

* HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND

* HON'BLE SMT JUSTICE T. RAJANI

+ CRIMINAL APPEAL No.745 of 2012

% 16.02.2018

Kadraka Mangulu

... Petitioner

Vs.

\$ The State of Andhra Pradesh, rep.
by its Public Prosecutor

... Respondent

! Counsel for the appellant: SRI M.CHALAPATHI RAO

Counsel for the Respondent: PUBLIC PROSECUTOR (AP)

< Gist :

> Head Note:

? Cases referred:



In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra
Pradesh

CRIMINAL APPEAL No.745 of 2012

Between:

Kadraka Mangulu

... Petitioner

Vs.

The State of Andhra Pradesh, rep.
by its Public Prosecutor

... Respondent

Date of Judgment Pronounced: 16.02.2018

Submitted for Approval:

SMT JUSTICE T. RAJANI

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/ No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/ No
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/ No

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

CRIMINAL APPEAL No.745 of 2012

JUDGMENT: (Per Hon'ble Smt. Justice T. Rajani)

Aggrieved by the manner of appreciation of the evidence and the judgment of the II Additional Sessions Judge (F.T.C.) Parvathipuram, Vizianagaram, dated 25.05.2012, in Sessions Case No.22 of 2011, which lead to the conviction of the appellant for the offence under Section 302 IPC and sentence of life, the appellant comes before us by way of this appeal.

2. Briefly the facts of the case are as under:

On 29.01.2010 at about 05:00 AM, while the deceased was sleeping in his house, the accused entered their house with an intention to kill him. He was armed with a knife and in execution of his plan, he hacked the neck of the deceased, twice, on which the deceased received severe bleeding injuries on his neck and died instantaneously. PW2, the wife of the deceased, who was sleeping in the house, woke up and witnessed the murder committed by the accused. The accused threatened to kill her also, if she informs to anyone. She, however, informed the same to LWS3, 4, 6 to 9 and PW3, who rushed to the spot and found the dead body of the deceased in a pool of blood, with hack injuries. On 21.09.2010, after committing the murder of the deceased, the accused went to PW1 and made extra judicial confession before him and handed over the crime weapon i.e., knife, with which he killed the deceased. On that PW1 handed over the accused, along with the knife, to the police. Based on

the said report, this case was registered in Crime No.53 of 2010 under Section 302 IPC on 21.09.2010 at 13:30 hours. After due investigation, the charge sheet was laid against the accused for the same offence.

3. The concerned magistrate, after taking cognizance of the case, committed the same to the Sessions Division, Vizianagaram, by virtue of orders in P.R.C. No 4/11. The Sessions Judge in turn, made over the case to the Special Court for Trial of Cases under the Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act, Vizianagaram. After framing the charge under Section 302 IPC, the court conducted the trial of the case. During the course of which, PWs.1 to 7 were examined and Exs.P1 to P13 and MOs.1 to 4 were marked. By considering the evidence and the material on record, the Court passed the impugned judgment, against which this appeal is preferred on the following grounds:

- i. The trial court having disbelieved the evidence of PW3, should have also rejected the evidence of PWs.1 and 2 and ought to have acquitted the accused.
- ii. The trial court should have held that the testimony of PWs.1 and 2, relating to the seizure of knife-MO1 is contradictory to each other and is inconsistent with the evidence of PW5, who is a mediator, and PW7, who is the investigating officer.
- iii. The lower court ought to have held that there is a delay in giving the complaint and registration of FIR and it

ought to have given the benefit of doubt to the appellant.

