

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL Nos.42 and 64 of 2012

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

A1 and A3 in Sessions Case No. 369 of 2009 on the file of the V Additional District and Sessions Judge, Tirupathi, are the appellants in Criminal Appeal Nos. 42 and 64 respectively. Originally, A1 to A6 were tried on seven charges, which are as under:

- (1) On 16.03.2009, at about 8 p.m., at Peda Harijanawada, K.Nagar, A1 to A6, being members of unlawful assembly, and in prosecution of the common object of such assembly, committed the offence of rioting punishable under Section 147 IPC;
- (2) A1 and A3, on the same day, time and place as specified in Charge No.1 above, being members of unlawful assembly, in prosecution of the common object of such assembly, committed the offence of rioting with a deadly weapon i.e., iron rod (or with something which used as a weapon of offence was likely to cause death) to cause death of K.M.Chittibabu and Rukkamma, and thereby committed an offence punishable under Section 148 IPC;
- (3) A3, on the same day, time and place as specified in Charge No.1 above, voluntarily caused hurt to Rukkamma, by means of an iron rod, which is an instrument for

shooting (or stabbing etc.) and thereby committed an offence punishable under Section 324 IPC;

- (4) A1, A2, A4, A5 and A6, on the same day, time and place as specified in Charge No.1 above, being members of unlawful assembly, shared common object with A3 in intentionally caused injuries to Rukkamma, and thereby committed an offence punishable under Section 324 read with 149 IPC;
- (5) A2, A4, A5 and A6, on the same day, time and place as specified in Charge No.1 above, being members of unlawful assembly, in voluntarily causing hurt to Baburao, thereby committed an offence punishable under Section 323 IPC;
- (6) A1, on the same day, time and place as specified in Charge No.1 above, committed murder by intentionally (or knowingly) causing the death of K.M.Chittibabu, and thereby committed an offence punishable under Section 302 IPC;
- (7) A2 to A6, on the same day, time and place as specified in Charge No.1 above, being members of unlawful assembly, shared common object with A1 in intentionally causing death of K.M.Chittibabu and thereby committed an offence punishable under Section 302 read with 149 IPC.

Vide judgment dated 23.12.2011, the learned Sessions Judge, while acquitting A2 and A4 to A6 of all the charges framed against them, convicted A1 under Section 302 IPC simplicitor and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of one month. He also convicted A3 under Section 324 IPC for causing

injuries to PW2 and sentenced him to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for one month.

2. The substance of charge against the accused is that on 16<sup>th</sup> March, 2009, at about 8 p.m., all the accused formed themselves into an unlawful assembly and in prosecution of common object of such assembly, caused the death of the deceased by name K.M.Chittibabu and also caused injuries to one Rukkamma (PW2) in a quarrel.

3. The facts, as culled out from the evidence of the prosecution witnesses, are as under:

PW1 is the father-in-law, PW2 is the grandmother, PW3 is the brother and PW7 is the wife of the deceased. It is stated that in the month of September, 2008, A1 is said to have eloped with PW7, promising to marry her. The relatives of PW7 searched for PW7 and found PW7 and A1 at Renigunta railway station, when they were about to board a train to Mumbai. When enquired, PW7 informed them that A1 is taking her to their relatives' house and from there to Kadapa. PW7 was brought to the house of PW1 and since then, disputes arose between the two families.

4. On 05.11.2008, the marriage of PW7 was performed with one K.M.Chittibabu (the deceased), in Agastheeswara Swamy Temple, Thondawada. After marriage, PW7 and deceased lived together in Pedda Harijanawada, Karvetinagaram. On the date of marriage, A2 gave Rs.15,000/- to PW2 towards chit prize amount and she has

to still pay an amount of Rs.40,000/- to PW2. Four months later, PW2 asked A4, who is the wife of A2, to pay the balance chit amount. A4 is said to have stated that there is no amount due to her and she need not ask her any amount. On receiving the said reply, A4 pushed PW2 aside. On hearing the galata, the deceased came out of his house and separated PW2 and A4. At that time, A1 to A3, A5 and A6 came there. A1, who was armed with an iron angular, beat on the head of the deceased with the said angular, as a result of which the deceased sustained a bleeding injury. Thereafter, A3 is said to have beat PW2 with an iron rod on her left thigh and right shoulder. A1 to A6 thereafter fell the deceased down and beat him with hands and legs. The villagers who gathered there, separated all of them. Thereafter, all of them, including the injured, went to the police station at 8.30 p.m.

