

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.927 of 2012

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

1) The sole accused in Sessions Case No.404 of 2011 on the file of the Principal Sessions Judge, Kurnool, is the appellant herein. He was tried for the offence punishable under Section 302 IPC, for causing death of Myla Madana Gopal (hereinafter referred to as "the deceased) by hacking him with an axe. Vide its judgment dated 03.11.2011, the Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month.

2) The facts in issue are as under:

i) Accused is the husband of PW.1 and father of the deceased. PW.3 is the younger brother of the father-in-law of PW.1. PW.5 is the elder brother of the accused, while PWs.4 and 6 are the neighbours. Out of wedlock, PW.1 and accused were blessed with a son and daughter. Her daughter died some time ago due to jaundice. The evidence of PW.1 would show that the accused used to return home every day in drunken state and then abuse and beat her. Some time prior to the date of incident, PW.4 came and invited PW.1, accused and their family to Devara

Jathara. On the next day morning all the family members went to Bhupanapadu village to attend Jathara at the house of her brother. On the next day of their visit, the accused returned home consuming alcohol and beat PW.1. During the said course, the son of PW.1 (deceased) intervened and pushed the accused inside the house. Then the accused threatened the deceased stating that he will see his end when they return to their village. On the next day morning, the accused left Bhupanapadu without informing the inmates. A day thereafter, PW.1 left her brother's home to her house asking the deceased to come after three days. After PW.1 reached home, she noticed the accused continuing with the habit of consuming liquor and beating her. Three days later, the deceased returned to their house. On that night, the accused, in drunken condition, was abusing and beating PW.1, as such she went and slept in their old house situated opposite to the present house. During night time, the deceased woke up PW.1 and enquired as to why she is sleeping in the old house. Then PW.1 reported that since the accused was beating her, she came out of the house and slept in the old house. At about 6.00 a.m. PW.1 woke up and saw the accused going upstairs through the staircase, armed with an axe. Suspecting something, she immediately rushed and noticed the accused removing the blanket from the face of the deceased and hacking him with an axe on the right side of neck, mouth, forehead and below right eye. Immediately, PW.1 raised cries and on hearing the same, the neighbours and relatives gathered there. The accused is alleged to have escaped,

threatening the people, who gathered there with an axe. The deceased died while he was being shifted to the hospital.

ii) PW.2, who is the brother of PW.1, on receipt of information, proceeded to the hospital and from there he took PW.1 to the police station and lodged a report with PW.9-the Inspector of Police. Basing on the said report, a case in Crime No.47 of 2006 came to be registered under Section 302 IPC. Ex.P7 is the First Information Report.

iii) PW.9 along with his staff visited the Government Hospital, Banganapalli, conducted inquest over the dead body in the presence of PW.4 and others. Ex.P4 is the inquest report. During inquest, he examined PWs.1 to 4 and others. Thereafter, the dead body was sent for post mortem examination.

iv) PW.8-the Civil Assistant Surgeon, Community Health Centre, Banaganapalli, conducted autopsy over the dead body of deceased and issued Ex.P6-the postmortem certificate. According to him, the cause of death was "due to head injury using axe in multiple areas followed by shock, hemorrhage, coma with cardio respiratory failure leading to brain death".

v) PW.9-the Inspector of Police went to Gorlagutta village, examined PWs.5 and 6 and recorded their statement. He observed the scene of offence in the presence of PW.7 and another and prepared a rough sketch of the scene of offence. Ex.P8 is the rough sketch. During the said process, he seized M.O.5-Bontha, M.O.6-blood stained earth and M.O.7-controlled earth. The seized

properties were sent to R.F.S.L. Kurnool under the original of Ex.P10-letter of advice, dated 19.04.2006. Further examination is taken over by PW.10-the Inspector of Police. He re-examined PWs.2 to 6 and found their statements similar to what they have stated earlier. The police could not arrest the accused as he was absconding. After completing the investigation, PW.11-the Inspector of Police, who is successor in the office to PW.10, filed the charge sheet showing the accused as absconding. Accordingly a N.B.W. was also issued. The charge sheet was taken on file as P.R.C.No.24 of 2008 on the file of the Judicial Magistrate of First Class, Dhone, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. which came to be numbered as S.C.No.404 of 2011.

3) On appearance, 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.

4) To substantiate their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P12 and MOs.1 to 7. After the closure of prosecution 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 behalf of the accused.

5) Out of eleven witnesses, PWs.5 and 6 did not support the case of the prosecution. After considering the oral and

documentary evidence on record, the trial Court believed the evidence of PW.1 and convicted the accused in the manner referred to above. Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that no reliance can be placed on the evidence of PW.1 since she is an interested witness and she is deposing falsely against the accused. In the absence of any motive for the commission of offence, learned counsel for the appellant would submit that the defence taken by the accused with regard to the cause for the incident appears to be improper.

