

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.489 of 2012

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

1) Accused Nos.1 to 3 in Sessions Case No.193 of 2011 on the file of the V Additional Sessions Judge, Rayachoty, are the appellants herein. They were tried for the offence punishable under Section 302 IPC, for causing the death of one T.Veeraiah (hereinafter referred to as "the deceased"), by beating him with a stick on his head. Vide judgment dated 11.05.2012, the learned Sessions Judge, convicted accused Nos.1 to 3 for the offence punishable under Section 302 IPC and sentenced them to suffer 'rigorous imprisonment for life' and to pay fine of Rs.500/- each, in default to suffer simple imprisonment for a period of three months.

2) The case of the prosecution in brief is as under:

i) Accused No.3 is the son of accused No.1 and they are residents of K.Vaddepalli Village. Accused No.2 is the sister's son of accused No.1 and he is a resident of Vaddepalli Village. Accused No.1 runs a petty shop in the veranda of his house. PW.1 is the brother and PW.2 is the wife while PW.3 is the father-in-law of the deceased. On 28.04.2009 at about 8.30 p.m., the deceased took his son aged about 10 years to the shop of accused No.1 to buy a

cool drink. An electric wire which was hanging from tube light fell on the deceased and his son. A dispute arose between the deceased and accused No.1, in which accused Nos.1 and 2 caught hold of the deceased. At that time accused No.3 came from inside the house, picked up a stick and beat the deceased on his head, as a result of which the deceased fell down and died. On hearing the cries, PWs.1 and 3 came to the house of accused No.1 and witnessed the attack on the deceased.

ii) On 29.04.2009, PW12-the Sub-Inspector of Police, received a report from PW.1, basing on which he registered a case in Crime No.55 of 2009 for the offences punishable under Sections 302 read with 34 IPC and issued Ex.P10-the first information report. After informing the same to PW13-the Inspector of Police, PW.12 visited the scene of occurrence and posted a guard at the scene.

iii) PW.13-the Inspector of Police, who took up investigation, observed the scene of offence and prepared a rough sketch, which is placed on record as Ex.P1. He, then conducted inquest over the dead body of the deceased in the presence of PW.7. Ex.P2 is the inquest report. During inquest, he examined PWs.1 to 4 and others. Thereafter, the dead body was sent for postmortem examination. PW10-the Civil Surgeon, R.M.O., at Government General Hospital, Kurnool, conducted autopsy over the dead body of the deceased and issued Ex.P8 the postmortem certificate.

According to him, the cause of death was “sudden shock and cardio respiratory failure due to electric shock”.

iv) PW.8-the Mandal Executive Magistrate, Chakrayapeta Mandal, in his evidence deposed that on 06.05.2009 PW.2 gave a requisition to the District Collector, Kadapa, seeking re-postmortem by exhuming the body as she got suspicion over the death of the deceased and the postmortem done by PW.10. On 12.05.2009 the body of the deceased was exhumed in the presence of his relatives. PW.11-the Professor and Head of the Department of Forensic Medicine, RIMS Hospital, Kadapa, conducted re-postmortem over the dead body of the deceased and opined that the death of the deceased was “due to brain injury due to blunt force over the head.” Ex.P9 is the second postmortem certificate.

v) On 02.06.2009, PW.13 arrested accused Nos.1 to 3 at Konampeta Cross and recorded the confessional statements of the accused in the presence of PW.9 and others. Pursuant to the said confession, he seized M.O.1 from the thorny bushes in the field of Venkata Subbaiah. After collecting all the material papers and after completing the investigation, PW.13 filed the charge sheet, which was taken on file as P.R.C.No.2 of 2010 on the file of the Judicial Magistrate of First Class, Lakkireddypalli. After complying with the procedure under Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 of Cr.P.C., which came to be numbered as S.C.No.193 of 2011.

3) On appearance, charge under Section 302 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs. 1 to 13 and got marked Exs.P1 to P14 and MO.1. After the closure of prosecution 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. No oral evidence was adduced but Exs.D1 to D4 were marked on behalf of the accused.

5) While disbelieving the evidence of PW10 and believing the evidence of PWs.1, 2, 4 and 6, the learned Sessions convicted the accused for the charge referred to above. Challenging the same, the present appeal came to be filed.

6) Sri K.Suresh Reddy, learned counsel appearing for the appellants mainly submits that there are number of circumstances to indicate that the incident did not happen in the manner spoken to by the prosecution witnesses. According to him, if really the version of the prosecution namely the assault made by accused No.3 is correct, there is no explanation as to how the deceased received burn injuries. He took us through the inquest report, to show that the deceased received burn injuries on his legs. According to him accused No.3 came to the rescue of the deceased

and in that process, accused No.3 also sustained burn injuries, which fact gets corroboration from the second postmortem doctor's report.

