

**HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

CRIMINAL APPEAL No.649 of 2013

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

This is an appeal against the judgment of the learned Special Judge for Trial of Offences under S.Cs. and S.Ts. (Prohibition of Atrocities) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, in Sessions Case No.481 of 2012. The appellant has been convicted for the offence under Section 302 of IPC and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.1,000/-, and in default of payment of fine, he has to undergo simple imprisonment for a period of three months.

2. The allegations on the basis of which charge was framed against the accused/appellant was that he had committed murder of his brother-in-law by name Gyaneshwar Rao on 11.12.2011 by stabbing with a knife. Charge was framed under Section 302 of IPC, to which the appellant pleaded not guilty and claimed to be tried. Prosecution examined 16 witnesses and exhibited 11 documents and 2 material objects.

3. PW-1 stated that the deceased is his maternal uncle, who had married the sister of accused, but thereafter, they got separated. On 11.12.2011 at 2.40 p.m., himself and the deceased went to the house of LW-9/Kalamma and by that time, the accused was present there. While they were discussing about a money transaction, he went to his

house to have meals. Thereafter, at about 3.30 p.m., when he was returning to the house of LW-9/Kalamma, he found the accused going away from the house of LW-9 with a knife, on a motorcycle. On his entering into the house of LW-9/Kalamma, he found the deceased lying on floor in a pool of blood. He stated that at that time, LW-9/Kalamma, LW-10/Balamani and LW-11/Babu were present. Accordingly, he gave Ex.P-1/complaint to the Police.

In his cross-examination, he stated that he narrated about the incident to the Police when they visited the scene of offence. Police reduced the same into writing and shifted the dead body to Gandhi Mortuary at 6.00 p.m. on 11.12.2011. His father took him to the Police Station at 5.00 p.m. on 11.12.2011, where, he gave Ex.P-1/complaint and Police recorded his statement. He admitted to have stated to Police that he found the dead body of deceased in a pool of blood in the hall with stabbing injuries. He also admitted that the deceased and the sister of accused got separated on the advice of elders as they happened to be brother and sister by relation. He denied the suggestion that as there were disputes regarding money transaction between the deceased and the accused, he lodged a false complaint though the deceased was injured by someone else, but not by the accused.

4. PW-2 stated that on 11.12.2011 at 5.30 p.m., while himself and LW-2/Pochaiah were at the house of LW-9/Kalavathi @ Kalamma, Police requested them to act as panch witnesses. They found one

dead body in a pool of blood between gate and hall. The Police drafted panchanama and also sketch in their presence and also drawn blood samples from the wounds of the dead body. Police readover panchanama and he signed the same. Ex.P-2 is the scene of offence panchanama and Ex.P-3 is the rough sketch of the scene.

In his cross-examination, PW-2 stated that the place where the dead body was lying, was open to sky. He admitted that in the panchanama, Police have mentioned that the dead body of deceased was lying in between the main gate and kitchen.

5. PW-3 stated that on 11.12.2011 at Noon, while himself and LW-5/Posani Praveen Kumar were near temple market, they found the accused and deceased quarrelling with each other in connection with a money transaction. Therefore, they went there and separated the accused and the deceased. Thereafter, they came to know that the deceased was murdered. Police examined and recorded his statement.

In his cross-examination, he stated that he goes to the work at 9.30 a.m. and returns to the house at 6.00 p.m. On 11.12.2011, he attended to work from 1.00 p.m. onwards. On that day after 6.30 p.m., he came to know through the people of his locality that the deceased was died. He went to the Police Station on 12.12.2011 at around 11.30 a.m. on his own and Police recorded his statement. He denied the suggestion that the deceased and accused never quarrelled at market yard and that he was deposing falsely at the instance of Police and the people of the locality.

6. PW-4 deposed that he is a Photographer by profession. On 11.12.2011, he was called to the scene of offence, where, he took the photographs of one male dead body and also some other clippings with digital camera. He took 16 photographs in total and transferred the soft copies of photos to the computer of the concerned Police Station. In his cross-examination, he stated that he took the photographs between 3.00 and 4.00 p.m. on 11.12.2011.

7. PW-5 deposed that he knows the accused and deceased/Gyaneshwar. On 11.12.2011 i.e. Sunday at Noon, while himself and PW-3 were chit-chatting near temple at Bowenpally market, they found the deceased and accused quarrelling in connection with a money transaction. Then, himself and PW-3 went there and pacified the deceased and accused.

In his cross-examination, he deposed that it was around 1.00 p.m. when they got separated the deceased and accused from quarrelling. Himself and PW-3 together purchased vegetables, which took about one hour from 1.00 p.m. His house and the house of PW-3 are in the same street. The distance from his house to the vegetable market is $\frac{1}{2}$ kilometre. On 12.12.2011 between 3.30 and 4.00 p.m., on his own accord, he went to the Police Station and one Constable recorded his statement. He denied the suggestion that the deceased and accused never quarrelled at market yard, that they did not separate them and that he is deposing falsehood at the instance of Police.

