IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*** * * ***

CRIMINAL APPEAL No.582 of 2012

Between:

Eesampalli Srinivas

....Appellant/A1

and

The State of Andhra Pradesh,
Rep.by its Public Prosecutor,
Through SHO, Huzurabad Mandal, Karimnagar District.

....Respondent/Complainant

JUDGMENT PRONOUNCED ON : 02.12.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

+ CRIMINAL APPEAL No.582 of 2012

% 02.12.2017

Eesampalli Srinivas

...Appellant

vs.

$ The State of Andhra Pradesh,
Rep.by its Public Prosecutor,
Through SHO, Huzurabad Mandal, Karimnagar District.

... Respondent/complainant

!Counsel for the appellant : Sri M.Chalapathi Rao

^Counsel for the Respondent : Public Prosecutor (TG)

<Gist :

>Head Note :

? Cases referred

1. 2011 (1) ALD (Crl.) 527 (AP)
2. (1997) 5 SCC 341
3. AIR 1952 SC 54
4. AIR 1995 SC 959
5. (1998) 7 SCC 177 : AIR 1998 SC 2726
6. (2008) 12 SCC 565 : AIR 2008 SC 1460
7. (2011) 4 SCC 786
8. (2010) 12 SCC 324 : AIR 2010 SC 3071
9. (2014) 5 SCC 353
10. 2016 SCC Online SC 1163
11. 2014 SCC Online SC 719
12. 2017 SCC Online SC 801

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No.582 of 2012

JUDGMENT: (per Hon'ble Sri Justice A.Ramalingeswara Rao)

Heard the learned Counsel for the appellant appointed by the Legal Services Authority and the learned Public Prosecutor for the State.

This Criminal Appeal arises out of conviction and sentence of the appellant in Sessions Case No.299 of 2011, dated 14.05.2012, passed by the learned Judge, Family Court-cum-Additional Sessions Judge, Karimnagar, for the offence under Section 302 IPC.

The case of the prosecution was that the brother of the deceased came to Huzurabad Police Station on 13.10.2010 at about 22.30 hours and lodged a complaint stating that on the said day at about 08.30 pm his sister was killed by the appellant by hitting her with a pestle. In the complaint he stated that at about 11 years back his elder sister – Eesampalli Saritha, loved the appellant and married him. They were blessed with one son aged about 10 years and a daughter aged about 9 years. After their marriage, the appellant's sister, mother and brother started harassing the deceased physically and mentally demanding additional dowry. Unable to bear the said harassment, three years back, the parents of the deceased gave Rs.20,000/- and

also gave Rs.10,000/- about one month back. The appellant used to work as tractor driver previously and is not working at present. He is addicted to vices and his wife used to maintain their family by doing tailoring work. The appellant suspected the character and chastity of the deceased and used to pick up quarrels without any reason. On the fateful night, the appellant went to the house in a drunken condition with an intention to kill his wife, started quarrelling about her character and chastity, picked up a pestle and beat her on her head. At that time one Sri Chelluri Shravan Kumar witnessed the incident and immediately informed the same to him. On receiving the information, he along with his family members went to the house of the accused and noticed that his sister was struggling for life. They immediately shifted her to Government Civil Hospital, Huzurabad. The duty doctor examined and declared her dead at about 9.30 pm.

Crime No.248 of 2010 was registered under Sections 302, 498-A read with 34 IPC by Huzurabad Police and investigation was taken up. The inquest on the dead body was conducted from 08.00 hours to 10.00 hours on 14.10.2010 and thereafter the autopsy was conducted in the Government Civil Hospital, Huzurabad. The cause of death was stated to be “sudden cardio respiratory failure as a result of injury to vital part i.e., brain”.

On the information furnished by L.W.8 stating that the accused – appellant, approached him and disclosed about the

commission of offence and he was kept in front of Post Office Huzurabad, the Investing Officer went to the Post Office, Huzurabad, and apprehended the accused on 21.10.2010 at 10.30 hours in the presence of the mediators. Thereafter, the pestle was seized under the cover of confession and recovery panchanama from the accused in the presence of the same mediators. Accused Nos.2 to 4 were also arrested at about 13.00 hours.

