

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice M.S.K.Jaiswal

Criminal Appeal No.1553 of 2010

Date: 19.12.2016

Between:

Mesu Swamy @ Chendraiah

.. Appellant

and

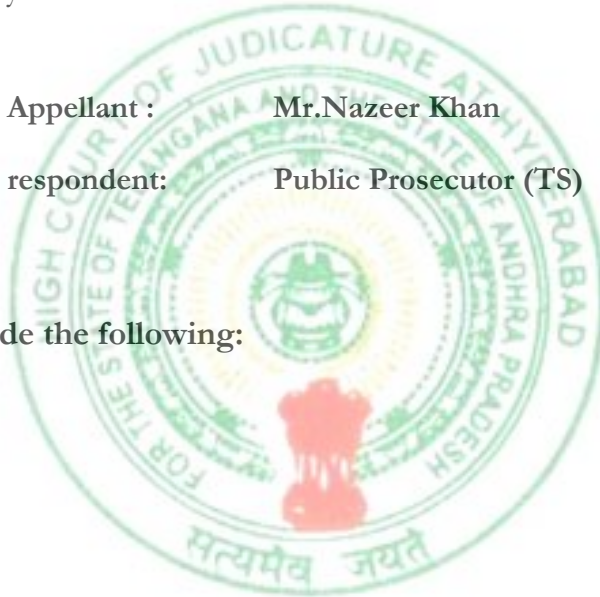
The State of A.P., Rep. by the Public Prosecutor
High Court, Hyderabad

.. Respondent

Counsel for the Appellant : Mr.Nazeer Khan

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:



Judgment : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused in Sessions Case No.592 of 2009 on the file of the Sessions Judge, Adilabad, filed this Criminal Appeal questioning his conviction for the offences under Sections 302,

326 and 324 IPC and sentence to undergo Life Imprisonment and to pay fine of Rs.500/-, in default, to suffer Simple Imprisonment for three months for the offence under Section 302 IPC; to undergo Rigorous Imprisonment for a period of three years and to pay fine of Rs.500/-, in default, to undergo Simple Imprisonment for a period of three months for the offence under Section 336 IPC; and also to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs.500/-, in default, to suffer Simple Imprisonment for a period of three months for the offence under Section 324 IPC with the direction that all the three sentences shall run concurrently.

The case against the appellant, as unfolded by the Prosecution, is briefly stated hereunder:

On 29-09-2009 at about 13.45 hours, PW.1 came to the Police Station at Luxettipet and lodged a written complaint that on the said date at about 12.30 hours, while her father-in-law *viz.*, Mesu Yellaiah (hereinafter referred to as 'the deceased') was erecting thorny fence around his fields, the appellant came to him by holding an axe with an intention to kill him on account of previous enmity, abused him in filthy language saying that the electric wire belonging to him will be cut down

by touching the fencing sticks, picked up a quarrel, hacked her father-in-law over neck and shoulder and committed his murder. On seeing the incident, PW.1 along with her husband- PW.2 came there, but, the accused caused injuries to them also with the axe.

Based on the said complaint, LW.14- Head Constable of Luxettipet Police Station registered Crime No.151 of 2009 under Sections 302 and 324 IPC, issued Ex.P.8- Express FIRs to all the concerned and took up the investigation, during the course of which, he examined PW.1, recorded her statement under Section 161 Cr.P.C., and referred her to the Government Civil Hospital, Luxettipet, for treatment and medical certificate.

On receipt of the Express FIR, PW.10- Circle Inspector of Police, Luxettipet, took up the further investigation, visited the scene of offence situated at Harijanwada, Doudapalli Village, observed the dead body of the deceased and the scene of offence, took photographs of the dead body of the deceased through LW.7, recorded the statements of PWs.2, 3 & 4 and LWs.3 & 5, secured the presence of the mediators- PWs.5 and 6, conducted the scene of offence panchanama, drew Ex.P.13- rough sketch of the scene of offence and seized the blood

stained earth and control earth from the scene. Later, he held inquest over the dead body of the deceased in the presence of the above mediators and seized the blood stained white coloured dhoti from the dead body of the deceased under the cover of Ex.P.10- Inquest Panchanama. Thereafter, he sent the dead body to the Government Civil Hospital, Luxettipet, for Post Mortem Examination and referred PW.2 to the Government Hospital, Luxettipet, for treatment and medical certificate.

On 30-09-2009 at 6.15 hours, on reliable information, PW.10 arrested the appellant at his house and interrogated him in the presence of PWs.7 and 8- mediators. During the course of investigation, the appellant confessed to the commission of offence. His confessional statement was recorded and the crime weapon *i.e.*, blood stained axe was seized from his possession in the presence of the above mediators under Ex.P.11- Confession and Seizure Panchanama. Then, PW.10 brought the appellant to the Luxetti Police Station, informed him the grounds of arrest and produced him before the Court for judicial remand.

P.W.9- Medical Officer, Government Civil Hospital, Luxettipet, who held autopsy over the dead body of the deceased, gave Ex.P.7- Post Mortem Examination report and opined that the cause of death of the deceased was due to cardio-respiratory arrest due to hemorrhagic shock. He further opined that the injury received by PW.1 is simple in nature whereas the injury received by PW.2 is grievous in nature. LW.13- Scientific Assistant, Regional Forensic Science Laboratory, Karimnagar, gave Ex.P.12- FSL report. After completion of investigation, PW.10 filed charge sheet.

As the appellant pleaded not guilty, he was tried. The Prosecution has examined PWs.1 to 10, got marked Exs.P.1 to P.13 and produced MOs.1 to 4. On behalf of the appellant, no evidence was let in.

On appreciation of both oral and documentary evidence, the trial Court has disposed of the case in the manner as indicated above.

