

HIGH COURT FOR THE STATE OF TELANGANA

HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1256 OF 2012

Date: 20.08.2019

Between:

Dyarangula Pedda Ramesh

...Appellant/Accused

AND

The State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court of Andhra Pradesh,
Hyderabad.

... Respondent/Complainant

Counsel for the Appellant

: Sri A. Gayathri Reddy

Counsel for the Respondent

: The Additional Public Prosecutor

The Court made the following:

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the appellant/Accused No.1, aggrieved by the judgment, dated 23.11.2010, passed in Sessions Case No.229 of 2008 by the III Additional District & Sessions Judge (Fast Track Court) at Medak, whereby, the appellant/Accused No.1 found guilty of the offence under Section 302 of IPC and sentenced to undergo Imprisonment for Life and to pay fine of Rs.500/-, in default, to undergo Simple Imprisonment for two months.

2. In brief, the case of the prosecution is that on 16.03.2008, the *de-facto* complainant Dundugula Nagamma (P.W.1) went to Alladurg Police Station and lodged a report stating that she has two brothers. Her younger brother Yellaiah was working in Pothanshettipally village and another brother Jarpat Dakaiah (hereinafter referred to as 'deceased') was living in Hyderabad by doing collie work and used to stay in her house whenever he visits Alladurg village. On 15.03.2008, the appellant/A.1-Dyarangula Pedda Ramesh came to her house and took away the deceased beating him with a stick. At that time, the husband of the de-facto complainant was present in the house and questioned the appellant/A.1 about taking the deceased with him. On that, the appellant/A.1 replied that his concubine had gone with somebody else on the directions of the deceased and hence, he is taking him to enquire about the whereabouts of his concubine. At that time, one Agamma (A.2) was also present with the appellant/A.1. The appellant/A.1 and A.2 took the deceased to the house of A.2 and beat him and it was witnessed

by Dandu Pochaiah (P.W.5) and others. The deceased was beaten up by the appellant/A.1 on the instigation of A.2 to A.5. Therefore, she suspected that the A.1 to A.5 killed the deceased. Then, A.2 set fire to the legs of the deceased. After killing the deceased, A.3-Dandugula Pentamma and A.4-Dyarangula Chinna Ramesh and one Laxmamma shifted the dead body of the deceased from the house of A.2 to the burnt hut of the deceased. The de-facto complainant came to know through P.W.5-Pochaiah that the deceased died at 12:00 PM on the intervening night of 15/16.03.2008 in the house of A.2. The de-facto complainant went and saw the dead body of the deceased with injuries on hand. The deceased was killed by A.1 to A.5 and hence, requested to take action against them.

3. Basing on the said report lodged by the de-facto complainant, P.W.8-Sub-Inspector of Police, Alladurg Police Station, registered a case in Crime No.18/2008 for the offences under Sections 302, 109 read with 34 of IPC and issued express FIR. Thereafter, P.W.10-Circle Inspector of Police, Jogipet Police Station, took up further investigation of the case, completed the investigation and laid charge-sheet before the Court of Judicial Magistrate of First Class, Jogipet, for the offence under Section 302 of IPC against the appellant/A.1, and for the offences under Section 109 read with 34 of IPC against A.2 to A.5.

4. The learned Magistrate has taken cognizance of the case against A.1 to A.5 in P.R.C.No.22 of 2008 and committed the case to the Principal District and Sessions Judge, Medak at Sangareddy, since the offence under Section 302 of IPC is exclusively triable by the Court of Session. On committal, the learned Principal District

and Sessions Judge, Medak at Sangareddy, had made over the case to the Court below for disposal in accordance with law. After appearance of the accused, the trial Court framed charges under Section 302 IPC against the appellant/A.1, and Section 109 read with 302 of IPC against A.2 to A.5., read over and explained to them for which, they pleaded not guilty and claimed to be tried.

