

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE MS JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.136 of 2013

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

Accused Nos.1 and 2 in Sessions Case No.185 of 2012 on the file of the Additional Sessions Judge, Hindupur, are the appellants. They were tried for the offence punishable under Section-302 read with 34 IPC for causing the death of one Yalpula Yamuna (hereinafter referred to as 'the deceased') on 15.9.2010 at 12 noon, near the fields of one Eediga Lingappa and Manyam lands of Anjaneyaswamy temple of Thalamarla Village. The learned Sessions Judge convicted both the accused for the offence punishable under Section-302 read with 34 IPC and sentenced each of them to suffer imprisonment for life and to pay a fine of Rs.200/- each, in default, to suffer simple imprisonment for three months each. M.Os.1 and 2 were directed to be destroyed after the expiry of the appeal time.

The facts of the case, as culled out from the evidence of the prosecution witnesses, are as under:-

Accused No.1 is the husband of accused No.2. P.W-1 is the junior paternal uncle of the deceased while accused No.1 is the brother of P.W-1. The deceased is the daughter of Yalpula Pedda

Chandrayudu and Savithri. P.W-1 had two brothers. All the brothers were living separately. As P.W-1 had no issues, he brought up the deceased. P.W-1 and L.W-4 own an extent of Ac.1.00 of land each and accused No.1 owns an extent of Ac.3.20 cents of land and their brother-in-law owns an extent of Acs.2.00 of land. There were some property disputes between accused No.1 and his brother-in-law. On the date of the incident, at about 12 noon, P.W-4, who was at the lands of one Ediga Lingappa, saw the accused coming towards the cart way near the lands of Ediga Lingappa while the deceased came opposite to both the accused. At that time, the accused obstructed the deceased and forced her to sign on a blank white paper, to which she resisted. A galata took place between the accused and the deceased. P.W-4 claims to have seen this incident from the side of the bushes. When the deceased refused to sign on a blank white paper, accused No.1 is said to have hacked her with a sickle, which she warded off by raising her left hand, as a result of which, she received a bleeding injury on the wrist. Later, accused No.2 is said to have forcibly administered poison to the deceased which lead to deceased falling on the ground. Thereafter, both the accused went away thinking that she died. However, the deceased got up and started moving towards her house.

The evidence on record further discloses that on the date of the incident, at about 12 noon, P.Ws.1 and 2 were present at the agricultural well of P.W-2. They noticed the deceased coming towards them by raising cries and when she reached near them, they noticed smell of pesticide poison coming from her and an injury on her left wrist. When enquired as to what happened, she seems to have narrated the entire incident, as afore-mentioned. Then P.Ws.1 and 2 took the deceased to the Government Hospital, Kothacheruvu, where the doctor declared her dead. On 15.9.2010, at about 1.30 pm., P.W-1 went to Kothacheruvu Police Station and lodged a report-Ex.P-1 with the Police, which came to be registered as a case in Crime No.78 of 2010 for the offence punishable under Section-302 IPC. Ex.P-9 is the F.I.R. Further investigation into the case was taken up by P.W-8-the Inspector of Police. According to him, on receipt of a copy of the FIR, he along with his staff reached the Primary Health Centre, Kothacheruvu at 2.30 pm and found the dead body of the deceased lying in a trench in front of the building of the Primary Health Centre, Kothacheruvu. He examined P.Ws.1 to 3, 5 and 6 and then conducted inquest over the dead body of the deceased in the presence of P.W-5. Ex.P-2 is the inquest report. Thereafter, the dead body of the deceased was sent to post-mortem examination. P.W-7-the Civil Assistant

Surgeon, Government Hospital, Penukonda conducted autopsy over the dead body of the deceased and issued Ex.P-6-the Post-mortem certificate. He opined that the cause of death of the deceased was due to consumption of Phorate-an insecticide poison. Later, P.W-8 visited the scene of offence and examined the same in the presence of P.W-5. It is said that the exact scene of offence is located on the cart track running from Talamarla Village to the fields, which is situated by the side of Anjaneyaswamy temple, and as there was rainfall on the previous night, the ground was wet and no blood stains were found at the scene of offence. However, P.W-8 claims to have seized one empty plastic bottle-MO-1 from the scene of offence, in the presence of mediator, under Ex.P-5. He also got prepared a rough sketch of scene of offence which is placed before us as Ex.P-7. On 22.9.2010, on receipt of credible information about the movements of the accused, P.W-8 along with his staff reached Appalavandlapalli bus stop and on seeing the Police, the accused tried to fled away, but they were arrested. When both of the accused were examined separately, they confessed about the commission of the offence, pursuant to which, a sickle which was said to have been used in the commission of offence was recovered from thorny bushes behind the wall near the Z.P. High School of Talamarla Village. Ex.P-4 is the admissible

portion of the Confession and Arrest mahazarnama of accused No.1. After collecting all the relevant documents and after the completion of investigation, a charge sheet came to be filed, which was taken on file as P.R.C.No.15 of 2012 on the file of the Judicial First Class Magistrate, Penukonda.

