

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.334 OF 2013

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

1) The sole accused in Sessions Case No.284 of 2008 on the file of the III Additional District and Sessions Judge (FTC), Kadapa at Rajampet, is the appellant herein. He was tried for the offences punishable under Sections 302, 307 and 506 (ii) IPC. Vide judgment, dated 28.02.2013, 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 fine of Rs.5,000/- in default to suffer simple imprisonment for a period of six months.

2) The substance of the charges is that on 16.05.2008 at about 3.30 p.m. at Margopalli of Chitvel Mandal, the accused intentionally caused the death of one Anupati Venkata Subbaiah (hereinafter referred to as "the deceased").

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

PW.1 is the sister-in-law of the deceased. PW.2 is the father of the deceased. PW.4 is the cousin of the deceased. There were disputes between the accused and the deceased with regard to sharing of water from Yallamraju Tank for the purpose of

cultivation. In respect of an incident which is said to have taken place on a Sankranti festival, PW.1 is said to have lodged a report against the accused and the same ended in a compromise. The incident in question took place on 16.05.2008. On that day at about 2.30 p.m. the deceased went out of the house and sat at the door of the house of Nageti Chinna. The accused is said to have come there and hurled stones against the deceased saying that people of Besta community should be killed one by one. Then PW.1 and others took the deceased to his house. Thereafter, the accused is said to have gone to his house and brought a big knife, dragged the deceased to the house of one Sankaraiah and hacked the left hand upto the elbow, with a sickle. Thereafter the accused went upto Rama temple, came back and hacked the deceased on his left shoulder leading to instantaneous death. None of the people present there claimed to have intervened at the time of the attack. In respect of the said incident, a report came to be lodged on 16.05.2008 at 5.00 p.m. before PW.9-the Sub-Inspector of Police, who registered the same as a case in Crime No.18 of 2008 for the offences punishable under Sections 302 and 506 IPC. Ex.P6 is the first information report.

Further investigation in this case was taken up by PW.10-the Inspector of Police. According to him, after receiving a copy of the first information report, he proceeded to scene of offence and found the dead body of the deceased in a pool of blood. He posted a guard there and on the next day at about 6.30 p.m., he conducted inquest over the dead body of the deceased in the

presence of PW.7 and others. Ex.P4 is the inquest report. He also conducted a scene of offence panchanama in the presence of PW.7, which is placed on record as Ex.P7. During the said proceedings, he seized M.Os.1 to 5 from the scene of offence, also examined PWs.1 to 4 and recorded their statements. Then, he sent the dead body for postmortem examination.

PW.8-the Civil Assistant Surgeon, Government Hospital, Rajampet, conducted autopsy over the dead body of the deceased and issued Ex.P5-the postmortem certificate. According to him, the cause of death was “due to cardio respiratory failure, due to shock, excessive hemorrhage of the injuries Nos.1 and 2.”

On 26.05.2008, on reliable information, PW.10 proceeded to Kamasamudram fields and arrested the accused. On interrogation the accused claims to have confessed about the commission of offence. His confessional statement recorded in the presence of PWs.5 and 6. Basing on the said confession, M.O.6-sickle was seized. After collecting all the material, PW.10 filed a charge sheet before the Court of Judicial Magistrate of First Class, Railway Koduru, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.284 of 2008.

4) On appearance, charges under Sections 302, 307 and 506-II IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs. 1 to 10 and got marked Exs.P1 to P9 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. On behalf of the accused, DWs.1 and 2 were examined but no documentary evidence was adduced.

6) Basing on the evidence of PWs.1, 2 and 4, the learned Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life'. Assailing the said conviction and sentence the present Criminal Appeal came to be filed.

7) Learned counsel for the appellant mainly submits that the version of PWs.1, 2 and 4, with regard to the manner in which the incident took place is inconsistent with each other and hence no credence can be given to the evidence of alleged witnesses to establish that the involvement of the accused in the commission of offence. He would further submits that even if the evidence of the said witnesses is accepted, still no offence under Section 302 IPC is made out, as the injuries said to have been caused by the accused were are on non-vital parts of the body. He would further submit that though the deceased fell un-conscious for a period of three hours, nobody took steps to provide proper treatment and no steps were taken for stopping the bleeding. According to him, his version gets support from the evidence of the doctor.

8) The learned Public Prosecutor would submit that the two injuries which are found on the elbow and left shoulder lead to loss of huge quantity of blood as such the accused liable for the offence punishable under Section 302 IPC.

9) The point that arises for consideration is whether the accused is responsible for the incident, if so, whether he is liable to be convicted for the offence punishable under Section 302 IPC.