7) On the other hand, the learned Additional Public Prosecutor would contend that even if there is some discrepancy in the evidence of PWs.10 and 11 with regard to the manner in which the deceased sustained burn injuries but the evidence of PWs.1, 2 and 4 establish that only these three accused were responsible for the death of the deceased.

8) In order to appreciate the same, it would be useful to refer to the evidence of the eye witnesses and also the evidence of PW.8 and the doctors, who conducted postmortem examinations.

9) PW.1 is said to be the brother of the deceased. In his evidence, he deposed that on the date of incident while himself and Subbarayudu (PW3) were on the terrace of the house of the deceased, they heard sounds as "Kottandira, Champandira" from the house of accused No.1. Then himself, PW.3 along with one Lakshmaiah, Ramanaiah went there and saw accused Nos.1 to 3 beating the deceased. It is said that after PW.1 and others went there, accused Nos.1 and 2 caught hold of the deceased while accused No.3 beat the deceased on his head with a stick, causing head injury leading to his death. According to him, on the date of incident, the deceased and his son went to the shop of accused No.1 and there was some altercation when the son of the deceased

touched the electric wire and then the accused attacked the deceased.

10) PW.1 in his cross-examination admits that the deceased was neither removed nor was any doctor summoned to treat the deceased. He further admits that 108 ambulance came to the village, in which accused No.3 was removed to hospital. No information about the incident was given by PW.4 either on phone or by going to the police station in the motor cycle. In fact he admits that no attempt was made to go to police station. He further admits that the deceased was beaten only once. On the next day morning, he claims to have gone to the police station along with Venkataiah and lodged a report. He pleads ignorance as to why accused No.3 was moved to the hospital. He admits that the doctor opined that the deceased died due to electric shock and thereafter he fell on the grills and sustained head injury.

11) From the evidence of this witness it is clear that himself along with PW.3, Lakshmaiah and Ramanaiah went to the house of accused No.3 on hearing the cries, and saw accused Nos.1 and 2 catching hold of the deceased and accused No.3 beating the deceased on the head with a stick. He further states that there was some altercation between the deceased and accused No.1 while son of the deceased touched the electric wire. He also admits that no report was lodged on that day either by informing

the police through phone or going to the police station on motor cycle.

12) In the cross-examination, he pleads ignorance with regard to contents of column No.7 in the inquest report namely about the deceased sustaining burn injuries at his ankle. However he admits that the Tahsildar recorded his statement at the time of second postmortem which bears his signature. Ex.P5 is the said statement. He admits that in Ex.P5 it was mentioned that by the time they went to the house of accused No.1, the deceased was found dead. Therefore, from the answers elicited, it is clear that his version in chief is not correct in view of his admissions in the cross-examination, wherein he admits recording of his statement by Tahsildar under Ex.P5, in which he disclosed that by the time he went to the house of the accused the deceased was found lying dead.

13) PW.2 is the wife of the deceased. According to her on the date of incident at about 8.00 p.m., the deceased and her son went to the shop of accused No.1 for a cool drink. There was some galata in the said shop. On hearing the cries, herself, PW.1, her father (PW.3), Lakshmaiah, Venkataiah, Venkatanna and Ramanaiah went there. After going there, they claimed to have seen accused Nos.1 and 2 catching hold of the deceased, while accused No.3 beating the deceased with stick and causing injuries. She further states that when the deceased and her son went to the

shop of accused No.1, her son touched the electric wire of tube light and her husband questioning accused No.1 about the electric wire touching to his son. At that time quarrel ensued in which the accused beat the deceased and caused his death. She further speaks about the second postmortem which was conducted two weeks after the incident.

14) To a suggestion that she did not state in Ex.D1, that by the time she went to the scene of offence, the deceased was dead was denied by her. She admits that though 108 ambulance came to the village, neither the deceased nor his son were moved in the ambulance but accused No.3 also shifted in the ambulance to the hospital. She further admits that she did not ask anybody to give a report to the police on that day. To a suggestion that the deceased died due to electric shock was denied by her. In further cross-examination, which was done on 28.11.2011, she admits that the Tahsildar examined her at the time of second postmortem and she signed the statement. She admits that she did not tell the Tahsildar about accused No.3 beating the deceased with a pestle.

