

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

Criminal Appeal No.1357 OF 2009

Between:

Dudepaka Chalapathi @ Chalam
and another

... Appellants

And

The State through Public Prosecutor,
PS Marredpally, Secunderabad

... Respondent

DATE OF JUDGMENT PRONOUNCED: 31.07.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRLA. No. 1357 of 2009

% Dated 31.07.2023

Dudepaka Chalapathi @ Chalam
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... Appellants

And

\$ The State through Public Prosecutor,
PS Marredpally, Secunderabad

... Respondent

! Counsel for the Appellants: Sri Ravi Kumar Veluri.

^ Counsel for the Respondent: Public Prosecutor

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1357 OF 2009****JUDGMENT:**

1. The appellants were convicted for the offence under Section 307 r/w 34 of IPC, A1 was also found guilty for the offence under Section 25(1)(a) of Arms Act and A2 for offence under Section 27 of the Arms Act.

2. Briefly, the case of the prosecution is that P.W.1 questioned A3(died) about his illegal activities of grabbing of plots allocated to the members in the locality. On 13.02.2007 in the evening while P.W.2 (victim and injured) was on his scooter going to the under construction plot, he saw P.W.1 and asked him to come to his under construction house. P.W.2 reached the under construction house at 7.15 p.m. P.W.1 also arrived at the scene. P.W.1 saw that A2 fired at him from the back. P.W.2 threw his cell phone at A2. Both A3 (died) and A4(acquitted) were standing near the stair case of the under construction house. P.W.1 started hurling stones on the appellants. The appellant and others fled the scene. According to P.W.2, A2 fired with pistol which was marked as MO1 and A1 was standing with dragger MO2. Having received bullet injury, P.W.2 became unconscious and P.W.1 joined him in the hospital.

Both the appellants were strangers to P.Ws.1 and 2. Test Identification Parade was conducted by the Magistrate at Chenchalguda Jail.

3. On the date of the incident i.e., 13.02.2007, P.W.1 went to the police station around 8.30 p.m and his statement was recorded by the Sub-Inspector of Police in the police station. On the basis of statement, crime was registered for the offence under Section 307 of IPC and Sections 25(1)(a) of the Arms Act.

4. Learned Sessions Judge, having considered the evidence of the witnesses P.Ws.1, 2 and others found that the appellants/A1 and A2 committed the offence and accordingly convicted as stated above.

5. Learned counsel on record was continuously absent, for which reason, Retired District Judge Sri V.Ravi Kumar was appointed to argue the case.

6. Learned counsel Sri V.Ravi Kumar would submit that the evidence of P.Ws.1 and 2 cannot be believed. P.W.2 is a rowdy sheeter and P.W.1 has criminal antecedents. P.Ws.3, 4 and 5 are also interested witnesses. The complaint does not give any details or descriptive particulars of the appellants. Even during the course

of Test Identification Parade, the procedure prescribed was not followed by the learned Magistrate. Further, the police did not take sanction to prosecute the accused under the Arms Act.

7. Learned counsel further argued that it was admittedly under construction house and there is no proof of any light available at the scene. Since the appellants were strangers, the identification cannot be believed. In fact, P.W.2 stated that un-identified person had fired from behind. There are several contradictory statements regarding the incident in so far as P.Ws.1 and 2 are concerned. In the said circumstances, the appellants are entitled to benefit of doubt.

8. On the other hand, learned Public Prosecutor supported the findings of the learned Sessions Judge. It was further argued that there was no necessity for P.W.2 to speak false against the appellants if they were not the assailants. P.W.1 had stated in his complaint that he can identify the persons who have shot at him. Learned Sessions Judge had given adequate reasons for conviction.

9. The defence projected was that P.W.2 who received bullet injury was a rowdy sheeter. He had several enemies in the area. The appellants, who are strangers to P.W.2 would not have caused

injuries. The prosecution has failed to prove any motive on the part of the appellants to kill P.W.2.