- iv. The lower court failed to note that the offence took place at 05:00 AM while it was admittedly dark and it should have given benefit of doubt to the appellant.
- v. The lower court also failed to consider that the injuries on the body of the deceased are lacerated injuries as stated by PW6, while the evidence of eye witness, PW2 shows that the assailant hacked her husband with a knife on his neck, which if true, would have caused cut injuries, MO1 being a sharp edged weapon and the court ought to have held that the medical evidence is inconsistent with the oral evidence.
- vi. The trial court failed to note that if the wife of the deceased PW2 was really present at the time of offence, she should have immediately reported the same to the police and the delay in giving the FIR assumes importance and becomes fatal to the case of the prosecution.
- vii. The lower court ought to have disbelieved the extra judicial confession said to have been made by the appellant to PW1 and the report ought to have been held as artificial and as not inspiring confidence in the court.
- viii. The lower court ought to have seen that PW1 admitted in his cross-examination that he cannot say the person who scribed the report and therefore should have rejected his testimony and held that PW2 was

untrustworthy, as it was not corroborated by any independent evidence.

- ix. The lower court committed an error in accepting the sole, interested and discrepant testimony of PW2, without any corroboration to base a conviction against the appellant/accused in a grave offence of this nature.

4. The arguments of the counsel for the appellant and that of the Public Prosecutor were heard at length.

5. The counsel for the appellant reiterates the grounds taken in the appeal and harps on the delay in the FIR being sent to the court. He contends that as per the evidence of PW1, he gave report at 10:30 AM itself, but the evidence shows that the FIR was registered only at 01:30 PM. As regards the extra judicial confession made before PW1, he contends that it is highly improbable that a person, who commits an offence, would immediately go and make a confession before anyone, without there being any time for him to think on the consequences of his act. He also argues about the discrepancies between the injuries, as stated by PW2, and the injuries found on the body of the deceased.

6. The Public Prosecutor, on the other hand, argues that the extra judicial confession cannot be considered as artificial, since the reason for making such confession would be lodged in the mind of the person making such confession and if the other evidence available on record would lend strong support to the accused making an extra judicial confession, then there need not

be any reason to disbelieve the extra judicial confession. He then contends that the evidence of Pws 2 and 3 would clinchingly prove the guilt of the accused.

7. From the arguments on either side, the following points come up for consideration:

I) Whether the evidence of PWS.2 and 3 would prove the offence of the accused.

II) Whether the extra judicial confession made by the accused, before PW1, inspires confidence and whether it is reliable.

III) Whether the judgment of the trial court is sustainable.

POINT No.I:

8. PW2, who is the wife of the deceased, in her evidence, states that on the date of incident at about 05:00 AM, the accused entered their house and beat the deceased with a knife on his neck, causing bleeding injuries. At that time she was also sleeping along with the deceased and her children. On hearing the beatings of the deceased by the accused, she woke up and raised cries, in which time, the deceased died due to the injuries. On hearing her cries, her relatives came to the spot. Meanwhile, the accused escaped from the scene of offence along with the crime weapon. She stated that she can identify the crime weapon and MO1, which is the crime weapon was marked through hear. Speaking about the motive, she stated that the deceased, during his life time, suspected the

accused to be practising witchcraft and warned him several times.

9. PW3, who is the brother-in-law of PW2 and who is the person, who came to the spot on hearing the cries of PW2, states that he is the elder brother of the deceased. His house is situated opposite to the house of the deceased and the house of the accused is situated by the side of their house, separated by one house. Speaking about the incident, he states that at about 05:00 AM on the date of incident, he heard the cries of PW2 and immediately rushed to the spot. He witnessed the accused rushing out of the house of the deceased, along with MO1 knife. On enquiry, PW2 informed him that the accused killed the deceased, beating him with MO1 knife. He also spoke about the disputes between the accused and the deceased. But he could not give the details of the said disputes, due to which he was declared hostile by the production. But during the cross-examination done by the Public Prosecutor, he admitted that he stated before the police that during the deceased, during his life time, suspected that the accused is practising witchcraft and warned several times, but the accused did not change his attitude. Hence, PW3 need not be considered as a hostile witness. Even if that be so, the evidence given in his chief examination does not get affected by the hostility, if any.

