

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.827 of 2011

JUDGMENT: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present appeal, appellant has challenged judgment dated 26.04.2011 passed in S.C.No.351 of 2008 on the file of the IV Additional Sessions Judge (FTC) at Karimnagar, whereby he was found guilty for the offence punishable under Section 302 IPC and accordingly convicted and sentenced to imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for 3 months.

2. Case of the prosecution in brief is that on 20.08.2007 at about 10.00 hours, P.W.1 Venkatamma lodged a complaint at P.S., Huzurabad, alleging that on 19.08.2007 at about 5.00 p.m., her husband Chunch Ramulu left from their house to Khaleel's leather shop for duty; as usual Khaleel sent him to Warangal on duty; later she was informed by her brother-in-law Chunch Shekar over telephone that her husband was found dead at K.C. Camp, Huzurabad. Then, she, along with her relatives, went there and found the dead body of her husband with bleeding injuries. Her husband was killed and thrown on the road by some person (s). Basing on the report, the CI of Police, Huzurabad registered a case in Cr.No.160 of 2007 under Section 302 IPC by issuing FIR under Ex.P.12. After investigation, charge sheet was laid before the

Magistrate concerned; thereafter, committal was made to the Sessions Court, which framed charges, read over contents of the charge sheet to the appellant/accused, who pleaded not guilty and claimed to be tried.

3. To bring home the guilt of the appellant/accused, prosecution examined P.Ws.1 to 19, got marked Exs.P.1 to P.15 and M.Os.1 to 8 on its behalf. Exs.D.1 and D.2 were marked on behalf of the defence. Thereafter, 313 Cr.P.C., statement of the appellant/accused was recorded, who denied incriminating evidence and submitted that he is innocent and not involved in the crime.

4. After considering the deposition of the prosecution witnesses and the material on record, the trial Court found the appellant guilty and accordingly convicted him as noted above.

5. Learned counsel appearing on behalf of the appellant submits that the trial Court failed to notice that, absolutely no motive is attributed to the appellant by any of the witnesses. As per the evidence of P.Ws.1 to 8 and 10, they do not know the appellant and there is absolutely no relationship between the accused and the deceased. Moreover, P.Ws.12 to 14 have not supported the case of the prosecution and they were declared hostile by the prosecution. Learned counsel further submits that the trial Court failed to notice that the evidence of sole eye witness – P.W.9 is untrustworthy and unnatural and not believable with regard to witnessing the incident, since he has not informed the incident to anybody or the

Police for five days after the incident. As per P.W.9, the incident had taken place on 19.08.2007, but he was examined by the Police on 23.08.2007; thus there is abnormal delay in disclosing the incident to the Police. In addition to the above, learned counsel further submits that as per the evidence of P.W.9, both the accused and the deceased had purchased liquor bottle and on the way to Warangal from Karimnagar, they went into a hut where both of them consumed liquor and thereafter both of them started quarrelling suddenly and in the quarrel the accused said to have caused injuries to the deceased. The aforesaid fact has been ignored by the trial Court. If the allegations are proved there is no pre-concerted plan to kill the deceased and the incident happened in the spur of the moment and thus the present case attracts the provisions of Section 304 IPC, but not Section 302 IPC.

6. Learned counsel further submits that the injuries caused to the deceased were not likely to have been caused by a single weapon and more than one person is involved in the commission of the offence. Learned counsel also argued that there is inconsistency in the deposition regarding the length of knife used in the crime. He further submits that since the incident had taken place on the spur of the moment, the conviction of the appellant is to be modified from Section 302 IPC to Section 304 IPC. In support of his submissions, learned counsel for the appellant/accused relied on the following decisions:

- *State of Orissa v. Mr. Brahmananda Nanda*¹
- *Kanan and others v. State of Kerala*²
- *Gopal Singh and ors. v. State of Madhya Pradesh*³
- *Bhagaban Kirsani and etc. v. The State*⁴

7. We have heard the learned counsel for the appellant, learned Public Prosecutor for the respondent/State and perused the depositions of the witnesses and the material on record.