15) From the above evidence of PW.2, it is clear that she along with PWs.1, 3 and other villagers went to the house of accused No.1 on hearing the cries and after going there, they claimed to have seen accused Nos.1 and 2 holding the deceased while accused No.3 beating the deceased with stick. But PW.1, who also gone to the house of accused No.1 on hearing the cries

did not refer to PW.2 coming along with them to the said house. She admits that the version which she has spoken to in the Court was never spoken to by her at the time of second postmortem report when the Tahsildar recorded her statement. Her evidence is silent with regard to accused No.3 beating the deceased with a pestle which is recorded in Ex.D3.

16) Coming to the evidence of PW.3, who is the father of PW.2, in his evidence deposed that on the date of incident while he was on the terrace of house of the deceased, heard cries from the house of accused No.1 and accordingly, himself and PW.1 went to the house of accused No.1. He noticed accused Nos.1 and 2 holding the deceased while accused No.3 beat the deceased with stick. He was also cross-examined at length. In the cross-examination he admits that the Tahsildar recorded his statement in Ex.P5, which discloses that by the time all these people went there the deceased was found lying dead. The evidence of PW.4 also toes in line with the evidence of PW.3. Similarly, PW.6, who was examined as an eye witness to the incident also deposed that on hearing the cries from the house of accused No.1, himself, PWs.1 to 3 and others went to the house of accused No.1 and saw accused Nos.1 and 2 holding the deceased while accused No.3 beating the deceased with stick on his head. Though he was cross-examined at length with regard to the manner in which the incident happened and also about accused No.3 being removed to the hospital in 108

ambulance, but he pleads ignorance about the same. However in the cross-examination he admits his signature on Ex.P2, which was the statement recorded by the Tahsildar during second postmortem examination, wherein it is mentioned that by the time all these people went there the deceased was found dead.

17) The evidence of these witnesses would show that, all of them on hearing the cries from the house of accused No.1, proceeded to the said house and claimed to have seen accused Nos.1 and 2 catching hold of the deceased while accused No.3 beating the deceased on his head with a stick. None of the witnesses speak about the electric shock and burn injuries on the deceased and accused No.3. In the chief examination all of them tried to suppress the said fact but in the cross-examination it was elicited that accused No.3 also sustained burn injuries, pursuant to which he was shifted to the hospital. The fact that the son of the deceased was not shifted to the hospital along with accused No.3 in 108 ambulance clearly indicates that the nature of injuries sustained by accused No.3 are more grave and serious in nature than the injuries sustained by the son of the deceased. Probably, this made the villagers and others to send accused No.3 to the hospital at the earliest point of time. Having regard to the above, we are of the opinion that these witnesses are not coming forward with the true version as to how the incident took place.

18) The learned counsel for the appellants tried to contend that the incident in question happened when accused No.3 on hearing the cries came there and then used a stick in rescuing the deceased, who was in contact with a live electric wire and thereafter he fell down on the iron grill. This defence taken by the accused in our view appears to be probable for more than one reason. PW.10 though in his chief-examination does not refer to the treatment given by him to accused No.3, but in the cross-examination he admits that on 28.04.2009 at 11.05 p.m., accused No.3 was admitted in the hospital due to an electric shock. He treated accused No.3 and issued the wound certificate, which was handed over to the police. He also admits that accused No.3 got admitted on his own accord and on examination he found cold and clammy and hypo tension, tingling and numbness present throughout body. According to him, the injuries found on accused No.3 are simple in nature but caused due to electric shock, three to four hours prior to his examination.

19) From the above, it is clear that though the doctor handed over the wound certificate of accused No.3 to the police, for the reasons best known they suppressed the same and only in the cross-examination, the accused could elicit the injuries sustained by accused No.3 on that day, due to electric shock.

20) The second circumstance which supports the plea of the accused is the inquest proceedings. In column No.7 of the

inquest report, it was mentioned that the deceased also sustained burn injuries on left leg ankle and on right ankle. That being the position, the version of the accused not only becomes probable but the evidence of Pws.1 to 4 and 6 has to be viewed with suspicion since none of them in their evidence spoke about the deceased sustaining burn injuries. All through they were only referring about the assault on the deceased by accused No.3 when accused Nos.1 and 2 caught hold of him. This in our view appears to have been introduced at the instance of others for the reasons best known to them.

21) Further, the first information report was given at a belated stage. As seen from the record the police station is at a distance of 10 kms., from the village and everyone in that village were having vehicles. As observed by us earlier no attempt was made even on phone to inform the police about the incident. It appears that even the witnesses were aware that the incident in question was due to electric shock, pursuant to which the deceased and accused No.3 fell on the iron grill which gets support from sustaining burn injuries and being sent to the hospital at the earliest point of time.

