

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.344 of 2013

JUDGMENT : *(Per Hon'ble Sri Justice M.S. Ramachandra Rao)*

This appeal is preferred challenging the judgment of conviction dt.18-02-2010 made against the appellant in S.C.No.277 of 2009 by the II Additional Sessions Judge (FTC), Khammam.

2. The prosecution case is that one Rachamalla Prameela is resident of B.C. Colony, Gandhampalli, that she was married and that she had two daughters and son, who were also married; the appellant was an inhabitant of the same colony, whose wife had died long back; and he was also having two daughters and son, who were married. According to the prosecution, the appellant was living alone and developed illicit intimacy with the said Prameela for about 10 years and that the husband of the said Prameela was also necked out by Prameela and the appellant. It is alleged that there were altercations between the children of Prameela and appellant and the appellant was beaten up by the children of said Prameela, which is the subject of Cr.No.43 of 2007 on the file of Bayyaram (G) P.S. under Section 324 r/w 34 I.P.C. It is alleged that the said Prameela and appellant used to attend coolie works together not only locally but also in other villages; that prior to 02-08-2008, Prameela and the appellant stayed together at

Kondapalli of Vijayawada city for about 2 to 3 months for coolie works; that they returned back to Gandhampalli on 01-08-2008 evening after earning some money and went to their respective houses; that on 02-08-2008 evening, the appellant fetched and gave chicken to the children of Prameela and asked for preparation of chicken curry; in the meantime, Prameela asked the appellant to give some money for her needs; and at that time, the appellant, who did not like the chicken curry prepared, got enraged, cast away the chicken curry. It is further alleged that Prameela started scolding the appellant and went in front of the house of L.W.6 and continued scolding the appellant in filthy language; that the appellant became wild, picked up a pestle, beat Prameela on her head repeatedly with an intention to do away with her life; and that this was witnessed by P.W.2, who is the grand son of Prameela, who informed it to P.W.1 and her husband. It is alleged that when they rushed to the spot, they found the appellant fleeing away from the scene with pestle and Prameela lying struggling in a pool of blood and on a call made by L.W.1, the husband of P.W.1, the 108 Ambulance arrived and the staff of the said Ambulance examined Prameela and found her dead.

3. L.W.1, the husband of P.W.1, lodged Ex.P-1 complaint, on the basis of which F.I.R.No.61 of 2008 was registered by the P.S. Bayyaram (G), Khammam District on 02-08-2008 under Section 302 I.P.C. against the appellant.

4. Thereafter P.W.11 took up investigation, visited the scene of offence, recorded the statements of L.W.1, P.Ws.1 to 5, L.W.4, L.W.8 and L.W.9. He prepared the Crime Details Form (Ex.P-4) and also conducted inquest over the dead body of Prameela and drafted Ex.P-5 inquest report. He got photographed the scene of offence through P.W.6 and collected controlled earth and blood stained earth in the presence of P.W.7, L.W.12 and L.W.13 and sent the same to the F.S.L. for examination and report.

5. After inquest, he sent the dead body of deceased to Government Hospital, Yellandu for Post Mortem examination. P.W.10 conducted Post Mortem examination over the dead body of deceased.

6. P.W.10, who conducted Post Mortem examination, mentioned in Post Mortem report Ex.P-10 that death of Prameela occurred due to haemorrhage and neurogenic shock as a result of skull and brain damage, that there were three injuries i.e. (1) on the right mandible, (2) on the pre-auricular area and (3) on the occipital area, and these injuries were on the right side and back side of skull and were caused probably by hitting with hard object which would rupture the blood vessels.

7. The appellant was apprehended by P.W.10 Investigating Officer on 14-08-2008 at Gandhampalli village centre in the presence of L.W.14 and P.W.8. It is alleged that during interrogation, the appellant confessed regarding commission of offence and pursuant to

the confession, he led the police to the outskirts of the village near Aligeru river and recovery of blood stained pestle M.O.1 was made in the presence of the said mediators.

8. According to the prosecution, M.O.2, a green striped lungi belonging to the appellant was also seized and Ex.P-6 confessional panchanama and Ex.P-12 seizure panchanama, under which M.O.1 pestle was seized, were prepared in the presence of mediators. The material objects i.e., the pestle, lungi of the appellant, clothes of the deceased as well as the sample blood of deceased were sent to the R.F.S.L. Warangal, and it sent report Ex.P-11.

9. Thereafter the appellant was committed to Sessions Court and the following charge was framed against him in SC No.277 of 2009 by the II Additional Sessions Judge (FTC), Yellandu:

“That you on or about the 2nd day of August, 2008 at about 17.00 hours at B.C. Colony, Gandhampalli, did commit murder knowingly or intentionally causing the death of Rachamalla Prameela with a pestle on her head repeatedly and that you thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.”

10. The appellant denied the charge and claimed to be tried.

11. The prosecution examined P.Ws.1 to 11 and marked Exs.P-1 to P-12 and also M.Os.1 and 2. A portion of Section 161 Cr.P.C. statement of P.W.6 was marked by the appellant as Ex.D-1.

12. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. and the incriminating circumstances mentioned by prosecution witnesses were put to the appellant and he denied the same. No defence witnesses were examined.

13. The II Additional Sessions Judge (FTC), Khammam pronounced judgment on 18-02-2010 in S.C.No.277 of 2009 and sentenced the appellant to undergo life imprisonment and also pay fine of Rs.1,000/-, in default to suffer S.I. for one month.

14. The said Court considered the evidence on record and relied on the evidence of P.Ws.2 and 4 and held that the appellant beat the deceased with pestle on her head, that she received bleeding injuries and died. It rejected the defence of the appellant that the children of deceased killed her since she was not listening to their advice to discontinue her illegal contact with him, and that they had also falsely implicated him in the present case. It held that there is no evidence to show that the children of the deceased beat the deceased and killed her and the evidence on record showed that due to disputes between the appellant and the deceased regarding money, the appellant beat the deceased with pestle on her head and she died. It also observed that there is no material to disbelieve the evidence of P.Ws.2 and 4, who are the eye-witnesses to the occurrence of the offence and that their evidence is reliable and trustworthy, since nothing was elicited during their cross-examination to disprove the prosecution's case. It also

discussed the contents of Ex.P-7 and held that the case alleged against the appellant in Ex.P-7 is proved and hence, he is liable to be convicted under Section 302 I.P.C. and sentenced to imprisonment for life.

15. Assailing the same, this appeal is filed.

16. Learned counsel for appellant contended firstly that according to the charge sheet, the only person who witnessed the alleged incident was P.W.2, a child witness aged about 8 years at that time, and who was the son of P.W.3, the sister of P.W.1, but prosecution introduced both P.W.1 and P.W.4 to speak as if they were eye-witnesses to the incident of the alleged beating of the deceased by the appellant and that the presence of P.W.2 at the scene of offence at the time of alleged incident is highly doubtful since P.W.1 did not mention about his presence. He also contended that the sketch of scene of offence contained in crime details form report Ex.P-4 clearly indicated that the location of the house of P.W.4 was such that she could not have witnessed the above incident from her house, particularly when the walls of the dilapidated house of deceased would block her vision completely. He also contended that non-examination of the complainant L.W.1, who is the husband of P.W.1, is an important circumstance and so the contents of the complaint Ex.P-7 cannot be relied upon as was done by the trial Court. He pointed out that both P.W.1 and P.W.3 had admitted that there was an earlier incident of the appellant being beaten by the husband and the

family members of the deceased, and it was possible that they were angry with the deceased for continuing illicit intimacy with the appellant; and when P.W.3 tried to beat the appellant with pestle, it slipped and touched the deceased, that she sustained injuries and died. He contended that due to grudge against the appellant, he was falsely implicated in the case by the family members of deceased, who were only responsible for the death of deceased. He also contended that P.W.2 being a child witness, there is a strong possibility of tutoring of P.W.2 and it is not safe to rely upon his evidence without corroboration from other dependable evidence on record. He relied upon the decisions in **Dattu Ramrao Sakhare and others Vs. State of Maharastra¹**, **Rajulapadu Rambabu Vs. State of Andhra Pradesh²** and **Korra Govardhan Vs. State of A.P. rep. by Public Prosecutor, High Court of AP., Hyderabad³**.

17. The learned Public Prosecutor appearing for respondents refuted the above contentions. He contended that the evidence of child witness P.W.2 was cogent and preliminary questions had been put to him to gauge the understanding of the said witness and once his evidence is accepted, the appellant was liable to be convicted and was rightly convicted by the trial Court. He further contended that P.W.4 was also an eye-witness to the beating of the deceased by appellant and her evidence would amply corroborate the evidence of P.W.2. He

¹ (1997) 1 SCC 341

² 2011(1) ALD (Crl.) 527 (DB) (AP)

³ 2013(2) ALT (Crl.) 187 (DB) (AP)

denied that the family members of deceased had killed the deceased and falsely implicated the appellant.

18. We have noted the contentions of both sides.

19. According to the charge sheet, P.W.2 informed the incident of beating of deceased by appellant with pestle to P.W.1 and her husband L.W.1, that then they rushed to the spot and found the appellant fleeing away from the scene with pestle and the deceased struggling in a pool of blood.

20. Though the learned Public Prosecutor contended that P.W.1, daughter of deceased, witnessed the incident, she claimed to have come thereafter and witnessed only the appellant running away from the house along with pestle in his hands after he killing her. According to the sketch of scene of offence on Ex.P-4 Crime Details Form, PW1's house is behind the house of the deceased, which though dilapidated, had walls. The entrance of the house of P.W.1 is facing South and is at a distance of 100' from the place where the body of the deceased was found opposite the house of the deceased. The location of the house of P.W.1 is, in our view, such that there is no possibility of P.W.1 witnessing the incident since the walls of the dilapidated house of deceased would have obstructed her vision.

21. PW1's evidence of seeing the appellant running away with pestle appears to be doubtful since she does not say that P.W.2 informed her about the incident and she then rushed out and saw the

appellant running away with the pestle. She does not state how she came to know about the incident and from whom. She does not even mention about the presence of PW2 at all and fact that he witnessed the incident.

