

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

CrI.A. No. 730 of 2011

JUDGMENT:- (Per Hon' ble Sri Justice Suresh Kumar Kait)

1) This Criminal Appeal is preferred against the judgment dated 16.06.2011 delivered in S.C.No. 230 of 2010 by VI Additional District and Sessions Judge (Fast Track Court), Markapur, whereby the appellant - accused was found guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced to undergo imprisonment for life and pay a fine of Rs.5000/-, in default of payment of fine, he shall undergo Simple Imprisonment for a period of six months.

2) The brief case of the prosecution is that the appellant – accused is the eldest brother of the deceased – Srinivasulu and they are residents of Chilakacherla village of Dornala Mandal. The accused, the deceased and their another brother got Ac.01.00 cents of land each out of Ac.4.00 cents of land left by their father and the remaining Ac.01.00 cents was taken by the mother of the appellant namely Mata Nagamma (PW3). There is a joint bore-well situated in Ac.4.00 cents of land and its water is being used for irrigation by all the sharers. The deceased, with his earnings, purchased an extent of Ac.4.00 cents of land situated by the

side of his Ac.1.00 cents and using the water from the joint bore-well for the land purchased by him. In addition, the deceased also purchased an Auto and for his livelihood was maintaining the same, thus, his financial status was much better than the appellant. This became an eyesore to the appellant and on that score the appellant quarreled with the deceased now and then. Moreover, the appellant is addicted to drinking and other vices and wasting money.

3) On 12.07.2008, at about 08.10 p.m., the deceased saw the appellant picking up quarrel with one villager namely Routhu Yogaiah and uttering abuses against each other and admonished the appellant for his high-handed behaviour towards him. Thereafter, the deceased went home and was taking rest on a cot. Later, the appellant went to his house, brought a small crow-bar from behind the house of the deceased and gave hard blows twice on his head with an intention to do away with his life. Meanwhile, PW1, who is the wife of the deceased, rushed and caught hold the crow-bar in the hands of the appellant to prevent him from giving further blows and raised hue and cry. PW2, the son of the deceased, and PW3, the mother of the deceased, also witnessed the occurrence and raised cries. Meanwhile, PW8, who sat on the stile of his house, having witnessed the

occurrence, rushed to the spot. On seeing them, the accused fled away with crow-bar and absconded.

4) It is further case of the prosecution that the wife of the deceased, with the help of PWs.5 and 6 and others, took the deceased to Primary Health Centre, Dornala, but he succumbed to injuries by the time they reached the hospital. Thereafter, PW1, the wife of the deceased, gave a report to the Sub-Inspector of Police, Dornala Police Station at 11:00 p.m. on the same day which was registered as a case in Crime No. 91 of 2009.

5) After completion of investigation, the police filed charge sheet against the appellant for the offence punishable under Section 302 IPC.

6) To bring home the guilt of the appellant, the prosecution examined as many as fifteen witnesses and got marked Exs.P1 to P21 and M.Os.1 to 5.

7) After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. wherein he pleaded not guilty and denied the incriminating evidence spoken against him. However, no defence witnesses were examined on behalf of the accused. The trial Court found the accused guilty of the charge under Section 302 IPC and convicted him. Hence, the appeal.

8) Smt. A. Gayatri Reddy, learned counsel for the appellant, submits that as per the prosecution case, PWs.1 and 2 are the eye-witnesses to the incident. PW1 is the wife of the deceased. PW2 is the minor son of the deceased. The appellant is own brother of the deceased. PWs.3 to 11 were declared hostile and did not support the case of the prosecution. She further submits that as per the complaint made by PW1, on 12.07.2009 at 08:30 p.m., while Venkateswarlu was quarrelling with one villager, Routhu Yogaiah, her husband reprimanded her elder brother-in-law – Venkateswarlu stating as “why you are quarreling with villagers?” and came to the house. When he was lying down, her elder brother-in-law – Venkateswarlu i.e. accused, armed with a crowbar, came from behind and beat on the forehead of her husband with crowbar. Immediately, her husband collapsed and she rescued him by catching hold of the crowbar and shouted loudly. On seeing the arrival of surrounding people, the appellant fled away with crowbar. Thereafter, immediately, PW1, along with her villagers, shifted her husband – Srinivasulu to Government Hospital, Dornala by an Auto for treatment, however, he succumbed to the injuries.