10. Motive will have no significance in a case where eye witnesses are available to speak about the incident. If the eye witnesses account is convincing, the Court need not go to the motive aspect. In the present case, P.W.2 is the injured, who has seen A2 firing at him. He threw his cell phone at A2. P.W.1 also came there and hurled stones at A2. The presence of A1, A3 and A4 was also spoken to by P.W.1 at the time of recording his statement at 8.30 p.m in the police station. The said incident occurred at 7.00 p.m and immediately, P.W.1 has taken injured P.w.2 to the police station from where P.W.2 was shifted to Yashoda Hospital. The statement of P.W.1 was recorded at 8.30 p.m i.e., within one hour of the incident. P.W.2 had become unconscious by the time he was taken to the police station.

11. Both P.Ws.1 and 2 and the other witnesses P.Ws.3 to 5 also speak about the incident. There is no contradiction or any kind or any discrepancy amongst the statements of the witnesses which cast any amount of doubt on the case of the prosecution regarding the incident. The injured witness P.W.2 had given the very same version as stated in the complaint by PW1. P.W.1 though friend of

P.W.2, it cannot be said that a false complaint was made against the appellants

12. The Test Identification Parade was conducted since A1 and A2 were strangers.

13. P.W.9, who was working as III Additional Chief Metropolitan Magistrate had conducted the proceedings of Test Identification. P.W.9/Magistrate narrated the procedure adopted by him at the time of Test Identification Parade. There is no infirmity in the procedure followed by the learned Magistrate. During the course of his cross-examination, learned Magistrate was questioned whether A1 was enquired about showing him to the witnesses, earlier to Test Identification Parade. Learned Magistrate answered that he had enquired with A1 and he did not state anything about showing him to the witnesses earlier to the Test Identification Parade. However, A2 had informed the Magistrate that after his arrest and prior to the Test Identification Parade, he was shown to the witnesses.

14. The statement made by the accused to the Magistrate conducting Test Identification Parade that he was shown to the witnesses prior to Test Identification Parade would not suffice. The

details had to be given and the accused should be specific where and under what circumstances the accused were shown to the witnesses. A bald statement stating that they were shown to the witnesses will not in any manner dilute the identification proceedings or the identification of the accused by the witnesses at the time of Test Identification Parade and also subsequently in the Court.

15. P.W.6 is the independent witness to the seizure of fired bullet at the scene. Ex.P2 panchanama was drafted and MO3 is the bullet shell seized from the scene. P.W.10 is the independent witness to the confession of the appellants and also the seizure of MO1 country made revolver, MO7 is the live cartridges and MO3 is the used cartridge. Nothing is elicited from P.Ws.6 and 10 to discredit their evidence.

16. The seized country made revolver and also the cartridge recovered at the scene were sent to Ballistic expert/P.W.8. The expert stated that having compared the firing pin marks on the cartridge seized at the scene of offence and also the cartridge which was testified with MO1 revolver, both were found to have been fired from the same fire arm MO1. He further opined that MO1 pistol

was in a working condition and MO3 used cartridge was fired from MO1 pistol.

17. The scientific evidence and also the eye witness account leave no element of doubt that it was A2 who has fired at P.W.2.

18. A1 was also convicted for the reason of being in possession of a knife at the scene. In the complaint Ex.P1, P.W.1 did not narrate that A1 was holding a knife. Admittedly, the presence of A1, A3 and A4 was spoken in the complaint as present at the scene. However, no overt acts are attributed to A1, A3 and A4. The learned Sessions Judge convicted A1 only for the reason of being at the scene and holding a knife. However, A4 was acquitted since no overt act was attributed. The holding of a knife is a subsequent improvement made by the witnesses. In the absence of the evidence of A1 holding a knife, both A1 and A4 stand on the same footing. Since the version of A1 holding a knife was subsequent improvement made, this Court deems it appropriate to extend benefit of doubt to A1. The conviction under Arms Act against A2 is set aside for not obtaining sanction as required under section 39 of the Arms Act

19. In the result, the conviction against A1 is hereby set aside and confirmed against A2. However, the period of sentence of imprisonment is reduced to the period of seven years under section 307 of IPC. The trial Court is directed to cause appearance of A2 and send him to prison to serve out the remaining part of sentence.

20. Accordingly, the Criminal Appeal is allowed in part. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 31.07.2023

Note: LR copy to be marked.

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1357 OF 2009

Dt. 31.07.2023

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