

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.627 of 2012

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

1. The sole accused in Sessions Case No.21 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 charge under Section 302 of the Indian Penal Code, 1860 (in short, 'IPC') for causing the death of his elder brother Kamuju Suribabu, on 28.01.2009 by beating him with cement brick bat on his face and also throwing it over his abdomen. Vide judgment dated 17.01.2012, the learned Sessions Judge, found the accused guilty of the offence punishable under Section 302 IPC and accordingly sentenced him to undergo imprisonment for life and to pay fine of Rs.1000/- in default to suffer simple imprisonment for six months. Assailing the same, the present Criminal Appeal is filed.

2. The case of the prosecution, in brief, is as under:

P.W.3 and one Kamuju Marthamma (L.W.4) are parents of one Kamuju Suribabu (hereinafter called as 'the deceased') and the accused. P.W.1, who is the Sarpanch of Kandriga village, is the informant who set the criminal law into motion by lodging Ex.P1-report to police.

Accused is the younger brother of the deceased. The deceased married one Kamuju Rajeshwari and they were blessed

with two children. The deceased was a chronic T.B. patient. The wife and children of the deceased were residing separately from the deceased due to some differences. The deceased was staying at the house of his parents. He was not attending to any work but was depending on his parents to eke out his livelihood. The accused could not digest the love and affection shown by his parents on the deceased and suspected that his parents may bequeath major share of their properties to the deceased, which became an eye sore to the accused. The accused started instigating the deceased to die on some pretext or the other with harsh words. He wanted to become an absolute owner of the properties of his parents and was waiting for an opportunity to do away with the life of the deceased.

On 25.01.2009, the parents of deceased went to Yenugupalli to attend a birthday function and asked the accused to take care of the deceased and serve food properly. On 26.1.2009 and 27.1.2009, the accused served meals to the deceased. On 28.01.2009, the accused picked up meals from his wife-L.W.5-Kamuju Kumari and visited the house of deceased. Taking advantage of his loneliness, the accused dragged the deceased into a room of an under construction house, beat him and made him to fall flat on the ground with face upwards. Thereafter, he picked up a cement brick bat and threw it over the abdomen with force. He also trampled the neck of the deceased with legs. The deceased, being a T.B. patient and lean built, could not resist the

blows. P.W.2, who is neighbour of deceased, is said to have heard the cries of the deceased.

Some time later, the accused came to her, confessed about the incident and asked her to take the deceased to a hospital. So saying, he left the place. P.W.2 informed the same to P.W.1, and all of them rushed to the scene of occurrence, where they found the deceased dead on a concrete mound in the room. One Chirra Sampada Rao informed parents of deceased, who were then at Gantipedapudi village in the house of Chadalavada Atchiyya (brother of Kamuju Marthamma) over phone, about the death of the deceased.

Basing on Ex.P1-report, lodged by P.W.1, a case in crime No.16 of 2009 of Kothapeta police station came to be registered for the offence punishable under Section 302 IPC under Ex.P8-F.I.R. by P.W.8. On receipt of a copy of F.I.R., P.W.9 took up further investigation. He rushed to the scene of occurrence and conducted inquest over the dead body of the deceased. Ex.P7 is the inquest report prepared in the presence of P.W.7 and others. Thereafter, he prepared a rough sketch of the scene of occurrence, which is placed on record as Ex.P6. He also got photographed the scene of occurrence through P.W.4 and the same are placed on record as Ex.P3. He also examined and recorded statements of witnesses. He then sent the dead body for postmortem examination. P.W.5, the then Deputy Civil Surgeon, C.H.C., Kothapeta, conducted postmortem examination over the dead body

of the deceased and opined that cause of death of the deceased would be due to haemorrhage and shock due to rupture of spleen. Ex.P4 is the postmortem certificate. P.W.9 effected arrest of the accused and seized the material objects. After receipt of all the relevant documents and after completing the investigation, a charge sheet came to be filed before the Court of the Additional Judicial Magistrate of First Class, Kothapeta, which was taken on file as P.R.C. No.33 of 2009 and was committed the case to the Court of Session under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.21 of 2010.

3. Basing on the material available, the learned Sessions Judge framed charge under Section 302 IPC, read over and explained to the accused in Telugu, to which he pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution examined PWs.1 to 9 and got marked Exs.P1 to P10, besides case properties M.Os.1 to 13. 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 of the accused in support of his defence.

