

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.1123 of 2011

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

1) The sole accused in S.C.No.29 of 2010 on the file of the VI Additional District and Sessions Judge, Krishna at Machilipatnam, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Jillepalli Purushotham, hereinafter referred to as "the deceased") on 23.04.2009 at 7.00 p.m., in the fields of Devabathini Basveswar Rao of Somavaram village. Vide judgment, dated 29.07.2011, 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.500/- in default to suffer simple imprisonment for a period of three months.

2) The facts as culled from the evidence of the prosecution witnesses are as under:

i) PW.1 is the mother of the deceased, while PW.2 is the father of the deceased. PW.3 is the younger brother of the deceased. PW.4 is the owner of a toddy thatched shed, situated in the field of one Pullaiah, where the incident is said to have occurred. The material on record would show that the house of the accused was situated opposite to the house of PWs.1,2 and the deceased. The accused was beating his wife in front of his house.

On one occasion, PW.1 interfered and asked the accused not to beat his wife, for which the accused beat her. At that time, the deceased, who is the son of PW.1, came to the spot leading to a scuffle between the accused and the deceased. Since then there was some enmity between both of them. The said incident took place about two months prior to the date of the incident. On the date of the incident ie., on 23.04.2009 at about 6.00 p.m., the deceased said to have gone to the toddy shop of PW.4 for consuming toddy. PW.5 also went to the said shop for consuming toddy. The accused, PWs.6 and 7 were also present at the shop. All of them consumed toddy. Thereafter, the accused is said to have beat the deceased with Tunagalabanda, due to which the deceased fell down. The evidence of PW.1 would show that after the incident, PW.5 came to her, told him about the accused beating the deceased with Tunagalabanda. Then PW.1 along with her husband (PW.2) rushed to the spot and observed injuries on the head and hand of the deceased. According to their evidence, PWs.5, 6 and 7 were present at the time of the incident. Thereafter, the family members shifted the injured to Nandigama Government Hospital, in 108 ambulance where the doctors provided the treatment. On the next day ie., on 24.04.2009 at about 11.00 a.m., the injured was shifted to Government Hospital, Vijayawada, where he died on the next day ie., third day after the incident.

ii) PW.1 lodged a report with A.S.I. of Police, Nandigama (not examined), basing on which he registered a case in Crime

No.183 of 2009 for the offence punishable under Section 324 IPC. PW.14-the Inspector of Police, Nandigama, in his evidence deposed that on 25.04.2009, the injured succumbed to the injuries and after his death, the A.S.I. of Police, altered the Section of Law from 324 IPC to 302 IPC and issued the altered first information report. Ex.P13 is the altered first information report. The A.S.I. of Police also held inquest over the dead body of the deceased in the presence of PW.11 and others. On 27.04.2009 PW.14 verified the investigation done by A.S.I of Police and found the same to be on correct lines. On the same day, he visited the scene of offence, re-examined and recorded the statements of PWs.1 to 5. After conducting inquest the dead body was sent for postmortem examination.

PW.13-the Associate Professor, Siddartha Medical College, Vijayawada, conducted autopsy over the dead body of the deceased. According to him, the cause of death was “due to multiple injuries and its complication”.

On reliable information, PW.14 along with staff and mediators proceeded to the house of the accused situated at Somavaram Village on 01.05.2009. On seeing the police, one male person tried to skulk away. Then with the assistance of his staff, PW.14 apprehended the said person and on interrogation he is said to have confessed about the commission of offence. He recorded the confessional statement of accused. His confession lead to recovery of blood stained shirt of the accused. After collecting all

the material, PW.15 filed a charge sheet before the Court of Additional Judicial Magistrate of First Class, Nandigama, which was taken on file as P.R.C.No.29 of 2009. 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.29 of 2010.

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 14 and got marked Exs.P1 to P15 and MOs.1 and 2. 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 on behalf of the accused.

5) Relying upon the evidence of PW.6 and others, the learned Sessions Judge convicted the accused for the offence referred to above. Challenging the same, the present appeal came to be filed.

