

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRL.A.No. 991 OF 2011

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

The sole accused in S.C.No.275 of 2006 on the file of VIII Additional District Judge (FTC), Chittoor, is the appellant. He was tried for the offence punishable under Sections 302 and 201 of IPC, for causing the death of one Poomalai by beating him indiscriminately near the garden of one Kaluvapalli Rami Reddy at Karumitla Village, Santhipuram mandal on 21.04.2006 between 12.45 to 01.15 p.m. Vide judgment dated 16.03.2011, the Sessions Judge convicted the accused under Section 302 of IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.500/-, in default to suffer imprisonment for a further period of 3 months. Assailing the same, the present appeal came to be filed.

2. The facts as culled out from the evidence of the prosecution witnesses are as under:

The deceased was the cousin of PW1. The accused and the prosecution witnesses are residents of Karumutla village.

The deceased was married to the sister's daughter of PW1 and both of them were living at Bangalore by doing coolie works. The deceased was coming to their village once in a month for paying the chit subscription amount, which was being run by PW1.

The said amount was paid by 20th of every month. The evidence of PW6 discloses that the deceased came to the village on 20.04.2006. On the next day morning, himself, deceased and PW7 went to the toddy shop of Mangamma at Solichettypalle cross road and consumed toddy. At that point of time, the accused joined with them and consumed toddy. After consuming toddy, PW6 went to Gesikapalle on his cycle to purchase the ration from a ration shop, while PW7 went to Pallabudugur. It is stated that at about 12 noon, while PW6 was returning from Gesikapalle, he noticed the accused and the deceased on the road near the house of one Vonti Krishnappa and were talking about the incident of Ranganatha Swamy procession and then both of them had a quarrel. On seeing the quarrel, PW6 got down from his cycle and followed them to a distance. When they reached near the garden of Ramireddy, PW6 called the deceased to get on to his cycle, for which the deceased denied and asked PW6 to leave the place. After sometime, one Nagaraj PW8 came there and later PW6 and Nagaraj left the place. At about 01.30 or 02.00 p.m., PW6 saw the accused alone coming to the village and when he asked about the deceased, he went away without giving any answer. At about 02.30 p.m. or 03.00 p.m., PW6 came to know through villagers that the deceased was found dead. Thereafter, PWs.1, 3, 6 and other villagers went to the garden of said Rami Reddy and found the body of the deceased. When PWs.1 and 3 enquired PW6, he told them that all of them consumed toddy and PW6 went to

Gesikapalle and while returning he found the deceased and the accused quarreling with each other.

On the next day morning i.e., on 22.04.2006, at about 04.30 a.m., while PW13 was present in the police station, he received a report from PW1. Ex.P1 is the report. Basing on the said report, a case in Crime No.19 of 2006 came to be registered for an offence punishable under Section 302 of IPC. Ex.P7 is the FIR submitted to the Court. PW14 the Inspector of Police took up further investigation. On receipt of information, PW14 along with PW13 visited the scene of offence situated in Eucalyptus garden of one Ramireddy. He found the body of the deceased with minor injuries on his face and the face was pressed towards the earth. He conducted the scene of offence panchanama in the presence of PWs.9 and 10 and also prepared a rough sketch of the scene. Ex.P8 is the rough sketch prepared by him. He then conducted inquest over the body of the deceased from 08.00 am to 11.00 am. Ex.P5 is the inquest report. During inquest, PW14 examined PWs.1 to 5, recorded their statements and also seized MOs.1 to 5, which are the clothes of the deceased. After conducting inquest, PW14 forwarded the body for post mortem examination. PW12 the Assistant Civil Surgeon, Area Hospital, Kuppam, conducted autopsy over the body and issued Ex.P6 the post mortem certificate. According to him, the cause of death was due to Asphyxia and Smothering. He noticed mud present in the neck, lungs, trachea and larynx. On 23.04.2006, PW14 visited the village and found the accused was absconding. On 13.05.2006, he received information

about the accused and accordingly secured PW11 the mediator and proceeded towards Gudipalle railway station where he arrested the accused. Ex.P9 is the relevant portion in mahazarnama with regard to the arrest of the accused. After completing investigation and collecting necessary documents, a charge sheet came to be filed which was taken as PRC No.22 of 2006 on the file of Judicial Magistrate of First Class, Kuppam.

