

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

CRIMINAL APPEAL No.557 of 2012

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

1. Sole accused in Sessions Case No.636 of 2009 on the file of the V Additional Sessions Judge (Fast Track Court), Kurnool at Nandyal is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of one Srasani Mohan Reddy (hereafter after called as 'the deceased') on 12.06.2009 at about 8.10 AM when he reached in front of shop of one B.Pama Subba Reddy, near Shivalayam, on his return to Akumalla village suspecting that the deceased developed illicit intimacy with his wife. Vide judgment dated 15.03.2011, the learned Sessions Judge found the appellant/ accused guilty for the offence punishable under Section 302 IPC and accordingly convicted and sentenced him to undergo imprisonment for life and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for six months. Assailing the same, the present Criminal Appeal is filed.

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

P.W.1 is the wife of deceased. One Kambakka is wife of the accused. The marriage of P.W.1 with the deceased took place about 12 years prior to the date of the offence. P.W.1 owned a

tractor but they had no space to keep the said tractor. Hence, they used to park it in front of house of said Kambakka, who is wife of the accused and who used to attend works in the house of P.W.1, besides their agricultural works. There was a rumor in the village that the deceased was having illicit intimacy with said Kambakka. A dispute arose between the families of the accused and the deceased with regard to the alleged illicit relationship of the deceased with the wife of the accused. On the date of the incident, at about 8.00 AM, P.W.1 and the deceased took dung basket to throw it in dung pit, and after throwing the same, were returning back to their house. The deceased was going in front of P.W.1. At that time, the accused came from behind and stabbed the deceased with a knife on the back side. On seeing the same, P.W.1 tried to rescue the deceased, but the accused pushed her aside. As per the evidence of P.W.1, the accused stabbed the deceased continuously on front side and all over the body. It is her version that about 10 to 15 injuries were caused to the deceased. She raised cries, on which her daughter went and informed to Nallamma (P.W.2), who is mother of the deceased, about the incident. Immediately, P.W.2 rushed to the spot and requested the accused by touching his feet. But, the accused did not heed to the words of the P.W.2 and continued stabbing the deceased. Thereafter, 4 or 5 villagers came to the scene of occurrence and on seeing them, the accused ran away.

On receipt of information, police came to the scene of occurrence and recorded statement of P.W.1. Basing of Ex.P1, a

case in crime No.76 of 2009 of Sanjamala police station was registered for the offence punishable under Section 302 IPC. Ex.P14 is the F.I.R. Further investigation in this case was taken up by P.W.10. During the course of investigation, he visited the scene of occurrence, secured blood relatives and punch witnesses P.W.6 and others, conducted inquest over the dead body of the deceased under Ex.P11-inquest report. During the inquest, he recorded the statements of P.Ws.1 to 3 and other witnesses, and also seized M.Os. 2 to 8. He then conducted scene of observation panchanama and prepared a rough sketch, Ex.P15. After completing the proceedings, the dead body was sent for postmortem examination.

P.W.8-the Civil Assistant Surgeon, Government Hospital, Koilkuntla conducted postmortem over the dead body of the deceased Srasani Mohan Reddy from 3.15 PM and 5.45 PM on 12.06.2009 and issued Ex.P13-the Postmortem examination report. The Doctor observed 13 external incised and stab injuries and also internal injuries on the body of the deceased. He opined that the cause of death was due to haemorrhage and shock due to the injuries, which were caused by a sharp object.

After receipt of relevant documents and completion of investigation, a charge sheet came to be laid by P.W.10 before the Court of Judicial Magistrate of First Class, Koilkuntla, who took cognizance of the same as P.R.C. No.15 of 2009, and after compliance of Section 207 Cr.P.C., committed the case to the

Court of Session under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.636 of 2009.

3. On appearance of the accused, the learned Sessions Judge framed charge under Sections 302 IPC, read over and explained to the accused in Telugu, to which he pleaded not guilty and claimed to be tried.

4. To substantiate its case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P17 and M.Os.1 to 8. After the closure of the 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 on behalf of the accused in support of his defence. However, Exs.D1 and D2-portions in the statement of P.W.1 under Section 161 Cr.P.C. were marked on behalf of the defence.

