

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRIMINAL APPEAL No.598 of 2013

Between:

Harijana Peddinti Erikalanna

..... APPELLANT/
ACCUSED

VERSUS

1. State rep. by its Public Prosecutor
High Court of A.P., Hyderabad and
another.

..... RESPONDENTS/
COMPLAINANTS

JUDGMENT PRONOUNCED ON : 27.07.2018

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE P.KESHAHA RAO

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reporters/Journals
3. Whether Their Ladyship/Lordship : Yes/No
wish to see the fair copy of
judgment

C. PRAVEEN KUMAR, J

P.KESHAHA RAO, J

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

CRIMINAL APPEAL No.598 of 2013

ORDER :

%Dated 27.07.2018

Harijana Peddinti Erikalanna

.....

APPELLANT/
ACCUSED

VERSUS

\$1. State rep. by its Public Prosecutor
High Court of A.P., Hyderabad and
another.

.....

RESPONDENTS/
COMPLAINANTS

! Counsel for Appellant

: Smt Nargis Afshan Khan

^ Counsel for Respondents

: PUBLIC PROSECUTOR (TG)

< GIST :

> HEAD NOTE :

? Cases referred :

¹ AIR 2005 Supreme Court 1206

² Laws(APH)-2018-2-25

³ (2010)3 SCC 538

⁴ (2005)5 SCC 272

⁵ 1994(2) ALT 172

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P.KESHA RAO**

CRIMINAL APPEAL No.598 of 2013

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

1) The sole accused in Sessions Case No. 728 of 2007 on the file of the III Additional Sessions Judge (F.T.C) Anantapur, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife Harijana Sreedevi (hereinafter referred to as "the deceased") on 27.04.2007 at 3.00 a.m., in his house in Ferror colony, Rani Nagar, of Anantapur. By its judgment dated 03.06.2010, the learned Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.200/-in default, to suffer imprisonment for a period of one month.

2) The facts in issue are as under:-

The accused is the husband of the deceased. P.Ws.1 to 5 are the residents of Rani Nagar, Anantapur. The house of the accused and deceased are situated nearby the house of P.Ws.1 and 2. According to PW.1 on the date of incident at about 3.00 a.m., on hearing the cries of deceased, he woke up and saw the accused inflicting injury with a pestle on the head of the deceased. Then himself, P.Ws.2 and 3 telephoned to 108 Ambulance and then shifted the deceased in that Ambulance to Government General Hospital,

Anantapur. It is said that the accused used to suspect the character of his wife Sreedevi and because of which he must have killed her. On the fateful day at about 8.00 a.m., while P.W.12 the S.I. of Police was in police station, received intimation from the Hospital about the admission of the injured. Ex.P-10 is the said intimation. At the same time, P.W.1 also went to the police station and made an oral statement, which was reduced into writing. Ex.P-1 is the said statement, which contains the signature of P.W.1. Basing on Ex.P-1, P.W.12 registered a case in Cr.No.68 of 2007 under Section 307 IPC and dispatched the same to all concerned. Ex.P-17 is the FIR. On the same day at about 9.00 a.m., the injured succumbed to the injuries while undergoing treatment in the Hospital. On receipt of death intimation from the Hospital, P.W.4 altered the section of law to one under Section 302 IPC. Ex.P-18 is the altered FIR. Further investigation was conducted by the C.I. of police, who was examined as P.W.11. According to him, on receipt of a copy of the altered FIR, he proceeded to the scene of offence along with his staff and mediators. He prepared a panchanama of the scene at 1.30p.m. and also a rough sketch of the scene, which is marked as Ex.P-12. The said panchanama and the sketch of the scene were said to have been prepared in the presence of P.Ws.7 and 9. During the said process, he seized M.os.1 to 4 under Ex.P-13, the seizure mahazarnama. He then visited the mortuary of the Government General Hospital, Anantapur, secured the presence of P.Ws.1 to 4, 6, 7 and 9 and conducted inquest over the dead body of

the deceased. Ex.P-14 is the inquest report. After completion of inquest, he sent the dead body for post-mortem examination. P.W.8, who is the Professor in Forensic Medicine in Government Medical College, Anantapur conducted autopsy over the dead body of the deceased and issued Ex.P-17-the Post Mortem certificate. On 10.05.2007 at about 8.00 a.m., P.W.11 arrested the accused near Meda Diesel bunk on Gooty road, Anantapur and sent him to remand on the same day. After obtaining the RFSL reports, which are marked as Exs.P-15 and P-16, he filed charge-sheet, which was taken on file as P.R.C.No.141 of 2007 by the Additional Judicial Magistrate of I Class, Anantapur, who in turn committed the case to the Sessions Division under Section 209 of Cr.P.C., which came to be numbered as S.C.No.728 of 2007.

