

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.578 of 2013

JUDGMENT: (*per the Hon'ble Smt Justice T. Rajani*)

The judgment of the II Additional Sessions Judge (FTC), Parvathipuram in SC.No.36 of 2012 dated 22.02.2013 is brought to question, in this appeal. The learned Sessions Judge found the accused guilty for the offence under Sections 302, 452, 324 and 323 of the Indian Penal code and convicted them for the same and sentenced them to undergo rigorous imprisonment for life and also to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of six months; sentenced them to undergo rigorous imprisonment for a period of three years for the offence under Section 452 read with Section 34 IPC and to pay fine of Rs.500/-, in default to undergo simple imprisonment for a period of three months; sentenced them to undergo one year simple imprisonment for the offence under Section 324 read with Section 34 IPC and also sentenced them to undergo six months simple imprisonment for the offence under Section 323 read with Section 34 IPC .

2. The facts of the case, briefly, as per the charge sheet are as follows:

The deceased and the accused are residents of Mosuru Village. The deceased was residing along with his son, L.W.3, since the death of his wife and his daughters were married and were living with their husbands separately, in the same village, in SC colony. On 24.11.2010, the deceased was accosting his son at about 7 PM,

for his laziness in not attending to the sweet shop, where he was employed. Then A1, who is the husband of the youngest daughter of the deceased, interfered and there was verbal duel. The deceased shouted that unless the children were guided properly they will become useless just like A1 and they cannot even earn gravel for the family. As tempers rose, the deceased showed away A1, who went away stating that he will settle scores. As A1 went away threatening, L.Ws.1 to 3 and the deceased went inside the house and bolted it from inside. Shortly, thereafter, all the accused came there, with a common intention, to teach a lesson to the deceased, by killing him. All the accused kicked against the doors, due to which they broke. A1 to A4 barged inside the house and while they were about to beat the deceased, L.Ws.1 and 2 interfered and in spite of it, A2 beat the deceased on the backside, by clutching their hands. A1 picked the charikatti inside the house of the deceased and gave a blow on the right eye of the deceased. A2 also picked up an axe and hacked on the head of the deceased. A3 brought a sling (kavidibadda) and beat heavily on the head of the deceased. The deceased fell unconscious on the road, in a pool of blood. While A3 beat L.W.1 on her legs, head, right shoulder, back of the head and forehead, L.W.2 was beaten by A1, with a stick, on her head. A5 punched L.Ws.1 to 3 by clutching their hairs and pulled them. A1, believing that the deceased is still alive, hit him with two bricks.

L.Ws.1 to 3 approached L.W.4, who is the vice president of Mandal Praja Parishad and told him about the incident. He immediately contacted 108 and sent the injured in the ambulance, to the

Government Hospital Salur, for treatment and one hour after admission into the hospital, the deceased succumbed to the injuries. On receipt of medical intimation, the SI of Police, Pachipenta Police Station, recorded the statement of L.W.1 and registered a case in Cr.No.62 of 2010 for the offence under Sections 302, 452, 324, 323 read with 34 IPC. After due investigation, charge sheet was laid against the accused for the same offence. The learned Magistrate, Salur took cognizance of the case against the accused for the same offence and as the case is exclusively triable by the Sessions Court, the case was committed for trial to the District and Sessions Division, Vizianagaram by virtue of orders in PRC.No.32 of 2011. The Sessions Court, in turn, made over the case to the II Additional Sessions Judge (FTC), Parvathipuram, who conducted the trial and passed the impugned judgment.

3. Against the said judgment, the present appeal is preferred on the following grounds:

The Court below erred in placing reliance on the testimony of P.Ws.1 and 2, being the daughters of the deceased, as highly interested and which is discrepant with the evidence of P.W.4. The Court below failed to see that the prosecution witnesses have filed false case against the appellants, as A1 refused to the demand of the deceased, to come to their house as an illatum son-in-law. The Court below erred in placing reliance on the evidence of P.W.4 and failed to see that the witnesses could not speak about the specific overt acts of the accused, which shows that their presence at the time of the incident is doubtful. The Court below failed to see that P.W.4 stated

that A3 and A5 have not dragged P.Ws.1 and 2 from inside the house and they themselves came out of the house.

