

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL APPEAL No.1481 OF 2010

Between:

A. Kuppaiah, S/o A. Chengaiah,
Aged about 67 years, R/o Padirikuppam,
Harijanawada, Karvetinagar Mandal,
Chittoor District. ... Appellant/Accused No.1.

Versus

The State of Andhra Pradesh, rep. by the
Public Prosecutor, High Court of Andhra Pradesh.
... Respondent.

DATE OF JUDGMENT PRONOUNCED: 30.11.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
Fair copy of the Judgment? Yes/No

A.V.RAVINDRA BABU, J

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! Counsel for the Appellant :

Mr. Suresh Kumar Reddy Kalava.

^ Counsel for the Respondent : Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

AIR 2013 SC 840
(2009) 13 SCC 542
(2011) 7 SCC 421
2021 SCC OnLine SC 493

This Court made the following:

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRIMINAL APPEAL No.1481 OF 2010

JUDGMENT:-

The judgment in Sessions Case No.67 of 2008, on the file of IV Additional District & Sessions Judge, Chittoor at Tirupati ("Additional Sessions Judge" for short), delivered on 10.11.2010, is under challenge in the present Criminal Appeal filed by the unsuccessful accused, who faced charge under Section 302 of the Indian Penal Code ("I.P.C." for short), but was convicted and sentenced for the offence under Section 304 Part-II of I.P.C., culpable homicide not amounting to murder.

2) The parties to this Criminal Appeal will hereinafter be referred to as described before the learned Sessions Judge for the sake of convenience.

3) The Sessions Case No.67 of 2008 as above arose out of a committal order in P.R.C.No.18 of 2007, on the file of Judicial Magistrate of First Class, Putturu, pertaining to Crime No.65 of 2005 of Karveti Nagar Police Station.

4) The State, represented by the Inspector of Police, Karveti Nagar Circle, in the aforesaid crime number, filed a charge sheet alleging the offence under Section 302 of I.P.C.

5) The case of the prosecution, in brief, according to the charge sheet is as follows:

(i) The accused is resident of Padirikuppam Dalithawada, Karveti Nagar Mandal. One Thoti Jayaram (hereinafter will be referred to as "deceased") also belonged to the said village. On 06.09.2007 night, a music orchestra was arranged in Padirikuppam Harijanawada in connection with Kumbhabhisekham of Lord Sri Krishna temple. During that night, at about 11-00 p.m., the deceased, who was one among the spectators, was found often going to the stage. On noticing the same, the accused bore grudge against the deceased for his often going to the stage where music orchestra was being played. The accused forcibly pushed the deceased, due to which the deceased fell in between reaper and chair and as a result, he fell in between the seats arranged at the above place and his head was struck. The accused also beat the deceased on the back side of his head with a wooden stool causing severe injuries. Later, he was taken to L.W.14-Dr. K. Somasekhar Naidu for treatment. After providing necessary first aid, L.W.14 advised that the deceased to be taken to SVRR GG Hospital, Tirupati. Firstly, the deceased was admitted in SVRR GG Hospital, Tirupati. Later, he was shifted to SVIMS, Tirupati.

After having treatment for some days at SVIMS Hospital, Tirupati, he was discharged and brought back to his house at Padirikuppam Dalithawada. Ultimately, the deceased was succumbed to injuries on 24.09.2007 at 8-30 a.m.

(ii) On 11.09.2007 a hospital intimation was sent to the concerned police by SVIMS Hospital, Tirupati with history that the patient sustained injury due to fall at stage erected for orchestra at 11-00 p.m. on 06.09.2007 and that he was admitted in hospital. On the same day, at 12-30 p.m., the S.I. of Police, Karveti Nagar Police Station received a phone message from OP PS, SVRR GG Hospital, Tirupati, regarding admission of the deceased. The S.I. of Police deputed P.C.1950 (L.W.17) to visit SVIMS Hospital, Tirupati and to record the statement of the deceased. Accordingly, the said Police Constable visited SVIMS Hospital, Tirupati and recorded the statement of deceased, aged 48 years and produced the statement before the concerned S.I. of Police. L.W.17-Police Constable obtained a certificate from the deceased that the contents of the above statement are correct and obtained the signature of the injured. On the basis of the same, S.I. of Police registered a case in Crime No.65 of 2005 under Section 324 of I.P.C. of Karveti Nagar Police Station on 11.09.2007 at 6-00 p.m. and submitted FIR to all concerned.

