

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.826 of 2011

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

1) The sole accused-Chedala @ Chendala Rami Reddy in Sessions Case No.233 of 2009 on the file of the V Additional Sessions Judge (FTC), Eluru, is the appellant herein. He was tried for an offence punishable under Section 302 of IPC, for causing the death of one Cheekati Kommireddy (hereinafter referred to as "D.1") and Cheekati Jogamma @ Jyothi (hereinafter referred to as "D.2") on the intervening night of 7/8.06.2008. He was also tried for an offence punishable under Section 307 IPC and 506(2) I.P.C. for attempting to kill PW.2, who is the son of D.1 and D.2 and for threatening PW.2 with dire consequences during the said transaction. By its judgment, dated 29.12.2010, the learned Sessions Judge convicted and sentenced the appellant to suffer "imprisonment for life" and to pay fine of Rs.5000/- for the offence punishable under Section 302 IPC, rigorous imprisonment for seven years and to pay a fine of Rs.3000/- for the offence punishable under Section 307 IPC, and to suffer rigorous imprisonment for a period of four years and to pay a fine of Rs.2,000/- for the offence punishable under Section 506 (2) IPC. All the sentences shall run concurrently.

2) The case of the prosecution as culled out from the evidence of prosecution witnesses is as under:

i) It is a case of double murder. D.1 is the husband of D.2. PW.1 is the father of D.2 while PW.2 is the son of D.1 and D.2. About 12 years prior to the incident, the marriage of D.2 was performed with D.1 and they were blessed with a girl aged about 11 years and a boy (PW.2) aged about 9 years, at the material time. The accused was also a resident of the same village. About two years prior to the incident, the accused and D.2 developed illicit intimacy. When D.1 came to know about the same, he called for a panchayat, in which the accused and D.2, were not only admonished but were also directed not to continue such illicit relationship any further. But the accused not only continued his illegal contacts with D.2 but also developed enmity with D.1 and D.2. PW.3, who is the brother-in-law of D.1 and PW.4, who is the brother of D.1, also spoke about the illicit relationship and the panchayat that was held at the instance of D.1.

ii) On the date of incident ie. on 07/ 08.06.2008 at about 12.00 midnight, while PW.2, who came to his parents house, because of holidays to school, was sleeping by the side of his mother (D.2) and (D.1) was sleeping on another cot made with bamboos, the accused came there armed with an axe and hacked D.1 on the right side of the neck. Later he axed D.2, who is the mother of PW.2. Hearing the sound, PW.2 got up. On seeing the

same, the accused also caused axe injuries on his left shoulder and on back side of the right shoulder of PW.2. It is to be noted here that PW.2 was aged about 9 years at the time of incident. Immediately, thereafter, PW.2 ran away from the scene of offence and went to the house of his maternal uncle (PW.3), which was at a distance of 50 meters from his house. He informed about the incident to them. On hearing the cries at the house of the deceased, PW.1 also came to the scene, by which time, PWs.3 and 4 were present at the scene of offence. All of them noticed both the deceased lying dead with axe injuries. Thereafter, PWs.1 and 6 went to the police station lodged a report.

iii) It is to be seen here that on 08.06.2008 at about 7.00 p.m. PW.1 gave a report-Ex.P1 to PW.11, pursuant to which, PW.11 registered a case in Crime No.39 of 2008 for the offences punishable under Sections 302 and 307 IPC and issued Ex.P14-express F.I.R. Immediately thereafter, the FIR was sent to the all concerned. On receipt of information about the incident, PW.12- the Circle Inspector of Police took up further investigation from PW.11. He rushed to Polavaram Police Station, perused the contents of the first information report, secured the presence of PWs.1 and 2, and recorded their statements. He sent the injured boy-PW.2 to the Government hospital for treatment, as the condition of PW.2 was very serious at that time. Since the scene of offence is located in a dense forest and in an agency area, PW12

could not proceed further and as such he posted a guard to preserve the scene and the dead bodies.

iv) As seen from the record, PW.12 proceeded to the scene of offence on the third day morning, conducted scene of offence of panchanama in the presence of PW.7, which was marked as Ex.P8. He also prepared a rough sketch which is placed on record as Ex.P15. Thereafter, he got photographed the scene of offence through Ravipati Nageswara Rao (LW.15). Exs.P16 to P.19 are the photos and Exs.P20 to P23 are the corresponding negatives. PW.12 also seized MO.1-blood stained earth, M.O.2-controlled earth and M.O.3-blanket from the scene of offence. During the said process he secured the presence of PWs.3, 4 and others and recorded their statements. He also conducted inquest over the dead bodies of D.1 and D.2 in the presence of PW.8 and LW.21. Ex.P7 is the inquest report relating to D.1, whereas Ex.P9 is the inquest report relating to D.2. Later both the dead bodies were sent to Government Hospital, Polavaram, for postmortem examination. PW.10- the Medical officer at Government Hospital, Polavaram, conducted autopsy over the dead bodies of D.1 and D.2 on 09.06.2008. Exs.P.12 and P.13 are the postmortem examination reports of D.1 and D.2 respectively. He opined that the cause of death as "due to injury to vital organs" and the approximate time of death was 36 to 48 hours prior to the post mortem examination.

