

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL APPEAL No.207 OF 2013

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

1) The sole accused in Sessions Case No.343 of 2012 on the file of the Sessions Judge, Mahabubnagar, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Lakshma Reddy (hereinafter referred to as "the deceased"), on 12.09.2011 at about 5.00 p.m. Vide judgment, dated 27.02.2013, the learned Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.100/- for the offence punishable under Section 302 IPC.

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

PW.1 is the son of the deceased. PWs.2 and 3 are the agnates of the deceased, {i.e., sons of the brother of the deceased}. PW-5 is the wife of the deceased. PWs. 6 and 7 are eye-witnesses to the incident. There were disputes between the family of the appellant/ accused and the deceased since twenty years. On 12/ 09/ 2011 at about 05:00 p.m., while the deceased, Lakshma Reddy was grazing cattle in the fields of Gundlapally Mohan Reddy, the appellant/ accused armed with a stick [cart peg], beat him indiscriminately all over his body with an intention to kill

him. Earlier to the incident, there were some criminal cases between the family of PW-1 and the appellant/accused in respect of land disputes. On the date of incident at about 04:00 p.m., while PW-2 was ploughing his land, he noticed the appellant/accused attacking the deceased. On seeing the same, he intervened and separated both the accused and deceased. PW-7 and one Indiramma, who were grazing cattle rushed to the spot and witnessed the incident. Further PW-4 and PW-6 also came to the scene of offence and on seeing all of them the accused ran away leaving the deceased. Immediately PW-2 is said to have informed about the incident to PW-1 on phone. Pursuant thereto, PW-1 came to the scene of offence and took the injured father to the Veldanda Police Station. Basing on the report given by PW-1, a case in Crime No.83 of 2011 came to be registered by PW-12 against the accused for the offence punishable under section 307 of I.P.C. and issued Ex.P8 the first information report. He examined PW-1, PW-5, LW-3 Gundlapally Laxma Reddy and PW-2 and recorded their statements. Thereafter, he sent the injured to the Govt.Civil Hospital, Kalwakurthy for treatment but on the same day the deceased died at about 06:45 p.m., while undergoing treatment in the hospital. PW-12 altered the Section of law from Section 307 I.P.C. to Section 302 I.P.C. Further investigation in this matter was taken by PW-13 the Inspector of Police, Kalwakurthy. On receiving the altered F.I.R., PW-13 visited the hospital along with mediators, where he examined PW-3, LW-6 Gummala Madhusudhan Reddy and PW-6 and recorded their statements. He,

then held inquest over the dead body of the deceased in the presence of PW.9 and another. Later, he sent the dead body to Community Health Centre, Kalwakurthy, for postmortem examination. PW.11-the Civil Assistant Surgeon, Community Health Centre, Kalwakurthy, conducted autopsy over the dead body of the deceased and issued Ex.P7-the postmortem examination Certificate. According to the doctor, injury No.8 would be possible due to rupture of spleen which causes '*Hemoperitonium*', which is sufficient to cause death in the ordinary course of nature. PW-11 opined that the death is about 24 to 36 hours prior to postmortem examination.

Thereafter, PW-13 proceeded to the scene of offence, where he prepared a panchanama of the scene in the presence of PW.9 and another. He also got prepared a rough sketch of the scene, which is placed on record as Ex.P4. During the course of observation he seized MO-1 blood stained towel, MO-2 blood stained banyan and MO-3 Dhoti.

On 16/9/2011, PW-13 arrested the appellant/accused at Ankamonikunta, and recorded his confessional statement in the presence of PW.10 and another. Pursuant to his confession, the accused lead them to his agricultural well, from where he produced MO-4 cart-peg, which was seized under Ex.P-6 and sent to F.S.L. for analysis. After receiving Ex.P-11-the F.S.L. report, on 01/10/2011, he filed requisition before the Judicial Magistrate of First Class, Achampet for recording the 164 Cr.P.C. statements of

PWs. 1, 2, 4, 6, one Laxma Reddy and Indiramma. After completion of investigation and receiving all documents, PW-13 filed the charge sheet before the Court of the Judicial Magistrate of First Class, Kalwakurthy. On committal of the case to the Sessions Division under Section 209 Cr.P.C., the same came to be numbered as S.C.No.343 of 2012.

3) Basing on the material 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) In support of its case, the prosecution examined PWs.1 to PW-13 and got marked Exs.P-1 to P-11 and MOs. 1 to 4. 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 evidence was adduced on behalf of the accused, except marking Exs.D1 to D4.

