

**HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY
AND
HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

Crl.A.No.589 of 2014

DATE: 19.11.2022

Between :

Majumdar Azith @ Baji.

...Appellant

And

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

...Respondent

For Appellant : Ms.Ande Vishala, Legal Aid Counsel

For respondent : Public Prosecutor.

< Gist:

< Head Note:

? CITATIONS :

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

C/15

**HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY
AND
HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

CRIMINAL APPEAL No.589 of 2014

JUDGMENT : (Per G.Anupama Chakravarthy, J)

This appeal is arising out of the judgment dated 20.06.2013 in S.C.No.372 of 2011 on the file of the VII Additional District and Sessions Judge (FTC), Nizamabad at Bodhan.

2. The appellant is the sole accused who was tried before the Sessions Judge for the charges under Sections 302 and 201 of IPC. The Sessions Court convicted the accused under Section 235(2) Cr.P.C. for the said charges and sentenced him to undergo imprisonment for life.

3. The brief case of the prosecution is that the accused was working under one Someshwar Rao (hereinafter referred to as "the deceased") for drilling the hand pump borewells and had been demanding the deceased to increase his wages, for which, the deceased did not respond. Keeping it in mind, the accused attacked the deceased in a fit of rage with brickbats and murdered him between 7.30 and 8.00 p.m. on 05.02.2011.

4. Basing on the report given by PW-1, who is the son of the deceased, the Circle Inspector of Police, Bichkunda Police Station took up investigation, examined the witnesses under Section 161 Cr.P.C., visited the scene of offence, prepared the rough sketch of the scene of offence including the crime detailed report, conducted inquest over the dead body of the deceased, forwarded the dead body to Government hospital, Bichkunda for postmortem examination, collected the material objects from the scene of offence and later apprehended the accused on 07.02.2011, recorded his confession statement in the presence of panchayatdars. Pursuant to the confession of the accused, recovered the brick bats (M.O.9) and later remanded the accused to judicial custody. After receiving the medical reports and on completion of investigation, laid charge sheet against the accused for the offences punishable under Sections 302 and 201 of IPC.

5. The trial Court framed charges against the accused for the above said offences, read over and explained the same to him and the accused denied the charges, pleaded not guilty and claimed to be tried. During the course of trial, the prosecution has

examined PWs.1 to 15, Exs.P-1 to P-8 and M.Os.1 to 9 were marked. The accused was examined under Section 313 Cr.P.C. for the incriminating evidence found against him but the accused denied the evidence of prosecution and reported no defence evidence. After considering the entire evidence on record, the trial Court found that the prosecution was able to prove the guilt of the accused for the offences punishable under Sections 302 and 201 of IPC beyond reasonable doubt and therefore, the accused was convicted and sentenced as stated supra.

6. It is pertinent to note that the appellant was in jail since 20.06.2013 and Legal Aid was granted to him to defend his case before this Court.

7. Heard learned Legal Aid counsel Smt.Ande Vishala, appearing for the appellant and the learned Public Prosecutor for the respondent-State.

8. It is urged by the learned counsel for the appellant that there were no eyewitnesses to the incident and the entire case is based on

the circumstantial evidence and there are many missing links and therefore, the appellant is entitled for benefit of doubt.

9. On the other hand, the learned Public Prosecutor contended that the prosecution was able to prove the guilt of the accused beyond reasonable doubt, and therefore, prayed to confirm the judgment of the Sessions Judge.

The point for consideration in this appeal is;

“Whether the prosecution is able to bring home the guilt of the accused beyond reasonable doubt and whether there is any irregularity or error in the judgment of the trial Court, requiring interference ?”

10. In order to appreciate the evidence, it is necessary to discuss about the witnesses. PW-1 is the son of the deceased. Basing on his report/Ex.P-1, the Police have registered the case against the accused, upon which, the criminal law is set into motion. Admittedly, PW-1 is not eyewitness to the incident. His evidence discloses that the accused used to work under the deceased on a monthly salary of Rs.3,500/- and on 05.02.2011 at about 9.30 p.m., the Upa-Sarpanch Md.Raheemuddin informed him over phone that

the accused murdered his father. On that, he along with his relatives, went to the village and found the dead body of the deceased nearby the house of one Ameeruddin and the said place belongs to one Chand Gowri. His evidence also discloses that he entered into the newly constructed house of Ameeruddin and found blood-stains, Chappal and spectacles of his father and also found the chappal of the accused, some coins in the mud and there were also marks of dragging the dead body of his father. He further testified that his father used to stay in the newly constructed house of Ameeruddin along with four other workers and one week prior to the incident, the accused had telephoned him and informed that his father was not paying the amount and also abused his father. M.O.1 is the mobile phone which is of PW-1, used by the deceased. M.O.2 is the watch, M.O.3 is alleged to be the chappal of the accused, M.O.4 are the pair of chappals of the deceased, M.Os.5 and 6 are the lungi and underwear of the deceased. It is specifically stated by PW-1 that on his dictation, one Nagaraju has scribed Ex.P-1/report, which was given by him to the Police. In the cross-examination, it is specifically admitted by PW-1 that the

dead body was found in the bushes and he was not aware as to whether the deceased used to consume alcohol or not. The evidence of PW-1 is hearsay as he has not witnessed the incident.

11. PW-2's evidence discloses that the deceased used to work under him, who used to undertake borewell works. His evidence discloses that the accused along with three other persons, used to reside with the deceased in his house and later, the deceased went to Bodhan and returned to the village to install a borewell in the fields of one Sailu. He further testified that his son Muneeruddin informed him that the dead body of the Mestry was lying near the open land of one Chand Gowri and on that, they went to the spot and saw the dead body of the deceased lying with only underwear and a lungi was found beside the dead body. Further, they went into the house and found the spectacles, cash and blood stains.

Therefore, the evidence of PW-2 is also in no way helpful for the prosecution to connect the accused with the crime. His evidence would establish that the accused worked under the deceased along with four other persons.

12. The evidence of PW-3/Shaik Akthar is crucial. His evidence discloses that the accused installed borewell in the fields of one Ameeruddin and used to stay at the house of Ameeruddin along with four other workers. About one and a half years back at about 11 a.m., he went to the fields to get tobacco and at about 6 p.m., he saw the accused and another person, who was aged about 70 years, in the open plot of Chand Gowri. It is specifically testified by PW-3 that he saw the accused and the other person in the mobile phone light. He went to call his master Ameeruddin, but as he was not there, he called the son of his master, namely, Muneer and later went to the open plot of Chand Gowri and again saw the accused and by the time the master came to the place, the accused fled away and they found the other person bleeding from his nose and ears.

13. On perusal of the entire evidence of PW-3, it is evident that he saw the accused with one person, but he did not mention that the other person was the deceased. Moreover, his evidence does not disclose that there was a quarrel between the accused and the deceased while passing from Chand Gowri's plot, to prove that the

accused had attacked the deceased either for want of money or for enhancement of his wages.

14. PW-4 is also the person who got installed the borewell in his fields through the deceased. His evidence discloses that the son of PW-2 i.e. Muneeruddin informed him over phone that the accused and the deceased slept in the plot of Chand Gowri and by the time they went, the accused was not there and they found the dead body of the deceased. In the cross-examination, PW-4 admitted that Muneeruddin telephoned him and informed about the dead body and on that, they informed the Village Secretary, who in turn, informed the Police. But, on the other hand, PW-1, who is the son of the deceased, was the first person to inform the Police about the incident. His evidence can also be treated as hearsay evidence.

15. PW-5 is also one of the persons who got installed borewell in his fields. It was deposed by PW-5 that he used to work at some other place and used to stay at the house of one Muslim person and he went to place, after the death of the deceased. His evidence further discloses that he along with Peraji, Laxman and Balaji went

to the house of Sailu to watch T.V. and the accused did not accompany them. At about 8 p.m., when they all went to the house of Muslim person to have dinner, they found about 30 persons gathered near the house and also found the dead body of the deceased in the open place. They also entered into the portion of the house and saw the articles in pell-mell condition. It is also admitted by PW-5 in the cross-examination that some persons used to visit the hotel where they used to consume liquor and they found the dead body in the bushes.

16. The evidence of PW-6/Mohd.Muneer discloses that they installed three borewells in their fields. In the year 2011, he returned from his shop at about 7 p.m., slept in the house and PW-3 came to his house and informed him that two persons were lying behind the newly constructed house and on that, he along with PW-3 went and identified the said two persons as the deceased and accused in the cell phone light and then informed the matter to PW-4, who in turn, came within 10 minutes. Thereafter, he has gone 2 to 3 yards away from his house to make a phone call and

when again they went to the place, only the deceased was lying and the accused was not there.

The evidence of PW-6 only discloses that he saw the accused and the deceased in the open plot along with PWs.3 and 4, but the evidence of PWs.3 and 4 is silent as to this aspect. Therefore, the evidence of PWs.3, 4 and 6 are inconsistent with each other and cannot be considered, so as to believe the last seen theory in a case of circumstantial evidence. Further, the evidence of PW-6 discloses that he along with PW-4 and one Sailu went to the newly constructed house and found blood-stained clothes scattered here and there and also noticed the marks of dragging the dead body of the deceased.

