

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL No.864 of 2012

JUDGMENT: (Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)

Having been convicted for the offence under Section 302 read with Section 34 I.P.C., by judgment, dated 10.07.2012, in Sessions Case No.346 of 2010, on the file of learned VIII Additional Sessions Judge (Fast Track Court), East Godavari District at Rajamahendravaram, and having been sentenced to undergo rigorous imprisonment for life, and imposed with a fine of Rs.1,000/-, and having been further directed to undergo simple imprisonment for a period of six months in default thereof, the appellant, Kadali Papa Rao, has challenged the same before this Court.

2. In a short compass, the facts of the case are that on 14.01.2010, the Police Station, Ramachandrapuram, received an intimation from the Area Hospital, Ramachandrapuram, that the injured, Kurupudi Venkata Ramana @ Venkata Rao, has been brought to the hospital

in an injured condition. Upon receiving the said information, N.Chinnarao, the Sub-Inspector of Police, Ramachandrapuram, proceeded to the said hospital and recorded the statement of the injured, Kurupudi Venkata Ramana, (Ex.P-8). In his statement, the injured claimed that *“I am resident of Kapavaram village, Ramachandrapuram Mandalam. My marriage took place about twenty years back. I have two children. Due to disputes between me and my wife, Raghava, we separated two years back. Since then, there are family disputes. For one year I am working as a tractor driver in Pendurthi, Visakhapatnam District. On the eve of Sankranti festival I came to our house at Kapavaram. Today i.e., 14-01-2010 morning at about 10:30, while I was coming from the Panchayat Office in our village towards my house by walk, (sic), by the time I arrived near Nandi statue, my brother-in-law, Kadali, Paparao, and my mother-in-law, stopped me keeping in view the previous disputes. Abusing, my brother-in-law beat on my head with an iron crow-bar, and a bleeding injury was sustained; my mother-in-law beat on my back bone. I sustained lacerated wounds. Then my nephew, Illa Suribabu, brought me for treatment in 108 Ambulance. Doctor are giving treatment.”* The said statement (Ex.P-8) was subsequently

sent to the Police Station, Draksharamam, where a formal F.I.R. (Ex.P-9) was chalked out, for offence under Section 324 read with Section 34 I.P.C. The investigation commenced. During the course of investigation, the appellant – accused No.1 ('A-1', for short), and his mother – accused No.2 ('A-2', for short) were arrested, and put up for trial. However, during the trial, accused No.2 expired.

3. In order to prove its case, the prosecution examined fifteen witnesses, submitted nineteen documents, and produced five material objects. On behalf of the appellant, no oral evidence was adduced. However, two documents were marked. After completion of the trial, the learned trial Court convicted and sentenced the appellant as aforementioned. Hence, this appeal before this Court.

4. The learned counsel for the appellant has raised the following contentions before this Court:-

(i) Firstly, out of five eyewitnesses produced by the prosecution, two eyewitnesses *viz.*, Gunturi Krishna Murthy (P.W.4), and Geesala Satyanarayana (P.W.5), have turned

hostile. The remaining three eyewitnesses *viz.*, Illa Suribabu (P.W.1), Kurupudi Satyanarayana (P.W.2), and Illa Srinu (P.W.3), are related to the deceased. Thus, they are inimical witnesses. Hence, their testimonies should not be believed.

(ii) Secondly, although the prosecution had relied upon the statement of the injured (Ex.P-8), the recording of the statement is shrouded in mystery. For according to Ex.P-8, the said statement was recorded, on 14.01.2010, at 1:00 p.m., that, too, at the Area Hospital, Ramachandrapuram. Moreover, according to the testimony of N.Chinnarao, the Sub-Inspector of Police (P.W.10), he had recorded the said statement at 4.00 p.m. in the evening. However, according to Illa Suribabu (P.W.1), immediately after the injury was caused, P.Ws.2 and 3 and himself, had rushed the injured to the Area Hospital, Ramachandrapuram. But they had stayed in the said hospital for merely fifteen minutes. Allegedly, the incident had taken place at 10:00 a.m. Therefore, the time noted on the statement of the injured (Ex.P-8), that it was recorded

at 1:00 p.m. is contradicted by the oral testimony of P.W.1. Therefore, the time and the place of recording of the statement of the injured (Ex.P-8) is unclear.

