

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

CRIMINAL APPEAL No.470 of 2013

JUDGMENT: (Per Hon'ble Sri Justice U.Durga Prasad Rao)

This Criminal Appeal is filed by the appellant/accused aggrieved by the Judgment, dated 25.02.2013, in Sessions Case No.189 of 2011 passed by the IV Additional District and Sessions Judge, Visakhapatnam, convicting him for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for LIFE and to pay fine of Rs.1,000/- (Rupees one thousand only) in default to suffer simple imprisonment for one month.

2. The case of prosecution, in brief, is thus:

The offence took place on 20.04.2011 at about 12:00 Noon in front of Government Primary School, Ravvalaguda Village, Pedalabudu Panchayat of Araku Valley Mandal, Visakhapatnam District. The deceased Sundaramma (hereinafter referred to, as 'the deceased') was working as single Teacher in that school. The accused and the deceased were natives of Korra Village of Pedalabudu Panchayat of Araku Valley Mandal, Visakhapatnam District. About 10 years prior to her death, the deceased got job as Teacher. The accused loved the deceased and used to roam around her persisting her to marry. She refused to marry him on the ground that his mother and her mother are sisters and they are brother and sister by courtesy and further, she was a Teacher and accused has no job. However, the accused continued to follow her with a view to marry her.

The further case of prosecution is that once in the month of September, 2004, the accused outraged her modesty and threatened her with dire consequences and forced her to marry him. On her complaint, the police of Dumbriguda Police Station registered a case in Crime No.25 of 2004 for the offences punishable under Sections 354 and 506 (2) IPC and investigated and filed charge sheet, which was taken cognizance and registered as Sessions Case No.68 of 2006. After trial, the accused was convicted and he served sentence also. He was released from jail in June, 2011.

The further case of the prosecution is that even after conviction, the accused did not mend his ways and he developed grudge against the deceased as she refused to marry him and also sent him to jail. Thus, he was waiting for an opportunity to wreak vengeance. While so, on 20.04.2011 at about 12:00 Noon, the accused, armed with a knife, went to the Government Primary School, where the deceased was working. At that time, the deceased was taking lunch along with other students and the accused went there and asked the deceased to marry him, but she refused. On that, the accused held her tuft, dragged her on the ground and cut her throat and also stabbed on her left shoulder, right hand and her back. As a result, the deceased sustained severe deep cut injuries over throat and succumbed to death instantaneously. P.W.3-the Cook and P.Ws.4 to 6, who are the students of the school, witnessed the ghastly incident.

On receiving intimation, P.W.1, the Village Revenue Officer of Pedalabudu Panchayat rushed to the spot and found the dead body of the deceased in a pool of blood and gave Ex.P.1 report to

police of Araku Valley Police Station and set the criminal law into motion. P.W.10, Head Constable received Ex.P.1-complaint and registered the same as a case in Crime No.23 of 2011 for the offence punishable under Section 302 IPC and issued express FIR to all concerned. P.W.11 Inspector of Police, Araku Valley, took up investigation, visited the scene of offence i.e., Government Primary School and inspected the scene of offence in the presence of panchayatdars, prepared rough sketch of the scene of offence and drafted the scene observation report. Ex.P.7 is the rough sketch of the scene of offence. He also drafted scene observation panchanama in the presence of mediators under Ex.P.2 and also got photographs of dead body of the deceased. He collected the bloodstained earth and controlled earth vide M.Os.1 and 2. He examined the witnesses and recorded their statements. He also conducted inquest over the dead body of the deceased and prepared Ex.P.4 inquest report. On the same day, he arrested the accused near Anjaneya Swamy temple, Araku Valley at 6:30 PM and accused admitted the commission of the offence. In the presence of mediators, the Investigating Officer seized M.O.3-knife from the possession of the accused. He also seized M.Os. 4 to 6 bloodstained clothes of the accused. On completion of investigation, he laid charge sheet against the accused for the offence punishable under Section 302 IPC.

3. On appearance of the accused, the trial Court framed the charge against him under Section 302 IPC. He denied the charge and claimed for trial.

4. The trial went on before the learned IV Additional District and Sessions Judge-cum-II Additional Metropolitan Sessions Judge, Visakhapatnam. During trial, P.Ws.1 to 11 were examined and Exs.P.1 to P.9 were marked on behalf of the prosecution. M.Os.1 to 9 were also marked.

