

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL Nos.50 and 102 of 2012

COMMON JUDGMENT: (Per the Hon'ble Sri Justice C.Praveen Kumar)

Both these appeals are filed against the judgment dated 28.10.2011 passed in S.C.No.224 of 2011 by the III Additional District and Session Judge, FAC, Judge, Family-cum-Additional District and Sessions Judge, Prakasam Division, Ongole. Criminal Appeal No.50 of 2012 is filed by accused No.1 whereas Criminal Appeal No.102 of 2012 came to be filed by accused No.2.

2. Initially, the case was registered against A1 to A3. Before committal of the case, A3 died and the case against him got abated on 28.05.2010.

3. The appellants/A1 and A2 were tried for an offence punishable under Section 302 of IPC for causing the death of one Maddirala Yesaiah by hacking him with axes on 30.04.2005 at about 05.30 a.m. at his house. Vide judgment dated 28.10.2011, the III Additional District and Sessions Judge, Ongole, convicted A1 and A2 for the offence punishable under Section 302 of IPC and sentenced them to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of three months.

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

A2 is the son and A3 is the son-in-law of A1. PW.1 is the son of deceased. PW2 is the sister of the deceased while one Punniyah is her husband and PW4 is the sister of PW1. PWs.3 to 6 are the neighbours of deceased and eyewitnesses to the incident.

P.W.3 in his evidence deposed that on 29.04.2005, while he was at Karamchedu Railway gate, Perala, the deceased, who was coming from ILTD Company on a cycle, touched A1 at the gate. Thereupon A1 picked up a quarrel with the deceased and later, the people present there pacified the situation. Thereafter, the deceased returned to home.

P.W.1 in his evidence deposed that he was working in ILTD company, Perala, at the time of incident and that on 29.04.2005 at about 10.00 PM., he was informed that the cycle of his father dashed against A1, while returning from duty and thereupon a quarrel took place between his father and A1. Thereafter, his father came to his house. He further deposed that some time after the return of his father, A1 to A3 came to their house, abused his father in filthy language and threatened him with dire consequences. On that night, his father slept on a cot in front of his house and he slept inside the house. At about 05.30 a.m., on hearing cries, PW1 came out of the house and found his father in a sitting position on the cot, while A1 to A3 were standing around the cot. He then noticed A1 hacking the deceased on his head with axe, while A2 hacked on left side of forehead above the eye and A3 beat on the right hand of the deceased with a pestle. When PW1 came to rescue his father, A3 beat him with a pestle on his mouth and right shoulder. Further, A1

to A3 thrashed the deceased and fisted him on his face. On hearing cries, the neighbours gathered at the scene. PW1 also stated that the stick portion of axe, which was in the hands of A2, broke and all the accused left the place. As the deceased fell down unconscious, PW1 and others took him to the Government hospital in a rickshaw. The doctor gave first aid and advised them to take the deceased to Government hospital in Guntur. Then PW9 and PW4 took the deceased to Government hospital, Guntur and PW1 got himself admitted in Government hospital, Chirala, for the injuries suffered by him.

PW10, the Head Constable of Chirala I Town police station, on receipt of intimation from the hospital about the admission of deceased in the hospital with injuries on his head, proceeded to the hospital and found the injured/deceased in unconscious state. He recorded the statement of PW1 and also obtained his signature. Ex.P7 is the hospital intimation and Ex.P1 is the statement given by PW1. Later, PW10 sent the said intimation and the statement of PW1 to SHO, Chirala II Town Police Station, who is examined as P.W.11. On receipt of intimation from the hospital along with the statement of P.W.1 recorded in the Government hospital, Chirala, a case in Crime No.48 of 2005 for the offence punishable under Section 307 read with Section 34 of IPC came to be registered. Ex.P8 is original FIR sent to the Court of Additional Metropolitan Magistrate, Chirala and copies of the same were sent to the officers concerned. At about 10.45 a.m., P.W.12, the CI of police, received a copy of FIR and took up investigation. He visited the scene of

