

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

CRIMINAL APPEAL No.636 of 2010

JUDGMENT: (Per Hon'ble Sri Justice Nooty Ramamohana Rao)

On behalf of learned counsel for the appellants, Sri N.Srushman Reddy, sought for an adjournment, we were not inclined to accede to that request. As on 02.06.2015, when the matter is taken up, a request is made to adjourn the case by one week. On 15.06.2015, when the matter is again taken up, none appeared for the appellants, but the Court adjourned the case by one week and again on 23.06.2015, when the matter is taken up, none appeared on behalf of the appellants and to provide an opportunity to the appellants, the Court adjourned the case by three weeks and on 05.08.2015, when the matter is taken up, there was no appearance on behalf of the appellants and as a last chance, we adjourned it by one week and today, the matter is posted as first item and at 10.30 A.M. we were asked to adjourn the case and no other case is arranged or kept ready by the learned counsel and hence, we have declined to adjourn the matter.

Learned counsel for the appellants, Sri N.Srushman Reddy, is not in a position to make submissions and hence, we are left with no choice except to proceed further in the matter.

The appellants before us are accused Nos.1 to 4 in Sessions Case No.771 of 2008 on the file of II Additional Sessions Judge, Karimnagar at Jagtial, they were charged for the offences under Sections 302, 307 and 324 read with 34 IPC.

The prosecution case is that the accused No.2 has developed an undesirable intimacy with one Naseema and eloped with her three months prior to the registration of the crime. Based upon a complaint lodged by the family members of Naseema, crime No.86 of 2007 for the offence under Section 497 IPC was booked by the police at

Sarangapur. Since then there arose disputes between the family members of A.2 and PW.10. On an allegation that PW.10 bet accused No.3, police have registered crime No.95 of 2007 under Section 324 IPC. A.3 is none other than the father of A.2. On 28.12.2007 sometime after 07.30 PM, A.1 to A.4 assembled at a culvert near about the house of PW.10 and then A.1 and A.2 called on the mobile number of PW.10 using the mobile phone of A.1. After abusing PW.10 for a while they challenged him to come out of his house. At that time PW.10 was taking rest in the house of PW.1. Hence, he came out of the house along with PW.11 and when he reached the culvert on the road, A.3 bet PW.10 with a stick on his head and caused a bleeding injury as a result of which, he fell down. PW.11 went to the rescue of PW.10 and as a consequence, he also received a hit by A.3 using the same stick. Thus, even PW.11 suffered a head injury. Hearing the alarm raised by the victims, PW.1 rushed to the rescue of PWs.10 and 11 along with his wife and PWs.2 to 4, then A.3 also bet PW.1 with a stick and A.4 bet with his hands and pelted stones. A.2 caught hold of wife of PW.1, Smt. Haleema while she was going to the rescue of her brother PW.11, A.1 stabbed her with a knife and as a result of bleeding injury thus caused, she fell down. There upon, A.1 to A.4 fled away from the scene. In the meantime PWs.5 to 8 came out of their house and they saw A.1 to A.4 running away from the scene of the offence. After few minutes of the incident, Smt. Haleema succumbed to the injuries and died.

On behalf of the prosecution, PWs.1 to 20 were examined and Exs.P.1 to P.41 were marked and 13 material objects have also been exhibited. Though no witnesses were examined on behalf of the defence, but, however, the apparent contradiction in the statement of PW.11 recorded under Section 161 Cr.P.C. was got marked as Ex.D.1.

PW.1 is the husband of the deceased Haleema. The deceased, is the sister of PW.11. His wife died recently and hence he was resting at the time the incident took place at the house of P.W.1. The motive behind the accused for the commission of the offence was that A.2, the

son of A.3 has eloped with the wife of PW.10 and consequently, there were serious disputes between the family members of A.2 and the relatives of the person with whom he eloped.

