

HIGH COURT FOR THE STATE OF TELANGANA

Crl.A.No.366 of 2014

DATE: 27.01.2023

Between :

Mohd. Imran Khan.

...Appellant

And

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

...Respondent

JUDGMENT PRONOUNCED ON : 27.01.2023

HON'BLE DR. JUSTICE G. RADHA RANI

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 Lordships/Lordship wish to : No
see the fair copy of the judgment ?

DR. G. RADHA RANI, J

G. ANUPAMA CHAKRAVARTHY, J

**HON'BLE DR. JUSTICE G. RADHA RANI
AND
HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**

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For Appellant : Sri Mettu Goverdhan Reddy,
Advocate

For respondent : Public Prosecutor.

< Gist:

< Head Note:

? CITATIONS :

1. 2022 LiveLaw (SC) 543
2. 1957 SCR 981

C/15

**HON'BLE DR. JUSTICE G. RADHA RANI
AND
HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY
CRIMINAL APPEAL No.366 of 2014**

JUDGMENT : (Per G.Anupama Chakravarthy, J)

This appeal is arising out of the judgment dated 17.02.2014 in S.C.No.532 of 2011, on the file of II Additional Metropolitan Sessions Judge, Hyderabad, whereunder, the appellant was convicted under Section 235 (2) of Cr.P.C. for the offence punishable under Section 302 of IPC and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, and in default of payment of fine, he shall undergo simple imprisonment for a period of three months.

2. The appellant is the sole accused. The case of the prosecution, in nutshell, is that on the intervening night of 1st/2nd November, 2010, the accused murdered the deceased Katimani Pratap @ Sunder Raj by assaulting with a cement tile boulder, causing injuries on the head in front of the shop bearing No. 18-2-342/C, near Seven Temple, Jangammet, Hyderabad.

3. Basing on the report of PW-1, a crime was registered against the accused vide Crime No.377 of 2010, of Chatrinaka Police Station for the offence punishable under Section 302 of IPC. During the course of investigation, the Investigating Officer visited the scene of offence, examined the witnesses, recorded their statements under Section 161 Cr.P.C., conducted inquest over the dead body of the deceased, forwarded dead body for postmortem examination, observed the scene of offence, prepared crime report, apprehended the accused on 11.11.2010, recorded his confession in the presence of panch witnesses, seized the material objects and after receiving the medical reports, laid the charge sheet against the accused for the above said offence.

4. After committal proceedings, the Sessions Court framed charge against the accused for the offence under Section 302 of IPC, for which, the accused pleaded not guilty and claimed to be tried.

5. During the course of trial, the prosecution has examined P.Ws.1 to 10, Exs.P-1 to P-9 and material objects MOs.1 to 8 are

marked. Further, the accused was examined under Section 313 of Cr.P.C. with reference to the incriminating evidence of the prosecution witnesses which was denied by the accused and he also reported no evidence on his behalf.

6. The trial Court, after considering the oral and documentary evidence on record, came to a conclusion that the accused has committed the murder of the deceased, and accordingly, convicted him as aforesaid.

7. Heard learned counsel for the appellant and the learned Public Prosecutor. Perused the record.

8. It is contended by the learned counsel for the appellant that there are no eyewitnesses to the incident but the prosecution has planted PWs.3 and 4 as eye witnesses. It is further contended by the learned counsel for the appellant that the scene of offence is not properly established by the prosecution as the witnesses deposed that the offence took place in front of the shop of PW-1 though it took place in front of the temple and as such the prosecution miserably failed to bring home the guilt of the accused beyond

reasonable doubt, and therefore, the accused is entitled for benefit of doubt and prayed to set aside the judgment of the trial Court by acquitting the appellant.

9. On the other hand, the learned Public Prosecutor contended that the material objects are recovered pursuant to the confession of the accused, which is admissible under Section 27 of Indian Evidence Act and further, the FSL report also disclose that human blood was traced on the clothes of the accused. It is further contended that the trial Court has rightly appreciated the evidence on record and convicted the appellant and there is no error or irregularity in the judgment of the Sessions Court, warranting interference of this Court, and therefore, prayed to confirm the judgment of the trial Court by dismissing the appeal.

