

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.86 OF 2012

ORDER :

%Dated 30.11.2017

Dabbakuti Radha Krishna, S/o. Munnemaiah
Aged 30 years, Battiprolu Mandal, Guntur,
Now in Central Prison, Rajahmundry,
CT No.00042

..... APPELLANT

VERSUS

\$ The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

..... RESPONDENT

! Counsel for Appellant : Ms. Ammaji Nettem

^ Counsel for Respondents : P.P. for the State of A.P.

< GIST :

> HEAD NOTE :

? Cases referred :

1. AIR 2003 SC 1897
2. AIR 1975 SC 1727
3. AIR 2004 SC 2329
4. (2013) 2 SS 349
5. (2015) 4 SCC 794
6. AIR 2004 SC 1080

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CRIMINAL APPEAL No.86 of 2012

Between:

Dabbakuti Radha Krishna

..... APPELLANT
VERSUS

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

.... RESPONDENT

JUDGMENT PRONOUNCED ON : 30.11.2017

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local : Yes/ No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/ No
be marked to Law Reporters/ Journals
3. Whether Their Ladyship/ Lordship wish : Yes/ No
to see the fair copy of judgment

C. PRAVEEN KUMAR, J

SMT. KONGARA VIJAYA LAKSHMI, J

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.86 of 2012

JUDGMENT : (per Hon' ble Smt. Justice Kongara Vijaya Lakshmi)

1) The sole accused in S.C.No. 346 of 2011, on the file of the Sessions Judge, Guntur, is the appellant herein. He was tried for the offence punishable under Section 302 IPC, for causing the death of his wife, by name Dabbukuti Audi Lakshmi (hereinafter referred to as "deceased") on 27.12.2010, at about 2.00 a.m., at Ilavaram village, by beating her with iron rod (inupa blade), on her head. By its judgment, dated 19.10.2011, the Sessions Judge convicted and sentenced the appellant to suffer "imprisonment for life" and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month.

2) The facts, as narrated by the prosecution witnesses are as under:

PW.1 is the mother of the deceased, PW.2 is the neighbor of the deceased, while PWs.3 to 7 are official witnesses. The accused is the husband of the deceased. His marriage with the deceased took place about nine years prior to the date of incident. Out of the wedlock, they were blessed with two daughters. It is said that both of them lived happily for a period of eight years and thereafter disputes arose between them, as the accused started suspecting the fidelity of the deceased. The

accused used to harass the deceased by scolding and beating her. PW.1, in her evidence, deposed that the harassment got intensified since two months prior to the date of incident. The fact of harassment was informed by the deceased to PW.1. About two days prior to the date of incident, PW.1 received a phone call from the deceased stating that the accused was beating and abusing her. PW.1 went to the house of the deceased and, on that day, PW.1 noticed the accused quarrelling with the deceased. In view of the harassment, PW.1 stayed in the house of the deceased. On the next day also i.e., on the date of incident also, there was a quarrel before they went to bed. After having food, the accused, deceased, PW.1 and two grand-daughters slept in the house. At about 2.00 a.m., i.e., in the early hours of 27.12.2010, the accused is said to have beat the deceased with an iron rod. When PW.1 raised cries, the accused ran away with the iron rod. On hearing the cries, PW.2 and two others came to the scene and took the deceased to the hospital, but on the way she died. Hence, they returned back to the house. Thereafter, at 7.00 a.m., PW.1 went to Bhattiprolu police station and lodged a report, which is placed on record as Ex.P1. Basing on the said report, PW.6 registered a case in Crime No.110 of 2010 for the offence punishable under Section 302 IPC and issued Ex.P7-the first information report. PW.7-the Inspector of Police took up further investigation. After receiving the copy of F.I.R., he proceeded to the house of the accused and examined the scene of offence. He noticed blood stains on the

