

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
AND
THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

CRIMINAL APPEAL No.653 of 2013

JUDGMENT: (Per Hon'ble Sri Justice T.Sunil Chowdary)

This Criminal Appeal, under Section 374 (2) Cr.P.C., is filed by the appellant-accused assailing the judgment dated 05.05.2011 passed in Sessions Case No.597 of 2008 on the file of the Court of IV Additional District and Sessions Judge (FTC), Ranga Reddy District, wherein and whereby the appellant was found guilty for the offence punishable under Section 302 I.P.C. and accordingly, convicted and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of three months.

2 The case of the prosecution in nutshell is as follows:

(i) The Assistant Sub-Inspector of Police, Sanathnagar-PW.8 recorded the statement of one Durgam Raju (hereinafter referred to as 'the deceased') in the hospital and forwarded the same to the Station House Officer, Sanathnagar on 14.08.2007. The Circle Inspector of Police, Sanathnagar-PW.11 registered a case in Crime No.286 of 2007 under Section 307 I.P.C. against the appellant (hereinafter referred to as 'the accused') and issued Ex.P.9-F.I.R. While undergoing treatment, the deceased died. The S.I. of Police-PW.9 filed a memo before the concerned Court on 02.10.2007 for alteration of section of law from 307 to 302 I.P.C. During the course of investigation, it is revealed that Durgam Rama Krishnamma-PW.1 is the wife and Durgam Anitha-PW.2 is the daughter-in-law of the accused (Durgam Ramaswamy). The

deceased is the son of the accused and PW.1. The accused sold the property in his native place without the knowledge of PWs.1, 2 and deceased. Due to which, disputes arose in the family. Six months prior to the incident, the accused picked up a quarrel with the deceased in connection with the chit transaction and made an attempt to kill him. While so, on 14.08.2007 in early morning, the deceased brought the milk packets from the shop and thereafter sleeping in the house. In the meanwhile, the accused poured acid on the deceased and ran away from the spot. Kuduppa Devender-PW.3 and Pichuralu Ramesh-PW.4, who are the tenants of the accused, have seen the accused. Due to burn injuries, the deceased made hue and cry. On hearing cries of deceased, PW.1 came from the shop. PW.2 also came from bathroom and found burn injuries on the deceased. Immediately, the deceased was shifted to a Private Hospital, Sanathnagar, and thereto DRDO Apollo Hospital. On receiving the information, PW.9 visited the house of the accused and deceased and prepared the scene of observation report-Ex.P.1 and rough sketch of the scene of offence-Ex.P.2 in the presence of PW.5 and others. The S.I. of Police seized M.Os.1 and 2 in the presence of the mediators. The deceased died on 01.10.2007. Dr.Sriramulu-PW.10 conducted autopsy over the dead body of the deceased on 02.10.2007 and issued Post-mortem Certificate-Ex.P.8. PW.9 examined and recorded the statements of PWs.1 to 4 on 14.08.2007. On 20.08.2007 the S.I. of Police-PW.9 arrested the accused. On the same day, the accused in the presence of PW.7 stated to the S.I. of Police that he will show the acid tin if they followed him. The accused led them to his house and produced the empty acid bottle-M.O.3. Ex.P.4 is the relevant

portion of the statement of the accused. Ex.P.5 is the seizure report of M.O.3. The accused was produced before the concerned Court for judicial custody. After completion of the investigation, the Circle Inspector of Police, Sanathnagar-PW.11 laid charge sheet against the accused for the offence punishable under Section 302 I.P.C. before IX Metropolitan Magistrate, Cyberabad at Kukatpally.

(ii) The learned IX Metropolitan Magistrate, Cyberabad at Kukatpally, has taken the case on file and numbered it as P.R.C.No.94 of 2007 and supplied the copies of documents to the accused as contemplated under Section 207 Cr.P.C. The learned Magistrate has committed the case to the District and Sessions Division, Ranga Reddy District, under Section 209 Cr.P.C., as the offence under Section 302 I.P.C. is exclusively triable by a Court of Sessions. The learned District and Sessions Judge, Ranga Reddy District, has taken the case on file against the accused under Section 302 I.P.C. and numbered it as Sessions Case No.597 of 2008 and made over the same to IV Additional District and Sessions Judge (FTC), Ranga Reddy District, for disposal in accordance with law.

