

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Appeal No.1027 of 2011

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

The sole accused in Sessions Case No.399 of 2008 on the file of the Special Sessions Judge for Trial of Cases under S.Cs. & S.Ts. (PoA) Act-cum-VII Additional District & Sessions Judge, Mahabubnagar is the appellant herein. He was tried for the offence punishable under Section 302 IPC for causing the death of his daughter by name A.Sirisha by causing head injury with a stone. By its judgment dated 19.11.2010, the Sessions Judge convicted the accused and sentenced him to undergo 'imprisonment for life'.

2. The facts as culled out from the prosecution witnesses are as under:

P.W.1 is Head Mistress of school, while P.W.2 is the grand father of the deceased and P.W.10 is the mother of the deceased.

P.W.10 in her evidence deposed that a day prior to date of incident i.e., on 18.2.2008, there was a quarrel between the accused and herself while he was in a drunken state. On the next day morning, while she was attending to the coolie work, somebody came and told her about the death of the deceased.

The evidence of P.W.1, who is a Head Mistress, would show that on the date of incident i.e., on 19.2.2008, the accused came to the school stating that his wife called their daughter to their house. When they refused to send the girl, accused requested her stating that her mother is going to the village and he has to send her with his wife. In the cross-examination it has been elicited from P.W.1 that accused used to visit the school frequently and on that day, he approached class teacher by name Sandhya and insisted her to send the child with him, but when she refused, the accused requested P.W.1 to send the child along with him. The evidence of P.W.5 shows that at about 10.30 or 11.00 AM while he was doing stone cutting work, someone informed him that a girl was crying nearby that place. Both of them went to the spot and found the girl lying with injuries. They gave water to the girl, but she succumbed to the bleeding injury on the head. Thereafter, P.W.5 approached the Village Sarpanch and informed him about the incident. P.Ws.3 and 4 came to P.W.1 and informed her about the dead body of a girl lying near the house of P.W.5. P.W.1 informed to Police by telephone about the death of the deceased and thereafter lodged a report, basing on which the case in crime No.14 of 2008 of Police Station, Ghanpur, came to be registered.

3. P.W.14 – the C.I. of Police, after receiving a copy of F.I.R., proceeded to the scene of offence; found the dead body and prepared a panchanama of the scene in the presence of P.Ws.7 and 11. Ex.P7 is the scene of offence panchanama. Thereafter, he conducted

inquest over the dead body of the deceased. Ex.P8 is inquest panchanama. During inquest of the deceased, he seized M.Os.4 to 10. After conducting inquest, he sent the body to the post-mortem examination. P.W.12. the Civil Assistant Surgeon, Area Hospital, Wanaparthi, conducted post-mortem examination over the dead body and issued Ex.P11 – the PME report. According to him, the cause of death was due to haemorrhage and shock due to injuries. He noticed eight external injuries on the body of the deceased and also noticed bleeding from nose and ears.

4. On 24.2.2008, P.W.14 arrested the accused in the outskirts of the village and on questioning, he confessed about the commission of offence. P.W.14 also seized blood stained shirt and lungi from his possession. The admissible portion of the confessional statement was brought on record, as Ex.P9. After completing the investigation and after collecting all the material, a charge-sheet came to be filed which was taken on file as P.R.C.No.13 of 2008 on the file of the Judicial Magistrate of First Class, Wanaparthi. After following the procedure laid down under Section 207 of Cr.P.C. and as the offence alleged is triable by the Court of Sessions, the Magistrate committed the case to the court of sessions, which came to be numbered as S.C. No.399 of 2008.

5. A Charge under Section 302 IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P13 and M.Os.1 to 10. Out of 14 witnesses examined, P.Ws.2 to 6 and 13 did not support the case of prosecution and were treated hostile. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the accused, in support of his defence.

7. On appreciation of the entire evidence on record, the Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

8. Learned counsel for the appellant/accused would mainly submit that there is no eyewitness to the incident and the case is based on circumstantial evidence, hence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. He further submits that the evidence of P.W.1 cannot be relied upon, since there is an element of doubt as to whether the accused visited the school. He further submits that visiting register maintained at school does not anywhere indicate the visit of the appellant to school on the said date. Since these registers are not produced, he pleads that an adverse inference can be drawn against the prosecution.

9. On the other hand, the learned Public Prosecutor would submit that non-production of the visiting registers does not in any way improve the case of the accused. Apart from that he would submit that there is no explanation from the accused as to how the child died when the evidence of P.W.1 discloses that he took the child from the school in the morning. The evidence of P.W.1, who is Head Mistress of the school therein, shows that it was accused who took the child from the school in the morning and within 1 ½ hour thereafter, P.W.5 noticed the girl lying in hillock. They gave water to the girl, in spite of that, she succumbed to bleeding injury on the head. In view of the above, he submits that though there are no eye-witnesses, but in the absence of any explanation from the accused, it has to be held that it was accused alone who is responsible for the death of the deceased.

