

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.1547 of 2010

DATED:- 16-11-2016

Between:

Nimmaraju Mallaiah @ Mallesh and another

..... APPELLANTS

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

COUNSEL FOR THE APPELLANTS : Sri H.PRAHALADA REDDY

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (TG)

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL APPEAL No.1547 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

This criminal appeal is filed against judgment dated 26.11.2010 in Sessions Case No.269 of 2007 on the file of the IX Additional Sessions Judge, Kamareddy, by and under which, the learned Sessions Judge has convicted the appellants for the offence punishable under section 302 r/w.34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each.

2. The case of the prosecution in brief is that the deceased Bhumani Balnarsaiah was the husband of PW 1. A1 & A2 are son and mother and they are closely related to PW 1. PW 2 is the son of the deceased. On 21.04.2007 the marriage of PW 5 took place in the night at 10 p.m. In the marriage procession A1 and PW 2 were dancing and there arose a dispute between A1 and PW 2, due to which A1 did not allow PW 2 to dance. PW 2 informed the same to his father, the deceased. Then PWs 1, 2 and the deceased went to the house of the accused in the midnight of 22.04.2007 and questioned A1 for not allowing PW 2 to dance in the marriage procession. Then A1 pushed the deceased and A2 gave a punch on his nose, due to which, the deceased fell down and died. PW 1 gave report to PW 9, the Sub-Inspector of Police, Bhiknoor Police Station on 22.04.2007 at 7.30 a.m and the same was registered as Cr.No.70/2007 under Section 302 r/w.34 IPC. On receipt of a copy of the FIR, PW 10, the Inspector of Police took up investigation from PW 9. PW 10 went to the scene of offence and examined PWs 1 to 5 and others, got photographed the scene of offence, conducted inquest over the dead body of the deceased under Ex.P4, and sent the dead

body of the deceased for post mortem examination. PW 7, who conducted post mortem examination over the dead body of the deceased, found blood clots in the nasal cavity and abrasion over left elbow area and issued Ex.P6 post mortem certificate, opining that the deceased died due to the injury on the skull and the brain. PW 10 arrested the accused on 27.04.2007 and after completion of the investigation, filed the charge sheet.

3. The plea of the accused is one of denial.

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 10 and marked Exs.P1 to P8. On behalf of the accused, Exs.D1 and D2 were marked. Based on the oral and documentary evidence, the learned Sessions Judge has convicted the appellants and sentenced them, as stated supra.

5. The learned counsel for the appellants submits that excepting the interested testimony of PWs 1 to 4 absolutely there is no evidence whatsoever connecting the appellants with the crime. He has further submitted that it is not safe to record conviction against the accused on the basis of the testimony of the interested witnesses. The learned counsel also submitted that even if the testimony of the interested witnesses is accepted, it does not amount to an offence under Section 302 IPC, since it is clear that there was no premeditation or any intention on the part of the accused to kill the deceased and hence it cannot be said that the accused committed the offence which attracts Section 302 IPC. The learned counsel submitted that the court below has erred in convicting the accused for the offence under Section 302 IPC and hence this appeal.

6. The learned Public Prosecutor submitted that the cogent testimony of PW 1 & PW 2 leaves no room for doubt that A1 & A2 killed the deceased by forcibly pushing and punching him on the face, and that therefore, the

evidence of PW 1 & PW 2 can justifiably be made the basis for holding the appellants guilty of the charge. The learned Public Prosecutor submitted that the Court below has appreciated the evidence on record in proper perspective and convicted the appellants, which does not warrant any interference.

7. The point for consideration is whether the prosecution proved its case against the appellants beyond reasonable doubt so as to sustain the conviction and sentence recorded against them, or whether it needs to be set aside, modified or varied?

8. A trivial incident culminated in the unfortunate death of Bala Narsaiah allegedly due to A.1 giving a blow on the neck and A.2 being a woman aged more than 52 years giving a fist blow on the face, due to which the deceased fell down and succumbed to the injuries. The Medical Officer – PW.7 who conducted autopsy over the dead body found blood clots in the nasal cavities and abrasion over the left elbow. Upon dissection, he found the blood clots in the rear part of the head and opined that the cause of death is due to injury on the skull. The Medical Officer did not rule out the possibility of such injuries being sustained due to a fall on hard surface.

9. The incident is alleged to have taken place for the reason that in the marriage procession of PW.5, A.1 and PW.2 were dancing in the procession and a quarrel ensued between them. Since PW.2 was not allowed to dance through the marriage procession, he returned home and informed the same to his father, (the deceased) and mother. The deceased came to the house of A.1 and A.2 to question the said act of A.1, upon which A.1 and A.2 inflicted one blow each with hands on the deceased, due to which he sustained injuries.

10. The incident is alleged to have been witnessed by PWs.1, 2, 3 and 4. All these four witnesses have consistently spoken to the fact that on the

date of the incident, the occurrence took place in the manner in which it is alleged. It is in their evidence that when questioned, A.1 and A.2 pushed and gave a punch on the face of the deceased. The evidence of these four witnesses is cogent and inspiring the confidence of the Court. Nothing is elicited from their elaborate cross-examination so as to disbelieve their claim or to hold that they are not speaking the truth.

11. The other witnesses on the record i.e., PWs.5 and 6, came to know about the incident when they were told that it is A.1 and A.2 who beat the deceased due to which he died.

12. Upon carefully perusing the evidence of the material witnesses, we have no hesitation in holding that it is the accused who are responsible for the death of the deceased.

13. The next aspect of the matter is as to what is the offence that is committed by the accused. As already noted above, the evidence on record is to the effect that while A.1 pushed the deceased down, A.2 gave a fist blow on face, due to which the deceased fell down and sustained injuries on the skull. Therefore, by no stretch of imagination, can it be said that the accused intended to cause the death of the deceased or that they acted with any premeditation. Therefore, the offence that is committed by the accused squarely falls within the ambit of Section 304 Part-II of I.P.C. Accordingly, they are liable to be convicted therefor instead of Section 302 I.P.C. The point is accordingly answered.

14. In the result, the Criminal Appeal is allowed in part, and the conviction and sentence recorded by the trial Court against the appellants/accused is modified to that of offence under Section 304 Part-II IPC. The appellants/accused are sentenced to undergo rigorous imprisonment for a period of six years, while maintaining the sentence of fine

imposed against them by the trial Court. The period of sentence already undergone by the appellants/accused is directed to be set off.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 16.11.2016
Dsr/Smr

