

THE HON'BLE SRI JUSTICE
C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.971 of 2010

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12.04.2016

Between:

Devasarni Rajanarsu

..Appellant/Appellant

And

The State of Telangana,
represented by its Public Prosecutor,
Hyderabad

..Respondent

Counsel for the appellant: Ms.Naseeb Afshan

Counsel for the respondent: Public Prosecutor
(TS)

The Court made the following:

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JUDGMENT: *(Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This is a case where the appellant was tried and convicted for the offence punishable under Section 302 of the Indian Penal Code on the charge of killing his own son and sentenced to undergo imprisonment for life, besides imposition of fine of Rs.3,000/-, in

default, to suffer rigorous imprisonment for a period of one year.

The case of the prosecution, in brief, is that P.W.1 is the wife of the appellant and the deceased is their son. The appellant and his two brothers owned Acs.4.00 of ancestral property. During partition among the three brothers, Acs.2.00 of land was given to the younger brother of the appellant, viz., Rajaiah on the ground that he was unemployed and Ac.1.00 each fell to the shares of the appellant and his another brother viz., Ramaswamy. This has caused dissatisfaction to the deceased and frequent quarrels ensued between the father - the appellant and his son - the deceased. One year prior to the occurrence, the appellant attacked his son with a stick, due to which, the latter's right leg was fractured. For about thirteen days prior to the occurrence, P.W.1 was away from her house as, she was helping her younger daughter in arranging her new house at Godavarikhani. On the night of 21.03.2008, the appellant called up his wife and informed her that the deceased beat him and that, his wife advised him to go to their elder daughter's house at Godavarikhani and sleep there to avoid quarrels. The elder daughter of the appellant (P.W.2), on coming to know about the quarrels between her brother and her father through the neighbours, took the latter to her house on the night of 21.03.2008. On next day morning, at about 8.00 a.m., the appellant got up and went to his house for washing his face and thereafter, he did not

return. Apprehending that there might have been a quarrel between her father and her brother, P.W.2 started going to her father's house and on the way, she has seen her father coming in opposite direction and she was informed by him that the deceased died. Then, P.W.2 rushed to her father's house and found the deceased in a pool of blood with head injuries. She has immediately called her husband and took the deceased to Surya Hospital, Godavarikhani, where P.W.11-the General Surgeon declared the deceased dead.

P.W.2 informed her mother (P.W.1) on phone that the deceased is in a serious condition. P.W.1 along with her younger daughter visited Surya Hospital, saw the deceased and later, she went to the Police Station and lodged Ex.P-1-report. Based on the said report, P.W.12-the Circle Inspector of Police, Godavarikhani registered a case in Crime No.85 of 2008 of I Town Police Station, Godavarikhani for the offence punishable under Section 302 I.P.C. and issued express First Information Reports to all the concerned. P.W.12 has taken up the investigation, visited Surya Hospital, Godavarikhani, recorded the statements of the witnesses and conducted inquest over the dead body of the deceased. He has also seized M.Os.1 and 2 during inquest and prepared Ex.P-10-inquest panchanama to which, P.W-7 and L.W-13-Jannavaram Chandraiah acted as panchayatdars. P.W-12 has sent the dead body of the deceased for autopsy to P.W-10, who,

after conducting autopsy, issued Ex.P-15-post-mortem report, wherein he has opined the time of death of the deceased as 7 to 10 hours prior to the time of post-mortem and that the death was due to shock and haemorrhage to head injury. P.W-12 visited the scene of offence, prepared Ex.P-11-Crime Details Form and Ex.P-12-rough sketch of the scene of offence in the presence of P.W.8 and L.W-15-Kormi Choralu, who acted as mediators. Later, he arrested the appellant in the RTC bus-stand, Godavarikhani and recorded Ex.P-13-confessional statement of the appellant, in the presence of P.W-9 and L.W-17-Bavena Bheemaiah, based on which, M.O-8 was seized and Ex.P-14-weapon recovery panchanama was prepared. The appellant was then sent for judicial remand and after receiving the report from the Regional Forensic Science Laboratory and the post-mortem report, P.W-12 laid the charge sheet.

