

NOTE : The Appellant/ Accused No.1 was directed to be released on bail by the order of the High Court dated 20.09.2013 in CrI.A.M.P.No. 1386 of 2013 in CrI.A.No. 755 of 2013

[3299]

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

**TUESDAY ,THE THIRTIETH DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL Nos: 755 AND 1119 OF 2013

CRLA.No. 755 of 2013

Appeal filed under Section 374(2) of Cr.P.C., against the Judgment dated 19.09.2013 passed in S.C.No. 261 of 2010 on the file of the Court of the I Additional Metropolitan Sessions Judge, Hyderabad.

Between:

Mohd. Umeedullah Khan, S/o. Kaleemullah Khan, Age: 26 years, Occ: Student, R/o. 16-2-145/A/7/2 and 3, New Malakpet, Hyderabad.

...Appellant/Accused No.1

AND

The State of Telangana., Represented by its Public Prosecutor, High Court of Telangana, Hyderabad.

...Respondent/Complainant

**Counsel for the Appellant : Sri Vinod Kumar Deshpande, Senior Counsel for
M/s. D Radha Rani**

Counsel for the Respondent : Assistant Public Prosecutor

CRLA.No. 1119 of 2013

Appeal filed under Section 374(2) of Cr.P.C., against the Judgment dated 19.09.2013 passed in S.C.No. 261 of 2010 on the file of the Court of the I Additional Metropolitan Sessions Judge, Hyderabad.

Between:

Mohd. Kaleemullah Khan, S/o Late Fatheullah Khan, Age: 63 years, Occ: Business R/o. 16-2-145/A/7/2 and 3 New Malakpet Hyderabad.

...Appellant/Accused No.2

AND

The State of Telangana., Rep. by its Public Prosecutor High Court of
Telangana., Hyderabad

...Respondent/Complainant

Counsel for the Appellant : Sri P Sreenivas Rao

Counsel for the Respondent : Assistant Public Prosecutor

The Court delivered the following: COMMON JUDGMENT

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL Nos.755 & 1119 OF 2013

COMMON JUDGMENT:

CRIMINAL APPEAL No.755 OF 2013

1 This criminal appeal under Section 374 (2) Cr.P.C is filed challenging the judgment dated 19.09.2013 passed in Sessions Case No.261 of 2010 on the file of the Court of the I Additional Metropolitan Sessions Judge, Hyderabad, wherein and whereby the appellant / Accused No.1 herein was found guilty and was convicted under Section 235(2) Cr.P.C. and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/- in default, to suffer simple imprisonment for six months for the offence punishable under Section 307 IPC, further sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for six months for the offence punishable under Section 25 (1-A) of Arms Act and further sentenced to suffer simple imprisonment for five years and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for six months for the offence punishable under section 27 (1) of Arms Act.

2 The facts that germane for filing of the present criminal appeal, succinctly, are as follows:

3 There were disputes between the appellant Mohd. Umeedullah Khan and the injured Md.Mukrram Ali Siddiqui (P.W.2). On 21.4.2007 the appellant received information that a pamphlet was pasted on the notice board of their college making some comments by insulting him and other students. In that regard the appellant thought that the victim Md.Mukram Ali Siddiqui might have done these things to damage the reputation and supremacy in the college. On that premise, the appellant, with a view to eliminate P.W.2, brought a licensed revolver of his father from his house and opened fire against P.W.2 on 21.4.2007 at 1.15 p.m. in the college of Deccan College of Engineering and Technology, Daru Salam, Hyderabad. P.W.2 received gut shot injuries. The appellant was caught hold by the students and security personnel of MLA and have removed the revolver from the appellant and handed over him to police when they came to the scene of offence later. In the meanwhile, P.W.2 was taken to Care Hospital, Nampally, Hyderabad where he was admitted

and later he was taken to Apollo hospital, Hyderabad. Hence the charge.

4 In order to prove the guilt of the appellant, the prosecution examined as many as 15 witnesses as P.Ws.1 to 15 and got marked Exs.P.1 to P.25, Ex.X.1 and M.Os.1 to 11. On behalf of the defence, no oral evidence was let in, but Exs.D.1 to D.13 were marked.

5 On appreciation of the entire evidence, both oral and documentary, available on record, the learned I Additional Metropolitan Sessions Judge, found the appellant guilty of the charged offences and sentenced him as stated supra. Hence the present appeal.