5. PW14-the Police Constable in Karvetinagar police station claims to have recorded the statement of the deceased/ injured, which is placed on record as Ex.P9. Basing on the statement given by the deceased/ injured, a case in Crime No.24 of 2009 came to be registered under Sections 324, 323 read with 34 IPC. Ex.P10 is the First Information Report. After registering the crime, the injured (deceased and PW2) were sent to Community Health Centre, Puttur along with a memo.

6. Further investigation in the matter was taken up by PW15-the Sub Inspector of Police, Karvetinagar. After receiving a copy of the F.I.R., PW15 proceeded to Community Health Centre, Puttur,

wherein he came to know that the injured/ deceased was shifted to SVRR GG Hospital, Tirupathi. Accordingly, he went to the said hospital and recorded the statement of the injured/ deceased, which is placed on record as Ex.P11. Basing on the statement of the injured/ deceased, he altered the section of law from 342 to 307 IPC and also added A5 and A6 as the accused. Ex.P12 is the altered F.I.R. On 17.03.2009, he visited the scene of offence and prepared an observation report, which is placed on record as Ex.P4. He also got prepared a rough sketch, which is marked as Ex.P13. At the time of the said proceedings, he seized M.Os 1 and 2. On 30.03.2009, he received the death intimation of the injured/ deceased from Casualty Medical Officer, SVIMS Hospital, Tirupathi. Ex.P15 is the said intimation. Basing on Ex.P15, PW15 altered the section of law from 307 to 302, 307, 324, 323 read with 34 IPC. Ex.P16 is the altered F.I.R. He then handed over the investigation to PW16-the Inspector of Police, Karvetingaram Police Station. On 23.03.2009, at about 11 a.m., A1 to A6 voluntarily surrendered before PW15, who remanded them to judicial custody.

7. PW16, who took up further investigation, gave a requisition to the Regional Mandal Officer for holding inquest over the dead body. In the presence of PW10, he conducted inquest over the dead body. Ex.P3 is the inquest report. After conducting the inquest, the body was sent for post mortem examination.

8. PW13-the Assistant Professor, Forensic Medicine, S.V.Medical College, Tirupathi conducted autopsy over the dead body of the

deceased and issued Exhibit P8-the Post Mortem Report. According to him, the cause of death was due to head injury.

9. On 01.04.2009, PW16 visited Harijanawada and examined PW2 to PW8 and recorded their statements. After collecting all the necessary documents, a charge sheet came to be filed, which was taken on file as PRC No.16 of 2009 on the file of the Judicial Magistrate of First Class, Puttur. On appearance, copies of the documents were furnished and after satisfying the requirements of Section 207 of Cr.P.C., and since the case is triable by the Court of Sessions, the same was committed to the Court of Sessions, where it came to be numbered as S.C.No. 369 of 2009 on the file of the V Additional District and Sessions Judge, Tirupathi. Basing on the material on record, charges for the offences punishable under Sections 147, 148, 323, 324 read with 149 and 302 of IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

10. In support of its case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P19 and M.Os.1 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. No oral or documentary evidence was adduced by the accused in support of their defence.

11. Basing on the evidence of PWs 1 to 3, coupled with the motive for the accused to cause the death of the deceased, the

learned Sessions Judge convicted the accused, as referred to earlier. Challenging the same, the present appeal came to be filed.

12. The learned counsel for the appellant mainly submits that even if the case of the prosecution is believed to be true, no offence under Section 302 IPC is made out. He would submit that his plea is only with regard to the nature of offence said to have been committed by the accused. According to him, even if the two statements of the deceased and the evidence of the injured witness are taken into consideration, no offence under Section 302 IPC is made out, as the incident in question was preceded by a quarrel, leading to the death of the deceased, (13) days after the incident. Having regard to the above, he submits that the finding and conviction of the trial court under Section 302 IPC is unwarranted.

13. On the other hand, the learned Public Prosecutor opposed the same, contending that the evidence on record amply establish the involvement of the accused in the commission of the offence, and as such, the findings of the trial court warrant no interference.

