

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No. 1086 OF 2012

JUDGMENT: (per HON'BLE SRI JUSTICE N. BALAYOGI)

1. The appellant, who is the sole accused, being aggrieved by the judgment dated 17.07.2012 passed in S.C.No. 288 of 2011 on the file of learned V Additional District and Sessions Judge, Rayachoty, Cuddapah District, convicting him for the offence punishable under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life and also pay a fine of Rs.1,000/-, in default of payment of fine, shall undergo simple imprisonment for a period of six months, preferred this appeal.

2. The contention of the appellant is that there is no eye-witness with regard to the allegations made against the appellant and the entire case depends on the circumstantial evidence. The trial Court erred in law in admitting certain inadmissible evidence and improperly rejected certain material evidence which is in favour of the appellant and will prove his innocence.

It is further contended that PWs.5 to 9 are interested witnesses. The entire evidence on record is full of contradictions and omissions. The non-examination of the witnesses cited is fatal to the prosecution case. No motive was attributed to the

appellant to kill the deceased and even the alleged motive is not properly established. The trial Court simply relied on the evidence of the prosecution witnesses alleging that the deceased refused to pay the amounts incurred by the accused for education purpose of the deceased after seven years of lapse of time. The material objects 1 to 3 do not connect the accused to the offence. The entire prosecution case is misconceived and without proof of evidence. Sentence imposed is too harsh.

3. The prosecution case, in brief, is as follows:

The accused is none other than the elder brother of the deceased and elder son of PWs.5 and 6. Seven years ago, the accused went to Kuwait for livelihood. At that time, the deceased was continuing his studies. The accused incurred nearly an amount of Rs.30,000/- towards education of the deceased to complete B.A. and B.Ed. The deceased was living by running a computer job work centre at Pedduru Road of Galiveedu town and got married.

4. Recently, the accused returned to India and came to know that PW.5 sold the ancestral property and obtained Rs.9.00 lakhs and distributed Rs.6.5 lakhs to the family members and the accused having suspected that PW.5 was giving remaining amount and his retirement benefits to the deceased, bore grudge against him and decided to end his life.

5. The accused bore grudge and demanded the deceased to clear off the amount of Rs.30,000/-. Then, the deceased expressed his inability for discharging the amount. On that the deceased approached village elders, held panchayat in which the elders advised the accused not to demand any amount and apprised that it is the responsibility of the elder son to look after the family. While so, on 25.10.2009, at about 06:00 p.m. while the deceased was going to Mosque and reached the house of Ganganapalli Venkatramana, the accused, who was awaiting for an opportunity to end life of the deceased, on seeing the arrival of the deceased, pounced on the deceased and recalled money issue with criminal intention to kill him. The accused caught hold the neck of the deceased with his left hand, took out the knife from his abdomen and stabbed him on right side chest near stomach and caused bleeding injury. PWs.1 to 3 and another, who witnessed the occurrence, rushed to the spot and on seeing them, the accused fled away. Then, PWs.1 to 3 and another shifted the injured to the clinic of PW4 who gave first-aid and advised to shift him to the Government Hospital, Rayachoty.

6. On knowing the occurrence, PWs.5 to 8 rushed to the hospital, Rayachoty and later the deceased was referred to S.V.R.R.G.G. Hospital, Tirupathi for better treatment and the deceased-Syed Ameenulla Basha succumbed to injuries on 26.10.2009 at 09.35 A.M.

7. PW13, having learnt that Syed Ameenulla Basha was admitted in Rayachoty hospital, recorded the statement and registered the crime. PW14 conducted inquest over the dead body on 26.10.2009 at S.V.R.R.G.G. Hospital, Tirupathi, received blood-stained jubba and baniyan of the deceased and forwarded the dead body to PW12 for conducting autopsy. On 06.11.2009, the accused was arrested and weapon was seized in the presence of PW11 and another. M.Os.1 to 3 were forwarded to F.S.L. and after receipt of the report, charge sheet was filed.

8. On filing the charge sheet, the learned Judicial Magistrate of First Class, Lakkireddypalli, took the case on file for the offence punishable under Section 302 IPC and numbered as P.R.C. No. 3 of 2010.

9. After securing the presence of the accused, all copies of documents were furnished to him as required under Section 207 Cr.P.C.

10. The learned Magistrate, having observed and considered the entire material evidence on record, found that the offence with which the accused is charged, is exclusively triable by Court of Sessions, and committed the case to the Court of Sessions under Section 209(b) Cr.P.C.

