

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CRIMINAL APPEAL No.1165 OF 2011

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

Assailing the judgment, dated 18.03.2011, rendered in S.C.No.549 of 2010 on the file of Judge, Family Court – cum – Additional District and Sessions Judge, Mahabubnagar, wherein the sole accused, who is the appellant herein, was tried and convicted for the charge under Section 302 I.P.C. and sentenced to suffer imprisonment for life and to pay fine of Rs.500/-, the present appeal came to be filed.

2. The gravamen of the charge against the appellant/accused is that on 02.04.2010 at Avancha Village, the appellant, who is the father of the deceased Edla Shiva Kumar, gave a blow on the head of the deceased with pestle, with an intention to kill him due to previous grudges.

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

Accused is the father of the deceased. PW.2 is the mother of the deceased and wife of the accused. PW.3 is the brother of the deceased, while PW.5 is the sister of the deceased. The accused is the son of paternal uncle of PW.4, while PW.6 is the brother of the accused. Except PW.5, all other witnesses are residents of Avancha Village of Thimmajipet Mandal.

About a week prior to the date of incident, the accused is said to have beat his wife (PW.2). At that time, the deceased interfered and separated PW.2 from the hands of the accused. Thereafter, the deceased is said to have beat the accused in that connection. On the date of incident i.e., on 02.04.2010, the deceased went to attend a marriage of their villager in a Temple. After attending the marriage, the deceased returned back to his house. At that time, PW.3 was preparing omelet outside his house. The deceased asked PW.3 as to why he was preparing omelet, at that time. The accused intervened and started talking with the deceased. It is in the evidence of PW.2 that on hearing the cries of the deceased, she woke up and saw the accused beating deceased with a pestle in his hand. Then, she raised cries stating that the deceased died, which attracted the attention of PW.3, who was outside the house. On hearing the said cry, PW.3 came into the house and found the deceased on the ground and the pestle in the hand of the accused. Seeing the people gathering at the house, the accused is said to have escaped from there. Thereafter, PW.3 went out to call a R.M.P. doctor, but, in the meanwhile, the deceased was shifted on a motorcycle to the dispensary of the R.M.P. doctor, who was examined as PW.10. The R.M.P. doctor is said to have advised them to shift the deceased to the Government Hospital at Jadcherla or Mahabubnagar, as the condition of the deceased was serious. But, however, on the way, the deceased succumbed to the injuries. Thereafter, the dead body of the

deceased was brought to the Village. On the next day morning, at about 10:30 AM, PW.1, who came to know about the incident through a village servant, lodged a report, which was brought on record as Ex.P1.

Basing on Ex.P1, PW.14, the Head Constable, Thimmajipet Police Station, registered a case in crime No.22 of 2010 against the accused for the offence punishable under Section 302 I.P.C. Ex.P8 is the F.I.R. Subsequently, investigation was conducted by PW.17, the Circle Inspector of Police, Jadcherla. After receiving the copy of the F.I.R., he visited the scene of offence and conducted a panchanama of the scene in the presence of PW.12. Ex.P3 is the scene of offence panchanama. During the said process, he seized blood stained cotton with earth and control earth from the scene. Thereafter, he prepared a rough sketch of the scene, which was brought on record as Ex.P4. Later, he conducted inquest over the dead body of the deceased in the presence of PW.12. Ex.P5 is the inquest panchanama. During inquest, he examined PWs.1 to 5 and recorded their statements. After conducting inquest, he sent the dead body of the deceased for postmortem examination. PW.15, the Civil Assistant Surgeon, Government Civil Hospital, Badepally, conducted autopsy over the dead body of the deceased and issued Ex.P9, the postmortem examination report. According to him, the cause of death was due to head injury and intra cerebral hemorrhage. PW.17 continued with the investigation and on 28.04.2010, he apprehended the accused

near the bus stand of Avancha Village and interrogated him. During interrogation, the accused is said to have confessed before PW.13, which lead to recovery of M.O.6, the pestle used by the accused in the commission of the offence. Ex.P7 is the seizure panchanama of the pestle.

4. After obtaining all the necessary documents, including the Forensic Science Laboratory Report, and examining the witnesses, PW.17 filed a charge sheet before the Court of Judicial Magistrate of First Class, Nagarkurnool, which was taken on file as P.R.C.No.54 of 2010. On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C. As the case was triable by the Court of Sessions, the same was committed to the Court of Sessions, under Section 209 Cr.P.C. On committal, the same came to be numbered as S.C.No.549 of 2010.

