

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL Nos.220 & 214 of 2012

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

Both these appeals are preferred against the judgment in S.C.No.56 of 2009 on the file of Principal Sessions Judge, Medak at Sangareddy. Criminal Appeal No.220 of 2012 is preferred by A1, while Criminal Appeal No.214 of 2012 is preferred by A2 and A3. Originally A1 to A6 were tried for the offences punishable under Sections 307, 302 read with Section 34 of IPC. Vide judgment dated 27.02.2012, learned Sessions Judge while acquitting A4 to A6 of all charges, convicted A1 to A3 for the offence punishable under Section 302 IPC and sentenced them to suffer imprisonment for life and pay amount of Rs.5,000/- each in default of payment of fine, to undergo simple imprisonment for a period of four months.

2. The substance of the charge against the accused is that on the intervening night of 12/13th March, 2008, A2 to A6 along with A1 trespassed into the house of the deceased and caused his death. In the course of the said incident, they also caused injuries to PWs.2 and 3.

3. The case of the prosecution as culled out from the evidence of the prosecution witnesses is as under:

(i) PW9 is the wife of A1. The deceased is the son of PWs.2 and 3, while PWs.1 and 5 are the brothers of PW2. PW4 is the daughter of

PW2. PW9 is the adopted daughter of PW2. PW6 is the brother-in-law of deceased while PW7 is the son of PW2. A2 and A3 are the nephews of A1.

(ii) About seventeen years prior to the date of incident, PW1 performed the marriage of PW9 with one Gajula Chandra Reddy (A1). Since then both of them were residing separately at Ramchandrapuram. It is stated that A1 used to consume liquor and beat his wife on trivial matters, as such she used to come to the house of PW1 and inform about the same. PW1 along with his brothers used to convince her and send her back. Just prior to the incident, she came back to the house of PW1. It is stated that PW1 and others thought of filing a case against A1, but were postponing the same on one pretext or the other. The facts disclose that on the intervening night of 12/ 13.03.2008, at about 02.00 a.m., A1 along with A2, A3 and others armed with sticks and stones entered the house of PW2, and attacked them. At that time, the wife of A1 (PW9) was not in the house. PW2, his four children and his wife received injuries in the hands of the accused. According to the evidence of PW2, A1 to A3 beat PW2 with sticks on his head and legs. PW3 the wife of PW2, was beaten by A2 and A3 with sticks on her legs and hands. It is further said that A1 beat the deceased indiscriminately with stick, while A1 to A6 beat PW8 and others. On seeing the incident, PW13 entered the house along with others and intervened. On seeing them, the accused left the place. The neighbours claim to have witnessed the incident and also identified the accused with the help of lights that were switched on. On the same day, PW2 and other injured were taken in an ambulance to the Government Hospital at Zaheerabad. From there, they were referred to Mamatha Hospital, Kukatpally. They stayed there for two days and then were

referred to NIMS, Hyderabad. At NIMS, Hyderabad, PW7 was treated as in-patient. The deceased who was admitted in Government hospital at Zaheerabad was discharged as he received simple injuries. Three days thereafter, the deceased was shifted to NIMShospital.

(iii) On 13.03.2018, PW32, the SI of Police, Jharasangam Police Station, received a report from PW1 basing on which a case in Crime No.17 of 2008 came to be registered initially for the offences punishable under Sections 324 and 307 read with Section 34 IPC. Ex.P25 is the FIR. PW32 recorded the statement of PW1, visited the scene of offence and also recorded the statement of the deceased. He also conducted a panchanama and prepared a rough sketch of the scene. He also recorded the statements of PWs.2 to 4 and PWs.7 and 8 at Mamatha Hospital, Kukatpally and also seized MOs.1 to 3 and 6 from the scene of offence apart from seizing MOs.1 and 2. As seen from the record, after admission in the NIMS, the deceased died. Thereafter the investigation was taken over by PW34, the then Circle Inspector of Police, who proceeded to the hospital and conducted inquest over the body of the deceased in the presence of PWs.21 and 22. During inquest, he recorded the statements of PWs.6,10 and 31. Ex.P18 is the inquest report. After inquest, the body was sent for post mortem examination. PW35, the Professor, Forensic Medicine, Gandhi Medical College, Secunderabad, conducted autopsy over the body of the deceased. Ex.P28 is the post mortem report. According to PW35, the cause of death was due to head injury. PW34 the Inspector of Police, Zaheerabad Rural Police Station, took up investigation, recorded the statements of PWs.6, 9, 10, 11 to 18, 28 and 31. It is stated that on the same day, A1 to A3 surrendered before the

