

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD**

CRIMINAL APPEAL No.1099 of 2012

JUDGMENT: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present appeal, appellant/A.1 has challenged judgment dated 31.10.2012, passed in S.C.No.519 of 2011 by the IV Additional Sessions Judge (FTC) Karimnagar. By the said judgment, appellant was convicted for the offence punishable under Section 302 IPC and sentenced to rigorous imprisonment for life with fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.

2. The case of the prosecution is that P.W.1 Madam Swaroopa lodged a complaint before the Police, Mulkanoor on 05.01.2011 alleging that her husband went to their agricultural field to water the same; on that day, she was in the house with her mother-in-law and two children; her eldest son who is four years old attended nature's call in the street; A.2 and A.3 and two juvenile offenders objected to it, caught hold of her tuft and beat her indiscriminately; seeing the same, her mother-in-law, Madam Komuramma (hereinafter referred as 'the deceased'), who was in the house, came to her rescue; the four assailants surrounded the deceased and were taking her forcibly into their house; A.6 came there and encouraged the said four assailants to kill her; meanwhile, A.1 intervened, abused them, went inside his house, returned with pestle and beat the deceased on her head

violently and caused bleeding injuries, as a result of which the deceased fell down and died on the spot and the same has been witnessed by P.Ws.5 to 8.

3. On receipt of the complaint, Police, Mulkanoor registered a case for the offences punishable under Sections 302, 290 and 323 read with Section 34 IPC. Thereafter, they visited the scene of offence, prepared crime details form, made arrangements for inquest and autopsy, recorded statements of all witnesses, seized pestle and other articles, apprehended the accused, recorded the confessional statements, completed other formalities and laid charge sheet against the accused for the offences referred above.

4. The learned Magistrate complied requirements under Section 228 Cr.P.C., and committed the case to the District and Sessions Court, Karimnagar, which had taken it on file as S.C.No.519 of 2011 and made it over to the trial Court. After accused appeared, upon considering the record and hearing the accused and prosecution, as there was ground to presume that accused committed the above offences, the trial Court framed the charges under Section 228 Cr.P.C., for the offences punishable under Sections 302, 290 and 323 read with Section 34 IPC against the accused. The charges were read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

5. The prosecution examined P.Ws.1 to 16 and got marked Exs.P.1 to P.10 and exhibited Exs.D.1 to D.5 and M.O.1 on their behalf. Thereafter, incriminating material available against the accused was informed to them under Section 313 Cr.P.C. They denied the same and did not choose to lead any evidence.

6. After hearing the learned counsel for the accused and the learned Public Prosecutor, the trial Court acquitted A.2, A.3 and A.6. A.4 and A.5, being juveniles, were sent to juvenile home. A.1, i.e., the appellant herein was convicted and sentenced as referred above.

7. P.W.1 is the daughter-in-law of the deceased. She deposed that her mother-in-law was beaten with pestle and murdered by A.1. Her son, aged 4 years, was attending nature's call on the date of the incident in the village at about 6.30 AM near the house in the street. A.2 and A.3 saw it, blamed her for it, abused her and beat her by catching hold of her tuft, objecting her in allowing her son to do so there. Her mother-in-law, i.e. the deceased, who was inside the house came out and objected to it. A.1 went inside his house, got a pestle and beat the deceased with it, on her head, as a result of which she died on the spot.

8. In the cross-examination, she admitted that she did not know whether her husband already lodged a complaint to the Police against the accused before this incident and whether her husband had dispute with regard to *jilugu* land with A.1. She did not know whether her

family had any disputes with the family of A.1. She denied the suggestion that as an earlier criminal case lodged by them against the accused ended in acquittal; this case was again coined in view of the death of her mother-in-law.

9. Learned counsel appearing on behalf of the appellant submits that since an altercation took place between P.W.1 and A.1, the deceased came out of the house and A.1 hit the deceased once with a pestle, due to which the deceased died, as alleged by the prosecution. He further submits that appellant/A.1 had no premeditation or any intention to kill the deceased, however, due to the altercation that had taken place, he hit the deceased with a pestle in his defence and caused injury to the deceased; however, the deceased succumbed to the injury.

