

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.762 of 2012

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

1. The sole accused in Sessions Case No. 184 of 2011 on the file of the III Additional District and Sessions Judge (Fast Track Court) at Medak, is the appellant herein. He was tried under Section 302 IPC for causing the death of his brother by name, A.Shankar (hereinafter referred to as "the deceased") on the intervening night of 22/ 23.04.2009 at 0020 hours. Vide judgment dated 3rd October, 2011, the Sessions Judge convicted the accused and sentenced him to suffer "imprisonment for life" and also to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for a period of two months.

2. The facts, as spoken to by the witnesses are as under:

PW1 is the wife of the deceased while PW2 is his neighbour. The accused is the brother of the deceased. On the date of incident, at about 11 P.M., PW1 went to the house of the accused and brought firewood to the house. At about 11 P.M., the accused came to her house and quarreled with her. In the meantime, the locality people came and separated both of them. Thereafter, the accused left the house of PW1. At about 12.30, in the midnight, while the deceased was standing in front of the house along with

his wife and PW1, the accused came there and stabbed the deceased in the stomach and left armpit with a knife. The said incident is said to have been witnessed by PW1.

3. Immediately thereafter, PW1 proceeded to the police station at 11.30 P.M and lodged a report, which is brought on record as Ex.P1. Basing on the said report, PW-8-Sub-Inspector of Police registered a case in Crime No. 97 of 2009 for the offence punishable under Section 302 IPC, and issued the first information report, which was marked as Ex.P7. On receiving the F.I.R. on 23.04.2009, PW7-the Inspector of Police visited the scene of offence and recorded the statements of PWs 2 and 3. He got the scene of offence photographed through PW3 and also prepared a panchanama of the scene in the presence of PW4 and seized M.Os 2 to 5. Exhibit P2 is the panchanama. He, then conducted inquest over the dead body of the deceased in the presence of PW4. Exhibit P3 is the inquest report. Thereafter, he sent the dead body for postmortem examination.

4. PW6-the Civil Assistant Surgeon, Area Hospital, Medak, conducted autopsy over the dead body on 23.04.2009 between 10 am to 11 am. Ex.P5 is the Postmortem Report. According to him, the cause of death was "due to hemorrhaging shock due to stab injury". He further opined that Injury No.4 can cause the death of a person in ordinary course of nature.

5. PW7-Inspector of Police arrested the accused on 23.04.2009, interrogated him in the presence of PW.4 and recorded the

confession statement of the accused. Pursuant to the confession made, the weapon alleged to have been used in the commission of offence was recovered from the house of the accused. After completion of investigation, PW7 filed the charge sheet, which was taken on file as PRC No. 52 of 2009 on the file of the Judicial First Class Magistrate at Medak, who inturn committed the case to Sessions Division under Section 209 Cr.P.C.. On committal which came to be numbered as Sessions Case No. 184 of 2010.

6. On appearance, 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.

7. In support of its case, the prosecution examined PWs. 1 to 8 and got marked Exs.P1 to P7 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.

8. Relying on the evidence of PWs.1 and 2, the Sessions Judge convicted the accused under Section 302 IPC. Challenging the said conviction and sentence, the present appeal came to be filed.

9. The learned counsel for the appellant mainly contended that PWs.1 and 2 could not have witnessed the incident. According to him, PWs.1 and 2, in their evidence, deposed that they used to go to sleep at 9 P.M or 10 P.M and as such, the possibility of PW1 and

PW2 seeing the incident is improbable. He would further submit that though there are number of houses in and around the house of PW1 but no effort was made by the prosecution to examine any of the neighbours as eye witnesses. Insofar as the recovery is concerned, the counsel for the appellant would submit that pursuant to the confession made, the police recovered M.O.1-weapon from the house of the accused and in that process, they should have prepared a separate panchanama, for seizure of the M.O. In the absence of the same, the arrest and recovery becomes doubtful. Coming to the seizure of clothes, he would submit that the clothes seized from the house are different from those sent to F.S.L. Hence, pleads that no reliance can be placed on the said seizure. In view of all the discrepancies, the counsel for the appellant would contend that there is no legal evidence to convict the accused with the crime.

10. On the other hand, the learned Public Prosecutor would contend that even if the recovery of knife and clothes of the deceased are disbelieved, still there lies the evidence of PWs.1 and 2 to convict the accused. According to him, the evidence of PWs.1 and 2 is not only consistent with each other but their version gets corroboration from the medical evidence, which is sufficient to convict the accused.

11. As seen from the record, the entire case rests on the evidence of PW1 and PW2, who were examined as eye witnesses to the incident. PW1 is the wife of the deceased. In her evidence,

she deposed that on the date of the incident at 11 pm, she went to the house of the accused and brought some firewood to her house. Thereafter, the accused came to her house and quarreled with the deceased-husband of PW1. The neighbours intervened and separated both of them. At about 12.30 am, the accused again came to the house of the deceased and while the deceased was outside his house, the accused stabbed the deceased on the abdomen and left armpit. The said injury led to rupture of the upper lobe of the lung, causing instantaneous death. The said incident was witnessed by PW2 as well. A perusal of the evidence of PW2 would show that after having dinner, himself and neighbours came out of the house, and in the meantime, the accused came and stabbed the deceased in the stomach, left of armpit and on the nose with a knife. However, in the cross-examination, he admits that he went to the scene of offence after hearing the sound of the public. This admission of PW2 would throw any amount of doubt as to he witnessing the incident. It clearly indicates that he went to the scene of offence much after the incident. Therefore, his version with regard to the incident proper cannot be accepted.

12. Coming to the evidence of PW1, the learned counsel for the appellant would submit that PW1 is a tutored witness. But, no such suggestion was given to that effect during the cross-examination. As seen from the record, immediately after the incident at 12.30 a.m., PW1 went to the police station and lodged a report by 1.00 a.m. There was absolutely no delay in giving the

report. The F.I.R., which was registered, was also sent to the Magistrate immediately and by 7 A.M. in the morning, the scene of the offence, panchanama and inquest proceedings were completed. Therefore, there was no possibility for fabricating an FIR and lodging a false report at the instance of others. The contents of the first information report clearly disclose existence of prior dispute and also the manner in which the incident took place. The evidence of PW1 gets ample corroboration not only from the FIR but also from the medical evidence. Though PW1 was subjected to cross-examination, nothing useful was elicited to discredit her testimony. On the other hand, the suggestion that was given to PW1 was that she did not see the incident and that the accused was not the person who stabbed the deceased, which was denied. If the evidence of the sole witness is reliable and found to be trustworthy, the same can be made the basis to convict the accused. In the instant case, we feel that the evidence of PW1 is reliable and dependable, to base a conviction.

13. Hence, we see no reason to disbelieve the evidence of PW1, more so, when her evidence gets corroboration from the medical evidence and also from the contents of the first report which was lodged without any delay. Even if the alleged recovery made pursuant to the confession made by the accused is disbelieved on technical aspects, still, there exists the evidence of PW1, which remained un-impeached.

14. Having regard to the above, the conviction of the accused for the offence under Section 302 IPC imposed by the III Additional District and Sessions Judge (Fast Track Court) at Medak in Sessions Case No. 184 of 2011 dated 03.10.2011 warrants no interference.

15. Accordingly, the Criminal Appeal is dismissed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

14.11.2017
DMG

