

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Appeal No.1181 of 2012

JUDGMENT : (per the Hon'ble Sri Justice N.Balayogi)

The appellant/accused aggrieved by the conviction and sentence dated 28.9.2012 in S.C.No.89 of 2011 on the file of the Special Sessions Judge for the trial of cases under S.Cs./S.Ts. (PoA) Act-cum-Additional Sessions Judge, Adilabad, preferred this appeal.

2. The prosecution case is as follows :

There are land disputes between the deceased Sursholla Poshetty and Gangadhar for the last four years. While so, on 8/9.6.2010 while the deceased was alone at house and sleeping in the front of the house, at about 2.00 AM the appellant hacked with axe on his neck on rear side of head and killed him. P.Ws.2 and 3 the daughter and son of the deceased witnessed the same and informed P.W.1 over phone. Immediately P.W.1 rushed to the spot and found her husband died on the cot. After filing the charge-sheet, the learned Judicial First Class Magistrate, Bhainsa took the cognizance of the offence under Section 302 I.P.C.

3. After apprehension of the accused, the learned Judicial Magistrate of First class, Bhainsa furnished the copies of case documents to the accused as contemplated under Section 207 Cr.P.C.

4. Since the case is exclusively triable by the Court of Sessions, the learned Judicial Magistrate of First Class committed the case to the Court of Sessions under Section 209 Cr.P.C. and the same is numbered as S.C. No.89 of 2011.

5. In support of the prosecution case, P.Ws.1 to 11 were examined and Exs.P1 to P9 and M.Os.1 to 8 were got marked.

6. Now the point that arises for determination is whether the conviction and sentence imposed against the appellant is legal and can be sustained?

7. The contention of the appellant is that there is no evidence to establish enmity between the appellant and the deceased and that there is also no evidence of any light at the alleged time of 2.00 AM and doubt may arise and it may go in favour of the appellant. The presence of P.Ws.2 and 3 and their witnessing the offences is doubtful and improbable.

8. The undisputed facts spell out from the testimony of P.Ws.1 to 3 are that P.W.1 is the wife, P.Ws.2 and 3 are younger son and daughter of the deceased. The appellant/accused is none other than

junior paternal uncle of P.Ws.2 and 3 by relation as he being the younger brother of the deceased. The further evidence is that there are land disputes between the deceased and the appellant for the last four years. P.Ws.1 to 3 and deceased and the elder son Gangadhar are residing in their own house. It is the evidence of P.Ws.2 and 3 corroborated with P.W.1, their mother, is that on the previous day P.W.1 along with her elder son Gangadhar went to Nagaram to see the other daughter of P.W.1 Sayavva.

9. P.Ws.2 and 3 are direct witnesses to the incident. To prove the land disputes between the accused and the deceased the prosecution examined P.W.4 – Kalyan Lingu Ram who is also doing cultivation. He knows P.Ws.1 to 3, deceased and the accused. According to the evidence of P.Ws.1 to 3, the mother and children, there are land disputes between the accused and the deceased since four years and there were mediations. P.W.4, who acted as a mediator along with Bheema Rao and Lasmanna, who are elders of their village, is the proper and relevant person to speak about disputes between the accused and the deceased. Unimpeachable evidence of P.W.4 is that he along with Bheema Rao and Lasmanna conducted mediation between the deceased Poshetty and the accused with regard to the dispute in respect of the landed property about four years ago. The existence of the land dispute between the accused and deceased since four years is proved by the consistent and corroborative evidence of P.Ws.1 to 4.

10. The further evidence of P.W.4 is that when accused and deceased came to them regarding dispute in respect of landed property, they affected partition of the property equally. It is further deposed that in view of the dispute with regard to bund in between the lands of the accused and the deceased, the deceased used to make indecent comments against the accused. Around 2 or 3 days prior to the incident, the accused in a drunken state of mind stated that the deceased was not heeding to the words of elders, as such he had to personally look into this affair. Two or Three days later in the morning having come to know about the death of Poshetty, himself and others gathered and came to know through the children of deceased who by weeping stated that the accused killed Poshetty during the preceding night. He also found injury on the neck of the dead body.