22) The second postmortem which was conducted at the instance of PW.2, throws doubt on the involvement of the police and the doctor in preparing the first postmortem report. In our view the second report is also of no help to PW.2. It would be

appropriate to refer to the evidence of PW.11, who was working as Professor and head of the Department of Forensic Medicine, RIMS Hospital, Kadapa, who conducted the second postmortem report. On requisition of M.R.O., Chakrayapeta Mandal, he attended the re-postmortem examination of the dead body of the deceased and commenced the postmortem at 9.35 a.m., and completed it by 10.35 a.m. According to him, the dead body was in advanced stage of decomposition and there was evidence of past postmortem examination over the dead body. He found the following anti mortem external injuries.

“Contused areas black in colour, two in number present over the right parietal area of the scalp of the head on the back near the top, measuring 4 x 3 cm., and 4 x 2 ½ cm., with echymosis on dissection. Skull was found subjected for previous autopsy. Brain is solid mass mixed with blood and blood pigments. All the bones are normal. Due to advanced decomposition injuries over the legs could not be made out. Stomach contains 120 grams of digested food material. The internal organs of becomes soft due to decomposition.”

23) From the evidence in chief, it is clear that he noticed two injuries on the right parietal area of the scalp of the head on the back near the top. According to PW.11, the cause of death was due to brain injury due to blunt force over the head and death occurred about two weeks prior to his examination.

24) But the answers given in the cross-examination throw some doubt as to the opinion arrived at by him. It is to be noted

here that the body was already subjected to postmortem and skull was subjected to previous postmortem. Therefore, some kind of contusions on the skull cannot be said to be unusual. At this stage, we intend to refer to the answers given by the doctor in the cross-examination, which are as under:

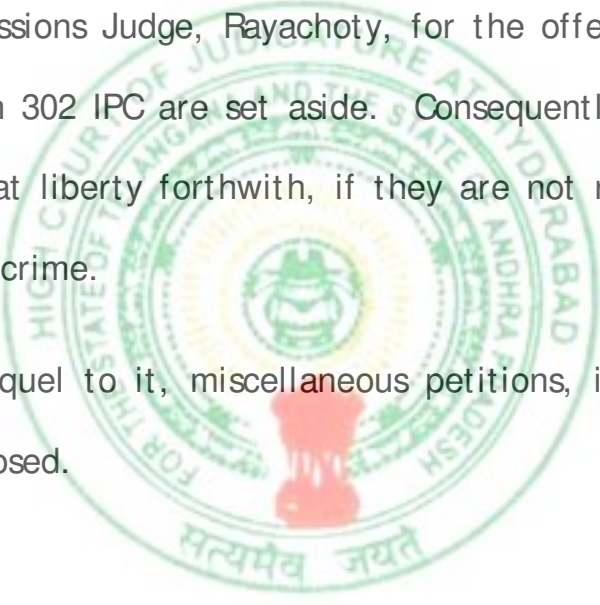
“During post-mortem I noticed the brain of deceased was not in liquefied and it was solid in mass. I agreed Modi’s medical jurisprudence that brain becomes soft and pulpy within 24 hours to 48 hours in summer and becomes a liquid mass in 3 to 4 days. It is not correct to say that my finding that brain is solid mass mixed with blood and blood pigments is incorrect. Eyes, lips, nose, ears were lost due to advanced decomposition of the body. It is not correct to say that my observation regarding contused areas on the scalp is not at all possible in this case due to advanced decomposition. All organs became soft due to advanced decomposition as per column No.5 of Ex.P8. In case of electric shock central nervous system would be affected. I did not notice any depressed wound on the skull of the deceased. In electric shock there will be entry and exit wound. Injury Nos.1 and 2 are possible to the deceased if he had fallen on iron grill due to electric shock with force.”

25) The answers given by the doctor in our view support the defence taken by the accused, which in our view appears to be more probable, having regard to the findings given by us earlier. If really the deceased was beaten with stick on head, as deposed by the eye witnesses, he would have definitely found a depressed wound on the skull. Absence of the same, throws some suspicion with regard to manner in which the incident occurred. Taking into

consideration the totality of the circumstances of the case and also the explanation of the accused in their examination under Section 313 Cr.P.C., which to a large extent is supported by the evidence adduced by the prosecution themselves, we feel that it is a fit case where benefit of doubt can be extended to the accused.

26) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/ Accused Nos.1 to 3 in Sessions Case No.193 of 2011 on the file of the V Additional Sessions Judge, Rayachoty, for the offence punishable under Section 302 IPC are set aside. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime.

27) As a sequel to it, miscellaneous petitions, if any, pending shall stand closed.


C.PRAVEEN KUMAR, J

T. RAJANI, J

01.08.2018
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