

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE T.SUNIL CHOWDARY**

CRIMINAL APPEAL No.445 OF 2012

JUDGMENT: (per the Hon'ble Sri Justice M.S.Ramachandra Rao)

This appeal is preferred by the accused in Sessions Case No.483 of 2010 against the judgment dated 22-02-2012 of the I Additional Sessions Judge, Krishna at Machilipatnam.

2. The Inspector of Police, Nandigama registered a First Information Report on the basis of complaint of P.W.1, as Crime No.106 of 2010 of Chandarlapadu Police Station.

THE PROSECUTION CASE

3. It is the case of the prosecution that the *de facto* complainant belongs to Tutukuntla village, Bonakal Mandal, that her marriage was performed 10 years back, that her husband and she were separated and while her elder child from the said marriage lived with her parents, the younger son, by name Naga Babu, aged 3 years was living with her.

4. It is alleged that the accused belongs to Turlapadu village and he used to work in a Brandy shop at Chillakallu, that the *de facto* complainant had acquaintance with him and converted it into illegal intimacy and both led family life, that the accused used to beat her and her son Nagababu in drunken state, that the accused kept her in a hut at

Turlapadu village, which is owned by his maternal uncle by name Yohan from Chillakallu and the *de facto* complainant also brought her second son along with her.

5. It is alleged that the accused did not like the company of her son and he used to beat the child severely every day.

6. It is alleged that on 08.08.2010 night, at about 8.00 p.m., the accused beat the child with his fists in stomach indiscriminately, that the boy fell down, and the accused lifted the boy by holding his legs up and the head downwards towards earth and hit the head of the boy to the ground. It is alleged that when the *de facto* complainant tried to intervene, he also beat her with iron pipe and pushed her aside.

7. It is alleged that on 09.08.2010 morning at about 7.00 a.m., again the accused beat the boy, as a result of which the boy fell unconscious, that both the *de facto* complainant and the accused shifted the boy to Nandigama Government Hospital, that the doctors in the said hospital advised to take the boy to Vijayawada for better treatment, but she did not do so as she did not have money.

8. It is alleged that the accused gave the *defacto* complainant Rs.50/- and asked her to go to Chillakallu and subsequently at about 2.00 p.m., while she was taking the boy in auto rickshaw and when the auto reached Chillakallu, the boy died.

9. It is alleged that the *de facto* complainant, apprehending that her mother will scold her, pushed the boy into the bushes by the side of a canal in Chillakallu, that she then returned to Nandigama, and in the evening she went to Turlapadu village and informed the same to Velpula Swamy and Velpula Mariyesu of Turlapadu village and also to the village servant.

10. It is alleged that the boy died only due to the beating given by the accused in his abdomen and therefore the accused committed the offence punishable under Section 302 IPC.

11. It is also stated that on 10.08.2010, P.W.1 went to the police station where her statement was recorded by P.W.10 and then Crime No.106 of 2010 under Section 302 IPC was registered.

12. P.W.9 the Investigating Officer visited the village at 8.30 a.m. on 10.08.2010 and got prepared the scene of observation report with the help of mediator P.W.4 and P.W.9 and prepared Ex.P.10 rough sketch. He also then went to the place where the dead body was thrown and prepared Ex.P11 rough sketch in the presence of P.W.4 and L.W.16. He then held inquest over the dead body of the deceased under Ex.P7.

THE CHARGES

13. Thereafter, the following charges were framed against the accused under Sections 302 and 324 IPC:

“Firstly: *That you, on the 9th day of August, 2010 at 7.00 a.m., in Turlapadu village of Chandarlapadu Mandal, did commit murder by intentionally(or knowingly) causing the death of Gowra Nagababu, S/o.Krishna, aged about 3 years, having developed illicit intimacy with the mother of deceased and in order to break through the hurdle in between you and the mother of deceased, by fisting on the abdomen of the deceased, and that you thereby committed an offence punishable Under Section 302 of Indian Penal Code and within the cognizance of Court of Session.*

Secondly & lastly: *That you, 9th day of August, 2010 at 7.00 a.m. in Turlapdu village of Chandarlapadu Mandal, voluntarily caused hurt to L.W.1 Gowra @ Gavara Radha, W/o.Krishna, with whom you developed illicit intimacy with hands when she interfered while you were fisting the deceased boy on his abdomen, and that you thereby committed an offence punishable U/s 324 IPC, and within my cognizance.”*

14. The charges were put to the accused and he denied the same.

15. The prosecution examined P.Ws.1 to 11 and marked Exs.P1 to P12.

16. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and the incriminating circumstances appearing against him in the evidence of prosecution witnesses was put to him.

