

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**AND**

**HON'BLE Mrs. JUSTICE T.RAJANI**

**CRIMINAL APPEAL No.278 of 2012**

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

The sole accused in SC No.131 of 2010 on the file of the X Additional District and Sessions Judge (Fast Track Court), Visakhapatnam at Anakapalle is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Appikonda Nageswararao on 29.01.2010 at about 04.00 p.m. at the house of the deceased in Venkannapalem village of Munagapaka Mandal. Vide judgment dated 15.12.2011, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer rigorous imprisonment for life and pay fine of Rs.500/- in default to suffer imprisonment for one year.

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

(i) PW1 is a resident of Venkannapalem village and the deceased is the daughter-in-law of PW1 and wife of PW2. The accused is the son of the elder brother of PW1.

(ii) The father of the accused had five brothers including PW1. It is stated that there was a common site for all the five brothers, in which they constructed houses in a family partition

of house sites. The accused had his site on the western side to the site of PW1. Disputes arose between them with regard to raising of a boundary wall between the house of the accused and PW1. It is stated that inspite of an objection raised by the accused, PW1 constructed a compound wall to a height of 5' feet between his house and house of the accused, as per the vasthu. This led to disputes between them and the matter was placed before PW3, the village elder and PW9, who conducted a panchayat to settle the issue. But the accused did not heed to the words of elders. While so, on 29.01.2010, at about 09.00 a.m., the accused abused PW1 and his family members for construction of a boundary wall to the height of 5' feet on the eastern side of his house. Then the neighbours interfered and pacified the situation. Thereupon, the accused developed vengeance towards PW1 and his family members and in pursuant thereof, on the same day at about 04.00 p.m., the accused rushed to the house of the deceased and found her cleaning the utensils. It is stated that the accused picked up a stick and beat on the head. On hearing her cries, PW1 came out of the house and noticed the accused beating the deceased with stick. Immediately, he went to the rescue of the deceased and pulled the stick and stone used by the accused. Due to the said attack, the deceased fell down unconscious with bleeding injuries. Meanwhile, PW6, who is the daughter of the deceased came out and found her mother lying in an unconscious state with bleeding injuries and raised cries, which attracted the

attention of PW7 and others. All of them rushed to the spot and found the deceased in a pool of blood. Immediately thereafter, she was shifted to KG Hospital, Visakhapatnam, in 108 ambulance, where she succumbed to the injuries, at 08.00 p.m., on the same day. On 30.01.2010, PW1 lodged a report before PW13, the SI of police, Munagapaka police station, basing on which, a case in Crime No.10 of 2010 came to be registered. Ex.P5 is the First Information Report issued. Immediately, thereafter, he informed about the registration of crime to PW14, who took up further investigation in this case. Accordingly, he visited the mortuary at KGH at about 11.15 a.m. In the presence of PWs.10, 11 and others, he conducted inquest over the body of the deceased. Ex.P2 is the inquest report. At the time of inquest, he secured the presence of PWs.1 to 5 and LW3 and recorded their statements. Thereafter, the body was sent for post mortem examination. PW15 the Associate Professor in Forensic Medicine, Siddartha Medical College, Vijayawada, conducted autopsy over the body of the deceased at about 02.05 p.m. Ex.P8 is the post mortem report. According to him, the cause of death was due to injuries to the brain and head. PW14, who continued with the investigation, visited the scene of offence and prepared a rough sketch of the scene of offence, which is placed on record as Ex.P6. He also seized MOs. 1 and 2, stick and stone from the scene of offence. On 31.01.2010 at about 05.00 p.m., PW14 arrested the accused and on interrogation, the accused is said to have confessed about the

commission of offence. After collecting all the necessary documents, a charge sheet came to be filed which was taken on file as PRC No.9 of 2010, on the file of II Additional Junior Civil Judge – cum – Additional Metropolitan Magistrate, Anakapalle.

