

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.726 of 2012

19.11.2018

Between:

Puramsetty Rajanna and others

..Appellants

and

The State of Telangana,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

Counsel for the appellants: Mr.P.Prabhakar Reddy
for Mr.S.Surender Reddy

Counsel for the respondent: Additional Public Prosecutor (T.S.)

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The appellants, who are accused Nos.1 to 4 in Sessions Case No.169 of 2008 on the file of learned I Additional Sessions Judge, Adilabad, filed this appeal feeling aggrieved by judgment, dated 20.06.2012, whereby they were convicted for the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. and sentenced to suffer life imprisonment and also to pay a fine of Rs.2,000/- each and in default of payment of fine, to suffer simple imprisonment for a period of six months. The appellants were also held entitled for set-off of the remand periods under Section 428 Cr.P.C.

2. Briefly stated, the case of the prosecution, as set out in the charge sheet, is as follows.

(i) The father of P.W.1 viz., Kotte Goverdhan (hereafter referred to as 'the deceased') and the accused persons were neighbours and residents of Palsi village. On 02.11.2007 at 21.00 hours, the complainant – P.W.1, presented a petition in Telugu stating that on 30.10.2007 at 5.00 p.m., he went to the house of accused No.1 to get back

the keys of his house, where the daughter of accused No.1 told that the keys were not available, upon which, he returned to his house. On 31.10.2007, a panchayat was held by the village elders as arranged by accused No.1 against P.W.1 alleging that he pressed the throat of his daughter on 30.10.2007, when he went for keys. During the panchayat, a decision was taken to pay a fine of Rs.1,500/- to the daughter of accused No.1 towards the medical expenses by the father of P.W.1. The said amount was paid. However, keeping this enmity in mind, all the accused persons, way laid and caught hold of the deceased on 02.11.2007 at 19.30 hours in front of Sai Baba Temple and started beating him with sticks indiscriminately. On knowing the said information, P.W.1 along his mother rushed to the spot and noticed continuous beating of the father of P.W.1 by the accused. After a while, the father of P.W.1 fell unconscious due to severe head injury and the accused fled away. Immediately, P.W.1 took his father to the Police Station in an auto and requested the Police to take necessary action and immediately, thereafter, shifted his father to the hospital for treatment.

(ii) On receipt of the above report, P.W.13 registered a case in crime No.86 of 2007 under Section 324 read with Section 34 I.P.C., took up investigation, examined P.W.1 and his mother, recorded their statements under Section 161 Cr.P.C., and referred the father of P.W.1 – the injured, to the Government Hospital, Bhainsa, from where he was shifted to NIMS, Hyderabad, for better treatment. On 05.11.2007, at 14.15 hours, the father of P.W.1 succumbed to injuries at NIMS, Hyderabad, while undergoing treatment, and the same was intimated to his brother – P.W.3. P.W.13 filed a memo on 05.11.2007 at 17.00 hours in this regard altering the provision of law from Section 324 read with 34 I.P.C. to Section 302 read with Section 34 I.P.C.

(iii) On P.W.14, on receipt of the altered F.I.R., took up further investigation of the case from P.W.13 and deputed P.W.13 to hold inquest over the dead body of the deceased at NIMS, Hyderabad and to conduct investigation. P.W.13 visited the New Gandhi Hospital, held inquest over the dead body of the deceased before the mediators –

P.Ws.9 and 10, examined L.Ws.3, 8, 9, 10 and 17 – Kotte Satya Narayana, Abbai Sainath, Suryavamsi Madhav, Walegaon Gangadher and Shaik Arif Hussain, respectively, and P.Ws.1 to 7, recorded their statements in Part II Case Diary under Section 161 Cr.P.C., seized the lungi containing blood stains worn by the deceased, got the dead body of the deceased photographed through L.W.17 and later, the dead body was subjected to autopsy by L.W.25 – Abdul Sattar. P.W.12 and handed over the dead body to the relation of the deceased for performance of funeral rites.

(iv) Later, P.W.14 took up further investigation, examined and recorded the statement of P.W.1, rushed immediately to the scene of offence located at Palsi village in front of Sai Baba temple, examined and recorded the detailed statements of L.Ws.12 to 16 – Thota Rajanna, Uppu Vittal, Kotte Shivalinga, Rajputh Laxman Singh, Ganta Hanmadlu respectively, and P.W.8 in Part II Case Diary under Section 161 Cr.P.C., drafted the scene of offence sketch before the mediators – L.Ws.21 and 22 – Kavagiri Rajanna and Kummari Bhojanna respectively, and

verified the investigation done by P.W.13 and found it to be on the correct lines.

