

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No. 1424 of 2011

JUDGEMENT: (Per Honourable Sri Justice C.Praveen Kumar)

The sole accused, in S.C. No. 127 of 2011 on the file of Principal Sessions Judge, Kurnool, is the appellant. He was tried for an offence punishable under Section 302 IPC for causing the death of one Pulicherla Pala Ankanna with boulder on 12.11.2009 at about 13.30 hrs. Vide judgment dated 05.07.2011, the Sessions Judge convicted the accused under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month.

The facts, as culled out from the prosecution evidence, are as under:

The deceased Pulicherla Pala Ankanna was eking out his livelihood by selling arrack. The accused and deceased were known to each other and there was no enmity between them. PWs.1, 2, 3, 4 and 5 are all residents of Palamcheruvu Village of Kothapalli Mandal. PW.3 is the brother in law of the deceased while PW.4 is the sister in law of PW.1 and sister in relation to PW.2. PW.3 is the brother of PW.4. PW.5 is also related to PWs.1 and 2. The sister of PW.3 and PW.4 married

the deceased about eight years back. It is stated that the deceased used to sell arrack in village while PW.4 was watchwoman in Kasturi Bai Hostel. On 12.11.2009 at 11.30 a.m, while PW.3 was present, the accused came in a drunken condition and requested PW.3 to give Rs.20/-. PW.3 reported that he had no money. Thereafter, PW.3 left to Palemcheruvu and the accused followed him to Palemcheruvu and embarrassed PW.3 by requesting him to give Rs.20/-. The accused is said to have requested the deceased to supply arrack for Rs.10/- or Rs.20/-. The deceased reported that no arrack was available with him and asked him to go to Kottalacheruvu. Both accused and deceased proceeded to Kottalacheruvu. While the deceased and accused were proceeding to Kottalacheruvu, the accused is said to have picked up a boulder and hit the deceased. PWs.1 and 2 who were returning from their in-laws house saw the incident. PW.1 went and informed PW.4, the wife of the deceased, while PW.2, the wife of PW.1, went and informed PW.3. All of them met together came to the scene of offence. By the time, they came, the deceased was lying dead with bleeding injuries. PW.1 proceeded to the police station and lodged report which was marked as Ex.P.1. Basing on the said report, a case in Crime No.156 of 2009 came to be registered. Ex.P.7 is the FIR. PW.11, the Inspector of Police, took further investigation,

after receipt of FIR from PW.10. He proceeded to the scene of offence along with PW.10, and found dead body lying on the road. As it was late night, he could not proceed with further investigation. On the next day, he resumed further investigation and proceeded to the scene of offence along with PW.7, the panchayatdar. He conducted a panchanama of the scene of offence and also prepared rough sketch which is marked as ExP.8. During the observation of the scene, he seized clothes of the deceased which are marked as MOs.2 to 4. Thereafter he conducted inquest over the dead body of the deceased which is marked as Ex.P.3. After examining the witnesses, he sent the dead body for post-mortem. PW.9, the Civil Assistant Surgeon, conducted autopsy on the dead body of the deceased and issued ExP.6, the postmortem certificate. According to him, the cause of death of the deceased was due to shock and haemorrhage due to head injury. On 15.11.2009, PW.11 arrested the accused and, in the presence of PW.10, the accused is alleged to have confessed about the commission of offence. Pursuant to the said confession, a boulder said to have been used was recovered from bushes. The said boulder was weighing about 7 Kgs. Ex.P.5 is the panchanama prepared in the presence of PW.8 and others. After completion of investigation, and after collecting all relevant documents viz. RFSL report and P.M. report, PW.11

filed the charge sheet, which was taken on file as P.R.C.No.3 of 2010 on the file of the Judicial Magistrate of First Class, Atmakur. On appearance of the accused, all the necessary documents were furnished in terms of Section 207 Cr.P.C. As the offence was triable by a Court of Session, the learned Magistrate committed the case to the Court of Session, which came to be numbered as Sessions Case No.127 of 2011.

