

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

CRIMINAL APPEAL No. 826 OF 2012.

JUDGMENT: (per HON'BLE SRI JUSTICE N. BALAYOGI.

1. The appellant/sole accused aggrieved by the judgment dated 09.02.2012 in S.C.No.176 of 2011 passed by the learned Judge, Family Court-cum-Additional Sessions Judge, Ananthapur, convicting him for the offences punishable under Sections 302, 307 and 326 IPC and sentencing him to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for two months, further to suffer rigorous imprisonment for ten years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for two months and also to suffer rigorous imprisonment for ten years and to pay fine of Rs.1000/- in default to suffer simple imprisonment for two months respectively, preferred this appeal.

2. Brief facts of the prosecution case are as follows: P.W.1 is the daughter and P.W.2 is the husband of the deceased Meenakshi. The house of the accused and deceased are situated side by side. P.W.2 installed telephone coin box in front of his house. Two months prior to the date of alleged incident, the accused demanded to remove the telephone coin box as it was causing disturbance to him and also warned P.W.2 that if it is not removed, they will have to face consequences.

3. While so, on 5.1.2011 at about 7.40 PM when P.W.1 was talking with her relatives through telephone coin box, the accused came there armed with sickle and hacked on her head saying that in spite of giving warnings they have not removed the telephone coin box. P.W.1 sustained bleeding injury. When again the accused tried to hack again, P.W.1 lifted her right hand to ward off the blow and received a bleeding injury on her right wrist. P.W.1 cried aloud. On hearing her cries, her mother Meenakshi came to the rescue of her daughter, then the accused dealt blow twice with the sickle on her head, causing severe injuries and another blow on her left palm severing her middle finger and ring finger. When P.W.1 tried to catch the sickle, she received bleeding injury on her left index finger. On arrival of neighbours, the accused ran away.

4. P.W.2 on receiving information over phone, rushed to the spot, shifted the injured to Government Hospital, Kalyandurgam.

5. On receiving the intimation, P.W.9 rushed to the hospital and recorded the statement of P.W.1 and based on the same, he registered a case in Crime No.5 of 2011 for the offences punishable under Sections 324 and 307 IPC and took up investigation. He recorded the statements of witnesses, visited the scene of offence and seized blood stained towel and severed finger found at the scene of offence under Ex.P.7 in the presence of mediators—P.W.6 and another. He also prepared a rough sketch of the scene of offence, Ex.P.14.

6. The deceased who was unconscious was shifted to Snehalatha Hospital, Ananthapur for better treatment and again the deceased was taken to NIMANS, Victoria Hospitals and lastly Sevachetra Hospital, Bangalore where the deceased died on 10.01.2011 at about 2.45 AM.

7. The body of the deceased was brought back to Kalyandurg Hospital. P.W.1 presented a report to police station on 10.01.2011 at 9.30 PM informing about the death of the deceased. P.W.8 altered the section of law into the offences punishable under Sections 326 and 302 IPC and submitted express FIR. On 11.01.2011 at about 7.00 AM, P.W.8 held inquest over the dead body of the deceased in the presence of P.W.6 and others, sent the body for post mortem examination and examined P.Ws.1,2,3, and others and recorded their statements.

8. P.W.5 conducted post mortem examination over the body of the deceased and opined that the deceased died due to head injury and sub dural haemorrhage due to hit by hard and sharp object weapon and issued Ex.P.5 Post mortem examination report.

9. On 22.01.2011 at about 7.30 AM, on receiving the credible information about the movement of the accused, P.W.8 secured the presence of P.W.6 and others and proceeded to Devi Veeramma colony, Kalyandurgam and arrested the accused. In the presence of the mediators, the accused confessed his guilt

vide Ex.P.9 seizure mahazar and at his instance the sickle-MO.1 used for committing offence was recovered vide Ex.P.10—seizure mahazar from the bushes at the market yard. After completing the formalities, the accused was sent to remand. On 28.01.2011 he PW.8) sent the MOs to the Regional Forensic Science Laboratory, Tirupathi for examination and report. Ex.P.12 is the report from the RFSL.

