

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL No.1058 OF 2013

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

This Criminal Appeal is filed by the accused aggrieved by the conviction and sentence passed by learned I Additional District and Sessions Judge, West Godavari at Eluru in Sessions Case No.113 of 2013 convicting him for the offence under Sections 450 and 302 IPC and sentencing him to suffer R.I. for two years and to pay fine of Rs.500/- in default to suffer imprisonment for one month for the charge under Section 450 IPC and to suffer imprisonment for life and to pay fine of Rs.500/- in default to suffer imprisonment for one month for the charge under Section 302 IPC and directing that both the substantial sentences shall run concurrently.

2. The prosecution case is thus:

(a) The accused is the cousin of P.W.2, who is the husband of deceased. Accused used to suspect that his wife had extra-marital relationship with P.W.9. He also suspected that P.W.8 and deceased acted as mediators for their illicit relationship. The accused, thus, developed grudge against P.Ws.8 and 9 and also deceased.

(b) The further case of prosecution is that on 27.01.2010 at about 06.00 a.m., while P.W.9 was at a coffee hotel in the village, the accused with an intention to kill him went there

and stabbed him with a knife causing injuries. In that connection, Crime No.7 of 2010 was registered against him by the police of Dharmajigudem for the offence under Section 307 IPC. After investigation, charge sheet was filed and case was registered as Sessions Case No.545 of 2011 on the file of Additional Sessions Court, Eluru. The accused was arrested in the said crime and later he was released on bail. After released on bail, the accused, who bore grudge against the deceased, was waiting for an opportunity to wreck vengeance against her. On two occasions, the accused bet the deceased. On 21.05.2012 at about 06.30 p.m., while the deceased was attending her household work in the open front yard of her house, the accused went there armed with MP3—crow bar and trespassed into her house and poked her on her face and head with crow bar and the deceased suffered multiple fractured injuries and succumbed to death instantaneously. At that time, her son P.W.3 was at the house and witnessed the incident. At the same time, P.W.2, who is her husband, returned home on his auto and found the presence of the accused. Both of them tried to intervene but the deceased threatened them and skulked away. Thereafter, P.W.1 – the V.A.O. on information came there and verified the facts and he submitted Ex.P1—report to the police on the night of 21.05.2012 at about 10.00 p.m., upon which, the S.H.O. Dharmajigudem P.S., registered a case in Crime No.52 of 2012 and issued F.I.R. under Sections 450 and 302 IPC.

(c) P.W.13—the Inspector of Police, took up the investigation and visited the scene of offence and got prepared the scene of offence observation report and also got drafted rough sketch at the scene of offence and held the inquest over dead body and took the photographs of the scene of offence and the dead body and then sent the dead body for postmortem examination. P.W.11 conducted Autopsy over the dead body and opined that the deceased died due to intra cranial haemorrhage and shock due to multiple fractures and accordingly, issued Ex.P7—postmortem report. During the course of investigation, the investigating officer apprehended the accused on 29.05.2012 in the presence of mediators and interrogated him and on his information recovered M.O.3 – crow bar with which he killed the deceased. He also seized MO1 and MO2—bloodstained shirt and lungi of the accused. He sent the material objects to the R.F.S.L., for chemical analysis. After obtaining the reports and completing the investigation, he laid charge sheet against the accused.

(d) On appearance of the accused, the trial court framed charges under Sections 450 and 302 IPC against him, which he denied and claimed to be tried. During trial, the prosecution examined P.Ws.1 to 13 and exhibited Exs.P1 to P15 and produced material objects marked as M.Os.1 to 6. After prosecution evidence, the accused was examined under Section 313 Cr.P.C. and the incriminating material found in

the prosecution evidence was put to him, which he denied and pleaded not guilty. The accused did not produce any defence evidence. On hearing both prosecution and defence and on appreciation of the evidence on record, the trial court having believed the prosecution case, convicted and sentenced the accused as stated supra.

Hence, the appeal.

3. The accused preferred the appeal through jail and he is being represented by legal aid counsel Smt.C.Vasundhara Reddy. Heard arguments of learned counsel for appellant and learned Public Prosecutor for the State (AP).

