

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL No.986 OF 2011

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

The sole accused in Sessions Case No.27 2011 on the file Principal Sessions Judge, Kurnool, is the appellant herein. He was tried for the offence punishable under Section 302 IPC, for causing death of one Ediga Prabhakar Goud (hereinafter referred to 'the deceased') by giving a blow on her forehead with a polish stone (Banda) on 02.06.2010 at 6:30 AM at N.T.R. Circle, opposite to Collectorate, Kurnool Town and District. Vide judgment dated 13.04.2011, the learned Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer Rigorous Imprisonment for 'LIFE'. Challenging the same, the present appeal came to be filed.

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

P.Ws.1, 4 and 5 were examined as eyewitness to the incident, while P.Ws.2 and 3 are wife and son of the deceased. The accused and the deceased are known to each other. The deceased used to come to the house in a drunken state and used to quarrel with the wife (P.W.2). It is deposed by her that, at about four or five days prior to the death of the deceased, he left the house and did not return to home. The

evidence of P.Ws.1, 4 and 5, who were examined as eyewitness, show that on 02.06.2010 at about 6:30 AM., P.W.1 started from his house to report to his duty. While he was proceeding to Out Post PS G.G.H Kurnool, and when he reached NTR Circle, he found two persons were quarrelling with each other. He stopped and enquired as to why they were quarrelling. According to him, both of them were pushing each other in respect of a lady by name Anitha. The accused who was working in Sai Eswar Hotel, picked up a polish stone (Banda) which was lying there and hit on the forehead of the deceased saying "Naa Anitha neeku Kavalanannu uru vaddalipetti pommantava". On receiving the said blow, the deceased fell down on the ground with bleeding injuries. Immediately thereafter, P.Ws.4 and 5, who were present at the scene of offence, shifted the deceased to the Government Hospital, Kurnool. Though the doctors gave saline, bleeding could not be stopped and about half an hour later, the doctors declared him dead. On the same day, P.W.1 lodged a report (Ex.P.1), basing on which a case in Crime No.125 of 2010 of III Town Police Station, Kurnool, came to be registered for the offence under Section 302 IPC. Ex.P.14 is the FIR. P.W.10 is the Inspector of Police, Kurnool, who took up further investigation, proceeded to Medical College, Kurnool and found the dead body of the deceased on eastern side verandah of the mortuary room. He secured the presence of eyewitness i.e., P.Ws.1 to 5 and recorded their

statements. Thereafter, he conducted inquest over the body of the deceased. During inquest he noticed contusion over right eyebrow on the forehead and blood was oozing from the mouth and nose. Ex.P.3 is the inquest report. Thereafter, the body was sent for postmortem examination. P.W.9 the Assistant Professor, Department of Forensic Medicine, Kurnool, conducted autopsy over the body of the deceased and issued Ex.P.6 postmortem report and Ex.P.7 is the final opinion with regard to the death of the deceased. According to him, the cause of death, to the best of his knowledge, was due to "Intracranial bleeding associated with skull bone fractures resulting from head injury". As per Ex.P.6, only one external injury and the other three injuries were consequent to 4th injury. Thereafter, P.W.10 the Inspector of Police, visited the scene of offence and prepared observation report of the scene, which is marked as Ex.P.4. At the scene of offence, P.W.10 seized M.Os.1 to 3. He also prepared a rough sketch of the scene, which was marked Ex.P.8. The witnesses examined by him stated that the death was due to injury caused by the accused on the forehead of the deceased. On 05.06.2010, P.W.10 arrested the accused and recorded his confessional statement. After obtaining all the documents including the Forensic Science Laboratory report, he filed a chare sheet, which was taken on file as P.R.C.No.156 of 2010 on the file of learned Judicial Magistrate of First Class at Kurnool. After furnishing documents to the accused and by

following the procedure laid down under Section 207 Cr.P.C., the case was committed to the Court of Sessions, Kurnool, wherein, it came to be numbered as Sessions Case No.27 of 2011.

3. On consideration of material placed on record a charge under Section 302 IPC was framed against the accused, which was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution examined PWs.1 to 12 and got marked Exs.P.1 to P.14 and M.Os.1 to 7.

5. After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., explaining the incriminating material which appeared against him in the evidence of prosecution witnesses, which was denied by him. No oral or documentary evidence was adduced by the accused, in support of his plea.

6. After considering the material available on record and by placing reliance on the evidence of P.Ws.1, 4 and 5, the trial Court recorded conviction as stated above.

7. Learned counsel for the appellant mainly submits that though prosecution tried to project its case as if the dispute was with regard to a lady by name Anitha, with whom the accused got married, there is absolutely no evidence to

connect the accused with the said offence. The prosecution failed to examine the said Anitha. Therefore, he submits that the plea that there was a motive for the accused to kill the deceased, cannot be accepted. He further submits that even if the evidence of P.Ws.1, 4 and 5 is accepted, the case would fall within exception (4) to Section 300 IPC, but not under Section 302 IPC.

