

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1497 of 2008

JUDGMENT:

1. This appeal is filed by the appellant-accused against the Judgment dated 3.12.2008 passed in S.C.No.30 of 2008 by the IV Additional District & Sessions Judge (FTC) at Mahabubnagar.

2. The case of the prosecution is as follows:

On 7.8.2007 at about 12 noon, L.W.1-Y. Venkataiah lodged a complaint alleging that on 1.8.2007 at about 9 a.m., when his brother Bala Swamy (for short, 'the deceased') was present in his house, one of the villagers-Ragilla Ramulu-appellant, keeping old grudges in his mind, came there and abused him in filthy language, due to which the deceased got enraged and came out from his house with a pestle and beat the appellant and his wife on their heads. During the course of the said struggle, the appellant pulled the pestle from the hands of the deceased and beat him on the backside of the head, as a result of which, the deceased fell down and lost consciousness. Then, he was shifted to Osmania General Hospital, Hyderabad for treatment. He succumbed to injuries while undergoing treatment. Basing on the said complaint, a case was registered and investigated into. After completion of the investigation, charge sheet was filed against the accused. The learned Judicial Magistrate of First Class, Kalwakurthy, took the case on file and committed the same to the Court of Sessions, Mahabubnagar. The learned Sessions Judge made over the same to the learned IV Additional District & Sessions Judge (FTC), Mahabubnagar for disposal.

3. The trial Court framed a charge under Section 302 IPC against the appellant, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 10 were examined and Exs.P1 to P10 and M.Os.1 and 2 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court found the appellant-accused guilty for the offence under Section 304 part II IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.500/- in default to suffer simple imprisonment for one month. Aggrieved by the same, the appellant filed this appeal.

6. Learned Counsel for the appellant submitted that a quarrel took place between the deceased and the accused and during the course of the said quarrel, the deceased picked up a pestle and beat the appellant and his wife and caused bleeding injuries and that the appellant after receiving injuries on his head tried to pull the pestle from the hands of the deceased, during the process of which, the deceased fell down and received injury and that the appellant pulled the pestle in order to protect himself and that the appellant has neither intention nor knowledge that the injuries caused by him would result in the death of the deceased and that the trial Court while coming to the conclusion that the accused has no knowledge, wrongly convicted the accused for the offence under Section 304 part II IPC and that the said conviction and sentence are not sustainable and therefore, the same are liable to be set aside.

7. Learned Additional Public Prosecutor submitted that the trial Court has appreciated the evidence in a proper perspective and that the judgment of the trial Court does not warrant any interference by this Court.

8. Now, the point that arises for consideration in this appeal is :

“Whether the Judgment of the trial Court warrants any interference by this Court?”

9. It is not in dispute that there was a quarrel between the appellant and the deceased on the date of occurrence. It is the case of the prosecution that there was a quarrel between the deceased and the appellant and during the course of the said quarrel, the appellant beat the deceased with a pestle on his head, as a result of which, the deceased died while undergoing treatment, whereas it is the defence of the appellant that during the course of quarrel, the deceased came out from his house with a pestle and beat the appellant and his wife on their heads, and later, the appellant pulled the pestle from the hands of the deceased, during the said struggle to get the pestle, the deceased sustained injury and that the appellant has neither intention nor knowledge to cause any harm or death of the deceased.

10. Now, it is to be examined as to whether the evidence of the witnesses establishes the case of the prosecution.

11. P.W.1, who is the brother of the deceased, deposed that there were previous disputes between the appellant and the deceased and everyday, they used to quarrel. On the date of occurrence, the appellant came to the house of the deceased and started quarreling with him. The deceased brought the pestle from nearby and beat the appellant and the appellant

seized it from the hands of the deceased and beat him on the back of the head. Immediately, the deceased became unconscious.

12. P.W.2-wife of the deceased deposed that once the deceased beat the accused due to which one of the tooth of the accused was broken and therefore, the accused came to their house on that day and started scolding and therefore, the deceased took a pestle and beat the accused and his wife. Meanwhile the accused pulled the pestle from the deceased and beat him at the back of his head due to which the deceased fell down unconscious.

13. P.W.3 deposed that there were previous disputes between the accused and the deceased and that on the date of incident, P.W.1 came to know that the teeth of the accused was broken when the deceased beat him some time ago, due to which, the accused and his wife went to the house of the deceased and quarrelled with him. Then, the deceased went inside and got the pestle and beat the wife of the accused first and later, the accused. Meanwhile, the accused pulled the pestle from the deceased and beat him on the back of his head, due to which, he fell down and lost conscious.

14. P.W.4 is the photographer. P.W.5 deposed as to the occurrence in the same manner as spoken to by P.W.3. P.W.6 is the mediator to the inquest report and P.W.7 is the mediator to the recovery panchanama P.Ws.6 and 7 turned hostile.

15. P.W.8 is the doctor, who conducted post mortem examination over the dead body of the deceased. He deposed that the cause of death is due to head injury.

16. P.Ws.9 and 10 are the official witnesses.

17. From the evidence of P.Ws.1, 2, 3 and 5, it is evident that prior to the occurrence, the deceased beat the accused, on account of which, the teeth of the accused was broken. On that, the appellant and his wife went to the house of the deceased and quarrelled with him. Then, the deceased got the pestle and beat the appellant and his wife first and then, the appellant took the pestle from the hands of the deceased and beat him. From this, it is evident that in the first instance, the deceased beat the appellant and his wife and then, the appellant took the pestle from the hands of the deceased and beat him. The appellant did not come to the house of the deceased with any weapons. The deceased got the pestle and beat the appellant. Then, the appellant took the pestle with an intention to defend himself and beat the deceased with the pestle. From this, it is evident that the appellant has no intention to cause any harm to the deceased and he has no knowledge that the injury caused by him during the course of quarrel would cause the death of the deceased.

18. In the Judgment under appeal, while appreciating the evidence, the learned trial Judge came to the conclusion that the appellant has neither knowledge nor any intention to cause the death of the deceased. While observing that the appellant has no knowledge, the learned trial Judge has convicted the appellant under Section 304 part II IPC. The learned Counsel for the appellant submitted that the trial Judge ought not to have convicted the accused for the offence under Section 304 Part II IPC.

19. From the judgment, it is evident that after considering the evidence, the learned trial Judge has rightly come to the conclusion that the appellant has no knowledge that the injury caused by him would cause the death of

the deceased. But, while observing so, the learned trial Judge wrongly convicted the accused under Section 304 Part II IPC. Considering the evidence of P.Ws.1, 2, 3 and 5 coupled with the medical evidence, it can be said that the head injury caused by the accused is grievous in nature and the same resulted in the death of the deceased. Therefore, the present case would fall under Section 326 IPC.

20. In the result, the conviction and sentence imposed by the trial Court against the appellant-accused for the offence under Section 304-II IPC are set aside. However, the appellant-accused is found guilty for the offence under Section 326 IPC and accordingly, he is convicted for the offence under Section 326 IPC. The imprisonment already undergone by the appellant-accused shall be construed as that of the sentence of imprisonment for the offence under Section 326 IPC. Further, the petitioner is also sentenced to pay fine of Rs.500/- for the said offence in default to suffer simple imprisonment for a period of one month.

21. Accordingly, the Criminal Appeal is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:30th August, 2016

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30.8.2016

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