6 Sri Vinod Kumar Deshpande, the learned senior counsel, contended as follows:

7 The doctor who treated P.W.2 (the victim in this case) was examined and no medical record whatsoever has been placed on record though the investigating officer P.W.15 deposed that he

collected the medical certificate of P.W.2 as well as the discharge summary.

8 It is his further contention that the trial Court convicted the appellant solely basing on the evidence of P.Ws.1, 2, 4 and 5 who are interested witnesses. P.Ws.1, 2, 4 and 5 are the members of the gang by name "Dominators" formed by P.W.2 as deposed by the investigating officer. Moreover, there are cases registered against the victim and the appellant.

9 The learned senior counsel further contended that no independent witness has been examined in respect of the alleged firing by the appellant in spite of several other persons were present at the time of incident.

10 The learned senior counsel further contended that the punch witness P.W.6 is a planted and interested witness. P.W.6 is resident of the same locality where P.Ws.1 and 2 reside. It is his further contention that the revolver MO1 does not contain the finger prints of the appellant and that the cotton swabs collected by the investigating officer from the hands of the appellant do not contain any gun shot

residue as admitted by the ballistic expert (P.W.12). He further submitted that the evidence of P.W.1, the injured, is self contradictory since in his chief examination he deposed that he received injury on his right buttock, but in his cross examination he deposed that he sustained injuries on his left buttock. Accordingly he prayed to allow the appeal and set aside the conviction and sentence imposed against the appellant / accused No.1. The learned senior counsel for the appellant further contended that though the name of one Mr.Nadeem was figured in the FIR, his name was subsequently omitted. He also contended that in order to identify M.O.1 revolver no identification parade was conducted.

11 On the other hand, the learned Assistant Public Prosecutor appearing for the State submitted that the trial Court has considered the material available on record meticulously and has passed a reasoned judgment, which does not warrant interference from this Court and the appeal is liable to be dismissed.

12 Now the point for consideration that arise for consideration in this appeal is, 'whether or not the prosecution has proved the guilt of

the appellant / accused No.1 for the charged offences beyond all reasonable doubt'.

13 . In order to come to a just conclusion, it is apposite to go into the evidence of the prosecution witnesses. P.W.2 the victim in this case deposed that on 21.4.2007 at 1.00 pm after collecting hall tickets, he and P.W.1 came out from the main college building and sat on the steps of Owaisi Medical Centre and were discussing about the examinations and P.W.2 was standing at that time. At about 1.15 pm, the appellant came there along with his friend Nadeem who stood at a distance from them and the appellant came near to them and asked them to leave the place and threatened them and abused them in filthy language. By so saying, the appellant removed revolver from his left side of the waist and on seeing the revolver, they all afraid and started running away from there. Then the appellant chased them and fired against the deceased indiscriminately. He (P.W.2) received four revolver bullet injuries. First injury received by him was on his left side of his abdomen and another injury on his back, one more injury on his right abdomen. When he fell down the appellant shot at him and he received injury on his left thigh. At that

time, the appellant was having many bullets in his hand. In the meanwhile, MIM party workers and persons who were standing nearby them came there and caught hold the appellant by overpowering him. P.Ws.1 and 5 shifted him (P.W.2) to Care Hospital, Nampally by a car. He has informed the hospital authorities that he was shot with a revolver by a known person i.e. appellant No.1. M.O.1 is the revolver that was used by the appellant.

14 The evidence of P.Ws.1, 4 and 5 went on similar lines. Their evidence is corroborated with each other on the aspect of the appellant shooting the victim with M.O.1 revolver. Though P.Ws.1, 4 and 5 are related to each other, their ocular evidence cannot be brushed aside simply. They deposed on the material aspects in one voice and there are no contradictions much less any material contradictions in their evidence.

