

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.976 of 2011

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

1) Accused No.1 in S.C.No.373 of 2009 on the file of the Principal Sessions Judge, Karimnagar, is the appellant herein. He along with Accused No.2 was charged for the offences punishable under Section 302 read with 34 IPC. By its judgment dated 07.01.2011, the learned Sessions Judge, convicted accused No.1 for an offence punishable under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.3,000/- for the offence punishable under Section 302 IPC, while acquitted accused No.2 for an offence punishable under Section 302 read with 34 IPC.

2) The gravaman of the charge against the accused is that on 21.04.2017 at about 11.30 p.m. at Dharmaram Village, the accused in further of their common intention are alleged to have caused the death of Indla Arjaiah (hereinafter referred to as "the deceased") by hacking him with an axe.

3) The case of the prosecution as culled out from the evidence adduced by the prosecution is as under:

PWs.1 and 2 are parents and PWs.3 and 4 are the brothers of the deceased. The deceased and accused were cousins. Accused No.1 married one Parvathi about 20 years back and suspecting her fidelity used to harass her. About one month prior to the date of incident, Parvathi along with her children went to her parents' house. Accused No.1 suspected that the deceased developed extra marital affairs with his wife and took her away from his custody. Keeping the same in mind accused No.1 developed

grudge against the deceased. On 21.04.2008 at about 11.30 p.m. both the accused went to the house of the deceased and found the deceased sleeping in front of his house on a cot. Accused No.1 asked accused No.2, to watch the surroundings and passers by. Thereafter, accused No.1 hacked the throat of the deceased with an axe. The mother of the deceased, who was beside the deceased woke up and raised cries. On hearing the cries, the brothers of the deceased came there and on seeing them the accused fled away. On the next day, PW.1-mother of the deceased went to the police and lodged a report. Ex.P1 is the report. Basing on the said report, PW.10-the Sub-Inspector of Police, Manthani Police Station, registered a case in Crime No.27 of 2008 under Section 302 read with 34 IPC and issued Ex.P9-the First Information Report. Later, he handed over the investigation to PW.11. On 22.04.2008, PW11 visited the scene of offence which is at the house of the deceased and found the dead body of the deceased. He conducted a panchanama of the scene of offence in the presence of PW.7 and another and also prepared rough sketch of the scene. Ex.P4 is the rough sketch. He then conducted inquest over the dead body of the deceased in the presence of PW.7 and another. Ex.P3 is the inquest report. During inquest, he examined and recorded the statements of PWs.1 to 4. Thereafter, the dead body was sent for post mortem examination. PW.9, the Assistant Civil Surgeon in Government Civil Hospital, Manthani, conducted autopsy over the dead body. He noticed three ante-mortem injuries namely; chop wound over the neck, fracture of clavicle and chop wound over the neck centrally placed between the chin and hyoid bone. According to the doctor, the cause of death was due to "external hemorrhage due to neck injury". On receipt of credible information, PW.11 arrested the accused on 28.04.2008 and recorded their confessional statements in the presence of PW.8 and another. After collecting all the material, PW.11 filed the charge sheet,

which was taken on file as P.R.C.No.64 of 2008 on the file of the Judicial Magistrate of First Class, Manthani. On appearance, the Court furnished all the documents as per Section 207 Cr.P.C. On committal the same came to be numbered as S.C.No.373 of 2009.

4) Basing on the material available a charge under Section 302 IPC was framed against accused No.1 and under Section 302 read with 34 IPC against accused No.2. The same was read over and explained to them, to which they denied and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P12 and M.Os.1 to 4. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral evidence was adduced on his behalf but Ex.D1 was marked, in support of their defence.

6) Taking into consideration the circumstances relied upon by the prosecution to connect the accused with the crime, the Sessions Judge convicted accused No.1 for the above mentioned charge, but acquitted accused No.2. Challenging the same, the present appeal came to be filed by accused No.1.

7) Though the matter was entrusted to legal aid counsel, there was no representation on his behalf. Heard learned Public Prosecutor for the State of Telangana perused the entire record and also sought the assistance of learned Public Prosecutor for the State of Andhra Pradesh in deciding the appeal.

8) Learned counsel, who assisted the Court would contend that since the incident happened in the mid night and the witnesses were in deep

sleep, they could not have witnessed the incident or identify the accused. According to him, the witnesses must have been in deep slumber when the actual attack took place. Therefore, he submits that there is any amount of doubt whether really Pws.1 and 2 could have witnessed the incident as narrated by them.

