

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

**MONDAY, THE EIGHTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE P.SREE SUDHA**

CRIMINAL APPEAL NO: 311 OF 2023

Appeal filed under Section 374(2) of Cr.P.C., against the Judgment dated 18.07.2014 passed in S.C.No. 550 of 2013 on the file of the Principal Sessions Judge at Karimnagar.

Between:

1. Smt.Rihana Begum, W/o Mushthyak Ahammed Aged 58 years, R/o Abadi Jammikunta, occ. House wife Karimnagar District. FTC No.6499
2. Mohd. Siddiq Ahammed, S/o Mushthyak Ahammed, occ. un employee Aged 28 years, R/o Abadi Jammikunta, Karimnagar District. CT No.6498

...ACCUSED/APPELLANTS

AND

State of Telangana, rep. by Public Prosecutor High Court of Hyderabad

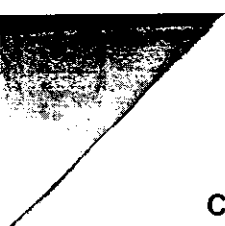
...COMPLAINANT/RESPONDENT

I.A. NO: 3 OF 2023

Petition under Section 389(1) of Cr.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend sentence and release the petitioners on bail pending disposal of the criminal appeal against the judgment passed in S.C. No. 550 of 2013 dated 18.07.2014 on the file of the court of Principal Session Judge at Karimnagar.

I.A. NO: 4 OF 2023

Petition under Section 389(1) of Cr.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the sentence and release the petitioners on bail pending disposal of the CRLA.No. 311/2023 against the Judgment passed in S.C.No. 550/2023 dated 18-07-2014 on the file of the Court of Principal Session Judge at Karimnagar.



Counsel for Appellants : Sri B. YUVRAJ

Counsel for the Respondent : ADDITIONAL PUBLIC PROSECUTOR

The Court delivered the following: JUDGMENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CRIMINAL APPEAL No.311 of 2023

JUDGMENT: *(per Hon'ble Smt. Justice P.Sree Sudha)*

This appeal is filed against the Judgment dated 18.07.2014 in S.C.No.550 of 2013, passed by the learned Principal Sessions Judge, Karimnagar.

2. The case of the prosecution is that as per the complaint dated 19.03.2013 given by the brother of the deceased, A.1 and A.2 alleged to have committed murder of the deceased. To prove the guilt of the accused, prosecution examined P.Ws.1 to 17 and marked Exs.P1 to P13 on their behalf and also marked M.Os.1 and 2. The trial Court after considering the oral and documentary evidence on record, convicted A.1 and A.2 under Section 235(2) of Cr.P.C and sentenced them to undergo imprisonment for life and also to pay a fine of Rs.100/-, in default to suffer Simple Imprisonment for a period of one month each for the offence punishable under Section 302 r/w 34 of IPC. Aggrieved by the said Judgment, accused preferred the present appeal.

3. The learned Counsel for the appellants/accused mainly contended that the trial Court erred in convicting the accused basing on the evidence of P.Ws.1 to 14. There are no eye witnesses to the occurrence. In the investigation made by P.Ws.16 and 17, there was no disclosure of finger prints of A.1 and A.2 from the body of the deceased. As per the evidence of P.W.8, A.2 would get job on voluntary retirement of deceased 5 years prior to retirement, as such the death of the deceased would not fetch any employment to A.2, but the trial Court erred in appreciating the evidence of witnesses. The brother of A.2 was not examined by the prosecution and it was stated in the trial Court that A.1 was always quarreling with the deceased regarding house site and also regarding the employment of A.2 and thus it was stated that there is no probability for the third person to commit offence. Therefore, requested the Court to set aside the Judgment passed by the trial Court.

4. P.W.1 is the brother of the deceased. He stated that deceased Mushtyak Ahammed, was his younger brother. A.1 is the wife of the deceased, A.2 is the younger son of the deceased and one Sadiq Ahmed is the elder son of the deceased. The deceased ~~was~~ died on 19.03.2013. While he was at Jagtial, his another brother by name Md.Ishaq Ahmed informed him about

