

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1165 OF 2008

JUDGMENT:

The Criminal Appeal is preferred by the appellants/A.1 to A.4 challenging the Judgment, dated 12.09.2008, in S.C. No.323 of 2007 passed by the VI Additional District and Sessions Judge (Fast Track Court), Markapur, whereby the learned Sessions Judge found A.3 guilty for the offence under Section 304 Part II IPC and accordingly convicted and sentenced him to suffer rigorous imprisonment for a period of eight years and to pay a fine of Rs.1,000/- (Rupees one thousand only), in default, to suffer rigorous imprisonment for a period of six months. The learned Sessions Judge found A.2, A.3 and A.4 guilty for the offence under Section 324 IPC and accordingly convicted and sentenced them to suffer rigorous imprisonment for a period of one and half years each; and also found A.1 guilty for the offence under Section 323 IPC and accordingly convicted and sentenced him to suffer simple imprisonment for a period of six months.

The case of the prosecution, as recorded by the Court below, is as follows. There are strained ill-feelings between the accused and P.Ws.1 to 4 and L.W.5 and civil disputes are also pending in the Court. That on 18.10.2003, L.W.5 drove his cattle in the disputed land for grazing. Having seen that A.3 and his daughter-in-law went upon him and beat with sickle and caused injury on his head and it is the subject matter in crime No.64 of 2003 under Section 324 read with 34 IPC of Darsi Police Station. Having come to know about the said incident, on the same day the deceased and P.Ws.1 to 3 went to Kurichedu road and when they asked the accused about the incident occurred at the fields, the accused in pursuance of their common intention attacked P.W.1 and others and beat

them with sticks, soda bottle and brick. A.2 beat P.W.1 with stick on head and caused injury. A.3 beat with soda bottle on the forehead of the deceased and caused bleeding injury. A.4 beat P.W.2 with stick on right side forehead and caused bleeding injury. A.1 and A.2 made the deceased fell down and beat with hands and legs indiscriminately all over his body. On the same day, P.Ws.1 to 3 brought the injured deceased who was in unconscious state to the police station and then P.W.1 offered statement, and P.W.14 the Sub Inspector of Police, Darsi P.S., registered the same as a case in crime No.65 of 2003 for the offences under Section 324 read with Section 34 IPC. P.W.14 took up investigation. P.W.12 treated the injuries of P.Ws.1 to 3 and issued wound certificates. As the deceased was in unconscious state, he was referred to GGH Guntur by the medical officer. Subsequently, the deceased joined People Trauma and Emergency Hospital, Guntur, on 21.10.2003 and underwent treatment, but he was not recovered and continued in unconscious state. Due to poverty, he came out of the hospital in the middle of January, 2004 and took treatment on the advice of P.W.12. On 29.05.2004, the deceased got fits and was admitted in Community Health Centre, Darsi and while undergoing treatment, he died in the hospital on 02.06.2004. P.W.14 received death intimation and then he held inquest. On the orders of the Superintendent of Police, Ongole, on the inquest report, Post Mortem Certificate and answers given to the questionnaire P.W.15 altered the section of law from 307 IPC to 302 IPC. After completion of the investigation, charge sheet was filed.

To prove the guilt of the accused, P.Ws.1 to 15 were examined and Exs.P.1 to P.18 and M.Os.1 to 3 were marked on behalf of the prosecution. On behalf of the defence, D.W.1 was examined and Exs.D.1 to D.6 were marked.

On appreciation of oral and documentary evidence, the Court below convicted A.3 for the offence under Section 304 Part II IPC; A.2, A.3 and A.4 for the offence under Section 324 IPC and A.1 for the offence under Section 323 IPC and accordingly sentenced them as stated above.

Heard and perused the material available on record.

On perusing the entire material available on record and on hearing both sides, the point for consideration is whether the offence under Section 304 Part II IPC is attracted in the present facts and circumstances of the case.

Even though the accused are charged for the offence under Section 302 IPC, the learned Sessions Judge having come to the conclusion that it is not the case of culpable homicide, acquitted the accused for the offence under Section 302 IPC. However, the learned Sessions Judge convicted A.3 for the offence under Section 304 Part II IPC as he is the person who brought empty soda bottles from the cool drink shop of P.W.5 and gave a blow forcibly on vital parts manifests that he had knowledge of the fact that the injury caused by him is likely to cause death of the deceased.

The relevant portion of the evidence of the Doctor, P.W.10, runs as follows.

"I am of the opinion that the death of Urubidni Maddileti was due to cardio respiratory failure as a result of Malnutrition or emaciation associated with Hemiplegia and post Traumatic epilepsy. Ex.P.6 is opinion issued by me dated 26.01.2005. Post traumatic epilepsy is the resulted complication of injury. It is possible to develop malnutrition or emaciation in a person who received liquid feedings with the help of tube for a period of eight months. I issued Ex.P.6 opinion on examination of the documents sent to me."

On perusing the evidence of P.W.10, as extracted above, it is very clear that the death of the deceased is not due to the injury suffered by the deceased in the hands of accused. The prosecution by way of admissible evidence failed to connect the accused with the crime for the offence under Section 302 IPC or 304 Part II IPC and as such, A.3 cannot be convicted for the offence under Section 304 Part II IPC. Hence, A.3 is entitled for acquittal for the offence under Section 304 Part II IPC.

Insofar as other offences are concerned, the prosecution is able to prove by way of clinching evidence that the injured suffered injuries in the hands of the accused and hence, the conviction imposed on A.2, A.3 and A.4 for the offence under Section 324 IPC and the conviction imposed on A.1 for the offence under Section 323 IPC are liable to be confirmed. However, considering the fact that the accused are the only breadwinners in their respective families and they have to look after their children and respective families, a lenient view may be taken while imposing sentence.

The criminal appeal is accordingly partly allowed as follows.

(1) The conviction and sentence imposed by the Court below on A.3 for the offence under Section 304 Part II IPC is hereby set aside and he is acquitted of the said offence; and the fine amount, if any, paid by A.3 shall be refunded to him;

(2) The conviction imposed by the Court below on A.2, A.3 and A.4 for the offence under Section 324 IPC is confirmed. However, the sentence of imprisonment imposed on A.2, A.3 and A.4 for the offence under Section 324 IPC is modified to that of the period, which A.2, A.3 and A.4 have already undergone. This Court imposes fine of Rs.5,000/- on each of the accused for the offence under Section 324 IPC and in default, to suffer simple imprisonment for a period of one month each; and

(3) The conviction imposed by the Court below on A.1 for the offence under Section 323 IPC is confirmed. However, the sentence of

imprisonment imposed on A.1 for the offence under Section 323 IPC is modified to that of the period, which A.1 has already undergone. This Court imposes fine of Rs.1,000/- on A.1 for the offence under Section 323 IPC and in default, to suffer simple imprisonment for a period of one week.

The Criminal Appeal is accordingly partly allowed. Consequently, the miscellaneous petitions, if any pending in this appeal, shall stand closed.

JUSTICE RAJA ELANGO

07.09.2016
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