9) Learned Public Prosecutor for the State of Telangana strongly opposed the same contending that the very conduct of PWs.1 to 4 is natural and when the incident happened in the varanda of their own house, it is difficult to believe that the PWs.1 to 4 could not have witnessed the incident. He submits that there is no reason to disbelieve the evidence of PWs.1 to 4.

10) PW.1 in her evidence deposed that her son married one Indla Laxmi about 15 years ago and they were blessed with two children. Her elder son Bheemaiah separated from them and is residing in other house, where as her husband, deceased and Sadaiah were residing together. All the brothers of her husband were residing in one place at their respective houses. The house of accused No.2 was said to be at a distance from the house of PW.1. According to her, accused No.1 married one Parvathi about 20 years ago and begotten two sons through her. Thereafter, disputes arose between accused No.1 and Parvathi, as he started suspecting her character. It is said that because of the said disputes, Parvathi left him along with the children and started residing with her parents. Accused No.1 suspected that the deceased was having illicit intimacy with his wife and because of it she left his company. About one and half month after Parvathi left accused No.1, an incident took place, pursuant to which the accused suspected that the deceased has hidden his wife somewhere. Keeping the earlier incidents in mind and on a strong belief that Parvathi left the company of accused No.1 because of her

intimacy with the deceased, accused Nos.1 decided to attack the deceased. On the fateful day, at 11.30 p.m. while PW.1 and others were sleeping under a thatched roof in varanda, and when PW.1 was about to sleep, she heard some sound. On hearing the same, she woke up and saw accused No.1 beating the deceased on his neck. Then PW.1 raised cries stating that his son was killed. Accused No.1 gave two blows with an axe on the neck. At that time, she noticed accused No.2 standing beside accused No.1. On hearing her cries, accused Nos.1 and 2 ran away leaving the chappal of accused No.1 at the scene and PW.3, who is elder son of PW.1, woke up and rushed towards PW.1. He noticed the deceased dead with injuries. Though PW.1 was cross-examined, nothing useful was elicited to discredit the testimony. The main line of cross-examination appears to be that there were no lights in the house at the time of incident and as such PW.1 could not have seen the incident. The said suggestions were denied and on the other hand, it was stated by PW.1 that there were street lights in the village and in front of their house there was a street light and there was also a light under the thatched roof. The second line of suggestion was that the accused was not responsible for the death of the deceased, which was denied. The defence appears to be that one Nalla Ramesh Reddy, lodged a complaint against the deceased and others, as they committed theft of electric wire connected to his well from electric pole and it was he, who attacked the deceased. But the said suggestion was denied and the said suggestion remained as suggestion without any material to substantiate the same. It was further suggested to the witness that the deceased used to bring teakwood from Chattisgarh forest and because of it some disputes arose between the smugglers, who killed the deceased. But all the suggestions were denied and no contra evidence has been placed to show that the deceased was involved in getting teakwood from the forest or that the deceased tried to commit

suicide unable to bare the pressure of cases on him. It was further suggested to PW.1 that on the date of incident, accused No.2 was not present at the scene of offence, as he was doing agricultural operations in the land, which he has taken on least from Lasetti Kistaiah, but the same was also denied.

11) Similarly, PW.2, while corroborating the evidence of PW.1 with regard to motive stated that on the date of incident while himself, his wife, deceased and younger son were sleeping on the cot in a thatched roof, accused Nos.1 and 2 came there and accused No.1 gave a blow on the neck of the deceased with an axe. When PW.1 raised cries, PW.2 woke up and saw accused No.1 and 2 running from the place and accused No.1 was found holding an axe.

12) PW.3 in his evidence deposed that on the date of incident at about 11.30 p.m. he heard cries of his mother and accordingly woke up and rushed towards PW.1. He found two hacked injuries on the neck of the deceased and also saw accused No.1 running away with an axe. He further deposed that accused No.1 left his slipper while fleeing from the scene of offence. PW.3 was also subjected to cross-examination on the same lines as that of PW.1, but nothing useful was elicited to discredit his testimony. As stated earlier, the main line of cross-examination appears to with regard to non-existence of light at the scene of offence, but the same was denied. Similar is the evidence of PW.4 with regard to the incident proper.

