

**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE N.BALAYOGI**

CRIMINAL APPEAL No.1089 OF 2012

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

Assailing the judgment, dated 23.07.2012, in Sessions Case No.7 of 2012 on the file of the III Additional District and Sessions Judge, Tirupati, wherein the appellant/accused was found guilty for the offence punishable under Section 302 I.P.C., for causing the death of one Challa Jayaprakash by beating him with a stone on his head on the intervening night of 20/21.06.2011 at 12:30 hours at Balinaidukandriga Village, Vadamalapeta Mandal, the present appeal came to be filed under Section 374(2) of the Code of Criminal Procedure, 1973.

2. *Vide* judgment, dated 23.07.2012, the learned Sessions Judge convicted the appellant/accused under Section 235(2) Cr.P.C. and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/- (Rupees one thousand only) and in default of payment of fine, to undergo simple imprisonment for a period of six (6) months for the charge levelled against the appellant.

3. The facts as unveiled from the evidence of witnesses are as under:-

P.W.1 is the father of the deceased while P.W.2 is the mother of the deceased. P.W.3 is the brother of P.W.2. P.Ws.4 to 6 are the neighbours of the accused and the deceased. The accused is also a resident of the same village. He is the son of the elder sister of

P.W.1. It is said that accused, who is unmarried, used to wander without doing any work. The evidence of P.W.1 would show that the accused used to ask the wife of P.W.1 to come along with him for sexual intercourse, for which he reprimanded the accused on more than one occasion but there was no change in his behaviour towards his wife. On 19.06.2011, after attending duty, he returned home at 9:30 P.M. He deposed that his wife informed him that at 5:30 P.M. on 19.06.2011, accused came to his house and asked his wife to come. He also deposed that his wife called her son Jayaprakash (deceased) and his brother-in-law Lokesh, who beat the accused, chastised and warned him. He further deposed that his wife informed him that the accused proclaimed that he would kill him or Jayaprakash and went away. He further deposed that he informed P.W.2 that he would complain to the mother of accused and elders in the village on the next day morning. P.W.1 further deposed that after taking meals, himself and his eldest son - Jayaprakash slept on the terrace of their house on mats and his youngest son and wife slept in the house while his mother and Varadaiah slept in front of the house. At about 12:30 A.M., on hearing a big sound, he woke up and saw the accused with a boulder in his hand sitting near the head of his son Jayaprakash. When he stood up and raised cry, the accused ran away. He deposed that he saw bleeding injury on the head of his son and that his son died. He deposed that on hearing his cries, his wife, his mother, his son Dilli Kumar, Varadaiah, neighbours Nagulamma, Chengalrayulu and others came there. He informed them about the incident stating that it was the accused, who killed the deceased. On the next day morning, at about 7:30 A.M., he proceeded to the police station and lodged a report under Ex.P-1 to

P.W.9 – Sub Inspector of Police.

4. Basing on Ex.P-1, a case in Crime No.26 of 2011 of Vadamalapeta Police Station came to be registered for the offence under Section 302 I.P.C. Ex.P-9 is the First Information Report. On the same day, at about 8 A.M., P.W.10 proceeded to the scene of offence and conducted an inquest over the dead body of the deceased from 9:00 A.M. to 11:30 A.M. in the presence of P.W.7, Chandra Mohan and Narayana Reddy. Ex.P-5 is the inquest report. During inquest, he seized M.Os.4, 5, 7 and 8. He also examined P.Ws.1 and 2 and Challa Dilli Kumar at the time of inquest. Thereafter, he prepared a rough sketch of the scene of offence, which is placed on record as Ex.P-10. After preparing the rough sketch, he examined P.Ws.3, 4, 5 and others. Thereafter, the body was sent for post mortem examination.

5. P.W.8 – The then Associate Professor, Department of Forensic Medicine, S.V.M.C., Tirupati conducted autopsy over the dead body of the deceased and issued Ex.P-8 – the Post Mortem Certificate. According to her, the cause of death of the deceased was due to head injury as a result of blunt force. On 22.06.2011, at 8:00 A.M., near Anjeramma Temple on Vadamalapeta – Puttur Road, P.W.10 arrested the accused. On interrogation, accused is said to have confessed about the commission of offence and offered to show the stone used in the commission of offence. Ex.P-6 is the relevant admissible portion. Pursuant thereto, the accused led P.W.7 and others to the vacant place, which is by the side of the house of P.W.1, and showed the boulder. Ex.P-7 is the seizure panchanama and M.O.6 is the stone seized by P.W.10 at the instance of accused. After completing the investigation, he filed a

charge sheet which was taken on file as P.R.C.No.32 of 2011 on the file of the Additional Judicial Magistrate of First Class, Puttur.