5. Relying upon the evidence of P.Ws.1 to 3 and the medical evidence, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal is filed through legal aid.

6. Learned counsel appearing for the appellant mainly submits that no reliance can be placed on the evidence of P.Ws.1 to 3 in view of the discrepancies in their evidence. According to her, though all the material prosecution witnesses deposed about the incident proper in their examination-in-chief, the answers given by

them in the cross-examination throw any amount of doubt on the prosecution case. She further submits that presence of food articles in the stomach of the deceased, which was noticed during postmortem examination, throw any amount of doubt as to the time of the alleged incident. She would further contend that P.Ws.1 to 3 failed to mention the crucial aspects in their earliest statements before the investigating officer and the same falsifies the presence of P.Ws.1 to 3 at the time of the incident or they witnessing the incident.

7. On the other hand, the learned Public Prosecutor appearing for the State would contend that the evidence of P.Ws.1 to 3 is sufficient to base a conviction. It is urged contention that P.Ws.1 to 3 were cross-examined at length, and though certain admissions came to be elicited in their cross-examination, but the same do not go to the root of the matter and demolish the evidence of P.Ws.1 to 3 in toto. It is further pleaded that P.Ws.1 to 3 have no grouse or enmity against the accused. He urges that though some persons, who were shown to be present at the scene of occurrence, were cited as witnesses in the charge sheet, but were not examined, the consistent evidence of P.Ws. 1 to 3 is sufficient to convict the accused, which was rightly done by the trial Court.

8. Now, the point that arises for determination is whether the appellant/ accused can be held liable for causing death of the deceased ?

POINT:

9. P.W.6 is one of the inquest mediators present at the time of P.W.10 conducting inquest over the dead body of the deceased under Ex.11-inquest report. He deposed about his presence at the time of conducting inquest over the dead body of the deceased by P.W.10. He is a Village Revenue Officer. His evidence remained unshaken even during cross-examination and nothing has been elicited in his cross-examination so as to disbelieve the same. As per column No.XV of Ex.P11-inquest report, the inquest mediators opined that the deceased died as a result of stab injuries sustained by him when the accused attacked him with dagger. The objective findings of the inquest mediators are admissible in evidence so as to know the apparent cause of death of the deceased.

10. P.W.7, the then Village Revenue Officer, Koilkuntla deposed in his evidence about his presence at the time of police apprehending the accused, seizure of M.O.1-dagger and M.O.6-kerchief in pursuance of Ex.P12-confession of the accused. His evidence remained unshaken even during cross-examination and nothing has been elicited in his cross-examination so as to disbelieve the same.

11. P.W.8 is the then Civil Assistant Surgeon, Government Hospital, Koilkuntla, who conducted autopsy on the dead body of the deceased on 12.06.2009 from 3.15 PM and issued Ex.P-13 postmortem report. He deposed that the cause of death of the deceased was due to haemorrhage and shock by the impact with

hard object having sharp edge. Though he was cross-examined at length, nothing has been elicited to disbelieve his evidence with regard to cause of death of the deceased. Therefore, from the evidence of P.Ws.6 and 8 and the recitals in Exs.P11 and P13, homicidal nature of death of the deceased is established.

12. Now, it has to be seen whether the appellant/ accused is the assailant of the deceased or not ?

13. A perusal of the evidence on record would go to show that it is the consistent version of all the 3 witnesses P.Ws.1 to 3 that on the date of the incident, the deceased and P.W.1 were returning from dung pit after throwing dung in it and when they reached the scene of occurrence, the accused came from behind and stabbed the deceased with a knife on his back side. It is also clear that when P.W.1 tried to interfere, she was pushed aside. Though P.Ws.1 to 3 were cross-examined at length, nothing useful was elicited to discredit their testimony. The only circumstance that was elicited through the evidence of P.Ws.1 and 2 is their improvement in the case with regard to they touching the feet of the accused requesting him to leave the injured-deceased, but the accused did not heed to their words. This aspect is an improvement because P.Ws.1 to 3 did not state the same either in Ex.P1-report or in their earliest version before police. But, the said aspect is not a material discrepancy which goes to the root of the case, if the presence of P.W.1 is established. Various suggestions came to be given stating that the accused was not

responsible for causing death of the deceased and that someone else might have caused the death because of illegal intimacy of the deceased with one Pani and others, but the same were denied. The suggestion that whenever the accused used to visit house he used to see his daughter, was denied. The suggestion that on 11.6.2009, while the accused was present along with his wife, the deceased beat the accused as to why he came to the house, was also denied.

