

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.1180 of 2012

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

1) Assailing the judgment, dated 12.10.2012, passed in S.C.No.607 of 2011 on the file of the Special Sessions Judge for trial of offences under SCs & STs (POA) Act, Karimnagar, wherein the accused was found guilty for the offences punishable under Sections 302 and 506 IPC, for causing death of his father by name Kumbala Malla Reddy (hereinafter referred to as "the deceased") and also for threatening PW.1 with dire consequences, was sentenced to suffer 'imprisonment for life' and to pay fine of Rs.3,000/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 302 IPC and also sentenced to pay fine of Rs.1,000/- in default to suffer simple imprisonment for one month for the offence punishable under Section 506 IPC, the present Criminal Appeal is filed by the accused.

2) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) The accused is the father of the deceased. PW.2 is the wife of PW.1. PWs.3 and 4 are sisters-in-law of PW.1. All the four witnesses are close relatives to each other. The marriage of the accused was solemnized about 11 years prior to the incident. After

marriage, he went on illatam son-in-law and lived there for a period of three years. Thereafter disputes arose between both the couple leading to divorce. Right from the time of divorce, the accused became vagabond and was never seen in the village. It is said that the accused used to come to the deceased often and take some amounts for his vices. On the date of incident i.e. on 08.05.2011 while PW.1 was in the house of PW.3, the accused is said to have come to the house of PW.3, with a stick in his hand and proclaimed that he has killed his father and he is going to kill PW.1. Immediately, PW.1 picked up a stick and chased the accused. On seeing the same the accused ran away to a distance and went into the bushes, which were situated near by Poshamma temple. Thereafter, PW.1 returned to the house of PW.3 and then went to his old house, wherein he found the deceased lying at the water pump with injuries on his head. PW.1 claims to have carried the deceased to his house from the said place. Immediately thereafter, PW.5-the RMP doctor came there, examined the deceased and declared him dead. Suspecting that the accused was responsible for the death of his father, PW.1 lodged a report on 09.05.2011 at 6.00 a.m. before PW.12-the Sub-Inspector of Police, Mustabad Police Station. Basing on the said report, a case in Crime No.43 of 2011 came to be registered for an offence punishable under Section 302 IPC. Ex.P3 is the first information report. Further investigation in this case was taken up by PW.13-the Inspector of Police. On receiving the first information report (Ex.P3), PW.13-the Inspector of Police, along with PW.12 visited

the scene of offence and prepared a panchanama in the presence of PW.9. He also got photographed the scene of offence and prepared a rough sketch of the scene. Thereafter, PW.13 conducted inquest over the dead body of the deceased in the presence of PW.9. Ex.P8 is the inquest report. While conducting inquest, PW.13 seized M.Os.1 and 2, dothi and banian of the deceased and M.O.3-the stone containing blood stains. Thereafter, the dead body was sent for postmortem examination. PW11-the Civil Assistant Surgeon, Government Area Hospital, Srcilla, conducted autopsy over the dead body between 12.00 p.m. and 1.00 p.m. He noticed laceration over the right parieto occipital region of the skull, laceration behind the right ear; contusion and hemorrhage over right parieto occipital lobe of the brain. According to him, the cause of death was “due to neurogenic shock due to contusion and hemorrhage of right parieto occipital lobe of the brain”.

3) On 14.05.2011, while PW.13 was at the police station, PWs.7 and 8, along with the accused came to his office and handed over the accused. According to PW.7, on 14.05.2011 while he was present in the house of PW.8, the accused came there and confessed about killing his father, as his father failed to perform his marriage and also failed to give money as and when demanded by him. PWs.7 and 8 brought the accused to Mustabad Police Station and handed him over to the police. The said version of PWs.7 and 8 was also spoken to by PW.13, who arrested the accused and recorded the confessional statement of the accused

in the presence of PW.10. Pursuant to the confession, the accused lead the police to the lands of Revella Ramulu situated at the outskirts of Kondapur Village, where PW.12 seized blood stained shirt of the accused. Ex.P11 is the seizure panchanama. After collecting all the material, PW14-the Inspector of Police filed the charge sheet which was taken on file as P.R.C.No.72 of 2011 on the file of the Judicial Magistrate of First Class, Srcilla. After complying with the provisions under Sections 207 Cr.P.C., the matter was committed to the Court of Sessions under Section 209 Cr.P.C. and the same came to be numbered as S.C.No.607 of 2011.

4) Basing on the material available on record, charges under Sections 302 and 506 IPC were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs. 1 to 14 and got marked Exs.P1 to P16 and M.Os.1 to 4. After the closure of 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 by the accused in support of his defence.

6) Relying on the evidence of PWs.1, 3, 7 and 8, the Sessions Judge convicted the accused. Challenging the same, the present appeal came to be filed.

7) The main ground urged by the learned counsel for the appellant is that there is no legal evidence on record to connect the accused with the commission of offence. According to him, the only material on which the prosecution is relying upon so as to connect the accused with the crime is the statement said to have been made by the accused before PW.1 in the house of PW.3 and the alleged extra judicial confession made before PWs.7 and 8, which according to him cannot be made the basis to convict the accused.

8) On the other hand, learned Public Prosecutor would submit that though there are no direct witnesses, the circumstances relied upon by the prosecution, do form a chain of events to connect the accused with the crime.

9) The short question that arises for consideration is whether the circumstances relied upon by the prosecution are sufficient to convict the accused for the offence punishable under Section 302 IPC.

