

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P. KESHA RAO

CRIMINAL APPEAL No.820 of 2011

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

1) Accused No.1 in S.C.No.401 of 2009 on the file of the II Additional District and Sessions Judge, Madanapalli, is the appellant herein. He along with Accused No.2 was tried for the offences punishable under Section 302, 324 and 302 read with 109 IPC respectively. By its judgment dated 09.11.2010, the Sessions Judge, convicted accused No.1 for an offence punishable under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.500/- in default to suffer simple imprisonment for one month for the offence punishable under Section 302 IPC and also to suffer rigorous imprisonment for a period of one year for an offence punishable under Section 324 IPC. Accused No.2 was acquitted of all the charges framed against him.

2) The gravamen of the charge against the accused No.1 is that on 27.02.2009 at about 8.30 p.m. at Deguvabandameedapalle, accused No.1 is alleged to have caused the death of one Thettu Raghu (hereinafter referred to as "the deceased") by stabbing him with knife on his stomach. During the said process, accused No.1 also caused injuries to Thettu Gopal and Thettu Narayana.

3) The case of the prosecution as culled out from the evidence adduced by the prosecution witnesses is as under:

4) PWs.1 and 2 are parents and PW.3 is the wife of the deceased. PW.4 is an eye witness to the incident and PW.5 is an injured witness. Accused No.1 is the son of the younger brother of PW.1. Accused No.2 is the relative of PW.1. The deceased was working as a lorry driver at Bangalore. While the deceased was working as a driver, accused No.1 was the cleaner of the said lorry. Three days prior to date of incident, deceased came to his village from Bangalore. On the date of incident, in the morning at 9.00 a.m. the deceased, A.1 and A.2 went to B.Kothakota Village, where quarrel took place with regard to payment of debt of Rs.300/- payable by the deceased to A.1. At about 2.30 p.m. PW.4 approached PW.1 and informed him that the deceased made a phone call to him and informed him about the dispute that occurred and requested PW.1 to come over to B.Kothakota village. On receiving the said information, PW.1 went to Kothakota village and when he got down from the auto at B.Kothakota village, he noticed Accused Nos.1 and 2 on the road. When enquired about the quarrel, they informed him that there was no quarrel and further told him that the deceased was at the bus stand. On that he proceeded to the bus stand and found the deceased. A.1 and A2 came and joined them. On enquiry, the deceased informed him that accused Nos.1 and 2 took money from him, consumed alcohol, beat him and they also pressed his throat. PW.1 advised accused No.2 to take accused No.1 and leave the

place. On that, both the accused left the place. The deceased and PW.1 returned to their house by 6.00 p.m. While they were taking food, accused No.2 came to the house of PW.1. On seeing accused No.2, the deceased asked him not to approach him at any point of time, on that accused No.2 went away. After some time accused No.2 came to his house, but PW.1 sent him away. While they were going into the house, accused No.1 abused the deceased saying "Paara Na Kodaka". On that the deceased went upon accused No.1. PW.1 and his wife went to pacify the deceased, but, by the time they approached the deceased, they found him on the ground with bleeding injury over the abdomen and the intestines were out of the abdomen. PW.1 saw accused No.1 holding blood stained knife. On that the deceased raised cries stating that accused No.1 stabbed him. When PW.1 caught hold of the hand of accused No.1, he inflicted injury with the said knife on the left forearm of PW.1 but however, he held accused No.1 and raised cries. On hearing the cries, PW.5 came there and also apprehended accused No.1. When accused No.1 wriggled himself out, PW.5 and the accused also sustained injuries. On the next day morning, PW.1 lodged a report with PW.15, the A.S.I. of Police. Basing on the said report, PW.15 registered a case in Crime No.7 of 2009 of PTM Police Station and issued Ex.P14-First Information Report. Then he proceeded to the scene of offence and conducted inquest over the dead body of the deceased, in the presence of PWs.6 to 8. Ex.P3 is the inquest report. During inquest, he recorded the statements of PWs.1 to 4. Thereafter,

he forwarded the body to the Area Hospital, Madanapalle, for postmortem examination. He also sent PW.1 to the hospital for treatment, as he found injuries on him. He then conducted the scene of offence panchanama in the presence of PW.8 and prepared a rough sketch, which was marked as Ex.P15. PW.16-the inspector of police arrested the accused on 13.03.2009 at Thummalakunta bus stop. Pursuant to the confessions made by the accused, M.O.4 and M.O.1 i.e. blood stained shirt of the accused and knife were recovered. After completing the investigation, he filed the charge sheet which was taken on file as P.R.C.No.14 of 2009 on the file of the Judicial Magistrate of First Class, Tamballapalli. On appearance, the Court furnished all the documents as per Section 207 Cr.P.C. and the case was committed to the Court of Sessions, which came to be numbered as S.C.No.401 of 2009.