10. P.W.2 is the son of the deceased. He is not an eyewitness to the incident and he was informed of the same by L.W.9. He deposed that his son aged four years was attending nature's call on the date of the incident in the village near his house in the street. A.2 and A.3 saw it, blamed P.W.1 for it, abused and beat her by catching hold of her tuft, objecting her in allowing his son to do so there. His mother objected the same. A.1 went to his house, got a pestle and beat her with it on her head. He was near his field at that time and he was not present at the scene of offence.

11. Learned counsel for the appellant submits that P.W.2 is neither an eyewitness nor had any altercation with any of the accused, however, initially A.2 and A.3 objected to the nature's call of his son; thereafter the deceased came out of the house and quarrelled with them and the appellant hit the deceased with a pestle on her head, but without intention to kill her.

12. It is not in dispute that P.W.2 was informed by L.W.9 about the incident and by the time he reached the scene of offence, his mother was lying unconscious.

13. In the cross-examination, P.W.2 admitted that he lodged a complaint to the Police against A.1 and A.6 previously and it ended in acquittal.

14. It is established from the deposition of P.Ws.1 and 2 that, initially, quarrel took place between P.W.1, A.2 and A.3; thereafter, deceased came and intervened. Subsequently, appellant/A.1 reached at the spot and hit the deceased with pestle due to which she succumbed to the injury.

15. P.W.3 is the daughter of the deceased. She deposed that her mother was beaten with pestle and murdered by A.1. She came to know that her brother's son aged four years was attending nature's call on the date of the incident in the village near her parents' house in the street. A.2 and A.3 and two children saw it, blamed P.W.1 for it, abused her and beat her, objecting her in allowing her brother's son to

do so there. P.W.3 is not an eyewitness. She heard that initially A.2 and A.3 objected to the nature's call of his brother's son and thereafter, A.1 came in between and hit the deceased with a pestle.

16. P.W.4, who is the daughter of the deceased, deposed that persons present at the scene of offence, informed her that appellant/A.1 beat her mother and murdered her with a pestle. Thus, P.W.4 is also not an eyewitness. She heard about the incident from others and reached the spot after the incident had taken place.

17. P.W.5 deposed that the scene of offence is visible from her house. She was in the house at that time and she had seen the incident. In cross-examination, she deposed that she stated before the Magistrate that A.1 came to the scene of offence from his well and denied the suggestion that A.1 was not in the village but was in his agricultural field at the time of the incident and that ladies of two families quarrelled and in that scuffle the deceased fell on the ground, received injuries and died and that her death was used against accused in view of disputes between two families.

18. P.W.6 deposed that when she was going in the village by walk to secure labour to his field, she had seen A.1 beating the deceased with a pestle and A.2 and A.3 beat P.W.1; she intervened and separated them. In cross-examination, she admitted that things in front of her house were not visible from her house. It was 7.15 AM

when she went there. Police examined her at the scene of offence some time after the death of the deceased.

19. P.W.7 deposed that he heard noise in front of his house. He heard the same, came out and saw A.1 beating the deceased with a pestle. Many people had gathered. He did not know about the reason for the *galata*. In cross-examination, he deposed that he was in his field during the night before the incident and returned to his house at about 6 or 6.30 AM. The incident happened at about 7.30 AM. Many houses are around his house. Many persons gathered when he came out of his house. Police thereafter examined him. He admitted in cross-examination that he went to his well on the date of the incident and he stated to the Magistrate that ladies of two families quarrelled and thereafter A.1 came there.

20. P.W.8 has also deposed on the same lines as that of P.W.7.

21. Learned counsel for the appellant submits that, admittedly, the above witnesses have deposed that *galata* took place between two ladies initially; thereafter A.2 and A.3 came in between and meanwhile the deceased intervened, but thereafter, A.1 came to the scene of offence as alleged by the prosecution. He further submits that even assuming that the appellant hit the deceased with the pestle as alleged, that is only after the *galata* took place between the ladies and the deceased picked up a big stone to hit A.1. The appellant was initially not a party to the incident and the appellant later intervened, hit the

deceased with pestle and left the place. Thus, he had no intention or premeditation to kill the deceased; however, just to cause injury, he hit the deceased and left the place. He further submits that one injury is caused, which is certified by P.W.14, Dr.D.Sujatha, who conducted post mortem. She deposed that a deep lacerated injury is present on right occipital region which is one inch deep with underlying fracture on right occipital bone. He would submit that the trial Court had ignored these facts and convicted the appellant for the offence under Section 302 IPC erroneously, whereas the trial Court ought to have convicted the appellant for the offence under Section 304 Part-II IPC.

