

HIGH COURT FOR THE STATE OF TELANGANA

Crl.A.No.1144 of 2013

Between:

Kunamalla Prabhakar.

.....Appellant

And

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

.....Respondent

JUDGMENT PRONOUNCED ON : 26.08.2022

HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

AND

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment ?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals ?
3. Whether Their Ladyship/ Lordship wish to : Yes
see the fair copy of the judgment ?

A. VENKATESHWARA REDDY, J

G. ANUPAMA CHAKRAVARTHY, J

HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY
AND
HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

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For Appellant : Ms. C. Vasundhara Reddy,
Legal Aid Counsel.

For Respondent : Public Prosecutor.

< Gist:

> Head Note:

? CITATIONS:

1. (2020) 4 SCC 33
2. 2019 (1) ALD (Crl.) 665
3. (2021) 5 SCC 572
4. 2022 LiveLaw (SC) 543
5. 1957 SCR 981
6. (1992) 3 SCC 300

C/15

**HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY
AND
HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**

CRIMINAL APPEAL No.1144 of 2013

JUDGMENT : (Per GAC, J)

This appeal is arising out of the judgment dated 29.11.2013 in S.C.No.121 of 2010 on the file of Special Judge for trial of cases under SCs. & STs. (POA) Act-cum-VII Additional District Judge, FAC: VIII Additional District Judge (FTC), Warangal.

2. The appellant is the sole accused. A charge sheet is filed against the accused for the offence punishable under Section 302 of IPC. The trial Court, after considering the evidence on record, convicted the appellant under Section 235(2) of Cr.P.C. for the offence punishable under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/- and in default of payment of fine, to undergo rigorous imprisonment for three months.

3. The brief case of the prosecution is that 4 years prior to the date of incident, the deceased purchased a house from one Bandi

Narsaiah and since then, he along with his family, were residing there and the accused initially intended to purchase the very same house, but as it was purchased by the deceased, the appellant/accused bore grudge against the deceased. About 20 days prior to the incident, the accused set fire to the kirana shop of PW-8, and on noticing the same, when the deceased when questioned the acts of the accused, disputes arose between them. It is the further case of the prosecution that on 11.10.2009, at about 9.00 p.m., the deceased went to the shop of PW-7 and the accused picked up a quarrel with the deceased in the presence of PWs.5 and 6 and also threatened the deceased. At about 11.00 p.m., on hearing the cries of PW-3, PW-2 rushed towards the house of PW-3 and saw the accused going away by hitting the deceased with a boulder on his head. On that, PW-2 rushed to the house of PW-1 and informed about the incident. Basing on the information given by PW-2, on the next day i.e. on 12.10.2009, PW-1 lodged a report/Ex.P-1 to the Police. On 12.10.2009, basing on Ex.P-1/report, PW-13 i.e. the Sub-Inspector of Police, Geesugonda registered Crime No.178 of 2009 for the offence punishable under

Section 302 of IPC and issued FIR i.e. Ex.P-14. The Inspector of Police, Geesugonda tookover the investigation and during the course of investigation, visited the scene of offence, prepared scene observation report, held inquest over the dead body of the deceased in the presence of blood relatives of the deceased and panchayatdars and later forwarded the dead body of the deceased for postmortem examination.

4. Basing on the requisition of Police, PW-12/Doctor conducted autopsy over the dead body of the deceased at Government hospital, Warangal and opined that the cause of the death of the deceased was due to head injury and issued Ex.P-13/postmortem report.

5. Basing on the reliable information, the investigating officer, on 15.10.2009 at 11.30 a.m., apprehended the accused at Manugonda bus stop in the presence of mediators. Further, on the confession of the accused, recovered the material objects under the confession and seizure panchanama and effected arrest of the accused and produced him before the IV Additional Judicial First

Class Magistrate, Warangal for judicial remand. After recording the statements of the witnesses and on receiving the reports from the Doctor, concluded the investigation and laid charge sheet against the accused for the offence punishable under Section 302 of IPC.

6. A charge was framed against the accused for the offence punishable under Section 302 of IPC, readover and explained the same to the accused, for which, he pleaded not guilty and claimed to be tried.

