

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

CRIMINAL APPEAL No.297 OF 2012

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

Assailing the judgment dated 18.01.2012, passed in S.C.No.241 of 2012, on the file of the III Additional Sessions Judge (F.T.C), Khammam, wherein the sole accused was found guilty for an offence punishable under Section 302 IPC, the present Criminal Appeal is filed by the accused.

The evidence adduced by the prosecution unveils the following facts.

The deceased was the cousin of P.W.1. P.Ws.3 to 11 are the residents of Vallapuram Village. P.W.3 is the neighbour of the deceased. The accused and the deceased were known to each other as they were friends. About ten days prior to the date of incident, the deceased and the accused came to the shop of P.W.8 to purchase beef worth of Rs.100/- and at the instance of the deceased, P.W.8 gave beef on credit basis, on the assurance of the deceased that the accused would pay the bill amount in time. Though the accused was supposed to pay the amount to P.W.8, the evidence of P.W.1 discloses that no amount was paid to P.W.8. In that regard, a dispute arose between the accused and the deceased.

On 07.03.2011 night at about 8.30 p.m, the accused and the deceased came to the shop of P.W.7, purchased liquor, consumed the same and thereafter the deceased asked the accused to pay the

amount due by him. The accused refused to pay the same to the deceased. On that there was a verbal altercation between the deceased and the accused. Thereafter, the deceased left the place and then the accused followed him. However, the evidence of P.W.2, who was examined as eye witness to the incident, shows that at about 9.30 p.m., while she was washing clothes near the water tub in her house, saw the accused beating the deceased with sentring stick on his head and also heard the cry of the deceased as "amma". When the deceased fell down on the ground with injuries, the accused again beat the deceased with the same stick twice or thrice. When P.W.2 questioned the accused as to why he is beating the deceased, the accused gave reply saying that in what way P.W.2 is concerned in the said matter and left the scene of offence with the sentring stick in his hand. Immediately thereafter P.W.2 and her husband went to the scene of offence and found the deceased lying in a pool of blood. Then P.W.2 and her husband went to the house of P.W.3, who is residing in the opposite house, informed him about the incident. Thereafter, the husband of P.W.2 and P.W.3 went to one R.M.P Doctor Srinivasa Rao (P.W.5) of their village and brought him to the scene of offence. P.W.5 tested the pulse of the deceased and declared him dead. The said information was passed on to P.W.1, who is the relative of the deceased. On receiving the said information, P.W.1 along with others, went to the scene of offence, saw the dead body of the deceased and later lodged a report. On receipt of the said report, the Sub Inspector of Police, Mudigonda registered a case in Crime No.22 of 2011 under Section 302 IPC and submitted Ex.P.12 express FIRs to all the concerned. Thereafter, P.W.12, the S.I of Police rushed to the

scene of offence, which is situated at Vallapuram village, examined P.Ws.1 to 6 and recorded their statements. P.W.12 got the scene of offence photographed in the presence of P.W.6. Exs.P.2 to P.7 are the digital photos of the scene of offence. P.W.12 conducted the observation *panchanama* of the scene of offence and also seized M.Os.1, 5 and 6 under the cover of *panchanama*. Ex.P.8 is the *panchanama* of the scene of offence. He then conducted inquest over the dead body in the presence of same panchas at the scene of offence itself and seized M.O.2 under the cover of inquest report, Ex.P.9. Later, P.W.12 sent the body of the deceased for postmortem examination.

P.W.11, the Deputy Civil Surgeon at District Head Quarters Hospital, Khammam, conducted autopsy over the dead body of the deceased and issued Ex.P.11 the postmortem certificate. According to him, the cause of death was hemorrhagic shock due to injury to brain. P.W.12 continued with the investigation and on 15.3.2011 at about 12.00 noon, apprehended the accused at the house of his grand father G. Venkaiah at Vallapuram. Then he secured the panchas P.W.10 and others, got recorded the confession statement of the accused and seized M.O.3 major portion of sentry stick, which was produced by the accused before the panchas and the same was seized under the confessional-cum-seizure *panchanama*, Ex.P.10. M.O.3 contains blood stains. After completion of the investigation, he filed a charge sheet before the Court of the II Additional Judicial Magistrate of I Class, Khammam which was taken on file as PRC No.18 of 2011. On appearance of the accused, copies of documents were furnished to him as required under Section 207 Cr.P.C. and then committed the case

to the Court of Sessions, as the offence alleged against the accused is triable by the court of Sessions.

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

In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P13 and M.Os.1 to 6. 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 but did not choose to examine any witnesses on his behalf.

After considering the oral and documentary evidence on record, coupled with the medical evidence, the III Additional Sessions Judge (FTC), Khammam found the accused guilty for the offence punishable under Section 302 of IPC and sentenced him to imprisonment for life. Assailing the same, the present Criminal Appeal came to be filed.