5. The defence of the accused is one of total denial of the offence. It was suggested to the prosecution witnesses that the deceased might have been killed by the Maoists on the apprehension that she was a police informer. He did not adduce any defence evidence.

6. The trial Court, on appreciation of the evidence on record, held that the prosecution established the guilt of the accused beyond all reasonable doubt and accordingly, convicted and sentenced him as stated supra.

7. Hence, the Criminal Appeal.

8. Heard Smt. P.Satya Manjula, learned Legal Aid Counsel, appearing for the appellant, and learned Additional Public Prosecutor appearing for the State.

9. Fulminating judgment of the trial Court, learned counsel for the appellant firstly argued that P.Ws. 3 to 6 cannot be believed to be eyewitness to the incident, but the trial Court erroneously relied upon their evidence and recorded the conviction. In expatiation, learned counsel would argue that P.W.3, who was the cook at the relevant time, was engaged in serving food to the students and therefore, there was no possibility for her to witness the incident even assuming that the accused went to the school and caused

death of the deceased. Further, though she stated in her evidence as if she tried to rescue the deceased from the accused and accused threatened her, that aspect was not stated by her to the police during her 161 Cr.P.C. statement. The said omission would show that she has not witnessed the incident.

a) Learned counsel further argued that so far as P.Ws. 4 to 6 are concerned, they were tender aged and they were engaged in taking food by talking among themselves at the time of incident. Therefore, they too had no occasion or opportunity to witness the incident, even if it is believed that the accused caused the murder of the deceased. Therefore, the evidence of P.Ws.4 to 6 cannot be accepted to connect the accused to the incident.

b) Secondly, learned counsel would submit that since the Araku Valley is a Maoists infested area, the possibility of the deceased being killed by them on the apprehension that she was a police informer cannot be ruled out.

c) Thirdly, it was argued that the mediators for recovery of M.O.3 weapon were not examined and therefore, prosecution failed to connect the accused with M.O.3 knife. Learned counsel, thus, prayed to allow the appeal and set aside the conviction.

10. In oppugnation, learned Additional Public Prosecutor argued that the accused committed a broad day light murder at the school, where the deceased used to work, in the presence of cook and the students (P.Ws.3 to 6) who are eyewitnesses to the incident. P.W.3 is a cook and P.Ws.4 to 6 are the students and since, the occurrence took place on a working day of the school,

their presence and witnessing the incident cannot be doubted. They have stated in one voice that while students and the deceased were taking lunch, the accused at once went there and picked up a quarrel with the deceased by forcing her to marry him and when she refused on the ground that both of them are siblings by courtesy, he dragged her and cut her neck with M.O.3. In view of their impeccable evidence, the guilt of the accused was established beyond all reasonable doubt and therefore, it is preposterous to argue that P.Ws.3 to 6 are not eyewitnesses to the incident. He would submit that though, mediators for recovery of M.O.3 were not examined, the eyewitnesses have clearly stated that the deceased was killed by the accused with the aid of M.O.3. Since they identified M.O.3 in their evidence, the use of M.O.3 can be believed. He thus, prayed to dismiss the appeal.

11. The point for determination in this appeal is: whether the prosecution could establish the guilt of the accused beyond all reasonable doubt and whether the conviction and sentence recorded by the trial Court is factually and legally sustainable?

12. **POINT:**

The prosecution case as already referred supra is that the accused and the deceased are natives of Korra Village and they are siblings by courtesy and on that ground and since the deceased is a Teacher, she refused to marry the accused. The accused used to pester her to marry him and once when he tried to outrage her modesty, he was convicted for the said offence. Keeping grudge, on 20.04.2011 the accused by holding a knife went to the school of the deceased, and while the deceased and the students were taking

lunch, he picked up a quarrel with her, dragged her out of the school and sliced her neck. In this regard, the evidence of P.Ws.3 to 6 is crucial.