22. Learned Additional Public Prosecutor appearing on behalf of the State argued that the trial Court has relied upon the eyewitnesses who had seen the offence. Appellant/A.1 is the person who hit the deceased with pestle and the deceased succumbed to the injury. There is consistency in the evidence of the witnesses, who had seen the appellant hitting the deceased with a pestle. P.Ws.12 and 13 are the witnesses before whom Police recorded confessional statements and they stated that A.1 led them to his house, secured a pestle from a cotton heap from inside his house and produced it. Thus, the trial Court rightly convicted the appellant for the offence under Section 302 IPC and there are no grounds to interfere with the same.

23. It is not in dispute that quarrel emanated from the nature's call of a four-year-old boy, to which A.2 and A.3 objected. Thereafter, elders from both sides came into the picture. The witnesses deposed

that appellant entered the scene of offence, got a pestle from his house, hit the deceased with it and left the place. It has come on record that, earlier, a complaint was lodged with the Police by P.W.2 against the appellant, however, the same ended in acquittal. As a result, there was enmity between the families.

24. As discussed above, a trivial issue of nature's call culminated into *galata* between two families. The incident does not appear to be a premeditated one and the appellant had no intention to kill the deceased. All of a sudden, in fit of rage, the appellant hit the deceased with pestle after joining the *galata* that was already going on.

25. As per Section 304 Part-II of IPC, an act of the culprit amounts to culpable homicide not amounting to murder if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

26. There was quarrel between two parties in which the appellant had also participated. The said quarrel emanated all of a sudden and during the quarrel, the appellant hit the deceased as a result of which the deceased succumbed to the injuries. If the appellant had an intention to cause the death of the deceased, he would not have hit the deceased only once, but would have continued to hit the deceased and ensured that she died, but he did not do so.

27. It is pertinent to mention here that, in the cross-examination, P.W.8 deposed that appellant/A.1 came to the scene of offence and chastised ladies on both sides for the quarrel and that he stated before the Magistrate that the deceased started the quarrel with A.2 and came in front of house of the appellant/A.1; in that connection, the deceased picked up a big stone to beat the appellant/A.1 and appellant/A.1 picked up a stick from a nearby wall and beat the deceased. Thus, it is clear that the appellant/A.1 had no premeditation to kill the deceased and in an act of defence, he hit the deceased with a stick and caused injury to her, however, she succumbed to the injury.

28. It is not in dispute that appellant remained in jail for more than five years and, thereafter, vide order dated 30.01.2018, he was released on bail in the light of the judgment of this Court in *Batchu Ranga Rao v. State of A.P.*¹

29. Learned counsel for the appellant argued that, in the present case, in addition to the appellant, J.1 and J.2, i.e., the daughters of the appellant were also implicated and they have seen the plight of the trial; at the time of the incident, J.1 was 15 years and J.2 was 13 years old and at present they are 22 and 20 years respectively and of marriageable age.

¹ (2016) 3 ALT (Crl.) 505 (DB) (AP)

30. In view of the above discussion, evidence of the prosecution and the facts and circumstances in which the appellant had hit the deceased, we are of the considered opinion that the case of the appellant falls under Section 304 Part-II IPC.

31. Accordingly, the conviction of the appellant is altered from Section 302 IPC to Section 304 Part-II IPC and the appellant is set free on the sentence which he has already undergone. The bail bonds are cancelled and sureties are discharged.

32. In the result, the appeal is allowed in part to the extent indicated above.

As a sequel, miscellaneous petitions, if any pending in the appeal, stand closed.



SURESH KUMAR KAIT, J

T. AMARNATH GOUD, J

September 5, 2018
MRR