11. Accordingly the case was made over to the Court of V Additional District and Sessions Judge, Rayachoty for disposal.

12. After consideration of the entire material on record, a charge under Section 302 IPC has been framed, read over and explained to the accused in Telugu for which he pleaded not guilty and claimed to be tried.

13. In support of the prosecution case, PWs.1 to 14 were examined and Exs.P1 to P14 and M.Os.1 to 4 were marked. On behalf of the accused, DWs.1 and 2 were examined and Exs.D1 to D4 were marked.

14. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. The entire incriminating material in the evidence of prosecution witnesses was put to him and he denied the same.

15. POINT:

Now, the point that arises for determination is:

“whether the conviction and sentence imposed by the trial Court is legal, valid and can be sustained.”

16. The learned counsel for the appellant contended that the prosecution evidence is full of contradictions, omissions and discrepancies. The scene of offence is changed and there is no

continuity of chain of circumstances to connect the accused with the offence. The findings recorded by the trial Court about conviction and sentence are illegal and cannot be sustained.

On the other hand, the learned Public Prosecutor contended that the evidence of the prosecution witnesses and the material on record coupled with the seizure of M.Os.1 to 3 is consistent and corroborated which proved the guilt of the accused.

17. The admitted facts are that the accused is the elder brother of the deceased. PWs.5 and 6 who are wife and husband are the parents of the accused, PW7 and the deceased. PW8 is the father-in-law of the deceased, whereas PW9 is the wife of the deceased.

18. As stated above, PWs.5 to 9 are related to each other, more particularly, the deceased and the accused are own brothers. Hence the evidence of PWs.5 to 9 has to be scrutinized carefully to testify their reliability and trustworthiness.

19. The undisputed facts spell out in the evidence of P.Ws.1,5,6,7,8 and 9 are that the accused-Syed Shabuddin, deceased-Syed Ameenulla Basha and P.W.7- Syed Nowshad are the sons and daughter respectively of P.Ws.5 and 6. It is not disputed that the accused spent Rs.30,000/- for the education of the deceased out of his earnings at Kuwait. It is also not disputed

that about fifteen days prior to the incident, the accused returned to India from Kuwait. When the deceased expressed his inability to return the amount, the accused raised the dispute before the village elders with regard to return of Rs.30,000/- spent by him for education of the deceased. Though village elders and Sarpanch was not examined, to whom before mediation was brought, the other evidence available on record, i.e. evidence of P.Ws.5 and 7 made out that a dispute was raised with regard to return of Rs.30,000/- spent by the accused for the education of the deceased.

20. Admittedly there is no direct evidence to the incident of murdering of Syed Ameenulla Basha (deceased). The entire case rests on the circumstantial evidence.

21. P.W.1 Shaik Iqbal was the owner of TATA Sumo vehicle. As on the date of incident, he was present in the bus stand at Galiveedu and observed a mob near the mosque and went there. He admitted during the cross examination that by the time he reached the place of incident, there were 30 to 40 people gathered and saw the deceased with injuries on table in front of the shop of Iqbal Ahammed. The deceased sustained injuries near the house of Ganganapalli Venktaramana. At the instance of police, he shifted the injured to Hospital at Rayachoti in TATA SUMO and from there to Hospital at Tirupathi for better treatment. The deceased was conscious and talking while taking him in

TATA SUMO vehicle. P.W.1 turned hostile and his statement was marked as Ex.P.1.

22. Coming to the evidence of P.W.2, he is also not a direct witness to the incident. He saw the deceased coming with bleeding injuries and fell down in front of the shop of Iqbal Ahmmed. According to P.W.2, the scene of offence is on the road near the mosque at Galiveedu and that he saw only the deceased coming with bleeding injuries and he has not accompanied P.W.1 in the TATA SUMO vehicle to the Hospital, at Rayachoti.

During the cross examination, P.W.2 admitted that he did not saw the incident. According to P.W.2, the incident of offence is in front of the mosque. After sustaining stab injury, the deceased came with bleeding injury and fell on the table in front of the Iqbal Ahammed's shop.

23. Shaik Iqbal Ahammed was the owner of shop. The injured Syed Ameenulla Basha was laid down on the table in front of PW.3's (Shaik Iqbal Ahammad) shop. According to him, the deceased came with bleeding injuries towards his shop. P.Ws.1 & 2 and himself made him rest on the table and one Saheb Peer gave first aid to him. During the cross examination, he stated that his shop is at a distance of 1½ furlong from the house of Ganganapalli Venkataramana.

