
(2022) 12 TEL CK 0012

High Court For The State Of Telangana:: At Hyderabad

Case No: Criminal Appeal No. 836 Of 2014

Santhosh Mallik,
R.R.Dt.

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision: Dec. 5, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 302, 357
- Code of Criminal Procedure, 1973 - Section 232, 374(2), 482

Hon'ble Judges: P.Sree Sudha J; Dr. D.Nagarjun, J

Bench: Division Bench

Advocate: Pendiyaala Suhasini Reddy

Final Decision: Allowed

Judgement

1. By judgment dated 19.06.2014 passed in Sessions Case No.136 of 2014, the learned Principal Sessions Judge at Mahabubnagar, held that the

accused is found guilty for the offence under Section 302 IPC and accordingly he is convicted and sentenced to undergo rigorous imprisonment for a

period of life and to pay fine of Rs.500/-, in default to suffer S.I. for one month. It was also further observed by the trial Court that the period of

imprisonment already undergone by the accused as under trial prisoner from 01.11.2013 to that date is to be set off under Section 428 Cr.P.C.

Aggrieved by the conviction and sentence imposed, the accused is in appeal under Section 374(2) Cr.P.C.

2. The charge framed against the accused read thus:

That you on or about 28.10.2013 at about 0630 hours, at Sreenivasa Spinning Mill in the limits of Addakal, did commit murder by intentionally

causing the death of Bipin Mallik by stabbing him with a knife and thereby committed an offence punishable U/Sec. 302 of I.P.C. and within my

cognizance;

3. The accused however pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined P.Ws.1 to 10 and marked in evidence Exs.P1 to P8 and M.Os.1 to 5. The defence did not adduce any

oral or documentary evidence. Upon consideration of the oral and documentary evidence advanced by both the counsel, the Sessions Court convicted

the accused as aforestated.

5. The case of the prosecution, as per the charge-sheet, is that the General Manager of Srinivasa Spinning Mill gave complaint at Police Station,

Addakal, on 28.10.2013 at about 7.05 hours stating that one Santosh Mallik-accused and Bipin Mallik-deceased are working in their spinning mill and

residing in the quarters and that one Dinish Kumar Jinha informed to the complainant that Santosh Mallik stabbed Bipin Mallik with a knife on his

chest and upon which the complainant instructed him to shift the injured to hospital and then he reached to the company by that time injured was

shifted to hospital. The complainant would also state that when he enquired the incident with one Mamatha Acharaya, W/o. Pratap Acharya, she

stated that on 27.10.2013 at about 1100 hours there was a quarrel between Santosh Mallik and Bipin Mallik. Bipin Mallik beat Santosh Mallik with a

eelapeeta (chekka peeta used for cutting vegetables) on his head and as a result of which Santosh Mallik sustained bleeding injury and as such

Santosh Mallik attacked and stabbed Bipin Mallik on 28.10.2013 at 6.30 am while he was returning from canteen to his room with a knife, as a result

Bipin Mallik died while he was shifting to the hospital and as such the complainant requested the authorities to initiate action against Santosh Mallik

who killed Bipin Mallik. The said complaint was received at 1130 hours by Police, Addakal, and later it was registered as case in Crime No.174 of

2013 under Section 302 IPC. After completion of investigation, the accused was arrested in the Spinning Mill in his Quarter No.6 at about 4.25 PM.

After the entire investigation is completed, charge-sheet is filed against the accused for the offence under Section 302 IPC.

6. The trial Court considering the evidence on record and also the arguments advanced by both the counsel, observed that on the previous day there

was a quarrel between the accused and the deceased and it is the motive for committing the offence and on the next day the accused attacked the

deceased with a knife and stabbed on his chest and committed an act with an intention to cause death and the bodily injuries caused by him is

sufficient in the ordinary course of nature to cause death and in fact the accused knows that the injury caused by him is likely to cause death and as

such it clearly falls within the ambit of Section 302 IPC. The eye witnesses-P.Ws.2, 3 and 7 clearly deposed with regard to the injury caused by the

accused to the deceased and their evidence amply establishes that the accused is having intention to take revenge against the deceased. The Doctor

who conducted post-mortem also stated that the injury caused on the left side of the chest and it went up to left atrium of the heart and the said injury

is sufficient to cause death of the deceased. The trial Court further observed that when accused sustained injuries in the hands of the deceased on

27.10.2013, he was treated by a private medical Doctor and was in the hospital for two days, but the said private Doctor was not examined and no

medical record was filed and thus the plea of alibi is not proved and accordingly convicted the accused under Section 302 IPC and it is not a rarest of

rare case to impose grave penalty of death and accordingly convicted him with life imprisonment and also a fine of Rs.500/- in default to suffer S.I.

for one month. As there are no dependants to the deceased, compensation was not granted under Section 357 IPC. Aggrieved by the said judgment,

the appellant-accused preferred this appeal.

