

The Hon'ble Sri Justice C.Praveen Kumar
and
The Hon'ble Smt. Justice T.Rajani
Criminal Appeal Nos.215 of 2012 & 1243 of 2018
Dated 16th July, 2018

Common Judgment: *(Per Hon'ble CPK, J)*

The appellants herein, who are accused Nos.1 and 2 in S.C.No.147 of 2011 on the file of the III Additional Sessions Judge, (Fast Track Court) at Asifabad, Adilabad District, were tried for the offence punishable under Section 302 read with Section 34 IPC, for committing the murder of their brother and sister-in-law *viz.*, Durgam Shankaraiah and Durgam Anasuya @ Suramma (hereinafter referred as 'D.2 and D.1 respectively') on 19.07.2010 at 3.00 p.m., in the outskirts of Arepalli Village. By its Judgment, dated 01-02-2012, the trial Court convicted both the accused for the offence punishable under Section 302 r/w Section 34 IPC and sentenced them to undergo Imprisonment for Life and also to pay a fine of Rs.5,000/-, in default of payment of the fine amount, to suffer Simple Imprisonment for a period of one year. Both the accused were further directed to pay a sum of Rs.25,000/- each to PW.1, who is the daughter of D.1 and D.2. Assailing the same, accused No.2 filed CrI.A.No.215 of 2012 and accused No.1 filed CrI.A.No.1243 of 2018.

2. The case of the Prosecution is as under:

PW.1 is the daughter of D.1 and D.2. PW.2 is the mother of D.1. PWs.4 to 11, 13 and 14 are the residents of Arepalli Village, who knew the accused and the deceased.

Accused Nos.1, 2 and D.2 are brothers. There were certain disputes between them regarding partition of agricultural land, in connection with which Panchayats were also held on two occasions. On 19-07-2010, D.2 got his land ploughed by hiring the tractor of PW.3 and D.1, D.2 and PW.1 were removing the weeds in that land. At about 2.00 p.m., after ploughing the land, the tractor left the fields and at 3.00 p.m., accused Nos.1 and 2 armed with an axe and a stick respectively came to the said land and questioned D.2 as to why he got the land ploughed without settling the dispute and advanced towards him. Sensing danger in the hands of the accused, D.2 ran towards the adjacent field. Both the accused chased him but could not reach him. D.1 followed them by raising hue and cry. As the accused could not reach D.2, they turned back. Accused No.1 caught hold of D.1, threw her on the ground in the field of Durgam Thirupathi and hit her three to four times with the axe on her neck, throat, chin *etc.* On seeing the incident, D.2 returned to rescue D.1. The accused again tried to catch D.2, but he ran away to some distance, but both the

accused overpowered him, caught hold of him in the fields of PW.7 and threw him on the ground. While accused No.1 hacked D.2 with the same axe, accused No.2 beat him with a stick. Both D.1 and D.2 died on the spot. This incident was witnessed by PWs.8 and 9, who were working in the neighbouring fields. Due to fear, PW.1 escaped from there and informed the incident to PWs.13 and 14, who are her relatives. As there was no response from them, PW.1 alone went to the Police Station at 5.30 p.m., and gave Ex.P.1- report to LW.24- the Sub-Inspector of Police, Jaipur, who registered the same as Crime No.122 of 2010 under Section 302 r/w 34 IPC and sent the express FIR to all the officers concerned. LW.24 recorded the statement of PW.1 under Section 161 Cr.P.C. On receipt of telephonic information from LW.24, PW.20- Circle Inspector of Police, Srirampur, rushed to the scene of offence, which is an agricultural field located on the northern outskirts of Arepally Village with cotton seeds sown in them, and directed LW.24 also to come to that place. After reaching there, he received the CD file and took up the investigation from LW.24. PW.20 verified the statement of PW.1 recorded by LW.24 and found it on correct lines. He got photographed the scene of offence and the dead bodies of D.1 and D.2 through PW.16. Exs.P.14 to P.21 are the photographs.