4a) Severely fulminating the judgment of the trial court, learned counsel for appellant would firstly argue that the trial court grossly erred in convicting the accused solely relying upon the interested and uncorroborated testimony of P.Ws.2 and 3 who are the husband and minor son of the deceased. Learned counsel would submit that P.W.2 was admittedly not at the house and he was only dubbed as if an eye witness to suit the prosecution case. Hence, his evidence cannot be taken into consideration. P.W.3 is concerned, she argued, he was a child witness aged about ten years by the date of incident and his presence is also highly doubtful, though the incident was occurred in front of their house. Learned counsel would submit that his elder brother was admittedly went to his grandparents place due to summer vacation. No

explanation was offered by the prosecution as to why P.W.3, who was also enjoying the summer vacation, did not accompany his elder brother to his grandparents. Obviously, the prosecution set up the minor boy to give colour of truth to its case. Hence, P.W.3 cannot be considered as an eye witness.

(b) Secondly, learned counsel would argue that the evidence of P.W.3 cannot be accepted for another reason also. According to him, the accused poked on the face and head of the deceased with M.O.3 – crow bar. She pointed out that a crow bar is generally a heavy iron material and if really the accused poked into the face and head of the deceased with such a heavy material, certainly the injuries resulted must be severe and gruesome than the ones found on the body of the deceased. Referring to the evidence of P.W.11-the postmortem doctor and also Ex.P7—postmortem certificate, learned counsel would strenuously argue that the aforesaid oral and documentary evidence would suggest that except the two fractures, all other injuries were only lacerations i.e., minor injuries. She would thus argue that the injuries found on the dead body of deceased would indicate that M.O.3—weapon must not have been used by the accused and thus the entire incident was a concocted one. She would further argue that the injuries 1 to 3 mentioned in Ex.P7 could be possible by falling on a rough surface as admitted by P.W.11. All these

would suggest an inference that no incident as projected by the prosecution and as deposed by P.W.3 was occurred. However, the trial court has not taken into consideration these aspects in a proper perspective.

(c) Thirdly, while expatiating on motive, learned counsel would argue that according to prosecution, the motive for accused to kill deceased was that she was instrumental and acted as a mediator for the illicit relationship between his wife and P.W.9. However, the prosecution could not establish the motive by reliable evidence. Though the wife of accused was examined and her statement was recorded and she was shown as witness (L.W.17) in the charge sheet, the prosecution for the reasons best known to it, did not examine her to prove the motive aspect. It is the case of prosecution that on suspicion of her character, the accused drove her away from the house. In such circumstances, her evidence would have shed light on the aspect of motive. Instead of examining her, the prosecution relied upon the evidence of some unconnected persons to establish the motive. Therefore, she argued, the prosecution utterly failed to prove the motive aspect. Learned counsel argued that generally in the presence of the evidence of eye witnesses, the motive pales into incognito. However, when the evidence of eye witnesses is doubtful, the prosecution has to establish the motive also by cogent evidence. In this case, the prosecution failed to prove

the motive through cogent evidence. On this aspect, learned counsel placed reliance on ***Kumar v. State represented by Inspector of Police***¹. On all these arguments, learned counsel prayed to allow the appeal and set aside the conviction sentence.

5(a) Per contra, learned public prosecutor, while supporting the judgment of the trial court, argued that the evidence of P.Ws.2 and 3 was intrinsic, natural and cogent in the circumstances of the case and the trial court rightly placed reliance on them. He would further submit that admittedly, the incident was occurred in the front yard of the house of deceased and therefore, P.Ws.2 and 3 being the husband and son of the deceased were the natural witnesses to witness the incident and therefore, their presence cannot be doubted. He would further submit that merely because P.W.3 did not accompany his elder brother to his grandparents' house, that cannot be a ground to suspect his evidence. P.W.3 has clearly deposed about the occurrence. He emphatically stated that the accused came and attacked his mother and caused her injuries and thereby, she fell down and died and at the same time his father (P.W.2) returned home and when both of them tried to intervene, the accused threatened them and went away. Though P.W.3 was intensely cross-examined, nothing useful could be extracted to impeach his credibility and

¹ (2018) 3 Supreme Court Cases (Cri) 245

therefore, the trial court believed the version of P.Ws.2 and 3 and convicted the accused.

