

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

CRIMINAL APPEAL Nos.208 & 350 of 2013

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

These two appeals were preferred by A2, A5, A6 and A8 against the conviction and sentence in S.C.No.318 of 2011, on the file of the IV Additional District and Sessions Judge (FTC), Karimnagar. The charges against A1, A2, A4 to A6 and A9 were for the offences punishable under Sections 148, 302 read with Section 109 IPC. The case against A3 and A7 was separated as juveniles. Vide judgment dated 26.02.2013, the learned Sessions Judge acquitted A1, A4 and A9 for the aforesaid offences, but however, found A2, A5, A6 and A8 guilty for an offence punishable under Section 302 IPC simpliciter. The trial Court convicted A2, A5, A6 and A8 for the aforesaid offences and sentenced them to suffer imprisonment for life and to pay fine of Rs.5000/- each, in default to suffer simple imprisonment for three months. Assailing the same, the present appeals came to be filed.

2. The case of the prosecution is as under:

(i) PW1 is the father of the deceased, who has three brothers by name Rajesham, Anjaiah and Laxmaiah. A1 is the son of Anjaiah, A2 is the son of Laxmaiah. PW2 is the wife of the deceased, while PW3 is the wife of PW1.

(ii) The father of A2 instituted a suit against PW1, Anjaiah and Rajesham for partition of their property. The evidence on record would show that the father of PW1 got lands divided during the life

time depending upon its fertility. After canals were laid, lands became efficient and as such litigation between them started. The partition suits between the brothers went upto the Hon'ble Supreme Court. It is stated that PW1 got land at five different places on division and he sold two acres of his land to Laxmaiah and received half of the consideration only. Subsequently, said Laxmaiah is said to have obtained a document showing as if PW1 received entire sale consideration. But, as the entire consideration was not received, PW1 did not allow said Laxmaiah to enter into the land and hence there arose disputes between PW1 and Anjaiah, in respect of the said lands.

The material on record further shows that the deceased and his wife were working as employees in Swasakthi Mahila Groups. There were 46 similar groups in the village with each group containing ten members. The deceased and his wife were incharge of accounts of all the 46 groups. It appears that there were land disputes between the brothers and PW1 on one side and PW1 and deceased sons on the other side. On the date of incident, i.e., on 14.07.2010 at about 09.00 a.m., A1 to A9 came in a tractor to the house of PW1, where A2 is said to have informed the deceased that he had already ploughed one land and is going to plough another land, for which, the deceased challenged him to do so. At that time, A4 is said to have got down the tractor, came there and questioned as to how long they would continue their land disputes, without putting an end to it? A1 also got down from the tractor saying land is going to be sued and hence it requires to be registered. The deceased advised them to

place the matter before the elders. A1 is said to have stated that land litigation is going on since long years and all they want is to put an end to the litigation. So saying, he picked up a stick from the tractor and the remaining accused also got down from the tractor. Till then PW4, who was sitting in the road, stood up, went towards them and requested them to avoid further quarrel, in front of her house. It is stated that A1 went towards the road, while A2 kicked the plastic chair wherein the deceased was sitting, pursuant to which, he fell down. When he tried to stand up, A5, the brother-in-law of A1, gave a blow on the neck of the deceased, as a result of which, he fell down and became unconscious. Thereafter, A1, A2, A5, A6 and A8 are said to have dragged the deceased from the pendol towards the road to some distance and then beat him with sticks. PWs.5,7,8 and 9 intervened and requested the assailants to leave the deceased. Pursuant thereto, they left the deceased and went away. Subsequently, 108 Ambulance came to the spot and shifted the injured to the hospital. But on the way, he died. It is stated that subsequent to the incident, the accused went to the house of PWs.2 and 3 and informed PW2 that they have killed the deceased and asked him to remove her Thalibottu. They also advised her to pour last water and searched for her father-in-law. They also claim to have informed PW3 about killing of the deceased and asked her to pour drops of water into his mouth. Basing on the said information, PWs.2 and 3 went towards the place of incident and found the deceased taking his last breathe, in a pool of blood. On 14.07.2010 at about 12.00 hours, PW1 proceeded to the police station and lodged a

