

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS.JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.44 of 2013

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

The accused, who is A1, in S.C.No.593 of 2011, on the file of the Additional Sessions Judge, Anantapur, is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Boya Pennappa by hacking him with sickles. A2, who is said to have committed the offence along with A-1 is absconding. Vide judgment dated 26.12.2012, the learned Sessions Judge convicted the accused and sentenced him to suffer imprisonment for life and pay fine of Rs.5000/- in default to suffer rigorous imprisonment for three months under Section 302 IPC.

2. The facts, as unveiled from the evidence of the prosecution witnesses, are as under:

(i) PW1 is the daughter-in-law of the deceased, while PW2 is the grand son of the deceased. PW3, who is a native of same place, knows the deceased and PW1. PW4 is the son of the deceased, while PW6 is the brother of A1.

(ii) On the date of incident, i.e., on 29.07.2010 when PW1 was inside the house, one Naresh came and informed him that a jeep dashed against the deceased and he fell down. When P.W.1 reached the spot and asked him the reason for sustaining injuries, the injured could not talk and requested him to shift to a hospital. Accordingly he was shifted to the Government General Hospital,

Anantapur. On the same day at about 10.10 a.m., PW13 the II Special Judicial Magistrate of First Class, Prohibition and Excise Court, Anantapur, on receiving hospital intimation (Ex.P19), recorded the dying declaration of the deceased. Ex.P20 is the dying declaration. On the same day at about 11.05 a.m., on receiving medical intimation of the said Boya Pennappa from the out-post police station of Government General Hospital, Anantapur, PW12 the SI of Police, Anantapur II Town Police Station, rushed to the hospital and recorded the statement of the injured (Ex.P13) in the presence of Medical Officer, Dr.R.Chowdary. Basing on the said statement, PW12 registered a case in Crime No.255 of 2010 under Sections 324, 307 read with Section 34 IPC of Anantapur II Town Police Station. Ex.P14 is the original FIR submitted to Addl.Judicial Magistrate of First Class. PW12 again visited the Government General Hospital and examined the injured, PW1 and recorded their statements. Subsequently, he visited the scene of offence and conducted a panchanama in the presence of PW8 and LW15 and seized MOs.1 to 5 under Ex.P8. He, then, prepared a rough sketch of the scene of offence, which is brought on record as Ex.P-15. He also recorded the statements of PWs.2 and 3. On 31.07.2010 at 06.30 a.m., on receiving the death intimation Ex.P16 from the Government General Hospital, Kurnool, PW12 altered the section of law and to one under Section 302 IPC read with Section 34 IPC. Ex.P17 is the altered FIR. Thereafter, he proceeded to the Government General Hospital, Kurnool and conducted inquest over the deadbody. Ex.P7 is the inquest report. Subsequent to the inquest, he sent the dead body

for post mortem examination. PW11 the Assistant Professor of Forensic Medicine, Government Medical College, Anantapur, conducted autopsy over the dead body. According to him, the cause of death was due to intra cranial bleeding with skull bone fractures resulting from head injury associated with multiple injuries. Ex.P11 is the post mortem certificate. PW14, who took up further investigation, proceeded to Rudrampeta village, secured the presence of PWs.5 and 6 and recorded their statements. On 11.08.2010, on receiving credible information about the location of the accused, he along with the mediators and staff proceeded to bus stop near Shiridi Sai Baba temple, Bellary road, Anantapur, stopped one TATA Sumo coming from Bellary side and caught the driver who was about to escape. On interrogation, he confessed about the commission of the offence. Thereafter, MO6 Hunting Sckle was recovered under the cover of panchanama-Ex.P21.

(ii) On completion of investigation, PW 14 filed a charge sheet, which was taken on the file as PRC No.173 of 2010, on the file of Additional Judicial Magistrate of First Class, Anantapur. On committal to the Court of Additional Sessions Judge, Anantapur, the same came to be numbered as S.C.No.593 of 2011.

(iii) On appearance, charge under Section 302 IPC was framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

(iv) In support of its case, the prosecution examined PWs.1 to 14 and got marked Exs.P-1 to P-23 and M.Os.1 to 6. Out of 14 witnesses examined by the prosecution, PWs.1 to 6, 8, 9 and 10 did

not support the prosecution case and were treated as hostile. No oral or documentary evidence was adduced on behalf of the defence.

(v) After the closure of prosecution 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.

(vi) Basing on the material on record, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

3) Learned counsel for the appellant mainly submits that there is absolutely no material to connect the accused with the crime. He pleads that two Dying Declarations which are placed on record are inconsistent with each other and the same cannot be made the basis to convict the accused. He took us through the two D.Ds., to show that no importance can be given to the said D.Ds. In the absence of any oral evidence he would submit that these two D.Ds. which are inconsistent, cannot form the basis for conviction.

