

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.104 OF 2012

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

The appellants are A-1 and A-2 in Sessions Case No.135 of 2010 on the file of the Court of X Additional District & Sessions Judge, Markapur (Fast Track Court), Visakhapatnam at Anakapalle (for short, trial Court). They were tried for an offence punishable under Section 302 IPC r/w Section 34 IPC, for causing the death of one Killada Appala Raju on 06-01-2010 at about 6.00 am. The trial Court by its judgment dated 30-12-2011 found the appellants guilty of the charge under Section 302 IPC r/w Section 34 IPC, and sentenced each of them to suffer 'imprisonment for life and to pay a fine of Rs.1,000/-, in default, simple imprisonment for one year.

2. The case of the prosecution as culled out from the evidence is as under:-

Appellant No.1/A-1 is the son of appellant No.2/A-2 and they are the residents of Govindapalem Village, Rambilli Mandal, Visakhapatnam District. The deceased, Killada Appala Raju, is also resident of same village. About 15 years prior to the date of incident, the accused family purchased an extent of land admeasuring Ac.1-06 cents in Sy.No.46 of Govindapalem Village in the name of father of A-1 from one Barnikala Apparao and since then, they have been in possession and enjoyment of the same by raising coconut tope. While so, about 12 years prior to the date of incident, the deceased family also purchased an extent of Ac.1-36

cents of land in the same survey number from the same vendor. Out of the said Ac.1-36 cents of land, one rectangular bit of Ac.0-35 cents of dry land situated adjacent to the land of the accused. About 6 years prior to the date of incident, the accused started asserting that they have got pathway from Tar road to proceed into their land through the said Ac.0-35 cents. In that connection, both families altercated with each other. The accused forcibly used to go to their coconut tope through the land of the deceased and that ill feelings have cropped up between two families and accordingly the matter was also placed before the Revenue and Police Authorities.

3. About 3 years prior to the date of incident, the accused dig a pit in the land of the deceased and erected water pipes and gave connection to their another land and that the deceased placed the matter before the village elders such as L.W.6, Dhuli Rambabu and others who convinced the deceased to keep quiet. About one year prior to the date of incident, due to such ill feelings, the accused family poisoned the cocks of the deceased resulting in the death of six cocks. In that connection, basing on the report of the deceased family, the Police, Rambilli Police Station, registered a case in Crime No.1/2009 under Section 429 IPC and the case is pending in C.C.No.159/2009 against the accused before Additional Judicial First Class Magistrate, Yelamanchili. While so, about 10 years prior to the date of incident, the deceased family erected fencing across their land including the disputed place, but the accused removed the same and that the deceased placed the matter before

the elders such as L.W.6 and others and again erected fencing about one week prior to the date of incident, due to which, A-1 developed grudge against the deceased.

4. On 06.01.2010 at about 9.00 am., A-2 went to their coconut tope through the land of deceased to which the deceased raised objection, thereby an altercation took place in between A-2 and the deceased and that the deceased beat her with hands. On seeing the same, A-1 got angry, rushed to the spot, picked up the iron crow-bar which carried by his mother and beat the deceased with that iron crowbar on the left leg and also on the back of head and caused bleeding injuries, which resulted in the death of the deceased. In the said incident, A-2 also sustained injuries.

5. P.W.3, Golagani Lakshmi, witnessed the incident and immediately she informed the incident to P.W.1, who is the sister of the deceased, on which P.W.1 along with others rushed to the spot and found the deceased dead. Immediately, she lodged a report (Ex.P.1) to the Police, Rambilli Police Station. Basing on the said information, P.W.10, the then Sub-Inspector of Police, Rambilli Police Station, registered a case in Crime No.1 of 2010, for an offence punishable under Section 302 read with Section 34 IPC. Thereafter, P.W.11, the Inspector of Police, Yelamanchili Circle, took up the further investigation. During the course of investigation, he visited the scene of offence along with P.Ws.6 and 7, examined the scene of offence and also the dead body of the deceased, drafted observation report, seized blood stained earth, controlled earth, blood stained stone and broken bangle pieces of

A-2 under cover of observation report and also held inquest over the dead body of the deceased in the presence of P.Ws.6 and 7. He sent the body to the Government Hospital, Yelamanchili for autopsy.

