

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SMT JUSTICE T. RAJANI**

Cr1.A.No.828 OF 2011

JUDGMENT:

(per Hon'ble Sri Justice Suresh Kumar Kait)

The present appeal is preferred against the judgment dated 24.01.2011 passed in S.C.No.514 of 2008 by the Principal Sessions Judge, Warangal, whereby the appellant/A-1 found guilty of the charge for the offence punishable under Section 302 IPC. Accordingly convicted and sentenced to imprisonment for life and fine of Rs.11,000/- to be paid to PW.1 widow wife of the deceased as compensation under Section 357 (4) Cr.P.C.

2. There are two accused (A-1 & A-2) in the present case but A-2 was not found guilty of the charges for the offence punishable under Section 302 read with 34 IPC but guilty of charge for the offence under Section 323 read with 34 IPC. Hence the present appeal is filed only by the A-1 i.e., the appellant herein.

3. The case of the prosecution is that on 14.05.2008 at about 5.00 p.m. while PW.1 was feeding water to her fields, A-1 picked up a quarrel with her, removed fuse of the electric motor. In the scuffle between them, gold pusthela thadu of PW.1 fell down on the ground. After returning back home, PW.1 informed about it to her husband G.Narsaiah. At about

5.30 p.m. A-1 to A-3 abused G.Narsaiah. A-1 challenged above named person to come out of the house and when he came out, A-2 brought out a knife and gave it to A-1. While A-2 and A-3 caught hold of G.Narsaiah, A-1 stabbed him with knife, due to which, he collapsed on the ground, as witnessed by PWs.1 to 3, 5, 9 and 10. When, PWs.1 and 2 tried to intervene, A-1 to A-3 beat them with hands. PW.1 shifted her wounded husband to Government Hospital, Jangaon, where PW.11-Dr K Sarangapani, gave first aid and referred him to M.G.M Hospital, Warangal, for expert treatment, but he succumbed to the injury at about 11.00 p.m. on the way to the hospital and the dead body was brought back to Jangaon and kept in the mortuary.

4. Thereafter, the police was set in motion on the written report of PW.1, on the basis of which, Crime No.104 of 2008 was registered under Section 302 read with 34 IPC against A-1 to A-3 by PW.13-S.I of police. Thereafter, PW.14-C.I. of police took up investigation, visited the scene of offence, conducted a panchanama, in the presence of PW.6 and another, seized blood stained and controlled earth and got the scene of offence photographed by PW.4. Later he proceeded to the mortuary of Government Hospital, Jangaon, held inquest on the dead body of the deceased in the presence of PW.6 and another, got the dead body photographed by PW.4, and sent it to the Government Hospital, Jangaon, for

post-mortem examination and recorded the statements of witnesses.

5. On 19.05.2008, PW.14-C.I of police arrested A-1 to A-3 and interrogated them, during which, they confessed to have committed offence. A-1 led PW.14 and mediators-PW.7 and another, to recovery of the blood stained knife used in commission of offence and his pant and shirt containing blood stains under a panchanama. While A-1 and A-2 were produced before the jurisdictional Court, A3-juvenile was produced before the juvenile justice Board, Warangal, they were sent up for remand to judicial custody. Seized material objects were forwarded to the RFSL, Warangal, and PW.8-K.Narsimha, Scientific Officer, FSL, Hyderabad, got analysed the material objects and gave a positive report. PW.12-Dr P.Pradeep opined that the cause of death of the deceased on whom he conducted post-mortem examination was due to haemorrhagic shock on account of rupture to left lung.

6. After investigation, the Investigating Officer filed charge sheet. Thereafter, the competent Court furnished copy of the charge sheet to the accused and thereafter charges were framed read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

7. To bring home the guilt of appellant, the prosecution examined PW.1 to PW.14 and marked Exs.P-1 to P-12 and MOs.1 to 8.

8. After closure of prosecution evidence, the appellant was examined under Section 313 (1) (b) Cr.P.C. Denying the incriminating circumstances appearing against him in the evidence of prosecution witnesses, the appellant has pleaded not guilty. He stated that his elder brother G.Narsaiah stopped the tractor in which he was carrying paddy and while throwing away the paddy bags, he fell down from the tractor and he was implicated in a false case. His wife-A-2 and juvenile son-A-3 were not at home at that time. A-2, too, has stated that she and her juvenile son-A-3 were not present at the time of commission of the alleged offence. The appellant has not examined any witness in his defence except relying on Ex.D1 a part of section 161 Cr.P.C statement of PW.2.