(iii) On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal under Section 209 Cr.P.C., the learned X Additional District and Sessions Judge (Fast Track Court), Visakhapatnam at Anakapalle, numbered the case as S.C.No.131 of 2010. On the basis of the material on record, the aforementioned charge came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

(iv) In support of his case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P8 and MOs.1 to 3.

(v) 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. But, however, he stated that he was suffering with mental disorder and in support of the same, he got examined DW1, who was working as a Civil Assistant Surgeon in Government Mental Care, Visakhapatnam and got marked Ex.X1 case sheet.

(vi) Disbelieving the theory put forward by the accused and believing the evidence of PWs.1 to 4, learned Sessions Judge

convicted the accused. Challenging the same, the present appeal came to be filed.

3. Sri T.M.K.Chaitanya, learned counsel for the appellant, mainly submits that the evidence of DW1 coupled with Ex.X1 amply establish that the deceased was of unsound mind since last twenty years. Though PW1 was aware about the same, he suppressed the said certificate. It is his plea that on one occasion, PW1 himself admitted the accused in the hospital giving an undertaking that he will take back the patient as and when doctor permits.

4. On the other hand, the learned additional public prosecutor would submit that there is no evidence available on record to show that the petitioner was of unsound mind as on the date of incident. He further admits that the health condition of the accused may not be proper prior to the incident and after the incident, but there is no evidence about his mental state of mind as on the date of incident. He further submits that the conduct of the appellant is projected to be un-natural on the date of incident, only with a view to take benefit under Section 84 IPC. He contends that unless there is evidence to show that the accused was inflicted with such illness so as to deprive his cognitive faculty (intellectual activity) to know the nature of the act he was doing, he cannot claim protection under Section 84 of the IPC.

5. But the issue at this stage is as to whether the injured was of unsound at the time of incident and also as to whether PW1 was aware about the accused being of un-sound mind and whether he was admitted in the hospital, due to his mental illness?

6. With regard to the entitlement of benefit under Section 84 IPC, the Apex Court in ***Elavarasan Vs. State***<sup>1</sup>, held that while determining whether the accused is entitled to the benefit of Section 84 of the Code, the Court has to consider the circumstances that preceded, attended or followed the crime, and such circumstances must be established by credible evidence. Keeping this in view, we intend to proceed with the matter.

7. PW1 in his evidence, deposed about the relationship between the accused and the deceased. According to him, on 29.01.2010 at about 09.00 a.m., a quarrel took place between himself and the accused with regard to a boundary wall and the elders of the village pacified and disbursed them from the spot. On the same day at about 04.00 p.m., while the deceased, who is the daughter-in-law of PW1, was cleaning vessels, the accused came there and is said to have picked up a stick and beat on her head causing injuries. When the deceased raised cries, PW1 came out of the house and took the stick from the hands of the accused. Then the accused is said to have picked up a stone

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<sup>1</sup> AIR 2011 SC 2816; (2011) 7 SCC 110; JT 2011 (8) SC 77; (2011) 7 SCALE 33

and beat the deceased on her head causing bleeding injuries. According to him, immediately thereafter, he lodged a report before the concerned police station. In the cross examination, PW1 admits that he is acting as Vice President for Nagavaram panchayat and the house of the accused is situated nearby his house. He admits that previously he did not file any police report against the accused with regard to the disputes between them. He further admits that no case is pending between them in any Court of law. He further states that the parents of the accused died long back and the accused is the only son, while the other four are the daughters to the parents of the accused. He admits that in view of the death of the father of the accused, who is the brother of PW1, he had to look after their family. The suggestion that previously the accused suffered with ill-health and mental disorder, was denied by PW1. He further denied the suggestion that he himself admitted that accused in mental hospital, Visakhapatnam. He further denies the fact of accused suffering with mental disorder and also suffering with some problem since 20 years. To a suggestion that PW1 himself provided the treatment to the accused for mental disease was denied by him. From the answers given by PW1, it appears that the deceased was not suffering with any mental ill-health and that he never admitted him in a mental hospital at Visakhapatnam. But a perusal of Ex.X1, which is the case sheet of the Government hospital for mental care at Visakhapatnam, would show that PW1 signed in the declaration

