

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.1046 OF 2012

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

The sole accused has challenged the judgment dated 24.08.2012 in Sessions Case No.174 of 2012 on the file of the Court of the Principal Sessions Judge, Medak at Sangareddy (for short, trial Court), whereby the appellant was found guilty of the offences punishable under Sections 302 and 379 IPC., and was convicted under Section 235(2) Cr.P.C., and sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months for the offence punishable under Section 302 IPC and further sentenced to suffer simple imprisonment for two years and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for one month for the offence punishable under Section 379 IPC. Both the sentences were to run concurrently.

2. The facts of the case in nutshell are that on 22.09.2011 at about 8.30 hours, Golla Jharanappa (P.W.1) lodged a complaint (Ex.P.1) before the Police Station, Hadnoor, stating that on 22.09.2011 at about 7.00 hours, a village servant came to his house and informed him that one unknown male person was found murdered in the verandah of the Gram Panchayat Office. Immediately, he went to the spot along with the village servant and other villagers and found the dead body in a pool of blood. In the complaint, P.W.1 further stated that about 4 days back, the deceased came to their village for telling panchangam and selling

ayurvedic medicines in the surrounding villages and he was staying in the verandah of the Gram Panchayat Office during night time and that some unknown persons killed the deceased with a stone like blunt object by hitting on his head.

3. Basing upon the said complaint, P.W.14, the Head Constable being the Station House Officer, Hadnoor Police Station, registered a case in Crime No.77 of 2011, for the offence punishable under Section 302 IPC and issued FIR (Ex.P.7). P.W.17, Circle Inspector of Police, Zaheerabad Police Station, took investigation. During the course of investigation, P.W.17 recorded the statement of P.W.1 under Section 161 Cr.P.C., and went to scene of offence, which is situated at the verandah of the Gram Panchayat Office, Rajola Village, where he found the dead body of the deceased in supine condition. Thereafter, P.W.17 recorded the statements of P.W.8 and Mohd. Maithab (L.W.2). L.W.2 stated that he first found the dead body of the deceased in the verandah of Gram Panchayat Office with severe bleeding head injury and lying in the pool of blood and informed the same to P.W.1. P.W.8 stated that his house is located by the side of the Gram Panchayat Office; that on 21.09.2011 mid-night, when he came out from his house to answer calls of nature, he found an unknown person wandering in that locality in a suspicious circumstances; that when he questioned that person, he replied that he belongs to Kashi Vadde caste; that he stayed during that night in the Gram Panchayat Office, but, on the next morning the deceased was found murdered and that the said Kashi Vadde person was found absconding from the village, as such, he expressed strong suspicion on the said person. Upon

such information, P.W.17 arrested the accused, and on interrogation, the accused confessed that during that night, himself and the deceased were staying on the verandah of Gram Panchayat Office and that he murdered the deceased by hitting with a hammer on his head and stole away his cell phone and cash of Rs.300/-. Based on his confession, the police recovered from him the stolen cash of Rs.300/- and a cell phone. After examination of the scene of offence panchanama and seized M.Os.1 to 9 under a cover of panchanama besides drawing rough sketch of scene of offence. Thereafter, P.W.17 conducted inquest over the dead body of the deceased in the presence of panchas i.e., P.W.17, Nagaram Shiva Kumar (L.W.19) and Sheri Mallikarjun (L.W.20). Thereafter, he shifted the dead body to the Government Hospital, Zaheerabad. After collecting the postmortem report (Ex.P.8) and investigation, charge sheet was filed for the offences punishable under Sections 302 and 379 IPC, which was taken on file as PRC No.7 of 2012 on the file of the Court of the Judicial First Class Magistrate, Zaheerabad.

4. On appearance of the accused, the said Court furnished copies of the documents as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the same was committed, which came to be numbered as S.C.174 of 2012. Basing on the material available, charges under Sections 302 and 379 IPC., came to be framed, read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

5. In support of its case, the prosecution examined P.Ws.1 to 18 and got marked Exs.P.1 to P.9 and M.Os.1 to 9. On behalf of the accused, Exs.X.1, X.2 and D.1 were marked. None were examined on behalf of the defence. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against him in the evidence of prosecution witnesses, to which he denied. Basing on the prosecution evidence, the trial Court found the accused guilty for causing the death of the deceased and accordingly convicted and sentenced the accused for the offences punishable under Sections 302 and 379 IPC. Challenging the same, the present appeal came to be filed.