24. P.W.4 who gave first aid to Syed Ameenulla Basha (deceased) deposed that he gave first aid to the deceased for the

bleeding injury on the right side of the abdomen and he was crying as 'alla alla' in front of the shop of P.W.3. He gave first aid by bandaging to him.

25. The consistent and corroborative evidence of P.Ws.1 to 3 is that they saw the deceased coming by running towards shop of P.W.3 with bleeding injury in the stomach and they made him to lay down on the table in front of shop of P.W.3, and P.W.4 RMP doctor gave first aid and thereafter the injured was shifted to hospital at Rayachoti in TATA SUMO vehicle of P.W.1. Thus it clearly emerges that P.Ws.1 to 3 did not state about witnessing the incident.

26. According to P.W.7, the deceased-Syed Ameenulla Basha was brought to the Hospital at Rayachoti and then herself, her mother-PW.6 and her husband Rasool went to the Hospital at Rayachoti and from there to another Hospital at Tirupathi in the vehicle.

27. P.W.8 is the father-in-law and P.W.9 is wife of the deceased. According to P.W.8, at about 6.00 PM and according to P.W.9 at about 6.45 pm they received phone calls from Iqbal-P.W.3 and another that on 25.10.2009 accused stabbed the deceased near Masjid in Gaaliveedu. According to P.W.9, she did not go to the hospital as she was pregnant, and that P.W.8 himself, his brother Rasool, and Noushad (P.W.7, wife of Rasool)

taken the deceased to Hospital, at Rayachoty and from there to another Hospital at Tirupathi in the vehicle. P.W.7 deposed that herself, her mother PW.6 and her husband Rasool went to Hospital at Rayachoti and from there they took the deceased in the TATA SUMO vehicle to the Hospital at Tirupathi and they reached Tirupathi at 12.00 midnight. The evidence of P.W.6 that she went to the place where the deceased was made to lay down on the table in front of the shop of P.W.3, is doubtful and creates a circumstance to suspect her evidence.

28. The evidence of P.W.7 that her mother accompanied the injured-Syed Ameenulla Basha in the TATA SUMO vehicle to Hospital at Rayachoti and that while shifting the injured to hospital, he was conscious and he stated that the accused stabbed him, is doubtful. The evidence of P.Ws.5 to 8 that they came to know stabbing of the deceased by his brother, is not corroborated and supported by any circumstantial evidence.

29. Ex.D.1 is the contradiction marked through P.W.7. According to it, herself and her husband went to hospital at Rayachoty on 25.10.2009 at 7.00 PM, whereas in her evidence in chief, she stated that herself, her mother PW.6 and her husband Rasool went to Hospital at Rayachoty and from there to another hospital at Tirupathi in the vehicle. Therefore Ex.D.1 is a material contradiction. If it is excluded from 161 statement of PW.7, the very statement of the deceased informing to them while shifting to

Hospital at Rayachoti in the TATA SUMO vehicle of P.W.1 that the accused stabbed him, is a material contradiction which goes to the very root of the prosecution case.

30. Ex.D.2 is the contradiction marked through PW.6, which reads as “*Yesterday evening on coming to know when my son Amanulla was going to Mosque, Shabuddin came back side and stabbed Amanulla on his stomach, my husband went on a bandi (vehicle) to seer*”. Coming to the evidence of P.W.6, she stated in her chief that she came to know about the incident of stabbing of deceased by accused and went to the shop of PW.3 and saw the deceased with bleeding injury and deceased son told her that he (deceased) was stabbed by the accused. During the cross examination, she deposed as to what was stated to the police that she rushed to the shop of P.W.3 after coming to know about the stabbing of the deceased. Her husband, according to Ex.D.2, after coming to know of her son Syed Amanulla Basha was stabbed by her elder son Shabuddin while he (deceased) was going to mosque, went to the scene of offence in a vehicle. But the evidence of P.W.5 is contradiction to Ex.D.2. According to him, he came to know about the incident and went to Tirupathi with money, but by the time he reached, his son (deceased) died. During the cross examination, he deposed that he came to know the incident through his son-in-law Syed Rasool. So according to Ex.D.2, yesterday (i.e. 25.10.2009 as she was examined on the next day of incident, i.e. on 26.10.2009) she came to know that

while her son Amanulla was going to Mosque, shabuddin came back side and stabbed Amanulla on his stomach, then her husband went on a bandi (vehicle), is clearly a material contradiction which goes to the very root of the prosecution case and creates a doubt which would go in favour of the accused.