form while admitting the injured in the hospital. The signature on Ex.X1 is not disputed by PW1. According to him, the said declaration appears to have been signed in the year 2003, whereas, the incident in question took place in the year 2010. But the above document falsifies the evidence of PW1 with regard to his ignorance about the mental state of the accused. Similar such suggestion came to be given to PW3 as well. But the same was denied by PW3. But, however, the counsel for the appellant not only relied upon Ex.X1, but also on the evidence of DW1 to show that the accused was of unsound mind.

8. DW1 is none other than the Civil Assistant Surgeon in Government Hospital Mental care at Visakhapatnam, who treated the accused. His evidence reads as under:

“Presently I am working as Civil Assistant Surgeon in Government hospital mental care, Visakhapatnam since 2007. I received summons from the Court accordingly came to Court for giving evidence. I also brought the record with regard to the treatment of the patient name A.Appikondanaidu, bearing registered No.31674 of unit-2. As per the record brought by me to the Court, I have given treatment to the accused herein, for recurring depressive disorder with psychosis. As per our records, the accused herein was brought to the hospital for the first time in the year 2002. By that time he was brought to the hospital by his family members. Accordingly treatment was given. Again he was also brought to the hospital in the years 2003, 2007 and 2009. Subsequently in the year 2010, the accused was brought to the hospital from the Central Prison, Visakhapatnam for treatment. Accordingly, given treatment. Ex.X1 is the copy of case sheet pertaining to the accused with regard to his treatment. In Ex.X1 all the details of treatment

given to the accused herein and also details with regard to the admission in the hospital as well as discharge from the hospital are noted. According to me, the accused has to take continuous treatment for his mental disorder and also psychosis. If the patient discontinued his treatment there is every possibility for aggravating the disease. There is specific complaint from the staff that the patient that is the accused herein hiding medicines under the cot from three days and the same was noted in Ex.X1, dated 15.03.2010. On the same day i.e., 15.03.2010 there was complaint against the accused herein that he intended to kill and stab, whenever the patient used to stop the treatment or medicines and the problem is aggravated there may be or may not be possibility to know the acts done by such patient.”

9. From the evidence of DW1, it is clear that the accused was brought to the hospital for the first time in the year 2002 by his family members and accordingly treatment was given. His evidence also shows that the accused was brought to the hospital during the years 2003, 2007 and 2009 and later in the year 2010, the accused was brought to the hospital from the Central Prison, Visakhapatnam. He placed on record Ex.X1 containing the details of treatment given to the accused.

10. In his evidence in chief, DW1 further deposed that if the patient discontinues his treatment, there is every possibility of ailment getting aggravated. There was also a complaint from the staff that the accused was hiding medicines under the cot since three days and the same was noted in Ex.X1. He also deposed about the complaint received from the staff with regard

to the behaviour of the accused, whenever he stops taking treatment or medicines.

11. Though learned additional public prosecutor tried to demolish the version of DW1, but we feel that he could not succeed in doing so. In the cross examination of DW1, it has been elicited that the accused was admitted in the hospital on 27.02.2010 and accordingly he took treatment. DW1 also admits that on the same day, the accused was produced from Central Prison.

12. Though an attempt was made to show that Ex.X1 case sheet was sought to be prepared by making endorsement with regard to the treatment given on 15.03.2010, but the same was denied by DW1. It was further elicited that Ex.X1, case sheet contains no telugu words, except two words of “champestanu, podichesthanu”. It was also stated that the patient/accused did not use medicines properly or was spitting the tablets and hence there was every possibility to take action against such patient.

