

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.598 of 2011

JUDGMENT: (*Per Hon'ble Sri Justice U.Durga Prasad Rao*)

This appeal is filed by appellant/accused aggrieved by the judgment dated 15.04.2011 in S.C.No.342 of 2007 passed by Additional Metropolitan Sessions Judge, Cyberabad, whereby the learned Judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer RI for life and to pay fine of Rs.1,000/- in default of payment of fine amount, to suffer SI for three months.

2) The prosecution case is thus:

a) The deceased—Veeranna was a resident of Parvathnagar, R.R.District; his wife predeceased him and he was looked after by his sister—Shantamma; deceased decided to sell away his house property and so he took an advance of Rs.10,000/- from one Parshuram; accused—Yellesh @ Yellanna who is the nephew of deceased, objected for the same and with an intention to grab the house property after the death of deceased, repaid the advance amount of Rs.10,000/- together with interest to Parshuram; deceased kept quiet for some time and again started taking steps to sell the house which was objected by accused; then, accused decided to eliminate the deceased and waiting for a chance; while so, on the intervening night of 18/19.05.2007, accused and

deceased consumed liquor in the company of one Vasudeva Rao; at that time, heated arguments took place between the accused and deceased with regard to sale of house of deceased which led to quarrel; deceased picked up a stick and beat the accused at about 1.30 AM; taking advantage of the same, accused grabbed the stick from the hands of deceased, beat him indiscriminately on his head, chest and other parts of the body and also fisted on his ribs due to which, the deceased fell down on the ground; accused dragged him to a distance, hit on his head with a boulder and thereby, the deceased sustained multiple injuries all over the body; PWs.5 and 7 took him to the court-yard of the house of deceased where PW4—sister of deceased served him gruel on that night and went away; on the next day morning i.e. 19.05.2007 at about 7.30 A.M., when she tried to wake him up to serve breakfast, she found him dead; immediately she informed the said fact to the neighbours, who shifted the dead body into the house.

b) Then, PW1—Zahed Shareef lodged a complaint to the Madhapur PS, basing on which, PW12—Inspector of Police registered a case in Cr.No.230 of 2007 under Section 302 IPC and took up investigation.

c) During the course of investigation, he visited the scene of offence, drafted the scene of offence panchanama in the presence of PWs.8 and 9, drew rough sketch of scene; got the scene of offence photographed by Mohan Prasad (LW9); conducted inquest over the dead body of the deceased and sent the dead body to post-mortem examination. PW3—doctor who conducted autopsy over the dead body, opined that cause of

death was due to multiple injuries. After completion of investigation PW12 laid charge sheet.

d) On appearance of the accused, the trial Court framed charge under Section 302 IPC against him and conducted trial.

e) During trial, PWs.1 to 12 were examined and Exs.P1 to P40 were marked and MO1—stick was exhibited on behalf of prosecution. No oral or documentary evidence was let in on behalf of defence. After completion of trial, the accused was examined under Section 313 Cr.P.C. and incriminating circumstances revealed in the prosecution evidence were put to him and the accused denied.

3) The trial Court after considering both oral and documentary evidence observed that prosecution proved guilt of the accused beyond all reasonable doubt for the charge under Section 302 IPC and accordingly convicted and sentenced him as stated supra.

Hence the appeal.

4) Heard arguments of Smt. A.Gayatri Reddy, learned counsel for appellant and learned Public Prosecutor for the State (Telangana).

5) The points for determination in this appeal are:

(1) Whether the deceased met with homicidal death on the intervening night of 18/19.05.2007 in his residence at Parvathnagar, R.R.District?

(2) If point No.1 is held affirmatively, whether accused who is the nephew of the deceased was responsible for his death and whether prosecution could able to prove his guilt beyond reasonable doubt?

(3) Whether the conviction and sentence recorded by the trial Court are factually and legally acceptable?

6) **POINT No.1:** There is ample medical evidence in the form of PW3 to conclude that deceased—Veeranna met with homicidal death. PW3—the Civil Assistant Surgeon, Area Hospital, Malakpet, Hyderabad, who conducted autopsy on the dead body of the deceased found the following ante-mortem external and internal injuries:

External Injuries:

(a) Laceration 2 x 1 cm x bone deep on occipital prominence of scalp, with contusion 9 x 7 cm underneath the scalp at the meeting point of both parietals and occipital area, dark red in colour.

