

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Criminal Appeal No.148 of 2012

JUDGMENT: *(per Hon'ble Smt. Justice Kongara Vijaya Lakshmi)*

The sole accused in SC No.16 of 2010 on the file of the Special Sessions Judge for SC & ST (POA) Act, 1989, Ranga Reddy District at L.B. Nagar, is the appellant herein. He was tried for the offences punishable under Section 302, 307 of IPC and Section 3(2) (v) of the SC & ST (POA) Act. By its judgment dated 10.12.2010, the Sessions Judge found the accused guilty of the first two charges framed and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- for an offence punishable under Section 302 IPC, in default of payment of fine, to undergo simple imprisonment for six months and also sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.3,000/- for an offence punishable under Section 307 of IPC, in default of payment of fine, to undergo simple imprisonment for three months. Both the sentences were directed to run concurrently. The Sessions Judge found the appellant not guilty of the charge framed under Section 3(2) (v) of SC & ST (POA) Act, 1989.

2. The case of the prosecution in brief is that, one Mallagalla Kistamma (PW.3) lodged a report with the Sub Inspector of Police (PW.9), Shabad PS stating that the accused is the husband of her daughter Narasamma, (hereinafter referred as 'deceased'), that about two days prior to the incident, the accused came to her house and picked up a quarrel with her and her daughter. As the deceased was not having belief, she refused to go along with the accused. Then the accused again demanded her to come along with him stating that she

will lose her character if she stays in the house and threatened her with dire consequences. On 20.06.2008, at about 9.30 p.m., the accused and the deceased went to the village to watch a movie and at that time her husband Laxmaiah (PW.5) was present in the village itself. After some time, PW.3 came to know that the accused stabbed the deceased and also her husband-PW.5 on a road, in front of the office of the Primary Cooperative Society indiscriminately, due to which the deceased died on the spot, and her husband sustained grievous injuries and is struggling for life. When the accused tried to escape from the spot, one Talari Jangaiah (PW.1) chased the accused and when he tried to catch him, the accused also stabbed PW.1 and ran away. She stated that as the deceased refused to go along with the accused, he developed grudge and stabbed her daughter. Basing on the said report, PW.9, the Sub Inspector of Police, Shabad, registered a case in Cr.No.88 of 2008 for the offences under Sections 302 and 307 of IPC and issued FIR Ex.P.10 to all concerned. He examined and recorded the statement of PW.3. Later PW.9 went to the scene of offence, noticed the deceased already lying dead due to the injuries and the father of the deceased i.e., Laxmaiah (PW.5) lying on the ground with injuries. Then, he shifted PW.5 to the Government Hospital, Shadnagar for treatment. PW.1 also came to him, at the scene of offence with injuries and he was sent to the Government Hospital, Shabad for treatment. PW.12 - the Inspector of Police, Chevella, on receipt of a copy of the FIR, proceeded to the place of incident at 6 a.m., secured the presence of PW.6 and one E.Yadaiah, conducted scene of offence *panchanama* under Ex.P.4 and also prepared a rough sketch under Ex.P.5. He also photographed the scene of offence. He then sent the dead body to the Government Hospital for post-mortem. As the deceased belongs to scheduled caste, he altered the

section of law to Section 3(2)(v) of the SC & ST (POA) Act, in addition to Sections 302 and 307 of IPC. After completion of the investigation and after receipt of the post-mortem certificate, he filed a charge sheet against the accused before the Judicial Magistrate of I Class, Chevella, which was taken on file as PRC No.9 of 2009. On appearance of the accused, copies of documents were furnished to him as required under Section 207 Cr.P.C. and then committed the case to the Court of Sessions, as the offences alleged against the accused are triable by court of Sessions.

3. On committal, the Special Sessions Judge for SC & ST (POA) Act, Ranga Reddy District at L.B. Nagar, framed charges against the accused for the offences punishable under Sections 302, 307 of IPC and Section 3(2)(v) of SC & ST (POA) Act, 1989, read over and explained to him, to which he pleaded not guilty and claimed to be tried.

4. To prove its case, the prosecution examined PWs.1 to 15 and got marked Exs.P.1 to P.15 and MOs.1 to 5. After closure of the evidence, the accused was examined under Section 313 Cr.P.C. with regard to the incriminating evidence found against him in the evidence of the prosecution witnesses, for which he denied the same, but did not choose to examine any witnesses on his behalf. However, he got marked Exs.D.1 to D.3.

5. After considering the evidence on record, the Special Sessions Judge, found the accused guilty for the offences punishable under Sections 302 and 307 of IPC and sentenced him as stated supra. Aggrieved by the same, the accused preferred the present appeal.

