

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE MRS JUSTICE ANIS**

CRIMINAL APPEAL No.783 OF 2010

JUDGMENT:- (per Hon'ble Sri Justice K.C.Bhanu)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 19.05.2010, in Sessions Case No.281 of 2009 on the file of the III Additional District & Sessions Judge (Fast Track Court), Nizamabad, whereunder and whereby, the appellants herein/A.1 to A.4 were found guilty of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, "I.P.C.") and accordingly, convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default to suffer simple imprisonment for a period of two (2) months.

2. Case of the prosecution, in brief, may be stated as follows:

On 23.01.2009 one Sailoo (P.W.3) came to the house of P.W.1-V.Chinna Sailu and informed that A.1 to A.4 beat his son Guruvaiah (hereinafter referred to, as 'the deceased') at toddy depot. Then P.W.1 rushed to the spot and found the deceased along with A.1 to A.4 at toddy shop. There was an enmity existing between the deceased and A.1 to A.4 regarding cutting of stones, and taking advantage of the same, A.1 to A.4 attacked and beat the deceased with hands and kicked with legs, resulting his death. P.W.1 lodged a report before police. Basing on the complaint, P.W.9 registered a case in Crime No.10 of 2009 for the offence punishable under Section 302 read with Section 34 I.P.C. and examined P.W.1. On receipt of express FIR, P.W.10 rushed to the scene of occurrence and re-examined P.W.1 and shifted the dead body of the deceased to the Government Hospital, Nizamabad, for postmortem examination. He also held inquest over

the dead body of the deceased in the presence of L.W.11-Dyarangula Hanmanthu and P.W.7. After inquest, P.W.10 visited the scene of occurrence situated at Yamcha Village and conducted scene of panchanama in the presence of L.W.9-Begari Sailu and P.W.6. P.W.8 is the Doctor, who conducted autopsy over the dead body of the deceased. He opined that the deceased died because of head injury and alcohol intoxicants. On 04.02.2009, A.1 to A.4 were apprehended and they voluntarily confessed that they committed the alleged offence. Then A.1 to A.4 brought to the police station and effected their arrest. After completion of investigation, police laid the charge sheet.

3. The trial Court framed the following charge against A.1 to A.4:

“That you on 23.1.2009 at night 7.00 p.m. you A.1 to A.4 beat the deceased by name Guruvaiah with hands and kicked with legs at toddy shop. Due to which the deceased fell on the ground and died at spot. So you did commit murder by intentionally causing the death of Vemula Guruvaiah and thereby committed an offence punishable U/s 302 r/w 34 IPC and within my cognizance.” ”

4. When the above charge was read over and explained to A.1 to A.4 in Telugu, they pleaded not guilty and claimed to be tried.

5. To substantiate the charge, the prosecution examined P.Ws.1 to 10 and got marked Exs.P-1 to P-8.

6. After closure of prosecution evidence, A.1 to A.4 were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. On behalf of A.1 to A.4 no oral or documentary evidence was adduced.

7. The learned Judge, after considering the evidence on

record, came to a conclusion that A.1 to A.4 beat the deceased indiscriminately and thereafter, threw him in the drainage and caused his death and accordingly, found A.1 to A.4 guilty of the charge under Section 302 read with Section 34 I.P.C., and convicted and sentenced them, as stated supra. Challenging the conviction and sentence, the present appeal is filed by A.1 to A.4.

8. The points for determination are:

“Whether the prosecution proved its case beyond all reasonable doubt against the appellants/A.1 to A.4 of the offence punishable under Section 302 read with Section 34 I.P.C. and whether the judgment of the trial Court is correct, legal and proper or not?”

9. **POINTS:-** Learned counsel for the appellants/A.1 to A.4 contended that there is no evidence to show that A.1 to A.4 participated in commission of the offence; that accused were not armed with any weapon and on the spur of moment without any premeditation, a free fight has taken place between the accused and the deceased and in that free fight, the deceased fell down in the drainage canal, sustained head injury and died on the spot and therefore, she prays to acquit A.1 to A.4.

10. On the other hand, learned Public Prosecutor (Telangana State) appearing for the respondent contended that P.W.s 3 to 5 are the eyewitnesses and their evidence is very clear that it is A.1, who pushed the deceased into the drainage canal, due which the deceased sustained head injury and died on the spot; that A.2 to A.4 also beat the deceased indiscriminately with hands and legs and hence, he prays to dismiss the appeal.

11. P.W.10 is the Investigating Officer, who conducted inquest on the dead body of the deceased in the presence of P.W.7 and another and issued Ex.P.3-inquest panchanama. The inquest mediators opined that the deceased died as a result of injuries on the

body. After inquest, the dead body was subjected to postmortem examination by P.W.8 and he found blood clot in the brain at Right temporal region measuring 5 x 2 cm. He opined that the deceased died as a result of head injury and alcohol intoxicants. He issued Ex.P.6 final opinion. From the evidence of P.W.8, it is clear that no external injuries were found on the dead body of the deceased. Evidence of P.W.8 and recitals in Ex.P.6 remained unchallenged. Therefore, the homicidal nature of death of the deceased has been established beyond all reasonable doubt.

12. P.W.1 is father of the deceased. He stated that he rushed to the scene of occurrence on the information given by P.W.3 and found the dead body of the deceased. He lodged Ex.P.1 report to police. P.W.2 is wife of the deceased. She stated that while she was in the house, P.W.3 came to the house and informed that her caste people were beating the deceased and then she rushed to the scene of occurrence and found the head of the deceased was in the drainage. P.Ws.1 and 2 are not eyewitnesses to the incident in question. They rushed to the scene of occurrence on coming to know about the incident.