(b) Contusion 10 x 8 cm on left lower chest extending upto the left upper abdomen with inter costal muscles and anterior chest muscles contused and with ribs fractured obliquely from 2nd to 10th extending anterior sternal junction to lower left anterior auxiliary line.

(c) Abrasion of 5 x 3 cms on back of left shoulder reddish black in colour.

Underlying in the abdomen spleen rupture present and left kidney contused all around red in colour with 1.5 litre of fluid blood present in peritoneal cavity.

Internal Injuries:

a) Rupture of spleen and contusion of left kidney.

b) Fracture of 2nd to 10th ribs on left side of the chest.

c) There is collection of blood 1.5 lts. in peritoneal cavity.

Basing on the above injuries the doctor deposed that the cause of death to the best of his knowledge was due to multiple injuries and death

was about 12 hours prior to his examination. Accordingly, he issued Ex.P3—post-mortem certificate.

7) A close scrutiny of the injuries recorded by the doctor would show the deceased suffered fracture of ribs obliquely from 2nd to 10th extending anterior auxiliary line. There was also bone deep lacerated injury on occipital prominence of scalp. Further, there was rupture of spleen and a contusion on the left kidney. These injuries would depict that they were caused on the vital parts of the body and since there was no suggestion in the cross-examination that those injuries could be caused by accidental fall on a hard surface, it can be safely concluded the deceased suffered those grievous injuries in the hands of his assailant. Having regard to the vital-site of the injuries, it can be concluded that whoever be the assailant, he caused those injuries with an intention to cause the death of the deceased. No doubt, it was suggested in the cross-examination that laceration referred in the post-mortem certificate could be possible by means of sharp object, probably to disprove the use of MO1—stick as claimed by the prosecution. However, the said suggestion was denied by the doctor. So, one can reasonably conclude that death is homicidal one. Of course, learned Additional Public Prosecutor did not confront the medical witness with MO1—stick to elicit that external injuries referred in the post-mortem report could be caused with the help of MO1—weapon. However, that mistake on the part of Additional Public Prosecutor, in our view, would not swing away the nature of death from

homicidal to suicidal or accidental, as there is no convincing material to hold that the death could of either suicidal or accidental.

8) Apart from the doctor's evidence, we have Ex.P14—inquest report wherein the inquest mediators opined that death was homicidal one. It should be noted that PWs.8 and 9 are the inquest mediators but they turned hostile and did not support prosecution case. Though they admitted their signatures on Ex.P14 they denied inquest was conducted in their presence. As rightly observed by the trial Court, if no inquest was conducted in their presence and they did not act as mediators, there was no reason why their signatures appear on the mediators' report. It was not their case that by threat or coercion the police obtained their signatures on Ex.P14. So, merely because the witnesses turned hostile, their entire evidence will not be effaced from the record. Regarding the appreciation of evidence of hostile witnesses, the principle of law is that the Court can accept their evidence to the extent their version is found to be dependable. On this well known principle, learned Public Prosecutor cited the judgment in *Paramjeet Singh @ Pamma v. State of Uttarakhand*¹. The Apex Court considering its various earlier decisions observed thus:

“Para--21. This Court reiterated a similar view in Govindappa and Ors. v. State of Karnataka MANU/SC/0372/2010 : (2010) 6 SCC 533, observing that the deposition of a hostile witness can be relied upon at least upto the extent he supported the case of the prosecution.”

¹ LAWS (SC) 2010 9 103 = (2010) 10 SCC 439

9) When the above principle is applied to the instant case, PWs.8 and 9 admitted their signatures on the mediators' report but for the reasons best known to them, they stated as if the police did not call them to act as inquest mediators. As already observed, it was not their case by threat or coercion their signatures were obtained by the police. Above all, PW12 clearly deposed that he conducted inquest in the presence of PWs.8 and 9. There is no reason to disbelieve the version of a responsible police officer. So, this Court can safely rely upon Ex.P14—mediator's report which also establishes that apparent cause of death of deceased was due to injuries inflicted on him. Thus, the medical evidence of PW3 and Ex.P14 cumulatively established the death to be a homicidal one.

It has now to be seen, whether the accused was responsible for such death in the point infra.