written report with PW22 the Sub-Inspector of Police, which came to be registered as Crime No.156 of 2010 for the offences punishable under Sections 148, 302 read with Section 149 IPC. Ex.P12 is the FIR. Further investigation in this case was taken up by PW23, the then CI of police, Sultanabad. According to him, on receipt of FIR from PW22, he along with his staff, noticed blood, broken plastic chair, one stick, one pair of chappal, one red wrest thread in the court yard. He got the scene of offence photographed and prepared a rough sketch of the scene. Ex.P3 is the Crime Details Form containing details of panchanama and rough sketch of the scene. Thereafter, PW23 visited the Government hospital and conducted inquest over the dead body, in the presence of PW16. Ex.P4 is the inquest report. Thereafter, the body was sent for post mortem examination. PW21, the Civil Assistant Surgeon, Karimnagar, conducted autopsy over the dead body and issued Ex.P11, the post mortem certificate. According to him, the cause of death was due to head injury. On his examination, he admits that injury No.3 is associated with external injury referred to at serial No.7 and the death was mainly due to injury Nos.3 and 7. After conducting post mortem examination, the dead body was handed over to the relatives. On 26.07.2010, A1 and A2 were arrested in the village and on interrogation, they confessed about the commission of the offence in the presence of PW17. Exs.P1, P5 and P6 are their statements. Pursuant to the confession made by the accused, MO6 the stick and MO11 the tractor were seized under Ex.P5. A2 also produced a stick, used in the commission of offence and the same was seized under Ex.P6. MO7 is the said stick.

On 28.07.2010, A5, A6 and A8 were arrested. On interrogation, they confessed about commission of offence. Exs.P7 to P9 are the confessional statements. MOs.8 and 9 are the sticks which are seized, pursuant to the said confession under EXs.P13 and P14. On 29.07.2010, A4 and A9 were arrested and they were interrogated in the presence of PW8. EXs.P10 and P15 are the statements recorded. The case of A3 and A7 were separated, as they were juveniles. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.8 of 2011 on the file of Judicial Magistrate of First Class, Sultanabad. On committal to the Court of IV Additional District and Sessions Judge, Karimnagar, the same came to be numbered as S.C.No.318 of 2011.

(iii) On appearance, the aforementioned charges were framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

(iv) In support of its case, the prosecution examined PWs.1 to 23 and got marked Exs.P-1 to P-25 and M.Os.1 to 11.

(v) After the closure of prosecution evidence, the accused was 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. They got marked Exs.D1 and D2, the relevant portion in 161 Cr.P.C. statements of PWs.11 and 12.

(vi) Basing on the evidence of PWs.4 to 10, coupled with the evidence of PWs.1 to 4, who were examined to speak to the incident,

the trial Court convicted A2, A5, A6 and A8 while acquitting A1, as stated earlier. Challenging the same, the present appeals came to be filed.

4. Learned counsels for the appellants in both the appeals would contend that there is absolutely no evidence to connect the accused with the crime. According to them, none of the witnesses in their evidence refer to the participation of the accused in commission of the offence, except PW4, whose evidence is not only inconsistent with the other evidence, but also with the contents of Ex.P1, which was said to have been given by PW1, basing on the information furnished by PW4. It is further stated that even in the earlier statements recorded by the police under Section 161 Cr.P.C., the participation of the accused was not specifically referred to. It is urged that except the evidence of PW4, who speaks about the incident of dragging of the deceased by A1, A2, A5, A6 and A8, there is no other witness to speak about it, though all of them claim to have seen the incident. Apart from all these things, the counsel would contend that since the acquittal of some of the accused including A1 for the offences punishable under Sections 148 and 302 read with 109 IPC were never challenged by the State and in view of the evidence of the Doctor, who states that the death of the deceased was due to head injury, it can be said that all the accused cannot be convicted under Section 302 IPC simpliciter in the absence of any evidence to say as to which injury is responsible for the death. Hence, it is pleaded that even if the evidence of the witnesses is to be accepted, conviction can only

be for lesser offences, depending upon the nature of injuries found on the body.