A.4 is the wife of A.3. Thus, A.3 and A.4 are the parents of A.2, while A.1 is the brother-in-law of A.2. PW.1 is none other than the younger brother of A.3. PW.1 has deposed that nearly about 1 ½ years back his younger brother by name Shaik. Lal Mohammad left for Dubai to work there and hence left his wife to the care of PW.1. When PW.1 also subsequently left for Dubai, A.2 being the son of the brother of PW.1 and thus, being a close relative of the family started visiting the house of PW.1 and in that process, developed undesirable relationship with Naseema, wife of Shaik. Lal Mohammad, the younger brother of PW.1 and A.3. By the time PW.1 returned from Dubai, the undesirable relationship between Naseema and A.2 became the talk of the locality. Thus, PW.1 learnt of this illegal activity of A.2. In those circumstances, the deceased who is the wife of PW.1 approached A.3 and A.4 and requested them not to allow their son, A.2, to visit their house. A.4 did not take too kindly to this request of the wife of PW.1 and she has picked up a quarrel immediately with the deceased. In view of these unhappy events taking place, Naseema the wife of younger brother of PW.1, shifted herself from the house of PW.1 to a rented premises belonging to one Sri Thoparapu Narsaiah. PW.1 in those circumstances has called up his younger brother and appraised him of all these developments. When the younger brother of PW.1 was making efforts to return to India, with a view to set right the situation, A.2 eloped with Naseema. In that view of the matter, Lal Mohammad, younger brother of PW.1 lodged a complaint with the local police against A.2. The situation then took an ugly turn. Lal Mohammad, younger brother of both PW.1 and A.3, could not contain himself and picked up a quarrel with A.3 and caused a bleeding injury on the head of A.3. Consequently, another criminal case is booked against the said Lal Mohammad. Since his return from Dubai, the said Lal Mohammad was staying with PW.1. During this time

around, on the day of the incident at about 7.40 p.m. A.1 and A.2 called Lal Mohammad, PW.10 and insulted and also abused him on the phone. Unable to bear the insult PW.10 proceeded towards the culvert on the day of the incident. P.W.11 followed him, as he was in the same room. Upon seeing PW.10, A.3 hit him with a stick on the head of PW.10 and because of the head injury PW.10 fell down. At that stage, PW.11 intervened and pleaded with the accused not to cause any more injuries to PW.10. Without paying any heed to this begging of PW.11, A.3 also hit PW.11 on his head using the same stick. When an alarm was raised, PW.1 along with PWs.2 to 4 rushed towards the culvert. A.3 bet PW.1 also on his left hand near the wrist. A.4 bet PW.1 on his back. In the meantime, wife of PW.1 went about to rescue her brother, the injured PW.11, and she was trying to tie a towel around the head of PW.1 as he was bleeding from the injury. Since the wife of PW.1 was seen helping the injured PW.11, A.2 caught hold of her and A.1 stabbed her using a knife below her ribcage. The wife of PW.1 then collapsed on the road. Seeing the gravity of the situation, A.1 to A.4 fled away from the scene. While PW.1 and others were trying to shift the injured wife of PW.1, in few minutes time thereafter she died. The next day morning at about 06.30 AM, PW.1 went to the police station at Sarangapur, which is 10 kms away from the village and lodged the complaint, Ex.P.1. MO.1 was the orange colour saree, while MO.2 was the blouse and MO.3 is the petty coat found on the person of the deceased. Though PW.1 was extensively cross-examined not much useful for the defence could be extracted from him. PW.1 in his cross-examination has admitted that A.1 is normally resident of Jannaram Mandal of Adilabad District and it is his sister, who was married to A.2. PW.1 has categorically asserted that PW.10 along with his children was staying at the house of PW.1 on the day of the incident. He also denied that because of the complaint lodged by his wife against him, he poked her with a sharp edged stick.

PW.2 is the daughter of PW.1 and the deceased. She was 14

year old at the time when she was examined in May 2009. PW.2 has affirmed that due to illegal intimacy of A.2 with the wife of PW.10, PW.10 has returned to India and there was some local panchayat (lolli) in that regard. This witness has specifically asserted that upon receiving a phone call from A.2, PW.10 went out of their house and proceeded towards the culvert. She was truthful in deposing that she has not seen the actual incident at the culvert involving PW.10, PW.11 and A.1 to A.4. But, however, when there was a gallata going on, this witness proceeded to the culvert along with PW.1 and her deceased mother.

Importantly the aged mother of A.3, PW.1 and PW.10, who was also staying at the house of PW.1 has also proceeded towards the culvert. PW.2 has spoken of A.3 and A.4 beating up her father PW.1. She has also specifically stated that A.2, caught hold of her mother and A.1 stabbed her with the knife and on the way to home while she is being shifted, the deceased succumbed to the injury. This witness (PW.2) has stated that it is Dr.Srihari, who has declared her mother as to have died.