11. There is a suggestion to P.W.1 which he admits that he did not state to the Police two days prior to the death of Poshetty that accused in a drunken state stated that Poshetty was not heeding to the words of elders and that he had to look into his affairs personally.

12. The defence counsel during cross-examination of P.W.4 elicited that though there was partition between father of accused and father of the deceased, Poshetty and accused were quarrelled with regard to boundary line.

13. During examination of the appellant/accused under Section 313 Cr.P.C. he stated that there used to be boundary disputes between the accused and the deceased which were settled in a mediation which clinches the issue.

14. The contention of the appellant is that there is only one cot in the photographs taken and the same is inconsistent with the evidence of P.Ws.2 and 3 who stated to be eyewitnesses slept on three cots. Therefore, the presence of P.Ws.2 and 3 at the time of incident is improbable.

15. The prosecution case is that while the deceased was sleeping on a cot in front of his house on the intervening night of 8/9.6.2010 he was killed and P.Ws.2 and 3 witnessed while the appellant/accused axed on the neck and head of the deceased during night.

16. Admittedly, as per the evidence of P.Ws.1 to 3, P.W.1 and Gangadhar were not present at home during the night of 8/9.6.2010. On the previous date they went to Nagaram to see the elder daughter of P.W.1 and deceased Sayavva who gave birth to a child.

17. The consistent evidence of P.W.3 Devu Bai which is corroborated with the evidence of P.W.2 is that during night at about 2.00 AM P.W.3 woke up her brother P.W.2 as she wants to go for urination, both went to a distance of thirty feet from the cot towards

front side of the house and while returning, they witnessed while the accused hacking the deceased who was sleeping on the cot.

18. It is pertinent to note that the evidence of P.Ws.2 and 3 is that they were sleeping on a cot by the side of the cot of the deceased. The incident took place at around 2.00 AM on the mid night of 8/9.6.2010. It is also the corroborative evidence of P.Ws.2 and 3 that during night P.W.3 woke up P.W.2 to go for urination and they have gone to a distance of thirty feet from the front side of the house and while returning witnessed while accused hacking the deceased on the neck and on the back side of the head of the deceased while the deceased was sleeping on the cot and that they raised cries, then the accused fled away. During cross-examination, P.W.2 reiterated the witnessing while the accused blowing the first blow and so also P.W.3 evidence is that the accused killed her father with axe on the neck and accused dealt two blows. P.W.2 also during cross-examination stated that they went for about 36 feet from their father's cot opposite to the door way i.e., his father's leg side and while returning, the incident took place.

19. Ex.D1 is the contradiction marked through P.W.2. According to which, there were three cots and that himself and sister and father were sleeping on different cots. During evidence P.Ws.2 and 3 stated that they were sleeping on one cot where as their father was sleeping on another cot. P.W.2 is aged about 16 years and P.W.3

was 17 years old. Generally, during summer, the villagers will sleep in open place and there is no absurdity in P.Ws.2 and 3 sleeping on one cot, whereas their father slept on another cot. Photographs - Ex.P2 show only one cot.

20. Father of P.Ws.2 and 3 – deceased was hacked to death while he was sleeping on a cot. The villagers who gathered there cannot be expected to keep the other cot there itself. The mere fact that the cot was not available by the time of photographs was taken at 8.30 AM or 9.00 AM cannot be discarded the evidence of P.Ws.2 and 3 that they were sleeping on the cot by the side of the cot of their father

21. The mere fact that P.W.1 came to the scene of offence from Nagaram having come to know the death of her husband and stated there was no interference with the precincts of the scene of offence would go to show that the cot by which 2 and 3 were sleeping is not removed from that place. There was no overt act with regard to the cot on which P.Ws.2 and 3 slept. The overt acts are made only on the deceased who was sleeping on his cot. There is no change of scene of offence. The adjacent cot has nothing to do with the offence. Therefore, the contention of the appellant's counsel that there are no three cots on which P.Ws.2 and 3 alleged to have slept cannot be believed. Generally in villages only the dead body will be kept on a cot and the other material by its side will be removed. The cot/cots on which P.Ws.2 and 3 slept are no way connected to the offence of

murder and even if Ex.D1 is removed, it cannot discard the offence. Therefore, Ex.D1 is insignificant and can be ignored.