10. The points for determination in this case are;

1. Whether the presence of PWs.3 and 4 at the time of incident, near the scene of offence is proved by the prosecution ?
2. Whether the human hair found on the material object/M.O.2 establishes as that of the deceased?

3. Whether the trial Court is proper in convicting the accused for the offence punishable under Section 302 of IPC and Whether the prosecution is able to prove the guilt of the appellant beyond all reasonable doubt for the offence under Section 302 of IPC ?

It is not necessary to reiterate the entire evidence of the prosecution and the relevant evidence will be referred/discussed for answering the above said points.

11. For better appreciation of facts, the evidence of the witnesses is reproduced as follows :

PW-1 is the owner of the shop. His evidence disclose that three months prior to the offence, the deceased came from Bidar and was working under him as a daily labour. Further, the deceased used to stay alone in a rented room at Indira Nagar, Chandrayangutta. On 02.11.2010, while he was in the shop, some passersby informed him that a dead body was lying in a pool of blood, in front of Seven Temple, Jangammet, Falaknama. On that, he along with his father went to the said place, identified the dead body as that of Pratap and opined that some unknown persons might have killed him. His evidence further disclose that on

01.11.2010 at 6.00 p.m., the deceased approached his father Sri Syed Jaffar in a drunken condition and borrowed Rs.50/- from him and on 31.10.2010 evening, the deceased came to his shop and took Rs.200/- from him. It is specifically testified by PW-1 that the deceased was addicted to alcohol and other bad habits. Ex.P-1 is the report preferred by him to Chatrinaka Police Station. M.O.1 is the ash colour pant of deceased.

12. PW-2 is an Auto driver, who was also working under PW-1. He testified that the deceased used to work under PW-1 and about 2½ years back, while he was in the shop of PW-1, he was told that a dead body was near seven temple. On that, he went and identified the dead body as that of Pratap.

13. From the evidence of PWs.1 and 2, it can be construed that they have identified the dead body of the deceased as that of one Pratap, who worked under PW-1 as daily labour and the dead body was found in front of seven temple. Neither PW-1 nor PW-2 have stated as to who has murdered the deceased. It is relevant to mention that Ex.P-1/report also disclose that the deceased was

last seen by Sri Syed Jaffar, who is the father of PW-1 on 01.11.2010 at 6.00 p.m. and by that time, the deceased was in a drunken condition. Ex.P-1 further disclose that some unknown offenders might have murdered the deceased. Ex.P-1 was received by the Station House Officer, Chatrinaka Police Station on 02.11.2010 at 7.45 a.m. and basing on it, a case was registered against unknown offenders for the offence punishable under Section 302 of IPC vide Crime No.377 of 2010 and the original FIR is Ex.P-6.

14. The evidence of PWs.3 and 4 is crucial to the case as they are alleged to be the direct eye witnesses to the incident i.e. the accused throwing the boulder on the deceased, and as a result, the said boulder hit on the head and face of the deceased, causing his death.

15. Whether PWs.3 and 4 witnessed the incident is to be scrutinized as per their evidence, which is point No.1 framed in this appeal.

16. The evidence of PW-3 disclose that about 2½ years back, during the night time, he slept on the footpath near seven temples, Jangammet, Falaknama and at about 11.00 p.m. or so, he heard galata, woke up and found the accused, deceased along with a female quarrelling with each other. Further, the accused took a brick and thrown it on the head of the deceased, but it missed and again, the accused took the same cement brick and hurled it on the head of the deceased and as a result, the deceased fell down on the road with bleeding injury and died on the spot. Out of fear, he ran away.

17. The evidence of PW-4 disclose that about 2½ years back, he along with PW-3 and the deceased slept on the footpath at seven temples and at about 3.00 or 4.00 a.m., they heard a galata. On that, he and PW-3 woke up, rushed to that place, found accused, deceased and one lady quarrelling with each other. Further, accused took a cement boulder and hit the deceased on his head. The deceased ran away a little distance, but the accused chased and hit him on the head with the same cement boulder. As a result, the

deceased fell down on the ground with bleeding injuries. On seeing the same, they ran away from the place.

18. From the above said evidence of PWs.3 and 4, the following discrepancies can be noticed:

1. The time of incident is not tallying -

PW-3 testified that the incident took place at 11.00 p.m. or so, and PW-4 deposed that the incident took place at about 3.00 or 4.00 a.m.