10. On completing the investigation, P.W.8 filed charge sheet which was taken on file as PRC No. 9 of 2011 by the learned Judicial First Class Magistrate, at Kalyanadurgam and took the cognizance of the offences under Sections 307 and 302 IPC. After compliance of Section 207 of Cr.P.C., and as the offences alleged are triable by the Court of Sessions, the case was committed to the Court of Sessions, which took the case on file and made over the same to the Additional Sessions Judge, Ananthapur for disposal according to law and it came to be numbered as SC.No.176 of 2011.

11. Charges under Sections 307, 302 and 326 IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

12. To substantiate their case, the prosecution examined P.Ws.1 to 9 and marked Exs.P.1 to P.15 , Exs. X1 and X.2 & M.Os.1 to 9. After the closure of evidence, the accused was examined under Section 313 Cr.P.C. with reference to 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.

13. On appreciation of the entire evidence on record, the learned Sessions Judge convicted and sentenced the accused in the manner referred to above. Challenging the same, the present Criminal Appeal came to be filed.

14. Now the point that arises for determination is *whether there is any error in prosecution case to establish motive on the part of the accused in committing the alleged offence and chain of circumstances connecting the accused with the offence.*

15. Learned Counsel for the appellant/accused contended that the appellant was falsely implicated and there is no complete chain of circumstances to connect the accused with the alleged offence. He further submitted that the prosecution evidence is full of disturbances and that P.W.3 is not at all an eye witness to the incident.

16. On the other hand, learned Public prosecutor contended that the complete motive on the part of the appellant for committing the alleged offence is established and that there is complete chain of evidence and circumstances coupled with seizure establishing guilt of the accused.

17. The evidence on record establishes the relationship between the witnesses P.Ws.1 & 2 and the deceased. P.W.3 is an independent witnesses who is the neighbour to P.Ws.1 and 2, accused and deceased Meenakshi. Since P.Ws.1 and 2 are related to the deceased, their evidence has to be scrutinized with more care and caution.

18. With regard to the motive part, there is evidence of P.Ws.1 and 2 whose evidence is consistent and corroborative and not shaken by the defence in the cross examination. It is their evidence that P.W.2 installed telephone coin box in front of their house at Kalayandurgam. For about two times, the accused raised dispute saying that the telephone coin box is causing disturbance and nuisance to him and demanded P.W.2 to remove the said coin box which is on the left side of his house. P.W.3 neighbour also corroborates P.Ws.1 and 2 and in the chief examination itself he stated that he was told by P.Ws.1 and 2 that the accused picked up quarrel on the issue of telephone coin box installation two or three times and at the time of incident on 5.1.2011 between 7.30 PM and 8.00 PM, while P.W.1 was talking with her relatives through the telephone coin box, the accused came there armed with sickle (matchu kathi) and quarreled with P.W.1. P.W.1 in chief itself clearly deposed that about two or three occasions, the accused/appellant raised objections saying that the telephone coin box is causing inconvenience and disturbance to him. The said telephone coin box was undisputedly installed about 2 ½ years prior to the incident and the accused warned them about 2

½ months prior to the incident stating that if the coin box is not removed, he would kill them.

19. The consistent and corroborative evidence of P.Ws.1 and 2 is supported by evidence of P.W.3 who is their neighbour and an independent witnesses, who deposed that through P.Ws.1 and 2 he came to know that the accused warned them to remove the telephone coin box kept on the left side of his house about two months prior to the incident. The said fact is further supported by the suggestion to P.Ws.1 and 2, which was in fact denied, that two months prior to the incident the accused requested them to remove the coin box as it was causing disturbance to him when he was taking rest after returning to home from his regular work. The further suggestion to P.W.2 that there are no disputes with the accused prior to the incident and the disputes started only two or 2 ½ months prior to the incident would clearly clinches the issue that the accused by way of cross examination not disputed the disputes with regard to the installation of telephone coin box in front of house of P.Ws.1 and 2 and there is a dispute and accused warned to kill them if the coin box is not removed on the ground that the said coin box is causing disturbance to him after returning to home who was working as hamali.

