

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No. 1493 of 2007

JUDGMENT:

This Criminal Appeal is preferred by the appellant/accused aggrieved by the judgment dated 19.2.2007 in S.C.No. 362 of 2006 passed by the IV Additional Metropolitan Sessions Judge, Hyderabad, convicting the accused for the offences under Section 307 IPC and sentenced him to undergo Rigorous Imprisonment for a period of five years and also to pay fine of Rs. 500/- and in default of payment of fine Simple Imprisonment for a period of one month.

2. The factual matrix of the case which lead to file the present appeal are stated thus:

The accused was a resident of Sayeed Nagar, Banjara Hills. It is alleged that he along with others committed murder of brother of the complainant by name Mohd. Rayeez on 23.10.2003 in Humayun Nagar Police Station limits and the trial of the said case was going on.

3. The case of the prosecution is that the accused has been insisting the complainant (PW-1) to affect the compromise in the said murder case and offered Rs. 1,00,000/- to affect the compromise. PW-1 refused the said compromise proposals and stated that he would proceed with the case. Then the accused threatened that he would kill him. The further case of the prosecution is that on 8.7.2005 at about 10.30 P.M while PW-1 sitting on a pial near his house, the accused passed in that way on a vehicle along with

the sword in his hands. Within few minutes again he came on a motor bike and suddenly took out the sword and tried to stab PW-1. However, PW-1 could providentially escape from the stab injury and thereby he did not get hurt and he ran into the house and raised cries hearing which some people gathered there and thereby the accused ran away. On the report given by PW-1, PW-5, SI of Police, Banjara Hills Police Station, registered the case in Crime No. 576 of 2005 under Section 307 IPC and handed over the case file to PW-4, who investigated the matter and on completion of investigation laid charge sheet against accused for the offence under Section 307 IPC. On appearance of the accused, the trial Court framed charges under Section 307 IPC and conducted trial.

4. During the course of trial, PWs 1 to 4 were examined and Exs. P1 to P3 were marked and MO.1 knife was exhibited on behalf of prosecution. PW-1 is the complainant, PW-2 is the brother of PW-1 and PW-3 is the punch witness for confession cum recovery of M.O-1 knife by the police. PW-4 is the investigating officer.

5. The trial Court on consideration of evidence on record held that the prosecution could establish the guilt of the accused beyond reasonable doubt and accordingly convicted the accused for the offence under Section 307 IPC and sentenced him as stated supra. Hence, the Criminal Appeal.

6. Heard arguments of Smt. Pushpender Kaur, learned counsel appearing for appellant and learned Additional Public Prosecutor for respondent/complainant.

7. Severely fulminating the judgment, learned counsel for appellant firstly argued that knowing that the murder case was weak, PW-1 foisted a false case against the accused to prejudice the mind of the trial Court which is evident from the fact that though he was not an eye witness he claimed as if the accused went behind him seeking to compromise the case.

7.1. Secondly, learned counsel would argue that there is absolutely no truth in the FIR and the evidence of PWs 1 to 3 and the trial Court convicted the accused on surmises and conjectures and argued that when PW-1 was not a witness in the murder case of his brother, the question of accused offering Rs. 1,00,000/- to him to enter into the compromise does not arise. Even if he offered money, PW-1 cannot influence other witnesses in any way. Therefore, the very foundation of the prosecution is weak.

7.2 Thirdly, he would argue, the statement of PW-1 is not corroborated by any independent witnesses though the incident was occurred in the street in front of the house of PW-1. Except PW-2, who is none other than the bother of PW-1, the prosecution did not examine any independent witnesses. Even the evidence of PW-2 is not believable because in the cross examination he stated that the police recorded his statement on the next day of the incident at about 7 'o' clock. Learned counsel would submit that when Ex.P1 was registered on 9.7.2015 at 23 hrs (i.e., 11.00 PM), the question of police examining him and recording his statement at 7 'o' clock is impossible and it would indicate that he is not speaking truth.