On appearance of the accused, copies of the documents were furnished to them. Since the offence is triable by a Court of Sessions, the case was committed to the Court of Sessions under Section-209 Cr.P.C., which came to be numbered as Sessions Case No.185 of 2012 on the file of the Additional Sessions Judge, Hindupur.

On appearance of the appellants, a charge under Section-302 read with 34 IPC was framed, read over and explained to them Telugu, to which they pleaded not guilty and claimed to be tried.

As the plea of the appellants was one of denial, they were made to stand trial, during which, the prosecution examined P.Ws.1 to 9 and got marked Exs.P-1 to P-9 and M.Os.1 and 2. On behalf of the appellants, no oral evidence was adduced, but Ex.D-1-the relevant portion in Section-161(2) Cr.P.C statement of P.W-2 was marked.

After completion of the prosecution evidence, the incriminating material appearing against the appellants through

the evidence of the prosecution witnesses was put to them during their examination under Section-313 Cr.P.C., to which they denied.

Relying upon the evidence of P.W-4 coupled with the evidence of P.Ws.1 and 2 and the oral dying declaration said to have been made by the deceased before P.Ws.1 and 2, the learned Sessions Judge convicted and sentenced the appellants as stated supra. Challenging the same, the present Criminal Appeal came to be filed through legal aid.

At the hearing, Mr. M.Chalapati Rao, learned counsel for the appellants, would contend that the evidence adduced by the prosecution is not sufficient to base conviction. According to him, P.W-4 would not have seen the incident. He would further contend that if really the deceased was administered poison, as deposed by P.Ws.1 and 2, she could not have walked a distance of 1 ½ miles, before reaching the fields of P.W-2 and narrated the incident to P.Ws.1 and 2. He would further contend that there is no material to show that the deceased was aware about the presence of her uncle in the lands of P.W-2 and that to reach the said place, she has to pass through the Village and the houses of P.Ws.1 and 2. That being the position, definitely, she would have first made an attempt either to go into her house or to the houses of her relatives in the Village to disclose about the

incident. Learned counsel further submitted that the entire case is set up by the prosecution because of the property disputes between accused No.1 and his brother.

On the other hand, the learned Public Prosecutor for the State of Andhra Pradesh would contend that even if the evidence of P.W-4 is disbelieved, the evidence of P.Ws.1 and 2 and the oral dying declaration made by the deceased remains on record. According to him, the statement made by the deceased is reflected in the report-Ex.P-1 given by P.W-1 and as such, there is no reason to disbelieve that the deceased could not have made such a statement. As regards the Post-mortem Certificate-Ex.P-6, learned Public Prosecutor would contend that the evidence of P.W-7-the Civil Assistant Surgeon, being only an opinion evidence, is not safe to hold that the deceased would not have made such a statement before P.Ws.1 and 2. As such, he contends that the oral dying declaration made by the deceased to P.Ws.1 and 2 is sufficient to base the conviction of the appellants and the trial Court has rightly done so.

The point that arises for consideration in this appeal is whether the appellants are responsible for the death of the deceased.

As stated earlier, accused No.1 is no other than the brother of P.W-1. Admittedly, there were property disputes between

accused No.1 and P.W-1, which fact was not denied even by the accused. Keeping this circumstance in the backdrop, we shall now deal with the evidence on record and find out as to whether the accused are responsible for the death of the deceased.

The prosecution examined P.W-4 as an eye-witness to the incident. In his evidence, P.W-4 deposed as under:

“The incident took place about 2 years ago at about 12 noon. At that time, I saw both the accused came to the cart way near Ediga Lingappa’s land. The deceased Yamuna came opposite to both the accused. Both the accused obstructed the deceased forcing her to sign on a blank white paper. The deceased resisted not to sign. I was nearer to that place in my land at a distance of about 50 feet. As some galata was going on between both the accused and deceased I sat by the side of bushes. When the deceased refused to sign, A-1-Chennareddy hacked on her left hand with a sickle and she received bleeding injury. Later, A-2-Chandrakala poured the poison into the mouth of the deceased. Then the deceased fell down. Both the accused went away thinking that the deceased died. When the deceased raised and went away towards her house. I saw at a distance the deceased saying about the incident to P.Ws.1 to 3. The deceased was taken to Kothacheruvu Govt. Hospital in 108 van. Later, I came to know that she died on the same day. CI of Police examined me next day.”

