

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No. 800 of 2012

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

1. The sole accused in S.C.No.67 of 2011 on the file of I Additional District and Sessions Judge, West Godavari, Eluru, is the appellant. He was convicted and sentenced to suffer imprisonment for life under Section 302 of IPC, for causing death of one Dondapati Ramakrishna Reddy, with a masonry spade (Taapi) on the back side of his head. Assailing the said conviction and sentence, the present criminal appeal came to be filed.

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

PW1 is the younger brother of the deceased, while PW2 is the grand mother of the deceased, PW3 is mother of the deceased and PW6 is the wife of the accused. All other witnesses are official witnesses.

The deceased used to live along with his grand parents in the same village. About three months prior to the death of the deceased, accused, who is masonry worker, took a portion on rent in the house of PW2 and used to live there along with his wife and children. The accused and wife used to quarrel frequently. He suspected the fidelity of his wife, due to which he repeatedly

raised quarrels. On one occasion i.e., about a week prior to the date of incident, the deceased demanded the accused to vacate the house, for which the accused replied as to who he was to ask him to vacate. The accused is said to have questioned the deceased about his relationship with the wife of the accused. About a week prior to the death of the deceased, the wife of the accused left the house and even the accused did not stay in the house since then. On the date of incident i.e., on 10.01.2010 at about 09.30 to 10.00 p.m., while the deceased was coming from the house of maternal grand parents of PW1 and while he was entering at the door steps of the house, the accused came from behind and beat him with a masonry instrument (Taapi) on his head. On seeing the same, the grand mother of PW1 raised cries, pursuant to which, the neighbours gathered and shifted the deceased to the hospital of Dr. Prasad Rao at Nidadavole, in a 108 Ambulance. As the doctor was not available, the deceased was shifted to the hospital of Dr. Rama Lakshmana, wherein the nurse examined the pulse of the deceased and declared him dead. Thereafter, the deceased was brought to the house of PW1. Basing on the report given by PW1, PW10, the SI of police registered a case in Crime No.10 of 2010 of Samisragudem Police Station for an offence punishable under Section 302 of IPC and issued Ex.P16 the FIR. At about 08.00 a.m., PW11 the CI of Police received a copy of the express FIR and took up investigation. He visited the scene of offence situated at the house bearing No.4-18 of Vinta Satti Reddy of Korumamidi Village. In the presence of

PWs.7 and 8, he prepared a panchanama of the scene of offence, which was marked as Ex.P11. He also prepared a rough sketch of the scene which was brought on record as Ex.P17. During the said proceedings, he seized MOs.2 to 4. Thereafter, he went to the house of the accused and conducted inquest over the body of the deceased. Ex.P12 is the inquest panchanama. The panchayatdars opined that the deceased died due to assault on the back of the head by the accused. Thereafter, the body was handed over for post mortem examination. PW9, the Assistant Professor, Sdhardha Medical College, Vijayawada, conducted autopsy over the body on 11.01.2010 from 3.00 p.m. to 05.00 p.m. Ex.P15 is the post mortem certificate. According to him, the cause of death was due to shock caused out of the head injury with intracranial heamorrhage, which might have caused by blunt object. On 15.01.2010, PW11 arrested the accused and basing on the confessions made, he seized blood stained clothes and weapon which were concealed in the house at Seethampet Village, Denduluru Mandal. Ex.P13 is the mediators report. Thereafter, the accused lead them to his house in Seethampet Village and produced MO1 and the clothes which he was wearing at the time of assault. The same was seized under Ex.P14. After receiving all the reports, PW11 filed a charge sheet, which was taken on file as PRC No.21 of 2010 on the file of Judicial Magistrate of I Class, Nidadavole.

On appearance of the accused, the Magistrate furnished copies of documents to the accused as contemplated under Section

207 of Cr.P.C. and on committal, the same came to be numbered as S.C.No.67 of 2011. Basing on the material available a charge under Section 302 of IPC was framed read over and explained to the accused, to which he denied and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P19 and M.Os.1 to 6.

