

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P. KESHA RAO

CRIMINAL APPEAL No.681 of 2011

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

1) The sole accused in Sessions Case No.811 of 2009 on the file of the XIII Additional District and Sessions Judge, Narasaraopet, is the appellant herein. He was charged for an offence punishable under section 302 IPC. By its judgment dated 14.03.2011, the Sessions Judge, convicted the accused under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.1000/- in default to suffer simple imprisonment for five months.

2) The gravamen of the charge against the accused is that on 05.12.2007 at about 7.30 p.m., in front of the Primary Health Centre, Madugula Village, he is said to have caused the death of one Chirumamilla Srinivasa Rao by hacking him with a hunting sickle over the neck and left jaw.

3) The facts as culled out from the evidence of prosecution witnesses are as under:

PW.1 is the mother of the deceased, while PW.2 is the brother of the deceased. PW.3 is the brother of PW.1. PWs.4 and 5 are residents of same village and were examined as eye witnesses to the incident. PW.6, who is also a resident of the same village, was examined to speak to the motive. The evidence on record

discloses that the deceased is said to have developed intimacy with the second wife of the accused. About seven months prior to the date of incident, the second wife of the accused is said to have left the company of the accused and started staying in her parents house in the same village. Since then the accused developed suspicion and grudge against the deceased, on a premise that the deceased was responsible for Bhulakshmi (second wife of the accused) leaving his company. It is also stated that about two months prior to the incident, there was a quarrel between the accused and the deceased near Ramumavari temple, wherein the accused threatened the deceased to kill him as he developed illicit intimacy with his wife. At that point of time, PW.6 is said to have intervened and pacified them, but the accused while leaving the place is said to have threatened the deceased with dire consequences. On the date of incident ie.on 05.12.2007 at about 6.30 p.m., PW.1 and the deceased went to purchase vegetables and also to supply milk to the milk centre. After delivering the milk and purchase of vegetables, they were returning to their house and when they reached the Primary Health Centre, the accused, armed with hunting sickle is said to have hacked the deceased on the left side of the neck, due to which the deceased fell down by raising cries as "amma, amma". When PW.1 intervened to rescue the deceased, the accused is said to have threatened her to hack her. The evidence also discloses that the accused also hacked the deceased on the chin with the same hunting sickle. On hearing the cries, PWs.4 and 5 came there and

on seeing them, the accused escaped with the hunting sickle. The deceased is said to have died on the spot. On the next day at about 8.00 a.m. PW.1 proceeded to the police station and lodged a report, which was marked as Ex.P.1. Basing on the said report, PW.11-the Sub-Inspector of Police, registered a case in Crime No.111 of 2007 for an offence punishable under Section 302 IPC. Ex.P9 is the First Information Report. Thereafter, PW.14-the Inspector of Police took up investigation. On 06.12.2007, PW14 visited the scene of offence located opposite to the Primary Health Centre, Madugula and conducted a panchanama of the scene of offence in the presence of PW.8 and another and also prepared a rough sketch of the scene. Ex.P12 is the rough sketch. He then conducted inquest over the dead body of the deceased in the presence of PW.8 and another. Ex.P7 is the inquest report. During inquest, he examined and recorded the statements of PWs.1 to 5 and others. Thereafter, the body was sent for postmortem examination. PW.10-the Civil Assistant Surgeon conducted autopsy over the body and issued Ex.P8-the postmortem report. According to him, the cause of death was “due to shock and hemorrhage due to multiple injuries” and the approximate time of death was between 18 to 24 hours, prior to the postmortem Examination. The police could not arrest the accused as he was absconding, and as such a charge sheet came to be filed showing the accused as absconding. Accordingly a N.B.W. was also issued. Pursuant thereto, the accused was arrested on 08.08.2009 and the confession made by him in the presence of PWs.12 and 13, lead to

recovery of a sickle-M.O.1. After completion of investigation, the charge sheet was filed, which was taken on file as P.R.C.No.24 of 2008. After complying with the provisions under Section 207 Cr.P.C., the case on committal, came to be numbered as S.C.No.811 of 2009.

