HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.1628 of 2010

JUDGMENT: (*per Hon'ble Sri Justice U.Durga Prasad Rao*)

This appeal is filed by sole accused against the judgment dated 19.02.2010 in S.C.No.82 of 2008 on the file of Additional Sessions Judge, Hindupur whereby he was convicted for the offences punishable under Sections 302 and 324 IPC and sentenced to undergo imprisonment for life and also to undergo RI for two years. Both the sentences are directed to run concurrently.

2) The case of prosecution in brief is as under:

a) The deceased—Harijana Kristappa was the resident of Parigi village. The accused—Harijana Govindappa had two wives. About seven months prior to the incident, the second wife of accused viz. Ramanjamma was found missing. Hence he gave a complaint to Police of Parigi PS, which was registered as case in Cr.No.75 of 2005. Accused suspecting involvement of deceased, PW1 and one D.N.K.Narasimhulu, abused them. Therefore, the accused hatched a plan to attack them.

b) On 11.05.2006 at 7 PM, when PW1 was lying down in front of his house, the accused went there armed with sickle and tried to hack him. When he raised his right hand to ward off the blow, he received bleeding injury. On seeing the attack, PW2—the wife of PW1 raised hue and cry. On hearing the same, the accused marched to the house of

D.N.K.Narasimhulu and found him absent. Thereafter, the accused proceeded towards Pydeti road and found the deceased in front of tailor shop of Shabbir and hacked him with sickle on his right elbow and right thigh causing severe injuries. On receiving the injuries the deceased fell down on the road and the accused fled away from the scene. PW1 and deceased were admitted in Government Hospital, Hindupur. On receipt of information, PW13—SI of police, Parigi PS visited the hospital and recorded the statement of injured (PW1) alone as the deceased was in unconscious state and registered a case in Crime No.38 of 2006 under Sections 324 and 307 IPC and issued FIR to all concerned. When the deceased was being shifted to Bangalore for better treatment, he succumbed to injuries. Then, PW13 altered Section of law from 307 to 302 IPC and submitted express FIR.

c) PW14—CI of Police, Hindupur took up investigation and examined the witnesses. During the course of investigation, he arrested the accused in the presence of PW9 and another mediator and seized MO1—sickle used in the commission of offence. After completion of investigation he filed the charge sheet before the Judicial First Class Magistrate, Hindupur. The learned Magistrate after following the procedure committed the case to Court of Sessions. Learned Sessions Judge, Ananthapur conducted trial. Accused was charged for the offence under Sections 324 and 302 IPC.

d) On behalf of the prosecution, PWs.1 to 14 were examined, Exs.P1 to P16 were marked and MOs. 1 to 7 were exhibited. No witness was examined but Exs.D1 to D4 were marked on defence side.

e) The trial Court after full-fledged trial found the accused guilty of the offence under Sections 302 and 324 IPC and accordingly convicted and sentenced him as aforesaid. Questioning the conviction and sentence accused is before us in this appeal.

3) Heard arguments of Sri R.Dheeraj Singh, learned counsel for appellant and learned Public Prosecutor (A.P.)

4a) Challenging the conviction and sentence passed by the trial Court, learned counsel for appellant would argue that prosecution utterly failed to prove the complicity of accused either in causing injuries to PW1 or causing death of deceased.

In expatiation, he would submit that all the alleged eyewitnesses are interested witnesses and prosecution has not examined any independent witnesses to prove the guilt of the accused. Therefore, the trial Court ought to have rejected their evidence. He argued that since the accused gave report to police regarding missing of his wife, and suspecting the complicity of deceased, PW1 and DNK Narasimhulu, a false case is foisted against him taking advantage of injuries of PW1 and death of deceased which incident might be occurred due to some other reason. He further argued that even assuming that the accused was responsible for causing injuries to PW1 and deceased, the charge under

Section 302 IPC is not maintainable because he inflicted injuries on non-vital parts like hands and legs. Hence, the trial Court ought not to have convicted him for the offence under Section 302 IPC. He thus at the first instance prayed to allow the appeal and set aside the conviction and alternatively to set aside the conviction under Section 302 IPC and impose suitable punishment.

