

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

CRIMINAL APPEAL No.463 OF 2012

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

The sole accused in S.C.No.382 of 2010 on the file of I Additional Sessions Judge, Mahabubnagar, is the appellant herein. He was tried for the offences punishable under Sections 302 and 201 IPC, for causing the death of one Yadamma (hereinafter referred to as "the deceased"), on 06.01.2010. Vide its judgment dated 21.02.2012, the learned Sessions Judge convicted and sentenced him to suffer imprisonment for life and to pay a fine of Rs.500/-. Further, he was sentenced to undergo rigorous imprisonment for one year, and also to pay a fine of Rs.500/- for the offence punishable under Section 201 IPC. Both the sentences shall run concurrently. In case of default of payment of fine amounts on both counts, the appellant shall further undergo simple imprisonment for a period of one month on each count.

The facts of the case as seen from the evidence of the prosecution witnesses are that P.W.1 is a resident of Agirala Village. P.W.2 is the wife of P.W.1. P.W.3 is a resident of Agirala Village to which P.Ws.1 and 2 belong. The deceased Yadamma was the daughter of P.Ws.1 and 2 and she got marriage with one Anthaiah who is a resident of Chowdapuram Village and they were blessed with a daughter and son. Both the deceased and accused were eking out their livelihood by attending coolie work. The deceased used to attend to coolie work in different places at Kondurg Village. On the date of incident, the deceased having attended the coolie work at Kondurg did not return home. On the next day morning, P.Ws.1 and 2 came to know that the deceased was killed. Then P.Ws.1 and 2

reached the place of incident, and found the body near by a hotel, which was run by the accused. It is stated that both the accused and the deceased together consumed alcohol and thereafter the accused beat the deceased with an axe and killed her in the hotel. It is further stated that the accused had illegal intimacy with the deceased Yadamma. On the next day at about 9.30 A.M, P.W.1 went to the police station and lodged a report, basing on which a case in Crime No.2 of 2010, came to be registered by the Sub Inspector of Police, Kondurg for the offence punishable under Section 302 IPC.

P.W.11 the C.I of Police took up the investigation of the case from P.W.9. He visited the scene of offence situated at Kothur Village and photographed the scene of offence with his own camera. Thereafter, P.W.11 recorded the statements of P.Ws.2 to 5. In the presence of P.Ws.6 and 8, P.W.11 conducted the scene of offence panchanama along with sketch. During the said proceedings, P.W.11 seized blood stained earth and controlled earth at the scene and also seized the blood stained white cem and controlled white cem from the hotel of the accused. Thereafter, he held inquest over the dead body of the deceased in the presence of the same mediators, after inquest, P.W.11 sent the dead body for post mortem examination. P.W.10 the Civil Assistant Surgeon at Community Health Centre, Shadnagar conducted autopsy over the dead body and issued Ex.P.8 the P.M certificate. After the postmortem examination, P.W.11 collected blood stained clothes of the deceased. On 9.1.2010, P.W.11 rushed to the hotel of the accused situated in Kondurg Village and in the presence of P.W.7, arrested the accused and recorded the confessional statement-cum-recovery panchanama. Pursuant to which, he recovered blood stained axe and blood stained clothes of the accused. Thereafter, P.W.11 returned to the police

station along with the accused effected the arrest of the accused and sent him for remand. On 10.01.2010, P.W.11 prepared a letter of advice and sent the articles to the F.S.L through S.D.P.O, Shadnagar for examination and report. After collecting the postmortem examination and F.S.L reports, P.W.11 filed the charge sheet against the accused before the Court of Judicial Magistrate of First Class, Shadnagar which was taken on file as P.R.C.No.32 of 2010. After compliance with 207 Cr.P.C, the case was committed to the Court of Sessions under Section 209 Cr.P.C.

In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P10 and M.Os.1 to 10. Out of ten witnesses, P.Ws.4 and 7 did not support the case of the prosecution. 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 did not choose to examine any witnesses on his behalf.

After considering the oral and documentary evidence on record, coupled with the medical evidence, the learned I-Additional Sessions Judge, Mahabubnagar, found the accused guilty for the offences punishable under Sections 302 and 201 of I.P.C and sentenced him to imprisonment for life. Assailing the same, the present Criminal Appeal came to be filed.

The learned counsel for the appellant mainly submits that there is absolutely no material available on record to connect the accused with the alleged offence. According to him, even recovery of the clothes of the accused pursuant to the confession made by the

accused cannot be accepted since the panch witnesses did not support the case of the prosecution. It is further urged that though the First Information Report is said to have given by P.W.1 at 9.30 A.M, but in the cross-examination, P.W.1 admits that he went to the police station long thereafter which itself indicates that the prosecution is trying to foist a case. It is also urged that the theory of both the accused and the deceased jointly consuming the alcohol and that the accused killed the deceased is falsified by the Postmortem Report which did not indicate the presence of intoxicating substance/alcohol in the stomach of the deceased.

