

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No. 979 of 2011

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

The accused No.1 in Sessions Case No.14 of 2010 on the file of the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupati is the appellant herein. He along with two others were tried under Sections 302, 201 IPC and Sec.3(1)(v) of SC and ST (POA) Act 1989, for causing the death of one Rangan (herein after referred to as deceased). By its judgment dated 21.04.2011, the Sessions Judge convicted the accused under Section 235(2) Cr.P.C and sentenced to suffer imprisonment for LIFE for the offence under Section 3(2)(v) of SC and ST (POA) Act, 1989 (for short "the Act") and Accused No.1 to Accused No.3 convicted and sentenced to suffer R.I. for 1 ½ years each for the offence punishable under Section 201 IPC. Both the sentences of A1 were directed to run concurrently.

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

3. P.W.1 is wife of the deceased, while P.W.2 is the mother of the deceased, P.Ws.3 to 10 are residents of Nagalapuram village. The deceased was working under one Pala Babu and was

assisting him in agriculture and milk business, earning Rs.3,000/- per month. On the date of incident i.e. on 15.02.2010, the accused left the house in order to meet his owner Pala Babu but did not return back on that night and also on the next day evening. They came to know that somebody beat and caused injuries to Rangan and thereafter threw him into bushes at Saibaba Nagar, Nagalapuram. P.W.1,2 and other villagers went and saw the dead body of the deceased. They found swelling and bleeding from ears and nose. P.W.1 expressed suspicion that one Natti Babu was responsible for the death of her husband Rangan. She also further deposed that her husband used to tell her that he has illegal contacts with the wife of one Natti Babu, who used to say that he will kill him. Suspecting that the said Natti Babu is responsible for the death of her husband Rangan, she gave Ex.P1 report to P.W.13 the S.I. of Police, which came to be registered a case in Cr.No.6/2010, under Section 174 Cr.P.C. Ex.P8 is the original FIR. As it was late night, he posted the guard at the dead body of deceased and on the next day he visited the scene of offence, examined and recorded the statements of P.W.s 1 to 5. He also observed the scene of offence, prepared and also Ex.P9 the rough sketch of the scene. He then conducted inquest over the dead body of the deceased in the presence of P.W 10 Ex.P3 is the inquest report. After completing the inquest proceedings he sent the dead body for post mortem examination. P.W.12, Dr.B.V.Subba Reddy, the Civil Assistant Surgeon in Community Health Centre, Satyavedu conducted post mortem examination over the dead body of the

deceased on 17.02.2010. According to him the cause of death was due to haemorrhage and shock. Basing on the post mortem report, P.W.13 altered the section of law from Sec 174 Cr.P.C. to Sec. 302 IPC and filed FIR on 25.02.2010. Ex.P10 is the altered FIR. P.W.14, Circle Inspector to police, S.D.P.O., Srikalahasthi, took up investigation in this case on 25.02.2010. He visited the scene of offence, examined P.W.1 to P.W.9 and recorded their statements. On 27.02.2010, on reliable information he proceeded to Surutupalle and in the presence of P.W.11, arrested A1 and A2 at Pallikondeswaraswamy temple near Surutupalle. On interrogation, A1 and A2 voluntarily confessed about the commission of offence. Basing on the confessional statement, police arrested A3 and recorded his confession under Ex.P.12. Pursuant to the confession, police went to the house of A.1 and A.2 and seized M.O.1, a Pidi of knife.

4. After completing the investigation, a charge sheet came to be filed, which was taken on the file as PRC No.10/2010 on the file of Judicial Magistrate of First Class, Satyavedu, who in turn committed the case to the Court of Sessions and the same came to be numbered as S.C.No. 14 of 2010 on the file of the Special Sessions Judge-cum-IV Additional Sessions Judge, Tirupati.

5. Basing on the material on record, charges for the offences punishable under Section 302 IPC & 201 IPC & Section 3(1) (v) of S.C., S.T. (POA) Act, 1989 against A.1 and under Section 201 IPC &

Section 3(1) (v) of S.C, S.T. (POA) Act, 1989 against A2 and A3 were framed, read over and explained to the accused A1 to A3, to which they denied and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs -1 to 14 and got marked Exs.P1 to P.15 and M.O.1. After the closure of evidence, the A1 to A3 were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced on behalf by the accused Nos.1 to 3 in support of their defence, but Exs.D1 & D2 relevant portion of 161 Cr.P.C. statement of PW.8 were marked.

7. As the evidence of the prosecution witnesses, establish the guilt of the accused beyond all reasonable doubt, the Court below convicted the A1 under Section 235(2) Cr.P.C. and sentenced to undergo imprisonment for LIFE for the offence under Section 3(2)(v) of SC and ST (POA) Act, 1989. A1 to A3 sentenced to suffer Rigorous Imprisonment for 1 ½ years each for the offence under Section 201 IPC. The second count of A1 was directed to run concurrently with the first count. Challenging the same, the present appeal came to be filed by Accused No.1.

8. The learned counsel for the appellant mainly submits that there are no eye witnesses to the case and the entire case rests on the circumstantial evidence. He also submits that the prosecution failed to prove the guilt of the accused for the offence under

Section 3(2)(v) of SC and ST (POA) Act, 1989, as the offence was never committed on the ground that the deceased belongs to a member of SC and ST community.

9. The only question that arises for consideration is whether the accused is liable to be convicted under Section 3(2)(v) of SC and ST (POA) Act, 1989 ?

Section 3(2)(v) of SC and ST (POA) Act, 1989 reads as follows:

3. Punishable for offences of atrocities:

- (1) xxx xxx xx
- (2) Whoever, not being a member of Scheduled Caste or a Scheduled Tribe,
- (v) Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste of a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

10. A reading of provisions makes it clear that if any offence is committed by a person not belonging to scheduled caste and scheduled tribe against a person, on the ground that such person is a member of scheduled caste and scheduled tribe, the same is punishable with imprisonment for life and with fine.