7. On behalf of the prosecution, PWs.1 to 15 were examined and Exs.P-1 to P-19 were marked. The accused was examined under Section 313 Cr.P.C. and he denied the incriminating evidence of the prosecution and pleaded not guilty for the offence.

8. The point for determination is;

Whether the trial Court is proper in convicting the accused/appellant for the offence punishable under Section 302 of IPC and whether the prosecution has proved the guilt of the appellant beyond all reasonable doubt for the said offence ?

9. It is relevant to mention about the relationship between the witnesses and the deceased for better appreciation of the facts. PW.1 and PW-2 are the brother and wife of the deceased respectively. PWs.3 and 4 are the distant relatives of the deceased, PW-5 is the photographer, PWs.6 to 8 are the residents of the same village. PW-9 is the panchayatdar for the crime report as well as for the inquest. PWs.10 and 11 are the panchayatdars for the confession-cum-seizure of material objects, PW-12 is the Doctor who conducted autopsy over the dead body of the deceased, PWs.13 to 15 are the Police officials who registered the crime against the accused, investigated the case and laid charge sheet.

10. The criminal law was set into motion basing on the information given by PW-1, who is the brother of the deceased. The report given by him is Ex.P-1. His evidence disclose that there are disputes between the accused and the deceased in view of the deceased purchasing the house, which the accused intended to purchase and that about 20 days prior to the incident, the accused set fire to the kirana dabba of PW-8, which was questioned by the deceased, for which, the accused bore grudge against the deceased.

His evidence further disclose that while he was in his house at 11.00 p.m., the villagers informed him that the accused murdered his brother and on coming to know the same, he along with his family members, rushed to the scene of offence and found the dead body of the deceased lying in a drainage canal and the face of the deceased was hit with a boulder.

11. In the cross-examination, it is specifically admitted by PW-1 that he mentioned in Ex.P1/report that PW-2 informed him that she found the dead body of the deceased lying with injuries in a drainage canal and the incident occurred in front of the house of PW-3 and that one Chandraiah's house was situated between the houses of the deceased and the accused, further deposed that the accused has his own house. It is also admitted by PW-1 that PW-2 did not inform him as to who has murdered her husband.

12. The evidence of PW-2, who is the wife of the deceased, disclose that the house of the accused is situated back side of their house and the accused used to quarrel with her husband (deceased) for purchasing the house which they have already purchased. Her

evidence further disclose that at about 11.00 p.m., she heard cries of her husband and on that, she immediately rushed out of the house and saw the accused going away after hitting her husband on the head with a boulder, and as a result, the deceased sustained bleeding injuries and died on the spot. Further, her evidence disclose that she raised cries, rushed to the house of PW-1 and informed about the incident, who in turn, lodged a complaint. In the cross-examination, it is admitted by PW-2 that she did not witness the quarrel between the accused and the deceased alleged to have taken place at the shop of PW-8 and further specifically deposed that she informed about the incident to PW-1 at 11.00 p.m., and basing on her information, PW-1 prepared the report (Ex.P-1). However, her evidence in the chief-examination is contrary, as she admitted in her cross-examination that she stated to the Police and PW-1 that as her husband did not turn up, she came out of the house and saw the dead body of the deceased lying with injuries.

13. PWs.3 and 4 are the distant relatives of the deceased but they turned hostile. Exs.P-2 and P-3 are the 161 Cr.P.C. statements of

PWs.3 and 4. Though PWs.3 and 4 are cross-examined by the Public Prosecutor, but nothing was elicited from them to support the case of the prosecution in order to prove the guilt of the accused.

14. PW-5's evidence disclose that at the behest of the Police on 12.10.2009, he went to the scene of offence and as per the instructions of the Police, took the photographs of the dead body of the deceased and later handed over them to the Police along with the C.D., which are Exs.P-4 and P-5 respectively.

15. PWs.6 to 8 are the villagers, who turned hostile and their 161 Cr.P.C. statements were marked as Exs.P-6 to P-8 respectively. Though they are cross-examined by the Public Prosecutor to prove the fact that there were disputes between the accused and the deceased prior to the incident, nothing could be elicited from them.

16. PW-9 is the panch witness to the scene of offence and inquest. His evidence disclose that he was called by the Police and asked to sign over the scene observation panchanama and inquest panchanama, which are Exs.P-9 and P-10 respectively and M.Os.1

to 6 are the wearing apparel, sachets of Ghutka and chappals of the deceased.