14. Taking advantage of the admission made in cross-examination of P.W.1, that she failed to mention distance between her house and the scene of occurrence, learned counsel for the appellant tried to contend that by the time P.W.2 reached the scene, the accused must have already left the place. But, it is to be noted that it is not the case of accused that P.W.1 was not there along with the deceased. Further, from the evidence of P.Ws.2 and 3, it is clear that P.W.1 was accompanying the deceased and that she had actually seen the assault on the deceased by the accused. P.Ws.2 and 3 denied a suggestion that due to suspicion, they gave the report. The suggestion that the accused has nothing to do with the death of the deceased and that they were not present at the scene of occurrence and deposing false, was denied. Therefore, the contention of the learned counsel for the appellant that no reliance can be placed on the evidence of P.Ws.1 to 3, in view of certain discrepancies in their evidence, cannot be accepted. The evidence of P.Ws.1 to 3 on the

occurrence of incident proper, is consistent and remained unshaken in cross-examination.

15. Coming to the first contention of the learned counsel for the appellant/ accused as to non-examination of L.Ws.4 to 8-Y.Bala Govinda Reddy, B.Rama Subba Reddy, G.Buchi Reddy, K.Venkateswar Reddy and Chakali Dastagiri respectively, who are cited as eye witnesses, along with P.Ws.1 to 3, it is to be noted that it is the quality of the evidence of a witness that is brought on record that is important rather than quantity. Under Section 134 of the Indian Evidence Act, 1872, no particular number of witnesses is required to be examined to prove a certain fact. If the evidence of a solitary witness is found to be true, trustworthy, reliable and cogent, then there is no rule that his evidence requires corroboration to accept the same. Corroboration is not a rule of law but is a rule of prudence. In the case on hand, the prosecution cited P.Ws.1 to 3 and other witnesses as stated above as eye witnesses to speak about the motive and the incident. If the evidence of P.Ws.1 to 3 is found to be true, trustworthy, reliable and cogent and if placed in the category of 'wholly reliable', then there is no difficulty in accepting the same to base conviction. Since P.Ws.1 to 3 categorically deposed about the manner in which the incident took place and when they withstood the test of cross-examination, it may not be necessary to examine all the witnesses. Therefore, the argument of the learned counsel for the appellant that an adverse inference has to be drawn for their non-examination, cannot be accepted.

16. The other aspect which is sought to be raised by the learned counsel for the appellant is that there is any amount of doubt as to whether really P.W.1 lodged the report. According to her, in the evidence of P.W.1, it is stated that on receipt of information, police came to scene of occurrence where her statement was recorded basing on which Ex.P14-FIR came to be registered. Whereas, P.W.9-Sub Inspector of Police deposed in his evidence that on 12.06.2009 at 9.30 AM, P.W.1 came to police station and gave a written report Ex.P1, basing on which he registered Ex.P14-F.I.R. No doubt, there is some discrepancy on the aspect namely as to whether the Ex.P14-F.I.R. was registered basing on the statement of P.W.1 recorded by police or basing on the written report lodged by her. But, this discrepancy is minor in nature and would not go to the root of the matter. There is no grouse or enmity for P.W.1 to speak falsehood against the accused or to implicate the accused falsely in this case. On the other hand, when the evidence of P.W.1 is tested with the evidence of other witnesses, it is clear that Ex.P1-written report was lodged with the police when they came to the scene of occurrence, and the same was registered as a crime vide Ex.P14-F.I.R. In Ex.P1, P.W.1 categorically stated about the manner in which the incident took place. Therefore, the arguments of the learned counsel for the appellant that entire fabric of the case collapses in view of such discrepancy, cannot be accepted.

