

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL No. 666 OF 2013

JUDGMENT: *(per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The sole accused preferred this appeal under Section 374 (2) of the Code of Criminal Procedure (for short, 'Cr.P.C.') feeling aggrieved by the calendar and judgment dated 10-06-2013 in S.C.No. 325 of 2011 on the file of the Court of Principal Sessions Judge, Ongole (for short, 'the Court below'), whereunder he was found guilty and convicted for the offence punishable under Section 302 of the Indian Penal Code (for short, 'I.P.C.') and sentenced to suffer imprisonment for life and also sentenced to pay a fine of Rs.1,000/- with default sentence of simple imprisonment of three months.

2. The prosecution case, in brief, is that the deceased Venkat Rao and P.W.1 are brothers-in-law, P.W.2 is father-in-law and P.W.3 is wife of the accused; that the marriage of the accused and P.W.3 was performed about 15 years ago; that four years prior to the date of incident, they came down to Karamchedu Village for their livelihood and took a house on rent, belonging to one Nageswara Rao and also took land of one Pothina Raghavaiah on lease; that while the matter stood thus, the accused indebted to several persons to a tune of Rs.2,00,000/- in the village; that the accused in spite of realizing income of Rs.2,00,000/- from the land obtained on lease, he gave the same to his elder sister, instead of discharging the debts; that thereupon, disputes cropped up between P.W.3 and the accused and the latter dropped the former at the house of P.W.2; that thereafter, the accused used to visit the house of P.W.2 and

quarrel with him to send P.W.3, for which the deceased used to support P.W.3 and reprimand the accused and as such, the accused bore grudge against the deceased; that during the intervening night of 16/17-06-2011 at about 1.30 hours while P.Ws.1 to 3 and the deceased were sleeping in front yard of their house on different cots, the accused allegedly hacked the deceased with an axe; that on receipt of injury, the deceased raised hue and cry and on hearing the same, P.Ws.1 to 3 woke up and saw the accused while leaving the scene of offence with bloodstained axe and later, the deceased succumbed to the injuries instantaneously at the scene of offence; that P.W.2 lodged a report with police about the occurrence and the same was registered as a case in crime No. 21 of 2011 of Karamchedu Police Station, issued F.I.R. and took up investigation; that during investigation, the police visited the scene of offence, prepared observation report, seized material objects and prepared rough sketch; that inquest was held over the dead body of the deceased in the presence of mediators and later, the dead body was sent for *post mortem* examination; that during the course of further investigation, the police arrested the accused on 25-06-2011 at Bommala Center, Parchur, and on confession made by the accused leading to discovery, the police seized the axe and the bloodstained clothes of the accused and that after completion of investigation, the police filed charge sheet against the accused for the offence punishable under Section 302 of IPC on the file of the Court of Judicial Magistrate of I Class, Parchur (for short, 'the committal Court').

3. The committal Court, having concluded that the case is exclusively triable by Court of Sessions, committed the case to Sessions Division, Ongole, Prakasam District, by following the procedure under Section 209 of Cr.P.C. who in turn registered the same as S.C.No. 325 of 2011.

4. On securing presence of the accused, a charge for the offence punishable under Section 302 of IPC was framed against him, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

5. During the course trial, P.Ws.1 to 12 were examined on behalf of the prosecution and got marked Exs.P1 to P15. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C. explaining the incriminating circumstances that appeared against him and he denied the same and reported no defence.

6. Upon hearing argument of both counsel, the Court below found the accused guilty for the offence punishable under Section 302 of IPC and convicted and sentenced him as stated above. Aggrieved by the conviction and sentence, the present appeal is filed.

7. At the hearing, Sri P.Indra Prakash, learned legal-aid counsel appearing for the appellant, has contended that the evidence of P.Ws.1 to 3, who are inimical to the accused, cannot be accepted; that P.Ws.4 to 6, who were said to have witnessed the incident, did not support the case of prosecution and that in the absence of any corroboration to the testimony of P.Ws.1 to 3, the Court below ought to have rejected their testimony. It is also contended that though P.W.7 supported conducting of inquest over the dead body of the deceased and observation of scene of offence, he did not support seizure of M.O.1 on the confession made by the accused leading to discovery and thereby, the prosecution failed to establish the seizure of M.O.1. It is further contended that the report allegedly lodged by P.W.2 was not drafted by him and it was drafted by some other person at the dictation of an unknown person and that the contents of the report were not read over to P.W.2 and therefore, registration of crime itself is illegal and in support of his contention, learned counsel has placed

reliance on the judgment of the Apex Court in ***Surajit Sarkar Vs. State of West Bengal***¹. Finally, learned counsel for the appellant has made an attempt to convince this Court that the facts of the present case would fall within Section 304 Part-I of IPC since the accused had no knowledge that the injuries caused on the body of the deceased was sufficient to cause death in ordinary course of events and in the absence of knowledge, conviction of the accused for the offence punishable under Section 302 of IPC is illegal and therefore requested to set aside the conviction and sentence imposed against him.