Learned counsel for the appellant would submit that the entire case rests on the evidence of P.W.2. According to him in the absence of any corroboration from any quarter to the evidence of P.W.2, no credence can be given to her evidence. The evidence of P.W.2 would show that she was inside the house when the incident took place and as such could not have seen the incident. He further submits that even if the entire case of the prosecution is

taken in toto, no offence under Section 302 IPC is made out, as there was no motive for the accused to cause the death of the deceased. On the other hand, it is pleaded that the deceased stood as a mediator to the dispute between the accused and P.W.8 and there was no enmity between them.

Learned Public Prosecutor would contend that P.W.2 is a natural witness. Since the house of P.W.2 is situated very near to the place where the incident took place, her presence and witnessing the incident cannot be ruled out. In so far as the nature of the offence is concerned, learned Public Prosecutor would submit that the deceased and the accused appear to have been in a drunken state and the incident of beating have taken place after a quarrel between them.

As stated earlier, the arguments of the learned counsel for the appellant is that there is any amount of doubt with regard to P.W.2 witnessing the incident, in the absence of any supporting evidence. He further pleaded that when P.W.2 was inside the house and came out on hearing the cries, she could not have witnessed the incident. But, P.W.2 in her cross-examination admitted that after hearing the cries of the deceased she rushed to the scene and witnessed the accused beating the deceased. In so far as the presence of sentring stick at the scene of offence, P.W.12 the Inspector of Police speaks to the same. In the cross examination of this witness, it has been elicited that though he did not locate the street lights in the rough sketch but there were street lights. It was further elicited that the photographs of the scene of offence clearly show existence of electricity poles in the

scene of offence and that the street lights were blowing. To a suggestion that the poles are not visible, the same was denied. Further, the evidence on record clearly discloses that the incident took place in front of the house of P.W.2. Therefore, the argument of the learned counsel for the appellant that the presence of P.W.2 at the scene of offence is doubtful cannot be accepted. In fact, in the First Information Report and in the inquest, the name of P.W.2 was shown as an eye witness. In view of the above, we feel that the presence of P.W.2 at the scene of offence cannot be doubted.

Coming to the incident proper and the accused, P.W.7 in her evidence deposed that on the date of incident at 8.30 p.m., the deceased came to his shop, purchased liquor and after purchasing the liquor both of them consumed the same. Thereafter, there was a quarrel between them with regard to the amount due for purchase of beef when the accused refused to give the same to the deceased, the deceased left the shop. On the way the accused is said to have picked up a sentring stick and beat on the head of the deceased, consequent to which, the deceased fell down. The postmortem report indicates the presence of two injuries on the head of the deceased.

The evidence on record discloses that P.W.8 provided beef to the accused on an assurance given by the deceased that he would see that the accused would pay the beef amount in time. The record further discloses that the deceased himself paid the amount and was asking the accused to return the same. In that regard, a quarrel took place between the accused and the deceased. Subsequently on the date of incident, the accused beat the

deceased with a sentring stick, which was lying at the scene of offence. In view of the above circumstances, even accepting the case of the prosecution, it cannot be said that the offence of murder is made out.

Now the question for consideration is as to whether there was any motive for the accused to kill the deceased?

Admittedly, the incident in question was preceded by a quarrel and thereafter when the deceased left the shop of P.W.7, the accused in a drunken condition is said to have been killed the deceased by hitting on his head. When the accused and deceased together went to the shop of P.W.7 and consumed liquor without any dispute, it cannot be said that there was any animosity between them. In that view of the matter, we feel that the accused had no motive to kill the deceased. But there was quarrel after consumption of toddy which lead to the incident. In absence of any animosity motive or intention to kill and as the incident was just preceded by a quarrel, the act of the accused, would be one under the culpable homicide not amounting to murder, falling under Part-II of Section 304 IPC.

The Apex Court in **Santosh vs. State of Maharashtra**¹, while referring to its earlier judgment in **Kalu Ram vs. State of Rajasthan**², reiterated the principle that the element of inebriation, when it is present in a case, may be taken into consideration, as it considerably alters the power of thinking. It was further held that where the intention to kill is present, the act amounts to murder and where such intention is not present, the act amounts to

¹. 2015(7) SCC 641

² 2000 (10) SCC 324

culpable homicide not amounting to murder and that in order to determine whether the offender had an intention or not, each case must be decided on its own facts and circumstances.

In view of the judgments referred to above, and having regard to the manner in which the incident in question took place, we are of the opinion that the case of the appellant/accused falls squarely under Section 304 Part-II of IPC.

In the result, the Criminal Appeal is allowed in part by modifying the conviction from Section 302 of IPC to Section 304 Part II of IPC and the sentence of Imprisonment for life awarded by the III Additional Sessions Judge (F.T.C), Khammam, against the appellant/accused namely Sampasani Veerabhadram, in S.C.No.241 of 2011, by judgment dated 18.01.2012, is modified to that of imprisonment for a period of SEVEN (7) years for the offence punishable under Section 304 Part-II I.P.C, while maintaining the sentence of fine imposed against him. The period of sentence already undergone by him is directed to be set off.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

Date: 09.11.2017
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