2. The evidence of PW-3 disclose that he alone witnessed the incident, whereas, the evidence of PW-4 disclose that he was present at the scene of offence along with PW-3 and the deceased.

Hence, the presence of PW-4 at the scene of offence was not testified by PW-3. Furthermore, the evidence of PW-1 clearly disclose that the deceased was residing alone in a rented room at Indira Nagar of Chandrayangutta, whereas, the evidence of PW-4 disclose that the deceased slept along with them on the footpath.

3. As per the evidence of PW-3, the accused thrown a boulder on the head of the deceased but it missed and again, the accused hurled the boulder which hit the head of the deceased, as a result, the deceased fell down and died on the spot. Whereas, the evidence of PW-4 disclose that the accused beat the deceased with the same boulder twice on his head. As a result, the deceased fell down with bleeding injuries and he did not notice whether the deceased died at that point of time or not.
 4. Furthermore, neither PW-3 nor PW-4 gave report to the Police about the incident.
 5. As per the evidence of PWs.3 and 4, the presence of one woman was noticed at the scene of offence along with accused and the deceased when they were quarrelling. But for the reasons best known to the prosecution, the said woman was not examined before the trial Court.
19. In a case of homicide, the evidence of Doctor who conducted autopsy over the dead body of the deceased is crucial to the case.

PW-9 is the Doctor and his evidence disclose that he conducted autopsy over the dead body of deceased named Pratap on 02.11.2010 and found 28 ante-mortem injuries over the dead body of the deceased, which are mentioned in Ex.P-7/postmortem examination report of the deceased. It is specifically opined by PW-9 that the cause of the death of the deceased is due to head injury associated with other injuries.

20. Admittedly, the evidence of PWs.3 and 4 only disclose that the accused has hurled boulder on the head of the deceased maximum twice, but as to how the deceased sustained 28 external injuries, was not at all explained by the Prosecution. Moreover, the injuries mentioned in Ex.P-7 disclose that deceased sustained injuries all over his body.

21. In view of the above said five discrepancies from the evidence of PWs.3 and 4, coupled with the evidence of PW-9, it is highly doubtful whether PWs.3 and 4 have witnessed the incident or not, as the ocular evidence of PWs.3 and 4 is not corroborated with the medical evidence.

22. PW-5 is the panch witness to the scene of offence. His evidence disclose that the Police have prepared the scene of observation panchanama/Ex.P-2 and M.Os.1 to 5 (ash colour pant, cement brick, pair of black chappals, underwear, piece of cloth). Except M.O.2, the rest of the material objects belong to the deceased), which were seized from the scene of offence. Ex.P-3 is the rough sketch. On perusal of Ex.P-2, it is evident that the scene of offence is near seven temples at Jangammet, in front of one RCC building consisting of 5 shutter shops, and the dead body of the deceased was found in front of shop bearing No.18-2-342/C. Ex.P-2 further disclose that the panchas are of the opinion that the deceased/Pratap might have been murdered with a boulder/a reddish colour cement tile, by some unknown person or persons. But in Ex.P-3/rough sketch, the dead body is not shown, except the seven temples and the shops, which are quite far away from each other, and therefore, Ex.P-3 is in no way helpful either for the prosecution or for the defence to fix the scene of offence. As stated supra, PWs.3 and 4 testified that the dead body was found near seven temples, which is contrary to Ex.P-2/Scene observation

panchanama, which disclose that the dead body was found in front of the shop bearing No.18-2-342/C.

23. PW-6 is the panch witness to the inquest panchanama. He testified that he visited the mortuary of Osmania Government Hospital at the instance of Police on 02.11.2010 and found one male dead body with an injury on the left side of the head, face and another injury on the back side of the head. Ex.P-4 is the inquest panchanama. On perusal of Ex.P-4, at Column No.9, it is mentioned that there is a head injury with bleeding and jaw of the deceased was broken. Column No.15 of Ex.P-4, the panch witnesses opined that the death of the deceased might have caused by the violent acts of some unknown offenders using the blunt object as boulder in causing injury to the face of the deceased as well as the head, which resulted in the death of the deceased.