4) Learned Public Prosecutor would contend that though the prosecution witnesses did not support the case, but recording of two dying declarations and the contents therein cannot be disputed. He would submit that even if one of the D.Ds., recorded by the S.I., is excluded from consideration, still there remains another D.D. recorded by the Magistrate, which cannot be rejected from consideration. He contended that even if there are more

than one D.Ds., and even if there is inconsistency, the one, which imposes confidence in the mind of the court, can be acted upon to base a conviction.

5) The point that arises for consideration is ; “Whether the accused is responsible for the death of the deceased?”

6) As stated above, all the witnesses examined by the prosecution including the family members of the deceased did not support the prosecution case and they were treated as hostile. In order to appreciate the two D.Ds., it is necessary to note that the incident in question took place on 29.07.2010. As per the charge, on that day at about 9.00 a.m., A-1 along with A-2 dashed the deceased Boya Pennappa with Tata Sumo bearing No.A.P.-02-TV-0808 while he was going on a cycle near Children school on the road of Ram Nagar extension area and thereafter hacked him with sickles. The first D.D. came to be recorded by P.W.13, the Special Judicial Magistrate of First Class, Prohibition and Excise Court, Anantapur. The intimation about the admission of the deceased and the requisition for recording the D.D., was received by the Magistrate at 10.10 a.m. Immediately thereafter he proceeded to the hospital for recording the D.D., and concluded the recording of the D.D., at 11.10 a.m.

7) The evidence of P.W.13, the Magistrate who recorded the statement, shows that he obtained the opinion of the duty CMO with regard to the mental condition of the deceased and also put some preliminary questions to know the mental status of the deceased. After satisfying himself with regard to the answers

given by him, and on being satisfied that the deceased is in a fit state of mind, recorded the statement. When asked as to what happened, the deceased stated that “on that day at about 9.10 a.m., or 9.15 a.m., he left his house to go to Anantapur and after crossing Rudrampeta over bridge and when he reached a small private school, whose name he does not remember, on a bicycle, he observed one white colour sumo came from his behind and dashed against the cycle resulting in he falling down. Then their villager one Sudhakar along with two or three followers whose names he does not know got down from the Sumo, armed with sickles and sticks and beat him. Thereafter they left the place in the same Sumo. It is stated that the said persons beat him on the right eye, middle and back side of the head. He sustained fracture of left foot. One Nagireddy of the village is said to have seen him and shifted him in an Auto to the Hospital. According to him, himself and Sudhakar got misunderstandings since 3 years. He claims himself to be the senior paternal uncle of Sudhakar. He also refers to existence of panchayats in the house of Ex.M.L.A. When asked whether he has any other enemies, he states that except Sudhakar there are no enemies to him.” The recording of the said statement was concluded at 11.10 a.m., on 29.07.2010. A perusal of the said statement shows that one Sudhakar who is a resident of the village, to which the deceased also belongs to, dashed him from back side and when he fell down, three persons including Sudhakar got down from the vehicle, attacked him with sickles and thereafter left the place. According to him, the reasons for attack was existence of certain disputes between both of them.

8) Immediately, within 5 minutes thereafter, another statement of the deceased came to be recorded by P.W.12-S.I. of Police, which formed the First Information Report. The said statement reads as under:-

“I am retired from A.P.Milk Dairy, Anantapur residing at Rudrampet. I am having 3 sons. About one year back from now, misunderstandings developed between me and my co-brother Obulapathi's son Sudhakar with regard to a house situated in Rudrampeta. About one week back elders convened a panchayat in the house dispute. Today i.e., on 29.07.2010 morning I have got some work in Anantapur town and that I started to go to Anantapur from my house on my cycle. Morning at about 9.00 a.m., I was riding on my cycle near new bridge at Rudrampeta, one vehicle came my back side and driver of that vehicle came with speed and dashed y cycle back side. Myself and my cycle fallen on the ground. I have fallen on the ground and saw (AP 02 TV 0808) Sumo, my co-brother Obulapathi's son Sudhakar and another person aligned from Sumo armed with sickles in their hands, came towards me by stating that “ee naa kodukunu champandra” saying so, Sudhakar hacked on my head with a sickle. I have sustained hacked bleeding injuries on my head and also on my backside. Another person also hacked me with his sickle on my left eye, back side of the head with his sickle. I raised huge cries, on hearing the same they ran away from that place. One Ramesh who is the grandson of Ramakka of Rudrampeta went to my house and informed about the incident. After sometime, my daughter-in-laws viz., Vannuramma and Varalakshmi took me in an auto to Anantapur Govt. Hospital and admitted me in the hospital and the doctor treated me. Due to house dispute the above Sudhakar and another person with an intention to kill me hacked me with sickles. You came and enquired me, I told what has happened. Read over and explained to me and the same is correct.”

