

THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL APPEAL No.257 of 2013

JUDGMENT: (per Hon' ble Sri Justice Gudiseva Shyam Prasad)

This Criminal Appeal is directed against the Judgment dated 22.11.2012 passed by the Court of the III Additional District and Sessions Judge, Kakinada in S.C.No.496 of 2010. By way of the impugned Judgment, the learned Judge convicted the accused/appellant herein for the offence punishable under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-; and in default of payment of fine, to undergo Simple Imprisonment for one month.

2. The case of the prosecution is that the accused killed his sister in law Smt.Chitra Varalaxmi, by hacking her with a curved knife (MO.2) as he developed animosity against her being under the impression that she was responsible for non-joining of his wife (PW.7) with him. The incident was witnessed by PWs.3, 4 and 5. She succumbed to injuries while undergoing treatment in the Government General Hospital, Kakinada. The Police, on complaint of PW.1 investigated the matter and filed charge sheet before the learned Magistrate against the accused.

3. The prosecution, to prove the guilt of the accused for the offence punishable under Section 302 IPC, examined PWs.1 to 11 and marked Exs.P1 to P16 and MOs.1 to 9. No evidence was adduced on behalf of the accused.

4. The Court below framed the point for determination as to whether the prosecution has established the guilt of the accused beyond reasonable doubt for the offence punishable under Section 302 I.P.C?

5. The learned Judge, after considering the evidence of witnesses PWs.1 to 11, documents Exs.P1 to P16 and Material Objects M.Os.1 to 9, convicted the accused for the offence under Section 302 IPC, and sentenced him as aforesaid. Aggrieved by the judgment of the trial Court, the accused preferred this Criminal Appeal.

6. Heard Sri K.Venkatesh Gupta, learned counsel for the appellant-accused; and the learned Public Prosecutor representing the State.

7. It is contended by the learned counsel for the appellant that the judgment impugned in the present appeal is erroneous, contrary to law and unsustainable. It is further submitted that the appellant herein was falsely implicated and the witnesses were planted by the prosecution and the recovery of the alleged curved knife as material object was also false and that there was delay of six hours in sending the F.I.R to the Magistrate.

8. On the other hand, it is contended by the learned Public Prosecutor that there is no error nor there exists any infirmity in the impugned Judgment and in the absence of the same, the impugned Judgment does not warrant any interference of this Court under Section 374 (2) of the Code of Criminal Procedure and in the absence of any contradictions in the evidence adduced by the prosecution, the appellant is not entitled for any relief from this Court. It is further contended that by examining the witnesses to the incident as PWs.1 to 5, and the medical evidence, the prosecution proved the guilt of the accused beyond reasonable doubt. It is

further contended that even assuming that there are minor contradictions, the same are not fatal to the case of the prosecution. In support of his submissions and contentions, the learned Public Prosecutor placed reliance on the judgments in *HEMA v. STATE THROUGH INSPECTOR OF POLICE, MADRAS*¹ and *PAWAN KUMAR v. STATE OF UP*².

9. In the above background, the point that arises for consideration is “Whether the Judgment under appeal is sustainable and tenable, and whether it warrants interference of this Court in this appeal filed under Section 374 (2) of the Code of Criminal Procedure?

10. As mentioned *supra*, for proving its case, the prosecution examined PWs.1 to 11 and marked Exs.P.1 to P.16 and MOs.1 to 9.

11. PW.1 is the brother in law of the deceased. PW.2 is the son of the deceased, who passed on the information about the death of his mother to PW.1. PWs.3 to 5 are the eye-witnesses to the incident. PW.1 in his evidence stated that about 4 years prior to the chief-examination, at about 4-30 PM, when he was in his house, the son of the deceased, by name Manikantha came to him and informed him that the accused hacked his mother and asked PW.1 to come to their house and that he immediately rushed to the house of the deceased Varalakshmi and found her in lying position in the front yard of their house. He further stated that he found injuries on her body and when he asked her as to what happened, she told him that the accused hacked her, stating that she is responsible for non-joining of his wife Ammaji with him. Therefore, the testimony of this witness i.e., PW.1, in clear terms, reveals that the deceased informed him that the accused hacked her with a knife. The

¹ (2013) 10 SCC 192

² (2015) 7 SCC 148

oral statement of the deceased can be taken as oral dying declaration. There is no reason for her to give false statement against the accused at that point of time. There are no suggestions to disbelieve her testimony.

