

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

CRIMINAL APPEAL NO. 72 OF 2012.

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

This appeal is filed by the appellants-A1 to A3 under Section 374 (2) Cr.P.C. challenging the judgment, dated 20.01.2012 in Sessions Case No.198 of 2010 on the file of the Special Judge for Trial of cases under SCs & STs(POA) Act-cum Addl. District and Sessions Judge, Vizianagaram, wherein and whereby the learned Sessions Judge convicted A1 to A3 under Section 341 IPC and, sentenced them to suffer Rigorous Imprisonment for one month each. He further convicted A1 under Section 302 IPC and sentenced him to suffer Rigorous Imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer Rigorous Imprisonment for a period of six months. He further convicted A2 and A3 under Section 302 r/w 34 IPC and accordingly, sentenced each of them to suffer Rigorous Imprisonment for life and to pay a fine of Rs.1,000/- each, in default to suffer Rigorous Imprisonment for a period of six months each. All the sentences were directed to run concurrently.

2. The grave-man of the charge against the accused is that on 24.09.2009 at about 11.30 P.M., near Balaji International Hotel, Vizianagaram, the accused is said to have caused the death of Kandala Sattibabu (hereinafter referred to as 'the deceased'), by beating him with sticks on his forehead.

3. The facts as culled out from the evidence of the prosecution witnesses are as under:

P.W.1 is the younger brother and P.W2 is the wife of the deceased. P.Ws. 3 and 4 are residents of Vizianagaram. The evidence on record discloses that on the date of incident at about 10.30 P.M., P.W.4 along with P.W.1 went to Pydithallamma temple to watch a Burrakatha. At that time, the deceased came

there on a rickshaw belonging to one Demudu and asked P.W.4 and P.W.1 to accompany him and forcibly made them to sit on the rickshaw. They all went to N.C.S. theatre, where the deceased consumed alcohol. While they were returning back and when reached Balaji Lodge, three persons came in an auto and stopped the rickshaw, in which the deceased and P.Ws. 1 and 4 were travelling. The said three persons got down from the auto holding sticks. On seeing them, P.W.1 ran away from that place. It is the evidence of P.W.4 that all the three persons beat the deceased. On seeing the same, P.W.4 and P.W.1 ran away from the scene and went to the house of his Senior Paternal uncle of P.W.1 by name Pydiraju. After furnishing information to the said Pydiraju, P.W.4, P.W.1 and Pydiraju went to the scene, where they found the deceased with injuries. One Mani, is said to have telephoned for 108 Ambulance. On arrival of 108 Ambulance, the deceased was shifted to Government Hospital in the said vehicle. On the next day at about 7.00 A.M., P.W.1 lodged a report with the police, basing on which a case in Cr.No.310 of 2009 came to be registered by P.W.8 for the offence punishable under Section 302 r/w 34 IPC by the Sub-Inspector of Police. After receipt of F.I.R., P.W.8-the Inspector of Police, took up investigation in the case and reached the scene of offence, which is situated near the Railway Station, opposite to Hotel Balaji International. He prepared an observation report and also a rough sketch in the presence of mediators, which are marked as Ex.P8 and P9. Thereafter, he visited the Government Hospital, Vizianagaram and found the dead body of the deceased in the mortuary. In the said mortuary, he held inquest over the dead body of the deceased. Ex.P2 is the inquest report. Thereafter, the dead body was sent for post-mortem examination. P.W.9-the Civil Assistant Surgeon, Vizianagaram, conducted autopsy over the dead body of the deceased and issued Ex.P12-post-mortem report. According to him, the cause of death was due to external injuries with a blunt object like stick. P.W.8 continued with the investigation and examined other witnesses.

On 01.10.2009, he arrested A1 to A3 under a cover of mahazar and recorded their confessional statements. Pursuant to his confession made, M.O.1-stick, said to have been used in the offence was seized. After collecting the documents, he filed the charge sheet, which was taken on file as PRC No.12 of 2010 on the file of Addl. Judl. Magistrate of I Class, Vizianagaram. On appearance of the accused, all the necessary documents were furnished in terms of Section 207 Cr.P.C. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Session, the learned Magistrate committed the case to the Court of Session under Section 209 Cr.P.C., which came to be numbered as Sessions Case No.198 of 2010.

4. Charges under Sections 341 IPC against A1 to A3, under Section 302 IPC against A1 and under Section 302 r/w 34 IPC against A2 and A3 came to be framed, read over and explained to the accused in Telugu, to which they pleaded not guilty and claimed to be tried.

5. To substantiate their case, the prosecution examined P.Ws.1 to 10 and got marked Exs.P1 to P12 and M.O.1.

6. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses, to which, they denied. No oral evidence was adduced on behalf of the accused except marking Ex.D1, which is a contradiction of 161 Cr.P.C. statement of P.W.1.

7. Basing on the evidence of P.Ws. 1 and 4, the trial Court convicted and sentenced the accused as stated above. Challenging the same, the present appeal came to be filed by A1 to A3.

8. Now, the point that arises for consideration in this Criminal Appeal is whether the prosecution has proved its case

against the appellants/A1 to A3 for the offences with which they were charged, beyond all reasonable doubt and whether the judgment of the trial Court is correct, legal and proper?

9. The entire case rests upon the evidence of P.Ws.1, 4 and 8. The fact that it is a case of homicidal death is not in dispute in view of the evidence of P.W.9-the Doctor, who categorically stated that external injuries found on the body of the deceased are responsible for the death.