9) The learned counsel further submits that PW1, who is the wife of the deceased, stated in her evidence that

the appellant was addicted to drinking and other vices. He used to quarrel with everybody in the village unnecessarily. He also picked up quarrel with her. Five or six months prior to the death of her husband, the appellant insisted her on supplying water to his Ac.01.00 cents of land firstly from their bore-well. He also threatened her with an axe to kill her in the absence of her husband in the field. The appellant used to pick quarrel with her and her husband also. Since five months prior to the death of the deceased, they were not having talking terms with the appellant. The house of the appellant is situated at a distance of two houses away from her house. On the date of occurrence, at about 7/ 7.30 p.m., the appellant came from the village in an intoxicated condition and quarrelled with the passersby and other villagers. The appellant, on seeing her husband sleeping on the cot, talked to him. Her husband warned him that he would lodge a police complaint for abusing her and the villagers in intoxicated state. On hearing the same, the appellant went away, and subsequently, when her husband was lying on the cot, the appellant attacked him twice with the crowbar, as a result, he received fatal injuries and ultimately died.

10) The learned counsel submits that the deceased and the appellant are real brothers. As admitted by PW1, PW1

was not on talking terms with the appellant since five to six months prior to the incident. It is also admitted that the appellant was in state of intoxication at the time of the incident and when the deceased admonished the appellant, he attacked on the deceased with an intention just to cause some injury and not to kill the deceased. Thus, she submits that in such a situation the learned trial Court had erred in convicting the appellant for the offence punishable under Section 302 IPC instead of 304 Part II IPC.

11) To strengthen her arguments, the learned counsel for the appellant has relied upon a judgment reported in the case of Palvai Devaiah v. State of A.P.¹ wherein this Court has held as follows:

“As per the evidence of PWs.3 and 4, there is no pre-mediation by the accused to cause the death of the deceased and a sudden quarrel took place between them when the accused was found near the kirana shop of PW4 by the deceased and he questioned him about the arrears of wages payable to his mother and there is a free fight between them and in the said free fight the accused fisted the deceased on his body indiscriminately, which led to the death of the deceased. Therefore, from the above circumstances, it is evidence that the accused has no intention to cause the death of the deceased. Thus, the act of the accused would fall under Exception-IV of Section 300 of IPC. Therefore, the said act of the accused is a culpable homicide not amounting to murder and the punishment for the said act would fall under Section 304 (Part II) of IPC.”

¹ 2013(1) ALT (CrI.) 211 (DB)(A.P)

12) The learned counsel for the appellant has also argued that the appellant was administered with intoxicant at the time of the alleged commission of offence, and in such a situation, the trial Court could have extended benefit to the accused as is available under Section 86 IPC. To strengthen her case, she has also relied upon a judgment of the Apex Court reported in Kalu Ram v. State of Rajasthan².

13) On the other hand, the learned Public Prosecutor appearing on behalf of the respondent – State, submits that the trial Court has rightly convicted the appellant for the offence punishable under Section 302 IPC. In the first instance, there was some hot discussion between the appellant and PW1 - wife of the deceased, thereupon the deceased admonished the appellant, due to which, the appellant bore grudge against the deceased and brought crowbar with an intention to eliminate him. Accordingly, he attacked twice on the head of the deceased which is a vital part of the body, as a result, he died in the hospital. Accordingly, the appellant succeeded in his plan in killing the deceased. He further submits that even the benefit under Section 86 IPC cannot be made applicable to the appellant because the accused voluntarily consumed intoxicant. It is not the case of the appellant that someone forcibly administered alcohol to him. Moreover, the animosity was not

² 2000 SCC (CrI.) 86

immediate but it was prior to the incident, therefore, the appellant planned to liquidate the deceased, and accordingly, killed him.

