

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

Cr1.A.No.945 OF 2012

JUDGMENT:

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has assailed the order and judgment dated 18.01.2012 passed in S.C.No.707 of 2010 by the II Additional Sessions Judge, FAC III Additional Sessions Judge, Guntur.

2. Brief facts of the prosecution case are that :

The deceased-Beeraka Thrimurthulu used to maintain chit business independently. The appellant/A1 and the deceased joined as members of private chit maintained by Thorati Srinivasa Rao-LW.5 and they have to pay Rs.1000/- every week for twenty weeks. For the first time of chit, the deceased bided the first chit. As the appellant/A1 is in need of money, he requested the deceased to arrange him the chit amount and he will pay the same regularly to LW.5, for which, the deceased agreed and the appellant/A1 took cash of Rs.15,000/- from PW.1, wife of the deceased, due to financial struggle. The appellant/A1 has not paid the chit amount to LW.5 and also not paid the amount to the deceased as promised earlier. Prior to the date of incident i.e., 16.04.2010, the deceased went to push cart of the appellant/A1 situated at RTC bus stand, Guntur and asked him for payment of chit amount, for which, the appellant/A1

requested him to give some more time for repayment. The deceased paid deaf ear and caught hold of the shirt of the appellant/A1 and also abused him in filthy language. The said incident was witnessed by PW.3-Shaik Baseer and LW.5-Thorati Srinivasa Rao respectively. On account of the insult in the hands of the deceased before the above said witnesses, the appellant/A1 has decided to put an end to the life of the deceased at any cost.

3. On 16.04.2010 at about 9.30 p.m., as per their pre-plan, the appellant/A1 phoned the deceased and asked him to come to Gandhi Statue Centre, Palaspathri to receive the amount due to him. The deceased came on his TVS moped reached Sanitary Inspector's office along with PW.4-Koppuravuri Sivaiah. Then the deceased while asking the appellant/A1 about money, A2 stabbed the deceased on his back and the deceased fell on the appellant/A1. On seeing the same, PW.4 ran away from that place. Then, the appellant/A1 also stabbed the deceased with a knife indiscriminately. The appellant/A1 instructed A3 to hurl the stone on the deceased, then A3 picked up a stone and hurled on the face of the deceased. Thereafter, determining that the deceased was dead, all the accused fled away from the scene of offence.

4. On the report given by PW.1-Beeraka Padmavathi, wife of the deceased, PW.19-Sub Inspector of Police, Lalapet

L&O Police Station registered a case in Crime No.62 of 2010 under Section 320 IPC and took up investigation and further investigation was conducted by PW.20-Inspector of Police, Lalapet P.S. During the course of investigation, PW.20 visited the scene of offence; an observation report was prepared and drafted in the presence of PW.12-Y. Venkata Suresh and LW.17-Krosuri Venkat, and seized three stones. Out of them, one is only with blood stains. Dried blood underneath the head of the deceased together with its control, a pair of plain synthetic grey colour chappals, Re.10/- currency notes (five in number), one 'Solino' ball pen, phone number pocket book, Nokia Cell phone in Black colour and one Thelhalks rider black belt company cheppal were taken into custody and prepared rough sketch of scene of offence, and photos were taken by PW.11-Bheemavarapu Vema Reddy. PW.20 also held inquest over the dead body of the deceased on 17.04.2010 in the presence of PW.12, LW.17 and LW.18 and sent the dead body for postmortem examination to LW.22-Dr C.G.V.Daniel, Assistant Professor, Forensic Medicine, Guntur Medical College, Guntur. He conducted autopsy over the dead body of the deceased and issued Postmortem Certificate and opined that the deceased died due to stab injuries. PW.20 arrested the accused on 30.04.2010 in the presence of LW.19-Nandukuru Dharma Rao and PW.13-Banka Jaya Rao and all the three accused voluntarily confessed their guilt.

