

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE A.V.SESHA SAI

CRIMINAL APPEAL No.342 of 2011

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

1) Assailing the judgment dated 08.09.2010, passed in S.C.No.282 of 2008 on the file of the III Additional District and Sessions Judge (Fast Track Court), Medak, wherein the accused was found guilty for the offences punishable under Sections 302 and 324 IPC, the present Criminal Appeal came to be filed by the accused.

2) The substance of the charge against the accused is that on 06.07.2007 at about 11.15 a.m., the accused is alleged to have caused the death of his wife Fareeda Begum (hereinafter referred to as "the deceased") and also caused injuries to Faima Begum (PW2) by hitting both of them with a pestle. He was found guilty for the offence punishable under Section 302 IPC for causing the death of Farida Begum and was sentenced to suffer imprisonment for Life and to pay a fine of Rs.500/- . He was also convicted for the offence punishable under Section 324 IPC, for causing injuries to PW.2 and was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.500/- . Both the sentences were directed to run concurrently.

3) The evidence adduced by the prosecution unveil the following facts.

4) The deceased was the wife of the accused. PW.1 is the brother of the deceased and PW.2 and also the brother-in-law of the accused. PW.3 is the daughter of the accused and the deceased. After the marriage of the deceased with the accused, both of them started staying in Kalvakunta village, where the accused used to quarrel with the deceased every day, in a drunken condition. Hence, the maternal grand father of PW.3 ie. father of the deceased, constructed two rooms at Venkatapuram Village. One for the family of the deceased and another for the family of PW.2. On 06.07.2007, the accused came to the house at 10.00 a.m. and after having food, the deceased questioned the accused as to why he has not come to the house for two days. She also advised the deceased to attend to some coolie work, as their three daughters are growing up. On that, the accused got angry, picked up a pestle and tried to beat the deceased. The deceased escaped from his clutches and ran out of the house. PW.2, who is the sister of the deceased, intervened to rescue the deceased. The accused is said to have beat her with a pestle on the back side of head, as a result of which she fell down. Thereafter the accused caught hold of the deceased and beat her on head with the pestle. Due to which, the deceased fell down and died on the spot. It is said that the passers by shifted the body near to the house of PW.3. Thereafter, PW.3 informed the same to PW.1 and also to the grand parents and relatives. On receiving the information, PW.1 came to the village and lodged a report-Ex.P1 with PW.7-the Sub-Inspector of Police. Basing on Ex.P1, PW.7 registered a case in Crime No.158

of 2007 under Sections 302 and 324 IPC. Ex.P6 is the First Information Report. After receiving the C.D. file from PW.7, PW.9, the Inspector of Police took up further investigation. He proceeded to the scene of offence, at Venkatapur village, secured the presence of witnesses and examined PWs.2 to 5 and three others. He conducted a panchanama of the scene of offence, which is marked as Ex.P2. While conducting panchanama, he seized M.O.1-pestle. He also conducted inquest under Ex.P4 in the presence of PW.5. Thereafter, the dead body was sent for postmortem examination. PW.8, the Civil Assistant Surgeon in Government Hospital, Sangareddy, conducted autopsy over the dead body between 4.30 p.m. and 6.30 p.m. He noticed one lacerated injury over right parietal region with fracture of parietal bone. Ex.P7 is the Postmortem Certificate. According to the doctor, the cause of death was due to "cardio respiratory arrest due to cerebral hemorrhage". PW.8 also examined PW.2 and issued Ex.P8-Wound Certificate. On 08.07.2017 at about 4.30 p.m., PW.9 arrested the accused near the bus stand of Ramayampet Village and in the presence of PW.6, recorded the confessional statement of the accused, which led to seizure of a T-shirt belonging to the accused. Ex.P6 is the confession panchanama. After completing the investigation, PW.9 filed the charge sheet, which was taken on file as P.R.C.No.99 of 2007 on the file of the Judicial Magistrate of First Class, Medak, which on committal came to be numbered as S.C.No.282 of 2008.

5) On appearance, charges under Sections 302 and 324 IPC were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

6) To substantiate their case, the prosecution examined PWs. 1 to 9 and got marked Exs.P1 to P7 and M.O.1. 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.

7) On appreciation of the entire evidence on record, the Sessions Judge convicted the accused and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal is filed.

8) Ms.Ammaji Nettam, learned counsel for the appellant/ accused would submit that there is any amount of doubt with regard to presence of PW.2 at the scene of offence. According to her, the evidence of PW.2 clearly suggests that the deceased and PW.2 were staying at Narsampally village, where as the incident took place at Venkatapur Village. Since the injury on PW.2 is possible by a fall, the counsel for the appellant would submit that the accused was falsely implicated, by taking advantage of the injury sustained due to the fall. She further submits that the evidence of PW.4, falsifies the time of incident. According to her, PW.4 admitted that he has seen the offence at 10.00 a.m. where

as, as per the prosecution case the incident occurred after 11.00 a.m. In view of the discrepancy, it is urged that no reliance can be placed on the evidence of PW.2. Apart from that it is further urged that since the age of injury is not mentioned in the wound certificate of PW.2, the possibility of PW.2 sustaining injury elsewhere cannot be ruled out. It is further pleaded that PW.9, the investigating officer never referred to the presence of PW.2 at the scene and as such no credence can be given to her evidence.