(v) The scene of offence was located at Palsi village in front of Sai Baba temple on Bhainsa and Ranjani road. On the north of the scene was the toddy shop of laxma Goud, adjacent was the kirana shop of Ganga Singh and hotel of Mutthanna, on the east was the road leading to Bhainsa, on the west was the road leading to Ranjani village and on the south was the hotel of accused No.1, Sai Baba temple, veterinary hospital and PHC.

(vi) On 16.11.2007, at 11.00 hours, accused Nos.2 to 4 were arrested at their residence at Palsi village. Two mediators – L.W.22 and L.W.23 – Shenkur Papanna were summoned and the said accused were interrogated individually before them; whereupon, the said accused confessed the commission of the offence. Pursuant thereto, a hand Khada and a stick were recovered at the instance of accused No.2 under the cover of panchanama before the above mediators. After informing the grounds of their arrest to their relatives in the case, accused Nos.

2 to 4 were brought to the Police Station, Kubeer at 14.30 hours, arrest memos were issued against them and all the entries were made in the connected P.S. records. Accused No.1 surrendered before the Court on 13.11.2007 and he was sent to judicial remand by the Court.

(vii) The Medical Officers, Government New Gandhi Hospital, Secunderabad - L.W.25 and P.W.12, who conducted autopsy over the dead body of the deceased, issued detailed post mortem examination report stating that the death of the deceased was due to cerebrovascular accident associated with acute myocardial infarction.

3. Based on the charge sheet and the material collected by the Police during the investigation, the Court below framed the following charges.

“FIRSTLY: That on or about 2.11.2007 at about 7.30 p.m., in front of Sai Baba Temple at Palsi village you A.1 Puramsetty Rajanna along with A.2 to A.4 Puramsetty Linganna, Puramsetty Gajjaram and Puramsetty Rajanna @ Raju with an intention to cause death of Kotte Goverdhan S/o. Gajjaram, 50 years, attacked and beat him with sticks and caused multiple injuries to him and killed him on account of previous

disputes and that you A.1 thereby committed offence punishable under Section 302 IPC r/w 34 IPC and within the cognizance of this Court.

SECONDLY: That in the course of same transaction and at the same time and place mentioned in charge No.1 about you A.2 Puramsetty Linganna along with A.1, A.3 and A.4 viz., Puramsetty Rajanna, Puramsetty Gajjaram and Puramsetty Rajanna @ Raju with an intention to cause death of Kotte Goverdhan S/o Gajjaram, 50 years, attacked and beat him with sticks and caused multiple injuries to him and killed him on account of previous disputes and that you A.2 thereby committed offence punishable under Section 302 IPC r/w 34 and within the cognizance of this Court.

THIRDLY: That in the course of same transaction and at the same time and place mentioned in charge No.1 above you A.3 Puramsetty Gajjaram along with A.1, A.2 and A.4 viz., Puramsetty Rajanna, Puramsetty Linganna and Puramsetty Rajanna @ Raju with an intention to cause death of Kotte Goverdhan, S/o Gajjaram, 50 years, attacked and beat him with sticks and caused multiple injuries to him and killed him on account of previous disputes and that you A.3 thereby committed offence punishable under Section 302 IPC r/w 34 IPC and within the cognizance of this Court.

FOURTHLY: That in the course of same transaction and at the same time and place mentioned

in charge No.1 above you A.4 Puramsetty Rajanna @ Raju along with A.1, A.2 and A.3 *viz.*, Puramsetty Rajanna, Puramsetty Linganna and Puramsetty Gajjaram with an intention to cause death of Kotte Goverdhan, S/o Gajjaram, 50 years, attacked and beat him with sticks and caused multiple injuries to him and killed him on account of previous disputes and that you A.4 thereby committed offence punishable under Section 302 IPC r/w 34 IPC and within the cognizance of this Court.”

4. As the plea of the appellants was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 14, got Exs.P-1 to P-15 marked and produced M.Os.1 to 3. On behalf of the appellants, no oral evidence was let in. However, Ex.D-1 – a portion of P.W.1 statement, was got marked. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as stated above.