5. To prove the case of prosecution, P.W.1 to P.W.10 were examined and Exs.P.1 to P.12 were marked, besides case properties MOs.1 to 8. P.W.1 is the *de facto* complainant/sister of the deceased, who lodged Ex.P.1 complaint with the police. P.W.2 is the husband of P.W.1. P.W.3 and P.W.4 are the eye witnesses to the incident. P.W.5 is a panch witness for scene of offence and inquest. P.Ws.6 and 7 are the panch witnesses for confession of the appellant/A.1 and recovery of Material Objects. P.W.8 is S.I. of police, Alladurg, who issued Ex.P.8 FIR in this case. P.W.9 is the doctor who conducted Post Mortem Examination over the dead body of the deceased and who issued Ex.P.9-PME Report. P.W.10 is the Circle Inspector of Police, Jogipet, who conducted investigation and laid charge sheet.

6. After closure of prosecution evidence, when the accused were examined under Section 313 of Cr.P.C explaining the incriminating material appearing against them, they denied the same and stated that they were falsely implicated in the case.

7. The trial Court, on analysis of both oral and documentary evidence and the submissions put-forth before it, convicted the appellant/A.1 for the offence under Section 302 of IPC and sentenced him as indicated supra and acquitted A.2 to A.5 for the offence under

Section 109 read with 302 of IPC. Aggrieved by the same, the appellant/A.1 preferred this criminal appeal.

8. Heard arguments of Smt.A. Gayathri Reddy, learned counsel for the appellant/A.1 and Smt.J.Sridevi, learned Additional Public Prosecutor for the State and perused the record.

9. Learned counsel for the appellant/A.1 would contend that the Court below erroneously convicted and sentenced the appellant/A.1 for the offence under Section 302 of IPC. All the prosecution witnesses are interested witnesses. The findings recorded by the trial Court are contrary to the evidence on record. There are omissions and contradictions in the testimony of the prosecution witnesses. The alleged incident took place in the dark night. Further, there were thorny bushes at that place. Therefore, there was no sufficient opportunity to the witnesses to identify the appellant/A.1. There are no direct witnesses to the alleged beatings and causing death of the deceased. The prosecution failed to prove the guilt of the appellant/A.1 beyond reasonable doubt and ultimately prayed to acquit the appellant/A.1 for the offence under Section 302 of IPC by setting aside the conviction and sentence recorded against the appellant/A.1 under Section 302 of IPC, vide judgment under challenge.

10. On the other hand, the learned Additional Public Prosecutor would contend that there are direct witnesses to the alleged incident. P.W.3 and P.W.4 are the neighbours of appellant/A.1. They had sufficient opportunity to see the deceased being taken away by appellant/A.1. Their evidence remained unshaken in their cross-examination. There is ample evidence on record to establish the

scene of offence as well as the appellant/A.1 causing death of the deceased. The deceased was brutally murdered by the appellant/A.1. The trial Court had elaborately dealt with all the contentions raised on behalf of the appellant/A.1 and rightly convicted him of the offence under Section 302 of IPC. There is nothing to take a different view and ultimately prayed to dismiss the appeal by confirming the conviction and sentence recorded against appellant/A.1.

11. In view of the submissions made by both sides, the following points have come up for determination in this appeal:

- 1. Whether the appellant/A.1 had caused the death of the deceased Jarpat Dakaiah?**
- 2. Whether the prosecution proved the guilt of the appellant/A.1 beyond reasonable doubt for the offence under Section 302 of IPC?**
- 3. Whether the conviction and sentence recorded by the trial Court against the appellant/A.1 for the offence under Section 302 of IPC is liable to be set aside?**
- 4. To what relief?**

12. POINTS: The specific case of the prosecution is that the deceased Jarpat Dakaiah said to have sent the concubine of the appellant/A.1 with some other person. The appellant/A.1 wanted to know the whereabouts of his concubine. In that process, on 15.03.2008, the appellant/A.1 came to the house of the de-facto complainant, where the deceased was present, dragged the deceased from the house and took him to the house of A.2, beat him brutally and caused his death. The dead body of the deceased was found in front of the house of A.2 in the morning hours of 16.03.2008. On a

report (Ex.P.1) lodged by P.W.1-sister of the deceased at 10:00 AM on 16.03.2008, the police registered a case against the appellant/A.1 for the offence under Section 302 of IPC and against the other accused (A.2 to A.5) for the offence under Section 109 read with 34 of IPC and took up investigation.