(iii) Thirdly, even while recording the statement of the injured (Ex.P-8), according to the testimony of N.Chinnarao (P.W.10), he did not seek a certificate from the treating Doctor with regard to the fact whether the injured is in a fit condition to give a statement or not. Considering the fact that the injured had suffered an injury, which led to two fractures, in two different parts of the head, the possibility that the injured could even speak is rather slim. Therefore, the statement of the injured (Ex.P-8) should not have been relied upon by the learned trial Court in order to convict the appellant.

(iv) Lastly, that it is a case of a single injury caused on the head of the deceased. Therefore, the intention to kill is conspicuously absent in this case. Hence, the case does not travel beyond Section 304 Part II I.P.C. Therefore, the learned counsel prayed that the conviction should be altered from Section 302 I.P.C. to Section 304 Part II I.P.C.

Consequently, considering the fact that the appellant had already served more than seven years of sentence, the sentence should be reduced to as already undergone.

5. On the other hand, Mr.Posani Venkateswarlu, learned Public Prosecutor (A.P.) appearing for the respondent-State, has raised the following contentions before this Court:-

(i) Firstly, the learned trial Court has not relied solely upon the statement of the injured (Ex.P-8) in order to convict the appellant. In fact, it has relied upon the testimony of Illa Suribabu (P.W.1), Kurupudi Satyanarayana (P.W.2), Illa Srinu (P.W.3), Dr.P.Uma Maheswara Rao (P.W.13), and of N.Chinnarao (P.W.10) in order to record a conviction.

(ii) Secondly, no mysterious circumstances surround the statement of the injured (Ex.P-8). For, Kurupudi Satyanarayana (P.W.2) clearly states in his cross-examination that *“the injured was taken to the Ramachandrapuram Hospital in the morning, but he was shifted from*

there to the Government General Hospital, Kakinada by 3.00 p.m.”

This testimony was corroborated by Illa Suribabu (P.W.1), who in his cross-examination also admits that they reached the Government General Hospital, Kakinada after lunch time. Therefore, N.Chinnarao (P.W.10) had sufficient time to record the statement of the injured at the Area Hospital, Ramachandrampuram at 1:00 p.m.

(iii) Thirdly, considering the fact that the F.I.R. was registered for an offence under Section 324 read with Section 34 I.P.C. clearly the Police were of the opinion that it was merely recording the statement of the injured for the purpose of initiating the criminal process. Thus, there was no need for N.Chinnarao (P.W.10) to seek a medical certificate of fitness from the treating Doctor. It is only unfortunate that three days later, the injured expired. Therefore, non-procuring of the fitness certificate from the treating Doctor would not adversely affect the veracity and the genuineness of the statement of the injured (Ex.P-8).

(iv) Lastly, relying on the case of **State of Andhra Pradesh vs. Rayavarapu Punnayya**¹, the learned Public Prosecutor has pleaded that in order to appreciate whether a case falls under Section 302 I.P.C. or under Section 304 Part II I.P.C., the Court is required to consider certain factors. The present case is not a case where at the spur of the moment, or in a heat of the moment, a single injury was caused on the head of the deceased. It is a case where the appellant with a crow-bar had waited along with his mother to intercept, and to attack the deceased. They had already come armed with a lethal weapon. The appellant had hit the deceased on the head with the crow-bar, so forcibly, as to cause two fractures on the head. Thus, his intention to kill is writ large in this case. Hence, according to the learned Public Prosecutor, the case does not fall within the ambit of Section 304 Part II I.P.C. Instead, it is a case which is squarely covered by Section 302 I.P.C. Hence, the learned Public Prosecutor has supported the impugned judgment.

