

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.382 of 2011

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

Assailing the judgment dated 01.02.2011, passed in S.C.No.387 of 2010 on the file of II Additional District and Sessions Judge, Chittoor at Madanapalle, wherein the sole accused was found guilty, and sentenced to suffer imprisonment for life for an offence punishable under Section 302 of IPC, the present appeal is filed.

2. The gravamen of the charge against accused is that on 03.05.2010 at about 03.00 p.m., the accused is said to have caused death of one Veeramma, near the bushes situated at the southern side of Bhagat Singh Colony.

3. The facts as culled out from the evidence adduced by the prosecution witnesses are as under:

The accused is the son of the deceased Veeramma. At the time of incident, the wife of the accused was not residing with him as she went to her parents' house for delivery. PW1 is the resident of the said Bhagat Singh Colony of Punganur town.

There were some property disputes between the deceased Veeramma and her brothers, in respect of which a civil suit was said to be pending between them, claiming share in their ancestral property situated by the side of RTC Bus Stand, Punganur. When the said suit came up for

trial, the deceased and the accused shifted their residence to Bhagat Singh Colony.

On the date of incident, at about 03.30 p.m., PW4 – an auto driver, parked his auto at a distance of 20 feet from the place of incident and noticed a quarrel between the accused and the deceased. He deposed that the accused was questioning the deceased as to why she was not serving food to him since four days. PW5, who was standing at a bus stop of Bagat Singh Colony, at about 30 feet distance towards the accused, also noticed the said dispute. PW1 is said to have pacified the said dispute that was going on between the accused and his mother. Thereafter, the deceased Veeramma took water in an iron container and proceeded towards thorny bushes situated to the southern side of the bunk of the accused. When the deceased was returning, the accused approached her, pushed her down and then hit her on her face. On seeing the incident, PW4 went near and noticed injuries over the face of the deceased. He is said to have identified the stone used for commission of the offence. On 03.05.2010 at about 05.00 p.m., when PW8 was present at Punganur Police Station, PW1 approached him and lodged a report (Ex.P7). Basing on the said report, a case in Crime No.95 of 2010 of Punganur Police Station came to be registered for an offence punishable under Section 302 of IPC and submitted copies to all concerned. Ex.P8 is the FIR. Later, he proceeded to the scene of offence, which is situated by the side of B.T.Road near Bagat Singh Colony, posted a police constable to guard the scene of offence. Further investigation was taken up by PW10 the CI of police, Punganur.

On receiving express FIRs from PW8, the Inspector of Police reached the scene of offence, but as it was late night, he could not proceed with investigation. Subsequently, on 04.05.2010 at 06.30 a.m., PW10 along with his staff and PW8 visited the scene of offence and resumed his investigation. He conducted inquest over the dead body of the deceased in the presence of PWs.1 to 3, LWs.7 and 8 and got drafted the inquest report. Ex.P5 is the inquest report. Thereafter, he prepared a rough sketch of the scene of offence, which was brought on record as Ex.P10. At the scene of offence, PW10 found a stone with blood stains and also a plastic tin without lid. MO2 is the plastic tin. During the course of inquest, PW10 collected blood from the injuries found on the body of the deceased, blood stained earth (MO4) and control earth (MO5) from the scene of offence. MO3 is the blood stained gauze cloth. He also got photographed the scene of offence and also the dead body of the deceased, through LW9, the photographer. Ex.P12 is the photographs. After completing the inquest proceedings, PW10 sent the body for post mortem examination. PW9, the Civil Assistant Surgeon at Community Health Centre, Punganur, conducted autopsy over the dead body of the deceased and issued Ex.P9 the post mortem certificate. According to him, the cause of death was due to shock and haemorrhage due to injury on vital organs. On 04.05.2010, while PW10 was present in the police station, PW7 produced the accused before him along with the report, wherein the accused is said to have made a confession about the commission of the offence. Immediately, thereafter, he called one Subramanyam Reddy – LW11 and in his presence examined and arrested the accused under the cover of mahazar. He also recorded the statement of PW7 on that day.

After receiving the post mortem and FSL reports, PW10 filed a charge sheet which was taken on file as PRC No.28 of 2010 on the file of Judicial Magistrate of First Class, Punganur. After furnishing all the documents as required under Section 207 Cr.P.C., the case was committed to Court of Session under Section 209 Cr.P.C. On committal to the Court of Sessions Judge, Chittoor Division, the same came to be numbered as S.C.No.387 of 2010.

On appearance, charge under Section 302 was framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P14 and M.Os.1 to 8.

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. However, no oral or documentary evidence was adduced in support of his plea. Out of ten witnesses examined by the prosecution, PWs.1, 2 and 3 did not support the prosecution case and were treated as hostile witnesses. Relying upon the evidence of PWs.4 and 5 and the extra judicial confession made by the accused before PW7, the trial Court convicted the accused under Section 302 of IPC and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed through legal aid counsel.