31. Ex.D.3 is another contradiction marked through PW.6. Ex.D.3 reads as *'my son was shifted to Tirupathi from Rayachoty Hospital and Amanulla died today. i.e. on 26.10.2009 due to the stab injuries'* P.W. 6 in her chief examination stated that the deceased was removed to Hospital at Rayachoti and from there to another hospital, at Tirupathi and on the next day morning, her son (deceased) died in the hospital at 9.30 AM. During the cross examination, she stated that she did not tell to the police that she came to know the deceased died as marked in Ex.D.3. It is not evident in chief or cross examination of P.W.6 that she came to know the death of her son, but it is a fact that Syed Amanulla Basha died on 26.10.2009 due to stab injury. Therefore what she stated during her examination to the police that she came to know that her son died, is clearly not a contradiction and is immaterial and insignificant.

32. Similarly Ex.D.4 is a contradiction marked through PW.8, which reads as *"yesterday i.e. on 25.10.2009 at about 7.30 PM myself and my people had taken a bandi (vehicle) and reached Rayachoty Government Hospital"*. Coming to the

evidence of P.W.8, he was informed that the accused stabbed his son-in-law (deceased) and money is required for medical expenses. He reached Rayachoty at 7.30 PM with money and saw the deceased in the hospital with injury. During his further cross examination on 23.1.2012 he stated that himself and another came on motor cycle and denied the statement made to the police that himself and others came to Hospital in the vehicle on 25.10.2009, as marked in Ex.D.4. The very conveyance used to reach hospital at Rayachoti is contradicted. The mode of transport according to P.W.8 is motor cycle, but in the chief he has not stated the mode of transport and on the other hand, he had spoken different mode of transport as in Ex.D.4, which is a contradiction which goes to the root of prosecution as it involves time taken for reaching the hospital.

33. Therefore contradictions vide Exs.D.1, D3 and D.4 are material and if they are excluded from 161 statements of witnesses and their evidence, the chain of circumstances linking the offence with the accused are missing which is crucial when the entire case is being dealt on circumstantial evidence.

34. The evidence of P.Ws.5 and 6, who are the parents of the deceased and accused, P.W.7 sister of the deceased and P.W.8 father in law of the deceased is that after they coming to know about the stab injuries to the deceased, they rushed to see the deceased. According to P.W.5, after coming to know about the

incident, he went to Tirupathi with money. By the time he reached, his son died.

35. P.W.6's evidence is contrary to the evidence of P.Ws.1 to 5. According to P.W.6, after coming to know about the incident, she went to the shop of P.W.3 and saw the deceased with bleeding injury and deceased son told her that the accused stabbed him (deceased). Whereas the evidence of P.Ws.2 and 3 is otherwise.

36. The Investigating Officer, P.W.14 deposed that on 26.10.2009 when he was in the office, P.W.13 informed him through phone at 11.00 AM that he received the death intimation; then he altered section of law into offence under Section 302 IPC. The evidence of P.Ws.1 to 3 is that from the scene of offence, the deceased was shifted to Rayachoti Hospital and from there, he was shifted to Hospital at Tirupathi and he died on 26.10.2009.

37. P.W.9, wife of the deceased deposed that at the time of incident, she remained in her parents house being pregnant. She only came to know about the incident over phone that her husband was stabbed by the accused on account of the money dispute with him (accused).

38. P.Ws.7 to 9 denied the suggestion that there are enemies to the deceased with regard to arranging passport and ration cards and that they might have stabbed the deceased.