24. PW-7 is the panch witness to the confession of the accused and recovery of material objects, pursuant to the said confession. His evidence disclose that on 11.11.2010, at about 2.30 or 3.00 p.m., he along with LW-15/Sri Pappu were called to the Police

Station and they found the accused in Police custody. At the request of the Police, they enquired the accused and he confessed of committing murder of the deceased, for which, a confession statement was drafted. Pursuant to it, the accused have led them and the Police to the graveyard, and produced his shirt and pant i.e. M.Os.6 and 7. Ex.P-5 is the confession and seizure panchanama.

25. On perusal of the evidence of PWs.5 to 7, it is evident that pursuant to the incident, scene observation panchanama, inquest panchanama were held on 02.11.2010. At that point of time, the case was registered against unknown offenders and even during the course of inquest and scene observation, the panch witnesses opined that some unknown person or persons might have murdered the deceased with blunt object such as boulder which ultimately resulted in the death of the deceased. But, as per the evidence of PW-7/panch witness, the accused was found in the Police custody on 11.11.2010 and on enquiry, he confessed his guilt in their presence and subsequent to his confession, the clothes of the accused were seized.

26. PWs.8 and 10 are the Police officials, who registered and investigated the case. Hence, their evidence need not be discussed in detail.

27. The learned Public Prosecutor specifically contended that the prosecution is able to prove the guilt of the accused, as M.Os.6 to 8 were seized, pursuant to the confession of the accused, which is admissible under Section 27 of the Indian Evidence Act. But, on perusal of the judgment of the trial Court, it is evident that the trial Court disbelieved the evidence of PW-7 and categorically held as under :

“the confession is hit by Section 25 of Indian Evidence Act, for the reason that no confession made to a Police officer shall be proved as against a person accused of the offence and consequent to the said confession, the seizure of M.Os.6 and 7 also not believable.”

Therefore, the contention of the learned Public Prosecutor is not at all tenable and much weightage cannot be given, as the appeal itself is preferred by the appellant, challenging the findings of the trial Court. Though recovery pursuant to the confession is admissible under Section 27 of the Indian Evidence Act, the

prosecution has failed to prove that M.Os.6 and 7/clothes contain the bloodstains of the deceased.

28. Therefore, it can be construed that the entire case rests on the confession statement of the accused, which is hit by Section 25 of the Indian Evidence Act. Though it is the contention of the prosecution that PWs.3 and 4 are the direct eye witnesses to the incident, it is highly unbelievable in view of the discrepancies and contradictions in their evidence.

29. But, surprisingly, the trial Court convicted the accused mainly believing the evidence of PW-10 i.e. the investigating officer, which reads as follows:

“According to P.W.10 he seized all the M.Os.1 to 7 from the scene of offence. As seen from Ex.P.2 scene of offence observation panchanama the P.W.10 seized hair collected at the scene of offence from the boulder. This hair was sent to FSL for examination. Ex.P.9 FSL report reveals the said hair is human hair. So, naturally a person hit with a boulder like M.O.2 certainly on that part of the hair will be stick to some extent to the said boulder. In the case on hand also the same thing was done. So, the boulder contains the human hair and this circumstance supports the evidence of P.Ws.1 & 2 and the case of the prosecution. So, when over all circumstances of the case is fairly examined referring to the evidence of P.Ws.1 to 10. I am fully convinced that the accused beat the deceased Pratap with a boulder on the head on the intervening night of 1/2-11-2010 causing death of the

deceased. The evidence of direct witnesses P.Ws.3 & 4 is quite convincing and believable and I have not seen any embellishment or coloured version to disbelieve the same. There may be some natural variation, but that does not mean that P.Ws.3 & 4 have not witnessed the incident. Therefore, for all the reasons discussed supra the evidence of prosecution witnesses is inspiring confidence to accept that the accused committed the murder of the deceased on the intervening night of 1/2-11-2010”.

30. Ex.P-9 is the FSL report marked through PW-10/the investigating officer. On perusal of the FSL report, it is evident that the Assistant Director analysed Item No.2 i.e. “hair strands” and gave biological report that origin of hair in Item No.2 is of human. There is no iota of evidence on record to prove that the hair analysed by the Assistant Director, FSL, belongs to that of the deceased. The investigating officer ought to have taken the sample of the hair strands from the dead body of the deceased, in order to analyse the same to prove that the hair on the boulder and the hair sample of the deceased are one and the same, so that the material object/M.O.2 is the crime weapon, is proved.

