

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

CRIMINAL APPEAL No.593 of 2013

JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

This Criminal Appeal is preferred by the appellant/accused against the judgment dated 28.03.2013 in S.C.No.208 of 2012 on the file of VI Additional District and Sessions Judge (FTC) Markapur whereby and whereunder the learned Judge convicted him for the offence under Section 302 IPC and sentenced him to suffer imprisonment for LIFE and to pay fine of Rs.500/- in default to suffer SI for one month.

2) The prosecution case in brief is as under:

a) One G.Danam Babu—deceased is the resident of Ambavaram and accused—Devasahayam is his father; deceased went to Hyderabad for coolie works and stayed there for nearly three years; whenever he visited his native place accused used to pick up quarrel with him; while so, three months ago deceased came back to Ambavaram and staying with his parents and attending coolie works; twenty days prior to the incident one night accused slept inside the house alone by bolting doors from inside; at about 9.30 PM when the deceased knocked the doors, the accused did not open; so, the deceased forcibly opened the doors and in such opening one of the doors fell on the right hand of accused and he sustained injuries; a quarrel was ensued between accused and deceased and since then accused bore grudge against deceased and openly

proclaimed he would see the end of deceased and also informed the villagers that he would kill the deceased. In furtherance of his evil plan, on the intervening night of 26/27.04.2012 when the deceased was sleeping on a cot in open place in front of their house, accused who slept inside the house, picked up an axe and brutally hacked the deceased on his face and head; on hearing the noise, PWs.1 and 2—wife and daughter of accused who slept on terrace of the house, woke up and on seeing accused hacking deceased they raised hue and cry. On hearing their shoutings, PW3 the neighbour rushed to the scene and saw the accused hacking deceased; meanwhile, PWs.1 and 2 came down from terrace and on seeing them accused threw away axe into the house and left the house by wearing shirt; all the neighbours have seen while the accused was leaving the house; meanwhile, B.Anand Rao one of the neighbours who also rushed to the house of the deceased, made a phone call to 108 Ambulance in order to shift the deceased to hospital but the Ambulance personnel who visited the house of deceased, on examining him declared as dead. PW1 went to Giddalur PS and gave complaint.

b) Basing on the said complaint, the police registered the case as Crime No.94 of 2012 under Section 302 IPC and took up investigation. PW12—Inspector of Police visited the scene of offence, conducted scene of offence panchanama, seized blood stained and control earth, pillow, blue colour cap, towel soaked with blood, tape of the cot on which deceased slept and axe used for commission of offence etc, material objects under the cover of scene of offence observation report,

got photographed the body of the deceased, conducted inquest in the presence of panchas and sent the body for post-mortem examination. During further investigation accused was apprehended and interrogated and during interrogation he confessed his guilt and after completion of investigation filed charge sheet.

c) On behalf of the prosecution, PWs.1 to 12 were examined and Exs.P1 to P17 were marked and MOs.1 to 14 were exhibited. No witnesses were examined on defence side.

d) The trial Court after full-fledged trial found the accused guilty of the offence under Section 302 IPC and accordingly convicted and sentenced him as stated above. Questioning the conviction and sentence, accused is before us in this appeal.

3) Heard arguments of Smt.D.S.Laxmi, learned counsel for appellant and learned Public Prosecutor for the State (AP).

4) Severely fulminating the judgment of the trial Court convicting the accused, learned counsel for appellant would argue that the trial Court convicted the accused without there being any cogent and acceptable evidence. PWs.1 and 2 who are projected by the prosecution as eye-witnesses in fact did not witness the incident as admittedly they were sleeping on the terrace of their house, whereas the incident took place in front of their house in the mid night. Only after hearing the cries of the deceased they woke up and they had no possibility to identify the assailants as it was pitch dark by then. They have implicated the accused

due to family disputes i.e. in order to lay a claim to the house of the accused. Learned counsel further argued that none of the other witnesses—PWs.3 to 6 have seen the actual incident and they came only aftermath. Therefore, their testimony has no evidentiary value. One of the witnesses has clearly stated that she has not encountered the accused on the way to house of accused. It shows that PWs.3 to 5 neither witnessed the incident proper nor accused fleeing away. The Investigating Officer set up those witnesses as they happen to be neighbours. Similarly, the recovery of MO1—axe and arrest of the accused and recovery of MO14—pant at the instance of accused are all make believable stories. The trial Court without proper appreciation of facts and evidence convicted on surmises. Learned counsel thus prayed to allow the appeal and set aside the conviction and sentence.

