

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.288 of 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1. The sole accused in Sessions Case No. 80 of 2011 on the file of the VIII Additional District and Sessions Judge (Fast Track Court), Visakhapatnam is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of his father, Peda Balanna on 23.09.2010 at 14.30 hours at Sanguloya village. Vide Judgment dated 02.09.2011, the Sessions Court convicted the accused for the charge leveled against him and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one month.

2. The facts, as culled out from the evidence of the prosecution witnesses, are as under:

PW1 is the wife of the deceased while PW7 is the brother of the deceased. The accused is none other than the son of the deceased. On 23.09.2010, there was a quarrel between the accused and the deceased in connection with taking cattle to the grazing field. In the course of the said quarrel, the accused is said to have beat the deceased with a stick on forehead. When PW7

interfered, the accused beat him also, and again beat the deceased with a stick on the right side of the neck. On receiving such injuries, the deceased fell down and died on the spot.

3. In his evidence, PW1 deposed that she went to the field to graze the cattle, and on return, she found the dead body of her husband in the house. She also deposed that she proceeded to the police station and lodged a report with PW8-the Sub Inspector of Police, Yelamanchili. Ex.P1 is the report. Basing on the said report, a case in Crime No. 53 of 2010 came to be registered under Section 302 IPC. Exhibit P5 is the copy of the First Information Report (FIR) sent to all concerned. Thereafter, PW9-the Circle Inspector of Police, G.Madugula conducted further investigation. On the same day, i.e., on 24.09.2010, he examined PW1 in the police station. Thereafter, he, along with PW8 and others went to the scene of offence, i.e., house of PW1 and prepared a panchanama of the scene in the presence of PWs 4 and 5. Ex.P2 is the scene observation report. During the said process, he seized blood stained clothes and controlled earth at the scene of offence. He also prepared a rough sketch of the scene, which is brought on record as Ex.P6. He then conducted inquest over the dead body of the deceased in the presence of PWs 4 and 5. Ex.P7 is the inquest report. During inquest, he examined PWs 1 to 7 and also seized blood stained clothes of the deceased. Thereafter, he sent the dead body for postmortem examination.

4. PW6, the Civil Assistant Surgeon, Government Hospital, Paderu conducted autopsy over the body of the deceased on 25.09.2010 and issued Exhibit P4, the Post Mortem Report. According to her, the cause of death was due to haemorrhagic shock due to excessive bleeding caused by excision of external and internal jugular veins right side, associated with multiple lacerated injuries.

5. PW9 continued with the investigation and apprehended the accused on 25.09.2010 at his house at Sanguloya village and basing on the confession of the accused, the said M.O.1 was seized under Ex.P7-the panchanama for the seizure.

6. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.5 of 2011 by the Judicial First Class Magistrate, Paderu. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.80 of 2011 on the file of VIII Additional District and Sessions Judge (FTC), Visakhapatnam. Basing on the material on record, a charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

7. To substantiate their case, the prosecution examined PWs.1 to 9 and got marked Exs.P1 to P9. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him

in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on his behalf in support of his defence.

8. After appreciating the evidence available on record, the trial court convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life'. Challenging the said conviction and sentence, the present appeal came to be filed.

9. The learned counsel for the appellant mainly submits that the evidence of PW7, which is now made the basis for conviction, cannot be accepted. According to him, there are number of discrepancies in the evidence to show as to why his presence cannot be accepted. He further submits that PW1 had a motive to speak false against the accused, since, in the cross-examination, he admits that on the death of the deceased, the property devolves on to him. The counsel further submits that another person, by name Sanyasayya, who was also present in the house at the time of incident, and who also claims to have received injuries, was not examined by the prosecution, and his non examination is fatal to the prosecution case.

10. On the other hand, the learned Public Prosecutor would contend that having regard to the nature of injuries sustained, and in view of the evidence of PW7, who is an injured witness, the case of the prosecution cannot be doubted.

11. The question that falls for consideration is: "whether the accused can be held liable for causing the death of his

father and if so, whether he can be convicted for the offence under Section 302 IPC.”

12. As seen from the record, there was no motive or intention for the accused to cause the death of the deceased. The entire incident happened due to a quarrel which ensued when the deceased asked his son to take the cattle for grazing. Pursuant thereto, he picked up a stick which was lying there and beat the deceased. As stated earlier, PW1, who is the mother of the accused and wife of the deceased and who was present in the house at the time of incident, did not support the prosecution case and turned hostile. Therefore, she is not an eye witness to the incident.

13. The evidence of PW2 shows that he came to know that there was an altercation between the accused and the deceased, and in the altercation, the accused beat the deceased with a stick. According to him, he immediately rushed to the house of the deceased and found the body of the deceased, and the accused was also present in the house at a distance. But, the fact remains that PW2 was also not an eye witness to the incident.

