

Note : The Appellant/Accused was directed to be released on bail by the Order of the High Court dated 02-01-2012 in CrI.A.M.P.No. 2236 Of 2011 in CrI.A.No. 1491 of 2011 .

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY ,THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SMT JUSTICE M.G.PRIYADARSINI

CRIMINAL APPEAL NO: 1491 OF 2011

Appeal under Section 374 (2) Cr.P.C aggrieved by the Judgment dated. 15/11/2011 Passed in SC.No.339 of 2010 on the file of the Court of the Metropolitan Sessions Judge, at Hyderabad .

Between:

Pathlavath Kishan, S/o P.Tukaram, aged about 20 years. Occ: Painter, R/o 10-3-162/66/FF, Near Railway Qtrs, Ambedkar Nagar, Secunderabad.

...APPELLANT/ACCUSED

AND

State of AP., Rep.by its, Public Prosecutor, High court of AP Hyderabad.

...RESPONDENT

Counsel for the Appellant :M/s. NASEEB AFSHAN

Counsel for the Respondent : PUBLIC PROSECUTOR (TG)

The Court made the following: JUDGMENT

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

CRL.A.NO.1491 OF 2011

JUDGMENT

The court of Metropolitan Sessions Judge, Hyderabad vide judgment in S.C.No.3390 of 2010 dated 15.11.2011 found the accused – Pathlavath Kishan s/o P.Tukaram guilty for the offence under Section 324 IPC and sentenced him to suffer simple imprisonment for six months and to pay a fine of Rs.500/-, and in default in payment of fine, to suffer imprisonment for a period of one month. Assailing the same, the accused filed the present appeal.

2. The case of the prosecution is that P.W.1, father of the prosecutrix (P.W.3), gave a written complaint on 10.04.2010 at 00-10 hours to Sub-Inspector of Police, P.S. Thukaram Gate – P.W.5 stating that his elder daughter by name Kum. Mariamma (P.W.3), aged about 18 years, was working as maidservant, and as usually she was proceeding to Ambedkar Nagar, to attend her regular work. In the meanwhile, the accused by name Kishan, aged about 20 year, resident of Ambedkar Nagar, was following her for the last one week and teasing her, asking to love and marry him. That, his daughter, got humiliated, and informed to her elder brother David – P.W.2, on the Saturday evening. On that, his son (P.W.2) went to the said Kishan at Ambedkar Nagar, and asked him as to why he was teasing his sister. On that, the said Kishan took out a knife from his pocket and stabbed

in the stomach of his son P.W.3, three times, and on his cries, the locality people rushed there. That on getting information, he (P.W.1) rushed to the spot and shifted the injured (P.W.2) to Gandhi Hospital, Secunderabad in an auto with the help of local people, and admitted him for treatment. With these allegations, P.W.1 lodged Ex.P-1 report.

3. During the course of investigation, the statements of L.Ws.1 to 3 (P.Ws.1 to 3) were recorded and the accused was arrested on 11.4.2010 and remanded to judicial custody.

4. After completion of investigation, P.W.5, who is the investigating officer, filed charge sheet against the accused for the offence punishable under Section 307 IPC.

5. The court has taken cognizance of the offence under Section 307 IPC, and supplied copies to the accused. After hearing the accused and the prosecution, court framed the charge under Section 307 IPC, and the same was read over to the accused in the vernacular language, for which he pleaded not guilty, and claimed to be tried.

6. To prove the case of the prosecution P.Ws.1 to 6 were examined and Exs.P-1 to P-4 were marked.

7. The accused was examined under Section 313 Cr.P.C. with regard to the incriminating material appearing in the evidence of the prosecution witnesses, and he denied the same, and also reported no evidence.

8. The trial court found the accused guilty for the offence under Section 324 IPC, and accordingly convicted and sentenced him. Assailing the same, the present appeal is filed by the accused.

9. Learned counsel appearing for the appellant submits that there is absolutely no evidence to find the accused guilty and there are discrepancies, which disprove the case of the prosecution, but the trial court without appreciating the same, found the accused guilty. Learned counsel has taken this court through the entire evidence on record, and submitted that the judgment of the trial court may be set aside and the accused may be acquitted of the charge.

10. On the other hand, learned public prosecutor supporting the impugned judgment of the trial court sought to dismiss the appeal.

11. In view of the facts and circumstances of the case, and the rival contentions of both the counsel, the issue that arises for consideration is whether the impugned conviction and sentence can be sustained?

12. To consider the above issue, it is necessary to examine the evidence available on record.

13. P.W.1 is the father of the prosecutrix (P.W.3) as well as P.W.2, the injured. He deposed that he is the resident of Ambedkarnagar, Rail Nilayam, Secunderabad, and that he is a petty vendor; L.W.2 (P.W.2) is his son, and that he knew the accused, who resides in their batsi (locality); that his daughter informed him that the accused used to tease her and propose for marriage every day whenever she go for work; that on 10.04.2010 at about 7.00 p.m., his son David (P.W.2), went to the house of the accused and asked him about the teasing, then accused stabbed his son; that when he came to know that the accused stabbed his son, immediately he rushed to the spot, and found his son in a pool of blood; that he along with basthi persons shifted his son to Gandhi Hospital; that he found three stab injuries on the stomach of P.W.2; on the same night in the early hours, he went to police station and gave a complaint; and that the police examined him and recorded his statement, which is Ex.P-1 complaint. He was cross-examined, and nothing contrary to his chief examination could be elicited by the defence counsel.