(iii) The learned IV Additional District and Sessions Judge, after hearing both sides, framed the charge under Section 302 I.P.C., read over and explained to the accused in Telugu, for which he denied the charge and claimed to be tried.

(iv) In order to bring home the guilt of the accused, before the trial Court, on behalf of the prosecution, PWs.1 to 11 were examined and Exs.P.1 to P.9 and M.Os.1 to 3 were marked. After

completion of the prosecution side evidence, the accused was examined under Section 313 Cr.P.C with reference to the incriminating material deposed against him by the prosecution witnesses, which he denied. No oral or documentary evidence was adduced on behalf of the defence.

(v) Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the accused committed the offence punishable under Section 302 I.P.C. and accordingly, convicted and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of three months. Hence, the appeal.

3. Smt. M.Padmalatha Yadav, the learned counsel for the accused (appellant), strenuously submitted that the trial Court has not properly considered and appreciated the testimony of PWs.1 to 4, who are not the eye witnesses to the incident. She further submitted that the trial Court failed to consider that PW.7 is a planted witness, therefore, much credence and credibility cannot be attached to Exs.P.4 and P.5. She further submitted that the trial Court convicted and sentenced the accused on assumptions and presumptions, which is not maintainable under law. Therefore, it is a fit case to allow the appeal.

4. *Per contra*, the learned Public Prosecutor submitted that by examining PWs.1 to 4, the prosecution clearly established that the accused poured acid on the deceased with an intention to kill him. He further submitted that the accused is not disputing the nature of the death of the deceased. He further submitted that the trial

Court considered the oral and documentary evidence in right perspective and found the accused guilty for the offence punishable under Section 302 I.P.C; therefore, it is not a fit case to interfere with the same.

5. The point that arises for consideration in this appeal is:

“Whether the prosecution has established the guilt of the accused for the offence punishable under Section 302 I.P.C. beyond all reasonable doubt?”

6. A perusal of the record reveals that the incident took place on 14.08.2007. On the same day, the Assistant Sub-Inspector of Police, Sanathnagar-PW.8 recorded the statement of the deceased-Ex.P.6 and forwarded the same to the Station House Officer, Sanathnagar. The testimony of PW.11 reveals that basing on the statement of the deceased, he registered a case in Crime No.286 of 2007 and issued F.I.R.-Ex.P.9. The incident took place on 14.08.2007. The F.I.R. was lodged on the same day without any delay. In the cross-examination of these two witnesses, nothing is elicited to shake their testimony so far as lodging of complaint and registration of the case are concerned.

7. The testimony of PW.9 clearly reveals that on 02.10.2007 she filed Ex.P.7 memo before the concerned Court for alteration of section of law from 307 to 302 I.P.C.

8. The next question that falls for consideration is whether the death of the deceased is homicide or not?

9. As per the testimony of PWs.1 to 4, the deceased sustained acid burn injuries on 14.08.2007. Their testimony further reveals

that the deceased died while undergoing treatment on 01.10.2007. As seen from the testimony of PW.6, on 02.10.2007 the Sub-Inspector of Police-PW.9 conducted inquest over the dead body of the deceased in the presence of himself and other mediators. His testimony further reveals that the S.I. of Police prepared inquest report-Ex.P.3 and obtained his signature. The testimony of PW.9 clearly reveals that she conducted inquest over the dead body of the deceased on 02.10.2007 in the presence of PW.6 and others. PW.6 opined that the deceased died due to acid burn injuries. The testimony of PW.10 (doctor) reveals that on 02.10.2007, on receiving requisition from Station House Officer, Sanathnagar, he conducted autopsy over the dead body of the deceased and issued post-mortem certificate-Ex.P.8. As per the testimony of PW.10, the deceased died due to acid burn injuries. By examining PWs.1 to 4, 6, 9 and 10 and marking Exs.P.3 and P.8, the prosecution clearly established the death of the deceased is homicide.

