

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SMT JUSTICE T.RAJANI**

CRIMINAL APPEAL No.367 OF 2012

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

The sole accused in Sessions Case No.350 of 2011 on the file of V Additional District and Sessions Judge (Fast Track Court), Guntur, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Shaik Saida @ Saidamma (hereinafter referred to as "the deceased") on 03.12.2010 at about 3:30 AM, at Gudipadu Village. Vide judgment, dated 22.12.2011, the learned Sessions Judge convicted the accused and sentenced him to suffer "imprisonment for life" and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for a period of two months for the offence punishable under Section 302 IPC. Assailing the said conviction and sentence, the present appeal came to be filed.

2. The facts of the case, as culled out from the evidence adduced by the prosecution witnesses, are as under:

The accused and the prosecution witnesses are inter-related and all of them are residents of Gudipadu Village. P.W.1 is the father, P.W.2 is the elder brother and P.Ws.3 and 4 are sisters of the deceased. The accused is none other than the nephew of P.W.1. P.W.7 was having Subabul garden in Gajuvaripalle Village adjacent to Gudipadu Village. He permitted P.W.6 to graze sheep in the said garden, by collecting Rs.10,000/- per annum from him. There ensued a dispute between P.W.6 and the accused, who claims to have purchased the rights over the property from P.W.7.

P.W.6 requested the younger brother of the accused to settle the dispute, wherein the accused admonished his brother in that regard. On 02.12.2010 at about 10:00 PM, the accused is said have beaten his younger brother for his interference. At that point of time, the deceased intervened and sent both of them away. At about 3:00 AM on 03.12.2010, the accused went to the house of the deceased and both of them quarrelled with each other. P.Ws.1, 2 and L.W.2 (Shaik Meera Bee) separated them and sent the accused. It is stated that at about 3:30 AM, the accused again returned to the house of P.W.1 with a knife, removed the blanket on the face of L.W.2. When she raised cries, P.W.1 woke up which made the accused to come to his cot. P.W.1 stated that the deceased was sleeping. The accused is said to have stated that he made the deceased sleep by slitting his throat and then fled away from the house. Then, P.W.1 and L.W.2 raised cries and on hearing the same, P.W.2, who was sleeping at Peerlachavidi, rushed to the house and noticed the accused leaving the house, with a blood stained knife. Thereafter, at about 8:00 AM on same day, P.W.1 went to the police station and lodged a report with P.W.14, the Superintendent of Police, which came to be registered as a case in Crime No.108 of 2010 and issued F.I.R. Thereafter, intimation about registration of crime for grave offence was sent to P.W.15, the Circle Inspector of Police, who on receipt of the information, proceeded to the scene of offence and prepared an observation report in the presence of P.Ws.9 to 13. Ex.P.11 is the observation report. He also got prepared rough sketch of the scene of offence, which is placed on record as Ex.P.16. Thereafter, he

held inquest over the dead body of the deceased in the presence of P.Ws.9, 10 and 13. Ex.P.2 is the inquest report. He then sent the dead body to postmortem examination. P.W.11 who is the Civil Assistant Surgeon, Area Hospital, Sattenapalli, conducted autopsy over the dead body of the deceased at about 3:30 PM and issued Ex.P.14 the postmortem examination report. According to him, the cause of death was due to haemorrhage and hypovolumic shock due to injury to neck vessels. P.W.15 is the Circle Inspector of Police, who continued the investigation by recording the statements of P.Ws.6, 7 and 12. On 18.12.2010, he arrested the accused in the presence of P.Ws.9 and 13 and recovered a knife, M.O.2. Ex.P.12 is the arrest mahazar of the accused. After obtaining necessary documents and examining the witnesses, he is said to have filed charge sheet before the Court of I Additional Judicial Magistrate of First Class, Sathenapalli, which was taken on file as P.R.C.No.6 of 2011.

3. On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as Sessions Case No.350 of 2011.

4. On consideration of material placed on record and on appearance of the accused, the charge, referred to above, came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

5. To substantiate the case, the prosecution examined PWs.1 to 18 and got marked Exs.P1 to P17, besides MOs.1 to 10.

6. After the closure of the prosecution 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. But he did not adduce any oral evidence, except getting marked Exs.D1 and D2.