39. The contention of the appellant is that there is change of scene of offence. According to the prosecution case, the evidence of PW.14 Investigating Officer is that on 25.10.2009 at about 6.00 PM while the deceased was going to mosque for offering prayer and when he reached the house of Ganganapalli Venkatarama, the appellant/accused who is waiting for an opportunity to end the life of the deceased, pounced upon the deceased, caught hold of his neck with left hand, took out the knife from his abdomen and stabbed on right side chest near stomach of the deceased and caused bleeding injury. Accordingly the scene of offence is in front of house of Ganganapalli Venkatarama. P.Ws.1 to 3 turned hostile and they did not support the prosecution case. The 161 Statements of P.Ws.1 to 3 were marked as Exs.P1 to P.3 which reveal that scene of offence is in front of house of Ganganapalli Venkatarama. The Investigating Officer P.W.14 during the cross examination admitted that the scene of offence is near the house of Ganganapalli Venkataramana. But he did not examine the said Ganganapalli Venkataramana or his family members for the reason that they were not available. P.Ws.1 to 3 deposed that the scene of offence is on the road in front of the shop of P.W.3. P.W.13 deposed that the scene of offence is cement road. In the rough sketch under Ex.P.12, as per the own evidence of the Investigating Officer PW.14, the house of Ganganapalli Venkataramana is not shown. There is a suggestion to P.W.14 that 161 statements of P.Ws.1 to 4 and rough sketch were prepared in the police station. The

mediator P.W.11 speaks only confession of the accused under Ex.P.5 which led to recovery of MO.1 under Ex.P.6. None of the witnesses have spoken about the scene of offence.

40. Therefore the above circumstances and marshalling the facts could lead us to infer that there is change of scene of offence which gives rise to a doubt and it goes in favour of the appellant/accused.

41. P.W.13 is the Sub Inspector of Police. His evidence is that on 25.10.2009 on receiving information, he reached the Government Hospital, Rayachoti at 7.00 PM and recorded the statement of injured Syed Ameenulla Basha vide Ex.P.8 and obtained his signature therein. In Ex.P.8 there is a specific assertion that his brother Shabuddin was laid near Masjid in Galiveedu town, came running and stabbed with a knife on his right side stomach and caused a bleeding injury. In the meantime, the neighbours at fancy store, Iqbal and others, came there running, and on seeing them, his brother ran away. Thereafter he was shifted to Hospital, at Rayachoty for treatment. The motive for the said incident is non-returning of Rs.30,000/- which was spent by accused towards education of deceased. The depositions of P.Ws.1 to 9 suggest that there is money dispute of Rs.30,000/- which the accused spent for the studies of the deceased who did his B.A., B.Ed. With regard to which, a dispute was raised near Masjid. The elders of the Masjid and relatives decided and told the deceased not to return the said amount. Due to the same, his

brother bore grudge against the deceased and stabbed him with knife on his right side stomach. It is also ocular and oral evidence of the witnesses P.Ws.1 to 3 that after the stab injury, while shifting the deceased to hospital, he was conscious. P.W.1 was specifically stated that while shifting the injured to Hospital in TATA SUMO vehicle, he was talking to the relatives who accompanied the injured to the hospital at Tirupathi.

42. It is the evidence of P.Ws.1 to 7 that the injured was conscious till shifting to hospital. Ex.P.8 is the statement recorded by P.W.13, based on which, he (P.W.13) registered a case in Crime No. 95 of 2009 for the offences punishable under Sections 324 and 307 IPC and issued FIR Ex.P.9. After receiving the death intimation on 26.10.2009 at 11.00 AM, he altered the section of law to Section 302 IPC and issued Ex.P.10, altered FIR. He further informed the same to P.W.14. On 25.10.2009 at 7.45 PM he seized blood stained clothes of the deceased in Rayachoty Hospital, i.e the blood stained jubba (MO.2), and blood stained banian (MO.3) under the recovery of police proceedings vide Ex.P.11. At first instance, P.W.13 was suggested that he received the death intimation at 11.00 AM, however he denied that he received the death intimation at 6.00 PM of 26.10.2009. He himself clearly stated that he received the death intimation at 11.00 AM of 26.10.2009 after verifying the altered FIR. There is material discrepancy with regard to the receipt of death intimation. To substantiate the same, none of the elders or mediators were examined in regard thereto. Therefore the contention of the

prosecution that due to dispute with regard to Rs.30,000/- which the deceased refused to pay, the accused bore grudge and waiting for an opportunity to do away the life of the deceased, remained as an allegation, and the same was not proved.