5a) Per contra, learned Public Prosecutor (AP) while supporting the judgment of the trial Court would argue the prosecution by cogent evidence could establish the two incidents i.e. the incident of accused hacking PW1 with sickle and causing injuries at his house and nextly his rushing to Pydeti circle and hacking the deceased with sickle by causing severe injuries which resulted in his death.

b) Learned Public Prosecutor argued that all the eyewitnesses are natural witnesses inasmuch as PW1 is the injured and PW2 is his wife, PWs.6 and 7 are their neighbours and independent witnesses. Similarly, PWs.4 and 5 are independent witnesses who witnessed the second incident. Hence, it is preposterous to argue that they are interested witnesses. He argued that the ocular evidence of eyewitnesses was amply corroborated by medical witnesses and the veracity of their evidence could not be shattered in the cross-examination.

c) Nextly, he argued that accused caused grievous injuries to the deceased with an intention to kill and therefore he was rightly convicted

for the offence under Section 302 IPC. He thus prayed to dismiss the appeal.

6) The points for determination in this appeal are:

1) *Whether the deceased met with homicidal death and if so, whether accused was responsible for his death?*

2) *Whether PW1 received injuries in the hands of accused?*

3) *Whether the conviction and sentence passed by the trial Court are factually and legally sustainable?*

7) **POINT Nos.1 and 2**: Since these two points are interconnected they are taken up together. On perusal of the record, it must be said that the prosecution by cogent evidence could establish Kristappa met with homicidal death. Apart from the ocular evidence of eyewitnesses—PWs.1, 4 and 5, the medical evidence of PW12—the doctor who conducted port-mortem and PW10—the inquest mediator coupled with Exs.P7—post-mortem certificate and P5—inquest report would confirm the death as a homicidal one.

a) PW12 deposed that he found the following external injuries:

1. *A big lacerated wound with clean cut edges of 20 cm x 10 cm x 5cm size on the right thigh lower 1/3rd.*
2. *A lacerated injury of 10 cm x 6 cm x 3 cm on the right elbow. Both Radius and ulna are fractured.*
3. *An abrasion of 5 cm x 2 cm on the right shoulder.*

He opined that the deceased would have died due to severe haemorrhage and shock due to injuries 1 and 2 and time of death around 12 to 16 hours

prior to his examination. He stated that injuries found on his body could be caused by any sharp edged weapon and accordingly he issued Ex.P7—post-mortem report. Thus, his evidence would depict that the death was resulted due to haemorrhage caused by external injuries and external injures could be caused with sharp edged weapon.

b) Then, PW10—the inquest mediator deposed that the CI of Police held inquest on the dead body of Kristappa in Government Hospital, Hindupur in their presence and they found injuries on the person of the deceased. The inquest mediators opined that the accused murdered the deceased due to ill-feelings. Accordingly, Ex.P5—inquest report was prepared.

The above evidence of PWs.10 and 12 was not much controverted. Thus, their evidence would demonstrate that death is homicidal one.

c) Then, the injuries of PW1 are concerned, apart from the oral evidence of PWs.1, 2, 6 and 7, we have the deposition of PW11—the doctor who examined PW1 and issued Ex.P6—wound certificate. PW11—Deputy Civil Surgeon, Government Hospital, Hindupur deposed that on 11.05.2006 he examined PW1 and found the following injury.

Lacerated injury ½" x ½" bleeding present on left fore arm.

