

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE Mrs. JUSTICE T.RAJANI**

CRIMINAL APPEAL No.398 of 2012

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

The sole accused in S.C.No.31 of 2011 on the file of the III Additional Sessions Judge (FTC) at Asifabad, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Thungeda Bheemaiah on 07.06.2010 at 7.30 a.m. at Vadlagudem on a suspicion that he was practicing sorcery.

Vide its judgment dated 30.11.2011, learned III Additional Sessions Judge (FTC) at Asifabad convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.500/-, in default, to suffer Rigorous Imprisonment for one month.

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

(i) PW.3 is the son of the deceased, while PW.4 is the neighbour of the deceased. PW.8 is the brother of the accused. All the material witnesses know the accused and the deceased, since they also belong to the same village. PW.5, who was running a kirana shop, came to know about the

death of the deceased and informed the same to PW.1, who is the Sarpanch of the village, through his cell phone. PW.1 claims to have received the information from PW.5 to the effect that the deceased was killed and the body was lying near the well. Then he went to that place and saw the dead body. His enquiries revealed that the deceased used to do sorcery and the accused suspected the deceased performing sorcery on him. It is said that because of the disputes between the accused and the deceased, panchayats were held before PWs.6 and 7. The panchayatdars did not find any material to show that the deceased was performing sorcery. Basing on the information received from PW.5 that it was the accused who caused the death of the deceased, PW.1 lodged a report before PW.16, the ASI of Police, on 17.06.2010 at 10.30 a.m., basing on which a case in Crime No.33 of 2010 came to be registered under Section 302 IPC. Ex.P19 is the F.I.R. Further investigation was taken up by PW.19, the Circle-Inspector of Police. On receipt of a copy of the F.I.R, PW.19 visited the scene of offence, drew a rough sketch of scene of offence and also took photographs of the dead body of the deceased with the help of the photographer. Ex.P21 is the rough sketch of the scene of offence. During the said proceedings, he seized blood stained earth and control earth. Thereafter, he conducted inquest over the dead body in the presence of PW.13 and another. Ex.P14 is the inquest

panchanama. After conducting inquest proceedings, he sent the body for post-mortem examination.

(ii) PW.17, who was working as a Civil Assistant Surgeon at Community Hospital, Asifabad, conducted autopsy over the dead body between 4.30 p.m. and 6.30 p.m and issued Ex.P20 – post mortem examination certificate. According to him, the cause of the death was due to shock and hemorrhage due to cut throat injury.

(iii) PW.19, who continued with the investigation, apprehended the accused at his residence on 10.06.2010 and interrogated him in the presence of PWs.14 and 15. The accused is said to have voluntarily confessed his guilt, leading to recovery of knife – MO.4 used in the commission of offence and blood stained clothes under Ex.P17. M.Os.5 and 6 are the blood stained shirt and lungi of the accused. After receipt of the FSL report and post-mortem examination report, a charge sheet came to be filed before the Court of Judicial First Class Magistrate, Asifabad, which was taken on file as PRC.No.50 of 2010.

(iv) On appearance of the accused, copies of the documents were furnished to him as contemplated under Section 207 of Cr.P.C., and since the case was triable by the Court of Sessions, the same was committed to the Court of

Sessions, under Section 209 Cr.P.C, wherein it came to be numbered as S.C.No.31 of 2011.

(v) On the basis of the material on record, a charge under Section 302 of IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

(vi) In support of its case, the prosecution examined PWs.1 to 19 and got marked Exs.P1 to P22 and M.Os.1 to 6. Out of (19) witnesses examined by the prosecution, PWs.2, 5, 8, 9, 10, 12 to 16 and 18 did not support the case of the prosecution and were treated hostile by the prosecution.

(vii) 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 prosecution witnesses, to which he denied, but, however, did not adduce any evidence in support of his defence.

(viii) Relying upon the evidence of PW.18, the panchayatdars and also the motive, for commission of the offence, the learned Sessions Judge, vide his judgment under challenge, convicted the appellant for the charge under Section 302 IPC and sentenced him to suffer imprisonment

for life. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that there is absolutely no legal evidence to hold the accused guilty. He also submits that all the witnesses examined by the prosecution, mainly the eye-witnesses, did not support the prosecution case and they were treated hostile by the prosecution. He further submits that even the motive alleged to be by the prosecution is not proved, since PWs.6 and 7 did not categorically speak about the existence of any dispute between the accused and the deceased.

4. On the other hand, learned Additional Public Prosecutor would contend that though the eye-witnesses did not support the prosecution case, but the motive coupled with the recovery establish that it was the accused who was responsible for the death of the deceased.