6. Heard the learned counsel for the appellant and the learned Public Prosecutor for the respondent-State.

7. PW.1 Talari Jangaiah and PW.2 Sharadamma are the residents of Shabad. Both of them turned hostile. PW.3 is the mother of the deceased Narsamma and wife of Laxmaiah-PW.5. Her evidence discloses that three days prior to the death of her daughter, the accused came to her house and asked the deceased to come along with him, for which she refused. Then the accused took her daughter along with him stating that he will take her to a second show at 9 p.m. After some time, some children came and informed that her daughter was killed by the accused and that her husband was in critical condition on the road near the office of the Cooperative Society. She rushed to the scene of offence and found her daughter dead in a pool of blood and PW.5 lying on the ground with bleeding injuries. PW.5 informed to her that the accused stabbed him and the deceased. Immediately, thereafter PW.5 was taken to the hospital.

8. PW.4 is a resident of Shabad village. His evidence discloses that on 20.06.2008 at about 10 p.m., when he was in his house, he came to know that the deceased Narsamma was stabbed to death by the accused and the accused also stabbed PW.5. Then he rushed to the scene of offence, where PW.5 informed to him that the accused stabbed him and his daughter.

9. PW.5 is the father of the deceased. He is also a victim in the hands of the accused and an eye witness to the incident. His evidence discloses that on the date of incident, the accused took the deceased along with him to go to second show movie from his house at 9 p.m. One hour after they left the house, he went into the Shabad village and when

he reached near the Society office, he noticed the accused and deceased on the road. When questioned as to why they stood there, the accused stabbed his daughter with a knife indiscriminately and also stabbed him with the same knife in his stomach and chest and he received seven stab injuries. His evidence further discloses that the deceased fell down on the ground and died on the spot. Then PW.3, who is his wife, came there and he narrated the incident to her. Thereafter, he was shifted to the government hospital for treatment. His evidence further discloses that PW.11, the then Junior Civil Judge, Shadnagar, recorded his statement.

10. PW.6 is also resident of Shabad village and he is a panch witness. His evidence discloses that on 21.06.2008 at about 6 a.m., police prepared scene of offence panchanama under Ex.P.4, rough sketch under Ex.P.5 in his presence. PW.7 is also resident of Shabad village. His evidence discloses that on 16.07.2008 at about 8 a.m. the police Shabad called him and LW.9 to the police station. Accordingly, they went there and found the accused in the police station. In their presence, the police enquired the accused and the accused is said to have confessed about the commission of offence and produced a knife from his hip pocket. MO.1 is the knife produced by the accused which was seized vide Ex.P.9.

11. PW.8 is the Civil Assistant Surgeon, Government Hospital, Shabad. His evidence discloses that on 21.06.2008, he conducted autopsy over the dead body of M.Narsamma. He stated that the cause of death was due to injury to heart causing massive loss of blood leading to hypovolemic shock, resulting in cardiac arrest. Ex.P.9 is the post-mortem certificate.

12. PW.9 is the then Sub Inspector of Police, Shabad. His evidence discloses that on 20.06.2008 at about 11 p.m., PW.3 came to the police station and gave Ex.P.3 written complaint. He registered the case in Cr.No.88 of 2008 for the offences under Section 302 and 307 of IPC and issued Ex.P.10 FIR to all concerned. His evidence further discloses that he examined and recorded the statement of PW.3 and thereafter, he went to the scene of offence, noticed the deceased already died due to injuries and PW.5 lying with injuries. Immediately, he shifted PW.5 to the Government Hospital for treatment. PW.1 came to him at the scene of offence with injuries and he also sent him to the government hospital for treatment. On 21.06.2008, he gave requisition to PW.11 to record the dying declaration of PW.5, as his condition was critical at that time.

13. PW.10 is the Judicial Magistrate of I Class, Pargi. His evidence discloses that he received requisition from police Shabad to record 164 Cr.P.C. statements of PWs.1 and 2 and accordingly, on 05.07.2008, he recorded their statements in the open court. Ex.P.1 is the 164 Cr.P.C. statement of PW.1 and Ex.P.13 is the 164 Cr.P.C. statement of PW.2.

14. The evidence of PW.11, the then Judicial Magistrate of I Class, Shadnagar, discloses that on 21.06.2008, he received requisition from PW.9 and he rushed to the hospital and recorded the dying declaration of PW.5. According to him, PW.5 stated that the accused stabbed him and the deceased with a knife-MO.1.

15. PW.12 is the Inspector of Police, Chevella. According to his evidence, on receipt of the copy of express FIR, he proceeded to the scene of offence on 21.06.2008 at 6 a.m., and he secured the presence of PW.6 and one E.Yadaiah, conducted scene of offence *panchanama* under Ex.P.4 and prepared a rough sketch under Ex.P.5. He also

collected controlled earth and blood stained earth and got photographed the scene of offence. Then, he proceeded to the Government Hospital, conducted inquest over the dead body of the deceased under Ex.P.6. He seized MOs.2 to 5 under a cover of *panchanama* Ex.P.7. He recorded the statements of PWs.1 to 3. On 25.06.2008, he sent a requisition to PW.11 to record the 164 Cr.P.C. statements of PWs.1 and 2. On 16.07.2008 at 6 a.m., the accused was brought before him and on enquiry, when the accused was about to confess the crime, he secured the mediators PW.7 and LW.9 and in their presence, the accused confessed about the commission of offence and produced knife MO.1 from his pocket.

