

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

Criminal Appeal No.359 OF 2009

Between:

Moguram Kanakaiah

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 02.08.2022

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 |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 359 of 2009

% Dated 02.08.2022

Moguram Kanakaiah

... Appellant

And

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rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad

..Respondent.

! **Counsel for the Appellant:** K.Venkatesh Gupta(Legal aid)

^ **Counsel for the Respondent:** Public Prosecutor

> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.359 OF 2009

JUDGMENT:

1. The appellant is convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months for the offence under Section 304(i) of IPC vide judgment in S.C.No.182 of 2008 dated 17.10.2008 passed by the III Additional Sessions Judge (FTC), Asifabad. Aggrieved by the same, present appeal is filed.

2. The case of the prosecution is that the appellant attacked his wife suspecting her character on 06.11.2007 with an axe resulting in her death. The said act of attacking with the axe was seen by P.W.3, who informed appellant's son P.W.1. P.W.1 came to the house and took his mother to the Government Area Hospital, Mancherial and while undergoing treatment, she died. P.Ws.1 and 2, who are son and daughter-in-law stated that the appellant was suspecting that his wife was having affairs with others, as such, they were always fighting with each other.

3. The only witness who speaks about the alleged attack by the appellant is P.W.3. On information by P.W.3, P.W.1 had lodged complaint before the police. P.W.3 stated in his chief examination that he tried to peep into the house of the appellant and found axe in his hands and when he tried to stop him, by that time he had already caused injuries on the left neck, left jaw and left eye. He tried to jump over the wall, but the appellant threatened him with axe. However, during cross-examination, he deposed as follows:

“As I was doing second shift I came back to my house at 11.00 p.m and before the incident. On hearing the galata I woke up by 6.00 am then only I went to the scene of offence. By then about 50/60 persons gathered. I did not observe any other male persons attempted to cross the compound wall.”

4. As seen from the evidence of P.W.3 his evidence is that the appellant was holding axe, however, he has not witnessed the attack. Though witness says that he tried to stop him, but by that he had already seen injuries on the left neck, jaw and hand of the deceased. The son, P.W.1 in his evidence deposed as follows:

“My father had mental imbalance and suspects chastity of my mother by stating that some one or the other is coming for her. 8 months prior to the incident such a suspicion over the character of my deceased mother started and also disputes between accused and my deceased mother.”

5. Even according to his son, P.W.1, the appellant has lost his mental balance and was suspecting the chastity of the mother. The other witnesses also do not state about the appellant attacking the deceased. P.Ws.1 and 2 are not witnesses to the incident, but deposed on the basis of information given by PW.3. P.W.4 is another neighbor, who had seen the people rushing to the house of the appellant and observed P.W.3 standing on the wall. As per the prosecution, even P.W.4 did not witness the appellant attacking the deceased. P.W.5 is signatory to the inquest proceedings. P.W6 is the witness to the scene of offence panchanama. P.W.7 is the witness to the confession and subsequent seizure of M.O.3, axe. P.W.7 stated that the appellant confessed in the police station and from there he was taken to his house where appellant produced the axe MO3. It is the specific case of the prosecution that the axe was in the hands of the appellant when 50 to 60 people gathered and saw him. The said confession was on 13.11.2007 and the incident occurred on 06.11.2007 and the deceased died on the same day. The prosecution has not explained as to whether the appellant was absconding or what transpired in between 06.11.2007 to 13.11.2007. Though 50 to 60 persons in the colony had seen the

axe in the hands of the appellant, the prosecution has failed to establish as to what the appellant had done after the accident. None of the witnesses had stated that he had ran away or absconded. However, the arrest is shown on 13.112007 after seven days.

6. There are number of loop holes in the prosecution case, which remained explained; i) That the appellant was mentally not balanced, no explanation is given regarding his mental stability when he was arrested; ii) The incident being witnessed by 50 to 60 people and none speaks about seeing the appellant attacking his wife; iii) the unexplained gap of seven days in apprehending the appellant and what happened to the appellant is not known; iv) the recovery itself is suspicious for the reason of not explaining regarding the acts of the appellant immediately after the alleged incident occurred, as he was holding the axe when 50 to 60 people had gathered and seen him.

7. In the said circumstances, the very genesis of the prosecution case appears doubtful. The actual happening appears to have been suppressed. None of the witnesses had stated that they have seen the appellant attacking his wife. It is not the case of the prosecution

that there was no one else in the house or that only the appellant was present when the incident took place. For the reason of the prosecution not proving its case beyond reasonable doubt, the conviction recorded is liable to be set aside.

8. In the result, the impugned judgment of the trial Court in S.C.No.182 of 2008 dated 17.10.2008 is set aside and the appellant is acquitted. Since, the appellant is on bail, his bail bonds stand cancelled.

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

K.SURENDER, J

Date: 02.08.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

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Date: 02.08.2022.

