

KURATIKAR SUDHAKAR

v.

STATE OF ANDHRA PRADESH  
(Criminal Appeal No. 404 of 2008)

AUGUST 12, 2014

[DIPAK MISRA AND S. A. BOBDE, JJ.]

*Penal Code, 1860 – s.302 – Murder – Two deceased – Father and son hacked to death with an axe – Incident occurred at night when deceased were sleeping with their family members – Conviction of accused-appellant – Sustainability – Held: Sustainable – Evidence against the appellant was clear and unimpeachable – Hearsay of a defence witness cannot weaken the prosecution case or cast any doubt on the depositions of the son and wife of the two deceased, who naturally woke up to the sounds of hacking by the axe and saw the accused standing between the two cots of the deceased and then saw him running away – These two were most natural witnesses whose presence at the scene could not be doubted, being members of the family – Corroboration from medical evidence – Police station was about 4 kilometers away from the place of incident and there was no evidence whether there was any road on which anybody could have travelled at night and therefore lodging the report in the morning did amount to delay – In any case, delay in registering FIR not fatal.*

**The appellant was charged u/s. 302 IPC for the murder of two persons. It was alleged that at night, while the two deceased, who were father and son, were sleeping with their family members, the appellant hacked them with an axe. PW1 is the son of the 1st deceased while PW2 is the wife of the 2<sup>nd</sup> deceased. PWs 1 and 2 stated that they woke up because of the sound of hacking made by the axe of the appellant and found the**

A appellant holding an axe and standing between cots of the two deceased. The appellant was acquitted by the Trial Court in respect of charge u/s.302 IPC mainly on the grounds that there was a delay of 17 hours in lodging the FIR; that the Police took 9 hours in sending the F.I.R.

B to the Court; that PWs 1 and 2 told D.W. 1 that some unidentified persons killed both the deceased, as narrated by D.W.-1; that the motive had not been established and further the evidence of P.W.-2 shows that she was in sound sleep, and therefore, it was not

C possible for that witness and another to get up and see the appellant running away in the light of a solitary lamp in the street and both P.Ws. 1 and 2 could not have seen the accused, and that too from the back. In appeal filed by the State, the High Court found the appellant guilty of

D the offence u/s. 302 IPC and accordingly convicted and sentenced him to undergo life imprisonment. The High Court held that PWs1 and 2 were witnesses of truth and rejected the contention that as motive could not be discovered, the appellant was entitled for acquittal.

E Dismissing the appeal, the Court

HELD:1. There is clear and unimpeachable evidence on the basis of which the appellant/accused must be held guilty for the murder of the two deceased on the night intervening 13/14-06-2000 u/s. 302 IPC.

F [Para 10][743-D-E]

2. The counsel for the appellant heavily relied on the statement of D.W. 1, that he was told by P.Ws. 1 and 2 that an unidentified assailant had attacked the deceased. One fails to see how hearsay of a defence witness could weaken the prosecution case or cast any doubt on the depositions of the son and wife of the two deceased, who naturally woke up to the sounds of hacking by the axe and saw the accused standing between the two cots

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of the deceased and then saw him running away. These two are most natural witnesses whose presence at the scene cannot be doubted, being members of the family. [Para 7][742-C-F] A

3. There is nothing to discredit the said two witnesses. PW1 has clearly stated that he got up on hearing the sounds of hacking by the accused with an axe and saw the accused standing between the two cots of the deceased with an axe in his hand. Further, when he tried to apprehend the accused he ran away along with the axe, which he then threw on the roadside. The deposition of P.W. 2 is similar and identical in material particulars. Depositions of P.Ws 1 and 2 remained unshaken in the prosecution examination. The medical evidence, from the deposition of P.W. 7 [Dr.], clearly establishes that the injuries on the two deceased might have been caused by the same weapon. [Para 8] [742-F-H; 743-A] B C D

4. The village was about 4 kilometers from the police station and there was no evidence whether there was any road on which anybody could have travelled at night and therefore lodging the report in the morning cannot amount to delay. In any case, delay in registering F.I.R. is not fatal. [Para 9][743-B-D] E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 404 of 2008. F

From the Judgment and Order dated 30.11.2005 passed by the Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad in CrI. Appeal No. 1264 of 2003.

Ms. Niranjana Singh, Ram Bhaj and Ms. Madhu Moolchandani, Advs. for the Appellant. G

S. Udaya Kumar Sagar and D. Mahesh Babu, Advs. for the Respondent.

A           The Judgment of the Court was delivered by  
              **S. A. BOBDE, J.**

B           1. The appellant was acquitted by the Trial Court in  
              respect of a charge under Section 302 of the Indian Penal  
              Code (hereinafter referred to as 'the IPC') for the murder of  
              two persons, one Kuratikar Laxman and one Kuratikar  
              Thukaram. In appeal filed by the State, the High Court of Andhra  
              Pradesh found the appellant guilty of the offence under Section  
              302 IPC and accordingly convicted and sentenced him to  
              undergo life imprisonment.

C           2. According to prosecution Kuratikar Laxman  
              (hereinafter referred to as '1 st deceased') and Kuratikar  
              Thukaram (hereinafter referred to as '2 nd deceased') were  
              father and son. The appellant and the deceased are residents  
              of Govindapur, Adilabad and were related to each other. The  
              1 st deceased used to give medicine to the cattle for snakebite.  
              The 2 nd deceased gave country-made medicine to the cattle  
              for any disease. About 15 days prior to the date of incident,  
              the father of the accused apparently became deranged and  
              started wandering in the village. Five months before the  
              incident, the paternal aunt of the accused died of some  
              disease; three years prior to the date of incident, the grandfather  
              of the accused and another relative died due to sickness. The  
              accused suspected that the above events happened because  
              the 1 st deceased practiced witchcraft and therefore  
              the accused decided to do away with the lives of deceased  
              1 and 2.

F           3. On the night intervening 13/14-06-2000, the accused  
              found the deceased sleeping along with their family members  
              in front of their house and went there with an axe. He first hacked  
              the 1 st deceased with an axe on his throat and then struck the  
              2 nd deceased twice on his throat and caused severe bleeding  
              injuries. On hearing the sounds of attack, the complainant woke  
              up and witnessed the incident as well as saw the accused  
              holding an axe in the electric light. The accused then ran away

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on hearing the hue and cries raised by the complainant. The complaint was lodged by the elder son of the 1st deceased on 14.06.2000 at about 8.00 a.m. The Sub Inspector of Police, Asifabad, registered a crime for the offence under Section 302, IPC. Inquest was conducted and bodies were sent for post mortem. The doctor opined that both the deceased died due to hemorrhage and shock.

4. A charge sheet was accordingly filed. The Trial Court acquitted the accused mainly on the grounds that there was a delay of 17 hours in lodging the F.I.R.; the Asifabad Police took 9 hours in sending the F.I.R. to the Asifabad Court. Also that P.Ws. 1 and 2 told D.W. 1 that some unidentified persons killed both the deceased, as narrated by D.W.-1. According to the Trial Court, the motive had not been established and further the evidence of P.W.-2, who was wife of the 2nd deceased, shows that she was in sound sleep, and therefore, it was not possible for that witness and another to get up and see the accused running away in the light of a solitary lamp in the street and both P.Ws. 1 and 2 could not have seen the accused, and that too from the back. Thus, the evidence is suspicious and the prosecution had failed to prove guilt of the accused beyond reasonable doubt and accused was entitled for acquittal.

5. The High Court in Criminal Appeal, referred to the direct evidence of P.Ws. 1 and 2, i.e. the son of the 1st deceased and the wife of the 2nd deceased. The High Court accepted that these were witnesses of truth, who had been sleeping near the accused on their cots and woke up because of the sound of hacking made by the axe of the accused. P.W. 1 had stated that he woke up because of the sound and found the accused holding an axe and standing between two cots of both deceased. P.W. 2 had categorically stated that on hearing the sound of hacking made by the axe of the accused, she woke up and saw the accused standing between the cots of her husband and her father-in-law with an axe in his hand. The High Court rejected the contention that because the motive cannot be discovered, the accused is entitled for acquittal since

A it was not always possible to ascertain the real motive. The High Court observed that the actor may plan to do the act; though there may be no evidence of the preparation. The High Court, however, observed that the failure to discover the motive did not signify its non-existence.

B 6. The High Court observed that the father of the accused had started wandering in the village due to madness and that in the cross examination of P.W. 2 [wife of 2nd deceased] it was put to her that father-in-law (1 st deceased) was practicing sorcery, which she denied. This strengthens the case of the  
C prosecution that the accused suspected that the 1 st deceased is responsible for the ill health and madness of his father and therefore he bore a grudge against the deceased.

D 7. We have heard the learned counsel for the parties and perused the evidence on record. The learned counsel for the appellant heavily relied on the statement of D.W. 1, that he was told by P.Ws. 1 and 2 that an unidentified assailant had attacked the deceased. We fail to see how hearsay of a defence witness could weaken the prosecution case or cast any doubt on the depositions of the son and wife of the two  
E deceased, who naturally woke up to the sounds of hacking by the axe and saw the accused standing between the two cots of the deceased and then saw him running away. These two are most natural witnesses whose presence at the scene cannot be doubted, being members of the family.

F 8. We have examined the depositions of these two witnesses and have found nothing to discredit the said witnesses. P.W. 1 has clearly stated that he got up on hearing the sounds of hacking by the accused with an axe and saw the accused standing between the two cots of the deceased with an axe in his hand. Further, when he tried to apprehend the  
G accused he ran away along with the axe, which he then threw on the roadside. The deposition of P.W. 2 is similar and identical in material particulars. Depositions of P.Ws 1 and 2 remained unshaken in the prosecution examination. The  
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medical evidence, from the deposition of P.W. 7 [Dr. Anitha Rani], clearly establishes that the injuries on the two deceased might have been caused by the same weapon. A

9. The learned counsel for the appellant also argued on the question of delay in lodging the F.I.R. The High Court considered this question and found that though the offence was committed in the night intervening 13/14-06-2000, the matter was reported to the police on 14 th June, 2000 at about 8.00 a.m. The village was about 4 kilometers from the police station and there was no evidence whether there was any road on which anybody could have travelled at night and therefore lodging the report in the morning cannot amount to delay. In any case, delay in registering F.I.R. is not fatal. We agree with the above findings of the High Court. We find the contention of the learned counsel for the respondent acceptable in this regard. Learned counsel for the respondent has referred to all the material evidence on record to bring home the guilt of the accused. B  
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10. On the evidence thus, we find that there is clear and unimpeachable evidence on the basis of which the appellant/accused must be held guilty for the murder of Kuratikal Laxman and Kuratikal Thukaram on the night intervening 13/14-06-2000 under Section 302 IPC. E

11. In the circumstances, we find there is no merit in the appeal and the same is hereby dismissed. F