13. As far as motive is concerned, as stated supra, the accused developed grudge against the deceased for her curtly refusing to marry him and also for sending him to jail in connection with S.C.No.68 of 2006. P.W.2 deposed on the motive aspect. P.W.2, who is the elder brother of the deceased, deposed that when the deceased was working in Borrapalem, the accused used to harass her on the ground that he was loving her and when he outraged her modesty, they conducted panchayat and also reported the matter to the police and in that context, the accused was convicted, but, he did not change his attitude. He further deposed that the deceased was his sister by courtesy, but the accused was enamoured and proclaiming that he was loving her. It should be noted that though this witness was extensively cross-examined, no suggestion was given to this witness that the accused and deceased were not related as siblings by courtesy and that the accused was not previously convicted for outraging the modesty of the deceased. Therefore, it is obvious that the accused and the deceased are brother and sister by courtesy as their respective mothers are sisters and on that ground when once the deceased rejected his love, he tried to outrage her modesty and therefore, in a case filed against him, he was convicted. Thus, the facts would clearly manifest that the accused had grouse against the deceased for her refusing his love proposals. Thus, the prosecution could amply establish the motive aspect. However, since the prosecution has come up with the testimony of direct eyewitnesses, if same is

believed, the motive will be relegated to the secondary status. Hence, it is now to be seen whether prosecution could establish the incident of murder committed by the accused through the direct eyewitnesses.

14. P.W.3 is the cook in Government Primary School, Ravallaguda Village where the deceased is working as a single Teacher. Her deposition is that the school consists of 1st standard to 5th standard, wherein 26 students were studying by the time of the incident. She used to prepare lunch at her house and take to the school and after the students finished lunch she used to come back home. Deposing about the incident, she stated that on 20.04.2011, the Wednesday, she went to the school at 12:30 PM and at that time, the accused came there and pressurized the deceased to marry him, but the deceased refused to marry him as their respective mothers were sisters. On that, the accused caught hold of her hair and stabbed her with a knife. She further deposed that the accused caused injuries to the right side of the throat and on left and right shoulders and on right forearm. When this witness tried to interfere, the accused threatened her with M.O.3. The school children who were taking lunch also witnessed the incident. On receiving the injuries, the deceased died on the spot. Thus, she claims to be an eyewitness to the incident. In the cross-examination, she admitted that she has no prior acquaintance with the accused. Everyday, she used to go to school with meals prepared by her at home between 12:00 and 12:30 PM and she alone used to serve food to the students. She further stated that the lunch was used to be served on the veranda of the school. At the time of taking lunch, the students used to

talk loudly. The teacher used to take lunch in the same veranda at some distance from the students. She denied the suggestion that she has not heard conversation between the accused and the deceased as she was busy in serving food to the students and she has also not witnessed the assailant and she was speaking falsehood. However, she admitted that she did not state to the police that the accused threatened her with M.O.3 when she tried to interfere.

15. On a close scrutiny of entire evidence of P.W.3, it is not in dispute that she was working as cook in Government Primary School, Ravvalaguda Village, where the deceased was working and the incident occurred. It was also not in dispute that on the date of the incident and at the relevant time of incident, she was present in the school and serving food to the students. From this, it is clear that she has every possibility to witness the incident because the murder has occurred during lunch time when the deceased and students were taking lunch. The only suggestion given to her is that as she was busy with serving food to students, she did not hear the conversation between the accused and the deceased and so also she did not witness the incident proper. She staunchly denied this suggestion. It should be noted that the incident occurred on the veranda of the school. Ex.P.7 the rough sketch of the scene of offence, which is not disputed by the accused depicts the Government Primary School and its veranda. It is mentioned in the sketch that 6 feet away from veranda, the dead body of the deceased was found. On the steps of the veranda, the rice and food particles were shown as scattered. Thus, Ex.P.7 would show that the incident in all probability occurred at the

veranda and on receiving injuries, the deceased fell on the ground in front of the veranda and died. Since the veranda is shown as in a straight line without any turns, it can be inferred that even if P.W.3 was engaged in serving food to 26 students (the total strength is as such), there was every possibility for her to hear the conversation between the accused and the deceased as the deceased was also taking food at some distance from the students. Similarly, she had every possibility to witness the incident also. Admittedly, P.W.3 had no enmity with the accused to speak falsehood against him. Therefore, we see no reason to disbelieve her evidence. It is true that she omitted to state before the Investigation Officer that when she intervened, the accused threatened her with knife. Merely because of such omission, her evidence which is otherwise believable, cannot be discarded.

