

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1032 OF 2007

Gorusu Nagaraju
s/o Apparao

....Appellant(s)

VERSUS

State of Andhra Pradesh

....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is filed by the accused from jail through the Supreme Court Legal Services Committee against the final judgment and order dated 15.12.2006 passed by the High Court of Judicature at Andhra Pradesh at Hyderabad in Criminal Appeal No.955 of 2005 whereby the High

Court affirmed the judgment and order dated 10.06.2005 passed by the IInd Additional District and Sessions Judge, East Godavari at Rajamundry in Sessions Case No.193 of 2000 by which the appellant(A-1) was convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and under Section 235(2) of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Cr.P.C.") and sentenced him to undergo imprisonment for life under Section 302 IPC with a fine of Rs.200/-, in default, to further undergo simple imprisonment for one month and for the offence under Section 201 IPC, he was sentenced to undergo rigorous imprisonment for three years with a fine of Rs.100/- in default to further undergo simple imprisonment for one month. Both the sentences were directed to run concurrently.

2. For the disposal of the appeal, few relevant facts need to be mentioned hereinbelow.

3. The appellant (A-1) along with four accused persons (A-2, A-3, A-4 and A-5) were prosecuted for commission of the offence punishable under Section 302 read with Section 201 of IPC for committing murder of one - Desineedi Venkateswararao @ Venkatesh. The IInd Additional District & Sessions Judge by his judgment and order dated 10.06.2005, convicted the appellant (A-1) and sentenced him to undergo imprisonment for life under Section 302 IPC and further to undergo rigorous imprisonment for three years under Section 201 IPC and acquitted three accused, namely, A-2, A-3 and A-5. So far as A-4 is concerned, since he was absconding, his trial was separated.

4. Against the said order, the appellant filed an appeal in the High Court of Andhra Pradesh challenging his conviction and sentence. The State, however, did not file any appeal questioning the order in respect of acquittal of A-2, A3 and A-5 and, therefore, the acquittal order became final.

5. The High Court, by impugned judgment, dismissed the appeal filed by the appellant(A-1) and upheld the appellant's conviction and sentence, which has given rise to filing of this appeal by way of special leave by the appellant before this Court.

6. The question arises for consideration in this appeal is whether any case is made out to interfere in the impugned judgment.

7. At the outset, we may consider it apposite to state that the Sessions Judge and the High Court, on appreciation of entire oral evidence, held the appellant guilty of the offences. In other words,

both the Courts on appreciation of oral evidence adduced by the prosecution, recorded a finding of guilt against the appellant for commission of the offences in question and accordingly convicted him.

8. It is a case where the findings of conviction are concurrent in nature and based on appreciation of evidence, therefore, such findings are usually binding on this Court. However, if the appellant is able to show any perversity, arbitrariness, absurdity or illegality in any such concurrent findings then, in such circumstances, the findings though concurrent are not binding on this Court. This Court, therefore, usually does not take upon itself to again appreciate the evidence *de novo* third time in the appeal subject to the exception pointed out above.

9. We have perused the entire record including the evidence adduced by the prosecution. The

prosecution examined 33 witnesses and the defense examined only one witness. We also find that the Sessions Judge and the High Court relied on the evidence of PW-8, PW-11, PW-12, PW-14, PW-28 and PW-31 for sustaining the conviction of the appellant (A-1). It is also noticed that the conviction is largely based on circumstantial evidence.

10. The High Court, in Para 5 of the impugned judgment, has taken note of the circumstances that led to the death of the deceased and how the appellant was connected with the crime in question. The circumstances noticed are first, the deceased was last seen in the company of the appellant (A-1); Second, the appellant and the deceased, both went together to a liquor shop to purchase bottle of whisky; Third, recovery of the body from the heap of hay of PW-18 with bleeding injuries; Fourth, the appellant's fingerprints found on the Whisky bottle

(McDowell) and glass and on other seized articles at the scene of occurrence by the Handwriting & Fingerprint Expert; Fifth, the recovery of all the seized articles was made at the instance of the appellant; Sixth, the appellant was having some grudge against the deceased because the appellant had requested the deceased to sort out some issues between him and PW-6 but the deceased failed to do so for some reasons; Seventh, the appellant failed to explain any of the circumstances noticed above and kept mum when asked to explain.

11. The prosecution with the aid of 33 witnesses proved the aforementioned seven circumstances. It is true that out of 33 witnesses, some turned hostile but those, who did not turn hostile and maintained consistent version of the aforementioned seven circumstances, in our opinion, their evidence was rightly relied on for sustaining the conviction.

12. That apart, in our considered opinion, the seven circumstances noticed and relied on by the prosecution were material circumstances and, therefore, rightly made basis to connect the appellant with the commission of the crime in question. Indeed, the chain of events which led to death of the deceased was established without any break implicating the appellant with the chain of events.

13. Learned counsel for the appellant wanted to go through the entire evidence and he actually did it but could not point out any material contradiction or inconsistency in evidence. It is a well settled principle of criminal law that some minor contradiction or inconsistency in evidence cannot affect the material evidence and such contradiction or inconsistency cannot be made basis to discard the whole evidence as unreliable. It is much more

so when the two Courts below took note of the said evidence and discarded it being wholly immaterial.

14. We are, therefore, not impressed by the submissions urged by the learned counsel of the appellant as it did not make out any case of acquittal of the appellant from the offences in question.

15. In view of the foregoing discussion, we find no merit in the appeal. The appeal thus fails and is accordingly dismissed.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
March 23, 2018