(b) Learned public prosecutor would further argue that motive is concerned, though the wife of accused was not examined, prosecution examined P.Ws.8 and 9. P.W.9 is the person with whom, the wife of accused was allegedly having illicit intimacy. His evidence clearly shows that on such apprehension, once the accused attacked him and caused injuries. Therefore, though the wife of accused was not examined, the evidence of P.W.9 and also P.W.8 would clinch the issue relating to the motive aspect. He, thus, prayed to dismiss the appeal.

6. In the light of rival arguments, the points for determination are:

1. *Whether the deceased met with the homicidal death on the evening of 21.05.2012 at her house?*
2. *If point No.1 is held in affirmative, whether the accused was responsible for her death?*

7. **Point No.1:** The evidence of P.Ws.2 and 3 – the eye witnesses, P.Ws.1 and 4 to 6 and the other witnesses and P.W.11–postmortem doctor and ExP11 postmortem certificate and Ex.P3 inquest report would cumulatively show that the death was a homicidal one. P.W.11 – the postmortem doctor, in his evidence, clearly deposed that he conducted

postmortem examination on the dead body of the deceased on 22.05.2012 and found the following injuries:

1. *Laceration of size 7x4 c.m. below right eye bone deep and fracture right maxilla, exposing meninges with blood clots.*
2. *Laceration of size 4x1 c.m. below left eye bone deep and fracture left maxilla exposing meninges with blood clots.*
3. *Laceration of size 7x2 c.m. over left cheek with left mandible.*
4. *Fracture base of skull and whole brain is filled with blood clots.*
5. *Fracture hyoid bone left cornu.*

8. He gave opinion stating that the deceased might have died due to intra cranial haemorrhage and shock due to multiple fractures. The other witnesses who have seen the dead body also found multiple injuries on her head and face. In Ex.P3 inquest report also the inquest mediators opined that the apparent cause of the death was due to the injuries on the face and body caused with crow bar. Thus, the aforesaid oral and documentary evidence would clearly show that the death was a homicidal one. Of course, the accused has not disputed the death of deceased as homicidal one, though his plea is that he is not responsible for such death. Therefore, it can be safely held that the prosecution could establish that the deceased suffered a homicidal death. It has now to be seen in the point infra as to whether the accused was responsible for such death.

9. **Point No.2:** The prosecution case is that the motive for accused to kill the deceased was because the deceased acted as mediator for the illicit intimacy between his wife and P.W.9. On that grudge, once the accused attacked P.W.9 and caused injuries and faced criminal charges in Sessions Case No.545 of 2011. Be that it may, it is the further case of prosecution that after released on bail in that case, he committed the present offence. The prosecution case mainly pivots on the evidence of P.Ws.2 and 3, who are the husband and son of the deceased. The trial court believed their evidence to convict the accused. Hence, it has now to seen whether their evidence infuse confidence.

10. P.W.3 is the second son of P.W.2 and the deceased. He was a minor boy studying about 5th class and aged about 12 years by the date of his evidence. So, by the date of incident he was aged in between 11 and 12 years. The trial court after conducting *voir dire* test, examined him. He deposed that the deceased is his mother and he knows the accused who is his senior paternal uncle. The house of the accused is at a distance of 30 to 40 yards from his house. In their house, P.W.2, his mother, himself and his elder brother used to reside. He further deposed that about two years ago during summer vacation days, when he was at his house, the incident was occurred. Narrating the incident, he deposed that on that day at about 6.30 p.m., while the deceased was

