

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL NO.184 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 20.01.2011 of the learned V Additional Sessions Judge (III FTC), Nalgonda at Miryalaguda, in Sessions Case No.46 of 2007 convicting the appellant, the sole accused therein, under Section 302 IPC and sentencing her to undergo life imprisonment, apart from payment of a fine of Rs.1,000/-, in default of which she was to undergo simple imprisonment for a period of six months.

The case of the prosecution, in brief, was as under:

The Circle Inspector of Police, Halia Police Station, P.W.13, received the written complaint (Ex.P1) from P.W.1, the father of the deceased child, Naresh, aged about 7 years, on 29.09.2005 at about 8.30 AM and registered a case in Crime No.79 of 2005 under Section 174 CrPC. He examined P.W.1 and recorded his statement indicting the accused and thereafter visited the Government Head Quarters Hospital, Nalgonda, where he conducted an inquest over the body of the deceased child in the presence of P.Ws.10 and 11. Ex.P3 is the inquest report. He then sent the body for post-mortem examination to the Civil Assistant Surgeon, P.W.12, and on the same day, at about 1400 hours, he visited the scene of the offence, i.e., the Primary School at Kummarikuntakalva. He conducted the scene of the offence panchanama (Ex.P6) in the presence of P.Ws.10 and 11 and also drew up a rough sketch (Ex.P7). He then examined P.W.2, P.W.3, P.W.4 and Gogu Naresh (L.W.5) at the Government Head

Quarters Hospital, Nalgonda. On 30.09.2005, he again went to Kummarikuntakalva, where he examined P.W.5, P.W.16, P.W.17, P.W.7 and P.W.8 and recorded their statements. He sent the viscera to the Forensic Science Laboratory for analysis. Upon his transfer, he handed over the case diary file on 27.03.2006 to the Sub-Inspector of Police, Halia Police Station (P.W.14), for further examination. Having received the same, P.W.14 collected the post-mortem report from P.W.12 and filed a Memo (Ex.P10) altering the provision of law from Section 174 CrPC to Section 302 IPC. He then visited Kummarikuntakalva on 30.03.2006 and re-examined all the witnesses and verified the scene of the offence. He handed over the case diary file to the next Circle Inspector of Police, Halia (P.W.15), for further investigation. P.W.15 recorded the statements of Kanneboina Bixam (L.W.12), P.W.9 and Nakirekanti Yellesh (L.W.14). He apprehended the accused on 16.05.2006 and sent her for remand. Upon completing the investigation, he laid a charge sheet.

Upon committal, the Sessions Court framed the charge that on 28.09.2005, in the evening at about 1600 hours, in the play ground of Government Primary School at Kummarikuntakalva, the accused committed murder by intentionally causing the death of the deceased, Naresh, by administering poison and thereby committed an offence punishable under Section 302 IPC.

The accused denied the charge and claimed to be tried.

The prosecution examined 17 witnesses before the Sessions Court and marked Exs.P1 to P10 in evidence. The accused did not lead any evidence, oral or documentary.

P.W.1, the father, stated that the deceased, Naresh, was his third son. He stated that on the fateful day, he and his wife, P.W.2,

went to their agricultural land as usual and the deceased, as usual, left to attend school in the morning. When he and P.W.2 returned to their house at about 6.00 PM in the evening, they noticed that the deceased was vomiting. Upon their enquiry, the deceased told them that the accused had come to school and offered him rice mixed with something and he ate the same before coming home and that might be the reason for his vomiting. Thereupon, he, his wife (P.W.2) and his elder brother (P.W.3) immediately took the deceased to the Registered Medical Practitioner (RMP), P.W.8, at Pulimamidi Village for medical treatment. However, the RMP advised them to take the deceased to the Government Hospital at Nalgonda. Then, they shifted the ailing child to the Head Quarters Hospital at Nalgonda. After reaching there, he died while undergoing treatment. P.W.1 then went to the police station, Halia, and lodged the complaint (Ex.P1) against the accused. He stated that he suspected the accused as there were differences previously between him and the accused in connection with their extramarital relations, which were resolved by the elders in a panchayat. He stated that the same was the motive for her to kill his son. In his cross-examination, P.W.1 stated that Kanneboina Bixam (L.W.12), P.W.9, Nakirekanti Yellesh, the Sarpanch (L.W.14), and other elders participated in the panchayat between him and the accused and decided that he and the accused should not again meet each other and that he should take the responsibility to perform the marriage of the daughter of the accused. He added that he had not agreed to this resolution. He stated that the strength of the students in the school in which the deceased was studying may be about 20 and that only two teachers were working there. He further stated that the teachers would not be available in