offence, examined PW1 and one Maddirala Ratnamma and secured the presence of mediators i.e., PW9 and one Koti Eminial. The panchanama of the scene of offence was marked as Ex.P5. He seized M.Os.1 to 7 under the cover of the panchanama. Thereafter, he prepared a rough sketch-Ex.P11. He also got the scene of offence photographed through a photographer. Ex.P12 is the bunch of photographs. During the said process, P.W.12 examined PWs.2, 3, 6 and LWs.4, 6, 7 and LW13 and recorded their statements and as PW1 was found with injuries, he sent him to the hospital along with memo at about 02.00 p.m. On the same day at 03.00 p.m., PW11 received death intimation of the deceased from G.G.H.OPPS, Guntur. Ex.P9 is the death intimation sent to the SI of police, who in turn instructed PW11 to alter the FIR. Accordingly, PW11 altered the section of law to one under Section 302 read with Section 34 IPC and issued the altered FIR. Thereafter, he sent the original altered FIR to the Court of Additional Metropolitan Magistrate, Chirala and copies of the same to all concerned. Ex.P10 is the altered FIR. As the C.I. of police was busy with other investigation, on instructions, PW12 conducted inquest over the body of the deceased in the presence of the panchayatdars, blood relatives and eyewitnesses. Ex.P2 is the inquest report. Thereafter, he sent the body for post mortem examination. One Dr.Madhusudhana Reddy, who was the colleague of PW14, conducted autopsy over the body of the deceased and issued Ex.P15-the post mortem certificate. PW14-the Doctor identifies the signatures on Ex.P15 as that of Dr.

Madhusudhana Reddy. As per the post mortem certificate, the cause of death was due to injury on the head.

On 02.05.2005, at about 01.30 p.m., while PW13, the Inspector of Police, Chirala, was at Circle Office, Chirala, he received an intimation about the presence of the accused. Immediately, he along with mediators proceeded to railway bridge, Epurupalem and while the accused were trying to skulk away from the police, they caught and interrogated them. Ex.P4 and Ex.P6 are admissible portions of mediators' statements. Basing on their confessions, MOs.8 to 11 were seized. After receiving FSL report- Ex.P14 and other documents, PW13 filed the charge sheet, which was taken on file as PRC No.35 of 2005 on the file of Additional Judicial Magistrate of First Class, Chirala.

5. On appearance of the accused, copies of documents were furnished to them as contemplated under Section 207 Cr.P.C., and after committal of the case to the Court of Family-cum-Additional District and Sessions Court, Prakasam Division, Ongole, the case came to be numbered as S.C.No.224 of 2011. On appearance of accused, a charge, as indicated above, was framed, read over and explained to them, to which they pleaded not guilty and claimed to be tried.

6. In support of its case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P15 and Mos.1 to 13.

7. After the closure of the prosecution evidence, the accused were examined U/s. 313 Cr.P.C., wherein they denied the

incriminating material appearing against them. No oral or documentary evidence was adduced on behalf of the accused.

8. Basing on the evidence of PWs.1 to 6, the trial Court convicted A1 and A2 for the offence punishable under Section 302 IPC and sentenced them to suffer imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a period of three months. Challenging the same the present appeals are filed by A1 and A2 through legal aid counsel.

