

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.423 of 2012

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

1. Accused No.1 in Sessions Case No.399 of 2009 on the file of the Sessions Judge, Adilabad is the appellant herein. Originally, Accused Nos. 1 to 3 in Sessions Case No. 399 of 2009 came to be tried on two charges. The first charge is under Section 302 IPC for causing the death of one, Gadikopula Srinivas, and the second charge under Section 307 IPC for attempting to kill PW2-Pettam Chinnaiah. Vide judgment dated 28.10.2009, the Principal Sessions Judge convicted the A1 under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.500/-, in default simple imprisonment for a period of two months. He was also convicted for an offence punishable under Section 307 IPC and was sentenced to suffer imprisonment for ten years and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of two months. Both the sentences were directed to run concurrently. A2 and A3 were acquitted of both the charges.

2. The facts, as culled out from the evidence of the prosecution witnesses are as under:

A3 is the father of A1 and A2. The accused and the prosecution witnesses are residents of Itikyal village of Luxettipet Mandal, Adilabad district. PW1 is the father of the deceased, while PW3 is the wife of the deceased. PWs 2, 4 and 5 are the neighbours of the accused and the deceased.

3. The evidence on record discloses that the accused were living in front of the house of the deceased, and on the date of incident, at about 6 p.m., the she-buffalo of the deceased went and damaged the bean plants in the house of the accused. There was a scuffle between the family of the accused and deceased on this issue. The accused abused PW1 and the deceased in filthy language. When they questioned the accused on the road, A2 is said to have caught hold of the deceased, while A3 went inside the house, brought a knife and gave it to A1, who with the said knife, is said to have stabbed the deceased.

4. PW2, in her evidence, deposed that on the request of PW1, he went to bring the deceased from the said place and the accused is said to have stabbed PW2 on the right armpit and left elbow. Thereafter, both of them fell down, and were shifted to Government Hospital in an auto rickshaw.

5. The evidence of PW6 shows that on the date of incident, i.e., 29.12.2006, at around 6 p.m., in his auto. On coming to know about the incident at the house of the deceased, and on the

request made by one, G.Sathaiah, he shifted the deceased and PW2 in his auto to the Government Hospital at Luxettipet.

6. On the same day, i.e., 29.12.2006, at about 7.30 p.m., PW13-the Circle Inspector of Police, Vemulawada received a report from PW1. Basing on the said report, he registered a case in Crime No. 210 of 2006 under Section 302 IPC. Ex.P.10 is the original F.I.R. He then visited the scene of offence, conducted a panchanama of the scene of offence, which is marked as Ex.P6. He also drew a rough sketch of the scene of offence, which is placed on record as Ex.P11. During the said process, he seized blood stained clothes, blood stained earth and controlled earth from the scene of offence, vide M.Os 5 and 6, in the presence of PW8. Subsequently, in the presence of PW7, he conducted inquest over the dead body of the deceased. Ex.P4 is the inquest report. During inquest, he seized M.Os 1 to 3, and thereafter, sent the dead body for postmortem examination.

7. PW12-the Civil Assistant Surgeon, Luxettipet conducted autopsy over the body of the deceased on 30.12.2006 and issued Exhibit P9, the Post Mortem Report. According to him, the cause of death was due to circulatory and respiratory failure. PW12 also deposed that on 29.12.2006, he examined PW2 and issued Ex.P8-the medical certificate.

8. PW14-the Deputy Superintendent of Police, Kagaznagar continued with investigation. On 21.01.2007, he arrested A1 and A2 in the house of A1 and recorded their confession statement in

the presence of PW8. Ex.P5 is the relevant portion of the confession leading to seizure of knife-M.O2.

9. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.4 of 2010 on the file of Judicial Magistrate of First Class, Mancherial. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.399 of 2009 on the file of the Principal Sessions Judge, Adilabad. Basing on the material on record, a charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which they denied and claimed to be tried.

10. In support of their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P12 and M.Os.1 to 6. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

11. As the evidence of the prosecution witnesses establish the guilt of A1 beyond all reasonable doubt, the Court below convicted A1. Challenging the same, the present appeal came to be filed.

12. The learned counsel for the appellant mainly submits that even if the entire evidence of the prosecution witnesses is accepted to be true, no offence under Section 302 IPC is made out.

According to him, there was no animosity between the family of the deceased and accused, and that the incident occurred only when the she-buffalo of PW1 started eating the bean plants raised in the house of the accused. He further submits that having regard to the manner in which the incident took place, the offence with which the appellant is convicted, needs to be scaled down.

13. The learned Public Prosecutor fairly submits that there was a quarrel between the family of the accused and the deceased, and in the scuffle, the incident took place. According to him, when PW2 intervened at the instance of PW1, the accused caused injury to PW2 as well. He would further contend that at the most, the accused may get the benefit of scaling down of the offence, but, is not entitled to an acquittal.

14. The point that arises for consideration is: “whether the accused is responsible for the incident, and if so, for what offence?”

15. As seen from the record, PWs 1 to 4 were examined as eye witnesses to the incident. Out of the four witnesses examined, PW2 is an injured witness. None of the witnesses deposed about the existence of any animosity or enmity between the family of the accused and the deceased. On the other hand, the evidence on record shows that the family of the accused was living in front of the house of PW1. The entire incident occurred on 29.12.2006, when the she-buffalo of PW1 trespassed into the house of the accused and damaged the bean plants raised by them. Initially,

both PW1 and the deceased had a scuffle with the accused and in the course of the said scuffle, A3, who is the father of A1 and A2, brought a knife from inside the house and gave it to A1, pursuant to which, A1 inflicted a single injury on the left waist of the deceased. When PW2, who is the son of PW1, intervened, A1 stabbed PW2 also causing injuries on the right armpit and left elbow. Though all these witnesses were cross-examined, nothing useful was elicited to discredit their testimony. Hence, the evidence of PWs 1 to 3 can be relied upon to say that it was A1 alone who was responsible for causing the death of the deceased. But, however, the question is whether A1 can be convicted under Section 302 IPC.

16. As stated earlier, the incident happened when the she-buffalo of PW1 trespassed into the house of the accused and damaged their bean plants. Pursuant thereto, a scuffle took place and during the course of the scuffle, A3 is said to have given a knife to A1, pursuant to which A1 stabbed once on the waist of the deceased, leading to his death. None of the witnesses were suggested about existence of any previous animosity between the accused and deceased or there was any motive for the accused to attack the deceased. In the absence of any motive or any intention to cause death, and merely because the injury inflicted by A1 led to the death of the deceased, it cannot be said that A1 is liable for the offence of murder. Apart from that, it is also to be noted here that A1 was not in possession of any weapon during the scuffle between both the parties. It was A3 who went inside the

house and brought a knife and gave it to A1, which was used to cause injury to the deceased on a non-vital part, i.e., waist. Since the incident happened in the course of a quarrel between both parties, we are of the opinion that the accused never had any intention to cause bodily injury to the deceased leading to death. But it can be said that he must have had knowledge that such an injury may cause the death.

17. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ Accused No.1 in the judgment dated 28.10.2010, in Sessions Case No.399 of 2009 on the file of the Court of the Sessions Judge, Adilabad for the offences punishable under Sections 302 and 307, read with 34 I.P.C. is altered to one under Section 304 Part-II IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused shall be set at liberty forthwith on completion of seven years rigorous imprisonment, if not required in connection with any other case.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

05.12.2017
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