12. P.W.2, who is no other than the son of the deceased, deposed that on 16.09.2008 at about 4-30 PM, when he returned to their house from the school, he found his mother lying in the front yard with hacked injuries. He also stated that Ch.Bhuramma (PW.5), wife of PW.1, informed him that the accused hacked his mother and escaped from that place, and asked him to bring PW.1. He further deposed that he went to the house of PW.1 and informed the same and brought him to his house. The deceased told PW.1 that the accused came there armed with a knife and uttered that she was responsible for non-joining of his wife Ammaji with him, and unless she was done to death, his family life will not be restored. So saying, he hacked her while she ran away from there. She fell down at the house of one D.Raghava (PW.4). The testimony of PW.2 clearly reveals that the deceased informed this witness about the incident that has taken place and this testimony is corroborated the testimony of PW.1 and the same can be considered as oral dying declaration.

13. PW.3 is the resident of Vemulapalem village. She stated that she has been residing with her in-laws in Vemulapalem village and about four days prior to the incident, she came to her mother's house at Prathipadu, as she was not feeling well. She also stated that his mother's house, and the house of the deceased Varalakshmi are abutting each other. On the date of incident at about 4-30 PM she and the deceased Varalaxmi were chitchatting, and the accused came with a bag, uttering that the deceased was responsible for spoiling his family life, and then he took out a knife from the bag and started hacking the deceased, and the deceased started

running away from the accused, and the accused chased her and hacked her indiscriminately. PW.3 further deposed that the deceased Varalakshmi fell in front of the house of D.Raghava (PW.4) and that the accused escaped from the place after hacking the deceased.

14. PW.4 is a resident of Durgamma Street, Prathipadu, where the incident had occurred. He is an eye-witness to the incident. He stated that his house is in front of the house of the deceased. He deposed that at about 4-30 PM, while he was standing in front of his house, he saw the deceased Varalakshmi running towards her house and the accused was chasing her, and she fell down in front of his house. The accused hacked her with a knife several times and went away. She had deposed that the deceased told him, and PW.5 that the accused hacked her on the impression that the deceased was responsible for non-joining of his wife with him.

15. PW.5 is the wife of PW.1. She corroborated the testimony of PW.1. The testimony of PWs.3 to 5 goes to show that the alleged offence took place in their presence, and they also spoke about the motive of the accused for attacking the deceased.

16. PW.6 was the V.R.O Prathipadu. He conducted the scene of offence Panchnama, under Ex.P.2 in the presence of the mediator LW.14. According to him, the first scene of offence was in the front yard of the house of the deceased Ch.Varalaxmi. He further stated that from the first scene of offence, blood stained earth, controlled earth, plastic cheppals, black coloured small bag with two zips wherein one towel and one lungi and black covered hair band were seized. Out of which, blood stained earth, controlled earth and plastic cheppals are marked as M.Os 3 to 5.

MO.1 is the black coloured bag with two zips and it was containing a towel and a lungi. The black coloured hair band, towel and lungi are marked as M.Os 6 to 8. They were seized under the Scene of observation cover of Panchanama Ex.P2. He further stated that the Police conducted inquest over the dead body of the deceased in his presence and Ex.P.3 is the inquest report. The panchas opined that the cause of death was due to hacking injuries. The police also seized the material object MO.2 curved knife, under cover of Panchnama Ex.P.5. Nothing is elicited in the cross-examination of PW.6 to disbelieve his testimony with regard to observation of panchnama and recovery of material objects, at the instance of the accused.