8. We note, P.W.1 – wife of the deceased, deposed that, on the date of the incident, her husband went to attend duty as usual, but did not return home. On the next day morning, her husband's brother namely Chunch Sheker phoned her and told that her husband was killed at K.C. Camp, Huzurabad; then she along with her relatives went to the said place and found the dead body of her husband with injuries on the head and other parts of the body. Thereafter, she gave complaint – Ex.P.1 to the Police.

9. P.W.2, Ch.Sheker who is the brother of the deceased, deposed that, on 19.08.2007, after midnight, one Head Constable of Police telephoned him, stating that a dead body was lying by the side of the road and he asked him to go the said place and see the dead body, but later the Head Constable himself came to him and took him to K.C. Camp, Huzurabad. There, he identified the dead body to be that of his elder brother Ramulu. Accordingly, he

¹ AIR 1976 SC 2488

² 1979 CRI. L. J. 919

³ (2010) 6 SC 407

⁴ 1985 CRI. L. J. 868

informed the same on phone to P.W.1 and to his brother-in-law. He found knife injuries on the forehead and some injuries on other parts of the body.

10. P.W.3 deposed that the deceased was his maternal uncle's son and on 19.08.2007, in the night, P.W.2 phoned him stating that some dead body was lying at K.C. Camp, Huzurabad; then he went to the said place where he met P.W.2 and saw the dead body of one Chunch Ramulu. Having noticed some injuries on the dead body, they thought that someone might have murdered the deceased.

11. P.W.4, D. Sudhakar, Police Constable, Huzurabad deposed that on 19.08.2007, he along with H.C.1128 namely Rajeshwar were to be on patrolling duty. They went to Police Station as it was raining at that time and could not go out for patrolling duty. At about 12.00 midnight, H.C.1128 received phone call informing him that some unknown dead body was lying at K.C. Camp, Huzurabad and they went to the said place. The dead body was lying on the right side of Karimnagar to Warangal road when one faces towards Warangal. The aforesaid Head Constable checked the pockets on the dead body in which he found a diary containing a phone number and he called that number. P.W.2 came there and identified the dead body; later P.W.2 phoned somebody about the dead body.

12. P.W.5, G. Swamy Reddy, deposed that, on 20.08.2007, at 10.40 a.m., while he was going back home from his agricultural well, he found some gathering at K.C. Camp and he went there. He had

seen a dead body there and a person by name Srinivas was also present there. Police prepared panchanama; then CI of Police called them and asked to sign on it, after reading out the contents. Both of them signed on the panchanama, Ex.P.2. They also signed on scene of offence panchanama with sketch after knowing the contents. Police also collected blood stained earth and affixed chits signed by them. The *panchs* found and opined that somebody murdered the deceased as there were injuries on the dead body on the head, chin and the stomach. Ex.P.3 is the scene of offence panchanama.

13. P.W.6, G. Mallaiah, deposed that he used to send skin once in a week and the employees of Warangal agents used to come and collect the skins from him; one Khaleel Seth was also doing skin business at Karimnagar and on 20.08.2007, the deceased Ramulu and one Baba came to him to take skins at 8.00 p.m. Both of them took away skins and on the next day he came to know through somebody that Ramulu died.

14. P.W.7 deposed that Ramulu was working with him. On 19.08.2007, Baba had come and had taken away the skins with whom he sent Ramulu. At about 10.30 a.m., they took the skins in an auto trolley and on the next day, he came to know that Ramulu died.

15. P.W.8 – Md. Yakub deposed that on 19.08.2007, he handed over auto trolley to Mohammed in the night time. On 21.08.2007, Police informed him that Ramulu died.

