

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.252 of 2012

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

1) Accused No.1 in Sessions Case No.86 of 2011 on the file of the Sessions Judge at Mahabubnagar, is the appellant herein. He along with accused Nos.2 to 4 were tried for the offences punishable under Section 302 read with 34 IPC, for causing the death of one Medipalli Anjaneyulu (hereinafter referred to as "the deceased") by hacking him with an axe. Vide judgment, dated 09.09.2011, the learned Sessions Judge, while acquitting accused Nos.2 to 4 for the offence punishable under Section 302 read with 34 IPC, convicted accused No.1 under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay a fine of Rs.1000/- in default to suffer simple imprisonment for a period of three months.

2) The gravamen of the charge against the accused is that on 07.06.2010 at about 5.00 p.m., in the lands of Medipalli Anjaneyulu at Chowdergudem village, accused No.1 axed the deceased on his neck while accused Nos.2 to 4 caught hold of him.

3) The facts as culled out from the evidence of the prosecution witnesses is as under:

i) PW.2 is the wife of the deceased and sister-in-law of PWs.1 and 7. All other witnesses are resident of Jilledu village. There were disputes between the accused and the deceased since the accused are said to have occupied the lands of the deceased during his stay at Hyderabad. Because of the same, the deceased filed O.S.No.80 of 2003 against the accused at Shadnagar, claiming restoration of possession, which is pending. On 07.06.2010, PW.2 along with the deceased went to Chowdergudem village at 10.30 a.m. In the village, PW.2 and her husband set fire to sticks and scrap in their land. Thereafter the deceased and PW.1 sat under a tree and started talking with each other. During that time, they asked PW.1 to cultivate their land. While they were talking about the same, accused Nos.2 and 3 came to them; picked up a quarrel with the deceased and asked the deceased to come to panchayat office for settlement of land dispute. A wordily altercation took place. In the mean time, accused No.4 also came there and all of them challenged the deceased as to how he would cultivate the land. At that time, accused No.1 came there. It is said that accused Nos.2 to 4 caught hold the deceased and accused No.1 axed on the back side portion of the neck of the deceased, as a result of

which the deceased fell down. While PW.2 went to rescue her husband, the accused came upon her, on that she raised cries, which attracted the attention of PWs.3 and 4. In the mean time, an auto came, in which the deceased was shifted to Government Hospital at Shadnagar, where he was declared dead. On the same day at about 8.00 p.m., PW.2 went to the police station and lodged a report, basing on which, PW.12- the Sub-Inspector of Police, registered a case in Crime No.42 of 2010 for the offence punishable under Section 302 read with 34 IPC and issued Ex.P2-the first information report.

ii) Further investigation in this case was taken up by PW.13-Inspector of Police. On receipt of copy of the first information report, PW.13 visited the scene of offence and in the presence of PW.8 and another he prepared the Crime Details Form (Ex.P7) which contains the rough sketch of the scene along with the observation report of the scene. Thereafter, he visited the Community Health Centre, Shadnagar, and recorded the statements of PWs.1, 3, 4 and others. He, then conducted inquest over the dead body of the deceased in the presence of PW.8. Ex.P8 is the inquest report. He also got photographed the dead body of the deceased. On completion of the inquest proceedings, the body was sent for postmortem examination.

iii) PW.11-the Civil Assistant Surgeon, Community Health Centre, Shadnagar, conducted autopsy over the dead body of the deceased on 08.06.2010 between 12.40 p.m., and 2.30 p.m., and issued Ex.P11 the postmortem certificate. According to him the cause of death was “due to shock and hemorrhage due to chop injury”.

iv) On 12.06.2010, PW.13 along with his staff proceeded to Chowdergudem village and arrested accused Nos.1 to 4 in the presence of PWs.9 and 10. On interrogation they are alleged to have confessed about the commission of offence. Ex.P19 is the marked portion of the confession-cum-recovery panchanama. It is said that pursuant to the confession made by accused No.1, blood stained axe was discovered. Thereafter, PW.13 effected the arrest of accused.

v) After collecting all the necessary documents, PW.13 filed a charge sheet before the Court of Judicial First Class Magistrate, Shadnagar, which was taken on file as P.R.C.No.9 of 2011. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 of Cr.P.C., which came to be numbered as S.C.No.86 of 2011.