v) It is also to be noted here that on 08.06.2008 PW.9- Medical Officer, Government Hospital, Polavaram, examined PW.2 and issued Ex.P11-wound certificate. She noticed three cut injuries on the right shoulder, left shoulder and one injury above the clavicle. According to her, the injuries are grievous in nature and caused by a sharp object like M.O.6. PW.2 was not discharged from the hospital, but was referred to the Government Hospital at Kakinada, for further treatment. After affecting the arrest of accused on the same day, his confession was recorded in the presence of PW.7 and LW.16, which is placed on record as Ex.P10. Pursuant to the confession made, M.O.6 was recovered from the back yard of the house of the accused.

vii) The evidence of investigating officer further discloses that pursuant to his request, 164 Cr.P.C. Statements of PWs.1 to 5 came to be recorded by the Judicial Magistrate of First Class, Kovvur (LW.24), which are produced on record as Exs.P2 to P6. After receiving F.S.L. report, PW.12 filed the charge sheet, which was taken on file as P.R.C.No.55 of 2008 on the file of the Judicial Magistrate of First Class, Jangareddygudem. After compliance with Section 207 of Cr.P.C., the matter was committed to the Court of Sessions, where it came to be numbered as S.C.No.233 of 2009.

3) Charges for the offences punishable under Sections 302, 307 and 506 (2) IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs. 1 to 12 and got marked Exs.P1 to P27 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 behalf of the accused in support of his defence.

5) On appreciation of the entire evidence on record, more particularly the evidence of PW.2 and also the evidence of PWs.1, 3 and 4 with regard to the motive for the accused to kill the deceased, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there is an abnormal delay in lodging report and the prosecution failed to explain the delay of 19 hours in lodging the report. She would further submit that the entire case rests on the evidence of PW.2, who is a child witness, and the same cannot be accepted in the absence of any corroboration. It is further urged that as PW.2 was in a deep slumber, he could not have witnessed the incident and identified the accused.

7) Learned Public Prosecutor opposed the same contending that there are no reasons to disbelieve the evidence of PW.2. He would submit that the prosecution successfully established the motive for

the accused to kill the deceased through the evidence of PWs.1 to 4. He also submits that apart from the motive, which came to be established through the evidence of PWs.1 to 4, the prosecution established beyond reasonable doubt the incident in question through the evidence of PW.2. He further submits that though PW.2 is a child witness, but there are no reasons to disbelieve his presence as he also sustained injuries during the said transaction.

8) Therefore, the question that falls for consideration is whether the accused was responsible for causing the death of D.1 and D.2 and also for causing injuries to PW.2?

9) Coming to the aspect of motive, the evidence of PWs.1 to 4 establish the same. PW.1, who is the father of D.2, deposed that the accused was known to him as he was living in a house which was situated 10 yards away from his house. According to him, accused and D.2 developed illegal contact and when the same came to the knowledge of D.1, he called for a panchayat, wherein the elders not only admonished the accused and D.2, but also directed them not to continue with the same. But the accused not only tried to continue the relationship but also developed enmity against D.1 and D.2.

10) PW.4, who is the brother of D.1, also spoke about the illegal contact of accused and D.2 and also about the panchayat which was held in the village, when the illicit relationship came to light. It was deposed that though both of them were having illegal

contact for two years, D.2 came back and joined D.1 and was living happily with him. His evidence show that D.1 warned the accused not to interfere in their family affairs as his wife-D.2 joined him. Though PWs.1 and 4 were cross-examined at length, nothing useful was elicited to discredit their testimony. The suggestions which were given to PW.1 relates to non-existence of street lights in the village and also the distance between his house and the house of the deceased. In the cross-examination, learned counsel for the accused tried to elicit the contradictions in the earlier statement recorded under Section 161 Cr.P.C. and the statement made before the Magistrate under Section 164 Cr.P.C. The suggestions relates to the accused throwing the axe which he was carrying, in bushes, while fleeing away from the scene of offence and also switching off the kerosene lamps in their houses before going to sleep, due to fear of wild animals etc. Similar suggestions were put to PWs.4 and 5. But we are of the opinion that these suggestions, which were denied by the witnesses, remained as suggestions and the same do not falsify the prosecution case with regard to motive.