the death of the deceased, on such information he along with his mother came to Jammikunta by 12:00 noon and found the dead body of his brother near the trees in the backyard of his house. At that time, both A.1 and A.2 were present in the house and the elder son of the deceased by name Sadiq Ahmed was not present in the house. When he enquired A.2 about the death of the deceased, he informed that his father went out in the night to attend nature call, but he did not return back in the night and that in the morning he found the dead body of his father near the trees in the backyard of the house, as such he gave a complaint under Ex.P.1 on 19.03.2013. In the complaint he also stated that there were disputes between the deceased and his wife right from the date of marriage, as such he expressed his doubt on A.1 and A.2 and stated that they are responsible for the death of the deceased. He further stated that they might have killed his brother, so that A.2 would get employment on compassionate grounds. He also stated that his father got Ac.0 - 02 gts of house site at Jagtial. He and his brother i.e., deceased are entitled to have equal share, but as the deceased was innocent his father instructed him to give the share of the deceased after his retirement, as such A.1 and A.2 were not happy and insisted the deceased to get his share from him. In the Cross-examination, he stated that his father got one

old house and two guntas of vacant site at Jagtial. He also stated that division of properties was effected two years after the death of his father. He had not visited the house of the deceased since the date of marriage of the deceased with A.1. There is no cordial relation between him and accused. It was suggested to him that he gave wrong complaint against the accused to grab the share of the deceased in the house site, but he denied it.

5. P.W.2 is another brother of the deceased, who accompanied P.W.1 at the time of giving complaint. He further added that A.1 used to beat the deceased at house as well as in the office of the deceased and unable to bear the harassment, once he made an attempt to commit suicide by jumping into a well, but he was saved by P.W.10. In the Cross-examination he stated that his father was having two wives. P.W.1 and deceased are the children of first wife of his father and there are four issues to the second wife of his father. His father gave house property to him and to his three brothers and the house site of two guntas was given to P.W.1 and deceased with equal shares. He also stated that about 6 years back, deceased attempted to commit suicide, but he did not remember the date and they have not registered any case against the deceased under Section 309 of IPC or against A.1. It was suggested to him that accused

were implicated in this case to grab the entire house site, but he denied it.

6. P.W.3 is the neighbor of the deceased. He stated that deceased and A.1 lived happily, but sometimes quarrels took place between them, but he did not know the reason. At about 9:00 AM, he came to know about the death of the deceased and found the dead body of the deceased near trees in the backyard of the house and turned hostile. P.W.4 is the part time sweeper in the office of M.E.O, Jammikunta. He stated that A.1 used to beat the deceased in the office, but he did not know the reason and he turned hostile. P.W.5 is the tailor by profession. He stated that deceased used to come to Mosque to offer prayers. On two occasions he found A.1 quarreling with the deceased and A.1 used to ask amounts from the deceased and he also turned hostile. P.W.6 is the immediate neighbour of the deceased. He stated that A.2 informed him that he found the dead body of his father near bubble trees in the backyard of the house of the deceased. He went there and saw the dead body and informed the same to P.W.2 over phone. He also stated that deceased and accused joined as tenants in his neighbouring house about four months prior to the death of the deceased. In the Cross-examination, he stated that he was not in visiting

terms with the deceased and accused and they never visited his house. He also stated regarding the quarrel between accused and the deceased.

7. P.W.7 is the colleague of the deceased. He stated that deceased never revealed to him about his relationship with his wife and children. A.1 used to come to office along with deceased to receive salary and he turned hostile. P.W.8 was the Head Master and F.A.C of Mandal Educational Officer, Jammikunta. He stated that once A.1 requested him to provide employment to A.2 in the place of deceased. He informed that employment for A.2 can be provided after getting voluntary retirement of the deceased just before 5 years of his superannuation. In the Cross-examination, he admitted that he had not stated before the Police regarding the employment of A.2. P.W.9 is the Photographer, who took photographs under Ex.P5. P.W.10 is the person who saved the deceased when he fell in a well and attempted to commit suicide about six years back. In the Cross-examination, he stated that he did not know about the family affairs of the deceased prior to the attempt. He was ~~not~~ in talking terms with the deceased even prior to his attempt to commit suicide.

8. P.W.11 stated that deceased was his tenant for two years before his death and paid Rs.500/- per month towards rent. He further stated that there were disputes between accused and the deceased, but he did not know the details. In the Cross-examination, he stated that both of them quarreled in his presence. P.W.12 stated that he know the elder son of the deceased by name Md.Sadique. On the next day of the death of the deceased, he informed him that both A.1 and A.2 killed his father by gagging mouth of the deceased and by throttling. When he along with Md.Sadique went to the house of A.1 and A.2 and questioned them, they revealed that they killed the deceased because of the dispute with regard to the house site at Jagtial and also for the sake of employment for A.2. He went to the police station along with A.1 and A.2 and handed over them to police. In the cross-examination, he stated that he had no personal acquaintance with both the accused. He also stated that Md.Sadique met him at about 11.30 am or 12.00 noon and explained about the incident for 45 minutes. He went to the house of accused in the evening hours at about 4.30 pm and stayed there for one hour and both the accused were handed over to police on the same day at about 5.30 pm. P.W.13 is the Panch witness for inquest Panchanama, marked under Ex.P.7. MO's.1 and 2 were recovered in his presence. P.W.14 is the

panch witness for confession panchanama. He stated that A.1 revealed that she closed the mouth of the deceased and A.2 throttled the deceased. They have also stated that they revealed the incident to P.W.12 and he produced them before the police.

