

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Appeal No.741 of 2011

JUDGMENT : (per the Hon'ble Sri Justice N.Balayogi)

The sole accused in Sessions Case No.457 of 2010 on the file of the II Additional Sessions Judge, East Godavari District at Amalapuram, is the appellant herein. He was tried for the offence punishable under Section 302 IPC for causing death of one, Subrahmanyam. By its judgment dated 31.03.2011, the Sessions Judge convicted the accused and sentenced him to undergo 'imprisonment for life' and also to pay a fine of Rs.1,000/-, in default of fine amount, he was directed to undergo S.I. for six months for the offence punishable under Section 302 IPC.

2. The case of the prosecution in brief is that the accused used to quarrel with his wife - P.W.2 in a drunken state of mind. While so, on 13.5.2010 around 7.30 PM, while the accused was abusing his wife P.W.2, the deceased, who is none other than the son of P.W.2 and accused, has intervened and admonished the accused. An altercation ensued between the deceased and the accused, then P.W.1 intervened and separated them. Thereafter, the deceased went away, whereas accused remained in the house.

3. Half an hour thereafter, the deceased returned to home, at that time there was no power supply in the house, therefore, the deceased went to the house of P.W.1 for match box. In the meanwhile, friend of the deceased came to his house, then the accused abused the friend of the deceased,

on that, the deceased questioned the accused as to why he is abusing his friend, who used to come to his rescue as and when he is in dire necessity of money and retorted the accused that his friend would give answer to him on the next day morning. Thereafter, while the deceased sat on the pial of their house with a match box, P.W.2 went inside the house to bring country made lamp to lit up, at that time, the accused came to the deceased and hacked him with a knife. P.Ws.1 and 3 heard thumping sound from the house of the accused. P.W.1 raised up from the dinner, in the meanwhile the deceased rushed to his house by placing hand on his chest with bleeding injury.

4. After filing the charge-sheet, the learned Magistrate took the case on file for the offence punishable under Section 302 I.P.C. and numbered it as P.R.C. No.25 of 2010. After appearance of the accused, all copies of documents were furnished to him as required under Section 208 Cr.P.C.

5. On hearing and consideration of the entire material, the Sessions Court framed charge under Section 302 I.P.C. read over and explained to the accused, for which he pleaded not guilty and claimed to be tried.

6. In support of the prosecution case, P.Ws.1 to 11 were examined and Exs.P1 to P11 and M.Os.1 to 3 were got marked. On behalf of defence, none were examined and no document was got marked.

7. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining incriminating circumstances appearing against him and he denied the same and claims to be tried.

8. Now the point that arises for determination is whether the findings of the trial Court that the accused intentionally hacked and killed the deceased and the conviction and sentence imposed by the trial court against the accused are tenable?

9. The learned counsel for the appellant contended that there is no direct evidence showing that the accused hacked the deceased with the M.O.1 – knife and P.Ws.1 and 3 also stated that on hearing the hues and cries, they rushed out of their house portion and saw the deceased coming with blood injuries, which raises strong doubt and it will go in favour of the appellant. It is further contended that in the absence of light, it is not possible to identify the accused.

10. There is no dispute with regard to the relationship between P.Ws.1 to 4. The deceased Subrahmanyam, who is aged about 20 years, is none other than the son of the accused and P.W.2 and P.W.1 is the son of elder brother of the accused and P.W.3 is the wife of P.W.1. The consistent and corroborative evidence of P.Ws.1 and 2 is that they are having an ancestral thatched house which came from grand father of P.W.1 consisting of two rooms in two portions. In one portion, the family of the accused and in another portion, family of P.W.1 are residing under the same roof. The Door number of accused, P.W.1 and deceased is bearing Dr.No.1-25. The family of the accused i.e., P.W.2, deceased and the accused are residing in the western side portion, whereas P.W.1 and P.W.3 are residing in the eastern side portion. The house of P.W.1 and accused were electrified. P.Ws.1 and 2's clinching evidence is that the accused is always used to return home in a drunken state and pick up quarrel with his wife – P.W.2.

While so, according to P.W.1, on 13.5.2010 at around 7.30 PM and according to P.W.2, on the date of offence and according to P.W.3, at about 8 or 8.30 PM, the accused picked up quarrel with P.W.2 and while he was abusing P.W.2, the deceased has intervened and admonished his father/accused and in that connection, there was a quarrel between father and son i.e., accused and the deceased. It is established that while accused and deceased were quarrelling, P.W.1 has intervened and separated them. After separation, the deceased went to neighbour's house, whereas accused stayed in the house. Half an hour after the deceased left the home, again he returned back to home, by that time, there was no power supply in the house. As there is no match box available in his house, the deceased went to the house of P.W.1, collected the match box and returned to home, by then P.W.1 was having his dinner.

