

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL APPEAL No.987 of 2011

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

1) A.1 and A.2 in Sessions Case No.15 of 2003 on the file of the Principal District and Sessions Judge, West Godavari Division, at Eluru are the appellants herein. They were tried for an offence punishable under Section 302 read with 34 IPC. By its judgment dated 09.09.2004, the Sessions Judge convicted A1 and A2 under Section 302 IPC read with 34 IPC and sentenced them to suffer "imprisonment for life" and to pay fine of Rs.200/- each, in default to suffer simple imprisonment for a period of 15 days each.

2) The substance of the charge against the accused is that on 10.09.2002 at 12.30 p.m in the fields of Yerraguntapalli Village, the accused caused the death of one Tholumatla Venkateswararao (hereinafter referred to as "the deceased") by hitting him with crowbar and with karra kathi.

3) The facts in issue are as under:

i) Accused No.1 is the son of accused No.2. PW.1 is the wife of the deceased, PWs.2 to 6 are residents of Yerraguntapalli Village and the accused are also residents of the same village. The evidence of PW1 is that she got Ac.1.70 cents of land at Subbarayudugudem and the accused also got Ac.0.60 cents situated in Subbarayudugudem on the southern side of lands of PW.1. PW.1 and her husband claims to have raised paddy crop in their lands and that the accused also raised paddy crop.

The land of PW.1 was on the higher gradient and the land of the accused is on the lower gradient. They draw water for cultivation of paddy from their village tank. A bore well was also laid in the land of PW.1. As there was no water in the tank, PW.1 was drawing water from the bore well. The accused was not having any water source except tank water. There was a bund separating the lands of PW.1 and the accused. It is said that the accused cut the bund boundary on their side and also dug holes in the said bund so as to facilitate the water to their lands from the fields. As a result of which, the water in the land of the deceased has been drained out. The deceased questioned as to why they are digging holes to the bund and taking away water from their lands. As there was a negative approach from the accused, the deceased reported the matter to Lakshmaiah and Nandru Mastan. A day prior to the date of incident, accused No.2 and PW.6 were talking with each other on the road and the husband of PW.1 was on the way to the easing ground. At that time accused No.2 proclaimed that he will see his end. The same was informed to PW.1 after coming to the house from easing ground. On the date of incident, the deceased took the village elders viz. Lakshmaiah and PW.2 – Mastan to show them the mischief committed by the accused. PW.1 and her father-in-law were accompanied them to their field. When they went there, they noticed A1 and A2 present in their land. When the deceased was showing the holes of the bund to the elders, both the accused came there; said to have abused the elders in filthy language, saying that the deceased would not be allowed to cultivate the land and A2 incited A1 to attack. Pursuant to the same, A1 armed with crow bar dealt a blow on the right side of the head of the deceased and on receiving the same, the deceased fell down. When

PW.1 intervened to prevent them from beating the deceased, A2 pushed her as a result of which she fell down. A1 again dealt a blow with crow bar on the head of the deceased. A.2 poked the deceased with the kathwa stick into the mouth of the deceased. The head of the deceased was broken and bleeding was coming from the head of the deceased as such he fell down. Thereafter, A2 and A1 ran away from the scene. PW.1 is said to have tied a towel on the injuries on the head. The neighbouring land owners came there on hearing her cries and with the help of others, the injured was shifted in an autorickshaw to the Government Hospital, Chintalapudi.

