

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.877 of 2012

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

The sole accused in Sessions Case No.111 of 2011 on the file of IV Additional Sessions Judge, (FTC), Khammam, is the appellant. He was tried for the offences punishable under Sections 294(b) and 302 of IPC. Vide its judgment dated 09.08.2011, the learned Sessions Judge found the accused guilty for the said offence and sentenced him to undergo rigorous imprisonment for three months for the charge under Section 294(b) of IPC and to suffer imprisonment for life for the charge under Section 302 of IPC.

2. The gravamen of the charge against the accused is that on 06.09.2010, at about 05.30 p.m. at Ananda Colony, H/o.Charla, the accused is alleged to have caused the death of one Madakam Venkateswarlu(hereinafter referred to as deceased), by hitting him with an axe on the back of his head.

3. The case of the prosecution as unveiled from the evidence of the prosecution witnesses are as under:

PW1 is the son of the deceased, while PWs.2 to 5 were examined as eye witnesses to the incident. The deceased used to eke out his livelihood by selling firewood. The extent of land admeasuring Acs.0.5 cents was given to one Kannaiah by the

Government. In that vacant site of the land, the accused constructed a small house on one side. It is stated that after the assignment of land, Kannaiah left the village. But in the said site there was an agricultural land belonging to the deceased. It is said that if the deceased wants to go to his land, he has to pass through the site of Kannaiah, wherein on one side the accused constructed his house. On the date of incident, at about 05.30 p.m., while the deceased was returning to his house through his land and when he arrived in the front of the house of the accused, a quarrel took place between the accused and the deceased. In the said quarrel, the accused abused the deceased stating as to how he could enter into his land. However, unmindful of the words uttered by the accused, the deceased proceeded towards his house stating that the land belongs to him. It is the evidence of witnesses that the accused came from behind and hit on the back right side of the head of the deceased with an axe, due to which the deceased fell down. When the deceased tried to ward off the blow, a portion of the right little finger got cut and fell down. PWs.2 to 4, who were working in the fields of Soyam Siramulu rushed to the scene of offence. After seeing the incident, they left the place, went into the village and informed the same to the villagers. After informing the villagers, they came back to the scene of offence along with the villagers. Within ten or 15 minutes, PW1 was also informed about the incident by the villagers, who rushed to the scene of offence and noticed his father lying dead in front of the hut of the accused. Immediately thereafter, PW1 went to the Charla police station and lodged a report, which is marked as

Ex.P1. Basing on the said report, a case in Crime No. 71 of 2010 of Charla police station is registered for an offence punishable under Section 302 of IPC. Ex.P16 is the FIR issued in respect of the said crime. PW10 the SI of police registered the crime, proceeded to the scene of offence and recorded the statements of PW1. As it was late by then, he proceeded to the scene of offence on the next day at about 09.00 a.m. situated in the forest near Lenin colony. According to him, he found the dead body in front of the house of the accused. He conducted panchanama of the scene of offence in the presence of mediators, prepared Crime Detailed Statement containing the scene of offence panchanama and rough sketch. Ex.P2 is the Crime Detailed Report. Thereafter, PW10 examined PWs.2 to 5 and recorded their statements. He also took photographs of the dead body. Exs.P4 to 12 are the positive prints of the said photographs. He then conducted inquest over the dead body in the presence of the mediators. Ex.P3 is the inquest report. After completing the inquest, the body was forwarded to the Government hospital Charla, for post mortem examination. PW8, the incharge medical officer of Public Health Community, Charla, conducted autopsy over the dead body of the deceased. Ex.P13 is the post mortem certificate. According to him, the cause of death was due to Cardio-respiratory failure due to head injury and cerebral hemorrhage. After completing the investigation, further investigation was taken over by PW11. On 17.09.2010, on receipt of credible information, PW11 rushed to the Old Bus Stand, near Gandhi Statue Centre, Charla and apprehended the accused by name Pasupuleti Laxmaiah. In the

presence of PW9 and LW10, the accused is alleged to have confessed his guilt. Pursuant to the confession made, MO3 was recovered. After collecting necessary documents, a charge sheet came to be filed against the accused, which was taken on file as PRC No.12 of 2011.