Court and on 04.04.2008, A1 to A3 confessed about their commission of offence in the presence of PWs.24 and 29. Basing on the confessions, PW34 also arrested A4 to A6 and sent them to judicial custody. After completion of investigation, a charge sheet came to be filed, which was taken on file as PRC No.43 of 2008 on the file of Judicial Magistrate of First Class, Zaheerabad.

(iv) After furnishing copies of documents to the accused as contemplated under Section 207 of Cr.P.C., the case was committed to the Court of Sessions under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.56 of 2009. Basing on the material on record, charges for the offences punishable under Sections 307, 302 read with Section 34 of IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

(v) To substantiate its case, the prosecution examined PWs.1 to 35 and got marked Exs.P1 to P28 and M.Os.1 to 9. After the closure of 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. Out of 35 witnesses examined, PWs.6,8,9,10,12 to 23, 26 to 29 did not support the prosecution case and were treated as hostile witnesses.

(vi) Relying upon the evidence of PWs.3 and 4, the trial Court convicted only A1 to A3. Challenging the same, the present appeal came to be filed.

4. The learned counsel for the appellants/ A1 to A3 mainly submits that there were some disputes between A1 and PW9 prior to the incident. It is

stated that all the accused entered the house of PW2 wherein an altercation took place thereby causing injuries to the inmates which ultimately lead to the death of the deceased. It is urged that there was no intention on the part of the accused to kill the deceased. Learned counsel for the appellants would submit that since the evidence adduced against A4 to A6 stands on the same footing as that of A1 to A3, the same benefit may be extended to the appellants as well. According to him, even if the prosecution case is to be accepted, the accused can at the most be convicted for an offence punishable under Section 324 IPC.

5. On the other hand, learned public prosecutor would submit that the evidence on record shows the presence of the accused at the scene and as such it cannot be said that the accused are not responsible for the death of the deceased. According to him, all the accused do not stand on the same footing and that the acquittal of A4 to A6 do not come in the way of convicting A1 to A3.

6. In order to appreciate the rival submissions, it would be appropriate to look into the evidence of PWs.3 and 4, more particularly, PWs.2 and 3, the injured eye witnesses to the incident. It is to be noted here that the marriage between A1 and PW9 took place about twenty years prior to the incident. Since marriage, A1 and PW9 were living separately at Ramachandrapuram. It is further brought on record that A1 was harassing his wife (PW9) and unable to bear such harassment, she is said to have left the company of A1 and started staying with her parents, since two months prior to the date of incident. These facts are not disputed. It is stated that on the intervening night of 12/ 13.03.2008, when PW9 was not in his

house, A1 along with others armed with sticks entered the house. At that time, PW2, his wife and sons were sleeping in the house. The evidence of the witnesses discloses that A1 to A3 beat PW2 on his hand and legs. A1 beat the deceased with a stick on his head, while A2 and A3 beat PW3 on her legs and hands. Thereafter, A1 to A3 beat PW4 on her legs. A1 to A4 beat PW5 on his legs and head. The evidence further discloses that A1 to A6 escaped from the place, when PW2 identified them in the light. Immediately, PW2 and other injured were taken in an ambulance to a Government Hospital at Zaheerabad. From there they were referred to Mamatha hospital, Kukatpally and then to NIMS hospital, Hyderabad. PW7 was treated as in-patient at NIMS, Hyderabad. The deceased was treated as an out-patient at Zaheerabad Government hospital. However, three days thereafter the deceased was shifted to NIMS, Hyderabad and while undergoing treatment, he died.

