

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

CRIMINAL APPEAL No.1131 of 2011

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

The sole accused in SCs. & STs. S.C.No.5 of 2010 on the file of Special Judge for Trial of Cases under SCs. & STs. (POA) Act – cum – VIII Additional District Judge, West Godavari at Eluru, is the appellant herein. He was tried on two charges. The first charge was under Section 302 I.P.C. for causing the death of one Uppati Srinivas on 03.05.2009 at about 06:30 PM, opposite to a neem tree situated at Kodey Vari Street, Pathavuru, Tadepalligudem Town. The second charge was under Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act'). Vide judgment, dated 05.09.2011, the learned Sessions Judge, while acquitting the accused for the offence punishable under Section 3 (2) (v) of the Act, convicted him for the offence punishable under Section 302 I.P.C. and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month. Challenging the same, the present appeal came to be filed.

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

The accused and the deceased belong to the same locality i.e., Pathavuru of Tadepalligudem Town. PW.1 is the wife of the deceased. It is stated that the deceased developed illegal intimacy with one Nagamani, who is the sister of the accused and was living with him. There was a panchayat in respect of the said dispute, wherein the elders summoned both of them and advised them to discontinue their relationship. On 03.05.2009 at about 04:00 PM, the accused came to the house of PW.1 and asked the deceased to give Rs.10,000/-. The deceased is said to have informed about the said demand made by the accused to PW.1 and also the threat given by the accused. Thereafter, PW.1 said to have gone to the house of the accused to question him. When she questioned the accused about his conduct, he said to have threatened her with dire consequences, if they fail to pay him as per his demand. PW.1 returned to the house and is said to have advised the deceased not to go out of the house. It is said that on the date of incident i.e., on the same day, at about 06:00 PM, the deceased went out of the house to get medicine, as their son was suffering from fever. At that time, in the twilight, while PWs.2 and 4 along with others sat on a bench near Vinayaka Temple situated at Pathavuru, 12th Ward, and chitchatting, they noticed the deceased coming on a cycle from bazaar side. PW.3, who was going on cycle to his house, also noticed the deceased going on cycle ahead of him.

The accused, who was running a laundry shop opposite to a Neem tree, is said to have gone behind the deceased and beat him with a stick on the head. As such, the deceased fell down. Thereafter, the accused again beat the deceased with the stick on the head. On seeing the same, PWs.2 to 4 along with others proceeded to the said place and apprehended the accused. One of them took the stick from the hands of the accused. They found blood oozing from the nose and ears of the deceased. Immediately, PW.2 informed the police on phone giving the details of the incident and also sent a word to PW.1. In spite of their best efforts, they could not get the 108 ambulance and as such, they shifted the deceased in an Auto-rickshaw to the Government Hospital at Tadepalligudem. On medical advice, they proceeded towards Tanuku hospital by engaging a taxi, but on the way, the deceased died. It is said that the dead body of the deceased was again brought to the Government Hospital, Tadepalligudem. Thereafter, on the same day, at about 11:45 PM, while PW.7 was present in the police station, PW.1 went to the police station and lodged a report. Ex.P1 is the said report. Basing on the said report, PW.7 registered a case in Crime No.182 of 2009 for the offences punishable under Section 302 I.P.C. and Section 3 (1) (x) of the Act read with 34 I.P.C. Ex.P5 is the F.I.R. Thereafter, he proceeded to the scene of offence, posted a guard at the scene of offence and kept

surveillance for the accused to the police station. PW.8, the Deputy Superintendent of Police, on receipt of information about the registration of a crime, immediately took up investigation. According to him, he received express F.I.R. on the next day at 03:00 AM, left Narsapur at 03:30 AM and reached Tadepalligudem by 05:30 AM. He visited the scene of offence and prepared an observation report of the scene. At the scene of offence, he observed blood stains on the road and also a stick lying near the laundry shop of the accused. Ex.P3 is the mediators report. Thereafter, he prepared a rough sketch of the scene, which is marked as Ex.P6. During the said process, he examined PWs.2 to 4 and others and recorded their statements. He then conducted inquest over the dead body of the deceased in the presence of PW.5. Ex.P2 is the inquest report. After completing the inquest proceedings, he sent the dead body of the deceased to the Area Hospital, Tadepalligudem, for postmortem examination. PW.6, the Civil Assistant Surgeon, Area Hospital, Tadepalligudem, conducted autopsy over the dead body of the deceased and issued Ex.P4 – Post-Mortem Certificate. According to him, the deceased appears to have died due to head injury.