10. As per the prosecution version, the scene of offence is the house of the accused and deceased. As seen from the testimony of PW.5 on 14.08.2007, the S.I. of Police, Sanathnagar, observed the scene of offence in his presence and prepared scene of offence observation report-Ex.P.1 and Ex.P.2-rough sketch. The testimony of PW.5 reveals that the S.I. of Police seized M.O.1-semi burnt pillow cover and M.O.2-bedsheet in his presence. As per the testimony of PWs.1 to 4 also, the deceased sustained acid burn injuries in the house. In the cross-examination of these witnesses, nothing is elicited to shake their testimony so far as the scene of offence is concerned. By examining PWs.1 to 4, 5 and 9 and marking Exs.P1 and P.2 and M.Os.1 and 2, the prosecution clearly

established that the incident took place in the house of the accused and deceased.

11. As per the prosecution version, the motive for the offence is property dispute. As seen from the testimony of PWs.1 and 2, the accused sold the property in the village without their consent and knowledge, which is the root cause for disputes between the accused and deceased. There is no much dispute with regard to selling of the property by the accused. As seen from the testimony of PWs.1 and 2, the accused picked up quarrel with the deceased six months prior to the incident and made an attempt to inflict knife injuries on him. As seen from the testimony of PWs.1 and 2, the deceased did not lodge the complaint as it relates to their family affair. The possibility of non-lodging the complaint by the deceased is more probable and believable in view of *inter se* relationship between them. The testimony of PWs.1 and 2 reveals that the deceased purchased a house property in the name of PW.2, which is not liked by the accused. A perusal of the record reveals that the accused picked up quarrel with the deceased with regard to the purchase of house by him in the name of his wife. The material placed before the Court clinchingly establishes the disputes in the family for a period of six months prior to 14.08.2007. PWs.1 and 2 are the competent persons to speak about the family affairs. In the cross-examination of these witnesses, except putting a formal suggestion, nothing is elicited so far as motive is concerned. By examining PWs.1 and 2, the prosecution clearly established the motive for the offence.

12. The crucial question that falls for consideration is whether the accused poured acid on the deceased on 14.08.2007 with an intention to kill him.

13. As seen from the testimony of PWs.1 and 2, on 14.08.2007 the deceased was sleeping in the house. The testimony of PW.1 reveals that when she was opening the shop, she heard cries of deceased and rushed to the house. As seen from the testimony of PW.2, while she was taking bath, she heard the cries of her husband and rushed to the spot. The testimony of PWs.1 and 2 reveals that their tenants PWs.3 and 4 poured water on the deceased. PWs.3 and 4 are the tenants of accused and deceased. As per the testimony of PWs.3 and 4, they have seen the accused while running from the house after hearing the cries of the deceased. In the cross-examination of these two witnesses, nothing is elicited to shake their testimony so far as they are witnessing the accused while leaving the house on 14.08.2007. As rightly pointed out by the learned counsel for the accused, there is no mention in Ex.P.6-statement of deceased that his father poured acid on him. As per the statement of deceased-Ex.P.6, his mother and wife informed him that his father poured acid on him. The legality or otherwise of Ex.P.6 will be considered at a later stage. If the testimony of PWs.1 to 4 is taken into consideration, the accused poured acid on the deceased. PW.1 is the wife of accused and mother of the deceased. PW.2 is the daughter-in-law of the accused and wife of the deceased. PWs.1, 2, accused and deceased belong to same family. Normally, no wife will depose false in order to implicate her husband in a false case. The testimony of these two witnesses clearly reveals that they rushed to the spot

immediately on hearing the cries of the deceased. The shop is situated within the same premises. In such circumstances, the presence of PWs.1 and 2 at the spot is natural and more probable. In the cross-examination, no suggestion was put to these two witnesses that they were not in the house on 14.08.2007 at the time of incident. Except putting formal suggestions, nothing is elicited to disbelieve their testimony. PWs.3 and 4 are the tenants of the accused and deceased. Viewed from any angle, PWs.3 and 4 are independent witnesses. As per the testimony of PWs.3 and 4, the accused poured acid on the deceased and left the scene of offence. In the cross-examination of these two witnesses, nothing is elicited to disbelieve their presence. On the other hand, being the tenants, the possibility of their presence is more possible and probable, more particularly, in the early hours. In the cross-examination of these two witnesses, no suggestion was put to them that due to previous animosity, they were deposing false against the accused. PWs.3 and 4 are no way concerned with the family affairs of the accused and deceased. In such circumstances, there is no necessity for them to depose false against the accused. The testimony of PWs.3 and 4 is corroborating with each other with all material aspects. The testimony of PWs.1 to 4 is cogent, coherent, convincing and consistent in all material aspects. There are no inherent infirmities in the testimony of these witnesses; in such circumstances, the Court can safely place reliance on the testimony of these witnesses. By examining PWs.1 to 4, the prosecution clearly established that the accused poured acid on the deceased with an intention to kill him.

