

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

CRIMINAL APPEAL No.1621 of 2010

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

This Criminal appeal is filed by the accused aggrieved by the judgment dated 09.04.2010 in S.C.No.442 of 2009 passed by the VI Additional Sessions Judge (III-FTC) Warangal at Mahabubabad, whereby and whereunder the learned Judge convicted the accused for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.500/-, in default to suffer SI for two months.

2) The deceased—Pedda Sammaiah was the father of accused. As per prosecution case, under Employment Guarantee Scheme compost pit was sanctioned to the deceased and so on 19.07.2009, Pedda Sammaiah was digging compost pit in front of his house at 7.30 AM; on seeing the same the accused who is his son, interfered stating that he would dig the pit; he went and argued with the deceased to stop digging of pit and allow him to do the said work so that he would get the benefit, but the deceased refused his proposal and continued the digging work due to which, the accused got angry and snatched MO1—spade from the hands of the deceased and beat him on his head thereby, the deceased sustained head injury and fell into the pit and died; PW1—wife of the deceased

and mother of accused who witnessed the incident, raised hue and cry; on hearing the same, PWs.2 to 5 who are neighbours, rushed there; on seeing them the accused fled away. PW1 gave Ex.P1—report to the police of Chinnaraopet PS, Warangal District, who registered the case in Cr.No.118 of 2009 for the offence under Section 302 IPC and investigated the matter and after completion of investigation filed charge sheet against the accused. On appearance of the accused, the trial Court framed charge under Section 302 IPC and the accused denied the commission of offence and the trial went on. The prosecution to establish its case, examined PWs.1 to 9 and exhibited Exs.P1 to P10 and produced MOs.1 to 6. The accused did not examine any witnesses.

3) The defence of the accused is one of total denial. The tenure of cross-examination of eye-witnesses would indicate his plea to the effect that the eye-witnesses have not seen how the incident has occurred and the deceased might have fell in the pit and received injuries and accused was not responsible for the death.

4) The trial Court, however, having relied upon the evidence of PWs.1 to 5—eye witnesses held that the accused beat his father with MO1—spade and caused his death and accordingly held him guilty under Section 302 IPC and sentenced him as stated supra.

Hence, the appeal.

5) Heard arguments of Ms.Naseeb Afshan, Legal Aid counsel for appellant and learned Public Prosecutor.

6) Severely fulminating the judgment, learned counsel for appellant would argue that the trial Court committed a grave error in holding that PWs.1 to 5 were eye-witnesses and placed implicit reliance on their evidence and convicted the accused. In fact, PW1 who is the mother of the accused, was inside the house and she did not witness how the incident has occurred. Learned counsel would argue that deceased was an old man and while digging the pit he might have fallen into the pit and sustained head injury and died, and due to some family disputes the accused was falsely implicated in the case. She further argued that PWs.2 to 5 though were neighbours to the deceased, but they were not eye-witnesses to the incident and their evidence would show that they came only after the deceased fell into the pit and died and therefore, they cannot be regarded as eye-witnesses. Learned counsel thus argued that for lack of proper evidence the accused deserves clean acquittal or atleast on the ground of benefit of doubt he deserves acquittal. Alternatively, she argued that the case would not come within the mischief of Section 302 IPC and even according to the prosecution, there were no disputes between the accused and deceased and further, the accused is the only son of deceased and PW1 and therefore, accused had no intention or knowledge to kill the deceased and the circumstances which lead to death of deceased would show that in a sudden quarrel between the accused and deceased in the matter of compost pit, the accused might have dealt a blow and therefore, his act may at best would amount to culpable homicide not amounting murder punishable under

Section 304 Part II IPC. She thus argued at the first instance to allow the appeal and acquit the accused and alternatively to alter the conviction.

7) Per contra, learned Public Prosecutor, while supporting the judgment would argue that PWs.1 to 5 were all eye-witnesses to the incident and their evidence was not shattered in the cross-examination and trial Court rightly believed their evidence and convicted the accused. He thus prayed to dismiss the appeal.

8) In view of rival contentions, the point for determination is:

“Whether the judgment of the trial Court is factually and legally sustainable?”

9) **POINT:** The admitted facts are that the accused is the only son of deceased and PW1 and they have three more daughters. The accused got married. The prosecution case is that under Employment Guarantee Scheme the Government sanctioned compost pit and on 19.07.2009 at about 7.30 AM when the deceased was digging the pit to lay compost, the accused went there and demanded the deceased to allow him to dig the pit as he would get benefit. However, the deceased refused and continued digging. On that the accused got enraged picked up quarrel with the deceased and took MO1—spade from the deceased and beat him on his head and thereby, the deceased fell down in the pit and died. PW1 who was watching the incident raised cries, hearing the same PWs.2 to 5 came there and on seeing them, accused fled away. Prosecution to establish its case examined PWs.1 to 5.