During the course of investigation, PW.8 filed an alteration memo, adding Section 3 (2) (v) of the Act, and arrested the

accused at Tadepalligudem Town Police Station at 01:30 PM and sent him to judicial custody.

3. After collecting all the documents and the photographs, which were taken at the scene, and examining all the witnesses, a charge sheet came to be filed against accused No.1, deleting the names of accused Nos.2 and 3 from the array of accused in the charge sheet, before the Court of Additional Judicial Magistrate of First Class, Tadepalligudem, which was taken on file as P.R.C.No.50 of 2009.

4. On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as SCs. & STs. S.C.No.5 of 2010.

5. On consideration of material placed on record and on appearance of the accused, two charges, referred to above, came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs.1 to 8 and got marked Exs.P1 to P10 and M.Os.1 to 3.

7. After the closure of the 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. But he did not adduce any oral evidence, except getting marked Exs.D1 to D5.

8. Relying upon the evidence of PWs.1 to 4 and taking into consideration the medical evidence, the trial Court convicted the accused for the offence punishable under Section 302 I.P.C. and sentenced him to suffer rigorous imprisonment for life. Challenging the same, the present appeal came to be filed.

9. Smt. K. Sesharajyam, learned Senior Counsel appearing for the appellant, would submit that there are any number of circumstances to indicate that the F.I.R. was brought into existence after due deliberations. According to her, the delay of 5 ½ hours in lodging the report was not explained. It is urged that in order to explain the delay, the prosecution introduced different versions, which are in conflict with each other. She took us through the evidence of PWs.1 to 4 to show that as many as three reports were given by PW.1, but two of them have not seen the light of the day. Insofar as the evidence of PWs.2 to 4 is concerned, her plea is that their version is a complete improvement over the earlier

version with regard to the events which took place after the incident. It is pleaded that merely because the evidence of witnesses is consistent with regard to beating the deceased with stick by the accused, their evidence cannot be accepted as gospel truth, when other evidence is inconsistent. The version of PW.2 that the accused was apprehended on the spot and then information was given to the police was neither reflected in the F.I.R. nor in the earlier statements of the witnesses. It is urged that, that being the position, there is no evidence to show that the accused was apprehended on the spot.

10. On the other hand, the learned Public Prosecutor would contend that the evidence of PW.1 coupled with the evidence of other witnesses would establish the motive of the accused to kill the deceased. To substantiate the same, he took us through the evidence of PW.1. Apart from that, he would contend that there is no reason for PWs.2 to 4 to speak false against the accused.

11. Hence, the point that arises for consideration is whether the accused is responsible for the death of the deceased.

12. Coming to the motive part, PW.1, in her evidence, deposed that the deceased developed illegal intimacy with the

sister of the accused, who was living with the accused. The matter was placed before the elders, who have summoned both of them and settled the issue advising them to discontinue their relationship. She further stated that on 03.05.2009 at about 04:00 PM, the accused came to her house and asked her husband to give Rs.10,000/-. The deceased is said to have told her about the demand made by the accused and also the threat given by the accused. Thereafter, she is said to have gone to the house of the accused and questioned him, where she was threatened with dire consequences. She claims to have come back to her house and advised her husband not to go out.

13. From the evidence of PW.1, it appears that the immediate and proximate motive for the accused to attack the deceased was in respect of an incident that took place on 03.05.2009 at about 04:00 PM, when PW.1 and her husband failed to give the amount of Rs.10,000/-, as demanded by the accused. But, if the evidence of PW.1 is tested with the contents of F.I.R. said to have given by her at 11:45 PM on the same day i.e., 03.05.2009 and also with her statement recorded under Section 161 Cr.P.C. by PW.8 on the next day, it would show that the F.I.R. is silent with regard to the accused coming to the house of PW.1 on 03.05.2009 at 04:00 PM and threatening her husband with dire

consequences. It also does not refer to the deceased informing PW.1 about the said fact. Apart from that, it is also to be noted that in Ex.P1 and in 161 Cr.P.C. statement, PW.1 did not specifically state that elders summoned her husband and Nagamani and settled the issue by advising them not to have further relationship with each other. When the omissions in the 161 Cr.P.C. statement, with regard to her version in the Court, was put to her in the cross-examination, she denied the same, but, however, PW.8, the Investigating Officer, in his cross-examination, states that PW.1 did not state before him that the elders summoned and advised the deceased and Nagamani not to have further relationship with each other and also about the accused coming to their house on 03.05.2009 at about 4:00 PM and threatening her husband, which was, in turn, informed to her. Apart from that, PW.1 very strangely denies her version in Ex.D1 to the effect that on 03.05.2009 at about 06:00 PM, when her husband was going outside, she advised him not to go out due to fear of threat. Further, the F.I.R. also does not contain the version spoken now with regard to deceased going out to fetch medicine. It may be true that the F.I.R. is not an encyclopedia to contain all the details, but when PW.1 claims to have given report at 11:45 PM and when PWs.2 and 3 and others are said to have accompanied her, definitely, the circumstances which lead to the incident, would have been uppermost in her

mind and should have been reflected in the F.I.R. Failure to mention the said aspect creates some doubt coupled with other circumstances which will be discussed later.

