

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE MS JUSTICE J.UMA DEVI**

CRIMINAL APPEAL No.226 of 2015

JUDGMENT: (ORAL) (Per Hon'ble Sri Justice Suresh Kumar Kait)

By the present appeal, the appellants-A1 to A4 have challenged the Judgment dated 04.02.2015 passed by the learned Metropolitan Sessions Judge, Hyderabad, in Sessions Case No.339 of 2014 whereby they were convicted of the offence under Section 302 read with Section 34 I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten thousands only), in default of payment of fine, to suffer simple imprisonment for a period of six months each.

The case of the prosecution as per charge sheet is that on 10.04.2013 a report was received from one Peta Srisailam (P.W.1) stating that he has three elder brothers, two elder sisters and one younger sister. His second brother Peta Beeraiah (hereinafter referred to as 'the deceased') used to reside at Kalapather, Hyderabad. On 08.04.2013 at about 10.30 A.M. he received a phone call from one Karne Srisailam (L.W.4), who is neighbour of his brother, stating that the deceased sustained injuries on his hand and leg. On that, on the same evening at 6.30 P.M. P.W.1 came to the house of the

deceased and when he enquired with the deceased, he stated that on 04.04.2013 while he was returning home after attending the Court, A1 to A3, who are his brothers-in-law, and A-4, co-brother, took him near Puranapool bridge, beat him and left him at Pillar No.1. As the deceased was not in a position to move, one rickshaw-wala by name Satish Kumar (L.W.10) brought him to his house. On 10.04.2013 at about 8.30 A.M. while P.W.1 was taking the deceased to Osmania General Hospital, Hyderabad, and on the way he succumbed to the injuries. P.W.1 further stated in his report that on the grouse that the deceased killed his wife, the accused attacked the deceased.

Based on the said report of P.W.1, received on 10.04.20013 at 9.45 A.M., P.W.10, the then Sub-Inspector of Police, Shahinayatgunj Police Station registered a case in Crime No. 73 of 2013 under Section 302 read with Section 34 I.P.C and issued FIR-Ex.P8 and handed over the investigation to P.W.11, the Inspector of Police, Shahinayatgunj Police Station, who examined and recorded the statements of witnesses, conducted inquest-Ex.P9 over the dead body of the deceased, scene of offence panchanama and prepared a rough sketch-Ex.P5

in the presence of P.Ws. 7 and 8. The dead body was subjected to post mortem examination.

Accordingly, on 10.4.2013 at 1.30 P.M. P.W.9 conducted post mortem examination-Ex.P6 over the dead body of the deceased and found as many as five injuries, accordingly issued final opinion-Ex.P7 that the cause of death of the deceased was due to multiple injuries.

On 03.06.2014 P.W.11 arrested the accused and sent them to Court for judicial custody. After completion of investigation and collecting all necessary documents, he filed a charge sheet against the accused for the offence punishable under Section 302 read with Section 34 I.P.C.

After complying with all the required legal formalities, the Committal Court committed the case to the Metropolitan Sessions Division, Hyderabad, vide P.R.C.No.12 of 2014 dated 20.08.2014. On appearance of the accused, the trial Court framed a charge under Section 302 read with Section 34 I.P.C against the accused, read over and explained to them in Telugu, to which they denied and claimed to be tried.

In support of its case, the prosecution examined P.Ws.1 to 11 and marked Exs.P1 to P9. After closure of the prosecution evidence, the accused were

examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses. They denied the same, however, led no evidence on their behalf.

After considering the evidence of the prosecution witnesses and Exs.P1 to P9 and the statement of the accused under Section 313 Cr.P.C., the learned trial Court convicted the appellants-A1 to A4 for the offence punishable under Section 302 read with Section 34 I.P.C. and sentenced them as stated supra.

Learned Counsel appearing on behalf of the appellants submits that the incident had taken place on 04.04.2013, whereas P.W.1 reported the incident to the police on 10.04.2013. Thus, there is a delay of 6 days in lodging F.I.R. with the police, which has not been properly explained by the prosecution.

