

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice G.Shyam Prasad

Criminal Appeal No.1316 of 2010

Date: 05.07.2016

Between:

Shaik Ghouse Jonny @ Jony

..Appellant/accused

And

The State of A.P.,
rep. by its Public Prosecutor
High Court of Judicature
at Hyderabad

..Respondent

Counsel for the appellant: Mrs.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

JUDGMENT: *(Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

The sole accused in Sessions Case No.132 of 2010 on the file of the Principal Sessions Judge, East Godavari District, Rajahmundry, filed this Criminal Appeal feeling aggrieved by his conviction for the offence under Section 302 of the Indian Penal Code, 1860 (IPC) and sentence of imprisonment of life and also to pay fine of Rs.5,000/- and in default, to suffer imprisonment for two months.

The case of the prosecution in brief is as follows:

The appellant and Rambabu (hereinafter referred to as 'the deceased') were workers in Manikanta Delux Hotel, Rajahmundry; that while the accused was a supplier, the deceased used to work in parcel section; that they used to quarrel with each other in respect of supply of tiffins; that on 23.04.2009, at about 6.00 or 7.00 pm., both the appellant

and the deceased quarrelled with each other during the course of which, the accused abused the deceased in filthy language and uttered the words as “nee anthu Chusthanu lanjakondaka” (I will see your end); that thereafter, both of them left their duties; that on the same day at about 11-00 or 11-15 p.m., when P.W.1 was taking food along with his wife, deceased and others in his house, the accused came and asked one Vodiya Raju to send out the deceased; that the deceased went out of the house; that PW.1 heard cries from outside and rushed out along with others; that at a distance of 10 yards, PW.1 found the accused stabbing the deceased on the left side of his stomach, on the left side below the chest and right side of the mouth with a drink bottle; that when PW.1 and others rushed to the scene, the accused had thrown away the bottle and ran away; that on hearing the cries of the deceased, five or six persons of the same locality rushed to the spot; that PW.1 and another person went to the house of the hotel owner and informed him about the incident; that the hotel owner reached the spot along with his two sons and shifted the injured to the hospital for treatment; and that thereafter, the deceased died.

It is the further case of the prosecution that PW.9- Assistant Sub-Inspector of Police, III Town, Rajahmundry, received MLC intimation on 23-04-2009 at 12.35 a.m.; that PW.9 proceeded to the District Head Quarter Hospital, Rajahmundry and recorded Ex.P.14- statement of the deceased in the presence of the Casualty Medical Officer of the hospital; that he returned to the Police Station at 1-15 a.m., and registered the same as Crime No.144 of 2009 under Section 307 IPC;; that at 3-15 a.m., PW.9 received Ex.P.7- death intimation of the deceased and handed over the file to PW.7- Sub-Inspector of Police, III Town Police Station, Rajahmundry; that P.W.7 altered the Section of law in the FIR from Section 307 IPC to Section 302 IPC; that PW.8- Inspector of Police, Rajahmundry, received express FIR at about 6.00 a.m., and took up the investigation; that PW.8 visited the scene of offence, inspected the same in the

presence of LWs.11 and 12 and seized MOs.1 to 6; that he prepared Ex.P.9- rough sketch of the scene of offence; that he conducted inquest over the dead body of the deceased at about 3.00 p.m., in the presence of PW.5, LW.12 and LW.13; that PW.8 examined PWs.1 to 4 and recorded their statements under Section 161 Cr.P.C.; that PW.6- CAS., District Hospital, Rajahmundry, who received requisition on 25-04-2009, conducted autopsy over the dead body of the deceased and opined that the death might be due to shock and haemorrhage caused due to the injury caused by a sharp edged object; that PW.8 apprehended the accused on 28-04-2009 at his house in the presence of PW.5 and LW.12- Jala Ravi Sekhar, seized MOs.7 and 8 from him and sent him to remand; and that after completion of the investigation, charge sheet was filed.