¹ (1976) 4 SCC 382

6. Heard the learned counsel for the parties, examined the impugned Judgment, and considered the record.

7. A bare perusal of the testimony of N.Chinnarao (P.W.10), reveals that having received the intimation from the Area Hospital, Ramachandrapuram, he had proceeded to the hospital. Having reached the said hospital, he had recorded the statement of the injured. According to this witness, the statement of the injured (Ex.P-8) was recorded at 1:00 p.m. at the Ramachandrapuram hospital. Although the learned counsel for the appellant has stressed on the point that the time and the place of recording of the said statement is unclear, the said argument is belied by the testimony of Illa Suribabu (P.W.1), and by the testimony of Kurupudi Satyanarayana (P.W.2). In his cross-examination, Illa Suribabu (P.W.1) clearly states *“The distance between our village to Govt. Hospital, Ramachandrapuram is about 8 kilometers.”* He further states *“We waited 15 minutes in Govt.Hospital, Ramachandrapuram and after preparing papers, then, we shifted the deceased to the GGH, Kakinada.”* But, he also states *“We reached the GGH, Kakinada, after lunch time, before*

evening.” This testimony is further supported by the testimony of Kurupudi Satyanarayana (P.W.2), who makes the following categorical statements in his cross-examination: “We took the injured to the Ramachandrapuram Hospital at morning time. We shift the injured from Ramachandrapuram Hospital to Kakinada at 3:00 p.m. i.e., reaching time.” Thus, both these witnesses consistently state that the injured was taken to the Kakinada hospital in the post-lunch time, or at 3:00 p.m. Therefore, the time shown on the statement of the injured (Ex.P-8) that it was recorded at 1 o’ clock by N.Chinnarao (P.W.10), cannot be doubted by this Court.

8. The learned Public Prosecutor is justified in claiming that the statement of the injured (Ex.P-8) is not the sole basis for convicting the appellant. In fact, the learned trial Court has relied upon the direct evidence produced by the prosecution in the form of three eyewitnesses *viz.*, Illa Suri Babu (P.W.1), Kurupudi Satyanarayana (P.W.2), and Illa Srinu (P.W.3).

9. Illa Suri babu - P.W.1, clearly states that,

“.....The deceased is my maternal uncle by courtesy. A.1 is the brother of the 2nd (of) wife of the deceased. Deceased is nephew of my father.

A.2 is the mother of A.1 and she died.

The deceased kept the daughter of A.2 as 2nd wife for the last 20 years.

The name of the 1st wife of deceased is Suridu, and 2nd wife's name is Raghava. Both the deceased and the 2nd wife are blessed with one male child, by name Veerababu.

There are disputes in between the accused and deceased. One and half year prior to the incident, the accused lodged a complaint against the deceased, and case was registered against him. He was released on bail. Thereby, the accused bore grudge against the deceased. After being enlarged on bail, he left for Vizag to work as a Tractor Driver.

On 13.01.2010, the deceased came to his house for Sankranthi. The next day, he came to his house from outside along with one person. When he reached to old house of the A.1, A.1 took piece of crow-bar and beat on the head of the deceased.

A.2 beat the deceased with stick on his body.

...

On seeing it, myself, L.W.4/Illa Srinu, L.W.2/Satyanarayana rushed to the spot. On that, the A.1 escaped from there, and went on the motor cycle; A.2 went to her house and bolted the door.

Then we telephoned to 108 Ambulance and shifted the deceased to Area Hospital, Ramachandrapuram, there the doctor advised us, to take him to GGH, Kakinada. Then he was shifted to GGH, Hospital, Kakinada for treatment. Three days after the incident, while taking treatment, the deceased died.”

This testimony is further corroborated by the testimony of Kurupudi Satyanarayana (P.W.2), and by the testimony of Illa Srinu (P.W.3).