14. Insofar as the incident proper is concerned, the prosecution relied upon the evidence of PWs.2 to 4. PW.2, in his evidence, deposed that on 03.05.2009 at about 06:00 PM in the twilight, the accused attacked the deceased with stick and beat him, which resulted in his death. It is his version that on the date of incident, while he along with PW.4 and one Rama Krishna were sitting on a bench nearby Vinayaka Temple and chitchatting, they observed the deceased coming on a cycle from the bazaar side. At that time, the accused, who was having a laundry shop opposite to the Neem tree, went behind the deceased and beat him with a stick on the head, as a result of which, the deceased fell down. The accused again beat the deceased with stick on the head. PW.2 along with some others went and apprehended the accused, while PW.3 is said to have taken the stick from the hands of the accused. Immediately, they claim to have telephoned to the police giving all the details and also informed PW.1. As they could not secure 108 ambulance, they shifted the deceased in an auto-rickshaw to the Government Hospital, Tadepalligudem, and thereafter, on medical advise, to Tanuku, but on the way, the deceased died. Thereafter, the dead body of the deceased was said to have been brought

back to Government Hospital at Tadepalligudem and later, a report was given.

15. Before dealing with the cross-examination of PW.2, it would be appropriate if the aforesaid version of PW.2 in chief is tested with the evidence of PW.1, which is to the effect that on the date of incident at about 06:00 or 06:30 PM, when somebody informed her about the murder of her husband, she went to the scene of offence and took her husband to Government Hospital, Tadepalligudem, where they were informed that the condition of the deceased was serious. Then all of them started to Tanuku Hospital and on the way, the deceased died. Her version is to the effect that immediately after the incident, the deceased was taken to Government Hospital, Tadepalligudem and while they were taking to Tanuku, the deceased died. But, the version of PW.1 in the F.I.R. is something different. According to her, after the incident, she along with others shifted her husband to Government Hospital, Tadepalligudem and from there they shifted the deceased to Tanuku for better treatment, where tests were done and while coming back, the deceased died due to the injuries. The version of PW.1 runs contra to the evidence of PW.2.

16. Further, the evidence of PW.7 also appears to be something different. According to him, the deceased was

admitted in Government Area Hospital, Tadepalligudem, at about 08:05 PM and while undergoing treatment, he died in the said hospital at 09:00 PM. He got information about the death of the deceased at 10:30 PM on the same day, which again is different from what PWs.1 and 2 have deposed.

17. From the above evidence, it is clear that various versions are coming forward as to when the deceased died. As stated earlier, in the F.I.R., it is the version of PW.1 that after the incident, the deceased was taken to Tadepalligudem and from there to Tanuku and while coming back, the deceased died at Tetali. If really the deceased sustained grave injury, as suggested by the prosecution and since the evidence of PW.1 is to the effect that the condition of deceased was serious, it is strange how the deceased could have been sent back after reaching Tanuku. On the other hand, the evidence of PWs.2 to 4 is to the effect that initially the deceased was taken to Government Hospital, Tadepalligudem and while they were on the way to Tanuku, the deceased died, which is not the version of PW.1, who was accompanying the deceased along with PWs.2 to 4, in the F.I.R.

18. Having regard to the above circumstances, the argument of the learned Senior Counsel for the appellant that the said version came to be introduced only to explain the delay of 5 ½ hours in giving the report, cannot be ignored. It

may be true that PW.1 is a rustic villager, but having regard to the manner in which the various versions are coming forward, a doubt arises as to whether the witnesses are speaking the truth. Hence, the delay in lodging the report has to be viewed with suspicion.

