

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.41 OF 2014

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

Having been convicted for offence under Section 302 of the Indian Penal Code ('IPC'), having been sentenced to life imprisonment, imposed with a fine of Rs.200/- and directed to undergo simple imprisonment for three months in default thereof, having been aggrieved by the judgment dated 03.06.2013 passed by the III Additional District and Sessions Judge, Ranga Reddy District, in S.C.No.421 of 2010, the appellant, Amos Thamong, has approached this court.

2. Briefly stated, the facts of the case are that on 10.05.2010 at about 5:00 pm., Raju Thapa (P.W.5) came to Raidurgam Police Station and lodged a complaint (Ex. P.5) stating that his brother-in-law, Milan Thapa, is working as Assistant Cook in Ultimate Hospital Service at Banjara Hills, Hyderabad, and staying at Badderabasthi, Rajeevnagar, for the last four years with his friends Bishal (L.W.3), Yuvaraj Rana (P.W.1) and Deva (L.W.4). On 10.05.2010 at about 10:00 am., he was informed by Bishal (L.W.3) that on 09.05.2010 at 11:30 pm., the accused came to their room at Vaddarabasthi and after some time, Milan Thapa (deceased) and the accused left the room. At about 3:00 am., the Milan Thapa returned to the room with stab injuries and collapsed. When he was asked about the injuries by Yuvaraj Rana (P.W.1), he informed

that he was stabbed by the accused. The deceased was shifted to Osmania General Hospital, where he succumbed to the injuries while undergoing treatment. When Raju Thapa (P.W.5) came to know about the incident, he rushed to Vaddarabasthi, and enquired about the incident. He came to know that due to previous enmity, the accused attacked the deceased with a knife. Basing on the said complaint (Ex. P.5), the Inspector of Police, Raidurgam (P.W.6), registered a case in Crime No.136 of 2010 for offence under Section 302 IPC. During the course of investigation, Inspector of Police, Raidugram (P.W.6) examined the witnesses, conducted scene of offence panchanama, inquest panchanama, apprehended the accused, and sent the accused to Court for judicial remand. After completion of investigation, he filed the charge sheet.

3. In order to support its case, the prosecution examined six witnesses, exhibited eight documents, and produced six material objects. After appreciating the evidence brought on record, the learned trial Court convicted and sentenced the appellant as aforestated. Hence, the present appeal.

4. Smt. T.Bala Jayasree, the learned counsel for the appellant, has pleaded that the entire case is based on circumstantial evidence, as there is no eye-witness to the alleged crime. She further pleaded that the circumstances produced by the prosecution do not unerringly point to the guilt of the appellant. For, a complete chain of circumstances has not been produced by the prosecution in the present case. She further pleaded that the

evidence of Yuvaraj Rana (P.W.1), Suresh (P.W.2) and Raju Thapa (P.W.5), though inconsistent, based on the testimony of such highly interested witnesses, recording conviction is illegal. Added to that, it is contended that the learned trial Court failed to accept the contention that the prosecution was unable to establish each and every linking circumstances to complete the chain of circumstances, without giving any scope for any other hypothesis, thereby committed grave error in finding the appellant guilty. Therefore, the learned counsel has prayed this Court to set-aside the findings recorded by the trial Court, and to acquit the accused for the offence punishable under Section 302 IPC.

5. On the other hand, Mr. C. Pratap Reddy, the learned Public Prosecutor, has pleaded that since the prosecution had succeeded in establishing the evidence of the last seen, it was for the appellant to explain as to what happened to the deceased as he was last seen in the company of the appellant. He has further pleaded that when the prosecution proved each and every circumstance of the case, more particularly, all the links in chain of circumstances, the Court can record conviction of the appellant. That apart, Suresh (P.W.2) is the independent witness, and there was nothing to prove that he is the interested witness. Therefore, this Court should not interfere with the fact findings recorded by the learned trial Court, unless the findings are manifestly perverse, or without any evidence by exercising power under Section 374(2) Cr.P.C. Thus, the learned Public Prosecutor has requested this Court to confirm the

conviction and sentence imposed upon the appellant for the offence punishable under Sections 302 IPC.

6. Before advertng to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case, there is no direct evidence to connect the accused with the offence in question; the prosecution rests its case solely on circumstantial evidence. The case of prosecution is totally based on circumstantial evidence, since the incident allegedly took place in night time, and it is never the case of the prosecution that the incident was witnessed by any witness. It is the duty of prosecution to establish each and every circumstance to complete the chain of circumstances unerringly pointing to the guilt of the accused/appellant, and such circumstances should be inconsistent with his innocence.