He opined that injury was simple in nature and could be caused 1 to 2 hours prior to his examination. He stated that injury could be caused by a blunt edged weapon. He accordingly issued Ex.P6—wound certificate. This witness was not cross-examined by the defence. The evidence on

record would show that PW1 suffered simple injuries by a blunt edged weapon. Thus, the prosecution could establish that the death of Kristappa was homicidal death and PW1 sustained simple injuries by a blunt edged weapon.

d) It has now to be seen whether the accused is responsible for the death of Kristappa and injuries of PW1 and whether the evidence placed on record proved his guilt beyond reasonable doubt.

8) The motive for the accused to commit the offence as per prosecution case is that about seven months prior to the incident, the second wife of accused viz. Ramanjamma was found missing and the accused gave report to the police of Parigi PS and they registered Cr.No.75 of 2005. The accused suspected the hand of PW1, deceased—Kristappa and D.N.K.Narasimhulu in missing of his wife and he was apprehending that they concealed her in Bommanahalli village, Bangalore. It is stated that out of rage, he hacked PW1 and Kristappa on the evening of the incident with a sickle.

9) The case of accused is one of total denial of offence. His version is that since he suspected PW1, deceased and Narasimhulu as cause for missing of his wife, a false case was foisted against him. The first incident took place on 11.05.2006 at about 7.00 PM in front of house of PW1; himself, PW2 who is his wife, PWs.6 and 7 who are their neighbours, are said to be the eyewitnesses for the first incident of accused hacking PW1.

10 a) PW1 deposed that he is residing in 90 Houses Harijan Colony, Parigi; he knew the accused and deceased; Ramanjamma wife of accused was missing and her whereabouts were not known; the accused suspected him, deceased—Kristappa and one Narasimhulu responsible for her missing and he proclaimed that he would kill them. Regarding the incident, he deposed that about 3 years ago at about 7.00 PM while he was lying down in front of his house, the accused came armed with a sickle and questioned him about the missing of his second wife and tried to hack him with sickle; he raised his right hand to ward off the blow and in that process, he sustained bleeding injuries to his right hand; the accused proclaimed that he would see the end of Kristappa and went away from that place with sickle; he too followed him towards Pydeti circle, Parigi; he saw the accused hacking Kristappa with a sickle and on receiving sickle blows Kristappa fell down on the ground and on seeing the same the accused fled away from the place; PWs.4 and 5 and others took him and deceased to Government Hospital, Hindupur in an auto where they were treated by the doctors; doctors advised to take the injured Kristappa to Bangalore for expert treatment and on the way Kristappa succumbed to injuries which fact was informed to him; while he (PW1) was undergoing treatment in Government Hospital, Hindupur, police recorded his statement under Ex.P1; MO1 was the sickle used by the accused to commit the office.

b) This witness was extensively cross-examined by the defence. He admitted that in connection with Crime No.75 of 2005 the police

enquired him and Kristappa for missing of second wife of accused. He stated the accused took five minutes time to hack him in front of his house; he noticed arrival of accused 10 feet ahead and accused was armed with sickle at that time and he did not suspect that accused would hack him when he noticed for first time; he was under the impression that accused may scold him as he used to do earlier; he further stated, Pydeti Circle is situated ½ furlong away from his house; the accused after hacking him, rushed to Pydeti Centre within five minutes by running; the accused was going 40 yards away of him when he was proceeding towards Pydeti Circle; he (PW1) raised cries while following the accused towards Pydeti Circle; he noticed the accused hacking Kristappa at a distance of 20 feet; the deceased—Kristappa was proceeding to his house from Pydeti Circle when the accused hacked him; he alarmed deceased that accused was coming towards him and the deceased also noticed that the accused was coming opposite to him; himself and Kristappa were at the scene of offence for 15 minutes after the incident. Regarding the reason for not reporting to the police immediately, he deposed Parigi PS is in between Pydeti Centre land Government Hospital but as they were hurry to rush to hospital, they did not give complaint in the police station; they reached the Government Hospital, Hindupur at about 8.00 PM; the police reached the hospital at 9.00 PM; Kristappa was not in a position to talk anything when they came to hospital and even to the enquiries of the doctor about the injuries he was not in a position to talk. He denied the suggestion that accused was not responsible for the accident.