On appearance of the accused, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal to the IV Additional Sessions Judge (FTC), Khammam, the case came to be numbered as S.C.No.111 of 2011. On appearance, charges under Sections 294(b) and 302 of IPC came to be framed against the accused, which were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P16 and M.Os.1 to 3.

After the closure of 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 by the accused in support of his defence. Basing on the evidence of PWs.1 to 5, the Sessions Judge convicted the accused for the offences punishable under Sections 294(b) and 302 of IPC. Challenging the same, the present appeal came to be filed.

4. The learned counsel for the appellant/ accused mainly submits that though the prosecution tried to prove the guilt of the accused through the evidence of PWs.2 to 4, who are the eye witnesses to the

incident, but the admissions made by them, discloses that they have not seen the incident. It is further urged that the land of the deceased is behind his house and there was no necessity for him to pass through a site which is in front of the house of the accused. The learned counsel for the appellant took us through the evidence of the investigating officer to show that on 07.09.2010, when he proceeded to the scene of offence, he noticed the dead body in the forest near Lenin colony, but on the next day, when he went to the scene of offence, the body was found near the house of the accused. According to him, there was no forest near the house of the accused. According to him, the incident happened under totally different circumstance and because of some disputes, the appellant has been implicated in the case. She also refers to the evidence of investigating officer to show that none of the witnesses have seen the incident.

5. On the other hand, learned public prosecutor would submit that the evidence of PW1 shows that he is not an eye witness to the incident, but PWs.2 to 5 in one voice spoke about they witnessing the incident. After seeing the incident from a distance, all of them came to the scene of offence and noticed the dead body. He further submits that there is absolutely no discrepancy in the sketch to show that there was no necessity for the deceased to pass in front of the house of the accused to go to his fields. According to him, the reasoning given by the Sessions Judge in convicting the accused warrants no interference.

6. As per the evidence of the prosecution witnesses, the incident is said to have taken place on 06.09.2010 at about 05.30 p.m. On that day while the deceased was passing in front of the house of the accused, a quarrel took place and then the accused hit the deceased with an axe from the back side. Admittedly, PW1 is not the eye witness to the incident. But he gave a report basing on the information furnished to him by PW2. In his evidence, PW2 deposed about disputes between the accused and deceased and also about the incident that occurred on 06.09.2010. After receiving the information from PW2 about the incident, PW1 rushed to the scene of incident and noticed the dead body lying in the ground. By the time he arrived, the villagers were present there at the scene. He deposed that they stayed in the village till the police left the scene of offence. PWs.2 to 5 were examined as eye witnesses to the incident. In the chief examination, PW2 deposed that on the date of incident at about 05.30 p.m., he was in paddy fields removing waster. At that time, PWs.3 and 4 were also present with him in the land. According to him, when the deceased was going to his house in front of the house of the accused, an altercation took place between both of them. When the deceased was proceeding towards the house of the accused, the accused is said to have hit the deceased with an axe on the right side of the head of the deceased. In the cross-examination, PW2 admitted that after crossing the land of the deceased, the land of Soyam Sriramulu is situated and that they were removing kalupu in the said land. He admits that the land of Soyam Sriramulu is to an extent of Acs.2.00 and the land of the deceased was also admeasuring

Acs.02.00. He also admits that the extent of Acs.2.00 would be more than 100 feet. From the admissions made by the witnesses, it is clear that his version in the chief examination that he saw the incident from a distance of ten feet appears to be incorrect. Definitely, he must have been at the distance of more than 200 feet at the time of incident. Since the land of the deceased itself was admeasuring Acs.2.00 and as they were working in the fields of one Soyam Siramulu, which was also admeasuring Acs. 2.00, definitely the version in chief examination that they were at a distance of ten feet from the scene cannot be accepted.

7. PW2 further admits in the cross examination that the land of the deceased is situated behind the house of the deceased. A perusal of the rough sketch, which was incorporated in the Crime Detailed Form supports the admission made by PW2, to show that the land of the deceased was situated behind the house and there was no necessity for the deceased to pass through the house of the accused, to reach his agricultural land. Therefore, a doubt arises as to whether he really passed through the land of the accused.

