

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.618 OF 2015

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

This Criminal Appeal is filed by the accused, 9 in number, against the judgment dated 24.04.2015 in Sessions Case No.172 of 2012 on the file of IV Additional District and Sessions Judge, Kurnool (for short, the trial Court). Charges were framed under Section 148 IPC against A.1 to A.9, Section 302 IPC against A.1 to A.3, Section 324 IPC against A.1 to A.9 and Section 302 read with Section 149 IPC against A.4 to A.9 and they were tried on the aforesaid charges. The trial Court convicted the accused under various counts i.e., A.1 to A.9 for the charge under Section 148 IPC and sentenced to suffer R.I. for a period of one year each and also to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for one month each; A.1 to A.3 for the charge under Section 302 IPC and sentenced to suffer R.I. for life and also to pay a fine of Rs.1,000/- each, in default, to suffer S.I. for two months each; A.4 to A.9 for the charge under Section 302 read with Section 149 IPC and sentenced to suffer R.I. for life and also to pay a fine of Rs.1,000/- each, in default, to suffer S.I. for two months each; A.5 to A.9 for the charge under Section 324 IPC and sentenced to suffer R.I. for one year and also to pay a fine of Rs.500/- each, in default, to suffer S.I. for two months each; A.4 for the charge under Section 109 IPC and sentenced to suffer R.I. for life and also to pay a fine of Rs.1,000/- each, in default, to suffer S.I. for two months. All the sentences were directed to run concurrently.

2. For the sake of convenience, the appellants are referred to as they are arrayed before the trial Court.

3. The facts of the case, in nutshell, are that A.1 to A.9 are inter-related. P.W.1 is the younger brother of Nadipi Venkaiah (hereinafter referred to as 'deceased'). P.W.2 (L.W.3)-K.Seshanna, P.W.3 and L.W.5-K.Venkata Sivudu are the sons of the deceased. L.W.7-K.Venkateswarlu is the nephew and L.W.8-K.Laxmi Devi is sister-in-law of the deceased, while P.W.5 is the younger brother of the deceased. L.W.10-K.Ramulamma, is the youngest son of P.W.1. A.1, A.3 and A.4 are the nephews of the deceased.

4. During the year 2004, the deceased along with his sons beat A.4 over a debt issue. During Sarpanch elections, ill-feelings cropped up between the deceased family and the accused as the accused supported CPM Party candidate and worked against the candidature of one K.Laxmi, daughter-in-law of P.W.4. In a sequent to the above incident, on 08.02.2007, A.1 and A.5 were beaten up by P.W.1, P.W.4, L.W.7, P.W.5 and the deceased at Market Yard, Kurnool, for which, a case in Crime No.29/2007 under Section 324 read with Section 34 IPC was registered on the file of Kurnool IV Town Police Station. Later, both the parties compromised the matter.

5. Keeping the above incidents in mind, the accused bore grudge against the family members of the deceased. On 08.08.2010 at about 20.00 hours near the house of P.W.4, A.2 to A.9, along with one Kasapuram Laxmanna (elder brother of A.9), tried to make

nuisance in drunken condition. When P.W.4 and L.W.7 questioned and asked them to leave the place, verbal duel ensued between them. In the meanwhile, P.W.1 along with the deceased went there, and while enquiring about as to what happened, A.2 and A.9 threatened P.W.1 and deceased and went away from there. On that, P.W.4 directed L.W.8, who is his wife, and L.W.10 to go to the police station to report the matter. On the same day i.e., 08.08.2010 at 22.00 hours, A.1 to A.9 formed into unlawful assembly armed with deadly weapons like hunting sickle, iron rods, went to the house of P.W.1 and called him out of the house saying 'randie ippudu choosukundam'. When P.W.1 came out of his house, A.5 and A.6 attacked him with hunting sickle and iron rod and beat him over his head and caused bleeding injuries. When he raised cries, the deceased rushed there and tried to intervene, for which, A.1 to A.3 attacked him with iron rods and hunting sickles and caused severe bleeding injuries over his head at the instigation of A.4. P.W.1 again when tried to intervene, A.4 beat him with iron rod and caused injury to his left hand thumb. In the meanwhile, when P.W.2 and L.W.3 tried to intervene, A.7 and A.8 beat L.W.3 and caused injuries over his body. P.Ws.3, 4, 5 and L.Ws.5, 7, 8 and 10 to 14 witnessed the incident. The injured i.e., P.Ws.1, 2, L.W.3 and the deceased were shifted to Government General Hospital, Kurnool, where the deceased died on 09.08.2010 at 10.00 hours while undergoing treatment.