ii) The evidence of PW.10, the Head Constable is that on 10.09.2002 he received intimation (Ex.P4) from the Government Hospital, Chintalapudi and accordingly proceeded to the said hospital. There, PW.10 recorded the statement of PW.1 in the presence of PW.7, but her husband was in unconscious stage. Ex.P.1 is the statement of PW.1. PW.10 reported the same in the police station and handover it to PW.11- the A.S.I of Chintalapudi Police Station, who registered a case in Crime No.151 of 2002 under Section 307 read with 34 IPC. Ex.P.7 is the first information report. After registering the first information report, PW.13, the Inspector of Police took up investigation and proceeded to the Government Hospital, Chintalapudi. He again recorded the statements of PW.1 and others. Thereafter, proceeded to the scene of offence, which is situated in the fields of Yerraguntapalli Village and in the presence of PW.4 and 5 he prepared panchanama of the scene of offence, which is brought on record as Ex.P.2. At the scene of offence, he noticed marks of struggle in the fields. He also seized MOs.2 and 3 i.e. crow bar and kathwa stick, which were lying in the fields. PW.13

also got prepared rough sketch of scene of offence, which is marked as Ex.P.12. On receiving the death information from the Government Hospital, Eluru on the very same day he altered the section of law from 307 to 302 IPC and issued altered F.I.R. which is placed on record as Ex.P.13.

iii) PW.14, the Inspector of Police, Chintalapudi took up further investigation on receipt of the altered FIR. He proceeded to the Government Hospital, Eluru and conducted inquest over the dead body in the presence of PW.5. During inquest, he examined PWs.1, 2, 3 and 6. Ex.P.3 is the inquest report. After completing inquest proceedings, he forwarded the dead body for postmortem examination.

iv) PW.8, the Civil Assistant Surgeon in Government Hospital, Eluru conducted autopsy over the dead body of the deceased and issued Ex.P.6 postmortem certificate. According to him, the cause of death was "due to shock and hemorrhage due to multiple fractures of the skull bones involving injury to vital organ brain". PW.14 arrested A1 and A2 on 11.09.2002 and their confessional statements were recorded. After obtaining all necessary documents, a charge sheet came to be filed, which was taken on file as P.R.C.No.27 of 2002 on the file of Judicial Magistrate of First Class, Chintalapudi, which on committal came to be numbered as S.C.No.15 of 2003. .

4) A charge for the offences under Sections 302 read with 34 IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P15 and M.Os.1 to 3. After the closure of

evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating material appearing against them in the evidence of the prosecution witnesses, to which they denied. However, no oral evidence was adduced on behalf of the accused, but portion of 161 Cr.P.C. statement recorded by PW.3 were marked as Exs.D1 and D2.

6) On appreciation of the entire evidence on record, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

7) Learned counsel for the appellants mainly submits that there is no legal evidence to connect with the crime. According to him, the incident was an out come of sudden quarrel in the land of PW.1 and as such the accused cannot be convicted for the offence punishable under Section 302 IPC. She further submits that if proper treatment was given definitely the deceased would have survived. It is said that the mistake lies to PW.1 in not taking the deceased to the Government Hospital immediately. She further submits that the evidence of PWs.1 to 4 and 6 is a complete improvement from what they are stated in the earlier statements and the said ground alone is sufficient to acquit the accused.

8) On the other hand, learned Public Prosecutor would submit that the evidence of PW.1 which gets corroboration from the evidence of PWs.2 to 4 and 6 is sufficient to base a conviction. He further submits that the discrepancy with regard to the earlier statements of the witnesses was only with regard to the place where bore located and the same does not go to the root of the matter since the medical evidence say that all the injuries are sufficient to cause death of the deceased.

9) The point that arises for consideration is: whether the accused can be convicted for the offence punishable under Section 302 IPC?

10) As stated earlier, PW.6 was examined to speak about the incident, which happened a day prior to the date of incident. It would be useful to extract the relevant portion of evidence of PW.6, which is as under:

‘The deceased is having a bore well and the accused are not having bore well. Nearly about two years back, I was returning from the easing ground A2 met me at the rice mill and told me and informed me that they were drawing water from the land of the deceased and that the deceased reported the matter to the elders. At that time, the deceased was returning from the easing groud. Then Sddulu told the deceased that he has reported the matter to the elders and that if he comes today that he will end with his life. Without decline anything the deceased went away.’