10. Now, the question is whether the accused are responsible for the death of the deceased.

11. P.W.4 in his evidence deposed that on the date of incident at about 10.30 P.M., himself and P.W.1 went to Pydithallamma temple to watch Burrakatha. At that time, the deceased came in a rickshaw and forcibly made P.W.4 and P.W.1 to sit on the rickshaw. They all went to N.C.S. theatre, where the deceased consumed alcohol. When they reached Balaji Lodge, on their return journey, three persons came in a auto and stopped the rickshaw, in which the deceased, P.W. 4 and P.W.1 were travelling. The said three persons, who got down from the auto were armed with sticks. On seeing them, P.W.4 and P.W.1 ran away from the scene. It is the further evidence of P.W.4 that the deceased sustained injuries on the fore head, knees and there was bleeding from his nostrils and ears. P.W.1 and P.W.4 went to the house of Pydiraju (not examined) and thereafter, all of them came to scene of offence and found the deceased lying with injuries. The deceased was shifted to the Government Hospital in 108 ambulance.

12. From the evidence of P.W.4, who was examined as an eye witness to the incident, it is evident that initially they went to a temple and from there, he along with P.W.1 and the deceased went to N.C.S. theatre, where the deceased consumed alcohol. On returning, when they reached Balaji Lodge, three persons

came in an auto and stopped the rickshaw, in which they were travelling. Three persons got down from the auto holding sticks. On seeing them, P.W. 4 and P.W.1 went to the house of Pydiraju and informed him about the incident. The said Pydiraju was not examined. Be that as it may, in the cross-examination, P.W.4 admits that he did not consume alcohol with the deceased, just before the incident, but informed before the police that he along with the deceased consumed alcohol. He further admits that he does not know the names of the persons, who got down from the auto and that he did not give physical features of the persons who alighted from the auto. He did not tell to police that in case they are shown to him, he would identify them.

13. In the absence of any test identification parade being conducted as to the identification of the persons, who are responsible for the death of the deceased, it is difficult to believe the identification for the first time in the Court. In fact, P.W.4 was never asked to identify the accused in the Court also. If the evidence of P.W.4 is tested with the evidence of P.W.1, a different picture is projected. According to P.W.1, on the date of incident, himself and P.W.4 went to watch Burrakatha and from there, they came to the road point to take tea. He was informed by the tea stall owner by name Nagaraju about the galata in between the deceased and the accused near Balaji Lodge. Thereafter, he went to the house of Pydiraju, who is his senior maternal uncle and informed him about the galata. Later all of them proceeded to the scene of offence and found the deceased lying with the injuries on leg, fore head and other parts of the body. The deceased was unconscious and there was profuse bleeding from the nostrils and head injury.

14. The evidence of P.W.1 discloses that on the date of incident they went to watch Burrakatha and from there, they went to a hotel to take tea, which is totally contrary to the version of P.W.4. The evidence of P.W.1 shows that they were informed about the galata by hotel owner Nagaraju. The

evidence of P.W.1 is totally contrary to the evidence of P.W.4 with regard to how they came to know about the incident. Therefore, a doubt arises as to whether really P.Ws. 1 and 4 have witnessed the incident.

15. P.W.2 is the wife of the deceased. Her evidence is that she received a telephone call from unknown person about the death of the deceased. Then, she immediately went to Government Hospital, Vizianagaram and found the dead body of the deceased.

16. P.W.3 is a resident of Vizianagaram. His evidence is that on the date of incident at about 11.00 P.M., he found a person lying with injuries on the road near Balaji Lodge and several persons gathered there. He made a call for 108 from his Mobile. After arrival of 108 vehicle, the injured was shifted to the hospital in the ambulance. His evidence shows that neither he was an eye witness to the incident nor was he informed about the participation of the accused in the incident.

17. P.W.5 is a panch witness to the inquest. P.W.6 is the photographer, who took the photographs of the scene of offence.

18. P.W.8 is the Inspector of Police. He deposed that he conducted investigation and filed charge sheet. In the cross-examination, he admits that a rowdy sheet was opened against the deceased and the deceased was in the habit of extracting money from others under threat and coercion. He also admits that he did not send the rough sketch to the scene along with his report to the Court.

19. P.W.9 is the doctor who conducted post-mortem examination on the dead body of the deceased. According to him, the cause of the death was due to injuries caused by a blunt object like stout stick. P.W.10 is the person, in whose presence the police observed the scene of offence and seized M.O.1-stick under Ex.P9-seizure mahazar.

20. As discussed earlier, the evidence of P.Ws. 1 and 4, who are pressed into service to connect the accused with the crime, does not inspire any confidence. The evidence of these witnesses runs contra to each other. Hence, a doubt arises as to whether really they have witnessed the incident.

21. In view of the foregoing discussion, we have no hesitation to hold that the prosecution miserably failed to prove the guilt of the appellants-A1 to A3 beyond all reasonable doubt and hence, the appellants-A1 to A3 are entitled for an acquittal.

22. In the result, Criminal Appeal is allowed. The conviction and sentence recorded in S.C.No.198 of 2010 by the Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-Addl. District and Sessions Judge, Vizianagaram, against A1 to A3 for the offence punishable under Section 341 IPC, against A1 for the offence punishable under Section 302 IPC and against A2 and A3 for the offence punishable under Section 302 r/w 34 IPC are set aside. Consequently, the appellants/accused Nos.1 to 3 shall be set at liberty forthwith, if they are not required in any other case.

C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

DATED: 21-03-2018

Hsd