Thereafter, PW.20 drew Ex.P.34- a rough sketch of the scene of offence, conducted a scene of offence panchanama in the presence of panchas- PW.17 and LW.19, seized one blood stained white towel, blood stained earth, control earth, 12 bangle pieces of D.1 and a pair of rubber chappals of D.1 from the place where the dead body of D.1 was lying and one blood stained white towel, blood stained earth, control earth, a match box, a stick and a wood bark from the place where the dead body of D.2 was lying. Ex.P.23 is the scene of offence panchanama. As it was night, PW.20 shifted the dead bodies of D.1 and D.2 to the Mortuary of Government Civil Hospital, Manchiriyala, for inquest and Post Mortem Examination. Later, he recorded the statements of PW.8, PW.9 and PW.15. On the next day *i.e.*, on 20-07-2010 at 7.00 a.m., PW.20 conducted inquest over the dead body of D.1 in the presence of PW.17, LW.19 and LW.20 under the cover of Ex.P.25- Inquest Panchanama and over the dead body of D.2 in the presence of PW.17 and LW.19 under the cover of Ex.P.26- Inquest Panchanama. PW.20 recorded the statements of LW.6, PWs.2 to 7 & 10 to 14 under Section 161 Cr.P.C. On his requisition, PW.19- Civil Assistant Surgeon, Government Area Hospital, Manchiriyala, conducted autopsy over the dead bodies of the deceased and issued Exs.P.31 and 32- the Postmortem

Certificates, opining the cause of death of D.1 as “cardio respiratory arrest due to shock and haemorrhage due to multiple injuries to neck” and the cause of death of D.2 as “shock and hemorrhage due to cardio respiratory arrest secondary to multiple injuries to neck and head”. PW.20 sent the seized material objects to RFSL, Karimnagar, for examination and received Ex.P.35- report on 21.08.2010, to the effect that human blood is detected on item Nos.1, 2, 4, 5 and 8 to 19 therein.

On 22-07-2010 at 2.00 p.m., on reliable information, PW.20 along with his staff rushed to the bus stage area, Bheemaram, apprehended the accused and interrogated them in the presence of PW.18 and LW.22, during which both the accused confessed about the commission of the offence. PW.20 recorded their confessional statements- Exs.P.27 and P.28. In pursuance thereof, the accused led the Police personnel and the panchas to the house of accused No.1 at Arepalli Village and showed the weapons used for commission of offence and the clothes worn by them at that time. PW.20 seized the blood stained white banian, blood stained lungi and blood stained axe from the possession of accused No.1 and blood stained full shirt, blood stained pant and blood stained stick from the possession of accused No.2 under the cover of Exs.P.29 and P.20- seizure panchanamas respectively. Later,

PW.20 arrested the accused and sent them to judicial custody on 23-07-2010. After collecting all the documents, a charge sheet came to be filed, which was taken on file as PRC.No.6 of 2011 on the file of the Judicial First Class Magistrate at Chennur. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as SC.No.147 of 2011.

3. Basing on the material available on record, a charge under Section 302 r/w 34 IPC came to be framed against the accused, read over and explained to them, to which they pleaded not guilty and claimed to be tried.

4. In support of its case, the Prosecution examined PWs.1 to 20, got marked Exs.P.1 to P.35 and produced MOs.1 to 21. Out of the 20 witnesses examined by the Prosecution, PWs.4 to 14 did not support the Prosecution case and they were treated hostile. After completion of the 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. On behalf of the Defence, DWs.1 to 3 were examined and no documentary evidence was adduced.

5. Relying upon the evidence of PW.1, PW.8 and PW.15, the trial Court has convicted and sentenced the accused in the manner noted herein before. Assailing the same, the present Criminal Appeals came to be filed.

6. Mr.P.Prabhakar Reddy, learned Counsel for the accused, submitted *Firstly*- that PW.1 in her evidence stated that she was studying intermediate by staying in a hostel at Bellampally and therefore, there is any amount of doubt as to her presence at the scene of offence; that she was set up by the Prosecution after the incident; and that none of the Prosecution Witnesses supported the Prosecution Case; *Secondly*- no specific overt acts were attributed to accused No.2 in Ex.P.1- original report; and that he might have accompanied accused No.1 to question D.2 regarding the ploughing of the field; and *Thirdly*- that the medical evidence is inconsistent with the Prosecution case.