17. He denied the same and stated that he had no defence witnesses.

18. The I Additional Sessions Judge, Krishna, at Machilipatnam considered the evidence on record and found the appellant accused guilty of the charge under Section 302 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.200/- and in default of payment of fine, to suffer Simple Imprisonment for one year for the charge under Section 302 IPC. He also found that the appellant-accused was guilty of the charge under Section 324 IPC and sentenced him to suffer Simple Imprisonment for a period of one year.

19. Assailing the same, this appeal is filed by the accused.

20. Heard Sri K.Venkatesh Guptha, counsel for the appellant and the learned Public Prosecutor, for the State of Andhra Pradesh for the respondent.

CONTENTIONS OF THE COUNSEL FOR APPELLANT

21. It is the contention of the counsel for the appellant that though there is a specific charge that the accused committed murder and also voluntarily caused death to the deceased at 7.00 a.m. on 09.08.2010, there is no mention of this in the evidence of P.W.1, the *de facto* complainant, who is also the mother of the deceased child. He also contended that P.Ws.2 and 5, though related to the accused, had a family dispute about property with him, and they falsely implicated him and their evidence also cannot be accepted.

22. He pointed out that the specific case of P.W.1 was that the child was initially beaten at 8.00 p.m. on 08.08.2010 and then again beaten on 09.08.2010 morning, that she took him on 09.08.2010 morning along with the accused to Nandigama Hospital for treatment, but, Ex.P12, which is the O.P. Register extract of D.V.R.Government Community Health Hospital, Nandigama, does not show that the deceased was provided any treatment there and in fact, there is no evidence of the *de facto* complainant-P.W.1 going to Nandigama Hospital at all for sake of providing treatment to the deceased.

23. He also contended that she made a material improvement in her chief examination that the accused beat her with iron pipe on the head and caused injury on 08.08.2010, which was not mentioned by her in her 161 Cr.P.C. statement to the police.

24. He also pointed out that P.W.2's evidence that he intervened, when the accused was allegedly beating the deceased boy, is not spoken to by P.W.1 in her evidence.

25. Referring to the scene of observation report Ex.P.10, he pointed out that it would not have been possible to P.W.2 to witness anything happening in the hut where the accused and the complainant were said to be staying together, particularly when according to P.W.2, his house was 200 yards away from the said hut.

26. He also contended that the auto rickshaw driver of the auto in which she was traveling, when she placed the dead body of her son in the bushes near the canal of Chillakallu, was not examined and all these circumstances were over looked by the trial Court and it simply believed the evidence in chief examination given by the prosecution witnesses.

27. According to him, the suggestions were given to the witnesses for the prosecution and in particular to P.W.1, that she herself killed her son and threw his dead body into the bushes, after she was beaten by a third party other than the accused, ought to have been taken note of by the trial Court, but this was ignored.

CONTENTIONS OF THE PUBLIC PROSECUTOR

28. The learned Public Prosecutor appearing for the State however supported the judgment of the trial Court.

29. He contended that the evidence of the prosecution witnesses was consistent with the guilt of the accused, that there is ample evidence to show the illegal intimacy between the accused and P.W.1, and the resentment of the accused towards the child born to P.W.1, who was also staying with them.

30. He contended that the grand father of the accused, who was examined as P.W.2 himself stated that there was a property dispute between the accused and P.W.2 and his other family members and that

the accused turned violent and this circumstance also has to be taken into account in deciding the appeal.

CONSIDERATION BY THE COURT

31. We have given our anxious consideration to the contentions of both sides.

32. As per the charges framed against the accused, it is alleged that the accused, on 09.08.2010 at about 7.00 a.m. in Turlapadu village committed murder by intentionally or knowingly causing death of the deceased boy aged about 3 years having developed illicit intimacy with P.W.1 and in order to break the hurdle between him and P.W.1 by beating on the abdomen of the deceased with fists and thus committed the offence under Section 302 IPC. In the second charge also it was alleged that he voluntarily caused hurt to P.W.1 at 7.00 a.m. on 09.08.2010.