10. The short point that arises for consideration in this appeal is whether the accused can be held guilty for causing the death of his daughter?

11. Admittedly, there are no direct witnesses to the incident and the case rests on circumstantial evidence. In the present case, the accused was last seen in the company of the deceased and the time gap between the time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that no other inference is possible. It is to be noticed here that though P.W.1 was cross-examined at length, her evidence remained unimpeached. According to P.W.1, on that day, the accused came to the school and

wanted to take the child from the school stating that her mother was going to the village and he has to send her with his wife. It will be useful to extract the evidence of P.W.1 in the words spoken by her, which is as under :

“The accused came to the school stating that his wife called their daughter at their house. The accused was the person who came to the school. We have refused to send the girl with the accused, but, on his request stating that her mother going to village, we sent her with the accused.”

12. Therefore, the evidence of P.W.1 would show that on that day, the accused came to the school and took the deceased along with him. In the cross-examination of P.W.1, which was made long after the evidence in chief, it has been elicited that the accused used to visit the school frequently. The accused first approached the class teacher and thereafter came to P.W.1 to take the child along with him. From the above it is clear that initially the accused wanted to take the child from the school, but when the school teacher Sandhya refused, the accused approached P.W.1 and wanted to take the child with him. The reason given by him appears to be that at the instance of her mother (P.W.10) he wanted to take the child with him.

13. But the evidence of P.W.10 is otherwise. She never made such request to accused for bringing the deceased from the school. It will be useful to extract the evidence of P.W.10 in the words spoken by her, which is as under :

“In the morning time on that day the deceased went to school for her studies at manajipet village. The school madam telephoned to our village people and they told me that the accused himself brought the deceased from the school. They told me that accused killed the deceased at hillock area. I rushed to the spot where our daughter died. I found head injury on the deceased and she was in pool of blood and appears to be that she was beaten into a coal. Earlier to the death of the deceased during night time accused quarrelled with me, in drunken state of mind. I do not know the reason for which the accused killed my daughter.”

14. Though P.W.10 was cross-examined, nothing useful was elicited. Therefore, the version given by the accused for taking the deceased from the school is false.

15. The question that arises for consideration is whether the accused went to the school and took the deceased along with him.

16. The main plea of the learned counsel for the appellant is if really the appellant has gone to the school, nothing prevented the prosecution from producing the visiting registers which were admittedly maintained in the school. It is no doubt true that the visiting register was not produced before the Court. But, in the cross-examination of P.W.1 it has been elicited that that the police inspected the visiting registers of the school. Therefore, it is clear that only after inspection, the prosecution tried to establish the culpability of the accused in the offence. But, at the same time, we are of the considered view that non-mentioning the name of the appellant in the register may not be of much relevance in view of the evidence of P.W.1 to whom no

enmity or animosity has been suggested to speak falsehood against the accused. As stated above, her evidence is cogent and convincing. She being Head Mistress of the school, on being informed, went to the scene of offence on tracing the body of the deceased and lodged a report. Therefore, the argument of the counsel for the appellant that the evidence of P.W.1 cannot be accepted does not stand to ground.

17. Hence, we feel that the evidence of P.W.1 can be acted upon to find out the truth in the prosecution case. When once the evidence of P.W.1 is believed, it stands to establish that on that day in the morning about 9.00 AM, the accused took the deceased along with him by making a false representation. Within 1 ½ hours thereafter, P.W.5 was informed about the deceased lying nearby and was also crying. Immediately he went there and gave water, but she succumbed to injuries. When once the evidence of P.W.1 is believed, the accused has to explain as to how the deceased died within 1 ½ hours from the time he took the deceased from the school. Except denial, no explanation is forthcoming from the accused with regard to the manner in which the deceased died. It is true that a presumption cannot be drawn against the accused, but having regard to the fact that he took the deceased from the school at 9.00 AM, the burden is on him to explain as to how his daughter died while she was in his custody. The conduct of the accused also appears to be abnormal, as he gave false explanation before P.W.1 while taking his daughter from the school. According to P.W.1, the accused took the deceased on the request

made by P.W.10, but P.W.10 in her evidence never deposed that he sent the accused to get the daughter. Even in the cross-examination of P.W.10 it was never suggested that she sent the accused to get the deceased from the school.

18. Having regard to the above, we feel that the circumstances proved by the prosecution and the conduct of the accused are sufficient to base conviction against the accused.

19. Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence imposed by the Sessions Judge by judgment dated 19.11.2010 in Sessions Case No.399 of 2008 on the file of the Special Sessions Judge for Trial of Cases under S.Cs. & S.Ts. (PoA) Act-cum-VII Additional District & Sessions Judge, Mahabubnagar.

20. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

23rd November, 2017

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