13. From the oral or documentary evidence of DW1, it is clear that since 2002, the appellant was taking treatment at Government Hospital Mental Care for recurring depressive disorder with psychosis. It is a known fact that a patient with depression and disorder would become violent at times and there would be an abnormality in the behaviour of the accused. It appears that from 2002 to 2009, the accused was taking

treatment continuously and the endorsements on Ex.X1 also indicate the same. It would be appropriate to refer to few entries made in the said exhibit, which reads as under:

“29.04.2009 – Had disturbed sleep yesterday, Fearful  
(prescribed medicines)  
02.05.2009 - Mood-sad/depression, very fearful, anxious.  
(prescribed medicines)  
04.05.2009 – Still ↓ activity.  
(prescribed medicines and Electroconvulsive Therapy)  
13.05.2009 – Sleep (n), speech – rel., coh., feels better, no anxiety/fear, insight+  
16.05.2009 – maintained improvement.  
20.05.2009 – maintained improvement.  
23.05.2009 – maintained improvement.  
27.05.2009 – maintained improvement.  
His wife came. Patient is discharged.

14. The endorsements that are made after the incident i.e., on 27.02.2010, that is when he was brought to Central Prison, Visakhapatnam, after incident, are as under:

27.02.2010 – Brought from Central Prison, Visakhapatnam by HC 891, Koteswara Rao complaining feeling dull, sad, feels like crying, suicidal thoughts, Progressive muscular atrophy (PMA) ↓, Low pitch, reaction time ↑ depressive ideas + suicidal thoughts - Bipolar Affective Disorder (BPAD) – Depression.  
01.03.2010 – Sleep (w), speech: rel., coh., speaks in low tone, Depressed, no suicidal ideas, says he improved after admission, feeling of worthlessness.  
03.03.2010 – Speechlessness, mood – feeling better, looking dull, Improving. (prescribed medicines)  
04.03.2010 – Feeling better, improving, disturbed sleep, shouting during sleep.  
(prescribed medicines)  
08.03.2010 – Showing improvement, PMA ↓, insight present.  
(prescribed medicines).

15.03.2010 – Patient is hiding medicines under the cot from three days and sometimes spitting out the tablets, sleep (n), speech: rel., coh., looks dull. Patient complaints - he shouts during his sleep saying “*champesthanu, podichesthanu*” but patient does not remember it.

(prescribed medicines).

17.03.2010 – Showing improvement. Still shouting during sleep, PMA(n), mood – feeling better, dull, insight present.

(prescribed medicines).

.....2010 - improving, says he feels better, anxiety, fear are decreasing, PMA (n), subject – better, object – dull, insight present.

(prescribed medicines).

15. There was no review by the doctor between 27.05.2009 and 27.02.2010. During this period, the incident in question took place. There is no evidence on record to show that the deceased was taking medicine as required, during the said period. It has also come on record through the evidence of PW1 that the father of the accused died, so also his mother and since then PW1 was looking after his family. Therefore, we feel that the accused might have been a neglected person in all respects as there was no one to take care of him.

16. From the findings given above, it is very clear that the accused was frequently brought to the mental hospital and his mental condition was not as good as projected by the prosecution. The fact that he was brought to mental hospital, Visakhapatnam, establishes that the accused was of unsound mind and suffering with mental disorder. Even from the jail, he was taken to the mental hospital at Visakhapatnam.

17. Having regard to the above circumstances, which clearly establish that the accused was not of sound mind and suffering with psychosis even at the time of incident and also after the incident, we feel that it is a fit case where benefit under Section 84 IPC has to be extended.

18. Accordingly, the appeal is allowed. The conviction and sentence recorded against the appellant/accused by name Appikonda Naidu, in the judgment dated 15.12.2011, in Sessions Case No.131 of 2010, on the file of the X Additional District and Sessions Judge (Fast Track Court), Visakhapatnam at Anakapalle, for the offence punishable under Section 302 IPC, is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

**C.PRAVEEN KUMAR, J**

**T.RAJANI, J**

17.07.2018  
vhb