14. In order to appreciate the arguments of the learned counsel for the appellants, it would be appropriate to refer to the evidence of PW2, who is an injured eye witness to the incident. It is, no doubt, true that there were some disputes between the families of the accused and deceased, earlier when A1 eloped with PW7. The record reveals that on coming to know about the elopement of PW7 with A1, PWs 2, 3 and others went to Renigunta railway

station and apprehended PW7, when she was trying to board a train to Mumbai. Thereafter, she was brought home and then, her marriage was performed with the deceased. It is also to be noticed here that the evidence on record show that A2 was running chit business, in which PW2 was a subscriber. After the maturity of chit amount, PW2 is said to have claimed the entire chit amount, but only a part of the amount was paid by A2, and PW2 was insisting A2 to pay the entire amount. PW2 is none other than the grandmother of the deceased.

15. On the date of incident, i.e., 16.03.2009, at about 8.30 p.m., a quarrel ensued between PW2 and A4, who is the wife of A2, with regard to payment of balance of the chit amount. On hearing the quarrel between PW2 and A4, the deceased came out of his house, intervened and tried to separate both of them. At that time, the other accused, who are the relatives of A2 and A4, who were passing by, hit the deceased on the head with an angular, leading to his fall. Thereafter, all the accused are said to have hit the deceased with their hands and legs. After the incident, the deceased/ injured is said to have gone to the police station and given a statement, which was reduced into writing and placed on record as Ex.P9. Basing on Ex.P9, a case was registered against the accused, initially under Section 324 IPC. Thereafter, the injured/ deceased was sent to the hospital, where a statement came to be recorded by the Circle Inspector of Police, which is placed on record as Ex.P11.

16. A reading of Ex.P9 and Ex.P11 would show that on 16.03.2009, at about 8 p.m., in the night, PW2 and A4 were shouting at each other. The deceased is said to have gone there and asked A4 and A2 to pay the amount. A2, at the first instance, informed that he would pay the amount and asked the deceased to come. In the meanwhile, A1, who is the son of A2, came in an auto and beat on the head of the deceased, causing bleeding injury. Similarly, A3 beat PW2 on the right shoulder and left thigh with an iron bar and caused an injury. This statement, which is placed on record, as Ex.P9, led to registration of the crime. From this statement, it is clear that when PW2 and A4 were quarrelling over payment of money, the deceased intervened and asked A4 to pay the amount. At that time, A1 came there in an auto and beat on the head of the deceased with an iron rod, causing bleeding injury.

17. Ex.P11 is another statement made by the injured/ deceased, which was recorded in the hospital, wherein it is mentioned as under:

“I am residing in Pedda Harijanawada village of Karvetinagaram Mandal. Presently I am studying TTC course privately in Puttur Vedanarayana Educational Society Limited. My mother's brother by name Venu is residing in our village. The said my maternal uncle Venu has got a daughter by name Haritha. On 18.09.2008 Suresh s/o. Balasubramanyam, resident of our Harijanawada took away Haritha by saying mesmerizing words. On the next day i.e., on 19.09.2008 my uncle Venu and our relatives searched Haritha in

Penigunta Railway Station in Mumbai-Chennai Train and brought her to the house. Since the date of getting back Haritha to the house, the disputes arose between our two families. As per the wish of our elders, my marriage took place with Haritha on 05.11.2008 in Agastheeswara Swamy temple in Thondavada near Chandragiri. Since then the said Suresh frequently following me. I came to know that he used to told that in any way he will kill me through others and any way marry Haritha. About four months ago from today my grand mother Rukkamma participated in the Chit run by the father of Sureh by name Balasubramanyam for chit amount of Rs.55,000/- and she lifted the last chit. At the time of my marriage he only paid Rs.15,000/- towards part of chit amount and the remaining chit amount of Rs.35,000/- did not pay even the lapse of four months time and thereby killing the time. Today i.e., on 16.03.2009 at 8.00 p.m. in front of my house on the street my grand mother Rukkamma and the wife of Balasubrahmanyam Lakshamma were shouting each other about the balance chit amount. On hearing the cries I came out of the house to the street and tried to de-unite them. During that time Balasubramanyam and his sons Suresh, Doraswamy and the younger brother's sons of Balasubramanyam by name Vinod, Venkatesh, sons of Kuppaiah all as per their pre-plan came in an auto armed with iron rod and iron pipes and stayed nearby and while I went to rescue my grand mother Rukkamma, taking advantage of that time they altogether jointly attacked me and my grand mother. Suresh beat me on my head with iron angle armed in his hand

