

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.294 of 2012

JUDGMENT: (per Hon'ble Smt Justice T. Rajani)

The judgment that is assailed by the appellant – A2, in this appeal, is rendered by the VI Additional District and Sessions Judge (Fast Track Court), Narsapur in SC.No.5 of 2009, on 22.12.2010, whereby the appellant – A2 was found guilty for the offence punishable under section 302 read with 34 of the Indian Penal Code.

2. The facts of the case, succinctly, can be stated as under:

A1 and A2 are residents of Kanakkayalanka village of Elamanchili Mandal. About one year back, the wife of A1 developed illicit intimacy with the deceased, which resulted in extreme ill feelings between the deceased and A1. Accordingly, the deceased and wife of A1 went somewhere for 2 or 3 three times and later returned. The accused, along with their henchmen, attacked on the house of the deceased, to beat the deceased, but the deceased got detained in his house with the assistance of his people. Then the Ex-Sarpanch of the village and other local elders went there and settled the matter amicably. Since then the accused bore grudge against the deceased and were waiting for an opportunity to wreak vengeance against the deceased. While the matter stood thus, on 19.07.2006 at about 6.30 PM when the deceased was discussing with L.Ws.7 and 8 about the forthcoming panchayat elections, by standing near Sandaka tree, all of a sudden, A1 and A2, with an evil intention, came armed with

curved knives. A1 hacked the deceased on the left side of the neck of the deceased and A2 instigated A1 by uttering "you hacked well". Later both the accused absconded from the vicinity. The deceased was shifted to Government Hospital, Razole for treatment, where the doctor declared him as brought dead.

Based on the report given by P.W.1, a case was registered in Cr.No.46 of 2006 for the offence under Section 302 read with 34 IPC. During the course of investigation, the scene of offence panchanama was conducted, witnesses were examined and their statements were recorded and material objects were seized. On 30.07.2006, P.W.15 arrested the accused at 2 PM and in pursuance of the confession made by them, the weapons and blood stained shirt of A1 were seized. The accused were remanded to judicial custody. The investigation was concluded and charge sheet was filed for the same offence.

The Additional Judicial Magistrate of First Class, Narsapur took cognizance of the case and after complying with the required legal formalities, committed the case to the Sessions Division, West Godavari by virtue of orders in PRC.No.10 of 2007. The Sessions Judge, in turn, made over the case to the VI Additional District and Sessions Judge, Fast Tract Court, Narsapur for trial and disposal in accordance with law. The Court below, on appearance of the accused, framed charges against them for the same offences and after recording the plea of not guilty by the accused, conducted the trial of the case, during which the Court below examined P.Ws.1 to 15 and marked Exs.P1 to P12 and M.Os.1 to 11 on behalf of the prosecution.

Exs.D1 to D7 were marked on behalf of the accused. After concluding the prosecution evidence, the accused were questioned about the incriminating circumstances appearing in the prosecution evidence, which they denied and they did not choose to adduce any evidence on their behalf.

3. The Court below, after appreciating the evidence and considering the material on record, passed the impugned judgment, convicting A1 and A2 for the offence under Section 302 read with 34 IPC and sentencing them to undergo imprisonment for life and also to pay fine of Rs.1,000/- in default to suffer simple imprisonment for two months, against which the present appeal is preferred only by A2, on the following grounds:

The Court below failed to see that there was no motive for the accused to attack the deceased; failed to see that the scene of offence is not fixed by the prosecution and that all the witnesses are interested witnesses. The Court below ought to have seen that there is no probability of P.Ws.1 to 6 to witness the incident.

4. Heard Smt. A. Gayathri Reddy, learned counsel for the appellant and the learned Public Prosecutor.

5. The counsel for the appellant contends that there is absolutely no motive for A2 to commit the offence and even the evidence does not disclose that A2 committed the offence. She based her whole argument on the said contention.

6. Learned Public Prosecutor, on the other hand, by relying on the evidence of prosecution witnesses, submits that motive is absolutely

made out against A2 also, as he accompanied A1 along with knives and both the accused subsequently also made an attack on another person; hence, the intention on the part of A2 becomes evident.

7. Based on the above arguments and the material on record, we frame the following points for consideration:

1. Whether the evidence of the prosecution witnesses proves the motive on the part of the A2, to kill the deceased and whether the guilt of A2 stands proved beyond all reasonable doubt.
2. Whether the judgment of the Court below is sustainable.
3. To what result.

