

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRLA.NO.1414 OF 2011

JUDGMENT (Per CPK,J)

The VI Additional District and Sessions Judge, Markapur, tried the appellant herein for the offence punishable under Section 302 IPC, for causing the death of one Chimalamarri Venkata Reddy on 22.10.2009 at 9.00 p.m. at three road junction at Peerla Chavidi, Markapur. Vide its judgment dated 18.10.2011, the learned trial judge convicted the accused for the offence under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of six months.

The facts as seen from the record are as under:

P.W.1 is the son of the deceased. P.W.3 is the cousin of P.W.1. P.W.4 is also cousin of P.W.1 and nephew of the deceased by courtesy. P.W.12 who is the friend of the deceased was with the deceased at the time of the incident. There was previous enmity between the family of the accused and the family of the deceased. The record shows that on the basis of the report given by P.W.1, a case was registered under Section 307 IPC against the brother of the accused. In the said case, the brother of the accused was convicted and sentenced to imprisonment for four years. P.W.1 in his evidence deposed that since the date of conviction in the said case, there was rivalry and enmity between both the families.

The evidence of P.W.12 would disclose that the elder brother of the accused namely Venkat Reddy was his classmate and he do not have any acquaintance with the accused. Deceased was an agriculturist and was also doing plots business at Markapur. As and when they were free, they used to take some alcohol. The deceased and P.W.12 used to visit Radha Krishana Wines Bar and Restaurant (for short 'the Bar') for consuming alcohol. P.W.12 also worked as a manager in the said Bar for over twelve years. On the date of incident at 7.45 p.m., P.W.12 and the deceased had been to the said Bar, to consume alcohol. At that time, the accused was also present in the said Bar and was consuming alcohol. After consuming alcohol of about 90 ml. each, deceased and P.W.12 came out of the Bar. The accused followed them and asked the deceased to agree for compromise in the previous cases, in which the elder brother of the accused namely Venkata Rami Reddy was accused and the son of the deceased (P.W.1) was the informant. The deceased told the accused to approach P.W.1, expressing his inability to get the matter compromised. It is stated that the said conversation took place while they were on the way from Bar to Cumbum, Bus Stand Centre. The accused is said to have left their company and proceeded towards Chakalivari street by saying "SARELAY... NEE PANI CHOOSTHA...". Thereafter, both of them moved towards the court centre, as the house of the deceased was near Alugu. P.W.12 went in a different route, to go to his house. On the date of the incident i.e., on 22.10.2009 at about 9 p.m., when P.W.1 was proceeding from his house towards main road of Markapur and when he reached Peerla Chavidi, which is by the side of Jamaiah Mazeed, he noticed his father moving from main road towards Peerla Chavidi and he also

noticed accused behind him. Thereafter, he saw the accused beating the deceased with a stick on the head, proclaiming “NAA KODAKA.. NINNU CHAMPUTHAANU”. The deceased raised cries. On seeing this, he ran towards him and took him into his hands. The accused is said to have left the stick and ran away towards the main road. P.W.2 heard about the death of the father of P.W.1, while he was at bus stand. Immediately, he rushed to the scene of offence and saw P.W.1 weeping and deceased on the road with head injury. When enquired with P.W.1, he told him that the accused beat the deceased with a stick on his head, which resulted in his death. P.W.12, who heard the cries of the deceased, also came running towards the said area and found P.Ws.1 and 2 at the site.

As per the evidence of P.W.13, while he was in the police station at 11.30 p.m., P.W.1 came to police station and presented a report. Basing on the said report, a case in Crime No.257/2009, came to be registered of the file of Markapur Town Police Station under Section 302 IPC. Ex.P-11 is the original of FIR. Thereafter, the Inspector of Police, dispatched the copies of FIR to all the concerned. The record discloses that by 2.00 a.m. in the night, the said report reached the Magistrate.