15 The evidence of P.W.3 who was working as police constable, City Security Wing, Hyderabad and who was gunman to the then sitting MLA of Karwan constituency is to the effect that on 21.4.2007 he proceeded along with the MLA to Darushalam and reached at

12.30 pm and when the MLA entered the MIM office, he was standing outside the office along with another gunman. While so at about 1.20 or 1.30 pm, they heard some sounds of fire crackers. They saw the students running at different places and one student was lying on the ground near to a small building which is situated nearby to the main building. One person was holding a revolver in his hands. When his MLA and another MLA were proceeding to that person lying on the ground, he and the other gunman also went towards the spot. In the meantime some students caught hold the person who was holding revolver and beating him with sticks and hands. Then they separated the said person holding the revolver in his hand from the hands of the students who were beating him. Thereafter, some students lifted the injured to hospital. P.W.3 identified the appellant as the person who was holding gun on the said date and who was separated from the hands of the other students. Though P.W.3 was not a direct witness to the incident, his evidence clinchingly establishes the circumstances immediately before and after the incident of firing.

16 The evidence of P.W.6, who is a panch witness, is to the effect that the police seized the revolver and bullets and cartridges from the possession of the appellant in his presence. From the evidence of P.W.12 coupled with the evidence of P.Ws.1, 2, 4 and 5, it can safely be concluded that M.O.1 was used in the commission of offence.

17 The defence took a plea that though there were some other persons available at the scene of offence, the prosecution did not examine any independent witness in the Court in order to prove the guilt of the appellant. It may be true that the prosecution did not examine any other person available at that point of time and place, but in view of the categorical and consistent evidence of P.Ws.1, 2, 4 and 5, this Court is of the considered view that the prosecution proved the fact that the appellant opened fire at P.W.2 due to which P.W.2 sustained bullet injuries. The injuries sustained by P.W.2 can be said to be grievous in nature in view of the evidence of P.Ws.10 and 13, though no X-Ray film was produced. P.W.2 also deposed the same injuries as stated by P.Ws.10 and 13. In view of the ocular evidence, the non production of X-Ray film pales into significance.

18 The predominant contention of the learned counsel for the appellant is that P.Ws.1, 2, 4 and 5 are interested witnesses. But P.W.3 is a gunman of MLA, who is not known to the prosecution witnesses. His evidence also clinchingly establishes that he identified the appellant as the person who was holding gun on the said date and who was separated from the hands of the other students.

19 Though the name of Nadeem was figured in the FIR his name was deleted in the charge sheet. The police, after conducting a detailed investigation, have come to a conclusion that said Nadeem has no role in commission of the offence by the appellant. Hence his name was deleted. But that is not a fatal to the prosecution case. Moreover, P.Ws.1 and 2 have categorically stated that the appellant only fired at P.W.2. So question of manipulation in deleting the name of the said Nadeem does not arise at all. Moreover, none of the eye witnesses for the prosecution viz., P.Ws.1, 2, 4 and 5 did speak about the involvement or any overt acts of said Nadeem in the commission of the offence by the appellant herein. Further, as rightly observed by the Court below the injured person and the persons interested in

the injured person will not leave the person who actually attacked the injured to implicate some other person who is not at all concerned for the injuries sustained by the injured. Therefore, the judgment of the Hon'ble Supreme Court in **Jalpat Rai vs. State of Haryana**¹ has no application to the facts of the present case.

20 Coming to the issue of *mens rea* or motive for the appellant to cause harm to P.W.2, it is culled out from the investigation as well as in the evidence that there were differences between the appellant and P.W.2 inasmuch P.W.2 used to tease the appellant in the college by ragging him. So the appellant having bore grudge on P.W.2 in that angle thought of eliminating or causing some harm to P.W.2 brought the revolver of his father and opened fire at P.W.2. The appellant being student of II Year B.Tech, must have been well aware that firing with a revolver will cause death. So it can be concluded that the appellant was having intention and knowledge that his act would certainly kill the victim.

¹ (2011) 14 SCC 208

21 The learned senior counsel would further argue that there are discrepancies in the evidence of the prosecution witnesses. Of course, there might be some discrepancies because the incident had happened in the year 2007 and the trial in the trial Court was conducted in the year 2013. So, in the time gap of six to seven years, the incident must have been faded in the thoughts of the witnesses. Even though there were some discrepancies they are minor and do not deviate the case of the prosecution.

22 Though the investigating officer has not followed the guidelines or the rules prescribed in the Police Manual in handling the weapon and sending it to the expert, in view of the consistent and cogent evidence of the eye-witnesses examined by the prosecution this aspect cannot be given much credence. So also, there is deficiency in conducting investigation with regard to issuance of arrest card wherein the investigating officer noted the time when the accused was arrested as 13.15 hours. In the instant case the incident took place on 21.4.2007 at 13.15 hours only. This is only a typographical defect in preparation of the arrest card, which admittedly was

prepared by a subordinate of P.W.15 and which was signed by him. But this cannot take away the case of the prosecution since the incident had taken place in a broad day light in the presence of so many students and public, who have categorically stated that the appellant has committed the offence.