sweeping the front yard of their house, the accused came there with a crow bar and stabbed his mother for about seven times and thereby, she fell down on the floor. He stated, he was at a distance of 15 to 20 feet and saw the accused stabbing his mother. On seeing the incident, he was scared. When the accused was stabbing his mother, blood oozed out from the wounds. He further deposed, when the accused was stabbing his mother, his father (P.W.2) came to the house on his auto and then, this witness ran towards his father and informed. He also deposed that when P.W.2 and himself tried to apprehend the accused, he threatened them with the crow bar and ran away with the crow bar towards Eucalyptus garden, which is in front of their house. Then himself and P.W.2 went towards the dead body and found that she died. He gave the description of the weapon saying that the crow bar which was used by the accused was a little bit higher than his height. The court noted the height of the boy between 3½ to 4 feet. This witness identified the weapon which was confronted to him as M.O.3. He also identified M.O.4 to M.O.6, the wearing apparels of his mother and M.Os.1 and 2, the dress of the accused. This is the evidence of P.W.3 with regard to the method and manner of the occurrence of incident.

11. P.W.3 was intensely cross examined. During the cross-examination, he stated that daily his father used to go from

the house at 08.00 a.m. and return at about 08.30 p.m. There were shrubs around his house and from the road, one cannot see the persons in the house. He denied the suggestion that on the date of incident he also went along with elder brother to the house of his grandparents at Koppaka and he did not witness who killed his mother and he was giving false evidence on being tutored by his father and police. He admitted that the accused and his father used to quarrel. He denied the suggestion that the accused was implicated in the case because he was having some disputes with his father.

12. On a close analysis, the evidence of P.W.3 would show that though he was put to stiff cross-examination, nothing specific was elicited to impeach the veracity of his testimony. As rightly argued by the public prosecutor, since the incident was occurred in the front yard of his house and as by the date of incident, summer vacations were going on, there was every possibility for this boy to witness the incident as being the inmate of the house. Though learned counsel argued that the prosecution has not stated the reason why the boy did not follow his elder brother to his grandparents, on that ground his evidence cannot be discarded. It is for the defence to elicit in the cross-examination why the boy did not go along with the elder brother. Merely because P.W.3 did not follow his elder brother, that cannot be taken as a ground to discard his

evidence, because there is no hard and fast rule that P.W.3 should also go along with his elder brother to his grandparents house. As already stated, P.W.3 is a natural witness to the incident and it is not established in the cross-examination that his evidence is an outcome of the tutoring. So his evidence is worthy of belief. He clearly deposed that the accused came with the heavy crow bar and stabbed seven times and thereby his mother fell down and died. The evidence of P.W.3 is corroborated by P.W.11. All the injuries mentioned by P.W.11 were found on the face and head of the deceased. The doctor found two fractures i.e., a fracture on the face of the skull and fracture of hyoid bone left cornu. The postmortem doctor clearly stated that injuries are possible with weapon like M.O.3. Therefore, the ocular evidence of P.W.3 is corroborated by the medical witness. In this regard, the argument of learned counsel that if the M.O.3, which is a heavy iron article is used by the accused, the resultant injuries would have been different cannot be given weight because P.W.11 has clearly stated that the injuries found on the dead body could be possible with a weapon like M.O.3. Therefore, the evidence of P.W.3 which could not be shattered in the cross-examination can be relied, though he happens to be the son of the deceased.

13a. Then we have the evidence of PW.2—husband of the deceased. He deposed that deceased—Suvama is his wife. He is the owner-cum-driver of the TATA Ace vehicle. He has two

sons i.e, PW.3 and one Pavan Kumar (LW.15). Accused is his cousin i.e, the son of senior paternal uncle and his house is situated behind the house of PW.2. The further version of PW.2 is that in his house himself and his wife and children are living. Daily at 7am he would leave the house along with his vehicle and return back by 5:30 or 6:00pm. His elder son completed 7th class and his younger son completed 5th class. Regarding the incident he deposed that accused suspected his wife as if having illegal contact with PW.9 and about two years prior to the incident, he beat his wife and drove her away from the house and since then she has been residing with her parents at Nandivada village. One or two months thereafter, the accused one day stabbed PW.9 in a hotel at Bogallu and in that connection the police of Dharmajigudem PS registered a case against the accused. Six months thereafter the accused was released on bail. The witness further deposed that accused suspected that the deceased and PW.8 assisted his wife in developing illegal contact with PW.9. After he was enlarged on bail, the accused brought a woman to his house and started living with her and once he sent that woman to kill PW.8 by giving her a knife and she went and stabbed in the neck of PW.8 and in that connection police registered a case against the accused and said lady. Regarding the grudge against the deceased, the witness deposed that on one or two occasions the accused raised hue and cry against the wife of PW.2 and so PW.2 placed the

