

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.1007 of 2012

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

1. The sole accused in Sessions Case No. 366 of 2011 on the file of the Principal Sessions Judge, Medak at Sangareddy is the appellant. He was tried under Section 302 IPC for causing the death of his brother, Neeli Ramulu by beating him with a stick and thereafter squeezing his private parts. Vide judgment dated 09.05.2012, the Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life'.

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

The accused is the brother-in-law of PW1. PW2 is the mother of the deceased, while PW3 is the brother of the deceased. PW4 is the neighbour of the deceased. On the date of incident, i.e., 06.06.2011, the accused raised a quarrel with the mother of the deceased, N.Satyamma (PW2) and started pushing her by holding her neck. On that, the deceased, who is the husband of PW1, intervened and questioned the accused as to why he is

pushing his mother. Then the accused picked up a stick which was lying there and hit on the head of the deceased. Thereafter, he also beat on the chest, fell him down and squeezed his testicles, due to which the deceased became unconscious. Immediately thereafter, PW1 called the ambulance and took the deceased/injured to the Government Hospital, Sangareddy. They took treatment in the said hospital for three days, and as the treatment was very poor, PW1 took the deceased to Nawabpet for better treatment. On the way, the deceased succumbed to the injuries. After the death of the deceased, PW1 lodged a report with PW10, the Sub Inspector of Police, which came to be registered as Crime No. 71 of 2011 for the offence punishable under Section 302 IPC. Exhibit P12 is the FIR.

3. Further investigation in this case was taken over by PW11, the Circle Inspector of Police. On receiving the information, he rushed to Cheemaladari village along with his staff and conducted inquest over the dead body of the deceased in the presence of PWs 6 and 7. During inquest, he seized the clothes of the deceased, which were marked as M.O.1. Exhibit P13 is the inquest report. He also conducted a panchanama of the scene of offence along with the rough sketch, which is marked as Exhibit P14. During the inquest, he examined PWs 2 to 4, and later, sent the dead body to Government Hospital, Sangareddy for post mortem examination.

4. PW12, the Civil Assistant Surgeon, District Hospital, Sangareddy conducted autopsy on the body of the deceased and issued Exhibit P15, the Post Mortem Report. According to him, the cause of death was due to cardio respiratory arrest due to vaso vagal attack with injuries to intestine, leading to peritonitis (leaking of the intestinal contents) with hypo volumic shock.

5. On 11.06.2010, at Cheemaladari village, PW11 apprehended the accused and recorded his confessional statement in the presence of PW8. After completing the investigation, he filed charge sheet, which was taken on file as PRC No. 17 of 2011 on the file of the Judicial First Class Magistrate, Special Mobile Court, Sangareddy. On appearance of the accused, all the documents as required under Section 207 Cr.P.C were furnished and on committal, the case came to be tried as Sessions Case No. 366 of 2011. Basing on the material available on record, a charge under Section 302 IPC was framed, read over and explained to the accused, to which he pleaded 'not guilty' and claimed to be tried.

6. In support of its case, the prosecution examined PWs 1 to 12 and got marked Exhibits – P1 to P15. Out of the (15) witnesses examined by the prosecution, PWs 2, 3, 4, 6, 7, 8 and 9 did not support the prosecution case and were treated by the prosecution as hostile. On completion of prosecution evidence, the incriminating material appearing against the accused through the prosecution witnesses was put to him under Section 313 Cr.P.C.

examination, to which he denied. But, the accused did not adduce any oral or documentary evidence in support of his defence. Basing on the evidence of PW1, the Sessions Judge convicted the accused under Section 302 IPC. Challenging the said conviction and sentence, the present appeal came to be filed.

7. The learned counsel for the Appellant mainly submits that even accepting the evidence of PWs 1 and 2 to be true, no offence under Section 302 IPC is made out. According to him, there was no motive or intention on the part of the accused to kill the deceased and the incident happened only when the deceased intervened in the quarrel between the accused and PW2. The same was opposed by the Public Prosecutor.

8. As seen from the record, except PW1, all other prosecution witnesses turned hostile and did not support the prosecution case. The mother of the deceased, who was examined as PW2, did not support the prosecution case. Even the evidence of PW1 would show that on the date of the incident, the accused and PW2 were quarrelling, and in the said quarrel, the accused pushed PW2 by her neck. At that time, the deceased, who is the son of PW2, intervened and questioned the accused as to why the accused is pushing his mother. In a fit of anger, the accused picked up a stick and beat the deceased. Thereafter, he hit him on the chest, fell him down and in the squabble, he is said to have squeezed the private parts of the deceased, which made him unconscious. The evidence of PW1 further discloses that (3) days after the incident,

as no proper treatment was given in Government Hospital, Sangareddy, they were shifting the injured to Nawabpet for better treatment, and on the way, he succumbed to the injuries.

9. PW12, the Doctor who conducted post mortem on the deceased was cross-examined with regard to the cause of death. The Post Mortem Report, which is placed on record as Exhibit P15, shows that there were two abrasions on the left color bone and right forearm, contusion on the left scrotum and contusion on the left side of cheek and back. None of these injuries which were found on the body of the deceased were on the vital parts. In the cross-examination, PW12 admits that he does not know whether the patient was treated in the hospital or not. He further admits that there are chances of survival of the patient with the injuries mentioned in the post mortem certificate. He further states that he cannot say whether the patient died due to negligence of the concerned doctors.

10. Coming to the evidence of PW1, in her chief examination itself, PW1 admits that there was a quarrel in the house of PW1 between the accused and PW2 and when the accused pushed PW2, the mother of the deceased, by catching hold of her neck, the deceased intervened and questioned as to why he was manhandling his mother. At that point of time, the accused picked up a stick and hit on the chest of the deceased and both of them fell on the ground, tumbled over one another and thereafter, the accused squeezed the testicles of the deceased, as a result of which, the

deceased became unconscious. Therefore, the death of the deceased was not instantaneous. He fell unconscious and was shifted to the Government Hospital, Sangareddy, where no proper treatment was given. The said finding gets support from the evidence of PW1 itself. The Doctor, in his cross-examination, admits that there are chances of survival of the patient with the injuries mentioned in the post mortem examination. The evidence of PW1 and PW12 would make it clear that if proper treatment was given, definitely, the deceased would have survived.

11. Apart from that, it is to be noted here that the incident took place because of the quarrel between the accused and PW2 and when the deceased intervened, the accused beat him with a stick and thereafter, squeezed his testicles. The external injuries which were found on the body of the accused were on non-vital parts, i.e., color bone, forearm and also left side of cheek and back. Of course, there was a contusion of the left scrotum. Having regard to the manner in which the incident took place, it can be said that there was neither any motive nor intention on the part of the accused to kill the deceased. The deceased sustained injuries when he intervened in a quarrel. Neither PW1 nor any of the witnesses deposed about any disputes between the accused and the deceased.

12. Having regard to the above, and in the absence of any motive or intention on the part of the accused to cause the death of the deceased, we feel that it is a fit case where only knowledge

can be attributed to the accused. Hence, the conviction of the accused is scaled down from Section 302 IPC to that of Section 304 Part-II IPC.

13. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in the judgment dated 09.05.2012 in Sessions Case No. 366 of 2011 on the file of the Principal Sessions Judge, Medak at Sangareddy 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 six 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 six years rigorous imprisonment, including remissions, if he is entitled to.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

16.11.2017
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