

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1461 of 2011

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

The sole accused in Special Sessions Case No. 12 of 2009 on the file of the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupathi, is the appellant herein. He was tried for the offence punishable under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for causing the death of one K.Dorababu on 06.10.2008, at about 10 p.m in the house of PW4 situated in Thiruvattam village, Narayanavanam Mandal of Chittoor District. Vide judgment dated 19.10.2011, the learned Additional Sessions Judge convicted the accused for the offences punishable under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 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 three months.

2. The facts in issue are as under:

PW1 is the father of the deceased and paternal uncle of PW2. The deceased is none other than the elder brother's son of PW3, while PWs 4 and 5 are related to each other and are

neighbors of the accused. The deceased herein was working as Field Assistant. Over three months prior to the date of incident, the accused and his wife Dakshayani took the house of one Krishna Reddy on rent, which was by the side of the house of PW4. It is stated that the deceased used to come to the house of PW4 and prepare the bills etc. It has also come on record that the deceased and the wife of the accused Dakshayani developed intimacy with each other. On the date of incident, PW4 went to Tirumala for darshan in the morning hours and returned back at 3 p.m. By then, the deceased was preparing bills in his house. On the same day, in the evening hours, PW4 and the deceased consumed liquor in their kottam. In the night, PW4 went to his house for sleeping. He noticed the deceased was also sleeping in his kottam. When he woke up the deceased, the deceased asked him to go away. Then, PW4 went to the other portion of his house for sleeping. It is deposed that by PW4 that on the same day at 10 or 10.30 p.m., he heard cries from the kottam, and on hearing the same, he went to the kottam and found the accused holding a wooden pestle in his hand, and the wife of the accused raising cries. He also noticed the deceased in a pool of blood in the kottam. At that time, PW5-Parasuram and Bhagyalakshmi, who is the wife of PW5, were also present. On seeing them, the accused ran away. When he asked the injured, he told them that the accused beat him, and saying so, he fell down. PW5 proceeded to the house of PW1 and informed about the incident, who, in turn, came to the said kottam and shifted the injured/ deceased to the hospital.

3. On 07.10.2008, at about 12.45 noon, PW1 went to the police station and lodged a report with PW13-the Assistant Sub Inspector of Police, Narayanavanam Police Station. Ex.P1 is the said report. Basing on the said report, a case in Crime No. 33 of 2008 came to be registered under Section 302 IPC. Ex.P10 is the original First Information Report.

4. Further investigation in this matter was taken up by PW14-the Sub Inspector of Police, Narayanavanam Police Station. After receiving a copy of the F.I.R., PW14, along with PW13 went to the scene of offence and found the body of the deceased in front of the house of PW1. He conducted inquest over the dead body in the presence of PW9. Ex.P4 is the inquest report. During inquest, he examined PWs 1 to 3 and 5, and got the scene of offence photographed. PW1 then handed over the clothes of the deceased to PW15, which were seized under Ex.P5-the panchanama of the scene. Thereafter, he sent the body of the deceased for post mortem examination.

5. PW10-the Deputy Civil Surgeon, Government Maternity Hospital, Tirupathi conducted autopsy over the body of the deceased on 07.10.2008 at 04.30 p.m., and issued Exhibit P7-the Post Mortem Report. According to him, the cause of death was due to shock and haemorrhage because of injury to vital organ, i.e., brain due to head injury.

6. On 11.10.2008, PW14 secured the caste certificates of the deceased as well as the accused, wherein it is stated that the

deceased belongs to Adi-Dravida community, which is a Scheduled Caste and the accused belongs to Sali community (Backward Class). Ex.P8 and Ex.P9 are the Caste Certificates of the deceased and accused respectively. Basing on Ex.P8, PW14 altered the section of law from Section 302 IPC to Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ex.P11 is the altered F.I.R. Thereafter, PW15-the Sub Divisional Police Officer, Chittoor took up investigation.

7. PW15 verified the investigation done by PWs 13 and 14 and found them to be on correct lines. On 12.10.2008, he visited the scene of offence and drafted Ex.P4-the rough sketch of the scene. After collecting all the necessary material, a charge sheet came to be filed, which was taken on file as PRC No. 19 of 2009 on the file of the Judicial First Class Magistrate, Puttur. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as Special S.C.No. 12 of 2009 on the file of the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupathi. Basing on the material on record, a charge for the offence punishable under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was framed, read over and explained to the accused, to which he denied and claimed to be tried.

