

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.257 of 2012

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

The sole accused in Sessions Case No. 499 of 2010 on the file of the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his neighbour Kodem Kistaiah on 08.05.2010 at 20.00 hours at Mondkunta village, by attacking him with a kitchen knife. Vide judgment dated 22.02.2012, the learned Additional Sessions Judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of six months. Assailing the same, this appeal came to be filed.

2. The case of the prosecution, as spoken to by the witnesses, is as under:

PW1 is the son of the deceased, while PW2 is the brother of PW1. PW3 is the daughter-in-law of the deceased. On 08.05.2010, at about 10 p.m., PW1 and others were using the drilling machine for construction work on the back side of their house. At that time, the deceased, PW2 and PW3 were present at the work space.

At about 10 p.m., the accused abused PW1 and his family members, stating that the sound of the drilling machine was causing lot of disturbance to their family members. The accused came out of his house and tried to attack PW1. At that time, the wife and daughter of the accused came there and took the accused into the house, questioning him of raising an unnecessary dispute. Immediately thereafter, the accused came out with a kitchen knife (kathipeeta) and hurled the same towards PW1. PW1 went back four steps and escaped from the blow. Thereafter, the accused is said to have attacked the deceased with the kitchen knife on his forehead, as a result of which the deceased fell down with a bleeding injury. Hearing the cries of PW1 and others, PW7, who is a neighbour and whose house is situated on the western side of the house of PW1, came there and tried to remove the kitchen knife from the hands of the accused, but, the accused is said to have ran away from the place along with the kitchen knife. PW1 and others telephoned to 108 ambulance and after the arrival of the ambulance, the injured/deceased was shifted to Government Hospital, Bhadrachalam. There, the doctors advised him for better treatment, and accordingly, the injured was shifted to Mamatha Hospital. In the early hours of 09.05.2010, the injured died. Around 11.30 a.m., the dead body was brought back to Government Hospital, Burgampad. Thereafter, PW1 proceeded to Aswapuram and reported the matter to the Sub Inspector of Police, Aswapuram. Ex.P1 is the said report.

3. Basing on Ex.P1, a case in Crime No. 28 of 2010 came to be registered by PW16-the Sub Inspector of Police, Aswapuram, for the offence punishable under Section 302 IPC. Ex.P20 is the First Information Report. Further investigation in this matter was taken up by PW17-the Circle Inspector of Police, Manuguru. According to him, on receipt of telephone message from PW16, he rushed to the Government Hospital, Burgampad, examined PWs 1 to 10 and recorded their statements. Thereafter, he got the dead body of the deceased photographed through PW10. Ex.P9 to P11 are the photographs of the deceased. In the presence of PW12, he conducted inquest over the dead body. Ex.P14 is the inquest report. At the time of inquest, he seized M.Os 1 and 2. Thereafter, he sent the dead body for post mortem examination.

4. PW15-the Civil Assistant Surgeon, Government Civil Hospital, Burgampad conducted autopsy over the body of the deceased on 09.05.2010 at 3.20 p.m. and issued Exhibit P19-the Post Mortem Report. According to him, the cause of death was due to hemodynamic and neurogenic shock due to injury to vital organ (brain).

5. PW17 continued with the investigation and visited the scene of offence at Mondikunta village, where he prepared a panchanama of the scene in the presence of PW11 and another. At the scene of offence, he seized blood stained, controlled earth and two chappals. He also got prepared the rough sketch of the scene, all of which are enclosed in the Crime Details Form, which is placed

on record as Ex.P13. At the scene of offence, he seized M.O.4-a pair of chappals. He also got the scene of offence photographed through PW10. The photographs are placed on record as Ex.P6 to Ex.P8. On 12.05.2010, he arrested the accused, and in the presence of PW14, interrogated the accused, wherein the accused is said to have confessed about the commission of the offence. His confession led to discovery of the kitchen knife said to have been used in the commission of the offence. Ex.21 is the admissible portion of concession leading to recovery of the same. Ex.P22 is the mediators report for seizure and M.O.3 is the kitchen knife alleged to have been used in the commission of the offence.

6. After obtaining all documents and necessary reports, a charge sheet came to be filed for the offence punishable under Section 302 IPC, which was taken on file as PRC No. 27 of 2010 on the file of the Judicial Magistrate of First Class, Manuguru. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions under Section 209 Cr.P.C. and the same came to be numbered as S.C.No. 499 of 2010 on the file of Court of the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem. Basing on the material on record, a charge for the offence punishable under Section 302 IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

7. In support of its case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P23 and M.Os.1 to 4. 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. No oral or documentary evidence was adduced by the accused in support of his defence. Out of the (17) witnesses examined, PWs 4, 5, 6 and 8 did not support the prosecution case and were treated hostile by the prosecution.

