

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.1303 of 2011

Date: 31.07.2018

Between :

Shaik Jahangir

... Appellant/Complainant

And

The State of A.P., rep. by its Public Prosecutor,
High Court of A.P. at Hyderabad and others.

... Respondents/Accused

COUNSEL FOR APPELLANT : Sri Ravi Kiran Rao,

COUNSEL FOR RESPONDENT : Public Prosecutor (AP) for R1
Sri C. Sharan Reddy, representing
Smt. C. Vasundara Reddy for R2 to R7

THE COURT MADE THE FOLLOWING:

JUDGMENT : (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This Criminal Appeal arises out of the judgment dated 13.08.2010 in S.C.No.374 of 2009 on the file of the I Additional Metropolitan Sessions Judge, Hyderabad.

Aggrieved by the findings of the learned Sessions Judge acquitting the accused A.1 to A.6 for the offences punishable under Sections 120-B, 302 r/w. Section 34 IPC and Section 27 of the Indian Arms Act, the defacto-complainant has preferred this Criminal Appeal.

According to the prosecution, this is a case of murder occurred on the wee hours of 23.12.2007 at 1.30 a.m. at Hasnath Colony, within the limits of Humayun Nagar Police Station, Hyderabad. The accused A.1 to A.7 were alleged to have committed the murder of the deceased and were liable for punishment for the offences punishable under Sections 120-B, 302 r/w. Section 34 IPC and Section 27 of the Indian Arms Act. A.7 was shown as absconding from the date of offence and, therefore, the prosecution intends to file a separate charge sheet against him after his arrest.

The learned Sessions Judge, on examination of the witnesses PWs.1 to 19 and considering the documents under Exs.P.1 to P.41 and the material objects MOs.1 to 13, by the impugned judgment dated 13.08.2010, has acquitted the accused A.1 to A.6 for the

offences with which they were charged. Aggrieved by the same, the defacto-complainant has preferred this Criminal Appeal on various grounds.

Heard the arguments of the learned counsel for the appellant – defacto complainant and the learned Public Prosecutor appearing for respondent No.1 – State.

At the outset, learned counsel for the appellant – defacto complainant has fairly submitted that there are no merits in this appeal and, therefore, sought for disposal of the appeal accordingly.

The grounds of appeal preferred by the defacto-complainant reveals that the trial Court placed reliance on the evidence of PWs.1 to 4, 14, 15 16, 17, 18 and 19 and acquitted the accused. It is the case of the appellant that the evidence of these witnesses though proved the commission of offence, the trial Court acquitted the accused.

On a perusal of the judgment of the trial Court, it is obvious that there is absolutely no evidence against the accused. The trial Court has rightly come to the conclusion that the prosecution basing on the suspicion against the accused has implicated him in the offence.

This case is based on circumstantial evidence. The circumstances appearing against the accused are the motive for commission of offence and conduct of the accused. On analyzing the evidence carefully, we are of the considered view that the

finding of the trial Court with regard to recovery of MOs.1 to 6 from the possession of A1 to A5 does not require any interference.

MOs. 2 to 6 were deposited in the Committal Court after lapse of five months of their recovery. The investigation officer has not given any explanation with regard to the abnormal delay with regard to depositing of property in the Committal Court. There are no blood stains on the weapons seized from the accused. As per FSL report, Ex.P41 human blood is detected on item No.1, 3 to 7.

Item No.3 is MO1-boulder, Item No.4 is MO9-dark green colour pants, Item No.5 is MO.10-blood stained white colour kurta, Item No.6 is MO.12-black colour jerkin, Item No.7 is MO.11-white colour banian with blood stains.

These items contain the blood of human origin. The blood group of blood stains on item Nos.1, 3 and 6 is AB group. The blood group of item No.7 could not be confirmed.

MO.1 is the boulder (a granite stone) with which the accused is alleged to have beaten the deceased and caused the injuries. MO.1 was seized by PW.18 investigation officer in the presence of panch witnesses PW.10 and PW.15, along with other material objects MO.6-Knife, MO.7-blood stained swab, MO.8-control swab. PW.10 and PW.15 did not support the version of prosecution with regard to the alleged seizure of material objects. The material object MO.1 – blood stained boulder was seized at the scene of offence. The said fact is not supported by panch witnesses PW.10 and PW.15 as they turned hostile to prosecution. Therefore, the recovery of material objects by the investigation officer becomes doubtful and that benefit goes to the accused. The recovery of material object MO.1 from the scene of offence do not incriminate the accused though MO.1 and other material objects

contains the same group of blood and also the blood is of human origin.

The trial Court has doubted the reliability of investigation in the absence of corroboration of the testimony of the panch witnesses. Admittedly, the two panch witnesses in whose presence the material objects were seized did not support the case of prosecution. In fact, the material objects were also seized after a lapse of five months. There is abnormal delay in depositing them before the Committal Court. The delay has not been explained by the prosecution.

The investigation officer did not forward the seized weapons to the forensic science laboratory to investigate the blood stains and the clothes of the deceased which he was wearing at the time of incident which contains the blood stains. It is the positive finding of the trial Court that no blood stains were found on the weapons and the weapons were not deposited soon after the recovery led to a doubt about the investigation. When the recovery, which is one of the circumstances to prove the guilt of the accused, is not proved, the important circumstance in this case is not proved beyond reasonable doubt. Therefore, the accused is entitled for benefit of doubt in this case.

Having regard to the facts and circumstances of this case, the prosecution could not establish the circumstances appearing against the accused to prove his guilt. The trial Court has considered all these aspects in right perspective.

On considering the facts and circumstances of the case, we are of the considered view that the findings of the trial Court do not require interference, and the appeal is liable to be dismissed.

Accordingly, the criminal appeal is dismissed confirming the judgment dated 13.08.2010 in Sessions Case No.374 of 2009 passed by the trial Court finding the accused A1 to A6 not guilty for the offences with which they were charged.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

31.07.2018
Msr



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