17. PW-9 was also declared as hostile and in the cross-examination by the learned Public Prosecutor, it was specifically deposed by PW-9 that he did not made his signature over the material objects, which were alleged to be seized by the Police and that he signed on the panchanamas at the instance of the Police.

18. The evidence of PWs.10 and 11 also disclose that they signed on some written papers at the behest of the Police without knowing its contents and Exs.P-11 and P-12 are their signatures on the confession-cum-seizure panchanama. PWs.10 and 11 also turned hostile and their evidence disclose that they saw the accused for the first time in the Court.

19. The evidence of PW-12 i.e. the Doctor disclose that he conducted autopsy over the dead body of the deceased on 12.10.2009 and found two external injuries corresponding with two internal injuries, which are as follows:

“External injuries:

1. Mandible fracture depressed.
2. Laceration on right eye-brow 4 x 1.5 cms.

Internal injuries:

1. Contusion present on parietal bones.
2. Fracture of base of the skull.”

20. It is opined by PW-12 that the cause of the death of the deceased was due to injuries on his head and the deceased died 12 to 24 hours prior to the postmortem examination. Ex.P-13 is the postmortem report of the deceased. On perusal of Ex.P-13, it is evident that the postmortem examination commenced at 3.00 p.m. and was concluded at 4.00 p.m. on 12.10.2009.

21. The evidence of PW-13 to 15 disclose about registration of crime, investigation done by them and also about the arrest of the accused and filing of charge sheet against him.

22. It is urged by the learned counsel for the appellant that all the material witnesses, except PWs.1 and 2 who are the brother and wife of the deceased respectively, have turned hostile. It is further contended by the learned counsel for the appellant that the evidence of PWs.1 and 2 cannot be relied upon, as there were

improvements and contradictions and benefit of doubt has to be extended to the appellant and prayed to set aside the judgment of the Sessions Court.

23. On the other hand, the learned Public Prosecutor contended that the prosecution has proved the guilt of the accused beyond reasonable doubt and prayed to confirm the judgment of the trial Court.

24. In order to support her contentions, the learned Counsel for the appellant (Legal Aid Counsel Ms.Vasundhara Reddy) relied on the judgment of Hon'ble Supreme Court in **Parvat Singh & others v. State of Madhya Pradesh**¹, wherein, it is held in para 12 as under:

“It cannot be disputed that there can be a conviction relying upon the evidence/deposition of the sole witness. However, at the same time, the evidence/deposition of the sole witness can be relied upon, provided it is found to be trustworthy and reliable and there are no material contradictions

¹ (2020) 4 SCC 33

and/or omissions and/or improvements in the case of the prosecution.”

25. In the judgment of this Court in **Shai Pashamiya v. State of Andhra Pradesh**², relied upon by the learned counsel for the appellant, it is held that mere motive cannot be the sole circumstance to convict the accused in a case based on circumstantial evidence.

26. In another judgment of Hon’ble Supreme Court, relied upon by the learned counsel for appellant in the case of **Mallappa v. State of Karnataka**³, wherein, it is held in para 14 as under:

“Even if the prosecution version that PW.3, PW.5 and PW.6 could and did see the appellant running in front of Devendrappa’s house from the respective positions they were in at the time of occurrence of the incident was accepted, the evidence we would have been left with would have been two accused persons being seen running away. That would have been too thin piece of evidence to convict someone under Section 302 of the Code, applying the principle of *res gestae*.”

² 2019 (1) ALD (CrI.) 665

³ (2021) 5 SCC 572

The aforesaid judgments relied upon by the learned counsel for the appellant are squarely applicable to the facts of the present case.