11) From the chief examination of PW.1, it appears that while he was returning from easing ground, A2 met PW.6 and informed about the complaint made by the deceased to the elders with regard to the drawing of water from the land of the deceased. PW.6 admits the same which is as under:

“I did not state before the police that A2 stated before me about the information furnished by the deceased to the elders. I stated before the police that the deceased was informing all the people, but I did not say that he informed to the elders. I did not explain the word Ayapothavu before the police. The threatening was made on the same day, that the deceased sustained injuries and died.”

12) From the answers elicited in the evidence of PW.6, it is clear that he did not state before the police that A2 informed about the information furnished by the deceased to the elders and he further admits that he does not have any friendship with A2. That being the position, the question of A2 informing PW.6 about the complaint made by the deceased to the elders with regard to the drawing water would not arise. He further admits in the cross examination about the threat from A2 was on the date of incident itself.

13) Coming to evidence of PW.1, in her evidence she stated that a day prior to the date of incident when A2 and PW.6 were talking with each other on the road, A2 proclaimed that he would kill the deceased as he is complaining about A1 and A2 to the elders and the same was informed by the deceased to PW.1 after he came home from the easing ground. From the two statements, it is clear that there is an amount of discrepancy as to when A2 threatened the deceased. According to PW.6, it was on the date of incident, whereas PW.1 in her evidence deposed that the alleged threat was a day prior to the incident.

14) Coming to the incident proper, the evidence of PW.1 would show that on the date of incident, herself along with PW.2 and others went to the field with the mediators. At that time, A1 and A2 came towards their land abusing them in filthy language and A2 proclaimed that he will not allow the deceased to cultivate the land. So saying A1 attacked with a crow bar and A2 attacked with a katwa stick. A1 is said to have dealt a blow on right side of the head of the deceased, pursuant to which he fell down, when PW.1 intervened A2 pushed her down, thereafter A1

dealt a blow with crow bar on the head of the deceased, while A2 pocked with katwa stick on his mouth.

15) Coming to the evidence of PW.3, he deposed that on hearing cries of PW.1, PW3 proceeded towards the land of the accused and the deceased and noticed PW.1 and the deceased in the land. He also noticed the deceased lying with bleeding injuries on the head and PW.1 tying towel around the head. He also noticed the accused running away after beating the deceased. In his evidence, he further deposed that the parents of the deceased were also present at that time. He also deposed that his land is at a distance of one furlong from the land of the deceased and they raised paddy crop at the time of incident. PW.1 took the deceased to the Government Hospital, Chintalapudi. In the cross examination, it was suggested that he did not state before the police that his lands and the lands of the deceased were being cultivated with the bore well water, was denied. He also admits that he did not state before the police as in Exs.D.1 and D.2. To a suggestion that he did not state before the police about tying towel on the head of the deceased was denied. He admits his relationship with the prosecution party.

16) PW.4 is not an eye witness to the incident and his evidence is only to the extent of locating the lands of the accused and the deceased, digging of holes and the water flowing into the lands of the accused when the bore is switched.

17) From the evidence in chief of all the witnesses, more particularly the evidence of PWs.1 and 2, it is clear that there was some dispute between the accused and the deceased, with regard to cutting the bund and on the date of incident, A1 is said to have attacked the deceased

twice on the head while A2 poked the katwa stick on the mouth. When PW.1 intervened, she was pushed down. The suggestions given to the witnesses that their evidence is a complete improvement from what they are stated in the earlier statements before SI and CI were denied. At this stage, we intend to refer to the evidence of two investigating officers, who recorded the statement of witnesses mainly PW.13 and PW.14.

18) PW.13 is the Sub Inspector of Police, who altered the section of law and recorded statements of the witnesses. It is relevant to extract the relevant portion in the cross examination of PW.13, which is as under:

“Marks of violence as stated by me at the scene were not mentioned in Ex.P.2. The measurements of the bund was not stated by PW.1 to me at the time of recording her statement. She did not state to me that both the accused came by abusing the elders. PW.1 stated to me that A1 gave a blow on the head, but did not state to me on the right side of the head. She did not state to me about the second blow given by the accused No.1 on his head. She did not state to me that she covered the neck with a towel to the deceased. She did not state to me that she can identify MOs 2 and 3 if shown to me. She did not give any descriptive particulars nor sizes of the weapons of MOs 2 and 3.

PW.2 did not state before me that himself and Lakshaiah are elders to the village. He did not state before me that the incident took place at the land of the deceased. He did not state before me that the accused cutting of bund and holes to it. He did not state before me that he has seen the flowing of the water from the land of the deceased to the land of the accused. He did not state to me that A1 gave two blows on the head of the deceased.

He did not state to me about the identification capacity of MOs 2 and 3 if shown to me. He did not state to me the descriptive particulars or identification marks of MOs 2 and 3. He did not state to me that Head constable recorded the statement of PW.1 in the hospital and that himself and Lakshmaiah went to the Hospital.

19) From the admissions made by PW.13, it appears that in the earlier statement, PW.1 only referred to accused No.1 giving one blow to the deceased. PW.1 did not state that she covered the neck with towel. PW.2 in his earlier statement before ASI did not state that A1 gave two blows on the head of the deceased.

20) Coming to the evidence of PW.14, the Inspector of police, in his cross examination he stated as under:

“PW.1 did not state before me about the measurements of the bund. PW.1 did not state before me that A1 and A2 came by abusing the elders. PW.1 did not state to me that A1 gave a blow on the right side of the head of the deceased. PW.1 did not state before me that A1 gave second blow on the head of the deceased. She did not state to me that she covered the neck with a towel to the deceased around the head. She did not state to me that she can identify MOs 2 and 3 if shown to me. She did not give any descriptive particulars nor sizes of the weapons of MOs 2 and 3.

P.2 did not state before me that himself and Lakshmaiah are elders to the village. He did not state before me that incident took place at the land of the deceased. He did not state before me that the accused cutting of bund and holes to it. He did not state before me that he has seen the flowing of the water from the land of the deceased to the land of the accused. He did not state to me that A1 gave

two blows on the head of the deceased. He did not state before me about identification capacity of MOs 2 and 3 if shown to me so also descriptive particulars. He did not state to me that the Head Constable recorded the statement of PW.1 in the Hospital and that himself an Lakshmaiah went to the Hospital.

PW.3 did not state before me that he has got Ac. 1.50 cents of land at a distance of one furlong from the land of the deceased. PW.3 did not state before me about raising of paddy in his fields at that time. PW.3 did not state before me that he was in his field at the time of death of the deceased. PW.3 did not state before me that he has a bore well and he used to cultivate his lands with his bore well only. PW.3 stated before me as in Ex.D.1. PW.3 stated before me as in Ex.D.2. PW.3 did not state before me that he heard the cries of PW.1. PW.3 did not state before me that PW.1 tied a towel to the head of the deceased. PW.3 did not state to me about the mud sticking to the cloths of PW.1 and LW.2 Venkaiah.”

21) From the admissions made by PW.14, the investigating officer, it is clear that PW.1 stated before him that A1 and A2 came there abusing the elders. He did not state about A1 giving first blow on the right side of the head and also A1 giving second blow on the head of the deceased. Similar is the version of PW.2 with regard to the blows given by A1.

22) From the evidence of the witnesses more particularly PWs.1 and 2, who were examined as eye witnesses to the incident, it is clear that there were disputes between the accused and the deceased with regard to cutting of bund. A panchayat was also convened, pursuant to which PWs.1 and 2 and others went to the lands to verify the mischief done by the accused. At that time, when PWs.1 and 2 and others were at their fields, showing the mediators as to how the bund was cut, accused Nos.1

and 2, who were also present in their field came towards the land of PWs.1 and 2 and started abusing them. The evidence of PW.1 show that when the husband of PW.1 was showing the hole of the bund to the elders, both the accused are alleged to have come there, abused them in filthy language. In that process, the accused are alleged to have attacked the deceased.