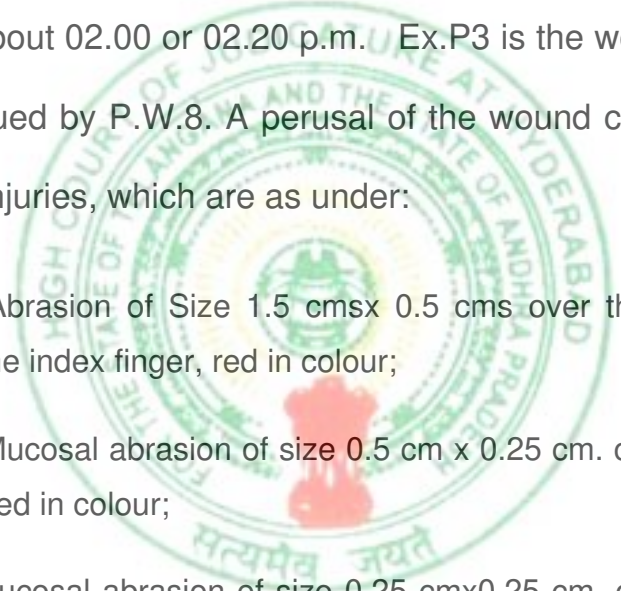
9. Learned counsel for the appellants mainly submits that the evidence of PW1 itself discloses that there were no disputes between the two family members and hence, there is any amount of doubt as to whether the accused would have gone to the house of the deceased to kill him. He further submits that a case was registered against the deceased at Chirala II Town Police Station alleging that the deceased used to act as mediator in supplying women to the employees of ILTD Company, and in view of the said allegation, it cannot be said that the accused would have killed the deceased, when his conduct appears to be doubtful and when there are number of enemies to him. In any event, learned counsel for the appellants would contend that in view of the evidence of Doctor and the post mortem certificate Ex.P15, even if A2 is assumed to be present at the scene of offence, his participation in the commission of offence does not warrant a conviction under Section 302 of IPC and he can be convicted for an offence punishable under Section 326 or 325 IPC.

10. The question that falls for consideration is, whether the accused are liable for conviction under Section 302 of IPC or whether the nature of offence can be scaled down to a minor offences?

11. In order to appreciate the same, it would be useful to refer the evidence of eyewitnesses. Admittedly, in the instant case, PW1 is an injured eyewitness to the incident and as such his presence at the scene of offence cannot be doubted. In his evidence, PW1 deposed that on 29.04.2005 at about 10.00 p.m., PW3 and one Donepudi Nathanial came to his house and informed him that the cycle of the deceased dashed against A1. According to him, people, who gathered there, intervened and pacified the matter. P.W.1 further deposed that within few minutes after PW3 informed him about the incident, the deceased came to the house and at about 10.30 p.m., A1 to A3 came to his house and threatened the deceased with dire consequences. After they left the house, the deceased slept outside the house on a cot. He further deposed that at about 05.30 a.m., all the three accused came to his house, armed with axes and then A1 is alleged to have hacked the deceased on his head while A2 is alleged to have hacked him on the left side of forehead above the eye. Further A3 is alleged to have beat on the right hand of the deceased with a pestle. At that point of time, PW1 intervened to rescue his father, as a result of which, A3 is alleged to have beat him with pestle on his face causing a bleeding injury. Immediately, he shifted the deceased to the Government hospital where the doctor advised them to shift the deceased to Government

hospital in Guntur. Accordingly, they shifted the deceased to Guntur hospital and PW1 got himself admitted in Government hospital, Chirala.

12. PW10, the Head Constable, in his evidence deposed that on intimation, he proceeded to the Government hospital, Chirala and as the deceased was found unconscious, he recorded the statement of PW1, based on which, the present crime came to be registered. It is to be noted here that after the crime was registered, the investigating officer came to the house of PW1 and sent him to the hospital at about 02.00 or 02.20 p.m. Ex.P3 is the wound certificate of P.W.1 issued by P.W.8. A perusal of the wound certificate would show three injuries, which are as under:

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- “1. Abrasion of Size 1.5 cmsx 0.5 cms over the left medial aspect of the index finger, red in colour;
 2. Mucosal abrasion of size 0.5 cm x 0.25 cm. over the lower lip region; red in colour;
 3. Mucosal abrasion of size 0.25 cmx0.25 cm. over the inner aspect of the upper lip; red in colour.