9. Learned trial Court has convicted the appellant by recording that inculpatory statements made before a police officer leading to disclosure of facts and recovery of incriminating articles on the strength of those statements are admissible in evidence under Section 27 of the Indian Evidence Act, whether it amounts to a confession or not. In the instant case A-1 having made an inculpatory statement before PW.14-C.I. of police and PW.7 and LW.13-Mohd.Latif Shareef in Ex.P6, leading to discovery and seizure of MO.8-knife, which is a formidable weapon, which was used by A-1 in stabbing the deceased-his elder brother, causing rupture to his left lung, which in fact, caused his death, the appellant/A-1 had knowledge that such a stabbing with so much force

as to rupture the left lung of the deceased would cause his instantaneous death, which had, in fact, occurred a little later due to profused bleeding on account of rupture of the left lung.

10. Learned counsel appearing on behalf of the appellant submits that the trial Court has relied upon the evidence of PWs.1 to 3, 5, 9 and 10. Their evidence has been consistently inconsistent and contradictory in all particulars much less the material particulars. PW.1's evidence has been in absolute contradiction with her son-PW.2 in all material particulars. There is no consistency at all. PW.2 deposed that "*all the three of us came out of the house*", the statement squarely contradicts his mother's statement as her statement mentioned on his reaching there later. Thus these two statements do not go together and are in virtual direct conflict and run counter to each other infallibly bearing out the factum of sheer falsehood which is writ large on its face. Their evidence lacks in consistency vindicating the fact that the occurrences alleged never occurred. They are wholly unreliable and highly interested witnesses and ought to have been turned down by the trial Court.

11. Learned counsel further submitted, the presence of PW.1 has not been spoken of by PW.10. Her evidence given the amount of inconsistency and contradictions, lodging of complaint after 14 hours and unusual standoffish attitude,

establishes that occurrences alleged never occurred and her testimony is absolutely false.

12. PW.3 deposed that *"I saw A-1 to A-3 and deceased alone in front of the house of the deceased"*. Learned counsel for the appellant submits that this is something which is neither stated by PW.1 nor PW.2. He did not state as to the alleged giving of knife to A-1 by A-2. Moreover, conduct of PW.1 in not lodging any complaint to police immediately as to the alleged acts of A-1 removing the fuse, beating and snatching away of her pusthelathadu, *per se* speaks of untrustworthiness of her evidence.

13. Coming to the evidence of PW.5, learned counsel submitted that the presence of this witness has not at all been spoken by PW.3. PW.1 also did not speak of the presence of this witness at the time of alleged stabbing. His evidence contradicts with PW.1 and PW.2. He does not explain as to his presence at the alleged place.

14. Learned counsel for the appellant further submits that PW.9 did not state about presence of PWs.3, 5 and 10. There is no substantive evidence at all, as such, its corroboration, does not arise. The contradictions in the evidence of PWs.2 and 3 when were put to PW.14 he deposed that they did not state them before him. But the trial Court did not consider them at all.

15. Learned counsel further submits that the trial Court failed to see that name of the father of the deceased was neither shown in the list of witnesses nor was examined though he was allegedly in the house of the deceased according to PW.1's evidence. Moreover, PW.1 deposed that when she came out and saw her husband lying on the ground A-2 giving a knife to A-1, A-2 and A-3 holding her husband and A-1 stabbing him and sitting on him. Later, her son reached there. A-1 and A-2 beat her and her son. At that time, nobody was present except A-1 to A-3 herself and her son. The said facts have been ignored by the trial Court. Thus, the appeal deserves to be allowed by setting aside the conviction awarded by the trial Court.

16. We note, the learned trial Court recorded in para-23 of the impugned judgment that, corroborating the evidence of PWs.1 and 2 and that PWs.3, 5, 9 and PW.10, too, has testified 1½ year ago at about 7.00 or 7.30 p.m. he heard loud noises and commotion in front of the house of the deceased, he was present in the house situated opposite to that of the deceased and when he came out of the house and reached the spot of commotion, he saw A-1 stabbing the deceased, A-2 and A-3 beating up PW-2 and on seeing him and other eye witnesses, A-1 to A-3 ran away from the scene. When PW.10 witnessed the stabbing, A-2 and A-3 were beating up PW.2, but A-2 was not catching hold of the deceased in order to facilitate A-1 to stab him. PW.10 being

an independent eye witness, his evidence does inspire the confidence. If at all, A-2 caught hold of the deceased facilitating A-1 to stab him, PW.10 could have definitely deposed about it but on the other hand PW.10 has categorically testified that he witnessed A-2 and A-3 beating up PW.2 and on seeing him and other witnesses, A-1 to A-3 ran away which does inspire confidence as even according to PW.1's testimony, no one except she, her son-PW.2 and A-1 to A-3, was present at the time of commission of offence.