43. P.W.14 is the Investigating Officer who took up investigation on 26.10.2009. He deposed that after coming to the police station, he received express FIR copy. Then he visited the SVRR Hospital, Tirupathi at 2.30 PM, secured the panchayatdars and conducted inquest over the dead body. Ex.P.4. is the inquest report which is supported by P.Ws.10 and 14. The inquestdars under Ex.P.4 opined that the reason for death appears to be that of Shabuddin, brother of deceased who had differences with his deceased brother in regard to cash of Rs.30,000/- spent by him for the education of deceased and also with regard to division of ancestral property between brothers and thereby he had a plan to kill his deceased brother. With that grudge, on 25.10.2009 while the deceased was at the Masjid, he(accused) stabbed him on his right side stomach with knife, causing bleeding injury . Then neighbours Ikbal and Khasim shifted him in TATA SUMO vehicle to Government Hospital, Rayachoti for treatment and on the advise of doctors, due to severity of injury, he was shifted to SVRR hospital, Tirupathi for better treatment. While undergoing the treatment, he succumbed to the injury in the hospital on 26.10.2009 at 9.35 AM. It is further mentioned therein that on 25.10.2009 at 6.00 PM the accused stabbed the deceased on the stomach. The inquestdars opined that the accused stabbed the

deceased due to property disputes and for not returning of Rs.30,000/- spent by the accused for education of the deceased.

44. There is no direct or indirect evidence to establish the family property dispute or none of the witnesses stated before the inquestdars that they have seen the accused while stabbing the deceased. In the absence of such evidence, the conclusion of the inquestdars under Ex.P.4 is untenable.

45. P.W.12 is the doctor who conducted inquest over the dead body of the deceased Syed Ameenulla Basha. During the examination he found external injuries:- (1) A sutured wound of 22 Cms in size with 10 sutures with black thread at all over the middle of the abdomen vertical; (2) a sutured wound of 6 Cms. In size with 3 sutures with black thread at middle of right upper abdomen; both are surgically intervened, (3) Punctured wound of 2 x 1 cm x cavity deep with one suture black thread at right slant of abdomen, (4) Multiple contusions are present in an area of 11 x 6 cm at lower end of front of right part of chest, and, internal injuries:--(5) Contusion of 8 cm x 3 cm at front aspect of middle of right side lost ribs, (6) contusion of 4 x 3 cms at front aspect of capsul of main lobe of liver, (7) Contusion of 6 x 3 cms at peritoneum of in between liver and duodenum, (8) sutured wound of at lesser curvature of stomach with silk ligature material (9) contusion of 8 x 3 cms (10) Ligature of right gastric artery done. All above injuries are ante-mortem in nature. He issued Ex.P.9 Post Mortem examination report wherein he opined that the death was

due to haemorrhage with shock as a result of ante-mortem abdominal stab wound sustained and that the deceased died at 9.35 am in SVRR Hospital. Further stated that the injuries on the abdomen are possible with M.O.1 weapon.

46. During the cross examination, he stated that MO.1 is sharp edged on the single side with sharp tip and four injuries are not possible with single stab.

47. The evidence of Investigating Officer P.W.14 is that on 26.10.2009 he visited the scene of offence and prepared rough sketch of scene vide Ex.P.12. It is the further evidence of P.W.14 that on 6.11.2009 he received credible information about the accused that he was moving at Petrol bunk on the main road of Galiveedu-Rayachoty. Then he along with staff, P.W.11 and one Uttam Reddy went to the petrol bunk and found the accused. On seeing the police, the accused tried to run away. Then the staff chased him, detained and thereafter interrogated in the presence of P.W.11 and Uttam Reddy. The accused confessed the crime and stated that he would show the crime weapon. The confession of the accused to the extent of seizure of material weapon is admissible under Section 27 of the Indian Evidence Act.

48. The accused led the party to the bushes at the field of Peddireddy Sivareddy at about 1.15 PM and shown knife used in the commission of offence. P.W.14 seized the same under the

cover of mahazar Ex.P.6 and it was attested by P.W.11 and Uttam Reddy. He obtained the signature of the accused on Ex.P.5 (arrest and confession statement) while giving copies of the same to him (accused). Thereafter the accused was brought to the police station and sent the seized property to Court and thereafter to the forensic laboratory for chemical examination under Ex.P.13-letter of advice. He received Ex.P.14 report issued by FSL, Hyderabad, dated 16.1.2010 wherein Items 1,2 and 3 i.e. (1)a torn cream colour polyster kurtha with dark brown stain marks, (2) a torn white colour mill made cut sleeved banian with dark brown stains and (3) a stain less steel knife with wooden handle blade measuring 18 cms were examined and detected blood on item Nos. 1,2 and 3, that found origin of blood stains on item Nos. 1 and 2 is of human, that blood group of blood stains on Item Nos.1 and 2 is of 'B' blood group and that origin of blood stains on item No.3 could not be determined. Therefore Mos.2 and 3—blood stained jubba & blood stained banian are the items seized by P.W.13 in the hospital and MO.1 knife was seized by P.W.14 in the presence of P.W.10 and Uttam Reddy under the mahazar Ex.P.6 at the instance of accused himself.