8. Learned Public Prosecutor (A.P.) has supported the impugned judgment in all respects while contending that P.Ws.1 to 3 are natural witnesses and there was no prior enmity between them; that causing injuries on vital parts of the deceased during midnight is suffice to conclude that the accused had knowledge that the injuries caused on the body of the deceased in ordinary course of events would lead to death and that arming with deadly weapon *i.e.* axe and coming to the scene of offence and open proclamation after attacking the deceased that 'Chachhadura Naa Koduku' (a colloquial expression that the injured had died) is suffice to establish *prima facie* that the accused had intention to kill the deceased and therefore the impugned judgment of the Court below cannot be interfered with by this Court even after re-appreciation of evidence on record and prayed to dismiss the appeal.

9. Considering rival contentions and perusing the material available on record, the sole point that arises for consideration is

"Whether the accused caused injuries on the body of the deceased with intention of causing his death or causing such bodily injuries as

¹ 2013 (1) ALD (CrI.) 568 (SC)

is likely to cause his death, if not, whether the conviction and sentence recorded by the Court below be sustained?"

10. **Point:**

Section 374 of Cr.P.C. conferred a substantive right of appeal on accused who is convicted by trial Court and this Court while exercising power under Section 374 (2) of Cr.P.C. is bound to re-appraise entire evidence to come to an independent conclusion, uninfluenced by the findings recorded by trial Court and decide the legality of conviction and sentence passed by it. Therefore, it is the duty of this Court to re-appraise entire evidence recorded by trial Court after giving an opportunity to both parties. Unless the Court finds manifest perversity in the impugned calendar and judgment or such findings were recorded without evidence, this Court cannot interfere with such fact findings in appeal while exercising jurisdiction under Section 374 (2) of Cr.P.C. It is the sacrosanct duty of the appellate Court while sitting in appeal against conviction and sentence of trial Court to be satisfied that guilt of accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of entire material on record. Appreciation of evidence and proper re-assessment to arrive at a just conclusion is imperative in a criminal appeal. Keeping the scope of Section 374 (2) of Cr.P.C., we would like to re-appreciate the entire evidence on record to come to an independent conclusion, uninfluenced by the findings recorded by the Court below.

11. The homicidal death of the deceased Jampani Venkat Rao due to injuries both on temporal region and jaw is not in quarrel. The only dispute is who caused such injuries which led to the death of the deceased. The case of prosecution is based on both direct and circumstantial evidence. The direct evidence is the testimony of P.Ws.1 to 3 and the circumstantial evidence is

inquest held over the dead body, recovery of M.O.1 and bloodstained clothes on the confession made by the accused leading to discovery and motive to commit murder of the deceased in view of the earlier incident that took place three days prior to the incident.

12. To substantiate its case, the prosecution examined the brother of the deceased as P.W.1 who testified in his examination in chief about his presence at the scene of offence along with P.Ws.2 and 3 and the deceased. He also spoke about the earlier dispute that took place about three days prior to the incident which was the root cause for committing murder of the deceased. On receipt of injuries at about 1.30 hours during midnight in the hands of the accused, the deceased raised cries and thereupon, other persons who were sleeping also woke up and noticed the accused while fleeing away from the scene of offence after proclaiming that "Chachhadura Naa Koduku". In cross-examination, a suggestion was put to P.W.1 to improbably his presence at the scene of offence. It was elicited that P.W.1 went into Illatam Adoption and it was followed by a suggestion that P.W.1 came to the scene only after knowing the death of Venkat Rao and he was not present at the time of incident and the said suggestion was denied by P.W.1. In further cross-examination, nothing could be elicited by learned counsel for the accused to disprove the presence of P.W.1 at the time of the incident. The testimony of P.W.1 is therefore consistent on the material facts about the accused axing the deceased during midnight.