11. In the instant case the evidence of the witnesses nowhere indicate

that the accused has committed the offence on the ground that the deceased belongs to scheduled caste and scheduled tribe. To appreciate the same it would be necessary to refer to the evidence of P.W.1, 7 and 8 which are as under:

P.W.1 in her evidence deposed as under :

“ About one year back my husband left the house by 05.00 PM in order to meet his owner Babu/L.W.6 and not returned back on that night. On the next day evening I came to know at 05.00 PM that some body beat and caused injuries to my husband and thrown in thorny bushes at Saibaba Nagar, Nagalapuram. Then myself, my mother-in-law, children alongwith some villagers went and seen the dead body of deceased. We round swelling on ears, bleeding from ears and nose on the dead body. My husband used to tell me that he has illegal contacts with the wife of one Natti Babu who used to say that he will kill him. So I suspect that the said Natti Babu is responsible for the death of my husband Rangan and none others . The said Natti Babu is present in the court hall. The witness identified R.Babu as Natti Babu. “

P.W.7 in his evidence deposed as under:

“The said Rangan used to visit the house of A2 as there is illegal contact between Rangan and A2. A1 came to know about the illegal contact between Rangan and A2 and made a galata with Rangan and gave a warning not to come to his house as he has illegal contact with A2 otherwise I will kill him and it is 15 days prior to

the main incident. On Tuesday morning 05.00 AM my husband went to Kadapa. At 06.00 AM Sivagami came to me and asked me to come to her house and also called Damayanthi/L.W.9. Then myself and Damayanthi went to the house of A2. We found the dead body of Rangan covered with cloth in the house of A2. At that time A1 also present in that house. When we asked A2 she told that Rangan came to her house on the previous day night at 10P.M. and around mid night, while they were in compromising mood. A1 came to house and A2 went and opened the door where A1 entered into the house and seen Rangan and godava took place between A1 and Rangan where A1 beat Rangan with a pidi of knife on an ear and then Rangan died on the spot. After heard the narration from A2, myself and Damayanthi went away to the house due to h\feare. Later A1 called his friend Raghu/A3 and both of them taken the dead body and thrown into bushes. “

P.W.8 in her evidence deposed as under :

On Tuesday morning at 06.00 A.M., A.2 came to my house and wake me up and informed about the incident. A2 also taken me to her house and by then P.W.7 already at that house. After I went there, myself, A2, husband of A2/A1, P.W.7/Kavitha and one Raghu/A3 were in the house and seen the dead body and on seeing the same we were frightened. When we asked A2 she narrated the incident as that on previous day night at 12.00 clock, the deceased Rangan came to her house and A1 was not in the house. A2 and Rangan were in the house, A1 came and

found both of us and slapped Rangan. Then A1 took katthi pidi and beat on an ear on the spot Ranga died. Later A2 requested us not to inform the said fact to anybody by caught hold of my legs. Due to fear we went to our respective houses. Later A3 took the dead body on his shoulder and proceeded towards bushes and A1 and A2 accompanied him.”

12. From the evidence of these three witnesses, who are examined by the prosecution to prove the offence, it is clear that the accused did not kill the deceased on the ground that the deceased belongs to a member of the Scheduled Caste and Scheduled Tribe. On the other hand the incident was because of illicit relationship between the deceased and wife of A.1, who is A.2. Therefore, the conviction of the accused under Section 3(2)(v) of the Act cannot be sustained. A reading of the charge further shows that the accused has committed the murder of the deceased with a knife. Punishable with an imprisonment for a term of 10 years against the said person on the ground that such person is a member of scheduled caste or scheduled tribe. That being the position, the Court also to consider as to whether the accused can be held guilty of an offence punishable under Section 302 IPC. As stated earlier, the trial Court itself found the accused liable to be convicted for the offence 304 Part II IPC. But, however, sentenced him to suffer imprisonment for life under Section 3(2)(v) of the Act.

13. Even as per the evidence of P.Ws. 7 and 8 to whom accused No.2 confessed about the incident, on the date of incident the deceased came to her house and at about 10 P.M. while the deceased and A2 were in a compromising mood, when A2 went and opened the door, A1 entered into the house and saw the deceased. Even as per the evidence of PW.7, there was a quarrel between accused No.1 and deceased, pursuant thereto accused No.1 is said to have beaten the deceased with a pidi knife, on the ear of the deceased leading to his death. The said version is also spoken to by PW.8. The evidence of both the witnesses gets corroboration from the medical evidence. Having regard to the manner in which the incident occurred, the trial court rightly convicted the accused u/s 304.II IPC.

14. In the light of the findings given above, we feel that conviction and imposition of imprisonment for life for the offence punishable under Section 3(2)(v) of SC and ST (POA) Act, 1989 is illegal and the same is liable to be set-aside.

15. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant / A-1 in the judgment dated 21.04.2011 in Special Sessions Case No. 14/2010 on the file of the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupati for the offence punishable under Section 3(2) (v) of SC and ST (POA) Act , 1989 is set aside while confirming the finding given by the Sessions Judge for the

offence under 304-II IPC. However, the sentence imposed under Section 304-II IPC is reduced to the period already undergone by him. Consequently, the appellant/A-1 shall be set at liberty forthwith, if he is not required in connection with any other case. The conviction and sentence imposed against the appellant/A-1 for the offence punishable under Section 201 IPC shall remain un-altered.

16. The Miscellaneous Petitions pending, if any, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

Dated: 26.12.2017

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