22. The contention of the appellant that there is no possibility of P.Ws.2 and 3 seeing while the accused hacking the deceased from a distance of 35 feet from the place of occurrence was rightly met by the trial Court. The offence took place during night time. There is every possibility for P.Ws.2 and 3 to identify the appellant/accused as he is none other than paternal uncle's son of the deceased. In fact, there was no focus regarding the lights during the cross-examination of P.Ws.2 and 3.

23. In this case, the evidence of P.Ws.2 and 3 is that they found the accused while hacking their father while returning to the cot after urination of P.W.3. There is no cross-examination of P.Ws.2 and 3 from which distance they have witnessed the incident. The evidence of P.Ws.2 and 3 inspire confidence that while returning to their cot, they witnessed while accused hacking their father. Therefore, the contention of the appellant that P.W.3 with the assistance of P.W.2 went to urination to a place at a distance of 35 feet, therefore, they could not witness the incident withers to the ground the accused is their paternal uncle, as he was son of uncle of the deceased and as they are villagers, they accustomed to see the things in the moon light and attend works even without any torch light in the fields. Therefore, the

contention of the appellant that there is no possibility of P.Ws.2 and 3 witnessing while the accused hacking the deceased is untenable.

24. The other contradiction Ex.D2 is in respect of motto. P.W.2 denied suggestion that he did not state to police that about 4 years ago the accused threatened to kill his father. He stated before the police about 4 years prior to the occurrence the accused threatened to kill his father. He was said to be present at the time of the said threat, but under Ex.D2 he stated to the Police that he came to know about the said threat given by the accused about four years ago. The said Ex.D2 is not a material contradiction touching the actual occurrence and is insignificant and can be ignored.

25. In Ex.P1 it was stated that when no body was in the house the incident took place, but it contains the recital that P.Ws.2 and 3 witnessed the occurrence. It may be because the mother and elder brother of P.Ws.2 and 3 were not present and the presence of P.Ws.2 and 3 at the time of occurrence is not doubtful. When the evidence of P.Ws.2 and 3 is cogent and corroborated and is reliable, trustworthy and established that the accused went to the cot of the deceased where he was sleeping and dealt blows one on the neck and the other on the back of the head with an axe which resulted in the spontaneous death. Therefore, the evidence of P.Ws.2 and 3 is cogent and corroborated to the aspect that the accused went from their father where he was sleeping on a cot, dealt two blows, one on the neck and another on the

back of the head with the axe. The same is further corroborated by the Civil Assistant Surgeon, Care Hospital, Bhainsa who is examined as P.W.10 that he conducted autopsy over the dead body of S.Poshetty, son of Linganna aged 45 years on 9.6.2010 between 1.20 PM to 2.20 PM. P.W.10 testified that clothes of the deceased were soaked in blood and there was a deep lacerated wound on the nape of the neck on right of mid line and anterior on the right side of neck below the jaw bone. He further found lacerated wound on the nape of neck right of midline cutting through skin, facia and muscle to the neck vertebrae measuring 3 inches x ½ inch across and 2 ½ inches deep. Lacerated wound on the right side of neck just below the angle of jaw bone cutting through the skin, facia and down to the great vessels of neck severing them with signs of profused haemorrhage measuring 3 x 1 ½ inches across and obliquely 2 ½ inches and that the injuries are ante mortem injuries. In Ex.P8 post-mortem examination report the Doctor opined that the cause of death to the best of his knowledge is haemorrhage shock resulting in cardio respiratory arrest as a result of severance of great vessels of neck.

26. The Public Prosecutor confronted through P.W.10 that the injuries on the neck were possible due to assault with a sharp weapon like M.O.7 axe and further stated that the injury of severance of big vessels of neck is fatal and further testified that in sleeping time also, the second injury is possible and the person might have caused the injury by standing on left side of the body and that the 1st injury is in

horizontal position and that the 2nd injury is obliquely placed. The blood vessels which were severed were not amenable for sutures and on account of such injuries, it may not be possible to the deceased to speak or utter any word.