10) It is not in dispute that there are no eye witnesses to the incident and the case rests on the circumstantial evidence. In a case which rests on circumstantial evidence, the prosecution has to prove all the circumstances relied upon by them. It is to be noted here that except the alleged statement made by the accused before PWs.1 and 3 and the extra judicial confession made before PWs.7 and 8, there is no other material connecting the accused

with the crime. Now, it has to be seen whether the said material is sufficient to convict the accused.

11) As seen from the evidence of PW.2, on the date of incident at about 8.00 p.m. while she was present in the house, PW.1 brought the deceased on his shoulder and told her that the accused killed the deceased, but neither the evidence of PW.1 nor any of the witnesses examined by the prosecution anywhere indicate that they have seen the accused and deceased together at any point of time on that day. On the other hand, the evidence of PW.2 discloses that at about 8.00 p.m. the deceased and PW.1 had their dinner and both of them together left the house. At about 10.30 p.m. PW.1 returned home carrying the dead body of the deceased.

12) As stated earlier, the case rests on the two sets of statement made by the accused. In order to deal with the same, it would be useful to refer to the evidence of PWs.1, 3 and 4 to answer the first set of disclosure statement/ confession statement said to have been made by the accused.

13) PW.1 in his evidence deposed that while he was in the house of PW.3, the accused came to the house of PW.3 with a stick and confessed that he has killed the deceased and he is going to kill PW.1. Then, PW.1 picked up a stick from the ground, chased the accused and tried to beat the accused, but after going to some distance, the accused picked up a stone and hurled the same at PW.1, which missed him. Thereafter, the accused ran into bushes situated nearby the Poshamma Temple.

14) PW.3 in her evidence deposed that about one year back while herself and PW.4 were rolling beedies in her house, PW.1 came there and all of them were chit chatting. At that time, the accused came there and proclaimed that he has killed his father and going to kill PW.1. Then PW.1 picked up a stick and chased the accused. The accused ran to a distance and hurled a stone at PW.1. However, in the cross-examination of PW.3, it has been elicited that she did not witness the accused killing the deceased.

15) PW.4 in her evidence stated that on the date of incident at about 8.30 p.m. while she was present in the house of PW.3 and rolling beedies, PW.1 came there. While all of them were chitchatting the accused came there. She informed to PW.1 about the coming of accused, on which PW.1 came out of the house with a stick on his hand. On seeing PW.1 the accused ran away. This evidence of PW.4 runs contra to the evidence of PW.3. PW.4 never deposed about the accused declaring his act of killing the deceased.

16) Having regard to the two circumstances mentioned above, a doubt arises as to whether really the accused has gone to the house of PW.3 and confessed about killing of his father and his intention of killing PW.1. In fact the record nowhere indicates existence of any quarrel between the accused and the deceased and the accused having any enmity with PW.1 and the deceased. On the other hand, the money was being paid by the deceased as and when demanded by the accused.

17) The next circumstance which is sought to be relied upon by the prosecution is the extra judicial confession made before PWs.7 and 8. The evidence of PW.8 discloses that on 14.05.2011 while himself and PW.7 were present at his house, the accused came there and confessed that he has killed his father as his father failed to perform his marriage and also failed to give money as demanded by him. Hence sought their help. Thereafter, himself and PW.7 took the accused to Mustabad Police Station and handed him over to the accused to Inspector of Police. The said version is also spoken to by PW.7.

18) It is to be noted here that these two witnesses are related to the accused and the deceased. When the case of the prosecution is that the accused has already disclosed about the commission of offence to PWs.1 and 3, who was also related to PWs.7 and 8, the question of accused again going to PWs.7 and 8 and disclosing the commission of offence would not arise. In fact the evidence of PW.7 discloses that about 10 days after the incident, he went to the house of PW.8 and while he was present in the house of PW.8, the accused came there and confessed about the incident. PWs.7 and 8, who were closely related to the accused and the deceased, must be aware about the death of the deceased and the person involved much prior to the date of alleged confession. When the accused has already made a statement before PWs.1 and 3, disclosing commission of offence, there is no necessity for the accused to again confess about the offence.

19) Apart from that, it is to be noted here that if really the extra judicial confession was made, the person, before whom the said confession was made, should have reduced the same into writing obtain the signature of the accused on the said statement and hand over the accused to the police along with a covering letter. No such procedure appears to have been followed. Therefore, we feel that it cannot be safe to rely on the said confession made by the accused to known persons, more so when they were aware about the incident and also the person, who was responsible for the said murder. Therefore, the circumstances which are relied upon by the prosecution namely two sets of statements made by the accused cannot be made the basis to convict the accused.

20) As a last ditch, the learned Public Prosecutor would submit that the evidence of PW.10 also discloses the commission of offence by the accused. It is to be noted here that the said confession alleged to have been made by the accused before PW.10 was when he was in the police custody. The said statement is in-admissible under Section 27 of the Indian Evidence Act, except to the extent of recovery of M.O.4.

21) Coming to the recovery made, though the prosecution claims to have seized blood stained shirt of the accused after his confession, but there is no evidence to show that the said shirt contains the blood of the deceased and that the shirt that was seized was that of the accused.

22) For the aforesaid reasons, we are of the opinion that the prosecution failed to establish the guilt of the appellant/ accused beyond reasonable doubt.

23) In the result the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.607 of 2011 on the file of the Special Sessions Judge for Trial of Offences under SCs/ STs (POA) Act, Karimnagar, for the offences punishable under Sections 302 and 506 IPC are set aside. Consequently, the appellant/ accused shall be set at liberty forthwith, if he is not required in any other case or crime.

24) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

22.11.2017
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