the village after the school was let-off. His other son (P.W.16), his brother (P.W.3) and his mother, P.W.6, were present at the house and were weeping when he and P.W.2 returned from the agricultural field between 6.00 and 7.00 PM. His mother, P.W.6, told him about the deceased vomiting and that he took the food offered by the accused. He denied the suggestion that he kept pesticides in his house as he was an agriculturist and that the said pesticides came into contact with rice available within his house and that the same was consumed by the deceased causing his death. He denied that owing to enmity, he filed a false case against the accused.

P.W.2, the mother of the deceased, stated that she knew the accused as a resident of her village. Her deposition was more or less on the same lines as her husband's (P.W.1). She repeated that when she and P.W.1 returned in the evening from the agricultural land and noticed the deceased vomiting, he told them upon their enquiry that the accused came to the school and offered broken rice with sugar and he ate the same which might have caused vomiting. In her cross-examination, she stated that she did not know what transpired between her husband and the accused prior to the death of the deceased. She stated that her mother-in-law, P.W.6, alone was present in the house with the deceased when they returned from the agricultural land in the evening hours. She stated that P.W.6 did not inform anything to her and she herself enquired with the deceased as to the reason for his vomiting. She denied the suggestion that the pesticide in the house got mixed with rice and consumption thereof by the deceased made him vomit and ultimately lose his life.

P.W.3, the elder brother of P.W.1, stated that on the fateful day, when he returned to his village from the agricultural field, he

was informed by P.Ws.1 and 2 that the deceased was vomiting on account of eating rice mixed with sugar offered by the accused at the school. He stated that they all shifted the deceased to the RMP at Pulimamidi, but upon seeing the deceased and the case history, he expressed his inability to treat him and advised them to shift him to the Government Hospital, Nalgonda, for expert treatment. He stated that they then shifted the deceased to the Government Hospital, Nalgonda, but while undergoing treatment, he died. He stated that prior to the death of the deceased, P.W.1 and the accused had extramarital relations and in that connection, differences arose and the elders ultimately decided the matter. He stated that keeping this dispute in mind, the accused might have offered the poisoned rice to the child. In his cross-examination, he stated that he himself witnessed the deceased vomiting. He denied the suggestion that he was deposing falsely at the instance of his brother, P.W.1. He also denied the suggestion that the available pesticide in the house got mixed with the rice and consumption of the same by the deceased made him vomit and ultimately lose his life.

P.W.4, a circumstantial witness, stated that on the fateful day, while he was returning from his agricultural land in the evening, he saw a gathering in front of the house of P.W.1. Upon his enquiries with P.Ws.1 and 2, they informed him that their son, Naresh, was vomiting on account of eating rice mixed with sugar etc., offered by the accused at the school. He stated that they all then took the ailing child to the RMP at Pulimamidi (P.W.8) and upon his advice, they shifted the child to the Government Hospital, Nalgonda, and while undergoing treatment, he expired during the night. He stated that prior to the death of the child, differences arose between P.W.1 and

the accused in relation to their extramarital life and it was decided by the elders in the panchayat that they should not meet each other. He stated that this might have been the cause for the accused to offer poisoned food to the child. In his cross-examination, he admitted that he was related to P.W.1, who was his agnate. He denied that he was giving false evidence at the instance of P.W.1.

