

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.123 OF 2012

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

Appellant is the sole accused in Sessions Case No.8 of 2010 on the file of the Court of Special Judge for trial of cases under SCs & STs (POA) Act-cum-Additional District Court, East Godavari at Rajahmundry (for short, trial Court). He was tried for offences punishable under Section 302 IPC and Section 3(ii)(v) of the Scheduled Castes and the Scheduled Tribes (POA) Act, 1989 for allegedly causing the death of one P. Apparao (deceased) on 19-05-2009. The trial Court, after appreciating the oral and documentary evidence on record, convicted the accused of the said charge, under Section 235(2) of the Cr.P.C., and sentenced him to suffer imprisonment for life and to pay a fine of Rs.200/-, in default, simple imprisonment for one month.

2. The case of the prosecution, as culled out from the evidence, is as under:-

One Satyavathi, wife of the accused, was indulging in selling liquor at her house. The deceased, who was in the habit of consuming liquor, used to visit the liquor shop run by the wife of the accused and he developed illicit intimacy with the wife of the accused since about three years prior to the date of incident. Due to the illicit intimacy with the deceased, the wife of the accused went to the extent of discarding her husband and her three children. The accused also got issued a legal notice to his wife

about her illicit intimacy with the deceased. As the illicit intimacy between the wife of the accused and deceased was not stopped, the accused decided to kill the deceased. On 19.05.2009 at about 12.00 pm., the accused observed the movements of the deceased and waited at his house with a curved knife, and when he was coming towards SC colony by crossing the house of the accused on cement road, the accused attacked the deceased and hacked him on the head, neck and on the both hands by chasing him upto the society building. The deceased sustained severe bleeding injuries due to the attack of the accused and died in between the society building and cement road. P.W.1, who is the wife of the deceased, having seen the incident, lodged a report (Ex.P.1), basing on which, P.W.11 Sub-Inspector of Police, Yeleswaram Police Station, registered a case in Crime No.82/2009 for offences punishable under Section 302 IPC and Section 3(ii)(v) of the SC/ST (POA) Act, 1989. Thereafter, P.W.12, the Sub-Divisional Police Officer, Peddapuram, took up the investigation.

3. During the course of investigation, P.W.12 visited the scene of offence, drafted observation report in the presence of P.W.10 and Chinthakinda Rama Krishna (L.W.11) and seized one pair of chappals, spectacles, blood stained and control earth and got the scene of offence photographed through Chinthakinda Rama Krishna (L.W.11). He held inquest over the dead body of the deceased in the presence of P.W.10 and Majjuri Venkata Suryanarayana (L.W.13) and blood relatives of the deceased i.e., P.Ws.1 to 4, 9, Barre China Nageswara Rao (L.W.4) and Kota

Venkata Lakshmi (L.W.5). He examined the witnesses and recorded their statements. He sent the dead body to the hospital for autopsy.

4. Thereafter, P.W.12 arrested the accused on 01.06.2009, and pursuant to the confessional statement of the accused, he drafted mediators' report and seized a bloodstained full-hands shirt worn by the accused in the presence of P.W.10, Majjuri Venkata Suryanarayana (L.W.13) and Boggua Mangi Reddy (L.W.14). He forwarded material objects to Regional Forensic Science Laboratory, Vijayawada for analysis and report. P.W.8, the Tahsildar, Yeleswaram, issued caste certificate stating that the deceased belongs to Mala-SC community.

5. P.W.7, Dr.N.V.Ramana Murthy, Civil Assistant Surgeon, Community Helath Centre, Prathipadu, who conducted autopsy over the dead body of the deceased, issued postmortem report (Ex.P.5) wherein he has opined that the deceased died due to shock and haemorrhage due to multiple chapped injures. The Assistant Director, RFSL, Vijayawada, examined the material objects and issued analysis report opining that the blood detected in blood stained earth, clothes and knife as human origin. After completion of investigation, P.W.12 filed charge sheet against the accused. The case was taken cognizance under Section 302 IPC and Section 3(ii)(v) of the SC/ST (POA) Act, 1989 by the Judicial First Class Magistrate, Prathipadu.

6. On appearance of the accused, the Judicial First Class Magistrate, Prathipadu furnished copies of the documents to the accused, as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the same was committed, which came to be numbered as S.C.No.8 of 2010. Basing on the material available, charges under Section 302 IPC and Section 3(ii)(v) of the SC/ST (POA) Act, 1989 came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

7. In support of its case, the prosecution examined P.Ws.1 to 12 and got marked Exs.P.1 to P.17 and M.Os.1 to 8. None were examined on behalf of the defence. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against him in the evidence of prosecution witnesses, to which he denied. Basing on the prosecution evidence, the trial Court found the accused guilty for causing the death of the deceased, and therefore convicted and sentenced him as aforestated. Challenging the same, the present appeal came to be filed.