14. As per the testimony of PW.9, the accused was arrested on 20.08.2007. Her testimony further reveals that in the presence of PW.7, the accused stated them that he will show the acid tin if they followed him. The testimony of PWs.6 and 9 reveals that the accused led them to his house and shown the plastic bottle-MO.3. The testimony of PW.7 reveals that PW.9 seized MO.3 under cover of panchanama-Ex.P.5. We have carefully perused Ex.P.4. The trial Court rightly marked the relevant portion of the statement of the accused, which leads to recovery of MO.3. In the cross-examination of PW.6, no suggestion was put to him that he was not present at the time of seizure of MO.3. PW.6 is no way interested either in the acquittal or conviction of the accused. The testimony of PW.6 remained unchallenged. By examining PWs.6 and 9 and marking Exs.P.4, P.5 and MO.3, the prosecution clearly established that PW.9 seized MO.3 in pursuance of the information given by the accused. Any information given by the accused, which leads to recovery of material object being used in the commission of offence, is admissible in view of Section 27 of the Indian Evidence Act. The prosecution clearly established the seizure of MO.3. The other interesting aspect to connect the accused with the crime is that he also sustained acid burn injuries. As seen from the testimony of PW.1, the accused while pouring acid on the deceased, he sustained injuries on his right hand. As seen from the testimony of PW.9, she sent the accused to D.B.R. Hospital for treatment as he sustained acid burn injuries to his right hand. The testimony of PW.9 clearly reveals that the O.P.Sheet was attached to the arrest form. No suggestion was put to PW.9 that she did not sent the accused to the D.B.R. Hospital

for treatment. The oral testimony of PWs.1 and 9 is corroborating with each other with regard to sustaining of the acid burn injuries by the accused to his right hand. If really the accused did not pour acid on the deceased, how he sustained acid burn injuries to his right hand is not properly explained. This is one of the strong piece of evidence opining towards the guilt of the accused. We have scanned the testimony of PWs.1 to 4 meticulously. No suggestion was put to PWs.1 to 4 that the accused was not in the house on 14.08.2007 at early hours. The presence of the accused in the house is more probable and believable. The prosecution introduced the version that the deceased sustained injuries due to accidentally falling of acid bottles from the roof, which were stored for the purpose of kirana shop. As seen from the testimony of PW.2, they used to sell the acid bottles, which are being used for cleaning of toilets. We have carefully perused the scene of observation report-Ex.P.1 and Ex.P.2 rough sketch. There is no attic (roof) as pleaded by the accused. In such circumstances, storing of the acid bottles on attic (roof) is a story invented by the accused in order to escape from the clutches of law. We are very much conscious that merely because the defence put forth by the accused is not believable that itself is not a valid ground to convict the accused. It is needless to say that the prosecution has to establish the guilt of the accused beyond all reasonable doubt. In the instant case, PWs.1 to 4 are eye witnesses to the incident whose testimony cannot be discarded on flimsy grounds. On the other hand, their testimony is trustworthy for consideration. The trial Court considered the testimony of PWs.1 to 4 in right perspective and placed reliance. There are no grounds much less

valid grounds to disbelieve the testimony of PWs.1 to 4. The prosecution also proved seizure of MO.3 in pursuance of the information given by the accused. By examining PWs.1 to 11 and marking Exs.P.1 to P.9 and MOs.1 to 3, the prosecution clearly proved the guilt of the accused for the offence punishable under Section 302 I.P.C. The findings recorded by the trial Court are based on evidence much less legally admissible evidence. We are fully agreeing with the findings recorded by the trial Court. There are no grounds much less valid grounds to upset the findings recorded by the trial Court.

15. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence imposed against the accused in Sessions Case No.597 of 2008 on the file of Court of IV Additional District and Sessions Judge (FTC), Ranga Reddy District. M.Os.1 to 3 shall be destroyed after expiry of the appeal time.

16. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

CHALLA KODANDA RAM, J

T.SUNIL CHOWDARY, J

Date: 25.08.2018
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