

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.863 of 2012

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

The sole accused in Sessions Case No.197 of 2011, on the file of the Additional Sessions Judge, Hindupur, is the appellant. He was tried for the following charges:

(i) Section 302 IPC for causing death of one Edagottu Gangaiah on 09.10.2010 after 09.00 a.m.

(ii) Section 307 IPC for causing bleeding injuries to one Gogula Rajesh with sickle during the course of said incident.

Vide judgment dated 27.06.2012, the Sessions Judge, convicted the accused and sentenced him to suffer imprisonment for life and also to pay fine of Rs.2,000/-, with default clause, for the offence punishable under Section 302 IPC and to undergo rigorous imprisonment, for a period of five years and to pay fine of Rs.1,000/-, with default clause, for the offence punishable under Section 307 of IPC. MOs.1 to 9 were directed to be destroyed after the expiry of appeal time.

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

(i) The deceased is the grandfather of PW1, while the accused is his uncle. PW2, the brother of PW1, married the daughter of the accused. PW3 is the second wife of the deceased and PWs.1 and 2 are her grand sons. PW4 is the relative to the deceased, while the accused is brother-in-law of

PW5. PW6 is the son of PW4 and deceased is the senior paternal uncle to PW6. From the narration of the relationship, it is clear that both the parties are very closely related to each other. It is also clear that the accused is none other than the son of the deceased through his first wife.

(ii) The evidence of prosecution witnesses reveals that the deceased was having two wives namely Rangamma and Narayanamma. The second wife and the deceased were having three daughters namely Ramulamma, Lakshmidevi and Saraswathi, whereas, the first wife and the deceased was having a son, who is the accused and one daughter by name Gangoji. The deceased was having 8 acres of land at Vaddipalli village, wherein mango trees were planted. The accused was having two daughters by name Vani and Veena. The evidence on record further shows that there were some disputes between the accused and the deceased and the accused was demanding the deceased, his share in the property, failing which he threatened the deceased with dire consequences. It is stated that one Ramakrishnaiah and Bathala Narayanaswamy of Vaddepalli village, who acted as elder persons in the panchayath, advised to settle their property dispute by giving the daughter of the accused to PW2, and accordingly, marriage of the daughter of the accused was performed with PW2. On the date of incident i.e., on 09.10.2010, while PWs.1, 2 and deceased were attending their agricultural operations in the fields, the accused came there armed with sickle and picked up a quarrel with the deceased, demanding his share in the property. The accused insisted the deceased to register the land in favour of the daughter of the accused. On noticing the quarrel, PW2 went towards them and intervened in the said quarrel, on which the accused hacked him on his right hand and head, causing bleeding injuries. On seeing the same, the deceased tried to rescue PW2. At that point of time, the accused is said to have hacked the deceased with sickle, on his

right hand, which got dislocated upto the wrist, head and other parts of his body. PW2, in his evidence, deposed that the accused hacked the deceased around 9 or 10 occasions/ times, causing bleeding injuries resulting in his death. On seeing the incident, the neighbours gathered there and the accused threatened them showing the sickle. Thereafter, the accused is said to have chased PWs.1 and 2 with sickle, but they escaped from the hands of the deceased. Later, the accused also left the scene, along with the sickle. Pursuant to the information given, 108 Ambulance came to the scene of offence and took the injured to the Government Hospital, Kadiri. On the same day, at about 11.45 a.m., PW12 the A.S.I., Mudigubba Police Station (the then Head Constable), received information from Talupula Police Station, about the admission of one G.Rajesh Kumar (PW2) in Government Hospital, Kadiri, with serious injuries. In the meantime, he also received admission intimation from the hospital, which is placed on record as Ex.P7. Pursuant thereto, PW12 proceeded to the Government hospital at 12.00 noon and recorded the statement of the injured (PW2). Ex.P1 is the statement recorded by PW12. Basing on the said statement, a case in Crime No.79 of 2010, came to be registered for the offences punishable under Sections 307 and 302 IPC. Ex.P8 is the original FIR. Further investigation in the matter was handed over to the Circle Inspector, Kadiri Police Station. On the same day at about 01.30 p.m., while PW13 the Inspector of Police, Kadiri Rural Circle, was present in the police station, he received information from PW12, about the registration of a crime and issuance of an FIR. Immediately, he proceeded to the scene, found PW12 at the scene of offence and noticed the dead body of the deceased. Thereafter, in the presence of PWs.8, 10 and LW15, he conducted inquest over the dead body between 03.15 p.m., to 05.30 p.m. During inquest, he examined PWs.1, 3, 4 and one Doddappa. Ex.P4 is the

inquest report. Subsequently, he prepared a panchanama of the scene and a rough sketch, which is placed on record as Ex.P9, and got photographed the scene of offence. Exs.P10 to P12 are the bunch of photographs. After complying with the proceedings, the dead body was sent for post mortem examination to the Government Hosptial, Kadiri, for conducting autopsy. PW9 the Civil Assistant Surgeon, Government Area Hospital, Kadiri, conducted autopsy over the body and issued Ex.P5 the post mortem report. According to him, the cause of death was due to "hemorrhage shock due to ante-mortem in nature head injury, possible due to a sharp object". PW13 proceeded to the Government hospital, Anantapur and recorded the statement of PW2 under Section 161 Cr.P.C. On 13.10.2010, at about 10.45 a.m., while PW13 was in police station, Talupula, he received information regarding the accused. He along with the panchayathdars and his staff went to Peddannavaripalli Bus Stop and found the accused. Accordingly he was apprehended in the presence of PW7. Ex.P13 is the arrest mahazarnama. Thereafter, the accused is alleged to have confessed about commission of offence and also shown the police the place where he kept the sickle, which was used for commission of offence. MO.1 is the sickle, MOs.8 and 9 the blood stained clothes were seized under Ex.P3. After receiving RFSL report, a charge sheet came to be filed against the accused, which was taken as PRC No.28 of 2011, on the file of Additional Judicial Magistrate of First Class, Kadiri.

iii) On appearance of the accused, copies of documents were furnished to the accused, as contemplated under Section 207 of Cr.P.C. and on committal to the Court of Sessions, the case came to be numbered as S.C.No.197 of 2011. On appearance, charges came to be framed against the accused for the offences punishable under Sections 302 and 307 of IPC,

which were read over and explained to the accused, to which he denied and claimed to be tried.

iv) To substantiate their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P15 and M.Os.1 to 9, Exs.D1 to D3 came to be marked for defence. 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.

v) No oral or documentary evidence was adduced on behalf by the accused in support of his defence.

vi) Relying upon the evidence of PWs.1 to 4, coupled with the evidence of the doctor, the trial Court convicted the accused and sentenced him in the manner referred to above. Challenging the same, the present appeal came to be filed, through legal aid counsel.

3. Learned counsel for the appellant mainly submits that there is absolutely no motive or intention on the part of the accused to cause death of the deceased. According to her, the accused has been falsely implicated in the case by PWs.1, 2 and 3, so as to grab the entire property. It is her case that when PW2 married the daughter of the accused, there is no reason for him to attack PW2, who is the son-in-law of the accused. She would further contend that non examination of the daughter of the accused throws any amount of doubt on the entire prosecution case. In other words, it is urged that if the daughter of the accused was examined, truth would have come out. On the other hand, learned public prosecutor would submit that there is no reason to disbelieve the evidence of PW.2, the injured eye witness. It is urged by the public prosecutor that the evidence

of PW2 and also the evidence of the doctor gets corroborated on several aspects.

4. In view of the rival submissions made, the question that arises for consideration is whether the accused was responsible for the incident and if so, for what offences?

5. In order to appreciate the same, it would be necessary to refer to the evidence of PWs.1 to 4. Before referring to the evidence of witnesses, it is to be noted that there is no dispute with regard to the relationship between the parties, as referred to earlier, and also with regard to the cause of death of the deceased and also the death being homicidal death. It is also not in dispute that all the witnesses in one voice spoke about the existence of property disputes between the family of the deceased and accused. A panchayath came to be conducted, wherein, the elders advised for a marriage between the daughter of the accused and PW2, to settle the dispute. Accordingly, the marriage was also performed. But inspite of the same, disputes over the property continued between the accused and the deceased. The facts, to the extent referred to above, are not disputed as the version of the witnesses is consistent in this regard.

6. Coming to the incident proper, PW1, in his evidence, deposed that on the date of incident at about 09.00 a.m., while himself, PW2, Lakshmidevi (PW4) and LW9 were going to attend agricultural operations in the fields, the accused came there, armed with sickle and started making galata with the deceased, who is the father of the accused. When PW2 questioned the accused as to why he was making galata, the accused became angry and hacked PW2 on his right hand and head causing bleeding injuries. On seeing the same, the deceased went to the rescue of PW2. At that point of time, the accused hacked the deceased on his head and also on other parts

of the body indiscriminately resulting in injuries, due to which, the deceased fell down and died on the spot. Though PW1 was cross examined at length, the main thrust of the cross examination appears to be that the appellant has been causing serious injuries because of the disputes between the family. The suggestions given to PW1, mainly relate to the misbehaviour of PW2 with Vani, the daughter of the accused, two days prior to the alleged incident and the deceased chastising PW2 in that regard, which came to be denied. It was also suggested to PW1, that the incident in question took place at about 06.00 a.m. or 07.00 a.m., but not at 09.00 a.m., as deposed by him, which was also came to be denied. The suggestion given to PW1 that he did not state before the police that on seeing PW2, the deceased went to the rescue of PW2 and the accused hacked the deceased with the same sickle, was denied. It was elicited in the cross examination of PW1 that the accused hacked PW2 on his head, right hand and right wrist, three times. It was further elicited in the cross examination that except these three injuries, PW2 did not sustain any injuries. It was further elicited that the accused hacked the deceased indiscriminately with the sickle on the body. As stated earlier, the argument of the learned counsel for the appellant is that an adverse inference has to be drawn for non-examination of Vani, who is the daughter of the accused. PW1, in his cross examination, admits that Vani, who is wife of PW2, left the village after the incident. It was further elicited by PW2 that the Vani did not witness the alleged incident, as she was at the house, at the time of alleged incident. To a suggestion that Vani rushed to the house and informed PW1 and PW3 that his grand father sustained injuries and fell down in the fields, was denied.

7. From the above, it is clear that though PW1 was subjected to lengthy cross examination, nothing useful was elicited to discredit his testimony.

The contradictory statement of commission of offence, which was sought to be elicited through the investigating officer, relates to the fact that on seeing the accused hacking PW2, the deceased went to the rescue of PW2 and then the accused hacked the deceased with the same sickle. It is to be noted that the witnesses in the chief examination stated the very same version. A reading of statements under Section 161 Cr.P.C., coupled with the questions put to investigating officer, would show that stress was on the word 'seeing'. Hence, we are of the view that the same is of not much significance.

8. Coming to the evidence of PW2, who is an injured eye witness to the incident, his evidence appears to be on same line as that of PW1. In his evidence, he categorically deposed that the accused came to the scene of offence armed with a sickle, picked up quarrel with the deceased and demanded the deceased to write a document in favour of Vani, who is the daughter of the accused. On noticing the same, PW2 went there and the accused hacked PW2 with a sickle on the right head, causing bleeding injuries. When the deceased intervened, the accused also hacked the deceased with the same sickle on his right hand, right wrist and head. Though the witnesses in his chief examination deposed that the accused hacked PW2, nine or ten occasions/times, the fact of hacking the deceased for 9 or ten times was not mentioned in the earlier statement. That by itself cannot be a circumstance to throw out the case, as it does not go to the root of the matter. PW2 was also subjected to lengthy cross examination, suggesting the nature of dispute, the extent of land, etc. Further, it was elicited through PW2 that firstly the accused hacked PW2 with a sickle, and when the neighbours namely Tirupathaiah, Sathyanarayana, Doddappa and others came to their rescue, the accused threatened them with dire consequences. The suggestion given to PW2,

that the accused has been falsely implicated in the case, because of earlier disputes, was denied. The suggestions given to PW2 remained as suggestions without any contrary evidence on record.

9. The evidence of PW3 would show that on the date of incident, at about 09.00 a.m., PWs.1, 2 and deceased went to the fields for plucking groundnut crop. She was informed about the accused hacking her husband with sickle and also causing injuries to PW2. She is not an eye witness to the incident. But, however, in the cross examination, it was suggested to her about the existence of disputes between both the families.

10. PW.4, who was also examined as an eye witness to the incident, deposed that on the date of incident, while PWs.1, 2 and others were present, PW2 went to the rescue of his grand father. At that point of time, the accused hacked PW2 on four or five times on his body, resulting in bleeding injuries. When the deceased came to the rescue of PW2, he was also beaten with the same sickle on various parts of the body. The discrepancy in the evidence of PW4, which is sought to be pointed out, is with regard to number of times the accused is said to have hacked PW2. However, we are of the view that the same do not go to the root of the matter. To a suggestion as to whether the incident took place between the accused and the deceased, because of Vani, was denied by her. To a suggestion that the daughter of the accused was also present along with the deceased and PW2 in the fields, was denied.

11. Similar is the version of PW5, who in his evidence spoke about the earlier disputes between the parties and also about the incident in question on the said day.

12. From the evidence of these witnesses, it is clear that there existed disputes between both the parties over the property and that both the

parties are related to each other. As seen from the evidence on record, immediately after the incident, PW2, the injured witness, was taken to the hospital. After his admission, intimation about the same was sent to the police. The said intimation is placed on record as Ex.P7. Basing on the said intimation, PW12 proceeded to the hospital and recorded the statement of PW2, which came to be registered as FIR.

13. As stated earlier, the incident in question is said to have taken place at about 09.00 a.m., and the intimation was sent by 11.45 a.m. Further, the evidence of PW11, the doctor, who treated PW2, in Government Hospital, Kadiri, would show that at about 11.45 a.m., he noticed three injuries on the body of PW2. The first injury was on the right arm, second on the right wrist and the third injury was on the scalp near the occipital region.

14. Therefore, from the evidence of the investigating officer, coupled with the evidence of PW2 and PW11, the presence of PW2, at the scene of offence and receiving injuries, cannot be doubted with. Hence, the presence of PW2 in the scene of offence stands established. The only discrepancy which is sought to be pointed in the evidence of PW2 is with regard to number of times, the deceased was attacked by the accused. The fact remains that PW9, the doctor, who conducted post mortem examination of the deceased, noticed seven injuries on the body. Injuries 1 and 5 were said to be fatal in nature, which lead to instantaneous death. It may be true that injuries caused by the accused lead to instantaneous death of the deceased, but the circumstances under which the said incident has occurred also requires to be considered. PWs.1 to 5, in one voice, deposed about the existence of disputes between the parties and because of the said dispute, on the date of incident, the accused is said to have gone to the fields, where PWs. 1, 2 and the deceased along with others were

doing agricultural operations. There a galata took place, in which, he insisted the deceased to execute a document in favour of his daughter. On seeing the same, PW2 tried to obstruct the accused on which the accused caused injuries to PW2 and thereafter when the deceased tried to rescue PW2, the accused hacked the deceased resulting in his death.

15. From the above circumstances, it is clear that there were some disputes between the accused and the deceased over the share of the property and when PW2 went to question the accused, the accused gave him blows. When the deceased tried to rescue PW2, the accused hacked the deceased. Out of the seven injuries, five were on non-vital parts of the deceased.

16. Having regard to the manner in which the incident took place; in view of the evidence of PW2, whose presence at the scene stands established, and in view of the injuries received at the time of incident, we feel there was no intention or motive for the accused to cause death of the deceased. But however, it can be said he had the knowledge that the said injuries are likely to cause death.

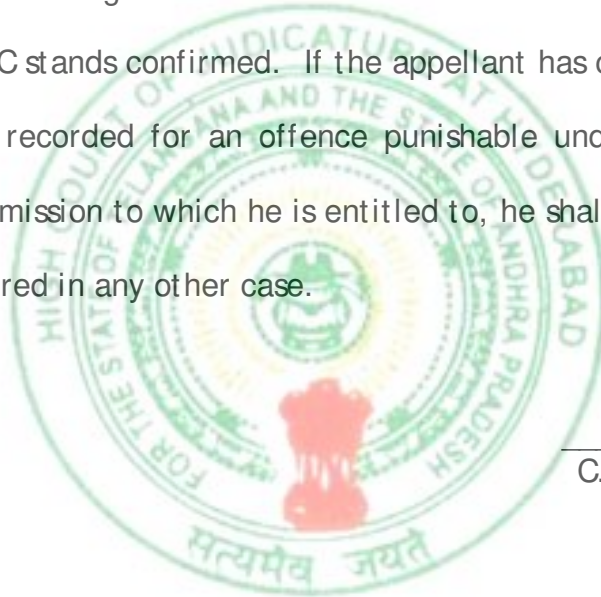
17. In *Yomeshbhai Pranshankar Bhatt Vs. State of Gujarat*¹, the Apex Court held as under:

“When accused had no pre-meditation to kill deceased or cause any bodily harm or injury to deceased, everything happened on spur of moment, possibility of accused losing self control on some provocative utterances of deceased cannot be ruled out and in such case the accused is liable to be convicted under Sec.304 Part II instead of Section 302 of IPC.”

¹ 2011(2) ALD (Cri.) 238 (SC)

18. In view of the judgment referred to above and taking into consideration the facts and circumstances in which the incident in question took place, nature of offence is scaled down from Section 302 to 304 Part II.

19. In the result, the Criminal appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.197 of 2011 on the file of the Additional Sessions Judge, Hindupur, for an offence punishable under Section 302 IPC is altered to one under Section 304-II IPC. The sentence of imprisonment recorded for an offence under Section 302 IPC is reduced to the period already undergone. The conviction and sentence recorded against the accused for an offence punishable under Section 307 IPC stands confirmed. If the appellant has completed five years imprisonment recorded for an offence punishable under Section 307 IPC, after giving remission to which he is entitled to, he shall be set at liberty, if he is not required in any other case.



C. PRAVEEN KUMAR, J

N. BALAYOGI, J

18.12.2017
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