

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.330 of 2012

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

1) The sole accused in S.C.No.13 of 2010 on the file of the Special Sessions Judge for trial of cases under SCs and STs (POA) Act-cum-Additional Sessions Judge, Khammam, is the appellant herein. He was tried for three charges. First charge was for the offence punishable under Section 302 IPC for causing the death of one M.Venkatamma (hereinafter referred to as "the deceased") on 11.11.2008 at about 8.00 p.m., at Sanjaynagar Colony, Kothagudem. The second charge was for an offence punishable under Section 307 IPC for attempting to kill PWs.1, 2, 3 and one Uma. The third charge was under Section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act for committing murder of the deceased, who belonged to Scheduled Caste. Vide judgment, dated 02.04.2012, the learned Special Judge, while acquitting the accused for the offence punishable under Section 302 IPC, convicted him under Section 304-II IPC and sentenced him to suffer "life imprisonment". The accused was also convicted for the

offence punishable under Section 324 IPC for causing injuries to PWs.1 to 3 and sentenced him to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.3,000/- in default to suffer simple imprisonment for six months. Substantive sentences were ordered to run concurrently.

2) The facts in issue are as under:

i) On 11.11.2008 at 8.00 p.m., the accused while searching his pet dog, entered the house of PW.1 and made enquiries about his dog. While making enquiry he said to have beat PW.1 with pestle on her head. Immediately, he went to the house of the deceased, picked up a quarrel and then beat her on her head with pestle, which lead to her instantaneous death. When PWs.2 and 3 and one Uma tried to stop the accused, questioning as to why he beat them on petty issue, the accused also beat them and caused injuries. Thereafter, he left the place. On 11.11.2008 at about 11.30 p.m., PW.12, who was working as Sub-Inspector of Police, P.S. III Town, Kothagudem, received a report from PW.1, basing on which he registered a case in Crime No.164 2008 and issued Ex.P8-the first information report. He informed about the same to PW.14-the Sub-Divisional Police Officer, Kothagudem.

ii) According to PW.14, on receiving a copy of the report, he proceeded to the scene of offence situated at Laxmidevipally and in the presence of PW.8 conducted scene observation and prepared the Crime Details Form. He examined and recorded the statements of PWs.2 to 5 and 7. He, then went to the Government Area Hospital, Kothagudem, where he held inquest over the dead body of the deceased in the presence of PW.6 and another. Ex.P2 is the inquest panchanama. Thereafter, he sent the dead body for postmortem examination.

iii) One Dr.Bindu Jyothi (not examined) conducted autopsy over the dead body of the deceased and issued Ex.P9-the post mortem examination report. PW.13, who is working as Medical Superintendent, identifies the signature and handwriting in Ex.P9 as that of Dr.Bindu Jyothi. According to the doctor, the cause of death was “due to shock and hemorrhage due to head injury”.

iv) PW.11-the Civil Assistant Surgeon, Area Hospital, Kothagudem, examined PW.1 and issued Ex.P5-wound certificate. He also examined one Uma (not examined) and issued Ex.P6-wound certificate. On 12.11.2008 at 8.00 a.m., he examined PW.3 and issued Ex.P7 wound certificate.

PW.14, who continued with the investigation, arrested the accused on 14.11.2008 and pursuant to the confession made, M.O.3 was recovered in the presence of PW.9. After obtaining caste certificate from the Tahsildar vide Ex.P12 and R.F.S.L., which is marked as Ex.P13, he filed a charge sheet before the Court of the III Additional Judicial Magistrate of First Class, Kothagudem, which was taken on file as P.R.C.No.22 of 2009. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.13 of 2010.

3) On appearance, charges under Sections 302 and 307 IPC and Section 3 (2) (v) of the SCs & STs (POA) Act, 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 P13 and MOs.1 to 3. After the closure of prosecution 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) The learned Sessions Judge while believing the evidence of PWs.1 to 3, convicted the accused under Section 304-II IPC as the accused has no intention to kill the deceased and as the injuries sustained by PWs.1 to 3 are simple in nature, he convicted the accused for the offence under Section 324 IPC. But while convicting the accused under Section 304-II IPC, the learned Sessions Judge sentenced the accused to suffer life imprisonment, which in our view beyond the purview of the said Court. In view of the sentence imposed, the matter is listed before the Division Bench.

6) Learned counsel for the appellant fairly states across the Bar except the quantum of sentence there is nothing to be argued on the merits of the case.

7) As seen from the record, PWs.1 to 3 are the injured eye witnesses to the incident. According to PW.1, the deceased was her elder sister and the accused was her neighbour. The accused was maintaining a pet dog by name Pappy. On the date of incident, the accused came to their house and asked her whether his dog has entered to their house. So saying he said to have beat her with a pestle on

her head. As a result she received head injury. Later, the accused went into the portion of the deceased and beat her with a pestle in the presence of PW.2 and Uma. There after, the accused also beat PW.2 and Uma. On hearing the said commotion, PW.3 came there and questioned the accused with regard to attack. Then the accused is said to have beat her with pestle and thereafter went away. The deceased died on the spot. PW.1 got drafted the report, affixed her thumb impression and there after lodged the same before the police. Though PW.1 was cross-examined at length, nothing came to be elicited to discredit her testimony. The suggestion given to PW.1 that the police raided the house of the deceased alleging that prostitution was going on, was denied by her.

8) The evidence of PW.2 toes in line with what PW.1 has stated about the incident in question. According to her, the accused also entered in her house in search of his pet dog and is said to have beat her with pestle. Similar such suggestions as given to PW.1 were also given to PW.2, which were denied by her.

9) PW.3, in her evidence deposed that about three years back, one Uma came to her house crying and the accused followed her. When she enquired with accused as

to why he beat Uma, the accused beat PW.3 with pestle on her left hand. Thereafter he went away. She was also subjected to cross-examination. She admits that there were differences between the deceased and accused. To a suggestion that prostitution was going on in the house of the deceased was denied. To a suggestion that the accused has been falsely implicated was also denied.

10) PW.4 is none other than the son of the deceased. According to him, on the date of incident at about 8.00 p.m., while he was at market yard on duty, he heard some commotion. On hearing the same, immediately he went to the house of the deceased and found the deceased dead. His enquiries revealed that the accused beat the deceased and three others.

11) PW.5 is the husband of PW.3. According to him, on the date of incident he went to his shop and returned home at 8.00 p.m. He heard some commotion. When PW.3 went to pacify the accused, the accused beat PW.3 on her hand. He found PWs.1, 2, 3 and deceased with injuries.

12) From the evidence of these witnesses, it is clear that on the date of incident the accused went to the house of PW.1 in search of his pet dog and while searching, he picked up quarrel with the inmates of the house and dealt a

single blow on the deceased, PWs.1, 2 and 3 each. One such blow given to the deceased lead to her death. Having regard to the manner in which the incident took place, the learned Sessions Judge while acquitting the accused for the offence under Section 3 (2) (v) of the SCs/ STs (POA) Act, convicted him under Section 324 IPC for causing injuries to PWs.1 to 3 and also convicted him for the offence punishable under Section 304-II IPC and sentenced him to suffer imprisonment for life.

13) Part II of Section 304 IPC reads as under:

“304 Part-II: With imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

14) The maximum sentence for the offence punishable under Section 304 Part-II is only ten years. Therefore, awarding imprisonment for life under Section 304 Part-II appears to be incorrect. Taking into consideration the manner in which the incident took place and in the absence of any enmity between the accused, deceased and PWs.1 to 3, we feel that it is a fit case to reduce the sentence to five years.

15) Accordingly, the Criminal Appeal is partly allowed while upholding the conviction and sentence for the offence punishable under Section 324 IPC, the conviction imposed against the appellant/accused in Sessions Case No.13 of 2010 on the file of the Special Judge for Trial of Offences under SCs & STs (POA) Act-cum- Additional Sessions Judge, Khammam, for the offence punishable under Section 304-II IPC is confirmed, however the sentence of 'life imprisonment' imposed on the appellant is reduced to five years rigorous imprisonment. The period of remand, if any, undergone by the appellant shall be given set off. If the appellant has completed five years of sentence with remissions, if he is otherwise entitled to, he shall be set at liberty forthwith, if not required in any other case.

16) This Court, vide its order dated 23.04.2012 in CrI.A.M.P.No.700 of 2012 directed release of the appellant/accused on bail on the terms and conditions mentioned therein. In view of modification of the sentence, the Magistrate concerned shall take immediate steps to secure the presence of the accused to serve the sentence of imprisonment. Registry is directed to forthwith communicate a copy of this Judgment to the concerned Court.

17) Consequently, miscellaneous petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

T. RAJANI, J

16.07.2018
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