5. Relying upon the evidence of P.Ws.1 and 2, the learned Sessions Judge convicted the accused in the manner referred to

above. Challenging the same, the present appeal is filed through legal aid counsel.

6. Learned counsel appearing for the appellant mainly submits that there are no eye-witnesses to the incident and the entire case rests upon the extra-judicial confession alleged to have been made by the accused before P.W.2, who in turn informed about the same to P.W.1. He further submits that P.W.1, who set the criminal law into motion by lodging Ex.P1-report to police, gave a different version in his evidence, and hence, his evidence cannot be taken into consideration to say that it corroborates the evidence of P.W.2. He would submit that the evidence of P.W.2 and P.W.1 are not consistent with the earliest version given in Ex.P1-report, and that P.W.3, who is father of the deceased and the accused, gave a different version, as to the cause of death. He further pleads that ocular testimony does not support the medical evidence of P.W.5 and the identification of the appellant/ accused as assailant is not established beyond reasonable doubt.

7. On the other hand, the learned Public Prosecutor appearing for the State would contend that the extrajudicial confession made by the accused before P.W.2, who is the neighbour of deceased, can be made the basis to convict the accused, as the same is trustworthy. . He further contends that the contents in Ex.P5-statement of P.W.2 recorded by P.W.6 under Section 164 Cr.P.C. can be taken to corroborate the evidence of P.W.2. He would further submit that P.W.2 has no grouse or enmity against the

accused to implicate him falsely in a case of this nature and as her ocular testimony is corroborated by the medical evidence. Hence, pleads that the findings of the trial Court warrant no interference.

8. Now, the point that arises for determination is whether the appellant/ accused can be held liable for causing the death of the deceased ?

POINT:

9. P.W.7 is one of the inquest mediators present at the time of inquest over the dead body of the deceased. His evidence remained unshaken during cross-examination and nothing has been elicited to disbelieve the same. P.W.9, who conducted inquest, deposed about holding inquest over the dead body of the deceased on 29.1.2009. As per column No. XV of Ex. P7 inquest report, the mediators opined that deceased died as a result of beating with cement brick and trampling on the neck of the deceased.

10. P.W.5, who worked as the Deputy Civil Surgeon, Community Health Center, Kothapeta, deposed that he conducted autopsy on the dead body of the deceased on 29.01.2009 at 12:30 noon and found four external injuries on the dead body of the deceased besides rupture of spleen. He also noticed stomach open. He opined that the death was due to shock and haemorrhage on account of rupture of spleen. He issued Ex.P4- Postmortem certificate. Nothing has been elicited in his cross examination, so as to disbelieve his evidence. Therefore, from the evidence of

P.W.7 and P.W.5 coupled with the recitals in Exs. P7 and P4, it stands established that it was a case of homicidal death.

11. There is no dispute with regard to the scene of occurrence. It is situated in a house, belonging to P.W.3 and L.W.4-K.Marthamma, who are parents of deceased and accused. P.W.7 is one of the mediators present at the time of observation of scene of occurrence conducted by P.W.9- the investigating officer under Ex.P6 scene observation report.

12. Now, it has to be seen whether appellant/ accused is the assailant?

13. P.W.1 is the informant who set the criminal law into motion by lodging Ex.P1 report with P.W.8, which led to registration of Ex.P8-FIR. A perusal of the recitals in Ex.P1 would go to show that on 28.01.2009 at about 8 pm, he noticed the body of the deceased in an under construction house and also noticed injuries on the dead body. The report reveals that he came to know that, the accused informed P.W.2 (who is senior maternal aunt of P.W.1), that the deceased was not doing well. It further states that when P.W.1 informed the accused about death of the deceased, the accused pretended crying as if he came to know about the death just then. It was further stated in Ex.P1 that P.W.1 came to know that the accused carried meals to the deceased prepared by his wife, and that the accused beat the deceased and killed him after raising a dispute with regard to feeding him.

14. Coming to the oral evidence, P.W.1 in his evidence deposed that on 28.01.2009 at about 8 pm, P.W.2 came to his house and informed that the accused beat the deceased, as a result of which the latter became unconscious. On that, he immediately went to the house of P.W.3 and L.W.4-K.Marthamma, which was under construction, and noticed the deceased, in one of the rooms, lying on the ground, with face facing upwards. He further deposed that he noticed an injury on left side of stomach up to left side of chest and there was bleeding from nostrils. He also noticed a cement brick bat near the head of the deceased. He further deposed that he moved the deceased but found him dead and as such informed the same to the police.

