

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.559 OF 2011

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Assailing the judgment in Sessions Case No.116 of 2010 on the file of the VII Additional District and Sessions Judge (Fast Track Court), Visakhapatnam, wherein the sole accused was convicted for the offence punishable under Section 302 IPC and sentenced to suffer Rigorous Imprisonment for Life and also to pay a fine of Rs.50/-, in default to suffer Simple Imprisonment for fifteen (15) days, the present appeal is filed.

2. The gravamen of the charge against the accused is that on 20.07.2001 at about 6:30 P.M., at the thrashing floor situated on the left side of Ganuga Dibbalu, the accused caused the death of one Itemsetti Bheem Naidu (deceased) by attacking him with a knife and causing injuries on the cheek, neck and chest etc.

3. The case of the prosecution as unfolded from the evidence is as under:

PW.1 is wife and PW.5 is brother of the deceased, whereas the accused is brother-in-law of PW.1 and senior paternal uncle's son of PW.5. PW.6 is the relative of the deceased and the accused. All are residents of Veera Narayanam Village. Prior to the date of incident, disputes arose between the deceased and the accused in

respect of a boundary, at the thrashing floor. At that time, the accused is alleged to have threatened the deceased with dire consequences. The accused suspected the deceased as having illicit intimacy with his wife. Keeping these two incidents in mind, the accused is alleged to have caused the death of the deceased on 20.07.2009. It is said that on the fateful day, PW.1 along with the deceased went to her parents Village at K.J.Puram. In the evening, her husband (deceased) returned to their village, Veera Narayanam, and on the next day she returned. At about 5:00 P.M., while PW.1 was doing household works, LW.2 came and informed about the death of her husband, caused by an unknown person, at Itemsetti's huts. As per the evidence of PW.4, on 20.07.2009 at about 6:00 P.M., the deceased after completing his work, proceeded towards his fields. The accused is said to have followed him and stabbed the deceased with a knife on right cheek, right side of neck, left side of his chest and on right thumb and thereafter escaped from the place. PW.4 claims to have witnessed the incident and informed PW.6, who is brother of the accused by courtesy, and PW.5, who is brother of the deceased. PW.4 also claims to have informed about the incident to other villagers. Thereafter, all of them rushed to the scene of offence and found the deceased lying dead and the articles, which were carried by the deceased and his cycle were lying in a pell-mell condition. On the next day, i.e., on 21.07.2009, PW.1 presented a report (Ex.P.1) with PW.14, Sub-Inspector of Police, V.Madugula Police Station. Basing on which, PW.14 registered a

case in Crime No.67 of 2009 for the offence punishable under Section 302 read with 34 IPC. Ex.P.8 is the First Information Report. This being a grave offence, he despatched FIR to the Court concerned. On the same day, PW.15, the Circle Inspector of Police, received information about the incident and registration of the crime. Immediately, he proceeded to the scene of offence and examined PWs.1 to 5 and three others. He conducted inquest over the dead body of the deceased in the presence of PW.10 and another mediator. Ex.P.3 is the Inquest Report. On the same day, he also prepared a panchanama of the scene of offence, in the presence of PWs.11 and another. The same was marked as Ex.P.4. Thereafter, a rough sketch was prepared and the same is placed on record as Ex.P.9. Thereafter, the body was sent for Post Mortem Examination on 21.07.2009. PW.13, the Medical Officer at Govt. Hospital, Chodavaram, conducted autopsy over the dead body and issued Ex.P.7, Post Mortem Examination Report. He noticed about ten external injuries over the body. According to him, the cause of death was due to injuries received by the deceased, which are possible with M.O.1 knife. On 25.07.2009, the accused surrendered before PW.14. After effecting recovery of M.O.1 knife, PW.15 completed investigation and filed a charge sheet for an offence punishable under Section 302 IPC.

4. Learned Judicial Magistrate of First Class V.Madugula, took the case on file as P.R.C.No.3 of 2010, for the offence punishable under

Section 302 IPC. After furnishing documents to the accused and by following the procedure laid down under Section 209 Cr.P.C., the case was committed to the Court of Sessions, Visakhapatnam, which came to be numbered as Sessions Case No.116 of 2010.

5. On appearance of the accused, after hearing both sides and on consideration of material placed on record, a charge under Section 302 IPC was framed against the accused, which was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

6. In support of its case, prosecution examined PWs.1 to 15 and got marked Exs.P.1 to P.12 and M.Os.1 to 4.

7. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., explaining the incriminating material appearing against him in the evidence of prosecution witnesses, which was denied by him. No oral and documentary evidence was adduced by the accused in support of his defence.

8. After considering the material available on record, the trial Court recorded the conviction as stated above.

9. Learned counsel for the appellant mainly submits that there is any amount of doubt as to whether PW.4 could have seen the incident. He submits that since PW.4 was behind the deceased and since the attack was from back side, the prosecution failed to

explain as to how the deceased sustained injuries on the front portion of his body. He further submits that the incident occurred at 6:30 P.M., in the month of July, and in view of the darkness, which prevails in the month of July, the possibility for PW.4 seeing and identifying the assailant is doubtful. He further submits that though the accused is alleged to have attacked the deceased with knife from back side, deceased sustained injuries on the face, which falsifies the presence of PW.4 and witnessing the incident. He further submits that since the prosecution failed to examine any other independent witness, the evidence of sole eye witness cannot be accepted.

