

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE T. AMARNATH GOUD

CrI.A.No. 1019 of 2012

JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This Criminal Appeal is preferred against the judgment dated 26.09.2012 delivered in S.C.No. 246 of 2011 by the Special Judge for Trial of Cases Under S.Cs. & S.Ts. (Prevention of Atrocities) Act-cum-Additional Sessions Judge, Adilabad whereby the appellant – A1 was found guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced to undergo imprisonment for life and pay fine of Rs.100/-, in default, to suffer Simple Imprisonment for one month.

The brief case of the prosecution is that on 30.12.2010, at 21:30 hours, PW1 lodged a written complaint – Ex.P1 stating that on 30.12.2010 at 19:00 hours, he along with his brothers-in-law i.e. P.Sai Kumar (deceased) and P.Shravan Kumar (PW2) went to Shankargutta Toddy Shop situated at Durganagar Colony of Adilabad Mandal where the appellant – A1 abused his younger brother-in-law – Shravan Kumar. When his elder brother-in-law intervened and asked the appellant why he was abusing his brother, the appellant and his associates fisted on his stomach and other parts of the body and one of them beat him on his stomach with toddy bottle,

due to which, he vomited blood from his mouth and fell down. When PW1 along with PW3 - his uncle, PW2 and PW4 – salesman of the toddy shop tried to rescue the deceased from the clutches of the appellant and his associates, they again beat him. Immediately, the deceased was taken to his house by PW4 and PW2 on the motorcycle. Meanwhile, 108 Ambulance was called and they declared P. Sai Kumar dead.

The learned counsel for the appellant submits that after investigation, the police filed charge sheet against A1 – appellant and A2 to A4 for the offence punishable under Section 302 IPC read with 34 IPC. However, the trial Court, after considering the evidence of the prosecution witnesses and the material on record, acquitted A2 to A4, however convicted A1 of the charged offence. He submits that when there is no evidence against the appellant for the charged offence, the trial Court erroneously convicted the appellant.

The learned counsel for the appellant further submits that PW1 deposed that on 30.12.2010 at about 07:30 p.m., he and his brothers-in-law went to toddy shop situated near Shankargutta, where a quarrel between his younger brother-in-law and the appellant took place wherein the appellant abused his younger brother-in-law with reference to his mother and sister. When the deceased questioned the appellant for abusing his brother, the appellant grew wild and

hit his elder brother-in-law with toddy bottle. PW1 tried to separate them but could not succeed.

The learned counsel for the appellant submits that PW1 was residing near Dasnapur of Adilabad District, however he is not a resident of the place where the deceased lived. He came and settled in the Dasnapur village after the death of the deceased. He clearly stated in his cross-examination that he had no acquaintance with Adilabad Town. He submits that PW1 did not mention the name of the appellant and that he hit the deceased with toddy bottle. Thus, this witness has not deposed anything against the appellant.

From a perusal of the evidence of PW1, it is clear that the appellant along with three others came to the scene of offence for consuming toddy, where some quarrel took place, due to which, the deceased received some injuries in the hands of the appellant and the other accused. It appears from his evidence that he did not know the names of the accused specifically of the appellant, therefore, he stated that out of the four accused, one hit the deceased with toddy bottle.

PW2 – P. Sravan Kumar deposed that on the date of the incident, himself, PW1 – Chandrasekhar and the deceased went to toddy compound at Durganagar, Shankargutta of Adilabad District at about 06:30 p.m. to celebrate the

occasion of arrival of PW1. He deposed that when his brother i.e. the deceased asked PW1 to bring some hot edibles, he brought accordingly. PW2 and his brother went and sat in the toddy compound and all the accused were sitting opposite to them even prior to their arrival. The appellant was shaking toddy bottle, due to which, froth from the toddy bottle sprinkled on PW2. When PW2 questioned and beat the appellant, the quarrel grew intense and PW1, Rajanna and Srinivas attempted to subside the quarrel, but they could not. Then the appellant hit the deceased in his stomach with the toddy bottle.

The learned counsel for the appellant submits that PW2, in his cross-examination, stated that the appellant was not known either to him or to his brother and admitted that he did not state to the police about questioning the appellant for pouring toddy on PW2. The learned counsel submits that as per the evidence of PW1, they were all present in the toddy shop and after sprinkling of toddy on PW2, quarrel took place, wherein the appellant hit the deceased due to which he died. However, this witness does not say that the appellant came with an intention to kill the deceased. Therefore, the trial Court has failed to take this fact into account in respect of the appellant and erroneously convicted him but while acquitting A2 to A4 on the same ground.

PW3 deposed that on the date of the incident at 07:30 p.m., he was passing by the road side while going home from Durganagar. By the time he reached white toddy compound, all the accused, the deceased and PWs.1 and 2 were beating against one another. Then, he and Sreenu, who is the owner of toddy compound, intervened and tried to separate them, but could not. He further deposed that Maruti, who was standing last in the row, hit the deceased in the stomach with toddy bottle.