7. Similarly, PW3 in her evidence deposed that at about 02.00 in the midnight, A1 to A6 armed with sticks entered the house of PW2. A1 is said to have beat PW3 with a stick on the left shoulder. According to her, the deceased and PW2 also received stick injuries. PW7 is said to have received injuries on the back of his head. Her evidence also discloses that while the incident was going on, some of the neighbours intervened. However, after A1 to A6 left the place, PW3 and others went to Government hospital, Zaheerabad, where the doctor examined the injured and shifted PW2 and PW7 to Mamatha hospital. From there, PW7 was shifted to NIMS, Hyderabad. On Friday, the said Sudershanreddy-deceased herein was also brought to NIMS, as he was vomiting blood. One week thereafter the deceased died while undergoing treatment at NIMS.

8. From the evidence of PW3, it is clear that her evidence is silent as to the specific role played by any of the accused with regard to attack on PWs.2, 7 and the deceased.

9. Similarly, PW4 in her evidence deposed that on the date of incident, while all of them were sleeping in the house, the accused armed with sticks entered the house. Thereafter, when the accused beat the father of PW4, she intervened. Then A1 kicked her and threatened to kill her, pursuant to which, she received injuries on her hands and legs. It is also stated that A1 to A6 also beat the siblings of PW4, due to which they received injuries on their hands. It is her evidence that as the electric light was burning, she could identify A1 to A6 and they attacking the injured was also witnessed by PW8, PW28 and one Sarah Abdul. Soon after the incident, the deceased and all the injured were taken to the Government Hospital at Zaheerabad, where PW2 and PW7 were referred to Mamatha hospital. It is stated that the deceased was initially brought to Government hospital, Zaheerabad and from there he was referred to NIMS on 14.03.2008. Seven days thereafter, he died on 20.03.2008.

10. Though all the three witnesses were cross examined at length, nothing useful came to be elicited. From the evidence of these three witnesses, it is clear that A1 to A3 along with three others entered the house. In fact, A1 in his examination under Section 313 Cr.P.C. also admits the attack made by him along with the other accused. He further stated that while he beat his wife in the house of PW.2, the prosecution party attacked him. As the wife of A1 was detained in the house of PW.2, A1 went there along with others, where a quarrel ensued which led to the

incident in question. The trial Court disbelieved the presence and participation of A4 to A6 in the commission of offence as their names were not mentioned in the statement of the PW.1 recorded by the police.

11. The fact that all the three accused went to the house of PW2 is not disputed by the learned counsel for the appellants. According to him, even accepting the entire incident to be true, no offence under Section 302 IPC is made out against the accused. As stated earlier, the incident in question took place on the intervening night of 12/ 13.03.2008 at about 02.00 a.m. A1 is said to have caused injuries to the deceased, apart from causing injuries to PWs.2 and 3 on their hands and legs and also to PW7 on his head. Insofar as causing injuries to the deceased is concerned, it is to be seen that immediately after the incident, the deceased was taken to the Government hospital, Zaheerabad, wherein he was treated as out patient, as he sustained simple injuries. Three days thereafter, he again got himself admitted in NIMS, Hyderabad, where he died after few days, while taking treatment. No evidence was adduced by the prosecution with regard to the health condition of the deceased, during his stay at house i.e., after the initial treatment at Zaheerabad and before his admission in NIMS.

12. On the other hand, PW35 the Professor, Forensic Medicine Department, Gandhi Medical College, Secunderabad, in the chief examination deposed that he noticed external ante mortem injuries which are abraded contusion 4" x4" c.m. on the left side of forehead, 2x2 c.m. on lower lip and contusion scalp 15 x 10 c.m. on left front parietal region. It is said that these injuries were present on the day when the injured was

treated in Government hospital at Zaheerabad. In the cross examination, the doctor admits that these injuries are possible by a fall on the ground and the clotting will be formed within 5 to 10 minutes of the injury.

