

HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.1088 OF 2012

JUDGMENT: (per Hon'ble Sri Justice C.PRAVEEN KUMAR)

1. Assailing the judgment dated 07.02.2012 passed in S.C.No.258 of 2011 by the learned XI Additional District and Sessions Judge, Gudivada, Krishna District, wherein the sole accused/appellant who was tried for the offence punishable under Section 302 IPC for causing death of one Gunja Kondaiah, was convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/-, the present Criminal Appeal is preferred.

The gravamen of the charge against the accused is that

2. On 10.04.2011, at 10.30 PM, a quarrel took place between the accused and deceased-Gunja Kondaiah and in that quarrel, the accused caused the death of deceased by beating him with iron rod indiscriminately on his right side stomach, left leg, below the knee, behind the head and right hand backside elbow, resulting in death of the deceased instantaneously.

3. P.W.1 is the younger sister of the deceased while P.Ws.2 to 7 are residents of same village, i.e. Singavaram village. P.W. 1 in his evidence deposed that the deceased was a Mutha coolie at K.R. market, Vijayawada. The house of the

deceased was on the northern side of the house of the accused. Both their houses are having a passage on eastern side. There was a cement road to the northern side of the house of the deceased. Since last three or four years, the accused used to pass through the house site of the deceased to reach the cement road. The deceased used to come to his village once in two or three months and stay in his house for about ten days. During that period, the deceased used to raise an objection with regard to the accused passing through the site. In spite of objection raised by the deceased, the accused did not stop to pass through his house site. On 10.04.2011 at about 10.30 PM, the deceased was found dead on the eastern side of the cement road. On the next day morning at about 6.30 AM, the same was informed to P.W.1 by P.W.7.

4. P.W.5 in his evidence deposed that on 10.04.2011 at about 8.00 PM, the deceased and accused quarrelled with each other and the deceased asked the accused not to pass through his site and both of them shouted at each other. P.W.5 further deposed that he witnessed the said quarrel while returning home from work. On the next day morning, i.e. on 11.04.2011 at about 4.00 AM he was informed by P.W.7 about the deceased lying on the cement road. P.W.6, who is the son of P.W.1 was also informed about the same by P.W.7. He further informed that the deceased died as the accused beat him with iron rod on the chest and other places. Then P.Ws. 1 and 6 proceeded to Singavaram village and saw the dead body of the

deceased-Kondaiah by the side of cement road, lying in between his house and cement road with injuries on head, chest, elbow and knee. P.W.7 is said to have seen the incident of quarrel and attack on the deceased by accused and informed the same to P.W.1.

5. On 11.04.2011 at about 9.00 AM, P.W.1, the sister of the deceased, presented the report which was marked as Ex.P.1. Basing on the said report, a case in Crime No. 55 of 2011 was registered for the offence punishable under Section 302 IPC vide Ex.P.12-FIR.

6. On receipt of FIR, P.W.12, the Inspector of Police took up investigation. He deposed that after receipt of the FIR, he along with P.W.9 proceeded to scene of offence and drafted the scene of observation vide Ex.P.8. He secured blood stains from the cement road and collected some earth from the side of the cement road. Thereafter, he prepared a rough sketch of the scene vide Ex.P.13 and also conducted inquest over the dead body of the deceased vide Ex.P.9-Inquest report. During inquest, he examined P.Ws.1 to 8 and recorded their statements. Thereafter, he sent the dead body for post-mortem examination.

7. P.W.10-the Civil Assistant Surgeon in Government Hospital, Gudivada conducted autopsy over the dead body of the deceased on 11.04.2011 from 2.40 to 4.40 PM and found

external injuries. According to him, the cause of death of the deceased was hypo volemic shock due to head injury to the brain. Ex.P.11 is the post mortem report issued by him.

8. On 12.04.2011, P.W.12- the Inspector of Police arrested the accused at his house at about 2.00 PM and seized M.O.1—Iron pipe. He prepared the disclosure cum seizure report vide Ex.P.10, in the presence of mediators. After completion of the investigation, he filed charge sheet, which was taken on file as PRC.No. 25 of 2011. After compliance of Section 207 Cr.P.C., and as the offence alleged is triable by the Court of Sessions, the case was committed to the Court of Sessions, which came to be numbered as S.C.No.258 of 2011. Basing on the material available on record, a charge under Section 302 IPC was framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

9. To substantiate their case, the prosecution examined P.Ws.1 to 12 and got marked Exs. P.1 to P.15 After 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. However, he did not adduce either oral or documentary evidence in support of his defence.

10. On appreciation of the entire evidence on record, the learned Sessions Judge convicted the accused in the

manner referred to above. Challenging the same, the present criminal appeal came to be filed.

11. Learned Counsel for the appellant/accused would submit that there is no incriminating material to connect the accused with the alleged offence. None of the witnesses examined by the prosecution supported its case. Even with regard to motive, more particularly with regard to the alleged incident at about 8.00 PM, no witness has deposed about the alleged incident, in their evidence. It is pleaded that even if the evidence of prosecution witnesses is taken into consideration, the prosecution failed to establish that it was the accused who killed the deceased at 8.00 PM. Hence, the learned Counsel for the appellant would contend that the conviction and sentence recorded by the learned Sessions Judge is illegal and improper.