17. On one hand, the evidence of PWs.4 and 6 disclose that they saw two persons alive in the open plot of Chand Gowri and on the other hand, it is the case of the prosecution that the entire incident took place in the newly constructed house of one Ameeruddin and later, the dead body was dragged to the open plot of Chand Gowri and the third version is that the body was found in the bushes. The prosecution is unable to fix the place of offence in this case. It is

the case of the prosecution that the incident took place in the newly constructed house of Ameeruddin and later, the dead body was thrown into the bushes. But, contrary to it, the evidence of PWs.4 and 6 disclose that they have last seen the accused and deceased together in the open plot of one Chand Gowri when the deceased was alive. They have not seen the accused attacking the deceased with the material object i.e. brickbat, which is alleged to have been recovered basing on the confession statement of the accused. Therefore, the evidence of PWs.4 and 6 is neither wholly reliable nor wholly unreliable.

18. The evidence of PW-7/Bethalwar Laxman discloses that the accused also worked along with them under the deceased and on the date of incident, he along with other labourers including the deceased and accused, came to the village and at about 4 or 4.30 p.m., they all sat together at Anjaneya Swamy temple, where the younger brother of Sailu provided two quarter bottles of liquor and they all consumed liquor in the hotel of Gangadhar. Thereafter, they went to the hotel and sat near the culvert. Further, he along with Pheeraji and Balaraju went to their relative's house to watch

T.V. and at about 8 or 8.30 p.m., they went to the house of Ameeruddin to have dinner and the said Ameeruddin informed them that the accused killed Someshwar and fled away. Further, they entered into the house and found blood-stains in the newly constructed house of Ameeruddin and the dead body was found in the bushes located towards the corner of the house. His evidence further discloses that he heard that the accused might have killed the deceased due to non-payment of labour charges. The evidence of PW-7 is also hearsay, as he did not witness the incident.

19. The evidence of PW-8/Goparaju Ramchandra Rao discloses that the deceased and accused used to install borewells and on 05.02.2011 at about 9.30 p.m., he received a phone call and was informed that the accused committed murder of the deceased. On that, he went to the village and found the dead body nearby the house, which is under construction. Therefore, it can be construed that the evidence of PW-8 is also in no way helpful to the prosecution to connect the accused with the crime.

20. PW-9/Md.Rafiuddin is the Upa-Sarpanch of the village. His evidence discloses that on 05.02.2011 at about 8.30 p.m., he came to know about the incident and went and found the dead body of the deceased in the newly constructed house of PW-2. In the cross-examination, it is admitted by PW-9 that at about 8.30 or 9 p.m., Police came to the village and he was examined by the Police on that night and Police guarded the dead body during the night time.

It is important to note that as per the evidence of PW-9, the dead body of the deceased was lying in the newly constructed house of PW-2.

21. PW-10 is the Panch witness for the scene of offence as well as for inquest. His evidence discloses that Police have prepared the scene observation report/Ex.P-2 and prepared rough sketch/Ex.P-3 and also conducted inquest over the dead body of the deceased and the inquest report is Ex.P-4 and collected the material objects from the scene of offence, which are M.Os.1 to 8. In the cross-examination, it is specifically deposed by PW-10 that PW-2

is the relative of PW-9, who is the Upa-Sarpanch of the village and the alleged incident took place in the house of PW-2.

22. PW-11 is the panch witness to the confession of the accused. His evidence discloses that he was called by the Police to the Police Station and the Police have enquired the accused in his presence and the accused has confessed his guilt of murdering the deceased and pursuant to the confession, the accused led them to the bushes nearby the house of Ameeruddin, where, two brick pieces (M.O.9) were seized by the Police. Ex.P-5 is the relevant portion of the confession of accused leading to recovery of M.O.9. In the cross-examination, it is admitted by PW-11 that he had acquaintance with the S.I. of Police and by the time he went to the Police Station, the Upa-Sarpanch, Kamdaar and Rafiuddin were present in the Police Station.

23. PWs.12 and 14 are the Police officers who registered the case basing on Ex.P-1/complaint given by PW-1, affected arrest of the accused and recorded the confession and seizure panchanama/Ex.P-7 in the presence of panchayatdars.

24. PW-15 is the investigating officer, who investigated the entire case and laid charge sheet against the accused.

25. PW-13 is the Doctor, who conducted autopsy over the dead body of the deceased on 06.02.2011 and found the following ante-mortem injuries:

- “1. Bruise on right cheek measuring 11 x 3 cm.
 2. Bruise near right mandible angle 3 x 1 cm.
 3. Bruise below mandible angle on right side one inch below injury No.2; 3 x 2 cm.
 4. Bruise over left mandible angle 5 x 3 cms.
 5. Bruise over left cheek 8 x 2 cms.
- Injuries 1 to 5 may be caused by hit over by having object with broad base (surface).
6. Contusion of left eye noted may be hit by broad surfaced weapon.
 7. Bruise over the anterior aspect of neck measuring 8 x 5 cms., over the thyroid cartilage may be hit by heavy object with broad surface.
 8. Laceration over mastoid area on right side measuring 6 x 3 Cms., may be hit by heavy object with cutting edges.
 9. Sub-dural hemorrhage on right hemi viaticum near temporal area and blood clot near right temporal area, may be hit by heavy object.
- All the injuries will be possible by bricks (M.O.9).”