6. On appearance of the accused, copies of the documents came to be furnished, as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the matter was committed to the Court of Sessions, Chittoor Division, Chittoor under Section 209 (a) Cr.P.C. wherein it came to be numbered as Sessions Case No.7 of 2012.

7. Basing on the material available, a charge under Section 302 I.P.C. was framed, read over and explained to the accused in Telugu for which he pleaded not guilty and claimed to be tried.

8. In support of its case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P-1 to P-13. Out of the eleven witnesses examined by the prosecution, P.Ws.4 and 5 did not support the prosecution case and were treated hostile by the prosecution. After completing the prosecution side evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. The accused pleaded denial, however, no oral evidence was adduced in support of his defence except marking Ex.D-1. Basing on the oral evidence of P.Ws.1 and 2 and also the recovery made, the Sessions Judge convicted the accused. Aggrieved by the same, the present appeal came to be filed through the Legal Aid Counsel.

9. Learned counsel for the appellant/accused mainly submits that in view of the discrepancies in the evidence of P.Ws.1 and 2 with regard to the presence and participation of the accused, a

doubt arises as to whether P.W.1 has seen the accused at the scene of offence or as to whether really the accused was responsible for the death of the deceased. He further submits that there are number of circumstances in the evidence of P.W.2 to show that the incident did not happen on 19.06.2011 at about 5:30 P.M. Apart from that, the learned counsel for the appellant further submits that the stone alleged to have been used in the commission of offence was weighing about 20 or 25 kgs. and in the absence of any evidence to show that the accused carried the stone, the recovery of the stone – M.O.6 from a place behind the house of the informant appears to be highly suspicious. Having regard to all these circumstances, the learned counsel would submit that the accused cannot be fixed with the culpability of committing the offence.

10. On the other hand, learned Public Prosecutor would submit that the evidence of P.Ws.1 and 2 amply establish that the accused alone was responsible for the death of the deceased. He also relies upon the incident which took place at 5:30 P.M. on 19.06.2011 to show that there exists a motive for the accused to do away with the life of the deceased.

11. The short question that falls for consideration is:

“Whether it was the accused, who was responsible for the commission of the offence?”

12. In support of its case, the prosecution examined P.Ws.1, 2 and 3. P.W.1, in his evidence in chief, deposed that on 19.06.2011, in the morning, he attended to duty and returned home in the night at 9:30 P.M. At that time, his wife informed him

about the quarrel that took place at 5:30 P.M. wherein the accused came to their house and asked her to satisfy his lust. P.W.2 is said to have called the deceased and his brother-in-law - Lokesh, who beat the accused and chastised him. Thereafter, the accused is said to have proclaimed that he would kill the deceased or P.W.1 and went away. This incident is said to be the immediate motive for the accused to commit the offence.

13. P.W.2, in her evidence, also states that on the date of incident, at about 5:30 P.M., while she was standing in front of her house, the accused made a gesture asking her to come along with him. The deceased and one Lokesh i.e., P.W.3 saw the same, beat the accused and found fault with him. However, P.W.1, in his cross examination, admits that neither his son nor mother and others saw the accused calling P.W.2 on the evening of 19.06.2011. Further, P.W.2, in her cross examination, admits that she cannot say the date on which the accused misbehaved with her prior to the date of actual incident. However, she contends that in the evening of 19.06.2011, while herself, deceased and P.W.3 were in the open place by the side of her house, the accused made gestures.

14. P.W.3 also toes in the same line with the evidence of P.W.2. P.W.6, who is an independent witness, also speaks on the same lines as spoken to by P.Ws.2 and 3. In the cross examination, he admits that he did not state before the police as in Ex.D-1.

15. Having regard to the answers elicited through P.W.2 and P.W.6, a doubt arises as to whether any incident has occurred on the evening of 19.06.2011 at 5:30 P.M. Is it possible to believe

that the accused would have made gestures when the deceased and P.W.3 were with P.W.2 at that time. In any event, even assuming that a galata took place at 5:30 P.M., it cannot be said that the accused is responsible for the death of the deceased for the reason that the gestures of teasing P.W.2 by the accused were happening even prior to the said incident. As held by the Apex Court, motive, however strong, cannot take the place of proof in establishing the guilt.