5. PW.15-Sri M.Gurunadh, V Additional Junior Civil Judge, Guntur, conducted Test Identification Parade on 03.07.2010 at District Jail, Guntur to PW.3-Shaik Baseer, LW.5-Thorati Srinivasa Rao, PW.4-K.Sivaiah, PW.5-Pathan Asha, PW.6-Shaik Subhani, PW.7-Katevarapu Vasudha, PW.8-Gunturu Ganesh Babu and PW.9-Mohammad Abdul @ Siraj on the appellant/A1 and A2. The seized blood stained clothes of the accused together with blood stained knives were sent to RFSL, Guntur for analysis and opinion. On receipt of opinion of RFSL, PW.20-the Inspector of Police laid charge sheet against the accused for the above offence punishable under Sections 120-B, 302 read with 34 IPC.

6. The case against A2 was abated as died.

7. After appearance of the accused-the appellant/A1 and A3 before the trial Court, charges were framed under Section 302 IPC against the appellant/A1 and A3 as per Section 228 (1) of Cr.P.C., when read over, the accused denied the commission of offence for the charges levelled against them and claimed trial.

8. Considering the case of prosecution, the learned trial Court has acquitted A3 and convicted the appellant/A1 for the offence punishable under Section 302 IPC and sentenced to LIFE IMPRISONMENT, and to pay a fine of Rs.500/-, in default, to suffer Rigorous Imprisonment for six months for the offence under Section 302 IPC

9. Learned counsel appearing on behalf of the appellant/A1 submits that PW.8 is stated to be an eye witness however the said witness is a planted witness. The learned trial Court ought not to have relied upon the said witness, but erroneously considered the said witness as main material witness, and luring upon his deposition, the appellant/A1 was convicted. He further submits that based on the same evidence, A3 has been acquitted, however without material on evidence, A1 has been convicted.

10. Learned counsel further submits that PW.8 in his chief-examination stated that the appellant/A1 stabbed the person who was driving the motor cycle TVS XL with a knife on the chest. The pillion rider ran away from that place. Out of the remaining two persons present along with the appellant/A1 one person stabbed the person driving the motor cycle from behind. The motor cyclist fell down. In cross-examination, he deposed that he knew the deceased since 10 years prior to his death. If that to be believed, he has identified the appellant/A1 from the same distance however he did not identify the deceased who was on motor cycle TVS XL. Had he knew the deceased from the last 10 years then he would have deposed the name of the deceased. Thus PW.8 is not a reliable witness. Therefore, the appellant/A1 deserves to be acquitted in this case.

11. On the other hand, learned Public Prosecutor appearing on behalf of the State submits that the evidence of PW.8 has clearly established that the appellant/A1 stabbed the person at Girls High school. The evidence of PWs.3 and 4 have proved that the appellant/A1 came to them and gave information that he murdered the deceased Trimurthulu at Pal Hospital and they found the appellant/A1 with blood stained clothes. PW.8 could not identify the deceased because he was on a running motor cycle whereas the appellant/A1 with his associates was sitting at that place. Therefore he was able to identify the appellant/A1 but not the deceased at that point of time though he knew the deceased and the appellant/A1 from the substantial time as he has deposed in its chief-examination. In addition, the evidence of PWs.12 and 13 reveals that the police recovered the material objects through the appellant/A1 which is admissible under Section 27 of the Indian Evidence Act. Thus the disinterested evidence of PW.8 clearly establishes that the appellant/A1 stabbed the deceased Trimurthulu at Pal Hospital and murdered him.

12. It is further submitted that as far as the identity of A3 is concerned, there is some doubt with regard to the participation in this offence and that benefit of doubt was given to A3. Accordingly, A3 was acquitted, whereas the appellant/A1 was identified in the Test Identification Parade. In addition to that, there was substantial evidence against the

appellant/A1. Therefore, the trial Court has rightly convicted the appellant herein.

13. We have heard the learned counsel for the parties and perused the material on record.

14. PW.1-Beeraka Padmavathi, who is wife of the deceased deposed that the deceased was running some chit business from about 6 months prior to his death. She is not an eye witness to the attack on her husband who was killed on 16.04.2010. She identified MO.1 - Nokia company mobile phone as belongs to her husband and MO.2 - pocket diary maintained by the deceased, MO.4 - pair of chappals, MO.3 is Re.10/- notes (five in number). The entire evidence of PW.1 is with regard to the motive for the accused and about the identifying MOs.1 to 5 belonging to her husband. In the entire cross-examination of PW.1, nothing is elicited to show her grouse against the accused or falsely she implicating the accused in this case. Nothing is suggested to any of the witnesses why police falsely implicated the appellant in this case and making the witnesses to speak against the appellant/A1. The evidence of PW1 has been accepted by the trial Court with regard to the motive spoken by her against the appellant/A1.