13. The evidence of P.W.10-Circle Inspector of Police, Jogipet, reveals that he conducted scene of offence panchanama in the presence of panch witnesses and conducted inquest panchanama over the dead body of the deceased on 16.03.2008. M.O.2-Bloodstain earth and M.O.3-control earth were collected from the scene of offence. During the conduct of Ex.P.3-inquest panchanama by P.W.10, M.O.4-pant, M.O.5-shirt, M.O.6-white banian, M.O.7-underwear, i.e., the apparels of the deceased, were collected from the dead body of the deceased. There is also investigation of P.W.10 with regard to preparation of Ex.P.2-scene of offence panchanama, Ex.P.3-Inquest Panchanama and also seizure of M.O.s 2 to 7.

14. There is no dispute with regard to the finding of the dead body of the deceased near the house of A.2 in the morning hours of 16.03.2008. In Ex.P.2-Scene of offence panchanama, there is a mention that the scene of offence is surrounded by number of houses and hardly ten to twelve yards distance is there between one house to another house and that a small portion of the scene of offence is covered by thorny bushes. There is specific evidence of P.W.1 and P.W.3 that the dead body of the deceased found in the court yard of the house of A.2. Furthermore, there is no dispute that the place, where the dead body of the deceased was found was surrounded by houses. The evidence of P.W.2 to P.W.4 is consistent that the

deceased was beaten by the appellant/A.1 near his house, later on near the house of A.2. The appellant/A.1 and P.Ws.1 to 4 belong to same basthi and they are known to each other. P.W.4 had categorically stated that there are hardly 40 to 50 houses in the basthi. In villages, the villagers are accustomed to identify the persons from a little distance even in the night time, even without sufficient light. Under these circumstances, it is not difficult for P.W.2 to P.W.4 to identify the appellant/A.1, who is known to them and who also belongs to the same locality.

15. To prove the death of the deceased as homicidal, the prosecution had relied on the evidence of P.W.9-doctor, who conducted autopsy over the dead body of the deceased. As per his evidence, he conducted post mortem examination over the dead body of the deceased on 16.03.2008 between 04:10 PM and 05:30 PM. On examination, he found the following injuries on the dead body of the deceased:

1. Contusion at the right lumbo sacral area 3 x 3 cm blackish in colour.
2. Contusion at the right scapular and thorasic vertebral area.
3. Lacerated wound on the right little finger and pelvic area 3 x 3, 2 x 1 cm, blackish in colour.
4. Burns and scaldes at the both foot and knee joints.
5. Haematoma at the right side of the kidney and bleeding at the liver, peritoneal cavity full of blood.

P.W.9 opined that all the injuries found on the dead body of the deceased were ante mortem in nature, the said injuries can be caused by a weapon like M.O.1-stick and injury No.5 can cause death of a person.

16. The testimony of P.W.1, the *de facto* complainant and the sister of the deceased, reveals that about two years back from the date of her deposition, at about 08:00 PM, the appellant/A.1 and A.2 came to her house, took the deceased along with them by beating stating that the deceased had kept the concubine of the appellant/A.1 somewhere else and the deceased knew the whereabouts of his concubine. She further deposed that due to fear, she went inside her house and in the morning hours of the next day, i.e., 16.03.2008, P.W.5-Pochaiah informed that the deceased was killed by the appellant/A.1 and A.2. Then she visited the scene of offence and saw the dead body of the deceased with injury on his right hand and burn injuries on his legs. She specifically deposed that the dead body was found near the house of A.2. Thereafter, she lodged Ex.P.1- report with the police.

