

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL APPEAL No.75 of 2013

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

1) The sole accused in Sessions Case No. 64 of 2010 on the file of the VII Additional Sessions Judge, Kakinada, is the appellant herein. He was tried for the offences punishable under Sections 302, 341 and 506 IPC, for wrongfully restraining one Kothem Appa Rao (hereinafter referred to as "the deceased") and caused his death by hacking him with a curved knife and also threaten him with dire consequences. Vide judgment dated 27.11.2012, the learned Sessions Judge, convicted and sentenced the accused as under:

U/ s. 302 IPC	To suffer imprisonment for life and to pay fine of Rs.200/- in default to suffer simple imprisonment for one month
U/ s. 341 IPC	To suffer simple imprisonment for a period of one month
U/ s. 506 IPC	To suffer rigorous imprisonment for a period of three years.

All the sentences were directed to run concurrently.

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

i) Deceased, a resident of Divili village, was working as a Correspondent of Sadhana Public School and also running a chit

fund business. PW.1, who is nephew of the deceased, was assisting him in the chit fund business. PW.5 is the wife of the deceased, while PW.6 is the daughter of the deceased. It is said that the accused fell in love with PW.6 while she was studying 10th class which was not to the liking of the family members of the deceased. The accused paid deaf year and continued to insist PW.6 to marry him. It is said that while PW.6 was studying M.B.B.S in G.S.L.Medical College at Rajanagaram, the accused abducted her on 07.03.2009, pursuant to which the deceased lodged a report against the accused and his family members which came to be registered as Crime No.83 of 2009, for the offence punishable under Section 363 (A) IPC. The accused and his family members were arrested in the said crime. Subsequently, the deceased performed the marriage of PW.6 with one Dasam Lakshmi Narayana Venkata Tirupathi Rao @Karthik. On account of that, the accused is said to have bore grudge and decided to kill the deceased. On 09.08.2009 at about 12.45 or 1.00 p.m., after closing the chit fund business in Divili Village, the deceased was proceeding to his sister-in-law's house at Kirlampudi on his motor cycle. When the deceased reached the outskirts of Rajupalem, the accused came across the deceased on his motor cycle, restrained him and hacked him with a curved knife on the right side of the neck, head, left side cheek, right side of the jaw and on right hand fingers. At that time PW.2, who was coming on his scooter from Rajupalem to Divili, intervened and admonished the accused and made attempts to rescue the deceased, but the accused is said to have threatened

PW.2 with dire consequences, which was informed by PW.2 to PW.1. The incident in question was also said to have been witnessed by PW.3, who tried to stop the accused, but he ran away after threatening him. On receiving the information about the incident, PW.1 rushed to the scene of offence and found the deceased lying on the road with severe cut injuries. He is said to have brought the deceased to the road margin and then took him to the hospital, in the auto of PW.4. The deceased is said to have informed PW.1 about the attack made by the accused and died. Basing on the report given by PW.1, PW.15-the Sub-Inspector of Police, Kirlampudi Police Station, registered a case in Crime No.95 of 2009 and issued Ex.P29-the first information report. On receiving the copy of the first information report, PW.16-the Inspector of Police, took up investigation in this case, visited the scene of offence and prepared a rough sketch of the scene, which is placed on record as Ex.P30. During the scene observation, PW.16 seized Mbs.4, 5, 8 and 9 from the scene under Ex.P20-the observation report. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW.9. Ex.P21 is the inquest report. He then sent the dead body for postmortem examination.

ii) PW14-the Medical Officer, Community Health Centre, Prathipadu, conducted autopsy over the dead body of the deceased and issued Ex.P28-the postmortem certificate. According to him, the cause of death was “due to complication of multiple injuries due to hemorrhagic shock.”

iii) On 22.09.2009, PW.16 filed a requisition before the Additional Judicial Magistrate of First Class, Peddapuram, for conducting test identification parade. Ex.P25 is the requisition. Pursuant to which, PW.13, conducted test identification parade on 03.10.2009, wherein PW.2 identified the accused. Ex.P26 is the identification proceedings. PW.13 also received requisition to record 164 Cr.P.C. statements of PWs.1 and 2, which was recorded.

iv) On 10.08.2009, on receipt of credible information, the Inspector of Police arrested the accused at New Divya Lodge, Rajuvari Street, Peddapuram. On interrogation, the accused is said to have confessed about the commission of offence, which lead to recovery of a knife from the bushes near Rajupalem. His confessional statement was recorded in the presence of PW.10. After completing the examination of all the witnesses and after collecting all the documents, PW.16 filed a charge sheet before the Court of Judicial Magistrate of First Class, Prathipadu, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.64 of 2010.

3) On appearance, charges under Sections 302, 341 and 506 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P33 and MOs.1 to 14. after the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral evidence was adduced on behalf of the accused but Exs.D1 to D10 were marked on his behalf.

5) Placing reliance on the evidence adduced by the prosecution, the Sessions Judge convicted the accused for the offences alleged, in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that the evidence of PWs.2 and 3, who are now examined as eye witnesses to the incident, is pressed into service to speak against the accused were actually not present at the scene. According to him, if really both of them have witnessed the incident, definitely the version of both the witnesses about their presence should have been one and the same. He took us through the evidence of PWs.2 and 3, to show that their version is a complete improvement from what they have stated in their earlier statements. He further submits that when the assailant was known to the deceased and when it was the accused, who attacked, definitely the deceased would have mentioned the name of the accused in the oral dying declaration alleged to have been made by him before PW.1. In the

absence of the same, it is pleaded that a doubt arises about the oral dying declaration made by the deceased before PW.1.

7) On the other hand, learned Public Prosecutor would contend that the presence of PWs.2 and 3 and they witnessing the incident cannot be doubted. Apart from that he would submit that there was no motive for PWs.2 and 3 to speak falsehood against the accused, nor have they any motive to implicate the accused.

8) In view of the rival submissions made, it would be appropriate to refer to the evidence of PWs.1 to 3.

9) Admittedly, PW.1 is not an eye witness to the incident. His evidence is to the effect that at about 12.30 p.m., when he went home for lunch, he was informed by his maternal uncle that he is going to his sister-in-law's house at Kirlampudi. While he was taking lunch, he received a phone call from PW.2, who informed that somebody hacked his uncle at Rajupalem and that he does not know the name of the assailant. PW.2 further informed to PW.1 to come over to the scene of offence immediately. It is said that when PW.1 went to the scene of offence, he noticed the deceased in a pool of blood and when enquired the deceased informed that Pulla Raja, is responsible for the incident. It is further stated by him that while he was making arrangements to shift the deceased to the hospital, he died.

10) In the cross-examination, PW.1 admits that there is no telephone facility to the chit fund business and there is no land line facility in his house. He further admits that he did not inform

the police whether he received a phone call on land line or cell phone. In view of the above, it is commented that the question of PW.2 informing PW.1 on phone about the incident appears to be doubtful. But however, the evidence on record would show that PW.1 went to the scene of offence and noticed the deceased lying with injuries in the middle of the road. With the help of others, he shifted the deceased to road margin and while he was making efforts to shift the deceased to the hospital, he died. However, it has been elicited that PW.3, Shiva Master, who was present there, assisted him in shifting the deceased to the road margin. He admits that he did not tell these facts to the police. He further admits that as the injured was moving this side or that side and as such was able to say that the deceased was alive.

11) Insofar as the motive aspect namely that the accused has a grouse after the marriage of PW.6 with another person, he admits that after the marriage of PW.6, the accused did not come towards PW.6. From the evidence of PW.1, it appears that though the prosecution has projected their case as if the motive for the commission of offence was the marriage of PW.6 with one Karthik, but the admission made by PW.1 indicate that the accused never came towards PW.6 after her marriage. Therefore, the matter, as projected by the prosecution appears to be false.

12) Insofar as the oral dying declaration made by the deceased to PW.1, there appears to be some doubt since none of the witnesses ie. PWs.2 and 3, who were present there even before

PW.1 came to the scene of offence, spoke about the deceased being able to speak. Even PW.1 in his cross-examination admits that he came to know about the deceased being alive only when he noticed that the deceased moving from one side to other side and not because of making an oral dying declaration. These two circumstances throw some doubt as to whether really the deceased had made the oral dying declaration before PW.1.

13) Coming to the evidence of PWs.2 and 3, it is to be seen that PW.2 in his evidence deposed that he got lands at Mukkollu of Kirlampudi Mandal, by the side of Rajupalem. On 09.08.2009 in between 12.45 or 1.00 p.m., while he was returning from his land towards Divili side, on his scooter, noticed two motor bikes on the road. He also noticed two persons scuffling and out of whom one person is the deceased and he does not know the name of other person or his village name. He also noticed hacking injuries on the neck of the deceased. It is said that he raised cries not to hack and stood between the deceased and the person, who was hacking him. Then the accused is said to have stated as under:

“Gogu Narayana Murthy, addu le lekapothe ninnu narikesta”

14) When the person raised his knife to hack him, he moved aside. It is said that though he requested the persons present there to come and help the deceased, none came forward due to fear and thereafter he telephoned to one Prakash, who is an electrician, doing work by the side of chit fund company of the

deceased and conveyed to him about the incident and asked him to inform the same to PW.1.

15) From the evidence in chief of PW.2, it is clear that he telephoned to an electrician, who was doing work by the side of the chit fund company of the deceased and asked him to inform the same to PW.1. But as observed earlier, the evidence of PW.1 is otherwise. The evidence of PW.1 is to the effect that when he came over to home for lunch, he received a call directly from PW.2, who informed him about the incident and asked him to come over to the scene of offence. Apart from that it is also to be noted that though PW.2 in his evidence states that the accused was a stranger and that he was not aware about his name and also the name of his village, strangely the accused is said to have addressed PW.2 by name. In the cross-examination PW.2 admits that himself and the deceased belonged to Kapu caste and are known to each other very well. He further admits that by the time he came to the spot except himself no other person was present on the road. He further admits that he does not know the identity of the assailant by then.

16) A reading of the evidence of PW.2 with that of PW.16- the Investigating Officer would show that he did not state in his earlier statement about his intervention and standing between the deceased and the accused and requesting the accused not to hack the deceased.

17) Further, a perusal of the evidence of PW.2 would show that by the time he went to the scene of offence no one was there except himself. His evidence does not indicate the condition of the deceased, after he was attacked. Even according to him, PW.1 came to the scene of offence after the accused left the place. It is also to be noticed here that when the accused was a stranger to PW.2 and when he does not know who he was, it is difficult to believe as to how the accused could have addressed him by name. As stated earlier, his evidence is silent as to the presence of PW.3 at the scene of offence.

18) The evidence of PW.3, who was working as a Teacher at Kirlampudi village would show that previously he worked as a President of the Teachers Union. Therefore, the fact that he knows the deceased is not in dispute. It is his evidence that on 09.08.2009 while he was returning from Kirlampudi to Divili, he noticed one boy hacking the deceased. He stopped the vehicle and tried to go there, but the person hacking the deceased warned him not to interfere by addressing him as “shiva master”. According to him, by the time he went there, one hand of the deceased was chopped and blood was oozing from his face. When the injured fell down, the accused left the place and proceeded towards Kirlampudi on his motor cycle. He states that he can identify the person, who attacked the deceased on that day. He further admits that by the time PW.1 came, the injured was alive and himself and PW.1 lifted the deceased to the side of the road. When PW.1

enquired, the deceased is said to have replied as “vadera Nannu narikesindhi” and thereafter died.