19. At this stage, it would be just and proper to refer to the evidence of PW.1 once again. Before dealing with the evidence of PW.1, we intend to refer to the evidence of PW.7, who registered the crime. According to him, at about 11:45 PM, while he was present in the police station, PW.1 came to the police station and lodged a report, basing on which, a case in Crime No.182 of 2009 came to be registered. It is to be noted that in the F.I.R., which is given at 11:45 PM, there is no reference to accused being apprehended at the spot and also about the intimation given to the police. Neither PW.7 nor PW.8 referred to receiving any information about the incident from PW.2, who claims to have informed the police about the incident. In the cross-examination, PW.1 admits that on 03.05.2009, for the first time at about 07:00 PM, she went to the police station and gave an oral report, which was reduced into writing. Signature of PW.1 was said to have obtained on the said document. PWs.2 to 4 accompanied her to the police station, when she went there for the first time at 07:00 PM. But, the said document has not

seen the light of the day. The first version of PW.1 with regard to the incident has not seen the light of the day. In fact, if really the accused was apprehended at the spot, the same would have been spoken to by PW.1 atleast in the Court, which she never did. Apart from that, it is to be noted that her version is that at about 08:00 PM, they left the police station and went to the hospital. As stated earlier, the first report, which was lodged at 07:00 PM has been suppressed. After the death of the deceased, PW.1 is said to have gone to the police station along with PWs.2 to 4 again and lodged a report at 11:45 PM. Strangely, in the said report, the family members of the accused were also added as accused Nos.2 and 3. No explanation is forthcoming as to why they were shown as accused Nos.2 and 3, when none speaks about their presence. Even PWs.2 to 4, who claim to have present with PW.1 at that point of time, did not explain as to why and what made them to include the names of accused Nos.2 and 3.

20. It is no doubt true that false in one thing cannot be false in every thing, but, still, having regard to the circumstances referred to above, a doubt arises with regard to the manner in which the incident took place.

21. Further, PW.1, in her cross-examination, categorically admits that Ex.P1 was prepared by her relatives

at about 07:00 or 08:00 AM on 04.05.2009. The argument of the learned Public Prosecutor was that PW.1 might have mistook the recording of statement under Section 161 Cr.P.C. as that of report. But, even the same appears to be incorrect, for the reason that PW.8, the Deputy Superintendent of Police, in his evidence, stated that he recorded the statement of PW.1 on the next day at about 06:00 AM. Therefore, there is one other statement which came to be made or prepared at the instance of PW.1 on the next day at 08:00 AM, thereby creating a doubt on the prosecution case, since Ex.P1 was not given at 08:00 AM on 04.05.2009.

22. As observed by us earlier, the version of PWs.2 to 4 is a complete improvement from what they have stated in their earlier statements before the police during the course of investigation. It would be just and proper to extract the relevant portion in the cross-examination of PW.8 with regard to omissions of PW.2, in his earlier statement, which is as under:

“P.W.2 did not state before me that the incident took place in twilight and he did not state before me that he along with L.W.4 to 6 sat on the benches. P.W.2 did not state before me about the presence of L.W.3 – Hari Krishana and he is holding the accused and taking away the stick from the hands of the accused. He did not state before me that he informed the incident on telephone to the police and sent a word to P.W.1. He did not state before me that in spite of their efforts they could not

secure 108 ambulance and then by engaging an Auto they shifted Srinivas to the Govt. Hospital Tadepalligudem and there on medical advise they engaged a taxi and proceeded to Tanuku Hospital and on the way Srinivas died. He stated before me as in Ex.D2. He did not state before me that they tied the accused to a pillar till the arrival of police and that in spite of alleged intimacy deceased used to move closely with each other and also having money transactions. P.W.2 did not state before me as to promise made by the mother of the accused to P.W.1 that illicit intimacy between the deceased and Nagamani would not be continued and in spite of that they did not stop such relationship and that in the afternoon on 3-5-09 P.W.1 came to him and informed that the accused threatened the deceased for money and her reply thereon to look into the matter by her. P.W.2 did not state about the measurements of MO1 and also its use generally.

23. Similarly, PW.3, who toed in line with the version of PW.2, did not mention any crucial facts in his earlier statement before the police. PW.8, in his cross-examination, stated as under:

“... He did not state before me that when he attended to take away the stick from the hands of the accused by pulling he left it down, and their shifting the deceased to Area Hospital Tadepalligudem and on medical advise there they shifting the deceased to Tanuku Hospital and on the way to Tanuku hospital the deceased loosing his life and the doctor there declaring him died. P.W.3 stated before me as in Ex.D.3. He also did not state before me that P.W.1 gave report to the police and conducting of inquest on the following day of the incident and as to the illicit intimacy between the deceased and sister of the accused and disputes thereon and knowledge

of the elders of the same and elders settling the matter. He stated as in Ex.D4. P.W.3 did not state before me about the dispute between the deceased and Mani on 3-4-09 at about 4.00 or 4.30 PM.”