27. On perusal of the entire evidence, it can be construed that all the material witnesses have turned hostile except PWs.1 and 2, who are related to the deceased. Admittedly, the official witnesses' evidence is also on record which is of PW-5/the Photographer, PW-12/the Doctor and PWs.13 to 15/the Police officials. There is no iota of evidence on record about witnessing the incident except the oral evidence of PW-2. The evidence of PW-1 disclose that PW-2, who is the wife of the deceased, was present at the scene of offence and on his enquiry, PW-2 informed him that the accused hit her husband/deceased with a boulder on his head and fled away from the scene of offence. But on perusal of Ex.P-1, it is evident that on the date of incident, PW-2 waited for the deceased (her husband) upto 10.30 p.m. at her house and then walked out of the house and found the dead body of the deceased in front of the house of Konnamalla Sarojana in the focus of the light and later rushed to the house of PW-1 and informed him about noticing the dead body of her husband and on that,

PW-1 went to the scene of offence, found the dead body of the deceased and suspected that the accused might have murdered the deceased. The oral evidence of PW-1 is contrary to the contents/recitals of Ex.P-1/report, of which, PW-1 himself is the author. As stated supra, Ex.P-1 report is the first and the foremost document which kept the criminal law into motion.

28. It is also important to note that PW-1 admitted in his cross-examination that he did not state to the Police that he came to know about the incident through villagers, which clearly disclose that improvement was made by PW-1 in his evidence as to his knowing about the incident through villagers instead of PW-2 and also stating that PW-1 witnessed the deceased being hit by the accused with a boulder.

29. The cardinal principles of criminal law are that the prosecution shall prove the guilt of the accused beyond reasonable doubt and the accused shall be presumed to be innocent till the offence is proved and benefit of doubt has to be extended in case

the prosecution fails to prove the built of the accused beyond reasonable doubt.

30. In order to prove an offence punishable under Section 302 of IPC, it is for the prosecution to prove that the death of the deceased is caused with a specific motive and the bodily injury is caused by the offender with the knowledge that such injury might cause the death of the deceased and further, the injury inflicted is sufficient to cause the death of the deceased.

31. In the present case, though the oral evidence of PWs.1 and 2 disclose that the deceased and accused had quarrels with respect to the property which was purchased by the deceased long back originally intended to be purchased by the accused, but there is no corroborating evidence to support their contention. Their evidence further disclose that the accused bore grudge against the deceased as the deceased questioned the acts of the accused in setting fire to the kirana shop of PW-8, but, PW-8 and all other witnesses have turned hostile and did not support the theory as to the motive for the accused to kill the deceased. In the absence of proper

corroborating evidence as to the motive for the offence, it can be construed that the prosecution has miserably failed to prove the guilt of the accused.

32. None of the witnesses deposed about the manner of murder committed by the accused in this case, except PW-2. But, PW-2 on one hand deposes that she witnessed the incident and stated the same to PW-1, who in turn, reported to the Police on the next day of the incident i.e. on 12.10.2019. But, as per Ex.P-1 and the oral evidence of PWs.1 and 2, the incident took place before 11.00 p.m. on 11.10.2019. Admittedly Column No.8, of Ex.P-14/FIR disclose that the incident was not reported due to night, which cannot be considered as a reason for delay in registering FIR, which is fatal to the case of the prosecution. Even the recitals of Ex.P-14 does not disclose that PW-2 is the eye witness to the incident though the contents speak that the report/Ex.P-1 was made by PW-1 at the instance of PW-2, who has first witnessed the dead body of the deceased in the drainage. It is also admitted by PW-2 that she did not state to the Police that she witnessed the incident i.e. the accused hitting the deceased on his face with a boulder.

33. The learned Counsel for the appellant relied on the decision of the Apex Court in **Mahender Singh & others v. State of M.P.**⁴, wherein, their Lordships have relied on the judgment reported in **Vadivelu Thevar v. The State of Madras**⁵ and held as under :

“Hence, in our opinion, it is a sound and well established rule of law that the Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely,

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the Court should have no difficulty in coming to its conclusion either way – it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category cases that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

34. As per the above ratio, the witnesses are of three types, (1) wholly reliable (2) wholly unreliable and (3) neither wholly

⁴ 2022 LiveLaw (SC) 543

⁵ 1957 SCR 981

reliable nor wholly unreliable. In the present case, PWs.1 and 2 come under the third category i.e. neither wholly reliable nor wholly unreliable and the trial Court ought to have looked for corroboration in material particulars either direct or circumstantial. But, in the present case, there is no corroboration of material particulars as to the direct or circumstantial evidence of PWs.1 and 2. Hence, it can be construed that the evidence of PWs.1 and 2 would fall in the category of ‘neither wholly reliable nor wholly unreliable’. Therefore, it can be presumed that there is no direct eye witness to the offence and the case of the prosecution rests upon circumstantial evidence.