6. Thereafter, P.W.11 arrested A-1 on 08.01.2010 at 8.30 pm. During the course of interrogation, A-1 confessed the offence and accordingly confessional statement of the accused was recorded in the presence of P.Ws.6 and 7 along with one Rambabu and also seized crime weapon used by the accused in the commission of offence. He forwarded all the material objects to Forensic Science Laboratory, Visakhapatnam for analysis and report.

7. P.W.19, Dr.T.Sivayya, Medical Officer, Government Hospital, Yelamanchili, who conducted autopsy over the dead body of the deceased, issued postmortem certificate wherein he has opined that the deceased would have been died of head injury and all the injuries found on the dead body at the time of the postmortem examination are anti-mortem in nature. L.W.14, N.Adinarayana, Assistant Director of RFSL, Visakhapatnam, examined the material objects and issued analysis report opining that, on examination, he found human blood on some of the material objects.

8. During the course of investigation, P.W.11 arrested A-2 on 02.04.2010. After completion of investigation, P.W.11 filed charge sheet against A-1 and A-2, which was taken on file as PRC No.18 of 2010 on the file of Additional Judicial First Class Magistrate, Yelamanchili.

9. On appearance of the accused, the Additional Judicial First Class Magistrate, Yelamanchili furnished copies of the documents as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the same was committed, which came to be numbered as S.C.135 of 2010. Basing on the material available, a charge under Section 302 IPC read with Section 34 IPC came to be framed, read over and explained to A-1 and A-2, to which, they pleaded not guilty and claimed to be tried.

10. In support of its case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P.1 to P.12 and M.Os.1 to 13. On behalf of A1 and A-2, D.W.1 is examined and Exs.X.1 to X.4 and Ex.D.1 were marked. After the closure of the prosecution evidence, A-1 and A-2 were examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against them in the evidence of prosecution witnesses, to which they denied the evidence of prosecution witnesses. Basing on the prosecution evidence, the trial Court found A-1 and A-2 guilty for causing the death of the deceased and sentenced them. Challenging the same, the present appeal came to be filed.

11. The learned counsel for the appellant would submit that the testimony of P.W.3, who is a chance witness, is most untrustworthy, and basing on her evidence, recording of conviction by the trial Court is erroneous. He submits that P.W.3 proved to be most untrustworthy witness in view of the contradiction marked as Ex.D-1, and hence, without there being any corroboration to the

testimony of P.W.3, the trial Court rejected her evidence. According to him, the circumstances relied upon do not form a chain of events, so as to connect the accused with the crime. The learned counsel further submits that on the date of incident, when the deceased attacked appellant No.2/A-2, appellant No.1/A-1 intervened to save appellant No.2 and in that connection, the deceased received injuries by falling on sharp edged stone and died. He further submits that due to the civil disputes pending between the families of appellants and deceased, the appellants were implicated in the crime. He further submits that the prosecution has not proved the motive of the accused for killing the deceased and sought to set aside the judgment of the trial Court.

12. On the other hand, the learned Public Prosecutor would submit that the trial Court, by relying on the evidence of P.Ws.1 to 7 & 11 coupled with Exs.P.1, 2 and 4, found the guilt of the accused. He submits that the trial Court basing on the evidence of P.W.3, who is the eye witness, has rightly convicted the accused. He further submits that the prosecution has proved the guilt of the accused beyond reasonable doubt and hence there are no grounds to interfere with the judgment of the trial Court.

13. To appreciate the facts of the present case, it is necessary to refer to the evidence of necessary witnesses. P.W.1, who is the brother of the deceased, deposed that on the date of incident, P.W.3 informed him that A-1 and A-2 beat the deceased, due to which, the deceased died. He also deposed about the purchase of land by his family and the family of the accused and the civil disputes

pending between them. He also deposed that earlier when A-1 beat the deceased and caused injury to his hand, they reported the matter to the police as well as to the MRO, Rambilli. He further deposed about the incident of accused family killing hens by giving poison which took place one year prior to the date of incident. P.W.2, who is the wife of the deceased, also spoke in the similar lines.