9) A reading of the said statement shows that on the date of incident at about 9.00 a.m., while he was riding the cycle near

new bridge, at Rudrampeta, one vehicle came from his behind and dashed his cycle. After falling on the ground, he saw the vehicle number as AP 02 TV 0808, from which, his co-brother Sudhakar and other persons who armed with sickles in their hands got down, saying that this man should be killed. Sudhakar is said to have hacked on the head with sickle. Pursuant to which, the deceased sustained bleeding injuries on the head and also on the back side. Thereafter, another person hacked him with sickle on his left eye, and back side of the head. The injured is said to have raised hue and cry and on hearing the same, they ran away from that place. One Ramesh, who is grandson of Ramakka of Rudrampeta, went to the house of the deceased and informed about the incident. Thereafter, his daughters-in-law viz., Vannuramma and Varalakshmi took him in an auto to Anantapur Govt. Hospital and admitted him. It is stated that due to house dispute, the said Sudhakar and another person hacked him with sickles, with an intention to kill him.

10) A reading of these two statements show that in earlier statement the deceased failed to give the vehicle number, in which the accused have come. He did not refer to any specific overt acts against any of the accused and according to him one Nagireddy of their village, who has seen the incident, took him in an Auto to the hospital. Within five minutes thereafter a different version is sought to be placed on record. The statement recorded by the S.I. of Police, contains the endorsement of the Doctor and also the thumb impression of the injured. As per the said

statement, on the date of incident, he claims to have seen the vehicle number after falling down on the road. His co-brother Sudhakar and another person got down from the Sumo, armed with sickles and he refers to specific roles played by each of the accused in attacking him. He further states that on hearing the cries, they ran away from that place. Then one Ramesh is said to have conveyed the information about the incident to the family members, pursuant to which, his daughters-in-law came there and took him to the Government Hospital, Anantapur and admitted him there. The said version of Ramesh going to the house of the injured, informing about the incident, pursuant to which the daughters-in-law of the deceased coming to the scene of offence and taking him to the Hospital is not found in the earlier D.D. On the other hand, one Nagireddy of their village is said to have taken him to the hospital in an Auto. Further, in the first D.D. recorded by the Magistrate he refers to the presence of three persons as the assailants, who attacked him, but in the second D.D. recorded by the police, he refers to only two persons getting down from the Sumo and attacking him. Before the attack, both of them claims to have stated that the deceased should be killed, which is again lacking in the first D.D. Merely because, the names of the accused are mentioned and since some role is attributed to him, which is common in both the D.Ds., one cannot convict the accused by taking into consideration the common features in both the D.Ds. when there are so many inconsistencies in both the D.Ds.

11) Further, in the first D.D., recorded by the Magistrate, the deceased stated that he was attacked and beaten on the upper side of right eye, forehead, middle of the head and on the back side. He also stated that his left foot was fractured. The post-mortem Doctor in his evidence states that injuries are due to road accident. That being the position, it is strange as to how the left leg got fractured when none of the accused have attacked him at that portion of the body. Further, the evidence of the post-mortem Doctor show that left side ribs 2 to 8 got fractured at anterior lateral angle and left lung upper lobe diffusely contused, lower lobe noted with septic foci. Left femur from its middle part of the thigh adjacent knee joint is fractured into multiple pieces. But both the D.Ds., do not anywhere indicate attack on the chest, stomach or abdomen. On the other hand, both the D.Ds., refers to attack on forehead, on upper side of right eye and on the back. Further, in the medical intimation sent to Station House Officer, police outpost, Government General Hospital, Anantapur, it was mentioned that the deceased sustained injuries due to assault by unknown persons at around 9.00 a.m., on 29.07.2010 at Rudrampeta, Anantapur. Definitely, the appellant herein is not an unknown person. One Nagireddy, who is claimed to have brought the injured to the Hospital was a resident of same village. The daughters-in-law, who brought the deceased to the hospital, were known to the appellant, as he is none other than the co-brother of the deceased. If really, the appellant has participated in the commission of the offence, they could have atleast mentioned, if not his name, but by saying that the assault was by a known

person. In view of the discrepancy between the versions given in D.Ds., and the medical evidence, a doubt arises as to whether really the deceased is speaking the truth. In the absence of any oral evidence connecting the accused with the crime and having regard to the findings arrived at, we feel that the D.Ds. recorded by the Magistrate as well as S.I. of Police, cannot be made the basis to convict the accused. Hence, the appellant/accused is liable to be acquitted.

12) In the result, the Criminal Appeal is allowed. The Conviction and sentence recorded against the appellant/accused in the judgment dated 26.12.2012 in S.C.No.593 of 2011 on the file of the Additional Sessions Judge, Anantapur, for an offence punishable under Section 302 IPC, are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime.

13) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

Dt: 16.02.2018
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