23 The prosecution has also filed Ex.P.24 showing the sanction order to prosecute the appellant under the Arms Act. Besides examining the witnesses to prove the guilt of the appellant for the offence punishable under Section 307 IPC, the prosecution has also produced the MO1 revolver which was used in commission of the offence by the appellant, which, in my considered opinion, the appellant has also committed the offences under the Arms Act. M.O.1 is a licensed revolver of the father of the appellant.

24 The learned senior counsel relied on the decision of the Hon'ble Supreme Court in **Pankaj vs. State of Rajasthan**². The facts of the said case are not applicable to the facts of the case on hand for the reason that in the said case the Hon'ble Supreme Court held that

² 2016 (16) SCC 192

when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. But here in the instant case, the prosecution proved the motive for the commission of the offence and also established the manner and series of incident without any hesitation.

25 The learned senior counsel further relied on the decision of the Hon'ble Supreme Court in **Jai Prakash Tiwari vs. State of Madhya Pradesh**³. In the said case the Hon'ble Supreme Court observed that when there is absence of independent evidence corroborating the statements made by the complainant, serious doubts regarding the recovery of the material objects, the version of the prosecution has to be thrown out. But in the instant case, besides the evidence of P.Ws.1, 2, 4 and 5, P.W.3 who is an independent witness was examined. His evidence is fully corroborated with the evidence of the injured as well as the other eyewitnesses. So the said decision also has no application to the facts of the present case.

³ 2022 SCC OnLine SC 966

26 The learned senior counsel further relied on the decision of the Hon'ble Supreme Court in **Chhota Ahirwar vs. State of Madhya Pradesh**⁴. The facts of the said case were that when heated arguments were going on and the complainant therein urged the main accused not to interfere as he was in no way concerned, but the main accused Khilai took out a pistol from the pocket of his trousers and pointed it towards the complainant. When the complainant therein told the main accused not to fire, the appellant – accused exhorted the accused Khilai to kill the complainant. Thereafter the main accused Khilai fired at him. In the light of the above facts and circumstances, the Hon'ble Supreme Court held that even though there may be some evidence that the main accused took out a pistol and opened fire, the prosecution has miserably failed to establish any common, premeditated and prearranged intention jointly of the appellant and the main accused to kill the complainant therein. Whereas in the instant case the facts are that there was previous enmity between the victim P.W.2 and the appellant as P.W.2 used to tease the appellant and keeping that in

⁴ (2020) 4 SCC 126

mind the appellant with an intention to eliminate PW.2 fired at him. So the facts of the said case are not applicable to the case on hand.

27 The learned senior counsel further relied on the decision of the Hon'ble Supreme Court in **Deepak Kumar vs. Ravi Virmani**⁵. The facts of the said case are also not applicable to the facts of the present case as there is ample evidence available on record in the instant case in the form of P.W.3, who is an independent witness, which was not available in the said case cited supra.

28 No doubt, in the instant case the prosecution has not filed the discharge summary issued by the Care hospital where the victim was treated. But that itself is not fatal to the case of the prosecution inasmuch as P.W.13 deposed that on examination of P.W.2, he found bullet injury in the left hypochondrium below the costal margin, a bullet injury in the left buttock, a bullet injury in the left upper thigh lateral aspect and a bullet injury in the right side back of the chest and that the above said injuries are grievous in nature. The said injuries spoken to by P.W.13 are corroborated with the evidence of

⁵ (2002) 2 SCC 737

P.W.2 - the victim. The aspect of sustaining bullet injuries by P.W.2 was also certified by PW.10 and the same can also be verified from the evidence of P.W.13.

29 The learned senior counsel contended that the medical certificate issued by the CARE hospital does establish that the appellant / accused was inflicted injuries upon him. Therefore, a safe conclusion can be drawn that the appellant also sustained injuries due to the scuffle / altercation with the deceased and that he has not fired but one Nadeem whose name had been deleted by the investigating agency must have fired and fled away and that he is being shielded by the investigating agency.

