

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
&
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

CRIMINAL APPEAL No.1027 OF 2013

JUDGMENT: *(Per Hon'ble Sri. Justice Abhinand Kumar Shavili)*

1. The present appeal is preferred by the appellant-sole accused aggrieved by the conviction and sentence imposed on him for the offence under Section 302 IPC by the learned Sessions Judge, Nizamabad, in Sessions Case No.113 of 2013 vide judgment dated 23.10.2013.

2. Heard Sri S. Surender Reddy, learned Counsel for the appellant and the learned Public Prosecutor for the respondent.

3. Brief facts of the case are as follows:

One Shaik Gudu (hereinafter referred to as 'the deceased'), P.W.1-Shaik Nayeem, P.W.2- Syed Jeelani, accused-Shaik Abdul and others used to dig pits for burial of dead bodies in the grave yard situated behind Kachiyani Masjid, Nizamabad. The deceased-Shaik Gudu was the main person in digging graves and he used to collect the labour charges from the concerned and distribute among other labourers. The deceased-Shaik Gudu was due of labour charges amounting to Rs.600/- to the accused and in spite of requests, he did not pay the same. The accused bore grudge against the deceased-Shaik Abdul on that issue. While so, on 13.7.2012, they dug

pits for burial of dead bodies and at about 10.30 p.m., the accused picked up a quarrel with the deceased-Shaik Gudu alleging non-payment of labour charges. The accused picked up pestle from grave yard with an intention to kill the deceased-Shaik Gudu, and beat him on his head with the pestle. The deceased-Shaik Gudu sustained severe bleeding injuries on his head. He was shifted to Government Headquarters Hospital, Nizamabad. On the same day at 11.30 p.m., P.W.1-Shaik Nayeem lodged a complaint before I Town Police Station, Nizamabad. On receipt of the complaint, P.W.8-Head constable of Town I Police Station registered a case in Crime No.153 of 2012 for the offence under Section 307 IPC and recorded the statement of P.W.1. On 14.7.2012 at about 4 a.m., P.W.1 came to the police station and informed that the deceased-Shaik Gudu succumbed to injuries while he was being shifted to Gandhi hospital at 3 a.m., and his dead body was brought back to the Government Head quarters Hospital, Nizamabad. During the course of investigation, inquest and post-mortem examinations were held over the dead body of the deceased. After completion of the investigation, charge sheet has been filed before the I Additional Judicial Magistrate of First Class, Nizamabad, for the offence under Section 302 IPC. The learned Magistrate committed the case to the Court of Sessions, Nizamabad. The learned Sessions Judge took it as a Sessions Case and tried the same.

4. The learned Sessions Judge framed a charge for the offence under Section 302 IPC against the accused, read over and explained the same to the appellant-accused, for which, the accused pleaded not guilty and claimed to be tried.

5. In order to substantiate its case, the prosecution examined P.Ws 1 to 10 and got marked Exs.P-1 to P-9 besides M.Os 1 to 6. After closure of the prosecution evidence, the appellant-accused was subjected to examination under section 313 Cr.P.C. by putting incriminating evidence brought on record against him. The plea of the accused is of total denial. No oral evidence was adduced on behalf of the appellant-accused. But Ex.D1 was marked on his behalf.

6. On appreciation of oral and documentary evidence, the learned Sessions Judge having found the accused guilty of the offence under Section 302 IPC, convicted and sentenced him to undergo rigorous imprisonment for life and also to pay a fine of Rs.500/- in default to suffer simple imprisonment for a period of one month. Aggrieved by the same, the present appeal has been preferred by the appellant.

7. The learned Counsel for the appellant vehemently contended that there was absolutely no motive for the accused to commit murder of the deceased and the prosecution also failed to prove the intention and motive. He further contended

that all the prosecution witnesses are interested witnesses and there is no independent witness in support of the case of the prosecution. He further contended that dying declaration of the deceased was not recorded either by the investigating officer or by the Magistrate even though the deceased was alive at the time of giving the complaint and therefore, benefit of doubt should be extended.