After the closure of prosecution 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 behalf by the accused in support of his defence. Placing reliance on the evidence of PW2, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed through a legal aid counsel.

3. The learned counsel for the appellant/accused mainly submits that there is abnormal delay in lodging of the report. According to her, the incident took place at 10.00 p.m. and no reasons are given as to why they waited till next day morning to lodge a report. She further submits that there is discrepancy with regard to the weapon used for commission of offence. In any event, she would contend that even if the entire case of the prosecution is true, no offence under Section 302 of IPC is made out against the petitioner/ appellant.

4. On the other hand, the public prosecutor would contend that delay of few hours in lodging the report may not matter much. In the absence of any suggestion being given to the witnesses and having regard to the explanation given as to why the report could not be given at the earliest point of time, he pleads that delay may not be vital. He further submits that when the evidence of PWs. 1 to 3 is consistent with each other, there is no reason to disbelieve their version. Having regard to the same, he submits that the judgment of the learned Sessions Judge warrants no interference from this Court.

5. As seen from the record, the accused was a mason, living as a tenant in the house of PW2. Since three months prior to the date of incident, there were frequent quarrels between the accused and his wife, which lead to intervention of the deceased, PW2 and few others, demanding them to vacate the house. When the deceased asked the accused to vacate the house, the accused is said to have questioned him as to why he should vacate the house and also questioned his relationship with the wife of the accused. In view of the said dispute, it is said that on 10.01.2010 between 09.30 and 10.00 p.m., while the deceased was entering his house, the accused beat him on the back of his head with a masonry instrument. In the FIR, which has been placed on record as Ex.P16, it is mentioned that the accused was suspecting his wife and about one week prior to the date of incident, while the accused was beating his wife, the deceased, PWs.2 and 3 asked the accused to vacate the house. At that point of time, the accused is

said to have quarreled with the deceased and questioned him as to who he was to ask him to vacate and the connection between the deceased and the wife of the accused. One week thereafter, the present incident took place.

6. The version of PW2 with regard to the manner in which the incident took place, is reflected not only in the FIR which was given on the next day morning at 08.00 a.m., but also in the inquest report and in the evidence of PWs. 1,2 and 3.

7. In his chief examination, PW1 deposed as under:

“....The deceased sustained injury on the back side of the head and fell down.

8. The neighbours also gathered there. Meanwhile I also came there and informed the same to 108 Ambulance. In the said 108 Ambulance we shifted the deceased to the hospital of Dr.Prasada Rao in Nidadavole. As the doctor was not available there, we shifted the deceased to the hospital of Dr.Rama Lakshmana. The nurse in the hospital examined the pulse of the deceased and declared that he was dead. We brought back the dead body of the deceased to out house.

Then I submitted a report to Samisragudem police station on 11.01.2010 around 8 a.m.”

8. The statement of PW1 discloses the emergency steps and efforts made by the family members for the survival of the deceased.

9. Further, in the chief examination of PW5, he states as under:

“On 10.01.2010 at about 10 p.m., some villagers came to my house and asked me to come to the house of PW2 as the deceased sustained injury.

After I went to the house of PW2, I found the deceased was suffering with fits and shaking his hands and legs and I also found a injury on the back side of the head and it was bleeding. I did not give any first aid, except administering T.T. Injection and requested them to take the deceased to the Government hospital. Immediately, PW2 and others took the deceased to the hospital. Though initially he was taken to a private hospital, but as there was no doctor available, the deceased was shifted to another hospital of Dr.Pama Lakshmana, wherein he was declared dead.”

The evidence of PW5, who is a Private Medical Practitioner and who used to give first aid shows that the family members were more concerned with the life of the deceased and he was called to give first aid. The deceased was taken to a private hospital and as there was no doctor, he was shifted to a Government hospital. Further the distance between the house of PW1 and the police station is about 15 Kms. and the incident is said to have occurred during night time at late hours.