7. Learned counsel for the appellant would contend that the prosecution failed to connect the accused with the offence by way of acceptable evidence

and it did not investigate the case properly. Learned counsel would further argue that the Investigating Officer-P.W.10 examined the persons who are

working in the mill and no independent witnesses were examined and that the Investigating Officer has not examined even the private doctor who

treated the accused for head injury and found out how many days accused was treated in the hospital. Learned counsel would also assert that as per

the evidence of P.W.7 the accused was treated for two days and as such there is no possibility for the accused to kill the deceased on the date of the

incident. Learned counsel would also argue that P.Ws.2, 3 and 7 are having enmity to depose falsely against the accused and P.W.8 is the Doctor has

not ruled out the possibility of injury if the deceased falls accidentally on the knife having sharp edge and that there are several contradictions in the

evidence of prosecution witnesses and the prosecution failed to prove the case beyond reasonable doubt and as such requested the Court to set aside

the conviction imposed upon the accused.

8. Heard the learned counsel appearing for the appellant-accused and the learned Public Prosecutor representing the State.

9. P.W.1 is the complainant who came to know about the quarrel between accused and deceased through Dinesh Kumar Jinha who was also working

in their Spinning Mill and he instructed him to shift the deceased to the hospital for treatment and thereupon he rushed to the quarters and when he

enquired one Mamatha Acharya she told him that on 27.10.2013 at about 11.00 am there was a quarrel between deceased and accused in respect of

cutting of vegetables and at that time the deceased Bipin Mallik beat on the head of the accused with eelapeeta (instrument used to cut vegetables) as

a result of which the accused sustained injury on his head and he got bandaged the wound at hospital situated at Addakal and that by keeping the

same in mind the accused stabbed the deceased on the way from canteen to his room on 28.10.2013 at 6.30 am and later he came to know that Bipin

Mallik died on the way to hospital. On the same day P.W.1 gave complaint under Ex.P1 at 11.30 am. He stated that Dinesh Kumar Jinha is not

working in their factory from the past two months and he do not know his whereabouts.

P.W.1 also deposed that both the deceased and accused are

natives of Orissa State and that the Company provided quarters to the labour who are from outside the State and that accused and deceased are

residing in Quarter No.6 at the time of incident. Pratap Acharya, his wife Mamatha Acharya, Dinesh Kumar Jinha were also working and residing in

the quarters provided by the factory. Mente Thirumalesh is the security guard of their spinning mill. When it was suggested to P.W.1 that accused

was in hospital for two days, P.W.1 denied the same. It was also suggested to him that the deceased on his own fell down on eelapeeta while cutting

vegetables and sustained injuries and died, but he denied it.

10. The prosecution examined Pratap Acharya as P.W.2 and his wife Mamatha Acharya was not examined by the prosecution and her evidence was

given up. The prosecution also examined one Dinesh Kumar Jinha as P.W.7. P.W.2 in his evidence deposed that Mamatha Acharya is his wife. He

deposed that he along with his wife are working in the Srinivasa Spinning Mills, Addakal, and are residing in Quarter No.2 provided by the company.

He knows accused and deceased as they are working in the mill and residing in Quarter No.6. On 27.10.2013 a quarrel took place between the

accused and the deceased with regard to cooking food and at that time deceased beat and caused injury on the head of the accused with eelapeeta

(cutting instrument). He took the accused to hospital for treatment where a private doctor at Addakal treated the accused and immediately after the

treatment they returned to their quarters and kept the accused in his room by providing food and tablets to prevent further quarrels between the

deceased and the accused and accordingly the accused slept in their quarters. Next day while P.W.2 was preparing to go to his duty, the deceased

was returning from canteen towards his quarters and then the accused picked up a knife from his quarters and stabbed the deceased on the chest with

the knife. He along with P.W.7 and others shifted the deceased to the hospital in an auto and on the way Ambulance came in opposite side and then

they all shifted the deceased into Ambulance, but the staff of the Ambulance declared him as dead. Immediately P.W.2 and others shifted the injured

to Government Hospital, Mahabubnagar. This witness deposed that the incident of stabbing was witnessed by his wife also. It was suggested to him

that MO.1 knife is available in the market and it was also suggested that accused was admitted for two days in the hospital for the head injury, but the

witness denied it.