15. PW.2-B. Basavaraju, who is brother of the deceased, deposed that appellant/A1 took an amount of Rs.15,000/- from the deceased in connection with the chit

and the deceased stated to PW.2 that there was a quarrel between the appellant/A1 and the deceased. MO.5 -TVS XL motor cycle belongs to PW.2 and that is taken by the deceased on the date of his death. His evidence is only to that extent and he did not connect the accused except the motive position.

16. PW.3-Shaik Basheer deposed that the appellant/A1 running fruit salad push cart at bus stand and the deceased lending Rs.15000/- to the appellant/A1 and the appellant did not repay that amount. He deposed that there was a quarrel between the appellant/A1 and the deceased. On 16.04.2010 the deceased died and on that date at about 8.00 or 8.30 PM, the deceased and one K. Sivaiah-PW.4 came to his shop and they all three were going to Saraswathi Theatre to see a movie and he was going on his motor cycle. After receiving a phone call, he returned back from the Theatre. At about 9.30 to 9.45 p.m., he found the appellant/A1 from his shop coming with hurry burry without chappals with blood stained shirt. On his questioning, the appellant/A1 stated to him that he has murdered Trimurthulu and also stated to him that he will kill him also if he tells the same to any others. Thereafter the appellant/A1 went away from that place. He also deposed that Apellant/A1 told him that he murdered the deceased near Pal hospital and he informed the same also to one PW.6-Shaik Subhani. He further deposed that he went to the house of the deceased and informed PWs.1 and 2 about the

death of the deceased after seeing the dead body of the deceased at Pal hospital. During his cross-examination, nothing is elicited to show why he was deposing falsely against the appellant.

17. PW.5-Pathan Asha deposed that she knew the appellant/A1 and the deceased. On the date of death of the deceased at about 9.30 p.m. she was in front of her Kirana shop and saw the appellant/A1 going speedily. The clothes of the appellant/A1 were blood stained. PW.3 was also present at her shop at that time. PW.3 talked with the appellant/A1. Thereafter, the appellant/A1 went away from that place. When she enquired PW.3, the appellant/A1 stated to PW.3 that he murdered the deceased at Pal hospital. Then herself, PW.3 and PW.6 went to Pal hospital and near the school they found the dead body of the deceased with injuries. She identified the appellant/A1 in the Test Identification Parade conducted by a Magistrate. Thus the evidence of PW.5 is about she seeing the appellant/A1 with blood stained clothes talking to PW.3 and PW.3 informing her about his murdering the deceased and then she along with PW.3 seeing the dead body of the deceased.

18. PW.6-Shaik Subhani deposed that he was going from Pal hospital to the shop of PW.3 and he found the appellant/A1 and two other persons coming hurriedly opposite to him and they went away. His evidence is only to

the extent of his seeing A1 and two others coming opposite to him. Nothing is elicited to discard his evidence in his entire cross-examination.

19. PW.7-K. Vasudha turned hostile and she did not support the case of the prosecution.

20. It is the evidence of PW.8 - G.Ramesh Babu that on 16.04.2010 at about 9.30 p.m. he was going towards Girls High School from Barra Imam Panja. At the said School, two persons were coming on a motor cycle TVS XL and the appellant/A1 along with two more persons was sitting there. The appellant/A1 stabbed the person who was driving that motor cycle with a knife on the chest. The pillion rider ran away from that place. Out of the remaining two persons present along with the appellant/A1, one person stabbed the person who was driving the motor cycle from behind. The motor cyclist fell down. The third person beat that injured with a stone on his head. He did not go near to them due to fear. He went to his complex. On the next day morning he came to know about death of deceased at that place. He went to mortuary to see the dead body. In the Test Identification Parade, he identified the appellant/A1 and another person A2.

21. In view of the evidence of PW.8, it is established that he is an eye witness for the appellant/A1 and two other persons stabbed one person at the Girls High school, who was

going on motor cycle. However, there is no material elicited in the cross-examination of PW.8 to discard his evidence.