10. In view of the above said circumstances, we feel there is no delay in lodging a report.

11. Insofar as the incident in question is concerned, the evidence of PW1, who set the law into motion by giving the FIR, amply corroborates from the evidence of PWs.2 and 4. PWs.1, 2 and 3 who are eye witnesses to the incident speak about the prior incident and also the incident which occurred on 10.01.2010

between 09.30 p.m. and 10.00 p.m. at the house of PW2. Therefore, the argument of the counsel that the appellant is not responsible for the incident cannot be accepted.

12. The next question that falls for consideration is whether the conviction of the accused under Section 302 of IPC is sustainable?

13. The dispute between the accused and the family members of deceased namely PWs. 1, 2, 3 including the deceased appears to be trivial. The averments in the FIR would show as if PWs. 1, 2, 3 and the deceased, questioned the accused when he was beating his wife. The said version is lacking in the evidence given before the Court. However, the contents of FIR and also the oral evidence would show that on 10.01.2010 at 09.30 p.m., when the deceased was coming from his grand mother's house and was about to enter the house of PW2, the accused beat him with masonry spade (Taapi) on the back side of the head. Insofar as the instrument said to have been used, none of the witnesses speak about the instrument used by the accused in hitting the deceased, in the earlier statement. In Ex.P1, it has been stated that the deceased was attacked with an unknown weapon on the back side of the head. Even in their earlier statements, neither PW1 nor PW2 deposed about the weapon used by the accused in the commission of offence. However, for the first time, the witnesses speak about the accused using masonry spade for commission of the offence, while giving evidence in the Court. The evidence of the doctor, who conducted autopsy over the body – PW9 would show that the

instrument which was used for commission of offence was a blunt object. In his cross examination, PW9 stated as under:

“12. The edge of MO1 cannot be said to be sharp. I did not agree with the suggestion the edge of MO1 is sharp.”

Therefore, from the above, a doubt arises with regard to the weapon used in commission of the offence.

14. Even the evidence of PW5, extracted above, discloses that when he went to the house of PW2, he found the deceased suffering with fits and shaking his hands and legs and also noticed an injury on his head. Therefore, the case of the prosecution that the deceased must have died instantly on receiving assault cannot be accepted. Infact it appears that the some time after the occurrence of incident only the deceased died.

15. A reading of the evidence of the Doctor and also the evidence of eye witnesses would show that the injury was not on the back of the head. It was just above the neck and slightly below the lower portion of the backside of the head. Since there is any amount of doubt with regard to the weapon alleged to have been used and as per the prosecution witnesses, the weapon which was said to have been used was a sharp object, a doubt arises as to whether the accused had any intention to kill the deceased. If really he had an intention to kill the deceased, he would have definitely come there armed with more lethal weapon or a dangerous weapon having a sharp edge so as to cause instantaneous death. But that is not the case of the prosecution.

16. Having regard to the above circumstances, we feel that the accused cannot be convicted for causing the death of the deceased. Having regard to the manner in which the incident happened, we are of the opinion that he must have come there only to cause injury to the deceased, because of the incident which took place a week prior to the date of incident, wherein the deceased and his family members interfered in the quarrel. It is also stated that subsequent to the said quarrel, the wife of the accused left him. Probably, the accused must have been under the impression that the deceased and his family members were responsible for his wife leaving his company.

17. There was no intention on the part of the accused to kill the deceased, but definitely the accused had intention to cause bodily injury as is likely to cause death and knowledge that by such act he would cause death. Therefore, we are of the view that the act of the accused would be culpable homicide not amounting to murder, falling under Part I of 304 IPC.

18. In view of the above, the criminal appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in S.C.No.67 of 2011 on the file of the I Additional Sessions Judge, West Godavari Division, Eluru, for an offence punishable under Section 302 IPC, is altered to one under Section 304-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of eight years. The period of remand undergone 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 on completion of eight years rigorous imprisonment, if not required in connection with any other case.

19. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

10.11.2017
vnb

