

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.1171 of 2012

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

Originally, A1 to A3 in Sessions Case No. 285 of 2011 on the file of the Sessions Judge, Mahabubnagar were tried for the charges under Section 302 IPC read with Section 34 IPC, for causing the death of Shyamalamma (wife of A1) by hitting her with a spade, hunting sickle and blow pipe, causing fracture injuries to both legs and ears. By its judgment dated 07.03.2012, the Sessions Judge, while acquitting A2 and A3, found A1 guilty of the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.500/- in default to undergo simple imprisonment for a period of two months.

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

A1 is the husband of the deceased. PW2 is the son of the deceased, and PW1 is the grandfather of PW2. PW3 is the neighbour of the accused and deceased. A2, who was tried along with A1, is the mother-in-law of the deceased while A3 is a member of the same caste.

3. PW2, who is the minor son of the deceased and the accused, deposed that A1 is his father, A2 is his paternal grandmother and A3 is the paramour of A2. PW2, A1 and A2 were living in a house in Devunipally village. PW2, in her evidence, deposed that on the date of incident, after return of his mother from the coolie work, the accused is said to have challenged the deceased, stating that he would kill her on that day. Due to fear, the deceased went to the house of a stranger and stayed there. In the meantime, A2 went to the said house and brought the deceased back. After having dinner, all of them slept, and in the middle of the night, the father of PW2 (accused) attacked the deceased with a spade, apart from causing injuries on her ears and throat. According to PW2, on hearing the galata, he woke up and saw the incident. On receipt of information furnished by PW2 as to what happened, PW1 came to the scene of incident. It is stated that after causing the death of the deceased, A2 took the body of the deceased to the house of the deceased and laid it there.

4. Basing on the information furnished, PW1 lodged a report with PW9-the Sub Inspector of Police, Maddur Police Station on 01.08.2010. Exhibit P1 is the report. Basing on the said report, a case in Crime No. 90 of 2010 came to be registered under Section 302 IPC. Exhibit P14 is the FIR. Further investigation is said to have taken up by PW8-the Circle Inspector of Police. After receipt of F.I.R., PW8 visited the scene of offence, examined PWs 1 to 3 and prepared a panchanama of the scene in the presence of PW5. Ex.P9 is the crime details form containing the rough sketch of the

scene. He then conducted inquest over the dead body of the deceased in the presence of PW5. Exhibit P10 is the inquest report. Thereafter, he sent the dead body for postmortem examination.

5. PW10-the Civil Assistant Surgeon, Government District Hospital, Mahabubnagar conducted autopsy over the body of the deceased and issued Exhibit P15-the Post Mortem Report. According to him, the cause of death was due to hypovoluemic shock secondary to multiple injuries due to cardiac arrest about 36 to 42 hours prior to the post mortem examination.

6. According to PW8-the Circle Inspector of Police, on 08.08.2010, on credible information, he arrested the accused; recorded their confessional statement in the presence of PWs 6 and 7 and seized M.Os 1 to 3.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.99 of 2010 on the file of Judicial First Class Magistrate, Mahabubnagar. 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 S.C.No.285 of 2011 on the file of Court of the Sessions Judge, Mahabubnagar. Basing on the material on record, a charge for the offences punishable under Section 302 read with Section 34 of IPC was framed, read over and explained to the accused, to which they denied and claimed to be tried. Out of the ten witnesses examined by the prosecution, PWs 3 and 6 did not

support the prosecution case and were treated hostile by the prosecution.

8. To substantiate their case, the prosecution examined PWs. 1 to 10 and got marked Exs.P1 to P15 and M.O.1 to 3. After the closure of 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 or documentary evidence was adduced on behalf of the accused in support of their defence.

9. Basing on the evidence of PWs 1 and 2, the trial Court, while acquitting A2 and A3, convicted A1 for the offence under Section 302 IPC and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and PW1 is set up by the prosecution to speak to the incident in question. According to him, PW2 was not present in the house of the deceased at the time of the incident, as he was staying along with his grandfather, who was examined as PW1. Having regard to the admission made by PW1 that neither PW1 nor PW2 have seen the incident in question, the fact of furnishing information by PW2 to PW1 regarding the manner in which the incident took place, is only an after-thought. Hence, the learned counsel would contend that the accused cannot be fastened with the liability of killing the deceased.

11. On the other hand, the Public Prosecutor would contend that the evidence of PWs 1 and 2 which inspires confidence need not be disbelieved and the accused is liable to be convicted under Section 302 IPC.

12. The point for consideration is: whether the accused is responsible for the death of the deceased.

13. As seen from the record, the entire case rests on the evidence of PW2, who was examined as an eye witness to the incident. Before dealing with the evidence of PW2, it is to be noted here that except PW2, there are no other witnesses who spoke about the incident in question. In fact, no witness has been examined by the prosecution to prove that the accused and deceased were seen together in the house of the accused prior to the incident. The question now is whether the evidence of PW2 can be believed. As stated earlier, PW2 is a child witness and in the chief examination, he deposed as under:

“.....My mother died in our house at Devunipaly village. After my mother returned home from the coolie work in the evening my father challenged my mother stating that he will kill her on that day night. On that my mother due to fear went to the house of somebody else and had hidden herself. In the meantime my paternal grand-mother (A2) went to her and brought her to our house. After we slept on completion of our dinner, my father hacked my mother with spade, he also had cut her ears and also caused cut injury on her throat. I do not

know what happened thereafter. I woke up on hearing the galata and saw the above mentioned incident. I can identify the spade and sickle with which injuries are caused to my mother by my father if they are shown to me.”

14. However, in the cross-examination, PW2 gave a go-by to what he has stated in the chief examination. He admits that on the night of the date of incident, he slept, and when he woke up in the morning, he found his mother lying dead. He further admits that after the death of his mother, his grandparents came to the scene of offence, where his mother was lying dead. He further admits that his grandfather asked him to give statement as mentioned above. He also admits that before entering the court hall, the police asked him to give evidence as mentioned in the chief examination. He clearly admits that during the lifetime of his mother, he was living with his grandparents at Devunipally village. He further admits that he has given evidence as stated by his grandparents and the police.

15. From the admissions made by PW2 in his cross-examination, it is clear that he was not staying with his deceased mother at the time when the incident occurred and that he was staying along with his grandparents at Devunipally village. He further admits that he slept in the night and by the time he woke up in the morning, he found his mother dead. As seen from the cross-examination, PW2 also admits that he is giving evidence in the manner suggested by his grandparents and police. Hence, PW2

cannot be treated as a reliable witness speaking the truth. Definitely, the version deposed by him in the chief examination appears to be a tutored one. Therefore, we feel that the evidence of PW2 cannot be accepted to connect the accused with the crime.

16. Apart from that, it is also to be noticed that PW2's version with regard to the fact that he was staying in the house of his grandparents, gets corroboration from the evidence of PW1 as well. PW1, in his evidence, admits that his grandson-PW2 was living with them. It is stated that even prior to the death of the deceased, his grandson was living with them. That being the position, the version of PW2 that he observed the incident and informed about the same to PW1, appears to be highly improbable. The learned Public Prosecutor as well as the learned counsel for the appellant admit that there is no other evidence except the evidence of PW2. In fact, both of them also admit that there is no other evidence to show that the accused was seen along with the deceased in their house prior to the incident. Having regard to the above and as the evidence of PW2 cannot be accepted, in the absence of any corroboration, the order under challenge, convicting A1 under Section 302 IPC is liable to be set aside.

17. Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 07.03.2012, in Sessions Case No.285 of 2011, on the file of the Sessions Judge, Mahabubnagar for the offence punishable under Section 302 I.P.C. 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.

JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

02.01.2018
DMG