16. P.W.4, Killo Sundar, who was studying 5th class in the Government School, Ravvalaguda Village, where the deceased was working, deposed that the deceased was his teacher and the incident took place on 20.04.2011 and P.W.3 was the cook in the said school. He further stated that at the time of incident, P.W.3 was serving food to the students and teacher and at about 12:00 noon the accused came to the school and asked the teacher (deceased) whether she was loving him or not and when she stated that she cannot love him as she was sister to him by courtesy, the accused suddenly caught hold of her tuft and pulled her from chair and stabbed her with M.O.3 knife. The accused stabbed her on the throat, hands, shoulders and right forearm. The deceased received bleeding injuries and died on the spot. He further deposed that on the previous day also, the accused came to their school to enquire

about the deceased. He further stated that along with him other students viz., Ramesh (L.W.11), D.Kalyani, Prasad (L.W.9), K.Janaki (L.W.12) and K.Sridevi (L.W.13) who were present at the scene witnessed the incident.

This witness was also intensively cross-examined. He stated in the cross-examination that during lunch time, the students will take lunch by talking with one another loudly; that when they want to talk loudly, they sit away from the Teacher. He further stated that after the incident, they left the school and went home and police enquired him two days after the incident. In the police station, the Inspector enquired him as what had happened in the school on the date of incident and the Inspector showed him the accused. He denied the suggestion that as he was engaged in taking lunch along with other students, there was no possibility for him to hear the conversation between the accused and the deceased and also there was no possibility for him to witness the incident. He admitted that he did not state to the police that the accused came to the school one day prior to the incident.

17. The evidence of P.Ws.5 and 6, who are also students in the same school is more or less in similar fashion. We gave our anxious consideration to the evidence of P.Ws.4 to 6. It should be noted that in the cross-examination, it is not suggested to these witnesses that they were not the students of that school during relevant time of incident. It was also not suggested to them that the incident had not taken place on a working day and during the lunch time. Therefore, as P.Ws.4 to 6 were the students of the school and since the incident occurred on a working day, there was

every possibility for them to witness the incident. We have carefully scrutinized their evidence to know whether any tutoring was applied to the witnesses to speak in tune with prosecution case since these witnesses were ten year old boys studying 5th class at the relevant time of incident. We found their evidence was intrinsic and contained a ring of truth. Hence, we see no reason for them to speak ill of the accused. Even if for argument sake we accept that these witnesses have not heard the conversation between the accused and the deceased, on that ground the veracity of their evidence cannot be doubted. Hearing of conversation and witnessing the incident are two different aspects. Even they fail in one aspect, the other need not be doubted. As already observed supra, the incident was occurred at the veranda of the school. When the accused picked up quarrel with the deceased and dragged her by holding her tuft, these witnesses who were having lunch on the very same veranda had every possibility to witness the incident. So, we hold that P.Ws.4 to 6 along with P.W.3, have witnessed the incident and their evidence is reliable. When the same is taken into consideration, it is clear that the accused has brutally murdered the deceased on the grouse that she was not loving him and not agreeing for the marriage. The arguments advanced by learned counsel for the appellant will not shatter the basic fabric of the prosecution case. As rightly observed by the trial Court, though the mediators were not examined to prove the factum of recovery of M.O.3 from the possession of the accused, still all eyewitnesses have clearly deposed that the accused has committed the offence with M.O.3. The FSL report would show that along with the clothes of the accused and the deceased, the

police referred M.O.3 knife (vide item No.6) also and the report would show that M.O.3 (item No.6) contains human blood, but blood group could not be determined. In that view also, it is obvious that M.O.3 must have been recovered from possession of the accused. So, on a conspectus of the facts and evidence, we hold that the prosecution could establish the guilt of the accused beyond all reasonable doubt and the trial Court has rightly convicted him for the offence punishable under Section 302 IPC

18. Coming to the sentence, the accused has brutally murdered the deceased by slicing her neck when she was in helpless condition. Therefore, the trial Court rightly sentenced him for LIFE and we find no reason to interfere with the same.

19. In the result, the Criminal Appeal is dismissed by confirming the conviction and sentence recorded by the IV Additional District and Sessions Judge, Visakhapatnam in Sessions Case No.189 of 2011 against the appellant/accused.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

A.RAMALINGESWARA RAO, J

U.DURGA PRASAD RAO, J

APRIL 28, 2018

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**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**



CRIMINAL APPEAL No.470 of 2013

Date:28.04.2018

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