On appreciation of oral and documentary evidence, the trial Court has convicted and sentenced the appellant as noted herein before.

I have heard Smt A.Gayathri Reddy, learned counsel for the appellant, and Mr. P.Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh.

The learned Counsel for the appellant submitted that there is a material contradiction between Ex.P.14- purported statement of the victim /deceased, allegedly recorded by PW.9, and the evidence of PW.1- the alleged eye witness regarding the weapon with which the appellant has attacked the deceased and that the whole prosecution case crumbles on account of this major contradiction. She has further argued that even if the appellant was found guilty of causing injuries to the deceased, as evident from Ex.P.6-post-mortem examination report, the deceased was suffering from right lung Tuberculosis; that, the injury inflicted on him would not have, in ordinary course, been sufficient to cause his death; and that the trial Court has committed an error in convicting the appellant for the offence under Section 302 IPC.

The learned Public Prosecutor, while opposing the

above submissions, argued that the deceased, who was brutally attacked by the appellant, would have been under severe shock after such attack and that he might have *bona fide* believed that the appellant might have stabbed him with a knife. He has further argued that merely on account of the inconsistency between Ex.P.14-statement of the deceased and the evidence of PW.1 on the nature of the weapon used, there cannot be a wholesale rejection of Ex.P.14 and that the contents of Ex.P.14 have to be considered in their entirety. He has further submitted that the contents of Ex.P.14-statement of the deceased in all other respects were amply corroborated by the evidence of PW.1, PW.9, who recorded Ex.P.14, and also PW.6, who conducted Post Mortem Examination on the deceased. While seriously opposing the submission of the learned Counsel for the appellant that conviction of the appellant under Section 302 IPC by the trial Court is erroneous, the learned Public Prosecutor argued that the fact that the appellant came to the place, where the deceased was staying, with a glass bottle shows his mental preparation to do away with the life of the deceased and that the nature of the injuries inflicted on the deceased was such that they would have caused the death of even a healthy person in ordinary course.

We have carefully considered the submissions of the learned Counsel for the parties with regard to the record.

PW.1, a co-worker of the deceased, is examined as an eye witness by the prosecution. He has narrated the background pertaining to the frequent quarrels between the deceased and the appellant in connection with their duties in the hotel. He has deposed that at about 6.00 or 7.00 p.m., on the date of occurrence, the accused and the appellant quarrelled with each other in connection with their respective works; that during the quarrel, the appellant has uttered the words “nee anthu chustanu lanjagodaka”, which in broad sense mean that he will see his end; and that saying so, the appellant has also abused the deceased in filthy language. PW.1 further deposed that after completing their respective

duties, they left the hotel; that he used to reside in a room at a distance of 30 feet to the hotel; that there were two portions and in another portion, one Allu Juren Raju, who was also working in the same hotel, was residing; and that at about 11.00 or 11-15 p.m., on the same day, himself, his wife, Allu Juren Raju @ Vodiya Raju and the deceased had taken food in their house and that, at that time, the appellant came and asked Vodiya Raju to send out the deceased; that there upon, the deceased went out of the house; and that thereafter, on hearing the cries from outside, himself and Vodiya Raju ran out of the room. He has further deposed that at a distance of 10 yards, he found the accused stabbing the deceased on the left side of the stomach, left side below the chest and right side of the mouth of the deceased with a 'drink bottle'; that they rushed to the scene; that on seeing them the appellant has thrown away the bottle and ran away; that on hearing the cries of the deceased, five or six persons of the locality also rushed to the spot; that himself and Vodiya Raju went to the house of P.W-2-the hotel owner, who also rushed to the scene of offence along with them and his two sons; that by that time, the deceased was in a pool of blood and he informed them about the incident; and that P.W-2 and his two sons have taken the deceased to the hospital for treatment, where he died. He has further deposed that on the next day, the Police examined him. He has identified MO-1-a glass piece as the same with which the appellant has stabbed the deceased.

