

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.487 of 2011

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

No representation on behalf of the appellant in spite of giving opportunities. Heard the learned Public Prosecutor for the State of Telangana and perused the record. We also took the assistance of the learned Public Prosecutor for the State of Andhra Pradesh in deciding the appeal.

2. The sole accused in Sessions Case No. 270 of 2010 on the file of the Court of the Judge, Family Court-cum-Additional Sessions Judge, Khammam is the appellant herein. He was tried for the offence under Section 302 IPC for causing the death of Ravva Venkataiah, S/o. Muthaiah on 23.11.2009 at 6.30 p.m. at Abhicharla village, Kunavaram Mandal, Khammam district. Vide judgment dated 31.01.2011, the learned Additional Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.100/-, in default to suffer simple imprisonment for a period of three months.

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

PW1 is the son of the deceased, whereas PW2 is the wife of the deceased. PW3 is the daughter of PW2 and sister of PW1. PW4 is the brother of PW1 and PW3. PW6 is the brother of the accused and also the distant relative of the deceased. All other material witnesses are residents of Abhicherla village.

4. The evidence on record, more particularly, the evidence of PWs 6 and 7 would show that on 23.11.2009, PW6 went to the house of her younger brother, one, Ramulu, for cleaning vessels, as her sister-in-law by name, Bhadramma (PW1) fell ill. At that time, PW7 came there and was chatting with her sister-in-law. Meanwhile, the accused and the deceased came there and were discussing about one, Sekhar. The evidence of PW7 would show that the accused brought the deceased to the house of Ramulu to consume liquor in the verandah. There, a quarrel took place when the accused questioned the deceased as to why he is doing sorcery to his family members. Thereafter, PWs 6 and 7 heard some noise and saw the accused hacking the deceased. Immediately, PW7 rushed to the verandah, caught hold of the accused while he was trying to hack the deceased, dragged the accused outside and questioned him as to why he has hacked the deceased. Then, the accused is said to have threatened PW7 with dire consequences. PW6 is said to have tied a cloth on the head of the deceased to stop bleeding and called for 108 ambulance. The staff of the ambulance declared the injured/ deceased dead. The evidence on record discloses that the neighbours came there on hearing the cries of PWs 6 and 7.

5. On 24.11.2009, PW16-the Sub Inspector of Police, Kunavaram received a report from PW1 (Ex.P1), basing on which, a case in Crime No. 108 of 2009 came to be registered under Section 302 IPC. Ex.P.6 is the F.I.R. Thereafter, further investigation was taken over by PW17-the Inspector of Police. According to him, on receipt of the F.I.R., he proceeded to the scene of offence and prepared a panchanama of the scene of offence, which is marked as Ex.P2. During the said process, he seized M.Os 1 to 3. Thereafter, in the presence of PW13, he conducted inquest over the dead body of the deceased. During inquest, he examined PWs 2 to 9 and PW12. Ex.P2 is the inquest report. Thereafter, he sent the dead body for postmortem examination.

6. PW15-the Civil Assistant Surgeon, Community Health Centre, Kunavaram conducted autopsy over the body of the deceased on 24.01.2009 at 4.45 p.m., and issued Exhibit P5-the Post Mortem Report. According to him, the cause of death was due to cardio resparative arrest due to intra cerebral haemorrhage caused by trauma.

7. Further investigation in this case was taken up by PW18-the Circle Inspector of Police. According to him, on receipt of credible information, he rushed to the house of the accused in Abhicherla village, apprehended the accused in the presence of PW14, and interrogated him. The accused is said to have confessed about the commission of the offence. His confession led to the discovery of

M.O.3-axe said to have been used in the commission of the offence.

8. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 49 of 2010 on the file of Judicial Magistrate of First Class, Bhadrachalam. 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. 270 of 2010 on the file of Court of the Judge, Family Court-cum-Additional Sessions Judge, Khammam. Basing on the material on record, charges 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.

9. In support of their case, the prosecution examined PWs.1 to 18 and got marked Exs.P1 to P8 and M.Os.1 to 4. 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 by the accused in support of their defence.

10. As the evidence of the prosecution witnesses establish the guilt of the accused beyond all reasonable doubt, the Court below convicted the accused. Challenging the same, the present appeal came to be filed.