13. P.W.3 is the person, who was present at the toddy shop on the date of the incident. He stated that on the date of the incident, he went to the toddy shop of P.W.4 at about 7:00 PM and at that time, A.1 and the deceased quarreled with each other with regard to the amount for cutting of stones; that A.1 caught hold of the collar of the deceased, pushed and threw him into the drainage. He further stated that thereafter, A.1 to A.4 beat the deceased indiscriminately with hands and legs. That aspect of the evidence has not been corroborated from the medical evidence, because the Doctor, who conducted postmortem examination on the dead body of the deceased, did not find any external injuries.

14. P.W.4 is owner of the toddy shop. He stated that on the date of the incident, the deceased and A.1 to A.4 came to his shop and consumed toddy; and that the deceased and A.1 to A.4 beat with each other with regard to the dispute of cutting of stones; and that A.1 to A.4 kicked the deceased indiscriminately. Evidence of P.Ws.3 and 4 would disclose that the accused were not armed with any weapon. Though they stated that all the accused beat the deceased indiscriminately, no external injuries were found. It is A.1, who pushed the deceased as a result he fell down in the canal and sustained head injury.

15. P.W.5 is the photographer. He stated that on the instructions of police, he had taken the photographs of the dead body of the deceased.

16. P.W.7 is one the mediators. Police conducted inquest panchanama over the dead body of the deceased in his presence and another.

17. P.W.8 is the doctor, who conducted autopsy over the dead body of the deceased, opined that the deceased died because of head injury and alcohol intoxicants. He found no external injuries except blood clot in the brain at right temporal region. He issued Ex.P.6 final opinion.

18. P.W.9 is the Sub Inspector of Police, Jakranpally, who received Ex.P-1 – complaint from P.W.1 and registered a case and handed over the case file to P.W.10-Circle Inspector of Police for further investigation.

19. P.W.10 is the Circle Inspector of Police, whose evidence is formal in nature. Except conducting inquest, examining the witnesses and preparation of scene of occurrence, his evidence does not incriminate against A.1 to A.4.

20. The evidence of P.W.4 is not supported by the medical evidence. P.W.3 is an eyewitness to the incident and he specifically stated that it is A.1, who pushed the deceased into the drainage canal and as a result the deceased sustained head injury and died on the spot. Therefore, A.1 is liable for punishment for his act.

21. Now it has to be seen whether it is a case of murder or culpable homicide not amounting to murder. Under Section 300 IPC, except in the cases excepted therein, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death; or secondly if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or thirdly, if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or fourthly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. Where culpable homicide falls under any one of the four clauses of Section 300 IPC and none of the exceptions applies, the culpable homicide is murder and is punishable under Section 302 IPC. Exception 4 of Section 300 IPC can apply if all the four conditions laid down are satisfied viz. (1) absence of pre-meditation; (2) there must be a sudden fight; (3) the killing must be in the heat of passion upon a sudden quarrel; (4) the offender should not have taken undue advantage or acted in a cruel or unusual manner. In a fit of anger and without any premeditation, the incident had occurred. It is not a pre-planned attack. Therefore, there was no intention on the part of A.1 to kill the deceased. But, the accused must be having a knowledge that his act would likely to cause death of the deceased. Though A.1 has no pre-meditation to cause death of the deceased, at

the same time, he must have knowledge that the injuries are likely to cause death of the deceased. A man is presumed by law to intend the ordinary and natural as well as the necessary consequences of his acts. Therefore, the act committed by the appellant/accused squarely falls under exception 4 of Section 300 IPC. So, the appellant/accused is liable to be convicted for the offence punishable under Section 304 Part-II IPC. Hence, the conviction and sentence recorded by the trial Court under Section 302 I.P.C. are liable to be set aside. However, we found A.1 guilty of the offence punishable under Section 304 Part – II I.P.C.

22. The evidence of P.Ws.3 and 4 does not corroborate with medical evidence. Medical evidence shows that there were no external injuries. The injury which caused the death is attributed to A.1. There is no evidence on record to show that A.2 to A.4 shared common intention to do away the life of the deceased. Mere presence at scene cannot bought them under the purview of Section 34 IPC.

23. In the result, the conviction and sentence recorded by the III Additional District & Sessions Judge (Fast Track Court), Nizamabad in Sessions Case No.281 of 2009 vide judgment, dated 19.05.2010, against appellant No.1/A.1 for the offence punishable under Section 302 read with Section 34 I.P.C. are set aside, instead, appellant No.1/A.1 is found guilty of the offence punishable under Section 304 Part-II I.P.C., accordingly convicted and sentenced to undergo rigorous imprisonment for a period of five (5) years and to pay fine of Rs.2,000/- (Rupees two thousand only) in default, to undergo simple imprisonment for a period of two (2) months. The period of detention underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C.

The conviction and sentence recorded by the Court below in the aforesaid judgment for the offence punishable under Section 302 read

with Section 34 IPC against appellant Nos.2 to 4/A.2 to A.4 are set aside. They are found not guilty of the said charge and accordingly acquitted. Appellant Nos.2 to 4/A.2 to A.4 shall be released forthwith if they are not required to be detained in any other case.

24. The Criminal Appeal is, accordingly, partly allowed. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE K.C.BHANU

JUSTICE ANIS

JUNE 17, 2015
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**THE HON'BLE SRI JUSTICE K.C.BHANU
AND
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Dt: 17.06.2015

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