5. On consideration of material placed on record, a charge under Section 302 I.P.C. came to be framed against the accused, which was read over and explained to him, to which, he pleaded not guilty and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P12 and M.Os.1 to 6. Out of the 17 witnesses examined by the prosecution, PWs.7

and 8 did not support the prosecution and were declared hostile.

7. After the closure of the 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 prosecution witnesses. He denied the same, but, however, he did not place on record any defence evidence in support of his plea.

8. Relying upon the evidence of PWs.2 and 3, the trial Court convicted and sentenced the accused to suffer imprisonment for life under Section 302 I.P.C. Questioning the same, the present appeal came to be filed.

9. Learned counsel for the appellant mainly contends that there is any amount of doubt with regard to the presence and participation of the accused in the commission of the offence. It is his plea that there was a dispute between the deceased and PW.3 and in order to protect PW.3, PW.2, who is the mother of PW.3, implicated the accused in the commission of the offence. He further submits that, in any event, since the incident in question is preceded by a quarrel and as the accused was not armed with any weapon, the offence may be scaled down.

10. On the other hand, the learned Public Prosecutor would submit that the evidence of PWs.2 and 3, which inspires confidence in the mind of the Court, is sufficient to base a

conviction for the charge under Section 302 I.P.C. According to him, the oral evidence of PWs.2 and 3 gets ample corroboration from the medical evidence and as such, there is no necessity to disbelieve the evidence of PWs.2 and 3.

11. The point that arises for consideration is whether the accused is responsible for the incident in question and if so, whether the conviction under Section 302 I.P.C. is just and legal?

12. As seen from the record, the admitted facts are that the accused is the father of the deceased, PWs.3 and 5, whereas, PW.2 is none other than wife of the accused. It is also not in dispute that PWs.2, 3, accused and the deceased were living in one house at the time of incident. Though, PW.1, who set the law in motion, is the Village Revenue Officer of the Village, he was not an eye-witness to the incident. He came to know about the incident from the villagers, who informed him that prior to the incident, a quarrel took place between the accused and his wife and in the said quarrel, the deceased intervened, because of which the accused bore grudge against the deceased and beat the deceased on the night of 02.04.2010.

13. Coming to the evidence of PW.2, she deposed that on the date of incident, the deceased went to attend a marriage and after attending the marriage, he returned to the house. At that time, she was sleeping in the house. At about 10:00 PM, she found the deceased taking dinner. After some time, she heard

cries as “Amma, Amma”. On hearing the same, she woke up and saw the accused beating the deceased with a pestle. Then she raised cries stating that the deceased died. In her evidence, she also deposed about the incident which took place a week prior to the date of incident. According to her, a week prior to the date of incident, when the accused beat her, the deceased intervened and separated her from the hands of the accused. Thereafter, the deceased is said to have beat the accused in that connection. According to her, the accused bore grudge against the deceased because of the earlier incident and attacked him on the said day. Her evidence further discloses that on hearing the cries, the neighbours gathered and immediately the deceased was shifted to the clinic of a R.M.P. doctor, who advised them to take the deceased to Jadcherla hospital, but on the way, he died. A report came to be lodged on the next day i.e., on 03.04.2010.

14. PW.2 was subjected to lengthy cross-examination. In the cross-examination, it was elicited that by the time deceased returned to the house, she slept in the house. It was also elicited that prior to the incident, the accused is said to have sat in front of the house, while she was sleeping inside the house. She admitted that she does not know personally about deceased Shiva returning to the house and taking dinner in the house. However, to a suggestion that there was no quarrel between her and the accused and that the incident of accused beating deceased with pestle did not take place, was denied. The

suggestion that she did not witness the weapon used by the accused was also denied. On the other hand, it was elicited that the incident in question took place at 10:00 PM, but not at 10:30 PM. It was further elicited that herself and PW.3 were present in the house and witnessed the incident.

15. PW.3 is none other than the son of the accused and PW.2. His evidence is on the same lines as that of PW.2. His evidence is to the effect that on the date of incident, deceased returned to the house at 10:00 PM and asked him why he was making omelet. At that time, the accused intervened and started talking with the deceased. Some time later, he heard cries of PW.2 and when he rushed inside the house, he saw the deceased on the ground and the accused armed with a pestle in his hand. Thereafter, the deceased was taken to a R.M.P. doctor, who advised him to take the deceased to a Government Hospital at Jadcherla or Mahabubnagar. In the cross-examination, he admits that he has not witnessed the incident of accused beating the deceased. However, it has been elicited that on hearing the cries of his mother, he entered into the house and found the deceased on the ground. He denied the suggestion that there was a quarrel between him and the deceased and during the quarrel, the pestle accidentally fell on the deceased.