14. P.W.2 is the injured and the brother of P.W.3. He deposed that he is the resident of Ambedkarnagar, Rail Nilayam, Secunderabad; that P.W.1 is his father, L.W.3(P.W.3) is his sister; that

he knew the accused; that he resides in their locality; that the accused was insisting his sister to marry him, and teasing her; that she told him the same; on that he proceeded to the house of accused and asked him why he was teasing his sister; that accused went inside the house and brought one knife, and stabbed on the left side abdomen and back; that the injury was bleeding; that the persons present there witnessed the incident, and he was taken to Gandhi Hospital. He was cross-examined, and there is no contradiction with his chief.

15. P.W.3 is the prosecutrix. She deposed that P.Ws.1 and 2 are her father and brother respectively; that he knew the accused; that he resides in their locality; that the accused used to ask her to love him, and marry him, and used to tease her; that she informed to her brother P.W.2, about the said incident at 7.00 p.m. on 10-04-2010; that her brother went to the house of the accused and asked about the accused teasing her; and that there was clash between them, and the accused stabbed her brother; that she came to know about that through her relatives; that she went there and found her brother with bleeding injuries; that he was shifted to Gandhi Hospital and that the police examined and recorded her statement. She was cross-examined, and she denied the suggestion that accused was not teasing her.

16. P.W.4 is the Casualty Medical Officer, Gandhi Hospital, Secunderabad at the relevant time. He deposed that on 10.04.2010 at 8.15 p.m., patient by name David (P.W.2) aged about 21 years came to the Casualty, Gandhi Hospital, with alleged history of stabbing by knife at 7.45 p.m., by known person by name Kishan in East Marredpally. He has examined the injured and found the following injuries:

1. Lacerated injury of size 2 x 1 x 0.5 cm. on the right side of chest;
2. Lacerated injury over the right scapular region of size 1 x 0.5 x 0.5 cm.
3. Another lacerated injury over the left scapular region of size 1 x 0.5 x 0.5 cm.

He further deposed that the patient was referred to C.T. Surgery Department; that Ex.P-2 is the 'accident register extract' issued by him; that the injury can be either simple or gricvous and that the same can be caused by a small knife; and that the injury was fresh, aged below one hour.

17. P.W.5 is the Sub Inspect of Police working at the relevant time at P.S. Tukram. He deposed that on 10.04.2010 P.W.1 lodged a complaint before him and he registered a case in Cr.No.40/2010 u/sec. 324 IPC and issued FIR; that Ex.P-3 is the FIR issued by him; that immediately he shifted P.W.2 - injured, to Gandhi Hospital for treatment; that on the same day; he instructed one Dhan Raju, Police Constable to record the statement of the injured; that on 11.4.2010 he

recorded the statements of P.Ws.1 to 3; that on 11.4.2010, the accused was arrested and produced before the Hon'ble Court for judicial remand, and after collecting the medical certificates, he filed charge sheet. Ex.P-4 is the medical certificate issued by Superintendent, Gandhi Hospital, Secunderabad, in which it is mentioned that the injury is gricvous.

18. In the cross-examination he deposed that knife was not seized from the scene of offence.

19. P.W.6 is the Assistant Profession in Cardiac Surgery, Gandhi Hospital. He deposed that on 10.04.2010, P.W.2 was admitted in Traumatology ward in Gandhi Hospital, and treated as in-patient from 10.04.2010 to 14.4.2010; that P.W.2 sustained a lacerated wound on his right side of chest, right scapular region and left scapular region; that the above said lacerated wound was a penetrating injury, which caused damage to his lung on the right side, leading to right lower zone consolidation with plural effusion; that the above said injury sustained by P.W.2 is grievous in nature; that he brought the case sheet pertaining to P.W.2, and he is filing it into court on that day (i.e., date of giving deposition); that Ex.P-4 is the case sheet consists of 16 pages; covered with two papers; that he endorsed on Ex.P-4, as the injury is grievous in nature; and at page No.1, he signed on Ex.P-4.

20. In the cross-examination he admitted that the case sheet was not given to Inspector of Police or Investigating Officer.

21. The gravamen of the charge as per the contents in Ex.P-1 report is that the accused used to tease the prosecutrix when she goes to work, and used to aske her to love and marry him, and that when she informed the same to her brother P.W.2, he is stated to have gone to the house of the accused, and that when he questioned the accused, the accused got wild, took knife from his pocket, and stabbed P.W.2 on his stomach, causing bleeding injuries and that immediately, the accused was shifted to Gandhi Hospital for treatment, where he was initially examined by P.W.4, the Casualty Medical Officer, and issued Ex.P-2 extract of accident register, and later the injured was shifted to Traumatology Ward, where P.W.6 treated him as inpatient from 10.4.2010 to 14.4.2010 and issued Ex.P-4 case sheet.