17. PW.7 is the wife of accused. She deposed that since the accused was not looking after her properly, she along with her children returned to her parents' house, and some time later she went to Hyderabad for cooli work as the deceased was running a coffee hotel at Saroornagar, Hyderabad. She further deposed that about two years prior to the death of her sister deceased Varalakshmi, the accused came to Hyderabad and asked her to send PW.7 with him, to lead marital life, and the deceased expressed her disagreement in view of the ill-treatment at the hands of the accused. She further stated that the deceased returned to Prathipadu about one year prior to the incident in view of the health condition of the husband of the deceased and that, one and a half months' prior to the date of the incident, the husband of the deceased died due to health problem. She further stated that she learnt that the accused killed the deceased as he bore grudge that the deceased was responsible for not sending PW.7 to lead marital life with him. The testimony of PW.7 reveals that she had no direct knowledge about the motive for commission of

offence and her evidence is a hearsay evidence and, therefore, the evidence of PW.7 is of no help to the case of prosecution.

18. PW.8 is the Assistant Professor, Incharge of H.O.D, Department of Forensic Medicine in R.M.C. Government General Hospital, Kakinada. He conducted post-mortem examination over the dead body of the deceased. He stated that there are 13 ante-mortem external injuries and 6 ante-mortem internal injuries found on the body of the deceased. He opined the cause of death was due to the injury caused to the brain with a cut fracture of the skull, and an injury to the left lung. He also stated that the time of death was less than 24 hours prior to post-mortem examination. He issued Ex.P.6 post-mortem report. He clarified that all the injuries, except injury No.6, are internal injuries and are possible with a curved knife like MO.2 and they are sufficient to cause death. He also stated during the course of his cross-examination that the injuries are possible while the deceased was running and the assailant was causing them with a weapon like MO.2. The testimony of this witness clearly reveals that the injuries sustained by the deceased were caused by a material object like MO.2 and that the injuries are sufficient to cause death.

19. PW.9 is the Sub-Inspector of Police and is the Investigating Officer, who received intimation from the Government Hospital, Prathipadu on 16.09.2008 at 5.00 PM, about the admission of Chitra Varalakshmi with injuries. Ex.P.7 is the intimation. He stated that he went to Government Hospital, Prathipadu and found deceased Varalaxmi in an unconscious state. She was brought to the Hospital by PW.1 and there the Investigation Officer has recorded her statement, basing on which he had registered the F.I.R in Cr.No.89 of 2008, for the offence punishable under Section 307 IPC, which is Ex.P.8. On 16.09.2008, he conducted scene of

offence panchanama in the presence of PW.6, and another panch witness, along with LW.14 K.Sesharao in the front yard of the house bearing D.No.4-176 situated in Munsif Street, where the deceased was residing as a tenant. He also conducted another scene of offence panchanama in front of the house bearing D.No.4-176, which belongs to PW.4/D.Raghava under Ex.P.2. Material objects MO.3 blood stained earth, controller earth MO.4, Plastic cheppals MO.5, black coloured hair band MO.6, black coloured bag MO.1 and towel and lungi MOs.7 and 8, respectively, which were in the said bag were seized from the first scene of offence, under the cover of scene observation report. He inspected the second scene of offence and found that it was cleaned and sprinkled with cow dung water. He recorded the statement of the witnesses PWs.2, 3, 4, 5 and 6 and LWs.8, 9, 10, 11 and 20. On the intervening night of 17/18.09.2008, at about 01.00 hours, he received the death intimation (Ex.P10) of Varalaxmi from GGH, Kakinada. Thereafter, he altered the section of Law from Section 307 to 302 I.P.C and issued altered F.I.R under Ex.P.11.

20. PW.10 is the photographer who took the photographs of the deceased which are marked as Exs.P.12 to 14 with corresponding negatives. PW.11 is the Inspector of Police, Prathipadu, who altered Section 307 IPC to 302 IPC, and proceeded to the scene of offence, and verified the investigation done by the S.I of Police PW.9.