13. P.W.2, father of the deceased and P.Ws.1 and 3, is also a natural witness who was supposed to be present in the house or in front yard of the house depending upon the season. P.W.2 also testified about the differences between his family and the accused and dropping of P.W.3 at his house due to disputes in connection with payment of Rs.2,00,000/- by the accused to his sister without

discharging the debts due to villagers. This fact is not disputed by the accused by putting any suggestion to the witnesses. Moreover, the testimony of P.W.2 is consistent that on hearing cries, he, P.W.1 and P.W.3 woke up and noticed causing injuries on the jaw and temporal parts of the deceased by the accused and the accused fleeing away from the scene. Thus, the examination in chief of P.W.2 is consistent, pointing out the complicity of the accused in commission of the offence. In cross-examination of P.W.2, learned counsel for the accused made a vain attempt to prove that the report lodged by P.W.2 was not drafted at his instructions and the same was drafted by a youngster of the village at the dictation of somebody else. Drafting of report by some other person would not lose its character as FIR and what is relevant in such case is whether P.W.2 gave instructions or not. However, in the entire cross-examination of P.W.2, no suggestion was put to him that he did not give any instructions either to the person who dictated or to the youngster who drafted the report. FIR is only information to police about commission of a cognizable offence to set criminal law into motion and it can be used for limited purpose under Section 157 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'), to corroborate prosecution case and not for any other purpose. FIR is not an encyclopedia of facts and even if there is any omission, it will not vitiate prosecution case. Though learned counsel for the appellant has placed reliance on the judgment of the Apex Court in **Surajit Sarkar** (1st *supra*), it is of no assistance to disprove the guilt of the accused and the facts of the present case are distinguishable from the facts of the above case. In the facts of the above judgment, the Apex Court held that cryptic telephonic information cannot be treated as an FIR but in the case on hand, the report was drafted by a youngster in the village on the dictation of someone who was present then. Therefore, based on the judgment

in **Surajit Sarkar** (1st *supra*) relied upon by learned counsel for the appellant, it is difficult to hold that the very issuance of FIR and commencement of investigation is illegal.

14. The third witness examined by the prosecution is wife of the accused who testified about the differences between her and the accused, causing hack injury with M.O.1 on the body of the deceased, proclamation by the accused that "Chachhadura Naa Koduku" after causing injuries and witnessing the incident by her and P.Ws.1 and 2. In the cross-examination of P.W.3, learned counsel for the accused elicited that she and the accused took a house on rent from one Puchakayala Nageswara Rao which is at a distance of one furlong from the house of P.W.2 and they lived in the said house prior to dropping her at the house of P.W.2. However, no suggestion was put to P.W.3 that she was not present at her parents' house and that she was staying with the accused in the rented house of Puchakayala Nageswara Rao at the time of incident. In the absence of eliciting anything about the stay of P.W.3, her evidence regarding her witnessing the incident cannot be doubted.

15. In the evidence of P.Ws.1 and 2, learned counsel for the accused elicited that there was an electric light at a distance of ten yards hanging to Gangaregadi tree and with the help of that light, the witnesses could identify the accused while fleeing away from the scene of offence with bloodstained clothes. Thus, the evidence of P.Ws.1 to 3 is consistent with regard to identification of the accused and, in fact, no suggestion was put to P.Ws.1 to 3 that someone else caused the injuries which led to the death of Venkat Rao. Therefore, in the absence of eliciting anything to disprove their presence, the presence of P.Ws.1 to 3, being the natural witnesses, cannot be disbelieved.

16. One of the contentions of learned counsel for the appellant is that P.Ws.1 to 3 are interested witnesses. Merely because the eyewitnesses are family members, their evidence cannot *per se* be discarded. When there is allegation of interestedness, the same has to be established and mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be ground to discard the evidence which is otherwise cogent and credible (*vide Daulatram Sadram Teli Vs. State of Chattisgarh*² and *Lala Ram Vs. State of Rajasthan*³). Here, undisputedly, P.Ws.1 to 3 are blood relatives of the deceased but what is their interestedness was not elicited. Interested witness means a person who is getting benefit out of litigation but here P.Ws.1 to 3 are not getting any benefit out of the litigation. Therefore, they cannot be described as interested witnesses. It is not the case of the defence that P.Ws.1 and 2 and the deceased got separated and therefore their witnessing the incident and the accused while fleeing from the scene of offence holding M.O.1 does not arise. Hence, we find that P.Ws.1 to 3 are wholly reliable witnesses and believed their presence at the time of incident.

17. The other evidence available on record is circumstantial evidence. If the case of prosecution is totally based on circumstantial evidence, the prosecution has to prove each and every circumstance in the chain of circumstances to complete the chain, directly pointing out the complicity of the accused without giving any scope for any other inference and any circumstance consistent with innocence of the accused, he is entitled to benefit of doubt (*vide Kishore Chand Vs. State of Himachal Pradesh*⁴). Here, the case of the prosecution is based on both direct and circumstantial evidence. The first circumstance relied upon by

² 2008 CrI.L.J. 4587

³ (2007) 3 SCC (CrI.) 634

⁴ AIR 1990 SC 2140

the prosecution is inquest held over the dead body of the deceased in the presence of P.W.7. P.W.7 supported the case of prosecution to the extent of observing the scene of offence, inquest held over the dead body of the deceased and signing on both observation report and inquest panchanama as a mediator marked as Exs.P6 and P7 respectively. As per column No. 15 of the inquest report, the probable cause of death was due to the injuries caused by the accused with M.O.1 and it was the opinion expressed by blood relatives of the deceased in the presence of mediators. Therefore, the opinion expressed is also corroborative piece of evidence only for the limited purpose of establishing probable cause of death of Venkat Rao and not for any other purpose.

18. The other strong circumstance which the prosecution relied on is recovery of M.O.1 and bloodstained clothes on the confession leading to discovery made by the accused while in police custody after his arrest. Though P.W.7 is one of the mediators signed on the seizure panchanama, he did not support the prosecution case for one reason or the other. To establish that the accused made confession leading to discovery marked as Ex.P9, the prosecution examined the other mediator as P.W.9 who totally supported the case of prosecution with regard to seizure of M.O.1 based on confession made by the accused leading to discovery. Therefore, the evidence of P.W.9 coupled with P.W.12-Investigating Officer established that M.O.1 was seized on production of the same by the accused based on his confession leading to discovery. Hence, the prosecution was able to establish the two circumstances relied on by it both to prove the homicidal death of the deceased Venkat Rao and established that the weapon used in commission of the offence is M.O.1 axe.

19. The last circumstance relied upon by the prosecution is motive attributed to the accused. The accused is no other than brother-in-law of the deceased

and P.W.1, son-in-law of P.W.2 and husband of P.W.3 and the motive to commit murder of Venkat Rao was the dispute between the accused and P.W.3. Of course, motive though relevant under Section 8 of the Act of 1872, it is not a substantive piece of evidence and it is an additional link in the chain of circumstances. When the case of prosecution is proved by direct evidence and other circumstances unerringly pointing out the guilt of the accused for the offence punishable under Section 302 of IPC, motive more or less becomes academic and failure to prove or establish motive loses its importance and it becomes irrelevant. Therefore, failure to establish the motive is not a ground to discredit the testimony of P.Ws.1 to 3.

20. One of the contentions urged by learned counsel for the appellant before this Court is that at best, the case on hand falls within Section 304 Part – I of IPC as the accused had no knowledge that the injuries caused on the body of the deceased would lead to death in ordinary course of events and in support of his contention, learned counsel has placed reliance on the judgment of the Apex Court in **Nankaunoo Vs. State of U.P.**⁵ In the facts of the above judgment, six gunshot injuries were caused on the thigh of the deceased which is not a vital part of body but he succumbed to injuries later and the Apex Court concluded that those injuries were not sufficient to cause death in ordinary course of events and accordingly altered the conviction of the accused from Section 302 of IPC to one under Section 304 Part-I of IPC. In the case on hand, the injuries were caused on vital parts *i.e.* temporal region and jaw. If really the accused had no knowledge and intention to commit murder, he ought not to have armed with M.O.1 and ought not to have caused injuries on the body of the deceased during midnight and besides that, open proclamation that "Chachhadura Naa Koduku"

⁵ 2016 (1) ALD (CrI.) 367 (SC)

is suffice to infer that the accused had knowledge and intention to kill the deceased. Therefore, the above judgment has no application to the facts of the present case.

21. On consideration of entire evidence available on record, the Court below rightly found the accused guilty for the offence punishable under Section 302 of IPC and the same is free from legal infirmities warranting interference of this Court under Section 374 (2) of Cr.P.C.

22. The criminal appeal is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal appeal shall stand dismissed in consequence.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 01-09-2018.

JSK