P.W.8-the Doctor opined that all the injuries are simple in nature and might have been caused by rough surfaced object in about less than 12 hours duration. Though the said injuries are simple in nature, the contention of learned counsel for the appellants that they are self-inflicted injuries cannot be accepted. Those injuries were found on both the lips and also on the left medial aspect of the index finger.

Having regard to the nature of injuries sustained by P.W.1, it cannot be said that those are self-inflicted injuries.

13. As seen from the record, the case rests on the evidence of P.Ws.1 to 6. Though P.W.1 was subjected to cross-examination, nothing was elicited to discredit his testimony, except to the fact that there are no disputes or differences between the accused and P.W.1 prior to the incident. Insofar as the suggestion to P.W.1 that he stated falsely that the cycle of the deceased dashed against A1 while he was returning home on 29.04.2005 is concerned, he denied the same. He admits in his cross-examination that Ex.P1 was written to his dictation. He also admits that the condition of his father was serious while he was being taken to Guntur Hospital. To a suggestion that homeless persons at Johnpet area had developed eyesore against their family members for occupation of government sites and construction of houses therein, P.W.1 denied the same. He also denied that the incident happened because of enmity of the deceased with the employees of higher authority. The evidence of P.W.1 clearly discloses that on the date of incident, when he tried to save his father, he sustained injuries at the hands of A3. P.W.8-the Doctor, who was working in the Hospital, examined P.W.1 at 2.20 PM., and noticed three abrasions on the face of P.W.1. Though the injuries are simple in nature, the fact that P.W.1 was sent to the hospital at 2.00 PM., by the Inspector of Police, who came to the scene of offence after registering the FIR, establishes his presence at the scene of offence. It is not the case of the accused that P.W.1 has not sustained injuries and that at that time he was not present at

the scene. Therefore, when once the presence of P.W.1 stands established at the scene, the question is, whether his evidence can be made the basis to convict the accused.

14. At this stage, we wish to place on record the evidence of other witnesses who came to the scene of offence on hearing cries. P.W.2 is the sister of the deceased. According to her, on 29.04.2005, the deceased slept in front of his house and she also slept in front of her house. She also speaks about the incident that occurred on 29.04.2005 at 10.30 PM., when A1 to A3 came to the house of the deceased and abused him in filthy language. Insofar as the incident on 30.04.2005 at about 5.30 AM., is concerned, P.W.2 in her evidence states that on hearing the cries as "Nannu Champuthunnaru" (I am being killed), she along with her husband rushed to the place where her brother was present, and at that time A1 was hacking the deceased on the head with axe. A2 is said to have hacked on the forehead with axe while A3 beat on his right hand with pestle. When P.W.1 tried to rescue his father from the hands of accused, A3 is said to have beat him on his right shoulder and mouth with a pestle. A1 to A3 also fisted on the face of the deceased. In her cross-examination, P.W.2 admits that in the earlier statement she did not say about the deceased raising cries as "Nannu Champuthunnaru" and she did not specifically say that A1 hacked the deceased on his head, A2 hacked him on forehead with axe and A3 beat P.W.1 on his right shoulder.

15. Learned Public Prosecutor submits that the omission in the earlier statement was with regard to the manner of attack, but the

fact that A1 to A3 came to the scene of offence was mentioned. The same, in our view, appears to be correct.

16. Similarly, P.W.3 having stated about two incidents, one that took place at the railway gate at about 10.30 PM and another on the next day morning at 5.30 AM, where all the three accused are said to have stabbed the deceased, in his earlier statement, he did not speak about A1 to A3 going to the house of the deceased and he followed them on the previous day and also about A2 having a broken axe in his hand. This circumstances, in our view, do not go to the root of the matter so as throw out the case since P.W.3 categorically speaks about participation of all the accused in the commission of offence.

17. Insofar as the evidence of P.W.4 is concerned, though in his chief examination he deposed that A1 hacked the deceased on head with axe, A2 hacked the deceased on forehead with axe and A3 beat the deceased on his right hand with pestle, in his earlier statement, he did not specifically say that A1 hacked the deceased on his forehead, but stated that A2 hacked the deceased on the head. He also did not specifically say that A3 beat the deceased on his right hand.