21. Learned counsel for the appellant, mainly contended that the accused is innocent and falsely implicated in the case and all the witnesses are planted and the recovery of knife is also not proved and that the delay in lodging the FIR is fatal to the case of prosecution.

22. The testimony of all the witnesses clearly reveals that they have witnessed the incident of accused chasing the deceased and hacking her with the curved knife. The motive for commission of offence is clearly established from the testimony of all the witnesses that the accused bore grudge against the deceased and hacked the deceased with a curved knife to cause death of the deceased as he was under the impression that the deceased was responsible for non-joining of his wife with him. The testimony of PWs.1 and 2 is credible and trust worthy as the deceased immediately after the incident has told both of them the reason for the accused committing this offence, which cannot be disbelieved. The learned counsel for the appellant vehemently contended that the recovery of knife MO.2 is not proved in the light of the inconsistent statement made by the witness PW.2. Learned counsel referred to the testimony of PW.2 in his cross-examination wherein he stated that police seized knife and one black coloured zip bag from the scene of offence and that black colour zip bag shown to him is the same and it was marked as MO.1. Now this witness has stated that MO.1 is seized from the scene of offence. As far as the knife is concerned, this witness stated in his cross-examination that the knife shown to him is not the same knife that was seized from the scene of offence. It is further stated that he cannot say exactly whether the knife shown to him was not the knife that was seized. Therefore, the contention advanced by the appellant that there is discrepancy in the recovery of the knife cannot be accepted.

23. The learned Public Prosecutor placed reliance on *HEMA (supra 1)* and *PAWAN KUMAR (supra 2)* and submitted that the discrepancies with regard to the recovery of material object would not vitiate the trial. This is a case based on the testimony of direct witnesses PWs.3 to 5 and the

oral dying declaration made by PWs.1 and 2. Therefore, the minor discrepancies with regard to recovery of the material object do not vitiate the trial and is not fatal to the case of prosecution, in view of the above decisions cited by the learned Public Prosecutor.

24. Learned counsel for the appellant submitted that there is a delay of six hours in sending the FIR to the Magistrate though the distance between the police station and the Magistrate's Court is half a kilometre situated in the same village of Prathipadu. In the light of the direct testimony of PWs.3 to 5 and the oral dying declaration of PWs.1 and 2, the delay in sending F.I.R to the Magistrate need not be taken into consideration as it may be the procedural lapse on the part of the investigating agency which would not vitiate the trial or go to the root of the case of the prosecution. The learned counsel for the appellant further contended that the medical officer who examined the deceased at the first instance and noted the injuries is not examined as a witness in this case. The testimony of PW.8, who conducted autopsy over the dead-body, clearly reveals the nature of injuries suffered by the deceased and the cause of death and, therefore, the non-examination of the medical officer who treated the deceased at the first instance, is not fatal to the case of the prosecution. The learned counsel further contended that though the deceased was alive for one whole day, and neither the police nor the medical officer has taken steps for recording the dying declaration of the deceased through a Magistrate. As a matter of fact, the testimony of the medical officer and the testimony of the investigating officer reveal that the deceased was conscious for some time after the incident, and later she fell unconscious and, therefore, her statement could not be recorded by the inspector. This clearly reveals the reason for not calling the

Magistrate for recording the dying declaration. Therefore, there are no valid grounds to interfere with the judgment rendered by the Court below.

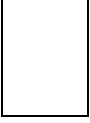
25. IN THE RESULT, the appeal is dismissed and the Judgment in S.C.No.496 of 2010, dated 22.11.2012, on the file of the Court of the III Additional District and Sessions Judge, Kakinada, is confirmed. The bail bonds of the accused, if any executed, shall stand cancelled.

A.V.SESHA SAI, J

Date: 27.04.2018
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GUDI SEVA SHYAM PRASAD, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI

AND

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



(per Hon' ble Sri Justice Gudiseva Shyam Prasad)

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