

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1236 of 2011

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

The accused A1 and A2 in Sessions Case No.444 of 2009 on the file of Principal Sessions Judge (FAC) cum Addl. Sessions Judge, Adilabad, are the appellants. They were tried for four charges namely:

- i. Section 302 of IPC for causing death of one Kanaka Kashiram.
- ii. Section 452 of IPC for trespassing into the house of said Kanaka Kashiram.
- iii. Section 324 of IPC for causing simple injuries to PWs.1 and 2.
- iv. Section 506 of IPC for threatening the deceased and her daughter with dire consequences.

Vide its judgment dated 05.08.2011, the learned Sessions Judge found both the accused guilty of all the charges framed against them and accordingly sentenced them to suffer imprisonment for life and also to pay fine of Rs.1000/- each under Section 302 of IPC and for two years each for offences punishable under Sections 452, 324 and 506 read with Section 34 of IPC respectively. The accused were further directed to pay fine of Rs.500/- for offence under Section 452 of IPC in default to suffer

simple imprisonment for three months. All the sentences were directed to run concurrently.

2. The facts as culled out from the evidence adduced by prosecution witnesses are as under:

PW.1 is the first wife of the deceased, PW2 is the daughter of PW1, PW3 is the neighbour while PW4 is a resident of neighbouring village.

PWs.1, 2 and the deceased were residing in one village. About ten days prior to the death of the deceased, A1 came to the house of PW1 and raised a galata stating that her husband was practicing sorcery and as such the matter was referred to elders. Among the elders, PW6 was examined, who deposed that a panchayat was conducted between the deceased and accused at the instance of the deceased, but no settlement took place in the said panchayat. However, as there was no evidence, it was found that the deceased was not a sorcerer and have returned the amount that was initially deposited by the deceased. On the date of incident, which occurred 4 to 5 days after the panchayath, A1 and A2 again came to the house of PW1 and deceased. At that time, PW1, her daughters and the deceased were present in the house. As per the evidence of PW1, A2 beat the deceased with a stick by taking it from the house of PW1. Immediately, PW1 sent the deceased inside the room and locked it from outside. After isolating the deceased from the accused, PWs.1, 2 and her co-widow stood outside the house. A1 and A2 are said to have

beat them with sticks. PW1 claims to have received injuries on her forehead, right hand, right knee and waist, her co-widow received injuries on thighs, whereas the daughters of PW1 received injuries on her hands, thighs and on back. At that point of time, A2 climbed the roof of the Bangalore tiles of the house of PW1 and tried to open the tiles so as to enter into the room. Apprehending danger, PW1 unlocked the room door and as such the deceased ran away. A1 chased him, followed by A2. The evidence of PW1 would show that both the accused caught hold of the deceased at a distance of about 30 yards and then A1 beat him on his head, later A2 beat him on his legs and thighs with sticks. On receipt of the said injuries, the deceased died on the spot.

On the next day, PW10, the A.S.I. of Police, Kadam Police Station, received a report from PW1 at 06.00 a.m. Ex.P1 is the said report. Basing on the report, PW10 registered a case in Crime No.139 of 2009 for the offences punishable under Sections 452, 302, 324 and 506 read with Section 34 IPC. Ex.P14 is the FIR. Further investigation was taken up by PW12. On receipt of express FIR, PW12 visited the scene of offence, prepared crime detail form, which is placed on record as Ex.P9. Thereafter, he conducted inquest of the dead body in the presence of PW7. Ex.P8 is the inquest report. During inquest, he examined PWs.1 to 4 and 6 and recorded their statements. At the scene of offence, PW12 seized blood stained earth, control earth, which were marked as MOs.1 and 2, blood stained stick MO3, apart from the clothes of the deceased, which were marked as MOs.4 and 5.

Later the body was sent for post mortem examination. PW5 the Civil Assistant Surgeon, Government Civil Hospital, Khanapur, conducted autopsy over the body of the deceased at 11.00 a.m. and issued Ex.P3 the post mortem certificate. According to the doctor the cause of death was as a result of injuries to vital organs like skull and brain. On the same day i.e. on 27.07.2009, he also examined PWs.1, 2 and 3 and issued Exs.P4 to P7 wound certificates of PWs.1 to 3 respectively. Further investigation in this matter was continued by PW12. On 28.07.2007 at about 11.00 a.m., PW12 arrested the accused at Pandavapur village. Pursuant to the confession made, two sticks, MOs.6 and 7 were recovered.