On the other hand, learned Public Prosecutor would contend that in the absence of any explanation given by the accused as to how the blood stains clothes seized at his instance contain the blood group of the deceased, coupled with the motive of the accused, the reasons given by the trial Court on convicting the accused under Section 302 IPC warrants no interference.

The point for consideration is as to whether the accused was responsible for the death of the deceased?

P.W.1 in his evidence deposed that he is the father of the deceased. According to him, he has three daughters and his eldest daughter is the deceased and she was given in marriage to Anthaiah who is a resident of Chowdapuram Village. They were blessed with a daughter and a son who are eking out their livelihood by attending to coolie work and staying with P.W.1 as the said Ananthaiah lost her. On the date of incident, the deceased having attended the coolie work at Kondurg, did not return home. According to him, the accused, Babaiah killed his daughter. On coming to know about the death of

his daughter, he went and observed the dead body with injuries all over the body. Thereafter, he gave a report to the police. Ex.P.1 is the report given to the police and the police examined him and recorded his statement.

In the cross-examination, P.W.1 admits that he did not see the accused at any time prior to the death of the deceased and that on coming to know about the incident, he reached the scene of offence at about 10.00 A.M along with others on the next day morning and thereafter at 11.00 A.M, P.W.1 went to the police station. He further admits that he cannot say as to how many members entered the police station. He further admits that the dead body was found lying in front of Chowltry and that he did not personally witness the occurrence. It is also elicited from his evidence that the deceased Yadamma used to come to the house of the P.W.1 daily except on the date of incident.

But as per the evidence of P.W.9, who is the Investigating Officer, on 7.1.2010 at about 9.30 A.M, P.W.1 came to the police station and presented Ex.P.1 report basing on the Ex.P.1 report, he registered a case in Crime No.2 of 201 under Section 302 I.P.C and submitted express F.I.R to the concerned Court. Ex.P.7 is the original F.I.R submitted to the Court. P.W.9 recorded the statement of P.W.1 under Section 161 Cr.P.C.

From the evidence of the P.W.1, it is clear that he is not an eye witness to the incident and he came to know about the incident on the next day morning, pursuant to which he along with family members went to the place where the body was lying at 10.00 A.M and thereafter at 11.00 A.M, he went to the police station. But the

evidence of P.W.9 shows that on 7.1.2010 at about 9.30 A.M itself, P.W.1 went to the police station and presented the report, which clearly indicates that the time of lodging the report is contrary to the time given by the P.W.1.

P.W.2 is the mother of the deceased. According to her, the deceased married one Anthaiah and both of them used to stay in their house. According to her, her son-in-law was taken away by his brothers and due to family disputes he was killed by them. According to P.W.2, the deceased was attending to coolie work prior to her death and on the date of incident, the deceased attended to coolie work at Kondurg, but she did not return home. On the next day morning, P.W.2 came to know that her daughter was killed. Accordingly, they reached the place of incident and found the body of the deceased near a hotel. According to P.W.2, she came to know that her daughter and the accused together consumed alcohol; that the accused beat the deceased with an axe and killed her in the hotel of the accused. She further stated that the accused had illegal intimacy with the deceased Yadamma. In the cross-examination, P.W.2 admits that she reached the scene of offence around 12.00 noon in a tractor. According to her, P.W.1 and others together went to the scene of offence and she stated to the police that the body of her daughter was found near the hotel of a Muslim man. She further stated that she did not personally see the deceased working with the accused in his hotel. P.W.2 further stated that she was not personally aware about the intimacy between the accused and her daughter, but adds that three days prior to her death, the accused came to their house and took the deceased for coolie work. She stated to the police that the accused used to bring the deceased on his cycle and

was leaving her in the house, but she did not personally witness the occurrence. She further stated to the police that the distance between her village and the place of incident is around 10 kilometers. She further admits that after reaching the scene of offence, she noticed the dead body near by the hotel of the accused.

From the evidence of P.W.2, it is clear that she is also not an eye witness to the incident and she along with her husband proceeded to the scene in a tractor on the next day morning at about 12.00 noon. However, she refers to the relationship between the accused and the deceased and also accused dropping the deceased on cycle at her house. But, the said fact was not spoken by the P.W.1 in her earlier statement. On the other hand, P.W.1, in his cross-examination admits that he has never seen the accused.