matter before the caste elders who summoned the accused and admonished him. Then regarding the incident proper, PW.2 deposed that on 21.05.2012 at about 8:00am he left the house with his vehicle and returned home at 6:00pm. On the same day his elder son went to his maternal grandmother's house at Koppada due to summer vacation. His wife and PW.3 were alone in the house. While he reached the house, PW.3 ran towards him by raising cries. He stopped the vehicle at a distance of 20 feet from his house and found the accused pulling the crow bar from the body of deceased. Then he tried to approach the accused but he threatened to stab him with crow bar and ran towards eucalyptus garden. After the accused left the scene of offence, PWs.2 and 3 went near the deceased and found her dead. He noticed three stab injuries: i) injury near the mouth, ii) injury on the eye and iii) injury on the neck and deceased was in a pool of blood. The accused had taken away the crow bar along with him. PW.1 and LW.2 came to his house and observed the dead body. PW.1 gave report to the police about the incident. On the next day police conducted inquest over the dead body. This witness was cross-examined at length. During the cross-examination he stated that his house is situated at the fag-end of the colony. There is a eucalyptus garden of B.David and the house of S.Johnraju situated on the northern side of his house. There is fencing around his house with weed plants. He stated that inspite of the fencing the persons standing on the road

outside his house can see the persons in the varanda of his house since the road is at a higher level. He further stated in the cross-examination that the accused has a mango garden which was sold by the accused and his father. However, this witness had no role in the said sale transaction. He denied the suggestion that he was instrumental in selling the mango garden of the accused and in that connection he had a wrongful gain and thereby disputes arose between him and accused. He denied the further suggestion that the deceased got illegal contacts with one D.Ranga Rao (LW.19) and PW.9. He also denied the suggestion that the accused never stabbed PW.9 and a false case was foisted against him and the case was ended in acquittal. He also denied the suggestion that no incident of accused sending a lady to kill PW.8 and her stabbing PW.8 and registration of a case against the accused and that lady took place. He denied the suggestion that he omitted to state before police that soon after reaching his house he saw the accused pulling the crow bar from the body of deceased. He denied the suggestion that the deceased was killed by someone with whom she got illegal contacts and when the accused came to his house to see the dead body, he was falsely implicated due to the previous disputes of PW.2 with accused.

b) When analyzed the evidence of PW2, admittedly he was not a direct eye-witness to the incident proper but, according to him, when he came to home, he saw the accused pulling

the crow bar from the body of the deceased. If his evidence is found to be true, it will help prosecution to establish the presence of accused at the relevant time of incident and his evidence would help to corroborate the testimony of PW3 who is the direct eye-witness. Hence, the issue is whether the evidence of PW2 is trustworthy.

c) PW2 eaksout his livelihood by running auto. According to him, he leaves the home at 8.00 AM and return by 6.00 PM every day. The incident was occurred in the evening time at about 6.30 PM. Since the time of incident coincides with the time of usual arrival of PW2 to home, the possibility of PW2 witnessing the accused at the scene can be accepted. Further, as the incident was occurred in the front yard of his house, PW2 like PW3 can be termed as a natural witness. It should be noted that in Ex.P1—report, PW1 mentioned as if PW3 alone was at home and PW2 was not present. However, this fact need not be given much weight to discard the evidence of PW2. As rightly observed by the learned trial Judge, PW1 was not a direct eye-witness and he prepared Ex.P1 on the basis of information given by village servant who was also not an eye-witness to the incident. PW1, it appears, did not verify the fact with PW3. Therefore, the evidence of PW2 cannot be brushed aside solely on the basis of Ex.P1. On the other hand, PW3 whose testimony is already held to be trustworthy, has clearly stated about the arrival of PW2 to home the ghastly incident was occurred.