4) A charge under Section 302 IPC was framed, read over and explained to the accused. The plea of the accused is one of total denial.

5) To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P14 and M.Os.1 to 8. 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 his behalf, in support of his defence.

6) Out of fourteen witnesses, PW.4 did not support the case of the prosecution. Believing the evidence of PW.1 and also the evidence of PWs.5 and 6, the learned Sessions Judge convicted the accused for an offence punishable under Section 302 IPC. Challenging the same the present appeal is filed.

7) The main ground urged by the learned counsel for the appellant is that except the evidence of PW.1, there is no other evidence to connect him with the crime. According to him, no reliance can be placed on the evidence of PW.1 as she is an interested person. He further submits that in view of the delay in

lodging the report, any amount of doubt would arise with regard to PW.1 being present at the time of incident. He further submits that no credence can be given to the evidence of PWs.4 and 5, as their evidence is inconsistent with each other. Insofar as the recovery of MO.1 is concerned, he submits that the same cannot be accepted as the recovery was effected nearly two years from the date of incident. Having regard to the above circumstances, he would submit that the conviction and sentence imposed by the trial Court is illegal and improper.

8) The same is opposed by the learned Public Prosecutor contending that the evidence of PW.1 being trustworthy, is sufficient to base a conviction. He further submits that even if the evidence of PWs.4 and 5 is excluded from consideration, the evidence of PW.1 coupled with the medical evidence of PW.12 is sufficient to base a conviction, more so, in view of the motive for the accused to cause the death of the deceased.

9) Coming to the first aspect namely the motive, the evidence of PWs.1 to 3 coupled with the evidence of PW.6 establish that there were some differences between the accused and the deceased. The evidence of PWs.1 to 3 would show that the accused suspected illicit intimacy of the deceased with his wife, pursuant to which, she is said to have left the company of the accused and started living in her parents house. Because of Bhulakshmi (wife of the accused) leaving him, the accused developed a grudge and grouse to eliminate the deceased.

10) PW.6 who is a resident of the same village, while deposing about the suspicion and the illicit intimacy between the deceased and the wife of the accused, also speaks about an incident wherein both the accused and deceased quarreled with each other near Ramulavari temple street, about two months prior to the date of incident. On that day he is said to have intervened and separated both of them. While leaving the place, the accused is said to have threatened the deceased to kill him. Though PWs.1 to 3 and 6 were cross examined at length, nothing useful was elicited to discredit their testimony with regard to the motive. Hence, we are of the view that the prosecution amply established motive for the accused to cause the death of the deceased.

11) Coming to the incident proper, the prosecution mainly relied upon the evidence of PW.1, coupled with the evidence of doctor, who is examined as PW.10. In her evidence, PW.1 deposed as under:

“On 05.12.2007 at about 6.30 p.m. myself, my son Ch.Srinivasa Rao, went to purchase the vegetable and also to supply milk to the milk centre. After giving milk and after purchase of the vegetables, we were returning and reached near the Government Hospital, Madugula. At about 7.30 p.m., the accused armed with hunting sickle while crossing the hospital compound wall, hacked the deceased on the left side of the neck with the hunting sickle, due to which Srinivasa Rao shouted “amma”. Then I went to Srinivasa Rao to rescue him, then the accused threatened me to hack and again the accused hacked

Srinivasa Rao on the Chin with the same hunting sickle, due to which Srinivasa Rao fell down with bleeding injuries and raised cries. K.Srinivasa Rao (LW.5) and P.Appa Rao (LW6) came to the injured and the accused ran away and escaped from there with hunting sickle. Srinivasa Rao died due to above injuries on the spot.”