49. Ex.P.14 is the Forensic Laboratory report. None connected to Ex.P.14 were examined. The opinion of the expert is an evidence like any other evidence which requires corroboration. Ex.P.14 is not proved by examining the expert. Non examination of the expert amounts to denial of opportunity to cross-examine

and thereby it gives clear suspicion with regard to the said opinion. More so, M.O.1 knife was seized by P.W.14 in the presence of P.W.11 and another at the instance of the accused on 6.11.2009 under Ex.P.6, whereas the incident occurred on 25.10.2009. Further the date of examination of material objects is not mentioned in Ex.P.14. But the report Ex.P.14 was signed by the Assistant Director on 16.1.2010 and approved and forwarded by the Joint Director with signature on 18.1.2010. MO.1 was seized from the bushes in the field of Peddireddy Sivareddy situated in between Kummarapalli and Buttigaripalli villages which is accessible to general public. The finding of the human blood on MO.1 which is said to have been used to kill Syed Ameenulla Basha (deceased) on 25.10.2009 is highly improbable. Therefore there is any amount of doubt about the use of MO.1. More so, it is the prosecution case that the appellant/accused picked up the knife from his abdomen and stabbed the deceased, i.e. stabbed the deceased only one time. Whereas in the Post Mortem Report Ex.P.7, the Doctor P.W.12 who conducted post mortem examination clearly stated that he found ten injuries on the dead body of the deceased. There is no explanation for such ten injuries caused by a single person with single stab. There is a suggestion to the witnesses P.Ws.1 to 3,5 and 7, that the deceased was addicted to drinking and other bad habits; though the same was denied, but the fact remains that deceased used to arrange passports and he was also involved in cheating case of passport. P.W.13 admits that he came to know that the deceased

was involved in the cheating case of passport. Therefore, we find force in the contention of the appellant/accused that some of the enemies of the deceased might have killed him (deceased).

50. Coming to the statements in Ex.P.8, which are of the Syed Ameenullah Basha (deceased) recorded by P.W.13, based on which, a case in Crime No. 95 of 2009 for the offences punishable under Sections 324 and 307 IPC was registered vide Ex.P.9. What all the witnesses deposed is that while shifting the deceased from the shop of P.W.3 to the Hospital at Rayachoti and thereafter to the Hospital, at Tirupathi, the deceased was consciously speaking and those witnesses stated that the deceased was stabbed by the accused. When the deceased was conscious and P.Ws.1 to 3 and 6 followed the deceased to hospital, on the way there is every possibility of tutoring the deceased; more so, Ex.P.8 is not certified by the duty doctor to the effect that the deceased was conscious, coherent and able to give statement to P.W.13. Therefore, it cannot be, under any circumstances, treated as dying declaration.

51. To rebut the evidence of P.Ws. 1 to 14 produced by prosecution, the accused examined DWs.1 and 2. DW.1 was the businessman who knows the accused and deceased. His evidence is that on 25.10.2009 at about 6.30 pm, after completion of namaz, when he was going, the deceased was going ahead of him, and at that time, 2 or 3 people stabbed the deceased and ran

away towards bus stand. Similarly, DW.2 deposed that he was the resident of Galiveedu and knows the deceased and accused and their family. His evidence is that the incident took place at about 5.30 or 6.00 PM, but did not know who are responsible for the incident, but the injured was brought to RMP doctor and he went there and saw the deceased. The deceased was not in a position to talk. He further deposed that the deceased used to arrange passports, ration card etc and there were quarrels between him and other persons, who approached him for passports. There was no rain on the day of incident or on the next day. The incident was happened in semi darkness and that the accused used to demand his share from his family.

52. Thus the evidence of DWs.1 and 2 do not inspire any confidence. DW.1 stated that he cannot identify the culprits. During the cross examination, he admitted that he was at a distance of 20 feet and that he could not identify the assailants though he saw from a distance of 20 feet. He told to the police that he do not know anything about the case when they enquired him. Thus the evidence of DW.1 is full of suspicions . On one way he deposed that he could not identify the culprits as it was dark and on other hand, he says that he witnessed the incident from a distance of 20 feet and when the police enquired him, he told that he did not know anything about the case. Similarly DW.2 also not able to say as to who are responsible for the incident and that he saw the deceased when he was brought to RMP doctor and that

the incident occurred in the darkness. Therefore the evidence of D.Ws.1 and 2 does not inspire confidence.