27. Further, the evidence of P.Ws.2 and 3 corroborates with the evidence of P.W.6, one of the mediator for inquest under Ex.P4, whose evidence is that the inquest was conducted on 9.6.2010 on the dead body of the deceased and they found injury on the neck and another injury behind the head and the death was homicidal one and it is medically proved that the injuries on the deceased were caused with M.O.7 axe.

28. P.W.7 is the witness for the observation of scene of offence under Ex.P5 – crime details form conducted by P.W.11, who was the then Circle Inspector of Police, Mudhole, who examined the scene of offence as detailed in Ex.P5 and seized M.Os.1 to 6 and got photographed the scene of offence through P.W.5 under Ex.P2 of which disc is Ex.P3. He also conducted inquest under Ex.P4 through P.W.6. M.O.7 and M.O.8 were seized by P.W.11 in the presence of P.W.8 mediator in pursuance of Ex.P6 - relevant portion of the confession of the accused. Before P.W.11, the investigating officer and P.W.8-mediator the accused confessed that he had hidden M.O.7-axe used in the crime and his shirt-M.O.8 by the side of bathroom of his house. The appellant/accused himself brought the M.Os.7 and 8 and

handed over to P.W.11 which was seized in pursuance of Ex.P6 confession wherein there was specifically noted the length of the axe handle and width of axe blade which was six inches.

29. With regard to delay in F.I.R. there is evidence of P.W.6 who corroborate P.W.1 that Ex.P1 report, around 7 AM as per instructions, was furnished by P.W.1 and her son read with contents to them whereunder P.W.1 alone affixed her thumb mark. He also admit there is overwriting in the 8th line of the contents of Ex.P1 regarding the figure 8/9 as well as column 15 of page 5 in the fourth line of Ex.P1. Initially, the date was mentioned as 8.6.2010 and later it was corrected as 8/9.6.2010 in the eighth line as well as column 15 of page 5 in the fourth line of Ex.P1. The incident was said to have occurred on the night of 8/9.6.2010 at about 2 AM. In Ex.P8 the Doctor stated the death was 10 to 12 hours prior to post-mortem examination which was conducted in between 1.20 PM to 2.20 PM.

30. P.W.2 testified that his mother reached the house at 4 PM and the death is said to have been occurred at around 2 AM. As P.W.1 stated that she took time for five minutes to engage an auto and that the auto took about half an hour to bring them to their house from Nagaram, she must have been reached after 2.30 PM. P.Ws.1 and 2 are illiterates. In view of illiteracy and innocence of witnesses, such a small discrepancy with regard to timings may occur. Such discrepancy is insignificant and which cannot be attributed. The evidence of P.W.1

corroborated with P.W.6 supported by Ex.P1 goes to suggest that P.W.1 got Ex.P1 report lodged through P.W.6 at 8.00 AM in the Police Station. She only received phone regarding death of her husband. On the hurry to see her husband she might not have stopped at the police station on her way to home and present a report. P.W.1, who is the wife of the deceased, aged about 40 years, generally was in shock on account of her husband's murder. Therefore, naturally there must be delay in submitting F.I.R. More so, when the evidence of P.Ws.2 and 3 is consistent and corroborated and they specifically identified the accused who is none other than their relative, there is nothing to suggest or reason to believe that the appellant/accused was implicated and there is no scope for any embellishment. Hence, the delay of 4 or 5 hours in submitting the F.I.R. is not fatal.

31. The evidence of P.W.7 is consistent and testified the seizure of M.Os.1 to 6 which are towel, bed sheet, banian, dhoti, blood stained earth and control earth seized from the scene of offence.

32. Having regard to the facts and circumstances discussed above, marshalling the facts and the evidence on record, the trial Court rightly came to the conclusion that the prosecution established that the appellant/accused committed murder of the deceased Poshetty intentionally. I do not find any ground to disbelieve the evidence of P.Ws.2 and 3 and also findings of the trial Court which do not suffer from any legal infirmities.

33. Accordingly, the Criminal Appeal fails and is dismissed, while confirming the conviction and sentence imposed against the appellant/accused vide judgment dated 28.9.2012 in S.C.No.89 of 2011 on the file of the Special Sessions Judge for the trial of cases under S.Cs./S.Ts. (PoA) Act-cum-Additional Sessions Judge, Adilabad,

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

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

December, 2017.

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