On the basis of the material available, a charge under Section 302 IPC against the accused came to be framed, read over and explained to the accused in Telugu, to which he pleaded not guilty and claimed to be tried.

To substantiate their case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P1 to P12 and MOs.1 to 6.

After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to incriminating circumstances appearing in prosecution evidence. He denied the offence. However, the accused did not adduce oral or documentary evidence in support of his plea.

After considering the oral and documentary evidence available on record, the trial Court, based on the evidence of PWs.1 to 4, supported by the medical evidence of PW.9, held that the accused alone is responsible for the death of the

deceased. Challenging the same, the present appeal came to be filed by the accused through legal aid.

Learned counsel appearing for the appellant mainly submits that, having regard to the discrepancies in evidence of PWs.1 and 2, a doubt would arise as to whether they have witnessed the incident which, according to the prosecution took place at 1.30 p.m. Relying upon the evidence of PWs.4 and 5, he would contend that, even accepting their evidence in toto, the case would not fall under Section 302 IPC, in the absence of any motive and intention to kill the deceased.

Learned Public Prosecutor appearing for the State would contend that the evidence of PWs.1 and 2 which remained unimpeached is sufficient to base a conviction.

As seen from the evidence on record, there is no motive to kill the deceased. The evidence of PW.3 show that accused and deceased were good friends. On the date of incident, the accused came to his house in a drunken state and requested for Rs.20/-. When PW.3 refused and left to Palemcheruvu, the accused followed him and requested for Rs.20/-. Thereafter the accused started asking the deceased to give liquor for Rs.10/- or Rs.20/-. The deceased reported that no arrack was available and accordingly both left to Kottalacheruvu for consuming arrack, while PW.3 returned back to his house.

From the evidence of PW.3, it is clear that both accused and deceased were in good terms and there was no motive for the accused to cause death of the deceased. The evidence of PW.3 discloses that, prior to the incident, the accused and deceased proceeded towards Kottalacheruvu for consuming arrack. What happened at Kottalacheruvu or till they were seen by PWs.1 and 2, there is no material on record. It is also to be noted that, at the time of accident, the accused was in a drunken state. In paragraph 5 of the judgment of the Trial Court, it was recorded that prior to the incident, the deceased abused and insulted the accused for his torture for money, beat him with hands for which accused grew wild, picked up a boulder and beat on his head. The said version which has been mentioned in the charge sheet finds place in column XV of the inquest report wherein it was mentioned that, on the date of incident, i.e. on 12.11.2009 at 12.30 hours, the deceased and accused quarrelled with each other and in that quarrel, the accused attacked the deceased with a boulder. It is not the case of the prosecution that the deceased was carrying stone along with him nor is it the case of prosecution that there was motive or intention to cause the death of the deceased.

Having regard to the above, which remain undisputed by the learned Public Prosecutor, it is clear that there was

quarrel prior to the incident which is evidenced from the inquest report. In the absence of any animosity between the two or motive or intention to kill, we feel that it is not a case of murder. However, it can be said that accused had knowledge that such an injury would cause death. As stated earlier, there was quarrel, and the deceased abused and insulted the accused and in a fit of anger the accused picked up boulder and beat on his head.

Hence, the conviction and sentence recorded by the Principal Sessions Judge, Kurnool, vide judgment dated 05.07.2011 in Sessions Case No.127 of 2011, against the appellant/accused of the offence punishable under Section 302 IPC is set aside, and he is acquitted of the offence charged with. But, he is convicted for the offence under Section 304 Part II IPC and sentenced to undergo imprisonment for a period of 7 years. It is said that the accused has been in jail from the date of judgment i.e.05.07.2011, hence the sentence of imprisonment is reduced to the period already undergone. The remaining part of the order of the trial court as to the imposition of fine and sentence in default thereof remain unaltered. The appellant/accused shall be set at liberty forthwith, if not required in any other crime.

Accordingly, the appeal is partly allowed.

Miscellaneous petitions pending, if any, shall stand closed.

C.PRAVEEN KUMAR,J

KONGARA VIJAYA LAKSHMI,J

Dt:06.11.2017
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