On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal, the VIII Additional District and Sessions Judge (FTC), Chittoor, numbered the case as S.C.No.275 of 2006. On the basis of the material on record, a charge under Section 302 of IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

In support of their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P9 and M.Os.1 to 7.

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 on his behalf in support of his defence, however, he got marked Ex.D1, a portion in the 161 Cr.P.C. statement of PW8.

Out of 14 witnesses examined by the prosecution, PWs.3,4 and 5 did not support the prosecution of the case and they were treated as hostile witnesses.

On the basis of evidence adduced by the prosecution, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed through the legal aid counsel.

3. The learned counsel for the appellant/accused mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution does not form a chain of events to connect the accused with the crime. According to him, there is any amount of doubt as to whether it was accused who caused the death of the deceased, since the evidence of witnesses would show that even PWs.6 to 8 were detained in the police station, due to suspicion against them. In view of the above, he submits that the version of PW6 with regard to the involvement of the accused in the commission of the offence appears to be doubtful. Apart from that, learned counsel for the appellant would also contend that the post mortem report amply throws any amount of suspicion with regard to the manner in which the deceased died. Since the entire case rests on the theory of last seen, he placed reliance on the judgment of the Apex Court in *Bodhraj @ Bodha and others Vs. State of Jammu and Kashmir*¹, in support of his plea.

¹ (2002) 8 SCC 45

4. On the other hand, learned public prosecutor would contend that the circumstances relied upon by the prosecution do form a chain of event, connecting the accused with the crime. He would submit that there are no reasons to disbelieve the evidence of PW6 whose version gets corroborated from the evidence of PWs.7 and 8. Since the cause of death was due to Smothering, learned public prosecutor would contend that the version of the prosecution with regard to the manner in which the deceased was done to death cannot be suspected.

5. The short question that arises for consideration is whether the circumstances relied upon by the prosecution, form a chain of events connecting the accused with the offence?

6. As seen from the evidence, the prosecution pressed in service, the evidence of PWs.6 to 8 to prove that the accused was last seen in the company of the deceased. PW6 in his evidence deposed that on the date of incident, himself, PW8 and the deceased went to the shop of Mangamma and consumed toddy. While they were consuming toddy, the accused joined them and thereafter PWs.6 and 8 left in two different directions, while the accused and the deceased proceeded in another direction. According to him, at about 12.00 noon, while he was returning from Gesikapalle, he noticed the accused and the deceased quarreling with each other. He claims to have asked the deceased as to whether he would accompany him in his cycle, but he refused. Thereafter, at about 02.00 p.m., the accused alone

came to the village and when questioned about the deceased, he did not give any reply. It is to be noted here that basing on the information received about the body of the deceased lying in the garden, PWs.1, 6 and others went to the garden and noticed the dead body lying with injuries. Though PW1 was not an eye witness to the incident, but in the cross examination, it has been elicited that in the FIR given by him, it was mentioned that the said Mangamma told him that the accused and Narayanamurthy (PW6) together went towards Karumutla village. He also admits that he gave a report against the accused on suspicion. He further admits that during the inquest, he stated that he suspected the involvement of the accused in the crime. It is to be noted that the said Mangamma, who is said to have sold toddy to the accused and deceased including PWs.1, 5, 6 and 8 was not examined. From the above, the version of PW6 that he went towards Gesikapalle village and that the accused and deceased proceeded to Karumutla village appears to be incorrect.

7. Apart from that, it is also to be noted here that PW6 in his evidence admits that on the same night i.e., on 21.06.2006, police came to the village and took PWs.6 and 8 to the police station and detained them in the police station for about eight days. It would be useful to extract relevant portion of the admission made by PW6, which reads as under:

“...On the same night, police came to our village and took me and Venkatesh to the police station and we were detained in the

police station for about 8 days. We were detained in the police station suspecting us in this case.”

8. Coming to the evidence of PW7, in his chief evidence, he deposed that on 20.04.2006, the deceased came to the village to participate in the chit. On 21.04.2006, PW7, PW5 and the deceased went to the toddy shop of Mangamma at Solichettypalle. While they were consuming toddy, the accused also came there and consumed toddy. After consuming toddy, PW7 went to Pallabudugur on his personal work. After attending to his work at Pallabudugur, he returned to his village. On the same day at about 05.30 or 06.00 p.m., he came to know about the death of the deceased, but he did not go to the place where the dead body was found. On the next day in the early hours, police came to the village and took PW7, 6 and Nagaraj to the police station and interrogated him, took them to Kuppam, the C.I examined them and obtained signatures from them. In the cross examination, he admits that PW7 along with PW6 were detained in the police station for about 4 to 5 days. If really PWs.6 and 7 were innocent, there was no reason for the police to detain them.

