

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.994 of 2011

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

1) The sole accused in Sessions Case No.57 of 2010 on the file of the IV Additional District and Sessions Judge (FTC), Karimnagar is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Ravi (hereinafter referred to as "the deceased") by push him on to the ground and then hit his head to the drainage. By its judgment dated 13.05.2011, the learned Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.5000/-, in default to suffer simple imprisonment for three months.

2) The case of the prosecution as culled out from the evidence of prosecution witnesses is as under:

PW.1 is the wife of the deceased, while PWs.2 to 6 are the friends of the accused and deceased. The evidence on record would show that the accused was making some noise at Kirana Shop at S.C.Colony. It was found that there were some quarrels between the accused and his mother. At that time, elder brother of accused came out and chided the accused as to why he is beating his mother. At that point of time, the deceased is said to

have intervened. Then, the accused is said to have been pulled the legs of the deceased, pursuant to which he fell down and received injuries on his head and back side. Thereafter, the deceased died while he was taken to the hospital. PW.1, who is the wife of the deceased, lodged a report, which leads to registration of a case in Crime No.102 of 2009, by PW.12, for the offence punishable under Section 302 IPC and. Ex.P5 is the First Information Report issued thereon. PW.12 recorded the statement of PW.1 and later handed over the investigation to PW.15, the Circle Inspector of Police. On receipt of First Information Report, PW.15 proceeded to the scene of offence and recorded the statements of PWs.2 to 9 and then conducted inquest over the dead body of the deceased, which is placed on record as Ex.P3. Thereafter, he conducted a panchanama of the scene of offence and prepared a rough sketch of the scene in the presence of PW.8 and 9. He then sent the dead body for postmortem examination. PW.13, the Deputy Civil Surgeon, Jammikunta, conducted autopsy over the dead body of the deceased and noticed deep lacerated wound on the head, in the occipital region and lacerated wound on left side of fore head. According to him the cause of death was “due to head injury and fracture of occipital bone”. Ex.P6 is the Postmortem Examination Report. PW.15 arrested the accused on 05.08.2009 and recorded his confession statement. Further investigation was carried on by PW.14-the Circle Inspector of Police. After receiving the F.S.L. report, PW.14 laid the charge

sheet, which was taken on file as P.R.C.No.98 of 2009 on the file of the Additional Judicial Magistrate of First Class, Huzurabad. On appearance of the accused, copies of the documents were furnished as required under Section 207 Cr.P.C and as the case is triable by a Court of Sessions, the same was committed to the Court of Sessions, which came to be numbered as S.C.No.57 of 2010.

3) A charge for the offence punishable under Section 302 IPC came to be framed, which was read over and explained to the accused, to which he denied the same and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P7 and M.Os.1 to 5. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the accused in support of his defence.

5) 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.

6) Learned counsel for the appellant mainly submits that there is any amount of doubt with regard to the manner in which the incident took place. She would contend that none of the witnesses

have seen the incident and as such no credence can be given to their evidence. According to her there are number of procedural lapses, which are enough to set aside the conviction.

7) On the other hand, learned Public Prosecutor would submit that the evidence of PWs.1 to 4 is cogent and convincing, so as to connect the accused with the crime.

8) As seen from the record, PW.1 is the wife of the deceased. According to her, on the date of incident some body informed through phone that her, husband received injuries. Thereafter, she proceeded to the place of incident and noticed her husband with bleeding injuries and took him in an auto to the hospital, but on the way he died. According to her, because of some disputes between the accused and her husband, the accused attacked her husband. From a reading of the above evidence clearly show that PW.1 was not an eye witness to the incident.

9) PW.2 in his evidence deposed that the accused was making some noise at a kirana shop in S.C.Colony. He found the accused beating his mother and in the meanwhile the elder brother of accused came and chided the accused stating as to why he is beating his mother. When the deceased interfered, the accused beat him and immediately thereafter the deceased was taken to hospital. But, the statements of the witness were recorded nearly three days after the incident.