7. Basing on the evidence of P.Ws.1 and 2, coupled with the recovery of knife and the motive for the accused to cause death of the deceased, the learned Sessions Judge convicted the accused. Challenging the same, the present appeal came to be filed.

8. The point that arises for consideration is whether the accused was responsible for the death of the deceased.

9. Sri K.Suresh Reddy, learned counsel for the appellant, would contend that though P.W.2 was not an eyewitness to the incident, but, the learned Sessions Judge found that P.W.2 was present at the scene of offence and convicted the accused, which is illegal and improper. According to him, the conduct of P.W.2 in not apprehending the accused on seeing him leaving the house with weapon appears to be highly improbable, more so when P.W.2, who is younger to the accused, knows the accused. According to him, if the evidence of P.W.2 goes, there is no other evidence to connect the accused with the crime.

10. On the other hand, learned Additional Public Prosecutor would contend that there are no justifiable grounds for disbelieving the evidence P.W.2. According to him, each person react in a different way and one cannot say that the conduct of P.W.2 is unnatural. He must have been more concerned with the injured, who was in the house. Hence, prays that the conviction and the sentence recorded by the learned Sessions Judge warrants no interference.

11. In order to appreciate the rival arguments, it would be just and proper to refer to the evidence of P.Ws.1 and 2. Before reading the evidence of P.W.2, it will be useful to know the relationship between the accused and the prosecution witnesses. As stated earlier, P.W.1 is the father, P.W.2 is the elder brother and P.Ws.3 and 4 are sisters of the deceased. The accused is also very closely related to P.Ws.1 and 2, being the sister's son of P.W.1. The evidence of P.Ws.4 and 7 would show that there were some disputes between the accused and the deceased with regard to grazing of sheep. P.W.7 in his evidence deposed that he permitted P.W.6 to graze the sheep in his garden by receiving Rs.10,000/- per annum in the year 2010 and did not give the said land to any other person for the said purpose. But, he stated that P.W.6 came and informed him that one Khajavali was also claiming to have purchased the said land for the same purpose.

12. The evidence of P.W.6 shows that on 02.12.2010 at about 10:00 PM, there was a quarrel, in which the accused beat L.W.4 near Peerlachavidi stating that as to why he was supporting P.W.6.

At that point of time, the deceased intervened and separated them. It is stated that the accused grew angry against the deceased and there was a scuffle between the accused and the deceased. At that point of time, P.W.5 intervened, chastised all of them and sent them away. The fact of intervention of the deceased in the quarrel between the accused and L.W.4 was also spoken to by P.W.5. The evidence of P.Ws.1 and 2 show that after the incident, which took place at about 10:00 PM, the accused went to the house of P.W.1 at about 3:00 AM, woke up the deceased and then quarrelled with him. P.Ws.1, 2 and another intervened and separated the accused and the deceased. The evidence on record shows that P.W.1 requested the accused not to quarrel with the deceased and took him to his house. P.W.2 and L.W.2 also claim to have accompanied P.W.1 to the house of the accused. After returning to their houses, P.W.1 slept in the house, while P.W.2 went to Peerlachavidi and slept there.

13. There is no dispute about the facts narrated above. Even the counsel for the appellant did not dispute much about the quarrel at 10:00 PM and also the quarrel at 3:00 AM and also about P.Ws.1 and 2 and another person dropping the accused at his house at 3:00 AM. But, things did not stop there. At about 3:30 AM the accused came back to the house of the deceased and removed the blanket from the face of L.W.2. Thereafter, the accused is said to have gone to the cot of P.W.1. When P.W.1 requested the accused stating that the deceased is sleeping, the accused himself, is said to have stated, that he made the deceased sleep by slitting his throat and then fled away from the house. The