11. P.W.7 deposed that he along with P.W.2 and his wife and P.W.3 witnessed the incident. When deceased died he informed the same to P.W.1 and

he gave report. He also deposed that accused was brought back from hospital and kept him in the house of P.W.2 to prevent further quarrel between

him and the deceased. During the cross-examination, the witness deposed that there are 36 quarters for the workers and staff of the Mill and that the

room of accused and the deceased was opposite to his room and they both are working in shifts but he cannot say who was working in day time and

who was working in night time. He also deposed that he along with P.W.2 and his wife took accused to hospital when he was beaten on the head by

the deceased. The witness further deposed that accused was in the hospital for two days. He also stated that the signature in 161 Cr.P.C. statement is

not his signature. It was suggested to the witness that deceased fell down on the instrument which is using for cutting vegetables and sustained injury

and died, but he denied it.

12. P.W.3-Security Guard of the Mill deposed that on 28. 10.2013 at 6.30 a.m. he went to canteen to have tea and while returning to main gate he

found some quarrel in front of the quarters of the workers and he went there and found accused stabbed the deceased on his chest with a knife, due

to which deceased fell down with bleeding injury. Then P.W.2, his wife and P.W.7 shifted the deceased to the hospital and at 8.30 am he came to

know that deceased died on the way to the hospital. On enquiry, he came to know about the quarrel between accused and deceased on the previous

day. During the cross-examination, the witness stated that on the date of the incident he was not on duty as his shift was not started. He deposed that

a room was provided to him along with another security guard in the factory premises and hence he was in the Spinning Mills at the time of the

incident. He do not know about the previous day incident as he was on duty in the factory. It was also suggested to him that accused was inpatient in

the hospital for two days and he was not in the factory on the date of the incident, but he denied it.

13. P.W.4 is the Driver worked in the Spinning Mill. He deposed that when he came to know about the quarrel between accused and deceased, he

went to the Government Hospital and at the instance of Police he acted as a panch witness and Ex.P2 inquest panchanama conducted at the time of

inquest. He further deposed that he cannot read and write Telugu and he signed on the written panchanama and he do not know the contents of

Ex.P2.

14. P.W.5 is another Security Guard. He deposed that on 31.10.2013 Police called him and one Uppala Govardhana Chary and they found the

accused in the custody of the police. The police searched the room of the accused and found knife having blood stains. M.O.1 knife was seized in

their presence under confession-cum-seizure panchanama and he signed on Ex.P3. The admissible portion in the panchanama is marked as Ex.P4. In

the cross-examination he stated that panchanama was written in the room of the accused. When it was suggested that it was written in the Police

Station, he denied it.

15. P.W.6 was running canteen in the Spinning Mills. On 28.10.2013 the Police called him and Chenglaya Laxminarayana to the workers quarters and

they acted as a panch witnesses for crime details form and rough sketch under Ex.P5 and also M.Os.2 and 3 were seized under Ex.P5 panchanama.

During the cross-examination, he deposed that only he affixed one signature.

16. P.W.8 is the Doctor who conducted post-mortem on 28. 10.2013 from 4.00 to 5.00 pm. He found a penetrating wound present on the left side of

the chest in the V-inter costal space in between left side nipple and sternum, measuring 1 x 1½ cms x thoracic deep. Wound is penetrating inter costal

muscles of the left side and entered up to left atrium of the heart. Thoracic cavity is filled with blood stains and fluid and opined that the cause of

death is hypovolemic shock due to penetrating wound in the heart. The time of death is 8 to 10 hours prior to post-mortem. He deposed that the injury

is possible with M.O.1 knife which is shown to him and Ex.P6 is the post-mortem examination report issued by him. During the cross-examination, he

deposed that M.O.1 is having one side sharp and also stated that the injury is possible if a person accidentally falls on a knife or sharp object.

