

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

CRL.A.NO.1174 OF 2011

JUDGMENT (Per CPK,J)

Appellant is the sole accused in S.C.No.370 of 2010 on the file of I Additional Sessions Judge at Khammam. By its impugned judgment dated 9.11.2010, the accused was found guilty for the charge under Section 302 IPC, for causing the death of one Komaram Satyanarayana, and accordingly convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- and in default, to suffer imprisonment for one month.

The facts as culled out from the evidence of prosecution witnesses are as under:-

P.W.1 is the son of the deceased, while P.Ws.2 and 3 are the wife and daughter of the deceased. P.Ws.4 and 5, who are neighbours of the deceased, were examined as eye witnesses to the incident. Similarly, P.Ws.6 and 7 were examined to speak to the quarrel between the accused and the deceased.

The accused and the deceased are residents of Thulugonda Village in Chintur mandal. The accused and the father of P.W.1,

who is the deceased in this case, were close friends. It was also brought on record that surrounding the village Turugonda, there is forest and generally, the residents of the village will be consuming liquor every day after their work.

On the date of the incident i.e., on 3.3.2010 at about 6.30 p.m., while P.W.1 and the deceased were present in their house along with the wife and daughter of the deceased, the accused, who is known to them, came to their house and abused them saying that they took his cock and ate them. P.W.1 and the deceased tried to pacify, saying that they can discuss the matter on the next day. The accused went away abusing P.W.1 and others. Thereafter, he came back with a knife and hacked the deceased on his face, neck and on his back. The deceased is said to have fall down on receipt of the said injuries. Immediately, P.W.1 rushed to the police station and presented a report, which is brought on record as Ex.P-1. Basing on Ex.P-1, P.W.12, the Sub Inspector of Police, Mothugudem Police Station, registered a case in Crime No.3/20120 and issued Ex.P-7 the FIR. Thereafter, P.W.13, the Circle Inspector of Police, proceeded with the investigation. He visited the scene of offence, examined and conducted panchanama of the scene of offence and also prepared a

rough sketch of the scene in the presence of mediators. During the said process, he recorded the statements of P.Ws.2 to 7 and others. Thereafter, he conducted inquest over the dead body of the deceased in the presence of P.W.9 and other mediators. Ex.P-4 is the inquest report. Thereafter, the body was sent to postmortem examination. P.W.11 who was a Civil Assistant Surgeon in Government Tribal, Hospital, Chinthoor, conducted autopsy over the dead body of the deceased and issued Ex.P-6 postmortem report.

He noticed following injuries:

1. Incised wound 6 x 1 x 11 inches over left side of the face. The said wound is incising nose and left side cheek bone.
2. Incised wound 3 ½ x 1 ½ x 2 ½ inches over left lateral side of neck from upper 1/3rd region.
3. Incised wound of x ½ x 1 over back of the neck i.e., on entire back of neck and
4. Incised wound 2 x ½ x 1 over back of the chest on left side.

According to P.W.11, the cause of death was due to cardio respiratory arrest due to hypovolemic shock.

On 10-03-2010, P.W.13 arrested the accused and pursuant to the confession made by him, M.O.1 knife, was recovered from bushes in the forest. Ex.P-5 is the relevant portion under which P.W.13, recovered M.O.1. After obtaining RFSL report, which was marked as Ex.P-8, P.W.13 filed the charge sheet, which was taken on file as PRC No.60/2010 on the file of Judicial Magistrate of I Class,

Bhadrachalam. Pursuant to summons issued, the accused appeared before the court and was furnished with the documents as required under Section 207 Cr.P.C. On committal, the case came to be numbered as S.C.No.370/2010.

Based on material, the trial court framed a charge under Section 302 IPC, read over and explained to him, to which he denied and claimed to be tried.

In support of its case, the prosecution got examined P.Ws.1 to 13 and marked Exs.P-1 to P-8.

After the completion of prosecution evidence, during Section 313 Cr.P.C. examination the incriminating material appearing in the evidence of prosecution witnesses was put to the accused, which he denied. However, no oral or documentary evidence was adduced on his behalf.

After appreciating the entire evidence on record and taking into consideration the evidence of P.Ws.1 to 4, the trial Judge, convicted the accused for the above mentioned charge. Challenging the same, the present appeal came to be filed.

The learned counsel appearing for the appellant mainly submits that the incident took place in dark and as such, witnesses could not have seen the assailant. Even otherwise he submits that the accused, who was in drunken condition, may not be knowing that the blow would land on the neck and the same would prove fatal. It is further urged that there are discrepancies in the evidence of P.Ws.1 and 4 with regard to the manner in which the incident occurred and as such pleads that benefit of doubt be extended to the accused.

On the other hand, the learned Public Prosecutor, would contend that the evidence of P.Ws.1 to 3, which is reliable and trustworthy, can be made the basis for convicting the accused.

In order to appreciate the same, it would be useful to refer to the evidence of prosecution witnesses.

As seen from the record, there are no disputes between the prosecution party and the accused at any time prior to the incident.

The incident in question is said to have taken place on 3.3.2010 at about 6.30 pm. It has come on record, more particularly through the evidence of P.W.1, that they will be commencing consumption of alcohol immediately after they return from the work. The said liquor

would be extracted from Vippra Puvvulu. It was stated by him that the said liquor will be more intoxicative than sara. Even P.W.1 admits that there are no disputes between the deceased and the accused prior to the incident. P.W.1, in his evidence, admits that prior to the incident, accused was in drunken condition. It was also admitted by P.W.1 that at the time of incident, there was total darkness.

Coming to the evidence of P.W.2, who was also present at the time of the incident, it was elicited through her that they go to work every day in morning at 8.00 a.m. would return by 12.00 noon. They attend to agricultural work and cooli work. It has been elicited from P.W.2 that just prior to the incident accused was in a drunken condition. He loudly abused them in front of their house alleging that they committed theft of his cock. At the time of incident, P.W.1 was pushed aside by the accused. However, P.W.1 retaliated and beat the accused. It was further elicited from P.W.2 that at the time of the incident, accused suddenly got angry and caused injuries to the deceased. P.W.2 in his evidence deposed that the accused and his family members were visiting their house during festivals and that they were having lunch or dinner in their house.

The evidence of P.W.3 goes in tune with that of P.Ws.1 and 2.

P.W.5, who is a resident of the same village, deposed that on the date of the incident, the accused questioned the deceased about the theft of his cocks. At that time, deceased told the accused that panchayat can be held in that regard on the next day. Thereafter, the accused is alleged to have gone to his house, came back with knife and hacked on the back, neck and on the face of the deceased.

In the cross-examination, it was elicited that he was not present at the time of incident, but however, he was informed about the incident by P.W.1. He admitted that his son married the sister of wife of P.W.1. He also admitted that at the time of incident, accused was fully drunk and was in an intoxicated condition.

P.W.6 in his evidence deposed that on the date of incident at about 6.00 p.m., accused and the deceased abused each other with regard to theft of cocks, belonging to the accused. He also deposed about the plea made by the deceased stating that the matter can be settled in the panchayat. He further deposed that the accused went back to his house, came back with a knife and caused injuries. In the cross-examination, he states that at the time of incident, the deceased and the accused were in a drunken condition. He also

claims to have witnessed the accused causing injuries with a knife. In his evidence, he deposed that when P.W.2 tried to intervene, the accused pushed her away. According to him, P.W.1 was not present at the time of incident, as he went to attend calls of nature. He only speaks about the presence of the two daughters of the deceased, at the time of the incident.

The evidence of P.W.6, with regard to deceased being in intoxicated condition, gets corroboration from the evidence of P.W.7. In the cross-examination, P.W.7 admits that at the time of incident, deceased Satyanarayana was also in intoxicated condition, as he also consumed alcohol. He also states that he cannot say whether deceased Satyanarayana and accused were in a fully intoxicated condition. He also admits that the accused and deceased were close friends.

From the evidence referred to above, it is clear that there was no enmity between the two families. Both the families were on visiting terms and used to meet and have food together at times. Even as on the date of incident, there was no enmity, hatred or ill-will between the two families. Therefore, it cannot be said that accused has any motive to kill the deceased. As stated by P.Ws.6 and 7, at

the time of incident, accused as well as deceased, were in drunken condition.

Though P.W.1 tried to claim to be an eye witness to the incident, but however, the same is not supported by P.W.6, who states that at the time of incident, P.W.1 went to attend calls of nature, but all other witnesses speak to the presence of P.W.1 at the time of incident. In fact, the evidence of P.W.2 further shows that P.W.1 beat the accused at the time of incident.

Even if the evidence of P.W.1 is excluded from consideration, for the sake of argument, still there lies the evidence of other witnesses, who deposed about the genesis of quarrel between the accused and the deceased and that the incident taking place when the accused and the deceased were in a intoxicated condition. In the absence of any motive or intention for the accused to cause the death of the deceased, though there are about four wounds over the body of the deceased and only one being on the vital part i.e., injury No.2, and since P.W.1 also beat the accused, we feel that having regard to the manner and circumstances under which the incident took place, it is a case, where the nature of offence can be scaled down to

Section 304-Part II IPC. It can only be said that the accused had knowledge that such an injury is likely to cause the death.

For the foregoing reasons, the accused is found not guilty for the offence under Section 302 IPC and the conviction and sentence imposed by the court of I Additional Sessions Judge, Khamma in SC.NO.370 OF 2010 dated 9.11.2010 is set aside. However, the accused is found guilty for the offence under Section 304 Part II IPC and accordingly his sentence is reduced to period already undergone for the offence under Section 304 Part II, by confirming the fine. In view of the representation made that he is in jail since last six years, the accused shall be set at liberty, if not required in any other case.

The appeal is accordingly allowed in part.

C.PRAVEEN KUMAR,J

P.KESHAHA RAO,J

AVS
DATE:03.11.2017