L.W.18-S.I. of Police visited SVIMS, Tirupati and examined the deceased who was then alive and also his wife as L.W.2 and recorded their statements. On 12.09.2007 he visited the scene, inspected the same and drafted rough sketch. He also examined L.W.2-Poluru Gangadharam, L.W.3-Pathapalem Ramaiah and L.W.4-Chelampalem Thyagaraju and recorded their statements. On 24.09.2007 at 12-00 noon, L.W.18-S.I. of Police received a report from L.W.1-Thota Lakshmi, the wife of the deceased, stating that her husband died on 24.09.2007 at about 8-30 a.m. at the house. Basing on the said report, L.W.18 altered the Section of law from Section 324 of I.P.C. to that of Section 302 of I.P.C. on 24.09.2007 at 12-00 noon and submitted express FIR to all concerned. Later, L.W.18 visited the house of L.W.1 and held inquest over the dead body of the deceased on 24.09.2007 between 1-30 p.m. and 3-30 p.m. in the presence of inquest panchayatdars, L.W.9-Manati Desaiah, L.W.10-V. Bhathavathsalam and L.W.11-Poluru Gangadharam. On 25.09.2007, L.W.19-Inspector of Police, Karveti Nagar Police Station, took up investigation and examined L.W.1, L.W.2, L.W.3, L.W.4-Chelampalem Thyagaraju, L.W.5-Thoti Syamala, L.W.6-Thoti Kavitha, L.W.7-Ponna Chandraiah and L.W.8-Ponna Srinivasulu and verified the investigation done by S.I. of Police.

On 25.09.2007, on reliable information, L.W.19 arrested the accused at 4-00 p.m. in the presence of L.W.12-M. Sudhakar and L.W.13-Chelampalyam Elumalai, the mediators, at Chinthamandi bus stop on K. Nagar Chittoor main road. He recorded the confessional statement of the accused and seized the crime weapon i.e., the wooden stool at 5-30 p.m. on the same day which is produced by the accused from his house in the presence of mediators. Later, he forwarded the accused for remand to the concerned Court. L.W.16-Dr. M. Prabhavathi, who conducted autopsy over the dead body of the deceased opined that the death of the deceased is due to chronic illness due to injury to cervical canal stenosis as per the opinion of the doctors of SVIMS, Neurosurgery Department. The investigation reveals that the accused caused the death of deceased. Hence, the charge sheet.

6) The learned Judicial Magistrate of First Class, Puttur, took cognizance under Section 302 of I.P.C. and numbered the same as PRC No.18 of 2007. On appearance of the accused and on compliance of Section 207 of the Code of Criminal Procedure ("Cr.P.C." for short) by exercising powers under Section 209 of Cr.P.C., the learned Magistrate committed the case to the Court of Sessions. Thereupon, the case was numbered as Sessions

Case No.67 of 2008 and was made over to the learned Additional Sessions Judge, for disposal in accordance with law.

7) On appearance of the accused before the learned Additional Sessions Judge, a charge under Section 302 of I.P.C. was framed against the accused and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

8) In order to establish the guilt against the accused, the prosecution before the learned Additional Sessions Judge, examined P.W.1 to P.W.16 and got marked Ex.P.1 to Ex.P.11 and M.O.1. After closure of evidence of the prosecution, the accused was examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances appearing in the evidence let in, for which he denied the same and stated that he has no defence witnesses.