35. In **State of U.P. v. Dr.Ravindra Prakash Mittal**⁶, the Apex Court held as under :

“The essential ingredients to prove guilt of an accused person by circumstantial evidence are: (1) The circumstances from which the conclusion is drawn should be fully proved; (2) the circumstances should be conclusive in nature; (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence; (4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.

⁶ (1992) 3 SCC 300

.....As pointed out supra, there is no direct evidence to connect the respondent with this offence of murder and the prosecution entirely rests its case only on circumstantial evidence. There is a series of decisions of this Court so eloquently and ardently propounding the cardinal principle to be followed in cases in which the evidence is purely of circumstantial nature. We think, it is not necessary to recapitulate all those decisions except stating that the essential ingredients to prove guilt of an accused person by circumstantial evidence are:

- (1) The circumstances from which the conclusion is drawn should be fully proved;
- (2) the circumstances should be conclusive in nature;
- (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence;
- (4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.”

36. During the course of investigation, the accused was arrested and it is the case of the prosecution that the accused have voluntarily confessed about committing of murder of the deceased and basing on the confession of the accused, M.O.7 i.e. brown colour pant of the accused was recovered. M.O.4 is the stone which is alleged to have been used as a weapon which contains blood stains. There is no forensic evidence before the Court to

prove that the blood stains contained on M.O.4 are that of the deceased.

37. As per Section 25 of the Indian Evidence Act, confession made to a Police officer is inadmissible in law. There is no evidence on record to show that the accused made extra-judicial confession.

38. Section 27 of the Indian Evidence Act envisages as under:

“How much of information received from accused may be proved;—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

Admittedly, the panch witnesses to the confession statement turned hostile and they deposed that they saw the accused for the first time in the Court, but their signatures alone were marked which is in no way helpful to the prosecution to prove the confession of the accused. It is important to mention that the brown colour pant of

the accused alone was seized from the possession of the accused, which will not prove in any manner, the guilt of the accused. There is no evidence on record to prove that the pant of the accused contains blood stains of the deceased. Further, it is not the case of the prosecution also that the pant seized from the possession of the accused contains the blood stains of the deceased. Material objects in this case were not sent for chemical analysis for the reasons best known to the prosecution in order to connect such objects with the crime.

39. The present case is based only on the circumstantial evidence and the prosecution has failed to prove the complete chain of circumstances, connecting the events so as to convict the appellant, therefore, the conviction is bad in the eye of law.

40. In a case of homicide, it is for the prosecution to prove that the accused hit the face of the deceased with M.O.4/boulder, due to which, head injury was caused to the deceased, which ultimately resulted the death of the deceased.

41. The prosecution has miserably failed to prove about the previous enmity between the accused and the deceased, which was alleged to be the motive for committing the crime by the appellant. As seen from the testimony of PWs.1 and 2, it is amply clear that PW-2 could not have witnessed the incident and their evidence would fall in the category of 'neither wholly reliable nor wholly unreliable' witness. As such, no conviction could be based solely on their evidence. The medical evidence could only establish that the death was homicidal. However, it could not have been used to corroborate the version of PWs.1 and 2 that they have witnessed the incident. Therefore, it can be construed that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. As such, the appellant is entitled to be given benefit of doubt.

42. In the result, the Criminal Appeal is allowed. The appellant is found not guilty of the offence punishable under Section 302 of IPC, and accordingly, the conviction and sentence imposed on the appellant vide Judgment, dated 29.11.2013 in S.C.No.121 of 2010 on the file of Special Judge for trial of cases under SCs. & STs.

(POA) Act-cum-VII Additional District Judge, FAC: VIII Additional District Judge (FTC), Warangal, are hereby set aside and the appellant is acquitted of the charged offence. Consequently, the Superintendent, Central Prison, Cherlapally, is directed to release the appellant forthwith, if he is not required in any other case.

Pending miscellaneous applications, if any, shall stand closed.

A. VENKATESHWARA REDDY, J

G.ANUPAMA CHAKRAVARTHY, J

Date: 26.08.2022

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