30 However, this Court does not sail with the contention of the learned senior counsel for the simple reason that it is an admitted fact that the appellant had stolen the pistol from the bedroom of his father who is a licence holder of the pistol and there is existing rivalry between the victim and the appellant and so far as the injuries as stated in the CARE hospital are concerned, it can be possible in such an incident the petitioner must have suffered injuries as there is a

mob which has overpowered the appellant and in that process of overpowering some altercation must have taken place. That itself does not mean that the accused / appellant has not committed any offence as canvassed by the learned senior counsel. Therefore, that contention of the learned senior counsel does not deserve any consideration.

31 For the aforementioned reasons, I am of the considered view that the prosecution has proved the guilt of the appellant for the offences punishable under Sections 307 IPC and under Sections 25 (1-A) and 27 of the Arms Act beyond reasonable doubt.

CRIMINAL APPEAL No.1119 OF 2013

32 Sri Krishna Prasad, learned counsel for the appellant in this appeal contended that the pistol which has been examined by the laboratory does not contain the number and it is not the same pistol which has been recovered from the scene of offence and therefore the prosecution failed to establish that which pistol has been used for commission of the offence and that the appellants have been falsely

implicated. However, it is an afterthought and it has not been contended before the trial Court and hence the same cannot be argued before this Court. Therefore, this Court does not see any reason to appreciate the stand taken by the learned counsel on this point.

33 The learned counsel for the appellant further submitted that as per the statutory provision the fine prescribed was only Rs.2,000/- for the offence under Section 30 of the Arms Act, whereas the court below has imposed a fine of Rs.10,000/-.

34 During the pendency of the appeal, it is brought to the notice of this Court that the appellant in this appeal died on 11.09.2021 and a death certificate issued by the competent authority has been filed. In view of the same, this appeal is liable to be dismissed as abated. However, since the under Section 30 of the Arms Act, the appellant in this appeal must have been sentenced to pay a fine of Rs.2,000/- only, but the court below imposed fine of Rs.10,000/-. Therefore, the fine of Rs.10,000/- imposed against the appellant in this appeal is reduced to Rs.2,000/- and it is directed that the legal heirs of the

appellant in this appeal are entitled to refund of the balance amount and they can take the same from the Court below on production of necessary and relevant documents and without furnishing any security, after appeal time is over.

35 In the result, Criminal Appeal No.755 of 2013 is dismissed confirming the judgment dated 19.09.2013 passed in Sessions Case No.261 of 2010 on the file of the Court of the I Additional Metropolitan Sessions Judge, Hyderabad. The appellant is directed to serve out the remaining period of sentence.

36 Criminal Appeal No.1119 of 2013 is dismissed as abated, however, the sentence of imposition of fine imposed upon the appellant in this appeal is modified to the extent as stated supra.

37 Miscellaneous petitions if any pending in both the criminal appeals shall also stand dismissed.

SD/- B.S. CHIRANJEEVI,
JOINT REGISTRAR.

//TRUE COPY//

SECTION OFFICER

To,

1. The I Additional Metropolitan Sessions Judge, Hyderabad. (with records, if any)
2. The XVI Additional Chief Metropolitan Magistrate, Hyderabad.
3. The Superintendent, Central Prison, Chenchalguda, Hyderabad.
4. The Station House Officer, Habeebnagar Police Station, Hyderabad.
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
6. One CC to Sri P Sreenivas Rao, Advocate [OPUC]
7. One CC to M/s D Radha Rani, Advocate [OPUC]
8. Two CD Copies

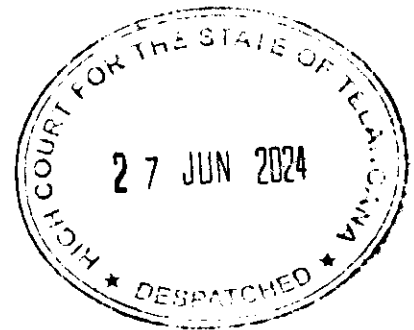
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Ajb

HIGH COURT

DATED:30/04/2024

COMMON JUDGMENT

CRLA.Nos. 755 & 1119 of 2013



**DISMISSING THE CRL.A.No. 755 of 2013
&
DISMISSING THE CRL.A.No. 1119 of 2013
AS ABATED**

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11/66/24
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