19) If the evidence of PW.3 is tested with the evidence of PWs.1 and 2, one would notice that in the oral dying declaration said to have been made by the deceased, he named the person, who said to have attacked the deceased, but PW.3, who claims to have been present there along with PW.1 does not refer to the name of the assailant in the oral dying declaration made by the deceased except stating “vadera” meaning thereby “that person” hacked him. Though PW.3 claims to have come there at the time when the incident was taking place, does not speak about the presence of PW.2 at the scene. As per the prosecution case, PWs.2 and 3 came to the scene of offence and witnessed the incident, ie., the actual attack. But one witness does not refer to the presence of other witness at the scene. Further when the accused was a stranger to PW.3, it is difficult to accept that he would have called PW.3 by name. As stated earlier, even PW.2 who claims to be a stranger, called by the accused by referring to his name. All the above circumstances, in our view throw any amount of doubt as whether really PWs.2 and 3 have witnessed the incident.

20) Coming to lodging of the report, though PW.1 in his evidence states that he gave a report to the police vide Ex.P1, but in the cross-examination, he admits that the persons who assisted him in shifting the injured, brought a white paper and pen, in which he is said to have prepared a report. Though the

prosecution examined PW.6 to speak about the incident in question, but as observed earlier her evidence is only hear say. She came to the scene of offence after the incident and at the scene, PW.1 is said to have informed to her about PW.2 witnessing the incident and also about his interference when the accused was hacking the deceased, which fact was not mentioned by PW.2 in his earlier statement recorded under Section 161 Cr.P.C. and the same was elicited through the evidence of the investigating officer. Apart from that, it is to be noted that the information which was given to PW.6 was that by the time of arrival of PW.1, the deceased was in the last stage and when enquired he seems to have stated as under:

“Vadera Pulla Raja killed me”

21) The evidence of PW.6 appears to be a combination of the words used PW.1 and 3 with regard to the oral dying declaration made. All the witnesses say that immediately after making the said statement, which according to us is inconsistent with the version of each of the witnesses, the deceased died. Similar is the version of PW.7, who is the co-brother of the deceased. He was also not an eye witness to the incident and he was informed about the incident by PW.1. Further, all the witnesses were informed by PW.1 about the interference by PW.2 when the attack was going on, but strangely PW.1 himself did not state this, in his earlier statement made before the police.

22) From the above, it is clear that though the motive for the commission of offence was the marriage of PW.6 with another person, but the evidence of PW.1 show that the accused never came towards PW.6 after her marriage with one Karthik, which falsifies the theory of motive put forth by the prosecution.

23) Coming to the information received by PW.1, according to him, he received a telephone call from PW.2 while he was taking lunch, pursuant to which, he proceeded to the scene of offence. In the cross-examination he admits that there was no land line connection to his house and that he did not mention in his earlier statement that he was talked with PW.2 either on cell phone or on land line. Apart from that the version of PW.2 with regard to how the information about the incident was passed on to PW.1 is totally different. According to PW.2, he called an electrician, who was working by the side of chit fund company and inturn asked him to inform PW.1 which is contrary to the version of PW.1. Therefore, a doubt arises as to the version put forth by PW.1 with regard to receiving the information.

24) Coming to the evidence of eye witnesses, as held earlier, the prosecution pressed into service the evidence of PWs.2 and 3. Each witness does not speak about the presence of other witness at the scene of offence, but both of them claimed to have seen the incident. In view of their evidence which we have discussed earlier, a doubt arises as to whether really they have seen the incident, more so when all the other witnesses namely

PWs.6, 7 and others, who came to the scene after the incident were informed about the intervention by PW.2 when the deceased was being attacked by the accused, but the said fact was not spoken to by him before the police. The theory put forth by the accused was that the deceased was running the chit fund business and having number of enemies and that he was defaulter in payment of money, as a result of which the incident in question must have taken place. Of course, there is no positive material to indicate the same, but at the same time it is to be noted that in view of the evidence adduced, we feel that it is a fit case where benefit of doubt is extended to the accused.

25) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in the judgment, dated 27.11.2012 in S.C.No.64 of 2010 on the file of the VII Additional Sessions Judge, Kakinada, is set aside. Consequently, accused shall be set at liberty, forthwith, if he is not required in any other case or crime.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE ABHINAND KUMAR SHAVILI

29.03.2018
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