9. P.W.15 is the Doctor who conducted autopsy over the dead body of the deceased and issued post mortem examination report under Ex.P.8. As per Ex.P.9 there was no poisonous substance found in the viscera submitted to RFSL. Basing on Ex.P.9 he issued final opinion stating that cause of death is due to cardio respiratory failure due to throttling-homicidal under Ex.P.10. P.W.16 is the Investigating Officer who received Ex.P.1 and registered a case in Crime No.72 of 2013 under Section 174 of Cr.P.C and issued FIR under Ex.P.11. After the opinion issued by P.W.15, he altered the provision of law from 174 Cr.P.C to 302, 201 r/w 34 of IPC. In the Cross-examination, he stated that Sadique Ahmed was present at the house of accused when he visited the house for the purpose of investigation. His investigation revealed that there are property disputes between the deceased and A.1. He also stated that P.Ws.2 to 6 stated that there are property disputes between deceased and his elder brother P.W.1. He also stated that deceased was aged about 57 years as on the date of death.

P.W.8 did not state before him that A.1 came to office and enquired regarding employment of A.2 and he informed her that deceased should retire voluntarily five years before retirement. P.W.17 stated that P.W.12 informed him that both the accused confessed the offence of committing murder of the deceased on 22.03.2013 and they were arrested on the same day and produced before the Court of JMFC and filed charge sheet. In the cross-examination, he admitted that Sadique Ahmed was not examined by him and he was not cited as witness in the charge sheet.

10. The main contention of the prosecution is that A.1 was picking up quarrel with the deceased on two grounds one is that he had sold away his share of land to P.W.1 without her consent or knowledge and another is that he has to provide employment to his second son i.e., A.2. P.Ws.3, 4, 5 and 7 turned hostile, but all the witnesses stated that there were disputes between the deceased and accused and A.1 and A.2 were picking up quarrel with the deceased on one or other pretext. P.W.8/Head master stated that once A.1 asked him regarding the employment of A.2, but he had not stated so before the Police at the earliest point of time, which is an important factor in his evidence. P.W.1 stated that two years after the death of his

father, they have partitioned the properties and two guntas of house site was allotted to him and deceased. He further added that his father instructed him to handover equal share to the deceased after his retirement as he was innocent, whereas the contention of the A.1 is that deceased sold away his share of land to P.W.1 without her knowledge. P.W.2 stated that P.W.1 and deceased are children of the first wife and they have given house site equally. He along with three others are the children of second wife, they were given house property in equal share. P.W.10 stated that six years back when deceased attempted to commit suicide, he saved him, but he did not know about the disputes between him and his family members. It was never revealed to him though he was having acquaintance with the deceased even prior to the attempt to commit suicide. P.W.1 subsequently made allegation against A.1 and A.2 and stated that his brother attempted to commit suicide at the instance of A.1, but he had not given any complaint. In fact, after the marriage of the deceased with A.1, he never went to their house. It was suggested to him that he implicated A.1 and A.2 to grab the share of his brother and the conduct of P.W.1 adds strength to the said argument. A.2 informed to P.W.1 that his father went to attend nature calls in the mid-night, but he did not return. When they searched for him in the morning, they found his

dead body near the trees in the backyard of the house. His dead body was found in the backyard of the house, but not in the house. The deceased might have attempted to commit suicide six years back, but they were living together from the past 26 years. Moreover, as per the evidence, A.1 was quarrelsome, that does not mean that A.1 and A.2 killed the deceased. It was also stated by the witnesses that A.1 was taking the salary from the deceased and she was questioning him for selling of land to P.W.1 without her knowledge and she was also asked him to provide employment to A.2. If A.1 and A.2 killed the deceased, A.2 will not get employment on compassionate grounds.