23) Though PWs.1 and 2 in their evidence in chief stated that two blows were given by accused No.1, but in the earlier statements made by them before PWs.13 and 14, they mentioned about only one blow given by accused No.1. The evidence of both the witnesses show that accused No.1 dealt a blow on right side of the head of the deceased but is missing in their earlier statements. Both the witnesses further deposed about accused No.2 poking with a katwa on mouth.

24) As stated earlier, there is any amount of doubt as to whether accused No.1 has caused one injury or two injuries. From the evidence of the postmortem doctor, who was examined as PW.8, it is clear that the death was due to fracture of skull bone. Out of six external injuries noticed by him, one contusion was on the right cheek, a contusion on left side of the neck and other two injuries were swelling of both eye lids and upper lip. Even as per the postmortem doctor, these injuries were not responsible for the death of the deceased. Further, there is no evidence on record that both the accused shared any common intention to kill the deceased. It was the prosecution party, who went to the fields along with the mediators, showing as to how the accused cut the bund. At that point of time, accused Nos.1 and 2, who were in their agriculture fields, came there and questioned PWs.1 and 2, which lead

to the incident. Though PWs.1 and 2 did not say in their evidence in so many words, but definitely the incident was preceded by some kind of quarrel when accused Nos.1 and 2 abused them in filthy language. Therefore, in the absence of any prior plan or mediation to kill the deceased, accused No.2 cannot be convicted by invoking Section 34 IPC. Having regard to the medical evidence, accused No.2 can made never liable for the injuries caused to the deceased, which at the most may amount to 326 IPC.

25) Hence, the conviction and sentence recorded against accused No.2 is altered to one under Section 326 IPC. For the altered conviction, accused No.2 is sentenced to rigorous imprisonment for the period already undergone by him.

26) Coming to the role played by accused No.1, there is any amount of doubt, whether he has caused one injury or two injuries on the deceased. As observed earlier, in their earlier statements, PWs.1 and 2 never spoke about the second assault made by accused No.1 and also the place where he dealt a blow. For the first time they spoke about the second assault and accused No.1 hitting on the right side of the head of the deceased. But fact remains that there was head injury which lead to his death, while the deceased was being taken to the hospital. If really, accused No.1 had any intention to cause the death of the deceased, definitely he could have caused more number of injuries on the body of the deceased.

27) In *Shivappa Buddappa Kolkar @ Buddppagol v. State of Karnataka and others*¹, the Apex Court dealt with a situation where a single blow was given by the accused with an axe on the head of the deceased, leading to instantaneous death. In the facts of the said case, the Apex Court convicted the accused under Section 304 Part II IPC, and not under Section 302 IPC.

28) As stated earlier, one blow appears to have been given on the head, lead to the death of the deceased while taking treatment in the hospital. Having regard to the judgment of the Apex Court referred to above and taking into consideration the totality of the facts in issue, we feel that the offence can be scaled down to Section 304 Part-II IPC insofar as accused No.1 is concerned. The conviction and sentence recorded against the appellant/ accused No.1, for the offence punishable under Section 302 read with 34 I.P.C., is altered to one under Section 304 Part-II IPC., and the appellant/ accused No.1 is sentenced to suffer rigorous imprisonment for a period of eight years.

29) In the result, Criminal Appeal is partly allowed.

i) The conviction and sentence recorded against accused No.2 in S.C.No.15 of 2003 on the file of the Principal District and Sessions Judge, West Godavari Division at Eluru, for the offence under Section 302 read with 34 IPC is altered to one under Section 326 IPC. For the altered conviction, accused No.2 is sentenced to rigorous imprisonment for the period already undergone by him. Consequently, accused No.2 shall be set at liberty forthwith, if not required in any other case.

¹ 2005 SCC (Cri.) 93

30) Miscellaneous petitions, if any, pending shall stand closed.

JUSTIC P.KESHA RAO

29.12.2017
kvrn/ gkv