

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL Nos.109 AND 212 OF 2012

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

1) Both these appeals are filed against the judgment dated 12.01.2012, passed in S.C.No.382 of 2011 on the file of the Principal Sessions Judge, West Godavari Division at Eluru. Criminal Appeal No.109 of 2012 is filed by accused No.1 while Criminal Appeal No.212 of 2012 is filed by accused No.2. Both the accused were tried for the offences punishable under Sections 302, 302 read with 34 IPC respectively. Vide judgment dated 12.01.2012, the learned Sessions Judge, convicted accused Nos.1 and 2 and sentenced them to suffer "imprisonment for life" and to pay a fine of Rs.500/- each, in default to suffer rigorous imprisonment for a period of six months.

2) The gravaman of the charge against the accused is that on 01.05.2010 at about 12.00 noon, both the accused caused the death of T.Venkateswara Rao (hereinafter referred to as "the deceased") by stabbing with a knife.

3) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) PW.1 is the father of the deceased while PWs.2 and 3 are mother and wife of the deceased. PWs.4 and 5 were examined as eye witnesses to the incident. Two months prior to the incident a quarrel took place between accused No.1 and the deceased on the ground that there was illicit intimacy between the wife of accused No.1 and the deceased. When the matter was placed before the elders, they

admonished both of them. On 01.05.2010 at about 12.00 noon, PW.4 sat at the place near the shop of Mariamma while taking palmyra fruits, meantime the deceased also came there. At that time, PW.5 was cutting palmyra fruits. The evidence on record shows that at that point of time both the accused came on motor cycle, accused No.1 was having knife, which would be used to cut the wood. After getting down from the bike, accused No.2 came towards PW.5 and took the knife from his hands. Seeing the same, the deceased went ahead of four or five yards. At that time PW.4 went opposite to accused No.2 to stop him, then accused No.2 questioned the capacity of PW.4 to stop him. In the meantime, accused No.1 went against the deceased and hacked his neck with the knife while standing on his back. The deceased fell down. Thereafter, the accused left the place. On the same day at about 1.30 p.m., while PW.13-the A.S.I. of police was in police station, PW.1 came to the police station and lodged a report. Basing on which a case in Crime No.95 of 2010 came to be registered. Ex.P1 is the report and Ex.P19 is the first information report. As it was a grave offence, he informed the same to Inspector of Police on phone.

ii) PW.14-the Inspector of Police, who took up investigation in this case from PW.13, rushed to the scene of offence and in the presence of PW.11 observed the scene of offence and seized Mos.4 to 6 under Ex.P11. He also got photographed the scene of offence. Thereafter he conducted inquest over the dead body of the deceased in the presence of PW.11 and others. During inquest, he recorded the statements of PW.5, thereafter he sent the body for postmortem examination.

iii) PW.12-the Civil Assistant Surgeon, Government Head Quarters Hospital, Eluru, conducted autopsy over the dead body of the deceased and issued Ex.P18-the postmortem certificate. He opined that the cause

of death was “due to injury to the spinal column, spinal cord and blood vessels of neck and secondary due to shock and hemorrhage”.

iv) On 04.05.2010 at about 1.00 p.m., the S.I. of Police informed to PW.14 about the handing over of the accused by PW.11 along with confessional statement. Then, he rushed to Pedavegi Police Station, took the confessional statement and report, which were marked as Exs.P13 and P14. On the same day at 1.30 p.m., PW.14 arrested the accused and recorded their confessional statements in the presence of PW.11 and another. After collecting all the material, PW.14 filed a charge sheet before the Court of the Special Judicial Magistrate of First Class (Excise), Eluru, who intum 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.382 of 2011.

4) On appearance, charges under Section 302 IPC was framed against accused No.1 and Section 302 read with 34 IPC was framed against accused No.2, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P22 and MOs.1 to 7. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. On behalf of the accused Dr.Sailaja was examined as DW.1 and Ex.D1, relevant portion in 161 Cr.P.C. statement of PW.4 was marked.

Last para dictation:

As stated earlier, the learned Public Prosecutor mainly relied upon the extra judicial confession made by the accused before PW.11—the V.R.O. As per the averments of the charge sheet the extra judicial confession said to have been made on 05.05.2010 but later it was rectified as that of 04.05.2010. But the evidence of PW.1 would show that the accused were taken into custody by the police on the evening of offence i.e., 02.05.2010 itself. Therefore, when the accused was taken into custody on 02.05.2010 itself, he making extra judicial confession voluntarily before PW.11 on 04.05.2010 appears to be highly improbable. When once the arrest itself is suspicious, the alleged confession and the recovery made pursuant to the said confession also become doubtful.

For the foregoing reasons, we feel that the prosecution is not able to establish the guilt of the accused beyond reasonable doubt.

In the result, both the Criminal Appeals are allowed. The conviction and sentence recorded against the appellants/ accused Nos.1 and 2 in the judgment, for the offences punishable under Section 302 against accused No.1 and Section 302 read with 34 IPC are set aside. Consequently, the appellants/ accused Nos.1 and 2 shall be set at liberty forthwith, if not required in connection with any other case. .

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

11.04.2018
gkv/ AMD

