

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1180 of 2011

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

1) The sole accused in Sessions Case No.70 of 2011 on the file of IV Additional Sessions Judge (Fast Track Court-3) at Khammam, is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of one Sunnam Ramudu (hereinafter referred to as "the deceased") by attacking him with an axe. Vide its judgment, dated 11.08.2011, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 and sentenced him to suffer "Life imprisonment" and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of two months.

2) The facts as culled out from the evidence of prosecution witnesses are as under:-

P.W.1 is the brother of the deceased. He along with the deceased and two other brothers were residing in Arlapenta village of Dammapeta Mandal. Deceased has got a son (P.W.2) and a daughter. The wife of the deceased died about 13 years back. Since then the deceased and her children were residing in a house, which was by the side of the house of the accused. The deceased used to eek out his livelihood by getting firewood from the forest and selling the same in the village. The accused also used to get firewood and sell the same in

the village. On the date of incident i.e., on 31.03.2010 at about 9.00 a.m., the deceased and accused went to the forest area to fetch the firewood. On that day, the deceased did not take his axe along with him but the accused took his axe along with him. It is said that both of them went to the toddy shop of P.W.4, consumed toddy and then went into the forest. In the evening the deceased did not return home. When P.W.1 questioned the accused as to why the deceased did not return home, the accused stated that the deceased did not return along with him. Then the villagers searched for the deceased for a period of two days. On 04.04.2010 at about 2.00 p.m., they found the dead body of the deceased at Yerragodu Gutta. Then P.W.1 and other family members went to the said Yerragodu Gutta, noticed the body of the deceased which was in a highly de-composed stage. They noticed an injury on top of the head and also on the forehead. They returned back to the village by 10.00 p.m. On 05.04.2010, P.W.1 went to Dammapeta Police Station and presented a report-Ex.P-1 before P.W.16 the S.I. of Police, which came to be registered as Crime No.61 of 2010 of Dammapeta police station for the offence punishable under Section 302 IPC. Ex.P-8 is the FIR. Copies of Exs.P-1 and P-8 were presented to concerned officers. Over phone, P.W.16 informed the Medical Officer at Government Hospital, Aswaraopet to come to the scene of offence to conduct autopsy over the dead body of the deceased. Then he along with his staff proceeded to the scene and noticed the dead body of a male person in a decomposed stage. He

recorded the statements of P.Ws.1 to 3, 4, 5 and 8, inspected the scene of offence in the presence of P.Ws.13 and 10 and prepared a Crime Detail Form -Ex.P-6. In the presence of the above mediators, he conducted inquest over the dead-body, which is placed on record as Ex.P-2. PW.11-the Civil Assistant Surgeon, Primary Health Centre, Kamepalli, who came to the scene of offence, conducted postmortem examination over the dead-body and issued the postmortem certificate, which is placed on record as Ex.P-3. On 07.05.2010, P.W.17 filed a requisition before the Judicial First Class Magistrate, Sathupally for recording the 164 Cr.P.C., statements of P.Ws.4, 12 and L.W.17-Gundam Butchaiah, which are marked as Exs.P-9; 10 and 11. On 29.10.2010 P.W.18 the C.I. of Police, who succeeded P.W.17, received the draft charge-sheet from senior A.P.P.O and filed the same before the Additional Judicial Magistrate of First Class, Sathupally, which was taken on file as P.R.C.No.63 of 2010, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.70 of 2011.

3) Basing on the material available on record, a charge under Section 302 IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 18 and got marked Exs.P1 to P11 and MO.1. 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. No oral or documentary evidence was adduced on behalf of the accused.

5) After considering the oral and documentary evidence on record, the Sessions Judge convicted the accused for the offence to which he was charged. Challenging the same, the present appeal is filed.