4. Heard Smt. Ammaji Nettam, counsel for the appellants and the learned Public Prosecutor appearing for the respondent.

5. The counsel for the appellants contends that due to family rivalry, the accused are falsely implicated in this case; the motive alleged is, absolutely scanty and would not in all probability, suffice to commit the alleged offence. She also contends that the scene of offence is not consistently stated by the witnesses.

6. The learned Public Prosecutor, on the other hand, contends that when there are direct witnesses, who witnessed the incident and when there are witnesses to support the happening of the incident, the inconsistencies, if any, in the case of the prosecution have to be ignored, as the substratum of the case stands proved.

7. Based on the arguments of the counsel and the material on record, the points that arise for our determination are:

1. Whether the evidence of the prosecution witnesses is reliable and would suffice to prove the guilt of the accused beyond all reasonable doubt for the offences with which they are charged.
2. Whether the judgment of the Court below is sustainable.
3. To what result.

POINT Nos.1 and 2:

8. P.W.1, daughter of the deceased, spoke about the relationship between the accused and their family. A1 is the husband of her sister; A2 is her junior paternal uncle; A3 is her father-in-law; A4 is her junior brother-in-law and A5 is her mother-in-law. Narrating the incident, she stated that on 23.11.2010 at about 7.00 PM, her younger brother, Gandipalli Chanti, L.W.3, returned to their house, after playing in the village. The deceased was taking his dinner and on seeing her younger brother, the deceased scolded him as to why he returned home without attending his duty at the sweet shop and that he did not attend the sweet shop since three days. L.W.3 replied that he will go to the sweet shop on the next day without fail. In the meantime, A1 came to their house and sarcastically stated that L.W.3 would become like his father. Then the deceased scolded A1 not to interfere in their family affairs, by stating that A1 became useless as he is not looking after his wife and children. A1 became wild and threatened the deceased that he will see his end and threatening so, he left their house.

On such threatening, P.W.1 and the deceased and her family members got afraid and bolted the doors and stayed in the house. Soon after, A1 to A4 came to their house and kicked the doors of the house forcibly and entered into their house and immediately A4 picked up a fire-wood piece and hit the deceased on his back, as a result, the deceased fell on the ground. Thereafter, A1 picked up a knife, which was lying in their house and beat the deceased on the right side of the head, over the ear. Thereafter, A2 picked up an Axe, which was lying

in their house and beat the deceased on the back of his head. Meanwhile, A3 left the house and went to his house and brought one 'Kavidi Badda' and beat the deceased on his back. Meanwhile, A5 also entered their house. When herself and her sister were questioning the actions of the accused, A5 caught hold of their tufts of hair and beat them, stating that they were bringing troubles since her sons married them and while saying so, dragged them out of the house.

P.W.1 further corrected herself stating that actually A1, A2 and A4 beat the deceased, as stated by her earlier and thereafter, all of them dragged the deceased out of their house. Thereafter, A3 brought 'Kavidi Badda' and beat the deceased on his back. A5 beat her with a brick, causing bleeding injury. She also beat her sister, causing injury on her hands.

Therefore, from the above, it can be understood that the beating of the deceased with 'Kavidi Badda' is outside the house of the deceased. It also can be understood that she was specific that it was the deceased who was dragged out of the house, though, in the chief examination she, in general terms, stated that the accused dragged them out. It only can mean that they identified themselves with the deceased and stated as such.

She further stated that the deceased received bleeding injuries in the hands of A1, A2 and A4 and blood oozed out from the back of his head. The above incident occurred in front of their house. The deceased fell on the ground with bleeding injuries, in a pool of blood. Thereafter, all the accused left the scene of offence, to their house. Immediately, herself, her brother and sister went to their junior

paternal father, L.W.4, Gandipalli Ramu and informed him about the entire incident and in turn, he called for 108 Ambulance and the deceased was shifted to Government Hospital, Salur, whom P.W.1 and L.Ws.2 and 3 accompanied. Immediately, the concerned Medical Officer examined the deceased and referred him to Headquarters Hospital, Vizianagaram. It was about 11.00 PM in the night. Then they requested the medical officer that they would shift the deceased later, because it was midnight. In the meanwhile, the deceased died at about 12.00 'O' clock. Thereafter, the SI of Police recorded her statement at about 5.00 AM in the morning, which is marked as Ex.P1. P.W.1 also identified the weapons used by the accused.