33. In the evidence of P.W.1 however she merely referred to the alleged beating given by the accused at night time i.e the incident at 8.00 p.m. on 08.08.2010. There is an omission by her about the alleged beating given to her as well as to her child by the deceased at 7.00 a.m. on 09.08.2010. This omission, in our opinion, is in a nature of contradiction in material particulars and discredits the testimony of P.W.1, rendering the prosecution case doubtful, and cannot be termed to be a minor

contradiction as is sought to be projected by the learned Public Prosecutor. (see: in **NARAYAN CHETANRAM CHAUDHARY AND ANOTHER v. STATE OF MAHARASHTRA**¹ and **STATE OF H.P. v. LEKH RAJ.**²)

34. This conclusion of ours is also fortified by the fact that the *de facto* complainant's plea that she took her son to Nandigama Hospital for treatment on 09.08.2010 morning is not established by the prosecution. The O.P.Register extract of D.V.R.Government Community Health Hospital, Nandigama, Krishna District, which is marked as Ex.P12 showing the presence of all persons who underwent treatment there on 09.08.2010, does not mention the name of the deceased.

35. Also without mentioning in her 161 Cr.P.C. statement that she was hit on the head by an iron pipe by the accused on night of 08.08.2010, she mentioned it for the first time in her chief examination as P.W.1. This is a material improvement.

36. More over according to her, the incident occurred in a thatched hut, which had no door and no walls. But Ex.P5 scene of observation report prepared by the Investigating Officer (PW10) shows that the thatched house had a door way and though it had a verandah, the same was closed on its three sides with palmyrah leaves.

1. AIR 2000 SC 3352

2. AIR 1999 SC 3916

37. The conduct of P.W.1 in not immediately giving a police complaint after the death of her son and throwing the dead body of her son by the side of a canal into the bushes also does not inspire any confidence in her evidence.

38. The Investigating Officer admitted in his evidence that except P.W.1 there were no eye witnesses, though he later corrected it by stating that P.W.5 witnessed the occurrence.

39. The evidence of P.W.5 that he saw the accused beating the deceased boy since his house was situated near the hut where the accused was living with P.W.1 is also not corroborated by Ex.P5, the scene of observation report and the sketch Ex.P10. The latter do not indicate that the house of P.W.5 was close to the said hut, where the incident is alleged to have happened.

40. Also, the fact that he witnessed the beating of the deceased boy by the accused at 8.00 p.m. on 08.08.2010 was not stated by P.W.5 in his statement to the police under Section 161 Cr.P.C. and he mentioned it for the first time in his chief examination in the Trial Court.

41. Merely because the accused had illicit intimacy with P.W.1 or was known to be beating P.W.1, it cannot be presumed that he was the one who caused the death of the deceased.

42. No doubt, the prosecution examined P.W.8 to prove that certain injuries were found on the body of P.W.1 when she was examined on

11.08.2010 at 7.00 p.m. P.W.8 is the Civil Assistant Surgeon Specialist in the Government Hospital, Nandigama, who examined PW1. According to him, the age of her injury might be 5 to 7 days old and the injury was simple in nature. In the cross-examination he stated that if a person falls on the ground, such injury was possible and that he did not see any blood at the place of injury when patient was brought to him.

43. While P.W.1 suffering the injury cannot be doubted, the age of the wound having been certified by the doctor between 5 to 7 days old on 11.08.2010, it is doubtful whether it was the accused who caused her said injury on 08.08.2010 at 8.00 p.m.

44. Moreover, P.W.1 has not explained that if she had taken the child to the said hospital on the morning of 09.08.2010 for treatment why she did not get herself examined by the same doctor.

45. In fact the charge framed is itself with regard to such injury being caused to her on 09.08.2010 at 7.00 a.m and not with regard to the incident on night of 8.8.2010.

46. In view of the above facts and circumstances, it appears that the origin and genesis of the occurrence has been suppressed by the prosecution and a distorted version has been brought to the Court.

47. We are also of the view that, the prosecution has been unable to bring home the guilt of the accused beyond reasonable doubt and that the

trial Court erred in convicting the accused without properly appreciating the evidence on record. It's decision therefore cannot be sustained.

48. In the result, the appeal is allowed setting aside the conviction and sentence imposed against the accused in S.C.No.483 of 2010 on the file of the I Additional Sessions Judge, Krishna at Machilipatnam, and the accused is acquitted of the charges under Sections 302 and 324 IPC. The bail bonds executed by the accused, if any, shall stand cancelled and he shall be set at liberty. The jail authorities are directed to release the accused forthwith, if he is not required in any other cases. The Registry is directed to communicate a copy of this order to the Superintendent, Central Prison, Rajamahendravaram.



M.S.RAMACHANDRA RAO, J

T.SUNIL CHOWDARY, J

21st October, 2017,
Rns

