

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A. Abhishek Reddy

CrI.A. 1224 of 2012

Date: 02-11-2019

Between:

Kukkala Gangaram and another

...Appellants/accused Nos.1 & 2

And

The State of A.P.,
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad

...Respondent

Counsel for the appellants: Mr. B. Vijaysen Reddy

Counsel for the respondent: Mrs. Juvvadi Sridevi, APP

The Court made the following:

Judgment: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

The appellants (accused Nos. 1 and 2) have challenged the legality of the judgment dated 14-03-2012, passed by the VI Additional District and Sessions Judge (Fast Track Court), Nizamabad at Kamareddy, whereby while acquitting accused No. 3, the learned Sessions Judge has convicted the appellants (accused Nos. 1 and 2) for the offence under Section 302 IPC, sentenced them to undergo Life Imprisonment, and imposed a fine of Rs.1,000/-, with default clause to undergo Simple Imprisonment for four months.

For convenience, the appellants shall be referred as accused Nos. 1 and 2.

Briefly, the facts of the case are that Kukkala Gangaram (accused No. 1) is the son of Kukkala Sangaiah (accused No. 2) and Kukkala Shivamma (accused No. 3). All three of them are residents of Yellareddy Village. Their agricultural land is adjacent to the land of Sivahgari Sangagoud (hereinafter referred as 'the deceased'). The accused persons wanted to dig a channel through the

agricultural land belonging to the deceased, in order to irrigate their lands. However, the deceased objected to the same. On 20-07-2010, when the deceased was working in his agricultural land along with Rodda Narsimulu (P.W. 3) and Sattigari Pochaiah (P.W. 4), at about 1:30 p.m., all the three accused came to his land. There was exchange of hot words in filthy language between the deceased and the accused persons. While accused No. 1 hit the deceased with a spade on his head, accused No. 2 assaulted the deceased with a stick. Due to the assault, the deceased collapsed and died. According to the prosecution, Rodda Narsimulu (P.W. 3) tried to save the deceased from the assault of the accused, during which, he too received injuries on his right eye, and on his right shoulder. Having hit the deceased, and the deceased having collapsed, the accused persons left the scene of the offence. On 20-07-2010 itself, Shivaiahgari Supritha (P.W. 1) filed a complaint before the Police Station, Yellareddy, wherein she not only named all the three accused persons, but also claimed as under:

“We have agricultural land at Gandhi Cheruvu Shivar, Yellareddy. Under our fields there are fields of Kukkala Sangia’s of Yellareddy. Kukkala Sangaiah and his son Gangaram often have illegally dug canal from our fields to their fields to irrigate their fields. In this matter he used

harass my husband very often. In this regard when my husband approached Tahsildar, Yellareddy there was no result. Even then used to threaten. Today dated 20-07-2010 when my husband went to the fields, as per preplan at about 3.00 p.m., 1) Kukkala Gangaram son of Sangaiah and his father 2) Kukkala Sangaiah and wife of Sangaiah 3) Shivavva Kukkala, all the three beat my husband on the head by means of spade (Para) and stick (Katte) and due to the injury the head is broken and he died on the spot and lying in the mud. Knowing this, I along with my family members went there and found my husband Sanga Goud lying dead in the mud (Burada) in the pool of blood, in our fields. Today Tota Narsimlu and Santtigari Pochaiah who came to our fields on labour, in their presence, Kukkala Gangaram, his father Sangaiah and his mother Shivavva, have killed my husband and also caused injuries to Narsimlu who intervened.”

During the course of the investigation, the police arrested all the three accused persons, and put them up for trial. In order to establish its case, the prosecution examined thirteen witnesses, submitted twelve documents, and produced seven material objects. The defence did not adduce any oral, or documentary evidence. After appreciating the evidence, the learned trial Court acquitted accused No. 3, but convicted accused Nos. 1 and 2 for the aforementioned offence and sentenced them accordingly.

During the pendency of this appeal, accused No. 2, *namely* Kukkala Sangaiah, expired. Therefore, the present

appeal is being argued only on behalf of accused No. 1, *namely* Kukkala Gangaram.

Mr. B. Vijaysen Reddy, the learned counsel for the appellants, has raised the following contentions before this Court:-

Firstly, Rodda Narsimlu (P.W. 3) and Sattigari Pochaiah (P.W. 4) are concocted witnesses. Therefore, they are unreliable witnesses.

Secondly, since no sketch of the place of occurrence is available, it is unknown as to where exactly the incident had taken place. Therefore, the genesis of the case has been withheld intentionally by the prosecution. According to the learned counsel, this casts a doubt on the case of the prosecution itself.