11) Thus, an intense scrutiny of his evidence would show that though PW1 was thoroughly cross-examined, the credibility of his evidence could not be impeached. This witness clearly revealed how himself and Kristappa received injuries in the hands of accused. He also gave reason for not reporting to the police though police station is on the way to hospital. PW1 is the injured victim and his evidence does not suffer from any infirmity or exaggerations. We see no reason for him to depose falsehood against the accused. The injuries spoken by him were corroborated by PWs.11 and 12 and Exs.P6 and P7.

12) It may be noted that by mistake PW11 deposed that the injury was on the left fore-arm instead of right fore-arm. However, Ex.P6—wound certificate issued by him shows PW1 suffered injury on the right fore-arm.

13) PW2 is the wife of PW1. She deposed that on the date of incident at 6.00 PM she returned to home after attending coolie work and the accused came towards their house armed with sickle and proclaimed to kill her husband; at that time PW1 was lying down in front of their house; accused tried to hack her husband with a sickle and in the process, her husband received bleeding injuries to his right hand; after hacking her husband, the accused left that place proclaiming that he would kill Kristappa and later she came to know that Kristappa was hacked by the accused with sickle and they were taken to Government Hospital, Hindupur and she went to the hospital; MO1 was the weapon used by the accused to commit the offence. This witness was also thoroughly cross-

examined. She stated that she noticed the presence of the accused when he came in front of their house; she was cooking rice when he came; accused hacked with sickle while PW1 was lying on the ground.

So, a perusal of evidence of PW2 shows she was the eye-witness for the first incident and she corroborated the evidence of PW1 regarding his injuries. As she is the wife of PW1 and inmate of his house and she was cooking food in front of the house at the time of incident, she can be said to be the natural witness for the incident. Nothing specific could be extracted in the cross-examination to shatter her credibility. She clearly deposed that the accused hacked her husband with MO1—sickle.

14) Then, we have the evidence of PWs.6 and 7 who are the mother and niece of D.N.K.Narasimhulu, whom the accused suspected along with PW1 and deceased. The house of PWs.6 and 7 is at a distance of 15 to 20 feet from the house of PW1. They claimed to have witnessed the first incident of accused hacking PW1 with a sickle.

15) PW6 deposed that on the date of incident at about 7.00 PM when she was in front of her house, accused came there and at that time PW1 was lying on the ground; accused tried to hack PW1 with MO1—sickle resulting injuries to his right hand; the accused left the place challenging that he would kill Kristappa and her son; PW1 followed him.

16) PW7 also deposed in similar lines. Both these witnesses were cross-examined but their credibility could not be attacked.

17) As these witnesses are neighbours to PW1, their witnessing the incident can be believed. Thus, the evidence of PWs.1, 2, 6 and 7 established the first incident.

18) Then, coming to the second incident, as already discussed supra, PW1 vividly deposed about accused hacking Kristappa at Pydeti Circle. His evidence in this regard is corroborated by independent witnesses—PWs.4 and 5.

19) PW4 deposed that the second incident was occurred at about 7.30 PM at Pydeti Circle and at that time he was present there along with PW5 and LW7—Talari Papanna; at that time deceased was standing at Pydeti Centre; accused armed with sickle came there and hacked him on the left hand and right thigh all over his body and Kristappa fell down; in the meanwhile, PW1 also came there; after hacking Kristappa, the accused left the centre; himself, PW5 and LW7—Talari Papanna brought the auto and took Kristappa and PW1 to the Government Hospital, Hindupur for treatment; he noticed injury on the right hand of PW1; PW1 gave complaint to the police; on the advice of doctors Kristappa was taken to Bangalore for better treatment but on the way he died. This witness identified MO1 which was used by the accused in connection of the offence. He stated that accused hacked Kristappa due to ill-feelings between them, as he suspected deceased was responsible for missing of his wife. In the cross-examination he denied the suggestion that PW1 is his elder brother; he stated his house is situated 3 to 4 furlongs from the Pydeti Circle; he was coming to the house attending coolie work; he