17. The next contention of the learned counsel for the appellant is that as the Doctor, during the course of postmortem

examination, found presence of food particles in the stomach of the deceased, there is any amount of doubt with regard to time of death of the deceased. According to her, had the deceased left the house without consuming food and had the incident happened at 8.10 AM and when the death was instantaneous, then the question of presence of food in stomach would not arise. It is her contention that as per the evidence of Doctor, if the deceased had taken food 8 to 9 hours prior to his death, then there would not be any possibility of noticing the food contents in the stomach. Therefore, it is urged that as the Doctor noticed partially digested food particles of 300 ml in the stomach of the deceased and the presence of food particles, it rules out the possibility of the incident taking place at 8.10 AM.

18. It is no doubt true that as per the case of prosecution, the incident in question took place at 8.10 AM on 12.6.2009. In Ex.P13-the postmortem examination report, P.W.8-the Doctor noticed presence of some food particles in stomach of the accused. It is also not in dispute that P.W.8-Doctor deposed that the deceased might have taken food 8 to 9 hours prior to his death. But, it is to be noted that there is no evidence on record to show the time as to when the deceased consumed food and the nature of food consumed by him. It is not the case of the prosecution that the deceased consumed food in the morning.

19. It is to be noted here that the evidence of the doctor is only an opinion evidence and the doctor could not have given timing

with such precision unless the evidence on record discloses the nature of food taken by the deceased. It is well known that the time taken for the food to get digested in a normal human being 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.

20. In *Ram Bali v. State of Uttar Pradesh*¹ the Apex Court held that “the process of digestion of food is not uniform and varies from individual to individual and health of 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 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.”

21. 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

¹ AIR 2004 SC 2329

determining the time of the occurrence because 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.

22. In *Rajpal v. State of Haryana*² the Apex Court was dealing with a case where the deceased took food i.e., 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 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.

23. In *Vijay Paul v. State*³ 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 eyewitnesses account which

² (2013) 2 SS 349

³ (2015) 4 SCC 794

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

24. 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, the 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. Even otherwise, in the absence of any evidence to show as to nature of food consumed and also the time when it was consumed, presence of 300 ml food particles in the stomach cannot be a circumstance to doubt the time of death of the deceased. Apart from that, it is to be noted that the Doctor deposed in his evidence that the deceased might have died about 8 to 9 hours prior to post-mortem examination, which concluded at 5.45. PM and commenced at 3.15 PM on that day. If the said time is taken into consideration, the time at which the incident had happened as per the case of prosecution gets corroboration therefrom. Therefore, we do not find any reason to throw out the case of prosecution on the said ground.

25. As regards motive, the case of the prosecution is that the motive for the accused to commit the offence is that the deceased had illicit intimacy with wife of the accused, and in this regard, there were some disputes between the accused and the deceased. The said aspect is stated in Ex.P1-report and is also deposed by P.Ws.1 to 3 in their evidence. The evidence on this aspect is

consistent and cogent. Even otherwise, motive is not an integral part of crime. It is only an aid in assessment of criminality. If the evidence of eye-witnesses is found to be true, trustworthy and acceptable on the incident proper, then motive loses significance. In the case on hand, since the evidence of P.Ws. 1 to 3 is consistent and trustworthy, much importance cannot be attached to the aspect of motive.

26. In view of the foregoing discussion, we hold that the prosecution established its case against the accused beyond all reasonable doubt for the charge leveled against him. The trial Court, upon appreciation of the evidence on record in right perspective, found the appellant/accused guilty of the offence punishable under Section 302 IPC. We do not find any reason to interfere with the findings arrived at, by the trial Court. The appeal is devoid of merit and is liable to be dismissed.

27. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence passed against the appellant/accused in the judgment dated 15.03.2011 in Sessions Case No.636 of 2009 on the file of the V Additional Sessions Judge (Fast Track Court), Kurnool at Nandyal. Consequently, Miscellaneous Petitions, if any, pending shall stand closed.

28. This Court, vide its order dated 12.07.2017 in CrI.A.M.P. No.1452 of 2017, directed release of the appellant/accused on bail on the terms and conditions mentioned therein. In view of dismissal of the Criminal Appeal, the bail bonds of the

appellant/ accused shall stand cancelled and the Magistrate concerned shall take immediate steps to apprehend the accused by issuing NBW to serve the sentence of imprisonment. Registry to communicate a copy of this Judgment to the Magistrate concerned forthwith.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

06.12.2017
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