22. As per the complaint the case of the prosecution is that when P.W.2 went to the house of the accused to question him as to why he is teasing his sister, on that, the accused took knife from his pocket and stabbed P.W.2 on his stomach, causing bleeding injuries. But P.W.2, in his examination-in-chief deposed that when he went to the house of the accused, the accused went into the house and brought one knife and stabbed him on the left side abdomen and back, causing bleeding injuries. From this statement, it is not clear

whether the accused took out the knife from his pocket or went inside the house and brought the weapon. There is discrepancy in this regard.

23. It is pertinent to note that none of the witnesses have stated that the accused has an intention to kill P.W.2, and even as per their evidence, P.W.2 himself went to the house of the accused, and that accused never invited him with an intention to kill. Even assuming for a moment that the accused really stabbed P.W.2, certainly P.W.2 would have sustained grievous injuries, and further his clothes would have drenched with blood. But surprisingly no blood stained clothes, and blood stained earth, and control earth, were seized. Further the crime weapon was not seized. P.W.5, the Investigating Officer, in his cross examination has categorically admitted that knife was not seized from the scene of offence.

24. Further as per the evidence of P.W.1, when he came to know about the incident, he rushed to the spot and found his son in a pool of blood and that he along with basthi persons shifted his son to Gandhi Hospital and that on the same night in the early hours, he went to the Police Station and gave a complaint. As per P.W.5 who is the Investigating Officer, on 10.04.2010, P.W.1 lodged a complaint before him and he registered the same as a case in Cr.No.40 of 2010 under Section 324 IPC, and issued FIR, marked as Ex.P 3 and that he immediately shifted P.W.2 to Gandhi Hospital for treatment.

Here there is discrepancy with regard to shifting of the injured to the hospital, i.e., whether it was by P.W.1 and basti people, or by P.W.5, the Investigating Officer. However, the fact remains that P.W.2 was admitted in Gandhi Hospital and initially he was treated by P.W.4 in the Casualty Ward, and later he was admitted as in-patient and treated by P.W.6.

25. P.W.1 deposed that when he went near the scene of offence, his son was in a pool of blood, but as noted in the preceding paragraph, no blood stained clothes were seized, and no control earth and the blood stained earth were also seized, and no rough sketch of the scene of offence is prepared, to fix the place of incident.

26. As per the evidence of P.W.2, the injured, there are persons who have witnessed the incident, but no independent witness was examined, except P.Ws.1 and 3, who are not the eye witnesses.

27. P.W.4 is the Casualty Medical Officer, Gandhi Hospital, Secunderabad and deposed about the lacerated injuries on P.W.2 and he issued Ex.P-2, which is the extract of the accident register. But curiously before the court he deposes that the injury can be either simple or grievous and the same can be caused by a small knife. As already noted, the crime weapon was not seized by the prosecution.

28. P.W.6 is the Assistant Professor, who treated the injured from 10.04.2010 in Traumatology ward during the period from 10.4.2010 to 14.4.2010 and he produced Ex.P-4 case sheet before the court and in the cross-examination, he admitted that he has not given the said case sheet to Inspector of Police or Investigating Officer. Here it is also important to note that why P.W.6 has suddenly appeared before the court and produced Ex.P-4 - case sheet, without giving the same to the Investigating Officer, and there is no proper explanation in this regard.

29. Thus in the above evidence, there are many discrepancies, and hence it cannot be said that prosecution has proved the guilty of the accused beyond all reasonable doubt. In the decision reported in **PUBLIC PROSECUTOR v. N. NARAYANA¹**, the Apex Court held that when there are many discrepancies in the evidence of prosecution witnesses, the accused is entitled for benefit of doubt.

30. For the foregoing reasons, I am of the considered opinion that the accused is entitled to benefit of doubt and the trial court without considering the discrepancies in the evidence of prosecution witnesses, found the accused guilty, which cannot be sustained.

¹ 2002(1) ALT CrL 272 (A.P.)

31. Accordingly the conviction and sentenced recorded by the trial court is set aside and the appeal is allowed. The bail bonds executed by the accused / appellant shall stand cancelled.

32. Interlocutory Applications pending, if any, shall stand closed.

//TRUE COPY//

SD/-B.S.CHIRANJEEVI
JOINT REGISTRAR
SECTION OFFICER

To,

1. The Metropolitan Sessions Judge, at Hyderabad (With Records)
2. The Sub-Inspector of Police, Tukaramgate Police Station, Secunderabad.
3. Two CCs to Public Prosecutor, High Court for the State of Telangana, at Hyderabad. (out)
4. One CC to SRI. NASEEB AFSHAN Advocate [OPUC]
5. Two CD Copies
6. One Spare Copy

CDL

HIGH COURT

DATED:14/07/2022

JUDGMENT

CRL.A.No.1491 of 2011



ALLOWING THE CRIMINAL APPEAL.

ATM-8
16/9/2022