P.W-4 in his cross-examination, admits that there was no written lease to show that he was cultivating the land of Ediga

Lingappa. He further deposed that he neither intervened nor raised any cries after seeing the incident. He further admits that he never stated about the incident to anybody except to the Police. He further deposed that the deceased was lying at that place for 10 minutes after, the accused left the place. He further admits that even after the accused left the place, he did not go there to see the deceased and did not observe whether the deceased vomited or any blood or pesticide or whether any of the said substances is at the scene.

From the evidence of P.W-4, it is clear that though he knows the deceased and the accused, he did not make any effort to rescue the deceased or at least go near her after the accused left the scene of offence. If really, P.W-4 was present at the scene of offence and witnessed the incident, his conduct would have been quite different. Apart from this, his name does not figure either in the FIR or in the inquest report. For the first time, he is cited as an eye-witness only during the course of investigation. In fact, he himself admits in his cross-examination that he never informed about the incident to anybody except to the Police. Further, this could not be the normal human conduct when the deceased was known to him. Therefore, these circumstances throw any amount of doubt about the presence of P.W-4 at the scene of offence.

One other circumstance which falsifies the presence of P.W-4 at the scene is that he claimed to have been cultivating the land of one Ediga Lingappa by taking it on lease, but no lease document was placed before the Court. On the other hand, he admits that there is no written lease document to show that he is cultivating the land of Ediga Lingappa. Further, the scene of offence and seizure Mahazarnama, which is placed on record as Ex.P-3, shows that the land which P.W-4 claims to have taken on lease is a barren land. Therefore, the presence of P.W-4 in the lands of Ediga Lingappa and his witnessing the said incident appears to be doubtful.

The next circumstance which, in our view, falsifies the incident in question, in the agricultural land of Ediga Lingappa, is the evidence of the Investigating Officer and the mediators coupled with Ex.P-3-the Observation report.

In the scene of offence panchanama-Ex.P-3, which was drafted on 16.9.2010, the Investigating Officer noted that there was rain on the previous night and that he seized one uncapped bottle emanating odour from it. This being the position, the question is whether the evidence of P.W-8-the Investigating Officer with regard to recovery of a bottle emanating odour from it can be accepted or not. At this stage, we intend to refer to the evidence of the mediator-P.W-5, who was examined to

speak about the preparation of Ex.P-3-Scene of offence panchanama and the recovery of M.O-1.

P.W-5 admitted in his cross-examination that they did not observe smell of any pesticide poison at the alleged scene of offence. He admitted that smell of pesticide was emanating from the white coloured bottle and not from MO-1-bottle which was said to have been used by the accused. He further admitted that he acted as mediator in 4 or 5 cases and also deposed in those cases.

From the evidence of P.W-5 and P.W-8-the Investigating Officer, it is clear that from the scene of offence, P.W-8 claims to have seized only one bottle-MO-1 from which smell of pesticide was coming. His version runs contra to the evidence of P.W-5 who categorically stated that smell of pesticide was emanating from a white bottle and not from MO-1-bottle. The bottle from which the odour was emanating, was neither marked nor sent to an expert to find out the contents of the same. It is also to be noted here that when the bottle was uncapped and there was rain on the previous night, the smell of pesticide could not have been emanating from any of the bottles. Having regard to the evidence on record, we feel that there is any amount of doubt with regard to the alleged recovery and MO-1-bottle from the scene of offence.

The next question that falls for consideration is whether the deceased would have walked a distance of 1 ½ miles to make an oral dying declaration before P.Ws.1 and 2?

It is the case of the prosecution that after the incident in land of Ediga Linganna, the deceased walked to a distance of about 1 ½ miles through the Village and in fact, the houses of her relatives and then, informed P.Ws.1 and 2 about the incident. After informing about the incident, she fell down and became unconscious.

In the report-Ex.P-1 given by P.W-1, it was stated that while P.Ws.1 and 2 were in the land of P.W-2, they noticed the deceased coming towards them swinging from one side to another and on seeing her, P.Ws.1 and 2 claims to have ran and questioned her as to what happened. Initially she fell down and thereafter, she claims to have made a statement disclosing the involvement of the accused.