P.W.14, the Inspector of Police, took up further investigation. On receiving a copy of FIR, he proceeded to the scene of offence and found the dead body of deceased near Peerla Chavidi. He secured P.W.1 and recorded his statement. He then prepared a rough sketch of scene of offence, which was placed on record as Ex.P-12. He also prepared an observation report in the presence of

P.W.10, under Ex.P-6. During the preparation of observation report, he seized a stout wooden stick with blood stains and hair on it, spectacles with gold frame, one pair of black colour chappals, match box and blood stained earth and control earth, which were brought on record as M.Os.1 to 6. The seizure report is marked as Ex.P-6. As it was dark, he placed a guard at the scene and returned back to the scene at about 8.30 a.m. on 23.10.2009. He conducted inquest over the dead body, which is marked as Ex.P-7. During inquest, he examined five witnesses and recorded their statements. Thereafter, the body was sent for postmortem examination.

P.W.15, the Civil Assistant Surgeon in Government Hospital, Markapur, conducted autopsy over the dead body and issued Ex.P-16, postmortem certificate. According to him, the cause of death was due to lacerated injury on the central part of the head, measuring vertically from the occipital region 4.25" x 0.75, exposing the underlying bones. Thereafter, P.W.14 continued with his investigation. His evidence further shows that on 23.10.2009 at about 10.15 p.m., P.W.10 V.R.O. came to his office along with accused and produced the extra judicial confession statement said to have been made by accused before him. Exs.P-8 and P-9 are the documents in support of the same. Immediately, P.W.14 arrested the accused and recorded his confession. After obtaining letter of advise – Ex.P-13, and also RFSL report, which was marked as Ex.P-14, charge sheet came to be filed against the accused, which was taken on file as PRC.No.13/2010 on the file of Additional Junior Civil Judge Court, Markapur.

On appearance, all the necessary documents, which are relied on by the prosecution, were furnished to the accused as per Section 207 Cr.P.C. Since the case is triable by the court of sessions, the matter was committed to the court of Sessions. Basing on the material, 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.

In support its case, the prosecution examined fifteen witnesses and marked Exs.P-1 to P-16. Out of fifteen witnesses, P.Ws.5, 7, 8, 9, 12 did not support the prosecution case and were treated hostile by prosecution.

After the completion of prosecution evidence, during Section 313 Cr.P.C. examination, the incriminating material appearing in the evidence of prosecution witnesses was put to the accused, which he denied.

In support of his case, the accused examined himself as D.W.1 and also two other witnesses as D.Ws.2 and 3 in support of his plea.

While disbelieving the extra-judicial confession of the accused made before P.W.10 and accepting the oral testimony of P.W.1, which gets corroboration not only from medical evidence, but also from oral evidence of other witnesses, the trial court convicted the accused. Challenging the same, the present appeal came to be filed.

Learned counsel for the appellant Sri S.Parameswara Rao mainly submits that when once the extra-judicial confession goes, the only material available on record is the evidence of P.W.1. According to him, no reasonable explanation is

forthcoming from P.W.1, as to why he was present at the scene of offence, or as to purpose for which he was going towards the main road at about 9.00 p.m. He further submits that there is an abnormal delay in FIR reaching the court. No reasons are given by the prosecution explaining the said delay. He further submits that the plea of the accused that the deceased fell down on the ground in an intoxicated condition, which resulted in a fatal injury, appears to be probable. In support of his contention, he relied on the medical evidence. He further submits that in the light of the evidence of D.Ws.1 to 3, the solitary testimony of P.W.1, cannot be relied upon.

Referring to the cross-examination of P.W.1 with regard to his presence at the scene of offence, the learned Public Prosecutor would submit that the question of disbelieving P.W.1 would not arise. He further submits that the evidence of P.W.12, who was declared hostile, at a later point of time, supports the evidence of P.W.1 with regard to the motive for killing the deceased. Coming to the evidence of D.Ws.1 to 3, the learned Public Prosecutor, submits that the said evidence will not in any way help the accused in proving his defence, except to the extent of showing that there were no disputes between the family of the accused and the deceased.

