

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE Mrs. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1229 of 2011

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

The sole accused in S.C.No.284 of 2010 on the file of the Additional Sessions Judge, Hindupur, is the appellant herein. He was tried for the offence punishable under Section 302 IPC. Vide judgment dated 17.10.2011, learned Judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life.

2. The substance of the charge against the accused is that on 17.06.2008, at about 12.00 noon, while the deceased was grazing cows in the fields of Bandlapalli, the accused caused her death by hacking her with a sickle.

3. The facts as disclosed from the evidence of the prosecution witnesses are as under:

(i) PW1 is the husband of the deceased, while PW2 is the close relative of PW1. PWs.3 and 4 are the residents of Bandlapalli Harijanawada, Talupula Mandal. PW5 is the brother of the deceased by courtesy.

(ii) The marriage between the deceased and PW1 was performed twenty years prior to the death. The accused was said

to be a paramour of the deceased. It is stated that the accused developed illicit intimacy with the deceased about a year prior to the incident and on coming to know about the same, PW1 chastised both the accused and the deceased for having illicit relationship. Pursuant thereto, both of them are alleged to have stopped their illicit intimacy. It is stated that the accused raised a quarrel with the deceased, insisting her to continue intimacy which was informed to PW1 by the deceased. It is stated that the accused also beat the deceased as she was not agreeing to continue the intimacy and the same was also informed by the deceased to PW1. On the date of incident, PW1 along with the deceased were grazing their cows in the fields of one Gangireddy of their village. At that time, when the deceased was collecting fire wood, the accused came there armed with a sickle and hacked the deceased on her left hand, temple and head resulting in bleeding injuries. According to PW1, along with PWs.3, 4 and others witnessed the incident. As the condition of the injured was serious, they took the injured to the Government hospital, Kadiri, but on the way she succumbed to injuries. On the same day, at about 05.00 p.m., PW1 presented a report before PW16, which led to registration of a case in crime No.35 of 2008 of Talupala Police Station. Ex.P12 is the FIR. Further investigation in this case was taken up by PW17, the then Circle Inspector. According to him, at about 06.00 p.m., while he was present in the Circle office, Kadiri rural, he received a phone call from PW16 about the incident, who then handed over a copy of

FIR to PW17. Accordingly, he deputed one constable to the scene of offence to guard the same. Then PW17 visited the mortuary room at the Government hospital and found the body of the deceased. He kept a guard at the mortuary room and left the place as it was late in night. On the next day morning, he again proceeded to the Government hospital and in the presence of PWs.5, 10 and 11, conducted inquest over the body of the deceased. Ex.P8 is the inquest report. During inquest, he examined PWs.1 to 4 and recorded their statements. On the same day at about 09.30 a.m., PW17 reached Bandlapalli village at 10.45 a.m. and secured the presence of PW12 and another and inspected the scene of offence. Ex.P7 is the observation mahazar. At the time of preparing observation report, he seized blood stained controlled earth, one pair of Paragon Hawai Chappals, broken red colour bangle pieces and artificial Jadakuchulu of the deceased. He also prepared a rough sketch of the scene of offence which is marked as Ex.P13. After conducting inquest, the body was sent for post mortem examination. PW15, the Civil Assistant Surgeon, Area Hospital, Kadiri, conducted autopsy over the body of the deceased and issued Ex.P11 the post mortem certificate. According to him, the deceased would have died due to shock and hemorrhage due to injuries to blood vessels in the left forearm. He opined that the first injury i.e., the injury from the left hand wrist extending to the fore arm is sufficient to cause death of the deceased. PW17 continued with the investigation by examining PWs.7,8 and 9.

On 22.06.2008, he received an intimation about presence of the accused and accordingly, he along with the mediators and staff, reached Bandlapalli cross road and arrested the accused, under Ex.P9. On interrogation, he is said to have confessed about the commission of offence. Pursuant thereto, the accused led the police and mediators to Chinnakonagutta near Obulesu konda situated on eastern side of the Bandlapalli village and produced MO1 blood stained sickle, used by him in the commission of offence. He also produced MO6 a blood stained pancha. Ex.P10 is the seizure mahazar for MO1 and MO6. Thereafter, the accused was remanded. After collecting the necessary documents, a charge sheet came to be filed which was taken on file as PRC No. 16 of 2010, on the file of Additional Judicial Magistrate of First Class, Kadiri.

(iii) On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal, the Additional Sessions Judge, Hindupur, numbered the case as S.C.No.284 of 2010. On the basis of the material on record, a charge under Section 302 of IPC 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 17 and got marked Exs.P1 to P15 and MOs.1 to 6. Out of the 17 witnesses examined by the prosecution, PWs.7 to 11 did not support the prosecution case and they were treated hostile.

(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. He did not produce any oral evidence, but however, during the course of trial got marked Ex.D1 to D5.

(vi) Relying upon the evidence of PWs. 1, 3 and 4, the learned Sessions Judge convicted the accused and sentenced him to suffer imprisonment for life for the offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that the evidence of PWs.1,3 and 4 give a clear indication that they were not present at the scene of offence. He took us through the cross examination of these three witnesses to demonstrate that none of them were present at the scene and witnessed the incident. He also submits that the delay in lodging the report was used to implicate the accused, in view of the enmity between PW1 and the accused.

4. On the other hand, learned public prosecutor would contend that the evidence of PW4 can be acted upon to show that it was the accused, who was responsible for the death of the deceased.

5. The point that arises for consideration is whether the trial Court was right in convicting the accused for an offence punishable under Section 302 IPC?

6. In order to appreciate the rival arguments, it would be appropriate to refer to the evidence of PWs.1, 3 and 4. Admittedly, PWs.2, 5 and 6 are not the eye witnesses to the incident and even according to the prosecution, they came to know about the incident through the villagers. PW1 in his evidence deposed that his marriage with the deceased took place about 20 years prior to the incident and about a year prior to the date of incident, the accused developed intimacy with the deceased. On coming to know about the same, PW1 chastised both of them. Since then, they discontinued their relationship. His evidence further shows that thereafter the accused started quarreling with the deceased, who insisted her to continue the illicit intimacy with him which was informed to him by the deceased. He also speaks about the accused beating his wife as she was not agreeing to continue illicit intimacy. According to him, on the date of incident, himself and his wife went to the fields of one Gangi Reddy for grazing their cows. While deceased was collecting firewood, the accused came there armed with a sickle and hacked the deceased on her left temple and head, resulting in bleeding injuries. As the condition of the injured was serious, she was taken in a jeep to the Government hospital and on the way she succumbed to injuries. The report about the incident was given in the police station at 05.00 p.m., on the same day.

7. PW3 was also examined as eyewitness to the incident. His evidence is to the effect that on the date of incident, while PW3 was grazing his bulls in the fields of Chinna Gangireddy, PW4 and others were grazing their cattle. His evidence is to the effect that they went to the field for grazing purpose around 09.00 a.m. and the deceased was collecting firewood. At that time, the accused came there and hacked the deceased on the left side of the face and head, causing bleeding injuries. Thereafter, the accused ran away towards the gate. His evidence is to the effect that he poured water into the mouth of the injured Obulamma and shifted her in an Auto to the hospital. He further deposed that he came to know about the death of the deceased while she was taken to the Government hospital, Kadiri. According to him, the accused hacked the deceased because the deceased did not agree to continue illegal intimacy with him. The version of PW1 in chief gets corroboration from PW4, who was also examined as eye witness to the incident. It may not be necessary to repeat the evidence in chief of PW4 as he deposed on the same lines as that of PW3, which is referred to above. In the cross examination, all the three eye witnesses, gave a go-bye to what they stated in chief. Strangely, no effort was made by the Additional Public Prosecutor to treat them hostile. It would be necessary to refer to the cross examination of PW1, which is as under:

“....There was no illegal intimacy between my deceased wife and accused on the date of the alleged incident. The witness volunteers that there was illegal intimacy with his wife by the

accused. The illegal connection between my deceased wife and accused stopped four months prior to the incident. No panchayats, no galatas, nor police reports were given against the accused for having alleged illegal intimacy with my wife earlier till the alleged incident. I do not remember the date, month or year when I allegedly chastised my wife for having illegal intimacy with the accused. I was examined by the police in my village during evening time on the date of the incident. I was examined by the SI of police.

....The incident had happened around 08.30 or 09.00 a.m. While I was present in my house the villagers took me to the scene around 12 noon as she sustained injuries. After, I reached the scene LW4 Venkatesh, LW5 Dasappa and LW7 Kavithamma, LW10 Vemanarayana and LW Narayanamma came to the scene. Then, I called LW2 Ramalakshamma, LW3 Obula Krishna, LW6 Obulakonda, LW8 Ramesh, and took my injured wife to the hospital in an auto. Later we shifted my wife in a jeep to the hospital for treatment.

...It is true that a quarrel had happened between me and accused regarding drinking water. I do not have talking terms with the accused since then with regard to earlier quarrels.”