The plea of the appellant was one of total denial and he claimed to be tried.

In support of its case, the prosecution has examined P.Ws.1 to 12 and marked Exs.P-1 to P-19 and produced M.Os.1 to 8. P.W-2 was declared hostile.

Based on the oral and documentary evidence, the trial Court convicted and sentenced the appellant to undergo life imprisonment as well as payment of fine, as indicted above.

At the hearing, Ms. Naseeb Afshan, learned counsel for the appellant, submitted

that the entire case of the prosecution is based on presumptions; and that, it has failed to let in any evidence to connect the appellant to the offence. She has further submitted that the prosecution has failed to plead strong motive, let alone proving the same, for a father to kill his own son and that, as motive is the most important fact in a case based on circumstantial evidence, in the absence of proof of such motive, the trial Court ought not to have convicted the appellant.

Opposing the above submissions, learned Public Prosecutor for the State of Telangana has submitted that P.W-1, who is no other than the wife of the appellant, has fully supported the case of the prosecution, besides P.W-2, *albeit* being declared as hostile deposing material facts against her own father. He has further submitted that the conduct of the appellant, as spoken to by P.W-2 herself, on finding his son with serious injuries in a pool of blood was so unnatural as to give rise to a strong presumption that he alone was responsible for causing the death of his son.

We have carefully considered the submissions of the learned counsel for the parties and perused the record.

As rightly argued by learned counsel for the appellant, in a case based on circumstantial evidence, the prosecution has to prove strong motive. P.W-1, who is no other than the wife of the appellant, deposed that her husband originally belonged to Kothur Village of Dharmaram Mandal; that he had

two brothers and the family owned Acs.4.00 of land; and that as the younger brother of her husband had no employment, he was given Acs.2.00 out of Acs.4.00 of land, while her husband and his another brother have taken one acre each. She has further deposed that as her family members were under the impression that they will get equal share in the ancestral property of the appellant, disputes arose between the appellant and the deceased as, they did not get equal share. She has further testified that about one year back, during mid night, when the deceased was sleeping, the appellant attacked him causing fracture of his right leg and on the next day morning, they have shifted the injured to the hospital. She has also deposed that at about 11 pm., on the previous night of the occurrence, her husband telephoned her and informed that her son (the deceased) beat him and that, she has advised him to go to Godavarikhani to avoid further quarrels and stay at the hospital, where their eldest daughter was a nurse.

The defence sought to elicit from her the survey numbers of Acs.4.00 of land and as to whether any civil suit was filed relating to the division of the said land. She deposed that she was not aware of the survey numbers; that no civil suit was filed; and that they did not approach the village elders for settlement of the disputes. A suggestion was put to her that there were no disputes between the family members relating to division of the ancestral

property which she denied. P.W-1 has also stated that no report was given to the Police soon after the fracture of right leg of the deceased and that the deceased was not taken to the hospital on the same night, on which his leg was fractured.

It is relevant to note that it is not the case of the defence that the family of the appellant did not have ancestral property or that, no division of the same has taken place. No suggestion was put to P.W-1 to falsify her statement that one year prior to the date of occurrence, the appellant attacked his deceased son. P.W-2, the elder daughter of the appellant and the sister of the deceased, corroborated the evidence of P.W-1 on the aspect of the appellant attacking the deceased and causing fracture of his right leg. She has also testified that disputes persisted between her father and her brother both on account of the unjust division of the ancestral property as well as her father forcing her brother to get back his wife, who was living separately. Though P.W-2 tried to prevaricate by stating in the cross-examination of the defence that her father and her brother lived together cordially, her elaborate testimony given in the chief-examination clearly exposed her attempt to save her father by trying to go back on what she has stated in her chief-examination. While stating that she does not know who killed her brother, she has indirectly admitted that her father was responsible for the death of her brother by

stating that the disputes between the two must be the reason for the killing of her brother by her father.

