shows that he is involved in the commission of offence and the admission of the appellant/accused coupled with the evidence of PW-2 establish the involvement of the appellant/accused in the commission of offence.

10. It is an admitted fact that the appellant/accused was a stranger to PWs 1 and 2 and the deceased. The evidence of prosecution witnesses does not in any way spell out any motive or enmity of the appellant/accused to attack the deceased. Keeping these two circumstances, we will now proceed to analyse the evidence on record. As seen from the evidence of PW-2, on the date of incident PW-2 and the deceased were returning to their village and when they reached the middle of vanka, the appellant/accused stabbed the deceased with a knife. PW-2 claims to have identified the appellant/accused in the test identification parade conducted by the Magistrate. He also identified the appellant/accused in the court. In the cross-examination, he admits that he saw the appellant/accused for the first time on the date of incident. He further admits that the Police showed the appellant/accused in the Manopad Police Station, where Sarpanch and PW-4 were also present at that time.

11. PW-1 is not an eye-witness to the incident and his evidence is based on the information given by PW-2 about the incident. In the FIR/Ex.P-10, which was given by PW-1, it is stated that on 14/05/2010 at 01:00 p.m., his son Mahendra [deceased] and his friend, Shekar, both together were returning to the village and on the way one unknown person aged about 25 years, wearing white colour shirt and lungi came from behind and caused an injury with knife to his son. The said report is given on 14/5/2010. In the said report, the name of the appellant/accused nor any descriptive features of the appellant/accused were given. After the death of the deceased, another report came to be lodged by PW-1 in which also no descriptive particulars of the appellant/accused were given except informing the Police about the death of the deceased on 17/05/2010 at 17:45 hours at Osmania General Hospital, Hyderabad, while undergoing treatment in the hospital. From the evidence of PW-1, it is clear that till 18/05/2010 nobody knows as to who the real culprit was ? Two months thereafter, the appellant/accused is said to have made an extra-judicial confession before PW-4. As per the evidence of PW-4, whose wife is the sarpanch of the village, two months after the incident while he was in Mennipadu village, the appellant/accused approached him and confessed about the commission of offence. The confession made by the appellant/accused was never reduced into writing. In the cross-examination, PW-4 admits that he has not stated before the Police,

while he was at Pothulapadu village that one person came and enquired him. He admits that the appellant/accused was stranger to him and that he used to come to Police Station now and then. He further submits that he maintained good relationship with the Police. It was further elicited from PW-4 that he never apprehended the appellant/accused when he came to confess nor took any steps to handover the appellant/accused to the Police. He further admits that he saw the appellant/accused in Mennipadu Police Station. It is to be noted here that the alleged extra-judicial confession made by the appellant/accused before PW-4 cannot be treated as extra-judicial confession for more than one reason. Firstly, the said extra-judicial confession was never reduced to writing. Secondly, the information about the extra-judicial confession was never informed to the Police. Thirdly, no effort was made by PW-4 to apprehend the appellant/accused and hand him over to the Police. Therefore, a doubt arises as to whether really the appellant/accused made such extra-judicial confession before PW-4. Based on the extra-judicial confession made before PW-4, the Police arrested the appellant/accused on 30/07/2010.

12. It is very strange to note as to how PW-1 came to know that the appellant/accused is the person, who committed the offence, in the absence of any descriptive particulars being given by PW-2. In the report, he only refers to particulars that were given by PW-2, relating to white shirt and lungi worn by

the appellant/accused at the time of incident. Since the appellant/accused was a stranger to PW-2, he ought to have given some descriptive features of the appellant/accused which would have enabled the Police to arrest the appellant/accused. In the absence of the same, a doubt arises as to whether really the appellant/accused was the person, who was responsible for causing the death of the deceased. At this stage, the learned Public Prosecutor submits that since PW-2 has identified the accused in the Test Identification Parade and also in the Court, there is no reason to disbelieve his evidence. But as stated supra, PW-2 and PW-4 were subjected to Test Identification Parade conducted by PW-8 wherein they claim to have identified the appellant/accused in the test identification parade. But in the cross-examination, PW-2 and PW-4 admit that they saw the appellant/accused in the Police Station some time prior to holding Test Identification Parade.

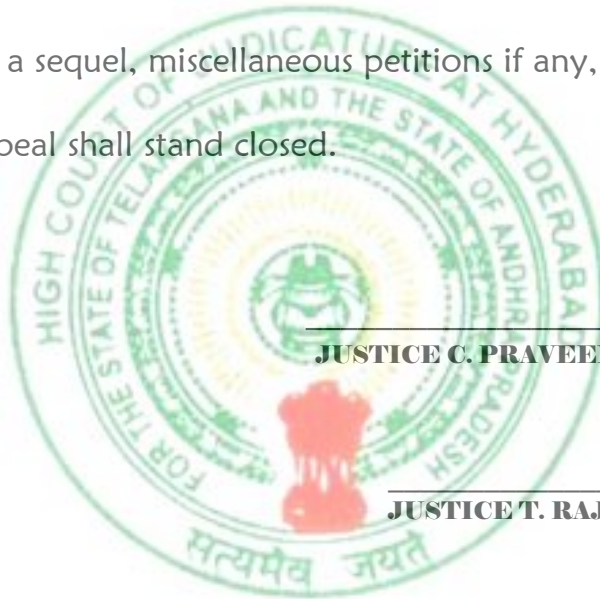
13. In view of the admission made by PW-2 and PW-4 with regard to seeing the appellant/accused in the Police Station, their identification in the Test Identification Parade loses significance. Hence, the evidence of PW-2 and PW-4 in identifying the appellant/accused in the Test Identification Parade and connecting the appellant/accused with the crime cannot be accepted, more so, when there was no enmity or motive for the appellant/accused to attack the deceased.

II

14. Having regard to the above, we feel it is a fit case, where the prosecution has failed to establish the culpability of the appellant/accused in the aforesaid crime.

15. In the result, this Criminal Appeal is allowed and the conviction and sentence recorded by the III-Additional District and Sessions Judge, [FTC], Gadwal, Mahboobnagar district, in S.C.No. 151 of 2011, vide judgment dated 21/06/2012, for the offence punishable under section 302 of I.P.C., be and is hereby set aside.

16. As a sequel, miscellaneous petitions if any, pending in this Criminal Appeal shall stand closed.



JUSTICE C. PRAVEEN KUMAR.

JUSTICE T. RAJANI.

**HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HONOURABLE SMT. JUSTICE T. RAJANI**

JUDGMENT
IN
CRIMINAL APPEAL NO. 1270 OF 2012
JUDGMENT OF THE DIVISION BENCH DELIVERED BY
{ THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR }
[RESULT : CRIMINAL APPEAL IS ALLOWED]

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