3) Basing on the material available on record, a charge under Section 302 IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 12 and got marked Exs.P-1 to P-18 and MOs.1 to 7. After the closure of 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. No oral or documentary evidence was adduced by the accused.

5) Out of 12 witnesses examined by the prosecution, P.Ws.1 to 7 and 9 did not support the case of prosecution and were treated hostile by the prosecution. However, relying upon the evidence of P.Ws.1 and 2, who turned hostile long after recording their evidence in chief, the trial court convicted the accused. Assailing the conviction and sentence, the present appeal came to be filed through legal-aid.

6) Learned counsel for the appellant mainly submits that there is absolutely no material on record to connect the accused with the crime. According to her, the evidence of P.W.1 who claims to have heard the cries of the deceased at about 3.00 a.m., and the evidence of P.W.2 who also claims to have witnessed the accused going out after the incident, cannot be accepted as they went back on what they have stated in their evidence in chief. In the absence of any other evidence, she pleads that the finding of the trial court are illegal and incorrect.

7) On the other hand, the leaned Public Prosecutor would contend that though P.Ws.1 and 2 were declared hostile, but the fact that their evidence in chief is supported by medical evidence and the contents of First Information Report given by P.W.1, the same can be made the basis to convict the accused. Hence, pleads that the finding of trial court warrants no interference.

8) The point that arises for consideration is "Whether the evidence in chief of P.Ws.1 and 2, who went back from what they have stated in

chief in the cross-examination, and declared hostile by the prosecutor, can be made the basis to convict the accused?

9) In order to appreciate the same, it would be useful to refer to the evidence of P.W.1 and the circumstances under which he was subjected to cross-examination and re-examination. P.W.1 in his evidence in chief states that his house is situated nearby the house of the accused and deceased. On the date of incident i.e., on 27.04.2007 at about 3.00 a.m., on hearing the cries of the deceased, he woke up and noticed the accused inflicting an injury with a pestle on the head of the deceased. Thereafter, he informed P.Ws.2 and 3; telephoned to 108 Ambulance and also shifted the deceased in a Ambulance, to Government General Hospital, Anantapur. According to him, the deceased died on the next day at 9.00 a.m. He further deposed that he lodged a report with the police, which is marked as Ex.P-1. According to him, M.O.1 is the pestle used by the accused in inflicting the injury on the deceased. When the accused was asked to cross-examine P.W.1, he pleaded his inability, as his counsel was not present. Then the court made the following endorsement:-

"Accused present. Accused submits that his Advocate is out of station. Accused is unable to proceed with the cross-examination of witness. Hence cross examination of P.W.1 is recorded as nil."

10) It is to be noted here that the chief-examination of P.W.1 was on 20.10.2009 and on the same day the cross-examination of P.W.1 was

recorded as Nil, as the counsel was not present. Similar is the evidence of PW.2. He is also a neighbor of the accused and the deceased and according to him on the date of incident at about 3.00 or 3.30 a.m., while he was sleeping in the front yard of their houses, heard cries of Sreedevi. On hearing the same, he woke up, went to the house of the accused and noticed the accused coming out of the house along with his mother after beating the deceased. P.Ws.2 and 1 called P.W.3, who in turn called 108 Ambulance. Thereafter they shifted the injured to Government General Hospital, where she died at 9.00 a.m. The accused used to suspect the character of his wife Sreedevi and used to quarrel with his wife. According to him, the accused used to quarrel with the deceased under the influence of intoxication very frequently. He also deposed about P.W.1 giving a report to police under Ex.P-1. His evidence in chief was recorded on 20.10.2009. On that day, the accused was present and his counsel was not present for cross-examination. As no cross-examination was done, the cross-examination of P.W.2 was recorded as Nil. Long thereafter an application vide Crl.M.P.No.6 of 2010 came to be filed, seeking to recall P.Ws.1 and 2 for their cross-examination, which was allowed and accordingly P.Ws.1 and 2 were subjected to cross-examination on 05.03.2010. In the cross-examination P.W.1 states that he knows the accused and deceased since 8 months prior to the death of the deceased and during such period they lived amicably. According to him, on the date of incident, he was in the Auto stand of

Tadipatri bus stop with a Auto and that he does not know the contents of Ex.P-1 and without knowing the same he signed. He further admits that when police people examined him, he stated to them that he was not present at the time of the incident. It was further elicited in the cross-examination that it was totally dark at the time of the incident and the articles therein were not visible. He further states that by the time he came out, 30 to 40 persons gathered at the scene and that he noticed the deceased lying with injuries. He goes to the extent of saying that he does not know when 108 Ambulance came and took the deceased. He categorically states that he has not witnessed the incident personally except hearing from gathering as to the incident. At that stage, the learned Public Prosecutor declared P.W.1 as hostile and sought permission for cross-examination. In the cross-examination, the suggestion given to P.W.1 was with regard to Ex.P-1, which is as under:-

"It is not true that having given Ex.P-1 complaint with facts and having deposed in my chief examination regarding incident I am deposing falsehood now as the matter is compromised out side the court."