31. In a criminal case, it is for the prosecution to connect the crime with that of the crime object and the accused. In the present case, there is no evidence on record to show that the boulder

contains the finger prints of the accused and the hair is that of the deceased. On one hand, the material object/M.O.2 i.e. the cement brick which was seized from the scene of offence as per Ex.P-2/scene observation panchanama. But the FSL report/Ex.P-9 disclose that Item No.8 is a red colour tile which is analysed by the FSL, but not the cement brick. The FSL report further disclose that human blood was detected on Item Nos.1, 3, 7, 8, 11 and 12 and the blood group 'B' was found on Item Nos.1, 7, 8, 11 and 12. But there is no evidence on record to prove that the deceased's blood group is 'B', in order to connect the crime with that of the accused.

32. It is important to note that it is for the prosecution to prove that the accused had inflicted injuries with M.O.2/cement brick and the said brick was forwarded to the FSL for chemical analysis, which contains the blood-stains of the deceased. But, in the present case, a red tile was sent to FSL but not M.O.2. The FSL report i.e. Ex.P-9, is no way helpful to the prosecution to connect the accused with that of the crime weapon i.e. to prove that the cement brick, which was alleged to have been recovered from the scene of offence contains bloodstains of the deceased. As stated

supra, the trial Court itself has disbelieved the recovery of M.Os.6 and 7 pursuant to the confession of the accused, which alleged to contain the blood-stains of the deceased. No iota of evidence was placed before the Court to prove the motive or intention of the accused to murder the deceased. In the absence of oral or documentary evidence, no inference can be drawn against the accused.

33. Admittedly, the death of the deceased is a homicide as per the evidence of PW-9/Doctor and Ex.P-7/the postmortem report of the deceased. In a case of homicide, it is for the prosecution to prove the motive, knowledge and intention for committing the murder of the deceased by the accused and that the accused inflicted injuries on the deceased, having knowledge that the injuries are sufficient to cause the death of the deceased. In the present case, the prosecution has miserably failed to bring home the guilt of the accused beyond reasonable doubt and therefore, the appellant is entitled for benefit of doubt.

34. In the judgment of the Hon'ble Apex Court in **Mahender Singh & others v. State of M.P.**¹, their Lordships have relied on the judgment reported in **VadiveluThevar v. The State of Madras**² 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.”

As per the above ratio, the witnesses are of three types, (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable.

¹ 2022 LiveLaw (SC) 543

² 1957 SCR 981

35. The aforesaid judgment of the Apex Court is squarely applicable to the facts of the present case. In the present case, the evidence of PWs.1 and 2 can be treated as hearsay evidence and the evidence of PWs.3 and 4 comes 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. There is no corroboration as to the material particulars for the evidence of PWs.3 and 4. Hence, it can be construed that the evidence of PWs.3 and 4 would fall in the category of 'neither wholly reliable nor wholly unreliable'.

36. As discussed supra, the presence of PWs.3 and 4 at the scene of offence is highly doubtful in view of the contradictions between their evidence and furthermore, the prosecution has failed to prove that the hair on the cement brick was that of the deceased and also failed to connect the crime weapon with that of the accused. It is pertinent to mention that the crime weapon was seized from the scene of offence but not from the accused pursuant to his confession. Therefore, the trial Court erred in convicting the

appellant and the judgment deserves to be set aside, as the prosecution miserably failed to prove the guilt of the accused.

37. 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 17.02.2014 in S.C.No.532 of 2011 on the file of II Additional Metropolitan Sessions Judge, Hyderabad, is hereby set aside and the appellant is acquitted of the charged offence. The appellant shall be released forthwith, if not required in any other case. His bail bonds shall stand cancelled. The appellant is entitled for refund of fine amount paid, if any. M.Os.1 to 8 shall be destroyed after appeal time is over.

Pending miscellaneous applications, if any, shall stand closed.

DR. G. RADHA RANI, J

G.ANUPAMA CHAKRAVARTHY, J

Date: 27.01.2023

N.B:1. Judgment be forthwith communicated to the
jail authorities concerned.

2. L.R. copy be marked.

(b/o) ajr