The learned counsel for the appellant submits that the name of the appellant is Ramadas whereas PW3 deposed that one person called "Maruti" hit the deceased in the stomach with toddy bottle, however, this witness is not examined before the Court. He further submits that PW3 only stated that altercation took place between the people of two groups i.e. the appellant and the deceased, due to which, the deceased sustained fatal injury and died, however there was no intention on the part of the appellant to kill the deceased, but the trial Court has erroneously convicted the appellant of the charged offence.

PW4 deposed that for the last five years, he was working as salesman in toddy shop and on 30.12.2010 i.e. the date of incident, he was not on duty. Since this witness has not

supported the case of the prosecution, he was declared hostile by the learned Public Prosecutor.

It is pertinent to note that in cross-examination, PW4 deposed that he was working as a salesman in toddy shop of Mahender Goud, and on 30.12.2010, the date of the incident, some people came to their shop for consuming toddy. At about 07:00 p.m., the appellant, Santosh, Sarath Kumar, who were residents of Pittalwada, visited their shop as usual. Each of them took two toddy bottles and sat together near a small thorny bush and were trying to drink the same. Meanwhile, Sai Kumar and Sravan Kumar, who were brothers, came to their shop along with a new person. The appellant opened the toddy bottle and due to pressure of the content therein, the lid went up at speed and the toddy fell on Sravan Kumar. When Sravan Kumar questioned the appellant for sprinkling toddy on him, the appellant quarrelled and abused him in filthy language with reference to his mother and sister. When the deceased intervened and questioned the appellant why he was abusing his brother in filthy language, then altercation took place between the people of two groups, wherein the deceased sustained fatal injuries.

The learned counsel for the appellant submits that this witness in chief-examination denied that on the date of the incident i.e. 30.12.2010, he was neither present at the toddy

shop nor witnessed the incident. Therefore, his evidence in the cross-examination cannot be relied upon.

From a perusal of the evidence of PW4, it is not in dispute that he denied even his presence on the date of the incident on 30.12.2010, however in cross-examination, he admitted the fact that on 30.12.2010, the people of both the groups came to their shop and purchased toddy, and while they were consuming the same, altercation took place among them.

The learned counsel for the appellant submits that the aforesaid witness does not disclose that there was enmity between the appellant and the deceased. Moreover, it is not the case of the prosecution that the appellant came with a plan to kill the deceased, but its case is that both the groups came to toddy shop for consuming toddy and while shaking the toddy bottle its content sprinkled on Sravan Kumar due to which the deceased asked the appellant why he sprinkled toddy on his brother and then altercation took place. Thus, the appellant group had neither any intention nor any pre-plan to kill the deceased. Both the groups came in the evening to enjoy toddy and purchased toddy and while shaking the bottle the toddy sprinkled. He submits that this case, by no stretch of imagination, falls under Section 302 IPC,

however he admitted that at best the case of the prosecution falls under Section 304 Part-II IPC.

The learned Public Prosecutor has contended that the prosecution has examined PWs.1 to 4, who are eyewitnesses to the incident, and considered the evidence of other witnesses and the material on record which establish that the appellant along with his associates committed murder of the deceased with intention and pre-determination. Therefore, the trial Court has rightly convicted the appellant for the offence punishable under Section 302 IPC. She submits that since there was no evidence against A2 to A4, the trial Court rightly acquitted them of the same offence.

Heard the learned counsel for the parties and perused the evidence and material on record.

We have already discussed the evidence of PWs.1 to 4 in detail. Now, we will discuss the evidence of other relevant witnesses.

PW5 deposed that on 30.12.2010, at about 07:45 p.m., while he was present at his house, Sravan Kumar, Mahender Goud brought the deceased in an unconscious state to his house on motorcycle. Thus, this witness is not an eye-witness to the incident.

PW6 deposed that on 30.11.2012 at about 07:45 P.M., while he was present at the house of PW5, Sravan Kumar and

Mahender Goud brought the deceased on motorcycle to his house and he found him in an unconscious state. Thus, this witness is a chance witness and deposed on the same lines as deposed by PW5.

PW7 is photographer who took photographs of the dead body. Ex.P5 comprises three photographs.

PW8 deposed that he was working in a hotel. On 31.12.2010, at about 09:30 a.m., the police conducted panchanama of the scene of offence at white toddy shop situated at Durganagar and seized toddy bottle with which the deceased was said to have been beaten. Ex.P5 is the panchanama of the scene of offence and Ex.P6 is the rough sketch of the scene of offence.

PW9 deposed that on 31.12.2010, the police called him to the house of the deceased and conducted inquest over the dead body and he signed on Ex.P7 –inquest report.

PW10 has witnessed recovery of MO1 –toddy bottle from the place of the incident under Ex.P8 – seizure report which was signed by him.