5. On the other hand, learned public prosecutor opposed the same contending that though A1 was acquitted for the charges levelled against him and though there is no appeal filed by the State against acquittal of the accused, no prejudice would be caused if the conviction is altered to one under Section 302 IPC read with Section 109 IPC. He would further submit that even though there is no charge under Section 302 IPC, but the participation of these accused is spoken to by the witnesses. As the evidence is consistent, the accused can be convicted for the offences with which they are charged. Hence, pleads that the findings arrived at by the trial Court warrants no interference by this Court.

6. Before proceeding further, it is to be noted that the only ground on which A1 was acquitted was that in the statement of PW4 recorded under Section 164 of Cr.P.C. which came to be marked as Ex.P19, the Court found that the same refers to A1 only interfering in the attack and preventing the other accused from going and attacking the deceased. Strangely, such a version is not found in Ex.P19. Since no appeal is filed by the State and having regard to the lapse of time, we do not intend to initiate any suo-motto proceedings against A1. Be that as it may, we intend to consider the evidence of witnesses, so as to find out as to whether all of them or any one of them is liable for any of the offences alleged.

7. One fact which should also be borne in mind is the acquittal of the accused under Section 148 of IPC is not challenged and all of them are convicted only for the offence punishable under Section 302 simpliciter. In the absence of any appeal filed by the State, one has to see whether the injury claimed by each of the accused is fatal, if it was found that they were present at the scene and participated in the commission of the offence?

8. PWs.4, 5, 6,7,8,9 and 10 are the witnesses, who were examined by the prosecution to speak about the incident in question. As seen from the record, the dispute was between the family of A1 and the deceased, A2, A5, A6 are said to be the close relatives of A1. The evidence of PW4 would show that on 14.07.2010 at about 08.00 a.m., while the deceased was sitting on a chair in an open place in his house, all the accused came there. Initially, A2 questioned him stating that they have ploughed one portion of the land and that they are going to plough another portion of the land. A1 got down from the tractor stating that the land litigation has been going on for years and that they wanted to put an end to the litigation. So saying A1 picked up a stick from the tractor. At that point of time, the remaining accused, who were present in the tractor also came out. It is stated that A1 went towards the road, while A2 kicked the plastic chair in which the deceased was sitting. When the deceased fell down, A5, who is the brother-in-law of A1, gave a blow. Thereafter, A1, A2, A5, A6 and A8 are said to have dragged the deceased to a distance and then five male persons are said to have beat the deceased. In the cross examination, it was suggested to PW4 that he

has not mentioned in the earlier statements about A2 kicking the plastic chair, in which the deceased was sitting and thereafter beating the deceased with legs. Though PW4 denies the same, but the admissions in the evidence of PW23, the investigating officer, would show that none of these things were spoken to by PW4 in his earlier statements, which gets clarified from the extract given below:

“PW4 did not state before me that A4 got down the tractor went to deceased and questioned as to how long dispute continues or that A1 also got down the tractor went to deceased and he sued the land and sued another land demanding deceased to register that land and deceased proposed to approach the elders and that A1 said the litigation has been there for many years and they wanted to put an end to litigation, picked up a stick from the tractor and that remaining accused also got down the tractor and that I then stood objected their quarrel in front of my house and that A1 went to the road and A2 kicked plastic chair and the deceased who was in the chair fell down and that brother-in-law of A1 came and beat deceased with stick on his neck”.

9. However, though he has not mentioned in the evidence in chief but in the cross examination, he refers to altercation between the accused and the deceased for about 15 to 20 minutes. PW5 in her evidence states that A1, A2, A4 who is the wife of A1 and brothers-in-law of A1 totaling eight persons came from eastern side on their tractor and stopped their tractor, on seeing the deceased. All of them got down and came towards the deceased, who was sitting there. A2 is said to have informed that he had already ploughed one piece of land and is going to plough another land. The deceased asked him to do so. Though the persons present there advised them not to enter into quarrel, all the eight persons went back on to the

road. A2 brought a stick and beat the deceased. A1 brought the deceased outside the pendol and beat him with a stick on his neck. Remaining assailants also claim to have joined and beat the deceased. PW5 and others raised cries and intervened, pursuant to which, the accused left the place in the tractor. From the evidence of this witnesses, it is clear that there is no reference of A1, A2, A5, A6 and A8 dragging the deceased from the pendol and individually beating the deceased.

