

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.628 of 2012

JUDGMENT: (per Hon'ble Sri Justice C. Praveen Kumar)

Against the acquittal of the accused in S.C.No.287 of 2008, on the file of the Sessions Judge, Machilipatnam, the State preferred this appeal under Section 378 (3) and (1) of the Criminal Procedure Code. Originally the case was tried for the offence punishable under Sections 302 read with 34 IPC. By its judgment dated 15.03.2001, the learned Sessions Judge acquitted the accused. The substance of the charge against the accused is that on 18.11.2007 at about 10.30 PM opposite Ajantha Hotel, R & B Road, Jaggaiahpet, in pursuance of their common intention the accused caused death of one Koduru Suribabu by cutting his throat with knives.

2. The facts, in issue, are that P.Ws.1 to 4, the accused and the deceased are all residents of Jaggaiahpet village. P.W.2 is the step mother of the deceased. It is said that on 18.11.2007, while P.W.6, a police constable and another constable were on beat duty, came to know about an altercation that was going on at Ajanta Hotel. They went there and saw the dead body of the deceased with his neck cut and called a rickshaw and shifted the deceased to the Government Hospital where the doctor examined the deceased and sutured the neck of the deceased. However, while undergoing treatment, the deceased died on the same night. P.W.6 is said to have informed the S.I. of Police, who rushed to the hospital and took up further investigation. On coming to know about the death of the deceased,

P.W.1 went to the Government Hospital, where police obtained his signature on Ex.P1 report, which lead to registration of a case in Cr.No.112 of 2007 under Section 302 read with 34 of the Indian Penal Code of Jaggaiahpet Police Station.

After registering the crime, the Inspector of Police, who was examined as P.W.9, along with his staff visited the scene of offence and got prepared an observation mazahar in the presence of panchayatdars. At the scene of offence, he seized controlled earth, blood stained earth and one pair of chappals under the cover of Ex.P7. M.O.4 is the blood stained earth and M.O.5 is the controlled earth. Thereafter, he along with his staff proceeded to the Government Hospital, examined P.Ws.1 to 3 and recorded their statements. He then conducted inquest over the dead body in the presence of P.W.7 the inquest panchayatdar. Ex.P5 is the inquest report. P.W.9, who continued with the investigation, prepared a rough sketch of the scene of offence vide Ex.P9 and also took photographs along with CD under Ex.P10. Thereafter, he sent the body for post mortem examination. P.W.8, Deputy Civil Surgeon, Community Health Centre, Jaggaiahpet, conducted autopsy over the dead body and issued Ex.P8 the post mortem report. According to him, the cause of death was due to four injuries.

On 27.11.2007, P.W.9 arrested A1 and A2 at Dolphin Hotel, Jaggaiahpet in the presence of P.W.7 under the cover of arrest cum seizure mazhar Ex.P6. Pursuant to the confession made, two knives, M.Os.2 and 3, which were said to have been used in the commission of offence were seized under Ex.P7. After collecting all the documents

and examining all the witnesses, a charge sheet came to be filed which was taken on file as PRC.No.15 of 2008 by the Judicial Magistrate of First Class, Jaggaiahpet. On appearance of the accused, copies of the documents were furnished as contemplated under Section 207 of the Criminal Procedure Code and later, the case was committed to the Court of Sessions under Section 209 Cr.P.C. On committal, the case came to be numbered as SC.No.287 of 2008 on the file of the Sessions Judge, Machilipatnam. On appearance of the accused, the charges came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried. In order to prove its case, the prosecution examined P.Ws.1 to 9 and got marked Exs.P1 to P13. After completion of the prosecution evidence, the accused were examined under Section 313 Cr.P.C explaining the incriminating circumstances appearing against them in the evidence of witnesses, which they denied. But, however, the accused did not adduce any oral or documentary evidence on their behalf. Since the prosecution failed to prove the involvement of the accused in the commission of the offence by adducing legal and reliable evidence, the Court below acquitted the accused. Assailing the same, the State preferred the present appeal.

4. Learned Public Prosecutor, appearing for the State, would submit that though P.Ws.1 to 4, who were examined as eye witnesses to the incident, did not support the prosecution case but the other circumstances in the case, more particularly, the recovery of blood stained knives, establish the involvement of the accused in the

commission of knives. The same is opposed by the counsel for the accused.

5. As seen from the record, the prosecution sought to prove the involvement of A1 and A2 through the evidence of P.Ws.1 and 4 by examining them as eye witnesses to the incident. Both the witnesses did not support the case of the prosecution.

6. The evidence in chief of P.W.1 shows that he was not aware as to how the deceased died and when he came to know about the death of the deceased went to the Government Hospital, Jaggaiahpet. Though he admits the signature on Ex.P1 however, states that he does not know the contents of the said report. Though he was cross-examined at length, but all the suggestions given to him were denied. P.W.2 is also resident of Jaggaiahpet and she is the step mother of the deceased. According to her, she came to know through her elder son that A1 and A2 cut the neck of the deceased. On coming to know about the same, she went to the hospital and found the body of her son in mortuary. She admits that neither she nor her elder son, by name Saradhi, are eye witness to the incident and that she came to know about the occurrence through P.W.3. P.W.3, who is the brother of the deceased, in his evidence, deposed that somebody killed his brother and they came to know about the death through P.W.1. As stated by us earlier, the evidence of P.W.1 is silent on this aspect. P.W.4 is another eye witness, who was examined to speak to the incident proper. He totally goes back on what he stated in his earlier statement. According to him, he never saw the incident and he was never an eye witness to the incident. P.W.5 is the Manager of the

Ajanta Hotel before whose premises the incident in question took place. He states that he does not know anything about the case and he is not an eye witness to the incident. According to him, on the date of the incident, P.W.1 and the deceased took one room in their lodge and on the next day he came to know about that the deceased being killed by somebody. He was treated hostile by the prosecution.

In the cross-examination, he admits that P.W.1 and the deceased were not regular customers to their lodge and that he saw both of them for the first time, hence, he cannot identify the deceased. Therefore, his evidence is also of no help to the prosecution, as he failed to identify P.W.1 and the deceased, as the persons, who took room in his lodge.

7. All the other witnesses are official witnesses, who stated about the registration of crime, inquest, post mortem and the recovery of blood stained knives. Though the prosecution is relying upon the recovery of M.Os.2 and 3 at Vooracheruvu, at the instance of the accused, but the same is not reflected in Ex.P7. Further, Ex.P7 does not disclose that A2 went into the bushes, brought M.Os.2 and 3 and handed over them to the police. P.W.7, however, admits in the cross-examination that the place where M.Os.2 and 3 were hidden is a public place, accessible to one and all.

8. Having regard to the above, a doubt arises as to the recovery of two knives, which were seized by the police under the seizure panchanama. Even assuming, for the sake of argument, that the two knives were seized, there is no evidence on record to show that the

blood, which was found on the knives, was that of the deceased. From the above it is clear that there is absolutely no evidence on record to connect the accused with the crime and the Court below rightly acquitted the accused.

In the result, the appeal is dismissed confirming the acquittal of the accused for the offence punishable under Section 302 read with 34 IPC. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

August 7, 2018
DSK



T. RAJANI, J