8. On the other hand, learned Additional Public Prosecutor would submit that though Anitha was not examined, the evidence of eyewitnesses would clearly show that both the accused and the deceased were quarrelling near N.T.R Circle by referring to the name of Anitha and in the said quarrel the accused picked up a stone and hit on the forehead of the deceased. He fairly submits that the case may fall within exception (4) to Section 300 IPC.

9. As seen from the record, the entire case rests on the evidence of P.Ws.1, 4 and 5. Though Anitha, for whom the accused and the deceased were said to have quarrelling, was not examined. But, the evidence of P.Ws.1, 4 and 5 would show that during the said quarrel, they referred to the name of Anitha. It would be appropriate to extract the relevant portions of evidence of P.Ws.1, 4 and 5, which is as under:

“P.W.1: I am working as police constable in GGH Kurnool Out Post since two years. On 2.6.2010 my duty hours was from 1.00 P.M. On that day I started

at 6.30 A.M. at home to report to duty. While proceeding to the out post PS GGH Kurnool and when reached NTR Circle, I found two persons were quarrelling. I stopped and entered into the circle to know why they were quarreling. Both the persons quarrelling and pushing each other in respect of a lady by name Anitha. The accused who is working in Sai Eswar Hotel picked up a polish stone (Banda) and hit on the head of Ediga Prabhakar saying "Naa Anitha neeku kavala-nannu uru vaddlipetti pommantava."

P.W.4: On 2.6.2010 around 6.30 A.M. I came to the hospital gate to have a cup of tea. I went to the hostel situated opposite to NTR Circle. I observed two persons quarrelling near the NTR statue circle with regard to a lady by name Anitha. The accused quarreled with the deceased saying why he was going to the said lady. The accused picked up Napa Banda and hit on the head of the deceased. There was bleeding from mouth and nostrils. Then myself, police constable and another whose name I do not know shifted him to the Govt. General Hospital, Kurnool."

P.W.5: The deceased used to do fruits business near Devar Nagar Bus Stop, Kurnool. The accused used to work in Sai Eswar Hotel. The accused and the deceased used to meet near NTR Statue, used to sit and talked together. They also used to move in the hospital. The accused near NTR Circle hit Prabhakar Goud with a napa banda and killed him on 2.6.2010 at 9.00 A.M. The quarrel between the accused and deceased Prabhakar Goud took place between 6.00 A.M. and 6.30 A.M. in respect of lady by name Anitha. Myself, police constable and another shifted the injured to the Govt. General Hospital, Kurnool."

From the evidence of P.Ws.1, 4 and 5, it is clear that on the date of incident, the accused and the deceased quarrelled with regard to the said Anitha. It is also clear from the evidence that the accused used to work in Sai Eswar Hotel, whereas the deceased used to do fruits business near Deva Nagar Bus Stop, Kurnool. The accused and the deceased used to meet near N.T.R Statue and talk together. They also used to move in the hospital. The evidence of P.Ws.1, 4 and 5 also show that the accused and the deceased were found quarrelling in the early hours on 02.06.2010. During the course of said quarrel, the accused picked up a stone, which was lying there, and hit on the forehead of the deceased stating that "Naa Anitha neeku kavala-nannu uru vadailipetti pommantava."

10. As stated earlier, the prosecution failed to examine Anitha though the accused and deceased were quarelling by referring the name Antiha. What is their relationship with Anitha is also not elicited from any of the witnesses. Without any evidence on record, the prosecution tried to project their case stating that the accused had illicit relationship with Anitha and later the said Anitha married the deceased and that the deceased was said to be responsible for breaking the relationship between the accused and Anitha. The said version of the prosecution which is sought to be projected is without any basis. However, there was a quarrel, wherein the

deceased and accused were pushing each other on the road in the early hours, by referring to the name of Anitha. In the said quarrel, the accused picked up a polished stone which was lying at the place of quarrel and hit on the forehead of the deceased, which lead to bleeding from the nostril.

11. As seen from the evidence, there is no enmity between the accused the deceased. The evidence of P.W.5 show that both the accused and the deceased used to sit near N.T.R Circle and talk together. It appears that on the date of incident, in the early hours, there was some quarrel between them, pursuant thereto, the accused picked a stone and hit on the forehead of the deceased. It cannot be said that the accused had any intention to cause death of the deceased. The evidence on record discloses that there was a quarrel between them, preceding the incident, and the evidence also discloses that there was no prior enmity between them. Taking into consideration the manner in which the incident took place, we feel that the case is one, which falls under exception (4) to Section 300 IPC as the incident was an outcome of a quarrel between both of them on that day.

12. In the result, the appeal is partly allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 13.04.2011, in Sessions Case No.27 of 2011 on the file of the Principal Sessions Judge, Kurnool, for the offence punishable under

Section 302 IPC is set aside. However, the appellant is found guilty of the offence punishable under Section 304 Part-I IPC and accordingly, he is convicted and sentenced to undergo rigorous imprisonment for a period of seven years. The fine amount imposed by the Court below is confirmed. The period of remand underwent by the appellant/accused during the course of investigation, trial and after conviction shall be given set off under Section 428 Cr.P.C.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

T.AMARNATH GOUD

Date: 30.10.2017
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