

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.1304 of 2011

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

1) The sole accused in S.C.No.127 of 2011 on the file of the Special Judge for trial of offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Gopi (hereinafter referred to as "the deceased") on 17.05.2010 at 5.00 p.m., at Hari Hara Kala Bhavan, Secunderabad. Vide judgment, dated 18.08.2011, the learned Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.10000/- in default to suffer simple imprisonment for a period of one month.

2) The brief facts are as under:

i) PW.1 was working as A.S.I. of Market P.S., while PW.4 was the police constable on duty at the scene, on the date of incident. PW.2 was running a General Store at Hari Hara Kala Bhavan. PW.5 is the person, who was passing through the said place on 17.05.2010 at 6.30 p.m. The evidence of all these witnesses would show that on 17.05.2010 at about 5.00 p.m.,

they found two persons in a drunken condition quarrelling with each other. It is said that at that time, the accused hurled a stone on the person, who was lying on the ground. Immediately the Rakshak van came to the scene and noticed one person lying with head injury and also noticed one cement boulder. Enquiries revealed the name of the said person as Gopi. Immediately, PW.1 called 108 ambulance and shifted the injured to Gandhi Hospital. On 17.05.2010 at about 5.45 p.m., PW.8-the Inspector of Police, received a report-Ex.P1 from PW.1, basing on which he registered a case in Crime No.87 of 2010 for an offence punishable under Section 307 IPC and issued Ex.P7-the first information report. He examined and recorded the statement of PW.1. Thereafter, he proceeded to the scene of offence, where he conducted a panchanama of the scene in the presence of PW.5 and another under Ex.P3 and also drew a rough sketch, which is marked as Ex.P4. At the scene of offence, he seized blood stain swab, control swab and also two blood stain cement blocks. On the same day at about 6.15 p.m., he arrested the accused and at 7.30 p.m., he examined and recorded the statements of PWs.2, 3 and 4. At about 8.00 p.m., he received a telephonic message stating that the person, who was undergoing treatment, succumbed at 7.30 p.m. Upon which, he altered the section of law from 307 to 302 IPC. Ex.P8 is the alteration memo. Thereafter, he along with S.I. of police, visited the Gandhi Hospital, conducted inquest over the dead body of the deceased in the presence of PW.7 and another. Ex.P6 is the

inquest report. Thereafter, the dead body was sent for post-mortem examination.

ii) PW.6-the Assistant Professor in Forensic Department of Gandhi Medical College, Secunderabad, conducted autopsy over the dead body of the deceased and issued Ex.P5-the postmortem examination report. According to him, the cause of death was “due to head injury”.

iii) After collecting all the material, PW.8 filed a charge sheet before the Court of the X Additional Chief Metropolitan Magistrate, Secunderabad, which was taken on file as P.R.C.No.89 of 2010. After complying with Section 207 Cr.P.C., the case was committed to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.127 of 2011.

3) On appearance, a charge under Section 302 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 8 and got marked Exs.P1 to P9 and MOs.1 to 3. After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the accused.

5) Relying upon the evidence of PWs.1, 2, 4 and 5, the trial Court convicted the accused for the offence referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there is absolutely no evidence to connect the accused with the crime and none of the witnesses have actually seen the incident. On a premise that the accused quarreled with the deceased, he has been falsely implicated in the case. In any event, it is submitted that as the incident was preceded by a quarrel and in the absence of any motive for the accused to kill the deceased, he pleads for scaling down the offence from 302 to 304 IPC.

7) Learned Public Prosecutor opposed the same.

8) In order to appreciate the same, it would be useful to extract the evidence of four witnesses. PW.1 was not an eye witness to the incident. He deposed that by the time he came to the scene of offence, he found one person lying with head injury and also noticed one cement boulder. His enquiries with the injured revealed his name is Gopi. Immediately he called 108 ambulance and shifted the injured to Gandhi Hospital.

9) PW.2 was running a General Store at Hari Hara Kala Bhavan. According to him, on 17.05.2010 at about 5.00 p.m., he came out of shop on hearing some noise and noticed two persons

quarreling in a drunken condition and one person hurled stone on the person who was lying. He further states that it was the accused, who hurled the stone on the person who was lying on the ground. When accused was trying to run away, he caught hold the accused, slapped him and made him to sit. Thereafter, he called the traffic constable and handed over the accused to him. Though he was subjected to lengthy cross-examination, nothing came to be elicited to discredit his version. However, in the cross-examination, it was elicited that he did not hand over the accused to the police. He further states that 50 to 100 shop persons gathered at the time of the incident. To a suggestion that he did not apprehend the accused was denied by him.

10) PW.4, who is the traffic constable, in his evidence deposed that on the date of incident, he was on duty at Hari Hara Kala Bhavan. According to him, there was a quarrel and public gathered there. He admits that he does not know which persons quarreled, but he came to know that two persons were quarrelling. In the mean time Rakshak police van came to the scene and apprehended the person, who beat the injured.

11) PW.3 did not support the case of prosecution and he was treated hostile. From the evidence of PWs.1, 2 and 4 it is very clear that there was a quarrel between two persons and in the said quarrel the injured fell down, thereafter the accused hurled a stone. The evidence of PW.2 clearly indicates that while the person, who hurled the stone was trying to fled away,

he caught hold of him and was made him to sit in front of his shop. Therefore, the presence and participation of the accused in the commission of offence cannot be doubted.

12) The only issue is that whether the accused can be convicted for the offence punishable under Section 302 IPC.

13) From the evidence of the witnesses referred to above, it is clear that the incident was preceded by a quarrel. The prosecution was not able to prove any motive for the accused to commit the offence. The evidence clearly shows that pursuant to a quarrel the deceased fell down and thereafter the accused hurled a stone on the deceased, who was lying there. As a result of which the deceased sustained head injury. Therefore, we feel that it is not a case where the accused had any motive to kill the deceased. As the incident took place pursuant to a quarrel between two individuals, we feel that it is a fit case where the nature of offence can be scaled down from 302 IPC to 304 Part-I IPC.

14) Accordingly, the Criminal Appeal is partly allowed and the conviction imposed against the appellant/ accused in Sessions Case No.127 of 2011 on the file of the Special Judge for Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, for the offence punishable under Section 302 IPC is set aside and consequently, the appellant is convicted under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous

imprisonment for a period of seven years. The period of remand undergone by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. The appellant/accused shall be set at liberty forthwith, if not required in any other case, on completion of seven years rigorous imprisonment, including remissions, if he is entitled to.

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

C.PRAVEEN KUMAR, J

T. RAJANI, J

25.06.2018
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