15. Coming to the evidence of P.W.2, who is neighbor of the deceased, she deposed that she does not know how the deceased died. It is her evidence that the accused came to her and informed that he beat his brother, as a result of which, the latter fell down and became unconscious. He requested her to bring a doctor. On that, she told the accused that, as it was dark, she could not bring, and so saying she went to house of P.W.1 and informed him about the statement given by the accused to her. She further deposed that after informing P.W.1 and while she was coming back to her house, she noticed the accused wailing on the body of the deceased.

In cross examination, she admits that the deceased was suffering from fits and whenever he gets fits he would fall on

ground fidgeting hands and legs by protruding tongue. She further admits in cross examination that she did not enter the newly constructed house of parents of deceased, to see the deceased.

16. During course of investigation, police got recorded the statement of P.W.2 under Section 164 Cr.P.C. before P.W.6-the Magistrate. Ex.P5 is the said statement.

17. A perusal of the recitals in Ex.P5 would go to show that P.W.3 and L.W.4-K.Marthamma, are parents of deceased and accused, and they were constructing a house and residing in the neighboring hut of P.W.2. It is further stated in Ex.P5 that as the deceased was suffering from T.B, his wife went back to her mother's house and so the deceased was residing with his parents. On one day, as parents of deceased went to the house of relatives, to attend a function, the accused beat the deceased, came to P.W.2, and informed her about beating his brother(the deceased), and requested her to bring a doctor. It is further stated in Ex.P5 that thereafter, the Sarpanch of the village P.W.1 and other villagers went and noticed the deceased in the house on the ground, and also observed a cement brick besides the deceased. The accused cried stating that his elder brother died.

18. As seen from the evidence adduced on behalf of the prosecution, there are no eye witnesses to the incident and the entire case rests upon the extra judicial confession said to have been made by accused before P.W.2, which was in turn informed by her to P.W.1 who was working as Sarpanch of the Village. It is

settled law that extrajudicial confession is a weak piece of evidence. But if the evidence of the person to whom the extrajudicial confession was made is reliable, consistent and is placed in the category of 'wholly reliable' and he has no grouse or enmity against the accused and if the chain of circumstances are established, then there is no bar to base a conviction basing on the extrajudicial confession. Keeping the aforesaid settled principles in mind, we shall proceed to deal with the matter.

19. As seen from the recitals in Ex.P1-report, it is clear that on 28.01.2009 at about 8 pm, P.W.1 noticed deceased with injuries at the scene of occurrence and that he came to know that the accused informed P.W.2, who is senior maternal aunt of P.W.1, that the deceased was not doing well. Coming to the oral evidence, he deposed that on 28.01.2009 at about 8 pm, P.W.2 came to his house and informed him that the accused beat the deceased, as a result of which the deceased became unconscious. Thereafter he went to the house of parents of deceased and noticed the deceased dead. Admittedly, P.W.1 is not an eye witness to the incident. There is inconsistency in the evidence of P.W.1, when compared with the earliest version given by him in Ex.P1. In the earliest version, he states that he noticed the deceased dead at the scene of occurrence and that P.W.2 is said to have informed him about the same, who in turn, was informed by the accused stating that the deceased was not doing well. But coming to the evidence, he deposed that on 28.01.2009 at about 8.00 pm, P.W.2 came to his house and informed that the accused

beat the deceased, as a result of which the deceased became unconscious. If the version of P.W.1, in his evidence is believed, it goes to show that P.W.2 witnessed the incident, which is not the case of prosecution. Therefore, a doubt arises as to whether the evidence of P.W.1 can be believed and made the basis to connect the accused with the crime.

20. If the evidence of P.W.1 is doubtful, the only other evidence which remains on record is the evidence of P.W.2 and the averments in Ex.P5- her statement recorded under Section 164 Cr.P.C. As seen from the averments in Ex.P5, which can be used only to corroborate or contradict the maker, on one day when parents of the deceased went to house of relatives to attend a function, the accused came to her after beating the deceased and informed that he beat the deceased, who was not able to speak and hence requested her to bring a doctor. Thereafter P.W.1 and other villagers went and noticed the deceased at the scene of occurrence. Coming to evidence, P.W.2 deposed that she does not know how the deceased died. She further deposed that the accused came to her and informed that he beat the deceased as a result of which the deceased fell down and became unconscious, and requested her to bring a doctor. She further deposed that thereafter she went to house of P.W.1 and informed him about the statement of the accused. In cross examination, she admits that she did not enter the newly constructed house of the parents of the deceased(the scene of occurrence).

