

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

CRIMINAL APPEAL No.132 OF 2012

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

A1 and A2 in S.C.No.524 of 2010 on the file of VI Additional District and Sessions Judge, Fast Track Court, Markapur, are the appellants herein. Vide judgment dated 27.01.2012, learned Sessions Judge convicted the accused for an offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life, for causing the death of one K.Srinivasa Reddy by hitting him with *medi* stick (ploughing stick) on his head, leading to his death on 28.11.2009.

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

(i) PW1 is the father of the deceased, PW2 is the mother of the deceased, PW3 is the wife of deceased, PW4 is the younger brother of PW1, PW5 is the brother of PW3, while PWs.6 and 7 are the relatives of the deceased. The accused are the grand children of the senior paternal uncle of PW1.

(ii) The family of the accused was having three shares in the tobacco barren, whereas PW1 was having one share, as it was constructed jointly. As the license was in the name of accused, there were some differences between the deceased and accused, with regard to the share in the tobacco barren

and the accused were demanding for transfer of shares. At that time, some of the elders intervened and pacified the issue. However, subsequent thereto they were living separately. On the next day i.e., on the date of incident, after taking dinner, the deceased went to the paddy fields and slept there. While he was in a deep sleep, he was beaten with a ploughing stick on the back of the head and ear. As the deceased did not return home by 05.00 a.m., PW1 went in search of him and at about 06.30 a.m., found him unconscious with bleeding injuries and the face swollen. Being afraid of the situation, he rushed to his house and informed about the same. On hearing the same, PW1 fell down unconscious on the cot. The family members and the villagers went to the spot and brought the dead body to the village along with the cot on which he was lying. Thereafter he was taken to Podili hospital. As per the advise of the doctor, the injured was taken to Ongole Government Hospital. On 29.11.2009, at about 10.30 a.m., while PW19 was in O.P. duty, he received an intimation about the admission of the injured in the hospital. Immediately, he proceeded to the casualty ward of the said hospital along with the duty doctor and recorded the statement of the father of injured, as the injured was not in a position to give the statement. He read over the contents of the statement recorded by PW19 and obtained the thumb impression of PW1. He also obtained the endorsement of the duty doctor on the statement recorded by

him. Thereafter, he forwarded the statement under Ex.P1 to K.K.Mitla Police Station with a memo. On receiving the statement of PW1 along with the police intimation, PW16 registered a case in Crime No.124 of 2009 for an offence punishable under Section 324 read with Section 34 IPC against A1 and A2. Ex.P13 is the registered FIR. PW16 who took up investigation into the matter, visited the scene of offence, prepared an observation report, and seized blood stained control earth at the scene of offence under Ex.P7 the mediators report. MOs.2 and 3 are blood stained and control earth seized at the scene. Ex.P15 is the rough sketch of the scene of offence. Thereafter, he examined PWs.2 and 3 at Thuvvapadu Village and recorded their statements. On 30.11.2009, PW16 received the death intimation from the Government Hospital, Guntur, basing on which, he altered the Section of law from Section 324 IPC to Section 302 IPC. Ex.P17 is the altered memo. On receiving death intimation and the altered memo, PW17 perused the CD file and proceeded to the Government hospital at Guntur where he conducted inquest over the body and recorded the statements of PWs.1,4 to 6, 13 and others. After inquest, the body was sent to PW20, the then Associate Professor at Guntur Medical College, for conducting post mortem examination over the body. Ex.P22 is the post mortem report. According to the doctor, the cause of death was due to head injury. He also noticed ante mortem external injuries on the body of the

deceased. On 11.12.2009, while PW18 was looking after the law and order situation at Podili, in connection with separate Andhra agitation, received information about the movement of the accused. Immediately, he along with his staff proceeded to Chinarikatla Junction and apprehended the accused. Later, he brought them to K.K.Mitla Police Station, and in the presence of PWs.13 and 15, interrogated them. Both the accused are said to have confessed about the commission of offence. Basing on the said confession a ploughing stick – MO1 said to have been used in the commission of offence was recovered from the Mirchi field, under Ex.P12. After completing the investigation a charge sheet came to be filed, which was taken on file as PRC No.5 of 2010 on the file of Judicial Magistrate of First Class, Podili.

(iii) After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions under Section 209 Cr.P.C. and the same came to be numbered as S.C.No. 524 of 2010 on the file of the VI Additional District and Sessions Judge, Markapur. Basing on the material on record, a charge for the offence punishable under Section 302 IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

(iv) To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P10 and M.Os 1 to 3.