8. In support of their case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P15 and M.Os.1 to 6. After the

closure of 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 by the accused in support of his defence.

9. Relying on the evidence of PWs 1 to 5, coupled with the medical evidence, the learned Sessions Judge convicted the accused under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellant mainly contends that the evidence on record does not, anywhere, indicate that the offence was committed on the ground that the deceased belongs to Scheduled Caste community. Therefore, in the absence of any evidence, she would plead that no offence under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out, and as such, the conviction of the accused is illegal. Apart from that, the learned counsel would contend that the circumstances would nowhere indicate that the incident in question happened in the manner projected by the prosecution. It is her case that the absence of blood stains at the scene of offence creates any amount of doubt as to whether the incident took place in the house of PW4. It is further pleaded that even the blood stained clothes on the body of the accused were cleaned by the time PW14 went to the scene after registering the crime. There is

no evidence as to the blood stained clothes coming into the possession of PW14. It is urged that because of the disputes between PW4 and deceased, PW4 alone caused the death of the deceased.

11. On the other hand, the learned Public Prosecutor opposed the same, contending that merely because the blood stains at the scene of offence are clean, it does not by itself through any suspicion with regard to the manner in which the incident took place. According to him, the minor discrepancies which are pointed out in the evidence of the witnesses do not go to the root of the matter, to disbelieve the entire prosecution case. Insofar as the conviction of the accused under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, the learned Public Prosecutor would contend that since the substance of the charge is to the effect that the accused caused the death of the deceased, and the evidence was to the effect that the accused was responsible for the death of the deceased, no prejudice would be caused if the conviction is altered from Section 302 IPC to Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

12. The point that arises for consideration is whether the prosecution was able to prove that the accused was responsible for the incident in question, or in other words, whether the accused has committed the offence, on the ground that the deceased belongs to Scheduled Caste community.

13. It is, no doubt, true that initially, the F.I.R was registered under Section 302 IPC and thereafter, it was altered to Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The charge sheet which has been filed by the police was for the offence under Section 302 IPC, but the charge came to be framed only under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. A reading of the said charge clearly indicates that on 06.10.2008, at 10 p.m., the accused, not being a member of the Scheduled Caste, committed the murder of the deceased by hitting him with a pestle. The line of cross-examination of the witnesses by the accused was with regard to the incident in question. In fact, no suggestion was given to PWs 1 to 5 that the offence was never committed on the ground that the deceased belongs to Scheduled Caste community. Since the entire cross-examination was with regard to the innocence of the accused in the commission of the murder of the deceased, and not as to whether the offence was committed on the ground that the deceased belongs to Scheduled Caste community, we feel that no prejudice would be caused to the accused in the findings arrived at by the trial court, convicting him under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

14. At this stage, the learned counsel for the appellant would contend that there is no material on record to show that it was the accused who was responsible for the incident. She took us through the evidence of PWs 1 to 5 to show that the accused was not

responsible for the incident and his presence in the house of PW4 is highly doubtful. In any way, she would contend that having regard to the background of the case and the relationship between the accused and deceased, the nature of offence may be scaled down to 304 IPC.

15. PW1 is the father of the deceased. His evidence is to the effect that his son-deceased was working as Field Assistant and he is also addicted to alcohol. His evidence is to the effect that the deceased used to consume alcohol with the accused and both of them moved together as brothers. According to him, somebody told to the accused that the deceased and the wife of the accused are in the kottam of PW4, and that at about 10 p.m., the accused went there and beat the deceased with a pestle and also struck on his head. The said fact was informed to PW1 by PW5. Thereafter, all of them went to the house of PW4 and found the deceased in a pool of blood. In the cross-examination, PW1 states that after the death of the deceased, they got the dead body and placed the same on a wooden plank. After the dead body was placed on the wooden plank in front of the house of PW1, the police came and took photographs. He admits that he did not witness when the accused is said to have inflicted injuries on the deceased, and he came to know the same through PW5. He also admits that he is not the scribe of Ex.P1 and does not know who has drafted the same. He further admits that he did not state before the police that the deceased and accused used to consume alcohol together and moved as brothers. He also admits that he did not state

before the police that somebody told the accused that his wife and the accused were sleeping in the kottam of PW4, and as such, the accused went there. The suggestion that PW1 did not inform about the incident, was denied by him.

