

THE HON'BLE SMT. JUSTICE P. SREE SUDHA

AND

THE HON'BLE DR. JUSTICE D.NAGARJUN

CRIMINAL APPEAL No.6 of 2014

COMMON JUDGMENT: *(Per Hon'ble DR.JUSTICE D.NAGARJUN)*

This Criminal Appeal is filed by the appellant-accused to set aside the judgment, conviction and sentence dated 04.12.2013 in S.C.No.633 of 2012 on the file of learned Judge, Family Court – Cum - Additional Sessions Judge, Khammam.

2. The brief facts which necessitated the appellant to file this criminal appeal are as under:

a) On 13.12.2011 at 9.30 AM the *de-facto* complainant lodged a complaint before the VR Puram Police Station alleging that on 12.12.2011 at about 10.00 PM her father (hereinafter will be referred as “deceased”), who is aged about 70 years, had his dinner, went to his hut to sleep. In the meanwhile, the accused came to the hut of deceased and asked him to provide tobacco. During the course of conversation, the accused asked as to why the deceased has practiced sorcery “mantralu” on his mother thereby she became mad. While saying so, the accused cut the neck of the deceased with palmyra leave cutting knife.

The deceased raised hue and cry stating that the accused is cutting his neck with a knife. On hearing such cries of the deceased, the de-facto complainant and her mother went there and found that accused was fleeing away from there by holding the knife. Though the de-facto complainant and her mother chased him, they could not catch him and they both returned back to the hut and found that the deceased received cut injury over left side of neck and blood was oozing. In the meanwhile, brother and sister – in - law of the de-facto complainant came there and shifted the deceased to the Government Hospital, Rekhpally, who, while undergoing treatment, died at 1.00 AM.

b) On the strength of the said complaint/Ex.P1, a case in Crime No.30 of 2011 was registered by Police, VR Puram for the offence under Section 302 of the Indian Penal Code and issued FIR in Ex.P7. During the course of investigation, Crime Detail Form under Ex.P3 was prepared on 13.12.2011 in the presence of mediators, drew rough sketch, collected samples of blood stained earth, control earth, blood stained bed sheet and seized one mobile phone of China made MO1 from the scene of offence, got photographed the scene of offence through a private photographer Ex.P2, dead body of the deceased was examined at Government Hospital, Kunavaram, noted the injuries on the

dead body, conducted inquest panchanama under Ex.P4 over the dead body, referred the dead body for autopsy.

c) On 15.12.2011 at 7.30 AM while the appellant-accused was waiting the Police have apprehended him. Confession statement of Appellant - Accused was recorded and the appellant has voluntarily confessed to have committed the offence and a knife folded in a cloth from the back of the appellant under his t-shirt was recovered. The medical officer, who conducted autopsy over the dead body of the deceased, has opined in post mortem report under Ex.P6 that the cause of death of deceased is "Hemorrhagic shock due to cut injury to major blood vessels". The seized material objects have been forwarded to RFSL, Warangal. After completion of investigation, charge sheet is filed against appellant-accused.

d) Cognizance was taken as S.C.No.633 of 2012 on the file of learned Judge, Family Court – Cum - Additional Sessions Judge, Khammam. On appearance of the accused, the following charge was framed against the appellant-accused for the offence under Section 302 of the Indian Penal Code:

"That you, on the 12th day of December, 2011 at about 2200 hours at Annavaram Village, H/o. Rekhapally Mandal, Khammam District, within the limits of Police Station V.R.Puram, Khamma District,

committed murder intentionally cause the death of Sode Erra Muthaiah S/o. Pentaiah, aged: 70 years, Koya, R/o. Annavaram, H/o. Rekhapally Village, V.R.Puram Mandal, Khammam District, by hacking him with a knife, which is used for cutting palmyrah tree leaves on left side of his neck, causing his death, on the ground that he applied sorcery to your mother due to which your mother became unsound and was behaving like a mad and thereby you committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance.