After completing the investigation, a charge sheet came to be filed before the Judicial Magistrate of First Class, Nirmal, which was taken on file as PRC No.56 of 2009.

On appearance of the accused, copies of documents were furnished to them as contemplated under Section 207 of Cr.P.C. and on committal under Section 209 Cr.P.C., the same came to be numbered as S.C.No.444 of 2009. Basing on the material, charges came to be framed against the accused for the offences referred to above, which were read over and explained to the accused, to which they denied and claimed to be tried.

To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P15 and M.Os.1 to 7.

After the closure of evidence, the accused 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 by the accused in support of their defence. After placing reliance on the evidence adduced by the prosecution witnesses, the Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed through the legal aid counsel.

3. Sri N.Parameshwar Reddy, learned counsel for the appellants would submit that in the absence of any motive being established against the accused, the incident itself cannot be believed. According to him, as per the prosecution case, reason for attack was because of deceased practicing sorcerer, but the panchayath holders found the same to be incorrect. In view of the same, he submits that the alleged attack on the deceased on the ground that he was practicing sorcerer cannot be accepted. Apart from that, he would further contend that the evidence of PWs.1 to 3, being interested witnesses, cannot be said to be true. Insofar as the evidence of PW4 is concerned, he would submit that he is neighbouring villager and as such he could not have witnessed the incident.

4. On the other hand, learned public prosecutor would submit that there is no reason to disbelieve the presence of PWs.1 and 2 at the scene. Therefore, their evidence cannot be brushed aside on

the ground that they are interested witnesses. Coming to the offence of PW4, he would submit that no suggestion was given to him for speaking falsehood to establish any motive or animosity between the accused and PW4. Having regard to the above, he would submit that conviction and the sentences imposed by the trial Court warrants no interference.

5. The question that arises for consideration is whether the accused have committed any offence? If so, whether both the accused can be held liable?

6. MOTIVE: In order to establish motive, the prosecution examined PWs. 1, 2 and 6.

PW1 in her evidence deposed that about ten days prior to the incident, A1 came to their house raising galata with the deceased and thereafter the matter was referred to elders, pursuant to which a panchayath was conducted, wherein the deceased was asked to pay fine of Rs.1,000/- . Similar is the version of PW2. In her evidence, PW2 deposed about the dispute raised by A1, holding of panchayath before PW6 and the deceased being asked to pay fine of Rs.1,000/- . Her evidence further discloses that four days thereafter, A1 and A2 came to their house and asked the deceased to pay Rs.1,700/- . The evidence of PW6 is to the effect that there was a panchayath between the deceased, accused and other elders and in the said panchayath there was no settlement and it was also found that there was no evidence to show that the deceased was practicing sorcerer. The

amount deposited by the deceased was directed to be returned. The evidence of these three witnesses itself proves that there were disputes between the accused and the deceased, pursuant to which a panchayat was held and hence it cannot be said that there was no enmity between the accused and the deceased.

7. Coming to the incident that occurred on 26.07.2009, it is to be seen here that the incident is in two parts. The first part of the incident took place in the house of PW1 and deceased, while the second part took place at about 05.00 p.m., in the fields of A1. According to PW1, the incident in question took place on 26.07.2009. On that day, A1 and A2 came to the house of PW1, where initially A2 picked up a stick from the house of PW1 and beat the deceased. However the evidence of PW2 runs contra to the evidence of PW1, wherein she states that it was A1, who beat her father with the stick. After the said attack, PWs.1, 2 are said to have confined the deceased in a room and all of them stood outside the house. Both the accused are said to have caused injuries to PWs.1, 2 and co-widow. At that point of time, PWs.1 and 2 noticed A2 removing tiles of the terrace of the room where the deceased was confined. On seeing the same, PW2 is said to have opened the door and then the deceased ran away from the house.

8. With regard to the attack on PWs.1 and 2, by A1 and A2, their evidence gets corroborated with the evidence of PW5, the doctor, who treated them on the very same day and issued Exs.P5

and P6 wound certificates, describing the injuries and also the age of the injuries.

9. Hence, the accused attacking PWs.1 and 2 that too in the house of the deceased stands established. Accordingly, both the accused can be held liable for the offences punishable under Sections 452 and 324 of IPC.