POINT Nos.1 and 2:

8. Before taking up the evidence of the prosecution witnesses, a decision relied upon by the counsel for the appellant can be looked into. The help of the said decision is taken by the counsel, in order to draw support to her contention that there was no pre-arrangement or pre-meditated concert between A1 and A2 and hence, conviction awarded to A2 under Section 302 read with 34 IPC cannot be sustained. The Supreme Court in *RAMASHISH YADAV v. STATE OF BIHAR*¹ by appreciating the facts, which were dealt with by it, held that intention can be developed at the spur of the moment but, however, it observed that there must be pre-arrangement or premeditated concert. In *ARUN v. STATE BY INSPECTOR OF*

¹ AIR 1999 SCC 3830

POLICE, [CRIMINAL APPEAL No. 1657 OF 2007], the Supreme Court took a contrary view and held as follows;

“The burden lies on prosecution to prove that actual participation of more than one person for commission of criminal act was done in furtherance of common intention of all at a prior concert. However, it is not required for the prosecution to establish that there was a prior conspiracy or pre- meditation, common intention can be found in the course of occurrence.”

As also said by the Supreme Court, the classic statement of law is to be found in *PANDURANG, TUKIA AND BHILLIA V. THE STATE OF HYDERABAD*² [(1955) SCR 1083] in which Bose J. speaking for the Court observed:

"It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them. Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case: *Barendra Kumar Ghosh v. King Emperor* [(1924) L.R.52 I.A. 40, 49] and *Mahbub Shah v.*

² (1955) SCR 1083

King-Emperor. As their Lordships say in the latter case, "the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice."

The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example, when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g., the intention to rescue another and, if necessary, to kill those who oppose".

In the case dealt with by the Supreme Court, the Supreme Court observed that there was no evidence of any prior meeting of minds. It was in the evidence that on being asked by the deceased as to why they entered the house and as to what they wanted; A4 immediately shot the deceased with the pistol in his hand. Obviously, this was considered as an impulsive act of A4 and the supreme Court held that both the courts rightly found that he was guilty for the offence of committing murder of the deceased punishable under Section 302 IPC but held that the High Court committed a serious error in holding the appellant vicariously liable for the criminal act of A4.

9. However, it has to be seen whether the evidence in this case would disclose any pre-arrangement or premeditated concert between

A1 and A2 and whether it can be gathered from the facts and circumstances relating to the commission of offence. P.W.1 is the daughter of the deceased. She speaks about the illicit relationship between her father and the wife of A1. A1 and A2 are brothers, being sons of her junior grand father. Due to the illicit intimacy developed between her father and wife of A1, A1 and A2 and their brother used to quarrel with the deceased. On one occasion, the accused came into their house and they closed the doors, keeping their father inside the room. The Ex-Sarpanch and caste elders came and pacified the situation and sent A1 and A2 and their brother back. Her father sent the wife of A1 to Kuwait. She used to contact her father over phone, from Kuwait. A1 having come to know about the same, used to abuse the deceased, saying that he would see his end. On 19.07.2006, while the deceased was talking with Koppanathi Peddiraju and Vadhadi Venkatesh at Santha chettu at about 6.30 PM, A1 and A2, armed with knives, came there and A1 hacked the deceased with the knife on the left side of his neck. P.W.1 rushed to her father, who was lying on the ground and saw blood oozing and the deceased making small groans. A2 uttered to A1 as '*Bhale Narikavu*' and expressed that the deceased will die and asked A1 to leave that place.

Then P.W.1 called her brother, Rajesh and after her brother came there, she asked him to bring one towel and he brought that towel and she tied that towel round the neck of the deceased, to stop the bleeding, but the flow of blood did not stop. She described the knives, as being in curved shape. She further stated that her junior paternal uncle, Krishna, came there and she informed him that A1 and

A2 hacked her father and went away. Then, he expressed that the accused did the act as said. One auto was going on the road and they stopped it and shifted the deceased to Government Hospital, Razole, where he was declared dead.

In the cross-examination of P.W.1, it was elicited that the father of A1 and A2 and the father of the deceased are own brothers. The wife of the deceased i.e. the mother of P.W.1 resides in Kuwait. She could not say whether the villagers admonished the deceased due to his contact with the wife of A1 but she stated that the disputes were also raised before the village elders, in connection with the said issue. Their family members also admonished the deceased. But even then, the deceased used to talk with the wife of A1 outside and used to spend about 10 days. There are no talking terms with the family members of the accused, due to the affair between the deceased and wife of A1. The omissions pointed out in her earlier statement are that she did not state that she called her brother Rajesh to bring towel and that he brought towel and that her junior paternal uncle came there and she informed him that A1 and A2 hacked her father and went away.