10. On the other hand, learned Public Prosecutor opposed the same contending that there are no circumstances to disbelieve the evidence of PW.4. He further submits that though PW.4 was subjected to lengthy cross-examination, nothing useful was elicited to discredit his testimony. Apart from that, he also submits that in the inquest report itself, PW.4 was shown as an eye witness to the incident, as such, his presence and witnessing the incident, cannot be doubted.

11. Insofar as the discrepancy in the oral evidence and the medical evidence, he submits that there is absolutely no discrepancy since most of the injuries are consequential to the first four injuries.

12. As seen from the record, the entire case rests on the solitary testimony of PW.4, who was examined as an eye witness to the incident. It is not in dispute that the presence of PW.4 as an eye witness to the incident was mentioned in the inquest report itself.

13. In his evidence PW.4 narrated the manner in which the incident took place. It would be useful to extract the evidence of PW.4, in the words spoken by him, which is as under:

“That was on 20.07.2009. On that day around 6.00 p.m., deceased after completing his work proceeded towards his house from the fields and accused followed him and I followed accused and at Itamsetti huts, accused stabbed deceased with knife used for cutting the trees on his right cheek, right neck and on left side of his chest and right thumb. I witnessed that incident and accused escaped from that place. The scene of offence is also called as Gajuja Dibba road. By raising the cries that accused murdered deceased, I ran from the scene of offence and saw LW.9 Suribabu, who is brother of accused by courtesy and Itamsetti Ramana Jaggarao, who is brother of deceased. There I have also found brother of accused Suribabu and I have informed the incident to LW.8, LW.9 Suribabu and other Suribabu who is brother of accused and on that, all of us reached to scene of offence and observed that deceased in this case died and household articles of deceased, his cycle etc were also found at scene of offence since he was carrying them. There were disputes between accused and deceased since accused suspected that his wife was having illicit intimacy with deceased. Apart from that there were disputes between accused and deceased in respect of field boundary lane dispute.”

From the evidence of PW.4, it is clear that the accused stabbed the deceased with a knife, used for cutting trees, on right cheek, right side of neck, left side of the chest and on right thumb and that his evidence also discloses that he was behind the deceased at the time of incident. The argument of the learned counsel for the appellant that PW.4 could not have identified the accused since the light was fading at 6.30 P.M., as the incident is in the month of July, cannot be accepted, for the reason that both of them are living in the same village and are known to each other. It is not the case of the accused, that PW.4 was at a distance away and that the accused and PW.4 are strangers.

14. Insofar as the motive is concerned, the evidence of PW.4 is supported by the evidence of PW.1, who categorically deposed about the existence of a boundary disputes between them. Further the evidence of PW.3 also reveals the illicit relationship of the deceased with the wife of the accused. Therefore, it cannot be said that there was no motive for the accused to attack the deceased.

15. The argument of the learned counsel for the appellant that there is a discrepancy with regard to the oral evidence and medical evidence, also cannot be accepted. The evidence of the Doctor (PW.13) shows the existence of ten external injuries on the body of the deceased. It will be appropriate to extract the injuries sustained by the deceased, which are as under:

1. "A transverse lacerated wound size 5x3"x1/2 from cheek to back of the ear
2. A crescent or semicircular large lacerated wound from left mandibular joint to right mandibular joint 7"x5"x5".
3. Size 6"x3"x1/2" transverse lacerated wound present at centre of the chest.
4. Size 4"x3"x1/2" wide lacerated wound (irregular) with Avulsion of right thumb.
5. Size 3"x2" lacerated wound present below the chin.
6. Size 2"x2"x1/2" size two parallel oblique lacerated wound present at right side of the neck.
7. Both upper and lower limbs tightened, Rigormortis was present.
8. Abdomen distended.
9. 1st, 2nd, 3rd metacarpal bones were fractured.
10. Large size bruise was present in the centre of the head involving the bone."

16. In his evidence, PW.13 categorically states that all the injuries received by the deceased are fatal injuries and that they are possible with knife (M.O.1). A reading of the above injuries would show that most of the injuries were on cheek, chin, neck and chest, which is clear from injuries 1 to 3, 5 and 6 and further, the injury No.4 was on the right thumb. All the above injuries, which were noticed on the body of the deceased, get corroboration from the oral evidence of PW.4. Though the Doctor was cross-examined, nothing useful was elicited to discredit his testimony.

17. In view of the evidence of PW.4, whose presence at the scene is mentioned in the earliest document and whose evidence gets ample corroboration from the evidence of Doctor (PW.13), we see

no reason to disbelieve the evidence of PW.4. Hence, we do not find any reason to interfere with the conviction and sentence awarded by the trial Court.

18. Accordingly, the Criminal Appeal is dismissed.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE P.KESHA RAO

Date:05.10.2017
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