He further submits that as per prosecution case, the deceased was returning home on 04.04.2013 after attending the Court, when the accused who are his brothers-in-law and co-brother took him to Puranapul bridge and beat him indiscriminately with hands and legs on his abdomen. They left him at his fate at Pillar No.1 under the said bridge and as he was unable to move from that place because of the injuries, he sat there till

07.04.2013. However, on 05.04.2013, P.W.3, who went near the bridge for attending calls of nature, noticed the deceased sitting near Pillar No.1 with injuries and on his enquiry, the deceased informed him that his brother-in-law beat him and due to which he was unable to move from that place. However, on 07.04.2013 P.W.3 again went to that place and shifted the deceased to his house by a rickshaw of L.W.10-Satish Kumar.

The Learned Counsel contends that though the deceased told P.W.3 that his brother-in-law beat him, but did not disclose his name to P.W.3. Though P.W.3 noticed the deceased in injured condition on 05.04.2013, however, got shifted him to his house by the rickshaw of L.W.10-Satish Kumar on 07.04.2013. P.W.3 neither informed the relatives of the deceased nor the police, but the learned Trial Court has relied upon his evidence, which cannot be believed at all.

The learned Counsel further submits that as per the evidence of P.Ws.1 and 2, they were informed by L.W.4-Karne Srisailam (not examined) through phone about the incident on 07.04.2013 at 6.30 P.M, whereas P.W.1 in his complaint given to the police stated that he received a phone call from L.W.4 on 08.04.2013 at about 10.30 A.M. But, fact remains that P.W.1 had not

informed the police nor took the deceased to a hospital, apart from that, the material contradiction in the evidence of P.W.1 has not been explained by the prosecution.

The learned Counsel further submits that there is no eye witness to the incident and the prosecution case rests upon the circumstantial evidence. In such a situation, there should be chain of circumstances and those circumstances should be complete and proved so as to inspire the confidence of the Court.

Further the learned Counsel submits that the deceased allegedly received injuries on 04.04.2013, whereas he died on 10.4.2013. Thus, there is a long gap between the receipt of injuries and death and the death has not occurred due to the injuries, but due to lack of medical care. He further submits that according to the evidence, the accused are said to have used sticks and knives in the commission of offence, but no such weapon was recovered from the accused, besides the FSL report which has found basis for final opinion, was not marked which is fatal to the case of the prosecution. Thus, the present appeal deserves to be allowed.

On the other hand, the learned Additional Public Prosecutor appearing on behalf of the State submits that though the incident had taken place on 04.04.2013, but the deceased was in injured condition and remained at the place of the incident till 07.04.2013. On 05.04.2013 the deceased told P.W.3 that he was beaten by his brother-in-law and P.W.3 had taken care of the deceased having shifted him to his house on 7.4.2013 by a rickshaw puller (L.W.10) (not examined). Thereafter, L.W.4, who is the neighbour of the deceased, informed P.Ws.1 and 2 regarding the incident and on such information, P.Ws.1 and 2 came to the house of the deceased and took the deceased to Government Hospital, Mahabubnagar for treatment on 10.04.2013. However, on seeing the deteriorating condition of the deceased, on half-way, they took the deceased to Osmania General Hospital, Hyderabad, but the deceased succumbed to injuries on the way to the hospital. Thereafter, P.W.1 made a complaint to the police on 10.04.2013 and the same was registered as a case in Crime No.73 of 2013.

Learned Additional Public Prosecutor further stated that the depositions of P.Ws.1 and 2 disclose that the appellants herein attacked the deceased on 04.04.2013 when the deceased was returning home after

attending the Court. She further submits that One Mallamma was the sister of A-1, A-2 and A-3 and wife of the deceased. Since the said Mallamma died after committing suicide, a case was pending trial against the deceased in a Court of law and in that connection A-1 to A-4 bore grudge against the deceased and also threatened him with dire consequences. Accordingly, in pursuit of their evil design, on the fateful day they attacked the deceased with sticks and caused grievous injuries and left him in injured condition at Pillar No.1 near Puranapul bridge. Thereafter, the deceased succumbed to those injuries on 10.04.2013 on the way to hospital. Regarding the delay in lodging the complaint by P.W.1., the learned Additional Public Prosecutor submits that P.Ws.1 and 2 did not report to the police for the reason that the accused persons and the deceased being relatives did not want to lodge complaint. But, after death they made the complaint. Thus, there is no delay in lodging the complaint.