8. The learned counsel for the appellant/accused would contend that basing on the testimony of P.Ws.1 and 2, who are highly interested witnesses, recording conviction by the trial Court is illegal. He submits that the trial Court did not take into consideration of the evidence of P.Ws.4 and 5. The learned counsel further submits that there are contradictions about the exact scene of offence; that the investigation had been started even

before the complaint was filed and that there are certain inherent defects so far as the recovery of material objects are concerned. He further submits that the prosecution has not proved the motive of the accused for killing the deceased and sought to set aside the judgment of the trial Court.

9. On the other hand, the learned Public Prosecutor would submit that the trial Court, by relying on the evidence of P.Ws.1 and 2, who are the direct witnesses, found the guilt of the accused. Therefore, the proved facts before the Court complete the links in the chain of circumstances and in such case, conviction of the accused for the offences punishable under Section 302 IPC and Section 3(ii)(v) of the SC/ST (POA) Act, 1989 cannot be faulted. Therefore, this Court cannot interfere with the fact findings recorded by the trial Court, unless the findings are manifestly perverse or without any evidence by exercising power under Section 374(2) Cr.P.C and requested this Court to confirm the conviction and sentence imposed against the accused/appellant for the offences punishable under Section 302 IPC and Section 3(ii)(v) of the SC/ST (POA) Act, 1989.

10. Considering rival contentions and the material available on record, the point that arises for consideration is:

“Whether the accused caused the death of P.Apparao (deceased) with an intention to kill him for continuing illegal intimacy with his wife and, if so, whether the evidence on record is sufficient to convict the accused/appellant for the offence punishable under Section 302 IPC and whether the conviction recorded by the Court below be sustained?”

P O I N T:

11. Section 374 Cr.P.C conferred a substantive right of appeal on the accused who is convicted by the trial Court and this Court while exercising power under Section 374(2) Cr.P.C is bound to re-appraise entire evidence to come to an independent conclusion, uninfluenced by the findings recorded by the trial Court and decide the legality of conviction and sentence passed by the Sessions Court. Therefore, it is the duty of this Court to re-appraise entire evidence recorded by the trial Court after giving an opportunity to both the parties, i.e., appellant and the respondent, unless the Court finds manifest perversity in the calendar and judgment or such findings were recorded without evidence, normally, this Court cannot interfere with such fact findings in appeal, while exercising jurisdiction under Section 374(2) Cr.P.C. It is the sacrosanct duty of the appellate Court, while sitting in appeal against the judgment of the trial Court, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record. Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate Court to be undertaken and when that is not done, the cause of justice is not sub-served, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt (vide **Kamlesh Prabhudas**

Tanna & Anr v. State Of Gujarat¹). Keeping the scope of Section 374(2) Cr.P.C we would like to re-appreciate entire evidence on record to come to an independent conclusion, uninfluenced by the findings recorded by the trial Court.

12. P.W.1, who is the wife of the deceased, deposed that her husband had illicit intimacy with the wife of the accused. Her husband who was a drunkard was in the habit of visiting the arrack shop run by the wife of the accused. Her husband had illicit intimacy with the wife of the accused for the past three years prior to the date of offence. Her husband and the wife of the deceased used to go to outside and come back in the night times. As her husband did not discontinue illicit relationship with the wife of the deceased, she left the deceased and went to the house of her daughter at Kirlampudi and stayed there for about three weeks. Thereafter, her husband went to the house of her daughter and promised her that he will not continue the illicit intimacy with the wife of the deceased, on which, she came back to her house at Siripuram. On the date of incident, at about 12.00 noon, when she came to know that her husband and the accused were quarreling, she went there along with P.W.2. At that time, they found her husband was running towards society building and that he was being chased by the accused with a knife in his hands. Thereafter, the accused chased her husband and stabbed him twice in his head and back (below the neck). When her husband tried to ward off, the accused caused injuries on his hands. By the time she

¹ (2013) 15 SCC 263

reached the spot, her husband was found dead in a pool of blood due to the injuries caused by the accused. She identified M.Os.1 to 6. In the cross-examination, P.W.1 admitted that the distance between her house and the scene of offence is about 100 yards. She was informed about the quarrel by P.W.2. To reach the scene of offence from her house, she has to take two turnings. She denied the suggestion that on the date of incident, she was engaged in coolie work at Jaggampeta.