16. Coming to the incident proper, the entire case now rests on the evidence of P.W.1. P.W.1 is the father of the deceased. According to him, on the date of incident, after having dinner, himself along with the deceased went to terrace and slept. At about 12:30 hours, he heard a big sound and when he woke up, he saw the accused having a stone in his hand and sitting near the head of the deceased. However, in the F.I.R., which is given by him on the next day morning, and also in the cross examination of P.W.1, he states that on hearing the sound, he woke up and saw the accused going down the terrace of the house speedily. This discrepancy in the evidence of P.W.1 was not explained properly by the prosecution. What was the reason for P.W.1 to give two different versions with regard to the presence of the accused on the terrace was not explained.

17. From the above, it creates a doubt as to whether P.W.1 has really seen the accused beating the deceased with stone – M.O.6. It is true that P.Ws.2 and 3 came to the terrace and heard the cries of P.W.1, but their evidence is to the effect that P.W.1 informed them that it was the accused, who beat the deceased and caused the death. When admittedly P.W.1 has not seen the accused

beating the deceased, he giving information to others about the accused killing the deceased remains unacceptable. This version of P.W.1 coupled with the earlier statements would show that he did not state before the police that himself and deceased slept. He did not inform the police that street lights were burning and the light was coming on the terrace. He also did not state before the police that he could identify the accused in the moon light and that there was an injury on the neck and shoulder of the deceased.

18. The relevant portion in the evidence of P.W.10 reads as under:-

“Further cross examination for accused:-

P.W.1 did not state before me that himself and Jayaprakash slept on mats.

P.W.1 did not state before me that there was cool breeze and moon light on that night.

P.W.1 did not state before me that there are street lights burning and that light is coming on to their terrace.

P.W.1 did not state before me that he could identify the accused in moon light.

P.W.1 did not state before me that there was an injury on the neck of his son and swelling on his shoulder.”

19. Coming to the evidence of P.W.3, he is said to have rushed to the terrace of P.W.1 on hearing the cries, but in his earlier statement made before the police, he did not state that the accused hit the deceased with a boulder and killed him. It is to be noted here that P.W.1 claims to have informed P.Ws.2 and 3 about the manner in which the deceased sustained injuries and more particularly to P.W.3, who came to the scene of offence from his

house. Strangely, the said fact of the accused hitting the deceased with a boulder was not mentioned in his earlier statement. The relevant portion in the evidence of P.W.10 reads as under:-

“P.W.3 did not state before me that accused hit Jayaprakash with a boulder on his head and killed him.”

The version of P.W.1 coupled with the evidence of P.Ws.2 and 3 assumes importance with regard to the manner in which the prosecution proceeded further with the investigation.

20. The evidence of P.W.1 shows that he only saw the accused getting down the stairs in a hurried manner. It is not his case that the accused carried the stone weighing 20 to 25 kgs. In the cross examination, P.W.1 admits that when he got up, he noticed M.O.6 on the terrace of the house at a distance from where they slept and it was there even by the time the police came there. The relevant portion reads as under:

“M.O.6 stone was on the terrace of our house at some distance from where we slept, by the time police came there.”

From the admission made by P.W.1, it is clear that the stone was on the terrace of the house by the time the police reached the scene. However, P.W.3, in his evidence, states that when he reached the terrace, he did not notice any boulder on the morning of 20.06.2011. It is nobody's case that the said stone was pushed down from the terrace and that someone has carried it down. Strangely, the police recovered the stone from an open place behind the house of the informant. The evidence of Investigating Officer discloses that after the arrest of the accused, he made a

confession which led to recovery of the stone from a place behind the house of P.W.1. No explanation is forthcoming as to how the said stone, which is the weapon alleged to have been used, came down and how the accused was aware about the existence of the stone at that place. The blood group on M.O.6 could not be determined as that of the deceased. The same is evident from item No.8 of the F.S.L. Report, which is placed on record as Ex.P-13. Apart from all these things, the conduct of the inmates and the neighbours appears to be abnormal. When cries were raised by P.W.1, four persons were sleeping in the down stairs, but none made any effort to chase the accused.

21. Having regard to the circumstances stated above, a doubt arises as to whether it was the accused, who caused the death of the deceased, mainly in view of the inconsistent versions in the evidence of P.W.1, who is the sole witness examined by the prosecution to prove the presence and participation of the accused in the commission of the offence. Hence, we intend to extend the benefit of doubt in favour of the accused and accordingly, the judgment under challenge is set aside.

22. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 23.07.2012, in Sessions Case No.7 of 2012 on the file of the learned III Additional District and Sessions Judge, Tirupati for the offence punishable under Section 302 I.P.C., are 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 or crime. The material objects shall be destroyed after appeal time is over.

23. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

Date: 21.11.2017
AMD



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