In order to appreciate the same, it will be useful to first refer to the findings of the Sessions Judge, with regard to extra-judicial confession made by the accused before P.W.10, which are as under:

“23. P.W.10 is VRO Markapur town. He deposed that on the next day of occurrence during night time at about 8-30 p.m. while he was in his office accused approached him and made extra judicial confession before him admitting his guilt in the case. Then he recorded the extra judicial confession

of accused and surrendered the accused before inspector of police along with a report. Extra judicial confession made by accused before him is marked as Ex.P-9. Evidence spoken by him is duly corroborated with the contents of Ex.P-9. Denying the veracity of Ex.P-9 confession and questioning the testimony of P.W.10, he was cross-examined at length and during cross-examination it is elicited that he had no prior acquaintance with the accused and accused has not disclosed before him during alleged confession that any of his family members were harassed by deceased to apprehend him suspecting his involvement. It is also elicited that he did not make enquiry with the accused though he had not shown his identity about his family history and as per the evidence spoken by P.W.10 without verify the identify of accused though he had no prior acquaintance with him. He simply recorded the confessions made by him admitting his guilt in his offence that too at 8.30 p.m. in the premises of Tahasildar office of Markapur. From the evidence spoken by P.W.10 it can be also safely said that accused without assigning any reason made confession before him without any compelling reason within 24 hours of occurrence admitting his guilt in the case. From the evidence spoken by P.W.10 in the above circumstances more particularly making of confession by the accused before P.W.10 with whom he had no acquaintance throws doubt on genuineness of extra judicial confession said to have been made by accused which is marked as Ex.P-9. As submitted by the counsel for accused there is every possibility of manipulating Ex.P-9 by investigating officer in connivance with P.W.10 to give strength to the case of prosecution as eye witnesses to the occurrence are close to deceased.”

Since the above findings given by the Sessions Judge, have not been challenged by the State, they have become final. From the findings arrived by the Sessions Judge, it is clear that no reliance can be placed on the evidence of P.W.10 and the confession, which was reduced into writing cannot be accepted.

When once the extra judicial confession goes, the other circumstances, which are required to be considered, are the oral evidence of P.Ws.1, 4, 6 and 12.

P.W.1 is the son of the deceased. In his evidence he deposed about the enmity between the accused and their family with regard to earlier incident, whereby a report was given by P.W.1 against the elder brother of the accused. In the said case, the brother of the accused was convicted and sentenced to suffer imprisonment for four years. Hence the accused wants both the parties to compromise in the matter. On the date of incident, while the deceased along with P.W.12 was returning from the Bar, the accused is said to have asked the

deceased to agree for a compromise in the previous cases, in which his elder brother was accused. The deceased expressed his inability on the said issue and asked him to enquire with P.W.1. Though accused examined himself as D.W.1 to prove that there were no disputes between their families at any point of time, but his evidence was without any legal basis, more so, when the prosecution could prove the existence of disputes. Therefore, the argument of the learned counsel for the appellant that there was no reason for the accused to assault the deceased, cannot be accepted.

Coming to the incident proper, it is the case of P.W.1 that on the date of incident at about 9.00 p.m., while he was proceeding towards main road of Markapur, he noticed his father moving from main road towards Peerla Chavidi, which is by the side of Jamiah Mazeed. He also noticed accused behind the deceased. His evidence shows that at that time, the accused hit the deceased with a stout stick. When the deceased fell down, the accused ran away leaving the stick at the scene. But P.W.1 who came to the scene took his father in his hands. Immediately, thereafter P.W.2, who received information about the death of the deceased, rushed to the scene and enquired with P.W.1 about the incident. Then P.W.1 is said to have disclosed about the assault made by the accused on his father. In the cross-examination of P.W.1, it was elicited that he was at a distance of 20 to 30 feet from the place of incident. But however, the suggestion that at the time of the occurrence none of them were present, was denied. Though a suggestion was made with regard to news item in Vaartha that some persons have hit the deceased, the same was neither produced, nor any person concerning with the news item, was examined. To a suggestion that

P.W.1 gave a press statement expressing his doubts, was denied. It was further elicited that his clothes were stained with blood as he took his injured father into his hands. It was also elicited that the deceased was in the habit of taking alcohol. He denied the suggestion that he was doing house plots business. To a suggestion that the accused was staying at Dornal and his wife hails from Dornal, was denied by P.W.1. To a suggestion that the deceased who was in an intoxicated condition fell down on the ground and received injury and because of the said injury he died, was denied.