11. According to the evidence of P.W.2, while the deceased sat on the pial of the house with a match box, she went inside of their house to bring country made lamp to lit up. In the meanwhile, the accused came and hacked the deceased with a knife – M.O.1. Then, the deceased fell in her lap and she caught hold of him with injuries and he was unconscious and as such, she laid him on the ground. The evidence of P.Ws.1 and 3 is that 10 minutes after the deceased left their home with match box, they heard a thumping sound from the house of the accused and as soon as hearing the thumping sound, P.W.1 rose up from the dinner. In the meanwhile, the deceased came to their house by placing hand on the chest with bleeding injuries. Then, P.W.3 came out from the house by raising cries and the deceased succumbed to injuries.

12. The evidence of P.Ws.1 to 3 is that after a quarrel between accused and the deceased, the deceased went to his neighbours' house and half an hour later returned back to home. In this regard, P.W.4 is the relevant witness, though he turned hostile. The settled law is that when the witness turned hostile, the evidence cannot be thrown out in its entirety and the admissible portion of the evidence can be taken into consideration. Nothing is suggested and proved through P.W.4 to speak against the accused. Therefore, the evidence of P.W.4 to the extent that on the date of offence the deceased went to his house at 6.30 PM is admissible. P.W.4 deposed that on the date of offence, the deceased came to his house at 6.30 PM and he requested him to have a dinner, but the deceased stated that he did not take his bath, so saying went to his house. This portion of his evidence corroborates with the evidence of P.Ws.1 to 3 that half of an hour after the deceased returned to home and as there was no power supply in the house at that time, the deceased went to the house of P.W.1 for match box, by which time P.W.1 was having his dinner. These facts are not contravened by the cross-examination of any of the witnesses.

13. It is pertinent to note that P.Ws.1 to 3 have not seen while the accused hacking the deceased. However, it is their consistent evidence that the deceased went to the house of P.W.4 after quarrel with his father-accused and within half an hour, returned back and while he was sitting on the pial of the house, P.W.2 went inside of the house to bring a country made lamp to lit up. Meanwhile, the accused hacked the deceased with M.O.1. Immediately after hacking the deceased, the deceased rushed to the house of P.W.1, P.Ws.1 and 3 witnessed him with bleeding injuries and the deceased

caught hold of his chest on the bleeding injury. Their evidence inspires confidence.

14. Ex.P1 is the earliest report submitted by P.W.1 whereunder P.W.1 specifically stated that on 13.5.2010 night at about 8 PM his paternal uncle and his wife are quarrelling with each other, in the meanwhile their son Subrahmanyam came and chastised both of them, later, while their paternal uncle and his son are quarrelling, P.W.1 separated and sent Subrahmanyam out. On the same day at 8.30 PM, while P.W.1 was taking dinner, again Subrahmanyam came to his house to take match box, as there was no power supply in the house and while the deceased giving the match box to his mother, which was taken from P.W.1, his paternal uncle hacked the deceased with knife, which is used for plucking, on the left collar bone, below right hand wrist, left arm and back of right hand, as he likes. On that, Subrahmanyam fell on him, while he was eating, with blood wounds. There is no exaggeration in the Ex.P1 to doubt the evidence of P.Ws.1 to 3. The evidence of P.Ws.1 to 3 inspires confidence, reliable and trustworthy.

15. P.W.5 is neighbour of the accused. His house is situated by the side of the house of accused by intervention of two houses. At the time of occurrence, he was present at the house and on hearing cries from the house of the accused, he went there and found Subrahmanyam lying in pool of blood on the pial of his house, then he telephoned to 108 ambulance and the persons who came in ambulance declared Subrahmanyam as died.

16. P.W.6 is the photographer who took up ten photos under Ex.P3 at the request of P.W.11 – the investigating officer.

17. P.W.10 is the ASI of Police, Razole and his evidence is that on 14.10.2010 at about 00.30 hours he received Ex.P1 report from P.W.1 and registered the same as a case in crime No.55 of 2010 for the offence punishable under Section 302 I.P.C. and issued Ex.P9 - F.I.R. and sent Exs.P1 and P9 to the Court and copies of F.I.R. to the concerned. He informed the registration of F.I.R. to P.W.11. Nothing suggested to him to suspect F.I.R.

18. P.W.11 is the Investigating Officer, whose evidence is that on 13.5.2010, P.W.10 registered F.I.R. and sent a copy on the intervening night of 13/14.5.2010. At about 5.15 AM on 14.5.2010, he along with staff proceeded to the scene of offence situated at Ponnamanda Village in the house of accused and deceased. The house consisting of two portions under one roof with door bearing No.1-25. He found dead body of Subrahmanyam in a pool of blood on the pial of the western side portion, which belongs to the accused, examined the dead body and found one cut injury on the right side collar bone and another cut injury on the left upper arm and also another cut injury on the right hand wrist and another small injury on the right ear. The injuries found on the deceased was further corroborated by the Doctor – P.W.9 who conducted post-mortem examination under Ex.P8. He noted injuries as follows :

“1. An elliptical incised wound sharp edges of size 6 cm x 3 cm x 4 cm depth over the Rt clavicles region medial end extended to the neck base, laterally fracture medial end of clavicle, great blood vessels cut.