The above said charge was read over and explained to the accused, who pleaded not guilty and claimed to be tried.

e) During the course of trial, the prosecution has examined PWs 1 to 15 and got marked Exs.P1 to P8 and MOs1 to 3. After completion of evidence on behalf of prosecution, the accused were examined under Section 313 of the Code of Criminal Procedure, wherein the accused has denied the incriminating evidence deposed against him, by the prosecution witnesses. On behalf of accused, the relevant portion of statement of PW1 recorded under Section 161 of the Code of Criminal Procedure was marked as Ex.D1.

f) The trial Court after hearing both sides, found accused guilty for the offence alleged against him and convicted him to undergo Rigorous Imprisonment for Life and to pay fine of Rs.500/- and in default to undergo simple imprisonment for a

period of one month for the offence under Section 302 of the Indian Penal Code.

3. Aggrieved by the conviction judgment, the appellant has filed the present criminal appeal mainly on the following grounds:

i) The trial Court convicted the appellant by relying upon the testimony of PWs 1 to 5, who are interested witnesses.

ii) There is a delay in lodging report to the Police Station, which is very nearer to the complainant.

iii) There are number of discrepancies in the evidence of PWs 1 to 4 and also in recovery and seizure of MO3.

iv) PW14, the investigating officer has categorically stated that the mother of the appellant-accused is suffering from mental ailment since time, as such, causing death of the deceased by the appellant on the grudge that deceased has applied sorcery “mantrarlu” on his mother and made her to mad, does not arise.

4. Now the point for consideration is:

“Whether the judgment of conviction and sentence dated 04.12.2013 in S.C.No.633 of 2012

passed by the learned Judge, Family Court – Cum - Additional Sessions Judge, Khammam can be set aside?”

5. Heard learned counsel for the appellant-accused and learned Assistant Public Prosecutor sides and perused the record.

6. According to the prosecution, the appellant has bore grudge on the deceased, as the accused has suspected that the deceased has played sorcery on his mother and thereby his mother has become mad. By keeping that grudge, which, according to the police, is a motive, the appellant has entered into the hut of the deceased at about 10.00 p.m. on 12.12.2011 when he was alone. The accused asked the deceased for tobacco for which the deceased told the appellant that he has no tobacco and then the appellant has also told the deceased that on account of practicing of sorcery on his mother, she became made. The deceased stated to have replied that the mother of the appellant is like his daughter. In the meanwhile, the appellant has picked up a palmyra leaves cutting knife and cut the neck on the left side of the deceased on which the deceased has raised hue and cry stating that the appellant was cutting his neck. PWs.1 and 2, who are very close by outside

the hut, heard the cries and ran inside the hut and on seeing that the appellant ran away by holding the knife, PWs.1 and 2 chased him, but could not catch him. They returned back to hut and found the deceased in pool of blood and shifted to hospital where the deceased succumbed to death on the late night at 1.00 a.m.

7. The prosecution has produced PWs.1 to 15 and filed Exs.P1 to P8. On behalf of the appellant, no witness was examined. However, Ex.D1 was marked out of the statement of PW.1 in 161 Cr.P.C., statement.

8. There are no eye witnesses to the incident. Even according to the prosecution, the appellant has slit the neck of the deceased on the left side when the deceased was alone in his hut. PWs.1 and 2 and others were outside the hut at such a distance that the hue and cry raised by the deceased could be heard. The evidence of PWs.1 and 2 are crucial to the prosecution as they are the persons, who have reached the scene of offence, immediately after the incident and spoke to the deceased.

9. PW.1, who is no other than the daughter of the deceased, has deposed that on a fateful day when herself and her

mother/PW.2 were outside the hut of her father near the fire, the appellant entered into the hut and slit the neck of her father. On hearing the hue and cry of her father, herself and her mother rushed to the spot and seen that the appellant running with a knife. PWs.1 and 2 have chased the accused, but could not catch him. They returned back and took the deceased to the hospital.

10. Similarly, PW.2 deposed that she is the wife of the deceased and on that day while herself and her daughter/PW.1 were near the hut, they heard the voice of the appellant asking the deceased to give tobacco and she then heard the hue and cry of the deceased stating that Subba Rao/appellant is cutting his neck. Immediately, they rushed and find that the appellant running with a knife. They chased him, but could not catch. PW.2 further went on to depose that her husband informed her that the appellant has cut his neck with knife.