11) It is also to be noted here that PWs.4 and 5 were also subjected to lengthy cross-examination, but their cross-examinations was only with regard to omissions and contradictions in their earlier statements vis-à-vis the statement recorded by the Magistrate under Section 164 Cr.P.C., which do not go to the root of the matter. The suggestions mainly relate to accused and D.2

living at Pedduru Village for about one year. All the suggestions put to the witnesses were denied.

12) Coming to the incident proper, the entire case rests on the evidence of PW.2. It is not in dispute that PW.2 is a child witness, who was aged about 12 years at the time of giving evidence. His evidence was recorded by the Court after being satisfied with the knowledge, maturity and understanding of the child.

13) The issue as to when the evidence of child witness can be accepted, came for consideration before the Apex Court in *Radhey Shyam v. State of Rajasthan*¹. In the said case, the Apex Court categorically held that the evidence of child witness must be subjected to close scrutiny to rule out the possibility of tutoring and it can be relied upon if the Court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. It was further held that as a matter of caution, the Court must find adequate corroboration by other evidence on record, in which event the same can be accepted without hesitation.

14) In the instant case, PW.2 was staying in a hostel at Kopelli and due to closure of school in summer, he came down to his parents house and was staying along with D.1 and D2. On the fateful day ie. on 07.06.2008, during night, while PW2 was sleeping by the side of his mother, the accused came and axed D.1 (his father), who was sleeping on another cot made with bamboos and later axed

¹ (2014) 5 SCC 389

D.2, who was sleeping by the side of PW.2, at the time of incident. On hearing the sounds, PW.2 got up. Seeing the same, the accused axed PW.2 on his left shoulder and also on the back side of the right shoulder. Immediately thereafter, he ran to the house of his uncle (PW.3) and informed about the incident. The father of D.1, who was examined as PW.1 also came to know about the incident and rushed to the scene. All of them including PW.4, who is the brother of D.1, came to the scene of offence and noticed D.1 and D.2 lying dead with injuries.

15) It is to be noted here that evidence on record amply establishes that the place where the D.1 and D2 were living is a dense forest, which is an agency area. The distance between place of incident and police station is about 46 kms. Having regard to the fact that they were living in a dense forest, without any proper transport, the report could not be lodged forth with. Therefore, on the next day evening, the report came to be lodged, explaining the manner in which the incident took place. The reason for the delay in lodging the report was also explained by PW.1 in the report itself. Therefore, the argument of the learned counsel for the appellant that there was abnormal delay, cannot be accepted.

16) As stated earlier, PW.2 in his evidence deposed about the manner in which the incident took place. As observed earlier, he also sustained injuries during the course of the attack. Pursuant thereto, he was immediately taken to the Government Hospital,

where PW.9- the Medical Officer examined him and referred him to the Government Hospital at Kakinada. The evidence of the Investigating Officer coupled with the fact that PW.2 was referred to the Government Hospital at Kakinada shows the condition of PW.2, after receipt of injuries. Though PW.2 was cross-examined at length, nothing material came to be elicited to discredit his testimony. In fact, it was mainly suggested to PW.2 that he could not have seen the incident as there was no electricity supply during that period because of rain, but PW.2 categorically stated that after the rain, the street lights were on and at the time of incident there was electricity supply and lights were on in the house. As seen from the record, the accused was known to PW.2. His house was at a distance of 10 meter away from their house. Therefore, the argument that PW.2 could not have identified the accused, would not arise. Definitely PW.2 could have easily identified the accused even if the street lights are not there as he is a known person. To a suggestion that he was tutored, PW.2 categorically stated that nobody guided or tutored him to give evidence before the Court but he gave the statement before the Magistrate on his own. To a question as to why he stayed in the house of PW.3, he stated that both his parents were killed, as such he stayed in the house of PW.3. It was not even suggested to PW.2, that he was not present in the house at the time of incident. Having regard to the above circumstances, we are of the opinion that even though PW.2 is a child witness, but he being an injured, his presence at the

scene cannot be doubted. His conduct being natural, there is no reason to disbelieve his version.

17) Apart from that, the evidence of PW.2, who is an injured child witness, also gets ample corroboration from the medical evidence. The doctor, who conducted postmortem examination on the deceased noticed lacerated wound on left side of neck along with fracture of both right and left mandible; fracture of C-6 Vertebra; and lacerated wound on the front side of throat on the body of D.1. He also noticed fracture of mandible and infra-orbital fossa, fracture of skull parietal region and a chopped wound on left side of upper thigh on the body of D.2. In view of the above, we find that the prosecution established, not only the motive to kill both the deceased but also the incident proper. Hence, we see no ground to interfere with the conviction and sentence imposed by the Sessions Judge.

18) Accordingly, the Criminal Appeal is dismissed. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

01.11.2017
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