fact of accused entering in the house at 3:30 AM and removing the blankets from the faces of inmates of the house finds place not only in the evidence of P.W.1, but also in the F.I.R lodged by P.W.1 at 8:00 AM on the very same day. Though P.W.1, in the F.I.R, claimed to have seen the accused actually slitting the neck of the deceased, but his evidence in the Court is silent on the said aspect. Taking advantage of the same, learned counsel for the appellant tried to contend that the evidence of P.W.1 is of no help to the prosecution. We are afraid, the same cannot be accepted. It is true that P.W.1 never spoken about seeing the assault on the deceased, but his evidence shows that on that day at about 3:30 AM, the accused entered the house, removed blankets from the faces of the inmates and searched for the deceased and thereafter, disclosed slitting the throat of the deceased, to P.W.1. Though P.W.1 was subjected to cross-examination, nothing useful came to be elicited to discredit his testimony. The suggestions given to him were with regard to disputes between the accused and the deceased and that no incident took place at 10:00 PM and 3:00 AM, which were denied by him. Though P.W.1 has not actually witnessed the actual attack, but his evidence, which remained un-impeached would reveal that there was an earlier quarrel which took place at about 10:00 PM and 3:00 AM, the accused entering the house at 3:30 AM and then leaving the house after informing P.W.1 that he cut the throat of the deceased. The deceased was found lying on the cot with a cut injury to the throat. Things would have been different had there been no other evidence to corroborate the evidence of P.W.1. But, in the instant case,

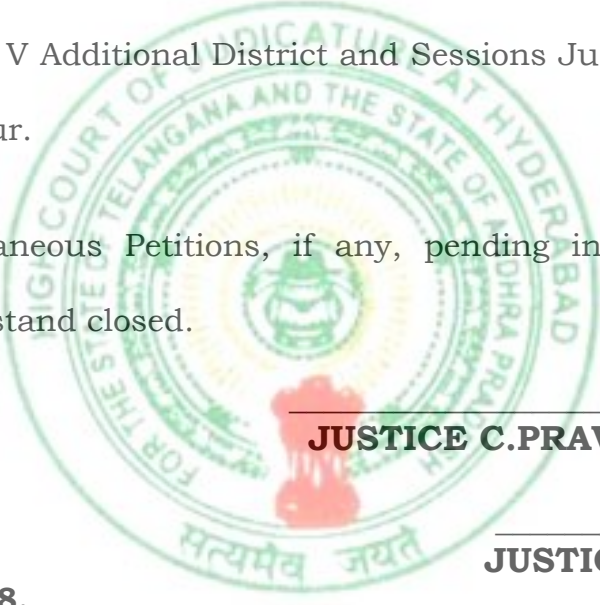
evidence of P.W.2 corroborates the evidence of P.W.1. P.W.2 in his evidence deposed that he was sleeping at Peerlachavidi, which is at a distance of 50 feet from the house of P.W.1. On hearing the cries, he reached the house of P.W.1 and noticed the accused leaving the house with blood stained knife. The argument of learned counsel for the appellant is that if really P.W.2 was present or reached the house, his conduct would have been different. No effort was made either to prevent the accused or apprehend him from leaving the place. It is to be noted here that though P.W.2 came to the house of P.W.1 on hearing the cries, but a perusal of the sketch shows that the distance between the place where the attack took place is 50 feet and since the incident took place in the night, he must have heard the cries clearly. Therefore, the argument of learned counsel for the appellant that P.W.2 could not have heard cries cannot be accepted.

14. Coming to the conduct of P.W.2, which is strongly commented upon, it is to be noted that reaction of each person varies in its own way. It may be true that the accused and P.W.2 are known to each other, and P.W.2 is younger to the accused. But, fact remains that the accused was armed with knife and was leaving the house holding a blood stained knife. In our view, P.W.2 would have been more concerned with the situation in the house, more particularly, the body of the deceased lying in cot and inmates raising cries than intercepting the accused. At that point of time, he would not have thought of detaining the accused since he can be apprehended at any time being a known person. Therefore, we feel that the conduct of P.W.2 cannot be termed as

unnatural or improbable. When once the evidence of P.W.2 is believed, the same lends corroboration to the evidence of P.W.1. Hence, the involvement of the accused in the commission of the offence, more so, in the presence of P.W.1 due to earlier disputes between the accused and the deceased person, cannot be doubted. For the aforesaid reasons, we see no ground to interfere with the findings arrived at by the learned Sessions Judge.

15. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 22.12.2011, in Sessions Case No.350 of 2011 on the file of the V Additional District and Sessions Judge (Fast Track Court), Guntur.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE T. RAJANI

July 24, 2018.
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**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SMT JUSTICE T.RAJANI**



CRIMINAL APPEAL No.367 OF 2012

Date:24.07.2018