14) We have heard the learned counsel for both the parties and perused the material placed on record.

15) PW1, who is the wife of the deceased, categorically deposed in her evidence that on the date of occurrence i.e. on 12.07.2009 at about 08:30 p.m., while the deceased was lying on a cot operating cell phone, the appellant came to her house and inflicted two fatal blows with crowbar on the head of her husband. When he was about to inflict another blow, she rushed to the appellant from his behind requesting him not to beat her husband and caught hold of the crowbar. Then the appellant by snatching the crowbar, left the place on seeing the persons rushing to her house on hearing her cries. As a result of the blows inflicted by the appellant, the deceased sustained severe bleeding injuries on the head. On seeing oozing of the blood, PW1 lost her consciousness, which she regained at Government Hospital. She further deposed that by the time she regained consciousness her husband succumbed to injuries.

16) PW1 further deposed that the root cause for the occurrence of offence is admonition of the appellant by the deceased one hour prior to the incident as he was indulged in

an altercation with the villagers and also passersby in intoxicated condition. Earlier also, the appellant quarrelled with her in the absence of her husband in the fields and at her house as well and the same was complained to her husband. She further deposed that relations between the deceased and the accused became strained in view of the differences arose in respect of the water shared from the joint bore-well to their lands. At the time of occurrence, her son – PW2, who was studying VI class, was also present in the house lying down on another cot which was adjacent to the cot of the deceased. During her evidence, she identified the crowbar said to have been used by the accused in inflicting injuries on the deceased and it is marked as M.O.1.

17) PW2, son of the deceased, who is a child witness, deposed in his evidence that on the night of the occurrence, himself and his sister, who was then studying first or second class, were on a cot which was right side of the cot of their father. His mother - PW1 went into the kitchen to get food for the deceased, meanwhile, the appellant came with a crowbar and attacked his father twice on the head, and when he was about to inflict third blow, his mother rushed and caught hold of the crowbar which was in the hands of the appellant, then he snatched the crowbar from PW1 and ran away. PW2 further stated that after the occurrence, his

mother ran towards public bore well and shouted for one Balaram, who used to drive Tractor and their Auto now and then. Meanwhile, all the villagers rushed and PW2 noticed oozing of blood from the head of the deceased which also fell on his shirt and on the dress of his sister. After arrival of the villagers, himself and his sister were taken away from that place pleading ignorance of subsequent events.

18) PW14, Medical Officer, Area Hospital, Markapur, who conducted autopsy over the dead body of the deceased, stated in his evidence that on a requisition, he conducted autopsy over the dead body of the deceased at 11:15 a.m. and on external examination, he found multiple bullae present all over the body of various size froth with blood stain coming from nostrils. He also found a perforating (fracture & lacerated) injury on skull right frontal region of 6 c.m. width of two brain para inchyma. He also found lacerated injury on right frontal region (3 cms to the 1st wound) and 5 cms length and 4 cms. width. He also deposed that on internal examination of the skull, he found fracture of skull bones of frontal region and laceration of brain on right frontal region of 4 cms x 4 cms and cut section on brain is pale, and accordingly, opined that the deceased would have died of lacerated injury to the brain and hemorrhage and shock.

Accordingly, he issued post-mortem examination certificate which is marked as Ex.P15.

19) In the evidence of PW14, it is elicited that there is a slight possibility of cause of external injuries as mentioned in Ex.P15 due to speedy fall on any blunt object. In normal course, such injuries will not be possible. It is also elicited that lacerations on bony part may expand sometimes due to retractions. The doctor categorically denied that there is always possibility of cause of injuries 1 and 2 over scalp area due to fall on any hard object.