noticed the presence of the accused for the first time 10 to 15 feet ahead from the deceased; he was 12 to 15 feet ahead of the deceased when the accused looked him; the accused questioned that the deceased was responsible for missing of his second wife and thereby hacked him; himself, PW5 and LW7—Talari Papanna did not try to rescue deceased from the hands of accused as he was armed with sickle; he (PW4) did not have any ill-feelings with the accused. He too stated that because of urgency they did not give complaint to the police.

20) A notable feature in the evidence of PW4 is that he is an independent witness and he has no enmity or ill-feelings with the accused. Therefore, there is no reason for him to speak falsehood against the accused. While returning from coolie work he witnessed the incident and he along with PW5 and LW7—Papanna took PW1 and deceased to the hospital in an auto. Therefore, his evidence is intrinsic and does not suffer from any infirmities. The slight discrepancy in the form of Ex.D2 will not affect his credibility as he is a rustic witness and deposed about three years after the incident.

21) PW5 deposed that the incident was occurred about three years back at about 7.00 to 7.30 PM and at that time he came to Pydeti Circle after completing coolie work and saw the accused hacking Kristappa with a sickle; himself, PW4 and LW7—Talari Papanna took PW1 and Kristappa in an auto to the hospital. This witness was subjected to cross-examination, but his evidence could not be shattered. Thus, the evidence of PWs.1, 4 and 5 establish the second incident.

22) Added to it, the evidence of PW9 would show that the police after arresting accused recovered MO1—sickle on his revelation near the tamarind tree of Gopalappa.

23) Ex.P16—FSL report would show that blood was detected on MOs.1 to 5—wearing apparel and also item 7—sickle (MO1). The blood is of human origin and it belongs to 'B' group. Hence, it is established that the accused used MO1—sickle to cause injuries to PW1 and deceased. Thus, the prosecution established that the accused was responsible for the injuries of PW1 and Kristappa.

Point Nos.1 and 2 are answered accordingly.

24) **POINT No.3**: The trial Court convicted the accused on two counts i.e. under Sections 324 and 302 IPC. There is no demur about the applicability of Section 324 IPC since the accused voluntarily caused simple injuries to PW1 with MO1—sickle which is a dangerous weapon. Coming to conviction under Section 302 IPC, the argument of learned counsel for appellant is that the accused has not caused injuries on the vital parts of the deceased and the deceased died due to haemorrhage rather than the critical nature of the injuries on vital parts and thereby it can be inferred that accused had no intention to kill the deceased. We find force in the argument of learned counsel for appellant.

25) As per the evidence of PW12, the deceased suffered injuries on the right thigh, right elbow and right shoulder. Both radius and ulna were fractured. Evidently, they are not the vital parts of the body and any

amount of injury in the normal course will not result in death of the deceased. PW12 deposed in his evidence that death was caused due to haemorrhage and shock due to injuries.

26) It is to be noted that the deceased was referred to Bangalore for better treatment and on the way he died. The time lag in getting the treatment might have resulted in haemorrhage. From these facts, it can be inferred that though accused had no requisite intention to cause death but had only knowledge that his injuries are likely to cause death. Therefore, in our considered view, accused is punishable under Section 304 Part II IPC rather than under Section 302 IPC.

27) In the result, the appeal is partly allowed. While upholding conviction and sentence under Section 324 IPC, the conviction and sentence under Section 302 IPC is modified to Section 304 Part II IPC and the sentence is reduced to eight (8) years R.I. Both the sentences shall run concurrently and remand period shall be given set off.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

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SURESH KUMAR KAIT, J

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U. DURGA PRASAD RAO, J

Date: 02.08.2017
Murthy