10) Coming to the evidence of PW.3, he deposed that when the accused pushed the deceased, he fell down and received injuries. It is his evidence that when the deceased intervened in a quarrel between the accused and his mother, the accused pulled the legs of the deceased. As a result of which he fell down and received injuries on his head.

11) PWs.4 and 5 are not the eye witnesses to the incident. According to PW.4, he saw a gathering at the house of the deceased and when enquired, he was informed about the accused beating the deceased. Similar is the version of PW.5. However, PW.6 gave a different version stating that on the date of incident, the accused was in drunken condition, disturbed all the articles in his shop and abused his wife in filthy language. At that time, the brother of the accused took him away. As contended by the learned counsel for the appellant, there are slight variations in the evidence of three witnesses, but these small discrepancies, in our view, may not go to the root of the matter but definitely we are of the opinion that it is not a case which warrants a conviction under Section 302 IPC.

12) As seen from the evidence of PWs.2 and 3, there was a quarrel between the accused and his mother and when the deceased intervened he was pushed down. As a result of which he fell down on the drainage and sustained a head injury. It may be true that the head injury led to his death, but definitely it cannot be said

that the accused had any motive or intention or knowledge that his act would lead to the death of the deceased. Though PW.1 deposed that there were some disputes between the accused and the deceased and because of that her husband was attacked, but she was not an eye witness to the incident and is not a competent witness to speak to the manner in which the incident took place. Further no other witnesses spoke about the existence of any enmity or disputes between the deceased and accused. On the other hand, all the witnesses in one voice stated that when the deceased intervened, in a quarrel between the accused and his mother, the accused pulled the leg of the deceased, as a result of which the deceased fell down and sustained a head injury.

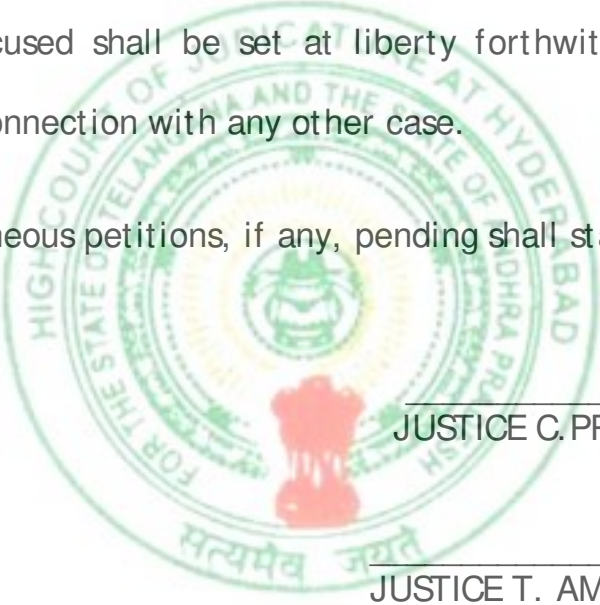
13) Having regard to the circumstances in which the incident took place, it can be said that the accused had neither any animosity nor motive or intention to kill the deceased. It cannot also be said that the accused would be having knowledge his act of pulling the leg of the deceased would lead to the death of the deceased. It cannot also be said that there was any transfer of malice. It all happened because of the intervention of the deceased in a quarrel between the accused and his mother. Hence, the accused can only be convicted for the injury caused.

14) At this stage, learned counsel for the appellant would submit that since the petitioner is in jail since last six years, his sentence may be reduced to that of period already undergone altering the

conviction and sentence from the offence punishable under Section 302 IPC to one under Section 325 IPC.

15) In view of the above, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/accused in S.C.No.57 of 2010 on the file of the IV Additional Sessions judge (FTC), Karimnagar, for an offence punishable under Section 302 IPC is altered to one under Section 325 IPC. For the altered conviction, the appellant is sentenced to imprisonment for the period already undergone by him. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in connection with any other case.

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



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

01.11.2017

Note: Though the matter was entrusted to Legal aid counsel Smt K. Rekha, she neither appeared nor was there any representation on her behalf. Hence, Ms Ammaji Nettem, Advocate was requested to assist the Court. Hence, the concerned shall take steps for payment of fees to Ms Ammaji Nettem.

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