

THE HON'BLE SRI JUSTICE RAJA ELANGO

Crl.A.M.P.No.1424 of 2015

and

Crl.A.No.1386 of 2010

JUDGMENT

This criminal appeal is directed against the judgment dated 10.11.2010 passed in S.C.No.139 of 2009 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Vizianagaram.

2. The brief facts of the prosecution case are as follows;

A1 is the husband of A3 and A2 is their son. The deceased Vallepu Appalaraju is the eldest son of P.W.1. P.W.2 is the younger brother of the deceased. The deceased is the son of elder brother of A1. One Vallepu Mutyalamma, constructed a three portioned RCC slabbed house at about 20 years ago and gave one portion each to her three sons, out of whom Vallepu Pydithalli is the eldest one followed by Vallepu Demudu, father of the deceased and A1 herein is the third son. There is a common stair case on the eastern side of the said portioned house to go to the terrace for all. While so, A1 constructed a wall on the southern side of his portion obstructing P.W.1 and his family members from approaching the common staircase to the terrace. On 09.06.2009 at about 4.00 PM., when P.Ws.1 and 2 questioned A2 and A3 about ongoing construction, they replied that they have no right to question them and threatened and also beat them with hands by abusing them. At about 5.00 PM., the deceased, on coming to know the same, questioned A2 and A3 for the illegal construction, whereupon, A2 beat the deceased with hands, but P.W.5 intervened and rescued him. Again at about 8.00 PM., while the deceased was on the way to home through pathway from the bore well, the accused obstructed and punched him with force on his face, abdomen and all over his body and eventually, the deceased slumped down and fell unconscious and

thereafter, he was taken to his house and at about 11.00 PM., 108 ambulance came there and the technicians therein were examined the deceased and declared him dead. On 10.06.2009 at about 9.30 AM., on a report filed by P.W.1, a case in Cr.No.84 of 2009 of Kothavalasa Police Station was registered against A1 to A3 for the offence punishable under Section 302 read with Section 34 IPC.

3. The charge sheet was taken on file by the learned Judicial Magistrate of First Class, Kothavalasa in P.R.C.No.15 of 2009. On appearance of the accused, the case was committed to the Court of Sessions under Section 209 Cr.P.C. After appearance of all the accused, a charge under Section 302 IPC was framed against A1 to A3 and the same was read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws. 1 to 15 were examined and Exs.P1 to P11 were marked on behalf of the prosecution. No evidence was adduced on behalf of the defence, but Exs.D1 to D6 were marked. After completion of evidence, the accused were examined under Section 313 Cr.P.C., wherein the accused denied the incriminating evidence adduced against them.

5. The trial Court after considering the evidence of prosecution witnesses and the material documents held that there is no intention on the part of the accused to cause the death of the deceased, however, they beat him indiscriminately having knowledge that the beatings would cause bodily injury as is likely to cause death and therefore, held that the nature of attack does not attract the charge under Section 302 IPC and Section 304-II IPC only applies to this case and found the accused not guilty of the offence under Section 302 IPC, but found them guilty of the offence under Section 304-II IPC and convicted and sentenced them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-each, in default to suffer rigorous imprisonment for a period of six months. Aggrieved by the same, the accused preferred the present appeal.

6. Heard and perused the material available on record.

7. When the matter came up for hearing, the second respondent/de facto complainant and the appellants/A1 to A3 filed Crl.A.M.P.No.1424 of 2015 seeking to compound the offence since the matter has been settled out of the Court. Today, both the parties are present along with their respective counsel. They produced the xerox copies of their Identity Cards. The second respondent stated that the matter has been settled out of the Court and she does not want to prosecute the appellants/A1 to A3 in the aforesaid crime. Thus, she prays to set aside the conviction and sentence imposed against the appellants/A1 to A3.

8. Since the offence under Section 304-A-II IPC, against which the appellants/A1 to A3 were convicted, is a non-compoundable offence, this Court is not inclined to compound the said offence and to acquit the appellants/A1 to A3 by setting aside the conviction and sentence recorded by the trial Court. Hence, the Crl.A.M.P.No.1424 of 2015 is dismissed.

9. Learned counsel for the appellants contended that the trial Court failed to consider the aspect that there are no specific individual overt acts against the accused with regard to infliction of injuries that caused the death of the deceased. He contended that the trial Court failed to consider the aspect that the prosecution witnesses are all interested witnesses. He further contended that the trial Court ought to have considered that there is no medical evidence to show that the injuries are fatal and are likely to cause the death of the deceased. He also contended that the trial Court ought to have considered that there is a delay in lodging the complaint.

10. Learned Public Prosecutor submitted that the trial Court after taking into consideration all the aspects imposed the conviction and sentence against the accused and there is no need to interfere with by this Court.

11. As seen from the evidence of prosecution witnesses, P.Ws.1 to 3 in one voice have stated that while the deceased was returning from the bore well situated near to their house after cleaning his hands and face, all the accused obstructed him, beat him all over his body by fisting with their respective hands by raging him fatal on the ground and on hearing the cries of the deceased, they rushed to the spot and found that the deceased was in unconscious state of mind and the accused left the place. P.W.4 stated that while he was proceeding through the house of A2, he noticed a galata between A2 and P.W.1 and observed that A2 caught hold of the collar of P.W.2, dragged him and raging him to fatal and beat him with his hands, he intervened and separated them, and on the same day, he received a phone call about the death of the deceased. P.Ws.5,6 and 12 also corroborated the evidence of P.W.4.

12. As per the evidence of prosecution witnesses, P.Ws.1 to 3 are all interested witnesses and they have not stated specific individual overt acts against the accused and in one voice, they all stated that after hearing the cries of the deceased, they came to the scene of offence. Therefore, the prosecution failed to establish the case with regard to infliction of injuries by each and every accused on the deceased. Having regard to the facts and circumstances of the case and in view of the close relationship between the parties, who are residing in the same village and are intending to settle the disputes between them, this Court is of the considered view that benefit of doubt should be given to all the accused.

13. Accordingly, the Criminal Appeal is allowed, by setting aside the conviction and sentence imposed against the appellants/A1 to A3 by judgment dated 10.11.2010 in S.C.No.139 of 2009 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Vizianagaram. The appellants/A1 to A3 are acquitted for the charge levelled against them. Their bail bonds shall stand cancelled. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE RAJA ELANGO

12th October, 2015

sj