6. Sri Palle Sri Harinath, learned counsel for the appellant, would submit that there is no direct evidence to prove that the accused committed the offence, and the trial Court, basing on presumptions and assumptions, convicted the appellant. He would further submit that when the case of the prosecution is totally based on circumstantial evidence, the prosecution has to establish each and every linking circumstance to complete the chain of circumstances, pointing out the guilt of the accused. Apart from the same, there was no evidence to show that just prior to the death of the deceased, the accused was in his company and sought to set aside the judgment of the trial Court.

7. On the other hand, the learned Public Prosecutor would submit that there is no reason to disbelieve the evidence of P.Ws.1 to 18, much less, P.W.8, who stated that on the night of incident,

he saw the accused near the scene of offence. He would further submit that the prosecution has proved the guilt of the accused beyond reasonable doubt and hence there are no grounds to interfere with the judgment of the trial Court.

8. It is seen from the depositions of P.Ws.1 to 13, who are independent witnesses, that they are not direct witnesses to the incident. P.W.8 only stated that on the date of incident, he saw the accused at verandah of Gram Panchayat Office and questioned him as to why he was there, for which, he answered that as it became late for him, he was sleeping there. He also stated that the deceased was moving in the village since one week and that the deceased and the accused were also moving together. P.W.8 deposed that at about 2.00 am, he heard some cries and thought that there was some galata and did not pay any attention, but at 5.00 am he came to know about the incident and hence he could understand that the accused has committed the offence. In the cross-examination, P.W.8 deposed that there is a road between his house and the Gram Panchayat Office. Hence, a doubt arises about the deposition of P.W.8 with regard to his non-reaction to the cries of the deceased. In his deposition, nothing was elicited that he saw the accused killing the deceased, but he has deposed on assumptions.

9. P.W.15, in his deposition, stated that on the evening prior to the date of incident at about 6.00 pm., he saw the accused and the deceased sitting in front of the Gram Panchayat Office; that at 8.00 pm., the accused came to his house and begged for meals and

when he provided meals, he left his house; and that on the next day morning at 8.00 am., he came to know that the deceased died. In the cross-examination, he stated that his house is situated at a distance of about 100 yards from the Gram Panchayat Office and there are 7 to 8 houses in between his house and the Gram Panchayat Office. A perusal of chief examination and cross examination of P.W.15, a doubt arises that when P.W.15's house is situated at a distance of about 100 yards from the Gram Panchayat Office and there are 7 to 8 houses in between his house and the Gram Panchayat Office, seeing of accused sitting with the deceased is highly improbable and hence his statement cannot be believable. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something mere establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.

10. That apart, the case of the prosecution is that on the interrogation, the accused confessed that he killed the deceased with a hammer (M.O.7) and kept the same in the house of P.W.9 and that in the presence of P.W.10 and Kurun Kushal (L.W.22), P.W.17 drafted the confessional and seizure panchanama and seized stolen cash amount and stolen cell phone from the

possession of the accused under a cover of panchanama. But, it is to be noted that no blood stains were found on M.O.7 or the same as sent to Forensic Laboratory to prove the guilt of the accused. Therefore, it can be said that the prosecution has not proved its case beyond reasonable doubt that the accused killed the deceased with M.O.7.

11. P.W.16, the doctor who issued Ex.P.8, postmortem report, opined that the cause of death of the deceased is due to head injury with extra sub-dural hematoma caused by heavy object, which resulted in cardio respiratory arrest, but there is no report to show that the accused killed the deceased with M.O.7.

12. As discussed above, the prosecution miserably failed to establish each and every linking circumstance to complete the entire chain of circumstances to infer the guilt of the accused. Benefit of doubt would therefore have to be extended to the accused as the prosecution failed to establish beyond reasonable doubt that he is responsible for the death of the deceased. Hence, the convictions and sentences passed by the trial Court are liable to be set aside as we find that the trial Court committed an error in finding appellant guilty for the offences punishable under Sections 302 and 379 IPC.

13. For the aforesaid reasons, the criminal appeal is allowed and the judgment dated 24.08.2012 in Sessions Case No.174 of 2012 on the file of the Court of the Principal Sessions Judge, Medak at Sangareddy is set aside. It is pertinent to mention here that vide order dated 07.03.2018, the appellant was released on bail after

completion of actual sentence of 5 years in view of law laid down in **Batchu Ranga Rao Vs. State of A.P¹**. Consequently, the bail bonds furnished at the time of his securing conditional bail shall stand discharged. The fine amounts, if any, paid by him shall be refunded.

SURESH KUMAR KAIT, J

T.AMARNATH GOUD, J

Date: 14.09.2018
TJMR



¹ 2016 (3) ALT (Crl.) 505 (DB) (AP)