20. Ex.P.1 is the police complaint submitted by P.W.1 and Ex.P.2 is the second complaint submitted subsequent to the death of deceased Meenakshi on 10.01.2011. In both the complaints, there is a specific assertion that two months prior to the date of incident, the accused Boya Jinkala Lakshman

warned PWs. 1 and 2 that he is facing disturbance with the telephone coin box and instructed them to remove the same, otherwise he will take action. P.Ws.1 and 2 gave deaf ear thinking that the accused might have stated the same in intoxication mood. Accordingly the intention and motive for committing the alleged offence by the accused on 5.1.2011 is proved.

21. There are no circumstances either suggested or proved to discard the evidence of P.Ws.1 to 3 except the suggestion to P.Ws.1 and 2 that the accused is the follower of PW.2 belonging to Telugu Desam Party and he had no intention to kill Meenakshi. Such suggestion would not stand to legal scrutiny because P.W.2 specifically stated that they have no disputes with the accused 2½ months prior to the incident. The accused admittedly supported P.W.2 during the cross examination of P.W.1 that there were no misunderstandings between the accused and her father P.W.2 which clinches the issue that there is no suggestion to discard the evidence of P.Ws 1 and 2 treating them as interested witnesses.

22. The clinching evidence of P.W.1 is that on 5.1.2011 between 7.30 PM and 8.00 PM while she was talking with her relatives through telephone coin box, the appellant/accused came with MO.1 and caused cut injury on the right side of her face above the right ear with MO.1, i.e. Injury from right cheek to above right ear. When she raised cries, her mother Meenakshi came out of the house. Again the accused wielded blow with MO.1 to cause injury on her head. When she warded off the blow

with her right hand, she sustained cut injury on her fore arm. When her mother Meenakshi intervened, the accused hacked her with the knife-MO.1 twice. When he tried to hack again on her head with the knife-MO.1, she put her left hand to ward off the blow, then her two fingers - middle finger and little finger were cut. Little finger was completely cut and fell on ground while the middle finger was partly cut and was hanging on hand. P.W.1 clarified that the accused attacked P.W.1 with Matchukatthi saying '*meeku ennisarlu cheppina artham kada, mimmulani champithegani vinaru*'.

23. P.W.2 admittedly is not the direct witness. He came to the spot after receiving the message over phone. He came from main bazaar. P.W.3 is the neighbour who is an independent witness. His evidence is that on 5.1.2011 between 7.30 PM and 8.00 PM he heard sound and came out of his house. By the time, he came out, P.W. 1 was hacked and when the deceased went to the rescue of P.W.1, the accused hacked her twice with MO.1 and again when he tried to hack her, the deceased raised her hand to ward off the blow, then her fingers were cut. The accused on seeing him (P.W.3) and others, ran away. P.W.3 also corroborates P.W.1 that when he (P.W.3) and other neighbours came, on seeing them, the accused ran away.

24. Injuries of P.W.1 were proved by medical evidence. The doctor, PW.5 treated her in CAS, CHC, Kalyandurgam. His evidence is that on 5.1.2011 at about 8.30 PM he examined P.W.1

and found on her three injuries, namely, (1) cut laceration over the right temporal area of scalp to right parietal area of scalp above right ear lobule, 10 x 3 cm, (2) cut laceration over the right wrist, 4 x 2 cm, and (3) laceration over left index finger, 1 x ½ cm. The X-rays of skull, PNS and right fore arm with wrist reveals no fractures. Ex.P.3 is the wound certificate which supports the evidence of P.W.5. The three injuries mentioned in Ex.P.3 are the injuries spoken by P.W.1 that the accused caused cut injury on the right side of her face above the right ear, and another injury from right cheek to above right ear. When the accused wielded below with the knife to cause injury on her head, she raised right hand to ward off the blow and received cut injury on her fore arm. These injuries corroborated and proved by the evidence of P.Ws.1 and 5 coupled with Ex.P.3.

