

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 1177 of 2008

JUDGMENT:

1. The appellant was charged for the offence under Section 302 IPC. However, the Additional Metropolitan Sessions Judge, Cyberabad, NTR Nagar Hyderabad convicted the appellant for the offence under Section 304(II) IPC vide judgment dated 15.09.2008 in S.C.No.671 of 2007 and sentenced to undergo Rigorous Imprisonment for a period of five years. Aggrieved by the same, present appeal is filed.

2. It is the case of the prosecution that the deceased is brother of P.W.1. The appellant and the deceased were friends. On 11.05.2007 at about 12.00 noon, P.W.1 went to the house of the deceased to give tiffin. The house of the deceased was situated nearby the house of P.W.1. When she went to the house of the deceased at 12.00 noon, she found the appellant and the deceased were playing cards. Again P.W.1 went back to the house of the deceased around 1.00 p.m, when she was about to enter the house, the appellant/accused came out

from the house and his shirt was stained with blood. P.W.1 entered into the house and found the deceased in a pool of blood and the playing cards were scattered on the floor. On seeing the deceased injured, P.W.1 shouted for help and the neighbors came. Immediately, P.W.1 lodged complaint at 2.00 p.m, which is Ex.P1 stating that the appellant/accused herein had murdered her brother.

3. Prior to the arrest, the police, on the basis of the complaint, proceeded to the house of the deceased and conducted scene of offence panchanama and also sketch was drawn at the scene of offence. Having received the complaint, the police, during the course of investigation, apprehended the appellant/accused herein on 15.05.2007 and seized one cream colour pant light green colour shirt with blood stains.

4. Learned counsel for the appellant/accused would submit that P.W.1 is the only witness to the alleged incident and she was planted to speak against the appellant/accused herein. It is highly improbable that when tiffin box was given at 12.00 noon, she again went to the house of the deceased brother at

1.00 p.m. No reason is given as to why she again went to the house of her deceased brother. He further argued that the deceased had many enemies, for which reason, anyone must have attacked him. Since P.W.1 is a planted witness and even according to her she is not a witness, the finding of the trial Court has to be reversed.

5. Learned Assistant Public Prosecutor contends that the circumstances under which the appellant/accused was arrested and seizures were affected, which are blood stained shirt and pant would clearly show that it was the appellant and none else who was responsible for causing the death of the deceased.

6. The appellant was seen by P.W.1 at the residence of the deceased while playing cards. It is not disputed during the course of cross-examination that the deceased and the appellant are friends. Further, it is suggested that the deceased must have died due to the differences with his wife.

7. P.W.4 is witness to the scene of offence panchanama and also the inquest proceedings. He deposed that it was at the

instance of the appellant/accused that the blood stained pant and shirt, which are MOs.4 and 5 were seized. According to P.W.9, both the deceased and the appellant visited his wine shop and after consuming liquor, they left the place. Further, the appellant/accused came back to the wine shop and purchased liquor and went back.

8. The prosecution has proved that the appellant was present in the house of the deceased on the day when the deceased was dead. It is for the appellant/accused to explain under what circumstances the deceased died as he was last seen in the company of the deceased by P.W.1 and also while the appellant/accused was leaving the house with the blood stains on his pant and shirt. Further, absconding of the appellant from the scene of offence is also a circumstance to infer that it was the appellant/accused who was responsible for causing the death of the deceased.

9. In the said circumstances, in view of above mentioned discussion, there is no doubt that the appellant/accused herein has caused the death of the deceased. However,

keeping in view that the appellant/accused was in drunken condition, even according to the prosecution case, the trial court finding that there was no intention on the part of the appellant/accused to kill the deceased, this Court deems it proper to reduce the sentence to the period already undergone.

10. In the result, the conviction imposed by the Additional Metropolitan Sessions Judge, Cyberabad, in S.C.No.671 of 2007 vide judgment dated 15.09.2008, against the appellant-Accused for the offence under Section 304(II) of IPC, is confirmed. However, the sentence of imprisonment imposed by the learned Sessions Judge is modified to that of the period which the appellant/accused has already undergone.

11. Accordingly, the Criminal Appeal is partly allowed. As a sequel thereto, miscellaneous applications, if any pending, shall stand closed.

K.SURENDER, J

Date: 12.07.2022

kvs

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