5) Charges under Sections 302 and 324 IPC were framed against accused No.1, while a charge and under Section 302 read with 109 IPC came to be framed against accused No.2. The same were read over and explained to the accused, to which they denied and claimed to be tried.

6) To substantiate their case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P21 and M.Os.1 to 8. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the

prosecution witnesses, to which they denied. Neither oral nor documentary evidence was adduced on their behalf, in support of their defence.

7) Taking into consideration the circumstances relied upon by the prosecution, the Sessions Judge while acquitting A2 convicted the accused No.1 for the above mentioned offences. Challenging the same, the present appeal came to be filed by accused No.1.

8) The main ground urged by the learned counsel for the appellant is that when the incident happened immediately after taking the dinner, postmortem report should indicate the presence of some un-digested food in the stomach. It is her case that in the absence of any food in the stomach, a doubt arises with regard to the timing of the incident. The second ground urged by the learned counsel for the appellant is that the original report said to have been given by PW.1, has not seen the light of the day. The third ground raised by the learned counsel for the appellant is that none of the witnesses spoke about the actual attack on the deceased. All the witnesses came to the scene of offence after the incident is over as such it cannot be said that the accused alone was responsible for the death of the deceased.

9) On the other hand, learned Public Prosecutor would submit that the evidence on record discloses that PW.1 and 5 sustained injuries in the hands of the accused and that the accused was initially apprehended by PWs.1 and 5, pursuant to which he wriggled himself out during which, PWs.1, 5 and accused also

sustained injuries. As such the presence and the participation of the accused cannot be doubted. Such being the position, the question of false implication of the accused in the case would not arise.

10) In order to appreciate the same, it would be useful to refer to the evidence of PWs.1 to 5.

11) PW.1 in his evidence stated that the deceased is his son. Accused No.1 is the son of his younger brother. Accused No.2 is also his relative. The deceased was working as a driver at Bangalore, while accused No.1 was a cleaner of the said lorry. Three days prior to date of incident, deceased came to his village from Bangalore. On the date of incident in the morning at 9.00 a.m. deceased, A.1 and A.2 went to B.Kothakota Village, where a quarrel took place with regard to payment of Rs.300/-, payable by the deceased to A.1. At about 2.30 p.m. PW.4 approached PW.1 and informed about the phone call made by the deceased to him and requested PW.1 to come to B.Kothakota village in view of the dispute. On receiving the said information, PW.1 went to Kothakota village. When he got down the auto at B.Kothakota village, he noticed Accused Nos.1 and 2 proceeding on the road in an auto. When enquired about the quarrel, they informed him that there was no quarrel and also informed him that the son of PW.1 (deceased) was in the bus stand. On that he proceeded to bus stand and found his son (deceased). While they were proceeding together, accused Nos.1 and 2 joined them. On

enquiry, the deceased informed him that accused Nos.1 and 2 took money from him, consumed alcohol, beat him and they also caught hold of his throat and pressed it. PW.1 advised accused Nos.2 to take accused No.1 and leave the place. On that both the accused left the place. The deceased and PW.1 returned to the house by 06.00 p.m. Later, all the family members completed their dinner. While they were taking food, accused No.2 came to the house of PW.1. On seeing accused No.2, the deceased asked him not to approach him anymore, on that accused No.2 went away. After some time accused No.2 again came to his house but PW.1 sent him away. While they were going into the house, accused No.1 abused the deceased by stating "Paara Na Kodaka". On that the deceased went upon accused No.1. PW.1 and his wife went to pacify the deceased. By the time they went out, the deceased was lying with bleeding injury over abdomen and the intestines were came out. PW.1 saw the accused No.1 holding blood stained knife. The deceased raised cries stating that accused No.1 stabbed him. When PW.1 caught hold of the hand of accused No.1, inflicted injury with a knife on his left forearm. However, while holding accused No.1, PW.1 raised cries. On hearing the same, PW.5 rushed to the scene and apprehended the accused No.1. In the process of wriggling out, accused No.1 caused injuries to PW.5 and also sustained injuries on himself. On the next day morning, PW.1 lodged the report.

12) In the cross-examination, PW.1 admits that by the time PW.1 reached the spot, the deceased was on the ground. The

initial part of the cross-examination relate to the quarrel which took place at B.Kothakota and also about the information given by the deceased to PW.1 about the manner in which he sustained injuries at B.Kothakota.

13) Coming to the incident proper, to a suggestion that the deceased fell down on the ground by the time PW.1 went there, was accepted to be true. To a suggestion that none of the persons came there on hearing the cries was denied. He admits that he does not remember the person who scribed Ex.P1. To a suggestion that he did not make any attempt to make a phone call immediately to the police, was accepted to be true. To a suggestion that he has intentionally not approached the police immediately after the incident, was denied. He admits that when accused No.2 approached his house, he offered dinner to him. To a suggestion that PW.1 did not state in Ex.P1 about the earlier dispute at B.Kothakota, was denied. The suggestion that there was no street light at the scene of offence was also denied. However, it was elicited in the cross-examination that he witnessed accused No.1 stabbing his son Raghu. It was further elicited that on hearing the cries of his son, himself, his wife and others approached him. It was further admitted that the deceased proceeded on to the street voluntarily, after having the dinner. It was further admitted that he did not mention in Ex.P.1 about the exact time of the incident.

14) Similarly PW.2, who is the mother of the deceased, deposes that after having dinner, PW.1 and the deceased were standing in front of the house. At that time, accused No.2 approached the deceased. The deceased asked accused No.2 to leave the place. On that accused No.2 went away. After some time, the deceased started proceeding in the street. Within no time, she heard cries of the deceased "Abba podichesinadu amma". Immediately she ran to the rescue of her son. Before she reached the deceased, PW.1 approached him. They noticed the deceased on the ground. The incident occurred at a place which was 100 feet away from their house. On hearing the cries, the neighbours also gathered at the scene. She categorically deposed that with the help of light she noticed bleeding injuries on the abdomen and on the chest. PW.1 caught hold of accused No.1, who was holding a knife in his hand. During the struggle, accused No.1 inflicted injuries on PW.1, thereafter, accused No.1 escaped from the hands of PW.1 and went away. She further stated that when accused No.1 was trying to wriggle himself out, PW.5 approached them and at that time PW.5 also sustained injuries.

15) In the cross-examination, it was admitted that there were no disputes between family of PW.2 and the family of the accused prior to the date of incident. To a suggestion that there are no street lights was denied by her. However, it has been elicited that in the earlier statement she did not state that while the deceased was taking food, accused No.2 approached and deceased asked him not to meet him. It was further elicited that she did

not state to the police that while the deceased was standing in front of the house after completion of dinner, accused No.2 approached him. She admits that she did not state to police the exact words uttered by the deceased at the scene of offence. To a suggestion that the accused was not responsible for the death of the deceased was denied by her.

16) PW.3 is the wife of the deceased. She also deposed on the same lines as deposed by PWs.1 and 2.

17) PW.4, who is the resident of the said area, deposed that on the date of incident at about 8.00 a.m. on hearing the cries from street, he came out of his house and found accused No.1 and deceased quarrelling with each other. He asked them not to quarrel. Immediately, accused No.1 stabbed the deceased and the deceased fell down and died. He further deposed that PWs.1 and 5 caught hold of accused No.1, but accused No.1 escaped himself causing injuries to PWs.1 and 5. However, in the cross-examination, he admits that by the time he reached the scene of offence, PWs.1 and 2 were present. He further stated that when he reached the scene of offence, the dispute was going on between accused No.1 and the deceased. It has been elicited from PW.4 that he witnessed accused No.1 stabbing the deceased. However, he admits that he stated before the police that on hearing the cries of the deceased he proceeded to the scene of offence and witnessed accused No.1 stabbing the deceased. He denied the suggestion that he did not state to police that PWs.1

and 2 reached the scene while the dispute was going on. He admits that he stated to police that PW.1 and others followed him, witnessed the incident and tried to catch hold of accused No.1.

18) PW.5, who sustained injuries in the hands of accused, deposed that on the date of incident, on hearing the cries of PW.1, he came out of his house. When he proceeded to the said place, he noticed the deceased falling on the ground. He noticed PW.1 and accused No.1 struggling with each other and PW.1 holding accused No.1. At the first instance, he did not notice the knife which was present in the hand of accused No.1, but when he went near, he noticed the knife. When he was separating PW.1 and accused No.1, the knife in the hand of accused No.1 came into contact with his right wrist, thereby causing injury to him.

19) In the cross-examination, PW.5 stated that by the time he reached the scene of offence, the deceased was on the ground. He also states that by the time he reached the scene of offence, a scuffle was going on between accused No.1 and PW.1. To a suggestion that he did not sustain any injury in the hands of accused No.1, was denied by him.

20) A reading of the evidence of PWs.1 to 5 establish that an incident happened at about 8.00 p.m. on that day wherein the deceased was stabbed to death and due to the second injury, the intestines came out.