P.W.3 is a resident of the said village. According to him, about 11 months back, his driver informed him at about 10.00 P.M that one Yadamma died by the side of the hotel of the accused at Kondurg Village. Then P.W.3 along with other villagers and parents of the deceased went on the next day morning and found the body of the deceased by the side of the hotel of the accused. She deposes about the presence of the blood in the hotel of the accused. Police also brought dog-squad which went to the house of the accused and caught him. On observing the features at the scene, P.W.3 and others felt that the accused might have killed the deceased. However, to a suggestion that he is speaking falsehood since P.Ws.1 and 2 used to support them in the elections, was denied. However, P.W.3 admits that he has not stated to the police that the police brought the dog squad and that the dogs caught the accused. He further admits that the accused used to visit the village on his cycle and he used to take

deceased on the cycle to his hotel. The evidence of this witness also indicates that he was not an eyewitness to the incident. However, if the evidence of this witness is tested with the evidence of P.W.11 Investigating Officer, it appears that in her earlier statement she did not state about the dead body was lying near by a hotel but stated that it was lying at some distance. She also did not state about the police brining the dog squad and the dog going to the house of the accused. Though P.W.2 deposed about the presence of the blood in the hotel of the accused, the body not being present in the hotel, but at a distance of 90 feet away from the hotel of the accused and that the body of the deceased near by the hotel of a Muslim man, but both the witnesses deposed about blood flowing in the hotel of the accused.

The postmortem doctor who was examined as P.W.10 admits in his cross-examination that the blood would get clot within 3 to 8 minutes after it comes out of the body. Therefore, the version of P.W.2 that she noticed the blood flowing in the hotel of the accused cannot be accepted for reason that the case of the prosecution is falsified with regard to the time of lodging the report by P.W.1 and but also the dead body being was not present at the scene of offence. In fact, a perusal of rough sketch of the scene of offence shows that the dead body was present at a distance of 90 feet away from the hotel and there is no evidence on record to show that the body was shifted from the hotel of the accused to the said place. In the absence of evidence, we feel that the version of witnesses with regard to presence of blood in the hotel appears to be doubtful. The version of P.Ws.1 and 2 also gets falsified by the evidence of P.W.8, who does

not support the theory of existence of blood on the floor of the hotel of the accused.

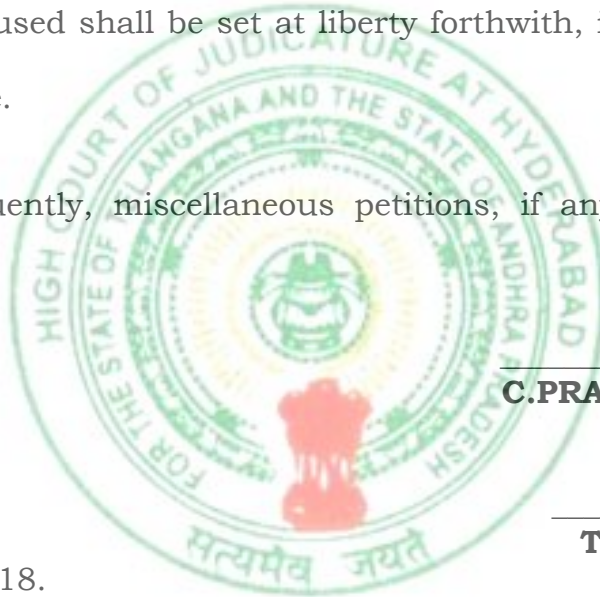
The circumstances which strongly relied upon by the prosecution is the confession by the accused leading to recovery of cloths containing the blood group of the deceased. P.W.11 is an Investigating Officer who in his evidence stated that on 9.1.2010 on receipt of prior information, he rushed to the hotel of the accused situated in Kondurg Village and in the presence of P.W.7 and another, recorded the confessional statement-cum-recovery panchanama and recovered the blood stained axe and blood stained clothes of the accused at the instance of the accused. On 10.01.2010, P.W.11 prepared a letter of advice and sent the articles to the F.S.L through S.D.P.O, Shadnagar for examination and report. Basing on the report of F.S.L, it is sought to be contended that since the cloths of the accused contained the same blood group, it is the accused who committed the offence. But two circumstances are required to be looked into. Firstly, P.W.7 who is V.R.O of West Kondurg, who was examined as a Panch has deposed that no property was seized in his presence. Hence his evidence does not support the case of the prosecution with regard to seizure of cloths at the instance of the accused. Though he was subjected to cross-examination, nothing useful is elicited to believe her version.

Secondly, P.W.8 in his evidence deposed that the cloths on the dead body of the deceased were also seized at the time of inquest itself. But P.W.11 in his evidence deposed that after the postmortem examination, he collected the blood stained cloths of the deceased. Having regard to the said discrepancy, a doubt arises as to the seizure of the cloths of the deceased; which according to the counsel

supports the view of the accused that they were planted. In our view the same cannot be brushed aside. Hence, a doubt arises with regard to seizure of blood stained clothes of accused containing blood group of the deceased.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 21.02.2012 in Sessions Case No.382 of 2010 on the file of the Court of the I Additional Sessions Judge, Mahabubnagar, for the offences punishable under Sections 302 and 201 IPC are set aside and he is acquitted for the said offences. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

Consequently, miscellaneous petitions, if any, pending shall stand closed.



C.PRAVEEN KUMAR,J

T.RAJANI,J

Date:07.08.2018.
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