10) Insofar as the incident proper is concerned, the prosecution placed on record the evidence of PWs. 1, 2 and 4. All the witnesses in one voice speak about the manner in which the incident took place. All the witnesses in their evidence deposed that long prior to the date of incident, there was a quarrel between the accused and deceased with regard to sharing of water for agricultural purpose. Pursuant to which a report was given and subsequently there was a compromise. According to the prosecution the said quarrel took place some time during Sankranti festival.

11) Learned counsel for the appellant would submit that the dispute insofar as the incident which occurred Sankranti Festival of the year 2003, there is no material to show that the said incident took place in the year 2003 and it ended in a compromise. The incident in question took place in the month of May, 2008. It is said that on that day while the deceased was sitting in front of the house of one Nageti Chinnaiah, the accused came there and hurled stones against the deceased. Thereafter, PW.1 and others took the deceased to his house. It is said that thereafter the accused went

to his house, brought a knife and initially gave a blow on the left hand elbow of the deceased. He went back, returned and again gave a blow near the left shoulder of the deceased, which lead to amputation of the left hand. At about 5.00 p.m., a report came to be lodged by PW.1, narrating the manner in which the incident took place. Though PWs. 1, 2 and 4 were cross-examined at length, nothing useful was elicited to discard their testimony. Though it was elicited that PW.1, her husband and deceased were living separately but that by itself does not make their evidence doubtful. It is true that PW.1 has no personal knowledge about the disputes with regard to the sharing of water. However, all the witnesses including the evidence of investigating officer would show that the deceased was suffering with AIDS and his wife left his company and staying with her parents at Chinna Orampadu village. To a suggestion that the deceased had number of enemies in the village was denied by PW.1.

12) The evidence of PWs. 1, 2 and 4 coupled with the evidence of postmortem doctor, would amply establish that it was a case homicidal death and it is also clear that it was the accused alone who was responsible for the incident.

13) The next question that arises for consideration is whether the accused is liable for the offence punishable under Section 302 IPC.

14) As stated earlier, there were two injuries on the body of the deceased. Both the injuries were on left hand. First injury was a chop wound over the left shoulder back side, and second injury

lead to amputation of the left fore arm from the left elbow joint and left arm muscles. PW.8-the doctor who conducted autopsy over the dead body of the deceased, admits that if the bleeding could have been stopped by dressing the wound, there would have been a chance for survival. Taking advantage of the admissions made by the doctor, the learned counsel for the appellant would submit that since minimum medical attention was not given the deceased died. It is his case that if any effort is made by the persons who were present there, in arresting the bleeding, definitely the deceased would have been survived. No effort was made by the witnesses, who were present at the scene, to shift the injured to the hospital.

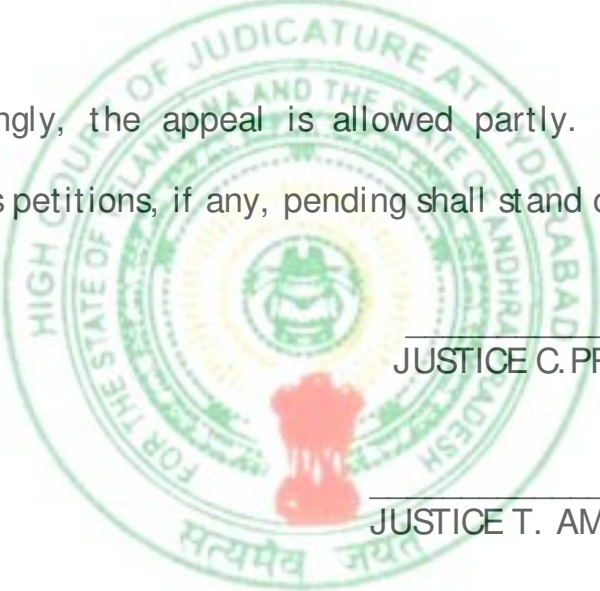
15) In some what similar circumstances in *Chuttan and others Vs. State of Madhya Pradesh*¹ the Apex Court dealt with a situation where the deceased sustained eight injuries over the dead body and remain un-attended for nearly 20 hours. The Apex Court found that since the injuries were on non-vital parts namely legs or on the arms, the nature of offence can be scaled down to 304 Part II IPC.

16) Even in the instance case, the evidence of all the witnesses show that there were only two injuries which were caused on the left fore arm and left shoulder. The evidence of the doctor further shows that if the bleeding was arrested, definitely there would have been chances for survival.

¹ AIR 1994 SC 1398

17) Having regard to the judgment referred to above; in the absence of any motive or intention to cause the death of the deceased; as the injuries are on non-vital parts of the body and as the incident is preceded by some sort of quarrel, we feel that the offence can be scaled down to 304 Part II IPC. Hence, 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 of seven years. The period undergone by the accused shall be given set off under Section 428 Cr.P.C.

18) Accordingly, the appeal is allowed partly. Consequently, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

19.03.2018
gkv