17. There is specific evidence of P.W.2, the husband of P.W.1, that two and half years ago, the appellant/A.1 came to his house and took away the deceased along with him by beating, demanding to tell about the whereabouts of his concubine. The deceased was tied to a tree near the house of the appellant/A.1 and then the appellant/A.1 beat the deceased. At that time, A.5 also instigated the appellant/A.1 to give more beatings. Due to fear, he was standing at a little distance. When the deceased untied himself and tried to run away, the appellant/A.1 chased and caught hold the deceased, took him to the house of A.2 and beat him. Due to fear, he went to his house and on the next day morning, he came to know that the deceased died. Then, he, along with P.W.1 went to the scene of offence and saw the dead body of the deceased with injuries on legs.

18. P.W.3 is another eyewitness to the incident. His evidence is corroborated with P.W.1 and P.W.2 with regard to the appellant/A.1 taking the deceased to the house of A.2, beating him by tying to a tree, asking about the whereabouts of his concubine, etc. He specifically deposed that he saw the incident from his house and that the deceased received injuries on his hands and legs. He further deposed that the appellant/A.1 told him that he would keep the deceased with him in the night. On the next day morning, P.W.5-Pochaiah informed him that the deceased died. He went to the scene of offence and saw the dead body of the deceased in front of the house of A.2. He identified the stick which was allegedly used in commission of offence and which was marked as M.O.1.

19. P.W.4 is another eyewitness to the incident. He corroborated the evidence of P.W.3 on all aspects. He further deposed the deceased ran away to his brother-in-law's house to escape from the beatings of the appellant/A.1, but again the appellant/A.1 took the deceased with him asking him to tell about the whereabouts of his concubine. He specifically deposed that the appellant/A.1 told him that he would keep the deceased with him for the night and on the next day morning he saw the dead body of the deceased near the house of A.2. He further deposed that the appellant/A.1 beat the deceased with M.O.1-stick.

20. P.W.1 to P.W.4 are the material witnesses in this case. All of them have specifically deposed that the appellant/A.1 took away the deceased along with him by beating and asking the deceased to tell the whereabouts of his concubine in the night hours of 15.03.2008.

They have reiterated the same in their cross-examination. P.W.1 to P.W.4 are the neighbours of the appellant/A.1 and they are direct witnesses. There is consistency and corroboration in their testimony. Though these witnesses were subjected to cross-examination, nothing was brought on record to discard their testimony. Since the beating had taken place nearby the houses of P.W.1 to P.W.4, they are the right persons to testify in this case. Their presence at the scene of offence at the time of alleged offence cannot be doubted. Furthermore, there is no animosity or grudge or any other reason for these witnesses to falsely depose against the appellant/A.1. Their evidence is cogent, consistent and reliable. P.Ws. 1 to 4 have categorically stated that they saw the appellant/A.1 taking away the deceased along with him by beating and asking about the whereabouts of his concubine. P.W.3 and P.W.4 have specifically deposed that the appellant/A.1 stated to them that he would retain the deceased with him on that night. They further deposed that when the deceased tried to escape from the clutches of the appellant/A.1, the appellant/A.1 chased and caught hold of the deceased, brought him back to the house of A.2 and beat the deceased. On the next day morning, i.e., on 16.03.2008, all of them saw the dead body of the deceased in front of the house of A.2. Further, no material contradictions are marked on behalf of the accused in the evidence of these witnesses. Furthermore, no omissions were pointed out in their testimony. There is also evidence on record to establish that the deceased was beaten by the appellant/A.1 near the house of A.2. P.W.1 also deposed that the deceased received injuries on hands and legs. The evidence of P.W.1

to P.W.4 is unambiguous, free from suspicion and falsity and inspires confidence in the Court.