5) On appreciation of the evidence on record, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there is absolutely no material connecting the accused with the crime. According to her, none of the witnesses have really witnessed the incident and they have been set up by the prosecution party because of some disputes between them. It is her contention that though the witnesses in their chief examination stated the accused

attacked the deceased, but failed to mention the specific overt acts against the accused. She would further contend that as per the evidence of the postmortem doctor, there is any amount of doubt as to the time when the deceased was attacked. She further contends that the evidence of PW.10 runs contra to the evidence of the investigating officer to show the recovery of weapon used in the commission of offence. Having regard to the circumstances stated above, she would contend that the appellant has been falsely implicated in the case.

7) On the other hand, the learned Public Prosecutor would contend that the finding of the Sessions Court with regard to presence of accused and he committing the offence being witnessed by PWs.2, 5, 6 and 7, warrants no interference. He took us through the judgment of the Sessions Court to show that PWs.2, 5, 6 and 7 have witnessed the accused attacking the injured, leading to his death.

8) In order to appreciate the rival submissions made it would be appropriate to extract the evidence of the witnesses, who claimed to have seen the incident. The prosecution mainly pressed into service the evidence of PWs.2, 5, 6 and 7 to speak about the incident in question. Before advertng to the same, it is to be noted here that the first information report given by PW.1, the son of the deceased, was based on the information furnished by Venkat Narayana Reddy. In the first information report which was given to PW.12-the Sub-Inspector of Police, it would show that on the date

of incident ie., on 12.09.2011 at about 5.00 p.m., in the fields of Mohan Reddy, the father of PW.1, who was aged about 68 years, was grazing cattle. At that time, accused, who bore grudge against them because of earlier land disputes, picked up a quarrel with the deceased and beat him with stick on hands and legs, pursuant to which the deceased fell down. Thereafter, his uncle PW.2, who saw the incident, rushed there. At that time the accused beat his father and ran away. On coming to know about the incident through phone, he went there, took his father in an auto, brought him to the police station and informed him about the incident.

9) From the first information report given by PW.1, it is clear that he came to know about the incident in question through a phone call. His information is about the accused beating his father with stick on hands and legs, leading to his fall on the ground. But in the evidence of the witnesses, who claim to have seen the incident, there is no reference to any quarrel prior to the incident or about the accused beating the deceased with stick on hands, legs and shoulder, leading to his fall on the ground. None of the witnesses refer to any specific overt acts against the accused. Even PW.1 in his evidence never deposed about the contents of Ex.P1 report given by him.

10) Coming to the evidence of eye witnesses, as stated earlier, the prosecution is mainly relying on the evidence of PWs.2, 5, 6 and 7. PW.2, in his evidence deposed that on that day at about

4.00 p.m., he went to a well to drink water. While he was returning from the well he noticed the accused attacking the deceased with stick resulting in injuries. On seeing the incident, he raised cries, rushed towards the deceased and separated the deceased from the accused. His evidence is also to the effect that the other witnesses came to the place after he reached the scene. In the cross-examination he admits that he heard a galata from a distance of one furlong and by the time he reached the scene, the deceased was already down on the ground. He further admits that when he was running towards the deceased by raising cries, the accused left the scene east towards his fields. Three minutes later PWs.4 to 7 came to the scene. It would be appropriate to refer to the relevant portion in his cross-examination, which is as under:

“I heard the galata one furlong away while I was present. By the time I reached the scene already Lakshma Reddy fell down on the ground. When I running towards Lakshma Reddy by raising cries the accused left the scene east towards his fields. Lakshmamma, LW.10, Indiramma LW.11, Parvath Reddy LW.5, Lingaiah LW.7, Eshwaraiah LW.9 came to the scene three minutes after I reached the scene.”

11) He further admits that except PW.1, he did not inform about the accident to anybody till he was examined by the police. He further admits in the cross-examination that while he was in the fields of Mohan Reddy he heard the cries of the deceased. Relevant admissions are as under:

“While I was in the fields of Mohan Reddy I heard the cries of the deceased. I stated before the police that while I was present on the road I heard the cries.”

12) Insofar as the usage of the weapon is concerned, PW.2 states as under:

“M.O.4 stick would not contain my signature. The accused has thrown M.O.4 stick at the scene after the incident. The police seized M.O.4 stick on the next day after my statement was recorded at the scene. I have shown M.O.4 stick to the police with which the accused assaulted the deceased.”

