

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

Criminal Appeal No. 274 OF 2011

Between:

Methari Gangadhar

... Appellant/
Accused

And

The State of A.P. rep. by its Public Prosecutor
High Court Buildings, Hyderabad, through
P.S., Velpoor.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED: 05.07.2024

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**

+ CRL.A. No. 274 OF 2011

% Dated 05.07.2024

Methari Gangadhar

... Appellant/
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! Counsel for the Appellant: Sri Lakshman Batchu

^ Counsel for the Respondent: Sri Suresh Goud,
Assistant Public Prosecutor

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.274 OF 2011****ORDER:**

1. This Criminal Appeal is filed by the appellant/accused aggrieved by the conviction recorded by the Sessions Judge at Nizamabad, in S.C.No.71 of 2010, dated 05.10.2010, for the offence under Section 304-II of the Indian Penal code and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-.

2. Heard learned counsel for the appellant and learned Assistant Public Prosecutor for the respondent-State.

3. Briefly, the case of the prosecution is that on 21.09.2009, around 3.30 p.m., the appellant attacked the deceased and inflicted injuries with a cart peg on his head. Due to which he sustained injuries and died on the spot. On the basis of the complaint filed, Police registered case.

4. On 29.09.2009, the appellant was arrested in the village and on interrogation, he confessed that he committed the offence and took the Police to his house and produced M.O.5 which is Cart Peg,

with which he allegedly assaulted the deceased. Cart Peg is a wooden piece which is fixed to the wheel to ensure that the wheel does not come off the bullock cart.

5. Having concluded the investigation, charge sheet was filed under Section 302 of the Indian Penal Code. The learned Sessions Judge framed charge under Section 302 of the IPC. The witnesses PWs.1 to 12 and Exs.P1 to P24 were marked on behalf of the prosecution. M.Os.1 to 5 of which M.O.5 is the Cart Peg, were also placed on record by the prosecution.

6. The main witness for the prosecution is PW1. According to his evidence, the deceased was his younger brother. When he went to his house around 3.00 p.m., he found his brother dead under the Tamarind tree and the appellant was at that place. On seeing PW1 and others appellant ran away. Similar is the evidence of PW2 who is the wife of PW1. The other witnesses have all turned hostile to the prosecution case including PW7 who according to prosecution is an eye-witness to the actual attack by accused.

7. The learned Sessions Judge mainly based his finding on the presence of accused at scene and fleeing on seeing PWs.1 & 2 and also recovery of M.O.5-Cart Peg. The said Cart Peg was recovered

at the instance of the appellant and accordingly the Court found that it was admissible under Section 27 of the Indian Evidence Act. In the background of there being disputes in between the deceased and the accused, the Court found that the circumstances were enough to conclude that it was the appellant who had attacked and caused injuries to the deceased, resulting in his death. The hostility of the eye-witness-PW7 is of no consequence.

8. Learned counsel appearing for the appellant would submit that there are several contradictions in the evidence of witnesses. In fact there are no eye-witnesses to the said incident. The only eye-witness which the prosecution relies on, has turned hostile to the prosecution case. In the absence of any direct evidence who have witnessed assault as alleged by the prosecution, the conviction cannot be sustained, only on the ground that he was found at the scene running.

9. On the other hand, learned Assistant Public Prosecutor would submit that adequate reasons are given by the learned Sessions Judge and on the basis of the circumstances of recovery and motive, the learned Sessions Judge has rightly convicted the appellant.

10. PWs.1 and 2 are closely related to the deceased. According to them there was a panchayat held for the reason of there being a dispute regarding the land that was used in between the house of the accused and the deceased. The appellant bore grudge against the deceased and accordingly attacked him. Though, the alleged motive is spoken to by the witnesses, however, as seen from the evidence of PWs.1 and 2, when they went to the scene, PW.1's brother was found lying on the ground underneath the tamarind tree and the accused was present, however, he fled from the scene. Suspecting that the appellant would have caused injuries on account of the disputes, complaint was filed.

11. In Ex.P1, there is no mention that the appellant was found at the scene when PWs.1 and 2 went near the scene. It is specifically mentioned in Ex.P1 that when PWs.1 and 2 went to the scene, they found the deceased with injuries lying under the tree. The presence of the accused at the scene is a subsequent development. Further, regarding motive aspect also PW1 admitted that there was a 'panchayat' which was held in between the deceased and the accused in connection with a lane in between their houses and that the deceased had threatened the accused. The basis on which the trial Court recorded conviction about the

presence of the accused and the disputes in between them, are both subsequent developments, which cannot form the basis for conviction.

12. Appellant was arrested on 29.09.2009. There are no reasons given by the Investigating Officer as to what investigation was done in between 21.09.2009 and 29.09.2009. The appellant belongs to the same village and it is not stated by any of the witnesses that he had absconded. In fact, the appellant was arrested from his house, according to PW.12-Investigating Officer. If the appellant was staying in his house for 8 days and in the same village, it is highly suspicious that as to why arrest was not made. The seizure of M.O.5 is of no consequence, since no blood was found on M.O.5. It is highly improbable that after attacking the deceased, accused stayed in his house and also kept M.O.5 with him in the house.

13. In the said circumstances, on account of there being no substantial evidence to believe the version of the prosecution regarding attack by the deceased and the presence of accused at scene and differences with the deceased are developments, benefit of doubt is extended to the appellant.

14. Accordingly, Criminal Appeal is allowed setting aside the conviction and sentence recorded by the Sessions Judge at Nizamabad, in S.C.No.71 of 2010, dated 05.10.2010, for the offence under Section 304-II of the Indian Penal code. Since the appellant/accused is on bail, his bail bonds shall stand discharged.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

Date: 05.07.2024
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K.SURENDER, J