2. An incised wound of size 4 cm x 2 cm x 2 cm at Rt wrist joint involving the both bones of forearm.

3. An incised wound of size 3 cm x 2 cm x 2 cm on the middle of the upper arm sharp edges, muscle deep.

4. An incised wound of size 4 cm x 1 cm x 1 cm on the lt side of chest in the auxiliary line.”

P.W.9 opined that the deceased died due to shock and haemorrhage due to multiple injuries. On the right side of the neck of the deceased, blood muscles were cut off. Due to injury No.1, haemorrhage caused to the deceased and so he died instantaneously. The injury Nos.1 to 4 would have been caused by sharp edged and heavy weapon. The injury Nos.1 to 4 mentioned in Ex.P8 would be caused by M.O.1. Nothing is rebutted by cross-examination of P.W.9 about the weapon M.O.1 used for causing injuries by the accused. The only suggestion to P.W.9 is that M.O.1 could not cause the injuries 1 to 4 mentioned in Ex.P8.

19. It is the further evidence of P.W.11 that he secured the mediators for the scene observation and got photographed through P.W.6 under Ex.P3 and observed the scene of offence in the presence of P.W.7 who corroborated that on 14.5.2010 they observed the scene of offence and also inquest over the dead body of the deceased. The scene of observation report is Ex.P4 and Ex.P5 is the inquest report. P.W.7 attested on both Ex.P4 and P5. The inquestdars under Ex.P5 opined that on 13.5.2010 at about 7 PM while the wife of the accused was talking with neighbours, the accused called her and beat her on the lower part of abdomen with a stick used for sharpening the knife and while he was quarrelling with her, the deceased came to his house from work, on that, his mother stated to him that her husband unnecessarily beat her, thereupon, when the deceased asked his father as to why he beat his mother, an altercation ensued between the deceased and accused and therefore, P.W.1, who is residing in the western side of the said house, intervened and separated them and sent the deceased

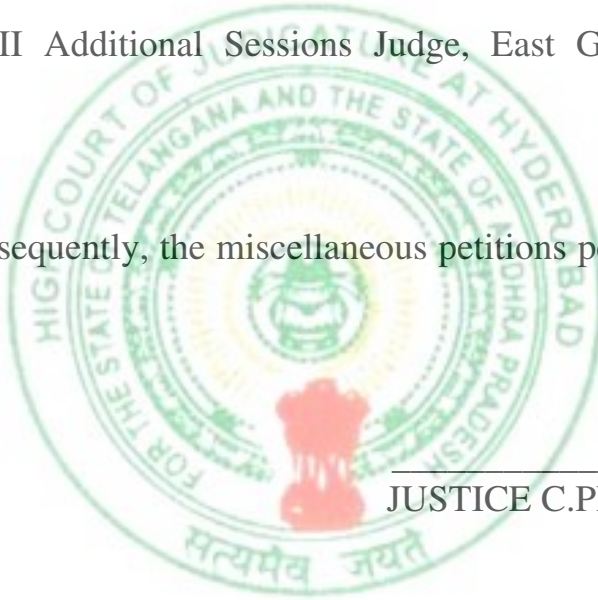
out. Later at 8.30 PM the deceased came to house from outside and as there was no power supply in the house, the deceased went to the house of P.W.1, who was taking dinner at that time, and took match box from him and while he was giving it to his mother to lit the lamp, his father suddenly pounced upon the deceased with curved knife, which is being used for plucking, hacked at the right side collar bone, left hand arm, right hand wrist and near right ear, as he likes. On that, the deceased fell down by raising cries as “*baboy baboy*” near P.W.1 who is taking dinner, thereupon his wife - P.W.3 and mother of deceased P.W.2 laid the deceased on a mat on the pial and the deceased succumbed to wounds.

20. Further, the evidence of P.W.11 corroborated with P.W.8 - VRO established that on 16.5.2010 on credible information P.W.11 proceeded along with staff to the centre of Ponnamanda village, where P.W.11 noticed the accused. Police surrendered the accused and enquired his address particulars, then P.W.11 identified him as the accused in this case and arrested the accused in the presence of P.W.7 and another. M.O.1, at the instance of the accused, was recovered. The accused himself led the police party to casurina top belongs to P.Das and shown a place which was covered with casurina waste leaves, then the accused himself lifted the M.O.1 from the casurina leaves and handed over to Police party. P.W.8 prepared seizurenama of M.O.1 under the cover of Ex.P6 and seized the M.O.1. RFSL report was received by P.W.11. The analyst, on examination of the material objects, detected blood on Items 1,3,4 and 5 only, but not on item No.2 and according to him, the blood is of human origin, but the blood group could not be determined.

21. Having regard to the facts and circumstances discussed above, marshalling the facts and the evidence on record, the trial Court rightly came to the conclusion that the prosecution established that the appellant/accused committed murder of the deceased intentionally. I do not find any ground to disbelieve the evidence of P.Ws.1,2,3 and 5 and also findings of the trial Court which do not suffer from any legal infirmities.

22. Accordingly, the Criminal Appeal fails and is dismissed confirming the conviction and sentence imposed against the appellant/accused vide judgment dated 31.3.2011 in S.C.No.457 of 2010 on the file of the II Additional Sessions Judge, East Godavari District at Amalapuram,

23. Consequently, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

21st December, 2017.
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