8. PW-6 stated that on 12.12.2011 at about 10.30 a.m., himself and LW-8/D.Satyanarayana were called by the Police to act as inquest panchas over the dead body of Gyaneshwar. They saw injury over the dead body. Police drafted inquest report in Ex.P-4 and readover to them. Himself and LW-8/D.Satyanarayana signed Ex.P-4/inquest report.

9. PW-7 deposed that she is a resident of RTC Colony, Trimulgherry and is a maid servant. Accused is the son of her sister and that she knows the deceased/Gyaneshwar. Deceased married the elder sister of accused and subsequently got separated as the sister of accused becomes sister to the deceased. Accused took loan of Rs.50,000/- from the deceased and did not repay. On 11th day of the month which was a Sunday, at about 3.00 p.m., the deceased/Gyaneshwar went to her house with bleeding injury and asked for water and fell down on floor. She informed the same to the Police. She does not know as to how the deceased got injury.

This witness was cross-examined by the Public Prosecutor as she resiled from her 161 Cr.P.C. statement. In the cross-examination, she denied to have stated before the Police that on 11.12.2011 at 2.00 p.m., the deceased/Gyaneshwar went to her house and by that time, accused was there and there was discussion regarding money, later accused stabbed the deceased with a knife and ran away from the scene and that she is deposing falsehood as the accused is her sister's

son. She admitted to have stated before the Magistrate that accused stabbed the deceased.

In the cross-examination by the defence counsel, this witness deposed that on 11.12.2011, she stated before the Police that the deceased/Gyaneshwar came to her house with injuries and fell down when she went inside to get water to him. She admitted that her statement given before the Magistrate was under the fear of Police, as the Police threatened that she will be made responsible for the case as the deceased fell in her house. She stated that she does not know as to how and who made injuries to the deceased.

10. PW-8 deposed that PW-7 is her neighbour. She knows the accused and the deceased/Gyaneshwar as they used to come to the house of PW-7. On 11.12.2011 at about 3.00 p.m., when she came out of her house to throw garbage, she heard hue and cries from the house of PW-7 and accused was going away from the house of PW-7 on a motorcycle. Then she went into the house of PW-7 and found Gyaneshwar in a pool of blood.

In her cross-examination, she deposed that within 5 to 10 minutes after her seeing the dead body, Police arrived at the spot. She told the Police about her seeing the dead body and accused running away from there. Police recorded her statement. She denied the suggestion that she did not state before the Police and Magistrate that she saw the accused running away when she came out of her house to throw the garbage. She also denied the suggestion that she did not

come out of her house to throw the garbage and that she did not see the accused running away from the house of PW-7.

11. PW-9 deposed that he knows PWs.7 and 8 as they are his neighbours. He does not know the accused. He stated that on 11.12.2011 at 3.00 p.m., he heard noise from the house of PW-7 and saw one person fleeing away from the said house on motorcycle. He went to the scene of offence and saw Gyaneshwar died and body lying on the floor. He did not ask PW-7 regarding the murder.

This witness was cross-examined by the Public Prosecutor as he resiled from his 161 Cr.P.C. statement. In the cross-examination, he denied the suggestion to have stated before the Police as in Ex.P-6. He stated that PW-7 informed that accused stabbed the deceased/Gyaneshwar. He denied the suggestion that he was not disclosing the name of the accused and also was not identifying the accused as he compromised with him.

In the cross-examination by the defence counsel, he stated that within half an hour of the incident, he saw the dead body. He was examined by the Police on 11.12.2011 between 3.00 and 4.00 p.m. He denied that PW-7 did not inform him that the accused stabbed the deceased.

12. PW-10 deposed that the deceased/Gyaneshwar was his younger brother and was living with them. His deceased brother married the sister of the accused and thereafter elders conducted panchayat in the Police Station as the relationship between the deceased/Gyaneshwar

and his wife was that of brother and sister, therefore, they were got separated in the panchayat. On 11.12.2011 at 3.45 p.m., his son informed him that the deceased/Gyaneshwar was murdered by the accused. PW-1 narrated to him that he saw the accused while running out from the scene of offence with blood stained knife. He went to the scene of offence to see the dead body of his brother/Gyaneshwar. Himself and PW-1 went to the Police Station, where, PW-1 gave complaint.

In the cross-examination, he deposed that he, along with his son, went to the Police Station, and thereafter went to the scene of offence, where, he was examined by the Police and recorded his statement. He admitted to have not stated before the Police that on 11.12.2011 at 3.45 p.m., his son informed that his brother/Gyaneshwar was murdered by the accused and PW-1 seeing the accused while running away from the scene of offence with a blood-stained knife.