22. Therefore, we hold that the prosecution case that P.W.2 witnessed the incident and informed P.W.1 and her husband L.W.1 about it and she rushed to the spot, and saw the accused running away, appears to be highly doubtful.

23. Coming to the evidence of P.W.2, he is a child witness aged 8 years. P.W.3 is his mother. P.W.3 admitted that she along with others beat the appellant and also admonished him not to come to their house and have any illegal contact with the deceased. Thus, the enmity between the families of deceased including P.W.3 and P.W.1 apart from L.W.1 with the appellant is clear. Therefore, there is every possibility of P.W.2 beating tutored to give evidence to falsely implicate the appellant.

24. In **Dattu Ramrao Sakhare** (1 supra), the Supreme Court held that though there is no rule or practice that in every case the evidence of child witness should be corroborated before a conviction can be allowed to stand, there is, however, a rule of prudence that there should be corroboration to a child witness's evidence from other dependable evidence on record.

25. This principle had been applied in **Rajulapadu Rambabu** (2 supra), wherein it was reiterated that if the evidence of a child witness is found to be true and trustworthy not an outcome of tutoring or prompted by any relatives, it can be acted upon. The Court observed that children are prone to tutoring and much care and caution should be taken in appreciating their evidence and it is desirable to have it corroborated by other dependable evidence.

26. In **Korra Govardhan** (3 supra) also, a Division Bench of this Court reiterated the said principle. It observed that there is a general belief that a child is artless, innocent and uncraftful, but at the same time, children are susceptible to external circumstances and can be easily tutored as to what they should speak in the Court; that the Court should keep this aspect in mind and as a rule of prudence, the Court should desire corroboration of the child witness's evidence, though not as a rule of law.

27. In the instant case, while P.W.1 stated that at the time of incident, his mother P.W.3 went to Kondapalli and was not in the house, P.W.3 states that she had gone to Hyderabad for coolie work and came to know about the incident by telephone. Also P.W.2 stated that the deceased and appellant lived together in one house, but the charge sheet itself states that they had different houses. Even P.W.3's evidence is that the appellant had his own house. Further, according to P.W.2, the incident took place in front of the house of L.W.7 Challa Venkatamma, but according to the charge sheet, the incident occurred

in front of the house of P.W.4, and not L.W.7. As stated earlier by us, PW1 did not mention about the presence of PW2 at all at the time of the incident. This is a serious omission and throws serious doubt about his very presence at the time of the incident and witnessing it. These discrepancies in the evidence of P.W.2 are not explained by prosecution.

28. Therefore we are of the view that having regard to the illicit intimacy between appellant and deceased, there is a strong possibility of P.W.2 being tutored to falsely implicate the appellant in the case since admittedly an earlier attempt was made by the family members of the deceased to beat the appellant and a crime was also registered at that time; that his evidence is also not corroborated by any other independent evidence as explained above; and so, it is not safe to rely on the evidence of PW2.

29. Coming to PW4, in the charge sheet itself, it is mentioned that P.W.2 is the person who witnessed the alleged beating of the deceased by the appellant on the head with pestle after the arguments about sharing of money between the appellant and deceased occurred. There is no mention therein of any other eyewitness to the incident like PW4. Even P.W.2 stated in his evidence that he alone was present when the appellant beat the deceased.

30. However, P.W.4 claims that she also witnessed the incident of beating by the appellant with pestle on the head of deceased. She

denied that there was no possibility to witness the incident from her house. But Ex.P-4, Crime Details Form contains a sketch of the scene of offence which shows that the house of P.W.4 was behind the house of deceased and that the house of deceased, though dilapidated, its walls were in existence and the body of the deceased was shown to be in the middle of the road in front of her dilapidated house and opposite the house of LW7. The entrance of the house of P.W.4 was not facing the house of deceased, but was facing South and not East, where the house of deceased was located. In our view, the walls of the dilapidated house of deceased would have clearly obstructed P.W.4 from witnessing anything happening in front of the house of deceased, which was facing the road on East; and it would have been physically impossible for P.W.4 to have witnessed any incident occurring in front of the house of deceased. Therefore, the evidence of P.W.4 deserves to be discarded.

31. For the aforesaid reasons, we, therefore, hold that the prosecution failed to prove the guilt of the accused. Unfortunately, the Court below has not considered the evidence on record in correct perspective and erred in holding that P.W.4 was also an eye-witness to the incident and that evidence of P.W.4 as well as that of P.W.2 is reliable and trustworthy.

32. Accordingly, the Criminal Appeal is allowed setting aside the conviction and sentence recorded against the appellant by the II Additional Sessions Judge (FTC), Khammam vide judgment

dt.18-02-2010 in S.C.No.277 of 2009 of the charge under Section 302 IPC. The appellant shall be set at liberty forthwith, if he is not required in any other case.

33. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. SUNIL CHOWDAY

Date: 12-04-2018

Note : Issue C.C. today.

B/o.
Vsv