16. From the evidence of PW1, it is clear that he is not a direct witness to the incident, and that he came to know about the incident from PW5. His evidence in chief shows that the accused went to the kottam of PW4 on being informed by someone that the deceased and wife of the accused were in the said kottam, but, the said fact was not mentioned in his earlier statement.

17. Coming to the evidence of PW2, who is a relative of the deceased, he deposed that the deceased was working as Field Assistant and had acquaintance with one Venkatamuni Reddy of Thiruvattam village. His evidence is to the effect that on the date of incident, at about 10 p.m., while he was in his house, PW1 came and told him about the information furnished by PW5 with regard to the incident. Then, himself, PW1 and other relatives rushed to the spot and found the deceased with injuries in a pool of blood in the kottam of PW4. Initially, the injured was taken to Puttur Hospital, and when the doctors expressed their inability, he was shifted to Ruia Hospital, Tirupathi, where the doctors advised to take him to another hospital for better treatment. While shifting the injured to Vellore, he died. Though PW2 was cross-examined, nothing useful came to be elicited.

18. Therefore, the evidence of PW2 shows that he was not an eye witness to the incident and the source of information to PW2 was through PW1, who, in turn, was informed by PW5 about the incident.

19. PW3, who is also related to the deceased, in his evidence, deposed that while he was sleeping in his house, PW1 woke him up and informed about the accused beating the deceased, which was informed to him by PW5. Thereafter, all of them proceeded to the house of PW4 and noticed the deceased in the said kottam with injuries on the head, eye and other parts of the body. They also noticed a wooden pestle and 'machhu katti' at the scene, apart from one mat and pillow. His evidence also shows that he received the said information from PWs 1 and 2, who were in turn informed by PW5.

20. PWs 4 and 5 are the witnesses who were examined by the prosecution as eye witnesses to the incident. PW4, in his evidence, deposed that about three months prior to the date of incident, the accused and his wife took the house of Krishna Reddy on rent, which is by the side of his house. According to him, the deceased used to go to his house as Field Assistant and to pay the bills. On the date of incident, PW4 went to Tirumala for darshan in the morning hours and returned back at 3 p.m. By then, the deceased was preparing some bills in his house. In the evening, PW4 and deceased consumed liquor in the kottam of PW4. At about 8 p.m., when PW4 went to his house, he found the deceased

sleeping. When he woke him up, the deceased asked him to go away. Then, PW4 returned to the other portion of his kottam and slept there. At about 10 or 10.30 p.m., he heard cries from the kottam. He went there and noticed the accused, holding a wooden pestle and the wife of the accused raising cries. The deceased was in a pool of blood. PW5 and his wife were present at the scene. It is stated that on seeing all of them, the accused ran away. The injured is said to have informed PW4 that the accused beat him, and after disclosing the same, he fell down.

21. PW4 was subjected to lengthy cross-examination. His evidence is to the effect that for the first time, the police examined him at about 3 p.m., on the next day afternoon. He states that when he chastised the bad behaviour of the deceased, he threatened PW4, stating that he will not pass the bills. In that regard, PW4 and deceased had some quarrel on two or three occasions. PW4 further admits that frequently himself and the deceased used to consume liquor in his kottam. The suggestion that on the date of incident, both of them consumed liquor, leading to a quarrel, was denied. The suggestion that the wife of PW4 has also witnessed the incident, and that he sent for PW5, and through him, he intimated the relatives of the deceased, was also denied. The suggestion that all his community members foisted the case against the accused, as he belongs to other community, is also denied. But, he admits that he failed to mention before the police that on the date of incident, at about 8 p.m., he went to his house and noticed the deceased sleeping in the kottam, and when

he woke him up, the deceased asked him to go away. He further admits that for the first time, he went to the scene of offence, and his wife and PW5 followed him within seconds. The suggestion that PW4 was responsible for the incident and that he threw the blame on the accused, is denied.

22. From the evidence of PW4, it is clear that the deceased and PW4 were good friends and used to consume alcohol frequently. His evidence also discloses that the deceased was preparing bills in his house and on two or three occasions, both of them quarreled with each other. His evidence also shows that on the date of incident, the deceased was sleeping in his house and the incident in question took place at the kottam of PW4. It is also to be noted here that the house of the accused is near to the house of PW4, and at about 10 p.m., when PW4 went to the kottam, he noticed the wife of the accused also being present there. No explanation is forthcoming as to why the wife of the accused was present in the kottam of PW4 on that night.