21. P.W.5 is a panch witness for scene of offence and inquest panchanama. He supported the case of the prosecution. P.W.6 and P.W.7 are panch witnesses for confession of the appellant/A.1 and recovery of material objects. They were declared hostile. P.W.8 is the Sub Inspector of police, Alladurg. He stated that P.W.1 came to Alladurg Police Station on 16.03.2008 and gave her statement and the same was reduced into writing by him and read over its contents to P.W.1 and obtained her thumb impression on Ex.P.1 report. Basing on Ex.P.1 report, he registered the crime and issued FIR under Ex.P.8. In his cross-examination, he asserted that he prepared Ex.P.1 report to the dictation of P.W.1.

22. On a careful analysis of the evidence of prosecution witnesses, we find that the deceased was taken by the appellant/A.1 from the house of P.W.1 and P.W.2 by beating to tell the whereabouts of his concubine, when the deceased tried to escape from the clutches of the appellant/A.1, the appellant/A.1 chased and caught hold the deceased, took him to the house of A.2 and again beat him. It is evident from the evidence of P.W.3 and P.W.4 that the deceased was in the custody of the appellant/A.1 in the night of 15.03.2008 and on the next day morning, i.e., on 16.03.2008, his dead body was found near the house of A.2. The deceased was taken away forcibly by the appellant/A.1 from the house of P.W.1 and P.W.2, assaulted repeatedly and tied up to a tree. The nature of injuries mentioned in the Post Mortem Examination of the deceased clearly demonstrates the intention of the appellant/A.1 to cause the death of the deceased.

It cannot be said that there was no intention on the part of the appellant/A.1 to cause the death of the deceased. The subject death was caused during the intervening night of 15/16.03.2008. There is overwhelming evidence of P.W.1, P.W.2, P.W.3 and P.W.4, who are relative and locality people, with regard to the appellant/A.1 taking the deceased with him and beating the deceased mercilessly demanding the deceased to tell the whereabouts of the concubine of the appellant/A.1. There is no possibility for any other person to cause the injuries as found in the post-mortem examination report (Ex.P.9). On perusal of PME Report (Ex.P.9) and evidence of P.W.9-Doctor substantiates that injury No.5 is sufficient to cause the subject death.

23. The manner in which the deceased was beaten during the night hours with M.O.1 stick clearly establishes that the appellant/A.1 had the intention to cause the death of the deceased. There is reliable and clinching evidence on record to prove that the appellant/A.1 caused the subject death. There is no explanation from the appellant/A.1 or any other evidence to take a different view and doubt that the appellant/A.1 had not caused the subject death. All these circumstances clinchingly establish that the death caused by the appellant/A.1 is proved beyond reasonable doubt. The prosecution clinchingly proved the guilt of the appellant/A.1 beyond reasonable doubt. The Court below had elaborately dealt with the evidence on record and rightly found the appellant/A.1 guilty of the offence under Section 302 of IPC and accordingly convicted and sentenced him. The Court below has given the benefit of doubt to A.2 to A.5 in this case. There is nothing to take a different view. All

contentions raised on behalf of the appellant/A.1 do not merit consideration. The Criminal Appeal is devoid of merit and is liable to be dismissed.

24. For the reasons stated above, the conviction and sentence recorded against the appellant/A.1, namely, Dyarangula Pedda Ramesh, in the judgment, dated 23.11.2010, in Sessions Case No.229 of 2008, on the file of the learned III Additional District & Sessions Judge (Fast Track Court) at Medak, of the offence under Section 302 of I.P.C., is hereby confirmed.

25. In the result, the Criminal Appeal is dismissed. The appellant's bail bonds are cancelled and the appellant/A.1, namely Dyarangula Pedda Ramesh, shall forthwith surrender before the Superintendent, Central Prison, Cherlapally, to serve the remaining sentence of imprisonment.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

20th August, 2019
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