P.Ws.1 to 16 were examined on behalf of the prosecution and none were examined on behalf of the defence. Exs.P1 to P15 and M.Os.1 to 6 were marked on behalf of the prosecution.

At the time of framing the charges, the appellant-accused No.1, admitted his guilt, whereas accused Nos.2 to 4 denied their involvement.

In spite of the admission of guilt by the first accused, the trial was conducted and the first accused was found guilty of the charge under Section 302 IPC and sentenced to suffer rigorous imprisonment for life and also sentenced to pay a fine of Rs.200/- and in default of payment of fine, to suffer simple imprisonment for a further period of three months. However, accused Nos.1 to 4 were found not guilty for the charges under Sections 498-A read with Section 34 IPC and also under Section 4 of the Dowry Prohibition Act and accordingly they were acquitted.

The *de facto* complainant was examined as P.W.1 and the father, mother, daughter and younger brother of the deceased were examined as P.Ws.2 to 5 respectively. The neighbour who passed on the information to the *de facto* complainant was examined as P.W.6. The photographer was examined as P.W.7, witnesses of inquest report were examined as P.Ws.8 and 9. The panch witnesses were examined as P.Ws.10, 13, 11 and 14. The owner of the house was examined as P.W.12. The Civil Assistant Surgeon who conducted the inquest was examined as P.W.15 and the Investigating Officer was examined as P.W.16. P.W.4, who is none other than the daughter of the first accused and the deceased, along with P.W.6 were stated to be the eye witnesses. But, during evidence it came out that only P.W.4 is the eye witness and the entire case rested on the deposition of P.W.4, who was aged about 9 years on the date of the offence and she deposed after more than one year.

Though the first accused initially pleaded guilty, but at the stage of examination under Section 313 Cr.P.C, he pleaded not guilty.

Learned Counsel appearing for the appellant argued that the evidence of P.W.4, daughter of the deceased and the appellant, is not wholly reliable and a perusal of the evidence shows that it was tutored. He further submits that the trial Court failed to bring on record the questions and answers put to the witness and make a record of the satisfaction of the Court as held by this

Court in **Rajulapadu Rambabu v. State of Andhra Pradesh**[1]. He also relied on **Dattu Ramrao Sakhare v. State of Maharashtra**[2].

Learned Public Prosecutor, on the other hand, submitted that the non-recording of questions and answers of the child witness did not vitiate the trial.

As stated above, the daughter of the first accused and the deceased was examined as P.W.4 and the entire case was dependant on her evidence.

In order to appreciate the evidence of the eye witness, P.W.4, this Court feels it necessary to reproduce the said evidence and it reads as follows:

> "Chief Examination by Addl.Public Prosecutor:-
>
> After putting some preliminary questions to ascertain the capacity of child witness to give evidence the court satisfied that the child witness by name Esampalli Varsha is capable of under standing the questions and give answers properly:-
>
> I am studying 4th standard in Rangineni Trust School at Sircilla by staying in a hostel. I am studying in Telugu Medium. The child witness identified her father by showing A-1 and further stated that A-2 is her paternal grand mother (mother of A-1) A-3 is her junior paternal uncle and A-4 is her aunt. Pw-3 is my maternal grand mother. My mother's name is Saritha, my mother is no more. My mother died on 13-10-2010. My father A-1 beat my mother with a pestle on her head consequently my mother died in our house at Peddapapaiahpalli during night time at about 8.30 pm. The incident was happened in front of our house at Peddapapaiahpalli. I witnessed while my father beat my mother with pestle. Immediately on seeing my father beat my mother, I went to Shravan Kumar (Lw-6) who is my neighbour and informed the incident to him.

[1] 2011 (1) ALD (Crl.) 527 (AP)
[2] (1997) 5 SCC 341

Shravan Kumar informed Pw-1 my uncle through phone about the incident. Within half an hour of the incident my uncle, my maternal grand father Pw-2, my grand mother Pw-3 and some others came to our house at Peddapapaiahpalli. My father used to come to home drunken state and used to abuse and beat my mother. My mother used to do tailoring work in our house itself. My uncle Pw-1, and my grand father Pw-2, and my grand mother Pw-3 and others shifted my mother to Govt. Hospital, Huzurabad, I also accompanied them to hospital, the doctor examined my mother and informed that my mother died. Police examined me.