21. Admittedly, P.W.2 is also not an eye witness to the incident. The accused is said to have made an extrajudicial confession before P.W.2 stating that he beat his brother the deceased as a result of which the deceased became unconscious. As regards this, the evidence of P.W.2 is consistent with her earliest version in Ex.P5. It is also her evidence that after the accused informed her about beating the deceased, she went and informed the same to P.W.1. But in her version recorded under Ex.P5, she did not state about informing the same to P.W.1. Therefore, this version of P.W.1 in her evidence that she informed about the statement made by the accused before her to P.W.1, is clearly an improvement. The evidence of P.W.2 is not consistent with her earliest version in Ex.P5, with regard to her version of informing P.W.1 about the confession alleged to have been made by the accused before her.

22. Furthermore, the evidence of P.W.1 and P.W.2 is not consistent and corroborative with each other. In the earliest version i.e. in Ex.P1, it was stated by P.W.1 that P.W.2 informed him that the accused stated to her that the deceased was not doing well. P.W.3, who is the father of the deceased, deposed that the accused was residing opposite to his house under construction, and on the date of the offence, himself and his wife went to Enugupalli village to attend function in the house of their relatives and thereafter they went to Ganti Village on the third day; while they were in the said village, he received a phone call from L.W.9-Chirra Sampadaraao stating that the deceased suffered

fits and the medicines meant for him was not found and asked him to come back to village. It is his further evidence, that immediately himself and his wife returned to their village and noticed the deceased in the under construction building, at the pile of cement bricks; that when he enquired with neighbors they informed him that they do not know what happened to the deceased. Though P.W.3 was cross examined by the prosecution, nothing useful to the case of prosecution came to be elicited, except marking Ex.P2-his statement under Section 161 Cr.P.C. P.W.3 gave a different version as to the cause of death of the deceased i.e. he received a message from L.W.9-Chirra Sampada Rao stating that the deceased suffered fits and medicines meant for him was not found.

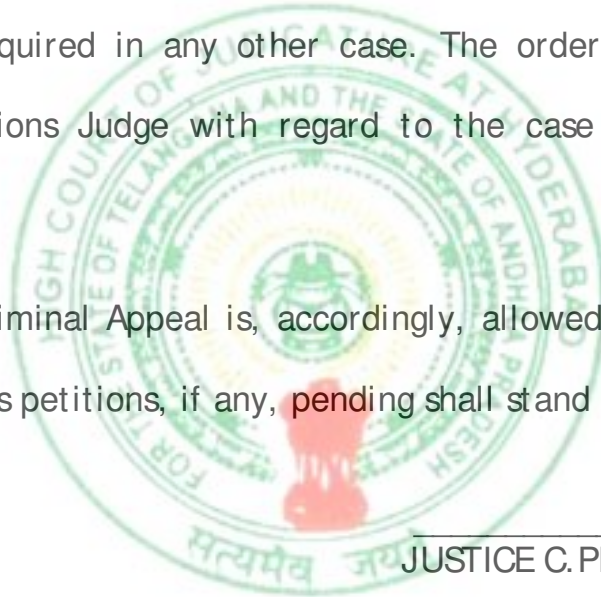
23. In view of the aforesaid discussion, the evidence of P.W.2 cannot be placed in the category of 'wholly reliable'. At best, it can be treated as neither 'wholly reliable' nor 'wholly unreliable'. In such a case, it requires corroboration from other quarters. But, no such corroborate evidence is available on record. Hence, this Court is of the opinion that an implicit reliance cannot be placed on the solitary testimony of P.W.2 alone to base a conviction.

24. In view of the foregoing discussion, this Court is of the opinion that the prosecution failed to establish the guilt of the accused beyond all reasonable doubt and the accused is entitled to benefit of doubt. The aforesaid aspects have not been considered

by the trial court in right perspective and hence, the judgment of the trial court is liable to be set aside.

25. In the result, the conviction and sentence recorded by the learned II Additional Sessions Judge, Amalapuram in the judgment dated 17.01.2012 in Sessions Case No.21 of 2010 against the appellant/ accused for the offence punishable under Section 302 IPC are set aside. The accused is found not guilty of the offence punishable under Section 302 IPC and accordingly acquitted of the said offence. The appellant/ accused shall be released forthwith, if he is not required in any other case. The order passed by the learned Sessions Judge with regard to the case property holds good.

26. The Criminal Appeal is, accordingly, allowed. Consequently, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

06.12.2017
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