11. There is no eye witness to the occurrence. In the inquest report, A.1 and her two sons were suspected for the death of the deceased. Though the Sadiq Ahmed/elder son was present in the house at the time of investigation, he was not examined and he was not cited as witness. It is the case of the prosecution that Sadhiq Ahmed informed to P.W.12 that his mother and brother killed his father. He might have informed the same to the Police, but why he kept quiet till next day and informed to P.W.12 was not explained by the prosecution. It was projected as extra judicial confession made by accused to P.W.12. In fact, A.1 and A.2 have not confessed before P.W.12 directly. Sadhiq

Ahmed/elder son of the deceased stated about the involvement of A.1 and A.2 to P.W.12, when he enquired A.1 and A.2 admitted the same and thus P.W.12 surrendered them before Police. Immediately after the death of the deceased, A.1 and A.2 have not fled away from that place, they were available for investigation. Basing on the suspicion of P.W.1, investigation was diverted towards the implication of A.1 and A.2 and all the witnesses stated regarding the fact that A.1 was quarrelsome and A.2 was also picking up quarrel with his father, but many of them stated that they did not know about the family affairs of the deceased, A.1 and A.2. When A.1 lived with the deceased for more than 26 years, why should she along with A.2 kill the deceased was not established.

12. Admittedly, deceased was not killed within the four corners of the house, his body was found in the backyard which is an open place accessible for several persons. When extra judicial confession of P.W.12 is not relied upon, there is no other evidence to connect accused with the offence. No doubt, as per the medical evidence, it is a case of homicide and he died due to throttling, but it is for the prosecution to connect the accused with the offence. As on the date of accident, elder son was not in the house, but how he came to know that A.1 and

A.2 killed the deceased was not established. Prosecution failed to prove the said aspect. Even if he suspects the involvement of A.1 and A.2, it is for him to explain to Police, but he has not stated so. Presently, Police have not examined the elder son even after recording the statement of P.W.12 for the reasons best known to them. Initially, it was suspected that he might have some poison, but later, after receiving FSL report, it was ruled out and held that it is a case of throttling. Non-examination of the elder son and the implication of A.1 and A.2 by P.W.1 are two crucial circumstances which were not properly investigated by the investigation agency. Though the father of P.W.1 gave two guntas of land to P.W.1 and deceased equally, he had not handed over the same and simply stated that his father instructed him to hand over the same to his brother after retirement. The deceased was aged about 57 years as on the date of incident and due for retirement in one year and thus the involvement of P.W.1 cannot be ruled out. As already stated the dead body of the deceased was found in the backyard of the house, but not in the house. The said place is accessible for several persons. There is no other evidence to connect the accused with the offence, but the trial Court erred in convicting the accused. In a Criminal case, it is for the prosecution to establish the guilt of the accused beyond

reasonable doubt. In this case, it was established that the death of the deceased is homicide and there are disputes between deceased and A.1 and A.2, but there is no evidence to connect the accused with the offence, as such the benefit of doubt is to be extended to the accused. Therefore, A.1 and A.2 found not guilty for the offence under Section 302 r/w.34 of IPC. They are in jail from 18.07.2014.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence passed by the learned Principal Sessions Judge, Karimnagar, against A.1 and A.2 for the offence punishable under Section 302 r/w 34 of IPC, by judgment dated 18.07.2014 in S.C.No.550 of 2013, is hereby set aside and they are acquitted under Section 235(1) of Cr.P.C for offence under Section 302 r/w 34 of IPC and they shall be set at liberty forthwith, if they are not required in any other case and their bail bonds shall stands cancelled. M.Os.1 and 2 shall be destroyed after expiry of appeal time.

Pending miscellaneous petitions, if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

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SECTION OFFICER

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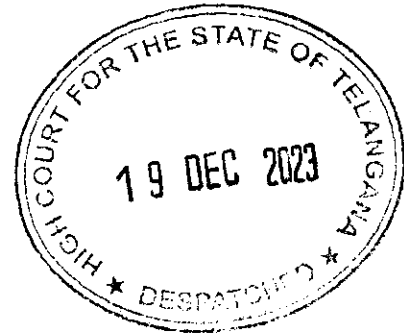
1. The Principal Sessions Judge at Karimnagar, Karimnagar District.
2. The Superintendent, Central Prison, Chenchalguda, Hyderabad.
3. The Station House Officer, Jammikunta Police Station, Karimnagar District.
4. One CC to Sri. B. YUVRAJ, Advocate [OPUC]
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
6. **Two CD Copies**

HIGH COURT

DATED:18/12/2023

JUDGMENT

CRLA.No.311 of 2023



ALLOWING THE CRIMINAL APPEAL

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19/12/23
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