We have heard Mr.Nazeer Khan, learned Counsel for the appellant, and the learned Public Prosecutor for the State of Telangana.

The learned Counsel for the appellant submitted that the Prosecution failed to establish the motive for commission of offence by the appellant and that except the interested testimony of PWs.1 and 2, who are none other than the daughter-in-law and the son of the deceased, the Prosecution failed to adduce independent evidence in order to prove the guilt of the appellant. He has further argued that PW.3, who is the grandson of the deceased, and PWs.5 to 8, who are the witnesses for confession and recovery Panchanama, have turned hostile, which has seriously dented the Prosecution case. He has further argued that there is material contradiction in the version of PWs.1 and 2 between Ex.P.1- complaint and their oral evidence regarding the place where the deceased was attacked.

The learned Public Prosecutor sought to sustain the conviction of the appellant with reference to the evidence on record.

With regard to the first submission of the learned Counsel for the appellant, the law is well settled that in a case based on the evidence of eye witnesses, motive does not play significant role. Even otherwise, PW.1 has specifically

mentioned in Ex.P.1- Complaint that the appellant had old rivalry in his mind and that on seeing the deceased raising the fence in the agricultural field, he had attacked him with an axe after chasing him from the field up to their house. In her evidence also, PW.1 categorically stated that there were disputes between the appellant and the deceased with regard to the boundary of the fields. Though a suggestion was put to PW.1 in her cross-examination that there were no land disputes between the appellant and the deceased, the same was denied by her. PW.2 also deposed that there was boundary dispute between the appellant and the deceased. This evidence is sufficient to conclude that the appellant, who is no other than the agnate of the deceased being his nephew, appears to have some boundary dispute relating to their agricultural fields and that on seeing the deceased raising a fence on the boundary of the agricultural fields, the former has attacked the deceased.

Coming to the evidence relating to the participation of the appellant in the murder of the deceased, PWs.1 and 2 are not only eye witnesses but also injured witnesses. Both of them deposed in unison that when the deceased was raising a fence in his field, the appellant went there and quarrelled with him; that when the appellant took an axe to attack the deceased, the

latter ran from the fields to his house; that the appellant has chased the deceased and hacked him on his neck and shoulder in their house; and that when both the witnesses tried to intervene, the appellant has hacked PW.1 on her right waist and PW.2 on his mandible jaw. Exs.P.5 and P.6 are the injury certificates relating to PWs.1 and 2 respectively issued by PW.9-Medical Officer. In his evidence, PW.9 has deposed that PW.1 sustained injury on the abdomen with incised wound of 4 x ½ x ½ centimeter and PW.2 sustained injury on left cheek with deep incised wound of 7 cms long and 1 cm sharp (deep). He has also opined that the injuries mentioned in Exs.P.5 and P.6 were possible by an axe or a sharp object. No suggestion was putforth to this witness that these injuries are self inflicted or that they must have been caused by someone else. Though PWs.1 and 2 are interested witnesses, that itself cannot be a ground to discard their evidence, if their testimony is found truthful and reliable. Being the injured witnesses, it is not possible to disbelieve their presence at the scene of offence in the absence of the defence being able to probablise the injuries found on the two eye witnesses in a manner different from the one spoken to by them. We have, therefore, no hesitation to

hold that the appellant has attacked the deceased in the presence of PWs.1 and 2.

PW.3, who is the son of PWs.1 and 2, has turned hostile. A perusal of Ex.P.3- Section 161 Cr.P.C. statement of PW.3 shows that he has not claimed to be an eye witness. As per his statement, he is only a hearsay witness. In his chief examination, he has stated that he went to his in law's house for Dasara; that on the next day, he received telephone call from one Pathru stating that his parents are at Luxettipet hospital; and that he has immediately rushed to the hospital at 2 p.m., and found PWs.1 and 2 with injuries. PW.3 not being the eye witness, his evidence did not have much relevance. At any rate, he supported the version of the Prosecution to the extent of PWs. 1 and 2 sustaining injuries. No doubt, PWs.5 and 6, who are witnesses to Ex.P.9- Scene observation Panchanama and Ex.P.10- Inquest Panchanama, and PWs.7 and 8, who are the witnesses to Ex.P.11- Confession and Seizure Panchanama, have turned hostile. However, in the light of the evidence of the direct witnesses and that of PW.10- Investigation Officer, who had categorically deposed the factum of preparation Ex.P.9- Scene observation Panchanama, Ex.P.10- Inquest Panchanama and Ex.P.11- Confession and Seizure Panchanama

in his presence, the Prosecution is able to establish the charge against the appellant.

The evidence of PW.9- Doctor completely supports the version of PWs.1 and 2 regarding the nature of injuries sustained by them and also the deceased and the nature of the weapon used in the commission of offence. Thus, the evidence as discussed above, which is brought out by the Prosecution, clinchingly establishes the guilt of the appellant beyond all reasonable doubt.

The learned Counsel for the appellant has alternatively submitted that the conviction of the appellant may be converted into the one under Section 304 Part I IPC. We are afraid we cannot accept this submission. The provisions of Part I of Section 304 IPC would be attracted only if the act committed by the appellant falls in any one of the five exceptions under Section 300 IPC. The manner in which the appellant has attacked the deceased *viz.*, proceeding to the scene of offence with an axe, which is a deadly weapon, and attacking the deceased after chasing him for a distance of 100 meters from the field to the latter's house shows that he had a clear intention of doing away with the life of the deceased.

Therefore, the appellant is guilty of the offence of ‘murder’ within the meaning of Section 300 IPC. For the aforementioned reasons, we do not find any reason to interfere with the judgment of the lower Court.

The Criminal Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Dt: 19th December, 2016
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