

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.239 of 2013

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

1) The sole accused in Sessions Case No.53 of 2012 on the file of the II Additional Sessions Judge (FTC), Parvathipuram, is the appellant herein. He was tried for the offences punishable under Sections 302 and 506 IPC, for causing the death of one Tadang Tatabau (hereinafter referred to as "the deceased"), on 27.11.2011 at 9.00 a.m. in Kusturu Village. By its judgment, dated 30.07.2012, the learned Sessions Judge, while acquitting the accused for the offence punishable under Section 506 IPC, convicted him 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 out from the evidence of the prosecution witnesses are as under:

i) PW.1 is the mother of the deceased. PWs.2 and 3 are residents of Kosturu village, eking out their livelihood by doing coolie work. The deceased was also eking out his livelihood by doing podu cultivation. The accused is none other than the junior paternal uncle of the deceased. There were some disputes between the accused and the deceased in respect of land which

was situated on the hill top. The accused and the deceased were cultivating the said land with equal shares, but the accused was claiming ownership over the land, which was in possession of the accused. The deceased used to question the accused to show his patta and title deed, because of which there were disputes between each other. It is said that on the date of incident ie. 27.11.2011 at about 9.00 a.m., the deceased questioned the accused to show his patta and title deed. Thereupon the accused became aggressive and hacked the deceased with a knife, causing injury over the left side of the neck. It is said that as a result of the said injury, the deceased fell down. On that day at about 11.30 a.m., while PW.7-the Sub-Inspector of Police of Komarada Police Station, received information through PW.4 about the incident in question. Immediately he informed the same to the Inspector of Police, who reached the police station at 12.30 p.m. Since it is an affected area of Maoists, he secured the special task force consisting of PW.7 and others proceeded to the scene of offence in a jeep. At the scene of offence he recorded the statement of PW.1 into writing and sent the same to PW.8 with an endorsement to register the same as first information report. Ex.P1 is the said statement. Basing on which, PW.8, registered a case in Crime No.90 of 2011 for the offence punishable under Section 302 IPC and issued Ex.P7, the first information report.

ii) Further investigation was taken up by PW.9-the Inspector of Police. On 27.11.2011 at about 1.00 p.m., on receipt of a phone message from PW.4 about the murder in Kosturu village and after

receipt of the first information report, he reached the scene of offence at 4.00 p.m. After recording the statement of PW.1, he stopped investigation as it was dark by then. On that night they stayed in Kosturu village. On the next day ie., on 28.11.2011 he resumed the investigation and prepared the scene of offence panchanama in the presence of PW.4, which is placed on record as Ex.P2. During the scene observation, he seized controlled earth and blood stained earth. He also prepared a rough sketch which is marked as Ex.P8. He then held inquest over the dead body of the deceased in the presence of PW.4. Ex.P3 is the inquest report. The panchayatdars opined that the death of the deceased was homicidal and he was killed by a known person. After completion of inquest, he sent the dead body for postmortem examination.

iii) PW.6-the Civil Assistant Surgeon, Area Hospital, Parvathipuram, conducted autopsy over the dead body of the deceased and issued Ex.P6-the postmortem certificate. According to her, the cause of death was “due to damage to major blood supply to brain and neck structure”.

iv) PW.9 took up further investigation and examined PWs.2 and 3. On 29.11.2011, on receipt of credible information, PW.9 along with his staff and PW.5 proceeded to Poojariguda village and arrested the accused. On interrogation, he confessed about the commission of offence. His confessional statement was recorded in the presence of PW.5. After completion of investigation and after collecting all the material, PW.9 filed a charge sheet before the

Court of Judicial Magistrate of First Class, Parvathipuram, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.53 of 2012.

3) On appearance, charges under Sections 302 and 506 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 9 and got marked Exs.P1 to P10 and MOs.1 to 3. 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. Neither oral nor documentary evidence was adduced on behalf of the accused.

5) While rejecting the evidence of PW.1, who was examined as an eye witness to the incident, the trial Court believed the evidence of PWs.2 and 3 and convicted the accused, in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there is any amount of doubt with regard to PWs.2 and 3 witnessing the incident. It is her version that the period during which the incident happened is a harvesting season and in view of the admission made by PW.3 that all the villagers used to leave the village to attend agricultural works in the early hours these two

persons would not have seen the incident at all and that they have been planted by the investigating agency. In any event she would contend that since the deceased was responsible in provoking the accused by questioning him to show the patta and title deed and as only one single injury was caused, pleads that the nature of offence requires to be scaled down to one under Section 304 Part II IPC.

7) On the other hand, the learned Public Prosecutor would contend that though the witnesses have admitted in their evidence that all the villagers except the old and children go to agricultural operations during harvesting season by itself does not mean that these two persons have not seen the incident. According to him, at the time of inquest these witnesses have figured as eye witnesses and the report came to be lodged immediately on the next day. Hence, urges that the question of scaling down the offence to 304 Part II IPC would not arise, more so when the injury was caused on the vital part of the body.

8) The point that arises for consideration is whether the accused is responsible for the death of the deceased, if so, whether he is liable for punishment under Section 302 IPC.

9) As stated earlier, the prosecution examined PWs.1 to 3 as eye witnesses to the incident, however, the trial Court rejected the evidence of PW.1. Hence, the question now is whether the evidence of PWs.2 and 3 establish that the accused cause responsible for the death of the deceased.

10) It is now to be seen is whether the evidence of PWs.2 and 3 can be made the basis to convict the accused, in view of the admissions made by them in their cross-examination.

11) PW.2 in his evidence in chief states as under:

“I am the resident of Kosturu village and doing podu cultivation besides attending agricultural coolie work. I know PW.1 being resident of our village and also the deceased. The deceased died about seven months back as he was killed by the accused. Since about one year prior to the incident the accused and deceased are disputing with each other in connection of land which is situated on the hill top. The accused and deceased had been cultivating the said land in equal shares. But claiming ownership of the land which is in possession of accused, the deceased used to question the accused to show his patta and title deed and likewise they are disputing with each other since one year prior to the death of deceased. Likewise on that day morning at about 9.00 a.m. the deceased questioned the accused to show his patta and title deed, thereupon the accused became aggressive and hacked the deceased with a knife, causing **hack** injuries over the left side of the neck of the deceased. As a result the deceased fell down in pool of blood and died. At the time of incident PW.1 was sitting in the varanda of their house at a distance of two feet from the spot. At that time myself, LW.3 Santhamma, LW.4 N.Jaggaiah and LW.5 Tadangi Ramrao, the son of the deceased and grandson of PW.1 were present at the scene of offence. On seeing the incident when we tried to catch hold him the accused threatening us with the same knife ie., M.O.1 and escaped from the scene of offence. The police reached the scene of offence, examined me and recorded my statement.”

12) Similar is the version of PW.3.

13) Pointing upon the evidence of PW.2, the learned counsel for the appellant would submit that in view of the admission made in the cross-examination that she used to attend

the coolie work from 9.00 a.m. to 4.00 p.m. in the evening and that she would reach agricultural lands by 9.30 a.m., the possibility of she witnessing the incident appears to be incorrect. One other circumstance which is pointed out by the learned counsel for the appellant that PW.2 was residing in another street of Kosturu village. The reason given by her for coming over to the said street was never disclosed in her earlier statement made before the police. Therefore, her presence in the house of his brother at the time of incident cannot be accepted.

14) Similarly, PW.3 in his evidence states that her house is situated by the side of the house of deceased, intervened by one house. Her evidence is to the effect that prior to the incident the accused and deceased were quarrelling with each other with regard to land. Likewise, on that day at about 9.00 a.m., there was a dispute between the accused and the deceased in front of the house of the deceased in connection with the land. Her version is to the effect that during the said dispute, the accused is said to have hacked the neck of the deceased with a knife. As a result of which he died. Her evidence is commented upon by the learned counsel for the appellant, basing on the admission made by her that all the villagers except the old and children usually attend their agricultural operations during harvesting season. It appears that Pws.2 and 3 have made a general statement with regard to villagers attending agricultural operations during harvesting season. It does not probabalise the contention of the defence that there is no possibility of PWs.2 and 3 witnessing the incident. It is

to be noted that in the later part of the cross-examination of PW.3, she denied the suggestion that she never witnessed the incident and that she was deposing false at the instance of the police. Further, at the time of inquest, these two persons figured as eye witnesses and their version was incorporated in the report. Though inquest is normally used to know the cause of death but it can be used to test the veracity of the evidence of the witnesses. In view of the same, the argument of the learned counsel for the appellant that PWs.2 and 3 could not have seen the incident cannot be accepted. The evidence of PWs.2 and 3 coupled with the evidence of PW.6-the postmortem doctor, amply establish that it was a case of homicidal death and that the accused was responsible for the death.

15) The next question that falls for consideration is whether the accused is liable to be convicted for the offence punishable under Section 302 IPC.

16) As seen from the record, both the accused and deceased were very closely related to each other and are staying in one house. There were disputes between them with regard to land which was situated on a hill top. Both of them were cultivating the said land but the accused was claiming ownership as he is in possession of the same. The evidence of PW.2 was that on the date of incident at about 9.00 a.m. the deceased questioned the accused to show his patta and title deed, thereupon the accused became aggressive and hacked the deceased on the neck with

knife, causing injury over the neck which proved fatal. The issue as to whether the offence falls under Section 302 or 304 IPC does not depend upon the place where the injured was attacked but it depends upon the circumstances under which the incident took place.

17) As stated earlier, the evidence of PW.2, show that on the date of incident it was the deceased, who questioned the accused about the patta. Pursuant to which the accused said to have hacked the deceased with knife on neck region. It is not the case of the prosecution that the accused intentionally came there armed with a knife to attack the deceased. Had the deceased kept quiet, probably the incident in question would not have happened at all. Taking into consideration the circumstances under which the incident took place and in the absence of any intention or motive to the accused, we feel that the incident in question would definitely fall within the exception to 300 IPC. Since the accused was having no intention to cause the death of the deceased, as the incident happened was due to provocation of the deceased, it can be safely held that the accused may be only having knowledge that such injury would lead to death.

18) 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

¹ 2011(2) ALD (Cri.) 238 (SC)

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.”

19) In view of the judgment referred to above and having regard to the manner in which the incident in question took place, we are of the opinion that the case of the appellant/ accused falls squarely under Section 304 Part-II of IPC. Hence, the conviction under Section 302 IPC is set aside and the appellant is convicted under Section 304 Part-II IPC and sentenced him to suffer rigorous imprisonment for a period of six 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/ accused shall be set at liberty forthwith on completion of six years imprisonment, if not required in connection with any other case.

20) Accordingly, the Criminal Appeal is partly allowed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

05.03.2018
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