10. P.W.2 is the brother of the deceased. He stated that he knows the accused, as they are the sons of his junior paternal uncle. He also spoke about the illicit relationship between the deceased and wife of A1. On the date of the incident, at about 6.30 PM, when he was returning to his house and when he came to Ganneru tree, he hear cries and rushed to the scene and saw the deceased lying in pool of blood and one towel was tied to his neck. He saw P.W.1 weeping.

When he enquired with P.W.1, she informed that A1 and A2 hacked her father and went away. He expressed that the accused did as they expected. He took the deceased to the hospital, along with P.W.1. No omissions are pointed out in the cross-examination of P.W.2. Hence, the omissions pointed out in the cross-examination of P.W.1 that she did not state about her calling her brother and asking him to bring a towel become immaterial, as the evidence of P.W.2 that he saw a towel round the neck of the deceased is not pointed out as an omission.

11. P.W.3 is Rajesh, who is referred to in the evidence of P.W.1. He also spoke about the illicit relationship between the deceased and the wife of A1. Though he spoke about the incident proper, saying that A1 and A2 hacked his father with knives, on the left side of his neck, it appears that he went to the scene only when P.W.1 called him. Hence, he cannot be termed as an eye witness. He speaks about his bringing towel and tying around the neck of the deceased. He also speaks about P.W.2 coming to the spot and enquiring as to what happened and about P.W.1 informing him that A1 and A2 hacked the deceased. However, that part of his evidence was pointed out as an omission.

12. P.W.4 is also a material witness. She spoke about the illicit relationship between the deceased and wife of A1. She also speaks about caste elders Krishna Rao and others pacifying the situation, when A1 and A2 went to the house of the deceased on an earlier occasion. They advised the deceased to be careful. On the date of the incident, at about 6.30 PM, she went to Sandha chettu, where she

noticed the deceased in conversation with L.Ws.7 and 8. By that time, she was in the front yard of her house. She saw A1 and A2 armed with knives and hacking the deceased on the left side of his neck. She also described the knives as curved knives. She corroborates the evidence of P.W.1 with regard to P.Ws.2 and 3 coming there.

In the cross-examination, it was elicited that she gave evidence in the criminal case filed against the accused in SC.No.9 of 2009 and the said case was filed on the allegation that the accused committed the offence on the same day of the incident of this case and that they hacked her husband. The evidence of P.W.4, given in the chief examination, that she was searching for her husband apprehending some danger to him also and that one Gudese Yesu informed her that the accused aimed to kill her husband also and that he saved her husband and that her husband went to police station, gets strengthened by the fact elicited in the cross-examination and it proves that the accused were charged and tried for the attack made on the husband of P.W.4.

13. P.W.5 is another eye witness to the incident. He also speaks about the motive. On the date of the incident, when he was in conversation with Rambabu (deceased) and Peddiraju near the Sandha Tree, A1 and A2 came there with knives and A1 hacked the deceased with the knife, on his neck, on the left side. He described the knife as curved knife. Due to fear, himself and Peddiraju ran away. P.W.2 took the deceased to the Razole Government Hospital.

Though the cross-examination of P.W.5 is very elaborate, nothing material was elicited. The topography of the scene of offence

was elucidated by him. Ex.D1 was marked in his cross-examination, which is to the effect that the neck was cut and blood was sprinkling severely. On seeing that, himself and Peddiraju went away from that place with fear. The said contradiction does not have any bearing on the credibility of P.W.5, as he nevertheless stated the said fact and does not stand as a contradiction.

14. P.W.6 is a circumstantial witness. He speaks about the motive. On the date of the incident, after 6 PM, he was at his house. He heard some people weeping and crying and when he came out from the house, he noticed A1 and A2 moving fast. He saw the deceased lying at Sandha chettu, in a pool of blood. P.Ws.1 and 2 were also present there. Later, he came to know about the death of the deceased. Ex.D3 was marked in his cross-examination, which is to the effect that his brother Krishna came there in the mean time. The reason for marking Ex.D3 is not explained by the counsel for the appellant. Ex.D2, which is to the effect “*so many times*”, does not seem to have any relevance and the same is not relied upon by the counsel for the appellant. Ex.D4, which was also marked in the cross-examination of P.W.6, is to the effect that “*a towel was rounded on the neck of her father to prevent blood*”. Absolutely there is no relevancy placed on Exs.D2 to D4.

15. P.W.7, in his evidence, deposed that he saw A1 and A2 moving towards Chakalipalem, with knives. He also came to know about the attack on the deceased by A1.

