

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE MS JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.830 of 2009

Date:12.6.2017

Between:

Baikadi Chinna Narasaiah @
Narasimulu Goud

..... Appellant

And:

The State of Andhra Pradesh,
reptd., by the Public Prosecutor.

.....Respondent

Counsel for the appellant: Mrs. A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Criminal Appeal is filed by accused No.2 in Sessions Case No.760 of 2007 on the file of the Special Sessions Judge for Trial of Cases under SCs and STs (POA) Act-cum-VII Additional District and Sessions Judge, Mahaboobnagar against judgment, dated 08-07-2009, passed therein.

By the aforementioned Judgment, the appellant was found guilty of the offences punishable under Sections 148, 452 and 302 IPC and was convicted and sentenced to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment (RI) for a period of one month for the offence punishable under Section-148 IPC, to undergo RI for a period of two months and also to pay a fine of Rs.1,000/-, in default to undergo RI for a period of one month for the offence punishable under Section 452 IPC and to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo RI for a period of one month for the offence under Section 302 IPC. All the sentences were directed to run concurrently and the remand period, if any, was directed to be set off under Section 428 Cr.P.C.

The case of the prosecution, in brief, as reflected from the charge sheet is as under:

On 12-10-2006 at 12.00 hours, PW.1 lodged a complaint at Makthal Police Station stating that on the said date

at about 10.30 a.m., when he along with his family members was present at his house at Yedavelli Village, accused Nos.1 to 6, who are their coparceners, formed into an unlawful assembly and attacked them with axes, lathies and sickles with an intention to kill them; that the appellant/accused No.2 attacked his elder son Venkanna Goud (hereinafter referred to as 'the deceased') with an axe on the head; that accused Nos.3 and 4 attacked his younger son (PW.2) with sticks and sickle; that accused No.1 beat him with a sickle on his head; that accused Nos.5 and 6 pelted stones on them; that the motive for the offence was distribution of agricultural land in Survey No.32; that the whole incident was witnessed by PWs.4 to 6 and some other villagers; and that his sons fell unconscious with bleeding injuries.

It is further stated in the charge sheet that on receipt of the complaint, PW.17- Head Constable, Utkoor Police Station registered a case in Crime No.49 of 2006 under Sections-147, 148, 452 and 307 IPC read with Section 149 IPC and sent express FIRs to all the concerned, examined and recorded the statement of PW.1 and referred him to Government Community Health Center, Makthal; that he went to Makthal and recorded the statements of PWs.2 and 3; that he could not examine the deceased as he was in unconscious state; that he gave requisition

to PW.16-Civil Assistant Surgeon, Government Community Hospital, Makthal to give treatment to the injured-PWs.1 to 3 and the deceased; that thereupon, PW.16 treated them; that PW.17 visited the scene of offence, secured the presence of PWs.11 and 12-mediators, seized the blood stained earth, control earth, broken pieces of sticks and bangles under the cover of panchanama and recorded the statements of PWs.4 to 6 and LW.7; that PWs.1, 2 & 7 and the deceased were admitted in Osmania General Hospital, Hyderabad for further treatment; that the deceased succumbed to the injuries on 12-10-2006 at 19.15 hours; and that therefore, PW.17 added Section 302 IPC in addition to the earlier offences and sent express report to all the concerned.

It is further stated in the charge sheet that on receipt of the said information, PW.19-Circle Inspector of Police, Makthal took up the investigation and verified the investigation of the case; that PW.19 accompanied by PW.20 proceeded to Osmania General Hospital, Hyderabad, and obtained death summary, examined and recorded the statements of PWs.7 to 10 in Part-II CD, secured the presence of PW.13 and LW.15- Dhanwada Ramulu, held inquest over the dead body of the deceased and subjected the dead body to Post-mortem examination; that PW.18-Assistant Professor, Osmania Medical College,

Hyderabad, who conducted autopsy over the dead body of the deceased, issued Ex.P.15-Post-mortem examination report on 13-10-2006 opining that the cause of death was head injury; that PW.16 treated the injured-PWs.1 to 3 and 7 and issued Exs.P.8 to P.11-wound certificates indicating that the injuries received by them were simple/grievous in nature.