25. The consistent and corroborative evidence of P.W.1 is that the accused hacked Meenakshi with sickle (Matchu katti) M.O.1 twice. When he tried to hack her again on her head with the knife, she put her left hand to ward off the blow and her two fingers, middle finger and little finger, were cut. The little finger was completely cut and fell on the ground. The middle finger was partly cut and was hanging. P.W.3's evidence is that the accused hacked the deceased with knife MO.1 twice and when he again hacked her, she raised her hand to ward off the blow, then the fingers of the deceased were cut

26. P.W.4 is the auto driver who shifted the injured—P.W.1 and deceased to the Government Hospital, Kalyandurgam

on the request of P.W.2. P.W.2 and others accompanied them. P.W.2's evidence is that while he was in the main bazaar on 5.1.2011, one Narendra Kumar telephoned to him and informed that the accused hacked the deceased with machukathi MO.1 and also P.W.1 and they were in serious condition. Immediately, he returned to home and found the deceased in unconscious state. They all took P.W.1 and the deceased in the auto of P.W.4 to the Government Hospital, Kalyandurgam and got them admitted in the hospital. He got them treated in Snehalatha Hospital, Ananthapur and took them to Bangalore Hospital. After five days of the incident, the deceased Meenakshi died.

27. P.W.3 confirms the evidence of P.W.2. He informed P.W.2 that the accused hacked Meenakshi and P.W.1 over phone. P.W.2 further corroborates P.W.1 that himself, P.W.3 and others shifted the deceased to Hospital, Kalyanadurgam. The doctor P.W.5 corroborates P.Ws.1 to 4 that he treated P.W.1 in Government Hospital, Kalyandurgam on 5.1.2011 at about 8.30 PM. By Ex.P.4, P.W.5 certified that P.W.1 was conscious and coherent while her statement was recorded by the Inspector of Police, P.W.8.

28. It is the consistent evidence of P.W.1 who witnessed while the accused hacking her mother Meenakshi that when her mother intervened to the rescue of her, the accused hacked her (Meenakshi) twice on her head. When she tried to ward off the blow of accused with her left hand, her two fingers—middle finger and little finger were cut. The little finger was completely cut and

fell on the ground while the middle finger was partly cut and hanging.

29. The evidence of P.W.9 is that on 5.1.2011 at about 8.30 PM he received hospital intimation from the CHC, Kalyandurg. Then he made GD entry and proceeded to the hospital and reached the hospital at 8.40 PM, went to P.W.1 who was undergoing treatment, recorded her statement vide Ex.P.1 in the presence of duty doctor-P.W.5, read over and explained the contents to her, obtained her LTI on Ex.P.1. At the time of recording the statement, P.W.1 was conscious and coherent. Though P.W.1 able to sign, but due to pain in the right hand on account of injury, she could not put her signature, but put her LTI on Ex.P.1. There is no suspicion with regard to Ex.P.1 complaint as it was endorsed by the duty doctor P.W.5 vide Ex.P.4 that P.W.1 made her statement in conscious state.

30. Further the evidence of P.W.9 is that when he tried to record the statement of Meenakshi, she was found in unconscious due to injuries. After recording the statement of P.W.1 vide Ex.P.1, P.W.9 returned to the police station, registered the case in Crime No. 5 of 2011 for the offences punishable under Sections 326 and 302 IPC and resumed the investigation and issued copies of FIR to all the concerned.

