

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.461 of 2012

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

A1 to A3 in SC.No.469 of 2010 are the appellants herein. They were tried for the offences punishable under Sections 302 read with 34 of the Indian Penal Code for causing the death of one Gundeti Sammaiah by beating him with sticks and bricks on 18.02.2009 at about 10 AM at Haripuram Village of Odela Mandal, Karimnagar District.

2. Vide judgment dated 30.04.2012 the learned IV Additional Sessions Judge, Karimnagar, convicted all the four accused for the offence punishable under Section 302 read with 34 IPC. All the accused were sentenced to undergo imprisonment for life, but A1 was directed to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year. The Court also directed A2 to A4 to pay fine of Rs.1,000/- each in default to undergo rigorous imprisonment for three months each for the offence punishable under Section 302 IPC.

3. The facts, as culled out from the evidence, are as under:

The deceased was the son of P.W.1. P.W.10 is the sister of P.W.1. P.W.1's son was given in marriage to P.W.10's son and P.W.11 is the sister of the deceased. A1 and A3 are brothers, A2 is their junior paternal uncle's son and A4 is the father-in-law of A1. All of them belong to Haripuram Village and belong to Golla caste.

The deceased was doing the job of mason at the time of the incident and had undertaken construction of the house of A1, which was to be completed within one year. As the house could not be completed within one year, A1 approached P.W.4, who is the husband of the Sarpanch of the village, complaining about the delay in executing the work. P.W.4 advised A1 to pay a sum of Rs.2,500/- to the deceased to complete the remaining work of plastering. At that point of time, the deceased (who was also there) and A1 scuffled with each other and P.W.4 pacified them and made them leave the place. It is said that on the fateful day i.e. 18.02.2009, after the scuffle between the deceased and A1, the deceased returned home and while he was at his house, A1 to A4 came there angrily armed with sticks and all of them beat on the head of the deceased with sticks. It is said that A4 beat the deceased with a brick on his head. Immediately, thereafter, the deceased was taken to Anandrao Hospital, Karimanagar, where the doctors declared him brought dead.

P.W.1 lodged a report with the Station House Officer. On the basis of which, he registered a case in Cr.No.10 of 2009 for the offence under Section 302 read with 34 IPC. Ex.P14 is the copy of the FIR. Further investigation in the case was taken up by P.W.17. It is said that on receipt of a copy of FIR, he visited the Government Hospital, Sulthanabad and examined P.Ws.1 to 6 and got photographed the dead body of the deceased through a photographer, P.W.12 and also recorded his statement. He then held inquest over the dead body in the presence of P.W.13 and one G. Srinivas. Ex.P3 is the inquest report. During inquest, he seized the blood stained pant and

shirt of the deceased in the presence of same panch witnesses. Thereafter, he sent a requisition to the doctor for conducting post mortem examination. P.W.16, who was doing Post Graduation in MD, Forensic Science, Kakathiya Medical College, Warangal, conducted autopsy over the dead body of the deceased and noticed four injuries. According to him, the cause of death was due to hemorrhage due to head injury. P.W.17, who continued with the investigation, visited Haripuram Village, secured witnesses and examined P.Ws.8 to 11 and conducted panchanama of the scene in the presence of Mahender Reddy and P.W.14. He claimed to have seized one brick from the scene of offence apart from blood stained earth. He also drew rough sketch of the scene of offence, which is placed on record as Ex.P13. On 21.02.2009, at about 7.45 PM, he arrested A1 to A4 at Kolonoor Railway Station. On interrogation, they confessed about the commission of the offence in the presence of panch witnesses P.W.15 and one G. Shanker. On the basis of the confession made, they recovered sticks from A1 to A3 in the presence same panchas. The successor to P.W.17, after collecting the FSL report, filed the charge sheet, which was taken on file as PRC.No.17 of 2009 by the Judicial Magistrate of First Class, Sulthanabad. On appearance of the accused, the copies of the documents were furnished as contemplated under Section 207 of the Criminal Procedure Code and later, the case was committed to the Court of Sessions under Section 209 Cr.P.C. On committal, the case came to be numbered as SC.No.469 of 2010 on the file of the IV Additional Sessions Judge, Karimnagar. On appearance of the accused, the charges referred to earlier came to be framed, read over and explained to the accused, to which the