(v) After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. However, no oral or documentary evidence was adduced on their behalf, in support of their plea.

(vi) Relying upon the evidence adduced by the prosecution, more particularly, with regard to the motive and the recovery of the weapons used in commission of offence, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

3. The learned counsel for the appellants mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. He further submits that the two circumstances relied upon by the prosecution i.e., the motive and the weapon used in the commission of offence, are not proved beyond reasonable doubt and as such the order of conviction against the accused warrants interference.

4. On the other hand, the learned Public Prosecutor would submit that apart from the two circumstances, the prosecution also relied upon the conduct of the accused in evading the process of law and that all the three circumstances put together, do form a chain of events connecting the accused with the crime. He relied upon the judgment of the Apex Court in ***Chunni Lal Vs. State of Uttar Pradesh***¹, in support of his plea.

5. The point that arises for consideration is whether the prosecution was able to prove the guilt of the accused for the offence punishable under Section 302 IPC beyond reasonable doubt?

6. It is not in dispute that there are no eye witnesses to the incident and the case rests on circumstantial evidence. As stated earlier the main circumstance relied upon by the prosecution is the motive for the accused to commit the offence. The prosecution placed on record the evidence of PWs.1,2 and 3 to establish the existence of disputes between the family of the deceased and the accused, with regard to their share in the tobacco barren, which lead to the incident in question.

7. PW1, the father of the deceased in his evidence deposed as under:

¹ 2010 (7) SCC 496

“ About two years ago, on one day during night time at about 07.00 p.m. altercation ensued between deceased and A1 and A2 with regard to our share in tobacco barren on a demand made by deceased for transfer of our share, as the barren and license stands in their name. Village elders intervened and subsided the matter.”

8. PW1 was cross examined at length, in which existence of some dispute came to be elicited. To a suggestion that unnecessarily police report was given was denied by PW1. In the cross examination he admits that though he was at Podili, he did not give any report against the accused, inspite of staying there for about half an hour. To a suggestion that the accused were falsely implicated after due deliberations and discussions, was denied by him.

9. PW2 who is the wife of PW1, in her evidence deposed as under:

“...On the earlier night of my son’s death, my son had been to our paddy field for watching at about 09.00 p.m. after taking dinner and slept there. Usually he used to return home in the early hours of 04.00 a.m., whenever he visits the fields for watching. On that day, he did not return home till 05.00 a.m. Then my husband PW1 had been to the fields for the sake of my son to find out the reason. On reaching the field PW1 noticed my deceased son, on his cot with bleeding injuries in semi-conscious state.

Immediately, he (PW1) rushed to the house and informed about the condition of my son. Then myself, PW1 and other villagers rushed to the fields and shifted my son on same cot into our village.”

10. According to PW2, one day prior to the incident an altercation took place between her son and the accused with regard to the share in tobacco barren when her son insisted for transfer of their 0.25 ps. share to them. At that time, the accused are alleged to have threatened the deceased with dire consequences. The incident is said to have taken place in the presence of PW2.

11. In the cross examination, PW2 admits that she does not remember whether she stated before the police about the threat given by the accused to his son on the date of altercation.

12. PW7 and other witnesses were pressed into service by the prosecution to prove 'motive'. PW7 in his evidence in chief examination, deposed as under:

“Two days prior to the death of deceased at about 07.00 p.m., altercation ensued in between accused and deceased with regard to tobacco barren share as deceased insisted document in proof of his family's 0.25ps. share in that barren in front of the house of accused which is 50 yards away from my house. Then I was watching TV in my house. After the altercation deceased and accused came towards our house and I noticed the same when I came out of my house to feed my cattle. I did not talk with accused or deceased. Deceased was taken to his house by his mother accused proceeded towards village to attend marriage function. I heard about the details of discussions between deceased and accused through others.”

13. At a later point of time, the above witness was declared hostile by the prosecution.

14. From the evidence of these witnesses it is clear that PW1 categorically stated that he was present at the time of altercation. Even assuming that, PW1 was present on that day, his evidence is silent as to when the incident of altercation between the accused and the deceased took place. His evidence is only to the effect that on one day during night time at about 07.00 p.m. an altercation ensued between the accused the deceased. Whereas the evidence of PW2 is to the effect that on a particular day i.e., a day prior to actual attack on the deceased, at about 09.00 p.m. the incident in question took place, while the evidence of PW3 is to the effect that two days prior to the date of incident, an altercation took place between the accused and the deceased, wherein the accused proclaimed to see the end of the deceased. The evidence of these three witnesses is inconsistent with each other with regard to the quarrel that took place between the accused and the deceased. There is no consistency as to when the altercation took place. Further the evidence of PW2 shows that prior to the incident, the accused have threatened the deceased to eliminate him by the next day, but the same does not find place in his earlier statement recorded by the police which fact is admitted in the cross examination by PW2 himself.

15. Having regard to the above, we are of the view that the prosecution failed to prove the existence of an immediate or proximate motive for the accused to kill the deceased.

16. The other circumstance relied upon by the prosecution is the recovery of ploughing stick alleged to have used in the commission of offence. The witnesses who acted as panch for recovery of the weapon are PW13 and PW15.

17. PW13, who was a VRO of Thuvvapadu Gram Panchayat of Konakanamitla Mandal, deposed as under:

“On 11.12.2009 while I was in my office the Inspector of Police, Podili summoned me and Kilaru Subba Rao VRO of Bachalakurapadu through his Constable went to Konakanamitla Police Station. In our presence Inspector of Police examined A1 and A2 separately and prepared a report on which, myself and LW17 signed as attestors. In our presence, A1 and A2 confessed their guilt disclosed that they will show the plough stick secreted y them in the field taken by them on lease, belonging to Udumula Kasaiah (late) wife Rattamma.”

18. In the cross examination, PW13 admits that the blood stains found on the stick were totally dried. Slips with their signatures were not affixed on the stick. However he states that A1 picked up the stick on the instructions of the Inspector. He also admits that he did not observe whether any photos were taken in proof of seizure.

19. PW15 in his evidence states that the Inspector of Police was present at the time when the accused gave confession,

which led to recovery of MOs.1 and 2. In the cross examination he admits that the signatures of the accused were not taken in confessional statement and seizure report, but their signatures were taken elsewhere. He also admits that blood stains on MO1 got dried and slips pasted on MO1 are not there. Apart from that, PW18 the investigating officer, in his evidence states that he does not remember whether any slips were affixed on MO1 on the date of seizure.

20. From the above it is clear that the procedure as contemplated under law in showing recovery of MOs.1 and 2 pursuant to the confession made by the accused was not followed. If really seizure was effected, law requires that the seizure slips be pasted on the seized items by the concerned officer. In the absence of the same, we feel that the seizure alleged to have been made pursuant to the confession cannot be accepted by the prosecution. Apart from that, it is also to be noted that FSL report which is placed on record as Ex.P9, does not anywhere indicate group of the blood found on medi stick (ploughing stick) as that of the deceased. As per the said report, the blood stains on item 3,4 and 5 are of 'A' group, but there is no evidence on record to show that the blood group of the deceased is of 'A' group. It is also to be noted that PW5 in his evidence states that blood stains on MO1 i.e, ploughing stick are not visible at all. Both these circumstances throw any amount of doubt with regard to recovery made and the usage of the said weapon in the

commission of offence. Even if the argument of the public prosecutor with regard to motive is accepted, in view of the above, the same by itself may not be sufficient to convict the accused.

21. In ***Majenderan Langeswaran Vs. State (NCT of Delhi) and another²***, the Apex Court was dealing with a situation where a day prior to the date of incident, an altercation took place between accused and deceased, which was said to be the source for murder. The prosecution evidence was found full of inconsistencies and infirmities. The contentions of appellant was that the altercation could not be reckoned as affording a sufficient motive for the fatal assault on deceased on the following day; and that in any case such motive alone, in the absence of necessary links in the evidence, would not suffice to record conviction against appellant. The same was accepted and the accused was acquitted.

22. In view of the judgment of the Apex Court referred to above and having regard to the above evidence with regard to motive, recovery and usage of weapon in the commission of offence, we feel that the prosecution failed to prove the chain of events, connecting the accused with the crime.

23. In the result, the Criminal Appeal is allowed. The conviction and sentence awarded against the appellants/accused Nos.1 and 2 by names Sanikommu

² (2013) 7 SCC 192

Venkateswara Reddy @ Venkateswarlu and Sanikommu Ramana Reddy, in the judgment dated 27.01.2012, in Sessions Case No.524 of 2010, on the file of the VI Additional District and Sessions Judge (FTC), Markapur, for the offence punishable under Section 302 of I.P.C., are set aside and they are acquitted for the said offence. Since the appellants are on bail, their bail bonds shall stand discharged.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T.AMARNATH GOUD

18.04.2018
vnb

