

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

**CRIMINAL APPEAL No.400 of 2011**

**Date : 23.09.2017**

Between :

Settibalija S.Sidha Gangappa .... Appellant-accused

and

The State of A.P.

... Respondent



**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**  
**AND**  
**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**  
**CRIMINAL APPEAL No.400 of 2011**

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

This Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure (for short 'Cr.P.C.') came to be filed by the appellant-sole accused questioning the conviction and sentence passed in Sessions Case No.437 of 2010 by the Additional Sessions Judge, Hindupur, vide judgment dated 15.02.2011 whereby and whereunder, the appellant was convicted under Section 235 (2) Cr.P.C. and sentenced to undergo imprisonment for Life for the offence punishable under Section 302 of Indian Penal Code (for short 'IPC') and rigorous imprisonment for seven years for the offence punishable under Section 307 IPC. Both the sentences were directed to run concurrently.

2) The case of the Prosecution, in brief, is as follows:

P.W.1 is the informant, P.W.2 is the relative of deceased Boya Narasamma @ Rajamma, P.W.3 is the injured-eye witness, P.W.4 is the father of P.W.1 and Founder of Veerananda Geethashram. The deceased, P.W.3, P.W.4 and accused were staying in a Ashram. Accused used to come to the Ashram in a drunken condition. In this regard, the deceased, PWs 3 and 4 used to chastise the accused and warned him that if he continues to take alcohol in the Ashram, he will be sent away from the Ashram. As such, the accused bore grudge on them. On 05.05.2010 at about 10.00 p.m., the accused armed with an iron pipe, beat on the head of the deceased, which resulted in his death

on the spot. The accused also beat PWs 3 and 4 due to which they sustained grievous injuries. PWs 3 and 4 were initially shifted to Government Hospital, Hindupur, and from there to Higher Centre, Bangalore, for better treatment. Basing on the report given by P.W.1, LW.17 registered a case in Crime No.29 of 2010 for the offence punishable under Section 302 IPC and issued Ex.P.8-FIR.

3) P.W.11, the Inspector of Police took up further investigation and visited scene of offence. On 06.05.2010 at about 6.15 a.m., he proceeded to Ashram, held inquest over the dead body of the deceased under Ex.P-2 Inquest Panchanama and later sent the dead body for Post Mortem Examination. P.W.8, the Civil Assistant Surgeon at District Hospital, Hindupur, conducted autopsy over the dead body of the deceased. Ex.P.3 is the Post Mortem Report. According to him, the cause of death was due to injuries on the vital parts of the body with an iron pipe. On 11.05.2010, PW-11 arrested the accused at Sri Lakshmi Narasimha Swamy Temple situated at Tekulodu Forest. The accused confessed about the commission of offence in the presence of P.W.9, under Ex.P-4. Pursuant to the statement made by the accused under Section 27 of the Evidence Act, MOs 1 and 2 were recovered from Lepakshi, under cover of Ex.P.5-Seizure Mazhar. After receiving the FSL report, a charge sheet came to be filed for the offences punishable under Sections 302, 307 and 326 of IPC.

4) The case was taken on file as P.R.C. No.45 of 2010 by the Judicial First Class Magistrate, Hindupur. On committal, the same came to be numbered as S.C.No.437 of 2010. On appearance, copies of the documents were furnished to the

accused as contemplated under Section 207 Cr.P.C. Thereafter, charges under Sections 302, 307 and 326 IPC came to be framed against the accused, to which he denied and claimed for trial.

5) In order to prove the guilt of the accused, Prosecution got examined PWs 1 to 11 and got marked Exs.P.1 to P.11 apart from marking MOs 1 and 2. After closure of Prosecution evidence, the accused was examined under Section 313 Cr.P.C. wherein he denied the incriminating evidence appearing against him. Accused did not choose to adduce any evidence on his behalf. After hearing the arguments and on appreciation of the entire evidence, the learned Session Judge convicted the accused as referred to above.

6) Heard the learned counsel for the appellant and the learned Public Prosecutor for the State.

7) The learned counsel for the appellant would submit that no reliance can be placed on the evidence of PWs 1 to 4, as they are all interested witnesses. According to him, due to earlier disputes in the Ashram, where an objection was raised with regard to accused coming to Ashram in drunken condition, he was falsely implicated in the case. He further submits that though there are number of persons available in the Ashram, the Prosecution failed to examine any of the independent witnesses. He further submits that even accepting the case of the prosecution to be true, no offence under Section 302 IPC is made out. It is his case that since the incident happened in a spur of moment, the case of the accused would fall under the exceptions.

8) The same is opposed by the learned Public Prosecutor contending that the argument of the learned counsel for the appellant that incident was preceded by a quarrel is false.

According to him, the evidence of PWs 3 and 4 nowhere indicates any quarrel before the incident. In view of the evidence of the injured eye witnesses, whose presence in the Ashram is not in dispute, learned PP would submit that their evidence is sufficient to base a conviction.