21) The main thrust of the argument of the learned counsel for the appellant is that none of the witnesses have seen the incident. It is urged that in the light of the evidence of PWs.1 and 2, that there was no enmity between both the families, there is any amount of doubt as to why accused No.1 would kill the deceased. At the same time, it is to be noted here that when there was no enmity between both the families, there was no reason for both the witnesses to implicate the accused in the crime, more so, when the presence of PWs.1 and 5 stands established due to injuries sustained by them in the hands of accused No.1. It is not in dispute that accused Nos.1 and 2 came to the house of the accused prior to the time of the incident, where they were admonished by PWs.1 and 2 and also by the deceased by asking them to go away. Some time after having supper, the deceased went alone into the street and within few seconds they heard the cries of the deceased. On hearing the same, PWs.1 to 5 rushed to the scene of offence and their evidence show that the accused No.1, who was armed with knife was apprehended at the spot and when he tried to wriggle himself out, PWs.1 and 5 sustained injuries. But however, the evidence on record shows that the accused escaped from the hands of PWs.1 and 5, and ran away. The presence of accused No.1 at the spot is spoken to by all the witnesses, not only before the court but also at the time of inquest and in their earlier statements recorded by the police under section 161 Cr.P.C. If the totality of the facts in issue is taken into consideration, the guilt can only be

directed against accused No.1. Admittedly, two stab injuries on the chest and abdomen were found to be sufficient in the original course of nature to cause death of the deceased, as per the evidence of the doctor. Having regard to the evidence of these five witnesses and more particularly the answers elicited in the cross examination of PW.4, who was examined as an eye witness to the incident, wherein it was elicited through him that he saw the actual incident and also tried to intervene, amply establish not only the presence but also participation of accused No.1 in the commission of offence.

22) Though the learned counsel for the appellant tried to contend that there is any amount of doubt with regard to timing of incident as the stomach does not contain any undigested food, but the evidence of witnesses show that some time after taking dinner, the deceased went out. It has also come on record that after coming from B.Kothakota, the deceased consumed food and after some time went out. It is the case of the prosecution that the deceased returned from B.Kothakota 6.00 p.m. and had food. But the incident in question was at 8.00 p.m.

23) *Moti etc. v. State of U.P.*¹ was a case where immediately after consumption of food the incident in question is said to have taken place. The postmortem report indicated that the stomach was empty. Under those circumstances, the Apex Court held as under:

¹ AIR 2003 SC 1897

“12. It is rather surprising that the High Court should find this part of the medical evidence as being of no consequence at all. The High Court referring to this part of the medical evidence has observed “In our opinion the stomach contents are not very material to determine the time of incident.” We are of the considered opinion this view of the High Court is wholly erroneous. It may be possible to contend that contents of the stomach may not always be an indicator of the time of death. But in a case where stomach is empty and the prosecution evidence is that the murder had taken place shortly after the deceased has his last meal, to say that the contents of the stomach have no material bearing on the determination of the time, in our opinion, is not acceptable. In the instant case, time of death being a material factor to verify the presence of the eye-witnesses it was obligatory for the prosecution to have clarified the discrepancy between the medical evidence and the oral evidence. The prosecution having failed to do so, in our opinion, a serious doubt as to the time of incident and the presence of the eye-witnesses at the time of incident and their narration of the incident also becomes doubtful.”

24) 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 stomach of every individual without exception would be empty.

² (2013) 2 SCC 349

25) From the judgments referred to above, it cannot be said as a rule that food consumed gets digested within a particular period or remain undigested for a long time. It all depends on many factors. The quantity of food taken, type of food consumed, age of the individual and sickness if any etc.

26) Even otherwise, in the instant case, it is to be noticed that pursuant to the second injury, the entire intestines came out of the body, such being the position a doubt would arise with regard to presence of un-digested food in the digestive system of the deceased.

27) Having regard to the judgment referred to above; taking into consideration the injuries which were found on the body of the deceased and in the light of the injury to the abdomen, pursuant to which the entire intestines came out of the body, we feel that the said circumstance may not by itself be sufficient to throw out the entire case, more so in view of the evidence of PWs.1 to 5, who spoke about the presence and participation of accused No.1. The evidence of PWs.1 and 5, who are the injured eye witnesses cannot be said to be false vis-à-vis the medical evidence, as the medical evidence is only an opinion evidence and the same cannot override the ocular evidence.

28) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/ accused beyond reasonable doubt and the trial Court was right in convicting the appellant, as stated supra.

29) In the result the appeal fails and it is accordingly dismissed, confirming the conviction and sentence passed in S.C.No.401 of 2009 on the file of the II Additional District and Sessions Judge, Madanapalli. Consequently, miscellaneous petitions, if any, pending shall stand closed

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHA RAO

17.11.2017
gkv