10. The evidence of PW5 also does not specifically state as to whether A2 alone beat the deceased. In the cross examination, it was suggested to PW5 that she did not inform police about A1 dragging the deceased from pendol, where the incident took place. Though PW5 denied in cross examination to the said suggestion, but the cross examination through PW23, reveals as under:

“PW5 did not state before me that A2 went to Srinu informed that he ploughed one land and will plough another that Srinu asked him to do so that we intervened and requested not to quarrel there that A1 brought Srinu from pendol, meanwhile another assailant beat him with stick on his neck and that we all further intervened with folded hands to stop the quarrel saying he died and that they came upon us also and we stopped ourselves and then accused went away.”

11. Similarly, PW6 in his evidence states that on that day about eight persons came in a tractor, got down in front of the house and quarreled with the deceased. The brothers-in-law of A1 beat the deceased with sticks. He admits that he does not know names of the brothers-in-law as they belong to different villages. It is stated that the deceased received injuries and fell down. The evidence of these

witnesses is also silent with regard to the accused dragging the deceased to the ground and beating him. His evidence is also silent with regard to the role played by A2 in attacking the deceased. In his evidence, he states that the brothers-in-law of A1 beat the deceased with stick. At the same time, he does not know the names of the brothers-in-law. Though he is a stranger, no steps were taken by the prosecution to get the Test Identification Parade conducted.

12. It appears that even in the Court, no effort was made to identify the assailants. Further, PW6 did not state before the police that the brothers-in-law of A1 beat the deceased and that PW5 witnessed the incident.

It would be useful to refer to the evidence of PW23, which is as under:

“PW6 did not state before me that brothers-in-law of A1 beat Srinivas and that PW5 was present and witnessed it”.

13. Insofar as evidence of PW7 is concerned, he deposed that on the date of incident, A1, A2 and others came in a tractor; talked to the deceased for about ten minutes. Thereafter, all of them went to the road and came back. It is stated that though the witnesses present there intervened, A2 is alleged to have beat the deceased. When PW7 and others went to the rescue of the deceased, other assailants came there, beat him with sticks and left the place in their tractor. However, in the earlier statements, PW7 did not state about discussion which the accused made with the deceased and also A2 and

other assailants beating the deceased. The relevant portion is as under:

“PW7 did not state before me that A1, A2 came and discussed to Srinivas about the land that Srinivas asked them to plough their land that I intervened and asked to accused to go to read that A2 returned and beat Srinivas and that other assailants came thereafter and assaulted him”.

14. Though PW8 was examined as eye witness to the incident, but her evidence does not indicate witnessing of the incident. Her evidence reads as under:

“I know deceased Srinivas and A1, A2 and A4. He died about two years back. He was beaten and murdered. Brothers-in-law of A1 beat Srinivas in front of my house. Deceased came to our house to discuss with me and my husband about the group matters and was discussing. PW5, PW4, PW7, Kumar, Pochaiah, Durgaiah were also there. Accused came in a tractor, A1, A2 talked to Srinivas about their land. When they were discussed I went to backside my house and was cooking. I heard some noise came again in front of my house and saw assailants beating Srinivas we all raised cries and intervened. Assailants went away. Ambulance was secured. Injured was taken. He died within some distance. Police came thereafter and recorded our statements.”

15. Insofar as PW9 is concerned, it is her version that on the date of incident, while PWs.4 to 8 were present in the house, A1 and A2 came there along with others, A2 beat the deceased, while others also beat him, pursuant to which he fell down with injuries. Further, he admits in the cross examination that he did not state to the police, the particulars of any of the accused other than A1 and A2.

16. As stated earlier, the evidence of PW9 is only with regard to A1 beating the deceased and an omnibus allegation of others beating the deceased with sticks. His evidence is silent as to the weapon said to have been used by A2 while beating the deceased. Insofar as the evidence of PW10 is concerned, he deposed that on that day, he was going to his fields from his house through that road and saw eight persons beating the deceased with sticks. He also refers to PW4 and another witnesses being present at the scene. According to him, after assault, the accused left the place. Thus the prosecution sought to connect the accused with the crime through evidence of PWs.4 to 10.