On a careful reading of the evidence of P.Ws.1 and 2, we have no reason to disbelieve the case of the prosecution with regard to motive. The evidence of both these witnesses would clearly establish that serious disputes persisted between the appellant and the deceased over partition of the ancestral property and the disputes boiled down to the appellant attacking the deceased one year prior to the occurrence, resulting in fracture of his leg. Further, it also clearly goes to prove that there was a serious quarrel between the appellant and the deceased on the previous night of the day of occurrence, during which, evidently, the deceased beat the appellant, which fact was informed by the latter to his wife-P.W-1.

Learned counsel for the appellant has tried to play down the said quarrel as a minor one based on the evidence of P.W-3, wherein he has stated that his enquiries with the deceased revealed that it was a small quarrel.

In our opinion, the very fact that the appellant, who stayed with the deceased in their house, even in the absence of P.W-1 in the house, would not have left the house and slept in the house of P.W-2 if the quarrel was petty.

In the light of the above discussed evidence, we are of the opinion that the appellant has developed strong grudge against

his own son as the latter has beaten him due to which he appeared to have felt humiliated and retaliated on the morning of the next day for the insult he has suffered during the previous night at the hands of his son.

It is also clear from the evidence that even one year prior to the occurrence, the appellant attacked the deceased, causing fracture injury to him, which clearly goes to show that the appellant was in the habit of beating his son.

Though there is no direct evidence of the appellant killing the deceased, the circumstances are very clearly indicating the involvement of the appellant.

In the first place, P.W-1, who is no other than the wife of the appellant, had absolutely no reason to implicate her husband falsely. No suggestion whatsoever was put to her that any differences existed between herself and the appellant prompting her to give a false complaint against her own husband. The occurrence has taken place between 8 and 8.30 am and the deceased was taken to the hospital at about 9 am, where he was declared dead. By 12 noon, Ex.P-1-report was given to the Police by P.W-1, wherein she has clearly stated that her husband has killed her son and the express First Information Report has reached the Judicial First Class Magistrate within one hour thereafter. Thus, the report was given by P.W-1 without undue delay ruling out any scope for deliberations and confabulations for false implication of the

appellant.

Though the defence has sought to suggest to the prosecution witnesses, including P.Ws.1 and 2, that the deceased had some disputes with the members of a Drivers Union, thereby implying that he would have been killed by any of the members of the Union, we have no reason to believe that P.W-1, being the wife of the appellant, would have left out the real culprits and implicated her own husband.

The conduct of the appellant after the occurrence is also of great relevance. P.W-2 has stated that on noticing that her father has not returned after leaving her house for washing his face in his house, she suspected that some quarrel might have taken place between the appellant and the deceased and that, when she was proceeding to her father's house, her father came in the opposite direction and informed her that his son died.

From the evidence of P.W-1, it is clear that on the previous night of the occurrence, when the deceased has beaten the appellant, the latter has informed her on phone about the said fact and that, on her advise, the appellant went to the house of their elder daughter (P.W-2) and slept there. Thus, it is clear from her evidence that there was a telephone available at the house of the appellant. If the appellant was not involved in the commission of offence, the moment he has noticed his son in injured condition and lying in a pool of blood, he would have immediately, called up his wife on phone. Instead, he has

coolly left his son in injured condition and was proceeding to his daughter's house. It has come in the evidence that the deceased has succumbed to the injuries one hour after he was brought to the hospital, which clearly suggested that he was very much alive when the appellant saw him in his house. No person of ordinary prudence and much less, a father would leave his son to his fate, when the latter was lying with serious injuries without making any effort to alert the neighbours and shift him to hospital to save his life. Thus, the conduct of the appellant was so unnatural as to create a strong presumption that it was only he who was responsible for causing the death of his son.

On the strength of the above discussed evidence and the conduct of the appellant, we have no reason whatsoever to think that the appellant was innocent and that the deceased could have been killed by any third party, as desperately sought to be suggested by the defence. Though the case was based on circumstantial evidence, the prosecution succeeded in proving the strong motive for the appellant to commit the offence and also in establishing all the links in the chain of circumstances to pin down the appellant to the offence. Hence, we do not find any reason to interfere with the judgment of the trial Court.

The Criminal Appeal is, accordingly, dismissed.

JUSTICE
C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

12th April 2016
DR