17. P.W.9 is the Assistant Sub-Inspector of Police, who received complaint from P.W.1 at 11.30 a.m. and registered a case in Crime No.174 of 2013

and issued FIR under Ex.P7.

18. P.W.10 is the Inspector of Police who examined the witnesses, conducted scene of offence panchanama, prepared crime detail form and rough

sketch and also examined the Photographer, seized M.Os.4 and 5 under Ex.P2 and also gave requisition for post-mortem examination. He sent MOs

to the FSL on 31.10.2013 at 5.00 pm and arrested the accused in his quarter and recorded his confessional panchanama and also recovered MO.1 at

his instance under Ex.P4. Received FSL report under Ex.P5 and filed charge sheet. It was suggested to him that accused was in the hospital for two

days, deceased fell down on the knife while cutting vegetables and sustained injuries, that accused was in hospital for three days and as such he was

arrested on 31.10.2013 and that he planted MO.1 and intentionally not examined the independent witnesses, but he denied all the suggestions.

19. Admittedly, it is for the prosecution to establish the guilt of the accused beyond reasonable doubt in a grave offence of murder. In this case P.W.1

is the complainant and not an eye witness to the occurrence. Prosecution examined P.Ws.2, 3 and 7 as an eye witnesses. P.W.2 has not stated

anywhere that he witnessed the incident, but at the end of the deposition he deposed that incident of stabbing was witnessed by his wife also. He

stated that while he was preparing to go to the duty, deceased was returning from the canteen towards his quarters and at that time accused stabbed

him. He has not stated regarding his presence at the scene of offence, though the other witnesses stated about his presence. P.W.3 deposed that

while he was returning from the canteen he found some quarrel in front of the quarters of the workers and he went there and found accused stabbed

the deceased and due to which the deceased fell down with bleeding injury and as such this witness has not seen the accused stabbing the deceased

with the knife and he do not know about the previous day quarrel between accused and deceased. Though he was in the premises on the date of

offence, he is not an eye witness to the incident. It at all he is an eye witness to the incident, being Security Guard of factory premises why he has not

produced accused before the Police Station immediately after the incident is not explained anywhere. P.W.1 stated that wife of P.W.2 informed him

about the quarrel and it seems that she is an eye witness, but for the reasons best known to the prosecution, her evidence was given up and she was

not examined before the Court. P.W.7 informed about the incident to P.W.1 immediately after the incident over phone, he shifted the deceased to the

hospital along with P.W.2 and his wife, but in the cross-examination he denied his signature on the 161 Cr.P.C. statement.

20. Now it is for this Court to scrutinize the evidence adduced by the witnesses for arriving to the conclusion whether the judgment of the trial Court is

correct or not.

21. Though P.W.7 stated that he witnessed the incident, he denied the signature on 161 Cr.P.C. statement. He also deposed that he along with P.W.2,

L.W.3 and P.W.3 witnessed the incident, but in the evidence of P.Ws.2 and 3 there is no specific mention that they witnessed the actual incident

along with P.W.7 and as per the evidence of P.W.1, P.W.2 informed him about the incident in detail when he went to the quarters immediately after

the incident, but she was not examined by the prosecution for the reasons best known to them. As the evidence of P.W.7 is not corroborated by the

evidence of other witnesses who are cited as eye witnesses, it is for this Court to see whether to rely upon the sole testimony of P.W.7 for conviction.

P.W.7 in the chief-examination deposed that the accused was brought back and kept in the room of P.W.2, in the cross-examination stated that he

was in the hospital for two days. The defence of accused is that he was in the hospital for two days and as such he did not kill the deceased on

28.10.2013 and thus the material contradiction in his evidence goes to the root of the case, and thus it is not safe to rely upon his sole testimony to base

conviction. P.W.8 is the Doctor who deposed about the cause of death under Ex.P6, but he has not ruled out the possibility of causing injury due to the

accidental fall.

22. The defence of the accused is that he was in the hospital for two days due to the injuries sustained by him on the previous day in the hands of the

deceased and as such there is no occasion for him to quarrel and stab the deceased. The said suggestion was given to all the material witnesses, but

all of them denied his presence for two days in the hospital except P.W.7. The prosecution has not examined the Doctor who treated the accused on

27.10.2013. The motive for the offence is that on 27.10.2013 there was a quarrel between accused and deceased at the time of cutting of vegetables

and the deceased stabbed the accused with eelapeta and as a result of which he sustained head injury and treated in the hospital, due to the above

quarrel in mind, the accused on the next day stabbed the deceased to death. Even the trial Court observed that there is an intention on the part of the

accused to kill the deceased and thus the prosecution proved the motive for the offence.