6) Sri P.Prabhakara Rao, learned counsel for the appellant would submit that there are number of circumstances to indicate that the incident did not happen in the manner alleged by the prosecution. PWs.4 and 5, who are said to be eye witnesses to the incident did not support the case and were declared hostile by the

prosecution. According to him, the evidence of PW.6 would show that he was there at the toddy shop between 6.00 to 6.30 p.m., whereas the incident in question took place at 7.00 p.m. Though PW.6 claims to be an eye witness, and his name is reflected in the first information report, but for the reasons best known he was not examined for a period of ten days. It pleads that as per the prosecution the incident took place on 23.04.2009 and immediately thereafter he was taken to Government Hospital, Nandigama. Though the police station is just behind the hospital, no effort was made by the doctors to send intimation to the police station and no effort was made by any of the family members of the deceased to lodge a report. Even in Government Hospital, Vijayawada, where the deceased was admitted on the next day morning, no intimation was sent to the area police station about the said admission nor was any report lodged. His plea is that if really the report was given on 24.04.2009 evening as alleged, there is no explanation as to why it took such a long time to reach the Magistrate. He would further contend that there is any amount of doubt with regard to seizure and usage of M.O.1. If really M.O.1 was used, the mediators to the seizure of M.O.1 would have definitely spoken to the presence of blood on the weapon. The panchanama is silent on the said aspect. But for the first time in Court they speak about the presence of blood on the weapon, which is obviously due to F.S.L. report which shows presence of blood on M.O.1. He would further contend that the A.S.I. of Police, who registered the case, recorded the statements of the witnesses, seized M.O.1, was not

examined. No explanation is given as to why the said A.S.I. of Police was not examined. Hence, pleads that great prejudice has been caused to the accused. He further contended that there was no medical record to show that the injured was in the hospital. He further contended that even if the case of the prosecution is believed in toto, the death was not due to assault but due to the complications which developed in the hospital. In the absence of any material to show the nature of treatment given, it cannot be said that the death was due to injuries.

7) On the other hand, the learned Public Prosecutor would submit that the evidence on record is sufficient to connect the accused with the crime. He submits that there are no reasons to disbelieve the presence of accused and deceased at the toddy shop, on the date of incident. According to him, non-sending of the intimation to the concerned police was due to latches of the doctor and that the case of prosecution should not suffer due to latches on the part of the doctors, who treated the injured. Insofar as the non-giving of the report immediately, he submits that the family members were concerned about the health condition of the injured, as such they might not have thought of giving a report. To counter the argument of the appellant that there was no medical record to show that the injured was in the hospital, he submits that the death intimation itself would show that the injured was in the hospital and took treatment.

8) The point that arises for consideration is whether the accused is responsible for the death of the deceased.

9) PWs.1, 2 and 3 are not the eye witnesses to the incident. Their evidence is only to the extent of dispute which took place about two months prior to the date of incident. The evidence of these witnesses would show that about two months prior to the date of incident, while the accused was beating his wife in front of their house, PW.1 interfered, upon which the accused beat PW.1. The deceased, who is the son of PW.1, interfered which lead to a scuffle between both of them. Since then the accused is said to have developed some grouse against the deceased. Two months later i.e., on the date of incident, which was on 23.04.2009 at about 7.00 p.m., the deceased went to the toddy shop of PW.4 for consuming toddy. He said to have left the house at 6.00 p.m., by which time PWs.5, 6 and accused were there in the toddy shop and consuming toddy. Since PWs.4 and 5 did not support the case of the prosecution, we are forced to peruse the evidence of PW.6, who in his evidence deposed that on the date of incident PWs.5, 7 and accused were present at the toddy shop of PW.4. In the evening at about 6.30 p.m., the deceased also came to the said shop for consuming toddy. At that time the accused is said to have beat the deceased with Tunagabanda. The witness identified the said weapon. His evidence is to the effect that the accused initially beat on the hand and later on the head due to which the deceased fell on the ground. Later, PWs.1 and 2 came to the scene and shifted the

injured to hospital. He further states that he does not know the reason for the accused beating the deceased.

10) The evidence of PW.6 is that he does not know as to why the accused beat the deceased. His evidence is silent as to whether the incident in question is preceded by any quarrel between both of them. The evidence of PWs.1 and 2 shows that on coming know about the incident, they proceeded to the scene of offence and found PWs.4 to 7 in the toddy shop. It is urged by the learned Public Prosecutor that since the name of PW.6 is reflected in the first information report, there is no reason to disbelieve his presence at the scene. If the evidence of PW.6 is tested with other evidence of record, more particularly with the evidence of PW.4, it would show that there was a quarrel between the accused and the deceased. Pursuant to which the accused picked up a stout stick which was lying there and gave a blow on the head of the deceased.

11) Though the learned counsel for the appellant pleaded that the prosecution is not coming forward with the true version of the case, as there is no explanation as to why no intimation was sent by the hospital authority to the police station and also a doubt with regard to deceased being treated in the hospital, we feel that the said circumstance is without any merit. It is true that immediately after the incident the injured was shifted to Government Hospital, Nandigama, which was just behind the police station. This was on the night of 23.04.2009. In normal

circumstance the doctors should have sent intimation to the police station about the admission of the injured. Non-sending of intimation to the police station about the admission of the injured does not lead to any suspicion. It is true that PWs.1 and 2 did not give any report, the circumstances of the case show that the injured suffered a blow on the head and PWs.1 and 2 must have been worried about the health of their son rather than lodging a report. But after shifting of the injured to the Government Hospital, Vijayawada, a report came to be lodged, which was registered for the offence punishable under Section 324 IPC and the first information report was also sent to the Magistrate. Since it was only an offence under Section 324 IPC, which is not a grave offence, there must have been some delay in reaching the first information report to the Court. Therefore, the argument that no report was lodged immediately and there was abnormal delay in report reaching the Court cannot be accepted.

12) After the death of the deceased which was on 25.04.2009, the first information report came to be altered by 3.30 p.m., and then a copy of the same was dispatched to the Court, which was received on the same day at 7.30 p.m., ie., within a few hours of the alteration. It is also to be noted that the first information report came to be altered pursuant to the death intimation given by the Government Hospital at Vijayawada, which indicates the admission of the injured on 24.04.2009 at 11.05 a.m. Therefore, two arguments urged by the learned counsel for the appellant to disbelieve the prosecution case namely the delay in

reaching the first information report to the Court and also any amount of doubt with regard to admission of the injured in the hospital stand answered.

13) Coming to the last circumstance namely recovery of M.O.1 and the prejudice that was caused to the accused for non-examination of A.S.I. It is to be noted that the A.S.I. of Police, who registered the case, conducted only preliminary investigation. After registering the crime, he proceeded to the scene of offence, seized M.O.1 and held inquest over the dead body. Thereafter, PW.14 took over the investigation and later PW.15 filed the charge sheet. It is true that the investigating officer, who conducted preliminary investigation was not examined but the investigation done by him only relate to seizure of M.O.1 at the scene and also holding the inquest, but PW.14, who took up further investigation examined and recorded the statements of the witnesses and also verified the investigation done by the A.S.I. of Police. In fact situation we feel that no prejudice is caused to the accused due to non-examination of A.S.I. of Police.

14) As observed earlier, PWs.4 and 5 came to be declared as hostile at a later point of time. In their earlier statement they speak about a quarrel between both the accused and deceased in the toddy shop, which lead to the incident in question. The version of PWs.4 and 5 finds place in their 161 Cr.P.C. statement and in fact the same was elicited in their cross-examination as well. It appears that PW.5 was declared hostile because he has not

stated about the intimation of the incident to PWs.1 and 2. The evidence of PW.4 shows that he runs a toddy shop. His evidence is also to the effect that by the time he returned to his toddy shop, the persons who were at his toddy shop were quarrelling with one another. Under those circumstances we hold that the incident was an outcome of a quarrel that ensued between the accused and the deceased in the toddy shop. It cannot be said that the incident must have been an immediate outcome of the earlier dispute which took place about two months prior to the incident. If really there was a grouse, there is no reason for the accused to wait for two months to attack the deceased, as both of them stay in opposite houses.

15) In *Yomeshbhai Pranshankar Bhatt Vs. State of Gujarat*¹, the Apex Court held as under:

“When accused had no pre-meditation to kill deceased or cause any bodily harm or injury to deceased, everything happened on spur of moment, possibility of accused losing self control on some provocative utterances of deceased cannot be ruled out and in such case the accused is liable to be convicted under Sec.304 Part II instead of Section 302 of IPC.”

16) Having regard to the circumstance in which the incident in question took place, the nature of offence is altered from Section 302 IPC to 304 Part-II of IPC. The conviction under Section 302 IPC is set aside and the appellant is convicted under Section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for a period

¹ 2011(2) ALD (Cri.) 238 (SC)

of five years. The period undergone by the accused shall be given set off under Section 428 Cr.P.C. As seen from the record, this Court, vide its order dated 30.11.2016 directed release of the appellant/accused on bail as he has completed five years of imprisonment. Hence, his bail bonds shall stand cancelled.

17) Accordingly, the Criminal Appeal is allowed in part. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

11.06.2018
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