9) The learned Additional Sessions Judge on hearing both sides and on considering the oral as well as documentary evidence, found the accused guilty of the offence under Section 304 Part-II of I.P.C. culpable homicide not amounting to murder as against the original charge under Section 302 of I.P.C. The learned Additional Sessions Judge made a finding that the accused was aged about 67 years by the date of filing of the case and he is aged around 70 years at the time of judgment

and taking into consideration the above said facts, sentenced him to undergo simple imprisonment for three years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of three months for the offence under Section 304 Part-II of I.P.C. and that the remand period, if any, shall be set off under Section 428 of Cr.P.C. Felt aggrieved of the same, the unsuccessful accused filed the present Criminal Appeal.

10) Now, in deciding this Criminal Appeal, the points that arise for consideration are as follows:

(1) Whether the prosecution before the learned Additional Sessions Judge proved that on 06.09.2007 at 11-00 p.m., at Padirikuppam Dalithawada, the accused voluntarily caused hurt to the deceased on the back of the neck and that in consequence of that whether the deceased died on 24.09.2007 at 8-30 a.m.?

(2) Whether the prosecution before the learned Additional Sessions Judge proved that the accused committed the offence of culpable homicide not amounting to murder beyond reasonable doubt?

(3) Whether the judgment, dated 10.11.2010 in S.C.No.67 of 2008 is sustainable under law and facts and whether

there are any grounds to interfere with the judgment of conviction and sentence imposed against the appellant?

POINT Nos.1 to 3:-

11) Sri Suresh Kumar Reddy Kalava, learned counsel appearing for the appellant, would contend that the alleged date of offence was on 06.09.2007 at 11-00 p.m. The allegations were that out of verbal exchange, the accused became angry and forcibly pushed the deceased, due to which the deceased fell in between reaper and chair and as a result, he fell in between the seats arranged at the above place and his head was struck and that he also beaten the deceased on the back of the neck with stool. Though such a serious allegation was there that the accused attacked the deceased on a vital part of the deceased with a stool, but neither deceased nor relatives of the deceased thought of to give any report before the police. On 06.09.2007 the deceased was alleged to be referred to private Doctor and from there to SVRR GG Hospital, Tirupati and from there to SVIMS, Tirupati. According to Ex.P.6-discharge summary of the SVIMS, admission of the deceased was on 08.09.2007. Even then no medical intimation whatsoever was forwarded to the police. It was only on 11.09.2007 i.e., 4th day after the admission of the deceased in the hospital, a medical

intimation was said to be forwarded to police citing that the deceased allegedly sustained injury due to fall on stage drama at 11-00 p.m. It is borne out by the record that the deceased also put forth such a version before the Doctors in SVIMS hospital and also before the private doctor. So, till 11.09.2007 no report could be lodged. No statement of the deceased could be recorded. It was on 11.09.2007. Ex.P.8 was said to be recorded by the concerned police constable in which there was allegations against the accused. The prosecution did not explain the delay in lodging the report. It is fatal to the case of the prosecution in view of the serious infirmities appearing from the evidence on record. The deceased was discharged from the SVIMS hospital in good health condition on 14.09.2007. Therefore, the deceased could survive for about 10 days after the discharge. The date of death was on 24.09.2007. The prosecution did not establish anything as to whether the deceased received external injury on the back of his head or at cervical area of the neck. The cause of death according to the medical evidence is on account of injury to cervical canal stenosis. The Doctor who conducted autopsy answered in the cross examination that the cause of death may be natural. Even the medical officer, who was examined in SVIMS hospital, did

not notice any injury on the back of the neck. Even the private doctor who originally treated the deceased in earliest point of time on 06.09.2007 could not notice any external injury. There is glaring inconsistency between the ocular evidence and the medical evidence. All these facts were canvassed before the learned Additional Sessions Judge and the learned Additional Sessions Judge simply brushed aside the contention of the appellant on the ground that when there was overwhelming direct evidence such things cannot be considered. According to P.W.1, the deceased consumed liquor at the time of orchestra drama. Even P.W.8, another direct witness, testified the same in cross examination that even the deceased along with others consumed liquor and dances on the stage. All these probabalizes the contention of the accused that the deceased received injury by fall. The evidence on record warrants the Court to extend benefit of doubt. It is unsafe to convict the accused in the aforesaid set of circumstances when there is a glaring inconsistency between ocular testimony and the medical evidence. Most of the witnesses were kith and kin of the deceased, who supported the case of the prosecution for obvious reasons. The unexplained delay in lodging Ex.P.1 coupled with the above serious infirmities entitles the accused to

claim benefit of doubt, as such, the Criminal Appeal may be allowed.

12) Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, would contend that P.W.1 to P.W.5, P.W.8 and P.W.12 were the direct witnesses who fully supported the case of the prosecution. They specifically spoke the overt acts as alleged against the accused either in Ex.P.8 or in Ex.P.1. Though the cause of death may be after about fortnight subsequent to the attack made on the deceased, but the death was on account of the injury received by the deceased. It is evident from the medical evidence. When there is overwhelming direct evidence, the simple discrepancies would not effect the case of the prosecution. The learned Additional Sessions Judge rightly appreciated the evidence on record and convicted the accused and took a lenient view as the accused was aged about 70 years as on the date of judgment, as such, there are no grounds to interfere with the judgment of conviction.

13) P.W.1 was no other than the wife of the deceased. P.W.2 was a direct witness to the occurrence. P.W.3 and P.W.4 were the daughters of the deceased, who supported the case of the prosecution. P.W.5 was also a direct witness to the

occurrence. P.W.6 came to know about the death of the deceased through the wife of the deceased and he claimed that he acted as inquest panchayatdar. P.W.7 was a witness to the arrest of the accused and consequent recovery of the wooden stool in pursuance to the so-called confession. P.W.8 also claimed that he witnessed the occurrence and further acted as panchayatdar to the arrest of the accused. P.W.9 was the Casualty Medical Officer in SVIMS Hospital, Tirupati, who initially treated the injured and referred him to Neurosurgery Department. P.W.10 was the medical officer, who conducted autopsy over the dead body of the deceased and Ex.P.5 is the postmortem report. P.W.11 was the Dr. K. Somasekhara Naidu, who initially treated the deceased and referred him to RUIA Hospital, Tirupati. P.W.12 claimed to have witnessed the occurrence. P.W.13 was the Assistant Professor in Neurosurgery Department, who spoke about the treatment that was given to the deceased. P.W.14 was the Police Constable who recorded the statement of the deceased on 11.09.2007 under Ex.P.8 upon the instructions of S.I. of Police. According to him, Ex.P.7 is the hospital intimation and Ex.P.8 is the statement of the deceased. P.W.15 was the S.I. of Police, who instructed the police constable to record the statement of the injured and registered

FIR. P.W.16 was the then Inspector of Police, Karveti Nagar Circle, who was the investigating officer.

14) There is no dispute about the fact that in the village of the accused and the deceased on 06.09.2007 on account of Kumbhabhisekham that was performed at Lord Sri Krishna Temple, there was an orchestra programme arranged by the villagers on the stage and it was also called as stage drama. There was also no dispute about the participation of the deceased in the above said event along with his family members as well as the accused.

15) The testimony of P.W.1 with regard to the actual incident in question is that she, her husband and her children went to *tirunalu*. She, her husband and her children sat near stage arranged in that *tirunalu*. The accused sat behind them on a stool. The accused asked her husband to go on some distance. Her husband went aside and sat there. Again the accused came and forcibly pushed her husband where he fell down. Later, the accused beat her husband with a stool on the back of his neck. They provided water to her husband and taken him to Pallipattu hospital. The doctor examined her husband and advised them to take him to Government hospital, Tirupati. Two or three days later they shifted her husband to

SVIMS hospital. The police came to the hospital and recorded the statement from her husband. As there was no amount with them for providing better treatment to her husband, they shifted him to the house. Within a week he died in the hospital. Because of the accused beat her husband with a stool, he died. After his death, she went to the police station and presented a report which is Ex.P.1.

16) The evidence of P.W.2 is that at the orchestra programme that was arranged in the village, he, Jayaram, his wife P.W.1 and their children and others were there. Jayaram was standing near to the stage of that programme and accused was sitting behind Jayaram. The accused asked Jayaram to go aside, as the programme was not visible to him. Then Jayaram replied that he will witness the programme on his own way and enjoy. The accused went near Jayaram and pushed him down. Jayaram fell down near the stage at *kammulu*. Then the accused taken a stool and beat on the back side of the neck of Jayaram. They tried to lift Jayaram, no movement from him. They shifted Jayaram to private hospital of Dr. Somasekhara in Pallipattu. On the advice of Doctor, they shifted Jayaram to RUIA Hospital, Tirupati. Jayaram was in RUIA Hospital for three days. Later, they shifted to SVIMS Hospital. Jayaram was in the hospital for

five days and thereafter as they were unable to bear the expenses for treatment, got discharged Jayaram from the hospital and took him to their house. Later, he was expired.

17) Turning to the evidence of P.W.3, her evidence is also that her father was standing in front of the stage. The accused asked him to go aside. Her father told him that he will see the program on his own way and asked him to see the programme on his way. The accused grew wild and pushed her father in front of centering sheet arranged for stage where the head of her father was stuck into them and later picked out a wooden stool brought from his house to sit and beat her father on his back. Her father became unconscious and fell down. They and villagers shifted her father to Dr. Somasekhara Hospital at Pallipattu. At the advice of Doctor, they shifted their father to RUIA Hospital, Tirupati and from there her father shifted to SVIMS hospital, Tirupati. After five days because they were unable to bear the expenditure, they shifted her father to house. Later her father died.

18) The evidence of P.W.4, another daughter of the deceased, is also similar as that of the evidence of P.W.3.

19) The evidence of P.W.5 is that at about 10-00 p.m., accused asked Jayaram who was standing near the stage to go

aside, for which Jayaram refused. The accused pushed him forcibly and beat him with a stool. Jayaram fell down. Immediately he was taken to Dr. Somasekhara Hospital at Pallipattu and there from to RUIA Hospital and from there to SVIMS hospital. Doctors told that there are no chances of survival. Again witness says that as there is no sufficient amount with them for treatment, they got discharged from hospital and taken to the house. After one week he died.

20) According to the evidence of P.W.6, he acted as inquest panchayatdar. He and Gangadharam along with Bhaktavatsalam put signatures.

21) The evidence of P.W.8 is that on 25.09.2007 (date was wrongly spoken by the witness) at orchestra programme all of them enjoyed with dances. At that time the accused beat Jayaram with a wooden stool. The injured was shifted to Pallipattu Hospital and from there to RUIA hospital and thereafter he was shifted to SVIMS hospital. Later he was discharged but he died after 19 days. On 25.09.2007 he acted as panchayatdar for arrest of the accused and pursuant to his confession, wooden stool was recovered. M.O.1 is the said wooden stool.

22) The evidence of P.W.12, another direct witness to the occurrence, is also that in the verbal quarrel, accused pushed Jayaram whose head contacted the stage and thereafter accused picked up a wooden stool and beat on the neck of Jayaram. Thereafter, the deceased was shifted to Pallipattu hospital and from there he was shifted to RUIA hospital and he was further shifted to SVIMS hospital. Jayaram was in the hospital for one week and thereafter as there is no amount from them, Jayaram taken back to his house where he died.

23) Firstly, this Court would like to deal with the evidence of some of the prosecution witnesses that though the deceased was taken to SVIMS hospital, but as the deceased and his family members were unable to meet the medical expenditure he was discharged from the hospital. It is to be noted that according to the evidence of P.W.13, the medical officer from the Department of Neurosurgery in SVIMS hospital, the patient was admitted in the category of *Prana Dana Scheme* and the patient need not pay the amount under *Prana Dana Scheme*. Further by the time of discharge, the general condition of the patient was good. As seen from Ex.P.6-discharge summary, it is not a case where the deceased was discharged from the hospital as against the medical advice. The contents of

Ex.P.6 are such that the treatment was given to the patient in a conservative manner and patient was informed to come for review after one month. There were medicines prescribed. At the time of discharge, patient was conscious and coherent. Therefore, the discharge of the deceased as on 14.09.2007 was not against the medical advice. So, the evidence adduced by the prosecution in the form of P.W.1 to P.W.5 as the deceased was unable to bear the medical expenditure and there was no chance of survival, he was discharged from the hospital cannot stand to any reason.

24) For better appreciation of the evidence, it is important to make note of some important dates.

25) The date of offence was alleged to be on 06.09.2007 at 11-00 p.m. On the same day, the deceased was taken to Pallipattu. From there, he was taken to RUIA hospital and from there he was taken to SVIMS hospital. As pointed out, the date of admission of the deceased into SVIMS hospital was on 08.09.2007. The date of statement of the deceased recorded under Ex.P.8 by the police constable was on 11.09.2007. Ex.P.7-medical intimation reads that it was sent to the police to record the statement of the deceased on 11.09.2007 only though the deceased was admitted into hospital on 08.09.2007.

Therefore, from 08.09.2007 to 14.09.2007, the deceased was in SVIMS hospital. His discharge was on 14.09.2007. The date of death of the deceased was on 24.09.2007 i.e., 11th day after his discharge. These are all the facts which are not at all in dispute.

26) Now coming to the cross examination of P.W.1, she testified that because of occasion of *tirunalu*, her husband consumed little quantity of liquor. She denied that her husband was addicted to drinking. She volunteers that on that day only her husband consumed liquor. She denied that as her husband consumed liquor along with others on the occasion of *tirunalu*, he fell down and received injuries and that taking advantage of the death of her husband with injuries, she foisted a false case with ill-advice of enemies of accused in the village and to get monetary benefit. Apart from this, another direct witness to the occurrence i.e., P.W.8 admitted in cross examination that all of the villagers and neighbouring villagers attended the Orchestra programme and they were dancing as like after consuming liquor and that the deceased also danced in that programme. The fact that the deceased consumed alcohol along with other villagers on the fateful day and he indulged in dancing is not in dispute. The defence of the accused is that as the deceased

consumed alcohol, he fell down at the stage and received injuries.

27) Now, this Court has to consider the truth or otherwise of the evidence of the prosecution witnesses in the light of the defence of the accused. The specific overt acts that were alleged against the accused throughout the trial is that firstly, the accused forcibly pushed the deceased, due to which the deceased fell in between reaper and chair and as a result, he fell in between the seats arranged at the above place and his head was struck. Another allegation is that the accused beaten the deceased with stool on the back of the neck.

28) It is to be noted that according to the evidence of P.W.11, on 06.09.2007 around 11-00 p.m., deceased Jayaram was brought by his villagers to his clinic and he examined the said Jayaram. According to the version of the villagers, deceased Jayaram sustained injury on the neck and then he provided first aid to Jayaram and referred to RUIA Hosptial, Tirupati. He did not find any external injuries either on the neck or on the head of the deceased Jayaram.

29) Turning to the testimony of P.W.10-the medical officer, who conducted autopsy over the dead body of the deceased. On 24.09.2007 at about 4-00 p.m., she conducted

autopsy over the dead body of the deceased Jayaram on the requisition of Karveti Nagar Police Station. She has not found any internal injuries. She did not notice any external injuries. She is of the opinion that the deceased might have died due to chronic illness due to injury to cervical canal stenosis as per the opinion of doctors of SVIMS hospital, Neurosurgery Department. Ex.P.5 is the postmortem certificate issued by her. During cross examination, she deposed that as per Ex.P.5, chest, head, neck and neck region are normal. She did not find any negative findings for her opinion with regard to death of deceased Jayaram. When the defence counsel posed a question to the said witness as to whether the death of Jayaram is a natural death, she answered that it can be. She further stated in cross examination that she did not find any marks of stenosis as the injured received such injuries long back and was treated in SVIMS hospital and thereafter the deceased went to the house and died and brought to their hospital for postmortem examination.

30) Turning to the evidence of P.W.13, Assistant Professor in Neurosurgery in SVIMS hospital, he deposed that on 08.09.2007 a patient by name T. Jayaram was admitted with history of fall when the patient attended stage drama in his

village on 06.09.2007 at 11-00 p.m. By then the patient is having quadriplegia with respiratory distress. He was in the hospital up to 14.09.2007. They treated him conservatively and patient was discharged on 14.09.2007. At the time of discharge, the patient is conscious and coherent with quadriplegia secondary to traumatic cervical canal stenosis. Patient was advised to follow up treatment. They issued case summary and discharge summary. Ex.P.6 is the case summary and discharge summary. During cross examination he deposed that patient was referred to their ward from Casualty. They have done thorough investigation for stenosis with quadriplegia. They did not find any external injuries on the patient. According to the history of the patient, patient sustained injury by a fall. By the time of discharge, the general condition of the patient was good. They suggested medicines also which shows that the general condition of the patient was good. Stenosis is not relating to fracture. He further stated in cross examination that when a person dies 10 days after discharge from the hospital, the cause may not due to ailment for which they have treated the patient.

31) By virtue of the above answers elicited from the above witnesses, it is clear that at the time of admission of the deceased into SVRR GG Hospital and further RUIO hospital, the

reason set forth either by the deceased or his family members is that the deceased received injuries by fall at stage drama. Apart from this, absolutely, there were no external injuries corresponding to the overt acts attributed against the accused.

32) It is to be noted that the general condition of the deceased was good at the time of discharge in view of Ex.P.6-discharge summary and the evidence of P.W.13. There is ample evidence from P.W.9, the Causality Medical Officer in SVIMS hospital, P.W.10-the Medical Officer who conducted autopsy over the dead body of the deceased, P.W.11 a Private Medical Practitioner, who initially treated the deceased and further from the evidence of P.W.12 who was Assistant Professor in the Department of Neurosurgery that absolutely they did not notice any injuries either internal or external on the back of the neck or cervical area of the deceased.

33) It is a case though the prosecution examined direct witnesses in the form of P.W.1 to P.W.5, P.W.8 and P.W.12, who alleged overt acts against the accused, but their ocular testimony has no corroboration from the medical evidence. The allegations attributed against the accused is that when he forcibly pushed the deceased, the deceased fell in between reaper and chair and as a result, he fell in between the seats

arranged at the above place and his head was struck and further not satisfied with that he hit the back of the neck of the deceased with stool. If those allegations are true, corresponding injury or injuries were supposed to be found on the back of the neck of the deceased or at cervical area. So, it is a glaring inconsistency between the ocular evidence and medical evidence.

34) In medical parlance cervical stenosis is a narrowing of the cervical spinal canal. This narrowing of the cervical spinal canal may result in compression of the spinal cord/or the nerve roots and affect the function of the spinal cord or the nerve. The spinal stenosis can put pressure on the spinal cord and nerves within the spine. It commonly occurs in the neck of lower back. So, the cervical spinal canal stenosis is nothing but a disease in the relevant spinal area. The opinion of the medical officer, who conducted postmortem examination, is that the cause of death may be due to chronic illness due to injuries to cervical canal stenosis. Therefore, without there being any corresponding injury on the back of the neck or the cervical area, it is very difficult to believe that there is injury to stenosis with quadriplegia attributable to the alleged act of the accused. The answer that was elicited from the mouth of P.W.10 during cross

examination that the death of the deceased can be natural further throws any amount of doubt about the bonafidies of the case of the prosecution.

35) The law is well settled with regard to the glaring inconsistency between the ocular evidence and the medical evidence. The Hon'ble Supreme Court in **Darbar Singh vs. State of Punjab**¹ held that unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. It is only, when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved. The Hon'ble Supreme Court in this regard relied upon decisions in **State of U.P. vs. Hari**² and **Bhajan Singh @ Harbhajan Singh and others vs. State of Haryana**³. Further the Hon'ble Supreme Court in **Pruthiviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala and others**⁴ dealing with the discrepancy between the ocular evidence and the medical evidence, held that in case where there is a gross contradiction between the medical evidence and oral evidence, and the medical evidence makes

¹ AIR 2013 SC 840

² (2009) 13 SCC 542

³ (2011) 7 SCC 421

⁴ 2021 SCC OnLine SC 493

the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.