10. Dr.P.Umamaheswara Rao, (P.W.13), performed autopsy on the dead body. He observed the following ante-mortem external injuries on the deceased:

1. A surgically sutured wound of 8 cm in length with 8 black thread stitches with hair shaved around is present on left parietal region of scalp of the head and the front end of which is 7 cm about the right ear, and the back end is 13 cm above the external occipital protuberance. Brown scab present on opening the stitches approximated edges partly united, wound is bone deep with organising blood clots at the base.

2. *An abrasion of 5 × 3 cm size is present on left side of the forehead, 6 cm above the left eyebrow, light brown scab present.*

3. *An abrasion of 2 × 1 cm size is present on the back and lower aspect of left side of abdomen 3 cm above the left pelvic bone. Light brown scab present.*

4. *A greenish brown contusion of 29 × 28 cm is present on left buttock extending on to back of thigh.*

He also noted the following ante-mortem internal injuries on the deceased:

1. *An organising haematoma of 10 × 9 cm. size is present under the scalp of left parieto temporal region of head.*

2. *A fissured fracture of 6 cm in length is present on left parietal bone of vault of skull extending down on to the left temporal bone of vault of skull. Fractured bone edges stained with organising blood clots.*

3. *Diffuse subdural, organising blood clots along with diffuse subarachnoid haemorrhages are present on both hemispheres of brain.*

4. *A fissured fracture of 3 cm in length is present in the left middle cranial fossa of base of skull. Fractured bone edges stained with organising blood clots.*

According to him, *“the cause of death was due to cranio cerebral injury (head injury) by hitting with hard and blunt, medium to heavy size object or weapon.”* According to him, *“the above said injuries were possible to be caused by the material object – M.O.1 – crow-*

bar.” He had noted the above injuries in the Post-Mortem Report (Ex.P-13). Therefore, the prosecution had established its case both by oral and documentary evidence.

11. The issue before this Court is whether the offence falls under Section 302 I.P.C. or under Section 304 Part II I.P.C.?

12. It is an admitted fact that the deceased was intercepted by the appellant while he was returning from the Panchayat Office. Undoubtedly, the appellant was armed with a crow-bar. In general, people in the villages do not carry a crow-bar while walking through the village. Thus, the appellant had come armed with a lethal weapon. According to the prosecution evidence, the appellant had hit the deceased on the head, a vital part of the body, by using the crow-bar. Both according to the testimony of Dr. Dr.P.Uma Maheswara Rao (P.W.13), and according to the post-mortem report (Ex.P-13), due to the impact of the injury, there was a fissured fracture on the left parietal bone of vault of skull extending down on to the left temporal bone of vault of skull. There was also a fissured fracture in

the left middle cranial fossa of base of skull. Thus, a single injury was caused with such a force that it caused two fractures on the skull of the deceased. Therefore, considering the fact that the appellant had attacked the head - a vital part of the body, and had used the crow-bar with such a force as to cause two fractures of the skull, his intention to kill the deceased is writ large. Hence, obviously, the case does not fall within the ambit of Section 304, Part II I.P.C. Instead, the learned trial Court is legally justified in convicting and sentencing the appellant for the offence under Section 302 I.P.C.

13. For the reasons stated above, this Court does not find any merit in the present appeal. In the result, the Criminal Appeal is dismissed. The conviction and sentence recorded against the appellant by judgment, dated 10.07.2012, in Sessions Case No.346 of 2010, on the file of learned VIII Additional Sessions Judge (Fast Track Court), East Godavari District at Rajamahendravaram, for the offence punishable under Section 302 read with Section 34 I.P.C. are hereby confirmed.

Since the appellant is presently on bail, *vide* this Court's order, dated 16.08.2017, in Crl.M.P.No.1698 of 2017, his bail bonds shall stand cancelled; he shall be arrested forthwith, and produced before the Jail Superintendent, Central Prison, Rajamahendravaram, East Godavari District, in order to serve the remainder of the sentence.

**RAGHVENDRA SINGH CHAUHAN, J**

M.SATYANARAYANA MURTHY, J

12th December, 2018

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