accused pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined P.Ws.1 to 17 and got marked Exs.P1 to P16. After completion of the prosecution evidence, the incriminating circumstances appearing against the accused in the evidence of witnesses was put to them, to which they denied. But, however, the accused did not adduce any oral or documentary evidence on their behalf. Believing the evidence of P.Ws.1 to 11, who were eye witnesses to the incident and basing on the circumstances relied upon by the prosecution, the Court below convicted the accused. Assailing the same, the present appeal came to be filed.

4. Learned counsel for the appellants mainly submits that the prosecution did not present the true version of the case. According to him, the entire family of the accused had been implicated in the case by taking into consideration the presence of four injuries on the body of the deceased. According to him, various versions are coming forward as to the circumstances in which the incident took place and the same cannot be relied upon. However, he further submits that even accepting the entire case to be true, the provisions of Section 302 IPC would not attract, as, there is no motive or pre-meditation on the part of the accused to attack the deceased. According to him, there was hardly any time gap between the two incidents to think and plan and as such, it cannot be said that the accused had a common intention or that they came there only with an intention to kill the deceased.

5. On the other hand, the learned Public Prosecutor would contend that the evidence of 8 eye witnesses clearly demonstrates the manner

in which the incident took place. According to him, if really the accused had no intention to cause the death, there was no reason for them to come to the scene of offence armed with sticks. He further submits that there was sufficient time for the accused between the first and second incidents, which made the accused to plan and attack the deceased. In view of the above, he would contend that the finding of the Court below needs no interference.

6. In view of the rival contentions, the question that arises is whether the accused are responsible for the death of the deceased and if so, whether the conviction under Section 302 IPC is just and proper.

7. Coming to the incident proper, the prosecution relied on evidence of P.Ws.1 to 11. But before dealing with the incident in question, it would be just and proper to refer to the circumstances which led to the incident in question. Admittedly, there was no animosity or enmity between the accused and the deceased prior to the incident. In fact, none of the witnesses speak about the accused having any grouse against the deceased, who undertook construction of the house of A1. The evidence of the witnesses shows that the deceased agreed to construct the house of A1, but could not complete the work as promised. Only plastering of the walls was to be done. A1 complained to P.W.4, the husband of the Sarpanch, about the laxity on the part of the deceased in not completing the construction work. At that time, P.W.4 noticed the deceased proceeding in front of his house and, as such, he called him and informed him that Rs.2,500/- would be paid by A1 to him for completion of work, to which the deceased seems to have requested A1 to get the work completed

through someone else. Then A1 abused the deceased and caught hold of his collar. The deceased also caught hold of the collar of A2. Then P.W.4 along with one Maturi Ravi pacified both of them and asked them to leave the place. Half an hour thereafter, the incident in question took place. It would be proper to extract the evidence of P.W.4 as under:

"... About two and half years ago, Sammaiah agreed for construction of house of A1 and constructed the house leaving only plastering work. A1 came to me and informed to call Sammaiah for completing the plastering work as agreed. In the meanwhile, Sammaiah was proceeding there, as such I called and informed that Rs.2,500/- be paid by A1 to Sammaiah and A1 can get his work completed by anybody then A1 abused Sammaiah and caught hold the collar of Sammaiah. Then Sammaiah caught hold A1 and beat. Then I along with Maturi Ravi (ward member) pacified both A1 and Sammaiah and asked them to leave the place. After half an hour, the accused persons took sticks with them towards house of Sammaiah ..."