16. The aforesaid evidences are connecting that deceased was seen by them. The evidence of P.W.9, who is the eyewitness to the crime, becomes relevant. P.W.9 deposed that on 19.08.2007, he loaded the skins in the trolley being taken by Ramulu and Baba at Ashok Nagar, Salam Mosque crossroads and in the lane of Raju tea stall, took the load to Mandi Bazar, Warangal. On the way, Baba, i.e. the appellant/accused asked him to stop the auto at Manakondur wine shop; the deceased and the appellant/accused purchased a quarter liquor bottle there; Ramulu was sitting on his left in his seat and the appellant/accused was sitting in the backside of the auto. P.W.9 further deposed that he was proceeding in the auto from Karimnagar to Warangal, on the way, at K.C. Camp, as there was rain, appellant/accused asked him to stop the auto, then the appellant/accused got down along with the deceased. Both of them went into a hut and consumed liquor. Thereafter, both of them returned, quarrelling with each other. He further deposed that the appellant/accused held the head of the deceased and forcibly pushed and hit his head on the auto trolley and the appellant/accused stabbed the deceased twice or thrice on his stomach and had thrown the deceased on the road. He further deposed that Ramulu died; then accused lifted the deceased Ramulu and tested whether he died or not. Then, appellant/accused told him to take the vehicle fast, otherwise he would kill him. The accused got down at Mandi Bazar paying Rs.100/- less and threatened him not to tell about the incident to anybody, otherwise

he would kill him. Thereafter, he left the auto at the house of the owner and did not go to take the auto for two days. He further deposed that, on 23.08.2007, at about 4.00 or 4.30 p.m., Police approached him and he told the entire incident to them, then Police took him to Mandi Bzar where appellant/accused was present and he identified him. On 22.09.2007, the JFCM (Excise) Karimnagar, recorded his 164 Cr.P.C., statement. The auto driven by him is bearing No.AP.15.X.4255. The same is marked as M.O.1.

17. P.W.10 Mohammad Fariaz deposed that on 19.08.2007, he gave the auto trolley bearing No.AP.15.X.4225 to P.W.9 who was night-driver. He further deposed that he was going to Warangal. On 23.08.2007, the CI of Police called him and stated that he seized the above auto trolley as a murder took place.

18. P.W.9 Mubarak Bin Amer deposed that the auto driver Mohammad was present and Police seized auto trolley from owner as the auto was involved in murder case. Ex.P.4 is the seizure panchanama and bears his signature.

19. It is pertinent to mention that P.Ws.12 to 14 have turned hostile and did not support the case of the prosecution.

20. It is further pertinent to mention that P.W.15, Judicial Magistrate, stated that she recorded the statement of P.W.9 under Section 164 Cr.P.C.

21. P.W.18 Dr P. Viswashanthi, Civil Surgeon, deposed that she had conducted autopsy on dead body of the deceased Ramulu at 11.00 a.m., and found eight external injuries and all the injuries were ante mortem injuries and she found four internal injuries. She deposed that the approximate time of death is within 24 hours prior to PME. The cause of death is homicidal due to traumatic shock as a result of multiple stable and incised injuries incurred probably by a sharp weapon. Ex.P.10 is the PME.

22. P.W.19 Mohan, Inspector, Traffic, Ramagundam, deposed that on 20.08.2007 at 10.00 a.m., he received a complaint from P.W.1. Basing on it, he registered a case in Cr.No.160 of 2007 under Section 302 IPC and issued FIR and took up investigation. He had examined and recorded the statement of P.W.1. He along with his staff went to the scene of offence and examined P.Ws.2, 3, 4 and 17 and secured the presence of P.W.5 and Srinivas and drew rough sketch and drafted scene of offence panchanama. He had also got the scene photographed by B.Ramakrishna. P.W.19 further deposed that after drawing the panchanama, he held inquest in the presence of P.W.5 and L.W.9. Thereafter, he visited Karimnagar, examined P.Ws.6 and 7 and he also examined P.Ws.8, 9 and 10 and recorded their statement. He had secured P.Ws.11 and 12 and seized the auto bearing No.AP.15.X.4225 and also collected the blood stains. On 24.08.2007, he had secured the presence of P.Ws.13 and 14, went to Mandi Bazar, Warangal and effected the arrest of accused and seized one jean pant, ash colour t-shirt, came to the scene of offence

at the instance of accused, recovered the knife used by the accused and conducted confessional recovery panchanama. M.O.2 is knife, M.O.3 is blue colour jean pant, M.O.4 is t-shirt, M.O.5 is polyester shirt, and M.O.6 is black colour pant. Mo.7 is blood stain and M.O.8 is controlled earth.