8. PW3 in her chief examination toes in line with the evidence of PW2, the relevant portion of which reads as under:

Firstly, PW2 deposed as under:

“.....By the time he arrived in front of the house of the accused, the accused quarreled with Madakam Venkateswarlu stating that “Lanjakodaka Yee Polalu Navira. Meeru Yenduku Chesthunnu”. Unmindful of the said words, Madakam Venkateswarlu was proceeding to his house. Then the accused came

from behind and hit on the back right side of head of Madakam Venkateswarlu with the help of an axe..”

PW3 deposed as under:

“...By the time he reached in front of the hut of the accused, the accused questioned Madakam Venkateswarlu as to why Madakam Venkateswarlu is cultivating the said land when the said land belongs to the accused, thus saying the accused abused Madakam Venkateswarlu in filthy language stating that “Nee Ammani Denga, Yidi Naa Bhoomi ra, Lanja Kodaka, Naa Bhoomilo Chesukuni Thintunnavu Nuvvu”. Then Madakam Venkateswarlu stated that the said land belongs to him and cultivating the same. Saying so he was proceeding to his house side. Then, the accused went to him from his behind and hit on the back of the head of Madakam Venkateswarlu with the help of an axe.”

9. Further, the investigating officer PW10 admits that in their statements PWs.2 to 4 disclose that they have arrived at the scene of offence only after commission of the offence. Similarly, PW4 in his evidence deposed about the manner in which the incident took place. Further, she states that as she was at a distant, could not hear the words uttered in the quarrel, as the same was not audible to her. Hence, herself along with PWs.2 and 3 rushed to the scene of offence. The version of PW4 runs contrary to the evidence of PWs.2 and 3, who deposed that they heard the words alleged to have used by the accused against the deceased and thereafter came to the scene of offence. It is also to be noted here that PW4 in her cross examination admits that by the time herself, PWs.2 and 3 went to the scene of offence, the deceased was already lying on the ground. Therefore, having regard to the place where they were working and having regard to the evidence of PW 4 that they could not hear the

conversation between the accused and the deceased, which also runs contrary to the evidence of PWs.2 and 3, a doubt arises as to whether PWs.2 to 4 have really witnessed the incident. Further, when the incident is in the forest area and when the land of the deceased is behind his house, PWs.2 to 4 could not have witnessed the incident.

10. One another aspect which we like to refer here is the chief evidence of PW5. In her examination, she deposed that after registering the crime, PW11 proceeded to the scene of offence. He deposed that the scene of offence in the present case is situated in Lenin Colony and as such he visited the scene of offence. But on the next day, i.e. on 07.09.2010, when he visited the scene of offence, he found the dead body in front of the house of the accused. If the version of PWs.1 to 5 has to be accepted, the incident happened in front of the house of the accused, but not in the forest area. None of the witness deposed that the area in front of the house of the accused was a forest area. Strangely, PW10 in his evidence states that the body was lying in the forest area on the previous day night and on the next day, it was shifted to a place before the house of the accused. No reasons are forthcoming as to why the body was shifted to another place. Apart from that, it is also to be noticed that PW10 in his evidence deposed that by the time he went to the scene of offence, the accused was not present and he was absconding. The admission of PW5 in the cross examination, would show that the accused was present at the scene of offence till the arrival of the police. It would be useful to extract relevant portion of the evidence of PW5, which is as under:

“.....While I was present there, police came to the scene of offence. Police entered into the house of the accused. The accused was present at the scene of offence till the arrival of police.....”

11. In view of the above circumstances, there is any amount of doubt with regard to the manner in which the incident took place and also as to whether really the accused was responsible for the death of the deceased.

12. Accordingly, the appeal is allowed. The conviction and sentence awarded against the appellant/ accused by name Pasupuleti Laxmaiah, in the judgment dated 09.08.2011, in Sessions Case No.111 of 2011, on the file of the IV Additional Sessions Judge (FTC), Khammam, for the offences punishable under Sections 294 (b) and 302 of I.P.C., is set aside and he is acquitted for the said offences. Consequently, the appellant/ accused shall be set at liberty forthwith, if not required in any other case.

13. Miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE C.PRAVEEN KUMAR

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JUSTICE T.AMARNATH GOUD

16.11.2017  
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