10) PW1 in her evidence deposed about the facts which lead to the death of the deceased and stated that while her husband was digging compost pit accused went there and interfered stating that he would dig the pit which was granted under Employment Guarantee Scheme by the Government, however, the deceased refused; then the accused snatched the spade from the hands of the deceased and beat him on the back side of his head; in the result he fell down into the pit and on seeing it she raised cries; on hearing the same, PWs.2 and 3 rushed to the scene of offence and on seeing them the accused fled away. She stated that she submitted Ex.P1—report to the police. Ex.P1 also reveals the same facts. In the cross-examination she denied the suggestion that the pit site on the back side of their house and she did not witness the incident as she was attending the household work inside the house and that the deceased slipped and fell down in the pit and died.

11) Thus, on a close scrutiny of evidence of PW1, she is the wife of deceased and residing along with deceased in the same house. The incident took place in front of their house in the early morning at 7.30 AM. Considering all these it can be said she was a natural witness to the offence. It is significant to note that in the cross-examination no suggestion was given to her that she nurtures any grudge against her son to foist a false case against him or to give false evidence against him. Her evidence clearly depicts that while the deceased was digging the pit, accused went there and picked up quarrel with him and forcibly wrested the space from him and beat him. This part of her evidence could not be

shattered in the cross-examination. The only suggestion given to her was she did not witness the incident and the deceased slipped and fell down into the pit which was denied. As already stated supra, PW1 is none other than the mother of the deceased and there is no enmity to her to speak falsehood against her own son. Hence, her evidence is held to be intrinsic and reliable. Her evidence clearly exposes the offence committed by the accused and it also narrates that on hearing cries PWs.2 and 3 and others rushed to the spot. PWs.2 to 5 are the neighbours of the deceased which is evidence from Ex.P2—scene of offence sketch.

12) The evidence of PW2 is that on the early morning of incident at about 7.30 AM when herself, her son—PW3 and PW4 were talking about cotton crop while standing in front of her house; at that time deceased was digging compost pit granted by the Government; the accused rushed there and quarrelled with his father and beat him on the back side of the head with spade and due to which the deceased fell down into the pit and these people rushed to the scene and on seeing them the accused ran away.

13) PWs.3 to 5 also deposed in the similar fashion. No useful material was extracted in their cross-examination to disbelieve their evidence. They being the immediate neighbours of the deceased and as the incident took place early in the morning at 7.30 AM, their presence and witnessing the incident can be believed. Further, no enmity between them and accused was even suggested. Therefore, their evidence can be

safely relied upon. Their evidence corroborates PW1 on material particulars.

14) Then, the evidence of PW8—post-mortem doctor would show that he found the following injuries on the dead body of the deceased.

1. *Incised wound over left parietal region eminence measuring 2 x ¼ x 1 inch.*
2. *Fracture of occipital bone (c-shaped) measuring 2 x 1 x 2 inch.*
3. *Incised wound over vertex of scalp of occipital region with fracture skull measuring 1½ x ¼ x ¼.*
4. *Incised wound over left side of occipital region with fracture skull measuring 1 ½ x ¼ x ¼ inch.*
5. *Contusion on left shoulder back measuring 10 x ¼ cms.*

PW8 stated that all the above injuries are ante-mortem in nature and could have been caused by a blunt heavy object and injuries 2 and 4 could cause the death of a person in ordinary course of nature. He denied the suggestion in the cross-examination that injuries found by him could be caused when a person falls on hard uneven surface. Thus, his evidence is to the effect that deceased died of the injuries inflicted by the accused.

15) Now, the next aspect is whether the accused can be held guilty of the charge under Section 302 IPC. In this context, alternative argument advanced by the learned counsel for appellant needs to be considered.

It is not the case of the prosecution that there was severe enmity between the deceased and accused who are father and son. The accused was the only son of deceased and PW1 and it appears, he was living with them. On the fateful morning, he quarrelled with his father on a flimsy issue that if he was allowed to dig pit, he may get the benefit under Employment Guarantee Scheme issued by the Government which was refused by the deceased. On such refusal accused in a fit of anger dealt a blow on the head of the deceased. Thus, the facts and circumstances which lead to the death of the deceased would give an inference that accused had no intention or knowledge to kill the deceased and he is not pre-meditated. However, he dealt a blow on the head of his father in a sudden fight and in a fit of anger without knowing the consequences. Hence, in our considered view, the offence committed by the accused does not fall within the ambit of Section 302 IPC and on the other hand, his act would come within the exception (4) of section 300 IPC. Consequently, he is liable to be punished under Section 304 Part II IPC for culpable homicide not amounting to murder.

16) In the result, this Criminal Appeal is partly allowed and the conviction recorded by the trial Court against the accused for the offence under Section 302 IPC is set aside and in turn, he is convicted for the offence under Section 304 Part II IPC and his sentence is reduced to the period already undergone by him in the jail and consequently the appellant/accused is directed to be set at liberty forthwith by the jail authorities, if he is not required in any other offence.

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

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date:14.03.2017
Murthy