20) PW15, the then Inspector of Police, who conducted investigation, has also supported the case of the prosecution. In cross-examination, nothing is elicited from this witness including PWs.1, 2 and 14 which help the appellant.

21) The defence of the appellant is that the deceased, being in intoxicated condition, fell on mancham kodu (cot peg) and sustained injury which resulted in his death. He denied infliction of such injury by him with crowbar – M.O.1. Further, the defence of the appellant is that due to previous enmity the appellant is falsely implicated though the deceased sustained injuries on his own and succumbed to injury.

22) The case on which the learned counsel for the appellant has relied, is of no help for the reason that Ex.P1 –

report is lodged about 11:00 p.m. within 2½ hours after the occurrence of offence, and based on Ex.P1, F.I.R. was also registered by PW13 which is marked as Ex.P14.

23) In Ex.P1 – complaint, which is lodged within few hours after the occurrence, PW1 categorically stated that the appellant, who is her brother-in-law, came with M.O.1 – crowbar and attacked on the head of her husband when he was lying down.

24) Though in Ex.P1, PW1 did not state anything about the previous enmity between the members of their family and those of the appellant, she deposed that on the date of occurrence, the appellant was admonished by the deceased as he was altercating with one Routhu Yogaiah and for that reason, the appellant became wild and attacked on the deceased. However, in the statement recorded under Section 161 Cr.P.C. and also in the inquest report, the reasons for strained relations between the family of the appellant and that of the deceased are specifically mentioned.

25) Thus, in our considered opinion, PW1, during her evidence, did not make any improvement giving scope to doubt her veracity. The evidence of PW1, which is corroborated with the medical evidence, and Ex.P15 – Postmortem examination certificate and Ex.P16 – inquest

report duly prove that the deceased died due to anti-mortem injuries covered under Exs.P15 and P16 and the alleged offence is homicide.

26) The learned counsel for the appellant has not raised the other issues, therefore, it is not required to deal with those aspects which were raised before the trial Court.

27) In view of the clinching evidence of PWs.1 and 2 and other material witnesses and corroborated by documentary evidence, we are of the view that the prosecution has successfully brought home the guilt of the accused. Hence, we find no illegality or perversity in the conviction recorded by the trial Court.

28) Coming to the argument of learned counsel for the appellant that even if the prosecution case is accepted to be true, the charge under Sec.304 Part-II IPC but not 302 IPC is maintainable, we are unable to accept the said argument. It was not a case where in a sudden fight, the accused without any premeditation and in the heat of passion and without taking undue advantage caused the death of deceased so as to bring his action under exception (iv) of Sec.300 IPC. On the other hand, the facts and evidence would show that on the fateful night at about 8:30pm when the deceased returned home, laid on cot and operating cell phone, the accused went

with a crowbar and suddenly inflicted two fatal blows on the head of the deceased and seeing his ghastly act PW.1, the wife of the deceased rushed to her husband and in the meanwhile, the accused tried to inflict third blow but she could catch hold him from behind and requested him not to beat. It is only after her intervention, the accused left the place with crowbar. The postmortem doctor found fracture of the skull on right frontal region and opined that the deceased died due to the said injury to the brain and hemorrhage and shock. Thus, the facts and evidence would reveal that the accused with predetermination and with intention and knowledge to do away with his own brother went with a crowbar and seeing the deceased in an undefendable position as he laid on cot and operating cell phone, gave two fatal blows on the vital part of the body i.e, head and also tried to give a third blow which could be averted by PW.1. Hence, in our considered view, the offence committed by the accused would squarely fall in the realm of murder. The trial Court rightly convicted and sentenced him for the offence under Sec.302 IPC. The citations relied upon by the accused have no relevance.

29) The Criminal Appeal is devoid of merit and the same is accordingly dismissed.

30) As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

31.01.2017

SURESH KUMAR KAIT, J

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U.DURGA PRASAD RAO, J