13) Coming to the first aspect, namely the motive, the evidence of PWs.1 to 4 coupled with the evidence of PW.5 establish that accused No.1 developed a grudge against the deceased, on suspicion that he was having illicit intimacy with his wife. The record shows that there were quarrels between the accused and the deceased. The evidence of PW.1 shows that

unable to bear the harassment, the wife of accused No.1 left him along with her children to her parents house. Since then accused No.1 was threatening the deceased with dire consequences, on a belief that it was the deceased, who was responsible for his wife leaving his company. One week prior to the date of incident also, accused No.1 threatened the deceased in the presence of PW.3 and one Indla Durgaiah. Therefore, we are of the view that there is un-impeached evidence of PWs.1 to 5, establishing motive for the accused to attack the deceased.

14) Coming to the incident proper, from the evidence available on record, it is clear that the incident occurred in the varanda of the house of PW.1. The evidence of PW.1 would show that at about 11.30 p.m. while she was about to sleep, she heard some sound and on hearing the same, she woke up and saw accused No.1 hacking the deceased with an axe on the neck of the deceased. She also noticed accused No.2 standing by the side of accused No.1. As stated earlier, though she was cross-examined at length, nothing useful was elicited to discredit her testimony. The suggestion given to PW.1 was with regard to non-existence of light and that she could not have seen the incident as it was night. But however, she stated that there were street lights in the village and in front of their house there was a street light apart from a light under the thatched roof.

15) Insofar as the delay in lodging the report, according to PW.1, the incident took place at about 11.30 p.m. and immediately on the next day morning the F.I.R. came to be issued. The distance between the police station and the house is about 11 kms. Since the incident took place in the night and having regard to the location of the village, it cannot also be said that there was any abnormal delay in lodging the report.

16) Learned counsel points out some discrepancies in the evidence of PWs.8 and 11 with regard to the arrest of the accused. PW.11-the

Inspector of Police deposed that he arrested accused no.1 at his field, but PW.8 in whose presence the confession of accused No.1 was recorded, deposed that the arrest of the accused was at the house of accused No.1. PW.8 categorically stated that accused No.1 confessed about killing the deceased and brought the axe used in commission of the offence from his house. The said Axe was seized under Ex.P6-seizure panchanama. Ex.P5 is the disclosure portion in the confession of accused No.1 which was made at 16.05 and Ex.P7 containing the disclosure portion in the confession of accused No.2 made at 16.30. Both the confessions were made at the field of accused No.1, where as the time in Ex.P6-seizure panchanama was shown 17.30 at the house of accused No.1. In the cross-examination of PW.11, it was elicited that the place of confession and place of recovery are at two different places and PW.8, who acted as panch witness for confession was with him all through ie. from 04.05 p.m. to 5.30 p.m. and that he subscribed his signature in the panchanams on one day. Therefore, it cannot be said that there was any discrepancy with regard to arrest of accused.

17) Insofar as the comment with regard to the contents of the first information report, namely, that in the first page of first information report the space between the lines was broader where as in the second page the space between the lines being narrowed down, indicates correction in the first information report, it is to be noted that PW.1 is an illiterate woman and she has stated in her cross-examination that she got the said report written through a scribe. It is true that the space between the lines in the first page when compared to the second page is more, but it is to be seen here that only three or four lines appear to have been written closely. From the beginning of Ex.P1, PW.1 referred to the name of accused No.1, how and why he was having grudge against the deceased

and the series of incidents involving accused No.1 and his wife, she leaving him a month prior to the murder of the deceased and accused No.1 threatening the deceased that one day or other he would kill him. The last lines only reiterate what has already been mentioned in the first page about accused No.1 suspecting the deceased having illicit intimacy with his wife and she was leaving him. There are no interpolations or overwriting, creating some suspicion over the document. Therefore, it cannot be said that Ex.P1 is a fabricated or brought it existence after due deliberations.

18) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/ accused No.1 beyond reasonable doubt and the trial Court was right in convicting the appellant under Section 302 IPC.

19) In the result the appeal fails and it is accordingly dismissed, confirming the conviction and sentence passed in S.C.No.373 of 2009 on the file of the Principal Sessions Judge, Karimnagar. Consequently, miscellaneous petitions, if any, pending shall stand closed

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

31.10.2017
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