

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.483 of 2011

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

1) Assailing the judgment dated 02.06.2010, passed in S.C.No.854 of 2009, on the file of the I Additional Sessions Judge, Guntur, wherein the sole accused was found guilty for an offence punishable under Section 302 IPC, the present Criminal Appeal is filed by the accused.

2) The gravamen of the charge against the accused is that on 23.06.2009 at about 7.30 a.m. at Salapadu Village, the accused is alleged to have caused the death of one Shaik Mahaboob Subhani (herein after referred to as "deceased") by hacking him with a knife. He was found guilty for an offence punishable under Section 302 IPC for causing death of the deceased and was sentenced to undergo 'Imprisonment for Life' and to pay a fine of Rs.100/-.

3) The facts in issue are as under:

On 23.06.2009 at about 9.00 a.m., the deceased, PWs.1 and 2 went to the toddy shop of the accused for consuming toddy. The accused gave one litre toddy for Rs.15/-. The deceased is alleged to have demanded more toddy for Rs.15/-, for which the accused

refused. Hence a quarrel took place between them. In the course of the quarrel, the accused is said to have picked up a knife and hacked the deceased on the left collar bone. On that the deceased ran away. The accused is alleged to have chased him and beat him on the leg with a stick. PWs.2 and 3 also followed them. Later, PW.2 picked up the stick from the hands of the accused and beat the accused on his left leg, questioning as to why he stabbed the deceased. Thereafter, PW.1 went to V.R.O., who recorded the statement of PW.1. Ex.P1 is the statement. Basing on Ex.P1, PW.8-A.S.I. of Police, Chebrolu Police Station, registered a case in Crime No.158 of 2009 and issued F.I.R. Ex.P7 is the F.I.R. Thereafter, the C.I. of Police, who is examined as PW.9, took up further investigation. On the same day at about 1.30 p.m. PW.9 proceeded to the scene of offence, prepared an observation report of scene of offence in the presence of PW.4 and another. Ex.P4 is the scheme of offence panchanama. During the said process, he seized MOs.1 to 4 and 6 to 11. He then conducted inquest over the dead body of the deceased in the presence of PW.4 and another. Ex.P3 is the inquest report. Thereafter, the body was sent to District Hospital, Tenali, for post mortem examination. PW.10-the Civil Assistant Surgeon in District Hospital, Tenali, conducted post mortem examination and issued Ex.P10-post mortem examination report. According to him, the cause of death was due to "shock and hemorrhage due to injury to vital organ left lung". He noticed three external injuries on the body of the deceased. On 31.08.2009, PW9 arrested the accused and recorded his

confessional statement in the presence of PW.7 and another. Ex.P6 is the panchanama. After collecting all the material, PW.9 filed a charge sheet before the Court of VI Additional Munsif Magistrate, Guntur, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.854 of 2009.

4) On appearance, charge under Section 302 was framed, read over and explained to the accused. The plea of the accused is one of total denial.

5) To substantiate their case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P10 and MOs.1 to 11. 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 his behalf, in support of his defence.

6) After considering the oral and documentary evidence on record, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal is filed.

7) Learned counsel for the appellant mainly submits that even accepting the entire version of the prosecution is to be true, the ingredients constituting an offence punishable under Section 302 IPC are not made out. It is stated that there was absolutely no motive for the accused to kill the deceased. It is urged that when

the deceased asked for more toddy, the accused refused to provide the same for Rs.15/-, which lead to a quarrel, wherein the accused is alleged to have hacked the deceased with knife. It is also contended that during the said process the accused also sustained injuries, pursuant to which he was hospitalized for a period of two months and was arrested only after he was discharged from the hospital.

8) On the other hand, learned Public Prosecutor though opposed the appeal, but however submits that as the incident is preceded by a quarrel and in the absence of any motive, fairly states that the case would fall under Exception-4 to Section 300 I.P.C.