16. PW.4 was the person who went to the marriage along with the deceased. In his evidence, he deposed about the deceased

returning alone to his house. Admittedly, he was not an eye-witness to the incident.

17. Similarly, PW.5, the daughter of the accused, was not an eye-witness to the incident, as she was residing at Thimmajipet. According to her, PW.2 telephoned to her and informed about the accused beating her brother with a pestle and she noticing the said incident. She also speaks about earlier incident, which took place between the accused and the deceased. Though, she was subjected to cross-examination, nothing useful was elicited to discredit her testimony.

18. PW.6, who is the younger brother of the accused, deposed that on receiving information about admission of the deceased in the hospital, he went to the clinic of the R.M.P. doctor and enquired with the persons present there. He was informed that the accused beat the deceased on his head with a pestle, due to previous quarrel that took place between the accused and the deceased. He accompanied the deceased while he was being shifted from the clinic of R.M.P. doctor to the Government Hospital, Jadcherla, but the deceased died on the way. He is also not an eye-witness to the incident, but his evidence is to the effect that his enquiries revealed that the accused beat the deceased.

19. At this stage, it would also be appropriate to refer to the suggestions given to the Investigating Officer, who was examined as PW.17. The suggestion that PWs.1 to 5 stated in

their earlier statements that accused came to the house in drunken condition was denied by him.

20. At this stage, the argument advanced by the learned counsel for appellant that accused was not present at all in the house on the date of incident appears to be incorrect, for the reason that PW.2, in her evidence, stated that at about 10:00 PM, while she was going to sleep, the accused was sitting in front of the house. Apart from that, the evidence of PW.3 shows that when the deceased asked PW.3 as to why he was preparing omelet at that point of time, the accused came and intervened between them. The evidence of PWs.2 and 3 coupled with the suggestions given to the witnesses establish the presence of accused in the house at the time of incident.

21. Now the question is whether the accused was responsible for the incident in question?

22. Learned counsel for the appellant mainly contends that since PW.2 was sleeping at the time of incident, she could not have seen the assault by the accused on the deceased. It is his case that PW.3 must have assaulted the deceased because of the quarrel and to protect PW.3, PW.2 shifted the blame on to the accused.

23. The defence, which is now put forth by the accused, was never suggested to any of the witnesses. It was not the case of the accused that it was PW.3, who attacked the deceased, when

he was questioned about the preparation of omelet. On the other hand, the evidence of PW.2, whose presence in the house cannot be disputed and who is the wife of the accused and mother of the deceased, shows that on hearing the cries, she woke up and saw the accused beating the deceased with a pestle on the head. She also raised cries saying that the deceased Shiva died. On hearing the same, PW.3 came inside the house and also noticed the accused being armed with a pestle and the deceased on the ground with a head injury.

24. From the above, the participation of the accused in the commission of the offence cannot be doubted. In fact, nothing has been elicited in the evidence of these two witnesses to doubt their credibility. Hence, we hold that the incident in question took place on 02.04.2010 in the house of the accused and it was accused alone, who caused injuries to the deceased.

25. The next question is whether the accused can be convicted for the offence punishable under Section 302 I.P.C.?

26. As seen from the record, PW.2, who claims to have seen the incident, deposed that on hearing the cries of the deceased, she woke up and saw the accused beating the deceased on the head with a pestle. Even the evidence of PW.1, who is not an eye-witness to the incident, discloses that the villagers informed to him that when the deceased asked his brother as to why he was preparing omelet during that night, accused came and attacked the deceased. But, it is to be noted here that the

accused herein was arrested on 28.04.2010. Immediately after his arrest, he was produced before PW.16, the Civil Assistant Surgeon, Community Health Centre, Badepally. He examined the accused and issued Ex.P10, Wound Certificate. As per the said Certificate, he noticed a wound mark on the right eye-brow of the accused. Though, the injury was simple in nature, the age of the injury was stated to be 20 to 30 days old, which tallies with the time and date of the incident in question.

