

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.1432 OF 2011

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

1) The sole accused in Sessions Case No.273 of 2011 on the file of the VII Additional Sessions Judge, Kakinada, is the appellant herein. He was charged for the offence punishable under Section 302 IPC, for causing the death of his wife by name Surneedi Satyavathi @ Chilakamma, on 15.05.2010 at about 4.30 p.m., by hacking her with a knife. Vide judgment, dated 13.10.2011, the learned Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.100/- in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 302 IPC.

2) The facts as culled out from the evidence of the prosecution witnesses is as under:

i) Accused is the husband of the deceased while PWs. 1 and 2 are brothers of the deceased. PW.3 is the son of the deceased and the accused. PW.4 is the landlord in whose house the accused and deceased were living together. The

house of the deceased was at a distance of 30 meters from the house of PW.1. In the morning of 15.05.2010, PW.1, his wife, accused and the deceased went to attend a function of his niece, who is the daughter of another sister of PW.1. After completion of the function, the deceased and the accused along with their son (PW.3) returned to their house. After returning from the function at 4.30 p.m., while the deceased was having tea, the accused hacked her from the front side on the head, right wrist and left side of the neck. On hearing the cries of the deceased, PW.1 went there and found the deceased on the ground with bleeding injuries. He also noticed injuries on the head and right hand. He called an auto and shifted the injured to Pathipadu hospital. By the time he went, he noticed PW.3 present in the house. It is said that the accused was in the habit of taking alcohol and used to spend his earnings for his vices.

ii) On 15.05.2010 while PW.12, the constable, was present in the police station, he received intimation from P.H.C., under Ex.P6, about the admission of the injured in the hospital. Immediately he proceeded to the said hospital and recorded the statement of PW.1 under Ex.P1. As per the instructions of the Sub-Inspector of Police, he registered a case in Crime No.108 of 2010 for the offence punishable under Section 324 IPC.

iii) PW.13, who is the Sub-Inspector of Police, received intimation about the admission of the injured in the hospital while he was on bandobast duty. He directed the concerned constable to record the statement of the deceased and register the first information report basing on the said statement. After his return from duty, he went to the hospital, where he came to know that the injured was shifted to Government General Hospital, Kakinda on 16.05.2010. He went to Government General Hospital, Kakinanda and noticed that the injured was in an unconscious stage, but however he examined PWs.1 and 2. From there he went to the scene of offence, observed the scene and prepared a rough sketch in the presence of PW.9. Ex.P4 is the scene observation report and Ex.P8 is the rough sketch. During the said proceedings, he seized bangle glass pieces, one steel glass, one comb. He also got photographed the scene of offence. He examined PWs.3 to 6 at the scene of offence. On receipt of death intimation, he altered the Section of Law to 302 IPC. Ex.P10 is the altered first information report.

iv) On receipt of the altered first information report, PW.15-the Circle Inspector of Police, took up investigation in this matter and proceeded to the scene of offence. He did

not prepare rough sketch and scene observation report as the same were already prepared by PW.13. However, he secured the presence of PWs.2 to 6 and 10, examined and then recorded their statements. Later, he proceeded to Government General Hospital, Kakinada, where he conducted inquest over the dead body of the deceased in the presence of PWs.8 and 9. Ex.P3 is the inquest report. Thereafter, the dead body was sent for postmortem examination.

v) PW.11-the Assistant Professor, Government Forensic Medicine, RMC, Kakinada, conducted autopsy over the dead body of the deceased and issued Ex.P5-post mortem certificate. According to him, the cause of death was “due to the brain and fracture of skull vault by hacking with a sharp pointed, single edges cutting or hacking weapon medium to heavy side”.

vi) Further investigation in this case was taken up by PW.16-the Inspector of Police. On receipt of credible information, he along with his staff proceeded towards Vivekananda statue on 26.05.2010 and arrested the accused. On interrogation, the accused confessed about the commission of offence and his confession lead to recovery of M.O.1-knife, used in the commission of offence from the

cattle shed of P.Sesharao and the same was seized under Ex.P11. After collecting all the necessary documents, PW.16 filed a charge sheet before the Court of Judicial First Class Magistrate, Prathipadu, which was taken on file as P.R.C.No.1 of 2011. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.273 of 2011.

3) On appearance, charge under Section 302 IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P14 and MOs.1 to 8. After the closure of 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 on his behalf, in support of his defence.

5) After considering the oral and documentary evidence on record, more particularly the evidence of PWs.1 to 3, the learned Sessions Judge convicted the accused in

the manner referred to above. Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that the version of PWs.1 to 3 cannot be accepted as they are interested witnesses. He pleads that though PW.3 was projected as an eye witness, his name is not figured in the first information report. PWs.1 and 2 failed to mention the name of PW.3 as being present in the house along with the deceased at the time of incident. It is urged that if the evidence of PW.3 is eschewed from consideration there is no material to connect the accused with the crime.

7) Learned Additional Public Prosecutor would submit that there are no reasons to disbelieve the presence of PW.3 in the house at the time of incident. He would submit that no adverse inference can be drawn due to absence of the name of PW.3 in the first information report, since the first information report is not an encyclopedia containing all the details. He further submits that the evidence of Pws.1 and 2 amply establish that after they went to the house of the deceased, the accused and PW.3 were present in the house and the same is sufficient to believe the presence of PW.3 in the house.

8) The point that arises for consideration is whether the accused was responsible for incident in question.

9) Admittedly, the prosecution is relying upon the evidence of Pws.1 to 3. PWs.1 and 2 are brothers of the deceased, who in their evidence deposed that on hearing the cries from the house of the deceased, which was at a distance of 30 meters from their house, rushed to the house of the accused and found the deceased lying in a pool of blood. Disputes between the accused and the deceased with regard to accused suspecting the character of the deceased, lead to accused hacking the deceased. It was suggested to all the witnesses that the deceased got illicit intimacy with the son of the house owner, but the said suggestion remained as suggestion since no positive evidence was adduced to show existence of any quarrel and also illicit intimacy between the deceased and the son of the house owner. PW.1 in his evidence categorically states that on hearing the cries, he went to the house of the accused and found the deceased lying with injuries. He also speaks about the presence of PW.3 in the house at that time, though in his earlier statement he did not refer to the presence of PW.3.

10) It may be true that PWs.1 and 2 failed to mention in their earlier statement about the presence of PW.3. But the said omission does throw the presence of PW.3 in the house doubtful. If their evidence is tested with the evidence of PW.3, it would clearly establish the presence of PW.3 in the house at the time of the incident. Though PW.3 was aged about 10 years at the time of giving evidence, he narrated the disputes and also withstood the test of cross-examination. In his evidence in chief, PW.3 states that his father, who used to work as labourer used to raise disputes with his mother. He states that the accused used to beat and abuse his mother. He further states that on the date of incident while he was at his house, he noticed the accused hacking the deceased with knife on head and wrist. He also deposed that on the date of incident himself, along with his mother, went to the house of his maternal aunt, had lunch and returned home at 3.00 p.m. He further states that after the incident, the accused fled away. He speaks about the visit of PWs.1 and 2 on hearing the cries and also shifting of the injured to the hospital. In the cross-examination, it has been elicited that at the time of incident his mother was sitting in varanda and the accused was standing behind him in the varanda. While the deceased was having tea, the accused hacked the deceased from front side of head. He

admits that the accused never suspected the fidelity of his mother. He further states that nobody tutored him to give evidence. To a suggestion that he was not present in the house was denied. He also denied the suggestion that the accused was not in the village on the date of incident.

11) From the suggestions given to the witnesses, it appears that the accused has come forward with two defences. On one hand he tries to say that he was not present in the house at the time of incident, but on the otherhand his stand appears to be that in the spur of movement he hacked the deceased. Both cannot go together.

12) It is true that Pws.1 and 2 have not seen the actual assault. Both of them went to the house of the deceased only after hearing the cries. But PW.3, who is the son of the accused and the deceased, was present in the house and in whose presence the incident took place. In view of the answers elicited in the cross-examination of PW.3, it establishes that he was present in the house and saw the assault made by the accused. It is not the case of the prosecution that the incident happened in the middle of the night which disabled PW.3 in witnessing the incident. But here is a case when the incident took place in the early

hours. Though Sri Mangena Sree Rama Rao, learned counsel for the appellant, tried to contend that the incident is preceded by a quarrel, but except suggestions, no evidence has been placed on record to substantiate the same. As stated earlier all the suggestions given with regard to quarrel were denied.

13) Having regard to all the circumstances stated above and since the presence of PW.3 in the house cannot be disputed, we feel that his evidence can be believed to hold that it was the accused alone who was responsible for the incident.

14) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

T. RAJANI, J

11.07.2018
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