In the entire cross-examination, the defence could not elicit anything worth-mentioning to discredit the testimony of P.W-1. It was suggested to him that he did not see the incident; that he has given false evidence at the instance of the Police; and that the appellant did not stab the deceased with the broken glass bottle. The manner in which this suggestion was put to P.W-1 suggests as if that the dispute was only with regard to the weapon, which was used for stabbing.

Be that as it may, the evidence of P.W-1 was lent full

corroboration by the medical evidence. Ex.P-6 is the post-mortem examination report, which found as many as six external injuries and two internal injuries, which are as under:

“External injuries:

1. A round lacerated injury on the left side of the upper abdomen – 5 x 2 x muscle deep with small intestines coming out of the wound.
2. A round lacerated injury on the middle part of the left side of the chest of size 5 x 2 cms x muscle deep.
3. A round lacerated injury on the left below Axillary region 5 x 2 x muscle deep.
4. A lacerated injury on the left side of the face, left side of the mandibular region 5 x 2 cms x muscle deep.
5. A lacerated injury on the left side below the left eye region 2 x 3 cms x muscle deep.
6. A lacerated injury on the left side of the upper lip of size 2 x 1 cm muscle deep.

Internal injuries:

1. The right lung was affected with TB and there was presence of fibrosis.
2. The right plural cavity was also filled with blood.”

P.W-6, who conducted autopsy on the dead body of the deceased, opined that the death might have occurred due to shock and hemorrhage because of the injuries caused to the chest and abdomen approximately by means of a sharp edged object; that the injuries were possible by means of an object like MO-1 shown to him; and that the death of the deceased was possible due to such injuries during normal course of events. He has, however, ruled out the possibility of the injuries being caused by a knife. Nothing material could be elicited from this witness also to shake the veracity of his testimony. MOs.1, 2 and 6-a part of Fanta tin bottle and glass pieces, respectively, were recovered from the scene of offence under Ex.P-3. Ex.P-3 was proved by the prosecution by examining P.W-5, one of the witnesses to the said document. P.W-8-Investigating Officer has testified in his

evidence that he has seized MOs.1 to 6 under Ex.P-9. P.W-2-the owner of the hotel, in which both the appellant and the deceased used to work, has also corroborated the version of P.W-1 that the appellant and the deceased used to frequently quarrel with each other; that at 6 pm on the night of occurrence, they have quarrelled with each other in the hotel on the ground that the appellant left his duty without informing the deceased about the curries to be supplied; and that P.W-2 has intervened and separated them. He has also deposed that at about 11 or 11.15 pm., on that day when he was taking dinner at his house, P.W-1 and Vodiya Raju came to the house and informed him that the appellant has dealt blows to the deceased; and that thereupon himself and his father rushed to the nearby house of P.W-1 and Vodiya Raju and found the deceased in a pool of blood struggling for life. He has further deposed that the deceased was in a position to speak and he informed him that the appellant dealt blows against him and left the place. He has also testified that on being informed, 108- Ambulance arrived; that himself and his father had taken the deceased to the Government Hospital, where he was admitted; and that some Police personnel came and examined the deceased.

In this background, we need to consider Ex.P-14-purported statement of the deceased, which was recorded by P.W-9-Assistant Sub-Inspector of Police.

A perusal of this statement shows that a detailed narration of the background of the deceased, *i.e.*, his leaving his wife and working in the hotel of P.W-2, his earlier quarrels with the appellant, etc., were recorded.

As regards the incident, it is stated that on the evening, prior to the occurrence, during the quarrel between himself and the appellant, the latter has threatened him saying that he will see his end; that after completing their duties at 10.30 pm., they came out of the hotel; that he went to the room in which P.W-1 stays, finished his dinner and sat with P.W-1; that at about 10.15 pm., Vodiya Raju-a co-worker has informed the deceased that the appellant was calling him

from outside; that on hearing the same, he has gone out and the appellant has taken out a knife and while abusing him in filthy language, questioned him how he could give warning and uttering that he will not let him live, stabbed him with knife on his left abdomen, below the chest, left side of the chest and also on the left cheek indiscriminately; that he fell down with his intestines coming out and profusely bleeding; that on hearing his cries, the neighbouring people residing opposite to the scene came there; and that, on seeing them, the appellant ran away and that thereafter, he was taken to the hospital through 108-Ambulance.