4. Learned counsel for the appellant mainly submits that the evidence of PWs.4 and 5, which is sought to be relied upon by the prosecution do

not inspire confidence. According to him, even the extra judicial confession said to have made by the accused cannot be accepted, as there was no reason for the accused to go and confess about the commission of offence on the very next day itself. He pleads that the Panchayat Secretary – PW7, before whom the accused is said to have made the confession was at his house situated about 200 meters from Punganur Police Station and that in every case, police are using the services of Mandal Panchayat Officers and creating an extra-judicial confession to show that the accused had made such statements before them. In view of the same, the learned counsel for the appellant submits that there is no legal evidence on record to convict the accused.

5. On the other hand, learned public prosecutor submits that the trial Court on appreciation of evidence on record, more particularly, the evidence of PWs.4 and 5 and also the extra judicial confession made before PW7 convicted the accused, which warrants no interference.

6. As seen from the record, PWs.1 to 3, who were also examined as eye witnesses to the incident, did not support the prosecution case and were treated hostile by the prosecution. But, however, their evidence discloses that on that day there was some dispute between the deceased and the accused with regard to the non serving of the food by the deceased to the accused. The evidence of these three witnesses further discloses that the wife of the accused was not in the house of the accused as on the date of the incident, as she went to her parental home for delivery. Further, PW1 deposed that there are no disputes between the accused and the deceased during her life time and he does not know as to how she died. Insofar as lodging of a report is concerned, PW1 in his

evidence states that the police obtained signatures on some documents and that he was not aware of the contents of the report. At that stage, the witness was treated hostile. Similarly, PW2, who is the wife of PW1 in her evidence deposed that she was not aware about the incident and that she was not present in the village at that time. Hence, she was also declared hostile. But as stated earlier all the three witnesses, who are residents of the same village speak about some disputes between the accused and the deceased with regard to non-supply of food by the deceased, who is the mother of the accused. PW1 in his evidence deposed that the accused filed a civil suit on behalf of the deceased against the brother of the deceased, claiming share for the deceased, in the joint family property. As seen from the evidence of these witnesses, there was no strong motive for the accused to cause death of his mother, except a quarrel for not serving food to the accused. It has also come on record that the accused was fighting a litigation on behalf of the deceased with regard to her share in the joint family property.

7. Coming to the incident proper, the prosecution relied upon the evidence of PWs.4 and 5. PW4 in his evidence deposed that on the date of incident at about 03.30 p.m., he parked his auto at a distance of 20 feet from the place of incident. At that time, he noticed a quarrel going on between the accused and the deceased; later he proceeded back in his auto and stopped his auto to have a cool drink at a distance of about 300 feet from the scene. He deposed that after the dispute, the deceased went to attend nature's call and while she was coming back the accused hit her with a big boulder. When he went nearby, he noticed injuries on the face of the deceased. The stone which was used for hitting the

accused was identified by PW4. MO1 is the stone said to have been used by accused.

8. Insofar as evidence of PW3 is concerned, it is to be seen that his evidence is silent as to the purpose for which the accused and the deceased were quarreling. His evidence also discloses that the incident in question took place when the deceased was returning from the nature's call. His evidence further shows that the incident happened near bunk on the southern side of Bhagat Singh colony.

9. In the chief examination, PW4 deposed that he saw the incident by dragging his auto near a cool drink shop for the purpose of drinking cool drink. But in the cross examination, he admits that he did not state to the police that he stopped his auto for the purpose of cool drink. Therefore, a doubt arises as to whether really PW4 was present at the scene of offence at that point of time. In the cross examination, it was further elicited that the place of incident is a busy locality and the distance between Bagat Singh Colony and Punganur town is about 2 ½ Kms. It is further stated that normally three autos would be present for getting passengers, at the bus stand of Bagat Singh Colony. It is also admitted that every ten minutes a private bus would be stopped at the bus stop of Bagat Singh Colony. The bus fare from the bus stand of Bagat Singh Colony to Punganur was Rs.4/-.

10. From the above, it is clear that the place where the incident is said to have occurred is a busy locality. But, none of the persons present at the scene were examined. At this stage, it is also to be noted that according to PWs.4 and 5, the incident took place on the southern side of the bunk i.e., near a car track. But the charge which has been framed

indicates as if the incident of murder took place in the bushes. The scene of offence panchanama does not anywhere indicate the presence of bushes. On the other hand, it was stated that the body of the deceased was lying on a cart track. Insofar as weapon which is alleged to have been used, though in chief examination, PW4 claimed to have identified MO1 as the weapon used, but however, in the cross examination, he stated that MO1 is not the stone which was used by the accused for hitting the deceased. The relevant portion of his admission reads as under:

“...MO1 is not the stone which was used by the accused for hitting.”

Therefore, a doubt arises with regard to PW4 witnessing the incident.

11. Coming to the evidence of PW5, in his evidence, he deposed that he is also a resident of Bhagat Singh Colony of Punganur town and that he was a mason. He also stated that he knew the deceased and the accused. On the date of incident at about 03.30 p.m., PW5 was waiting at the bus stop of Bagat Singh Colony to go to Punganur town. At that time, he noticed a dispute going on between the accused and his mother Veeramma. The accused also questioned the deceased as to why she was not serving food to him since four days. According to him, the distance between the place where he was standing and the bunk of accused was about 30 feet. Though he says that PW1 intervened in the said dispute, but PW1 did not support the said version. He further deposed that the deceased took water in an iron container and proceeded towards an open space, which was at the southern side of their bunk,

where there were thorny bushes. While the deceased was returning, the accused is alleged to have took a big boulder and hit her on the face.

