

POLAMURI CHANDRA SEKCHARARAO @ CHINNA@
BABJI

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.v.

STATE OF A.P.
(Criminal Appeal No. 2168 of 2009)

JULY 23, 2012

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[SWATANTER KUMAR AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]

PENAL CODE, 1860:

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s.302 - Accused committing murder of his elder sister's son - Circumstantial evidence - Conviction and sentence of life imprisonment by courts below - Held: Trial court has rightly held that though the two eye-witnesses turned hostile, their presence at the police station was admitted and correctness of the report given by one of them at the police station could not be questioned - The said report disclosed that the deceased went to the house of accused who got enraged by the conduct of the deceased in his attempt to develop close relationship with his daughter - He stabbed repeatedly the deceased and went to police station along with the said two eye-witnesses and handed over the knife to the police - The SFL report supported the prosecution case - The fact that the dead body was found in the compound of the accused is not in dispute - The overall consideration of the evidence available on record only substantiates the guilt of the accused in the killing of the deceased and consequently the conclusion reached by trial court and upheld by High Court does not call for any interference - Evidence - Testimony of hostile witnesses - Evidentiary value of related witnesses - Circumstantial evidence.

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The appellant was prosecuted for committing the murder of the son of his elder sister (PW-3). The case of

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A the prosecution as stated in Ext. P-1, the statement of PW-1, the daughter of the accused, was that on the stated date and time, the deceased went to the house of the accused and on latter's asking, the deceased stated that he would marry both his daughters (PWs 1 and 2).
B Enraged by the statement of the deceased, the accused brought a knife from his bed room and stabbed several times the deceased. The accused along with PWs 1 and 2 went to the police station and handed over the knife there stating that he had killed the deceased. The
C statement of PW 1(Ext. P-1) was registered. Before the trial court, PWs 1 and 2 turned hostile. However, the trial court relying upon the other evidence convicted the accused u/s 302 IPC and sentenced him to life imprisonment. The High Court declined to interfere.

D In the instant appeal, it was contended for the accused-appellant that the so-called eye-witnesses, namely, PW-1 and PW-2, having turned hostile, Ext. P-1 could not be acted upon; and that PWs 3, 4, 6 and 7 were closely related to the deceased and, as such, their
E version could also not be relied upon.

Dismissing the appeal, the Court

F HELD: 1.1 The fact that the dead body of the deceased with a number of bleeding injuries was found in the compound of the appellant is not in dispute. It is also not in dispute that the said fact was reported to the Police Station by PWs-1 and 2 along with the accused. The knife (M.O.-10) was seized in the presence of PW-10 by PW-14 under Ext. P-5. The FSL report also confirmed
G that human blood was found on the weapon (M.O.-10) though the origin of the blood group was stated to be not traceable. The doctor (PW-13) also confirmed that the incised cut injuries could have been caused by a weapon like Ext. M.O.-10. Further, the appellant also admitted that

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he was not in talking terms with his wife and that is why she was living with her parents; and that the deceased used to stay in the same house in which his wife and PWs-1 and 2 were also staying. Every circumstance noted by the trial court goes to show that it was the appellant who got enraged by the conduct of the deceased in his attempt to develop close relationship with his daughter (PW-2) which was not to his liking, inasmuch as he was not in good terms with the mother of the deceased (PW-3). [para 14, 16 and 18] [588-C-E; 590-F-H; 591-A-B]

1.2 The trial court held that though PWs-1 and 2 turned hostile, they deposed that they saw the dead body of the deceased in the house of the appellant; that they went to the police station along with the appellant; and that Ext. P-1 report was given by PW-1. The presence of PWs-1 and 2 in the police station was admitted and the correctness of Ext. P-1 cannot be questioned by them. [para 8] [585-D-F]

1.3 Merely because PWs-3, 4, 6 and 7 are related to the deceased, there is no reason why they should implicate the appellant who is also closely related to them. [para 18] [591-C]

1.4 The overall consideration of the evidence available on record only substantiates the guilt of the accused-appellant in the killing of the deceased and consequently the conclusion reached by the trial court and upheld by the High Court does not call for any interference. [para 18] [591-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2168 of 2009.

From the Judgment & Order dated 28.03.2008 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 646 of 2006.

A Chanchal Kumar Ganguli for the Appellant.

Amit K. Nain, D. Mahesh Babu, Mayur R. Shah, Savita Devi for the Respondent.