11. PW.3 is the son of the deceased. He also deposed that when he was sleeping in his house, his brother Durga Rao/PW.4 came to him and informed that the appellant has cut the neck of the deceased. He rushed to the scene of offence and found his father was bleeding with cut injury and on enquiry his

sister/PW.1 has informed him that the appellant has entered the hut and cut the neck of the deceased. Boycott

12. Similarly, PW.4, who is also a son of the deceased, deposed that at the time of incident he was in his hut along with his wife and that his hut is situated very close to the hut of his father. According to him, when PW.1 informed him by shouting that the appellant has cut the neck of the deceased with a knife, himself and his wife rushed to the scene of offence and found the deceased lying on the ground and on enquiry, PW.1 informed him that the appellant has cut the neck of the deceased with a knife.

13. The evidence of these four witnesses is crucial to the prosecution. Their evidence would go to show that on a fateful day at about 10.00 p.m., the appellant went inside the hut of the deceased, asked him for tobacco and told the deceased that the deceased has played sorcery on his mother and thereby she became mad and while saying so, the accused has slit left side of the neck of the deceased as a result, the deceased raised hue and cry and on hearing the same, PWs.1 and 2 rushed into the hut and seen the appellant running away with knife. Though PWs.1 and 2 tried to chase them, they could not catch him.

PWs.3 and 4, who are the sons of the deceased and brothers of PW.1 also deposed in similar lines. According to their evidence when both of them reached the scene of offence, they found the deceased in pool of blood and it was informed by PW.1 to them that the appellant has cut the throat of the deceased.

14. None of the four witnesses i.e., PWs.1 to 4 have witnessed while the appellant was cutting the neck of the deceased. Therefore, the question is whether there are circumstances to believe the evidence of PWs.1 to 4 to the effect that the appellant has cut the neck of the deceased with a knife. PW.1's evidence can be considered to conclude that she heard the cries of her father stating that the appellant is cutting his throat on which she rushed to the scene of offence and seen the appellant running with knife. She chased him along with PW.2, but could not trace him.

15. PW.2 was categorical in deposing that the deceased has told her that the appellant has cut his throat. Not only that she also heard the hue and cry of the deceased that the appellant has cut his throat and she found that the appellant was running with a knife. Therefore, at the scene of offence when there are no other persons except the deceased and the

appellant, when both PWs.1 and 2 have seen the appellant with a knife running and when the deceased has raised hue and cry that the appellant has cut his throat and when the deceased has told PW.2 that the accused has cut his throat, then certainly the evidence of PWs.1 and 2 can be believed to say that the appellant has cut the throat of the deceased.

16. The evidence of PWs.3 and 4 would also go to show that at the time of incident, they were not present and their sister/PW.1 informed them that the appellant has cut the throat of the deceased with knife suspecting that the deceased was playing sorcery on his mother. Therefore, on perusal of the evidence of PWs.3 and 4, which corroborates with the evidence of PWs.1 and 2, it is clear that the appellant has cut the throat of the deceased with a knife on the ground that he was playing sorcery on his mother.

17. Other witnesses produced by the prosecution are circumstantial witnesses. PW.5 is the person in whose auto the deceased was shifted to hospital. PW.6 is the Civil Assistant Surgeon, who has treated the deceased initially, and at that time, the deceased was in semi-conscious state and not fully

unconscious. PW.7, photographer, who has taken the pictures of the deceased and the scene of offence.

18. PW.8 is the panch witness for recovery of mobile phone belonging to the appellant under MO1 at the scene of offence. Though this witness has identified the accused in the Court, his identification will not have any significance because the mobile phone of the deceased was not recovered at the instance of the accused.

19. Further, the prosecution has failed to connect the mobile phone to the appellant. Though PW.8 has stated that the mobile phone under MO1 belongs to the appellant, there is no record to that extent. Police can certainly file the record from the service provider to show that the sim card in the mobile phone was given to the appellant, but no such effort was made. In addition to that, mobile phones similar to that of MO1 will be available in the market thereby suspicion would arise as to whether MO1-mobile phone belongs to the appellant or not. In fact, there is no significance of any mobile phone in this case. In order to strengthen the case of the prosecution that the appellant was present at the scene of offence, it appears that the prosecution has made an attempt to prove before the Court

that MO1/mobile phone belonging to the appellant was found at the scene of offence to contend that the appellant has cut the throat of the deceased.

20. PW.9 is the mediator for scene of offence panchanama under Ex.P3. PW.10 is the mediator for the inquest panchanama under Ex.P4. In this case, no significance can be attached to the inquest, as cause of the death is not in dispute and the dead body is also identified.

21. PW.11 is again a crucial witness to the prosecution. He is the one in whose presence the appellant stated to have confessed the offence and also produced MO3/knife. He deposed that on his enquiry, the appellant has confessed that he has committed the offence and told that he is having the knife which was used to committing the offence. Police have seized the said knife in pursuance of his confession under Ex.P5, the relevant portion of confessional panchanama. This evidence would clearly go to show that the appellant has confessed the offence and he was extensively cross examined, but nothing concrete could be elicited to suspect that this witness was deposed false and hence, there is no reason to disbelieve the evidence of PW.11.

22. PW.12 is the Medical Doctor, who has conducted autopsy on the dead body of the deceased. The significance of this evidence is that the fatal injury sustained by the deceased was cut injury to the throat and he has also deposed that in order to cut the throat, weapon like MO3/knife seized from the appellant could have been used. PW.13, SI of Police, has registered a case and issued FIR. PW.14 is the investigating officer, who has completed the rest of the investigation and filed charge sheet.

23. Basing on the evidence in the form of PWs.1 to 4, who were present just adjacent to the scene of offence, while offence was committed, it is clear that PWs.1 and 2 have seen the appellant. The appellant caused the death of the deceased by slitting the neck of the deceased on the suspicion that the deceased was playing sorcery on his mother. The evidence of other witnesses like mediator for scene of offence, inquest, recovery of knife is not much relevant in either side except the evidence of PW.14 through whom the knife was seized. The evidence of the medical officer, who has examined the deceased initially and also the evidence of the medical officer, who has conducted autopsy over the dead body of the deceased and the evidence of the investigating officer, who has done the investigation and filed the charge sheet are also mere procedure

in nature, as the appellant has not contested the evidence of these witnesses. The evidence of the medical officer is relevant for the purpose that he has admitted that the injury caused to the deceased is possible with MO3/knife.

24. It is the contention of the learned counsel for the appellant that the evidence of PWs.1 to 4 cannot be accepted and taken into consideration as there is no corroboration among the prosecution witnesses and that there are lot of contradictions.

25. It is true that there are contradictions in the evidence of PWs.1 to 4 with reference to their previous statements recorded under Section 161 Cr.P.C. In the cross examination, it was elicited by PW.1 that she has not stated to the police as in Ex.D1. Ex.D1 is a part of statement of PWs.1, which was reduced in Telugu, is that when herself and her mother went to the hut, her father/deceased fell in unconscious state and in dangerous situation.

26. PW.2, who is the crucial witness for the prosecution, has deposed in the chief examination that her husband/deceased informed her that the accused has cut his neck. However, the said fact is not found in 161 Cr.P.C., statement of PW.2. In the

cross examination the accused has rightly pointed out and got the omission recorded and a suggestion was given to PW.2 that the deceased has told her that the appellant has cut the throat of the deceased. This omission of PW.2 cannot be of any use to the appellant as the accused failed to confront the same to the investigating officer/PW.14, who has recorded the statement of PW.2. Similarly, Ex.D1 contradiction also not confronted to IO/PW.14. Therefore, once an omission and contradiction were recorded, the accused must put the said omission and contradiction to the investigating officer, thereby it can be concluded that PWs.1 and 2 were improving their statements.

27. Similarly, in the cross examination it was suggested by the appellant to PW.3 that he did not stated in his statement before the police that PW.1 has informed him that the appellant has cut the neck of the deceased. But, a careful perusal of the chief examination of PWs.3 and 4 did not depose in their respective chief examinations that the deceased has informed them that the accused has slit his throat. If PWs.3 and 4 deposed in the chief examination and it is not found in the 161 statement, then that part of evidence will have to be confronted to the witness as an improvement. However, PWs.3 and 4 even though did not depose before the Court that the deceased has

informed that the appellant has slit his throat with knife, a suggestion was given in cross examination and the witness had denied the same. There was no necessity for the accused to give such suggestion which was not at all deposed to in the chief examination.

28. Therefore, on account of non-confronting of the contradiction and omissions to the investigating officer, lot of prejudice, is, in fact, caused to the accused, but whatever the witness is deposed before the Court will have to be taken by the Court. Therefore, the contention of the learned counsel for the appellant that there are number of contradictions among PWs.1 to 4 and also with the other statements of the witnesses cannot be accepted.