In the cross-examination of P.W.1, nothing material was elicited. Moreover, a suggestion, which would infer that the accused committed the offence, was given. The suggestion was that, on an apprehension that the accused would beat him, the deceased escaped from their house and while running on the road, he fell on the ground, on his own and received injuries, leading to his death. That part of the suggestion would show that the appellants admitted that there was apprehension in the mind of the deceased that the accused will beat him. The basis for such apprehension is not suggested and we are left with an understanding that such apprehension is because of the threatening words used by the accused.

9. P.W.2 is the sister of P.W.1 and the daughter of the deceased. She corroborated the evidence of P.W.1 with regard to the initial verbal altercation that took place between the deceased and A1. Speaking further about the incident, she stated that A1 pushed the

deceased during the verbal altercation and went off to his house, threatening that he would see his end. According to her evidence, apprehending that A1 might come back taking liquor, to wreck his revenge, herself and her family members went inside the house and bolted the doors, out of fear. As expected, A1 to A4 came to their house and kicked the doors of the house and entered into the house and started beating the deceased, indiscriminately. The overt acts that were stated by P.W.2 are that A4 picked up a fire-wood piece and beat the deceased on his back; A1 took the knife which is lying in their house and beat the deceased on his head, over the ear; A2 picked up an axe which is lying in their house and beat the deceased on the back side of his head. A1, A3 and A5 dragged them out of the house and A1 beat her on her forehead, near the eyebrow, with a stick, to which a nail was affixed, which caused bleeding injury to her. A3 beat on her hands, with a brick, causing bleeding injury. Meanwhile, the deceased was dragged out of the house. A3 picked up one 'Kavidi Badda' and beat the deceased on his back. The deceased fell on the ground in a pool of blood. Thereafter, she corroborates the evidence of P.W.1 with regard to P.W.1 calling L.Ws.3 and 4 and their shifting the deceased to the hospital.

The cross-examination of P.W.2 does not succeed in eliciting any fact, which would belie her evidence in the chief-examination. Some admissions are made by P.W.2, that her parents' house and in-laws house are situated side by side and herself and her husband lived happily for some time immediately after their marriage. Immediately after the marriage with A1's brother, P.W.1 resided with her husband in a separate house, in the same street, for some time

and after the death of her mother, the deceased and L.W.3 resided in their house where the offence took place. The above admissions do not, in any manner, help the appellants in proving their innocence. Her evidence also shows that the deceased was alone dragged out of the house.

10. P.W.3 is Gandipalli Ramu, who is a resident of Mosuru Village. He stated that he knows all the accused, the deceased and his family members. His evidence shows that while he was in his house, at about 9.00 or 9.30 PM, P.Ws.1 and 2 and L.Ws.3 and 5 came to his house and informed about the entire incident and he went to the scene of offence and saw the deceased with bleeding injuries, on the ground, in a pool of blood. Immediately, he called for 108 Ambulance and the deceased was shifted to Government Hospital, Salur. In the midnight at about 1.00 or 2.00 AM, the SI of Police telephoned him and informed that the deceased died and he and other village elders went to the hospital and inquest was conducted.

In the cross-examination, he admits that he did not state before the police that at 1.00 or 2.00 AM, the SI of Police informed him that the deceased died. But the said omission is not at all material, as even if the police informed him or not, the fact remains that the deceased died at that time and the same is not disputed.

11. P.W.4 is a resident of the same village and is a neighbour of the deceased. He stated that A1's house is situated by the side of the house of the deceased on the other side, intervened by two houses. A3 and A5 are also residing with A1 in one house. On 23.11.2010, at about 7.00 PM, L.W.3, Gandipalli Chanti, came to his house.

On seeing him, the deceased scolded him that he did not attend the sweet shop on that day. Meanwhile, A1 came there and asked the deceased as to why he was scolding L.W.3. Thereupon, the deceased abused A1 not to interfere in their family affairs. He further states that A1 left the place, threatening them with dire consequences. He categorically stated that he was present at that time and witnessed the said altercation. He also stated about further incidents and corroborated the evidence of P.Ws.1 and 2, though he did not elaborate the incidents, as was done by P.Ws.1 and 2.