P.W.3 is not an eye witness to the incident. But his evidence is to the effect that he heard about the death of the deceased in the hands of the accused and immediately he rushed to the place of incident and saw the dead body. He also spoke about the presence of P.W.1 at the scene of offence. He also deposed about the deceased and P.W.12 consuming alcohol and about the incident at the Bar.

Similar is the evidence of P.W.4. To a suggestion about the quarrel between the accused and the deceased in the Bar was accepted to be true. However, he says that there is no personal enmity between the families of accused and deceased on account of conviction of the elder brother of accused on a report given by P.W.1. His evidence also disclosed that by 8.30 p.m., public gathered at the scene and he also identified the presence of M.O.1 at the scene. To a suggestion that he was made to identify M.O.1, was denied.

Though P.W.12 was treated hostile, but his evidence to the extent of his accompanying the deceased to the Bar, consuming alcohol and the accused

questioning the deceased about the compromise, corroborates the version of other witnesses. He was treated hostile, when he deposed that he had not seen the accused clearly, but only noticed somebody running towards Dodlavari street, in which the house of the accused is situated and that by the time he reached there, P.Ws.1 and 2 were found at the deceased.

The learned counsel for the appellant mainly submits with regard to delay in lodging the report. The evidence of investigating officer, P.W.13, discloses that on 22.10.2009 at about 11.30 p.m., P.W.1 came to police station and lodged the report. Immediately thereafter, the FIR was sent to the court, which was received by the Magistrate at 2.00 a.m. It may be true that there was some delay in lodging the report, but the same cannot be said to be fatal. The father of P.W.1 who was an eye witness to the incident was done to death due to earlier disputes. He must have taken some time to reconcile himself before lodging the report. If really, he wanted to implicate others, he could have attributed some role to others as well. Having regard to above, we feel that there is no delay in lodging the report.

Coming to the plea of the accused that the deceased on his own account fell down in an intoxicated condition and died, also cannot be accepted, in view of the evidence of doctor.

P.W.15 in his cross-examination, categorically deposed as under:

“At present no hair clippings are found on M.O.1 stick. As per Ex.P-16 no injury was found on occipital region as a land mark to show the exact location, I referred in Ex.P-16 that the injury starts from occipital region and accordingly gave its dimension which is shown on central part of head. No possibility of causing such injury if any person falls towards his back on the road or any

sharp edged part. It is true injury referred in Ex.P-16 may be caused due to fall of any stone or any hard object over the centre part of the head.”

In the light of evidence above, plea of the accused cannot be accepted.

In so far as the argument of the learned counsel for the appellant that there was no reason for P.W.1 to be present at the scene of offence, we feel that the same cannot be accepted, firstly, that immediately after the incident, P.W.1 rushed to the scene, took his father on to his lap, to which his clothes were stained with blood. The fact of P.W.1's clothes getting stained with blood, was elicited by the accused in the cross-examination of P.W.1. Even if the said clothes are not marked, having regard to the fact that answer came to be elicited at the instance of the accused, it certainly assumes some importance.

The next circumstance relied upon by the prosecution is the evidence of P.Ws. 2,3, 4 and 12. According to them, immediately on coming to know about the incident, all of them rushed to the place and found P.W.1 at the scene weeping and the dead body of the deceased fell on the road with head injury.

Therefore, from the above circumstances, we feel that presence of P.W.1 at the scene and also his witnessing the incident, cannot be doubted.

A vague attempt is sought to be made that as P.W.1 was at a distance of 20 to 30 feet, from where the deceased was assaulted, and in the absence of any evidence with regard to existence of light at the scene of offence, he could not have seen the accused. We are afraid, the same cannot be accepted. A perusal of rough sketch and the scene of offence observation report, shows the existence of street light. Apart from that, the distance of 20 to 30 feet between where the

deceased was assaulted and the place where the P.W.1 was standing, cannot be said to be long, to identify a known person.

In view of the aforesaid reasons, we find no merit in the appeal and the same is accordingly dismissed.

C.PRAVEEN KUMAR,J

KONGARA VIJAYA LAKSHMI,J

DATE:07—11—2017

AVS