Nothing much has been extracted in the cross-examination of this witness. She also denied that it is PW.1 who caused the fatal injury using a sharp edged stick on the deceased. PW.3 is the mother of PW.1, A.3 and PW.10. She has spoken about the back drop in which the quarrels have taken place amongst the family members. Since she was also present at the site when PW.1 and the deceased received the injuries, she spoke of the same. PW.3, the mother of PW.1, was staying with him and she never stayed in the past 20 or 25 years with A.3. It is during the cross-examination of this witness, she has deposed that it is she who caught A.2 and Naseema in the house of PW.1 when they are in a compromising mood. She denied the suggestion that the injury to which the deceased succumbed was caused by PW.1.

PW.4 is the son of PW.1 and the deceased and the elder brother of PW.2. He has narrated as to what happened near the culvert after they rushed out of their house upon hearing the cries of PWs.10 and 11.

This witness stood his ground and affirmed that it is A.1, who stabbed his mother while A.2 caught hold of her. He denied the suggestion that it is PW.1 who caused the fatal injury on his mother. PW.5 is a resident of the village and he is not related to the victim or the accused. He was examined only for purpose of establishing that the deceased died in few minutes time after the incident had occurred on the road sometime after 07.30 P.M. in the evening. PW.6 is the wife of PW.5. She was also examined for the same purpose. PW.7 is also resident of the village, who was present at the time of the death of the deceased. PW.9 was the photographer who took the photographs of the dead body and the scene of offence marked as Exs.P6, 8, 10, 12 and 14.

The next most important witness is PW.10. He is also an injured witness as he was attacked by A.3 and A.4. It is, in fact, PW.10 who lodged a complaint against A.2 because A.2 has eloped with his wife. On the day of incident at about 07.30 PM, A.2 telephoned PW.10 and abused him in filthy language. It is asserted by PW.10 that he cut off the phone for two times, but, however, for the 3rd time A.2 called him around 07.45 PM and since he was already abused on the telephone, PW.10 rushed out of the house of PW.1 and went towards the culvert. When A.3 hit on his head with a stick, he lost conscious and fell down on the ground. This witness has been cross-examined extensively. He has deposed that it is the Sarpanch of the village and a Member of the M.P.T.C. who got him to the hospital at Jagtial. The distance between Sarangapur police station and Rangapet village where the incident took place is 15 kms. This witness stood his ground in the cross-examination. Same is the case with PW.11, who is also an injured witness who received the injury at the hands of A.3. The reason why A.3 bet him was PW.11 seems to have questioned A.3 in the following words: "Emite E Anyayam (what is this injustice)" then A.3 bet him on his head with the same stick, which he used against PW.10. At that stage, PWs.10 and 11 cried loudly and it is this alarm which fetched PWs.1 to 4 and the deceased. PW.12, the Sarpanch of the village, was

examined. He was present at the inquest of the dead body of the deceased. He was a witness to collect MOs.7 to 9. He was also witness to Ex.P17, Crime observation report. PW.13 has been examined as he was witness for recovery of MOs.5 and 6 and Ex.P18-Seizure Panchanama. PW.14 is local Panchayat Secretary. He has been a witness to the recovery of MO.4-the knife used by A.1 for causing the fatal injury on the deceased, near about a bridge in Porandla village, which is 8 kms away from Rangapeta Village. He was also a witness for recovery of MOs.10 to 12 and he was witness to Exs.P19 and 20. Ex.P19 is the relevant portion of confession statement of A.1. PW.15 has been examined as he signed Ex.P24, the extra judicial confession statement of A.2 and Ex.P25 a similar statement of A.3 and Ex.P26 a similar statement of A.4 and Ex.P27 also bears his signature. PW.16 was the Civil Assistant Surgeon, Area hospital of Jagtial, who conducted Post Mortem examination of the deceased on 29.12.2007 at 12.10 PM and gave the post mortem report Ex.P28, which has vouched for the fact that the deceased died due to internal hemorrhage and shock and also due to penetrating injury to the visera of the deceased. PW.17 was the Civil Assistant Surgeon, Area Hospital of Jagtial, who examined and treated PWs.10 and 11. PW.18 is another Civil Assistant Surgeon, who on 31.12.2007 at 05.20 PM upon a request from the SHO, Sarangapur, examined A.1, he has also recorded the injuries noted on A.1. He has also examined A.3 and noted the injuries found on A.3. PW.19 was the Assistant Sub Inspector of Police, Sarangapur Police Station, who registered Ex.P1 FIR. PW.20 was the Investigating Officer.