23. No doubt, accused caused injury with knife on the chest of the deceased and as per the evidence of P.W.8 it entered up to left atrium of the heart.

P.W.2 also stated that after the treatment they kept the accused in his room during the entire night time and on the next day he picked up knife from

his quarters and stabbed the deceased while he was returning from canteen towards his quarters. The prosecution examined P.W.5-another Security

Guard for recovery of knife. He deposed that it was recovered from the room of the accused. The accused concealed the knife in his room and

brought out the same and produced before them under Ex.P4. Admittedly, incident took place on 28.10.2013 and the accused was arrested on

31.10.2013 i.e. after three days in his room and the knife was also recovered from his room with blood stains. In such a situation the natural human

conduct of the culprit is either he might have fled away from the scene of offence or he might have thrown away the weapon used in committing the

offence somewhere else instead of keeping it in the room. It was suggested by the accused that MO.1 knife is planted by the police and the knife like

MO.1 are easily available in the market. Though P.W.5 deposed that the blood stained knife was recovered and it was sent to FSL, the FSL report is

not filed by the prosecution. P.W.5 also deposed that the report was written in the room of the accused.

24. Learned counsel for the appellant would strenuously contend that the prosecution miserably failed to examine the independent witnesses, as the

incident had occurred within the factory premises that too in the quarters, it cannot be said that non-examination of the independent witness is fatal to

the case of the prosecution.

25. Admittedly, accused and deceased are co-workers working in the Spinning Mill and they both hail from Orissa State and are residing in the same

quarters opposite to the quarter of P.W.2. There was no previous enmity between them and unfortunately a small quarrel took place between them

with regard to cutting of vegetables while cooking food on 27.10.2013. The motive attributed by the prosecution for killing of the deceased by the

accused on the next day is not so grave and moreover, among the eye witnesses examined by the prosecution, except P.W.7, the other eye witnesses

have not stated before the Court that they witnessed the actual incident. The evidence of P.W.7 is not corroborated on material particulars with the

evidence of other eye witnesses. The seizure of MO.1 in the room of accused three days after the incident strengthens the argument of the defence

that it is available in the market easily and there is chance of planting it by the police.
P.W.3-Security Guard has not taken custody of accused when

he came to know about the death of the deceased by 8.30 am. Even P.W.8 stated that the injuries sustained by the deceased can be caused by

accidental fall on a sharp edged weapon and as such it is for the prosecution to establish that the accused alone caused the death of the deceased and

there is no person. The prosecution has not examined the private doctor to rule out the defence of the accused. The prosecution mainly contended that

the accused was in hospital for two days, but it was suggested to the Inspector that the accused was in the hospital for three day and as such he

arrested accused only on 31.10.2013. Further, the allegation of the prosecution is that the accused had an intention to kill the deceased and caused

such bodily injury, which in the ordinary course of nature sufficient to cause death. But P.W.2 deposed that the accused has taken a knife from their

house and stabbed the deceased while he was proceeding from canteen to his quarters. It cannot be said that there was premeditated plan to kill the

deceased and there was no previous criminal history to the accused earlier and in fact, the injury was inflicted on the deceased at 6.30 am and while

shifting him to the hospital, he died on the way at 8.30 am. Complaint was given at 11.30 a.m. on the same day, but the accused was arrested on

31.10.2013 i.e. after three days from his quarters in the spinning mill.

26. P.Ws.2 and 3 are not eye witnesses, P.W.7 evidence is not reliable, recovery of weapon is doubtful, arrest after three days from the room of

accused is not believable, and thus this Court finds that the prosecution failed to prove the guilt of the accused beyond reasonable doubt, and therefore,

it is just and reasonable to set aside the judgment of the trial Court.

27. In the result, the appeal is allowed and the judgment in S.C. No.136 of 2014 dated 19.06.2014 on the file of the learned Principal Sessions Judge at

Mahabubnagar, is set aside. The appellant-accused is acquitted under Section 232 Cr.P.C. for an offence under Section 302 IPC. He shall be set at

liberty forthwith, if not required in any other case. Fine amount paid by him shall also be refunded.