53. The material on record clearly goes to suggest that P.Ws. 1 to 3 though declared as hostile by prosecution, still their evidence is acceptable to the extent that the deceased came on running to the shop of P.W.3 with stab injury and he was made to lay on the table in front of the shop of P.W.3 and thereafter first aid was provided to him.

54. Further we are of the considered view that the evidence of P.W.1 supported by Ex.P.8 goes to suggest that the deceased gave statement while he was conscious and according to the witnesses 1,4, 6 to 8, the deceased was conscious while shifting him to the hospital in the TATA SUMO vehicle of PW.1. and also when he was taken to SVRR Hospital, Tirupathi. There is no ambiguity with regard to the statement made by the deceased to P.W.13 about the occurrence and injuries caused to him by his brother who is the appellant/accused. But the statement recorded by P.W.13 is not certified by the duty doctor and as discussed supra, the said statement cannot be treated as dying declaration.

55. Considering the oral and documentary evidence, we are of the considered view that the entire prosecution case rests on the circumstantial evidence. There is no independent evidence

as to who had seen while the accused stabbing the deceased on 25.10.2009. The evidence of P.Ws. 1 to 3 can only establish that there was a dispute between the appellant/accused and the deceased with regard to Rs.30,000/- which the appellant/accused spent for the education of the deceased. P.Ws.1 to 3 only speak that the deceased came on running from Majid with stab injury and made the injured (deceased) to lie on the table in front of the shop of P.W.3 and after the first aid, he was shifted to the Hospital, at Rayachoti and on the advice of doctor, he was again shifted to SVRR Hospital, Tirupathi. The evidence on record is that there was money dispute between the accused and deceased and P.Ws. 1 to 3 had seen the deceased came on running with stab injury. Thereafter only, SI of police, P.W.13 recorded the statement of injured vide Ex.P.8 in the hospital, based on which, he registered a case in Crime No. 95 of 2009. P.W.14 after altering the FIR to that of the offence punishable under Section 302 IPC, took up investigation, prepared rough sketch of scene of offence vide Ex.P.12 in the presence of P.W.11 and another. In the presence of P.W.10 and others, he conducted inquest over the dead body and prepared report vide Ex.P.4. Thereafter on reliable information, P.W.14 secured the presence of P.W.11 and arrested the accused and alleged to have seized MO.1 knife in the fields of P.Siva Reddy on 6.11.2009. Thereafter, the dead body was sent to Post mortem examination. P.W.12 the doctor who conducted post mortem examination gave report Ex.P.7 wherein he opined

that the death was due to haemorrhage with shock as a result of ante-mortem abdominal stab wound.

56. Absolutely there is no iota of evidence that who had last seen the deceased in the company of the accused. None of the witnesses spoke about the presence of the accused either at the scene of offence or while he was running away with knife MO.1. There is missing link in the chain of circumstances and there is no evidence to connect the accused with the offence alleged under Section 302 IPC. Exs.D.1 to D.4 are material contradictions which go to the very root of the prosecution case as discussed supra and give rise to doubt which would go in favour of the appellant/accused. Since there is no iota of evidence or material on record connecting the accused with the alleged offence, we are of the considered opinion that there is error on record in convicting the accused for the alleged offence. Therefore the findings of the trial Court are illegal and suffer from legal infirmities. Consequently, the conviction and sentence imposed against the appellant/accused is liable to be set aside.

57. Accordingly the Criminal Appeal is allowed and the conviction and sentence recorded against the appellant/accused in the judgment dated 17.07.2012 in Sessions Case No.288 of 2011 on the file of learned V Additional District and Sessions Judge, Rayachoty, Cuddapah District for the offence punishable under Section 302 IPC is set aside and he is acquitted of the said

offence under Section 235(1) Cr.P.C. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case or crime. The fine amount, if any, paid by the appellant/accused shall be returned to him. The property order of the trial Court holds good.

58. Miscellaneous petitions pending consideration if any in the Criminal Appeal stand closed in consequence.

JUSTICE SURESH KUMAR KAIT

JUSTICE N. BALAYOGI

DATED 23rd MARCH, 2018.
BCJ/Msnr_x