13. PW-11 deposed that on 13.12.2011 at 4.15 p.m., Police called him and another panch witness Shiva Kumar to the Police Station. On the instructions of Police, he questioned the accused who was present in the Police Station. Then the accused confessed that the deceased/Gyaneshwar married his sister, but actually his sister and Gyaneshwar were sister and brother by courtesy. Therefore, the accused bore grudge against the deceased. The deceased also took loan from the accused. On 11th day of the month i.e. Sunday at

around 12 Noon, the accused quarrelled with the deceased at Market and at that time, PWs.3 and 5 got them separated. Another meeting was conducted at the residence of PW-7 on the same day at about 3.00 p.m. Then, the accused stabbed the deceased with a knife from back side and fled away on motorcycle. The accused further confessed that the Police caught hold of him at Alwal Railway Station. The accused shown the knife which was used in the commission of offence. To that effect, Police drafted panchanama and recovered knife/M.O.1. The chit containing the signature of this witness was affixed on M.O.1. M.O.2 was the motorcycle. Ex.P-7 is the confession-cum-seizure panchanama, which was read over to him and the other panch witness. The other panch witness/Shiv Kumar also signed Ex.P-7 and also the chit affixed on M.O.1.

In his cross-examination, he stated that the distance between his house and the Police Station is about 2 km. There are no cases against him in Trimulgherry Police Station. When he questioned, Police informed him that he had to sign on a seizure panchanama for seizure of knife and motorcycle i.e. M.Os.1 and 2 respectively from the accused. He admitted that they had seen M.O.2/motorcycle while entering the Police Station, as it was parked in the compound of Police Station. M.O.1 was in the Police Inspector's room, which was brought into the hall later. When he was questioning the accused, a Constable was noting it down. He denied the suggestion that he did not question the accused and that accused did not confess. He stated that M.O.1 is a single-edged weapon.

14. PW-12 deposed that he was running a photo studio by name 'Image Photo Studio' at Diamond point, Sikh village, Secunderabad. He knows the accused as the accused worked with him as a photographer. He used to pay Rs.4,000/- to the accused. On 12.12.2012, Police came and asked him whether the accused works with him. When he said "yes", the Police took his motorcycle bearing No.AP-12-B-8826 from him.

As this witness resiled from his 161 Cr.P.C. statement, Public Prosecutor cross-examined him. In the cross-examination, he denied the suggestion to have stated before the Police as in Ex.P-8 that on 11.12.2011 at 10.30 a.m, accused requested and took his motorcycle bearing No.AP-12-B-8826 i.e. Hero Honda Splender and later, he came to know that the accused was involved in a murder case and that he was deposing falsehood to help the accused and that actually the vehicle was seized at the time of arrest.

15. PW-13/Sub-Inspector of Police, Trimulgherry P.S. deposed that on 11.12.2011 at 5 p.m., PW-1 brought Ex.P-1/written complaint. Basing upon Ex.P-1, he registered the case in Crime No.171 of 2011 under Section 302 of IPC and issued Express FIR under Ex.P-9 and handed over the case file to the Inspector of Police, Bollaram P.S. as their Inspector was on leave and intimated the same to all concerned.

In the cross-examination, he deposed that it took 15 minutes after receiving Ex.P-1/complaint for issuing FIR/Ex.P-9. After 5 minutes of registration of FIR, Inspector came to the Police Station.

PW-1 alone went to the Police Station and presented Ex.P-1. He denied the suggestion that Ex.P-1 was substituted to the earlier complaint given to the Police.

16. PW-14/the then Inspector of Police, Bollaram P.S. deposed that on receiving phone call from PW-13, he instructed him to receive complaint and register a case and also to send men to preserve scene and also instructed to send a letter to clues team. Immediately he went to the Police Station at about 5.10 p.m. and received C.D. file from PW-13. When he reached the Police Station, the complainant was there. Then he examined and recorded the statement of complainant, visited the scene of offence along with staff, drafted panchanama in the presence of witnesses, collected blood-stained earth from the scene, shifted the dead body to the mortuary and later handed over the C.D. file to the next investigating officer.

In the cross-examination, he deposed that he examined PW-1 in Telugu, for which PW-1 also replied in Telugu, but he translated the same into English. He admitted that it was not mentioned at the bottom of the statement of PW-1 that the statement was readover to PW-1 in the language known to him. He admitted that in Ex.P-2/scene of offence panchanama, it was not mentioned that people at the scene obstructed the Police in conducting Exs.P-2 and P-3/rough sketch of the scene. He denied the suggestion that the statements of witnesses examined by him on 11.12.2011 were suppressed as the same were not favourable to the Prosecution.