5. At the hearing, Mr.P.Prabhakar Reddy, learned counsel representing Mr.S.Surender Reddy, learned counsel for the appellants, has submitted that the Court below has fallen into an error by applying Section 34 I.P.C. in the absence of any evidence of common intention. He has

further submitted that having regard to the nature of the injuries, which were described as simple, and the facts that the deceased, who was already a heart patient, succumbed due to cerebrovascular accident associated with acute myocardial infarction and that the death was not the direct result of the injuries, the Court below has wrongly convicted the appellants for the offence punishable under Section 302 I.P.C. As regards appellant Nos.3 and 4, the learned counsel has submitted that even if the evidence of the alleged eyewitnesses – P.Ws.4 to 7 is taken into consideration, these appellants have not used any weapons and no corresponding injuries were found on the dead body of the deceased and that therefore, the Court below is wholly unjustified in convicting them for the offence punishable under Section 302 I.P.C. by applying Section 34 I.P.C.

6. Opposing the above submissions, the learned Additional Public Prosecutor (T.S.) appearing for the respondent-State has submitted that the prosecution was able to prove the guilt of the appellants beyond all

reasonable doubt; that P.Ws.4 to 7 being the eyewitnesses, their evidence is reliable and trustworthy and that the Court below has rightly relied upon their testimony to convict the appellants. She has further submitted that the fact that appellant Nos.3 and 4 are closely related to appellant Nos. 1 and 2 and their physical participation in the attack on the deceased shows their common intention and that therefore, Section 34 I.P.C. was rightly applied by the Court below.

7. We have carefully considered the respective submissions of the learned counsel for both the parties and perused the record.

8. P.Ws.4 to 7 were examined as eyewitnesses. Except P.W.6, the remaining eyewitnesses supported the case of the prosecution. From the cross-examination of these witnesses, the defence failed to elicit anything, which would create a doubt on the veracity of their testimony. Though it was suggested to P.W.4 that he was speaking falsehood as he was related to the deceased and P.Ws.1 and 2, the same was denied among the eyewitnesses. P.W.5 had admitted the relationship with the deceased. P.Ws.4, 6 and 7 being

the independent witnesses, we do not have any reason to doubt the veracity of their testimony, more so, when the defence failed to expose any weakness or shortcoming in their testimony. We are, therefore, of the opinion that the Court below has rightly believed their testimony.

9. The next question to be considered is whether even if we take the evidence of the eyewitnesses on its face value, the appellants are guilty of committing the offence of murder of the deceased. P.W.7 in his evidence deposed that two days after the panchayat was conducted, in which fine of Rs.1,500/- was imposed on the deceased for the alleged misbehaviour of his son towards the daughter of appellant No.1, a quarrel ensued between the deceased and the appellants, during which, appellant No.1 beat the deceased with a stick on his head, appellant No.2 beat the deceased with a wrist ring (kadem) and appellant Nos.3 and 4 beat the deceased with hands. Ex.P-11 – the post mortem examination report, showed seven injuries on the dead body of the deceased. P.W.12 – the Doctor, who

conducted autopsy over the dead body of the deceased, deposed that all the injuries noted by him at column No.9 at page 2 of Ex.P-11 are simple in nature and that injury Nos.1 to 3 and 5 to 7 are possible with M.O.2 – stick and injury Nos.3 and 7 are possible with M.O.3 - wrist ring (kadem). As per Ex.P-11, injury No.1 is an abrasion on the center of the forehead, injury No.2 is an abrasion on the left cheek, injury No.3 is a contusion interrupted over upper 1/3rd of right arm, injury No.4 is a contusion over back of middle 1/3rd of left forearm, injury No.5 - abrasions over the back of the right wrist, injury No.6 – abrasions to left knee and injury No.7 is a contusion on the scalp on the right side of occipital region. As noted above all the injuries were described as simple in nature. P.W.12 further deposed in the chief-examination that the emotion or the stress that the deceased underwent due to the injuries received might have led to him to have fresh myocardial infarction over old myocardial infarction; and that due to the stress and emotion, the blood pressure might have been caused, due to which cerebrovascular accident might have been occurred. It is, thus, evident from the opinion of P.W.12 –

the Doctor, that the death was not the direct cause of the injuries but due to the injuries, the deceased suffered cerebrovascular accident with acute myocardial infarction. Thus, the nature of the injuries being simple and the objects with which the injuries were caused were not lethal like sharp objects, such as nails and spears etc., it is not possible to attribute intention to cause the death of the deceased to appellant Nos.1 and 2, who used M.O.2 - stick and M.O.3 - wrist ring (kadem) to cause the injuries. This, coupled with the testimony of P.W.7, who deposed that there was a quarrel between the deceased and the appellants before appellant Nos.1 and 2 caused those injuries also shows that the said appellants did not have the premeditated intention to cause injuries, much less to cause the death of the deceased. Evidently, appellant Nos.1 and 2 attacked the deceased in a general fight and in a fit of emotion. Hence, we are of the opinion that the act committed by them falls under Exception IV to Section 300 I.P.C. In view of the finding that appellant Nos.1 and 2 do not have the intention of causing the death, the offence committed by them would fall under Section 304 Part-II I.P.C. as the act

done by them is with the knowledge that it is likely to cause death but without any intention to cause death or have they caused such bodily injury as is likely to cause death.