9. From the above, it is clear, till next day evening, PWs.6 and 7 never spoke about witnessing the accused and the deceased quarreling. If the version spoken to now, in the Court, was available, the police would not have detained PWs.6 and 7. It appears that initially there was only a suspicion against accused and later PWs.5 and 6 against whom there was some suspicion,

were made to speak against the accused. Hence no reliance can be placed on the evidence of PWs.5 and 6.

10. Coming to the evidence of PW8, he also admits that he was detained in the police station. In his chief evidence, he stated that on the date of incident at about 12.35 p.m., while he was returning from the school at Peddur village, after writing exam and when he reached near the garden of Ramireddy, he saw the accused, deceased and PW6 proceeding towards their village. He saw the accused and the deceased quarrelling and when the deceased was asked to get into the cycle, the deceased denied and asked PW6 and PW8 to go away.

11. The issue is whether PW8 could have been present at the scene of offence at about 12.35 p.m.?

12. In his cross-examination, PW8 admits that after completing the exam time i.e., about 2 ½ hours from 10.00 or 10.30 a.m., he handed over the answer sheet and left the school. He also admits that he stayed in the school for about ten minutes after the examination. PW8 further admits in his cross examination that it takes nearly half an hour to go to the garden of Ramireddy from the school, if he comes in a normal speed on a cycle. Therefore, a doubt arises as to whether PW8 could have reached the scene of offence by 12.45 p.m. When his examination was for 2 ½ hours commencing from 10 or 10.30 a.m., and the traveling time from the school being half an hour, he could not have been present at the scene by 12.45 p.m., more so when he stayed at the school for

ten minutes after finishing his exam. Having regard to the above and since he was also detained in the police station on suspicion, his evidence cannot be taken in aid to connect the accused with the crime.

13. Insofar as the medical report is concerned, the evidence of the Doctor, who was examined as PW12, was to the effect that on 22.04.2006, he conducted post mortem examination over the body of the deceased and found four external injuries, which are all abrasions. The said abrasions were on the right side cheek, thighs lateral aspect, left wrist and scrotal region. The said injuries by itself are not responsible for the death. In the cross examination, he admits that he noticed mud present in the trachea and larynx. He also states that mud was present in the airway passage of neck. He further admits that injuries 1 to 3 noted under the head 'external injuries' were possible if a person falls in a dried-up channel. He noticed bleeding injuries on the testis. According to him, the congestion of testis might have occurred due to accidental fall and pressure applied due to fall in a narrow channel. It is possible that when an intoxicated person falls in a channel, asphyxia and smothering may occur, as such person due to intoxication may not be able to get up after falling down.

14. Admittedly, the evidence of prosecution witness would show that all of them who were in a drunken condition, were proceeding to the village.

15. Having regard to the above; in the absence of any legal oral evidence connecting the accused and having regard to the nature of injuries on the body of the deceased, more particularly, the presence of mud in trachea and larynx, the version of prosecution with regard to the manner in which the deceased was killed appears to be doubtful.

16. The Apex Court in Bodhraj case (supra), while dealing with the cases arising out of the circumstantial evidence and the theory of last seen, held as under:

“10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.....The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram Vs. State of Punjab (AIR 1954 SC 621 : 1954 Cr.LJ 1645) it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

15. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.”

17. Taking into consideration the ratio laid down by the Apex Court referred to above and having regard to the findings arrived at, we feel that there is any amount of doubt on the prosecution case, and hence the conviction and sentence awarded by the trial Court are liable to be set aside.

18. Accordingly, the appeal is allowed. The conviction and sentence awarded against the appellant/accused by name N.Ananda Reddy, in the judgment dated 16.03.2011, in Sessions Case No.275 of 2006, on the file of the VIII Additional District and Sessions Judge (FTC), Chittoor, for an offence punishable under Section 302 of 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.

19. Miscellaneous petitions, if any, pending shall stand closed.

20.11.2017
vhb



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI