

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

AND

THE HON' BLE SRI JUSTICE DR. SHAMEEM AKTHER

CRIMINAL APPEAL No.579 of 2013

JUDGMENT:

This Criminal Appeal is filed aggrieved by the conviction and sentence imposed on the accused for the offences under Section 302 and 201 IPC, to suffer rigorous imprisonment for life, vide orders dated 17th April, 2013 on the file of the II Additional District and Sessions Judge (FTC), Nizamabad.

2. The learned counsel for the appellant submits that the order of the court below in sentencing the accused to suffer rigorous imprisonment for life is not supported by any cogent and acceptable evidence. There are material contradictions and omissions in the prosecution evidence. The accused beating the deceased with M.O.1 (grinding stone) had not been established beyond reasonable doubt. There are disputes between the accused and the deceased, and there are theft cases pending against the deceased. Ultimately, the learned counsel prayed to set aside the conviction and sentence recorded by the court below.

3. The learned Assistant Public Prosecutor contended that the prosecution proved the guilt of the accused beyond all reasonable doubt, and the court below had appreciated all the facts and

circumstances of the case and rightly convicted and sentenced the accused for the offences punishable under Section 302 and 201 IPC. There are no material omissions and contradictions, there is no reason to take a different view, and ultimately prayed to dismiss the appeal.

4. The case of the prosecution is that on the intervening night of 11/12th April, 2012, at about 00.30 hours, the accused went to the deceased Mohan when the deceased was sitting on the stage (baduka), and asked the deceased to pay Rs.2,000/-, for which the deceased refused. Thereafter, with an intention to kill the deceased, when the deceased was sleeping, beat the deceased with a pounder two or three times and caused death. On a report lodged by PW1, this case was registered and investigated. The learned Magistrate, after complying with the requirements under Section 209 Cr.P.C., committed the matter to the Court of Sessions, and the Court of Sessions made out the same to the II Additional District and Sessions Judge (FTC), Nizamabad, for disposal of the case. The trial court had framed the charges under Sections 302 and 201 IPC against the accused. The charges were read out and explained to the accused. Thereafter, the prosecution, to prove the guilt of the accused, examined PWs 1 to 8, got marked Exhibits P1 to P10 and M.Os 1 to 3.

5. The evidence of PW1-Ch.Vittal is that the deceased Mohan is his eldest son. He knows the accused, who is the son of brother of his wife. The deceased and the accused resided in their village, i.e., Gopanpally. His elder son was sleeping on the "Arugu" in front

of his house. He, along with his wife, son and wife of his 2nd son were sleeping inside the house. Around 12'O clock midnight on 12.04.2012, he heard some sound of his eldest son. On hearing that, he opened the door and went outside and saw the accused hitting on the head of his son Mohan with rubbu rai (grinding stone, pounder), and on seeing PW1, the accused ran away. He cried and shouted. People gathered there. His son Mohan received bleeding injuries and died on the spot.

6. The evidence of PW2-Ch.Chiranjeevi reveals that PW1 is his father. The deceased Mohan is his elder brother. He knows the accused, who is his brother-in-law. Eight or nine months prior to his deposition, he, along with his wife and parents, were sleeping in their house situated at Gopanpally village. His elder brother, by name Mohan, who is the deceased in this case, was sitting on the "Arugu" in front of his house. Rest of them were sleeping inside the house. At about 12 or 12.30 midnight, his father heard sound of his brother Mohan, woke up and went outside the house and saw the accused beating his brother Mohan with rubbu rai (grinding stone). On seeing his father, the accused ran away. He further deposed that on hearing the cries of his father, he went outside and saw his brother, who was suffering with bleeding injuries on forehead and also found his brother dead. The house of the accused is situated by the side of his house. He further stated that the accused might have killed his brother for money which his brother got from DWACRA group.

7. PW3-Ch.Lavanya, wife of the deceased, deposed that her husband died about eight months ago prior to her deposition. PW2 informed her when she was sleeping in their house that her husband was killed with rubbu rai (grinding stone). She went and saw the dead body. She was told by PW2 that her husband was killed by the accused and the accused killed her husband for want of money. Her husband got Rs.20,000/- from DWACRA group. She was examined by police.

8. The evidence of PW4-Ch.Shobha reveals that she knew the accused and the deceased in this case. The house of PW2 is in front of her house. About eight months ago, Mohan died. She saw the dead body. She came to know in the morning that the accused killed the deceased. She also spoke about the sniffer dogs coming to their village.

9. PWs 1, 2 and 3 were subjected to lengthy cross-examination, wherein they have reiterated what they have stated in their chief examination and they also gave the details where they were sleeping and where the deceased was sleeping. It has also come up in the cross-examination of PW1 that there were quarrels between the deceased and the accused. PW1 denied that there were criminal cases against his deceased son Mohan. There is no much dispute with regard to the scene of offence, which is in front of the house of PW1.

10. Ex.P1 is the report lodged by PW1, which reveals that it was received by the Magistrate on 12.04.2012 at 6 A.M., and on receipt

of Ex.P1 report, PW8 registered a case in Crime No. 114 of 2012 for the offence under Section 302 IPC and issued Ex.P8-F.I.R. He also deposed about the conduct of investigation in this case.

11. So, as seen from Ex.P1 and the evidence of PW8-investigation officer, it is clear that Ex.P1 was instantly lodged with the police. There is no delay on the part of PW1 lodging Ex.P1-report and immediately Ex.P1 was sent to the Magistrate concerned on the same day at 11 A.M.

12. It is also apt to refer to the evidence of PW6-Ch.Narayana Reddy, which reveals, eight months prior to his deposition at the house of PW2, the police conducted panchanama. A sketch map was drawn and the police seized a rubbu rai (grinding stone) under a cover of Panchanama-Ex.P4. He identified the rubbu rai (grinding stone) and it is marked as M.O.1. He has also stated that Ex.P5 is the sketch map.

13. There is no much dispute with regard to the finding of the dead body in front of the house of PW1 and also the causing of the death in front of the house of PW2. There is specific evidence of PW5-Ch.Babu Rao, who is a mediator for the confession and recovery of the blood stained clothes, marked as M.O.2 and M.O.3. His evidence reveals that murder took place in his village Gopanpally. He was ex-Sarpanch. He deposed that the accused confessed the commission of offence with a rubbu rai (pounder) and also informed him that in the process, his clothes were soiled with blood and he concealed his clothes. Accused took the panch

witnesses and police to Phulong area of the village and the accused took out blood stained clothes. The witness identified the blood stained clothes. M.O.1 is blue coloured jeans pant and M.O.3 is blue striped full shirt. Both M.O.1 and M.O.3 were seized by the police. This witness was also subjected to lengthy cross-examination. He reiterated what he has stated in his chief examination. Nothing is brought on record to discard the testimony of PW5.

14. As per the evidence of PW7-the doctor M.A.Khadeer, who conducted autopsy of the dead body on 12.04.2012 between 10.20 A.M. to 12.30 Noon, he observed the following injuries:

1. Head troma with fracture of frontal bone bleeding from nose mouth
2. Fracture of nasal bone
3. Left eye blood trauma with swelling, and the cause of death was head injury with intra cronial haemorrhage.

Ex.P7 is the post mortem report given by him and the doctor also specifically stated that the injury mentioned in Ex.P7 is possible with M.O.1-grinding stone. Nothing is brought in the cross-examination to discard his testimony. Further, he reiterated what he has stated in his chief examination.

15. Therefore, it can be safely concluded that the death is a homicidal death. There is consistency in the evidence of PWs 1 to 3 with regard to the injuries caused to the deceased. There is corroboration with the medical evidence also. As seen from the entire evidence on record, PW1, from the beginning, started

uttering that the accused is the person who caused the death of his son with M.O.1-grinding stone. PWs 2 and 3 also supported the statement made by PW1. There is no delay in lodging the F.I.R. There is no delay in sending the F.I.R. to the Magistrate concerned. There is no reason for PW1 to falsely implicate the accused, who is also his relative, for the death of his son. Further, there is no reason for PWs 2 and 3 to give false evidence against the accused. It cannot be said that the accused is implicated in this case, after due deliberation. Further, there is no animosity for PWs 1 and 3 to falsely implicate the accused. The prosecution examined PWs 1 and 3 and also elicited that there were disputes between the accused and the deceased with regard to sharing the money received from DWACRA group. The evidence of PW1 is consistent, cogent and cohesive. So also the evidence of PWs 2 and 3.

16. In view of the circumstances, the prosecution has established the motive as well as the manner how the deceased was subjected to death by the accused. All the ingredients of Section 302 IPC have been proved by prosecution beyond all reasonable doubt. It is a pre-planned murder and there was no sudden provocation, as contended on behalf of the accused. There is no inconsistency, infirmity or contradictions or material omissions, as contended on behalf of the accused. The court below analyzed the entire evidence on record and reached a just conclusion. There is no reason to take a different view. Hence, all contentions raised on behalf of the accused are rejected. The conviction and sentence imposed on the accused for the offence under Section 302 IPC is

liable to be confirmed, and the appeal preferred is liable to be dismissed.

17. Accordingly, the Criminal Appeal is dismissed.

P.NAVEEN RAO, J

DR. SHAMEEM AKTHER, J

Date: 21.04.2018
DMG