5) In oppugnation, learned Additional Public Prosecutor while supporting the judgment of the trial Court, would argue that accused is none other than the father of deceased. PWs.1 and 2 are wife and daughter of the accused and accused brutally killed the deceased due to family disputes as accused wanted to claim the house for himself which was constructed by the deceased and PW1 with their contributions. He would argue that PWs.1 and 2 on hearing the cries of the deceased rose immediately and witnessed from the top of the terrace the accused axing the deceased as he gave many blows to deceased with MO1—axe. The accused on seeing them coming down, went inside the house and left the axe and put on a shirt and went away. He would forcefully argue that

PWs.1 and 2 are none other than the own kith and kin of accused and they have no necessity or intention to implicate him in the offence if some other persons were the assailants. PWs.3 to 5 also have no animosity to speak falsehood against him. Their ocular evidence coupled with evidence of autopsy doctor would clinchingly establish that accused brutally murdered the deceased who is his own son due to property disputes. The trial Court on a conspectus of facts and evidence rightly convicted him and therefore there is no need to interfere with the said judgment. He thus prayed to dismiss the appeal.

6) In the light of above arguments, the points that arise for determination in this appeal are:

- 1) *Whether the deceased—G.Danam Babu met with homicidal death on the intervening night of 26/27.04.2012 in front of his house while sleeping on the cot?*
- 2) *If point No.1 is held affirmatively, whether the accused is responsible for the murder of deceased and prosecution could able to bring home the guilt of the accused beyond reasonable doubt and whether the judgment of the trial Court is factually and legally sustainable?*

7) **POINT No.1:** It is the case of prosecution that on the intervening night of 26/27.04.2012 at about 1.30 AM while the deceased was sleeping on a cot in front of his house, he was axed to death. On the aspect of homicidal death, apart from PWs.1 to 6 some of whom are eye-witnesses and some others who rushed to the scene after the incident, prosecution examined PWs.7 and 10—the inquest mediators

and PW.8—Civil Assistant Surgeon who conducted post-mortem on the dead body of the deceased. The evidence of PWs.1 to 6 in categorical terms is that when the deceased was sleeping in front of his house on the intervening night of 26/27.04.2012, he was axed to death. During their cross-examination the factum of accused met with homicidal death was not disputed by the accused though his culpability was challenged. Thus, the evidence of PWs.1 to 6 would clearly establish that the death was homicidal one. Their evidence is corroborated by PWs.7, 10 and 8.

8) PW8 who conducted post-mortem on the dead body of deceased on 27.04.2012 at about 4 PM found the following external injuries:

- 1) *An incised wound on the right temporal region of the head measuring 2" x 1 ½" into fracture of the skull bone.*
- 2) *Adjacent to the above incised injury on the right parietal region of the head measuring 2" x 1 ½" with skull bone fracture.*
- 3) *Adjacent to the above injury an incised injury on the right parietal region of the head measuring 1½" x ½" into fracture of the skull bone.*
- 4) *An incised wound on the fore head (right side) above the upper eye lid measuring 1½" x 1" with skull bone fracture.*
- 5) *An obliquely incised injury on the right side of the forehead measuring 2" x ½" with bone deep.*
- 6) *An incised injury below the right lower eye lid measuring 2" x 1" with skull bone fracture.*
- 7) *Small abrasions on the right side of the face here and there.*
- 8) *The upper jaw teeth are loosened."*

This medical witness opined that the deceased would appear to have died by homicidal and neurogenic shocks. He stated that injuries mentioned in Ex.P6—post-mortem report can be caused with MO1—axe shown to him. Thus, PW8 stated that the deceased died due to axe injuries received by him on his face and skull. The injuries 1 to 4 and 6 would show that those injuries were associated with fracture of skull bone.

9) Then the evidence of PWs.7 and 10 is to the effect that they acted as inquest mediators for Ex.P5—inquest proceedings conducted by the police. In Ex.P5 the mediators opined that apparent cause of death was due to the hack injuries received by the deceased on his head and face.

10) Thus, the evidence of PWs.7, 8 and 10 coupled with Ex.P5—inquest report and Ex.P6—post-mortem report would show that the assailant had attacked on the vital parts of the deceased i.e. on the head and face and caused fracture injuries to skull bone. It would show that whoever be the assailant he caused the injuries to deceased with an intention to kill him. Thus, there is no demur that death of deceased is a homicidal one.

This point is answered accordingly.

It is, therefore, now to be seen whether the accused is responsible for the murder of the deceased in the point infra.

11) **POINT No.2:** Ex.P1—report given by PW1 unfolds the prosecution case, as per which, about 20 days prior to the incident the

accused in an inebriated condition slept in the house by bolting from inside and at that time the deceased came and knocked the door but the accused did not open. Hence, the deceased forcibly opened the door and thereby the door fell on the accused and he got an injury to his hand. The accused got angry and locked the house and did not allow PWs.1 and 2 and deceased and so, they had to stay in the house of neighbours for about 10 days. Thereafter, they broke open the lock and entered the house. On 26.04.2012 the deceased attended the obsequies of their relation and had dinner and returned to house at 9.15 PM and slept on the cot in front of the house; accused slept inside the house and PWs.1 and 2 slept on the terrace of house. In the midnight at about 1.30 AM on hearing the cries, PWs.1 and 2 woke up and saw from the terrace that accused was axing the deceased with MO1. When PWs.1 and 2 raised cries, the neighbours rushed there and on hearing it the accused went inside the house and left the axe and went away. In the meanwhile, PWs.1 and 2 got down from the terrace and some one telephoned to 108 Ambulance and about 1.45 AM the Ambulance came and the team who came with Ambulance examined the deceased and declared him dead. PWs.1, 2 and 6 went to the Giddalur PS and gave report to the police at about 3 AM, basing on which, Cr.No.94 of 2012 was registered by the police under Section 302 IPC and conducted investigation.

12) To establish the complicity of accused the prosecution examined PWs.1 and 2 who are eye-witnesses and PWs.3 to 6 who rushed to the spot on hearing their cries, PWs.1 and 2 in one voice deposed that on the

night of incident when the deceased was sleeping on a cot in front of their house, at about 1.30 AM on hearing his noise when PWs.1 and 2 woke up they found from the terrace that the accused was hacking the deceased with axe. They raised hue and cry and on hearing the same the accused left the place by wearing a shirt and keeping the axe inside the house. They stated that deceased was in an unconscious stage and groaning. The neighbours—LWs.3 to 9 rushed to the scene, on information passed by one of them, 108 Ambulance came and the persons who came along with Ambulance on examining declared the deceased died. Their evidence would further show that on her information PW6 drafted the report and thereafter PWs.1, 2 and 6 went to the police station and presented Ex.P1—report. As per PW1, the motive for the accused to kill the deceased was that accused developed grudge against the deceased, as the deceased was living with them against his will and accused claimed exclusive right over the house constructed by them with their joint amounts and the accused questioned their right to stay in their house particularly, the right of the deceased. PWs.1 and 2 identified MO1—axe used by the accused to kill the deceased. PW1 further identified MOs.2 to 13 which are wearing apparel of the deceased and cot and pillow etc.

13) PWs.1 and 2 were intensively cross-examined by the defence side and tried to destabilize their testimony. However, nothing specific could be elicited to discredit them. As already observed, PWs.1 and 2 are none other than the wife and daughter of the accused and no strong reason or

motive is projected to show that they have animosity to implicate him in a false case leaving the real culprits. PW2 is the married daughter of accused and her matrimonial home is at Hubli, Karnataka State. It was suggested to her she was away at Hubli and not present in the house of accused on the night of occurrence. It was denied by her. It is to be noted that Ex.P1—report was lodged with police within short time after the incident wherein the presence of PW2 at the scene was mentioned. Further, in Ex.P5—inquest report also her presence was noted. Inquest was conducted by the police on the morning of 27.04.2012 at about 10 AM at Ambvaram village, Giddalur Mandal at the house of accused. If really PW2 was absent, it is highly impossible to include her presence in Exs.P1 and P5. A close scrutiny shows, there is a ring of truth in the evidence of PWs.1 and 2. Their evidence is corroborated by PWs.3 to 6 the neighbours who rushed to the scene on hearing their cries. It is true, PWs.3 to 6 are not direct eye-witnesses but their evidence is relevant and admissible under the principle of *res gestae* as they rushed to the spot immediately after the incident and were informed of ghastly act committed by the accused from the horse's mouth of PWs.1 and 2. In their cross-examination no specific suggestion was given to them that they are not the neighbours of the accused. Hence, their evidence can be accepted. They stated that on hearing the hue and cry of PWs.1 and 2 they woke up and rushed to the house of deceased and saw him in bleeding injuries. PW3 specifically stated that on hearing cries when she came out of the house she noticed the accused leaving the house by wearing the shirt. She denied the suggestion that she was close to

deceased and she deposed falsehood. So, the evidence of PW3 further strengthens the evidence of PWs.1 and 2 to the effect that while the accused was going away from his house he was seen by PW3. PW6 stated that on the request of PWs.1 and 2 he scribed Ex.P1—report and he accompanied PWs.1 and 2 to police station to present Ex.P1—report.

14) In the instant case, the incident was occurred around 1.30 AM on the intervening night of 26/27.04.2012 and PWs.1, 2 and 6 presented Ex.P1—report within short time i.e. about 3.00 AM and the same was registered as Cr.No.94 of 2012. The endorsement on Ex.P10—FIR would show that the FIR and original report were received by the Magistrate on 27.04.2012 at 7.00 AM. All these would show that FIR was promptly registered without any delay. In the FIR it was clearly mentioned the accused was culprit who caused the death of deceased. The same facts were spoken too by PWs.1, 2 and other witnesses. Except denying the evidence of prosecution witnesses, nothing specific could be brought out on record as to why a false case was foisted against the accused. The evidence of PWs.10 and 12 and Exs.P13 and P14 would cumulatively show that after the accused was arrested the IO has sent all the material objects to RFSL and the RFSL sent its report under Ex.P14 wherein it is mentioned items 1, 3 to 7 i.e. the blood stained earth, towel, navaar tape of cot, pillow, axe and pant etc. contained human blood. MO1 was seized by the IO during the course of inspection of scene of offence. It was identified by PWs.1 and 2 as used

by the accused. The post-mortem doctor opined that the injuries found on the dead body can be caused with MO1.

15) So on a conspectus of the oral and material evidence, it is clear that the accused has committed the murder of the deceased by hacking with MO1—axe due to property disputes and prosecution could establish his guilt beyond reasonable doubt. The arguments advanced on behalf of appellant do not merit consideration. The charge is concerned, the number of injuries caused on the vital part of the body of the deceased by the accused including fracture to the skull bone would show that he had intention to kill the deceased. Therefore, the charge under Section 302 IPC is established beyond reasonable doubt. However, having regard to the circumstances in which the offence was committed, the same cannot be regarded as rarest of the rare one. Therefore, the trial Court was right in punishing him with life imprisonment.

16) In the result, this Criminal Appeal is dismissed by confirming the conviction and sentence recorded by the trial Court in S.C.No.208 of 2012.

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

A. RAMALINGESWARA RAO , J

U. DURGA PRASAD RAO, J

Date: 28.04.2018
Murthy