P.W.5 is the niece of P.W.1 and the cousin of the deceased. As she was aged about eight years at the time of the death of the deceased and was still a minor when she was examined in Court, the Sessions Court first put questions to her and satisfied itself as to her mental capacity to give evidence. She thereupon stated that she knew the accused being a resident of their village and that the deceased had died on account of eating broken rice offered by the accused within their school campus at Kummarikuntakalva. She stated that after eating the said rice, the deceased started vomiting. In her cross-examination, she stated that in the academic year 2005-2006, the strength of students in her class was ten and the same strength of students was in the fourth class. In the second standard, she stated that six students were there, while ten students were in the first class. She stated that on the fateful day, there was full attendance of students in the school. She further stated that both the teachers in the school were non-locals and they traveled to and fro the school. They used to come in the morning at about 8.00 AM and leave after 3.00 PM. She stated that after the teachers left the school, students would play in the school campus and that there was no compound wall around the school. When asked as to how many students were playing along with her after the school hours and whether she knew their names, she stated that along with her

P.W.16, P.W.17 and the deceased were playing in the school premises and all the other students had already left. She stated that they were playing in front of the school as both the teachers left the school premises immediately after 3.00 PM. According to her, they played for two hours and the accused came to the school in the 'middle time' of their playing when they first noticed her. After completion of their playing, she stated that she and the others left the school simultaneously. The deceased was stated to have come along with them from the school. She stated that P.W.1 was her agnate and he brought her to Court. She denied the suggestion that she was giving false evidence and asserted that she and the other students were playing in the school premises after school hours. She denied the suggestion that her statement that the accused came to the school and offered broken rice with sugar to the deceased was false. She also denied that the deceased died upon consuming the broken rice at his house being mixed with pesticide, and stated that the deceased had died on eating the broken rice with sugar offered by the accused.

P.W.6 is the grand-mother of the deceased. She stated that P.Ws.1 and 2 were her son and daughter-in-law. She stated that on the fateful day during evening hours, the deceased was brought by other students complaining about his vomiting on account of eating the broken rice-cum-sugar offered by the accused at the school. She stated that she washed the mouth of the deceased and in the meanwhile, P.Ws.1 and 2 returned from the agricultural field and shifted the ailing child to the hospital. In her cross-examination, she stated that she was staying with her elder son when the deceased returned from school with vomiting. She reiterated that P.W.16, her other grand-son, P.W.5 and some students brought the deceased to

their house complaining of vomiting. She denied the suggestion that she was deposing falsely at the instance of the police and P.W.1. She admitted knowledge of the panchayat that had taken place between P.W.1 and the accused. She denied that keeping the above panchayat in mind, P.W.1 made her give false evidence against the accused. She denied the suggestion that the deceased ate rice mixed with pesticide at his house and died.

P.W.7, the Head Master of the Primary School at Kummarikuntakalva Village, stated that there were two teachers working in the school and there were five classes, i.e., from class 1 to 5. He knew the deceased, a student of the school, and he died during his tenure as Head Master. He stated that the school timings were from 9.00 AM to 12.15 PM and 1.10 PM to 3.40 PM. On the fateful day, he left the school after school hours and when he reported for duty on the next day, the students told him of the death of the deceased on the previous day. At this stage, he was declared hostile and was subjected to cross-examination by the prosecution. Thereupon, he stated that he could identify the accused and denied the suggestion that he had informed the police that in his presence at the school, the accused offered broken rice mixed with sugar etc., to the deceased and that the deceased ate the same. Ex.P2 is the portion of his Section 161 CrPC statement with which he was confronted. He denied that in order to help the accused, he was deposing falsely. In his cross-examination by the defence, he said that the strength of the students at that time was about 40.

The RMP at Pulimamidi Village was examined as P.W.8. He stated that Kummarikuntakalva was situated at a distance of one kilometer from Pulimamidi Village. He stated that on 28.09.2005 in

the evening at 7.00 PM, P.Ws.1 and 2 brought their son, Naresh, to his house and complained that he was vomiting on account of being administered broken rice mixed with sugar by the accused. They informed him that the deceased had vomited seven times at home and upon seeing the condition of the deceased and his inability to even stand on his own, he advised P.Ws.1 and 2 to take him to the Government Hospital, Nalgonda. On the next day morning, he came to know that the deceased had expired. In his cross-examination, he stated that the Primary Health Centre at Kanagal was the nearest one to Kummarikuntakalva. He denied the suggestion that P.Ws.1 and 2 did not bring the deceased to him for treatment and that he was giving false evidence at the instance of P.W.1.

The former MPTC Member of Marepally Gram Panchayat was examined as P.W.9. She deposed about the panchayat held between P.W.1 and the accused. In this connection, she stated that Kanneboina Bixam (L.W.12), Nakirekanti Yellesh, Sarpanch (L.W.14), and she acted as elders in the panchayat which related to the delivery of a baby girl by the accused through P.W.1. As P.W.1 refused to accept the said girl as his daughter and did not want to continue extramarital life with her, the dispute arose. She stated that the elders resolved that P.W.1 and the accused should not meet each other in future but they should perform the marriage of the daughter together. In her cross-examination, she stated that P.W.1 and the accused selected the elders to decide the panchayat and she represented P.W.1. She stated that only three of them acted as elders in the panchayat and that the accused accepted their resolution.

P.W.10 was an inquest witness. He stated that on 29.09.2005 in the morning at 11.00 AM, the Halia police called him and P.W.11

to the Government Hospital, Nalgonda, to conduct an inquest over the body of the deceased, the son of P.W.1, who was known to him. He confirmed that they signed in the inquest report (Ex.P3) after the contents thereof were read over to them. He denied the suggestion that he was taken to Primary School, Kummarikuntakalva Village, and that the scene of the offence panchanama was conducted in his presence. He however admitted his signature (Ex.P4) in the scene of the offence panchanama, Ex.P6, and his signature (Ex.P5) in the sketch map, Ex.P7. He was thereupon declared hostile and was subjected to cross-examination by the prosecution. He again stated that it was not true that the police had taken him to Primary School, Kummarikuntakalva, and in his presence they observed the scene of the offence and after reading over the contents thereof his signatures, Exs.P4 and P5, were taken. He denied that he was deposing falsely as to the panchanama proceedings of the scene of offence. In his cross-examination by the defence, he denied the suggestion that he visited the Government Hospital, Nalgonda, on 29.09.2005 and participated in the inquest proceedings. He denied the suggestion that he affixed his signatures on Ex.P3 inquest report at the police station. He denied that he did not know anything about the case and that he affixed his signatures on blank papers at the instance of the police.

P.W.11 is the other inquest witness. He affirmed that on 29.09.2005, he visited Government Hospital, Nalgonda, in the morning at about 11.00 AM and that the Halia police conducted inquest proceedings on the body of the deceased and obtained his signature along with the signature of P.W.10 on the said inquest report (Ex.P3). He stated that the police took him and P.W.10 to the Primary School in their village where they conducted the scene of the

offence panchanama and drew up a rough sketch of the scene of the offence. He affirmed that the police obtained their signatures on the scene of the offence panchanama (Ex.P6) and rough sketch (Ex.P7). In his cross-examination, he stated that on 29.08.2005 during the evening he came to know about shifting of the deceased from their village to the hospital. He denied the suggestion that the police had not conducted the inquest proceedings in his presence and that they obtained his signatures in the police station on Ex.P3. He denied the suggestion that he was giving false evidence purposefully and that the police had not prepared the sketch of the scene as stated by him.

P.W.12 was the Civil Assistant Surgeon at Government Hospital, Nalgonda, who conducted the post-mortem examination of the dead body. She stated that no external injuries were found on the body and after collecting viscera, she sent the same to the Forensic Science Laboratory for analysis. She stated that upon receipt of the FSL report, she gave her final opinion that the cause of death was organophosphate poisoning. She confirmed that Ex.P8 was the Forensic Science Laboratory report dated 30.11.2005, while Ex.P9 was the post-mortem examination report.

P.Ws.13, 14 and 15, being the investigating officers, spoke of the various steps taken by them. Nothing of use was elicited in their cross-examination.

Gogu Janaiah, brother of the deceased, was examined as P.W.16. As he was still a minor at the time of his examination, the Sessions Court put questions to him to ascertain his mental capacity and upon such satisfaction, he was allowed to depose. He stated that he knew the accused and that she belonged to his village. At the time of the fateful incident, he stated that he was studying third class

at the Primary School, Kummarikuntakalva. At about 3.30 PM on that day, he stated that his brother, the deceased, informed him about the giving of sugar and rice by the accused. He stated that he questioned him as to why he ate the rice which was given by the accused and that he washed his mouth and face and they both went to their house and informed their grand-mother, P.W.6, of the same. He stated that the deceased slept for half an hour and upon waking up, he started vomiting. His parents shifted him to the Government Hospital for treatment, where he died. In his cross-examination, he denied the suggestion that he did not go to school on the fateful day and that he did not know anything about the case. He denied that he was speaking falsely at the instance of his parents.

Gogu Lalitha (P.W.17) is a child witness who was also subjected to questioning by the Sessions Court to know her mental capacity. Having satisfied itself in this regard, the Sessions Court permitted her to depose. She stated that the deceased was her junior paternal uncle and that she was studying third class at the village school at the time of his death. She stated that she knew the accused. She further stated that while they were playing in the school on the fateful day, the accused came and gave rice and sugar to the deceased by taking him aside. She stated that the deceased informed the same to his brother, P.W.16. After some time, she stated that she went to the house of the deceased and came to know that the deceased had vomited. The parents of the deceased then shifted him to the hospital where he died. In her cross-examination, she stated that P.Ws.1 and 16 were closely related to her. She denied the suggestion that she did not go to school on the date of the incident

and that she knew nothing about the case but was speaking falsely against the accused at the instance of P.W.1, due to previous enmity.

On the strength of the aforestated oral and documentary evidence, the Sessions Court opined that the evidence of the child witnesses was reliable and basing thereon, convicted the accused.

At the outset, it may be noted that the death of the deceased child was undoubtedly an unnatural one. The medical examination revealed that he died of poisoning by organophosphate, an insecticide. Though the defence put suggestions to witnesses that he may have died accidentally because insecticide at home may have gotten mixed with the rice that he ate, no acceptable evidence is available to draw such a conclusion. On the other hand, the prosecution's case that it is a homicide rests upon the testimony of three child witnesses.

Section 118 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') provides that a person is competent to testify unless the Court considers that such a person is prevented from understanding the questions put to him or from giving rational answers to those questions, by tender years, extreme old age, disease, or any other cause of the same kind.

In ***K.VENKATESHWARLU V/s. STATE OF ANDHRA PRADESH***¹, the Supreme Court observed that the evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the Court comes to the conclusion that the child understood the questions put to him and was capable of giving rational answers. It was further observed that a child witness, by reason of tender age, would be a pliable witness and could be tutored easily either by

¹ (2012) 8 SCC 73

threat, coercion or inducement and therefore, the Court must be satisfied that the attendant circumstances did not show that the child was acting under the influence of someone or was under threat or coercion. The Supreme Court however held that the evidence of a child witness can be relied upon if the Court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has the ring of truth.

It is therefore necessary that this Court test and evaluate the deposition of the three child witnesses with great care and circumspection before concluding that they were not tutored and that their evidence has a ring of truth.