12. On the other hand, learned Public Prosecutor would contend that the circumstances relied on by the prosecution would clearly prove that it was the accused who committed the alleged offence. It is further contended that even though P.W.7- the eye witness turned hostile, yet the fact remains that the medical evidence of P.W.10 and Ex.P.11-PM report issued by him cannot be brushed aside.

13. Having heard the learned Counsel on either side and perused the material on record, the short question that arise for consideration is, whether the accused is responsible for the death of the deceased.

14. As discussed hereinabove, the prosecution examined twelve witnesses, out of whom, P.Ws. 2 to 5 who were examined as direct witnesses to the occurrence did not support the case of prosecution and were treated hostile by the prosecution. P.W.1, the younger sister of the deceased deposed that there are some quarrels between the accused and deceased with regard to the passing of the accused through the house site of the deceased. The deceased used to come to the village once in two or three months and stay in his house for about ten days. During that stay, the deceased used to object the accused passing through his house site. But the accused did not care for the said warnings. Her evidence is to the effect that on 10.04.2011 at about 10.30 PM, her brother-deceased died at the eastern side of the cement road. On the next day, at about 6.30 AM, she was informed about the death of the deceased by P.W.7. Thereafter herself and her son proceeded to scene of offence and noticed her brother's dead body lying with injuries all over his body.

15. The evidence of P.Ws. 2 to 5 shows that there were no disputes between the accused and deceased with regard to properties and that on 10.04.2011 at about 10.30 PM or so, the deceased died. On the evening of 10.04.2011 the deceased and accused made shouting against each other. On the next day

morning, they came to know that the deceased died on the previous night at about 10.30 or 11.00 PM.

16. P.W.6 who supported the prosecution case deposed that on 11.04.2011, P.W.7 came to his house at about 6.30 AM and informed that the deceased died on the previous night at about 10.30 PM and further informed him that accused was responsible for the death of the deceased. Though P.W.7 is alleged to have stated to the police in her 161 Cr.P.C statements that on the night of 10.04.2011 the accused beat the deceased with iron rod on his head and killed him, but in the Court, he did not support the prosecution case and on the other hand, his version was to the effect that the deceased was killed by somebody.

17. P.W.12 the Investigation Officer in his evidence admitted that P.W.6 did not inform him about the disputes of the deceased at his house. He further admitted that P.W.5 did not inform him that there were quarrels between the accused and deceased at 8.00 PM, but he (P.W.5) informed that at about 10.30 PM quarrels took place between the deceased and accused. P.W.12 further admitted that P.W.4 did not inform him that on 10.04.2011 at 4 or 5 PM, the deceased and accused quarrelled, but it was stated to him that in the morning and afternoon, they quarrelled and again at 10.30 PM.

18. Thus from the statements of P.Ws. 4 to 6 made to the Investigation Officer, it is clear that different versions are put forth with regard to quarrels that took place between the accused and deceased. However, they did not support the case of prosecution with regard to the accused beating the deceased. Thus the prosecution failed to establish as to when the quarrels took place between the accused and deceased. In the statements made to the Investigating Officer, each prosecution witnesses have given different timings with regard to the quarrels that took place between the accused and deceased. Since there being a considerable time gap between the accused and the deceased being seen together and the approximate time of death, the circumstances of last seen theory, even if proved, cannot clingingly establish the guilt of the accused.

19. With regard to the incident, the entire case rests on the evidence of P.W.7 who was projected as an eye witness. The case of the prosecution is that P.W.7 informed about the incident to P.Ws.1 and 6 and thereafter P.Ws. 1 and 6 proceeded to the scene of offence and presented report to the police. P.W.7 who claimed to have witnessed the incident and informed about the incident to P.Ws.1 and 6, did not support the prosecution case. Therefore, the information which P.Ws.1 and 6 received from P.W.7 cannot be relied upon to base a conviction.

20. There is no dispute with regard to the medical evidence of P.W.10 who opined that M.O.1 can cause the injury found on the deceased. But regarding seizure of M.O.1, P.Ws. 9 and 12 stated that M.O.1 was seized from the house of accused; whereas P.W.6 in cross examination stated that he noticed iron rod at some distance from the dead body of the deceased. There is a discrepancy with regard to the seizure of M.O.1 and as such the same cannot be relied upon to connect the accused with the crime.

21. Thus, from the evidence available on record, we hold that the circumstances relied upon by the prosecution do not form a chain of events connecting the accused with the crime.

22. Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 07.02.2012, in Sessions Case No. 258 of 2011 on the file of learned XI Additional District and Sessions Judge, Gudivada, Krishna District, for the offence punishable under Section 302 I.P.C., is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

23. The fine amount paid if any shall be returned to the appellant/accused.

24. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N. BALAYOGI

Date: 21st November, 2017.
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