bed of the cot and also on the floor. He collected blood stained earth, controlled earth and also seized blood stained bed sheet, which is marked as M.O.2. Ex.P2 is the observation report and Ex.P8 is the rough sketch of the scene of offence. Thereafter, PW.7 conducted inquest over the dead body of the deceased in the presence of PW.3 and others. During inquest, he noticed cut injuries on the forehead and other portions of the head. Ex.P3 is the inquest report. The panchayatdars opined that the cause of death was due to head injury. During inquest, he examined PWs.1 and 2. Thereafter, he forwarded the dead body of the deceased to the Community Health Centre, Repalle, for postmortem examination. PW.5-the Medical Officer, Community Health Centre, Repalle, conducted autopsy over the dead body of the deceased and issued Ex.P6-the postmortem examination report. According to PW.5-the Doctor, the injuries, which are found on the body, are sufficient to cause death in the ordinary course. PW.7 arrested the accused on 04.01.2011 at Battiprolu railway station. Pursuant to the confessions made by the accused, PW.7 seized M.O.1. After completing the investigation, PW.7 filed the charge sheet, which was taken on file as P.R.C.No.24 of 2011, on the file of the Additional Judicial Magistrate of First Class, Repalle, who inturn committed the case to the Court of Sessions. On committal, the same came to be numbered as S.C.No.346 of 2011.

3) A charge under Section 302 IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 7 and got marked Exs.P1 to P11 and M.Os.1 and 2. 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.

5) After considering the evidence of prosecution witnesses, more particularly the evidence of PW.1 and the Doctor, who examined the deceased, the trial Court convicted the accused in the manner referred to above. Challenging the same, the present appeal is filed.

6) The learned counsel for the appellant mainly submits that there is any amount of doubt with regard to presence of PW.1 at the scene of offence. According to her, in the first information report-Ex.P1, it has been stated that PW.1, the accused and deceased consumed food at 9.00 p.m., but the presence of 10 to 50 ml semi-solid food in the stomach, which according to the Doctor (PW.5) indicates that food was taken 10 to 12 hours prior to death, falsifies the time of the incident. Hence, the learned counsel for the appellant pleads that there is any amount of doubt with regard to PW.1 witnessing the incident and the

accused participating in the commission of offence. She further submits that in view of inconsistency between the oral evidence of PWs.1 and 2 and the medical evidence of PW.5, the edifice of the prosecution case collapses and the accused is entitled for an acquittal. In support of her plea, she relies upon the judgments of the Apex Court in *Moti etc. v. State of U.P.*¹ and *Ram Narain v. The State of Punjab*².

7) On the otherhand, the learned Public Prosecutor would contend that when the evidence of PW.1 is corroborated by other circumstances and the evidence of Doctor tallies with regard to time of death, the argument of the learned counsel for the appellant that there is any amount of dispute with regard to the time of the incident, cannot be accepted. According to him, the evidence of the Doctor is only an opinion evidence and the same cannot be accepted overlooking the oral evidence of PW.1.

8) The question that falls for consideration is whether PW.1 was present in the house as on the date of the incident and whether the evidence of the Doctor-PW.5 falsifies the prosecution case?

9) Though PW.1, in her evidence, did not say as to when the accused and deceased consumed food, but, however, in the first information report, given by her, it was stated that all of them

¹ AIR 2003 SC 1897

²² AIR 1975 SC 1727

consumed food at 9.00 p.m., and then went to bed. At about 2.00 a.m., she is said to have seen the accused beating the deceased with iron rod and thereafter raised cries. On hearing her cries, PW.2 came to the scene of offence and tried to shift the deceased to the hospital, but, on the way, she died.

10) Learned counsel for the appellant would submit that the evidence of the Doctor falsifies the entire prosecution case more particularly, with regard to the timing of the incident. In his evidence in chief, PW.5-the Doctor, states that stomach contains semi solid food of about 10 to 50 ml. In the cross-examination, it has been elicited that the presence of 10 to 50 ml. semi solid food indicates that the deceased should have consumed the food about 10 to 12 hours prior to death. Relying upon the said admission, learned counsel for the appellant would contend that the incident did not happen at 2.00 a.m.