only with a view to kill me and caused bleeding injury. When my grand mother Rukkamma intervened, Doraswamy beat my grand mother with iron pipe on her right shoulder and left thigh and caused injury. Immediately Vindo, Venkatesh, Balasubramanyam, Lakshamma who were there made me fallen down and fisted me and caused injuries on my entire body. On seeing this when my younger brother Babu Rao intervened, the above said Sures, Doraswamy, Balasubramanyam, Lakshamma, Vinod, Venkatesh beat him with hands and legs. On seeing the severe bleeding injury to my head, my villagers, viz., Gunasekhar, Manikyam and Sekhar came and rescued me from them. Immediately I along with my grand mother Rukkamma came to Karvetinagaram Police Station and informed about the galata. By that time when the blood is coming out from my head I have feared and hence could not properly narrated the things that was happened. After the first aid treatment I feel relaxation from the injury to some extent and hence I am disclosing the facts properly. Suresh in order to marry my wife by killing me in any way, with the assistance of his relatives Doraswamy, Balasubramanyam, Lakshamma, Vinod, Venkatesh all joined together and as per their pre-plan attacked on me and my grand mother and caused severe injuries. Since the said Suresh, Doraswamy, Balasubramanyam, Lakshamma, Vinod, Venkatesh tried to kill me, I pray to take proper action against them as per law.”

18. PW2, who is an injured eye witness, in her evidence, also spoke about the quarrel between herself and A4, during which time the deceased intervened and was beaten on the head by A1. She also deposed that subsequent to the quarrel, all of them went to the police station.

19. From the two statements of the deceased, viz., Ex.P9 and Ex.P11, and the evidence of PW2, it is very clear that there was absolutely no motive or intention for the accused to cause the death of the deceased. It appears to be a case where there was a quarrel between PW2 and A4, in which the deceased intervened, separated both of them and insisted A4 to pay the amount to PW2, who is his grandmother. At that time, A1 beat the deceased on the head, causing bleeding injury. Even the evidence of PW13 the doctor who conducted post mortem examination, refers to only one external injury on the left temporal region of the head of the deceased. Though he noticed some abrasions on the right thigh and left foot of the body, he opined that the same were not caused by M.O.1. On the other hand, after the deceased fell down, A2 to A6 are said to have beat them with hands and legs, but, all of them were acquitted from the said charge. Therefore, the evidence of the doctor who conducted post mortem establish that there was only one injury on the head of the deceased, which was caused by M.O.1 weapon and that injury alone was fatal. But, as stated by us earlier, the circumstances under which the said blow came to be given does not establish that the said injury was caused with an intention to cause the death of the deceased. But, definitely, it

can be stated that A1 had knowledge that such injury is likely to cause death of the deceased.

20. In view of the above, we feel that the nature of offence can be scaled down from Section 302 to Section 304 Part-II, in case of A1 (the appellant in Criminal Appeal No. 42 of 2012). Insofar as the conviction of A3 (the appellant in Criminal Appeal No. 64 of 2012), we see no reason to disbelieve the evidence of PW2, who is an injured eye witness to the incident in question. In fact, the learned counsel for the appellants did not dispute with the said angular the conviction of A3 under Section 324 IPC.

21. In the result, the Criminal Appeals are allowed to the extent indicated above. The conviction and sentence recorded against A1 in the judgment dated 23.12.2011, in Sessions Case No. 369 of 2009 on the file of the V Additional District and Sessions Judge, Tirupati, for the offence punishable under Section 302 I.P.C. is altered to one under Section 304 Part-II IPC. For the altered conviction, the appellant in Criminal Appeal No.42 of 2012 (A1) is sentenced to suffer rigorous imprisonment for a period of five years. Consequently, the appellant/ A1 shall be set at liberty forthwith on completion of five years rigorous imprisonment, if not required in connection with any other case. While confirming the conviction of A3 (the appellant in Criminal Appeal No. 64 of 2012) under Section 324 IPC, the sentence is reduced to one year rigorous imprisonment. Consequently, the appellant/ A3 shall be set at liberty forthwith on completion of one year rigorous imprisonment,

if not required in connection with any other case. The period of remand underwent by both the appellants during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C., if they are entitled to. Miscellaneous petitions pending, if any, stand closed.

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JUSTICE C. PRAVEEN KUMAR

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JUSTICE T. RAJANI

23.07.2018  
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