It is further stated in the charge sheet that on 20.10.2006, accused Nos.1 to 6 were taken into custody at Kachwar Village Bus stop at 7.00 hours; that on thorough interrogation, they voluntarily confessed the commission of the offence; that their confessional statements (Exs.P.16 to P.21) were recorded in the presence of PWs.14 and 15; that one sickle each from accused Nos.1 and 2, an axe from accused No.3 and a stick from accused No.4 were seized; that PW.19 brought them to Utkoor Police Station at 13.00 hours and issued arrest reports by informing them the grounds of their arrest; that he served Section-50 Cr.P.C., notice on their relatives; and that all the accused were sent to judicial remand.

Based on the charge sheet, the Court below has framed charges against the accused. As the plea of the accused was one of denial, they stood trial.

On behalf of the prosecution, PWs.1 to 19 were examined and Exs.P.1 to P.26 were marked. The prosecution also produced

MOs.1 to 4-two sickles, one axe and one stick, respectively and MOs.5 to 8-clothes. On behalf of the accused, no evidence was adduced.

On appreciation of the oral and documentary evidence, the Court below has convicted the appellant and sentenced him in the manner as mentioned above. The lower Court has acquitted the other accused of the charge under Section-302 IPC, but however, found accused No.1 guilty of the offences punishable under Sections.148, 452 and 324 IPC, accused Nos.3 and 4 guilty of the offences punishable under Sections 148, 452 and 325 IPC and accused Nos.5 and 6 guilty of the offences punishable under Sections 148 and 452 IPC and sentenced them to undergo RI ranging from one month to two months and also imposed fines.

It has come out, at the hearing, that except the appellant/accused No.2, no other accused has filed any Criminal Appeal and that they have served the sentences imposed upon them.

At the hearing, Mrs. A.Gayathri Reddy, learned counsel for the appellant-accused No.2, submitted that as P.Ws.4 to 6, 8, 10 to 12, 14 and 15, the independent witnesses, having turned hostile, the lower Court has committed an error in relying upon the testimony of the interested witnesses, viz., P.Ws.1 to 3 and 7,

who are no other than the family members of the deceased. She has further argued that, as suggested to the prosecution witnesses, the deceased might have been evidently done to death by his own family members. In support of her submission, she has relied on the evidence of P.W-18-the doctor who conducted autopsy over the dead body of the deceased, wherein he has stated that injury No.2 appears to be an old injury and might have been caused two or three days prior to the examination. Alternatively, the learned counsel submitted that P.Ws.1 to 3 in one voice deposed that the appellant has attacked the deceased with an axe and dealt one blow on his head, but Ex.P-15-Post-mortem report shows that two injuries were present on the head of the deceased and that this has been substantiated by P.W-18-doctor, who deposed that injury Nos.7 and 12 are the head injuries which caused the death of the deceased. Learned counsel, accordingly, submitted that as the prosecution failed to explain the second injury on the head of the deceased and in the absence of P.W-18 specifying as to which of the two injuries on the head was fatal causing the death of the deceased, it is not safe to convict the appellant for the offence under Section-302 IPC.

Opposing the above submissions, the learned Public Prosecutor for the State of Telangana submitted that though the

independent witnesses have turned hostile, the testimony of P.Ws.1 to 3 and 7-the injured witnesses enjoys highest probative value and that, as all the independent witnesses have in one voice deposed that it is the appellant who caused the head injury to the deceased, their evidence cannot be disbelieved merely because they happened to be the family members of the deceased. He has further submitted that even assuming that injury No.2 was an old injury, no presumption could be drawn from the said fact that the deceased might have been done to death by persons other than the accused and that injury No.2 related to shin of the left leg which cannot be said to be fatal causing the death and that the same is wholly insignificant.

As regards the first submission of the learned counsel for the appellant, the independent witnesses have turned hostile and the fact remains that P.Ws.1 to 3 and 7 who are the father, two brothers and the mother of the deceased, respectively, are the interested witnesses.