Upon a careful analysis of the evidence, it emerges that PWs.1, 2, 3 and 4 and also the deceased rushed to the place of occurrence of the crime involving PWs.10 and 11. The presence of these witnesses along with the deceased was a natural consequence of their hearing cries let out loudly by PWs.10 and 11, who left the house of PW.1 just a few minutes before. There was nothing unnatural in their conduct in rushing towards the place where PWs.10 and 11 were attacked by A.1

to A.4. These witnesses were fairly truthful as they have not deposed one word with regard to the incident that took place between the accused and PWs.10 and 11. PW.3 is the mother of PW.1, PW.10 and also A.3. Therefore, there was no necessity for her to unnecessarily implicate A.3 or for that matter his wife A.4 with regard to the incident. It is she, who stood her ground when she deposed that she caught A.2 with the wife of PW.10, in the house of PW.1 in a compromising mood. Thus, the motive for picking up a quarrel with PW.10 and later on attacking him was clearly established. PW.1 was also attacked by A.3 and A.4. PWs.1, 2 and 4 have spoken about the same. The deceased was attacked by A.1 and A.2 on the road near about the culvert. She collapsed there. Except leaving a suggestion that it is PW.1 who caused the fatal injury to the deceased, there is no useful material was brought on record by the accused. Even PWs.5 and 6 who turned hostile have spoken that the deceased collapsed on the road, near about the culvert. Ex.P12 lends clear support in this regard. Therefore, the deceased was attacked by A.1 and A.2 and she died of the injury thus caused on her. Therefore, we are in complete agreement with the finding recorded by the learned Sessions Judge that it is A.1 and A.2 who caused the death of the deceased by causing the fatal injury on her.

But, however, when we have perused the entire evidence and carefully analyzed, we are of the opinion that no direct overt acts were attributed to A.3 and A.4 in so far as causing injury to the deceased. But, however, A.3 and A.4 being the parents of A.2, they had no doubt participated in the whole act. It was also brought in evidence that A.3 and A.4 did not take too kindly to the visit of the deceased to their home with a request to prevent A.2 from visiting their home because of his illegal activities involving the wife of PW.10. Therefore, there are adequate circumstances, which established not only the presence of A.3 and A.4 at the site of the offence, but their not preventing A.1 and

A.2 from committing the offence. Therefore, the conviction of A.1 and A.2 in so far as the offences under Sections 302, 307 and 324 read with 34 IPC is no doubt justifiable. But, however, since no specific overt acts have been attributed to A.3 and A.4, we feel that their conviction for the offence under Section 302 IPC is not justifiable. Both PWs.10 and 11, the injured witnesses have categorically spoken that it is A.3, who has unleashed the violence against them, the moment he saw PW.10 followed by PW.11 approaching the culvert. Further, PW.1 who was also attacked later on by A.3 and A.4, witnesses PWs.2 and 4 have spoken of the said fact. Both PWs.10 and 11 were shifted in an ambulance to the Area Hospital, Jagtial. PW.11 has categorically asserted that by the time the ambulance arrived, the deceased already succumbed to her injury and died and hence, she was not taken to the Hospital. The staff of the ambulance have given them first aid because of the bleeding injury suffered by them. We are convinced that for the sake of rescuing A.2, their son, A.3 and A.4 have attacked PW.10 and caused bleeding head injury. Since PW.11 interfered and tried to rescue PW.10, he was also attacked. Therefore, the conviction of A.2, A.3 and A.4 for offence under Section 307 read with 34 IPC cannot be taken exception to. Hence, so far as A.3 and A.4 are being held guilty for the offence committed against PWs.10 and 11 are concerned, we are confirming the conviction. The sentence handed down to A.3 and A.4 shall stand reduced to 10 years. In all other respects, we do not find any justifiable reason to allow the criminal appeal.

Accordingly, the criminal appeal stands dismissed excepting to the extent of reduction of sentence handed down to A.3 and A.4.

Consequently, miscellaneous petitions, if any, pending shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

19.08.2015
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