7. When the case is based on circumstantial evidence, burden of proof is always on the prosecution to prove all the circumstances from which conclusion of guilt is to be drawn must be fully established and the facts so established must be consistent with hypothesis of guilt of accused, and any circumstance consistent with innocence of accused, he is entitled to benefit of doubt. (Ref. to **Kishore Chand v. State of Himachal Pradesh**¹).

8. The Apex Court while discussing the scope of Section 3 of the Evidence Act, more particularly, circumstantial evidence held that, in a case of murder when the prosecution relies on circumstantial

¹ AIR 1990 S.C. page 2140

evidence, it is for the prosecution to prove all the incriminating facts and circumstances and the circumstances which are incompatible with innocence of the accused to draw inference of guilt and such evidence should be tested on the touchstone of law relating to circumstantial evidence laid down by Supreme Court (Ref. to **Syed Hakkim & another v. State**²).

9. In view of the principles stated above, to connect the accused/appellant with the offence alleged against him, we shall deal with the events in the order of circumstances hereinafter.

10. The evidence of P.Ws.1 and 2 goes to show that at midnight, while the deceased was in his room, the accused took him away. It is not the case of the appellant that there are no disputes between him and the deceased, or that he did not take away the deceased with him. Therefore, the said circumstance links the accused with the crime.

11. There is no reason to disbelieve the evidence of Yuvaraj Rana (P.W.1) and Suresh (P.W.2) before whom, the deceased has stated that the accused is the person who stabbed him and caused injuries. The circumstances in which the deceased died show that the accused is the only person who committed the murder of the deceased. Though Yuvaraj Rana (P.W.1) and Suresh (P.W.2) are known to the accused, but there is no evidence to show that there are any differences or enmity between them to depose against the accused.

² 2009 Cr.L.J. page 1891

12. The evidence of Dr. G. Deva Raju (P.W.3) goes to show that the deceased died due to multiple stab injuries to the chest and it is not the case of the appellant that the deceased did not die due to the said injuries.

13. According to Section 106 of the Indian Evidence Act, 1872, when any fact is especially within the knowledge of an accused, the burden of proving that fact is upon him. In the present case, the accused failed to prove as to how the deceased received the stab wounds, when the deceased was with him. In fact, in his statement recorded under Section 313 Cr.P.C., the accused has merely denied the allegations.

14. In the present case, the Material Objects, including knife (M.O.2), were recovered at the instance of the accused, from a canal, under a cover of panchanama. Apart from the same, the circumstances are so pointing out the guilt of the accused. The circumstances in which the offence is taken place clearly establishes that the accused has committed the offence punishable under Section 302 IPC, and all these evidences throw a light on the accused alone.

15. Moreover, the statement made by the deceased, just before his death, to Yuvaraj Rana (P.W.1) can be equally treated as a dying declaration, since Clause (1) to Section 32 of the Evidence Act recognises a dying declaration as a relevant piece of evidence, if the statement made by the deceased person relates to the cause of his

death or to any of the circumstances of the transaction which has resulted in his death, in cases where the cause of death of that person is in question. It is not the mandate of law that a person who has made a dying declaration must be under expectation of death at the time when he made the statement. Section 32(1) of the Evidence Act specifically states that a dying declaration can be oral or in writing. An oral dying declaration could mean a verbal statement i.e., words spoken by the deceased before his death. Thus, the Legislature, by using the word “oral” in Section 32(1) has made its intention clear and left no scope for any doubt concerning the relevance, admissibility and validity of oral dying declarations. Therefore, there is no bar to using oral dying declarations as evidence to prove the guilt of the accused. Therefore, the dying declaration is sufficient to hold that the accused has committed the offence.

16. Coming to the motive aspect, it is the consistent case of the prosecution from the beginning that earlier, there was a quarrel between the deceased and the accused regarding money; in the said quarrel, the deceased beat the accused; and hence, the accused bore grudge against the deceased. Thus, he hatched a plan to eliminate the deceased. In that connection, the accused came to the room of the deceased, took him away, and stabbed him on the vital parts, resulting in the death of the deceased, which establishes the motive behind the offence. In the examination under Section 313 Cr.P.C., the accused has not explained about

the incident, except denying the charges leveled against him. When the Court re-appreciated entire evidence and tested by touchstone of law relating to circumstantial evidence, we find no error in the finding recorded by the learned trial Court, as the motive, each and every circumstance relied upon by the prosecution form chain of events so as to connect the appellant with the crime beyond a reasonable doubt.

17. For the reasons stated above, the Criminal Appeal is dismissed. The conviction and sentence recorded against the appellant/accused for the offence punishable under Sections 302 IPC in the Judgment, dated 03.06.2013, in Sessions Case No.421 of 2010, on the file of the III Additional District and Sessions Judge, Ranga Reddy District, are hereby confirmed.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 20.03.2019
TJMR