13. From the evidence of PW35, it is clear that the deceased sustained couple of injuries on the head and also fracture at the base of anterior cranial fossa. Such being the position, we are of the view that the doctor who treated the deceased in Government hospital at the earliest point of time, could have missed seeing those external injuries that were on the body at that time and send the deceased home on the ground that he sustained simple injuries. Definitely, something else must have happened after he was treated as out-patient at Zaheerabad, which warranted admission of the deceased in NIMS Hyderabad after three days. Therefore, we feel that the prosecution failed to establish that the death of the deceased was due to the injuries sustained by him on the intervening night of 12/ 13.03.2008. But, fact remains that on that day all the accused entered the house and caused injuries. Further, the evidence of PW.3 also shows that on a Friday the deceased was taken to NIMS as there was vomiting of blood. It is not known as to how and why the deceased was vomiting blood. It could be either due to injuries which he sustained on the date of incident or could be due to fall in the house or otherwise. In the absence of any positive evidence in this regard and the evidence of the doctor being silent in this regard, we feel that the conviction of A1 to A3 under Section 302 IPC cannot be sustained and accordingly they are acquitted of the said charge.

14. The fact that an incident took place on the intervening night of 12/ 13.03.2008, on which date, A1 to A3 entered the house of PW.2 and caused injuries, cannot be doubted. It appears that all of them went to the house of PW.2 and after going there, a quarrel ensued, wherein the accused are said to have beat the deceased, PWs.2, 3 and 7. PW.7 in his evidence does not say as to who caused injuries to whom. The wound certificates of PWs.2 and 3 i.e., Exs.21 and 22 show the nature of injuries sustained by them as simple, but Ex.24, the wound certificate of PW.7 discloses that he sustained grievous injury. Having regard to the above and the nature of injuries caused to PWs.2, 3 and 7, the conviction and sentence recorded against the appellants/ accused Nos.2 to 3 for the offence punishable under Section 307 IPC are altered to one under Section 326 IPC.

15. Insofar as A1 is concerned, the evidence on record would show that immediately after the incident, the deceased was taken to a hospital at Zaheerabad, wherein he was treated as out-patient as he sustained simple injuries. Couple of days thereafter, there was bleeding from the mouth, which led to his admission in NIMS. As the injuries sustained by the deceased are simple injuries; as A1 is said to have given a single blow, which was neither intentional nor motive to kill the deceased, it can be said that the accused had no intention or motive to cause the death of the deceased. At the most he may be having knowledge that such injury would lead to death.

16. Having regard to the manner in which the incident in question took place, we are of the opinion that the case of the appellant/ accused No.1

falls squarely under Section 304 Part-II of IPC. Hence, the conviction under Section 307 IPC is altered to one under Section 304-II IPC.

17. In the result, both the Criminal Appeals are partly allowed. The conviction and sentence recorded against the appellants/ accused Nos.1 to 3 for the offence punishable under Section 302 IPC are set aside. Further, the conviction and sentence recorded against the appellant/ accused No.1 in S.C.No.56 of 2009 on the file of the Principal Sessions Judge, Medak at Sangareddy, for an offence punishable under Section 307 IPC are altered to one under Section 304-II IPC. For the altered conviction, the appellant/ A1 is sentenced to suffer rigorous imprisonment for a period of five years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused No.1 shall be set at liberty forthwith on completion of five years rigorous imprisonment, if not required in any other case.

18. The conviction and sentence recorded against the appellants/ accused Nos.2 and 3 in S.C.No.56 of 2009 on the file of the Principal Sessions Judge, Medak at Sangareddy, for an offence punishable under Section 307 IPC is altered to one under Section 326 IPC. For the altered conviction, the appellants/ A2 and A3 are sentenced to suffer rigorous imprisonment for a period of five years. The period of remand underwent by them during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellants/ A2 and A3 shall be set at liberty forthwith on completion of five years rigorous imprisonment, if not required in any other case.

19. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

17.04.2018
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