14. PW3, in his evidence, deposed that he came to know that the accused beat the deceased with a stick. As such, he cannot also be called as an eye-witness.

15. PW7 is the brother of the deceased. In his evidence, he deposed that there was a quarrel between the deceased and the accused, in connection with taking of cattle to the field for grazing

and in the quarrel, the accused beat the deceased with a stick on his face and cheek. When he interfered, the accused hit him also with the stick on the right shoulder, and thereafter, the deceased fell down on the ground and died. PW7 claims to have informed about the incident to PW1 to the Sarpanch of the village and then lodged a report in the police station. PW7 was cross-examined, mainly suggesting to him that he was not present at the scene of offence and that he had a motive to speak false against the accused. In the cross-examination, PW7 admits that as per their tribal custom, if one of the brothers dies, his property devolves on his surviving brothers. It was also elicited in the cross-examination of PW7 that the accused pushed him by putting the stick on him, and there were some scratches on his shoulder. It was further elicited from PW7 that he was taken to the hospital at 1 p.m on 23.09.2010 and was in the hospital for one day.

16. The omissions in the earlier statements of PW7 came to be marked as Ex. D1 and D2. In his earlier statement, PW7 did not state that the accused beat on the head of the deceased. He also admits the presence of his brother by name Sanyasayya and also the accused beating his brother Sanyasayya when he went to the house of the accused. Whatever may be the case, the said Sanyasayya was not examined by the prosecution.

17. From the evidence available on record, it is clear that the entire case rests on the evidence of PW7. It is not in dispute that the incident took place in the house of the accused and the

deceased, and during the said period the presence of the accused in the house is also not in dispute. Admittedly, PW1, who is the wife of the deceased and mother of the accused went to the fields, which fact is brought on record not only through the evidence of PW1, but also through the evidence of PW7. The dead body of the deceased was also found in his house. PW7 does not speak about the presence of any third person in the house or any other family member being present in the house at the time of the incident. In the 313 examination, the accused failed to explain as to how the deceased, who is his father, died with injuries in his house.

18. Therefore, we feel that the evidence of PW7 can be acted upon to believe that there was an incident in the house of the accused at that time. But, however, the question is whether the accused can be fastened with the liability of committing the murder of his father.

19. Admittedly, there was no intention or motive on the part of the accused to kill the deceased. Even as per the evidence of PW7, there was a quarrel between the accused and the deceased, and in the said quarrel, the accused picked up a stick and hit the deceased. The evidence of the doctor clearly indicates that there was no lacerated injury on the head and the lacerated injury was found on the forehead and also on the neck of the deceased. From the evidence on record and the evidence of the doctor, it can be said that the accused never had the intention to kill the deceased. If really he had the intention to kill, he would have inflicted a

heavy blow on the vital parts of the deceased. As seen from the evidence of the doctor, there was only one abrasion over the scalp of the deceased, which clearly indicates the manner in which the incident took place. Even otherwise, we feel that having regard to the manner in which the incident took place, it can be said that the accused never had any intention to cause such injury, but, he is having knowledge that such an injury may cause the death of the deceased.

20. In *RAMESH KRISHNA MADHUSUDAN NAYAR v. STATE OF MAHARASHTRA*¹, the Apex Court dealt with a situation where the accused inflicted two blows on the head of the deceased causing instantaneous death, and having regard to the manner in which the incident took place, the Apex Court convicted the accused under Section 304 Part I, IPC and not under Section 302 IPC.

21. In *SHIVAPPA BUDDAPPA KOLKAR ALIAS BUDDAPPAGOL v. STATE OF KARNATAKA AND OTHERS*², the Apex Court dealt with a situation where a single blow was given by the accused with an axe on the head of the deceased, leading to instantaneous death. In the facts of the said case, the Apex Court convicted the accused under Section 304 Part II IPC, and not under Section 302 IPC.

22. In the case on hand, the accused attacked the deceased with a stick, when the deceased (father) asked him to go to the field to

¹ AIR (SCW) 2008 0 370

² 2005 SCC (Cri.) 93

get the cattle. There was neither any enmity between the accused and the deceased nor any motive and intention on the part of the accused to cause the death of the deceased, who was his own father. The whole incident happened in a spur of the moment.

23. Having regard to the facts and circumstances of the case, we feel that it is a fit case where the nature of the offence can be scaled down from 302 IPC to 304 Part-II IPC.

24. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in the judgment dated 02.09.2011, in Sessions Case No.80 of 2011, on the file of the VIII Additional District and Sessions Judge (FTC) at Visakhapatnam, for the offence punishable under Section 302 I.P.C., is altered to one under Section 304 Part-II IPC., and the appellant is sentenced to suffer rigorous imprisonment for a period of seven years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused shall be set at liberty forthwith, if not required in any other case, on completion of seven years rigorous imprisonment, including remissions, if he is entitled to.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

20.11.2017
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