11) P.W.2 was also cross-examined on 05.03.2010. He also went back on what he has stated in his chief-examination. At that point of time, P.W.2 was declared hostile and was subjected to cross-examination by the learned Public Prosecutor. The suggestion given to P.W.2 was that he is deposing false since the matter is compromised outside the court, which is as under:-

"It is not true that having deposed about the incident in my chief-examination now I am deposing falsehood as the matter is compromised outside the court."

12) Insofar as the other witnesses are concerned including the panch witnesses for scene of offence, rough sketch, inquest and the recovery, did not support the prosecution case. The entire case now rests on the evidence of P.Ws.1 and 2, the medical evidence and the evidence of I.O. In other words the issue is; Whether the evidence of these two witnesses, who resiled from their evidence in chief, at a later point and were declared hostile can be made the basis to convict the accused?"

13) Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination took place a year and 8 months later giving ample time to the accused to pressurize the witness and gain him over by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty

to arrive at the truth on the basis of the material brought on record. If an accused, for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues." (**Vinod Kumar v. State of Punjab**¹)

¹ AIR 2005 Supreme Court 1206

14) As seen from the record, the evidence in chief of P.Ws.1 and 2 was recorded on 20.10.2009 and on the same day, the cross-examination was closed since the counsel for the accused was not present and accused, who was present, was unable to proceed with the cross-examination of the witnesses. Thereafter, an application came to be filed for recall of P.Ws.1 and 2 vide Crl.M.P.No.6 of 2010 and the same was allowed. Pursuant thereto, both of them were cross-examined on 05.03.2010, wherein they resiled from what they have stated in chief. After declaring them hostile, the Public Prosecutor cross-examined the witnesses. In cross-examination, it was suggested that they are deposing false as the matter was compromised outside the court, which was denied by them. It is also to be noted that cross-examination of P.Ws.1 and 2 was done after examination of all the witnesses except P.W.12-the Investigating Officer, who laid charge-sheet. Under those circumstances, it is to be seen whether the version in chief given by them can be made use of to convict the accused.

15) The word "evidence" as defined in Section 3 of the Evidence Act means and includes, all statements, which the court permits or requires to be made by the witness in relation to matters of fact under inquiry. Such statements are called oral evidence. A fact is said to be proved when, after considering the matter before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the

particular case, to act upon the supposition that it exists." From the definition of word "Evidence", it is clear that oral evidence means the statements made before the courts by the witnesses, in relation to matters of fact under inquiry; and documentary evidence means the documents produced before the court for inspection.

16) The learned counsel for the appellant relied upon a judgment of the Division Bench of this Court in **Dudekula Rasool v. State of Andhra Pradesh**² and also the judgment of the apex Court in **Javed Masood and another v. State of Rajasthan**³ to show that the evidence in chief of these two witnesses cannot be made the basis to convict the accused.

17) In **Javed Masood's case**, the Apex Court dealt with a situation where the witnesses who were examined by the prosecution, though deposed in chief, but went back in the cross-examination, at a later point of time. It was a case where the cross-examination was deferred, and the Public Prosecutor failed to declare the witnesses as hostile, when they resiled from their version in chief. Under those circumstances, the Apex Court disbelieved their evidence.

18) In **Dudekula Rasool's case (2 supra)**, the Court was dealing with the situation where the entire case rested on the evidence of P.W.2. In the evidence in chief, P.W.2 deposed about the manner in which the deceased was done to death. Three months thereafter, the case was

² Laws(APH)-2018-2-25

³ (2010)3 SCC 538

posted for cross-examination of P.W.2, when she totally resiled from what she has stated in chief, by giving a complete volteface to her version in chief. Strangely, the Public Prosecutor failed to declare the witness as hostile and put questions to her under Section 154 the Evidence Act.

19) In **Rajaram v. State of Rajasthan**⁴, the Apex Court dealt with a situation, where the Doctor, who was examined as a prosecution witness, deposed that the deceased was being told by one 'K' that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared hostile. Though the High Court convicted the accused, the Supreme Court, however, held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.