10) **POINT Nos.2 and 3:** Admittedly the accused is the nephew of deceased, as he is the son of PW4 who is the younger sister of the deceased. There were no direct eye-witnesses who have seen the accused inflicting injuries on the deceased. In this back drop, vehemently carping the judgment of the trial Court, learned counsel for appellant/accused would argue that there were no direct eye-witnesses who have seen the accused either going to the house of deceased in the dead of night of incident or his causing injuries to the deceased. PWs.5 to 7 who are the neighbours of the deceased on whom the prosecution and the Court placed much reliance, in fact, did not witness the act of accused causing injuries to the deceased. They only heard some galata in the midnight and

when they came out they found accused near the house of the deceased and the deceased found lying down. PWs.5 to 7 were declared hostile by the prosecution. Therefore, their evidence was not helpful to connect the accused to the offence in any manner. Learned counsel vehemently argued, the evidence of PWs.5 to 7 is thus not helpful to prosecution.

11) Similarly, the evidence of PW4—the mother of the accused is also of no use to establish the guilt of the accused since she was not present at the scene at the relevant time. She only stated that her son objected deceased proposing to sell his house and in that context, some godava (dispute) took place between them. Merely because there was a dispute between the deceased and the accused some time prior to his death, it cannot be readily concluded that the accused alone was responsible for the death of deceased. She further argued that in this case, prosecution miserably failed to prove the motive for the accused to kill the deceased. She thus prayed to allow the appeal and set aside the conviction.

12) Per contra, learned public prosecutor argued as motive is concerned, the evidence of PW4 itself was sufficient to establish that there were no good terms between the accused and deceased since some time prior to his death, as the accused was severely opposing the proposal of the deceased to alienate his house. Then his participation in the offence is concerned, unless there was an evil intention, there was no reason for him to go to the house of the deceased in the dead of night of the incident. Though PW5 to 7 did not support prosecution case on the aspect of their witnessing the accused beating the deceased, still they

unequivocally deposed to have seen the accused at the house of deceased and deceased lying down. Learned public prosecutor thus argued, the role of the accused in the offence was well established by the prosecution and on the other hand, the accused failed to give reason for his presence at the scene of offence. He thus prayed to dismiss the appeal.

13) We gave our anxious consideration to the evidence on record. As per EX-P1 report given by PW1, the offence took place on the intervening night of 18/19.05.2007 at about 1.30 AM at the house of the accused at which time, the accused went there and picked up a quarrel with the deceased in the matter of selling the house by the deceased and during that quarrel he beat the deceased with a stick on his head and other parts of the body and thereby the deceased fell down and became unconscious. The neighbours brought him and laid in front of his house. At about 5.30 AM, his sister i.e PW4 went there to offer gruel, while gulping the gruel he died. Thus, as per EXP1, the deceased suffered injuries in the hands of the accused on the night of 18/19.05.2007 at his house and he died early in the morning at about 5.30 AM while drinking the gruel offered by PW4.

a) Speaking to these facts, PW1 deposed that he knew the deceased, accused and his mother—PW4. They are all residing in the same colony. He further stated that deceased was his neighbour. Other neighbours informed him about the death of deceased in his house. He went and saw the dead body and on enquiry he came to know about the godava (dispute) that occurred on the intervening night with regard to the sale of

house. He came to know that the deceased beat the accused with a stick and in retaliation, the accused picked up the same stick and beat the deceased and caused injuries. Accordingly, he presented Ex.P1—report to the police. This witness was not cross-examined by the defence. It is to be noted that death was occurred after 5.30 AM on 19.05.2007 and Ex.P1 was presented to PW12 at 10.30 AM i.e within short time after the death of the deceased. It is true that PW1 was not a direct eye-witness to the incident and he was only hearsay witness. However, PW1 gave report within short time after the incident. Further, his version was corroborated by PW4 stating that by the time she went to house of her brother i.e deceased, there were good number of persons present and they proclaimed that her son beat her brother on his head with a stick. She offered water to her brother and he consumed the same and died. In this back drop, the unchallenged evidence of PW1 is, in our view, relevant under the principle of *res gestae*, since the facts spoken by him are relevant to the facts in issue and occurred within short time after the incident. We have the other reliable witness in the form of PW.4 to corroborate the version of PW1.

b) As already stated, PW4 is the younger sister of the deceased and mother of the accused. She deposed that deceased was her elder brother who was residing in one basti, whereas herself and accused were living in another basti in same locality. She stated she often used to visit him to look after his welfare. On that day she went to his house during morning hours as he was suffering with fever. By the time she went there, good

number of persons present there and proclaimed that her son beat her brother on his head with a stick. She offered water to him and he consumed the same and died. Regarding disputes, she deposed that her brother wanted to sell his house which was given to him by the Government which was objected by her son and in that context godava (dispute) took place. In the cross examination she stated that by the time of incident, her brother was not keeping good health and he was a leprosy patient. She further stated that her son also used to look after his welfare on and often.

14) On an analysis, her evidence would depict that the Government have given a house to deceased wherein he was residing alone and he wanted to sell away his house and the accused objected for the same and in that context, some galata took place between them. Though PW4 didn't know about further details relating to the dispute, however, she specifically stated that in the context of selling the house, disputes arose between the deceased and accused. Most importantly, PW4 also stated that people present at the house of the deceased proclaimed that her son beat her brother with a stick on his head, as too spoken by PW1. Her evidence was not challenged by the defence side. Thus, her evidence establishes the factum of disputes between accused and deceased and it further corroborated the presence of the accused at the house of deceased on the night of incident. The evidence of PW4 also establishes the motive of accused. PW4 is none other than the mother of accused and therefore there is no reason to disbelieve her evidence.

15) Then, we have the evidence of PWs. 5 to 7 who spoke about the presence of the accused at the house of deceased on the night of incident. PWs. 5 and 7 are the husband and wife and they are the neighbours of the deceased. Hence, their evidence assumes importance.

a) PW5 deposed that on the night of incident, when they were sleeping in their house, at about 1.30 AM they heard a big sound. On that they came up to the gate of their house and noticed accused standing in front of the deceased, who was lying on the ground. Since this witness did not support the prosecution case of his witnessing the incident proper as noted in Ex.P4—161 Cr.P.C statement, he was declared hostile and cross-examined by Additional Public Prosecutor. Though denied having stated in Ex.P4, however, he admitted that himself and others kept the deceased under a tree.

b) PW7—the wife of PW5 also deposed in similar manner. She stated that herself and PW5 came out and observed the deceased lying on the ground, the accused standing by his side. She further stated that she came to know that the deceased died as he was beaten by the accused. However, she did not support the prosecution case by stating that she personally witnessed the accused beating the deceased. Hence, she was also declared hostile and cross-examined by Additional Public Prosecutor with reference to ExP6—1 61 Cr.P.C statement.

c) Then, PW6 deposed that on that night he heard sounds and galata (bayata lolli). He witnessed accused and deceased had a godava at about

2 or 3 AM. He too did not support prosecution case about his personally witnessing the incident proper. Hence he was declared hostile and cross-examined with reference to Ex.P5 his earlier 161 Cr.P.C statement.

d) Thus, a scrutiny of the evidence of PWs.5 to 7 would show that despite these witnesses turned hostile and did not state about their personally witnessing the accused beating the deceased, still they have clearly deposed about their witnessing the presence of accused by the side of deceased on that night and deceased lying down. As already discussed about the appreciation of evidence of hostile witnesses, their entire evidence cannot be given a go-bye. On the other hand, the extent of their evidence speaking about the presence of accused by the side of deceased which is helpful to the prosecution and which could not be shattered in the cross examination can be accepted by the Court.

16) So, the conspectus of facts and evidence would show that there were disputes between accused and deceased regarding the alienation of the house and on the midnight prior to the death of the deceased, accused was seen at the house of the deceased and there was some galata between them and accused was found standing whereas the deceased was found lying down. On the next day morning the deceased was found dead with injuries on vital parts. PW12 claimed that on arrest of accused he recovered MO1—stick on revelation of the accused. Though the mediators for recovery did not support on this accept, we find that the evidence of PW12 can be accepted as MO1 was recovered not from a public place. Apart from it, the accused was also having injury on his

body. Therefore, the prosecution with the available evidence on record could establish the guilt of the accused. On the other hand, except denying the prosecution case, the accused could not explain about his presence at the crucial time at the scene of offence. The trial Court rightly appreciated the facts and evidence and accordingly convicted him for the offence under Section 302 IPC since the injuries found on the deceased were grievous in nature and inflicted on the vital part of the body which would infer that accused caused them with an intention to kill the deceased.

17) We find no merits in the Criminal Appeal and the same is dismissed by confirming the conviction and sentence recorded by the Trial Court in S.C.No.342 of 2007.

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

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 19.01.2018
Murthy