13) From the evidence in chief and cross-examination of PW.2, it appears that in the chief examination he claims to have noticed the accused attacking the deceased with a stick and on seeing the same, he raised cries, rushed towards the deceased and separated both the accused and the deceased. But however in the cross-examination he gives a go bye to the said version and admits that by the time he reached the scene, the deceased fell down on the ground. While he was running towards the deceased, the accused left the scene towards east of his fields. Therefore, his admission in the cross-examination throws any amount of doubt of he witnessing the incident. Further at one breath he says that while he was returning from the well after taking water he heard the cries and rushed towards the deceased. In the cross-examination he admits that by the time he reached the scene, the deceased fell down on the ground. Admittedly, PW.2 claims to have heard the galata from a distance of one furlong. In view of the above, a doubt arises whether PW.2, who was projected as an eye witness

to the incident, has really seen the incident, since his own version shows that by the time he reached to the scene the deceased was down on the ground and the accused was moving towards his fields on east direction. Therefore, the act of accused going towards his field may not by itself inculcate him in the commission of offence.

14) Coming to the evidence of PW.3, he deposed that while he was going to his fields at about 4 to 5 p.m., he heard the cries of PW.2 and other women, who were grazing goats in the lands of Mohan Reddy. On hearing the galata, he rushed to the scene. By the time he went to the scene, PW.2 and other two ladies rescued the deceased and the accused was leaving from that place. He claims to have noticed the deceased with bleeding injuries. In the cross-examination, PW.3 admits that on the date of incident he was alone proceeding on the road when he heard the gatala. By the time he reached the scene, PWs.2 and 7 were already present on the spot. He further admits that the accused was proceeding towards east, which he noticed from the road. It would be appropriate to extract the relevant admissions in the cross-examination, which are as under:

“I was alone proceeding on the road when I heard the gatala. By the time, I reached the scene PW.2, LW.10 Lakshamma and LW.11 Indiramma were already present at the alleged spot. By the time I reached the scene already Lakshma Reddy had fallen down. The accused was proceeding towards east when I noticed him from the road. PW.1 and LW.2 wife of the deceased came to the spot within half an hour after I reached the scene. After injured Lakshma Reddy sent to the PS in an auto. I left

my house from the scene. PW.1 telephoned me about the death of his father around 5.45 or 6.00 p.m., on the date of incident.”

15) From the admissions of PW.3 it is clear that by the time he went to the scene, the entire incident was over and he only noticed the accused moving east towards his land. Though initially in his earlier statement he claims to have stated that himself and PW.2 together went to the scene, but however the said version was given a go bye. From the above, it is clear that he has not witnessed the incident and by the time he reached the scene everything was over. PW.4, who was examined as an eye witness to the incident, did not support the prosecution case and he was treated hostile by the prosecution.

16) PW.5 in her evidence stated that she was present near the scene and attending to agricultural works. Though in the chief examination she stated that she was present near the scene of offence and after hearing the cries of her husband, she rushed to the scene of offence, but in the cross-examination she categorically states that she was not an eye witness to the incident. As stated earlier, the evidence of PWs.2 and 3 clearly establish that PW.5 came to the scene after the entire incident is over. If the evidence of PW.2 is tested with the evidence of PW.5, PW.2 in his cross-examination admits that three minutes after he reached the scene, the other witnesses came to the scene. Therefore, the version of PW.5 that she heard the cries of the deceased and on hearing the cries, she came to the scene and saw

the accused moving east towards his fields appears to be quite improbable. To a suggestion that she did not state before the police that the accused beat her son and when she enquired as to why he beat her son, the accused also beat her and pushed her on the ground, was denied.

17) Before proceeding further, we intend to refer to the evidence of the investigating officer with regard to veracity of the evidence of PW.5. In her earlier statement she stated before the S.I. of police, as in Ex.D3, that while her husband was taken to Kalwakurthy hospital, on the way Madhusudhan Reddy boarded auto at the chowrasta. So also deceased making a statement with regard to the manner in which he received injuries to PW.5, while he was being taken to the hospital. Therefore, the theory put in by the prosecution that PW.5 also witnessed the incident appears to be incorrect.