Cross-examination:-

I am also called as Varshitha. By the time of incident I am studying 4th class standard in Primary School Peddapapaiahpalli. Myself, my brother Abhiram, my father and my mother used to live in a rented house. By the time of incident my brother was studying 5th standard. We used to come back to home by a 4.00 pm and normally we used to bed by 8.00 pm. I cannot say the names of our neighbours. My father used to work as driver of tractor, whereas my mother used to do tailoring work. It is true that both my father and mother used to earn some amounts cordial. The witness volunteers my father used to come to home in drunken stage and used to beat my mother demanding additional dowry in that regard when my mother approached the Sarpanch, and Sarpanch also told that he will beat my mother instead of warning my father. The quarrel started between my mother and my father due to fear I came out of the house, by that time my brother also present, after few minutes I returned to home at that time my father abusing my mother on that I requested my father not beat my mother and later my father brought my mother outside by holding her tuft in our presence my father beat my mother with pestle. It is true to suggest that my self my mother, my father and my brother were living in a separate house, whereas my paternal grand mother, junior paternal uncle and aunt and my paternal grand father were used to live in another house. It is true that my parents are not in a habit of going to the house of paternal grand parents. It is not true to suggest that my mother fell down and sustained injury, my father never beat my mother and at the instance of my maternal grand parents and my uncle, I am deposing false. It is not true to suggest that I am deposing false at the instance of my maternal grand gather. The witness volunteers I myself deposing the facts.

Re-examination: Nil.”

Thus, as per the aforesaid evidence, she was studying in a school along with her brother and they came to the house at about 4.00 pm. She was there in the house at 8.00 pm when her father came in a drunken condition and took up altercation with her mother. Initially she came out of the house and after hearing the shouting, she went inside and requested her father not to beat her mother. Thereafter, her father brought her mother outside the house holding her tuft and beat her with pestle. The scene of offence and her intimation to P.W.6 substantiate the said incident. P.W.6 stated that by the time he went to the house, people gathered and he went there after the information given by P.W.4. By the time he went there, the victim was found on the ground and the same was informed to P.W.1 through phone. P.W.12, the owner of the house, turned hostile. Similarly the panch witnesses also turned hostile.

The trial Court held that the evidence of P.W.4 is consistent, inspiring confidence, appeared to be cogent and reliable and the evidence of P.Ws.1 to 3, 5 and 6 has duly corroborated the evidence of P.W.4. The trial Court further held as follows:

> "There is no dispute with regard to the death of Saritha. There is no dispute with regard to injuries on the head of Saritha. M.O.4 (pestle) was seized in pursuance of the confession statement made by A-1 under Ex.P.6 (admissible portion of confession statement). The R.F.S.L report under Ex.P.14 reveals that M.O.4 contains human blood. That apart, at the time of framing charges on 21.11.2011, when the imputations of charges were read over and explained to the accused, A-1 stated that "*he is not claiming any trial, he is admitting the commission of offence. He further admitted that in the state of intoxiatin, he beat his wife with a pestle and his wife died on the spot, and A-2 to A-4 were not present at that time*". This admission of A-1

> that he beat his wife (Saritha) with a pestle (M.O.4) in the state of intoxication, itself is sufficient to prove the guilt of A-1."

The medical evidence of P.W.15 also revealed three fractures on the skull of the deceased and in view of the injuries, the trial Court held that the first accused has the intention to kill his wife and he has knowledge that those injuries, which, in the ordinary course of nature, would cause the death of his wife. The trial Court also took into account the admission made by the first accused at the time of framing charges. The pestle which was used in the commission of offence was recovered at the instance of the first accused under recovery panchanama Ex.P11. The Investigating Officer – P.W.16, stated that during the course of investigation, the first accused confessed the commission of offence and the confession statement under Ex.P10 was recorded in the presence of P.Ws.11 and 14.

With regard to the capacity, credibility and soundness of evidence of P.W.4, the trial Court observed as follows:

> "The evidence of P.W.4 appears to be free from any tutoring, prompting, coercion or any threat. No reasons were elicited from the evidence of P.W.4 as to why her evidence cannot be relied upon. No reasons were elicited as to why she has deposed against her father (A-1). Generally, when any child lost his/her mother, he/she will develop more love and affection towards his/her father, unless there are extraneous circumstances. In the case on hand, P.W.4 being the minor daughter, aged about 10 years, entered into witness box and deposed firmly and cogently that her father (A-1) beat her mother with a pestle on her head, as a result of which, her mother died instantaneously. Before recording the evidence of P.W.4, the Court put some preliminary questions to ascertain the capability of the child witness, whether she can understand the questions and give rational answers to be put by the prosecution or the defence counsel. The child witness (P.W.4) has given rational answers fairly without

> any fear, as such, the Court satisfied that P.W.4, though a child witness, is capable of giving rational answers cogently and firmly. After recording the observation made by the Court, the evidence of P.W.4 is recorded."

As stated above, this Court carefully scrutinized the evidence of P.W.4 and the occasional volunteering in the cross examination clearly indicates that she wanted to say the truth on her own. The credibility of the witness was not shaken by the defence Counsel in the cross examination. Initially P.W.6 was shown as an eye witness, but his evidence showed that he was not an eye witness. However, his evidence corroborated the circumstances. He is stated to be a car driver by profession and he was the neighbour to the deceased. On that fateful date he went to the circus and returned home between 8:00 to 8:30 pm. At that time P.W.4 came and requested him to inform the complainant with regard to the incident. In the cross examination he stated that by the time he went to the house of the appellant, people gathered there. Thus, though he was not an eye witness, he was the first witness after the incident. P.Ws.8 and 9 are the witnesses who were present when the inquest was conducted. P.Ws.11 and 14 were witnesses who were present when the appellant confessed about the crime. They went along with the appellant and the Police party to recover the pestle – M.O.4, which was recovered. P.W.14 identified the same. The medical evidence of P.W.15 revealed the fracture of left fore arm, parital bone of skull on right side, petrous temporal bone on left side and frontal bone on left side and the doctor states that they are ante-mortem in nature. He

denied the suggestion that the fracture injuries might have been caused by falling on a hard surface. The Investigating Officer as P.W.16 stated that he interrogated the appellant in the presence of P.Ws.11 and 14 and recorded the confession statement of the appellant. Thus, the evidence of all these witnesses clinchingly show the involvement of the appellant, and hence, there is no doubt in the mind of this Court that the appellant committed the crime and the evidence of P.W.4 is corroborated by other evidence of the above witnesses. The prosecution thus established its case.

Though an opportunity was given by the trial Court to the accused after admission of the guilt at the time of framing charges, the appellant/accused did not produce any evidence on his side. In this connection it is relevant to quote Section 229 of Cr.P.C, and it reads as follows:

> "**229. Conviction on plea of guilty:-** If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon."

In the instant case after pleading guilty, the said plea was recorded by the learned Judge, but he proceeded with the trial. The word "discretion" used in the aforesaid Section is meant to avoid the conviction on the plea of guilt by the persons not connected with the crime. There may be occasions where an innocent person may be introduced to admit the guilt for giving scope to the real culprit to escape and the discretion was given to avoid such circumstances. In the instant case there was no

occasion to doubt on the basis of the charge sheet and the record available by the date of admission of guilt, and the learned Judge should have convicted him under Section 302 IPC while proceeding with the trial under Section 498-A read with Section 4 of the Dowry Prohibition Act against all accused.

In view of the objection raised by the learned Counsel for the appellant, it is necessary to examine the evidentiary value of P.W.4. Way back in 1952 in **Rameshwar v. State of Rajasthan**[3] the Supreme Court examined the provisions of Section 5 of the Oaths Act, 1873, and Section 118 of the Evidence Act, 1872, and held that every witness is competent to depose unless the Court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind, and in paragraph 11 of the said decision it was held as follows:

> "11. ...it is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate."

In **Mangoo v. State of M.P**[4] the Supreme Court held that though there is scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. It was held that it can be ascertained by

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[3] AIR 1952 SC 54
[4] AIR 1995 SC 959

examining the evidence and from the contents thereof. In **Panchhi v. State of U.P**[5] it was held that adequate corroboration of testimony of a child witness is a rule of practical wisdom than of law. In **Nivrutti Pandurang Kokate v. State of Maharashtra**[6] the Supreme Court observed as follows:

> "10. ... The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

Ultimately in **State of Madhya Pradesh v. Ramesh**[7] the Supreme Court held that the evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The Court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a

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[5] (1998) 7 SCC 177 : AIR 1998 SC 2726
[6] (2008) 12 SCC 565 : AIR 2008 SC 1460
[7] (2011) 4 SCC 786

stiff cross examination. Similarly, in **State of U.P v. Krishna Master**[8] it was held that a child witness is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life and may be able to recapitulate carefully and exactly when asked about the same in the future. It was held that the child at a tender age is incapable of having any malice or ill will against any person. The same principle was reiterated in **Raj Kumar v. State of Madhya Pradesh**[9]**.**

In **Yogesh Singh v. Mahabeer Singh**[10] it was held that the evidence of a child witness shall be rejected even if it is found reliable, but what is held to be required is a careful evaluation and with great circumspection. The same view was taken in **Gul Singh @ Guliya v. State of M.P**[11] and **Satish v. State of Haryana**[12]

P.W.4 is not only a child witness but also an eye witness. No doubt the questions and answers put to the child witness should have been recorded by the learned Judge, but that is only to understand the capacity of the witness to depose the facts. Though it does not vitiate the trial, it helps the appellate Court in appreciating the evidence, as the witness would not be available before the appellate Court. This Court also feels that in a case like this, it is always advisable to record the deposition in the

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[8] (2010) 12 SCC 324 : AIR 2010 SC 3071
[9] (2014) 5 SCC 353
[10] 2016 SCC Online SC 1163
[11] 2014 SCC Online SC 719
[12] 2017 SCC Online SC 801

language used by the witness verbatim as is provided under Section 277 Cr.P.C. For the purpose of better clarity, the relevant Sections of Cr.P.C are extracted hereunder:

> "**277. Language of record of evidence:-** In every case where evidence is taken down under Sections 275 and 276:-
>
> (a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;
>
> (b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;
>
> (c) where under Clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:
>
> Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.
>
> **278. Procedure in regard to such evidence when completed:-**
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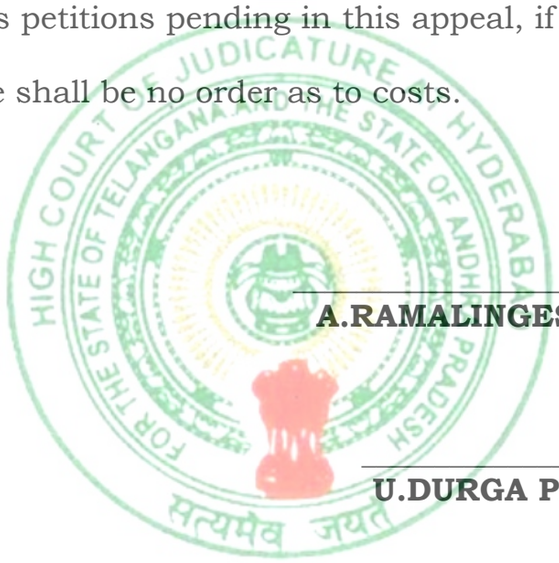
> …
>
> (3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands."

These two cautions would be helpful in deciding the criminal cases apart from the circumstantial evidence of the child witness

pointed out by the Supreme Court in **Dattu Ramrao Sakhare**'s case (supra).

By taking the overall circumstances and the evidence on record, we are of the opinion that the evidence on record clearly disclosed the commission of offence by the appellant on the fateful day.

The Criminal Appeal is accordingly dismissed confirming the conviction and sentence imposed by the trial Court. The miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.



A.RAMALINGESWARA RAO, J

U.DURGA PRASAD RAO, J

02.12.2017
vs