

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.343 of 2011

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

The sole accused in Sessions Case No.421 of 2010 on the file of I Additional Sessions Judge, Khammam, is the appellant. He was tried for an offence punishable under Section 302 of IPC, for causing the death of one B.Pama Devi (Deceased No.1-D1) and Lavudya Narayanamma (Deceased No.2-D2) and for an offence punishable under Section 307 of IPC, for causing injuries to PW8, Lavudya Venkateswarlu. Vide its judgment dated 01.12.2010, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life, while acquitting the accused of the charge under Section 307 of IPC. He was also convicted for the offence punishable under Section 326 of IPC and was sentenced to suffer rigorous imprisonment for a period of six months.

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

PW1 is the sister of D1, while PW2 is the daughter of D1 born through her first husband. The accused is the son-in-law of D2 and PW8. The accused is the second husband of D1.

The first husband of D1 died and thereafter she married the accused. Since a year prior to her death, D1 was residing along with her mother. On the date of incident, i.e. on 12.03.2010, at about 02.00 a.m., while PW2 woke up to attend nature's call, she noticed the accused killing D1 and D2 with an axe. On hearing some cries, PW1 also got up, rushed towards the house of deceased along with her husband and noticed the accused running away from the house armed with an axe. PW8, who is an injured eye witness and father of D1, deposed that on the date of incident, D1 and D2 had a quarrel with the accused and thereafter D1 slept on the floor while the daughter of D1 (PW2) was sleeping on a cot along with PW8. At about 03.00 a.m., PW8 got up and by the time he woke up, noticed the accused hacking his wife D1 with an axe, who then ran out and fell down. On seeing the same, D2 raised her cries, pursuant to which, the accused caused injuries to D2 leading to her death as well. When PW8 tried to obstruct the accused, he is said to have caused injuries on his left shoulder, left side of his chin, on his back and on the right side of his chest. On hearing the cries of PW8, the neighbours gathered and on seeing them, the accused ran away. PW1 and her husband tried to catch the accused, but he escaped from them. Thereafter, the injured/ deceased were shifted to Area Hospital, Bhadrachalam, in 108 Ambulance. While things stood thus, on 12.03.2010 at about 09.00 a.m. PW1 lodged a report before PW13, basing on which, a case in Crime No.10 of 2010 came to be registered for the offences punishable under Sections 302 and 307 of IPC. Ex.P10 is the FIR. Subsequent investigation was taken up by the CI of police, who is

examined as PW14. On receipt of a copy of FIR, PW14 along with PW13 went to Pinapaka village, visited the scene of offence, examined PWs. 1,2,3,4,6 and 7; inspected the scene of offence in the presence of mediators and prepared a crime detailed form. Ex.P3 is the Crime Detail Form. Thereafter, he held inquest over the dead bodies of D1 and D2 in the presence of mediators. Exs.P4 and P5 are the inquest reports of D1 and D2 respectively. During inquest, PW14 seized clothes of both the deceased, which are placed on record as MOs.4 to 9. He also seized blood stained earth and controlled earth, which are marked as MOs.10 and 11. After taking the photographs of the dead bodies, he sent the bodies to Bhadrachalam Government Hospital for post mortem examination, wherein he also examined PW8 and recorded his statement. He also gave a requisition to the Magistrate at Bhadrachalam for recording the statement of PW8. PW11, the Civil Assistant Surgeon, Government Hospital, Burgampadu, conducted autopsy of two dead bodies and issued Exs.P7 and P8, the post mortem certificates of D1 and D2 respectively. According to him, the cause of death of the two deceased was due to hemorrhage due to multiple injuries referred to in the report. The said post mortem was conducted on 12.03.2010. On the same day, at about 09.00 a.m., PW12, the Civil Assistant Surgeon, Area Hospital, Bhadrachalam examined PW8 and issued Ex.P9 the wound certificate. At the time of examination, PW8 informed PW12 that he received injuries in the hands of his son-in-law with an axe, at his residence.

PW14 proceeded with the investigation, got recorded the statements under Section 164 of Cr.P.C. by the Magistrate and on

12.04.2010, arrested the accused at Pinapaka. In the presence of mediators, PW14 recovered an axe which is marked as MO3. He also received RFSL report which was marked as Ex.P11. After completing the investigation, he filed the charge sheet, which was taken as PRC No.21 of 2010 on the file of Judicial Magistrate of First Class, Manuguru.

On appearance of the accused, copies of the documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal to the Court of I Additional Sessions Judge, Khammam, the case came to be numbered as S.C.No.421 of 2010. On appearance, charges under Sections 302 and 307 of IPC came to be framed against the accused, which are read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P11 and MOs.1 to 11. On behalf of the accused, Exs.D1 to D3 were marked.

After the closure of prosecution 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 by the accused in support of his defence. Basing on the evidence available on record, the Sessions Judge convicted the accused for the offences punishable under Sections 302 and 326 of IPC. Challenging the same, the present appeal came to be filed through a legal aid counsel.

3. The learned counsel for the appellant/ accused mainly submits that the findings given by the Sessions Judge in paragraph Nos.19, 20 and 21 of the judgment throw any amount of doubt with regard to the manner in which the incident took place. It is his argument that if really the incident has occurred in the house, it is strange as to how the body of D1 was found in front of a kirana shop. Relying upon Exs.D1 and D2 which are contradictory to the statements of PWs.3 and 5, learned counsel for the appellant would submit that the accused is entitled for an acquittal.

4. On the other hand, learned public prosecutor would contend that the evidence on record amply establish the presence and participation of the accused in commission of the offence. According to him, the evidence of PWs.2 and 8 (injured eye witnesses) is sufficient to base a conviction. Further, it is urged that since the accused failed to explain as to how the body of one of the deceased was lying in his house, he submits that, it has to be presumed that the accused alone is responsible for the death.

5. The question that arises for consideration is whether the accused is responsible for the death of the two deceased?

6. It is to be noted here that the entire case rests on the evidence of PWs.1,2,3,4 and 8, out of whom, PWs.2 and 8 were examined as eye witness to the incident. PW1, the sister of D1, deposed about the relationship between the accused and the deceased, the marriage of D1 and also the child born through the first husband. According to her, on the date of incident, at about 02.00 a.m., when she got up to

fill water, she heard cries from the house of her paternal uncle. On hearing the same, herself along with her husband rushed to the house of the deceased and noticed the accused running away armed with an axe. Thereafter, herself and others went to the house of the deceased and noticed D2 lying in a pool of blood and also noticed D1 Pama Devi lying dead in front of a kirana shop near her house, in a pool of blood.

7. Though PW1 was subjected to cross examination, nothing useful was elicited to discredit her version. Further, it is to be noted here that PW1 is not an eye witness to the incident and that she came to the scene of offence on hearing cries of PW8. In her cross examination, PW1 admitted that she was not tutored for giving her statement and that she was speaking exactly as to what she has seen on that day. To a suggestion that she was sleeping while the incident took place and that she has not witnessed the incident was denied by her.

8. PW3 in his evidence deposed that on the date of incident at about 08.00 p.m., the accused and the deceased D1 had a quarrel with each other. As it was a frequent quarrel, he did not interfere in it. It is stated that the accused used to quarrel with D1 on the ground that she was having an illicit intimacy with others. On 12.03.2010, at about 03.00 a.m., on hearing cries of PW8, PW3 came out of the house and noticed PW1, LW2 present at the house of D1. He noticed PW8 with bleeding injuries on left side of his cheek, on the right side of his chest and on the right side of his eye brow and his

clothes were blood stained. On questioning, PW8 informed PW3 that his son-in-law killed his daughter and wife with an axe and when he tried to obstruct the accused, he injured him with an axe. When PW3 entered the house of PW8, he noticed both the deceased lying dead with bleeding injuries, one on the cot and the other in front of a kirana shop. The answers given in cross examination of PW3 are on the same lines as that of the other witnesses. Except marking the contradictory statement as Ex.D1, there is nothing on record to disbelieve the statements. The said contradictory statement of PW3, which is marked as Ex.D1 reads as under:

“At 03.00 a.m., one Lavudya Venkateswarlu (PW8) knocked my door. I opened the door and came out.”