5. The point that arises for consideration is whether the accused is responsible for the death of the deceased?

6. As observed by us earlier, all the material witnesses, who were examined to speak about the incident, did not support the prosecution case and were treated hostile by the prosecution. PW.1 is the Sarpanch of the village. He claims to have received the information from PW.5 about the incident in

question and also the dead body lying near a well. On receipt of the said information, PW.1 proceeded to the said place and noticed the deceased lying there with cut throat injury. His enquiries revealed that the deceased used to do black magic and the accused was suspecting that the deceased was performing black magic on him. As per the information available, some panchayats were held and that he came to know that the accused killed the deceased due to previous disputes. However, in the cross-examination, he admits that at the time of receiving information from PW.5, he was at Rebbana, but the same was not mentioned in the report. He further admits that the distance between Thungeda and Rebbana is about 10 kms. He further admits that he went to Rebbana police station and then to the scene of offence along with the police. He categorically admits that PW.5 informed him that the accused killed the deceased. He further admits in the cross-examination that the inquest was held between 2.30 and 3.00 p.m., but the accused was not present at the time of inquest. However, the police brought the accused on that day, while he was fully in a drunken condition. From the evidence of this witness, it is clear that he was not an eye-witness to the incident and the source of information received by him was from PW.5. In the cross-examination, PW.1 admits that on the day, when inquest was conducted, the accused was not present and he was brought by the police on

that day. This shows that the accused was in the custody of police by 07.06.2010. At this stage, it would be useful to refer to the evidence of PW.5, who was running a kirana shop and who informed PW.1 about the incident. He has not supported the prosecution case and turned hostile. Therefore, the source of information to PW.1, which is said to be from PW.5, stands un-established.

7. Coming to the evidence of PW.3, who is the son of the deceased, his evidence discloses that PW.5 informed him about the death of his father, pursuant to which, he went to the dead body near the old well. He also stated that previously panchayats were held before PWs.6 and 7 who declared that his father was not responsible for the act of sorcery. Though, in his evidence in chief, PW.3 stated that the accused was responsible for the death of his father, but his evidence is only to the effect that he came to know about the death of the deceased from PW.5, who did not support the prosecution case.

8. PW.4 is also not an eye-witness to the incident. According to him, at about 10.00 and 11.00 a.m., he returned to the village and came to know that the accused killed the deceased by cutting his throat due to previous disputes. But, however, his evidence does not indicate that he was an eye-witness to the incident and also the source of information.

9. PWs.6 and 7 are the two witnesses who conducted panchayat. According to them, panchayat was held, since the accused suspected that the deceased was practicing sorcery on him. As nothing turned out in the panchayat, they informed the accused not to suspect the deceased. In the cross-examination, PW.6 admits that he did not give any paper to the police as to the persons who participated in the panchayat. Same is the evidence of PW.7. The evidence of these two witnesses would only reveal existence of some disputes between the accused and the deceased and also holding of a panchayat, but their evidence does not indicate as to when the said panchayat was held and who attended the said panchayat.

10. PW.11 is the photographer who took the photos of the dead body of the deceased. PW.18, who was examined as an eye-witness, also did not support the prosecution case. Though in chief evidence, he tried to say about the incident, but when he deposed that he is not aware, the reason for killing the deceased, he was declared hostile. In the cross-examination by the prosecution, he admits that he ran away due to fear after seeing the incident. But, in the cross-examination by the counsel for the accused, he admits that he cannot say the date and time of the incident and that he does not know the village of the accused also. He admits that

he used to see the accused whenever he used to go for begging to his village. According to him, the police stated to him that the accused killed the deceased. He also admits that he does not know the place of the incident. From the evidence of this witness, it is clear that nothing is elicited to prove the case of the prosecution. On the other hand, the answers given in the cross-examination throw any amount of doubt about he witnessing the incident. His admission reveal that the information as to the person responsible for killing the deceased was given to him by the police.

11. A perusal of the evidence referred to above, in our opinion, does not indicate the culpability of the accused in the commission of offence. Though the learned Public Prosecutor would contend that there is motive for killing the deceased, the evidence of the panchayatdars, who were examined as PWs.6 and 7, is quite vague, since none of them deposed as to when the said panchayat was held and as to persons present at the time of the said panchayat. Motive however strong cannot take the place of proof. In fact in the instant case, the motive was also found to be false.

12. Coming to arrest and recovery, the evidence of PW.1 show the accused was in police custody by the time of inquest, which was on 07.06.2010. That being so, the arrest

and recovery of blood stained clothes on 10.06.2010 appear to be doubtful and suspicious.

13. Having regard to the above, we feel that the motive and recovery, which are relied upon to connect the accused with the crime, are not established beyond doubt. Hence, we feel that there are no grounds to hold that the accused was responsible for the death of the deceased.

14. In the result, the Criminal Appeal is allowed and the conviction and sentence recorded against the appellant, in the judgment dated 30.11.2011, in Sessions Case No.31 of 2011, on the file of the III-Additional Sessions Judge (FTC), Asifabad, for the offence punishable under Section 302 IPC is hereby set aside and the appellant is acquitted. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in connection with any other case.

Miscellaneous petitions, pending, if any, shall stand closed.

C.PRAVEEN KUMAR, J

T.RAJANI, J

07.08.2018
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