29. PWs.1 to 4 are very close family members of the deceased. PWs.1 is the daughter, PW.2 is the wife and PWs.3 and 4 are the sons of the deceased. The question therefore, arises is whether basing on the evidence of such close relatives the conviction can be sustained.

30. In **Manga Alias Man Singh vs. State of Uttarakhand**¹

the Hon'ble Apex Court has held at para 34 as under:

“It was contended that according to the prosecution when the accused party attacked the injured party apart from the family members of the injured party, local villagers were also present but yet, none was examined by way of independent witness. The said submission has been rightly rejected by the High Court by giving reasons. The High Court has rightly held that though the injured witnesses were related to each other, having regard to the nature of evidence tendered by them, there were no good grounds to discard their version. It has found that their evidence was natural and there was nothing to find fault with their version. It has further held rightly that it is the quality of the witness and not the quantity that matters. It has also taken judicial notice of the fact that the public are reluctant to appear and depose before the Court, especially in criminal cases because of many obvious reasons. We fully endorse the said conclusion of the High Court, while dealing with the said submission made on behalf of the appellants.”

31. In the case on hand, on the fateful day at about 10.00 p.m. when the deceased was alone in his hut, the accused has committed the offence. All neighbouring huts are also belonging to the family members of the deceased. When there are no other witnesses except the close family members of the deceased at the scene of offence and when there is no enmity between the appellant and the family members of the deceased and when there is no other reason for falsely implicating the appellant, there is no reason why the evidence of PWs.1 to 4 can be

¹ (2013) 7 SCC 629

discarded. However, the Court is conscious that when the close relatives of the deceased are there, there is every likelihood that they may tend to show interestness and try to improve the case and therefore, the evidence has to be scrutinized carefully.

32. It is contended by the learned counsel for the appellant that there was a delay in filing the FIR. It is true that there is a delay in filing the FIR. On the date of incident i.e., on 12.12.2011 the moment the throat of the deceased was slit at 10.00 p.m., the deceased was shifted to Government Hospital, Rekhopally, and ultimately the deceased died at 1.00 a.m. on the following day. Further, the complaint was filed at 9.00 a.m. Prosecution is not depending on purely circumstantial evidence. In all the cases where there is a delay in filing the complaint, it cannot be concluded that the prosecution case has to be disbelieved.

33. In a given case like this, where PWs.1 and 2 have seen the accused running away with knife after committing the offence and when there is no enmity between the appellant and PWs.1 and 2, then the delay in filing the complaint is not fatal. It is to be noted that the de-facto complainant is an ill-treat person and he was in a shock on account of death of a family member.

Therefore, delay cannot be a fatal in a case like this. It is not the case of the appellant that the delay in filing the FIR was to develop a story for implicating the accused. Therefore, delay in this case is not fatal.

34. Learned counsel for the appellant has submitted that the appellant's mother was suffering from mental health and thereby the contention of the prosecution that the accused has a motive to kill the deceased cannot be accepted. Admittedly, there are no disputes between the accused persons and the family of the deceased. It is the clear evidence of PW.2 that she heard accused saying that the deceased has played sorcery on his mother. Not only that, PW.2 has deposed before the Court that the deceased has informed her that the appellant has committed the offence on suspicion that the deceased has played sorcery. Therefore, it cannot be said that because the mother of the accused was suffering from mental health problem, the motive set up by the prosecution is not proper.

35. Even otherwise, when there is clear and direct evidence in the form of PWs.1 to 4 to show that the appellant was running from the hut by holding a knife after slitting the neck of the

deceased, then it is immaterial that there is motive for the appellant or not.

36. In view of the above, this Court is of the firm opinion that the prosecution has proved the case beyond all reasonable doubt and in the form of PWs.1 to 4 there is a material to hold that the appellant has committed the offence by slitting the neck of the deceased with MO3. In view of the above, the trial Court has rightly appreciated the evidence and came to a right conclusion and therefore, this Court is not inclined to interfere with the judgment of the trial Court and the appeal is liable to be dismissed.

37. In the result, the criminal appeal is dismissed confirming the judgment dated 04.12.2013 in S.C.No.633 of 2012 passed by the learned Judge, Family Court-cum-Additional Sessions Judge at Khammam.

Miscellaneous applications, if any, shall stand closed.

SMT. JUSTICE P. SREE SUDHA

DR. D.NAGARJUN, J

Date: 19.11.2022
ES/AS