10. As regards appellant Nos.3 and 4, in **Balu alias Bala Subramaniam v. State (U.T. of Pondicherry)**¹, the Supreme Court, while dealing with Section 34 I.P.C., held at paragraph 10 as under.

“10. To invoke [Section 34](#) IPC, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that:- (i) there was common intention on the part of several persons to commit a particular crime and (ii) the crime was actually committed by them in furtherance of that common intention. The essence of liability under [Section 34](#) IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Minds regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention.”

¹ 2016 Cri.L.J. 176

The Supreme Court further held at paragraph 14 as under.

“14. Under [Section 34](#) IPC, a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. The question whether there was any common intention or not depends upon the inference to be drawn from the proving facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted.”

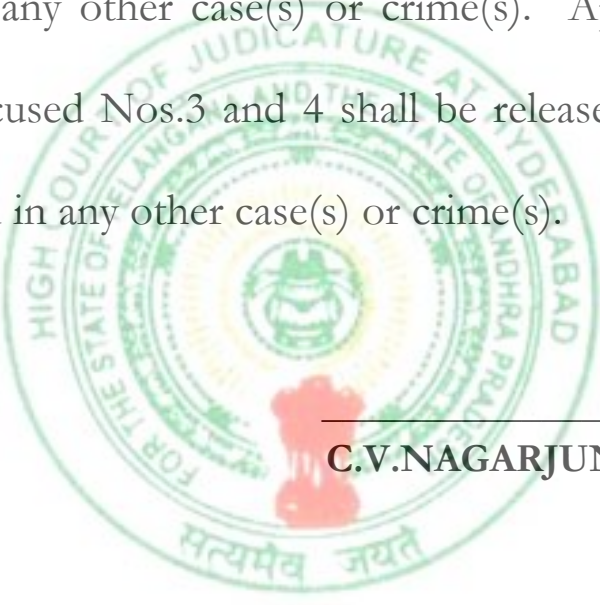
11. If we carefully analyze the evidence on record, we must held that the prosecution failed to prove the prior meeting of minds or concerted effort on the part of appellant Nos.3 and 4 along with appellant Nos.1 and 2 to attack the deceased. Evidently, at the spur of moment, appellant Nos.3 and 4 beat the deceased with hands. The fact that no corresponding injuries such as contusions were found shows that the deceased did not receive noticeable injuries from appellant Nos.3 and 4. The further fact that appellant Nos.3 and 4 have not armed

themselves with any weapon or object shows that they did not have the intention of causing injuries to the deceased, which in ordinary course, are likely to cause death. However, as the prosecution was able to prove that they beat the deceased with hands, they are liable to be convicted for the offence punishable under Section 323 I.P.C.

12. In the result, the Criminal Appeal is partly allowed.

The conviction and sentence recorded against appellant Nos.1 to 4/accused Nos.1 to 4 in judgment, dated 20.06.2012, in Sessions Case No.169 of 2008 on the file of learned I Additional Sessions Judge, Adilabad for the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C are partly set aside while confirming the fine amount imposed on them. Appellant Nos. 1 and 2/accused Nos.1 and 2 are convicted for the offence punishable under Section 304 Part II I.P.C. and sentenced to undergo six years rigorous imprisonment. Appellant Nos.3 and 4/accused Nos.3 and 4 are convicted for the offence punishable under Section 323 I.P.C. and sentenced to undergo one year rigorous imprisonment. As appellant

Nos.1 to 4/accused Nos.1 to 4 are on bail, their bail bonds shall stand cancelled. All the appellants are directed to surrender before the Superintendent, Central Prison, Warangal. Appellant Nos.1 and 2/accused Nos.1 and 2 shall serve the remainder of sentence, if any, if they have not served the sentence along with remissions. If they have served the sentence, they shall be released if they are not required in any other case(s) or crime(s). Appellant Nos. 3 and 4/accused Nos.3 and 4 shall be released, if they are not required in any other case(s) or crime(s).



C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

19th November, 2018

GHN