13. P.W.2, who is the cousin brother of the deceased, deposed that the deceased was having illicit intimacy with the wife of the accused since three years prior to the date of incident. The deceased, on one occasion, took the wife of the accused to Kothulapadu Village. The accused is aware about the illicit intimacy between the deceased and his wife and, in that connection, there were quarrels between the deceased and the accused. The deceased remained stubborn and did not mend his ways. While so, on one day around 12.30 pm., on coming to know that the deceased and the accused were quarrelling, he along with P.W.1 immediately went to the scene of offence and noticed the accused chasing the deceased with a tapper's knife. The accused inflicted stab injuries on the neck and hand of the deceased. When the deceased tried to ward off, he sustained stab injuries on his hands. He noticed the accused chasing the deceased from a distance of 50-100 yards. He also identified M.Os.1 to 6.

14. P.W.3, the daughter of the deceased, in her deposition stated that as the deceased was continuing his illicit intimacy with the wife of the accused, her mother came to her house and stayed there for some time. Thereafter, the deceased came to her house, convinced her mother and took her back to Siripuram. On 19.05.2009, on receiving a phone call from P.W.2 about the incident, she rushed to the scene of offence and noticed the corpse in a pool of blood.

15. P.Ws.4 and 5 did not support the case of the prosecution and hence they were declared as hostile. P.W.6 deposed that the deceased was having illicit intimacy with the wife of the accused and that the deceased brought the wife of the accused to her house and stayed there for two days on one occasion.

16. P.W.7, the doctor who conducted the postmortem examination over the dead body of the deceased, issued postmortem report (Ex.P.5) opining that the deceased died due to shock and haemorrhage due to multiple chopped injuries. He found following 11 injuries on the dead body of the deceased i.e., (1) a chopped injury over left side of the forehead 3 inches length 5 inches depth and 1½ inch width, (2) a chopped injury 5 inches length 1 inch depth and 1 inch width noticed over left occipital region, (3) a chopped injury 4 inches length 2 inches depth and 1½ inch width noticed over left side of the neck and cut in neck muscles and jugular veins, (4) a chopped injury 2 inches length ½ inch depth and ½ inch width noticed over middle of forehead, (5) a chopped injury 2 inches length ½ inch depth and ½ inch width

noticed over right occipital region, (6) a chapped injury 1 inch length 1 inch depth ½ inch width over right side forehead, (7) a chapped injury 4 inches length 3 inch depth and 2 inches width over right shoulder joint, (8) a cut injury 5 inches length 3 inches depth and 4 inches width a fracture of both ulne and radius of right forearm, (9) a chapped injury 2 inches length 2 inches depth and 1 inch width noticed over right side of the neck cut section of neck muscles and jugular veins, (10) a deep cut injury 6 inches length 3 inches width and 3 inches length noticed one left hand forearm of both ulna and radius bones and (11) an abrasion 1"x1" over right side of the knee joint and left side of the knee joint. P.W.7 also opined that the injuries are possible by a weapon like M.O.1.

17. P.W.8, the Tahsildar, deposed that on the requisition of P.W.12, he issued caste certificate (Ex.P.6) stating that the deceased belongs to SC-Mala, whereas the accused belongs to Settibalija.

18. It is to be noted that when the case is based on circumstantial evidence, burden of proof is always on the prosecution to prove all the circumstances from which conclusion of guilt is to be drawn must be fully established and the facts so established must be consistent with hypothesis of guilt of accused and if any circumstance is consistent with the innocence of accused, he is entitled to benefit of doubt. In the present case, there are eyewitnesses viz., P.Ws.1 and 2. They, in one voice, deposed that on the date of incident, at about 12.00 noon, when

they came to know that the deceased and the accused were quarreling, they went there. At that time, they found P.Apparao (deceased) was running towards society building and that he was being chased by the accused having a knife in his hands. Thereafter, the accused chased P.Apparao (deceased) and stabbed him twice in his head and back (below the neck). When P.Apparao (deceased) tried to ward off, the accused caused injuries on his hands. By the time P.Ws.1 and 2 reached the spot, they found P.Apparao (deceased) dead in a pool of blood due to the injuries caused by the accused. They also identified M.O.1, the knife which was used by the accused in the offence. Though P.Ws.1 and 2 were cross-examined, nothing useful came to be elicited to discredit their testimony, but their evidence does not show that the offence was committed on the ground that the deceased belongs to Scheduled Caste. Hence, the accused is acquitted for the offence punishable under Section 3(ii)(v) of the SC/ST (POA) Act.

19. Coming to the offence punishable under Section 302 IPC, the learned counsel for the appellant contended that as the deceased did not discontinue the illegal intimacy with his wife, it must have given him grave and sudden provocation driving him to commit murder, but he did not had the motive to kill the deceased.