17. In para-24 of the impugned order, it is recorded that, no doubt, as testified by PWs.1 to 3, 5 and 9 and as mentioned in Ex.P1-written report, A-2 and A-3 might have caught hold of the deceased in such a way as to cause his fall when A-1 appears to have ceased the opportunity of overpowering his elder brother and stabbing him with a knife supplied by A-2. But when A-2 and A-3 caught hold of the deceased, they do not appear to have intended to facilitate A-1 to stab the deceased to death but only to prevent the deceased-elder brother of A-1 not to overpower and assault A-1. Though A-1 was holding a knife, still participation of A-2 and A-3 in beating up PWs.1 and 2, as testified by PWs.1 to 3, 5, 9 and 10 does inspire confidence and appears to be quite natural, suggesting that while A-1 was fighting with the deceased, who was no other than his own elder brother, A-2 and A-3 were fighting with the wife and son of the deceased due to land disputes between A-1 to A-3, on the one hand,

PWs.1, 2 and the deceased, on the other hand. Therefore, the intention of A-2 in handing over a knife to A-1, appears to be to arm A-1 to defend himself from anticipated assault by his elder brother rather than to do away with the life of his own elder brother.

18. In para-25, it is further recorded by the trial Court that even if A-2 had handed over MO.8/knife to A-1, A-1 did not appear to have intended to cause the death of the deceased-his elder brother, in which event, he would have stabbed him several times on other vital parts of the body instead of remaining contented with one stab wound on the left chest.

19. We note, the learned trial Court has further recorded that A-1 had definite knowledge that causing injury with a formidable weapon like MO.8-knife on the vital part of the body of the deceased, would have caused the death of the deceased.

20. On recording of the aforesaid fact by the trial Court, we are of the opinion that trial Court immediately would have come to a conclusion that the appellant/A-1 has committed culpable homicide not amounting to murder and instead of convicted under Section 302 IPC would have convicted under Section 304 IPC.

21. Ex.P9 is medical certificate issued by PW.11, wherein recorded that it is incised wound over left auxiliary region with sharp edge weapon and injury is reported as simple. But size of injury is 1½ x 2 x 10 cm. In Ex.P10-Post-Mortem examination report, the aforesaid fact has been reiterated. Thus, it is proved that in a scuffle taken place between the family member of the appellant and the families of the deceased, the appellant has stabbed once but unfortunately it ruptured the left lung, due to which, the deceased died instantaneously. Act of the appellant proves that he had no intention to kill the deceased. The knife was used only when it was brought by PW.2 his son and given to A-1/ appellant herein. Thus, at the spot of the incident itself, it came in the mind of the appellant to use that knife so that the deceased would not be overpowering upon him. No doubt, the appellant was having knowledge while stabbing on the vital part of the deceased 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.

22. Therefore, keeping in view the Ex.P9 and Ex.P10 and the statement of PW.11, whereby he deposed that as per Ex.P9, the injury is externally simple in nature and it is possible that injury of the above nature could be caused if he comes into contact with a sharp edged object.

23. In view of the above discussion, we are of the opinion that the appellant had no intention to cause death of the deceased, however, had intention only to cause injury, but with knowledge that, that injury may cause death.

24. Accordingly, we hereby acquit the appellant-A1 from Section 302 IPC. Consequently, we set aside the conviction of the appellant, but we hereby held guilty to the appellant under Section 304 Part-II.

25. It is not in dispute that the appellant remained more than ten years incarceration, we hereby convict him under Section 304 Part-II IPC and set him free on the sentence, which he has already undergone.

26. We hereby make it clear that fine amount of Rs.11,000/- shall be paid, if already not paid, to PW.1, widow of the deceased as compensation under Section 357 (4) Cr.P.C.

27. Accordingly, the Criminal Appeal is partly allowed.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

SMT T. RAJANI, J.

Date : -04-2018
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