12. The point that arises for consideration is whether PW5 was present at the scene of offence?

13. In the cross examination, PW5 admits that normally he would attend his work everyday from morning till evening. But however, the witness volunteers that on the date of incident, he did not go to Punganuru town to attend his work. He further admits that he did not make any effort to shift the deceased to the hospital. According to him, five or six persons were present in the bus stop when he was there. He claims to have stayed at the incident for some time and later as he had to attend some urgent work, went to Punganur town. He also admits that Punganur police station is located adjacent to Gokul circle and that he did not give any information about the incident to the police. He claims to have stated about the incident only when the police examined him.

14. From the above evidence of PW5, it is clear that though he knew the accused and the deceased well and though he is the resident of Bhagat Singh Colony, he has not interfered or made any effort to take the deceased to the hospital. His conduct appears to be quite un-natural. When a known person is hit by another known person, definitely there will be some effort from the third person of either to catch hold of the accused or take steps to shift the injured to the hospital. The conduct of PW5 in not interfering may assume some significance if he was alone, but admittedly there were five or six people present and he could have atleast taken their help in trying to rescue the deceased or shift the deceased. He appears to have remained as a silent spectator and

thereafter left to Punganur town, as he had some urgent work. Even after going to Punganur, he did not make any effort to lodge a report, though the police station was located adjacent to the main circle. He never informed anyone about seeing the incident till he was examined by the police. In our view, his conduct appears to be quite unnatural. It is also to be noted here that the evidence of PW4 discloses presence of autos to take passengers from Bhagat Singh colony to Punganur and there would be bus facility every ten minutes. That being the position, the question of PW5 waiting at the bus stop, hearing the quarrel and thereafter seeing the deceased going inside the bushes and waiting till she arrives after attending calls of nature, appears to be quite improbable. If his work was so urgent, which made him not to wait even to inform the family members of the deceased or the residents, he would have immediately taken an auto or the bus available, to go to Punganur.

15. The other circumstance which is relied upon by the prosecution is the extra judicial confession made before PW7. As seen from the record, the incident in question took place on 03.05.2010. On the next day, the accused is alleged to have made an extra judicial confession before PW7, who is the Panchayat Secretary, while he was present in his house at 01.00 p.m. He claims to have confessed about the enmity and also the circumstances which lead to killing of his mother. The evidence of PW7 shows that he reduced the statement of the accused into writing, took the accused to police station and handed over the statement of the accused to the police. In the cross examination of PW7, it has been elicited that Bhagat Singh colony do not come under the jurisdiction of Beemaganipalle village gram panchayat i.e., the gram panchayat to which PW7 claims to be the Secretary. It was also admitted that the office

timings are from 10.00 a.m. to 01.00 p.m. and 02.00 p.m. to 05.00 p.m. That being the position, it is very difficult to believe that the accused would have gone to the house of PW7, who was not the Panchayat Secretary of the place where he resides, at about 01.00 p.m. and confess about the offence. Further, there was no special reason for the accused to go and confess about the offence. It is not the case of the accused that there was any threat to him or that he apprehended any danger to his body if he surrenders before the police. Apart from that it is also to be noted that though PW7 claims to have reduced the said statement into writing, he failed to take signature of the accused. It was further admitted by him that his office is in the premises of MDO Office, Punganur and the police station is situated at a distance of 200 meters from his house. Having regard to the same, when the office timings of PW7 are from 10.00 a.m. to 01.00 p.m. and from 02.00 p.m. to 05.00 p.m., the accused would not have imagined PW7 to be in the house at about 01.00 p.m. All these circumstances throw any amount of doubt with regard to the accused making the extra judicial confession before PW7.

16. Having regard to the circumstances stated above, we are not inclined to place any reliance on the extra-judicial confession. The another circumstance which throws any amount of doubt with regard to the incident proper is the evidence of PW8, the S.I. of Police. According to him, after registering the FIR, he proceeded to the scene of offence, which was situated by the side of B.T. Road near Bagat Singh Colony. In his cross-examination, he admits that he did not examine the persons present near the dead body, did not prepare any rough sketch of the scene and did not seize any incriminating material. But, on the other

hand, the evidence of PW4 shows that within ten minutes after the incident, the police approached the scene of offence, examined the scene and recorded his statement. The evidence of PW10 the investigating officer, runs contrary to the evidence of PW4, with regard to recording of his statement. If really such a statement was there, as spoken to, definitely the prosecution would have placed the same on record. Suppressing of the same throws any amount of doubt with regard to the genesis of the incident.

19. Having regard to the above findings, we are inclined to extend benefit of doubt to the accused and acquit him of the charge levelled against him.

20. Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in S.C.No.387 of 2010 on the file of the II Additional District and Sessions Judge, Chittoor at Madanapalle, for an offence punishable under Section 302 IPC is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

14.11.2017
vhb