In the cross examination, PW1 admits that there was no illegal intimacy between the accused on the date of the alleged incident. The witness volunteers and states that there was illegal intimacy of the deceased with the wife of the accused. According to him, the illegal contact between the accused and the deceased stopped four months prior to the date of incident. He further admits that the incident in question happened at around 08.30 or 09.00 a.m. He further states that while he was present in the house, villagers took him to the scene around 12.00 noon as she sustained injuries. After some time, she, PWs.3, 4 and Kavitha

(not examined), PWs.7 and 8 came to the scene of offence. Thereafter, he called one Ramalakshmaiah (not examined), Obula Krishna (PW2), Obulakonda (PW5) and one Ramesh (PW6) and took the injured to the hospital in an auto. Later shifted into a jeep and taken to the hospital for treatment. He further admits that there was a quarrel between him and the accused with regard to drinking water and he was not in talking terms with the accused since then.

8. From the answers elicited in the cross examination, it is very clear that he was not present at the scene of offence. According to him, while he was in the house, he was informed about the injuries sustained by the injured (deceased). Thereafter, the villagers took him to the scene of offence at 12.00 noon. He categorically states that the incident in question took place at about 08.30 or 09.00 a.m. His evidence also shows that PWs.3 and 4, who are examined as eye witnesses were not present at the scene and that they came after PW1 reached the scene.

....The incident had happened around 08.30 or 09.00 a.m. While I was present in my house the villagers took me to the scene around 12 noon as she sustained injuries. After, I reached the scene LW4 Venkatesh, LW5 Dasappa and LW7 Kavithamma, LW10 Vemanarayana and LW Narayanamma came to the scene. Then, I called LW2 Ramalakshamma, LW3 Obula Krishna, LW6 Obulakonda, LW8 Ramesh, and took my injured wife to the hospital in an auto. Later we shifted my wife in a jeep to the hospital for treatment.

9. Similar is the evidence of PW3, which discloses that there were quarrels between the accused and the deceased and that he was not in talking terms with the accused. Though in evidence in chief he projects himself as an eye-witness, but his admission in the cross, negates the same. The relevant portion in cross examination is as under:

“Injured Obulamma sustained injuries around 09.00 a.m., and I noticed the same on the person of the injured at 12.00 noon. After seeing the injuries on the person of the Obulamma, I, PW1 husband of the deceased and LW5 Dasappa rushed there. Kavithamma LW7 came to the injured Obulamma after we reached there. First time we noticed Obulamma sustained injuries except that we did not notice anything. I do not know as to how Obulamma received hack injuries.”

10. Therefore, the evidence of PW3, referred to above, throw any amount of doubt with regard to he witnessing the incident.

11. Having regard to the answers given and in view of the quarrel that took place regarding drinking water, we feel that there was sufficient motive for PW1 to lodge a report. In the cross examination, PW3 also admits that the deceased sustained injuries around 09.00 a.m., and he noticed the same on the person of the injured at 12.00 noon. After seeing the injuries on the person of the Obulamma, PW3, PW1 rushed there. Kavithamma came to the injured, after PW3 and others reached there. He further admits that except injuries they did not notice anything and also admits that he does not know as to how injuries are hacked injuries. As observed earlier, neither PW1

nor PW3 were treated hostile by the prosecution. Coming to the evidence of PW4, in his cross examination, he states as under:

“...It is not true to say that I stated before the police as in Ex.D3 to the extent that I came to know that on 17.06.2008 the accused hacked the deceased while she was grazing the cows.”

From the above, it is clear that in the earlier statements made before the police, during his examination under Section 161 Cr.P.C., he stated that he came to know on 17.06.2008 that the accused hacked the deceased while she was grazing cows. Therefore, he cannot also be treated as eyewitness to the incident.

12. Though learned public prosecutor tried to contend that the evidence of PW4 can be looked into, since he spoke about the manner in which incident took place, but his version before the police was something different. He never claimed himself to be eye witness to the incident, but in the Court he projected himself as witness to the incident in question. Therefore, the presence of these witnesses at the scene and witnessing the incident, cannot be accepted.

13. Having regard to the above, we feel that the evidence adduced by the prosecution does not establish guilt of the accused, beyond reasonable doubt.

14. Accordingly, the appeal is allowed. The conviction and sentence recorded against the appellant/accused by name Bandela Chinna Subbarayudu, in the judgment dated

17.10.2011, in Sessions Case No.284 of 2010, on the file of the Additional Sessions Judge, Hindupur, for the offence punishable under Section 302 IPC are set aside and he is acquitted for the said offence.

C.PRAVEEN KUMAR, J

T.RAJANI, J

19.06.2018
vhh