6. P.W.11-The Sub-Inspector of Police, K.Nagalapuram Police Station, having reached the Government General Hospital, Kurnool,

at 2.00 hours on 09.08.2010, recorded the statement of P.W.1 and registered a case in Crime No.44/2010 under Sections 147, 148, 324, 307 read with Section 149 IPC. After the death of the deceased, P.W.11 altered the Sections of law to 147, 148, 302, 324, 307 IPC read with 149 IPC.

7. P.W.8, the doctor who conducted autopsy over the dead body of the deceased, opined that the deceased died due to 'intracranial bleeding associated with skull bone fractures resulting from head injury'. P.W.9, the doctor who examined and treated P.Ws.1, 2 and L.W.3, issued wound certificates opining that the injuries are simple in nature.

8. During the course of investigation, P.W.12, the Inspector of Police, Kurnool, arrested A.1 to A.9 on 25.08.2010 at 13.30 hours near B.C. Social Welfare Hostel, Peddapadu, and recorded their confessional statements in the presence of P.W.10 and L.W.18-B.Sreenivasulu. Basing on the confessional statements, P.W.12 seized crime weapons i.e., M.O.1-iron pipes, 2 in number and M.O.2-bamboo sticks, 5 in number, in the presence of P.W.6 and L.W.18. After completion of investigation, P.W.12 filed the charge sheet, which was taken on file as PRC No.70 of 2011 on the file of the Court of Judicial Magistrate of First Class, Kurnool.

9. On appearance of the accused, the said Court furnished copies of the documents as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the same was committed, which came to be numbered as S.C.172 of 2012. Basing on the

material available, charges under the aforesaid Sections came to be framed, read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

10. In support of its case, the prosecution examined P.Ws.1 to 14 and got marked Exs.P.1 to P.17 and M.Os.1 and 2. On behalf of the accused, Exs.D.1 to D.34 were marked. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against them in the evidence of prosecution witnesses, to which they denied. After appreciating the evidence brought on record, the trial Court found the accused guilty and accordingly convicted and sentenced them, as aforestated. Challenging the same, the present appeal came to be filed.

11. Sri T.Pradyumna Kumar Reddy, learned counsel for the appellants, would submit that basing on the testimony of P.Ws.1 to 6, who are highly interested witnesses and are inter-related, recording conviction by the trial Court is illegal. He further pointed out the discrepancies that Ex.P.12 scene of offence is shown in front of the house of P.W.1, but P.W.1 deposed that he was beaten in front of house of Nagaiah, whereas P.Ws.2 to 6 stated that he was beaten in front of house of P.W.1; that the blood stains were found in front of house of Balamma in Ex.P.12 and no blood stains were found either in front of house of P.W.1 or in front of the house of Nagaiah; that P.Ws.1, 2 and 7 stated to the doctor, as seen from Exs.P.6 to 8, that incident occurred near Peddapadu and that MLC intimation of the deceased disclose that the deceased received

injuries due to fighting with neighbours at Peddapadu and hence argued that the prosecution failed to fix the exact scene of offence. He further argued that injuries mentioned in the complaint (Ex.P.1) and FIR are inconsistent. He would further submit that the trial Court did not notice the fact that when it is the specific version of the prosecution that the accused attacked the deceased with deadly weapons i.e., hunting sickles, iron rod and sticks, but no such deadly weapons were seized nor produced and the material objects produced were only iron pipes and bamboo sticks. Apart from the same, there were no bloodstains found on the MOs as well on the sample lifted from the earth. Furthermore, the prosecution failed to connect MOs to the injuries suffered by the witnesses. He would further submit that prosecution could not prove specific overt acts leveled against A.1 to A.6 with regard to the alleged injuries sustained by P.W.1 for the offence under Section 324 of IPC. The prosecution failed to fulfill all the probabilities. He would further submit that the trial Court failed to notice the aspect that when it is the case of the prosecution that P.W.1 got injury to his left hand thumb due to the blow inflicted by A.4 with iron rod, how could he signed on Ex.P.1. He would further submit that the prosecution has not proved the motive of the accused for killing the deceased and sought to set aside the judgment of the trial Court.

12. On the other hand, the learned Public Prosecutor would submit that there is no reason to disbelieve the evidence of prosecution witnesses, though there are slight discrepancies. The occurrence of incident is not disputed. The incident was happened

at the house of P.W.1 on 08.08.2010 at 10.00 pm and the deceased was shifted to hospital at 10.40 pm. As per P.W.8, the deceased received four external injuries, out of them, injury No.1 therapeutic wound and injury No.2 is inflicted by application of force by weapons or instructions or other means. He would further submit that there were no suggestions to the effect that the wounds are self-implicated. He would further submit that there is no reason to disbelieve the evidence of P.Ws.1, 2 and 7. As there were no blood stains on MOs as per the seizure report, the same could not be sent for forensic laboratory for analysis. He would further submit that the trial Court is right in convicting the accused by relying on the evidence of eyewitness. The prosecution has proved the guilt of the accused beyond reasonable doubt and hence there are no grounds to interfere with the judgment of the trial Court.

13. In the present case, P.Ws.1 to 6 are the direct witnesses and also victims. According to them, on the date of incident i.e., on 08.08.2010 at about 10.00 pm, there was a pial at the house of P.W.4 and galata took place between A.2, A.9, Laxmanna on one side and L.W.8 and L.W.10 on the other side. By hearing galata sounds, P.W.1 along with the deceased went to the pial and found that the galata was going among aforesaid persons and heard A.2, A.9 and Laxmanna scolding L.W.8 and L.W.10 in filthy language. Though they advised A.2, A.9 and Laxmanna to leave the place, they did not heed their words. In the mean time, A.5 intervened, threatened him and the deceased saying that 'Eenakodukulakatha Chusthanu'. While leaving from the place, they uttered the above

words. Then P.W.4 told to L.Ws.8 and 10 to go and report to the Police about the incident. As a sequel to that incident, on the same night at 10.00 pm., A.1 to A.9 along with Dushyanthudu formed themselves into unlawful assembly, armed with deadly weapons, came to his house and made a challenge to him saying that 'bytiki randiraa chuskundamu. On hearing said challenge, P.W.1 came out of house by switching on the light. On seeing him, A.6 with iron rod beat him on his head and A.5 beat on his right shoulder with a yerukali kodavali. Then when the deceased intervened to rescue him, A.1 to A.3 beat on his head on the instigation of A.4. Then P.W.1 got up and when intervened between them, A.4 beat him with iron rod on his left thumb. when P.W.2 came to his rescue, A.7 and A.9 beat P.W.2 with iron rods on his head, hands and left leg. At that time, when P.W.7 came to rescue P.W.2, A.7 and A.8 and Dushyanthudu beat P.W.7 on his back side, legs and hands with iron rods. Then on their cries, neighbours came, and on seeing the neighbours, A.1 to A.9 and Dushyanthudu fled away along with their weapons from the scene of offence.

14. It is, no-doubt, true that there is some discrepancy in the evidence of P.Ws.9 and 14 even with regard to admission of P.W.1 in the hospital and also with regard to alleged injuries received by him, but it is not fatal to the case of prosecution. From Ex.P.17, it is clear that P.W.1 received injury on his head and shoulder which is corroborating with the oral evidence of prosecution witnesses, which is in line with his earlier statement in Ex.P.1. P.W.9 does

not state any head injury to P.W.1, but he only found lacerated injury over the right shoulder and it is simple in nature which is evident from Ex.P.6, but as per Ex.P.17, P.W.1 received injury on his head and shoulder which is corroborated with the oral evidence of prosecution.

14. It is true that there is some discrepancy in the evidence of P.Ws.9 and 14 even with regard to admission of P.W.1 in the hospital and also with regard to alleged injuries received by him, the same cannot fatal to the case of prosecution. From Ex.P.17, it is clear that P.W.1 received injury on his head and shoulder which is corroborating with the oral evidence of prosecution witnesses as at the earlier stage itself i.e., Ex.P.1, he stated that he received injuries on his head. P.W.9 does not state any head injury to P.W.1, but he only found lacerated injury over the right shoulder and it is simple in nature which is evident from Ex.P.6, but as per Ex.P.17, P.W.1 received injury on his head and shoulder which is corroborating with the oral evidence of prosecution.