11) It is to be noted here that the evidence of the Doctor is only an opinion evidence and the Doctor could not have given the timing with such precision, unless the evidence on record disclose the nature of food taken by the deceased. It is well known that the time taken for the food to get digested, depends upon the type and nature of food, age of the person and the ailments with which he or she is suffering. Even if there is a discrepancy of few hours, the same, in our view, does not go to the root of the matter.

12) In *Moti's* case (1 supra), the Apex Court was dealing with a situation where immediately after consumption of food, the incident took place. The postmortem report indicated that the stomach was empty. Under those circumstances, the Apex Court held as under:

"12. It is rather surprising that the High Court should find this part of the medical evidence as being of no consequence at all. The High Court referring to this part of the medical evidence has observed "In our opinion the stomach contents are not very material to determine the time of incident." We are of the considered opinion this view of the High Court is wholly erroneous. It may be possible to contend that contents of the stomach may not always be an indicator of the time of death. But in a case where stomach is empty and the prosecution evidence is that the murder had taken place shortly after the deceased has his last meal, to say that the contents of the stomach have no material bearing on the determination of the time, in our opinion, is not acceptable. In the instant case, time of death being a material factor to verify the presence of the eye-witnesses it was obligatory for the prosecution to have clarified the discrepancy between the medical evidence and the oral evidence. The prosecution having failed to do so, in our opinion, a serious doubt as to the time of incident and the presence of the eye-witnesses at the time of incident and their narration of the incident also becomes doubtful."

13) In *Ram Narain vs. the State of Punjab* (2 supra) the Apex Court held as under:

"Where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. If the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case."

14) Situation is totally different in the case on hand. It is not a case where the incident happened immediately after the consumption of food. It took place nearly five hours after the deceased consumed food. Maybe, in normal course, the presence of 10 to 50 ml. semi solid food in the stomach indicates

that the deceased had consumed food about 10 to 12 hours prior to the death, but in our view, the same cannot be a standard formula and cannot be accepted as a universal principle. As stated earlier, it all depends upon various circumstances.

15) In *Ram Bali v. State of Uttar Pradesh*³, the Apex Court held that “the process of digestion of food is not uniform and varies from individual to individual and health of the person. The time taken normally for digesting of food would also depend upon the quality and quantity of food as well, besides other factors. It was required to be factually proved as to the quantum of food that was taken, atmospheric conditions and such other relevant factors to throw a doubt about the occurrence of time, as stated by the witnesses. Only when the ocular evidence is wholly inconsistent with the medical evidence, the Court has to consider the effect thereof.”

16) In *Sanjay Khaderao Wadane vs. State of Maharashtra* (CrI.A.No.1962 of 2011, dated 03.08.2017), the Apex Court held that judging the time of death from the contents of the stomach, may not always be the determinative test. It will require due corroboration from other evidence. Even in Modi's Jurisprudence, it has been recorded as “the state of contents of the stomach found at the time of medical examination is not a safe guide for determining the time of the occurrence because

³ AIR 2004 SC 2329

that would be a matter of speculation, in the absence of reliable evidence on the question as to when the deceased had his last meal and what that meal consisted of. It is also held that “the question of time of death of the victim should not be decided only by taking into consideration the state of food in the stomach. That may be a factor, which should be considered along with other evidence, but that fact alone cannot be decisive”.

17) In *Rajpal v. State of Haryana*⁴, the Apex Court was dealing with a case where the deceased took food at 9.00 p.m., but the death occurred at 5.15 a.m., One of the pleas taken was that undigested food would not have remained for 8 hours in the stomach. Having regard to the facts and circumstances of that case, the Apex court held that it cannot be stated as a rule of universal application that after every 2 to 3 hours, the stomach of every individual without exception would be empty.

18) In *Vijay Paul v. State*⁵, the Apex Court while commenting upon the medical evidence, held that opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the

⁴ (2013) 2 SS 349

⁵ (2015) 4 SCC 794

eyewitnesses account, which are to be tested independently and not treated as the variable, keeping the medical evidence as the constant.

