

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

CRIMINAL APPEAL No. 141 OF 2012

Between:

Kondam Gangadhar
aged 38 years, S/o. Rajalingam
Gharumpalli Mandal, Nizamabad

... Appellant/
Accused

And

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

... Respondent/

DATE OF JUDGMENT PRONOUNCED: 06.06.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 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. 141 OF 2012

% Dated 06.06.2024

Kondam Gangadhar, aged 38 years,
S/o.Rajalingam
Gharumpalli Mandal, Nizamabad

...Appellant/
Accused

And

\$ The State of A.P. rep. by its
Public Prosecutor, High Court of A.P.,
Hyderabad.

... Respondent/

! Counsel for the Appellant: Sri M.Sanga Reddy

^ Counsel for the Respondents: Public Prosecutor for State

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL NO.141 OF 2012****JUDGMENT:**

1. This Criminal Appeal is filed by the appellant/accused questioning the judgment of conviction dated 07.02.2012 in S.C.No.231 of 2011 on the file of the Sessions Judge, Nizamabad, for the offence under Section 304-II of IPC.

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

3. The appellant/accused was convicted for the offence under Section 304-part II of IPC and sentenced to undergo four years of imprisonment. The case against the accused is that he was married to the deceased 18 years prior to the incident. On 02.12.2010 at about 1:00 p.m. the accused went to the house and there was an altercation in between the spouses. In the said altercation, the accused according to the prosecution, grew angry and attacked his wife with sickle. On account of 11 injuries received by his wife, death occurred. According to the opinion of post mortem Doctor-P.W.15, the death was on

account of severe head injury with intracranial hematoma. Ex.P15 is the final opinion.

4. Learned Sessions Judge framed charge under Section 302 of IPC against the accused. P.Ws.1 to 17 witnesses were examined and Exs.P.1 to P.20 were marked on behalf of the prosecution. The prosecution also brought on record M.Os.1 to 5.

5. On the basis of evidence, the learned Sessions Judge found the accused guilty for the offence under Section 302-part II of IPC. Learned Sessions Judge found that though there were no eye-witnesses to the alleged incident, conviction was recorded on the basis of circumstantial evidence. According to the learned Sessions Judge, the circumstances are that (i) the accused was alone present in the house along with the deceased at the time of commission of offence and (ii) the accused also cut his throat with a knife when the deceased fell on the ground with bleeding injuries and the said injury on the neck of the accused is self inflicted. On the basis of the said inference drawn by the learned Sessions Judge, conviction was recorded.

6. Learned counsel appearing for the appellant would submit that there were no eye-witnesses to the said incident. On the basis of alleged circumstantial evidence, the conviction was recorded. He relied on the judgment of the Hon'ble Supreme Court in ***Hanumant Govind Nargundkar vs. State of Madhya Pradesh***¹ and argued that the chain of circumstances must be established beyond reasonable doubt and the said circumstances should unerringly point towards guilt of the accused. In the absence of such circumstances being made out by the prosecution, the question of convicting the accused with the help of circumstantial evidence does not arise.

7. Learned Public Prosecutor supported the findings of the learned Sessions Judge and argued that it was the accused who was alone present in the house when the incident happened. He was also found at the scene which is stated by P.W.1 and P.W.9 during their examination in Court. In the said circumstances, when the accused had inflicted injuries on himself and it was proved that the there were self inflicted

¹ 1952 LawSuit (SC) 46

injuries, the conviction recorded by the learned Sessions Judge cannot be set aside.

8. Having gone through the evidence, P.W.1 and P.W.9 (house owner) evidence is circumstantial in nature. They stated that having received information they went to the house and found the deceased and the accused with bleeding injuries and were lying on the floor in unconscious state, both were shifted to the hospital. However, complaint was given by P.W.1 on 02.12.2010 on the day of incident. The said version of the accused being found on the floor in unconscious state with bleeding injuries was not stated in the complaint. P.W.9 was declared hostile to the prosecution case.

9. The said version of P.W.1 and P.W.9 finding the accused at the scene is contrary to the evidence on record. P.W.17 who is the Investigating Officer stated that he apprehended the accused on 16.12.2010 at 9:00 a.m. at his house. Thereafter, accused confessed the commission of the said offence and he was arrested. The said version of the Investigating Officer is contrary to version given by P.W.1.

10. The prosecution has not brought on record any evidence convincing the Court that there were any injuries on the

accused or that he was treated in a hospital. In the absence of any such evidence being brought on record regarding any such self inflicted injuries and being treated in the hospital, the version of P.W.1 and P.W.9 at the time of trial that accused was found on floor with bleeding injuries, which is contrary to the case of the prosecution and Ex.P.1 cannot be considered.

11. Further, M.Os.2, 3 and 4 which were alleged weapons/instruments used in attacking the deceased were not recovered at the instance of the appellant but found at scene of offence. Learned Sessions Judge having found that no recoveries were effected at the instance of the appellant has erred in coming to a conclusion that the appellant was present in the house and found in unconscious state with bleeding injuries, on the basis of confession of accused and assumptive evidence of P.W.1 and P.W.9.

12. In a case such as this when there is no direct evidence, the Court ought to have relied upon any convincing circumstance to prove the case of the prosecution. Learned Sessions Judge had assumed that the accused was found in the house in unconscious state, without any evidence. Such assumptions contrary to the investigation and evidence on

record cannot be formed basis to find the accused guilty. Since the basis for conviction of the accused by the Sessions Judge is result of his imagination and inadmissible confession, without any admissible evidence, the said conviction has to be set aside.

13. Accordingly, the appeal is allowed and the conviction and sentence imposed against the appellant/accused is hereby set aside. The appellant shall be released forthwith, if not required in any other case. The bail bonds of accused shall stand cancelled. Miscellaneous applications, pending if any, shall stand closed.

K.SURENDER, J

Date: 06.06.2024

Note:

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