Sri M.Venkatram Reddy, learned counsel for the appellant/accused, would point out that all the child witnesses were related to the deceased and therefore, the possibility of their being tutored by the family elders cannot be ruled out. He would further submit that the presence of only these related child witnesses at the school after school hours is doubtful. Learned counsel would rely upon the evidence on record to the effect that there were about 40 students in the school at the relevant point of time and contend that it is highly unbelievable that except for these four children, all belonging to the same family, there would be no other children present.

In this regard, it may be noted that P.W.5 was a cousin of the deceased, while P.W.17 stated that the deceased was her junior paternal uncle. Only P.W.16 was the sibling of the deceased. Significantly, he did not claim that he saw the accused or directly witnessed her giving the broken rice to his brother at the school premises. It was P.Ws.5 and 17, on the other hand, who categorically spoke of seeing the accused at the school premises. P.W.17 spoke of

the accused coming to the school ground while they were playing and giving rice and sugar to the deceased by taking him aside. P.W.16 stated that the deceased himself informed him of the accused giving him sugar and rice to eat. This deposition of P.W.16 has the ring of truth as it is very natural that the deceased would have shared this information with him, as he was his brother. Though this is hearsay evidence it is relevant and admissible on the strength of Section 6 of the Act of 1872 as it forms part of the transaction and would attract the doctrine of *res gestae*.

Had it been a case of tutoring by family elders, P.W.16, who is an older boy and being none other than the brother of the deceased, would have been made to figure as an eye witness rather than the two girls, who were younger and were more distantly related. Taken cumulatively, the testimony of these children has undoubtedly a ring of truth. Further, being children they could not have been coached or tutored to the extent their versions were on the same lines on all crucial aspects. The minor discrepancies in their accounts militate against any claim of tutoring or coaching.

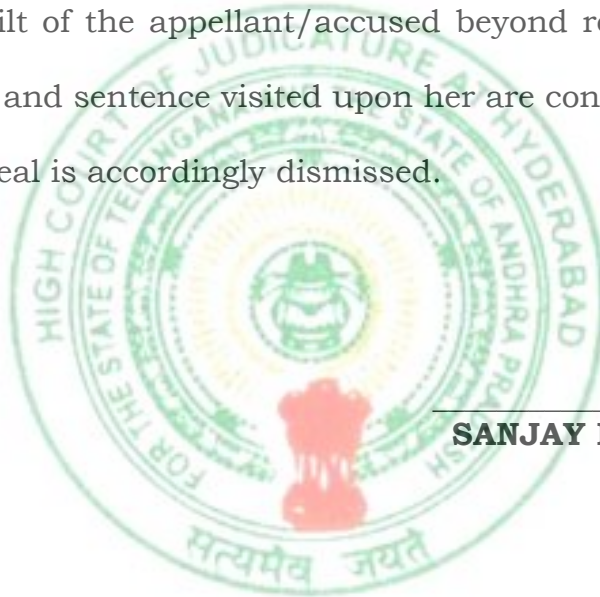
As to the argument of the learned counsel that it is difficult to believe that only these four related children would have been playing at the school, it is relevant to note that these children were all related but did not live together. It is therefore most natural that they should linger after school and play together, being in the same age group. Absence of other children does not make their presence doubtful.

Sufficient motive has also been established in the light of the testimony of witnesses to the effect that the accused had extramarital relations with P.W.1 and had also begotten a daughter through him. The panchayat elders seem to have held that they should not meet

each other in future and that P.W.1 should only bear the marriage expenses of the daughter. Estrangement from her paramour, which was one of the issues raised by her before the panchayat, would have caused her grief. The issues that she had with P.W.1 constitute reason enough for her to seek to cause loss and pain to P.W.1. Alas, the innocent child, the deceased, had to pay the price.

Ergo, we find no grounds to discard the testimony of the child witnesses in the present case. The conviction by the Sessions Court basing on their testimony therefore does not warrant interference. Minor discrepancies notwithstanding, as we find that the prosecution proved the guilt of the appellant/accused beyond reasonable doubt, the conviction and sentence visited upon her are confirmed.

The appeal is accordingly dismissed.



SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

17th AUGUST, 2017

Svv