10. The counsel for the appellant seeks the court to consider the facts that are elicited in the cross-examination of PW2 and appreciate that there is sufficient motive for the accused to be

implicated in this case falsely. In the cross-examination of PW2, there is an admission that the deceased was a member of Rythu cooli sangham and that one Sreenu, who is the leader of the said Sangham came to the court on the date of her giving evidence and that the accused never attended the meetings held by Rythu cooli sangham as he is not a member. The cross-examination of PW3 also surfaces the said admissions. It is further admitted by him, that except the accused, himself, the deceased and all other agriculturists of their village are members of Rythu Cooli Sangam, to which one Sreenu is the leader. He also admitted that Sreenu came to the court along with them. It is with the help of these admissions that the counsel for the appellant seeks the court to arrive at a conclusion that the complaint is a motivated complaint.

11. The question whether the fact that the deceased was not a member of the Rythu Cooli sangham would be enough for the *de facto* complainant and others to implicate the accused in the offence and depose falsely against him, has to be examined.

12. PW2 is stated to be an eye witness for the incident. The incident occurred at 05:00 AM. PW2 witnessed the incident. The accused is a known person to PW2 and others. Hence, unless she is not able to see the person, who attacked her husband, and unless the motive suggested is as strong as to implicate the accused in such a grave offence, it cannot be said that the complainant would implicate the accused falsely. The evidence does not show that there is enmity between the

deceased and anyone else. In our considered opinion, the suggested motive is not strong enough to falsely implicate the accused. Motive is, nevertheless, a double edged weapon. Hence, the suggested motive also can be taken as a factor, which would drive the accused to commit the offence.

13. The contention with regard to the inability of PW2 to witness the incident and PW3 to see the accused due to the incident having been taken place at 05:00 AM, which is a time at which there would be darkness, admittedly, can be appreciated with the help of the evidence of PWs.2 and 3. When questioned on the possibility of the same, PW2 volunteered to say that she could see the accused in the light of a kerosene lamp. The counsel contends that this is an omission in her 161 statement and hence, unless the source of light is cogently proved by the prosecution, it has to be assumed that there was no light at the time of the offence. But when a person is able to witness an incident with the help of the available light, he may not think and analyse as to how he could witness the incident. He would witness the incident as it appears to him and it is only when he is questioned about the possibility of his witnessing the incident at a time when there is darkness, he would come forward to explain the reasons. It is perhaps for that reason PW2 might not have mentioned about the source of light in his statement recorded under Section 161 Cr.P.C. Moreover, the time of offence i.e., 05:00 AM, cannot be considered as a time when there would be darkness and it is almost a time for sun rise and hence, the presence of light, enough to identify

known persons can be assumed. Presence of lamp in the house of the deceased also is a very probable fact. PW3, however, explains that there was some sun light as it was dawn but it was not dark. Hence, the plea that there was no source of light and that PW2 would not be in a position to see the accused can be brushed aside. When the possibility of PWs.2 and 3 witnessing the incident and seeing the accused is upheld, the evidence of PWs.2 and 3 becomes credible and the motive pales into insignificance. Hence, the evidence of PWs.2 and 3 can very well be relied upon.

14. Point No.I is answered accordingly.

POINT No.II:

15. The extra judicial confession before PW1 is assailed as not creditworthy, on the argument that the said confession was made immediately after the incident and that the same is improbable. But, a Division Bench of this court in CrI.A.No.1017 of 2018 between Pallapu Raju @ Pedda Raju vs. State of Andhra Pradesh, by order dated 14.07.2012, held that the fact of an immediate extra judicial confession would make the case of the prosecution credible. Actual words of the bench are “In view of the accused making the extra judicial confession before PW.1 immediately after the commission of the offence by coming straight away from the scene of offence with blood stained clothes and knife, the same inspires the confidence of the Court and as such the same can be relied upon. “ Hence, not only the confession, but also the fact that the accused came with the

weapon, was considered as a factor, improving the credibility of the extra judicial confession, which is the same in this case.

16. According to the evidence of PW1, while he was ploughing in his fields, at 08:00 AM, the accused came to him along with knife and informed him about the offence that he committed. Immediately, PW1 took him to his house and they went to Komarada village and he got drafted a confessional statement of the accused as he is an illiterate and thereafter he surrendered the accused in the police station. He explains that though he is an illiterate, he can make a signature. He also spoke about the accused confessing that he killed the deceased with the knife on that day in the house of the deceased itself. The said report is marked as Ex.P1.

17. One inconsistency, which is sought to be taken advantage of by the counsel for the appellant, is that, according to PW1, the report was given at 10:30AM, while according to the investigating officer, PW7, the report was given at 01:30 PM. The usual delays that take place due to the formalities that have to be followed, in registering the case, can be taken note of. The evidence of PW7 that the report was received at 01:30 PM has to be only considered as a statement made to save himself from the allegation of lethargy. However, the said delay is not a material delay. Hence, the same need not be taken into consideration as a factor belying the otherwise credible evidence of PW1, which is supported by the evidence of PWs.2 and 3.

Hence, in view of the above, this court opines that the extra judicial confession made before PW1 is true.

18. Point No.II is answered accordingly.

POINT No.III:

19. According to PW2, the accused beat the deceased with knife on his neck, causing bleeding injuries. The counsel wants this court to appreciate the correction made at the place of injury, which was corrected to injuries. But we consider it a vain effort. When it is upheld that PW2 has witnessed the incident, the said correction has to be considered only as a correction made as per the evidence given by PW2 before the court.

20. The post mortem examination report shows an injury on the neck of the deceased, which resulted in damage of all major blood vessels and nerve connections. PW2 cannot be expected to witness the incident with precision, as she herself would be in a state of shock and surprise and in a state of incomprehension, as she was woken up by the disturbance caused by the acts of the accused. She, in the state she was, cannot be expected to have a keen observation and count of the injuries. Hence, absolute corroboration between the evidence of PWs.6 and 2, cannot be sought for. In fact there is absolute corroboration between the evidence of PW2 and PW7, on the number of injuries on the neck.

21. The evidence of PW7 would corroborate the evidence of PW1 as regards the accused being brought to the police station

by PW1. Unless the accused goes to PW1, be it to make an extra judicial confession or otherwise, PW1 would not be able to bring him and hand over him to the police. Hence, the fact that the accused went to PW1 and that he was handed over to the police by him, lends support to the extra judicial confession made by the accused.

22. It is urged, that the fact that PW2 did not give any report, has also to be appreciated in favour of the accused. But the said argument does not hold any merit, as, PW2 would, in all probability, be under grief, for the death of the deceased and within a reasonable time, PW.1 went and lodged the report. The evidence of PW7 shows that police rushed to the scene of offence immediately, leaving not much time for PW2, to lodge a separate report.

23. The argument that PW2 did not state to the police, that she can identify the weapon and hence her identification of the weapon cannot be believed, does not impress us. A person capable of doing something, cannot be expected to always proclaim and say that he is capable of doing that thing. Seizure of knife is proved. She nevertheless stated that the weapon used by the accused was a knife and when it was shown to her, she identified it. No improbability is suggested by the manner of identification.

24. The other contention is that according to the evidence of PW2, her children were also present at the time of the incident and the failure of the prosecution to cite and examine them as

witnesses would affect the case. But when the police feel that there is already sufficient enough to prove the case and when the evidence of the witnesses remain unshattered and when their credulity is not eroded by the cross examination, looking for other evidence may not be just and proper. A technical approach in appreciating the evidence, would definitely defeat a just decision. When the pointed out lapses have premises for understanding them, they shall not be allowed to play. That leaves us at upholding the guilt of the accused.

25. In view of the foregoing discussion, we are of the opinion that the judgment of the court below needs no interference.

The Criminal Appeal is, accordingly, dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE T. RAJANI

February 16, 2018
LMV