Thirdly, in the alternative, the learned counsel has also pleaded that even if the case of the prosecution were accepted to be true, the offence does not fall within the ambit of Section 302 IPC. For, according to both Rodda Narsimlu (P.W. 3) and Sattigari Pochaiah (P.W. 4), before the deceased was assaulted, there was exchange of hot words in filthy language. Thus, the incident had occurred at the

spur of the moment. Furthermore, there was no preplan as there was no deadly weapon carried by the accused persons. Allegedly, accused No. 1 had used a spade to assault the deceased. Thus, the accused did not have the intention to cause the death of the deceased. At best, only knowledge can be attributed to them. Hence, the case would not fall beyond the ambit of Section 304 Part II IPC.

On the other hand, Mrs. Juvvadi Sridevi, the learned Additional Public Prosecutor, has vehemently pleaded as under:-

Firstly, Rodda Narsimlu (P.W. 3) happens to be an injured witness. Therefore, his presence at the scene of the crime cannot be doubted. According to him, he was assaulted by accused No. 1, when he had tried to save the deceased from the assault of accused No. 1.

Secondly, Sattigari Pochaiah (P.W. 4) has not been shattered in his cross-examination. Therefore, there is no reason to disbelieve the testimonies of Rodda Narsimlu (P.W. 3) and Sattigari Pochaiah (P.W. 4). In fact, they were asked by the deceased to come and work as coolies at his agricultural land in order to help him to transplant the crop.

Therefore, their presence at the scene of the crime at the relevant time cannot be doubted.

Thirdly, even if the incident is taken to have occurred at the spur of the moment, the fact that the deceased was hit so hard with a spade on the head that the brain matter came out clearly shows that accused No. 1 had the intention to cause the death. Therefore, the case would not fall within the ambit of Section 304 Part II IPC, but would fall within the ambit of Section 304 Part I IPC.

Lastly, the testimonies of Rodda Narsimlu (P.W. 3) and Sattigari Pochaiah (P.W. 4) have been corroborated by Dr. Vasudeva Naik (P.W. 10), the medical officer, who had conducted the autopsy of the dead body. According to him, there were two injuries on the dead body; *firstly*, a cut injury on the right side of the head; *secondly*, an abrasion at the right arbitral area. The cause of death was due to shock as a result of cut injury on the right side of the head. Even according to the said witness, the brain contents of the skull had come out. Thus, according to the learned Additional Public Prosecutor, the appellant has been rightly convicted of offence under Section 302 IPC. Hence, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

Shivaiahgri Supritha (P.W. 1) informs the Court in her examination-in-chief that accused Nos. 1 to 3 had demanded her husband (deceased) to permit them to dig irrigation channel through his lands, but he refused. Therefore, disputes periodically erupted between the parties for the last two to three years. Initially, her husband filed a complaint before the Tahsildar of Yellareddy, but there was no response. Subsequently, her husband filed a complaint at the Yellareddy Court. According to her, on 20-07-2010, around 2:00 to 3:00 p.m., her husband went to their agricultural land. At that time, Rodda Narsimlu (P.W. 3) and Sattigari Pochaiah (P.W. 4) were working in their land. According to her testimony, *“Again the accused demanded to permit them to dig channel through our land for which my husband refused. On which A2 bet (sic) my husband with a stick on his head, and A1 also beat my husband with spade. While A1 and A2 were beating my husband A3 caught hold of my husband”*. Since she was informed by Mohd. Nayeem (P.W. 5), she rushed to the scene of the crime. When she reached their agricultural land, both Rodda

Narsimlu (P.W. 3) and Sattigari Pochaiah (P.W. 4) were present in the land. Subsequently, she lodged an FIR with the Police Station, Yellareddy.

Since Rodda Narsimlu (P.W. 3) is an injured witness, since he is an independent witness, his testimony cannot be doubted, especially, considering the fact that he has not been shattered in the cross examination. In his examination in chief, he has stated, *"Deceased Sanga Goud called me and LW7 Pochaiah for coolie work. We went for coolie work at about 11:00 a.m. Sanga Goud came to the fields at about 1:30 p.m. Disputes were there in respect of the irrigation channel; altercation took place A1 to A3 abused Sanga Goud by using filthy language. While abusing A2 bet (sic) Sanga Goud on his head with stick, and A1 bet (sic) the deceased with a spade on his head. Both of them bet (sic) with stick and spade indiscriminately, while A3 bet (sic) the deceased with legs. I tried to intervene along with LW.7 Pochaiah on which I was also beaten by A1 and A2. I received injury on right side of my right eye and on right shoulder. Out of fear, we went aside. All the accused beat the deceased indiscriminately until he died and the brain matter of the deceased came out then they left."*

The testimony of Sattigari Pochaiah (P.W. 4) is on the same lines as that of Rodda Narsimlu (P.W. 3). Therefore, Sattigari Pochaiah (P.W. 4) corroborates the testimony of Rodda Narsimlu (P.W. 3). Since both these witnesses happen to be independent witnesses, since their presence is also corroborated by Shivaiahgari Supritha (P.W. 1), there is no reason to disbelieve their testimony.

According to the testimony of Dr. Vasudeva Naik (P.W. 10), on 21-07-2010 at 9:00 a.m., he received a requisition from the Station House Officer, Yellareddy, to conduct autopsy on the body of Shivaiahgari Sanga Goud. During the autopsy, he discovered the following injuries:

- “1. Cut injury at the right side of the head 4 x 2 x 1 cms Brain content came out of the skull. Anti-mortem injury caused by sharp weapon.
2. Abrasion right orbital area $\frac{1}{2}$ x $\frac{1}{2}$ cms, blackish in colour, anti-mortem injury.”

According to this witness, the cause of death was due to shock as a result of cut injury on the right side of the head. He also proved the Post-Mortem Report (Ex. P.9). He further clearly states that injury No. 1 is possible if the person is hit by a spade.

Considering the oral and documentary evidence, obviously, the prosecution has succeeded in establishing that the deceased had died a homicidal death at the hands of accused No. 1.

However, the issue before this Court is whether the case falls within the ambit of Section 302 IPC, or within the ambit of Section 304 Part I or II of IPC ?.

According to the testimony of Shivaiahgari Supritha (P.W. 1), on 20-07-2010, the accused had demanded her husband to permit them to dig a channel through his agricultural land. However, the said permission was refused. According to the testimony of Rodda Narsimlu (P.W. 3) and Sattigari Pochaiah (P.W. 4), hot words in filthy language were used. Thus, tempers ran high, and at the spur of the moment, accused No. 1 hit the deceased with a spade on his head. If, indeed, the accused persons had the intention to commit a cold blooded murder of the deceased, they would not have carried merely a spade, which is generally used for the purpose of digging a channel. Instead, they would have been armed with a deadly weapon.

According to the testimony of Rodda Narsimlu (P.W. 3) and Sattigari Pochaiah (P.W. 4), the deceased was indiscriminately assaulted by accused No. 1 and indiscriminate assault would have left more than two injuries on the body of the deceased. However, according to Dr. Vasudeva Naik (P.W. 10), there were only two injuries on the body of the deceased. Injury No. 1 is the cause of death, and injury No. 2 is a simple injury. Therefore, it is a case of causing a single injury on the head of the deceased.

Although the learned counsel for the appellants has vehemently contended that since it is a case of single injury, only knowledge can be attributed that death is likely to be caused, thereby, the case would fall within the ambit of Section 304 Part II IPC, the said argument is unacceptable. For, even if it is a case of single injury, nevertheless, the injury is on the vital part of the body, *namely* the head. Moreover, the fact that the brain matter came out clearly shows the force with which the blow was struck on the head of the deceased. Thus, even if the incident had occurred at the heat of the moment, accused No. 1 certainly had the

intention to cause the death. Therefore, the case clearly falls within the ambit of Section 304 Part I IPC.

For the reasons stated above, this appeal is partly allowed.

The conviction recorded against the appellant No. 1 (accused No. 1), *namely* Kukkala Gangaram, S/o. Kukkala Sangaiah, in the Judgment, dated 14.03.2012, in Sessions Case No. 66 of 2011, on the file of the VI Additional District & Sessions Judge (Fast Track Court), Nizamabad at Kamareddy, is altered from the offence under Section 302 IPC to Section 304 Part I IPC. The sentence is reduced from 'Life Imprisonment' to 'ten years of Rigorous Imprisonment'. The fine amount and the default sentence as recorded by the learned trial Court are sustained.

As the appellant No. 1 (accused No. 1) is on bail, his bail bonds shall stand cancelled. The appellant No. 1 (accused No. 1), *namely* Kukkala Gangaram, S/o. Kukkala Sangaiah, is directed to surrender immediately before the

Superintendent, Central Prison, Cherlapalli, to undergo the remaining period of his sentence.

The Criminal Appeal *qua* appellant No. 2 (accused No. 2), *namely* Kukkala Sangaiah, s/o Kukkala Lingaiah, stands abated, in view of his death during the pendency of this Criminal Appeal.

As a sequel, miscellaneous petitions, pending if any, stand dismissed as infructuous.

(Raghvendra Singh Chauhan, CJ)

(A. Abhishek Reddy, J)

Dt: 02-11-2019
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