27. From the above, it is clear that the accused also sustained one simple injury on the right eye-brow during that night. It is true that the same cannot be a ground to plead that he acted in self-defence. But, at the same time, it is to be noted from the evidence that the accused was not armed with any weapon when he entered into the house. He was sitting outside the house, when PW.2 went to sleep. Even the evidence of PW.3, who spoke about the accused entering into the house and questioning the deceased, does not disclose about the accused being armed with a weapon, when he entered into the house and intervened in the quarrel between him and the deceased. Therefore, it cannot be said that the accused had any intention to cause the death of the deceased.

28. The evidence on record establishes existence of a quarrel, which must have led to a verbal altercation, and in the process, the accused might have sustained injury on his right eye-brow and probably after receipt of the said injury, he picked up a

pestle lying there and dealt a blow on the head of the deceased. In fact, the prosecution witnesses have not stated as to how the accused sustained the said injury, though, it is not its duty to explain, where the injuries are simple in nature.

29. Further, though there were some disputes between the accused and the deceased, a week prior to the date of incident, but at the time of incident, there were no disputes in the house between them and all of them were living cordially in the house, which is evident from the admission made by PW.2 in her cross-examination, which is as under:

“My marriage with accused took place about 30 years ago. After marriage myself and accused lived happily. Till the date of incident myself and accused were living on cordial terms.”

30. Thus, taking into consideration the totality of the circumstances and the manner and nature of the incident, we feel that the offence can be scaled down to one punishable under Section 304 Part II I.P.C., as it can be inferred that the accused was having only knowledge to cause such deadly injury, but definitely not having intention to cause death of the deceased.

31. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant – accused in S.C.No.549 of 2010 on the file of Judge, Family Court – cum – Additional District and Sessions Judge, Mahabubnagar, for an offence punishable under Section 302 I.P.C. is altered to one

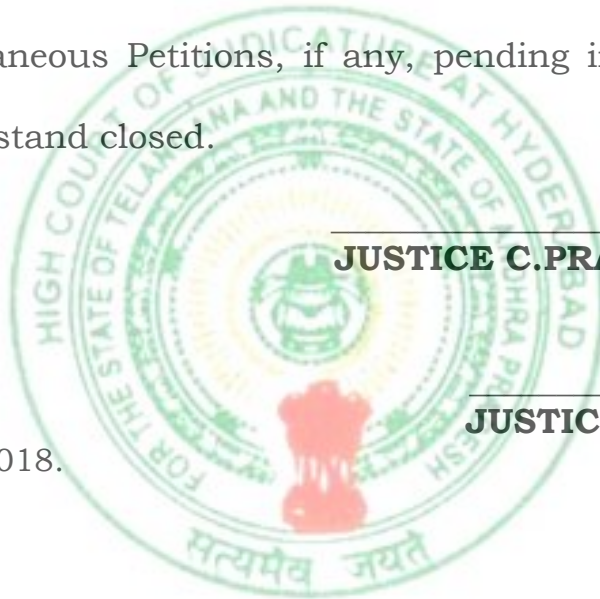
under Section 304-II I.P.C. and the sentence of life imprisonment inflicted on the appellant is reduced to seven years imprisonment, while confirming the fine amount imposed. The period of remand, if any, undergone by the appellant shall be given set off, if he is otherwise entitled to. If the appellant has completed the seven years of sentence with remissions, if he is otherwise entitled to, he shall be set at liberty forthwith, if not required in any other case. The order passed by the trial Court with regard to material objects holds good.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

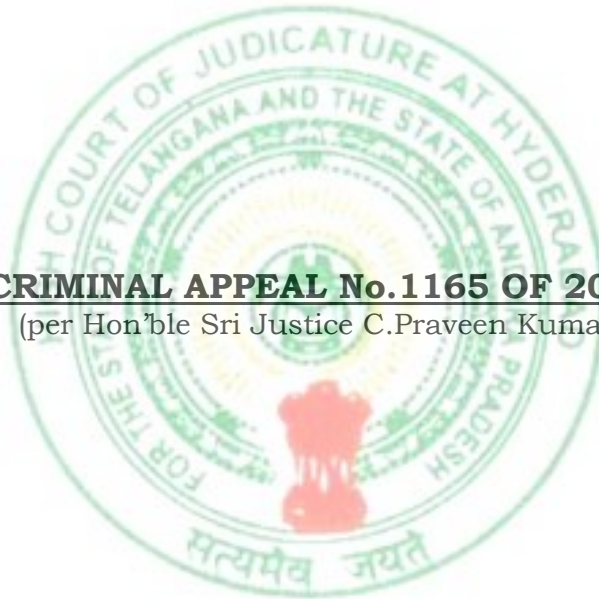
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January 22, 2018.
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