

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Appeal No.1253 of 2011

JUDGMENT (Per Dr.Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973, is filed by the appellant/accused, challenging the judgment, dated 26.07.2011, passed in S.C.No.174 of 2010 by the IX Additional District & Sessions Judge (Fast Track Court), Visakhapatnam, whereby, the Court below convicted the accused of the offence punishable under Section 302 I.P.C. and sentenced him to undergo Rigorous Imprisonment for life.

2. Heard the submissions of the learned Legal Aid Counsel appearing on behalf of accused, learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The learned Legal Aid counsel appearing on behalf of the appellant/accused would contend that there are inconsistencies and omissions in the evidence of P.W.1. Recovery of M.O.1 – knife (Komma Kathi) is not proved. Further, there are no finger prints of the accused on M.O.1. Other witnesses are interested witnesses. Prosecution failed to prove the guilt of the accused beyond all reasonable doubt. The Court below had erroneously found the accused guilty of the offence under Section 302 of I.P.C. and ultimately prayed to set aside the conviction and sentence recorded against the accused for the offence punishable under Section 302 of I.P.C.

4. The learned Additional Public Prosecutor representing the respondent-State would submit that there is specific, cogent and convincing evidence of P.W.1, who is none other than the mother of the accused, that the accused hacked the deceased with a knife (Komma Kathi) on the left side of the neck. There is also evidence of P.W.3 implicating the accused in commission of the instant crime. P.W.2 is a neighbour, who supported the case of prosecution. There are other witnesses to prove the guilt of the accused beyond all reasonable doubt and ultimately prayed to dismiss the Criminal Appeal by confirming the conviction and sentence recorded against the accused by the Court below.

5. In view of the above contentions put-forth by both the learned counsel, the points that arise for determination in this Criminal Appeal are:

- 1) Whether the accused caused the death of the deceased?
- 2) Whether the conviction and sentence recorded against the accused by the Court below of the offence under Section 302 of I.P.C. is liable to be set aside?

6. The case of the prosecution is that the deceased is the younger brother of the accused. On 18.03.2010 at about 11:30 hours, the accused came to the house of P.W.1, who is his mother, and demanded to provide food. The deceased, who was also present in the house, replied that the accused already left the house by taking his share in the properties, why he was again making demand for food. Some exchange of words took place between them. Thereafter, the accused pushed the deceased back side, and at that time, the deceased was sitting on the wooden

plank in front of country oven and the accused hacked the deceased with a knife on the left side of neck and caused instantaneous death. When P.W.1 raised alarm cries, the accused fled away along with M.O.1 – knife, from the scene of offence. On a report lodged with the police by P.W.1, the police registered a case against the accused for the offence punishable under Section 302 of I.P.C., completed the investigation and filed charge-sheet before the Magistrate concerned. The learned Magistrate took cognizance of the case, vide P.R.C.No.23 of 2010 under Section 302 of I.P.C. against the accused and committed the case under Section 209 Cr.P.C., to the Court of Session, since the offence under Section 302 I.P.C. was exclusively triable by the Court of Session. On committal, the District & Sessions Judge, Visakhapatnam, took the case on file and made over the same to the Court below for trial and disposal in accordance with law. The Court below framed charges against the accused under Section 302 of I.P.C. are read over the same to the accused for which, the accused pleaded not guilty and claimed to be tried.

7. To prove the case of prosecution, P.Ws.1 to 12 were examined and Ex.P.1 – Complaint given by P.W.4, Ex.P.2 – Scene Observation Report, Ex.P.3 – some portion of mediators report, Exs.P.4 to P.9 – Six Photographs, Ex.P.10 – Compact disk pertaining to photos, Ex.P.11 – Original FIR, Ex.P.12 – Rough sketch, Ex.P.13 –Inquest report, Ex.P.14 – R.F.S.L. Report, Ex.P.15 – Postmortem Report, were marked. M.O.1 – Knife (Komma Kathi), M.O.2 – Wooden Plank and M.O.3 – Blood stained earth and controlled earth were also marked.