8. Relying upon the evidence of PWs 1 to 3, coupled with the recovery of the kitchen knife said to have been used in the commission of the offence, the trial court convicted the accused for the offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

9. The learned counsel for the appellant mainly submits that the trial court erred in convicting the accused basing on the evidence of PWs 1 to 3, who are interested witnesses. She further submits that there are no disputes between the two families prior to the incident in question and they were also not enmical towards each other. It is further contended that the recovery of the weapon alleged to have been used in the commission of the offence is false, in view of the evidence of PWs 1 to 3. It is urged that since the recovery is false, even the evidence of the witnesses who spoke about the manner in which the incident took place, should be disbelieved. In support of her plea, the learned counsel

for the appellant relied upon the judgment of the Apex Court in *SALVERAJ v. THE STATE OF TAMIL NADU*¹.

10. On the other hand, the learned Public Prosecutor would contend that even in the absence of any other evidence on record, still the court can believe the evidence of PWs 1 to 3, whose presence at the scene of offence cannot be doubted. According to him, apart from the evidence of PWs 1 to 3, there is also the evidence of PW7, who speaks about he coming to the scene of offence and apprehending the accused. In view of the same, it is urged that the prosecution has proved its case beyond reasonable doubt, and as such, the order passed by the trial court convicting the accused, warrants no interference.

11. In order to appreciate the same, it may be appropriate to refer to the evidence of the four witnesses, who were examined as eye witnesses to the incident. PW1 is the son of the deceased. In his evidence, he deposed that on the date of incident, i.e., on 08.05.2010, at about 10 p.m., while he, along with his family members were present in the back side of their house, where construction was going on by usage of drilling machine, the accused came there and picked up a quarrel, saying that usage of drilling machine at night was causing disturbance to the inmates of their house. At that time, the wife and daughter of the accused came there and took him into the house, questioning as to why there should be unnecessary disputes. Immediately again, the accused came out of his house with a kitchen knife (kathipeeta)

¹ AIR 1976 SUPREME COURT 1970

and is said to have hurled the same on PW1. PW1 moved four steps back, as such, he escaped from the attack. Then, with the same kitchen knife, the accused is said to have struck the deceased once on the head, which led to his death.

12. PW1 was subjected to lengthy cross-examination. The initial portion of the cross-examination was with regard to the topography of the house of PW1 and the location of the house on the hundred feet wide road. He admits in his cross-examination that he had not obtained any permission from the Panchayat to construct the site on the back side of his house. The witness states that since it is a tribal area, prior permission is not necessary and in general, information is given after construction of the house. The suggestion that their village is not situated in the tribal area, was denied. It was further elicited that at the time of the incident, PW6 was assisting in drilling operations. The suggestion that he intentionally failed to mention the name of PW6 and his assistant in his evidence, was denied. It was further elicited in the cross-examination that Ex.P1 was written by PW1. The suggestion that the accused attacked them at the front side of their house when they were attending to the drilling operations, was denied. However, he admits that he stated before the police that on the date of incident, while they were attending to drilling work in the rear portion of their house, the accused abused PW1, his wife and children as to the sounds emanating due to the drilling operations, and then attacked them. The suggestion that PW1 attacked the accused, was denied. The suggestion that when the brother of

PW1 hurled the kitchen knife towards the accused, it hit on the head of the deceased, was also denied. In the cross-examination, PW1 further states that when he and others took the injured/ deceased to the hospital, the doctor was not in the hospital, and it was specifically elicited that the doctor was informed that the accused attacked the injured/ deceased with a kitchen knife. The rest of the suggestions given with regard to implication of the accused in the case, and the reasons for delay in lodging F.I.R. etc., were all denied.

13. Coming to the evidence of PW2, he is none other than the brother of PW1 and son of the deceased. According to him, on 08.05.2010, PW1 was getting the drilling work done on the rear side of their house, for the purpose of laying a slab. Then, the accused came out of his house and abused PW1 and his wife, as to the sound which was emanating from the drilling work. Thereafter, the wife of the accused came and took him into the house. Immediately thereafter, the accused came out of the house with the kitchen knife and hurled the same at PW1. Thereafter, he struck on the head of the deceased with the said kitchen knife, as a result of which the deceased fell down with bleeding injury. Then, PWs 6 and 7 came there and tried to remove the knife from the hands of the accused, but the accused left from that place along with the kitchen knife.

14. PW2 was also subjected to lengthy cross-examination, but nothing useful came to be elicited to discredit his presence at the

scene of offence and involvement of the accused in the incident. But, the discrepancy which was elicited from the evidence of this witness is with regard to the place where the incident occurred, viz., as to whether it was in the front of the house or on the rear side of the house. One other circumstance which was elicited from this witness is with regard to taking the knife from the accused by force. However, all the other suggestions relating to motive, deposing false against the accused and statements made before the police, were denied.