23. The submission of the learned counsel for the appellant/accused is that P.W.9 claimed to be eyewitness to the incident, however, he did no report the incident to the family members of the deceased or Police for 4 days. With regard to the said submission, we find that as per his deposition, the appellant/accused and the deceased were working together. The accused threatened him that if he disclosed the incident to anyone, he would also be killed. In such a fear, he did not take the auto trolley from his owner's house for two days. It is therefore clear that P.W.9 was in a state of shock having witnessed the murder and frightened due to the death threats given by the appellant/accused that he too would be killed if he disclosed about the incident. Thereafter, when Police approached him and enquired him about the occurrence of the incident, he disclosed the same to them. His deposition has been rightly believed by the trial Court.

24. So far as the injuries are concerned, the Doctor P.W.18 has not opined that the injuries were caused by more than one weapon, nor a question was put in the cross-examination whether more than one weapon was used in the crime. Therefore, we find no force in

the submission of the learned counsel that more than one weapon was used in the commission of crime.

25. Regarding the length of the knife, P.W.19 deposed that the length of the knife is 13 cms x 1.5 cms., whereas in Ex.P.15, FSL Report, it is clearly stated that the knife with metal handle with blade measuring 13.5 x 1.5 cms., is recovered. Therefore, it is clear from the said report that the length of the blade as mentioned in column 8 of the report, is not the length of the knife with the metal handle. Thus, we find no substance in the argument of the learned counsel for the appellant/accused that there is inconsistency in the depositions regarding the length of the knife.

26. Fact remains that P.W.1 deposed that Chunch Sheker telephoned her stating that her husband was killed at K.C. Camp, Huzurabad; then, she along with relatives, went to the said place and found the dead body of her husband with injuries on the head and other parts of the body; then she gave complaint to Police under Ex.P.1 supported by the evidence of P.W.2 Head Constable of Police telephoned him stating that a dead body was lying by the side of the road and he was asked to come there but after some time, the said Head Constable himself took him to K.C. Camp, Huzurabad; then he identified the dead body to be that of his elder brother Ramulu. Then, he telephoned P.W.1 and his brother-in-law. P.W.2 found knife injuries on the forehead and some injuries on other parts of the body of the deceased. The same is supported by the evidence of

P.Ws.3 to 9 as well as the evidence of P.W.18 Dr.Viswashanthi, who deposed that on 20.8.2007, she had conducted autopsy on the dead body of the deceased at 11.00 a.m., and found eight external injuries and that the injuries are ante-mortem injuries and also found four internal injuries. She has also deposed that approximate time of the death was within 24 hours of PME. The cause of death to the best of her knowledge was due to traumatic shock as a result of multiple stab and incised injuries incurred probably by a sharp weapon, which is supported by investigating officer, P.W.9. It is pertinent to mention here that P.W.12 has been declared hostile by the prosecution, however, he deposed that Police collected blood stains which were present on the trolley of the auto by scratching from there and he put his signature on the seizure panchanama, Ex.P.5.

27. The appellant/accused hit the head of the deceased with knife and caused fatal injuries; threw the deceased on the road mercilessly without making an attempt to save his life and left that place. Moreover, he had also threatened P.W.9 that he would also be killed if he discloses the incident to anyone. Thus, we are of the considered opinion that the trial Court has rightly convicted the appellant/accused under Section 302 IPC. The judgments relied on by the learned counsel for the appellant/accused would not in any way render assistance in support of the case of the appellant/accused.

28. In view of the above discussion and the depositions of the witnesses noted above, we do not find any ground for interference.

29. The appeal is devoid of merit and is accordingly dismissed.

As a sequel, miscellaneous petitions if any pending in the appeal stand closed.

SURESH KUMAR KAIT, J

April 16, 2018
MRR



T. RAJANI, J