7) On the other hand, learned Public Prosecutor would submit that the plea taken by the accused, by way of suggestions, remained as suggestions without any substance in support of the said plea. He would further contend that since the evidence of PW.1 gets corroboration from all quarters, there is no necessity to disbelieve her evidence. He would further contend that the evidence of PW.1 alone is sufficient to convict the accused since there is no motive for her to speak against her husband, if he was really innocent of the offence.

8) The question that arises for consideration is whether the accused can be held liable for the offence of murder.

9) The entire case rests on the evidence of PWs.1 to 4. Out of four witnesses examined by the prosecution, PW.1 is an eye witness to the incident while PWs.3 and 4 were examined to speak

to the circumstances which followed after the incident. PW.1 in her evidence deposed that about five years prior to the date of her giving evidence, her brother Chinna Subbarayudu (PW2) came and invited her family for Devara Jathara. On the next day morning, all the family members went to Bupanapadu to attend the Jathara. On the next day of their visit, the accused consumed liquor, abused and beat her. At that time, the deceased, who is her son intervened and put the accused inside the room. Then the accused threatened the deceased to see his end when they return back to their village. On the next day morning, the accused left the house without informing anybody.

10) From the evidence of PW.1, it is clear that the accused threatened her son with dire consequences. Apprehending danger in the hands of the accused, PW.1 asked the deceased to stay in the house of her brother for some more time and she alone returned to join her husband. Right from the time she joined her husband, she was being subjected to torture. Three days thereafter, the deceased came to the village. On the next day morning at about 6.00 a.m. PW.1 noticed the accused armed with an axe going to the terrace where the deceased was sleeping. Suspecting some foul play, she immediately ran towards the terrace and noticed the accused hacking the deceased with an axe. Her cries attracted the attention of neighbours. At that time, the accused fled away by threatening the persons, who gathered there. In the cross-examination of PW.1, the plea that was taken appears to be that the accused was having enemies in the village and

somebody thinking that the person sleeping on the terrace is the accused, went there and killed the deceased. To a suggestion that she is deposing false so as to implicate the accused in the case was denied by her.

11) Insofar as the omission with regard to non-mentioning of beating PW.1 at Bhupanapadu, it is to be noted that it is not the case of PW.1 that her husband beat her Bhupanapadu village. On the other hand, while the accused was abusing her in drunken condition, the deceased pushed the accused into a room and confined him there. Insofar as the other omission with regard to accused beating her through out a day, the same in my view is a minor omission, for the reason that in a general parlance, PW.1 might have stated that the accused was beating her all the time. By this, it does not mean that he was beating her through out the day. The fact of PW.1 not deposing about the accused leaving the place by threatening the witnesses with an axe is also a minor omission which in our view should not go to the root of the matter.

12) It is also to be noted that the plea taken by the accused that some unknown persons might have killed the deceased suspecting to be him as accused, has no legs to stand. Atleast a suggestion should have given with regard to persons with whom the accused had enmity and also the reason for such enmity.

13) It may be true that the accused was drunkard and a vagabond/ Sanyasi, but that by itself would not be entitle him to any benefit. The evidence of PW.1 gets corroboration from PWs.2

to 4. Before dealing with the evidence of PW.2, it would be useful to refer to the evidence of PWs.3 and 4. The evidence of PW.3 discloses that at about 6.00 or 6.30 a.m. on the date of incident while the accused and his wife quarreling in midde (terrace), he came out of the house and saw people gathered there. He also noticed the accused running with an axe, over the midde. He was not treated hostile by the prosecution. He was subjected to lengthy cross-examination, but no useful material would be elicited from him. On the other hand, it discloses that even in the earlier statements, he referred to the accused running away from the scene of offence with an axe in his hand.

14) Similarly, PW.4 in his evidence deposed that on hearing the cries from midde (terrace), he went there and witnessed the accused running away from that place with an axe in his hand. To a suggestion that some unknown culprit killed the deceased and taking advantage of the same, the accused has been falsely implicated, was denied.

15) Coming to the evidence of PW.2, he deposed about the information given to him with regard to the commission of offence and also about the earlier disputes not only in the house of accused but also at Bhupanapadu village. Even if the evidence of PW.4 is to be rejected on the ground that he failed to mention about the accused running over Middelu in his earlier statement, but the evidence of PW.1 gets corroboration from the evidence of PW.3. From the evidence of PW.1 coupled with Ex.P1, which is the first

document brought on record, there is no reason to disbelieve the version of PW.1.

16) Though an argument is sought to be advanced that an adverse inference has to be drawn due to non-seizure of weapon used in the commission of offence, but it is to be seen here that the accused was absconding till filing of the charge sheet. In fact the charge sheet came to be filed showing him as absconding. Therefore, the question of seizing the weapon used in the commission of offence would not arise. Since the evidence of PW.1, who is the wife of the accused, inspires confidence and which gets corroboration not only from Ex.P1 but also from the evidence of PW.3 and the doctor, who noticed six external injuries on the body tallying with the version given by PW.1, we see no grounds to disbelieve the case of the prosecution.

17) 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.

18) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

08.12.2017
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