8. On the other hand, the learned Public Prosecutor contends that the Court below after an elaborate consideration of the evidence rightly found the accused guilty of the offence under Section 302 IPC and there are no grounds to interfere with the judgment under appeal.

9. Now, the point that arises for consideration in this appeal is as to whether the prosecution was able to prove the guilt of the appellant-accused beyond all reasonable doubt?

10. **POINT:**

It is the case of the prosecution that as the deceased did not pay labour charges to the accused for digging graves, he bore grudge against the deceased, attacked him and caused the death of the deceased.

11. The evidence led by the prosecution in the form of P.W.1 was an eye witness, which was also corroborated by other two eye witnesses i.e., P.Ws.2 and 5. P.Ws.1, 2 and 5 stated that

they had seen the appellant-accused beating the deceased on the backside of the head of the deceased-Shaik Gudu with pestle and at that point of time, they were at hand bore well and the incident took place near the gate of the grave yard and they were at a distance of 20 yards from the scene of offence. Both the witnesses i.e., P.Ws.1 and 2 have deposed that the appellant herein beat the deceased with pestle as the deceased did not pay the labour charges to the appellant for digging graves. At that time, there were number of people, who gathered for burial of one of the muslim dead body and they caught hold of the appellant-accused. P.Ws.1, 2 and 5 identified the appellant in the Court also. P.W.3, who is the wife of the deceased deposed that her husband was killed by the appellant-accused. P.W.5 who was a child witness also deposed that the appellant beat the deceased on the backside of the head while he was standing near the gate by the side of office room of the grave yard. The evidence of panch witness also corroborated the version of P.Ws.1, 2 & 5.

12. P.W.6 deposed that in his presence, the police seized the blood stained earth, control earth and blood stained pestle from the scene of offence situated within the grave yard near the gate. P.W.7, who is a panch witness, has deposed about the injuries found on the dead body of the deceased. P.W.9 Doctor, who conducted post mortem, has deposed that he

found ante mortem injuries viz., blunt head trauma left with parietal region with fracture left parietal bone and left ear cut injury upper one third and that the cause of the death of the deceased was Cardio Respiratory Failure due to Multiple injuries found on head.

13. The motive for commission of the offence was clearly established by the prosecution by examining P.Ws.1 and 2, who deposed that as the deceased did not pay labour charges, the accused attacked the deceased with pestle. All the witnesses have deposed that the appellant herein was responsible for the death of the deceased. There are no contradictions in the evidence led by the prosecution. Nothing has been elicited from all the above witnesses in their cross-examination so as to disbelieve their version and apart from that, their evidence is very consistent and corroborative. The evidence of the witnesses remained unshaken in their cross-examination. The evidence of P.Ws.1, 2 and 5 coupled with the evidence of the Medical Officer clearly establishes the guilt of the accused beyond all reasonable doubt.

14. Thus, in the light of the evidence of P.Ws.1, 2 and 5 coupled with the medical evidence, we have no hesitation to hold that it is the accused who is responsible for the commission of the offence in question. The Court below is

justified in convicting and sentencing the appellant-accused for the offence under Section 302 IPC and therefore, the judgment under appeal does not require any interference by this Court. We see no merits in this appeal and the same is liable to be dismissed. Accordingly, this point is answered.

15. In the result, the Criminal Appeal is dismissed confirming the conviction and the sentence imposed on the appellant-accused for the offence under Section 302 IPC in Sessions Case No.113 of 2013 vide judgment dated 23.10.2013.



Justice Sanjay Kumar

Justice Abhinand Kumar Shavili

Dated: 15th December, 2018
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&
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CRIMINAL APPEAL No.1027 OF 2013

(Judgment delivered by *Hon'ble Sri. Justice Abhinand Kumar Shavili*)



Nn.