The prosecution examined P.Ws. 1, 2 and 6 as witnesses to the oral dying declaration made by the deceased.

P.W.1 and P.W.2 are the brothers of the deceased. They stated in their evidence that on receiving

a phone call from one Karne Srisailam (L.W.4) they rushed to the house of the deceased in Hyderabad where they were told by the deceased that the accused beat him with sticks and knives causing severe injuries to him. They took the deceased to Government Hospital, Mahaboobnagar and while they were shifting him to Osmania General Hospital, Hyderabad, he succumbed to the injuries.

P.W.6 is the brother-in-law of the deceased and in his evidence he stated that the deceased was residing in Hyderabad for eking out his livelihood. His wife Mallamma committed suicide by hanging herself about two years back. As the deceased absconded at the time of her death, the accused were under the impression that the deceased was responsible for the death of his wife and proclaimed that they would kill the deceased. The deceased was apprehended, thereafter, he came out on bail. This witness and another also accompanied the deceased to the Court for appearing in the case relating to the death of latter's wife. They returned from the Court at 3.00 P.M. and they had food in a hotel. While this witness and another left for bus stand to go to their village, the deceased was leaving for his home. After three days the deceased's neighbours telephoned and informed

that A1 to A4 beat the deceased, due to which he sustained injuries. They came to Hyderabad, took the deceased to Mahaboobnagar and on the advice of doctors, they took him to Osmania General Hospital, Hyderabad and while they were filling the admission form, the deceased died. When he enquired with the deceased, he told him that A1 to A4 beat him when he was returning home after attending the Court.

P.Ws 3 to 5 are independent witnesses examined by the prosecution and they happened to see the deceased with injuries on 05.04.2013 in the early hours when they went to answer calls of nature. P.W.3 stated that on 05.04.2013 in the early hours while he was going to attend nature calls, under the Puranapul bridge, he saw a person sitting against an electric pole. He questioned him as to why he was sitting there. He informed that his hand was fractured and asked him to take him to a hospital. The witness enquired as to who beat him, when he informed that his brother-in-law beat him and that his wife died earlier. Then the witness left the place. The deceased was sitting there till 7.4.2013 on which date he sent him to his house in a rickshaw. P.W.4 stated that on the 5th of a month when he was going to attend calls of nature, he saw a person sitting against an

electric pole. As every one went to see him, he also went there. He provided food and water to him. When he enquired, he informed him that his brothers-in-law beat him as he abused his wife. He did not inform the names of his brothers-in-law. P.W.5 also gave evidence to the same effect.

P.Ws 3 to 5 were declared hostile as they did not support the prosecution case and in their cross-examination they denied having stated to the police under Exs.P2 to P4, their earlier 161 Cr.P.C. statements to the effect that the victim informed them that his three brothers-in-law and one co-brother beat him with sticks and stabbed him on his abdomen alleging that he is responsible for the death of his wife who is their sister and that they were deposing falsely.

P.Ws 7 and 8 are the panch witnesses to the scene of offence and they were declared hostile by the prosecution as they did not support the prosecution case. Remaining witnesses are P.Ws. 9 to 11 who are doctor who did post mortem examination, Sub-Inspector of Police who registered the case and Inspector of Police who conducted investigation and filed the charge sheet.

P.Ws 1, 2 and 6 were examined by the prosecution to speak about the oral dying declaration

made by the deceased. They are interested witnesses being close relatives of the deceased and their evidence is not sufficient to hold the accused guilty of the offence without there being any corroboration. The independent witnesses viz., P.Ws 3 to 5 were declared hostile by the prosecution as they did not support the prosecution case. There is no other evidence brought in by the prosecution to connect the accused with the commission of offence. In the absence of such evidence, it is highly improbable to believe their testimonies.