6) Ms. Marie Desai, the legal aid counsel appearing on behalf of the appellant would contend that there are no eyewitnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. According to him, the evidence of P.W.1 would show that the accused and the deceased left the house to the forest to collect firewood at 9.00 a.m., and in the evening only the accused returned back. According to the counsel, the said circumstance alone cannot be made a basis to convict the accused, since the accused denied both of them being together in the forest. According to her, though the accused and the deceased were seen at the shop of P.W.4 at 9.00 a.m., but subsequently there is no evidence that the accused and the deceased together proceeded in the same direction in the forest. Having regard to the above, the learned counsel for the appellant would contend that the sole circumstance relied upon by the prosecution cannot be a basis to convict the accused.

7) On the other hand, the learned Public Prosecutor would contend that since the accused and deceased being seen together at 9.00 a.m.,

and thereafter at 1.00 p.m., the accused alone being seen by P.W.4 and in the absence of explanation as to what happened to the deceased, he would submit that the said circumstance is sufficient to base a conviction.

8) The point that arises for consideration is; Whether the accused is responsible for the death of the deceased?"

9) As seen from the record, there are no eyewitnesses to the incident and the case is based on circumstantial evidence. The main circumstances relied upon by the prosecution are i) existence of enmity between the accused and deceased; ii) motive for the accused to cause death of the deceased; iii) accused and deceased both leaving the house together on the date of incident; and iv) both of them were seen at 9.00 a.m., by P.W.4 and thereafter at 1.00 p.m., he noticed only the accused returning to the village and v) recovery of M.O.1 alleged to have been used in the commission of the offence at the instance of the accused from the cashew garden situated by the side of Ankampalem-Vinayakapuram road.

10) Coming to the motive aspect, P.Ws.6 and 7 are the two witnesses, who were examined by the prosecution, to speak about the deceased informing the family members of the accused, about the illicit intimacy between the accused and Shanthamma. In his evidence P.W.7, who is the son of the accused, states that there was a quarrel between his father (accused) and the mother, due to illicit intimacy

maintained by the accused with one Santhamma. P.W.7, who is the son of the accused also questioned about the illicit intimacy and chastised him. When the accused questioned as to who informed them about it, P.W.7 is said to have stated that it was the deceased, who informed them about the said fact. He further states that on the date of incident, the accused and deceased together went into the forest and only his father returned from the forest. The relatives of P.W.1 questioned him as to why the deceased did not return. The accused is said to have stated that he does not know anything. Though P.W.7 was cross-examined, nothing useful was elicited to discredit his evidence with regard to the said aspect.

11) Coming to the evidence of P.W.6, the owner of cashew nut garden, through whose land the accused and deceased go to forest everyday, he deposed stating that the accused was having illicit intimacy with one Santhamma and that the son of the accused questioned the accused with regard to same, because of which the accused bore grudge against the deceased. The information given by the deceased to the family members of the accused with regard to the illicit intimacy with one Santhamma is said to be the motive to cause death. But, however, Santhamma, who is examined as P.W.14 did not support the prosecution case and was treated hostile by the prosecution.

12) Coming to the incident proper, as stated earlier, the prosecution mainly relied upon the theory of last seen. The evidence of P.W.1

shows that on the date of incident at about 9.00 a.m., the accused and the deceased together went into the forest to fetch firewood. The deceased did not carry the axe along with him, but the accused took his axe along with him. In his evidence he deposed that both the accused and deceased went to P.W.4, consumed toddy and went into the forest. In the evening of that day, the accused alone returned to the village. When questioned, the accused stated that the deceased did not return along with him. Nearly four days thereafter the dead body was found at Yerragodu Gutta. The evidence of P.Ws.2 and 3 amply establish that both of them used to go to forest for collecting the firewood. P.W.4 in his evidence deposed that on the date of incident at about 9.00 a.m., accused and deceased together came to his shop and consumed toddy. Then he took Rs.25/- from them and thereafter both of them went into the forest. At about 1.00 p.m., the accused alone returned from the forest. P.W.6 in his evidence deposed that at about 1.00 p.m. or 2.00 p.m., the accused came to his cashew tope and asked him to give some water. At that time he noticed blood stains on T-shirt which he was wearing at that time. When he questioned, as to what happened to the person who accompanied him, the accused informed the name of that person as Ramudu but without giving any reply went away. P.W.8 in his evidence states that on the date of incident the accused and deceased together went into the forest in the morning and the accused alone returned from the forest at 1.00 p.m. When he questioned the

accused, the accused stated that he does not know anything about the said Ramudu.