9. But, in the chief examination, PW3 deposed that on hearing cries of said Venkateswarlu, he opened the door. However, we are of the view that the said variation does not help the accused and cannot be made the basis to throw out the entire case as false.

10. Coming to the evidence of PW8, the injured eye witnesses, it would be useful to extract relevant portion, which reads as under:

“On the date of death of my daughter Rama Devi and my wife Narayanamma, there was quarrel between Rama Devi and accused herein, at that time I admonished them and stopped their quarrel. Thereafter, the accused went out of the house and came back. At that time I was sleeping on a cot and my wife Narayanamma was sleeping on another cot by my side and on her side, the accused and Rama Devi were sleeping on floor. Daughter of Rama Devi was

sleeping on my cot along with me. On that day night at about 03.00 a.m., I got up on some commotion. By the time I got up, the accused caused an injury to his wife with axe and she ran out and fell down. When my wife raised cries, accused also caused injuries to my wife Narayanamma resulting in her death. When I tried to intervene the accused also caused injuries to me on the left side of my shoulder, left side of my chin, on my back, on right side of my chest. When I raised cries the neighbours gathered there and on seeing them the accused ran away. Then PW1 and her husband reached the scene and tried to catch the accused but he escaped and ran away. When PW1 and her husband and myself raised cries, PW3 and PW4 reached our house. Thereafter a telephone was made to 108 Ambulance and in that Ambulance I was shifted to hospital. In the hospital, Magistrate recorded my statement. I was examined by police and police recorded my statement".

11. In his cross examination, he denied the suggestion that on the date of incident, when he returned to his house, he noticed one Yadagiri in his house along with his daughter and on seeing the same, picked up a quarrel wherein both the deceased were injured leading to their death.

12. From the suggestion given, it can be established that prior to the death of the deceased, there were two quarrels which took place i.e., initially between PW8 and both the deceased and subsequently between the accused and the deceased. During the quarrel between the accused and his wife D1, the accused is said to have hacked both

the deceased. Immediately, thereafter, D1 is said to have ran out of her house and fell in front of a kirana shop. The fact that PW8 received injuries also gets clarified by the evidence of PW12, the Doctor, who examined him at Area Hospital, Bhadrachalam.

13. At the earliest point of time, PW8 disclosed that his son-in-law beat him with an axe causing injuries. The medical certificate Ex.P9 issued by the Doctor amply establish the nature of injuries sustained by PW8 in the hands of the accused, which are as under:

“Laceration 10x3x3cm. on left shoulder fracture of lateral end of left clavicle.

Laceration 12x5x4 left side of neck and mandible.

Laceration 10x5x4cm. right side of chest.

Laceration 3x2x1 cm. left shoulder.”

14. Hence, the presence of PW8 at the scene of offence and he witnessing the incident cannot be doubted. Therefore, the evidence of PW8 coupled with the evidence of PWs.1 to 4 prove beyond reasonable doubt that it was accused alone who caused the death of the deceased.

15. Though learned counsel for the appellant tried to contend that when the incident has occurred in the house, it is strange as to how the dead body was found in front of a kirana shop. It is to be noted that PW8 categorically stated in his evidence that the accused first attacked D1 and thereafter D2. She categorically stated that during the said incident, D1 ran away from the house and fell in front of a kirana shop. The said version finds place not only in FIR, but also in

the inquest report. In view of the above, there is nothing unusual with regard to the body being traced in front of the kirana shop, which was in front of the house of the accused.

16. Hence, we feel that the findings and conviction recorded by the trial Court warrants no interference.

17. Accordingly, the appeal is dismissed confirming the conviction and sentence dated 01.12.2010, passed in Sessions Case No.421 of 2010 on the file of the I Additional Sessions Judge, Khammam.

18. Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

27.11.2017
vhb