

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT. JUSTICE T.RAJANI

CRIMINAL APPEAL No.486 of 2012

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

Appellants - accused Nos.1 and 2 filed this Criminal Appeal being aggrieved by the judgment, dated 14.05.2012, rendered in Sessions Case No.569 of 2010 by the VI Additional District & Sessions Judge (FTC), Markapur, wherein and whereunder the learned Sessions Judge found both the accused guilty for the offence punishable under Section 302 read with 34 IPC and sentenced them to undergo Imprisonment for Life and to pay a fine of Rs.2,000/- each for the offence punishable under Section 302 read with 34 IPC, in default to undergo simple imprisonment for a period of two (2) months. Assailing the same, the present appeal came to be filed.

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

PW.1 is the wife of the deceased Chinna Hanumaiah. PW.2 is the aunt of PW.1. PW.3 is the sister of the deceased. The accused, deceased and PWs.1 to 3 are residents of Manthanala Cheruvugudem village. It is said that the accused are brothers and are related to PW.1 by courtesy. A.1 is the Upasarpanch of the village while A.2 is a Teacher. About one year ago, government sanctioned four solar

lamps to Pedda Manthanala Cheruvugudem village for installing of the same in four directions of the village. About two months prior to the incident, A.1 and A.2 took away the solar lamp fixed in front of the house of the deceased, and fixed it in their fields. After harvesting their crop, A.1 and A.2 shifted the said lamp and fixed it near their houses. The deceased opposed the high handed action of the accused and questioned them for shifting the light fixed in front of his house. On that, an altercation took place between the deceased and the accused. On 26.02.2010, about 10.00 p.m., the deceased was called by the accused, challenging him for questioning them with regard to shifting of the lamp from the house of the deceased to their house. PW.2 admonished the accused and asked them to go away and also warned the deceased. In spite of that, the deceased went towards the accused without caring the threats of the accused. PW.1 seems to have intervened and asked the deceased. At that point of time, the arrow released by A.1 hit on the forehead of the deceased and the arrow released by A.2 hit the right leg of the deceased. While the deceased started running, the other arrow released by A.1, hit the deceased on the right leg and the second arrow released by A.2 hit below the right knee of the deceased, as a result of which the deceased fell down unconsciously in the back yard of the house of China Chennamma. PWs.1 to 3 shifted the deceased to the house and after some time, the deceased succumbed to arrow injuries.

On 27.02.2010 at about 13.30 hours, PWs.1 and 3 went to the Police Station, Dornala and gave the statement about the occurrence. PW.10 – the Sub Inspector of Police, Dornala Police Station, recorded the statement of PW1 and registered a case in Crime No.8 of 2010 for the offence under Section 302 read with 34 IPC; submitted express FIR along with original statement of complainant to the Court of Additional Judicial Magistrate of First Class, Markapur and took up investigation. Having secured the presence of PWs.4 to 6, PW.10 conducted the scene observation proceedings and also prepared a rough sketch of the scene of offence. Exs.P.15 and P.16 are the scene of observation report and rough sketch of the scene, respectively. From the scene of offence, PW.10 seized four arrows, blue colour jeans pant, blood stained earth and control earth under cover of panchanama. On completion of the said proceedings, PW.10 conducted inquest over the dead body of the deceased in the presence of PWs.4 to 6, under the cover of inquest report, examined as many as 3 witnesses, recorded their statements and shifted the dead body for autopsy. Ex.P.6 is the inquest report. PW.8 - Dr.M.V.Krishna Reddy, Civil Assistant Surgeon, Area Hospital, Markapur, conducted autopsy over the body of the deceased on 28.02.2010 at 11.00 a.m., and issued Ex.P.9 - Post Mortem Report. He opined that the deceased would appear to have died of hemorrhage and shock.

PW9 – Circle Inspector of Police took up further investigation of the case. On 26.03.2010 on reliable information at 17.00 hours,

PW.9 arrested the accused at Pedda Manthanala Ashram School and seized two bows, four arrows in the presence of mediators under cover of mediatorsnama and produced the accused before the Additional Judicial Magistrate First Class, Markapur, seeking remand. The material objects seized at the scene of offence only were sent to RFSL, Gutnur, for analysis.

After obtaining all the documents and necessary reports, a charge sheet came to be filed against both the accused for the offence punishable under Section 302 read with 34 IPC, which was taken on file as PRC No. 35 of 2010 on the file of the Judicial Magistrate of First Class, Markapur. After complying with the requirements of Section 207 of Cr.P.C., the case was committed to the Court of Sessions under Section 209 Cr.P.C. and the same came to be numbered as S.C.No.569 of 2010 on the file of the VI Additional District and Sessions Judge (FTC), Markapur. Basing on the material on record, a charge for the offence punishable 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.

In support of its case, the prosecution examined PWs.1 to 10 and got marked Exs.P.1 to P.16 and M.Os.b1 to 7. 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. The accused did not adduce any oral evidence, but got

marked Ex.D-1, which is the contradictory statement of PW.3 under Section 161 Cr.P.C.

Believing the evidence of PWs.1 to 3 and the medical evidence, the trial court convicted the accused for the offence punishable under Section 302 read with 34 IPC and sentenced them as stated above. Challenging the same, the present appeal came to be filed.

3. Sri V.Raghu, learned counsel for the accused - appellants, submits that in view of the discrepancies in the evidence of PWs.1 and 2, *vis-à-vis* the earlier statements made before the Police with regard to the overt acts, there is an amount of doubt with regard to participation of the accused in the commission of offence. Insofar as the evidence of PW.3, who is the younger brother of the deceased, the learned counsel would submit that even as per his own admission, PW.3 was on the terrace of his house and woke up after hearing the cries, and therefore, his evidence in the Court that he saw the incident, cannot be believed. He further submits that the medical evidence is inconsistent with the prosecution case, since the doctor is not sure as to which injury is responsible for the death of the deceased, therefore, the learned counsel would contend that the trial Court erred in convicting the accused under Section 302 read with 34 IPC.

4. On the other hand, learned Public Prosecutor would contend that the evidence of PWs.1 to 3 cannot be disbelieved since their evidence gets corroboration from the medical evidence.

5. The points that arise for consideration is whether both the accused are responsible for causing death of the deceased, and also as to whether the trial Court erred in convicting the accused under Section 302 read with 34 IPC.

6. With regard to the incident, PW.1 in her evidence deposed that the Government sanctioned four solar lamps to the chenchu colony at Manthanala, about a year ago. One solar lamp was fixed in the agricultural land of A.1 and one lamp was fixed in front of the house of A.1's sister, by name, Pedda Venkatamma and two other lamps were fixed in the colony. The lamp fixed in the agricultural land of A.1, was originally fixed in front of the house of the deceased. Two months prior to the incident, A.1 is said to have taken away the lamp fixed in front of the house of deceased and fixed it in his fields. After harvesting their crop, A.1 and A.2 shifted the lamp and fixed it near their house. The deceased opposed the highhandedness of A.1 and A.2 and questioned them for shifting the lamp, which was fixed in front of his house. On that score, an altercation took place between the deceased and the accused. On 26.02.2010 at about 10.00 p.m., the accused called the deceased to come out of his house challenging him for questioning them, with regard to shifting of the solar lamp. PW.2 admonished the accused and asked them to go away and warned the deceased not to go towards the accused. In spite of that the deceased proceeded towards the accused. PW.1 also intervened and requested the deceased not to go. But still, the deceased proceeded towards the