The law is well settled that while the evidence of the interested witnesses cannot be discarded, the Court, however, must be circumspect while considering such evidence to see whether they are coming out with true version and whether there are embellishments in their testimony. It is equally well settled that the testimony of the injured witnesses enjoys highest

credibility for, no person who receives injuries would spare the real culprit and falsely implicate an innocent, more so, in a case not relating to a faction fight. The evidence on record would clearly reveal that the victims and the offenders belong to one family of different branches and accused Nos.1 and 2 are no other than the brothers of P.W-1 and the junior maternal uncles of the deceased. Though the offences appear to have been committed in connection with a dispute over immovable properties, still, we are not prepared to accept the defence version that the accused were falsely implicated. The suggestion put forth by the defence to the prosecution witnesses that there was internal feud between the deceased on one side and his other family members, viz., P.Ws.1 to 3 and 7 on the other side has not been substantiated by producing any evidence. In these circumstances of the case, this Court is not prepared to accept the plea of the defence that the deceased might have been done to death by his own kin and that the accused have been falsely implicated. The fact that all other accused who have been convicted for various offences, excluding Section-302 IPC, in connection with the same incident, have served the sentences imposed on them, itself would further strengthen the case of the prosecution that it is only the accused who are involved in the

commission of the offence and that their involvement has been clearly proved by the prosecution.

Coming to the crucial submission of the learned counsel for the appellant that the medical evidence on record does not support the case of the prosecution as regards the guilt of the appellant for the offence under Section-302 I.P.C., we need to carefully scan through the evidence on record.

In his chief-examination, P.W-1 has deposed that the appellant has hacked the deceased with an axe on the head. In his cross-examination, P.W-1 deposed that the appellant has dealt two blows with an axe "on the head and on the neck" of the deceased. A cumulative reading of these two statements of P.W-1 would leave us in no doubt that it is his specific case that the appellant has attacked the deceased with an axe and dealt one blow on his head and another on his neck. P.W-2 also deposed that the appellant has hacked the deceased with an axe on the head. To the same effect is the evidence of P.W-3 who deposed that the appellant has hacked the deceased with an axe on back of the head. It is thus the consistent evidence of all these witnesses that the appellant has dealt only one blow on the head of the deceased. Ex.P-15-Post-mortem report found 12 injuries. P.W-18-doctor, who issued the said report, deposed in his

evidence that injury Nos.7 and 12 which are the head injuries are possible with heavy cutting weapon such as an axe and injury Nos.8 to 11 are the internal injuries of injury Nos.7 and 12. He has described the cause of death of the deceased as the head injury. From the above medical evidence, it is clear that the deceased received two injuries on the head. P.W-18 could not opine as to whether both these injuries were fatal, and if not, which of the two injuries was fatal which caused the death of the deceased. The fact that the appellant was attributed with only one injury on the head goes without saying that the other injury on the head of the deceased might have been caused by any other assailant among the other accused. As the prosecution failed to attribute this overt act to any other accused, it is not safe to hold that the deceased might have died only due to the injury caused by the appellant and accordingly, the death of the deceased cannot be attributed solely to the appellant. It is here, that the appellant is entitled to the benefit of doubt as far as the charge under Section-302 IPC is concerned.

If the appellant is not guilty of the offence under Section-302 IPC, the further question would be as to for which offence he is liable to be convicted.

It is clear from the evidence let in by the prosecution, as discussed above, that not only the presence but also the participation of the appellant in the commission of the offence has been proved. His overt act to the extent of his causing head injury to the deceased is also proved. From the medical evidence, it is also proved that both the head injuries on the body of the deceased are serious and they caused the death of the deceased.

In these circumstances, the injury caused by the appellant to the deceased might be with knowledge that in ordinary course, it is likely to cause the latter's death. In the absence of the definite evidence to prove that the injuries caused by him alone caused the death, he is not liable to be convicted for the offence under Section-302 I.P.C. Hence, in our opinion the act of the appellant would amount to culpable homicide not amounting to murder falling under Part-II of Section-304 I.P.C and his conviction is accordingly, altered to the one punishable under the said provision instead of under Section-302 I.P.C. Considering the severity of the act of the appellant, he is sentenced to suffer rigorous imprisonment for ten years. The sentence of fine imposed on the appellant is however confirmed. The conviction and sentence imposed on the appellant are, accordingly, modified to the above extent.

Subject to the above modification, the Criminal Appeal is
allowed in part.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE J.UMA DEVI

12th June 2017
LUR/DR