31. Further the evidence of P.W.9 is that on 6.1.2011 he secured the presence of P.W.6 and another, reached Snehalata Hospital, Ananthapur at 6.00 AM and went to P.W.1 who was

undergoing treatment, examined P.W.1 and recorded her statement. He seized P.Ws.4 and 5 wearing apparel - blood stained polyester saree and yellow colour petty coat under Ex.P.6. P.W.6 corroborates P.W.9. P.W.6 deposed that on 6.1.2011 P.W.9 seized bloodstained saree and petticoat M.Os. 4 and 5 of the deceased vide Ex.P.6 Seizure Panchanama. It is also consistent and corroborative evidence of P.Ws.6 and 9 that after completion of seizure of M.Os, at about 11.00 AM they went to the scene of offence and seized M.Os 6 and 7 cut finger and blood stained towel under the cover of mahazar, Ex.P.7. It is the clear evidence of P.Ws.1 and 2 that the little finger of the deceased was completely cut and fell on the ground whereas the middle finger was partly cut and was hanging. That little finger was seized by P.W.9 in the presence of P.W.6 under Ex.P.7 at the scene of offence. Under Ex.P.7, P.W.9 also seized MO.9 blood stained earth and control earth.

32. It is the evidence of P.W.2 that he got treated the injured in Snehalatha Hospital, Ananthapur and also took them to Bangalore Hospital. Five days after the incident, the Meenakshi died. P.W.7 Neuro Surgeon in Sevakshetra Hospital, Bangalore deposed that on 8.1.2011 at 4.00 PM the deceased came to their hospital on referral letter from NIMHANS, Bangalore and on the same day they conducted surgery as she had serious injury on her head. For two days she was treated in ICU and on 10.01.2011 at 2.45 am the deceased died. Ex.X.2 is the case sheet and medical record supports the above facts spoken by P.W.7.

33. It is the evidence of P.W.1 that she gave Ex.P.2 report on 10.01.2011 after the death of her mother Meenakshi. PW.9 corroborates that after receiving Ex.P.2 on 10.01.2011 he altered the section of law to Sections 302 and 307 IPC and issued Ex.P.15 FIR and sent to the Court along with Ex.P.2 and to all the concerned and handed over the investigation to PW.8. It is the evidence of P.W.8 that on 10.01.2011 he took up further investigation and proceeded to Government Hospital, Kalyandurgam and found the dead body of Meenakshi in the mortuary. As it was late in the night, he posted a guard at the dead body and on the next day morning at 7.00 AM he secured presence of mediators P.W.6 and others and also blood relatives and held inquest over the dead body of the deceased from 7.00 AM to 9.30 AM in their presence. P.W.6 corroborates the same facts of inquest over the dead body vide Ex.P.8. During the inquest, he seized blue colour nighty and silver toe rings and one gold nose stud MO.8 and MOs 2 &3 respectively.

34. After the inquest, P.W.8 sent the dead body of the deceased for Post Mortem examination. P.W.5, the doctor conducted Post Mortem examination on the dead body of the deceased. In his evidence, he deposed that on 11.01.2011 on requisition from the CI, Kalyanadurgam, he conducted Post Mortem examination on the dead body of the deceased Meenakshi at CHC, Kalyanadurgam from 11 AM onwards for two hours and found three external injuries, namely (1) Sutured injury

over left side scalp, extended from left frontal temporal parietal and occipital area of scalp, 15 x 1 cm; (2) Sutured injury over the scalp, extended from left ear lobule area to left occipital area, 12 x 1 cm, and (3) Loss of terminal phalanx of middle finger of left hand, loss of two phalanges of 4th finger of the left hand and cut lacerated injury over little finger of the left hand. He also found that the above injuries are ante mortem in nature and Injury Nos. 1 & 2 are sharp cut edged incised injuries. On internal examination, he found (1) Fracture of left frontal bone and left temporo parietal bone, (2) Massive subdural hematoma present with tearing of meninges, and (3) Cut incised injury on the frontal lobe of brain matter. He opined that the deceased would appear to have died due to grievous head injury i.e. injury to vital organ brain and subdural massive hematoma, caused by sharp edged object prior to 28 to 38 hours of post mortem examination. He further deposed that as per the MLC register maintained in the hospital, on 5.1.2011 Meenakshi came to the hospital along with PW.1 and their relatives and he examined her at about 8.10 PM and found that she was unconscious and she had suffered the injuries namely (1) cut laceration over left occipital to frontal area of scalp, (2) cut laceration over frontal area to mid curve of the scalp, and (3) loss of tips of 3rd and 4th left fingers of the hand. He gave first aid to Meenakshi by giving I.V. fluids and antibiotics and by dressing the wound, referred her to CGH, Ananthapur for expert treatment. The said facts are supported by Ex.X.1 copy of MLC of Meenakshi.