20) The ratio laid down in the judgments referred to above, may not apply to the case on hand. All the judgments, referred to above, dealt with a situation where the witnesses were not declared hostile by the Prosecution, when the said witnesses resiled from their evidence in chief. In the instant case, the situation is otherwise. The evidence in chief of P.Ws.1 and 2 was recorded on 20.10.2009, on which date both the witnesses deposed about witnessing the assault on the deceased by the accused. Cross-examination was not done on that day since the counsel for the accused was present and the accused expressed his inability to cross-examine the witness. Rejecting the request for an

⁴ (2005)5 SCC 272

adjournment, the Court recorded the cross-examination of P.Ws.1 and 2 as Nil. Things would have been different had an application for recall of the witness for cross-examination been filed immediately thereafter. Strangely no steps were taken by the counsel or by the accused to file an application seeking recall of P.Ws.1 and 2 immediately thereafter. As seen from the record, P.Ws.3, 4, 5, 6 and 7 who were declared hostile were examined from 07.12.2009 to 11.01.2010. On 19.01.2010 the post-mortem Doctor as well as the mediators for inquest were examined as P.Ws.8 and 9. P.W.11 the C.I. of Police, who investigated into the matter after the receipt of altered FIR, was examined on 09.02.2010. Thereafter, the application for recall of P.Ws.1 and 2 came to be filed, though their evidence in chief was closed on 20.10.2009, P.Ws.1 and 2 came to be cross-examined on 05.03.2010. Obviously the defence kept quiet till the examination of all the other material witnesses was over and then made an application for recall of P.Ws.1 and 2, after gaining them over. When both the witnesses in their cross-examination, went back on what they have stated in chief, the Public Prosecutor declared them hostile.

21) In a situation of this nature, the court has to test the conduct of the witness coupled with the attitude of the accused in making every effort to win over the witness by not proceeding with the case on the day, when he was asked to cross-examine the witness. Situation would have been different had the witnesses were not declared hostile. But

as stated earlier, both the witnesses were declared hostile by the prosecutor and then they were cross-examined. This conduct of the accused in not making an application to recall the witness immediately after the evidence of P.Ws.1 and 2 was closed and making an application nearly couple of months later, i.e., after examination of other witnesses, has to be viewed with suspicion and the said conduct needs to be condemned. Allowing such applications is nothing but making mockery of the criminal trial.

22) If really, the witnesses were not present and have not witnessed the incident in question, there was no need for them to describe the manner in which the incident took place. In fact in the chief-examination, P.W.1 did not dispute his signature on the First Information Report, which was marked as Ex.P-1. His version in chief gets corroboration from the evidence in chief of P.W.2 and also the contents in the First Information Report, given at the earliest point of time, which is evident from the evidence of P.W.11-the Investigating Officer. As stated earlier, even in the cross-examination, which took place on 05.03.2010, P.W.1 never went back on his signature in Ex.P-1. It may be true that the First Information Report by itself is not a substantial piece of evidence, but in the given set of circumstances, definitely it can be used to test the veracity of the witness. It is to be noted that the evidence in chief of P.Ws.1 and 2 gets corroboration from the medical evidence in all aspects. The injury said to have been inflicted by the accused with a pestle finds

place in the post-mortem certificate, issued by P.W.8. Hence, we feel that the version of these two witnesses in their cross-examination cannot be given any importance.

23) The Apex Court in **Javed Masood's case** and the Division Bench of this Court in **Dudekula Rasool's case** categorically observed that situation would have been different had the prosecution availed its right under Section 154 of the Evidence Act and cross-examined the witnesses, meaning thereby that if witnesses of this nature, are declared hostile by the prosecution and cross-examined, their evidence in chief can be made use of, to connect the accused with the crime.

24) In **Pubi Satyanarayana alias Satteyya v. State of Andhra Pradesh**⁵ a Division Bench of this Court came down heavily on the practice of the defence seeking deferment of cross-examination with a view to manage the prosecution witnesses and make them resile from their earlier statements during the cross-examination. The said judgment does not indicate as to whether the witnesses were declared hostile. In the said case, the Division Bench condemned such practice and observed that in such cases, proceedings for perjury should be initiated against the person concerned.

25) Having regard to the above, we feel that the version of P.Ws.1 and 2 in cross-examination has to be eschewed from consideration and

⁵ 1994(2) ALT 172

their evidence in chief which gets corroboration from other evidence, as referred to by us earlier can be made the basis to convict the accused.

26) In the result, the Criminal Appeal is dismissed. As a sequel to it, miscellaneous petitions pending if any in this Criminal Appeal, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE P.KESHAVA RAO

Dt:27.07.2018

Note :
LR copy to be marked
B/o.
GM