16. PW.13 is the doctor, who treated PW.5 in the hospital. Her evidence discloses that PW.5 sustained seven stab injuries and she conducted a surgery on PW.5 on 21.06.2008. Ex.P.16 is the case sheet of PW.5. She opined that all the injuries are grievous in nature and there is possibility of causing those injuries with MO.1 shown to her.

17. PW.14, the then Sub Divisional Police Officer, Vikarabad, shows that on the requisition of PW.12, he forwarded the blood stained earth and controlled earth, one blouse to the FSL, Hyderabad on 03.07.2008. On 12.01.2009, he received memo from PW.12 for adding sections of SC & ST (POA) Act. The evidence of PW.15 discloses that on 15.03.2009, he took up CD file from PW.14 and verified the investigation done by PWs.12 and 14 and found it on correct lines and then he filed charge sheet against the accused for the offences under Sections 302, 307 of IPC and Section 3(2)(v) of the SC & ST (POA) Act.

18. Learned counsel for the appellant contended that the appellant was falsely implicated in the case and that the trial court convicted the appellant without properly appreciating the evidence on

record. He further submits that the trial court failed to consider the very importance of the hostile evidence, which is in favour of the appellant and which will prove the innocence of the appellant. He further submits that the witnesses of the prosecution are interested witnesses; their testimony cannot be believed and the seizure of MOs.1 to 5 are not in accordance with the procedure and that the mediator's report, scene of observation report were created by police for the purpose of the case and hence, he pleads that the appellant is liable to be acquitted from the charges framed against him.

19. Learned Public Prosecutor would contend that even though PWs.1 and 2 turned hostile, the evidence of PW.3, who is the mother of the deceased, categorically shows the involvement of the accused in the offence. He further submitted that PW.5, who is the father of the deceased, is an eye witness to the incident and also injured in the hands of the accused in the same incident. Even in the statement recorded by PW.11, PW.5 stated that the accused stabbed the deceased, due to which the deceased sustained bleeding injuries and died.

20. As seen from the evidence of the prosecution witnesses, even though PWs.1 and 2 turned hostile, their evidence can be relied upon to the extent that the death of the deceased was an unnatural one. The evidence of PW.3, who is the mother of the deceased and who rushed to the scene of offence immediately after the incident, stated that when she went to the place of incident, found the deceased dead and her husband -PW.5 was lying there with stab injuries. PW.4, who is the resident of the same village, also went to the scene of offence and he also saw the dead body of the deceased. He categorically stated in his

evidence that the father of the deceased informed him that the accused stabbed him and his daughter.

21. PW.5, the father of the deceased, is an injured witness to the incident. Hence his presence at the scene of offence cannot be disbelieved. The evidence of PW.5 gets corroboration from the evidence of PW.11, the Judicial Magistrate of I Class, who recorded the statement of PW.5 on a requisition from PW.9, anticipating the death of PW.5. The evidence of PW.11 –the Junior Civil Judge, Shadnagar, shows that he recorded the statement of PW.5 in the Government Hospital, Shadnagar on 21.06.2008, who stated that the accused, who is his son-in-law, stabbed him with a knife and caused injuries. The evidence of PWs.3 and 4 also discloses that they have seen the accused and deceased going together soon before the incident. Thus, the evidence on record clearly shows that the accused bore grudge against the deceased, as she refused to come to his house and he stabbed her with MO.1 knife. When PW.5 came there, he was also stabbed causing multiple injuries. The evidence of PW.13-the Doctor, who treated PW.5 in the Government Hospital, discloses that PW.5 sustained seven stab injuries, which are grievous in nature and there is possibility of those injuries being caused with MO.1. Thus, the evidence of PW.5 and the medical evidence of PW.13 clinchingly prove that the appellant stabbed the deceased indiscriminately, due to which she died on the spot and PW.5 sustained multiple injuries. Hence there is no reason to disbelieve their evidence, as nothing was suggested to these witnesses to contradict their evidence. Unambiguously, the prosecution has established beyond reasonable doubt that the accused had caused the death of the deceased and injuries to PW.5.

22. In the circumstances and for the reasons stated above, we are of the opinion that the prosecution has proved the guilt of the appellant beyond reasonable doubt for the offences punishable under Sections 302 and 307 of IPC and the trial court has rightly convicted and sentenced the appellant which warrants no interference.

23. We do not find any merit in the appeal and the appeal is, accordingly, dismissed confirming the conviction and sentence imposed by the trial court. Consequently, the miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

C. PRAVEEN KUMAR, J

KONGARA VIJAYALAKSHMI, J

Date: 08.12.2017
BSS



HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON' BLE SMT. KONGARA VIJAYALAKSHMI

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(per Hon'ble Smt. Justice Kongara Vijayalakshmi)



Date: 08.12.2017

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