At this stage, it would be relevant to refer to the evidence of the doctor-P.W-7 who conducted the post-mortem examination. According to him, the deceased died at 1 pm at Primary Health Centre, Kothacheruvu and the cause of death was due to consumption of Phorate poison. Insofar as the time of death of the deceased is concerned, the incident in question is said to have taken place around 12 noon and thereafter, the

deceased walked to a distance of 1 ½ miles and thereafter, she fell down. Definitely, it must have taken some time for her to walk the distance of 1 ½ miles. Though some discrepancy is pointed out by the learned counsel for the appellant, in our view, the same cannot matter much. However, in the cross-examination, the doctor admitted as follows:

“Phorate is organic phosphorus poison and its toxicity is very high. There are general symptoms of running nose, teary eyes, sweating, salivation, weakness, agitation, disorientation, sneezing, drooling, breathing difficulty, fatigue, terror in co-ordination, twitching of muscles, drowsiness, nausea, vomiting, wheezing fluid in lungs, productive cough, blurred vision, incontinence, scizures, unconscious if a person consumes the said phorate poison. But all these symptoms need not be present. If a person consumes this poison (Witness says) if a patient is not treated immediately after unconscious the next stage is coma and respiratory arrest resulting in death. The death may be caused due to paralysis of respiratory muscles, respiratory arrest due to failure of respiratory centre or interise bronchi construction. Witness says it is simply cardio respiratory arrest. There may be drowsiness, inconsistency before going to unconsciousness or there may not be.”

Though this evidence of the doctor is not conclusive by itself and as pointed out by the learned Public Prosecutor, it is only an opinion evidence, but still, we can take this as one of the

suggestions to decide whether the deceased was in a position to make any statement before P.Ws.1 and 2.

As seen from the record, the parents of the deceased were not examined. The findings given above throw any amount of doubt with regard to the deceased being administered poison and the complicity of accused Nos.1 and 2.

Having regard to the fact that the deceased was administered Phorate poison, the toxicity of which is very high, it is very difficult to believe that the deceased could have walked a distance of 1 ½ miles to reach her uncle-P.W-1, without disclosing about the manner in which the incident took place to others in the village, more particularly, to her parents or her relatives in the Village though she passed in front of their houses while reaching the lands of P.W-2. Apart from that, there is no material to show that the deceased was aware about the presence of P.W-1 in the lands of P.W-2, which is on the other side of the village. It is not the case of the prosecution that the incident occurred some time in the night or in the early hours or at an odd time where no villager would be present in the Village. On the other hand, the incident is said to have taken place at 12 noon and there is every opportunity for the deceased to inform about the incident to the villagers, more so, when she crossed the village to go to the land of P.W-2. Hence, a doubt

arises as to whether really, the deceased made a declaration before P.Ws.1 and 2 disclosing the commission of offence by accused Nos.1 and 2.

The case of the prosecution is that the accused administered poison to the deceased only with a view to grab the property. But, the same appears to be incorrect for the reason that even as per the evidence of P.W-1, the entire property was divided amongst the brothers and each one got their own share. Even if the deceased dies, accused Nos.1 and 2 are not the legal heirs to the property, which, in fact, is not even seriously disputed by the learned Public Prosecutor.

Ego, the motive set up by the prosecution for causing the death of the deceased, has no legs to stand.

At this stage, we also intend to refer to the evidence of P.W-6 who acted as a panch for the recovery of sickle-MO-2 alleged to have been used by the accused. His evidence discloses that he acted as mediator in more than 50 to 60 cases and deposed as a witness and whenever necessary he was called by the Police. In view of the said admission, we are not inclined to believe the evidence of P.W-6 as well, for showing the recovery of sickle pursuant to the confession of the accused. It is no doubt true that there is an injury on the wrist of the deceased, but

when the incident in question itself is doubtful, one cannot infer that the said injury was caused with MO-2-sickle.

Having regard to the findings arrived at, we feel that the circumstances relied upon by the prosecution are not legally proved and the same are not sufficient to connect the accused with the crime.

In the result, the conviction and sentence recorded against the appellants/accused in the judgment dated 09.01.2013 in Sessions Case No.185 of 2012 on the file of Additional Sessions Judge, Hindupur, of the offence punishable under Section-302 read with 34 I.P.C. are set aside. The appellants shall be set at liberty if they are not required in any other case.

The Criminal Appeal is, accordingly, allowed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

24th January, 2018

dr