19) From the judgments of the Apex Court, it is clear that one cannot accept as a rule of universal application that after every 2 to 3 hours, stomach of every individual, without exception, would be empty or presence of 10 to 50 ml. of food indicates consumption of food 10 to 12 hours prior to time of death.

20) The evidence of the same Doctor-PW.5 would show that the deceased must have died about 16 to 18 hours prior to the postmortem examination report. The postmortem examination was conducted at 3.45 p.m., on 27.11.2010. If the evidence of Doctor is taken into consideration, to calculate the time of death, it would be around the same time, which the prosecution claims to be. Having regard to the above, the argument of the learned counsel for the appellant that the presence of 10 to 50 ml of food in the stomach falsifies entire incident, cannot be accepted.

21) Further, the evidence of PW.1 cannot be brushed aside as a tainted one. Much prior to the postmortem report, she gave a report to the police, which lead to registration of a case in Crime No.110 of 2010. In the said report, she categorically narrated the manner in which the deceased was subjected to harassment by the accused, about the incident, which took place on 25.12.2010, and also the quarrel that took place in her presence

on the date of incident ie., 26.12.2010, at about 5.00 p.m. The words which were uttered by the accused were also referred to in the first report. Thereafter, he took the iron rod and beat the deceased while she was lying on the bed. On hearing the cries, the neighbours gathered and the deceased was then shifted to the hospital. Though PW.1 was cross-examined, at length, nothing useful was elicited to discredit her testimony. In fact, it was elicited that, two days prior to the date of incident, the deceased telephoned to her and informed about the act of harassment. To a suggestion that she was not in the house, on the date of incident, was denied by her. She also denied the suggestion that the accused was not present in the house on the date of incident. Therefore, there is no reason to disbelieve the evidence of PW.1.

22) The last straw in the argument is that an adverse inference should be drawn against the prosecution for their failure to seize the clothes of PW.1. In support of her plea, she relied upon the judgment of the Apex Court in *State of Rajasthan v. Taran Singh and another*⁶, wherein the Apex Court dealt with a situation, where the eye witnesses, who accompanied the deceased, are said to have carried the victim, who was profusely bleeding. But, no blood stains were found on the shirts of the witnesses. Under those circumstances, the Apex Court found

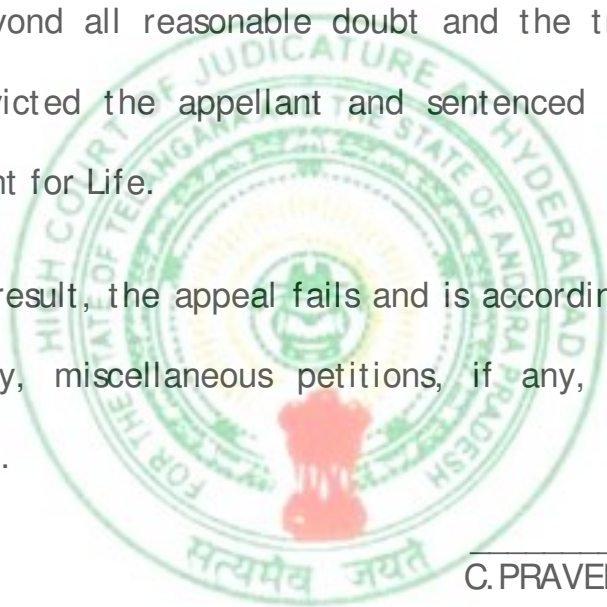
⁶ AIR 2004 SC 1080

that the presence of eye witnesses and they carrying the deceased, is doubtful.

23) In the instant case, there is no reference to PW.1, either trying to lift the deceased or making the deceased lie on her lap. Therefore, non-seizure of cloths of PW.1 may not matter much and shall not go to the root of the matter.

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

25) In the result, the appeal fails and is accordingly dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.



C. PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

30.11.2017

Note: L.R. Copy to be marked.

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