17. PW-15/Assistant Professor in Forensic Department of Medicine, Gandhi Medical College, deposed that on 12.12.2011 at 12.00 p.m., on receiving requisition from the SHO, Trimulgherry Police Station to conduct Postmortem examination over the dead body of one B.Gyaneshwar, he conducted post-mortem examination and found the following *ante-mortem* injuries:

1. *“Sharp Edge cut injury of 2 x 1 cm present at lower part of neck at the level of lower attachment of left sterno motoid muscles. It is spindle shaped. Underlying muscles vessels clean cut. It is passed towards downwards into upper part of side chest.*
2. *Sharp cut injury of 3 x 1 cm size is present on front of upper part of right side of neck in anterior axillary’s line oblique on destedim it is found on inwards and downwards into the pleural cavity and right lung.*
3. *Sharp edge cut injury of 3 x 1 cm present on front of middle of right side chest, vertical passing downwards and inwards into right side of heart.*
4. *Sharp cut injury 5 x 5 cm present on right front mid abdomen through which intestine protruded.*

All the injuries are spindle shaped caused by double-edged sharp weapon. The depths of injuries are more than length of all the injuries. The cause of injuries are stab injuries. The red blood clots are present and are ante-mortem in nature.”

He further deposed that the post-mortem examination was concluded at 2.45 p.m. Approximate time of death was about 24 hours prior to the post-mortem examination. He opined that the cause of death was due to stab injury to heart. Ex.P-10 is the post-mortem examination report.

18. PW-16/the then Inspector of Police, Trimulgherry, deposed that on 12.12.2011, he received C.D. file from PW-14. Thereafter, recorded the statements of witnesses, conducted inquest over the dead body, recorded the confessional statement of accused, seized M.Os.1 and 2, sent the seized material to FSL for analysis and after receipt of FSL report in Ex.P-11 and Postmortem examination report, he filed charge sheet.

In the cross-examination, he denied the suggestion that PWs.7, 9 and 12 did not state as in Exs.P-5, P-6 and P-8 respectively and that he fabricated the same. He admitted that when he received the C.D. file on 12.12.2011, it contains the statements of PW-1, FIR and scene of offence panchanama. He admitted that there was no mention either in Ex.P-1/complaint or in the statement of PW-1 that PWs.3 and 5 intervened in the altercation between the accused and the deceased at Marketyard. He admitted that prior to examining PWs.3 and 5, he did not examine any person to come to the conclusion that PWs.3 and 5 were witnesses in this case. He further admitted that in the bottom of statements of PWs.3, 5 and 7 to 10, there was no mention that those statements were translated from Telugu to English and were readover to those witnesses. He denied the suggestion that the statements of PWs.7 to 10 recorded on 11.12.2011 were suppressed as the same were not favouring the Prosecution and that the statement of PW-1 was also suppressed. He denied the suggestion that M.O.1/knife was brought into the hall of Police Station from his room, so as to show that it was seized from the possession of accused. He deposed that in

his investigation, it came to light that there was financial transaction between the sister of the accused and the deceased. He denied the suggestion that at the instance of PW-1 and elders of locality, the statements of PWs.3, 5 and 7 to 10 were created for filing a false case against the accused. He further denied the suggestion that M.O.2/motorcycle was not seized from the possession of accused.

19. Heard learned counsel for the parties and perused the material on record.

20. The principal contention of the learned counsel for appellant is that there is no direct evidence implicating the appellant in the offence. But the evidence of prosecution witnesses i.e. PWs.1 to 9 would abundantly makes it clear that some of them are direct witnesses to the scuffle ensued between the accused and the deceased at the market and some of those witnesses had seen the accused while running away from the house of PW-7 with a bloodstained knife and thereafter escaping on a motorcycle. All the witnesses might not have directly seen the accused killing the deceased, but PW-1 had seen the accused going away with a bloodstained knife on pulsar motorcycle after committing the offence and the deceased was lying in a pool of blood. PW-2 deposed that the deceased was lying in a pool of blood between the gate and hall. PW-3 deposed that he had seen the accused and the deceased quarrelling in connection with some money transaction just before commission of offence by the accused. PW-5 had also deposed that the deceased and accused were quarrelling with

each other just before the commission of offence with regard to some money transaction. PW-7 is an important witness, in whose house, the alleged incident had taken place. She deposed before the Magistrate that the accused had stabbed the deceased and that there was a quarrel between the accused and the deceased in respect of some money transaction.

21. The evidence of all the above witnesses clearly establishes that it is the appellant who had killed the deceased and the trial Court has rightly convicted the appellant for the offence under Section 302 of IPC. Therefore, this Court is not inclined to interfere with the said findings of the trial Court.

22. For these reasons, we do not find merit in this appeal, which is accordingly dismissed. The conviction and sentence as imposed by the trial Court in its judgment is confirmed.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

SANJAY KUMAR, J

ABHINAND KUMAR SHAVILI, J

20th March 2019

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