7. On the other hand, the learned Public Prosecutor would contend that in the absence of any suggestions put to PW.1 with regard to her presence at the scene of offence, and her oral evidence being consistent with the averments in Ex.P.1- report given within two hours of the incident, there is no reason to disbelieve her evidence.

8. As regards the role of accused No.2 in the alleged offence, learned Public Prosecutor would contend that even though Ex.P.1 is silent regarding the attack on D.1 and D.2 by accused No.2, the averments in the FIR would clearly show his presence at the scene of offence and he catching hold of D.1, pushing her, enabling accused No.1 to hack her with MO.1- axe and also chasing D.2, catching hold of him, enabling accused No.1 to hack him and beat D.2 with MO.2- stick. Ultimately, he submits that the contents of the FIR not only show the presence of accused No.2 at the scene of offence, but also his involvement in the commission of the offence.

9. Now, the point that arises for consideration is, whether both the accused have committed the offence punishable under Section 302 r/w 34 IPC.

10. The entire case rests upon the evidence of PW.1, who is none other than the daughter of both the deceased. In her evidence, she admitted that she was studying Intermediate II year by staying in a hostel at Bellampalli. But, she also stated that on 19.07.2010, she was assisting her parents in the field work; that from 12.00 noon to 2.00 p.m., their field was ploughed by PW.3 with a tractor; that thereafter, both accused Nos.1 and 2 armed

with an axe and a stick respectively came there and questioned D.2 as to why he got the land ploughed without any partitions. Sensing danger, D.2 ran into the neighbouring fields to which both the accused chased D.2. D.1 followed them by raising cries. As they could not reach D.2, and seeing D.1 following them, both the accused turned back and caught hold of her. A.1 is said to have hacked D.1 with an axe on neck, throat and chin. Seeing the same, D.2 came back to rescue D.1, but both the accused chased D.2 into the fields of PW.7 where he was made to fall on the ground. Then, accused No.1 hacked D.2 with the same axe with which he hacked D.2, while accused No.2 beat him with the stick.

11. PW.1 was cross-examined at length. In the cross-examination, she stated that she is studying Intermediate II year by staying in a hostel at Bellampally; that at the time of the incident, she was in the house; that she used to assist her parents in the household work and field work; and at the time of the incident, they were working in the fields. To a suggestion that she did not witness the incident was denied by her. Hence, nothing came to be elicited from PW.1 to discredit her testimony. Therefore, there is no reason to disbelieve her presence, more so, in view of the findings hereunder.

12. As regards the submission of the learned Counsel for the appellant that the evidence of PW.3 falsifies the presence of PW.1 at the scene, it is to be noted that PW.3 stated in his evidence that while he was near Bheemaram bus stand along with his vehicle, D.2 asked him to plough his land. Accordingly, he went to the field of D.2 and ploughed the same till 2.00 p.m; and that while he was ploughing the field, D.1 came there and paid a sum of Rs.1,000/- informing him that the remaining amount of Rs.1,000/- will be sent with her husband. It is no doubt true that there is no reference to the presence of PW.1 at that time. But at the same time, his evidence also does not indicate the presence of D.2 in the field at that time. Therefore, non-mentioning of the name of PW.1, in our view, is not a ground to disbelieve the presence of PW.1 at the scene. He was called upon only to speak about the hiring of his tractor and payment of money by D.1. His evidence can be relied upon only to the extent of D.2 engaging him and D.1 offering the advance amount of Rs.1,000/- by promising to send the balance amount through her husband.