35. P.W.5 confronted that the aforesaid injuries are possible with sickle MO.1 During the cross examination, P.W.5 clarified that injuries 1 to 3 found on Meenakshi were not healed. He suggested that the injuries found on Meenakshi were possible if a person falls on sharp edged object from a considerable height and the injuries found on P.W.1 were possible if a person falls on sharp edged object. Thus it is clearly proved that the accused caused injury with sharp edged object like MO.1 on P.W.1 and Meenakshi, which does not throw any doubt about the injuries suffered by them.

36. It is the consistent and corroborative evidence of P.Ws.1 and 3 that when P.W.3 and others came to the spot of incident, the accused fed away. P.W.1 is the direct eye witness to the incident. There are no perverse material aspects to give any doubt. The evidence of P.Ws.1 to 3 is convincing, reliable and trustworthy. The medical evidence of P.W.5 supported by Ex.P.3 Wound Certificate and Ex.P.5 Post Mortem Examination report establishes the injuries over the dead body of the deceased and it is clinchingly proved that the said injuries were caused by the weapon MO.1 There are no mitigating circumstances to doubt the prosecution case. There is cogent, ocular and corroborative evidence to the evidence of P.W.1 coupled with medical evidence of P.W.5 that Meenakshi lost terminal phalanx of middle finger of left hand, lost two phalanges of fourth finger of the left hand and cut lacerated injury over little finger of the left hand. The accused hacked the deceased twice with MO.1 on her head and it is due

to the head injury caused by the accused, as per the medical evidence of P.W.5 proved and supported by Ex.P.3 Wound Certificate and Ex.P.5 Post mortem report, the deceased died. Therefore the prosecution proved the guilt of the accused beyond reasonable doubt.

37. The Trial Court having considered the ocular medical evidence on record coupled with corroborative and consistent evidence, particularly the evidence of P.W. 3 who is an independent and direct witness, who came immediately after hearing the cries of P.W.1, came to the right conclusion. P.Ws.1 and 3 directly witnessed the accused. P.W.1 is the direct witness who had seen the accused while hacking the deceased Meenakshi with MO.1 and identified the same. The evidence of P.Ws.1 to 3 is consistent, corroborative and free from disturbances. The trial Court well considered both oral and documentary evidence on record and came to the right conclusion. There is nothing suggested to prove that Exs.P.9 and 10 are prepared in the police station and MO 1 is planted. The well considered findings and conclusion of the trial Court with regard to the commission of alleged offence by the accused are legal, valid and do not suffer from any legal infirmities.

38. For the foregoing discussion and in the result, the Criminal appeal is dismissed confirming the judgment dated 09.02.2012 in S.C.No.176 of 2011 passed by the learned Judge, Family Court-cum-Additional Sessions Judge, Ananthapur, convicting and sentencing appellant/accused for the offences

punishable under Sections 302, 307 and 326 IPC and sentencing him to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for two months, further sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for two months and also to suffer rigorous imprisonment for ten years and to pay fine of Rs.1000/- in default to suffer simple imprisonment for two months respectively.

39. Miscellaneous petitions pending consideration if any in the Criminal Appeal shall stand closed in consequence.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

Dated 18th December, 2017.
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