18. Coming to the evidence of P.W.5, though in chief-examination he referred to the overt acts as per the case of the prosecution, but in the cross-examination, he did not say about A2 hacking the deceased on the forehead. Similar omission is found in the evidence of P.W.6 with regard to the role of A2 in hacking the deceased on forehead and also A3 beating the deceased on the

right hand. From the evidence of these witnesses, namely, P.Ws.2 to 6, it is clear that all of them have spoken to the presence of A1 to A3 at the scene of offence, but there appears to be some discrepancies as to the place where the accused caused injuries to the deceased. Though some of the witnesses speak about A2 causing injuries on the head of deceased, some witnesses it was on the forehead. If the evidence of these witnesses is tested with that of post mortem certificate, which is marked as Ex.P15, it goes to show that there are four external injuries on the dead body, which are as under:

1. Five sutured lacerated injury measuring 5 x 0.5 cm present on the left side of left parietal area of scalp
2. Incised injury measuring 4 x 0.25 cms present on mid occipital area of scalp.
3. Two sutured lacerated injury on upper part of left angle of left eye.
4. Contusion of right hand with fractures of all metacarpal bones.

From the above, it is clear that the injury attributed to A3 corresponds with injury No.4. Insofar as the injury attributed to A2 is concerned, P.Ws.1 and 2 have categorically stated that A2 hacked the deceased on the left side of forehead above the eye, which is corroborated with injury No.3 in the post mortem certificate. The other two injuries are attributed to A1, who is alleged to have hacked on the head of deceased.

19. Admittedly, even as per the case of the prosecution, A2 beat only once on the left side of forehead causing injury on the eye. There is any amount of discrepancy in the evidence of P.Ws.2 to 6 as to whether A2 caused injury on the head or on the left side of

forehead. Therefore, we feel that the evidence of P.W.1, who is an injured eyewitness, can be taken into consideration along with the evidence of other witnesses which corroborates the evidence of PW.4 to decide the guilt of the accused. At this stage, we wish to point out that as per post mortem certificate-Ex.P-15 issued by Dr.Madhusudan Reddy, the cause of death was due to head injury. Neither the said doctor nor P.W.14, who identified the signature of Dr. Madhusudan Reddy in the post mortem report, stated that all the injuries are sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, since the injuries attributed to A1 are responsible for the death, the conviction and sentence imposed against A1 warrant no interference by this Court.

20. Insofar as A2 is concerned, the consistent version is that A2 caused injury on the left side of forehead above the eye, which correlates to third injury in the post mortem certificate. The said injury though grievous in nature, is not responsible for the death of the deceased. Therefore, the conviction of A2 is altered from Section 302 IPC to Section 326 IPC. Accordingly, the conviction of A2 is altered from Section 302 IPC to Section 326 IPC and the sentence of imprisonment is reduced to the period already undergone.

21. In the result, Crl.A.No.50 of 2012 is dismissed. The conviction and sentence recorded against the appellant/A1 for the offence punishable under Section 302 IPC vide judgment, dated 28.10.2011 in S.C.No.224 of 2011 on the file of the III Additional District and Session Judge, FAC, Judge, Family-cum-

Additional District and Sessions Judge, Prakasam Division, Ongole,
is confirmed.

Crl.A.No.102 of 2012 is partly allowed. The conviction recorded against the appellant/A2 vide judgment, dated 28.10.2011 in S.C.No.224 of 2011 on the file of the III Additional District and Sessions Judge, FAC, Judge, Family-cum-Additional District and Sessions Judge, Prakasam Division, Ongole, is altered from Section 302 IPC to 326 IPC and the sentence is reduced to the period already undergone by him. Consequently, the appellant/A2 shall be set at liberty forthwith, if he is not required in any other case or crime.



JUSTICE C.PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

15th November, 2017

sj/vhb