PW11 is Dr.B.Sekhar Rao, who deposed that on 31.12.2010, on the requisition given by Circle Inspector of police, Adilabad Rural in Cr.No. 194 of 2010 through PC 1335, he conducted post-mortem examination on the dead body of the deceased from 11:00 A.M. to 01:00 P.M. On examination,

he found the following ante-mortem external and internal injuries:

- a) Contusion of 5 x 2 cm over front of abdomen on left side, 12 cm away from umbilicus.
- b) Abrasion of 2 x 1 cm over front of abdomen on left side just below the 1st injury.
- c) Abrasion of 2 x 1 cm over the front of abdomen on left side 3 cm below the 2nd injury.
- d) Abrasion of 1 x 1 cm over neck on right side 7 cm away from right mastoid.
- e) About 200 ml. of clotted blood was present in abdomen cavity.
- f) About 100 ml. of clotted blood was present in thoracic cavity.

Accordingly, he opined that the cause of the death of the deceased was due to hemorrhage and shock consequent to blunt injury on the chest and abdomen. Ex.P11 is the postmortem report. Ex.P12 is the F.S.L. report. He deposed that injuries are possible due to hit by M.O.1. - toddy bottle.

The learned counsel for the appellant has pointed out that PW11 deposed that the blunt injuries were on abdomen and chest but as per Postmortem report, he found all the injuries on the abdomen and not on the chest.

On perusing the postmortem report, none of the injuries are found to have been caused on the chest of the deceased.

PW12 is Head Constable, who registered a case in Cr.No. 194 of 2010 for the offence punishable under Section 302 IPC read with 34 IPC and submitted F.I.R. along with Ex.P1 - report to the Court concerned. Ex.P14 is the printed F.I.R.,

and thereafter, he handed over CD file to the Inspector of Police.

PW13 is the Circle Inspector, who conducted investigation, visited scene of offence and recovered M.O.1. from the scene of offence and filed charge sheet. He also recorded confession statement of the appellant wherein he admitted that he hit the deceased due to which he succumbed to injuries.

It is not in dispute that the appellant group went to toddy shop as usual in the evening hours and purchased toddy bottle and sat in the compound. Then, the deceased along with his brother – Savan Kumar came to the toddy shop to celebrate the occasion of arrival of his brother-in-law. Meanwhile, others also reached at toddy shop to consume toddy. The appellant, while shaking the bottle, the toddy sprinkled on PW2 who asked him about sprinkling of the toddy due to which the appellant abused him in filthy language. When the deceased intervened and asked the appellant why he abused his brother in filthy language, then altercation took place between the groups of the appellant and the deceased. Since the appellant was holding toddy bottle in his hand, he hit the deceased on the stomach with the bottle, due to which, the deceased sustained fatal injuries and died.

It is not the case of the prosecution that the appellant and the deceased had any enmity before commission of offence. The appellant used to come to toddy shop daily in the evenings to enjoy toddy. Unfortunately, on the date of the incident, the deceased came to the toddy shop along with his brother-in-law, who came to their village, to celebrate his arrival to their place. However, due to sprinkling of the toddy, the altercation took place wherein the appellant hit the deceased on vital parts due to which he received fatal injuries. Thus, it is established that the people of both the groups belong to lower strata of the society. Normally, in the evening hours, their source of entertainment was to drink toddy and celebrate evening hours. On the date of the incident, the group of the deceased came to the toddy shop to celebrate arrival of PW1, his brother-in-law, but unfortunately, the incident took place and the deceased lost his life.

From the evidence of PWs.1 to 4, the prosecution has failed to establish that the appellant had any motive or predetermined to kill the deceased. It is evident from the testimonies that altercation took place all of a sudden wherein the appellant hit the deceased with the bottle in his hand due to which the deceased received fatal injuries and died.

In view of the above, we are of the considered opinion that the trial Court has not considered the fact that the present case falls under Exception 4 of Section 300 IPC, according to which, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

In the present case, admittedly the offence was committed without premeditation and in a sudden fight in the heat of passion. The appellant also did not take any undue advantage or acted in a cruel or usual manner. The quarrel took place between two groups wherein the appellant in a heat of anger hit the deceased with the toddy bottle which was in his hand.

As per Section 304 Part-II IPC, 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, then the case should fall under Section 304 Part-II IPC. Admittedly, in the present case, the appellant had knowledge that if he hit the appellant on vital part i.e. stomach that may cause death, however there was no intention on his part to cause death or cause such bodily injury as is likely to cause death.

Thus, for the foregoing discussion, we are of the considered view that the present case falls under Section 304 Part-II IPC. Consequently, we hereby set aside the conviction and sentence imposed on the appellant – A1 by the trial Court for the offence punishable under Section 302 IPC. However, we have found the appellant guilty of the offence punishable under Section 304 Part-II IPC, and accordingly, he is convicted. Insofar as imposition of sentence is concerned, we are of the opinion that since the appellant has already suffered five years of rigorous imprisonment in jail and has been released on bail by order dated 16.10.2017, passed by this Court, his sentence is reduced and limited to the period of sentence already undergone by him.

Accordingly, the Criminal Appeal is partly allowed. The bail bonds of the appellant – A1 shall stand cancelled.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

20.08.2018

SURESH KUMAR KAIT, J

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T. AMARNATH GOUD, J