14. Apart from PW3, PW4 also deposed about the presence of PW2 at the place of incident. PW4 is the younger brother of PW2 and he also resides in the same locality at a distance of one furlong from the house of PW2. His version is that on hearing the news about the accused stabbing the deceased, he went to the house of PW2 and found the dead body of the deceased lying in front of her house. At that time he found PWs. 2 and 3 and some others present at the scene of offence. In the cross-examination, his version that he witnessed the presence of PWs.2 and 3 was not challenged. It was only suggested that due to disputes PW2 implicated accused and the said suggestion was denied. Thus, in view of the overwhelming corroborative evidence, the arrival of PW2 towards the end of the incident can be believed. Thus, the evidence of PWs.2 and 3 establishes the guilt of the accused. Added to it, the other circumstances such as police recovering MO3—crime weapon and Mos.1 and 2—blood stained clothes of the accused pursuant to the information given by the accused and forwarding them to FSL and the report of FSL (Ex.P15) showing that those MOs. contain human blood would support the ocular evidence of PWs.2 and 3 in establishing the guilt of the accused.

15a) Then, to establish motive, the prosecution examined Pws.2, 8 and 9. According to PW2, the accused suspected that his wife had illicit intimacy with PW9 for which deceased and PW8 have acted as mediators. PW8 deposed that she is a

resident of Bogolu village and living by doing labour work; she knows deceased-Suvarna and accused. She also knows Sathunuri Padma who is the wife of accused. The deceased and Padma were attending agricultural work in the field of PW9 most of the days. She further deposed that the accused suspected that his wife developed illicit intimacy with PW9 and deceased acted as mediator in that regard. In that context, the accused and his wife quarreled with each other and she deserted him and living with her parents. In the cross-examination she denied the suggestion that the deceased alone used to go to the field of PW9 and he has illegal contact with deceased. She denied further suggestion that wife of accused never went to the field of PW9 along with deceased. PW8 is an independent witness and we find no reason for her to speak falsehood. Her evidence clearly establishes the motive for accused to commit the offence.

b) PW9 deposed that he is an agriculturist and a resident of Bogolu village. He knows the accused and deceased. He got half acre of land and he was cultivating three acres of land on lease. The deceased used to come to his field to do agricultural work. He further stated that about one year prior to the incident the deceased died and he came to know that accused stabbed her. He also came to know that accused suspected his wife –Padma having illicit contact with him and he also suspected the deceased was the mediator for such illegal affair and so he stabbed her. He further deposed that

on 27.10.2010 while he was at a tea stall the accused came there and stabbed him with a knife on the suspicion that he had illegal contact with his wife and police registered a case against accused. In the cross-examination he stated that the case against accused was ended in acquittal. Thus, the evidence of PW9 also corroborates PW8 to a large extent and their evidence cumulatively established the motive.

16. So, on a conspectus of the evidence on record, it is clear that prosecution by cogent evidence proved the guilt of the accused beyond reasonable doubt. The trial Court rightly convicted the accused. None of the arguments raised by learned counsel for appellant could destabilize the findings of the trial Court on the guilt of the accused. The decision in **Kumar**'s case (1 supra) relied upon by the appellant will not help his cause. In that decision it was observed by the Honourable Apex Court that if the prosecution desires to rely on motive of the accused as a circumstance, it has to fully establish the motive like any other incriminating circumstance. The Apex Court further observed if the genesis of the motive is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. In the case on hand, as we have already discussed, the prosecution could by cogent evidence establish the motive aspect as well as the offence proper.

17. In the result, this criminal appeal is dismissed by confirming the conviction and sentence recorded by the learned Sessions Judge in S C.No113 of 2013.

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

U.DURGA PRASAD RAO, J

T.AMARNATH GOUD, J

Date: 29.12.2018
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