8. When the accused was confronted with the incriminating evidence appearing against him and examined under Section 313 of Cr.P.C, he denied the same and pleaded innocence. No oral and documentary evidence has been adduced on behalf of the accused.

9. P.W.1 – Vanthala Appayamma is the mother of the deceased. P.W.2 is the neighbour of P.W.1. P.W.3 is the eldest son of P.W.1 and brother of the accused. P.W.4 is the V.R.O. of Kommika Gramapanchayat and the de-facto complainant. P.W.5 is the wife of the accused. P.W.6 is the purchaser of knife from the accused. P.W.7 is the person who sold the house site to the accused. P.W.8 is one of the mediators for the observation of scene of offence and inquest. P.W.9 is one of the mediators for the confessional statement of accused and for seizure of M.O.1 - knife. P.W.10 is the photographer who took photographs of the scene of offence and the dead body of the deceased. P.W.11 is the Sub-Inspector of police who registered the F.I.R. under Ex.P.11 and P.W.12 is the investigating officer.

10. Ex.P.1 is the written statement in Telugu submitted by P.W.4 to P.W.11 on 18.03.2010 at 1300 hours, with regard to the instant offence that took place on the same day about 1130 hours in the kitchen of thatched hut of P.W.1 at Karnikapalem. The said report was drafted basing on the information furnished by P.W.1 to P.W.4. A perusal of Ex.P.1 reveals that except P.W.1, mother of the accused, there is no other eye-witness to the incident and the other witnesses came to the spot only after the accused left the scene of offence along with M.O.1 - knife and they learnt about the incident through P.W.1.

11. P.W.1 has clearly and categorically deposed that about 5 to 6 years prior to the date of her deposition, marriage of the accused was performed with P.W.5. It was a love marriage. After marriage, the accused and his wife lived separately. Subsequently, P.W.5, wife of the accused, left the company of accused due to bad behaviour of the accused. Thereafter, the accused started living with P.W.1 in her house and used to attend coolie work. About 13 months prior to the date of deposition, the accused went to attend coolie work and he returned around 10:00 AM. At that time, her eldest son (P.W.3) and her youngest son (deceased) attended thatched roof work. The accused asked P.W.1 to serve food. Then, the younger brother of the accused (deceased) asked the accused to wait for some time, as they just got down from the roof after re-thatching work. Then, the accused stated that if food was not served, he would either hack P.W.1 or the deceased. At that time, the deceased was sitting on a wooden plank near the country oven. The accused pushed the deceased over the country oven and hacked the deceased with M.O.1 – Knife (Komma kathi) on the left side of neck and fled away. It caused instantaneous death of the deceased.

12. P.W.2 – A.Nooka Raju is a circumstantial witness. He deposed that he used to reside opposite to the house of P.W.1 and at about 13 months prior to the date of his deposition, he heard the cries of P.W.1 from her hut and he along with P.W.3 went to the hut of P.W.1 and found the dead body of the deceased with bleeding injury on the left side of neck. He specifically deposed that P.W.1 informed him that the accused hacked the deceased

and that the other villagers also came to the hut of P.W.1. P.W.4 drafted a report and went along with P.W.1 to police station to lodge the report.

13. P.W.3 – Vanthala Chandrayya is the elder brother of the deceased. He deposed that the wife of the accused left the company of the accused due to the bad behaviour of the accused. He deposed that the accused used to consume liquor with the money earned by him and was creating problems. He also deposed that on hearing cries of P.W.1, he along with P.W.2 reached the scene of offence and found the accused coming out of the hut with M.O.1 – knife and the accused escaped and he found bleeding injuries on the neck of the deceased who was lying on the ground near the country oven. P.W.3 identified M.O.1–knife used by the accused in commission of offence.