23. Coming to the evidence of PW5, he is another neighbour and relative of PW4, his evidence is to the effect that at the time of incident, he was in "Govindamala" and as such, was in a temple which was at a distance of 25 feet from the house of PW4. At about 10 or 10.30 p.m., he heard cries from the house of PW4 and hearing the same, he went there where PW4 and his wife were raising cries, and from there, all of them went to the kottam and found the deceased in a pool of blood, the accused, holding a

wooden pestle, and the wife of the accused crying, standing on the other side of the body. Later, they lifted the deceased and asked him as to what happened, and he is said to have told him that the accused beat him. Thereafter, the deceased fell down.

24. PW5 was also cross-examined at length, but nothing useful came to be elicited. However, the suggestion that he did not try to catch the accused, was admitted by him. He further admits that by the time he went there, the wooden pestle was in the hands of the accused and he left the same and ran. He further admits that even after the accused threw the wooden pestle and ran away, none of them tried to catch hold of him. The suggestion that PW4 was responsible for the incident, was denied by him.

25. From the evidence of this witness, it is clear that he was also not a direct witness to the incident and on hearing cries at 10 or 10.30 p.m., PW4 and his wife were at the scene, along with the wife of the accused, raising cries, sitting besides the dead body. The counsel for the appellant tried to point out minor contradictions in the evidence of PWs 4 and 5. The evidence of PW4 is to the effect that by the time he went into the kottam, PW5 was already present, whereas the evidence of PW5 is to the effect that by the time he went into the kottam, he was not present. We feel that this is a minor discrepancy, which does not create any doubt with regard to the incident in question, more so, when the dead body was present in the kottam. What is to be noticed here, is that there was illicit relationship between the

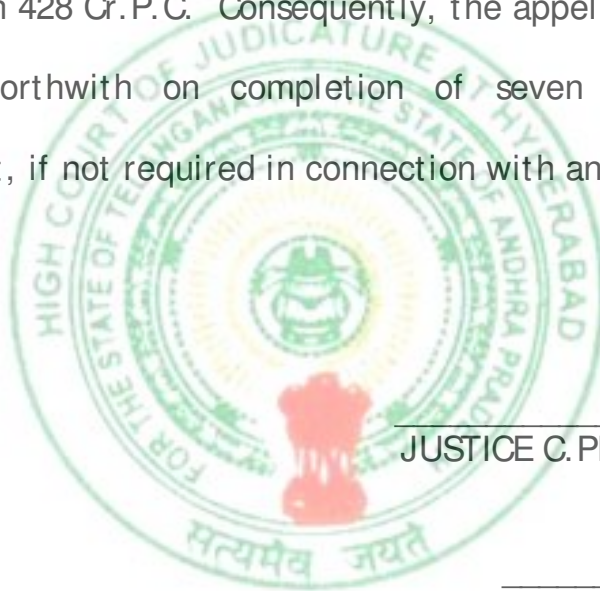
deceased and wife of the accused. The house of the deceased was not near the house of PW4 or the accused. Similarly, the accused and his wife were residing in another house, which was behind the house of PW4. The question is as to why the deceased and the wife of the accused were present in the kottam on that night at 10.30 p.m. The evidence of the prosecution witnesses, more particularly, the evidence of PW1 would show that on information being received by the accused with regard to the presence of his wife and the deceased in the house of PW4, he went there, appears to be quite correct.

26. Therefore, since the dead body was in the house of PW4 and he failed to explain as to why the wife of the accused was raising cries, sitting on the side of the deceased, coupled with the evidence of PW5, it has to be inferred that the accused, on receipt of the information, must have proceeded to the kottam of PW4, and on seeing his wife with the deceased, must have hit the deceased with a pestle, causing injuries. Otherwise, we feel that there was no reason or justification for the wife of the accused to be present in the house of PW4 at that time. As stated earlier, the accused, on seeing his wife and the deceased together, must have got provoked, leading to the incident in question.

27. Having regard to the above, we feel that it is a fit case where the nature of offence can be scaled down to 304 Part-II IPC.

28. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in

the judgment dated 19.10.2011, in Special Sessions Case No. 12 of 2009 on the file of the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupathi, for the offence punishable under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is altered to one under Section 304 Part-II IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven 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 shall be set at liberty forthwith on completion of seven years rigorous imprisonment, if not required in connection with any other case.



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

04.07.2018
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