14. P.W.3, in her evidence, deposed that on the date of incident, she went to her field for handing over the breakfast to her husband. In her return, she found a galata in the fields of the deceased and she went there and observed that A-1 beat the deceased with crowbar. She explained the incident stating that at first A-1 beat the deceased with crowbar on his leg, then the deceased bend upon and then again A-1 beat the deceased with same crowbar on the back side of the head. Then the deceased fell on the ground and died on the spot. Immediately, she went to the house and informed the same to P.W.1. It is to be noted that P.W.3, in her statement under Section 161 of Cr.P.C., gave contradictory statement. She stated that on 06.01.2010, at about 9.30 am., she saw that A-1 and A-2 beating the deceased with their hands; that on beating by A-1 with crowbar on the backside of head of the deceased, he fell down and that thereafter, she went away.

15. P.Ws.4 to 7, who are the residents of Govindapalem Village of Rambilli Mandal, deposed that they came to know about the incident through others.

16. P.W.8, the doctor who conducted the postmortem examination over the dead body of the deceased, issued postmortem report opining that the deceased died due to head injury. He found five external injuries on the dead body of the deceased i.e., (1) back side of the head 2X2 cm deep cut injury, (2) tear injury on upper part of lip present, (3) contusion at below right eye 4X4 cm present, (4) 2X2 cm abressions were also present on the back of right shoulder and (5) 5X5 cm deep cut injury on the lower part of medium side of the left leg.

17. It may be noted that no prosecution witness has said that A-2 beat the deceased resulting in his death or otherwise attributed any indirect role to A-2 in the incident which resulted in the death of the deceased, except speaking about her presence at the scene. A-2, in her statement before P.W.11, Investigating Officer, stated that she was attacked by the deceased and sustained injuries. This is also confirmed by the evidence of D.W.1, the doctor who treated A-2 on 06.01.2010 and gave Ex.X-4 wound certificate. This Ex.X-4 shows that A-2 sustained six injuries, five are simple and one is grievous. In view of this evidence, which overwhelmingly shows that A-2 did suffer injuries at the hands of the deceased, the statement of P.W.3 in her cross examination that she did not see any injuries on A-2 can be ignored. Thus, to repeat, except the presence of A-2 at the scene, no role is attributed to her in the incident by any of the prosecution witnesses.

18. Now coming to the role of A-1, the medical evidence consisting of wound certificate and the oral evidence of the medical officer who conducted the postmortem examination and the oral evidence of P.W.3 (eye witness), would convincingly disclose that A-1 attacked the deceased with a crowbar and caused the serious head injury which proved to be fatal.

19. It may however be noted that the evidence of P.W.3, the sole eye witness, would disclose that the whole incident broke out on the spot because of an altercation which suddenly developed there because of some disputes. What should be noted is that the evidence does not disclose any intention on the part of A-1 or even A-2 to cause the death of the deceased. It is clear that A-1 attacked the deceased out of anger and sudden provocation as the deceased attacked A-2. There are no multiple injuries of crowbar to indicate that it is a pre-planned and coldblooded murder committed by A-1. The *mens rea*, on the part of A-1 in killing the deceased, is also not proved. It can be concluded that A-1 caused the above injury not with any intention to cause the death of the deceased, but only with the knowledge as is likely to cause death falling under Section 304 Part II IPC.

20. In the above circumstances, we are of the considered opinion that the evidence does not disclose any guilt on the part of A-2 and therefore this appeal in so far as A-2 is allowed.

21. Turning to A-1, for the reasons aforesaid, his conviction is modified into an offence under Section 304 Part II IPC. Coming to

the sentence imposed on him, in the circumstances of this case, we consider that the sentence of imprisonment already undergone by him would be sufficient to meet the ends of justice by maintaining the fine. The appellants/A-1 and A-2 shall be set at liberty forthwith unless they are required in connection with any other case. The fine amounts, if any, paid by A-2 shall be refunded.

C.PRAVEEN KUMAR, J

Date: 27.03.2018
TJMR

T.AMARNATH GOUD, J