9) The same is opposed by the learned Public Prosecutor contending that the very answers elicited from the evidence of PW.2, during her cross-examination, amply establish that PW.2 and the deceased were staying at Venkatapur village. According to her, even if the evidence of PW.4 is eschewed from consideration, still the evidence of PW.2, who is an injured eye witness, cannot be brushed aside. Insofar as the nature of offence is concerned, the learned Public Prosecutor would submit that since the deceased was chased and hit with pestle that too on vital part of the body, it cannot be said that there was no intention to kill the deceased.

10) Counsel for the appellant placed reliance on the following judgments to show that if the presence of a witness, though injured, is doubtful, the prosecution case has to be thrown out. There is no dispute with regard to proposition advanced by the learned counsel for the appellant, but the issue is whether PW.2 was present at the scene and also as to why the evidence of PW.3,

the child witness, should be disbelieved. While trying to contend that PW.2, was a chance witness and that her presence at the scene is very much doubtful, learned counsel for the appellant relied upon the judgment of the Apex Court in *Mahavir Singh v. State of Madhya Pradesh*¹. It was a case where PW.9 a chance witness admits that he was a witness in another case against the accused for the deceased. The credibility of such witness came to be challenged on the ground that when the appellant/accused along with other co-accused came to the house of the deceased, armed with deadly weapons and picked up a quarrel with deceased, such a commotion was said to have been heard only by PW.9, where as, the rest of members of the locality never spoke about it. Under those circumstances, the Apex Court held that the evidence of PW.9, who is a chance witness and as well as an interested witness does not inspire confidence in the Court. Hence, rejected the evidence of PW.9.

11) In *State of Rajasthan v. Taran Singh and another*² the Apex Court dealt with a situation where the eye witnesses, who accompanied the deceased carried the victim, who was profusely bleeding. But no blood stains were found on the shirts of the witnesses. Under those circumstances, the Court found that the presence of eye witnesses and they carrying the deceased is doubtful.

¹ (2016) 10 SCC 220

² AIR 2004 SC 1080

12) Attacking the evidence of PW.3 as child witness, learned counsel for the appellant relied upon the judgment of the Apex Court in *Radhey Shyam v. State of Rajasthan*³. In the said case, the Apex Court categorically held that the evidence of child witness must be subjected to close scrutiny to rule out the possibility of tutoring and it can be relied upon if the Court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. It was further held that as a matter of caution, the Court must find adequate corroboration by other evidence on record, in which event the same can be accepted without hesitation.

13) Keeping in view the principles laid down by the Apex Court in the judgments referred to above, I shall now proceed to deal with the case on hand.

14) As seen from the record, PWs.2 to 4 were examined as eye witnesses to the incident. PW.2 was an injured eye witness to the incident and is also the sister of the deceased. As stated earlier, the main ground of attack, was the presence of PW.2 at the scene of offence.

15) In order to appreciate as to whether PW.2 was present at the scene of offence on the date of incident and receiving injuries in the hands of the accused, it would be useful to refer to certain portions of the evidence of PWs.2 to 4. The fact that the deceased and the accused were living at Venkatapur village is not in dispute.

³ (2014) 5 SCC 389

In fact, a suggestion made to PW.1 and the answers elicited from him, amply established that the deceased was staying in Venkatapur village since ten years.

16) Coming to the evidence of PW.2, in her chief examination, she stated that the deceased and herself were staying in Narsampally village in adjacent houses. However, in the cross, a suggestion was put to her stating that she was staying at Kamareddy, which was denied. Thereafter, it has been elicited from her that she along with her husband and children were staying in Venkatapur village since one and 1 ½ year back and that she was staying in a separate portion from the deceased. Taking advantage of the answers given and the date on which the evidence was recorded, namely July, 2010, it is contended that PW.2 started living at Venkatapur after the date of incident. But, the answers that were elicited later namely that herself, PW.3 and the deceased were staying together and rolling beedies when the accused entered in the house and that the accused did not come to the house since two days, shows the inconsistent stand taken by the accused. It appears that PW.2 started living at Venkatapur village since one and 1 ½ year prior to the date of incident. This gets clarified through the answers elicited in the cross examination of PW.3, who is the daughter of the deceased, which is as under:

“The accused did not come to our house since two days before the incident and I do not know where he used to stay. After the marriage, PW.2 stayed in Kamareddy and then she came to Venkatapur. PW.2 shifted to Venkatapur few days before the incident and she used to stay in

separate portion by the side of our portion. The accused came to the house at 10.30 a.m. and immediately he went to bath room and he came back from the bathroom within 10 or 15 minutes. Then started quarrelling, when the accused came to our house myself and my mother was present in the house, later he picked up pestle and started beating the deceased in the house, then she ran away out of the house and I was standing by the side in the mean time PW.2 went in between them then accused also beat on her head, in front of the house at little distance. I was standing in front of the house due to fear.”