24. Similar the omissions in the evidence of PW.4, as deposed by PW.8, in his cross-examination, which are as under:

“P.W.4 did not state that P.W.1 SC Madiga. He did not state before me that Srinivas fell down with Head injury, and that inspite of their efforts they could not secure 108 ambulance and then they shifted Srinivas by Auto to the Govt. hospital and their handing over the accused to the police and about their shifting Srinivas to the Govt. hospital Tadepalligudem and on medical advise there, their taking Srinivas towards Tanuku hospital and on the way Srinivas lost his breath and their bringing back Srinivas to the Govt. Hospital Tadepalligudem. He stated before me as in Ex.D.5. He did not state before me about the registration of case on the complaint of P.W.1 and about his presence at the time of inquest report at the hospital. He did not state before me that on 3-5-09 in the afternoon P.W.1 informed that the accused and his sister were making demand for money to the deceased and requested him to settle the issue and his reply thereon.”

25. From the evidence extracted above, it is clear that all the three witnesses, who claim to be eye-witnesses to the incident, failed to mention consistently what they have seen at the spot; with regard to informing the police about the incident; as to when the deceased died; tying of the accused to a pillar till arrival of the police; illegal intimacy between the

deceased and Nagamani; shifting of the body from one hospital to another etc. However, the learned Public Prosecutor would contend that there is consistency in the evidence of all these witnesses with regard to the attack by the accused. He pleads that when the said evidence is consistent with regard to incident proper, minor discrepancies in their evidence, cannot be acted upon in view of the judgment of the Honourable Supreme Court in **Anjan Das Gupta v. State of West Bengal and others**¹. But, it is to be seen that, factually, the judgment relied upon by the learned Public Prosecutor may not apply to the facts on hand. In the said case, the witness did not name the person, who tried to catch. Taking advantage of the said omission, it was observed that that his version cannot be relied upon, which fact was not accepted by the Honourable Apex Court. But, in the instant case, as stated earlier, the entire story was spoken to by the witnesses for the first time in the Court. In earlier statements, PWs.2 to 4 failed to mention the material facts, which are referred to earlier.

26. Even with regard to the incident, it is to be noted that PW.2, in his evidence, speaks about the assault by the accused when the deceased was coming on cycle from bazaar side. The version of PW.3 is to the effect that when the deceased reached the neem tree, the accused, who was at his

¹ (2017) 11 SCC 222

laundry shop, came behind him and repeatedly assaulted him with a stick. The repeated attack on the deceased is not spoken to by PW.2. PW.4, in his evidence, states that on 03.05.2009 at 06:00 PM, while he was at Vinayaka Temple along with others, he heard the cries of the deceased, who was coming on the cycle and noticed that accused beating the deceased with the stick. Of course, if the evidence of these witnesses is tested with medical evidence, the same, in our view, does not corroborate, since the Doctor, who conducted autopsy over the dead body of the deceased, noticed only one injury on the head and two abrasions on the right side of forehead and on right elbow. If really the accused assaulted the deceased as narrated by the witnesses, definitely there would have been more number of injuries on the head and on the body, than what was found by the Doctor.

27. The last straw in the argument of the learned Public Prosecutor was with regard to the arrest of the accused at the spot speaks volumes and there is no reason for PWs.2 to 4 to speak falsehood and as their evidence is consistent, can be acted upon.

28. It is to be noted that, if really, the accused was arrested on the spot, the same should have been reflected in the FIR, which was not there. PW.2, in his cross-examination, admits that they claim to have informed the police on

telephone and on furnishing such information, two police constables came to the spot. From the above, it has to be inferred that the person whom they have apprehended was handed over to the police. But, in the earlier statements, PW.2 never spoke about informing the police and also tying the accused till the arrival of the police, as deposed in the Court. Even the Investigating Officer, in his evidence, never stated that he was informed about the apprehension of the accused at the spot and tying of the accused to a tree. The two constables, who came to the spot and to whom the accused was handed over, were not examined. But, on the next day afternoon, the Investigating Officer is said to have arrested the accused in Tadepalligudem Town Police Station. There is no material as to when and who brought the accused to the Police Station. Having regard to all the circumstances referred to above, a doubt arises as to whether the prosecution is coming out with the true version of the case. Hence, we feel that it is a case where benefit of doubt can be extended to the accused.

29. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 05.09.2011, passed in SCs. & STs. S.C.No.5 of 2010 on the file of the Special Judge for Trial of Cases under SCs & STs (POA) Act –

cum – VIII Additional District Judge, West Godavari at Eluru, for the offence punishable under Section 302 I.P.C. are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

Date: 13.06.2018
MD

