

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.7 of 2013

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

1) The sole accused in S.C.No.527 of 2011 on the file of the Special Judge for trial of offences under S.Cs., and S.Ts., (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of one A.Venkat Balaram (hereinafter referred to as "the deceased") on 15.02.2011 at 9.15 p.m., in front of Plot No.20, Lepakshi colony, West Maredpally, Secunderabad. Vide its judgment dated 06.11.2012, the learned Sessions Judge, convicted the accused under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of one month.

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

P.W.1 is the sister of the deceased. P.Ws.2,3,4 and 5 are neighbours of the deceased. P.W.4 is the brother of P.W.3. The accused used to reside opposite to the house of P.W.1. On 15.02.2011 at about 9.15 p.m., while P.W.1 was present in the house, she heard

the cries of her younger brother (deceased). Immediately she opened the door, came out and found the deceased drenched in blood. She claims to have noticed the accused sitting on chest of her brother and stabbing him in the abdomen. Her hue and cries attracted the attention of the neighbours, who came there and pulled the accused, who was sitting on the chest. Thereafter P.W.5 also came to the spot and all of them shifted the injured to the Care Hospital at clock tower, where the duty doctor declared the deceased as dead. The motive for the commission of the offence appears to be that whenever ladies come out of the houses, the accused used to make some comment, for which the deceased used to chastise the accused. Because of it, the accused is said to have bore grudge on the deceased. On 15.02.2011, P.W.1 lodged a report before P.W.16 the S.I. of Police, who intturn registered a case in Cr.No.41 of 2011 for the offence punishable under Section 302 IPC. Ex.P-12 is the FIR. After issuance of the FIR, he proceeded to the scene of offence wherein he conducted a panchanama of the scene of offence in the presence of P.W.6. Ex.P-2 is the panchanama. He also secured the presence of P.W.1 and recorded her statement. He then prepared a rough sketch of the scene, which is placed on record as Ex.P-13. P.W.17-the Inspector of Police, who took up investigation in this matter, recorded the statements of P.Ws.2 to 5 on 16.02.2011; on the same day he visited the mortuary at Gandhi hospital and conducted inquest over the dead-body in the presence of P.W.9.

Ex.P-6 is the inquest panchanama. During the inquest he seized blood-stained cloths on the dead-body of the deceased. Later the dead-body was sent for post-mortem examination. P.W.13 the Assistant Professor in Gandhi Medical College conducted autopsy over the deadbody and issued Ex.P-9-the post-mortem certificate. P.W.17 continued with the investigation and accordingly he apprehended the accused on 16.02.2011 at his residence and brought him to the police station. In the presence of P.W.7, he recorded the confessional statement of the accused, pursuant to which M.Os.1 to 4 came to be seized vide Ex.P-4. Under escort, the accused was referred to Gandhi Hospital for treatment in respect of injuries sustained to the middle finger of the left hand and cheek. Thereafter he is said to have arrested the accused and sent him for remand. After completing the investigation, he filed a charge-sheet which was taken on file as P.R.C.No.36 of 2011 on the file of the X Additional Chief Metropolitan Magistrate at Secunderabad, who inturn committed the case to the Court of Sessions under Section 209 Cr.P.C. On committal the same came to be numbered as S.C.No.527 of 2011. Basing on the material available on record, a charge under Section 302 IPC was framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

3) In support of their case, the prosecution examined PWs.1 to 17 and got marked Exs.P-1 to P-13 and M.Os.1 to 8. 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, on behalf of the accused.

4) Taking into consideration the evidence and the circumstances relied upon by the prosecution to connect the accused with the crime, the Sessions Judge convicted the accused for the offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

5) The main ground urged by the learned counsel for the appellant is that the inconsistent versions of P.Ws.1 to 5, who were examined as eyewitnesses to the incident, throws any amount of doubt as to whether they have really seen the incident. He took us through the evidence of all the witnesses to show as to how the version of each witness is at variance with the evidence of other witness. Further, he would contend that if really the version of P.W.1 is to be accepted namely that the accused sat on the stomach of the deceased and caused stab injuries with a knife on the abdomen, the injuries noticed by the Doctor at the time of postmortem will not be the result of such stabbing. Therefore, he pleads that none of them have really seen the incident.

6) The next submission made by the learned counsel for the appellant is that the incident in question is said to have been taken place at 9.15 p.m. and immediately thereafter he was shifted to Care Hospital, Secunderabad. It has come on record that within five or ten minutes one could reach the said Hospital from the scene of incident. The hospital authorities issued a certificate under Ex.P-5 stating that they have examined the deceased at 9.30 p.m., and he was accompanied by P.Ws.2 and 3. At the same time, the said certificate also discloses that one Head Constable accompanied the deceased. Since no report was given by then and no information was given to any police station till mid night, it is strange as to how the Head Constable would have accompanied the deceased to the Care Hospital. Therefore, he contends that the incident must have happened long prior to the time as alleged by the prosecution.

7) The third ground raised by the learned counsel for the appellant is with regard to the arrest of the accused. According to him, P.Ws.15 and 16, claim to have arrested the accused on two different dates, and pursuant to the confession made by the accused, the weapon used in the commission of the said offence was said to have been recovered. According to him, the question of arresting the accused twice would not arise. Therefore, he pleads that the entire case of the prosecution is clouded with suspicion. He would further contend that the abnormal delay of 3 hours in lodging the report, when the police station is at a walkable distance from the scene of

offence, creates a suspicion as to the contents of the report. Apart from that he would further contend that the Doctor in his cross-examination would contend that in normal course the injuries which are found on the body of the deceased will not lead to his death. Taking into consideration such admission, the counsel would contend that since the deceased was already a heart-patient, which fact was not to the knowledge of the accused, the death must have occurred.

8) On the other hand, the learned Public Prosecutor would contend that the delay in filing the report cannot be viewed with suspicion, in the absence of any motive being suggested to the witnesses to falsely implicate the accused. On the other hand, the evidence on record amply prove that there were some differences between the accused and the deceased when he was misbehaving or staring the women on the road. The learned Public Prosecutor would further contend that mentioning of the name of the constable in the certificate-Ex.P-5, cannot go to the root of the matter as he might have come voluntarily to the hospital on receiving the information or possibility of he being in the Hospital at that point of time and informing his name cannot also be ruled out at the time of admission, though such a suggestion was never put to the witness. In other words, the Public Prosecutor would submit that the said fact should not go to the root of the matter, as the report of the Post-Mortem Doctor, giving the time of death fixes the version set out by the prosecution.

9) The point that arises for consideration is "Whether the accused is responsible for the death of the deceased?"

10) The evidence of P.W.13-the Doctor, who conducted post-mortem examination on the dead-body of the deceased and issued Ex.P-9-postmortem certificate shows that the death was "due to multiple stab injuries rupturing the internal organs". The evidence of the Doctor makes it clear that the death of the deceased was homicidal.

11) Coming to the incident proper, the prosecution relied upon the evidence of P.Ws.1 to 5 to show that it was the accused who was responsible for the death of the deceased.

12) P.W.1 in his evidence states that on 15.12.2011 at about 9.15 p.m., while she was in her house, she heard sound of her younger brother (deceased). On opening the doors, she noticed the accused sitting on the body of the deceased and stabbing him in the abdomen region. She raised hue and cry, which attracted the attention of P.Ws.2 and 3, who are alleged to have pulled the accused, who was sitting. Therefore, they took the deceased to the Care Hospital situated at clock tower, where the duty doctor declared him as brought dead. P.W.1 was cross-examined at length and it has been elicited that there are no street lights near the house. The deceased was in the habit of coming late from his work place and by the time P.W.1 reached the spot, the deceased was lying in the pool

of blood and that she did not mention in Ex.P-1 that the accused was sitting on the chest of the deceased and stabbing him. She also did not state in her earlier statement that P.W.5 came to the spot and that both of them shifted the injured to the hospital. The witness admits that she has seen the accused only after coming out, but not other inmates.

13) P.W.2 in his evidence states that on 15.02.2011, between 9.15 and 9.30 p.m., he heard some noise. Immediately, he came out of the house and found accused and the deceased. He felt that the accused was beating the deceased. He also noticed a knife in the hands of the accused and on seeing that, himself and P.W.3 caught hold of the accused, but however the accused tried to get rid of them and fled away. He along with P.W.3 claimed to have shifted the injured to the Hospital. Though P.W.2 was subjected to the cross-examination, nothing useful was elicited to discredit his testimony.

14) P.W.3 in his evidence deposed that on the date of incident at 9.15 p.m., on hearing the cries, he came out of the house and found the accused stabbing the deceased. On seeing the same, he went nearer to them and then himself and P.W.2 tried to catch hold of the accused but the same proved futile and the accused fled away. Thereafter himself and P.W.2 shifted the deceased to the hospital. However, in the cross-examination it has been elicited that he has

never seen the deceased warning the accused over his mis-behaviour with the woman of that locality.

15) P.W.4 in his evidence deposed that on 15.02.2011 at about 8.00 p.m., he came to the house and when he was about to go to the upstairs, heard cries of P.Ws.1 and 2. He came down and found the deceased was in a pool of blood in front of his house and also noticed that the accused holding a knife. According to him, P.Ws.2 and 3 tried to catch hold of the accused, to avoid further stabbing. Then himself and P.W.5 shifted the deceased to the hospital. The version of P.W.5 is on the same lines as that of the version submitted by other witnesses.

16) Learned counsel for the appellant tried to contend that the evidence of these witnesses are mutually inconsistent and there is any amount of doubt as to whether really they have seen.

17) As seen from the evidence there is inconsistency with regard to all the witnesses coming to the scene and seeing the accused armed with a knife; P.Ws.2 and 3 tried to prevent the accused from stabbing and the discrepancy with regard to the person who took the injured to the hospital. By this, it cannot be said that there was no incident at all. The first information report given by P.W.1, which was given immediately after the incident, refers to the attack on the deceased by the accused. Ofcourse, the version spoken to with regard to the accused sitting on the chest of the deceased and

stabbing in the abdomen is not mentioned to in the first information report, but the said report contains all other details. Therefore, the argument that P.Ws.1 to 5 have not seen the incident and that they are made to speak false, cannot be accepted. In fact there was no motive for P.Ws.1 to 5 to speak false against the accused.

18) The second circumstance relied upon by the prosecution is with regard to the certificate issued by the Doctor at the Care Hospital, which states that the injured was accompanied by one Y.L.Narasimha Rao, H.C. 7961 of Marredpally police station. This certificate was said to have been issued at 9.30 p.m. Learned Public Prosecutor would contend that mentioning of the name of Head Constable must be either due to his presence in the Hospital at that time or the Hospital authorities referring to his name to make it a medico legal case, since the area within which the incident occurred is within the limits of Marredpally police station. In other words it is his case that referring to the name of Head Constable does not in any way falsify the prosecution case.

19) The learned counsel for the appellant mainly submits that when no information was given to the police by then, it is strange as how the deceased could be accompanied by a Head Constable. He further submits that the fact that the name of the Head Constable was mentioned in the Ex.P-5 i.e., the certificate issued by the Care

Hospital shows that the incident said to have happened sometime earlier to the time given by the prosecution.

20) The evidence on record shows that the hospital is very near to the scene of offence and it is the version of all eye witnesses that immediately after the incident at 9.15 p.m., they have shifted the injured to Hospital. At the same time, it is also to be noticed that the very same certificate Ex.P5 shows that the deceased was brought to the Hospital by P.W.2 and P.W.3 who are the neighbours, which corroborates with the version given by P.Ws.1, 2, 3 and 5. But it is to be noted here that the fact that the incident happened sometime prior to the time mentioned in the charge-sheet or in the report given due to the reference of the name of Head Constable in Ex.P-5 was not suggested to any of the eyewitnesses. Therefore, the plea which is now sought to be put up that the incident occurred long prior to the time alleged cannot be accepted. On the other hand, as stated earlier, the very same document discloses that the injured was accompanied by P.ws.2 and 3. Therefore, the argument of the learned counsel for the appellant that there is any amount of doubt with regard to the time when incident had happened in view of Ex.P-5, cannot be accepted.

21) The third circumstance relied upon is with regard to arrest of the accused and the recovery made pursuant thereto. P.W.16 in his evidence states that he arrested the accused on 16.02.2011 after

conducting the scene of offence panchanama. The evidence of P.W.17-the Inspector of Police would show that on 16.02.2011 he arrested the accused at his residence, brought him to the police station, and thereafter in the presence of P.W.7 he is said to have recorded the confessional statement of the accused leading to recovery of weapon used in the commission of the offence. Therefore, the discrepancy, if any, in our view would not go to the root of the matter as the evidence of both the witnesses refer to the arrest of the accused on the same day. Further, the evidence on record show that P.W.16 was a member of the raid party, along with P.W.17; who went to the house of the accused. Probably because of that he might have mentioned about the arrest of the accused on the same day. Since the evidence of both the witnesses speak about the arrest of the accused on 16.02.2011, we feel that no prejudice would be caused to the accused by this and the recovery made pursuant to the said confession, cannot be found fault with.

22) The last argument advanced by the learned counsel for the appellant is that the medical evidence is totally inconsistent with the prosecution case. According to him, the evidence of P.W.1 shows as if the accused stabbed on the chest and then on the abdomen. At the same time, it is also to be noted that P.W.1 in his 161 Cr.P.C. statement never stated that the accused stabbed the deceased by sitting on his stomach. At this stage, it would be useful to refer to the nature of the injuries mentioned in Ex.P-9 the post mortem

report issued by P.W.13-the Doctor. As per the post-mortem report, there were eight injuries on the body of the deceased and out of eight only one was on the abdomen. Second injury was on the medial to the right nipple, third injury is below the left nipple, fourth injury was on the outer boarder to the left nipple, the fifth injury was a lacerated injury on left wrist joint, sixth injury was incised wound on left elbow joint, seventh injury was lacerated one on the anterior aspect of the left fore arm and eighth on the right arm. From the above, it is clear that the version of the prosecution witnesses that the accused sat on the chest and stabbed on the abdomen appears to be incorrect. If that be so, definitely there would have been more number of injuries than what was noticed by the Doctor. On the other hand, there was only one injury on the abdomen. Two injuries were on the left and right nipple and other injuries on non-vital parts of the body. The opinion of the Doctor was that the death was due to stab injuries and rupture on the internal organs. But, in order to appreciate the same, it would be appropriate to extract the entire cross-examination of the Doctor, which is as under:-

"It is true that I did not mention which quadrant of liver was ruptured and to what extent. Likewise, I did not mention in place of organs, spleen and also kidney. It is true that in all the injuries mentioned by me in column No.9 described as items from 1 to 8. I did not mention the measurements of depth of the wounds. It is true that the report issued by me is without giving the

measurement of the depth of wounds inflicted on wounds of the victim. It is not true to suggest that in a case where only the subcutaneous fat is only injured the question of damage to the internal organs does not arise. It is not necessary that there should be damage to the ribs in case of injury to the liver. It is not true to suggest that the wound described in item No.1 is capable of causing rupture to the liver. It is true that the root of mesentery starts from the small intestine. It is not true to suggest that the wound described in item No.2 of the injuries cannot produce the contusion of mesentery. It is not true to suggest that the contusion is always caused due to blunt objects in case of external organs and in case of internal organs it could be any object. It is not true to suggest that the injury mentioned in item No.3 on list of injuries is not capable of causing rupture to the spleen and comminution to the left kidney. It is true that the contusion to the left kidney need not be due to stab injury but could be due to some blunt object or with any other reason. It is true that the laceration of lacerated wound describing in item No.5 is not because of sharp object. Likewise the wound described in item No.7 also not due to stab injury. I cannot say a normal healthy person which survive upon the injuries narrated by me in my report were to be inflicted. It might be possible there won't be immediately death in case of healthy person having sustain the same injuries mentioned in Ex.P9. Normally, in cases of this nature, it is quite common that immerge is followed by shock and then death. I did not mention in my report regarding about probabilities of leading to death. It is not true to suggest that my report is

insufficient incorrect since I have not mentioned the nature of the injury to the vital organs and measurements of the depth of wounds."

23) From the cross-examination referred to above, it is clear that the Doctor did not notice or give description of the depth of the wounds of the victim. The lacerated injury described in Item No.5 was not caused with a sharp object, similarly injury No.7 was also not due to stab injury. He further admits that it is not possible that there would be immediate death in case a healthy person sustains the said injuries. He further submits that he did not mention in his report regarding the probabilities of leading to death. It is to be noted here that the material on record would disclose that the deceased had undergone bypass surgery. The evidence of P.W.8, the Doctor who treated him at Care Hospital, shows that the person who accompanied the injured disclosed that the patient underwent "Angio plasty" in the year 2001. Hence, we are of the opinion that the injury caused by the accused, would not have led to the death of the deceased. Having regard to the fact that the deceased has undergone heart surgery, and in view of the evidence of P.W.8 that in normal circumstances it would have led to his death, the nature of offence can be scaled down to one under Section 304-I IPC.

24) Hence, the conviction under Section 302 IPC is set aside and consequently, the appellant is convicted under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to suffer

rigorous imprisonment for a period of ten years. The period of remand undergone by him during investigation, trial and after conviction shall be given set off under Section 428 Cr.P.C. The appellant/accused shall be set at liberty forthwith on completion of ten years rigorous imprisonment, if not required in connection with any other case.

25) Accordingly, the appeal is allowed in part. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Dt:23.02.2018
GM



JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI