

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.1120 of 2011

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

1. The sole accused in Sessions Case No. 313 of 2011 on the file of the IV Additional District Sessions Judge (Fast Track Court), Mahabubnagar is the appellant. He filed the Criminal Appeal against judgment dated 01.08.2011, whereby he was tried under Section 302 IPC for causing the death of his father, Laxmaiah.

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

The accused is the son of the deceased and PW2 is the mother of the accused and wife of the deceased. PW3 is another son of the deceased and PW2. The deceased is the paternal uncle of PW4. All of them are residents of Janampet village. The eldest son of the deceased and PW2, by name Raju, was quarrelling with the accused for the sake of coolie amount in the house of PW2 and the deceased on 08.11.2010 at about 7.45 P.M. in S.C. Colony, Janampet village. PW2, who is the mother of the accused and the said Raju advised both of them not to quarrel with each other. She also interfered with their quarrel and at that point of time, the deceased, i.e., husband of PW2 came there and hit PW2 with a

stick, questioning her as to why she has interfered with the dispute between their sons. As PW2 sustained injuries because of the blow given by the deceased, the accused picked up the axe which was lying on the ground and beat the husband of PW2 (deceased) with the said axe. Due to the said blow, the deceased received grievous injuries and died on the spot. Thereafter, the villagers gathered there. Due to fear, the accused is said to have left the house. The evidence of PW2 also discloses that at the time the accused beat the deceased, her another son, Raju with whom the accused was quarrelling, was not there in the house. The incident of attack was said to have been witnessed by PW4 as well.

3. On 08.11.2010, at about 7.45 P.M. or 8 P.M., when PW1, who is the Village Revenue Officer of Janampet village was present in his office, he was informed about the quarrel at the house of the deceased. Then, himself and one, Narayana proceeded to the house of the deceased and noticed the body of the deceased lying at the back side of the house. PW1 noticed an injury on the face and also on the chest of the deceased. He then proceeded to the police station at 11.30 P.M and lodged a report with PW7, the Sub Inspector of Police. Exhibit P1 is the report. Basing on the said report, a case in Crime No. 167 of 2010 came to be registered under Section 302 IPC. Exhibit P5 is the First Information Report (FIR) sent to the Court. On the same day night, PW7 visited the scene of offence, which is situated on the road in front of the S.C. Colony and found the body of the deceased. He recorded the statement of PW1 and informed the incident to the Inspector of

Police, PW9. On 09.11.2010, PW9 conducted investigation and proceeded to the Government Hospital, Mahabubnagar and in the presence of two mediators, conducted inquest of the body of the deceased. Exhibit P3 is the inquest report. During inquest, he examined PWs 1 to 4 and recorded their statements. He also seized the blood-stained clothes of the deceased. Thereafter, he gave a requisition to the medical officer to conduct autopsy for the body of the deceased.

4. PW8, the Civil Assistant Surgeon, Primary Health Centre, Hanwada conducted autopsy on the body of the deceased and issued Exhibit P6, the Post Mortem Report. According to it, the cause of death is due to Cardio Respiratory arrest due to Hypovolemic shock and due to blood loss due to injuries.

5. PW9 continued his investigation and proceeded to the scene of offence and prepared a draft sketch and also panchanama of the scene in the presence of PWs. On 24.11.2010, he apprehended the accused at Janampet village and recorded his confession statement. Pursuant to the confession, M.O.1, 'axe' was recovered in the outskirts of Janampet village in the presence of PW6 and LW12. He also sent the clothes, controlled earth and blood for medical examination. Exhibit P7 is the F.S.L. Report. After completing examination, he filed charge sheet, which was taken as PRC No. 20 of 2011 on the file of the Judicial First Class Magistrate at Mahabubnagar. On appearance of the accused, all the documents as required under Section 207 Cr.P.C were

furnished and the case came to be tried in the Sessions Court as Sessions Case No. 313 of 2011. Basing on the material available on record, the charge under Section 302 IPC was framed and read over and explained to the accused, to which he pleaded 'not guilty' and claimed to be tried.

6. In support of its case, the prosecution examined PWs 1 to 9 and got documents marked as Exhibits – P1 to P7. On the completion of prosecution evidence, the incriminating material appearing against the accused through the prosecution witnesses was put to him under Section 313 Cr.P.C. examination, to which he denied. But, he did not adduce any oral or documentary evidence in support of his defence. Basing on the evidence of the eye witnesses, which gets corroboration from the medical report, the Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer imprisonment. Challenging the said conviction and sentence, the present appeal came to be filed.

7. The learned counsel for the Appellant submits that there are number of discrepancies in the evidence of PWs 2 to 4 with regard to the manner in which the incident occurred. According to him, though the quarrel was between the accused and Raju, and immediately thereafter, the incident took place, the prosecution failed to examine the said Raju, who would have been the crucial witness to speak to the incident. However, he would submit that even if the entire case of the prosecution is accepted to be true, no offence punishable under Section 302 is made out.

8. On the other hand, the Public Prosecutor countered the same stating that having regard to the nature of the injuries on the body of the deceased, it cannot be said that the accused had no intention to cause the death of the deceased. Insofar as the incident in question is concerned, he would submit that the evidence of PWs 2, 3 and 4, which are consistent with each other, are sufficient to base the conviction.

9. The question that falls for consideration is:

“whether the accused has committed the offence and if he has committed the offence, whether it would be punishable under Section 302 IPC.”

10. As seen from the record, PWs 2, 3 and 4 were examined as eye witnesses to the offence. PW2 is the wife of the deceased and the mother of the accused and in her evidence, she stated that there was a quarrel between the accused and Raju on 08.11.2010 at 7.45 P.M. and while they were quarrelling, she intervened and asked them not to quarrel with each other. At that point of time, her husband, the deceased herein, entered the house and hit PW2 with a stick, questioning her as to why she was interfering in the quarrel. On seeing the said incident and also the injuries on his mother, the accused picked up an axe and hit the deceased, which led to his death. The said incident is spoken to by PWs 2 to 4. In the cross-examination of the witnesses, it has been elicited that the deceased as well as the accused were in drunken condition at the time of the incident, and even the said Raju with whom the

accused had a quarrel just prior to the incident, was also in drunken condition. The suggestion put to the witness PW2 mainly relates to the facts that at the time of the incident, other inmates of the house were not present and that the husband of PW2 used to quarrel with the neighbours and other villagers, which facts were denied by PW2. It was also suggested that there were disputes with other villagers leading to the present incident, and the same was denied. To a suggestion that some of the villagers beat the deceased on that day in the darkness and that the accused hacked the deceased, was also denied.

11. Coming to the evidence of PW3 in the cross-examination, it was suggested to him that the deceased used to quarrel with villagers in a drunken condition and that the accused hit the deceased, and the same was denied. But, however, PW3 admits that the accused and Raju were quarrelling with each other and both were in drunken condition, during which period PW2 intervened. However, he admits that at the time of quarrel, he went to attend to calls of nature near the village and even after return from the village, the accused and Raju were still quarrelling with each other. He further submits that on the date of the incident itself, the accused and Raju were taken to the police station. He further submits that the deceased was not in the habit of beating PW2. From this suggestion, the accused wanted to prove that PW3 has not seen the incident and that the accused was not responsible for the incident. Same such suggestions came to be suggested to PW2. But, however, PW3 admits that when the

accused attacked the deceased, the other inmates were not there in the house and they came immediately after the incident. The neighbours came to the scene of offence about 10 to 15 minutes after the incident. To his suggestion that some of the villagers hacked the deceased, was denied by PW4. He also denied the suggestion that he has spoken false at the instance of PW2 to save Raju. The suggestion that he has not witnessed the incident is also denied by PW3.

12. Coming to the evidence of PW4 in the cross-examination, it was suggested to him that he quarreled with the deceased and that the deceased was in a drunken state on the date of the incident, and the same was denied. But, however, PW4 admits that when the accused hacked his father, i.e., the deceased, the other inmates were not there in the house and they came immediately after the incident. The neighbours came to the scene of offence about 10 to 15 minutes after the incident. To his suggestion that some of the villagers hacked the deceased, was denied by PW4. He also denied the suggestion that he has spoken false at the instance of PW2 to save Raju. The suggestion that he has not witnessed the incident is also denied by PW4.

13. From the evidence of these three witnesses, it may be true that at the time of the incident, the villagers were not present. But, however, the said witnesses admit that within 10 to 15 minutes of the incident, the villagers came and were present at the house of the deceased. Even PW1, who is the Village Revenue

Officer, came to the scene of offence after the incident. As seen from the cross-examination, the defence of the accused appears to be that he was not responsible for the incident and that some of the villagers with whom the deceased had some disputes, have caused his death. But the suggestions given to the witnesses remained as suggestions without any material to substantiate the same.

14. Therefore, we feel that the evidence of PW2 coupled with the evidence of PWs 3 and 4 establish beyond reasonable doubt that it was the accused alone who attacked the deceased. But the question is whether the accused is liable to be convicted for the offence under Section 302 IPC.

15. As seen from the record, Raju, who is the brother of the accused and son of the deceased, was quarrelling with the accused for coolie money. The mother of the accused intervened and asked them not to quarrel. At that point of time, the deceased entered the house and picked up a stick which was lying there and beat PW2, questioning as to why she had interfered with the dispute amongst the brothers. Seeing the injuries on PW2, the son of PW2 and the deceased (accused) became furious and he took up an axe and hit his father.

16. From the evidence on record, it is clear that there were no disputes amongst the family members and the incident took place in the spur of the moment because the deceased hit PW2 with a stick, as she was interfering with the dispute between the two

brothers. Definitely, it can be said that the accused had no intention to cause the death of the deceased. In fact, it is not even the case of the prosecution that the accused had any enmity with the deceased or that there were any earlier disputes in the family between the accused and the deceased.

17. Having regard to the above, we feel that it is not a case where the accused should have been convicted under Section 302 IPC, merely because there were four external injuries on the body of the deceased. As seen from the Post Mortem Report, the first injury was on the right pointing finger and (3) injuries were lacuation over the chest, (2) on the right side and (1) on the left side of the chest, and the death was due to loss of blood.

18. In RAMESH KRISHNA MADHUSUDAN NAYAR v. STATE OF MAHARASHTRA¹, the Apex Court was dealing with a situation where the accused inflicted two blows on the head of the deceased causing instantaneous death. Having regard to the manner in which the incident took place, the Apex Court convicted the accused under Section 304 Part I, IPC and not Section 302 IPC.

19. In SHAKTI DAN v. STATE OF RAJASTHAN², the Apex Court was dealing with a situation where the mother of the accused was throttled by the accused, as she was trying to convince her son not to beat his wife. Dealing with the said situation, and in the absence of any motive or intention on the part of the accused, the Apex Court convicted the accused under Section 304 Part I, IPC.

¹ AIR (SCW) 2008 0 370

² AIR (SCW) 2007 0 3128

20. In SHIVAPPA BUDDAPPA KOLKAR ALIAS BUDDAPPAGOL v. STATE OF KARNATAKA AND OTHERS³, the Apex Court was dealing with a situation where a single blow was given by the accused with an axe on the head of the deceased, leading to instantaneous death. In these circumstances, the Apex Court convicted the accused under Section 304 Part II IPC, and not under Section 302 IPC.

21. In the case on hand, we can see that the accused attacked the deceased with an axe and there were three injuries on the chest of the deceased. As stated earlier, there was no enmity between the accused and the deceased and there was no motive and no intention on the part of the accused to cause the death of the deceased who is his own father, and the whole incident happened in the spur of the moment, when the accused saw his father hit his mother and he took up the axe which was lying in the house and attacked the deceased.

22. Taking into consideration the totality of the circumstances and since the accused is in jail from 1st August, 2012, we feel that ends of justice would be met if the conviction of the accused is altered to one under Section 304 Part-II IPC.

23. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in the judgment dated 01.08.2011, in Sessions Case No.313 of 2011,

³ 2005 SCC (Cri.) 93

on the file of the IV Additional District and Sessions Judge (FTC) at Mahabubnagar, for the offence punishable under Section 302 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 T. AMARNATH GOUD

15.11.2017
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