The fact remains that the incident had taken place on 04.04.2013 and the deceased remained at the place of incident till 07.04.2013. P.W.3, who is a passerby, noticed the deceased at the place of incident on 05.04.2013 and found the deceased in an injured condition and he was not able to move from that place. If a person was lying in an open place with severe injuries, a prudent man cannot keep quiet without making any effort either to inform to the police or take steps for his treatment. P.W.3 neither informed the family members of the deceased nor to the police with regard to the incident. However, P.W.3 again visited the place of incident on 07.04.2013 and arranged a rickshaw puller (L.W.10) to take the deceased to his house. Even thereafter, P.W.3

did not disclose the incident to the police or to the family members of the deceased. When the deceased was taken by L.W.10 to his house, L.W.4, who is the neighbour of the deceased, informed the incident to P.W.1 and P.W.2 on 07.04.2013 at about 6.30 P.M. through a phone call. Even thereafter, P.Ws.1 and 2 neither took the deceased to the hospital nor informed the said incident to the police. It shows that they did not receive any information even on 07.04.2013 and the version of L.W.4 is not believable as he has not been examined by the prosecution for the reasons best known to them. If we believe that L.W.4 informed the incident to P.Ws.1 and 2 on 08.0.4.2013 at about 10.30 A.M. even then the deceased was neither taken to the hospital nor the incident was reported to the police. It seems that P.W.1 came to know about the incident only on 10.04.2013. Though it is the case of the prosecution that P.W.1 and P.W.2 taken the deceased initially to Government Hospital, Mahabubnagar, however, there is no evidence to prove that they had taken the deceased to Government Hospital, Mahabubnagar and thereafter brought the deceased to Osmania General Hospital, Hyderabad.

When a case is based on circumstantial evidence, the chain of circumstances has to be proved by

the prosecution. In the present case, L.W.10 who took the deceased from Puranapul bridge to the house of the deceased, has not been examined. Therefore, it is not proved that L.W.10 has taken the deceased to the place of his residence in an injured condition. Further, L.W.4, who is claimed to be the neighbour of the deceased and who informed about the incident to P.Ws.1 and 2 has not been examined by the prosecution. Since P.W.1 did not meet the deceased before 10.04.2013, there was no occasion for the deceased to disclose the names of the accused persons. If we believe that the deceased disclosed the names of the accused to P.Ws.1 and 2, on 7th or 8th April, 2013, then what prevented them to report the matter to the police or taking the injured to the hospital. Apart from that, they are interested witnesses being close relatives of the deceased and their evidence cannot be believed without there being any support from other evidence.

In this case, no other evidence is adduced by the prosecution and P.Ws 3 to 5 were declared hostile as they did not support the prosecution. They denied having stated to the police in their 161 Cr.P.C. statements as in Ex.P2 to 4 before the police. Thus, in our considered view, the circumstances relied upon by the prosecution

are not proved the involvement of the appellants-accused in the crime.

Apart from that, the incident occurred on 04.04.2103 and reported in the police station on 10.4.2013 and there was abnormal delay of six days in lodging the complaint which is not explained by the prosecution.

The prosecution has also not established the charge that the accused used sticks and knives in the commission of offence by recovering the weapon of offence at their instance. There is inconsistency between the charge framed against the accused and the allegations in the charge sheet. While the charge framed against the accused is silent as to the use of weapons like sticks and knives, the charge sheet mentions them as weapon of offence.

As already stated, there is no direct evidence to connect the accused with the commission of offence. The prosecution cases rests on circumstantial evidence and the circumstantial evidence led in by the prosecution is not sufficient and complete so as to inspire the confidence of the Court that the accused are the real culprits. Thus, chain of circumstances is not complete.

For all the above reasons, the prosecution has utterly failed to bring home the guilt of the accused beyond all reasonable doubt and, therefore, the accused are entitled for acquittal.

In the result, the Criminal Appeal is allowed. The appellants-A1 to A4 are found not guilty of the offence punishable under Section 302 read with Section 34 I.P.C, and accordingly, the conviction and sentence imposed on the appellants vide Judgment, dated 04.02.2015, in Sessions Case No.339 of 2014 by the Metropolitan Sessions Judge, Hyderabad, are hereby set aside and the appellants are acquitted of the charged offence. Consequently, the Superintendent, Chenchalguda Jail, Hyderabad, is directed to release the appellants-A1 and A2 and the Superintendent, Cherlapalli Jail, Hyderabad, is also directed to release the appellants-A3 and A4 forthwith if they are not required in any other criminal case. The fine amount, if any paid by the appellants/A1 to A4 shall be refunded to them.

SURESH KUMAR KAIT, J

J.UMA DEVI, J