20. The death of P.Apparao is not in dispute and it was only due to murderous assault. Whether the appellant committed the murder of P.Apparao is the only question to be decided. The plea of the appellant is total denial of offence. Therefore, in view of the total denial of prosecution case, it is the duty of the prosecution to

prove each and every circumstance. The first circumstance relied upon by the prosecution is the motive to commit the offence. It is the consistent case of the prosecution from the beginning that the illicit intimacy of the deceased caused the sore point to the accused. Prior to the incident, the accused also got issued a legal notice to his wife about her illicit intimacy with the deceased. Keeping this in mind, the accused hatched a plan and killed the deceased with a tapper's knife.

21. The question that requires consideration is whether the case of the appellant comes within Exception 1 of Section 300 IPC. Section 299 IPC relates to culpable homicide. It is provided therein that whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of 'culpable homicide'. Section 300 IPC relates to murder and it is provided that except in the cases excepted therein culpable homicide is murder.

The Exception 1 of Section 300 IPC is as follows:-

"Exception 1.-When culpable homicide is not murder.- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following proviso:-

First- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. Thirdly.- That the

provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

22. In terms of the Explanation to Exception 1 whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. Therefore, it is to be seen whether there was grave and sudden provocation for the appellant to cause the death of the deceased and this is a question of fact. As already noticed that the appellant stabbed and chopped P.Apparao (deceased) in 11 places with M.O.1, a deadly weapon, so as to kill P.Apparao and escaped from that place. As per the postmortem report Ex.P.5, there are 11 cut injuries on the dead body of the deceased. Therefore, it can be inferred that accused with the clear intention to kill the deceased, stabbed and chopped the deceased. Therefore, the contention of the learned counsel for the appellant that the appellant, in a sudden provocation, caused the injuries which resulted in the death of the deceased cannot be accepted.

23. In **K.M. Nanavati v. State of Maharashtra**², the Apex Court was dealing with the aspect of 'grave and sudden provocation'. In the said case, when the accused came to know about the illegal intimacy of his wife with the deceased, went to the house of the deceased and killed the deceased with his service revolver. In those circumstances, the Apex Court held that "Exception 1 to Section 300 of the Indian Penal Code could have no application to the case.

² AIR 1962 SC 605

The test of "grave and sudden" provocation under the Exception must be whether a reasonable person belonging to the same class of society as the accused, placed in a similar situation, would be so provoked as to lose his self control. In India, unlike in England, words and gestures may, under certain circumstances cause grave and sudden provocation so as to attract that Exception. The mental background created by any previous act of the victim can also be taken into consideration in judging whether the subsequent act could cause grave and sudden provocation, but the fatal blow should be clearly traced to the influence of the passion arising from that provocation and not after the passion had cooled down by lapse of time or otherwise, giving room and scope for premeditation and calculation".

24. In the circumstances, this Court finds no reason to interfere with the findings recorded by the trial Court which formed the basis for the conviction and sentencing of the accused under Section 302 IPC.

25. Hence, the Criminal Appeal is partly allowed. The judgment and sentence dated 02.01.2012 in Sessions Case No.8 of 2010 on the file of the Court of Special Judge for trial of cases under SCs & STs (POA) Act-cum-Additional District Court, East Godavari at Rajahmundry insofar as offence punishable under Section 302 IPC is confirmed while the conviction and sentence for the offence under Section 3(ii)(v) of the SC/ST (POA) Act, 1989 is set aside.

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

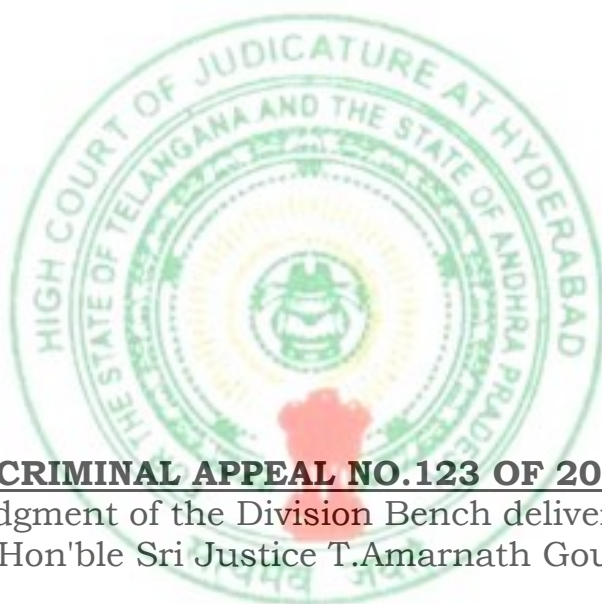
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