accused. On seeing the deceased coming towards them, the accused released arrows from their bows. One of the arrows released by A2 hit on the fore head and the one arrow released by A.1 hit on the right leg of the deceased. Then the deceased started running. Meanwhile, A.1 released another arrow which hit on the right leg of the deceased and the second arrow released by A.2 hit below the right knee of the deceased, as a result of which, the deceased fell down and lost consciousness. PW.1 though deposed in her chief examination about the specific act of each accused, failed to mention those specific overt acts in the earlier statement given before the police under Section 161 Cr.P.C. PW.10, who examined PWs.1 and 2 admits that these two witnesses did not specify the overt acts/role of A.1 and A.2. The fact remains that in the earlier statement, PW.1 did not specify the overt acts of both the accused. It is also on record through the evidence of PW.1 that on that day at about 6.00 p.m., the deceased consumed two glasses of Alcohol. PW.1 was also cross examined with regard to visibility at 10.00 p.m. and also as to whether she could have seen the incident. However, the said suggestion was denied. Since both the accused are known people, we do not see any difficulty in PW.1 identifying them in the night more so when the incident in question was preceded by a challenge thrown by A.1 and A.2 at deceased.

7. PW.2, who is the aunt of PW.1, deposed that about two years ago, the husband of PW.1 was killed by the accused with arrows in front of the house of accused on account of disputes between the

accused and the deceased with regard to solar lamps supplied by the Government to their colony. She also reiterated about the installation of solar lamp in front of the house of deceased and shifting of it by the accused to their fields and then to their house inspite of protest made by the deceased. Coming to the incident, she deposed that on the date of occurrence at about 10.00 p.m., the accused provoked the deceased to come out of the house. It is said that PW.2 requested them not to harm the deceased, but they did not agree. A.1 and A.2 released two arrows each towards the deceased, which caused injuries on his leg and on forehead resulting in his death. In the cross examination it was elicited that her house is behind the house of PW.1 and for the first time she saw the deceased on the ground with injuries. It was further elicited that she went near the deceased, saw the arrows pierced into the leg and thigh of the deceased. From evidence of this witness it is clear that the incident happened near her house and the dead body of the deceased was by the side of her house. Though she denied the suggestion with regard to non-mentioning of specific overt acts but the fact remains that she failed to mention the specific role of each of the accused in the earlier statement made before the police (PW.10). The said omission was also elicited in the evidence of PW.1.

8. PW.3 is none other than the brother of the deceased. While speaking about the motive, i.e. with regard to quarrel which took place between the accused and the deceased, he deposed that on the date of incident at about 10.00 p.m., the accused killed his brother as he

questioned the highhanded acts of the accused in removing the solar lights fixed in front of the house of the deceased and fixing it near the house of the accused. According to him, A1 and A2 released four arrows and out of them one hit on the fore head and three arrows on the legs. In the cross examination, PW.3 admits as under:

“By the time of occurrence I was on the terrace of our house. I did not state before the police that at the time of occurrence I was sleeping and I was hearing the cries I woke up as mentioned in Ex.D.1.”

9. From the admission made by PW.3, it appears that he was sleeping on the terrace of the house and woke up, on hearing the cries. Therefore, a doubt arose as to whether he had witnessed the incident. Even if the evidence of PW.3 is excluded from consideration still there remains the evidence of PWs.1 and 2.

10. Learned counsel for the appellants tried to submit that these two witnesses have not spoken about the overt acts in their earlier statements and therefore, the entire evidence cannot be relied upon, since according to him, the evidence of these witnesses is inconsistent with the medical evidence. But, before dealing with the incident in question, we are not inclined to accept his argument with regard to innocence of the accused. The fact that these two witnesses did not mention in their earlier statements about the overt acts, cannot be disputed. For the first time in the Court these two witnesses deposed about the role played by each of the accused. Out of two arrows released by A1 one arrow hit the forehead of the deceased and the other arrow hit the right leg of the deceased. The two arrows released

by A2 hit the deceased on his right leg. Since these two witnesses did not mention or refer to the specific overt act of each of the accused, doubt arises as to which arrow released by which accused caused injury. It cannot be said with certainty that the cause of death was due to release of arrows by A.1 which hit on the Popliteal Fossa as deposed by the post mortem doctor. However, the evidence of these two witnesses coupled with the averments in the FIR and the version in the inquest report, occurrence of the incident cannot be disputed. Though there were omissions in the earlier statement with regard to specific overt acts, we are not inclined to doubt the incident. Hence, the occurrence of the incident, stands established.

11. To know as to whether the accused had any intention to cause death of the deceased, the evidence of these two witnesses, makes it clear that there were disputes between the accused and the deceased with regard to shifting of the solar lamp by the accused to their fields and then again to their house. The deceased used to quarrel with both the accused over this issue. Even on the date of incident at about 10.00 p.m., the A1 and A2 called the deceased from the house, challenging him for questioning their action in shifting the solar lamp. In spite of PWs.1 and 2 requesting the deceased not to go towards the accused, the deceased, who appeared to be in an intoxicated condition, as he is said to have consumed Alcohol at 6.00 p.m., proceeded towards the accused, and only then the accused were said to have released the arrows. Since the arrows came to be released by the

accused only when the deceased came towards the accused after accepting the challenge, it can be said that the accused never had any intention to cause death of the deceased or that they shared common intention to cause the death of the deceased. It cannot be said they have any knowledge that the arrows released would cause the death more so having regard to the nature of injury caused at the place where the arrow was pierced.

12. PW8 is the Doctor, who conducted postmortem on the dead body of the deceased. He noticed four injuries on the body of the deceased. In his evidence, he referred four injuries, which are as under:

“Laceration over lower end of the right thigh 3 x 2 cms.
Another laceration over popliteal fossa 4 x 3 cms.
Another laceration over back side of the leg 3 x 3 cms.
Another laceration over fore head 3 x 2 cms.”

13. In chief, he deposed that the cause of death was due to hemorrhage and shock due to above injuries which might have caused with sharp edged weapon. In the cross-examination, he admits that when an injury is caused by a sharp edged weapon that travels into the body and there will be corresponding clean cut edges in the body. He admitted that in the wound certificate issued by him, depth of the injuries were not noted. According to him, no corresponding internal injuries are found on the body of the deceased corresponding to the external injuries. He further admitted that only injury No.3 was caused on the vital part of the body and other injuries were not on vital

parts. He further admitted that there is possibility of causing death due to dehydration as the deceased consumed alcohol. Taking a clue from the admission made by PW.8 with regard to the cause of death due to dehydration, the learned counsel for the appellants tried to submit that the death was not due to injuries caused by releasing of the arrows. But, we are not inclined to accept the same. The reason is that though in the chief examination, the Doctor stated that death was due to hemorrhage caused by the injuries, but in the cross examination he admitted that only one injury was on the vital part of the body and the other three injuries are on non-vital parts of the body and injury No.3 was said to have been caused on a vital part. In the Postmortem examination certificate, which is placed on record as Ex.P-9, the third injury was a laceration over Popliteal fossa, measuring 4 x 3 cms., which was on the back of the knee.

14. In view of the evidence of PWs.1 and 2, who in their earlier statement did not attribute any specific overt acts to any of the accused, it cannot be said that fatal injury, which according to the doctor, appears to be third injury, is caused either by A1 or A2. At the same time, the Doctor also did not say as to whether these injuries are grievance or simple in nature. On the other hand, he admitted that there are no corresponding internal injuries on the body of the deceased corresponding to external injuries.

15. Having regard to the findings arrived at with regard to the manner in which the incident took place, the role of the accused and

the circumstances in which the incident took place, we feel that the trial Court erred in convicting the accused for the offence punishable under Section 302 read with 34 IPC. But, however, having regard to the findings arrived at, both the accused are liable to be punished for causing injuries on the deceased. Hence, the conviction recorded by the trial against the accused for the offence under Section 302 IPC read with 34 IPC is modified to the one under Section 324 read with 34 IPC.

16. In the result, the Criminal Appeal is allowed in part. The conviction recorded against the accused for the offence under Section 302 read with 34 IPC is modified to Section 324 read with 34 IPC and the accused are sentenced to undergo rigorous imprisonment for three (3) years. Learned counsel for the appellants submitted that the appellants have already undergone imprisonment for sufficient period and now they are released on bail.

Miscellaneous petitions pending, if any, shall stand closed.

C.PRAVEEN KUMAR, J

T. RAJANI, J

August 01, 2018

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