

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

CrI.A. No. 65 of 2011

JUDGMENT:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

1) This Criminal Appeal is preferred against the judgment dated 08.07.2010 delivered in S.C.No. 23 of 2010 by III Additional District and Sessions Judge (Fast Track Court), Medak, whereby the appellant – accused was found guilty of the offence punishable under Section 302 IPC, and accordingly, convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default, to suffer Simple Imprisonment for a period of two months.

2) In brief, case of the prosecution is that the deceased – Samaiah was working as Attender in Lakadaram School apart from doing business in wood and was having two DCM Vans. On one of the DCM Vans, one Golla Narsimha Reddy @Golla Narsimha, the appellant herein, was working as driver. On 30.06.2009, while brother of the deceased was at house, he came to know that the driver of the deceased gave a blow to the deceased with an axe near the house of Sunkari Kistaiah in Amdur village. On reaching the place of occurrence, the brother of the deceased came to know that on 30.06.2009, in the afternoon, the deceased, D. Lingamaiah and M.Mogulaiah were cutting tamarind trees, meanwhile, the

appellant/ accused, keeping old grudge in his mind, attacked his brother on head and face with axe, as a result, brain matter came out. On the same day, he was shifted to hospital by 108 Ambulance and at 06:00 P.M. while undergoing treatment, the deceased succumbed to injuries. Based on the report lodged by B. Narasimulu - brother of the deceased, the Sub-Inspector of Police registered a case against the appellant in Cr.No. 102 of 2009 and issued express F.I.R to all concerned. After investigation, the police laid charge sheet against the appellant/ accused.

3) Charge was framed against the accused for the offence punishable under Section 302 IPC, read over and explained to the appellant in Telugu, for which, he pleaded not guilty and claimed to be tried.

4) To bring home guilt of the appellant, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P13 and M.Os.1 to 3. On behalf of the defence, no witnesses were examined nor got marked any documents.

5) After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. wherein he denied the incriminating material surfaced against him. The trial Court found him guilty and convicted and sentenced him as stated supra.

6) The learned counsel for the appellant submits that the appellant was working as Driver on DCM Van belonging to the deceased. He submits that PW3 deposed in his evidence that on the date of the incident, himself, Lingamaiah and Narsimulu went to Amdur village to cut tamarind trees of Amdur Gram panchayat. The deceased came to the scene of offence at 11:00 A.M. by which time, PW3 and other labourers were cutting wood. At about 01:00 P.M., the appellant suddenly hacked the deceased on his head and face with axe. When the deceased raised cries, they rushed to the scene of offence, then the appellant escaped from the scene along with the axe. He further submitted, even PW4 also deposed in similar lines.

7) However, PW5 deposed that the deceased used to abuse the appellant, as such, the appellant hacked the deceased. The learned counsel for the appellant argued that from the prosecution witnesses, it is established that as the deceased abused the appellant, altercation took place all of a sudden, and thereby the appellant, with the axe available at the spot, hit the deceased who succumbed to the injuries. Thus, the present case does not fall under Section 302 IPC. Therefore, the trial Court ought to have convicted the appellant for the offence punishable under Section 304-Part II IPC.

8) The learned Public Prosecutor appearing on behalf of the respondent - State submits that none of the witnesses has stated the deceased abused the appellant on the date of the incident and due to that he attacked the deceased with the axe. Rather, the witnesses had only stated that the deceased used to abuse the appellant and the appellant bore grudge against him, and consequently, on 30.06.2009, attacked the deceased leaving him no scope for survival. He further argued, as per Ex.P11 - Post-mortem report, the deceased received serious injuries, as such, the appellant was rightly convicted by the trial Court for the offence punishable under Section 302 IPC and the judgment under appeal cannot be interfered with.

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

10) PWs.3 to 7, who are the eye witnesses, deposed that they were near the scene of offence at the time of the incident. They all heard cries of the deceased and saw the appellant running from the scene of offence with the axe in his hand. PW3 deposed that on the date of the incident, he, Lingamaiah – PW4 and Narsimulu went to Amdur village and the labourers were cutting tamarind tree. The deceased came to the scene of offence at 11:00 A.M. At about 01:00 P.M., the appellant suddenly hacked the deceased on his head

and face. He witnessed the incident from a distance of 200 yards. In cross-examination PW3 asserted that at the time of the incident, they were cutting the branches of tree and on hearing the cries of the deceased they saw the appellant running away from the scene along with the axe.

11) It is pertinent to note that no suggestion was put to PW3 that PW3 was not present at the scene of offence at the time of the incident. Also, no suggestion was made to PW3 that only when the deceased abused the appellant, the appellant hit the deceased with the axe.

12) PW4 deposed that on the date of the incident, himself and others were cutting trees at Amdur village and the appellant came to the scene of offence on DCM Van and the deceased came to the scene at 11:00 A.M. on his motorcycle. He further deposed that at about 01:00 P.M., when himself, the appellant and others were cutting branches of tree, the appellant hit the deceased on his head and face with the axe. In cross-examination, PW4 asserted that at the time of the incident, he was cutting the tree. On hearing cries of the deceased, PW4 saw the deceased. He was standing at a distance of 20 yards away from the scene. PW4 also deposed that PW3 called for 108 Ambulance immediately after the incident. In cross-examination, no suggestion was put to this witness disputing the presence of PWs.3 and 4 near

the scene of offence at the time of the incident. Similarly, no suggestion was made to this witness that only after the deceased abused the appellant, he was attacked with the axe.

13) PW5 is the driver of the deceased. He deposed that on the date of the incident, himself, the appellant and other labourers came to Amdur village to cut the trees. The deceased came to the scene of offence at about 11:00 A.M. on his motorcycle. At about 01:00 P.M., when he heard commotion, he found the appellant hacking the deceased on his head and face. In cross-examination, he deposed that in the DCM van, himself and Lingamaiah (PW4) proceeded to the scene of offence. The appellant came to the scene by DCM Van 15 minutes after arrival of the deceased. He further asserted in his cross-examination that he witnessed the incident by standing beside the Van within a distance of 200 yards. Admittedly, to this witness, no suggestion was made that PW5 was not present near the scene at the time of the incident. Similarly, no suggestion was made to the effect that only after the deceased abused the appellant, the appellant attacked him with the axe.

14) PWs.6 and 7 also deposed on similar lines and nothing could be elicited from their cross-examination.

15) PW12 conducted post-mortem examination over the dead body of the deceased and issued Ex.P11 – Post-

mortem report which shows external injuries on right cheek, nose, chap wound with exposure of brain on right temporal and parietal region of scalp and stab injury over left collar bone with fracture collar bone. From the above evidence, it is obvious that the deceased sustained injuries on his head and face which is clearly supporting and corroborating the evidence of PWs.3 to 7.

16) Keeping in view the evidence on record, the trial Court opined that the prosecution has clearly established the guilt of the appellant beyond reasonable doubt recording that PWs.3 to 7, the appellant and the deceased were very much present near the scene of offence at the time of the incident and thereby, they could see the appellant hitting the deceased on his head and face with the axe, and on hearing cries of the deceased, all the witnesses rushed to the deceased when the appellant ran away from the scene of offence with the axe. No contrary evidence was put forth before the trial Court to suspect the evidence of the eye-witnesses.

17) From the evidence of PWs.3 to 7, it is established that as the deceased used to abuse the appellant, he bore grudge against the deceased and hit the deceased on face and head which are vital parts of the body. In the present case, we do not find substance in the argument of the learned

counsel for the appellant that the deceased had abused, and thereupon, altercation took place all of a sudden whereby the appellant attacked the deceased resulting in his death. This argument cannot be believed for the reason that not even a single witness had deposed that on the date of the incident, the deceased abused the appellant, and only thereafter, he hit the deceased. All the witnesses deposed that he used to abuse the appellant due to which he bore grudge against the deceased, and finding an opportunity, the appellant killed the deceased. It is important to note that this defence has not been taken in the statement recorded under Section 313 Cr.P.C. and a suggestion to that effect was not made even to a single witness.

18) As per Section 304-Part II IPC, two elements are to be fulfilled. One is, the appellant had no intention to cause death and the other is, he had only knowledge regarding the injury that is likely to cause death, which amounts to culpable homicide.

19) In the present case, it is established that the appellant bore grudge against the deceased as he used to abuse the appellant, and moreover, he hit the deceased on vital parts with full force with the axe which is a dangerous weapon. Therefore, the intention of the appellant in killing the deceased is manifest. Hence, we find no substance to

convert the conviction imposed by the trial Court from Section 302 IPC to 304-Part II IPC.

20) From the facts recorded above, we find no merit in this appeal, and the same is accordingly, dismissed confirming the judgment dated 08.07.2010 delivered in S.C.No. 23 of 2010 by III Additional District and Sessions Judge (Fast Track Court), Medak.

21) Before parting with the judgment, we record appreciation of the arguments advanced by Dr.K.Satyanarayan Rao, learned Legal Aid Counsel, who rendered assistance to this Court.

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

19.04.2017

SURESH KUMAR KAIT, J

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U.DURGA PRASAD RAO, J