From the evidence of P.W.4, it is clear that when A1 went to complain to P.W.4 with regard to the failure on the part of the deceased in completing the work within the time agreed upon, P.W.4 accosted the deceased, who was proceeding there and informed him to complete the work with Rs.2,500/- to be paid by A1, for which the deceased appears to have told them that A1 can get his work completed through someone else. In view of the answer given by the deceased, a scuffle ensued between both of them and both of them caught hold of each other's collar and beat each other.

8. At this stage, we intend to refer to Ex.D3, which is portion of 161 statement of P.W.10, which is as under:

నీ అవ్వనీ, పెళ్ళాన్ని దండుజార అని తిట్టే గళ్ళు వట్టికట్టుగా సమ్మయ్య కబాడా కామరయ్య తల మీద సానంతోని గుద్దినారు తలకు గీరుకు పోయి రక్త కారుతుందగా

A perusal of the said document would show that during the scuffle both of them abused each of them in vulgar language and thereafter, the deceased beat A1 on the head with a *sanam* causing a bleeding injury on the head of A1. Immediately, thereafter, A1 went away and within no time, he along with his family members, who are his brother, junior paternal uncle's son and father-in-law, came to the scene of offence.

9. Though the learned Public Prosecutor tried to contend that the time gap between the first incident where the accused and the deceased quarrelled with each other and the second incident, when A1 along with other accused came to the scene of offence is quite long, the same appears to be incorrect in view of the evidence of P.W.4, who in his evidence in chief, deposed that within half an hour, the accused took sticks and proceeded to the house of the deceased. Having regard to the above, it can be said that there was no pre-meditation or prior consent of minds to eliminate or cause the death of the deceased. Had it been so, definitely, the accused would have gone there armed with more dangerous or lethal weapons. Though it is argued that the accused having gone to the scene of offence with sticks shows their intention, but since all the accused are agriculturists, carrying sticks along with them, particularly when somebody assaulted their own family member, cannot be said to be unusual. It is a common phenomena in village, where every agriculturist, while going out of his house, carries a stick with him.

As observed by us earlier, there was no time for all the accused to even think about eliminating the deceased. Therefore, the argument of the learned Public Prosecutor that the accused went to the scene of offence armed with sticks only with motive and intention to cause the death of the deceased cannot be accepted.

10. Coming to the incident proper, P.W.2, in her evidence, deposed that, on the date of the incident, A1 and her husband scuffled and thereafter, he returned home. Then A1 to A4 came there angrily and beat the deceased on head and neck with sticks. A4 is alleged to have beaten the deceased with a brick. But, P.W.3, in his evidence, deposed that about two and half years ago while the deceased was going on his TVS, all the accused came with sticks and brick and attacked him. According to him, A1 to A3 beat the deceased with sticks on head and A4 beat on the head of the deceased with a brick. The deceased fell down after receiving injuries. Thereafter, the deceased was shifted to Anandarao Hospital, Karimanagar. P.W.5, in his evidence, deposed that about two and half years ago, while he was going to his house, on the way he heard some noise and noticed A1 to A3 beating the deceased with sticks while A4 beating the deceased with a brick on head. However, the evidence of P.W.6 is to the effect that the deceased was killed by the accused by beating with sticks on the neck near the dustbin of Asari Raja Komuraiah and that he was behind the accused when they beat the deceased. P.W.7, in his evidence, deposed that while he was going to the house of Sarpanch, he noticed the scuffle between A1 and the deceased, pacified them and then advised them to go to their houses. Subsequently, he came to know the

Sammaiah died. P.W.8, in his evidence, deposed that the deceased was killed by the accused with sticks and when he tried to stop the accused from beating the deceased, the accused pushed him away. As a result of beating, the deceased fell down and was taken to Anandarao Hospital, Karimnagar in 108 ambulance. So is the evidence of P.W.9. The evidence of P.W.10 is to the effect that on hearing some noise, they came to the place of incident and noticed that A4 beat the deceased with brick. P.W.9 does not refer to the participation of A1 to A3. However, the evidence of P.W.11 is to the effect that on seeing gathering, he saw the deceased with injuries and he was informed that the accused beat the deceased with sticks.