9) In order to appreciate the same, it would be useful to refer to the evidence of PWs.1 to 3. PW.1 in his evidence deposed as under:

"I am native of Gunthakal, Ananthapur District. I know the accused. I know Usa Sva, Kongala Abraham and Palli Rangababu. I also know the deceased Mahaboob Subhani, he used to lift the dead bodies on the railway line. He died about 9 months back. On 23.06.2009, myself, deceased, Rangababu, Abraham went to accused for toddy. The accused gave toddy in two litres bottle for Rs.15/-. The deceased asked for more toddy, for which the accused refused and a quarrel took place, then the accused drawn a knife from his back and hacked the deceased on his neck and dragged into chest. The deceased ran away. The accused chased him and beat him on his leg with a sana stick. Sva, Abraham followed there.

LW.2-Usa Siva @Jeedelu, picked up the stick from the hands of the accused and beat the accused with the same stick questioning why he stabbed the deceased. Thereafter, I went to V.R.O. V.R.O. recorded from my statement and read over the same to me and obtained the signature on it. Ex.P1 is the report."

10) Though PW.1 was cross-examined at length, nothing useful was elicited to discredit his evidence. Similarly, PWs.2 and 3, who were also present in the toddy compound, speak about the quarrel between the deceased and accused and the demand of the deceased for more toddy for Rs.15/- . PWs.2 and 3 were also cross-examined at length, but nothing useful was elicited to discredit their presence at the scene.

11) From the above evidence, it is clear that the incident occurred in two phases. The first was when the deceased demanded more quantity of toddy and second was when the deceased started running after receiving a blow from the accused. At that point of time, PW.2 is said to have picked up a stick from the hands of the accused and beat the accused, causing severe injuries. Therefore, the presence of the accused and PWs.1 to 3 at the scene cannot be doubted. It is also not in dispute that during the said process the accused also sustained injuries, pursuant to which he lodged a report against PW.2 which came to be registered as Crime No.159 of 2009, for an offence punishable under Section 324 IPC.

12) The question that falls for consideration is whether the incident in question, falls within the Exception 4 to Section 300 IPC.

13) Exception 4 to [Section 300](#) I.P.C, is in the following terms :

"Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault."

14) The requirements of this exception are : (a) without premeditation in a sudden fight; (b) in the heat of passion upon a sudden quarrel; (c) the offender has not taken undue advantage; and (d) the offender has not acted in a cruel or unusual manner.

15) As seen from the evidence on record, there was a quarrel between the accused and the deceased when the accused refused to oblige the illegal demand made by the deceased by asking the accused to supply more toddy for Rs.15/- . It was also deposed by all the three witnesses that there was a quarrel between the accused and the deceased and thereafter the accused picked up a toddy toppers knife and then hacked the deceased. In fact there was no motive for the accused to attack the deceased and there was no enmity between both of them. Everything appears to have happened in a spur of the moment and because of

the quarrel in supply of toddy. Having regard to the manner in which the incident took place and more particularly when a quarrel preceded the attack and also taking into consideration the nature of injuries sustained by the accused in the hands of PW.2, we feel that it is a case which falls under Exception-4 to Section 300 IPC, but not 302 IPC.

16) In *Indrasan v. State of U.P.*¹ the Apex Court held as under:

“11....When on the very next day morning i.e. 14.10.1979, the accused-appellant saw the face of the deceased he simply picked up his lathi and with that gave one blow on the head of the deceased. The said blow was so forceful that as a consequence of which the deceased died within an hour and before he could be taken to the hospital. There is a direct nexus between the blow of lathi and death of the deceased which is immediately caused after giving the blow.

12. We, therefore, are of the considered opinion that although it is a case of culpable homicide not amounting to murder, but considering the nature of the injuries which was caused on a vital part of the body, we are of the considered view that there was intention on the part of the accused-appellant to cause death of the deceased.

13. We, therefore, alter the conviction of the appellant from [Section 302, IPC](#) to [Section 304 Part I IPC](#).”

17) For the aforesaid discussion and in view of the judgment referred to above, we are of the opinion that an offence under Section 304 Part-I of IPC is made out. Hence, the conviction under Section 302 IPC is set aside and consequently, the appellant is

¹ (2009) 14 SCC 532

convicted under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years. The period of remand undergone by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. The appellant/ accused shall be set at liberty forthwith on completion of seven years rigorous imprisonment, if not required in connection with any other case.

18) Accordingly, the appeal is allowed in part. Consequently, miscellaneous petitions, if any, pending shall stand closed.

25.10.2017
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JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO