

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL Nos.495/ 2012 & 231/ 2015

Date: 28.08.2018

Crl.A.No.495 of 2012

Between:

Nimmala Gangadhar

....Appellant/ Accused No.1

And:

State of A.P.rep.by the
Public Prosecutor,
High Court, Hyderabad

...Respondent

Counsel for the Appellant: Sri O.KAILASHNATH REDDY

Counsel for respondent : PUBLIC PROSECUTOR (AP)

Crl.A.No.231 of 2015

Between:

State of A.P.rep.by the
Public Prosecutor,
High Court, Hyderabad

....Appellant

And:

Nimmala Dhanalakshmi

...Respondent/ Accused No.2

Counsel for the Appellant: PUBLIC PROSECUTOR (AP)

Counsel for respondent : Sri MD SALEEM

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL Nos.495/ 2012 & 231/ 2015

COMMON JUDGMENT : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused No.2, in Sessions Case No.301 of 2009, on the file of the Judge, Family Court-cum-Additional District & Sessions Judge, S.P.S.R.Nellore District, filed Criminal Appeal No.495 of 2012, feeling aggrieved for his conviction for the offence punishable under Section 302 IPC and sentencing *inter alia* to life imprisonment for the said offence, and also his conviction for the offence punishable under Section 326 IPC and sentencing to rigorous imprisonment for a period of three years, apart from imposing fine of Rs.500/- for each of the offences.

2. The State has filed Criminal Appeal No.231 of 2015 against the very same judgment, referred to above, to the extent of the acquittal of the respondent/Accused No.2.

3. The case of the prosecution, as set out in the charge sheet, is briefly stated hereunder:

Prior to the incident, a quarrel occurred between Accused No.1 and one Thalamanchi Nageswaramma (hereinafter referred to as "the deceased") and since then accused developed grudge against the deceased. On 01.05.2009 at 5.30 p.m, while the deceased was sitting at the house of PW 3, Accused No.2 went there and abused the deceased, and then the deceased beat Accused No.2. Accused No.2 sent her son Kotaiah to bring her husband Accused No.1. Accused No.1, along with his elder son Prathap armed with an iron rod rushed to the scene, and beat the deceased with the iron rod over her head and caused bleeding injury, as a result of which, the deceased fell down and died instantaneously. When PW 2 questioned the highhanded acts

of Accused No.1, he was also beaten by the said Accused with iron rod on his head causing a grievous injury. When the witnesses intervened, Accused No.1 chased them. PW 2 was shifted to Narayana Hospital, Nellore. PW 1 filed a report before PW 15, who registered the case for the offences punishable under Sections 302 and 326 r/w.Sec.34 IPC of Indukurpet Police Station and took up investigation. After completion of investigation, PW 12 filed the charge sheet.

4. Based on the charge sheet filed and the material produced by the Investigating Officer, the court below has framed the following charges:

FIRSTLY: That A1 among you, on 01.05.2009 at about 05.30 p.m, at the house of Thadakaluru Ramalingaiah (LW 3) situated at Jangala Street, Indukurpet village and mandal, Nellore District, committed murder intentionally causing the death of Thalamanchi Nageswaramma and thereby A1 among you committed an offence punishable under Section 302 of the Indian Penal Code and within the cognizance of this Court.

SECONDLY: That A1 among you, on the same day, time and place mentioned in the first count, voluntarily caused grievous hurt to Thalamanchi Chandra Sekhar (LW 2) on his head by means of an iron rod, and thereby A1 among you committed an offence punishable under Section 326 of the Indian Penal Code and within the cognizance of this Court.

THIRDLY: That A2 among you, on the same day, time and place mentioned in the first count, in furtherance of common intention along with A1 among you, and at that time, A1 among you committed murder intentionally causing the death of Thalamanchi Nageswaramma and thereby A2 among you committed an offence punishable under Section 302 r/w.34 of the Indian Penal Code and within the cognizance of this Court.

FINALLY: That A2 among you, on the same day, time and place mentioned in the first count, in furtherance of common intention along with A1 among you, and at that time, A1 among you voluntarily caused grievous hurt to Thalamanchi Chandra Sekhar (LW.2) on his head by means of an iron rod, and thereby, A2 among you committed an offence punishable under Section

326 r/w.34 of the Indian Penal Code, and within the cognizance of this Court.”

The above charges were read over and explained to Accused Nos.1 & 2 in Telugu, for which they pleaded not guilty.

5. As the plea of the accused is one of denial, they were subjected to trial, during which, the prosecution has examined PWs 1 to 16, got Exs.P1 to P20 marked and produced M.Os.1 to 6. On behalf of defence, DWs 1 to 3 were examined and Ex.D1 was marked.

6. On appreciation of both oral and documentary evidence, the court below has acquitted Accused No.2 and convicted and sentenced Accused No.1, in the manner, as noted hereinbefore.

7. We have heard both the learned counsel for both sides and perused the record.

8. Taking appeal of the State first, the genesis of the occurrence was traceable to a quarrel between the deceased and Accused No.2. The prosecution has not pleaded that once Accused No.1 entered the scene, Accused No.2 had any role, except allegedly provoking Accused No.1 that the punishment is the same even if more than one person is attacked. The Court below did not believe, and in our view rightly, this version of the prosecution, on the ground that no such allegation was made in Ex.P1 report given by PW 1. Moreover, the defence was able to extract omission from the deposition of PW 12, who stated that none of the witnesses stated that Accused No.2 instigated Accused No.1 by uttering the words, referred to above. When the prosecution failed to prove the said words attributed to Accused No.2, the theory of common intention put forth by it must fail for the simple reason that even as per its own version while a quarrel was taking place between Accused No.2 and the deceased, the former has sent her son to inform and bring his father, i.e., Accused No.1. It is the further case of the prosecution

that as soon as Accused No.1 has arrived at the scene, he attacked the deceased. Therefore, the prosecution could not establish “meeting of minds”, which are *sine quo non* to attract Section 34 IPC. Hence, we are of the opinion that acquittal of Accused No.2 by the Court below does not call for any interference.

9. As regards conviction of Accused No.1, apart from others, PW 3 is a direct eyewitness, near whose house Accused No.1 has attacked the deceased. The prosecution was able to prove that PW 2 arrived at the scene immediately on Accused No.1 attacking the deceased, and even he was attacked by the said Accused causing grievous injury. Therefore, PW 2 being an injured witness, though he may not have seen Accused No.1 actually attacking the deceased, his presence at the scene of offence immediately after the attack, is established by the prosecution. Ocular evidence stood corroborated by the medical evidence and also recovery of M.O.1 from the house of Accused No.1 based on Ex.P10 confessional statement. Recovery was witnessed by Ex.P11 mediators’ report, to which PW 9 is a panch witness.

10. Being conscious of the cogent and credible evidence, as discussed above, Sri O.Kailashnath Reddy, learned counsel for the Appellant/Accused No.1, has put forth his alternative submission that the offence may be converted into one under Section 304 Part-II IPC. In support of this plea, the learned counsel submitted that the fact that Accused No.1 did not use dangerous weapons, such as knife, axe etc., shows that he did not have any intention of causing death, though he may have had the knowledge that the two injuries caused on the head of the deceased are sufficient in ordinary course to cause the death. He further submitted that though Ex.P7 postmortem report shows two injuries, injury No.2 is obviously a

corresponding injury. In support of his submission, he placed reliance on Ex.P3 inquest report.

11. The learned counsel further urged that on hearing that the deceased was beating his wife, Accused No.1 might have come under grave and sudden provocation, resulting in his causing injury on the head of the deceased. He further submitted that Accused No.1 has undergone imprisonment continuously for nearly 7 years and that a lenient view may be taken.

12. A perusal of Ex.P3 inquest report shows that 4½” cut injury was found on the right side of the head of the deceased projecting straight. Even in Ex.P7 postmortem report, PW 11 opined that the cause of death is as a consequence of shock and hemorrhage “due to head injury”. We therefore find force in the submission of the learned counsel that Accused No.1 has dealt only one blow which proved fatal. In the above facts and circumstances of the case, we are of the opinion that intention to cause death cannot be attributed to Accused No.1. However, we cannot rule out knowledge on the part of Accused No.1 that the blow as given to the deceased is sufficient in ordinary course to cause death of the deceased.

13. After hearing the Public Prosecutor and having given our earnest thought, we find the submissions of the learned counsel convincing. As submitted by him, Accused No.1 came armed with an iron rod, which is generally not considered as a lethal weapon, though depending upon the force, with which it is used, may cause fatality as happened in the instant case. In our opinion, information that his wife was being beaten by the deceased might have provoked Accused No.1 to retaliate and cause injuries to the deceased. In the facts and circumstances of the case, we feel persuaded to hold that Accused No.1 did not have intention of causing death,

but in grave and sudden provocation he has caused injuries on the head of the deceased, with the knowledge that they would in ordinary course cause the death. In these facts and circumstances of the case, we feel that it is a fit case for converting the conviction from Section 302 IPC to Section 304 Part-II IPC, while confirming the conviction and sentence imposed on Accused No.1 for the offence punishable under Section 326 IPC.

14. In the result, Criminal Appeal No.231 of 2015, filed by the State, against the acquittal of Accused No.2, is dismissed. Criminal Appeal No.495 of 2012, filed by Accused No.1, is partly allowed. The conviction and sentence recorded against the appellant/Accused No.1 in the judgment, dated 01.06.2012, in Sessions Case No.301 of 2009, on the file of the Judge, Family Court-cum- Additional District & Sessions Judge, S.P.S.R.Nellore District, for the offence punishable under Section 302 I.P.C., is modified to that for the offence under Section 304 Part-II IPC, and the sentence of life imprisonment is converted into rigorous imprisonment for 7 (seven) years, while confirming the sentence imposed by the trial Court against the appellant for the offence punishable under Section 326 IPC. The fine imposed by the trial court for both the offences is sustained.

(C.V.NAGARJUNA REDDY, J)

(T.AMARNATH GOUD, J)

Date: 28.08.2018
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