11. Basing on the evidence of these 11 witnesses, the learned counsel for the appellant tried to contend that there is any amount of doubt as to where and when the incident took place. According to him, the evidence of P.W.2 would show as if the incident happened at the house of the deceased while the evidence of P.W.3 is to the effect that the incident took place while the deceased was proceeding on his TVS moped and the evidence of P.W.6 indicate the incident taking place near the dust bin of Asari Raja Komuraiah. He further pleads that none of the witnesses deposed as to the manner in which each of the accused attacked the deceased. According to him, some of the witnesses spoke about all the four accused beating with sticks while some witnesses deposed stating that three accused attacked with sticks, while one beat with a brick.

12. Though there are certain discrepancies as to where the incident took place, nothing has been elicited in the cross-examination of the

I.O., to show that the scene of offence viz. the house of the deceased or the place where the deceased was going on his TVS moped are far away or separated by a long distance. Therefore, these minor discrepancies, in our view, do not go to the root of the matter to disbelieve the entire prosecution case. Therefore, the argument of the learned counsel for the appellant that the prosecution has not come forward with true version of the case, in spite of the discrepancies, cannot be accepted.

13. But, at this stage, it would be useful to refer to the evidence of the doctor, P.W.16, who conducted the post mortem examination.

The doctor noticed the following injuries:

1. Left Parietal bone.
2. Fracture of left Maxillary, Temporal, Tympanic and Zeugmatic bone.
3. Fracture of lateral left side of the frontal bone.
4. Fracture of occipital bone.

According to him, the cause of death was due to hemorrhagic death due to head injury. His evidence is silent as to whether the injuries are sufficient to cause death in the ordinary course of nature or whether any one of the injuries is sufficient to cause death of the deceased. His evidence also does not indicate whether the injuries would have been caused with sticks and bricks alleged to have been seized pursuant to the confession made by the accused. The evidence of the doctor is also silent as to the dimensions of the injuries. It is also to be noted that according to doctor the death was due to head injury and not other injuries. As observed by us earlier, the evidence of eye witness does not show as to which of the accused

caused that head injury which was found to be responsible for the death of the deceased.

14. Having regard to the nature of injuries found on the deceased and weapons to be used by the accused and in view of the finding given above viz. that the accused never had any intention or motive to eliminate the deceased, it cannot also be said that the assault on the deceased was with the knowledge that such injuries would cause the death of the deceased. It is well settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is an important consideration for coming to the conclusion that death was indeed with an intention to cause death or the knowledge that death will probably be caused. From the testimonies of the witnesses, as held by us earlier, it cannot be inferred that the accused persons intended to cause the death and with that intention they caused bodily injuries, in fact, it cannot also be said that they shared knowledge that such injury is likely to cause death of the deceased, more so, when there is no prior enmity or prior disputes between the accused and the deceased or any pre-determination to cause his death. But as there is fracture to the skull, lateral left side of the frontal bone, occipital bone and injury to the parietal bone, it can be said that the injuries are grievous in nature falling within the definition of 'grievous hurt' as defined under Section 320 IPC.

Accordingly, the appeal is partly allowed setting aside the conviction and sentence recorded against the appellants-accused in SC.No.469 of 2010 dated 30.04.2012 on the file of the IV Additional

Sessions Judge, Karimnagar for the offence under Section 302 read with 34 IPC and they are acquitted of the same. However, the appellants-accused are convicted for the offence punishable under Section 326 read with 34 IPC and sentenced to undergo rigorous imprisonment for a period of Five Years. The fine amount imposed on the appellants-accused for the offence under Section 302 read with 34 IPC shall be maintained as the fine for the offence under Section 326 read with 34 IPC along with the default clause. The period of imprisonment undergone by the appellants-accused shall be set off against the imprisonment now imposed on them. The material objects shall be destroyed as per the directions of the trial Court.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

T. RAJANI, J

July 31, 2018

Note: Office to dispatch copy of the judgment to the trial Court forthwith.

(B/o) DSK