18) Smilar is the version of PW.6. He is a resident of Ankamoni Kunta village, eking his livelihood by doing cultivation. His land is situated 50 yards away from the scene. The deceased was grazing his bulls in the land of Mohan Reddy at the time of incident. At that time the accused came there armed with a stick and beat the deceased. According to him, on hearing the cries of PWs.2 to 5, he reached to the scene and noticed the injuries on the deceased. It is his version that on seeing them, the accused ran away from the scene. They claimed to have noticed injuries on the legs and head

of the deceased. Immediately thereafter PW.2 is said to have informed to PW.1. In the cross-examination, he admits as under:

“PW.2 was at the scene earlier to me, PW.3, PW.4, LW.10 Lakshmamma and LW.11 Indiramma. By the time I reached the scene accused fled away.

The deceased sustained three head injuries and the same was noticed by me while the accused beating the deceased with a stick on his head.”

19) From the admissions, it appears that by the time he reached the scene, PWs.2, 3, 4 and 7 were present. He also admits that by the time he reached the scene, the accused fled away. Therefore, his version in chief about witnessing the incident appears to be totally false. One other circumstance which falsifies his version is that he claims to have seen the accused beating the deceased with a stick on his head causing three injuries, but PW.11-the postmortem doctor nowhere refers to the presence of any injury on the head of the deceased. On the other hand, out of eight injuries, injury No.1 is on left hand, injury No.2 on right hand, injury Nos.3 to 5 on left leg, injury No.6 is on chest, injury No.7 is fracture of vertebra and injury No.8 is multiple injuries over back of the chest. Therefore, his version that he saw the deceased being beaten by the accused on head, appears to be totally false. Further, PW.6 in his evidence admits that PWs.3 and 4 came after his arrival, which is not the case of PWs.3 and 4.

20) Similarly, PW.7 toes in line with the evidence of PW.6. In the cross-examination, PW.7 admits that by the time he reached

the scene, the accused left the scene. Relevant portion in the cross-examination is as under:

“By the time we reached the scene accused already left the scene.”

21) From the evidence of these witnesses, it is clear that none of them have seen the actual assault. Though in the chief examination all the witnesses categorically deposed about witnessing the attack on the deceased by the accused, but all of them admit in their cross-examination that by the time they went to the scene, the accused left the scene. Except PW.2 none of the witnesses speak about the accused beating the deceased.

22) Insofar as the recovery of M.O.4 stick, PW.13 in his evidence states that on 16.09.2011, he effected the arrest of the accused at Ankamonikunta, at the fields of the accused. In the presence of mediators namely PW.10, he recorded the confessional statement of the accused, which is placed on record as Ex.P.6. Pursuant to the confession made, the accused lead them to the agricultural well, where the accused produced M.O.4 cart peg, which was used by him in the commission of offence. This was on 16.09.2011. PW.10, who was the mediator for the alleged recovery of cart peg, in his cross-examination admits that on the next day of the incident which was on 13.09.2011, the C.I. of Police called him to the police station. At about 3.00 p.m. he along with Venkat Reddy went to the office of Circle Inspector together. They were present in the office of C.I. for one hour. He signed on Ex.P6 at the circle office. The accused brought M.O.4 stick from outside and

produced before the C.I. of Police. Till the production of stick, he was in the office of C.I. of Police. The accused was in the police custody from the morning ie. on the date when his confessional statement was recorded.

23) From the admissions elicited through the evidence of PW.10, a doubt arises as to the recovery of M.O.4 stick. If really the accused made a confession, which lead to recovery of M.O.4 stick, there was no need for the police to show a make believe recovery of M.O.4.

24) At this stage, we also intend to note about the findings given by the learned Sessions Judge. Strangely the learned Sessions Judge relied upon a statement said to have been made by the deceased while he was being taken to the police station before being shifted to the hospital. PW.12 claims to have recorded the said statement. Neither the said statement contains the signature of the deceased nor marked through PW.12, but the same was sought to be relied upon by the learned Sessions Judge as a piece of corroborating material to the evidence of PW.5 to show that the deceased made an oral dying declaration before PW.5. But as observed earlier, PW.5 never stated in her earlier statement about the deceased making such a statement before her. Even assuming for the sake of arguments, that it can be used as a dying declaration, but the said statement should have brought on record atleast through the evidence of PW.12. In the absence of any evidence, we feel that the trial Court erred in relying on the said

statement. Viewed from any angle, we feel that the evidence adduced by the prosecution is not sufficient to base a conviction.

25) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 27.02.2013 in S.C.No.343 of 2012 on the file of the Sessions Judge, Mahabubnagar, for an offence punishable under Section 302 IPC are set aside. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

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

C.PRAVEEN KUMAR, J

ABHINAND KUMAR SHAVILI, J

12.02.2018
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