9) In order to appreciate the same, it would be useful to refer to the evidence of PWs 3 and 4, who are the injured eye witnesses to the incident. Admittedly, the accused and PWs 1 to 3 were living in the Ashram. It is also not in dispute that on earlier occasions, quarrels took place between them as the accused was consuming alcohol in Ashram. The fact that it was a case of homicidal death stands established through the evidence of P.W.8. The evidence of PW.3 would show that the accused used to take alcohol in Ashram, which was objected to by the inmates including the deceased, who warned him on one occasion. Because of that, the accused bore grudge against PWs 3 and 4 and the deceased. It was further deposed that in view of the above, the accused beat the deceased with an iron rod, which resulted in his death on the spot. In that process, the accused also caused injuries to PWs 3 and 4. The evidence of PW.3 further discloses that immediately after the incident, herself and P.W.4 were taken to Government Hospital, Hindupur, and from there to NIMHANS Hospital, Bangalore, for better treatment. Though PW.3 was subjected to cross examination, nothing useful was elicited to discredit her testimony. All the suggestions put to her were denied and no contra evidence was produced to prove the suggestions made.

10) PW-4 is the father of P.W.1 and brother of P.W.3. According to him, on the incident of incident at about 10.00 p.m.

the accused beat the deceased with an iron pipe. His evidence also discloses that when they objected to taking alcohol in the Ashram, the accused beat the deceased with an iron pipe causing instantaneous death and also bleeding injuries to himself and P.W.3. His evidence also shows that he received injuries on the right shoulder when the accused beat him with an iron pipe. He further deposed that immediately after the incident, he was shifted to Government Hospital, Hindupur, and from there to NIMHANS, Bangalore, for better treatment. Though PW-4 was cross-examined, nothing useful was elicited to discredit his testimony except suggesting that he has no good eye vision because of his old age and as such he has not seen the actual incident, which was denied.

11) The evidence of these two witnesses, more particularly the injuries received by them and the treatment taken by them in hospitals at Hindupur and Bangalore, would clearly establish their presence in the Ashram at the time of incident. No contra evidence is putforth by the accused to disprove the presence of these witnesses at the time of the incident in the Ashram.

12) At this stage, the learned counsel for the appellant would submit that even accepting the evidence on record to be true, no offence under Section 302 IPC is not made out. According to him, a quarrel took place prior to the incident, which led to accused giving a blow on the deceased, causing instantaneous death. Hence, pleads that the acts of the accused would fall under Section 304 Part-I IPC, but definitely not under Section 302 IPC.

13) In support of his contention, he relied upon the decision of the Apex Court in ***Devendra Nath Srivastava v. State of U.P.***<sup>1</sup>. It was a case where the appellant was a drunkard and the actual incident was preceded by a quarrel between the accused and the deceased. Under those circumstances, the Apex Court convicted the accused under Section 304(I), though there were number of injuries on the body of the deceased. But the situation on hand is different. In the instant case, the evidence on record nowhere establishes any quarrel between the deceased and accused or the accused and PWs 3 and 4 immediately prior to the incident. It may be true that there were some quarrels earlier between the accused and inmates of the Ashram including deceased, PWs 2 and 3, when the accused was visiting the Ashram in drunken state, but, past quarrels cannot form the basis to say that the incident happened due to sudden provocation or in a spur of moment, so as to fall under the exceptions.

14) As narrated above, the evidence of PWs 3 and 4 clearly establish that because of the earlier disputes, the accused developed a motive to kill the deceased, PWs 3 and 4. Hence, on the fateful day he caused the death of the deceased and injuries to PWs 3 and 4. In fact, the blow given by the accused was such that the death of the deceased was instantaneous and even PWs 3 and 4 were forced to take treatment at NIMHAMS Hospital, Bangalore, having regard to the nature of injuries sustained by them on the head and other parts of the body.

15) Under those circumstances, though there was only one single injury caused by the accused on the deceased and PWs 3

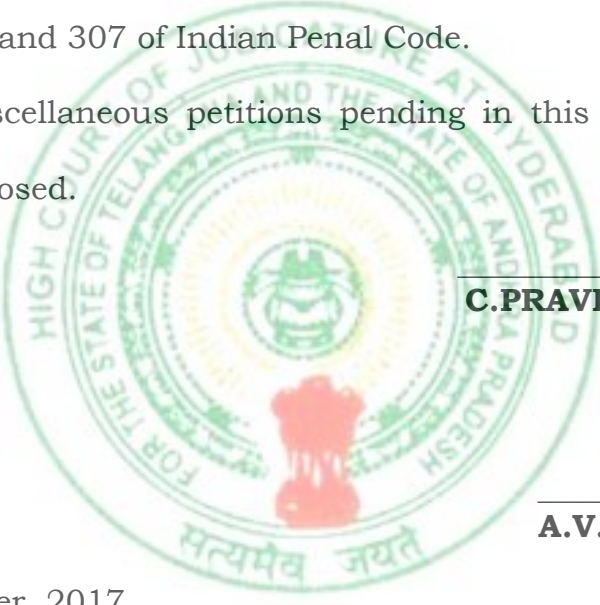
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<sup>1</sup> 2017 (2) Crimes 144 (SC)

and 4, but having regard to the nature of weapon used by the accused and the place where the blows were given by the accused leading to instantaneous death of the deceased, this Court is of the view that it is a fit case where the conviction rendered by the trial Court for the offences punishable under Sections 302 and 307 IPC warrants no interference.

16) Accordingly, the Criminal Appeal is dismissed, confirming the conviction and sentence passed by the Additional Sessions Judge, Hindupur, in Sessions Case No.437 of 2010 vide judgment dated 15.02.2011, for the offences punishable under Sections 302 and 307 of Indian Penal Code.

17) Miscellaneous petitions pending in this appeal, if any, shall stand closed.



**C.PRAVEEN KUMAR, J**

**A.V. SESA SAI, J**

23<sup>rd</sup> September, 2017  
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