14. P.W.4 – V.Lingalu is another circumstantial witness. He deposed that he was working as V.R.O. of Kommika Village at the relevant point of time. He specifically deposed that on 18.03.2010 morning around 08:00 AM, he went to Degalapalem village adjacent to Karnikapalem and P.W.2 came and informed that the accused hacked the deceased and on request, he went to the house of P.W.1 and found the dead body of the deceased with a cut injury on the left side of neck.

15. P.W.5 – Vanthala Ratnam is the wife of the accused. She deposed about her marriage with the accused and the disputes between them. She also deposed that she left the company of the

accused due to the continuous harassment meted out to her by the accused.

16. There is evidence of P.W.7 – Vanthala Bapanna, who sold the house site to the accused. He deposed about the sale of land admeasuring Ac.0.03 cents in favour of the accused.

17. P.W.8 – Kedhari Ambulu is a Ward Member of Kommika Grampanchayat. He deposed that he knew the accused, the deceased, P.W.1 and P.W.3. He deposed about his visit to the scene of offence, finding of the dead body of the deceased with a injury on the left side of the neck and the police conducting panchanama.

18. P.W.9 is one of the mediators to the confessional statement of accused and seizure of M.O.1 - knife. P.W.10 – M.Vijaya Kumar is the owner of the photo studio. He deposed that he took the photographs of the dead body of the deceased with his digital camera.

19. P.W.11 is the Sub-Inspector of police. His deposition reveals that on 19.03.2010, he apprehended the accused and on his confession, he recovered M.O.1 – Knife at Degalapalem.

20. P.W.12 is the investigating officer. He deposed that on his return from leave, he verified the investigation of P.W.11 and found it on correct lines. He visited the scene of offence, examined the witnesses and also recorded their statements. He sent the material objects seized to F.S.L. and after obtaining report from

F.S.L., his successor filed charge-sheet and he got recorded the statements of P.Ws,1, 2 and 4, under Section 164 of Cr.P.C.

21. The learned Legal Aid Counsel appearing on behalf of the accused contended that there are omissions and contradictions in the evidence of the prosecution witnesses and that the evidence of P.W.1, who is none other than the mother of the accused, is not trustworthy. P.W.1 is the mother of the accused and P.W.3 is the brother of the accused. As per the evidence on record, P.W.1 is an eye-witness to the incident. She had clearly and categorically deposed the manner in which the offence had been committed. Though P.W.3 is not an eye-witness to the incident, he deposed that the accused left the house of P.W.1 along with M.O.1 – knife. P.W.2 is a circumstantial witness who deposed the presence of P.W.1 and P.W.2 at the scene of occurrence. P.W.4 is another circumstantial witness who deposed about the commission of offence. P.W.5 deposed the conduct of accused, which is not relevant for the purpose of deciding the case on hand. The evidence of P.W.6 shows that he purchased M.O.1 – knife from the accused for Rs.100/-. M.O.1 – knife was recovered pursuant to the confession made by the accused. There is evidence of P.W.11 to show the recovery of M.O.1 – knife.

22. It is contended on behalf of the accused that there were no finger prints of the accused on M.O.1 – knife. Merely because there were no finger prints of the accused on M.O.1 – knife, the whole prosecution case cannot be thrown out. P.W.1 is a direct witness and there is no reason for P.W.1, who is the mother of the accused, to falsely implicate her own son for the offence of this

nature. P.W.1, mother of the deceased, is natural witness. She has no animosity or grudge against the accused to implicate him falsely in a case of this nature. In cross-examination, her evidence with regard to her presence at the time of the incident, is not shaken. There is no reason for her to screen the real culprit and falsely implicate her own son in the instant case. Her evidence is consistent and cogent. There are no omissions or contradictions in her evidence with regard to the accused hacking the deceased with M.O.1-curved knife. P.W.3, brother of the accused and a circumstantial witness, also saw the accused fleeing from the house of P.W.1 with M.O.1-knife. He also supported the case of prosecution. On this aspect, it is pertinent to refer to a decision in *Dalip Singh & others v. State of Punjab*¹, wherein it has been laid down as under:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

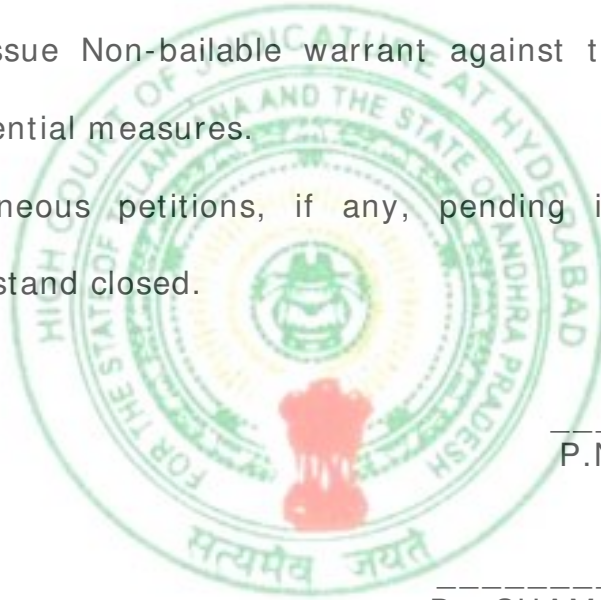
The above decision has since been followed in *Guli Chand and Ors. v. State of Rajasthan* (1974 (3) SCC 698) in which *Vadivelu Thevar v. State of Madras* (AIR 1957 SC 614) was also relied upon.

¹ AIR 1953 SC 364

23. Further, immediately after the incident, P.W.1 got prepared Ex.P1-report and lodged to police. There is no delay in issue of First Information Report in the instant case. Ex.P1 was not lodged after due deliberations or even on suspicion. There is evidence to hold that the accused had threatened P.W.1 as well as the deceased to do away with their lives. The accused was possessing M.O.1-knife and he hacked the deceased with it. The size of the injury is incised wound of 17 cm length, 3 ½ cm width and 8 cm depth, and the place of injury is on the left side of the neck. It clearly establishes that the accused had intention to cause the death and with that intention only, the subject death was caused by the accused. There is no dispute with regard to the time and place of death of the deceased. Further, there is also no dispute that the subject death is homicidal in nature. There are no inconsistencies either in oral evidence or documentary evidence. There is no reason for the investigating officer to plant M.O.1-knife and falsely implicate the accused in the instant case. So also, there is also no reason for P.Ws.1, 2, 3, 4 and 5 to depose falsely against the accused. There are no omissions or contradictions to extend benefit of doubt in favour of the accused. The prosecution clinchingly proved the guilt of the accused beyond all reasonable doubt for the offence punishable under Section 302 IPC. The Court below had analysed the entire evidence on record and recorded the finding against the accused basing on the oral and documentary evidence. There is nothing to take a different view. All the contentions raised on behalf of the accused would fail. The Criminal Appeal is devoid of merit and is liable to be dismissed.

24. In the result, the Criminal Appeal is dismissed confirming the judgment, dated 26.07.2011, passed in S.C.No.174 of 2010 by the IX Additional District & Sessions Judge (Fast Track Court), Visakhapatnam. The accused was released on bail by this Court by order, dated 04.01.2017, passed in Crl.A.M.P.No.2393 of 2016. Since this Criminal Appeal is dismissed confirming the conviction and sentence recorded against the accused by the Court below, the accused is directed to surrender before the Court below forthwith to serve the remaining period of sentence. If the accused fails to surrender before the Court below as ordered, the Court below is directed to issue Non-bailable warrant against the accused and take consequential measures.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.



P.NAVEEN RAO, J

Dr. SHAMEEM AKTHER, J

21st April, 2018
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