22. Learned counsel appearing on behalf of the appellant/A1 argued that PW.8 who is stated to be an eye witness did not speak about his witnessing the incident till next day to the police and his conduct is highly improbable. Learned trial Court has not accepted this contention that each witness react in a different way, that too, when he witnessed a ghastly murder. Thus, the disinterested evidence of PW.8 is to be accepted and when accepted it proves that the appellant/A1 stabbed the person who was going on motor cycle at the time of incident.

23. The contention of the learned counsel for the appellant/A1 cannot be accepted as there is no necessity when this ghastly incident took place and when PW.8 saw the attack by the appellant/A1 at 9.30 p.m., to see the deceased also simultaneously when he saw the appellant/A1. There may be mistaken identity of the deceased and PW.8 might not have identified the deceased at the time of incident though he stated in his cross-examination that he knew the deceased since 10 years prior to his death. Thus there is no force in the argument of the learned counsel for the appellant.

24. PW.9-Mr Abdul @ Siraj, deposed that on 16.04.2010 at about 9.30 p.m. he was going to his house from Bara Imam Panja by walk and he came across the

appellant/A1 and two others coming opposite to him hurriedly near Bara Imam Panja at Gandhi Statue and he found blood stains on the shirt of the Karimullah-appellant/A1. A3 is one of other two persons whom he has seen along with the appellant/A1 at that time. Thus he categorically stated that he identified the appellant/A1 with blood stained clothes at the time of incident. During the cross-examination, nothing is elicited to discard his evidence or why he is speaking falsely against the accused. Though PW.9 identified A3 also, as one of the persons, who was going with the appellant/A1 at the time of the incident, no other witness has identified A3. PW.8 did not speak about A3 participating in the attack. Accordingly, the learned trial Court accepted the evidence of PW.9 with regard to the identity of the appellant/A1 alone.

25. PW.10-B. Jannaiah, constable, who deposed that on court duty he came to Guntur on 16.04.2010 and at Bara Imam Panja he found three persons running hurriedly opposite to him. Out of them, one person was clothed with blood stains on his shirt and he identified the appellant/A1 and A3 are the persons whom he had seen on that day. He has also no personal animosity against the appellant/A1 and A3. As such, his evidence is accordingly accepted by the trial Court to the extent of identifying the appellant/A1 by him with blood stained clothes.

26. PW.12-Y.V.Suresh, who is mediator to the scene of offence as well as the inquest report, deposed about the arrest of the appellant/A1 to A3 and the accused lead them to show the house of LW.14, who is kept mistress of the appellant/A1. A2 produced MO.12 - blood stained white colour half hand shirt, MO.13 - blue colour terri cotton pant. Thus he has proved the recovery of Material Objects. He attested the seizure panchanama.

27. PW.14 is the Assistant Electrical Engineer, Mangalagiri. He speaks about burning of light at the place of the incident.

28. PW.15 is the Magistrate, who conducted Test Identification Parade of the appellant/A1 to A3.

29. PW.17 turned hostile and did not support the case of the prosecution.

30. PW.18-Dr V. Prasada Rao stated that he has got acquaintance with the signature of C.G.V Daniel, the Doctor. He has identified the signature of Daniel on Ex.P25, the Post Mortem certificate.

31. In view of the above discussion, the evidence of PW.8 has proved that the appellant/A1 stabbed the person at the Girls high school. The evidence of PWs.3 and 4 proved that the appellant/A1 came to them and gave information that he murdered Trimurthulu at Pal hospital and they found

the appellant/A1 with blood stained clothes. PWs.12 and 13 proved that police recovered the Material Objects by the appellant/A1 which is admissible under Section 27 of the Indian Evidence Act.

32. Keeping in view the facts and circumstances of the case, we find no illegality or perversity in the order and judgment of the trial Court and accordingly we hereby confirm the same.

33. Finding no merit in the instant appeal and the same is accordingly dismissed.

Miscellaneous Petitions, if any pending, shall stand closed.



JUSTICE SURESH KUMAR KAIT.

JUSTICE N. BALAYOGI.

Date: -02-2018

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