4) On appearance, charge under Section 302 read with 34 IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P20 and MOs.1 to 4. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral evidence was adduced on behalf of the accused, but Ex.D1-a portion of 161 Cr.P.C. statement of PW.6 was marked, in support of their defence.

6) Out of 13 witnesses examined by the prosecution, PWs.1, 3, 5, 7, 9 and 10 did not support the prosecution case as they resiled from their earlier statements. Basing on the evidence of PW.2, coupled with the medical evidence, the learned Sessions Judge while acquitting accused Nos.2 to 4 convicted accused No.1 in the manner referred to above. Challenging the same, the present appeal came to be filed.

7) Learned counsel for the appellant mainly submits that there are number of circumstances to indicate that PW.2 was not present at the scene of offence. She further contends that there is abnormal delay in lodging the report

and the same has been utilized to implicate the accused in the crime because of the earlier disputes. She further submits that there is a discrepancy with regard to the weapon alleged to have been used and produced in the Court. In view of the above she submits that the prosecution failed to prove the guilt of the accused. In any event she would contend that since the incident in question was preceded by a quarrel and only one blow was given, pleads that it is fit case to scale down the offence.

8) On the other hand, the learned Public Prosecutor would submit that the trial Court rightly believed the evidence of PW.2 to base a conviction on the appellant. Having regard to the findings given, he submits that the conviction and sentence imposed by the trial Court warrants no interference.

9) As seen from the record, the entire case rests on the evidence of PW.2, who was examined as an eye witness to the incident. The fact that there were disputes between the accused and the deceased is not in dispute. The record shows that when accused Nos.1 to 3 occupied Ac.2.20 gts., of land given to the deceased, he filed O.S.No.80 of 2003, before the Court of Junior Civil Judge at Shadnagar, claiming restoration of possession of the land from the accused. The

evidence of PW.2 further shows that on the date of incident at about 10.00 or 10.30 a.m., herself along with her husband came to the village from Hyderabad, where they are staying. In the village, the deceased along with PW.2 set fire to some sticks and scrap in their field and while they were sitting under a tree and chitchatting with each other, accused Nos.2 and 3 came there and picked up a quarrel with the deceased and they wanted the deceased to come to the panchayat office for settlement of the land dispute. It is further stated that accused Nos.2 and 3 also abused the deceased in filthy language. Meanwhile, accused No.4 came there and challenged the deceased as to how he will cultivate the land. While all three of them were present there, accused No.1 also joined them.

10) It is to be noted here that the evidence of PW.2 does not show that accused No.1 came there along with accused Nos.2 to 4 with any weapon. The record shows that after the arrival of accused No.1, accused Nos.2 to 4 caught hold of the deceased and accused No.1 hacked the deceased with an axe in the back portion of the neck of the deceased. Immediately thereafter at 8.00 p.m. in the evening a report came to be given showing the complicity of the accused in the commission of offence.

11) PW.2 was subject to cross-examination, in which she admitted that she along with her husband, were living in Hyderabad since 30 to 35 years. She further admits that she was having a house in Hyderabad and also a house at Chowdergudem village, which is in a dilapidated condition. She admits that though they claimed to have gone to the village at about 10.00 or 10.30 a.m., in the cross-examination it was elicited that the incident took place at about 4.00 or 4.30 p.m. She further states that the entire incident took place for ½ hour. To a suggestion that accused Nos.2 and 3 did not abuse the deceased was denied by her. To a suggestion that a false case came to be filed against the accused taking advantage of the incident in the village, was also denied by her.

12) From the answers elicited in the cross-examination of PW.2, it is clear that though PW.2 and the deceased reached the village at 10.00 or 10.30 a.m., but the incident in question took place at 4.30 p.m., immediately thereafter a report came to be lodged. Therefore, the argument of the learned counsel for the appellant that there was abnormal delay in giving the report, which has been utilized to implicate the accused cannot be accepted.

13) Further, one of the arguments advanced by the learned counsel for the appellant is that there is any amount of doubt with regard to presence of PW.2, since there is no need for her to go to the village on that day. But we are not inclined to accept the same. PW.2 was not a stranger to PWs.1, 3, 5 and 7. It is true that the said witnesses did not support the prosecution case but her presence in the village at the time of the incident cannot be doubted more particularly having regard to the nature of suggestions given to PW.2, which establishes her presence at the scene in the village on that day. Therefore, the argument of the learned counsel for the appellant that there is any amount of doubt with regard to PW.2 being present at the scene cannot be accepted.

14) Coming to the nature of offence, which appears to be the main plank of the argument, it is to be noted that as per the evidence of PW.2 and Ex.P1, accused Nos.2 to 4 caught hold of the deceased and accused No.1 gave single blow on the head of the deceased. The evidence of PW.2 also shows that prior to arrival of accused No.1, accused Nos.2 to 4 had an altercation with the deceased. After arrival of accused No.1, accused Nos.2 to 4 caught hold of the deceased while accused No.1 dealt a blow. Though the first information report is silent with regard to participation

of accused Nos.2 to 4 in holding the deceased, but the finding of the learned Sessions Judge would show that accused Nos.2 to 4 were also present at the scene and the incident in question was preceded by a quarrel, when they asked the deceased to come to panchayat office for settlement of land dispute. The incident of requesting the deceased to come to the panchayat office for settlement of the claim made by accused No.1, appears to have lead to the incident which is after the arrival of accused No.1. As the deceased referred to oblige their request, accused No.1 said to have dealt a blow.

15) The evidence of PW.13-the investigating officer would show that in Ex.P9, which is panchanama for confession and recovery of M.O.1, does not contain the signature of the accused. The measurement of the axe in Ex.P20-F.S.L. Report is mentioned as 17 x 6 cms. While the length of the axe is mentioned as 2 and half feet in Ex.P19. Relying upon the said discrepancy the learned counsel for the appellant pleads that the axe which was sent to an expert containing the blood group of the deceased is not the same weapon which was recovered at the instance of accused No.1. We feel that the same cannot be brushed aside, having regard to the discrepancy in the seizure and the weapon produced before the Court. Though the participation of accused Nos.2

to 4 is disbelieved, but the participation of accused No.1 in the commission of offence stands proved by the evidence of PW.2, coupled with the averments in the earliest report. Since a single blow is given on the head, which lead to death within few hours and having regard to the fact that the incident in question was preceded by a quarrel between the deceased and accused and taking into consideration the existence of civil disputes between the deceased and the accused and the deceased coming to the village on that day, on his own without any prior notice or knowledge to the accused, it cannot be said that the accused came there with an intention to cause the death of the deceased. Hence, we feel that it is a fit case where the nature of offence can be scaled down from 302 IPC to 304 Part-I IPC.

16) Accordingly, the Criminal Appeal is partly allowed and the conviction imposed against the appellant/ accused No.1 in Sessions Case No.86 of 2011 on the file of the Sessions Judge, Mahabubnagar, for the offence punishable under Section 302 IPC is set aside and consequently, the appellant is convicted under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of ten years. The period of remand undergone by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. The appellant/ accused

shall be set at liberty forthwith, if not required in any other case, on completion of ten years rigorous imprisonment, including remissions, if he is entitled to.

17) This Court, vide its order dated 19.12.2016 in Crl.A.M.P.No.2042 of 2016 directed release of the appellant/ accused No.1 on bail on the terms and conditions mentioned therein. In view of above sentence, the Magistrate concerned shall take immediate steps to secure the presence of the accused to serve the sentence of imprisonment. Registry is directed to forthwith communicate a copy of this Judgment to the concerned Court.

18) Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

T. RAJANI, J

16.07.2018

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