7.3 Fourthly, he argued that there was an enormous delay of more than 24 hours in lodging the report which throws any amount of doubt about the prosecution case. On all these submissions, learned counsel argued that the trial Court has erroneously convicted the accused. Hence, prayed to allow the appeal.

8. Per contra, learned Additional Public Prosecutor would argue that the motive for accused to attack PW-1 is that he did not accept his offer to compromise with him in the murder case of his brother by receiving Rs. 1,00,000/-. This was the reason for him to commit the offence. The factum of pendency of the trial of murder case during the relevant period of present offence and the accused herein was one of the accused in murder case are not in dispute. Therefore, these facts would strengthen the evidence of PW-1. Learned Addl. P.P. further argued that merely because PW-1 is not a witness in murder case that cannot be a ground to suspect the prosecution case. He is the brother of the murdered person and naturally the accused would contact him only to effect compromise.

8.1. He further argued that merely because PW-2 happened to be the brother of PW-1, on that score his evidence cannot be discarded because the incident took place in front of their house and therefore, he was the natural witness having possibility to witness the incident. The discrepancy in his evidence that he was examined by the police at 7 'o' clock on the next day may not be viewed seriously, as he gave evidence long after incident.

8.2. Lastly he argued that though there was a delay of about 24 hours in lodging the FIR, nothing was suggested in the cross of PW-1 and no useful point was extracted to hold that the time was gained to implicate the accused. He thus prayed to dismiss the appeal.

9. *The point that arises for consideration is whether the prosecution proved the guilt of the accused beyond reasonable doubt and whether the conviction and sentence recorded by the trial Court are factual and legally sustainable?*

POINT:

10. According to the prosecution, the motive for accused to attack PW-1 is because PW-1 refused to budge to the request of the accused to enter into the compromise in the murder case of brother of PW-1 wherein the accused was one of the accused. The factum of the pendency of murder case during the relevant period of instant case is not in dispute. In the light of this admitted fact, the case of the prosecution needs to be scrutinized. Prosecution examined PWs 1 & 2 to prove the incident. PW-1 in his evidence deposed that his brother Mohd Rayeez was murdered on 23.10.2003 in the limits of Humayun Nagar Police Station wherein the accused and two brothers-in-law of the deceased were the assailants. He further stated that the accused had threatened him to compromise the matter by offering Rs. 1,00,000/- but he refused the said offer and stated that he would fight out the case. Regarding the incident, he deposed that on 8.7.2005 at about 10.00 PM when he was sitting in front of his house, the accused holding a knife in his hand passed in front of his house on a bike

and after five or ten minutes he again came in front of his house and stopped his vehicle and suddenly attacked him with the knife but he escaped and ran away from the place raising cries and on the next day he lodged Ex.P1 report. This is the evidence of PW-1 regarding the motive of the accused and also the incident.

11. PW-2 is the brother of PW-1. He deposed in similar lines of PW-1 and stated that on 8.7.2005 at about 10.00 or 10.30 PM while he was near his house, the accused passed in front of his house on a bike and later he heard cries of his brother (PW-1) and on that he went and saw the accused tried to stab PW-1 but he escaped. Then he too raised cries and started running to catch the accused but the accused fled away from the scene. This is the narration of both the eye witnesses.

12. In the cross examination of PW-1, he admitted that he cannot tell the number, color and make of vehicle on which the accused came on that night. He further stated that he does not know the contents of Ex.P1 since it was in English. He stated that he got Ex. P-1 report typed near by his house and presented to the police. He admitted that in Ex. P1 he did not mention from which direction the accused passed in front of his house. He denied the suggestion that he falsely implicated the accused in the case and he also denied the suggestion that the accused did not make any compromise talks with him.