16. Apart from the above witnesses, P.W.14, who is the witness for the recovery of the knives, is also material. He is the owner of the thatched shed from where two knives and one shirt were recovered. When he questioned the police as to why they came to their house, the police informed him that two knives and one shirt were recovered from his thatched shed. He also identified two knives as M.Os.1 and 2. P.W.11 is the VRO, who is a witness for the confession made by the accused in pursuance of which M.Os.1 and 2 were recovered from the shed of P.W.14. He supports the case of the prosecution. According to him, on 30.07.2006, on receiving a phone call, he went to Elamanchili Police Station and he was taken to Gannavaram. He reached there at about 2 PM and on seeing them, two persons started running at the bridge and the SI apprehended them through the police constable. In the interrogation, one of them stated that his name is Koppadi Pallayya and other person revealed his name as Koppadi Kanakaraju. They gave confessional statements and on further interrogation, they gave disclosure statement regarding the weapon. Both the accused and mediators, including P.W.11, CI and SI, came to Chakalipalem and A2 handed over the knife produced from the thatched house of one Satyanarayana, ho is no other than P.W.14, by the side of PWD road. The thatched hut was in a dilapidated condition and nobody was residing therein. A1 produced another knife from the said thatched hut and one blood stained shirt.

The cross-examination of P.W.11 does not elicit any fact, which would affect the facts stated in the chief examination.

17. The doctor, who conducted post mortem examination, is examined as P.W.10 and the injuries found on the dead body of the deceased, as stated by him, are stab injury on the neck of 8.5 cm long, 2.5 cm wide and 2.5 cm deep in the middle medial and in the lateral 2/3rds it is 8.5 cm bone deep. The wound is an elliptical wound with sharp edges obliquely placed over the upper 1/3rd of the lateral aspect of the neck on left side. Muscles and blood vessels (carotidae) and jugular vessels are totally cut on left side and the pharyngeal wall was cut and the wound was communicating with pharyngeal air way. Blood clots were found. He testified that the cause of death is due to bleeding from totally cut carotid vessels and jugular vessels on the left side of the neck, leading to shock and death.

18. We see absolute consistency in the case of the prosecution, which is brought forth through the above witnesses. Motive is clearly stated by the material witnesses. The contention of the counsel for the appellant that A2 did not have any motive is baseless, as the evidence of P.W.1 and other witnesses would show, that on earlier occasion also A1 and A2 went upon the house of the deceased with an intention to attack him. Moreover, in view of the fact that A2 was also armed with knife, when he accompanied A1, who was going with an idea of attacking the deceased, it cannot be said that there was no pre-arrangement between A1 and A2 to commit the murder of the deceased. The recovery of weapons is proved beyond all reasonable doubt. The evidence of P.W.14 shows that nobody has been residing in his thatched hut and that could have been the reason for the accused to hide the knives in the said hut. The injury spoken to by P.W.10 is

only one injury, which is caused by A1. Mere absence of overt act against A2 would not exonerate him, when a common intention is made out on his part to commit the murder of the deceased along with A1. Since A1 hacked the deceased and the impact of the hacking is evident from the injuries stated by P.W.10, it would not have necessitated A2 to proceed with any further overt act. The shape of the knives is consistently spoken by all the witnesses. Absolutely, no motives are made out against the witnesses to depose falsely against the accused. The contention that P.W.2 stated that both A1 and A2 hacked the deceased while other witnesses stated that it is only A1, who hacked the deceased and hence, the evidence of the witnesses cannot be believed is absolutely meritless. When both of them were seen armed with knives and when hacking was, in fact, done by A1, with A2 by his side, it is possible for anyone witnessing the incident to opine that both of them together hacked the deceased. From the perception of P.W.5, the intention on the part of A1 and A2 also becomes more evident. More over, both the accused were charged for attacking the husband of PW.4, on the same day. Hence it goes to show that A1 and A2 were moving together, executing a common intention to attack and kill the deceased. In view of the consistent evidence, which proves the commission of offence, we do not find any reason to interfere with the judgment of the Court below.

The points are accordingly answered.

POINT No.3:

In the result, the criminal appeal is dismissed, upholding the conviction and sentence imposed on the appellant – A2 in SC.No.5 of

2009 dated 22.12.2010 by the VI Additional District and Sessions Judge (Fast Track Court), Narsapur. The period of detention/imprisonment undergone by the appellant – A2 before trial and after trial shall be set off against the term of imprisonment. The appellant – A2, who is on bail, is directed to surrender before the trial Court, which shall commit him to the concerned jail for undergoing the remaining period of imprisonment.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

C. PRAVAEEN KUMAR, J

T. RAJANI, J

August 1, 2018

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith.

(B/o) DSK