15. It is to be noted that though P.Ws.1 to 6 are inter-related, they cannot be said to be the interested witnesses and there were no material omissions or contradictions in the testimony of P.Ws.1 to 6 to disbelieve their testimony. Apart from the same, P.Ws.1, 2 and 7 are injured witnesses whose testimony cannot be discarded on flimsy grounds. It is not the case of the accused that P.Ws.1 to 6 have no acquaintance with the accused prior to the incident. Admittedly, they are the residents of same locality and some of them are blood relatives. The identification of the accused by

P.Ws.1 to 6 is more probable and believable in the street light and the testimony of P.Ws.1 to 6 cannot be discarded on the sole ground that they are blood relatives of the deceased. There were no suggestions put to P.Ws.1, 2 and 7 that their injuries are self inflicted.

16. Now it is to be seen whether there was grave and sudden provocation for the accused to cause the death of the deceased and this is a question of fact. There are contradictions in the statements of the witnesses. Though P.W.1 stated in his cross-examination that A.5 and A.6 attacked him with hunting sickle, rods, in the private complaint filed him, he did not state that A.4 beat with iron rod, due to which, he received injury to his left thumb. P.Ws.2 to 6 also in their cross-examination stated that they did not state before the police about all the accused armed with hunting sickles and pickaxes and that P.W.1 was beaten by A.5 and A.6 on his head. Their cross examination reveal that the accused were holding specific deadly weapons and A.5 and A.6 caused the head injury to P.W.1. Apart from the same, as per the evidence of prosecution, the accused did not come to kill the deceased. When P.W.1 came out of his house hearing the challenge of the accused, the accused attacked P.W.1, and on his intervention, the deceased sustained severe injuries and died while undergoing treatment. If at all, the accused wanted to kill the deceased, they would have gone to the house of the deceased, but not P.W.1. It is to be seen that though the prosecution witnesses stated that the weapons used in the commission of offence are

hunting sickles, iron road and sticks, but no such deadly weapons were seized nor produced and the material objects produced were iron pipes and bamboo sticks. Apart from the same, there were no bloodstains found on the MOs as well on the earth sample.

17. It is also to be seen that as per the evidence of prosecution, the accused formed an assembly and attacked the injured. If all the accused attacked once, there was every likelihood of non-recognizing the particular accused who attacked the injured at wee hours i.e., 10.00 pm. It is to be noted here that as per the prosecution witness, A.10-Dushyanthudu @ Dushyanth Kumar has also joined in the assembly and beat P.W.7 on his back side, legs and hands with iron rods. But, on enquiry, it was elicited that A.10 was in Kadapa on the date of offence and hence his name was deleted from the FIR. Due to the exaggeration of the incident by the complainants, A.10 was roped in the crime. That apart, there is only one head injury which was caused by the blunt edge like iron pipe which is not a deadly weapon.

18. Learned counsel for the appellants argued that there was no intention for the appellants to attack the deceased, but their attack was to P.W.1. Even if the said argument is accepted, the action of the appellants attracts offence punishable under Section 303 IPC, wherein the punishment is same that of Section 302 IPC.

19. It may however be noted that the evidence does not disclose any premeditative intention on the part of A.1 to A.9 to cause the death of the deceased. There is no specific evidence to say which

accused caused single head injury causing death of the deceased. The incident occurred on 08.08.2010 around 10.00 pm and the deceased died on 09.08.2010 around 10.00 am while undergoing treatment in hospital. Further, the statement alleged to have been made by the accused at the time of incident that they would see the end of the complainant and others is to be treated as a statement made in a fit of anger, but not out of *mens rea* to kill the deceased. In the facts and circumstances of the case, the *mens rea*, on the part of the accused in killing the deceased, is also not proved. It can be concluded that the accused caused the above injury not with any intention to cause the death of the deceased, but only with the knowledge as is likely to cause death falling under Section 304 Part II IPC. Hence, the conviction under Section 302 IPC against A.1 to A.9 is set aside and they are convicted under Section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for a period of five years. The period undergone by A.1 to A.9 shall be given set off under Section 428 Cr.P.C. Insofar as convictions imposed by the trial Court under other counts are concerned, the same are confirmed.

20. The Criminal Appeal is accordingly partly allowed, as indicated above.

SURESH KUMAR KAIT, J

T.AMARNATH GOUD, J

Date: 05.10.2018
TJMR