13. Then coming to PW-2, in his cross examination he stated that he did not notice the registration number, color or make of the vehicle used by the accused. In the cross examination, he stated that the police recorded

statement on the next day at 7 'o' clock and he denied the suggestion that he was implicated falsely to help PW-1.

14. When the evidence of PWs 1 & 2 is independently scrutinized, it is not disputed that the murder case of their brother was pending trial during the relevant period of incident. In the instant case, it is suggested to PWs 1 & 2 that the accused has not made any compromise offer to PW-1 to deny the motive aspect. Since the murder case was pending during the relevant period, version of PWs 1 & 2 that at that time accused made such an offer can be believed, as otherwise there is no need for them to make an allegation that he made such an offer.

15. Coming to the incident, it was occurred in front of the house of PW-1 at about 10.00 PM on 8.7.2005. As such, PW-2 can be said to be the natural witness for the incident as he is the resident of the house along with PW-1. Coming to the version of PW-1, he stated that when he was sitting on the pial in front of his house, accused first went on a bike in front of his house and again within a short time he came and pulled the knife to stab him but PW-1 could escape it. Of course, the difference between Ex.P1 and evidence of PW-1 is that in Ex.P1 statement he narrated the weapon as sword but in his evidence it is stated that it is a knife. The description of M.O-1 shows that it is a knife but not a sword.

16. Be that as it may, it appears that the accused firstly passed in front of the house of PW-1 to confirm that PW-1 was alone sitting in front of his house so as to make an attack and within a short time again he came and pulled the knife and attacked him. Since the accused took time to stop his

vehicle and get down and make an attack on him, PW-1 got time to run into his house and thus he providentially escaped un-hurt and he made hue and cry and thereby PW-2, who was inside the house, came and saw the incident and also accused running away. There is a ring of truth in the evidence of PW-1 & PW-2. As already noticed, the incident occurred in front of their house and hence they are natural witnesses. So, the evidence of PW-2 which corroborates the evidence of PW-1 cannot be discarded merely because he is an interested witness. Therefore, the evidence of PWs 1 & 2 can be believed to hold that an attack was made by accused on PW-1 on the ground that PW-1 did not oblige to his offer.

17. Now coming to the arguments advanced by the learned counsel for appellant, merely because PW-1 was not a witness in the murder case of his brother that alone cannot be a ground to discard his evidence. As rightly argued by the learned Additional Public Prosecutor, PW-1 is none other than the own brother of the deceased and therefore, naturally the accused would approach him for affecting compromise. Therefore, the version of PW-1 can be accepted. Then, coming to the next argument, it is true that PW-2 in his cross-examination stated as if he was examined by police on the next day at 7 'o' clock, whereas Ex. P1 was lodged at about 11.00 p.m on 9.7.2005 and therefore, his evidence in the cross examination that the police recorded his statement at 7 'o' clock on the next day is not true. However, on that minor discrepancy, the evidence of PW-2 which is otherwise believable one cannot be discarded. Therefore, the evidence of PWs 1 & 2 proves the incident.

18. Coming to the charge under Section 307 IPC, since PW-1 refused to accept the compromise offer; certainly accused would have grouse against him. The method and manner in which he attacked PW-1 on the night time would clearly indicate that he intended to kill PW-1. Therefore, the prosecution could able to establish the charge under Section 307 IPC. However, sentence is concerned, the trial Court sentenced the accused to undergo five years imprisonment. Considering the PW-1 escaped un-hurt as a mitigating circumstance, the quantum of punishment can be reduced in the interest of justice.

19. In the result, this Criminal Appeal is partly allowed and while upholding conviction recorded by the trial Court against the accused for the offence under Section 307 IPC, the sentence passed by it is reduced from five (5) years Rigorous Imprisonment to three (3) years Rigorous Imprisonment with fine of Rs. 500/- and in default to pay fine amount, he shall undergo Simple Imprisonment for a period of one month. The remand period if any, shall be given set off. The accused shall surrender before trial Court to serve sentence.

As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 05.07.2018
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