17) From the admissions made by PW.3, it is very clear that PW.2 was staying at Kamareddy earlier and some time prior to the date incident, she shifted to Venkatapur village and started staying in separate portion by the side of their house. Apart from that, immediately after the incident, PW.2 was taken to the Government Hospital, Sangareddy, where PW.8 examined her and issued Ex.P8-Wound Certificate. To a suggestion as to whether the said injury is possible by a fall on hard surface, PW.8 stated that it is possible, but that by itself does not mean that the injury sustained by PW.2 was by a fall and not by way of an attack on her by the accused. The evidence of PW.2 gets ample corroboration from the evidence of PW.3, which would be discussed later. Therefore, the argument of the learned counsel for the appellant that there is any amount of doubt with regard to presence of PW.2 at the scene of offence cannot be accepted.

18) It is also to be noted here that though PW.2 in her cross-examination admits that immediately after the attack on her head, she fell down and became unconscious, but the evidence of PW.3

establish the manner in which the incident took place. In fact, PW.3 immediately informed about the incident to PW.1 on telephone, who came to the village and lodged a report, narrating the manner in which the incident took place. Even assuming that PW.2 has not seen the incident, as contended, still the evidence of PW.3 is sufficient to hold that it was the accused alone, who attacked the deceased. In fact, no motive was suggested to PW.3 to speak falsehood against the accused.

19) In the chief examination, PW.3 deposed as under:

“Accused is my father, deceased was my mother. She died about 3 years back. After the marriage of my mother, my parents stayed in Kalvakunta Village, there accused used to quarrel with my mother every day in a drunken condition. Hence my maternal grandfather constructed two rooms at Venkatapur, one for us another for PW.2 and her family. On the date of incident the accused came to our house and picked up a quarrel with deceased. Then my deceased mother advised my father go for coolie work for livelihood; on that he got angry as the deceased asked him to go for coolie work, then he took one pestle and tried to beat the deceased then my deceased mother ran away out of the house and in the mean time my paternal aunt-PW2 came there to rescue my mother then the accused beat PW.2 with pestle on her head then he caught hold the deceased and beat on the head of the deceased also, with pestle. Due to which my mother died on the spot. The passers bye placed the dead body near my house. The accused ran way on seeking the passers.”

20) Learned counsel for the appellant would contend that PW.3 being a child witness, the Court ought not to have relied upon the same. We are afraid, the same cannot be accepted. PW.3 was

aged about 18 years on the date of giving evidence and 15 years on the date of incident. She appeared to be matured enough to speak to the facts of the case. She was able to withstand the test of cross-examination and the way in which answers were given amply established her maturity. As stated above, her evidence discloses the manner in which PW.2 was attacked and thereafter how the deceased was attacked outside the house by the accused. Her evidence shows that the deceased died on the spot, which gets corroboration from the medical evidence as well. Though PW.3 was cross-examined at length nothing useful was elicited to discredit her testimony. Therefore, the argument of the learned counsel for the appellant that the evidence of PW.3 is an outcome of tutoring cannot be accepted.

21) Learned counsel for the appellant further contended that there was no justification for the police to shift the body of the deceased, from one place to another place.

22) The evidence of PW.3 would show that after the incident the passers by shifted the body of the deceased to the house of accused. But the scene of offence panchanama indicate that the body was moved to a short distance ie. from the place where the deceased fell down to the house of the accused. Even assuming that the police have shifted the body of the deceased from the place where the deceased actually fell down after receiving the injury, that circumstance by itself will not throw out the entire case as false and un-reliable, more so, in view of the evidence of

PW.3, who is a natural witness present in the house at the time of incident and whose evidence remained un-impeached, coupled with the evidence of PW.2. At this stage, the learned counsel for the appellant would submit that even accepting the case of the prosecution to be true, the appellant cannot be convicted under Section 302 IPC, as the incident was preceded by heated argument between the deceased and accused. It is true that the incident of attack was preceded by exchange of words between the accused and the deceased. But the evidence discloses that immediately after the incident he picked up a pestle and tried to attack the deceased in the house. The deceased escaped from the attack in the house and came out running on to the street. The accused also came out of the house armed with a pestle, chased her and attacked her on the road. When PW.2 intervened, the accused beat her with pestle on her head. Had the incident happened in the house, when he first attempted to attack, without any further chase, things would have been different. But here is a case where the accused chased the deceased when she came out of the house and gave her a blow on the head with pestle, which led to her instantaneous death. Therefore, it cannot be said that the accused has no intention to kill the deceased.

23) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/ accused beyond reasonable doubt and the trial Court has rightly convicted the appellant and sentenced him as stated supra.

24) In the result the appeal fails and it is accordingly dismissed.
Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE A. V. SESA SAI

17.11.2017
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