In the cross-examination, it was admitted by him that there was no light in front of the house of the deceased but he volunteered to state that there was a street light near the house of the deceased. He also asserted that A1 to A4 entered the house of the deceased, though without any weapons and kicked the doors forcibly and that he witnessed A1 beating the deceased with M.O.1 knife. He, however, admitted that he could not see the specific overt acts of A1 to A4, over the deceased, as it took place inside the house of the deceased and as it was dark at that time. He also stated that A1, A2 and A4 beat the deceased at that time and dragged him out of the house and thereafter, again they beat the deceased, which was witnessed by him. When he stated that A1 beat the deceased with M.O.1 knife on the right side of his head over the ear, it was suggested to him that there was no possibility for A1 to beat the deceased over the ear because the height of A1 is about 4 and half feet, whereas the deceased was 6 feet in height, for which he explained that the deceased fell on the ground in front of the house when he was dragged from out of the house and thereafter, A1 beat him over his ear. He also spoke about

A2 beating the deceased, after he fell on the ground. A suggestion was given that the deceased fell on the ground in supine position. That would amount to admitting the falling down of the deceased. He, however, stated that no one dragged P.Ws.1 and 2 from out of the house and in fact, P.Ws.1 and 2 themselves came out of the house, along with the deceased, who was dragged out from the house by A1, A2 and A4. He could not state whether P.Ws.1 and 2 received injuries or not in the said incident. He stated that on seeing the incident of beating the deceased, he left the scene of offence out of fear. Ex.D2, which is to the effect that A1 beat the deceased over his eye, was marked in his cross-examination. The contention that his evidence contradicts the evidence of P.Ws.1 and 2, regarding dragging them out, is already met with, while discussing their evidence.

12. P.W.5 speaks about L.W.3 working in his shop and he being absent for three days and not turning up to his sweet shop even after three days and his later coming to know that the father of L.W.3 died in an altercation. The said evidence may not have much bearing on the issues involved in this case, as the death of the deceased is not disputed.

13. P.W.6 is a witness for the scene of offence panchanama. The cross-examination of P.W.6 elicits that an electrical pole was present near the house of the deceased. It is also elicited that he witnessed pool of blood in front of the house of the deceased. He, however, admits that the fact that electrical pole was present near the house of the deceased is not mentioned in Ex.P2 report. But he explains that to his observation the said electrical pole is situated at a

distance of 3½ feet from the scene of offence. Hence, the facts elicited from the cross-examination of P.W.6 would suffice to prove the source of light. Though it is not mentioned in Ex.P2, the manner in which P.W.6 explains the source of light, inspires confidence.

P.W.7 is the photographer, who took photographs of the dead body of the deceased and the scene of offence. P.W.8 is the VRO of Mosuru Village, who held inquest over the dead body of the deceased. No discrepancies are pointed out with regard to the inquest. Hence, his evidence need not be taken up for discussion.

14. P.W.9 is the witness for the confession made by the accused. He speaks about the recovery of weapons at the instance of the accused. According to his evidence, A1 and A3 produced the knife and Kavidi Badda from their house. Speaking about the manner in which the accused were apprehended and their confessions were recorded, P.W.9 states that his house is situated at a distance about 80 yards from the house of the accused and the deceased. About 7 days after the incident, the police came to the scene of offence. By the time, himself and L.W.20 i.e. P.W.10 and other villagers were present. On seeing the police, A1 to A4 tried to run away from their house but the police took them into custody and interrogated them, during which, A1 confessed his guilt and produced the weapons. The cross-examination of P.W.9, except making some suggestions, does not elicit any material fact, which would belie his evidence. P.W.10 corroborates the evidence of P.W.9.

15. P.W.11 is the doctor, who conducted post mortem examination on the dead body of the deceased. He spoke about the injuries, which

are in the form of chopper wound over the right parital occipital region and franto parital region and right parital region, which can be assumed as having been caused by the axe, as it is the weapon, which is likely to cause such injuries. The internal injuries were also spoken to by P.W.11, which are closed fractures on the right parital region and occipital region. There was also haemorrhage encircling the brain. With regard to the bleeding that was noted by P.W.11, in the cross-examination he explained it to be a mistake, as he admits that by the time of post mortem examination blood was clotted on the external injuries and that generally blood gets clotted within one hour from the receipt of injury. In the light of the explanation given by P.W.11, the noting of the presence of blood can be considered as a mistake. Moreover, it is not the case of the accused that the deceased did not die by the time of post mortem examination.

16. P.W.12 is the Doctor at Salur CHS, who examined P.W.2 and found abrasion over left arm. He opined that the said injury is simple in nature. The evidence of P.W.12 would prove that P.W.2 sustained injuries, as stated by P.Ws.1 and 2. P.Ws.13 to 16 are the Investigating Officers.

17. The counsel for the appellant contends that though the evidence of P.Ws.1 and 2 would show that P.W.1 sustained injuries, there is absolutely no medical record produced by the prosecution to prove the injury sustained by P.W.1. The evidence does not project any explanation as to why P.W.1 was not referred to the hospital and as to why her medical record is not produced.

18. But, however, allowing such doubt to prevail over the other cogent evidence, coming forth not only from P.Ws.1 and 2, who can be termed as interested witnesses, but also from P.W.4, who is an independent witness, would only result in travesty of justice. The Courts shall not be swayed away by the technicalities or the minor inconsistencies and lapses in the case of the prosecution. Whatever be the evidence that could not be produced before the Court, the evidence that is produced before the Court would suffice to conclude the guilt of the accused.

19. The contention that the place of offence is not consistently stated by the witnesses does not find any ground, as P.Ws.1, 2 and 4 have clearly stated that the accused attacked the deceased, both inside and outside the house. Expecting the witnesses to remember the overt acts of the accused meticulously, would be asking for impossibility. When there is no reason for the witnesses to speak against the accused, their evidence shall not be looked at with a magnifying glass.

The delay in giving the report is argued as an aspect affecting the case of the prosecution. The incident, according to the evidence of PW.1 and others occurred at about 7 pm. The deceased died at about 12 midnight. The evidence of P.W.3 shows that he was informed by the police at 1.00 or 2.00 am, about the death of the deceased. The report is shown as given at 6.15 am on the next day. When a person sustains fatal injuries, it is natural that the concerned would first endeavour to sustain his life, by immediately resorting to medical aid, rather than rushing to the police station, to give a report. In the

background of the proved facts, it cannot be said that there was any delay in giving the report. There is bound to be some delay due to the operation of human elements in doing things.

20. For the above mentioned reasons, the decisions relied upon the counsel for the appellant in KUNA @ SANJAY BEHERA v. STATE OF ODISHA¹ wherein the Supreme Court considered that the evidence of P.W.1, which is the only evidence available, was filled with inherent improbabilities and incongruities; MACHINDRA v. SAJJAN GALPHA RANKHAMB² in which, the non examination of a material witness, who could have unfolded relevant facts of the case necessary for adjudication, was considered as throwing a reasonable doubt on the prosecution case; STATE OF KERALA v. ANILACHANDRAN ALIAS MADHU³ wherein the Supreme Court, in the background of the report appearing to be suspicious and the delay in sending the report to the magistrate, held the delay to be affecting the case and MUSTKEEM ALIAS SIRAJUDDIN v. STATE OF RAJASTHAN⁴ wherein it was held that the AB blood group which was found on the clothes of the deceased, does not by itself does not prove the guilt of the appellant, unless the same was connected with the murder of the deceased by the appellants, are considered as not helping the appellant. The case on hand does not suffer from any of the problems noticed in the above decisions. The contentions raised in that regard are met with, in the aforesaid paragraphs.

¹ 2018 (1) ALT (CRL.) 140 (SC)

² 2018 (1) ALT (CRL.) 173 (SC)

³ AIR 2009 SC 1866

⁴ (2011) 11 SCC 724

21. The contention of the counsel for the appellant that the motive alleged against the accused is not sufficient enough to commit the offence needs no appreciation, as, as already observed there are direct witnesses, who testified about the acts of the accused and when there is direct evidence to prove the offence committed by the accused, the motive pales into insignificance. Hence, we are of the opinion that the judgment of the Court below can be sustained without any interference.

The points are answered accordingly.

POINT NO.3:

In the result, the criminal appeal is dismissed upholding the conviction and sentence imposed on the accused in SC.No.36 of 2012 dated 22.02.2013 by the II Additional Sessions Judge (FTC), Parvathipuram. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

T. RAJANI, J

April , 2018
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