17. As seen from the case of PW4, none of the witnesses speak about A1, A2, A5, A6 and A8 dragging the deceased and then beating him. PW4 is the only witness, who speaks about A5 attacking the deceased, but no specific reference to the attack by A5 is spoken to by any of the other witnesses. The fact of A5 beating the deceased was not mentioned in the earlier statement of PW4, recorded by PW23. It appears that for the first time, in the Court, PW4 refers to the participation of A5 in the commission of the offence.

18. Coming to the role and participation of A6 and A8, it is to be noted that though they were strangers, no effort was made by the prosecution to conduct the test identification parade. Even in the Court, none of the witnesses, namely PWs.4 to 10, identified A6 and A8. They have not named the persons who came to attack on the date of incident, and were not even made to identify the persons

present at the house of PW4. All the witnesses baldly stated that A1, A2 and other accused beat the deceased with sticks. They do not even refer to the weapon used by the accused. As seen from the evidence of all these witnesses, there is discrepancy with regard to how, where and when they have beat the deceased, whether it was after dragging the deceased from the pendol or whether it was in the compound of the house of PW4. Therefore, we feel that the prosecution was not able to conclusively establish the presence and participation of A5, A6 and A8 and hence they are entitled for the benefit of doubt.

19. Coming to the role of accused No.2, learned counsel for the appellants would submit that even if the evidence of PW.4 is to be accepted, at the most, A2 can be convicted under Section 324 IPC.

20. As seen from the record, though PW.4 deposed about the role of accused No.2, but PW.5 in his evidence stated that the accused persons got down from the tractor and came towards the deceased, who was sitting in front of the house of PW.4. After some interaction between them, accused No.2 is alleged to have picked up a stick and beat the deceased. This part of evidence of PW.5 remained unimpeached. PW.7 in his evidence speaks about accused No.2 beating the deceased, and when he along with others went to the rescue of the deceased the assailants beat them with sticks. The same is also spoken to by PW.8.

21. The 164 Cr.P.C. statements of the witnesses, which came to be recorded by the police during the course of investigation, came to be

marked as Ex.P19 to P.25. DW.1, the Magistrate, who is said to have recorded the 164 Cr.P.C., Statements of the witnesses, categorically states that the statements were recorded in the Court hall and that all the witnesses have stated before him as disclosed in Exs.P19 to P25. Strangely the contents of the 164 Cr.P.C., statements of all the witnesses were not put to the witnesses. A reading of the evidence of the said witnesses, establish the role of accused No.2. At this stage, it would be appropriate to refer to the post mortem certificate, which shows seven injuries on the body of the deceased. Out of which, one blunt injury was over forehead, one laceration over forehead, fracture of frontal bone, three contusions over left arm, left chest and left loin and hematoma over the frontal region. The injury over the frontal region of brain was said to be fatal injury. But there is no evidence on record to show as to which of the accused caused the said injury on the vital part. It is to be noted that once the accused are acquitted under Section 148 IPC, even invoking Section 149 IPC would be impermissible, as the finding of the Court below was that there was no un-lawful assembly. Therefore, accused No.2 at the most is liable for his individual attack. Since out of seven injuries, only one injury is grievous in nature and there is no proof that accused No.2 caused the said injury; but as stick used by accused No.2 was recovered, he can only be convicted under Section 324 IPC.

22. In the result, Crl.Appeal No.208 of 2013 is partly allowed. The conviction and sentence recorded against accused No.2 in S.C.No.318 of 2011 on the file of the IV Additional District and Sessions Judge (FTC), Karimnagar, for the offence punishable under Section 302 IPC is

altered to one under Section 324 IPC. For the altered conviction, accused No.2 is sentenced to undergo rigorous imprisonment for the period already undergone by him. Consequently, accused No.2 shall be set at liberty forthwith, if not required in any other case. Whereas CrI.Appeal No.350 of 2013 filed by accused Nos.5, 6 and 8 is allowed. The conviction and sentence recorded against accused Nos.5, 6 and 8 in S.C.No.318 of 2011 on the file of the IV Additional District and Sessions Judge (FTC), Karimnagar, for the offence under Section 302 IPC, are set aside. Consequently, the accused Nos. 5, 6 and 8 shall be set at liberty forthwith, if not required in any other case or crime.

21.02.2018
vhb/ gkv



C.PRAVEEN KUMAR, J

J.UMA DEVI, J