B The Judgment of the Court was delivered by

Fakkir Mohamed Ibrahim Kalifulla, J. 1. This appeal is directed against the conviction and sentence imposed upon the appellant for the offence punishable under Section 302, Indian Penal Code (for short 'IPC') imposing the sentence of imprisonment for life and a fine of Rs. 1,000/- with default sentence of simple imprisonment for a period of three months.

2. The case of the prosecution as projected in Exhibit P-1 was that on 06.04.2004, in the evening at 5.10 p.m. the deceased, Ravi Kishore, went to the house of the accused in his Hero Honda Motor Bike, when the accused and his two daughters Polamrui Divya and Polamrui Jaya Chandrika [PWs-1 and 2] were chatting outside the house. It is alleged that when the accused asked the deceased as to why he came there, the deceased declared that he wish to marry both his daughters and threw a challenge as to whom he would give them in marriage. It is further alleged that the accused, enraged by the statement of the deceased, brought a long knife from his bed room and inflicted several blows on the deceased due to which he fell down breathless on the floor.

F 3. According to the prosecution, the accused along with his two daughters PWs-1 and 2, thereafter, went to the Steel Plant Police Station in his two-wheeler and handed over the knife to the Station writer stating that he had killed the deceased with that knife.

G 4. According to the prosecution, statement of PW-1 (Exhibit P-1) was registered against the appellant for an offence under Section 302, IPC on 06.04.2004. As many as 15 witnesses were examined in support of the prosecution. Exhibits P-1 to P-29 were exhibited and M.O.-1 to M.O.-14

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were marked. The appellant was questioned under Section 313, Cr.P.C. to which the appellant simply denied his involvement in the occurrence. A

5. Though PWs-1 and 2 were examined as eye-witnesses, they turned hostile and none was examined on the defence side. B

6. Dr. N.V.S.L. Narasimham [PW-13] in the post mortem report opined that the deceased appeared to have died of hemorrhage and shock due to incised cut injuries on the neck and multiple incised cut injuries on the other parts of the body. C

7. The trial Court based on the evidence of doctor (PW-13), Dasari Yerrayya [PW-9] and Y. Suryanarayana, Deputy Superintendent of Police [PW-15] as well as Exhibits P-4 and P-8 held that the death of deceased was a homicidal one. C

8. The trial Court held that though PWs-1 and 2 turned hostile, they deposed that they saw the dead body of the deceased in the house of the appellant, that they went to the police station along with the appellant and that Exhibit P-1 report was given by PW-1. The learned Sessions Judge rejected the case of the appellant that he along with PWs-1 and 2 went for shopping on that day and they were not present at the place of occurrence, inasmuch as, there was no independent witness to support the said version. The trial Judge noted that presence of PWs-1 and 2 in the police station was admitted and that the correctness of Exhibit P-1 cannot be questioned by them. It was also held that when the deceased was lying dead in front of the house of the accused, it was for the accused to explain as to how the dead body was found, in that place and what steps he had taken to explain the same. In that view, the learned Sessions Judge, by relying upon the other evidence, namely, FSL Report (Exhibit P-29) which made specific reference to Item No. 10-the knife and Item Nos.4,5,6 and 7 which contained human blood, the cloths which were seized from the deceased and Exhibit P-5- the Seizure Memo of M.O.-10 prepared by PW-14 while effecting the seizure in the presence of PW-10, a D
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A technician in the Steel Plant who had no axe to grind against the appellant, to support its conclusion.

9. The circumstances relied upon by the learned Sessions Judge are set out in detail in paragraph 49 of the judgment. Having found the appellant guilty of the offence of murder of the deceased on 06.04.2004 at about 5.10 p.m. with the aid of M.O.-10 within the compound of his house, the trial Court imposed the sentence of imprisonment for life apart from a fine of Rs. 1000/- with a default sentence of three months of simple imprisonment. The High Court declined to interfere with the conviction and sentence of the appellant in the judgment impugned in this appeal against which the appellant has come before us.

10. We heard Mr. Chanchal Kumar Ganguli, counsel for the appellant and Mr. Amit K. Nain, counsel for the State. Learned counsel for the appellant, in his submissions contended that when the so-called eye witnesses, namely, PWs-1 and 2 turned hostile, Exhibit P-1, alleged to have been given by PW-1 cannot be acted upon. He further submitted that if the evidence of the alleged eye witnesses are eschewed from consideration, what remains is the evidence of PW Nos.3, 4, 6 and 7, who were not eye witnesses but were closely related to the deceased and, therefore, their version also cannot be relied upon. Learned counsel would, therefore, contend that when there was no incriminating circumstance connecting the accused with the death of the deceased, the conviction and sentence imposed upon him by the Courts below cannot be sustained.

11. As against the above submissions, learned counsel appearing for the State contended that though PW-1 supported Exhibit P-1 in her Examination-in-Chief, she had to be treated as hostile in the course of her cross examination and the conclusion of the trial Court by relying upon various other circumstances narrated in the order, cannot be faulted. According to the learned counsel there was motive for the

appellant to kill the deceased, that the absence of proper explanation as to how the body of the deceased was found in the courtyard of the accused and failure to satisfy the Court about the plea of alibi was sufficient to prove the guilt of the appellant of the killing of the deceased. Learned counsel, therefore, submitted that the conviction and sentence imposed on the appellant by the trial Court and confirmed by the High Court does not call for interference.

12. Having heard learned counsel for the appellant and having perused the material papers placed on record, the judgment of the trial Court as well as the High Court, we are also convinced that the conviction and sentence imposed on the appellant does not call for interference. PW Nos.1 and 2 who are none other than the daughters of the appellant, though said to have initially preferred the complaint-Exhibit P-1 through PW-1 alleging murder of the deceased by the appellant on 06.04.2004, turned hostile.

13. To reiterate the facts, the deceased is none other than the nephew of the appellant i.e. son of his elder sister, Kareem Veera Veni (PW-3). Since the appellant was not in talking terms with his wife, his daughters, namely, PW Nos.1 and 2 were living along with their mother in their grandparents' house at a different place. The above facts are not in dispute inasmuch as the appellant admitted the same in the 313 questioning. It has also come in evidence that the move of the appellant to secure divorce from his wife was not supported by PW-3 and, therefore, he was not in good terms with PW-3 also. His wife is none other than PW-3's elder sister's daughter. K. Hema Sekhar (PW-4) is the father of the deceased, K. Kiran Kumar (PW-6) is the brother of the deceased and K. Swarnalatha (PW-7) is the sister of the deceased. Though according to PW-3, the appellant and PW-3 were not in talking terms, the children of both were moving friendly with each other. According to the prosecution, the deceased developed a liking for PW-2, daughter of the appellant which was also known to the appellant's elder sister as well as K. Swarnalatha (PW-7), sister

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A of the deceased.

14. It is stated that it was in the above stated background when PWs-1 and 2 visited the house of the deceased to spend their holidays, the appellant having come to know about the move of the deceased to develop close relationship with PW-2, got enraged by his conduct which made him to call him to his house on 06.04.2004 and that after the deceased arrived, the appellant questioned his conduct towards his daughter PW-2 to which the deceased appeared to have retorted saying that he can even marry both his daughters, which provoked the appellant to ultimately inflict the cut injuries with the knife (M.O.-10) and the deceased succumbed to his injuries on the spot. The fact that the dead body of the deceased was found in the compound of the appellant is not in dispute. It is also not in dispute that the said fact was reported to the Steel Plant Police Station by PWs-1 and 2 along with the accused. The knife (M.O.-10) was seized in the presence of PW-10 by PW-14 under Exhibit P-5. The Forensic Science Laboratory (FSL) report also confirmed that human blood was found on the weapon (M.O.-10) though the origin of the blood group was stated to be not traceable.

15. Inasmuch as PWs.1 and 2 turned hostile, the trial Court attempted to examine as to whether there were circumstances enough to link the appellant with the death of the deceased. In that attempt the trial Court has culled out the following 16 circumstances:

"49. The following circumstances/chain of events make the Court to draw an inference that the accused dealt blows on the deceased with M.O.10 and murdered him:-

a) The accused and his wife on account of their differences are living separately and the wife of the accused is residing with her parents at Kesanapalli of East Godavari District along with PWs 1 and 2 and her son;

b) The deceased was also residing in the house of the

parents of the wife of the accused and he was having close intimacy with the daughters of the accused; especially PW-2; A

c) On account of differences between him and his wife, the accused is not having talking terms with his sister i.e. PW-3; B

d) On account of the grudge developed against the deceased, having been informed by PWs-1 and 2, the accused gave a telephonic call to PW-3 and requested her to send the deceased to his house; C

e) The deceased went to the house of the accused on 06.04.2004 at 5 p.m. on his motor cycle (PW-2 deposed about the blue coloured Hero Honda Motor Cycle parking it in front of her house and having dents); D

f) The dead body of the deceased was found lying in the premises of the house of the accused; E

g) PWs-1 and 2 i.e. daughters of the accused going to the police station along with the accused and giving Ex.P.1 report to the police at 17.40 hours i.e. 5.40 p.m. on 06.04.2004; F

h) The accused not admitting himself going to the police station along with his daughters i.e. PWs-1 and 2. G

i) The denial of the accused about the presence of the dead body of the deceased in the premises of his house in his examination under Section 313, Cr.P.C. H

j) The seizure of M.O.10 by PW-14 in the presence of PW-10 under Ex.P.5 (PW-10 is also a technician in the Steel Plant);

k) The presence of the accused in the police station on 06.04.2004 (PW-10 deposed about the presence of the accused in the police station apart from deposing about the seizure of MO-10) H

- A l) The accused not attending to his duty on 06.04.2004;
 m) The theory of alibi introduced by the accused through PWs-1 and 2 who are his daughters that they had been for shopping along with him from 3.30 p.m. and returning to the house at 7.30 p.m. not being proved;
- B n) The police informing PW-3 about the murder of her son by the accused at 7 p.m. on 06.04.2004;
- o) PW-1 informing PW-8 on 06.04.2004 at about 7 p.m. about the death of the deceased from the police station;
- C p) The accused not giving any explanation for the presence of the dead body of the deceased in the premises of his house but he simply denying the offence and stating that the police have foisted the case against him."

- D 16. Keeping the above reasoning of the trial Court in mind, when we examine the submissions, we also notice that there were as many as 17 injuries noted in the post-mortem certificate by the doctor (PW-13). Of the 17 injuries, 13 injuries were incised cut injuries and the cause of death was stated to be due to shock and hemorrhage pursuant to the incised cut injuries on the neck and multiple incised cut injuries on other parts of the body. The doctor (PW-13) also confirmed that the incised cut injuries could have been caused by a weapon like Exhibit M.O.-10. Exhibit P-29, the FSL report disclosed that though the origin of the blood stain could not be determined, human blood was detected on MO-10. The appellant admitted the following facts:-that the deceased was son of PW-3, that he died on 06.04.2004, that he was found dead in the garden which is situated in front of his house within his compound, that there were number of bleeding injuries on the body of the deceased, that he was not in talking terms with his wife and that is why she was living with her parents, and that the deceased used to stay in the same house in which his wife and PWs-1 and 2 were also staying.

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17. To a specific question put to the accused as to whether he wish to examine any witnesses he said "no witness".

18. Having considered the above factors, we find that every circumstance noted by the trial Court goes to show that it was the appellant who got enraged by the conduct of the deceased in his attempt to develop close relationship with his daughter PW-2 which was not to his liking, inasmuch as he was not in good terms with PW-3, the mother of the deceased. The appellant was stated to have been aggrieved by the non-cooperation of PW-3 in his attempt to dissolve the marriage with his wife who is the daughter of the elder sister of the appellant as well as PW-3. Merely because PWs-3,4,6 and 7 are related to the deceased, there is no reason why they should implicate the appellant who is also closely related to them. If according to the appellant, he was not present when the murder of the deceased took place in his residence, as rightly pointed out by the trial Court, then it was for him to explain as to how the dead body was found in his house. Admitting the presence of the dead body of the deceased in the courtyard of the appellant's house, no step was taken by the appellant to explain the situation of the presence of the dead body in his house. The theory of the hostile witnesses PWs-1 and 2 that they went for shopping along with the appellant was rightly rejected by the trial Court in the absence of any other supporting material both oral as well as documentary. The evidence of the doctor (PW-13) and Exhibit P-8 disclose that the deceased was mercilessly wounded with the knife (M.O.-10) which resulted in his instantaneous death due to shock and hemorrhage. The overall consideration of the evidence available on record only substantiate the guilt of the accused-appellant in the killing of the deceased and consequently the conclusion reached by the trial Court and upheld by the High Court does not call for any interference. The appeal, therefore, fails and the same is dismissed.

R.P.

Appeal dismissed.

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