10. Insofar as the second part of the incident is concerned, as stated earlier, after the door was opened by PW2, the deceased is said to have left the house and started running towards his fields. Initially, A1 chased him, who was subsequently joined by A2. As per the evidence of PW1, the distance between the house and the place where the said incident took place is about 300 yards, but however, PW4, who is an independent witness, stated that the distance is about 200 yards. Be that as it may, the evidence on record establishes that at about 05.00 p.m., one Laxmibai came and informed PW4 about the incident at the house of PW1. Then immediately, PW4 went to the scene of offence, which is in the land of A1, wherein A2 is said to have threatened PW4 asking him not to come near him. Later, A1 beat the deceased with stick on his head and A2 also beat him later. At this stage, it would be useful to refer to evidence of PW1. In her evidence, she stated that after A2 joined A1, both of them caught hold of the deceased at a distance of 30 yards from the house. Initially, A1 beat the deceased on his head and subsequently, A2 beat the deceased on

his legs and thighs with sticks. According to him, the incident was witnessed by PW4 and one K.Laxman.

11. From the narration of the events and the evidence of PWs.1 and 4, it is clear that in the lands of A1, A1 beat the deceased on head with sticks and A2 also beat him with a stick on legs and thighs, as per PW1. But the evidence of PW4 is silent as to where A2 beat the deceased. When the evidence of PWs.1 and 4 is tested with the evidence of the Doctor, it can be said that the injuries which are responsible for the death of the deceased are those which are found on the skull and brain, which are caused by A1 alone. The said fact is not disputed by the learned public prosecutor.

12. Further, the evidence on record makes it clear that motive to kill the deceased was not established against A2. If really, A2 had an intention to cause death of the deceased, definitely, he would have taken every opportunity to beat the deceased on the vital parts, instead of beating him on the legs and thighs, even if the evidence of PW1 is to be accepted in this regard.

13. Since the evidence of PW4 is silent as to where the second accused beat the deceased and the same being inconsistent with the evidence of PW1, we feel that even if the evidence of PW1 is taken into consideration, the second accused can only be convicted under Section 324 of IPC for causing injuries on the legs and thighs of the deceased, but definitely not under Section 302 of IPC, since the said act of A2 has not resulted to death of the deceased.

Insofar as A1 is concerned, the evidence on record amply proves that it was he who beat the deceased on the head leading to his death, which is evident from the evidence of PW5 who deposed about noticing 5 external injuries on the head of the deceased, which are responsible for the death of the deceased.

14. Having regard to the motive and taking into consideration the injuries caused by A1, which are found to be sufficient to cause the death of the deceased, we hold that the conviction and sentence against A1 warrants no interference.

15. Since the act of injuring the deceased by A2 did not result in causing of death of the deceased and in the absence of any charge under Section 34 IPC, the conviction of A2 under Section 302 IPC is altered to one under Section 324 of IPC.

16. Coming to the incident at the house of PW1 and the deceased, as held earlier, the evidence of PWs.1 and 2 stands established through the evidence of PWs.1 and 2 vis-à-vis the evidence of PW5 Doctor. Hence, the conviction of both the accused under Section 324 of IPC, for causing injuries to PWs.1 and 2, is confirmed. Further, believing the evidence of PWs.1, 2, 4 and the medical certificates, conviction of the accused for the offences under Sections 452 and 506 for trespassing and causing criminal intimidation, needs no interference.

17. In the result, the Criminal Appeal is allowed in part. The conviction and sentence awarded against appellant No.1/accused No.1 by name Pusam Bhaghavanth Rao, in the judgment dated

05.08.2011, in Sessions Case No.444 of 2009, on the file of the Principal Sessions Judge (FAC) – cum – Addl.Sessions Judge, Adilabad, for the offences punishable under Sections 302, 452, 324 and 506 I.P.C., is confirmed.

18. The conviction and sentence awarded against appellant No.2/accused No.2 by name Chikram Jagga Rao, in the said judgment dated 05.08.2011, for an offence punishable under Section 302 of IPC is altered to Section 324 of IPC. For the altered conviction, the appellant is sentenced to suffer imprisonment for the period already undergone. However, the conviction of A2 awarded by the said Court for the offences punishable under Sections 324, 452 and 506 of IPC is confirmed. Consequently, the appellant No.2/accused No.2 shall be set at liberty forthwith, if not required in any other case.

19. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

28.11.2017
vhb