12) From the evidence of PW.1, it is clear that at about 7.30 p.m. the accused armed with hunting sickle is said to have hacked on the left side of the neck of the deceased and thereafter on the chin. The evidence of doctor amply corroborates the same. According to PW.10 he examined the deceased on 06.12.2007 at about 2.45 p.m. wherein he noticed the following injuries:

“1) A lacerated wound on the left side of neck measuring 30 cm x 14 cm x bone deep 8 cm exposing cutting muscles blood vessels and also cutting hyoid bone, thyroid cartilage in different levels extending from behind the left ear to the right side of the neck.

2) Fracture of hyoid bone, thyroid cartilage, mandible present.

3) Dislocation and fracture of temporal mandible joint on the left side present.”

13) Since the evidence of PW.1 is corroborated by the medical evidence with regard to nature of injuries sustained on the body of the deceased, the argument of the learned counsel for the appellant that no credence can be given to the solitary testimony of PW.1 in the absence of any corroboration, cannot be accepted.

14) Learned counsel for the appellant would further contend that though the incident took place in the village, prosecution failed to examine any independent witnesses to speak about the incident proper. According to him, when the incident happened at about 6.30 p.m. in the village, definitely there would have been some independent persons present near the government hospital, who could have been the best persons to speak about the incident. It was elicited in the cross examination of PW.1 that at the time of incident except PW.1 there was no other person near the scene of incident. In view of the answer, which has been elicited from the evidence of PW.1 by the accused, the argument that the prosecution failed to examine any independent witnesses who were present at the scene cannot be accepted.

15) Another comment made by the learned counsel for the appellant is that there was abnormal delay in lodging the report. As seen from the record, the incident happened at 7.30 p.m. in Madugula Village and the report was given on the next day morning at about 8.00 a.m. PW.1 explained as to why she could not present the report immediately. According to her, the accused while leaving the scene, threatened to kill PW.1 if she gives a report to the police. Therefore, out of fear and as it was night time, she did not lodge the report immediately. Therefore, the reason given for not lodging the report cannot be found fault with and we feel that the delay has been satisfactorily explained.

16) Coming to the evidence of PWs.4 and 5, it is to be noted that in his evidence PW.5 deposed as under:

“On 05.12.2007 myself and PW.4 went to answer calls of nature towards Vagu. On returning myself and PW.4, when we reached near Primary Health Centre, we heard the cries of PW.1 and we went to the scene of offence and found the accused was hacking Srinivasa Rao with hunting sickle and Srinivasa Rao was fell on the ground. Myself and PW.4 reached the scene the accused ran away with the hunting sickle towards Eastern side. We have identified Srinivasa Rao and the accused and saw the above incident in the light of electrical tube light which is affixed to the hospital building. The accused hacked and murdered Srinivasa Rao on the suspicion that there is an illicit intimacy between his wife Bhulakshmi and Srinivasa Rao.”

17) But the evidence of PW.4 is otherwise. Though he was treated hostile, he deposed that on the date of incident while he was in the house, he learnt about the death of the deceased. He proceeded to the hospital and found the dead body of the deceased with bleeding injuries. Since the evidence of PW.5 is inconsistent with the evidence of PW.4, the learned counsel for the appellant would contend that no reliance can be placed on the evidence of PWs.4 and 5, to say that their evidence corroborates the evidence of PW.1. Even assuming for the sake of argument that the evidence of PW.5 is eschewed from consideration, we feel that the evidence of PW.1 would be sufficient to base a conviction, as there are no circumstances to disbelieve the same.

18) Further, learned counsel for the appellant would submit that no reliance can be placed on the recovery of M.O.1 as the recovery was affected nearly two years after the incident. The reason for the delay was due to accused evading the process of arrest and he was arrested after filing of the charge sheet. But, even if the recovery of MO1 is disbelieved or ignored, we feel that the evidence of PW.1 which gets corroboration from the medical evidence, coupled with the evidence of PW.5 and PW.6 is sufficient to base a conviction under Section 302 IPC.

19) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/accused beyond reasonable doubt and the trial Court has rightly convicted the appellant and sentenced him to imprisonment for life.

20) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

02.11.2017
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