13) From the evidence referred to above, it is clear that the accused and the deceased went into forest to get firewood but the accused alone returned back. The evidence on record further show that he had a grouse against the deceased as he informed his son about his illicit intimacy with one Shanthamma. Further, the evidence referred to above clearly discloses that on the date of incident both of them have gone together. The accused went along with the axe, consumed toddy with the deceased and later both of them went into the forest and in the afternoon the accused alone returned from forest by about 1.00 p.m. P.W.6 speaks to the fact of accused alone returning from the forest and when PW.1 questioned about the same, he pleaded ignorance.

14) In **Dilip Mallick v. State of West Bengal**¹, the Apex court observed as under:

"8. P.W.3, P.W.4 and P.W.5 who are the family members of the deceased were consistent in their testimonies that the deceased and accused were last seen together at around 02.00 p.m. on 02.02.2004. There is a burden on the accused to give an explanation about what happened after they left the house of the deceased. No explanation was given about the events of 02.02.2004 after they left from the house of the deceased. In the examination under Section 313 Cr.P.C. the accused denied any knowledge of the crime and alleged false implication. Section 106 of the Indian Evidence Act, 1872 imposes an obligation on the accused to explain as to what happened after they were last seen together. P.W.3 gave evidence to the effect that the accused was not found in his house in the evening on 02.02.2004 when she

¹ AIR 2017 Supreme court 1133

went to enquire about her missing husband. She also stated that when she met the accused on the next day morning, the accused misled her by saying that she should go to Matigara Police Station in search of her husband. It is clear that the accused who was with the deceased on the earlier day did not give a proper answer to P.W.3 and asked her to go to the Matigara Police Station which indicates that he was suggesting to P.W.3 to complain to the police. These are strong circumstances against the accused."

15) As held by the Apex court in the above case, a burden is cast on the accused to explain as to what happened after both of them together left the house in the morning and thereafter at 1.00 p.m., when the accused alone returned to his house. No explanation was given by the accused as to what happened after he went into the forest along with deceased, after consuming toddy in the shop of P.W.4. In his examination under Section 313 Cr.P.C., accused denied the knowledge about the commission of the offence. Section 106 of the Indian Evidence Act imposed an obligation on the accused to explain as to what happened after they were last seen together. The fact that they were seen together stands establish not only through the evidence of P.W.1 & P.W.4 but also through P.W.6 who saw the accused alone returning to his house, which was unusual. In fact, when he was asked about the said fact, the accused stated that he does not know anything about the deceased. The record indicates that both of them were seen together at 9.00 a.m., and the accused alone returned home from the forest at 1.00 p.m. The evidence on record also refers to existence of some enmity between the accused and the deceased which was spoken to by P.W.7, who is the son of the accused. In his evidence P.W.6 speaks about quarrel between the accused and his

mother due to illicit intimacy maintaining of the accused with one Santhamma. The intimacy between the accused and one Santhamma was informed to P.W.7 by the deceased. Therefore, there was sufficient motive for the accused to do away the deceased. Though the body was recovered couple of days later but since the proximity of time between both of them seeing together and the accused returning alone and in the absence of any explanation given by the accused, we feel that the accused is responsible for the commission of the offence. Apart from that the time given in the post mortem with regard to cause of death tallies with the time when the accused and the deceased together went into the forest.

16) In view of the findings arrived at, we feel that the sentence imposed by the trial court warrants no interference.

17) In the result, the Criminal Appeal is Dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

Dt:02.02.2018

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