PW-13 opined that the deceased might have died due to head injury, subdural hemorrhage on right hemisphere.

Ex.P-8 is the postmortem examination report. In the cross-examination, it is deposed by the Doctor that as per the

Forensic science, the brick can be considered as a heavy object and the edges of the bricks are also sharp. It is also testified by the Doctor that no alcohol substance was found in the particles of the stomach.

26. Admittedly, the death of the deceased is not a natural one and it is homicidal. It is for the prosecution to prove that the accused had committed the murder of the deceased by causing injuries, knowing well that as a result of those injuries, the death of the deceased will occur. None of the witnesses have deposed before the Court about the motive for the incident, except PW-1, who is the son of the deceased. The evidence of PW-1 also discloses that about a week prior to the date of incident, the accused had telephoned him and informed that the deceased was not increasing his wages and abused him. Further, PW-1 has not stated about the said fact either to his father or did not bring to the notice of any other person i.e. the telephonic call made by the accused to him. Further, there is no evidence on record that the accused beat the deceased with the brick

and caused injury Nos.1 to 9, which are found in the postmortem examination report/ Ex.P-8. On perusal of the injuries sustained by the deceased, it can be noticed that injury Nos.1 to 5, and 7 are only bruises, which cannot be made with a brick. It is specifically mentioned at injury No.8 that it might have been caused with a heavy object with cutting edges. Moreover, there is no evidence before the Court as to whether M.O.9/bricks contain the blood-stains of the deceased or not.

27. It is pertinent to mention that the alleged incident took place on 05.02.2011 between 7.30 and 8.00 p.m. As per the evidence of PW-9/Upa-Sarpanch, the Police have arrived at the scene of offence by 9.00 p.m. in the night and the dead body was guarded by the Police, but the FIR was registered basing on the complaint of PW-1 on 06.02.2011 at 11 a.m., which clearly discloses that the investigation had commenced prior to the registration of crime which is fatal to the case of the prosecution.

28. There is a delay of 12 hours in registering the FIR. Admittedly, the distance between the Police Station and the place of offence even as per the evidence of PW-1, is 5 kilometres and as to why PW-1 did not prefer report to Police immediately after the incident, is not explained by the prosecution. Therefore, there is every likelihood of having an afterthought between the relatives of the deceased to implicate a false case against the accused.

29. On perusal of the entire oral and documentary evidence, it is evident that the entire case rests on the circumstantial evidence and there are missing of links and the prosecution has failed to prove the chain of events which completely forms a ring.

30. The Hon'ble Supreme Court in **Mahender Singh & others v. State of M.P.**¹, while relying on the judgment in **Vadivelu Thevar v. The State of Madras**², 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

¹ 2022 LiveLaw (SC) 543

² 1957 SCR 981

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 i.e.

- (1) wholly reliable, (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable.

31. The aforesaid judgment is squarely applicable to the facts and circumstances of the present case, as in the present case, the evidence of PWs.4 and 6 is neither wholly reliable nor wholly unreliable. Therefore, it is not proper to presume that the accused might have committed the murder of the deceased. Further more, it is for the prosecution to prove that the accused had hit/hacked/attacked the deceased with

the knowledge that the injuries inflicted by him will result in the death of the deceased. Moreover, there is no evidence that the accused has screened away the evidence by dragging the dead body of the deceased from the house of Ameeruddin to the bushes. Further, the prosecution has failed to fix the scene of offence i.e. whether it is the newly constructed house of Ameeruddin or bushes or the open place of Chand Gowri. Hence, it can be construed that the prosecution has miserably failed to prove the guilt of the accused for the offences punishable under Sections 302 and 201 of IPC, and therefore, the accused is entitled for benefit of doubt.

32. In the result, the Criminal Appeal is allowed. The appellant is found not guilty of the offences punishable under Sections 302 and 201 of IPC, and accordingly, the conviction and sentence imposed on the appellant vide Judgment dated 20.06.2013 in S.C.No.372 of 2011 on the file of VII Additional District and Sessions Judge (FTC), Nizamabad at Bodhan, is hereby set aside and the appellant is acquitted of the charged offences. The

appellant shall be released forthwith, if not required in any other case. M.Os.1 and 2 i.e. the cell phone and wrist watch respectively, shall be returned to PW-1 and M.Os.3 to 9 shall be destroyed, after appeal time is over.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

NAMAVARAPU RAJESHWAR RAO, J

Date: 19.11.2022

N.B:

- (1) Judgment be forthwith communicated to the jail authorities concerned.
- (2) L.R. copy be marked.
(b/o)
ajr