11. The learned Public Prosecutor fairly concedes that the material on record does not establish any animosity between the accused and the deceased prior to the incident. On the other hand, he would submit that both the accused and the deceased came to the house of the accused for consuming liquor and then, a quarrel ensued when the accused questioned the deceased as to why he is practicing sorcery. At that time, the accused is said to have hit on the head of the deceased with an axe, leading to instantaneous death of the deceased. He would further submit that even if the entire case is accepted in totality, having regard to the fact that there is only one injury on the body of the deceased, and in the absence of any motive on the part of the accused to cause death of the deceased, the offence under Section 302 IPC can be scaled down.

12. The evidence on record discloses that on 23.11.2009, at about 5.45 p.m., PWs 6 and 7 came to the house of PW11, as she was sick. While PW11 was chatting with PWs 6 and 7, the accused and deceased came to the house. The version of PW11 shows that the accused and deceased were consuming liquor in the verandah and in the meanwhile, they heard hue and cry of PW6. The evidence of PW6 shows that on the date of incident, she went to the house of the accused to see her sister-in-law, who was not well. In the meanwhile, the accused and deceased came here discussing about one, Sekhar, and thereafter, the accused hacked the deceased with an axe. PW7 was also present in the house at that time and saw the accused hacking the deceased.

Immediately, he proceeded to the verandah, apprehended the accused and prevented him from assaulting the deceased further. However, the evidence of PW7 shows that the accused wriggled himself out and left the place, threatening PW7 with dire consequences. Subsequently, number of people gathered there. All the witnesses spoke about hearing the cries of PW6, proceeding to the scene of offence and noticing the body of the deceased lying on the ground with blood oozing from the head. They also referred to PW6 holding the deceased and also about PW7 catching hold of the accused.

13. The evidence of PWs 1 and 2 is to the effect that on 23.11.2009, at 6.30 p.m., while watching T.V., PW8 informed them about the incident on telephone, pursuant to which, they rushed to the scene of offence and observed the dead body of the deceased. PW8 deposed that while she was washing her hands, she heard hue and cry of PW6 from the house of Ramulu and immediately thereafter, rushed to the house and saw the accused with an axe. The evidence of PW2 reveals that she also received a telephone call in the evening of 23.11.2009 and immediately thereafter, she rushed and saw her husband with injuries. At that time, all the neighbours gathered at their house.

14. From the evidence of all these witnesses, which remained unimpeached, though they were subjected to cross-examination, it is clear that on the fateful night, both the accused and deceased came to the house of the accused, consumed arrack and were

discussing about one, Sekhar. During the said process, PWs 6 and 7 heard cries from the verandah of the house of the accused. Immediately, both of them, who were inside the house, proceeded towards the verandah and saw the accused hacking the deceased. PW7 caught hold of the accused and prevented him from further attack. The accused wriggled himself out, threatened PW7 with dire consequences and left the place with a weapon in his hand. From the evidence of these witnesses, it stands established that it was the accused alone who was responsible for the incident. Now, the question is whether the accused can be convicted under Section 302 IPC.

15. As seen from the evidence of all the witnesses, none of them spoke about any animosity or ill-will between the accused and the deceased. On the other hand, the evidence of the witnesses, including the family members of the deceased, show that both of them together left the place and then came back to the house of the accused. Both of them started consuming arrack, during which process the accused is said to have questioned the deceased as to why he is practicing sorcery. Then, the accused is said to have given a single blow on the head of the deceased. In the absence of any motive or any animosity between both of them, and having regard to the fact that the evidence on record does not disclose existence of some verbal altercation between both of them prior to the incident, we feel that the offence can be scaled down, more so, when the medical evidence on record shows presence of only one single injury on the head of the deceased. It may be true that

the said injury lead to instantaneous death, but, having regard to the circumstances under which the incident occurred, more particularly, when it is preceded by a quarrel between the two persons who had no animosity or ill-will between them, we feel that the offence under Section 302 IPC can be scaled down to that under 304 Part-I.

16. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in the judgment dated 31.1.2011, in Sessions Case No.270 of 2010 on the file of the Judge, Family Court-cum-Additional Sessions Judge, Khammam for the offence punishable under Section 302 I.P.C. is altered to one under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of eight 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 on completion of eight years rigorous imprisonment with remissions, if he is not required in connection with any other case.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N. BALAYOGI

11.12.2017
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