13. As regards the submission of the learned Counsel for the accused that none of the independent Prosecution witnesses supported the Prosecution Case, it is to be noted from the evidence of PW.8, who although turned hostile, that while he was

working in the field, an unknown person ran and fell down and one female body was present. Similarly, PW.9, who is the wife of PW.8, deposed that on the date of the incident, both the deceased were working in their fields. During that time, her husband saw the quarrel and stated that D.1 and D.2 fell down, on hearing of which, this witness also fell unconscious. Further, the evidence of PW.15 shows that on the date of the incident, when he was in his agricultural fields along with his farm servants, the latter informed him that there was a quarrel between D.2 and his brothers in the nearby field and that two persons died. He was treated hostile as he failed to identify the two assailants, who attacked the deceased. His evidence shows that on the date of incident when he went to the scene of offence, he noticed PW.1. In our view, the evidence of PWs.3, 8, 9 and 15 not only establishes the occurrence of an incident at the agricultural fields but also the presence of PW.1 there. In view of the same, we feel that the presence of PW.1 at the time of incident cannot be doubted. Hence, her version with regard to the incident cannot also be doubted.

14. As regards the second submission of the learned Counsel for the accused that no specific overt acts were attributed to accused No.2 in the FIR, it is pertinent to note that the incident in

question is said to have taken place at 3.00 p.m. and the FIR came to be lodged at 5.30 p.m. In the said report, PW.1 categorically stated the role played by the accused No.2 in causing the death of her parents *i.e.*, D.1 and D.2. The contents of FIR coupled with the evidence of PW.1 show that after ploughing the field, both accused Nos.1 and 2 armed with an axe and a stick respectively came there and questioned D.2 as to why he got the land ploughed without the same being partitioned. When both of them came upon D.2, he started running to save himself pursuant to which, both of them chased him. D.1 was running behind them raising cries and when she reached the field of PW.6, both the accused turned back, accused No.2 caught hold of her and threw her on the ground, while accused No.1 hacked her with axe on the neck, throat, chin *etc.*, On seeing the same, D.2 returned to rescue D.1, but both the accused chased and apprehended him in the fields of PW.7, threw him on the ground and accused No.1 hacked him with the same axe, while accused No.2 beat him with stick. PW.1 categorically stated the usage of stick by accused No.2 and causing injuries to D.2. Therefore, we feel that the presence and participation of A.2 cannot be doubted. Hence, the submission of the learned Counsel for the accused that accused No.2 had no intention and that he only accompanied accused

No.1 to question D.2 about the ploughing of the land cannot be accepted.

15. As regards the evidence of DWs.1 to 3 that accused No.2 was present at the death ceremony of his father at the time of the incident, the learned Counsel for the accused did not place much reliance on their evidence, hence, we do not intend to discuss the same. Even otherwise, when it is the death ceremony of the father of accused No.2, it would be the death ceremony of the father of accused No.1 and D.2 as well. They would also have been present there, if such a ceremony was there. Hence, no reliance can be placed on the evidence of DWs.1 to 3 in support of the plea of alibi taken by accused No.2.

16. As regards the third submission made by the learned Counsel for the accused that the medical evidence is inconsistent with the Prosecution case, a close perusal of the evidence of PW.19- the Doctor, who conducted Postmortem Examination, would show that both the deceased sustained not only lacerated injuries but also contusions and abrasions. According to PW.19, injuries might be caused by axe and contusions and aberrations with stick. Hence, it cannot be said that there was any inconsistency in the medical evidence with the oral evidence.

17. Having regard to the reasons stated above, we feel that the impugned Judgment of the lower Court convicting and sentencing the accused for the offence punishable under Section 302 r/w 34 IPC needs no interference.

18. In the result, both these Criminal Appeals are dismissed. The conviction and sentence recorded against the appellants/accused Nos.1 and 2 for the offence punishable under Section 302 read with Section 34 IPC in the Judgment, dated 01.02.2012, in Sessions Case No.147 of 2011, on the file of the III Additional District & Sessions Judge, Fast Track Court, Asifabad, are hereby confirmed. The bail bonds of the appellant in Crl.A.No.215 of 2012/accused No.1 shall stand cancelled and he shall forthwith surrender before the Superintendent, Central Prison, Warangal.

(C.Praveen Kumar, J)

(T.Rajani, J)

Dt: 16th July, 2018
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