36) Coming to the case on hand, as this Court already pointed out that there would have been corresponding external injuries on the back of the neck of the deceased or the back of the deceased over cervical area. The absence of such injuries would make the evidence of the direct witnesses unbelievable.

37) Apart from this, as pointed out, there is no explanation from the prosecution as to why the report could not be lodged by the kith and kin of the deceased till 11.09.2007. On the 6th day subsequent to the offence only, a statement could be recorded by the police from the deceased at SVIMS hospital. If really the accused attacked the deceased on the vital part of his body i.e., on neck with a stool and caused injuries either the injured or P.W.1 or her daughters or other kith and kin would not have kept quiet till 11.09.2007. Further even at SVIMS hospital neither injured nor P.W.1 made any move to give statement before the police. Probably for the reason that according to the version of the injured and the persons who accompanied the injured, the injured received injuries by fall in the stage drama, SVIMS hospital authorities did not favour to

give any medical intimation to the police till 11.09.2007. Under the circumstances, even non sending of medical intimation till 11.09.2007 especially when the earliest version before the SVIMS is that the deceased received injuries by fall at the stage Orchestra is also fatal to the case of the prosecution. The unexplained delay in lodging Ex.P.1 coupled with the earliest version of the deceased or the villagers before the medical officer that the deceased received injuries by fall is fatal to the case of the prosecution, in my considered view. The prosecution has to establish a direct nexus between the act complained of against the accused and the death of the deceased. The deceased was discharged from the hospital in good health condition on 14.09.2007 with prescribed medicines. The case of the prosecution which was developed during trial as if the deceased was discharged from the hospital as there was no chance for survival and as they could not meet the medical expenditure was negated by the overwhelming medical evidence. On account of the delay in lodging Ex.P.1 coupled with earliest version, the possibility for deliberations cannot be ruled out.

38) Apart from this, the absence of any corresponding injury on the neck of the deceased when there were serious

allegations that the accused caused injury to the back of the neck of the deceased would warrants this Court to view the genesis of the occurrence as projected by the prosecution with an eye of suspicion. The learned Additional Sessions Judge was inclined to believe the evidence of prosecution witnesses overlooking the overwhelming medical evidence which makes the evidence of the direct witnesses improbable and unbelievable. In my considered view, the prosecution miserably failed to establish the nexus between the act alleged against the accused and the death of the deceased. Even the genesis of the occurrence as projected by the prosecution suffers with any amount of doubtful circumstances and improbabilities. In my considered view, the prosecution before the learned Additional Sessions Judge failed to prove the accused attacked the deceased on the back of his neck with a stool on 06.09.2007 at 11-00 p.m. and the death of the deceased is on account of the act alleged against the accused. It is a fit case where the evidence on record warrants this Court to extend the benefit of doubt.

39) Under the above circumstances, the judgment in Sessions Case No.67 of 2008 is not sustainable under law on facts. The prosecution failed to prove the offence of culpable

homicide not amounting to murder against the accused. The learned Additional Sessions Judge did not appreciate the evidence in proper perspective. The learned Additional Sessions Judge without sound reasons believed the evidence of prosecution witnesses. Therefore, the judgment of conviction and sentence is liable to be interfered with.

40) In the result, the Criminal Appeal is allowed, setting aside the judgment in Sessions Case No.67 of 2008, on the file of IV Additional District & Sessions Judge, Chittoor at Tirupati, delivered on 10.11.2010 against the accused, as such, accused shall stand acquitted of the offence under Section 304 Part-II of I.P.C. culpable homicide not amounting to murder. Bail bonds of the accused shall stand cancelled forthwith. Fine amount, if any, paid by the accused, shall be refunded to him after appeal time is over.

41) The Registry is directed to send the lower court record along with copy of the judgment to the trial Court on or before 07.12.2023.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 30.11.2023.
PGR

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRL. APPEAL No.1481 OF 2010

Date: 30.11.2023

PGR