15. PW3 is the daughter-in-law of the deceased. Her evidence toes in line with the evidence of PW1 and PW2. She was also subjected to cross-examination, but nothing useful was elicited to discredit her testimony.

16. The evidence of these three witnesses gets corroboration from the evidence of PW7. A perusal of the evidence of PW7 would show that he came to the scene of offence after hearing the cries of PW1 and others. According to him, the accused hacked the deceased on the head with a kitchen knife, which happened in the front of the house of PW1. His evidence is to the effect that PWs 4, 5 and several others gathered there at the time of incident. However, in the cross-examination, he admits that for the first time, he deposed in the court that the accused hacked the deceased on the head with a kitchen knife. The suggestion that he had not stated before the police that the accused hacked the deceased on the head with a kitchen knife, was denied. He admits

that by the time he went there along with PWs 4 and 5, the accused was holding the kitchen knife and the deceased was lying with head injury, struck by the kitchen knife.

17. From the answers elicited in the cross-examination of PW7, it appears that he went to the scene of offence after the assault. But, however, he saw the accused standing at the scene of offence with a kitchen knife in his hand. The presence of the accused holding a kitchen knife was elicited in the cross-examination of PW7. Therefore, this evidence of PW7 cannot be doubted, with regard to the presence of the accused at the scene of offence with a knife in his hand. When the evidence of PW7 is tested with the evidence of PWs 1 to 3, we feel that the evidence of PWs 1 to 3, which is consistent, can be made the basis to prove that it was the accused who assaulted the deceased.

18. The contention of the learned counsel for the appellant is that there is no motive on the part of the accused and that the accused has been falsely implicated in this case. But, here is a case where the incident happened at the house of PW1, and the accused who is their neighbour came there and questioned PW1, as to the usage of drilling machine at 10 p.m. His grievance was with regard to the sound which was causing disturbance to his family members. While he was abusing PW1 and others, his wife and daughter came and took him inside. Then, he came with a knife and is said to have struck the deceased on the head once, which lead to the deceased falling down on the ground with bleeding

injury. This version of the witnesses is consistent not only while deposing before the court, but also in the First Information Report, which was given immediately after the incident, and also during the inquest which was conducted on the next day of the incident. Hence, we feel that merely because there was some discrepancy with regard to the weapon alleged to have been used in the commission of the offence, and the recovery made, this evidence of all the four witnesses, cannot be disbelieved.

19. The judgment of the Apex Court in *SALVERAJ v. THE STATE OF TAMIL NADU*, which is relied upon by the learned counsel for the appellant will not apply to the facts in issue. It was a case where the trial court and High Court disbelieved the evidence of the two eye witnesses along with the recovery of the weapon, and convicted the accused. The Apex Court disbelieved the evidence of both the witnesses as their version appeared to be quite improbable. At the same time, the court also disbelieved the recovery made pursuant to the arrest and confession. But, in the case on hand, we feel that there are no grounds to disbelieve the evidence of PWs 1 to 3 and PW7. Hence, the finding of the trial court that the accused was responsible for the incident, has to be accepted.

20. The next question that falls for consideration is whether the accused is liable for the offence punishable under Section 302 IPC?

21. As observed earlier, the incident in question took place at 10' O Clock in the night, when the accused, who is the neighbour of

PW1, came to the house of PW1, questioning him as to the usage of the drilling machine at that time. The evidence on record establishes that the objection of the accused was with regard to the emission of sounds due to the drilling operations, causing disturbance in the night. Thereafter, the wife and daughter of the accused took him inside. Immediately, he came with a kitchen knife and hurled the same on PW1, who escaped from the same by taking four steps backward. The evidence on record shows that the accused then attacked the deceased by hacking on his head once, which led to his death. However, merely because the accused caused the death of the deceased by giving only one blow, it does not, by itself, mean that the offence has to be altered to Section 304 Part-II, but, one has to see the totality of the facts in issue.

22. The evidence on record would show that there was no prior enmity between the two families. The purpose for which the accused had a grouse against the family of the deceased, was not spoken to by any of the witnesses. Probably, this version came to be introduced subsequently, only to show existence of a motive. But, we feel that there is no motive, because the death of the deceased and the incident in question took place because of the quarrel which ensued between the family members of the accused and deceased regarding the drilling operations in the back side of the house of PW1 at 10'O clock in the night.

23. Having regard to the above, it is clear that the accused had no motive to cause the death of the deceased, but as the incident

is preceded by a quarrel and since a single blow is given, it can be said that the accused has no intention to cause death, but, has knowledge that the injury inflicted on the deceased is likely to cause his death. Therefore, we feel that it is a fit case where the nature of offence can be scaled down to Section 304 Part-II IPC.

24. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant in the judgment dated 22.02.2012, in Sessions Case No.499 of 2010 on the file of the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem 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 eight 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 shall be set at liberty forthwith on completion of eight years rigorous imprisonment, if not required in connection with any other case. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

29.06.2018
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