No doubt, as submitted by the learned counsel for the appellant, the deceased has described the weapon as knife. Though it is the case of the prosecution, as spoken by P.W-1 and also as alleged in the charge sheet, that the appellant has attacked the deceased with a broken glass bottle, as rightly argued by the learned Public Prosecutor, mere discrepancy in the nature of weapon could not render the entire statement of the deceased untrustworthy. If one imagines the position in which the deceased was placed at the time of attack, there was every possibility for him to mistake the 'broken glass bottle' as 'knife', especially, when the attack has taken place during late night at around 11.15 pm in an open place. Further, in the shock caused on account of the brutal attack, we cannot expect the deceased to be accurate in describing the nature of the weapon with which he was attacked. The doubt, if any, created relating to the weapon used by the appellant in attacking the deceased is very much cleared by the testimony of P.W-1, who is, undoubtedly, an eye-witness and amply supported by the medical evidence, which ruled out the attack with a sharp edged weapon like a knife. Even if we eschew the portion of the statement of the deceased relating to the nature of the weapon spoken by the deceased in Ex.P-14, we have no reason to disbelieve the rest of the statement given by him and recorded by P.W-9. Nothing was elicited from the cross-examination of P.W-9, which would discredit his testimony

except the suggestions that the so-called statement-Ex.P-14 was not given by the deceased, that he has fabricated the same, that a different statement was given about the incident (by the deceased) and that the same was suppressed. Ex.P-14 was signed by the Chief Medical Officer of the Government Hospital, in which the deceased was admitted, which certainly enhances its credibility and trustworthiness as, there was absolutely no need for a person occupying the position of Chief Medical Officer of a Government Hospital to be a party to a fabricated document. More over, no reason was suggested to any of the witnesses to falsely implicate the appellant.

From the above discussion, we do not have any hesitation to hold that it is only the appellant who caused the death of the deceased and the prosecution succeeded in proving the guilt of the appellant beyond all reasonable doubt.

As regards the submission of the learned counsel for the appellant that her client did not have the pre-meditated intention to cause the death of the deceased and that but for the fact that the deceased was suffering from Tuberculosis, the injuries received by him cannot have been sufficient in ordinary course to cause his death, we are afraid, we cannot accept this submission. P.W-6 in his evidence clearly deposed that the death of the deceased was possible by means of the injuries found on his body during normal course of events. He has also denied the suggestion that internal injury No.3, *i.e.*, the right lung affected with Tuberculosis, was sufficient to cause the death of the deceased. The medical evidence is, thus, clear that the injuries on the body of the deceased were sufficient to cause the death of even a healthy person. Further, it is clear from the evidence on record that the appellant came to the place, where the deceased was taking his dinner, with a bottle in his hand, and attacked him. This clearly proves his preparation to attack the deceased. Further, the nature of injuries inflicted on the deceased also proved the fact that he had the intention of killing him and not merely to cause injuries, which, in normal

course of events, would not cause the death of the deceased. Thus, we are satisfied that not only that the appellant had the intention to kill the deceased, but he also had inflicted the injuries with the knowledge that in ordinary course of events, they would cause the death of the deceased.

Therefore, we have no doubt in our mind that the act of the appellant constitutes the offence of culpable homicide amounting to murder and he was rightly convicted by the trial Court for the offence under Section-302 IPC and sentenced to life imprisonment. Hence, we do not find any valid reason to interfere with the well-considered judgment of the trial Court.

The Criminal Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

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(G.Shyam Prasad, J)

Dt: 5th July, 2016

Lur/DR