

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

AND

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL APPEAL No.708 OF 2012

JUDGMENT: (*Per Hon'ble Sri Justice T.Sunil Chowdary*)

1 This appeal is filed under Section 374 (2) Cr.P.C, questioning the validity and sustainability of the judgment dated 14.06.2011 imposed against the appellant/accused No.1 in S.C.No.459 of 2010 on the file the Court of the VI Additional District & Sessions Judge, Anantapur at Gooty, wherein and whereby the appellant herein was found guilty of the offence punishable under Section 302 IPC, convicted and sentenced to imprisonment for life and also to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for six months.

2 The gravamen of the charge levelled against the appellant are as follows:

3 One G.Anitha (hereinafter referred to as 'the deceased') was daughter of P.Ws.1 and 2. P.Ws.3 to 7 are residents of Chagallu village of Anantapur district. On 10.11.2007 P.Ws.1 and 2 went to agricultural fields to bring ground nut hay and came back to the house at about 11.00 AM. At the time of unloading groundnut hay by P.W.2 from double bullock cart; P.W.1 proceeded to her house to have drinking water. In the mean while, P.W.1 heard cries of her daughter from a room and found the appellant hacking the deceased. When P.W.1

made hue and cry, the appellant pushed her and ran away. P.Ws.1 to 3 followed the appellant in order to catch hold him, but in vain. P.Ws.1 and 2 lodged a complaint with the Station House Officer, Peddapappur Police Station (P.W.13), who in turn registered a case in Cr.No.53 of 2007 for the offence punishable under Section 302 IPC and issued FIR Ex.P.11. Thereafter, the Inspector of Police (P.W.14) conducted investigation.

4 During the course of investigation, P.W.1 submitted a representation to implead accused Nos.2 to 4. Basing on the same, accused Nos.2 to 4 were brought on record. P.W.14 conducted inquest over the dead body of the deceased and sent the same for post-mortem examination. P.W.11 conducted autopsy over the dead body of the deceased and issued Ex.P.8 post mortem certificate. On 25.11.2007, P.W.14 apprehended the appellant-accused No.1 in the presence of P.W.9. In pursuance of the information given by the appellant-accused No.1, P.W.14 seized MOs1 and 2 in the presence of P.W.9 and prepared seizure panchanama-Ex.P.5. After completion of investigation, P.W.14 laid charge sheet against the appellant-accused No.1 for the offence punishable under Section 302 IPC, against A.2 and A.3 under Section 212 IPC and against A.4 under Section 221 IPC.

5 The Judicial Magistrate of I Class, Tadipatri has taken cognizance of the offence under Sections 302, 221 and 212 of

IPC and numbered the charge sheet as PRC No.4 of 2008 and after furnishing the copies of all documents to the accused as contemplated under Section 207 Cr.P.C, committed the case to the District and Sessions Division, Anantapur under Section 209 Cr.P.C as the offence punishable under Section 302 IPC is exclusively triable by the Court of Session. The learned District and Sessions Judge, Anantapur has numbered the case as S.C.No.459 of 2010 and made over the same to the VI Additional District and Sessions Judge, Anantapur at Gooty. The learned VI Additional District and Sessions Judge, on appearance of the accused, framed charge against the appellant-A.1 for the offences punishable under Section 302 of IPC, under Section 212 IPC against A.2 and A.3 and under Section 221 IPC against A.4, read over and explained the same to the accused in Telugu, for which the accused pleaded not guilty and claimed to be tried.

6 During the course of trial, on behalf of the prosecution P.Ws.1 to 14 were examined and Exs.P.1 to P.15 and M.Os.1 to 7 were marked. After completion of the prosecution evidence, the accused were examined under Section 313 Cr.P.C with reference to the incriminating material deposed against them by the prosecution witnesses for which they denied. No oral or documentary evidence was adduced on behalf of the accused.

7 Basing on the oral and documentary evidence available on record, the trial Court found A.2, A.3 and A.4 not guilty of the offences punishable under Section 212 and 221 IPC and acquitted them of the respective offences. However, the trial Court found the appellant-accused No.1 guilty of the offence punishable under Section 302 IPC, convicted and sentenced him as stated supra. Hence the present appeal by the appellant-accused No.1.

8 The learned counsel for the appellant strenuously submitted that the trial Court has not properly considered the testimony of P.Ws.6 to 8. He further submitted that the appellant was falsely implicated in the case as his father supported the opposite group of P.Ws.1 and 2 in the land dispute litigation. He further submitted that the conviction and sentence imposed by the trial Court on the accused is not sustainable either on facts or in law.

9 *Pe contra*, the learned Public Prosecutor submitted that the testimony of P.Ws.1 to 7 is corroborative with each other on all aspects. He further submitted that the prosecution established the guilt of the appellant for the offence under Section 302 IPC beyond all reasonable doubt. He further submitted that there are no grounds much less valid grounds to interfere with the conviction and sentence imposed against the appellant by the trial Court.

10 Now the points for consideration in this appeal are,

1. Whether the prosecution has proved the guilt of the accused for the offence punishable under Section 302 IPC beyond all reasonable doubt?
2. Whether the conviction and sentence imposed against the accused is not sustainable either on facts or in law?

11 Both the points are intertwined with each other and hence we are inclined to answer both these points simultaneously in order to avoid recapitulation of facts and evidence.

12 As seen from the testimony of P.W.1, on 10.11.2007, herself and her husband-P.W.2 submitted a complaint-Ex.P.1 to the Sub-Inspector of Police, Muchukonda Police Station. The testimony of P.W.13 reveals that on 10.11.2007, P.Ws.1 and 2 came to the Police Station and submitted Ex.P.1-complaint. Basing on Ex.P.1-complaint, he registered a case in Crime No.53 of 2007 under Section 302 of IPC and issued Ex.P11-F.I.R. P.W.2 also deposed in the same lines of P.W.1. In the cross-examination of these three witnesses, nothing was elicited to disbelieve their testimony. By examining P.Ws.1 to 3 and marking Exs.P.1 and P.11, the prosecution clearly established that P.Ws.1 and 2 set the criminal law into motion. A perusal of the record also reveals that there was no delay in lodging the complaint.

13 In order to prove the guilt of the accused, the prosecution has to establish the scene of offence. As per the testimony of P.Ws.1 to 7, the incident took place at the house

of P.Ws.1 and 2. As per the testimony of P.W.14, he prepared rough sketch Ex.P.12 in the presence of mediators at the house of P.Ws.1 and 2. The testimony of P.W.14 shows that he seized M.Os.2 to 7 at the scene of offence. In the cross-examination of P.Ws.1 to 7 and 14, nothing is elicited to disbelieve their testimony so far as the scene of offence is concerned. By examining P.Ws.1 to 7 and P.W.14 and marking Ex.P.12 and M.Os.2 to 7, the prosecution clearly established that the incident has taken place in the house bearing door No.1-11/1 of Chagallu Village. It is not in dispute that the said house belongs to P.Ws.1 and 2.

14 The next question that falls for consideration is whether the death of the deceased is a homicide or not. As per the testimony of P.Ws.1 to 7, the deceased died due to injuries. As per the testimony of P.W.8, on 10.11.2007, P.W.14 conducted inquest over the dead body of the deceased and prepared inquest panchanama-Ex.P.3. His testimony further reveals that the panchayatdars opined that the deceased died of injuries.

15 The testimony of P.W.11-the Doctor reveals that on 10.11.2007 he conducted autopsy over the dead body of the deceased and issued post-mortem certificate-Ex.P.8. The oral testimony of P.W.11 coupled with Ex.P.8 clearly reveals that the deceased received 20 injuries on various parts of her body. P.W.11 opined that the deceased died due to shock and

haemorrhage due to multiple injuries. Except putting formal suggestions, nothing is elicited in the cross-examination of P.W.11. The material placed before the Court clinchingly establishes that the deceased died of injuries. The death of the deceased is homicide.

16 The next question that falls for consideration is '*whether the appellant has intentionally killed the deceased?*'

17 As per the prosecution version, the deceased refused to love the appellant, which is the motive for the incident. The deceased and the appellant belong to same village and known to each other. At the time of the unfortunate incident, the deceased was studying Intermediate in R.V.Raman College at Anantapur while staying in the hostel. As seen from the testimony of P.Ws.1 to 3, when the deceased came to the Village on the eve of Dasarah festival, the appellant made an attempt to outrage her modesty. The deceased in turn beat the appellant with a chappal. Feeling insulted, the appellant bore grudge against the deceased and waiting for an opportunity to wreak vengeance. The testimony of P.Ws.5 to 7 also supports the said incident. During Deepavali holidays, the deceased came to the village on 08.11.2007. On 10.11.2007 P.Ws.1 and 2 went to agricultural fields to bring ground nut hay. As seen from the testimony of P.Ws.1 and 2, they came back to the house at about 11.00 AM. When P.W.2 was unloading the hay, P.W.1, while proceeding to the house

to have drinking water, heard cries of her daughter from a room and found the appellant hacking the deceased. On seeing the unforeseen and unexpected incident, P.W.1 made hue and cry. On hearing the cries of P.W.1, the appellant-A.1 pushed P.W.1 and fled away from the scene. The testimony of P.W.1 to 3 clearly reveals that all of them made attempt to catch hold the appellant but of no avail. As seen from the testimony of P.Ws.5, 6 and 7, P.Ws.1 to 4 chased the appellant-A.1 in order to catch hold of him. The testimony of P.Ws.1 to 3 and 5 to 7 reveals that appellant-A.1 escaped from the scene of offence along with the dagger. As per the testimony of P.W.4, on the date of the incident, he has seen appellant-A.1 while proceeding towards hill-lock with a dagger in his hand.

18 P.W.1 is the mother, P.W.2 is the father, and P.W.3 is the paternal uncle of the deceased. There is no legal embargo to consider the testimony of kith and kin of the deceased. Merely because P.Ws.1 to 3 are the kith and kin of the deceased that itself is not a valid ground to discard their evidence in toto. We have carefully scanned the testimony of P.Ws.1 to 7 in order to ascertain whether the version put forth by the prosecution probablises its stand. No suggestion was put to P.Ws.1 to 7 that on the date of the incident the appellant-A.1 was not in the village. Interestingly, no suggestion was put to these witnesses that the appellant-A.1 did not hack the deceased on the fateful day. The very

purpose of cross examination of a witness is to ascertain the truth or to improbabilise the version put forth by the prosecution thereby to probablise the stand taken by the defence. In the cross-examination of P.Ws.1 to 3, nothing was elicited to shake their testimony with regard to the manner of the incident. In the cross-examination of P.Ws.5 to 7, nothing was elicited either to disbelieve their presence at the time of the incident or witnessing the appellant-A.1 immediately after the incident. In the cross-examination of P.Ws.5 to 7, it was not elicited that they are not the neighbours of P.Ws.1 and 2. P.Ws.5 to 7, being neighbours of the P.Ws.1 and 2, possibility of their presence nearby the scene of offence and witnessing the appellant-A.1 immediately after the incident is more probable and natural. In the cross-examination of P.Ws.5 to 7, nothing was elicited to establish that due to previous animosity these witnesses deposing false with an ulterior motive to falsely implicate the appellant-A.1 in this case. When there is no animosity between the appellant-A.1 and P.Ws.5 to 7 where is the necessity for them to depose false more particularly when they are not relatives of P.Ws.1 and 2. P.Ws.5 to 7 are independent witnesses, whose testimony cannot be discarded on flimsy and untenable grounds.

19 The defence version is that the appellant was falsely implicated in the case due to his father supported the opponents of P.Ws.1 and 2 in respect of a land dispute. Mere

putting of the suggestion would not amount to proof of stand taken by the defence. In the cross examination of the prosecution witnesses, nothing was elicited to support the stand taken by the defence. If anything is elicited in the cross-examination of the prosecution witnesses by the defence, improbablising the stand of the prosecution, eventually the same will probablise the stand of the defence. In such circumstances, the Court can doubt the truthfulness of the version putforth by the prosecution. Taking into consideration the facts and circumstances of the case, we are of the considered view that the stand taken by the defence has no legs to stand.

20 There are no material contradictions or omissions in the testimony of P.Ws.1 to 7. Nothing was elicited in the cross-examination of these witnesses to shake their testimony. On the other hand, the testimony of P.Ws.1 to 7 is cogent, convincing, coherent, consistent and corroborative with each other. The testimony of these witnesses inspires the confidence of the Court. In such circumstances, the Court has no option except to place reliance on their testimony. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the appellant that the testimony of these witnesses is no way helpful to the prosecution.

21 As per the testimony of P.W.9, on 25.11.2007 the Inspector of Police P.W.14 apprehended the appellant. His testimony reveals that the appellant told him that he will show the place where he concealed M.Os.1 and 2, if they follow him. In pursuance of the information given by the appellant, P.W.14 and P.W.9 followed him to the bushes in the barren fields of Chintalarayudu situated in Chikka Yekkaluru village where the appellant shown M.Os.1 and 2. The record reveals that P.W.14 prepared seizure panchanamEx.P.5 in the presence of P.W.9 as to the recovery of M.Os.1 and 2. In the cross examination of P.Ws.9 and 14, nothing is elicited to disbelieve the seizure of M.Os.1 and 2.

22 We are very much conscious that any confession made to a police officer is inadmissible in view of Section 25 and 26 of Indian Evidence Act. However, Section 27 of the said Act is an exception. As per Section 27 of the Indian Evidence Act, any information given by the accused, which distinctly related to the commission of offence, is admissible. The testimony of P.Ws.9 and 14 clearly establishes that M.Os.1 and 2 were recovered in pursuance of information given by the appellant and the same is admissible under law. By examining P.Ws.9 and 14 and marking Ex.P5 and MOs.1 and 2, the prosecution clearly established the recovery of MOs.1 and 2.

23 In the light of the foregoing discussion, we are of the considered view that the prosecution proved the guilt of the appellant-A.1 for the offence punishable under Section 302 IPC. The findings recorded by the trial Court are based on evidence much less legally admissible evidence. The trial Court has not committed any error much less legal error while appreciating the testimony of prosecution witnesses. In such circumstances, the appellate Court shall not upset the findings recorded by the trial Court. There are no grounds much less valid grounds to interfere with the conviction and sentence imposed against the appellant. The appeal is devoid of any merits and hence the same is liable to be dismissed.

24 In the result, the criminal appeal is dismissed. As a sequel, miscellaneous petitions if any pending in this appeal shall stand closed.

JUSTICE CHALLA KODANDA RAM

JUSTICE T.SUNIL CHOWDARY

Date: 06.01.2018

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