

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl. A. No. 298 of 2013

Date: 09-07-2019

Between:

Gajjala Anjaneyulu

...Appellant

and

State of Telangana
Rep. by its Public Prosecutor
High Court of Andhra Pradesh,
Hyderabad

...Respondent

Counsel for the appellant:

Mr. M. Achutha Reddy

Counsel for the respondent:

Public Prosecutor

The Court made the following:

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

Gajjala Anjaneyulu, the appellant (accused No.1), has challenged the legality of the judgment dated 12-03-2013, passed by the III Additional District and Sessions Judge (Fast Track Court) Gadwal, in S.C.No. 311 of 2012, whereby the learned Sessions Judge has convicted the appellant (accused No.1) for the offence under Section 302 IPC, sentenced him to undergo life imprisonment, imposed a fine of Rs.2,000/-, and directed that in case of default, he shall undergo simple imprisonment for a period of six months.

Briefly, the facts of the case are that on 03-09-2011, around 4:00 p.m., Anjaneyulu (PW.1) lodged a report at the Police Station, Dharoor, wherein he claimed that on that day around 10:00 a.m., he went to his agricultural field along with his family members. When they were working, his neighbour, the appellant (accused No.1), came with a tractor, and ploughed their land. When his father, Dodla Mashanna, objected to the same, the appellant (accused No.1) beat him with a stick. His father received bleeding

injury on his head. On the basis of this complaint, a formal FIR, namely FIR No.84 of 2011, was chalked out for the offence under Section 324 IPC. However, with the death of the deceased Dodla Mashanna, the offence was converted from the one under Section 324 IPC to one under Section 302 IPC.

During the course of investigation, the police arrested not only the present appellant, but also Gajjala Krishnaiah (accused No. 2) and Gajjala Sambasivudu (accused No. 3), and put them on trial. In order to support its case, the prosecution examined eleven witnesses, and submitted ten documents, and three articles. However, the defence neither examined any witness, nor relied on any documentary evidence. After appreciating the evidence, by the judgment under appeal, the learned trial court convicted the appellant (accused No.1) as aforementioned, but acquitted accused Nos. 2 and 3 of the offence under Section 302 r/w 34 IPC. Hence, the present appeal before this Court.

Mr. M. Achuta Reddy, the learned counsel for the appellant (accused No.1), has raised the following contentions before this Court:

Firstly, the case of the prosecution is unreliable as it has changed the place of assault. According to Anjaneyulu (PW.1), Govindamma (PW.2), and S. Anjaneyulu (PW.3), the place of occurrence is the field belonging to the deceased. However, both according to Bazaranna (PW.4), the driver of the tractor, and according to the site plan (Ex.P.3), the place of occurrence happens to be the field belonging to the appellant (accused No.1.).

Secondly, although according to Anjaneyulu (P.W.1), as stated by him in the first complaint given by him (Ex.P.1), it is only the appellant (accused No.1), who had assaulted the deceased, but according to the second complaint given by him (Ex.P.2), he had assigned specific overt acts to accused Nos.2 and 3.

Thirdly, even according to the testimony of Anjaneyulu (PW.1), Govindamma (PW.2), S. Anjaneyulu (PW.3), and P. Thippanna (PW.5), the occurrence happened at the spur of the moment. Thus, there was

neither any pre-meditation, nor any intention to kill the deceased. At the heat of the moment, the appellant (accused No.1) may have assaulted the deceased. But, even then, the case would not travel beyond the scope of Section 304 Part II IPC. Hence, the learned trial Court is unjustified in convicting the appellant (accused No.1) for the offence under Section 302 IPC.

On the other hand, Mrs. Sridevi, the learned Public Prosecutor, has raised the following counter arguments:

Firstly, even if the place of occurrence has been changed, it would not be fatal to the case of the prosecution. For, Bazaranna (PW.4), the driver of the tractor, clearly states that while he was ploughing the field of the appellant (accused No.1), the deceased had come to that field, and raised an objection. Because of the altercation that took place between the deceased and the appellant (accused No.1), the latter assaulted the deceased with a stick, and caused injuries on his head.

According to the learned Public Prosecutor, this witness has not been declared as hostile, although he has deviated from the testimony of PWs. 1, 2 and 3.

Moreover, according to her, even if the place of occurrence has been changed, it would not be fatal to the case of the prosecution. For, the principle *falsus in uno, falsus omnibus* (once a liar is always a liar) is not followed in this country.

Secondly, the testimony of the eye witnesses (PWs.1 to 5) is supported by the Post-Mortem Report (Ex.P.6). According to these witnesses, the appellant (accused No. 1) had hit the deceased on the right side of the head, and had assaulted him indiscriminately. According to the Post-Mortem Report (Ex.P.6), the deceased had suffered number of injuries on his body, including the fracture of skull and the ribs. Therefore, they are reliable witnesses.

Thirdly, since the appellant had attacked the deceased on vital parts of the body *i.e.*, the skull and the chest, and had used such force so as to fracture the skull, and the two ribs of the chest, his intention and knowledge to kill the deceased is apparent.

Fourthly, the stick used for assaulting the deceased had been recovered at the instance of the appellant himself.

Lastly, since the deceased was unarmed, the learned counsel for the appellant is unjustified in claiming that it is

the deceased, who was the aggressor, and who went into the farm of the appellant (accused No.1). Therefore, the learned Public Prosecutor has supported the impugned judgment.

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

Anjaneyulu (PW.1) happens to be the son of the deceased as well as an eye-witness, and the complainant in this case. In his examination-in-chief, he informs the Court that the accused are his relatives. On the fateful day *i.e.*, on 03-09-2011, he along with Govindamma (PW.2), S. Anjaneyulu (PW.3) and Sujatha (L.W.4), who was not produced before the trial court as a witness, went to their agricultural field along with their father, Dodla Mashanna (deceased). Furthermore, according to him, the appellant (accused No.1) was ploughing his field with a tractor. Therefore, his father objected to the activities of the appellant. Thereupon, the appellant hit his father on the right side of the head. His father sustained bleeding injuries, and blood came out from his nose. He further

claims that the accused Nos.2 and 3 beat his father with sticks on his back. After his father fell down, both the accused Nos.2 and 3 went away from the scene of offence. In his cross-examination, he further claims that there were land disputes between the parties, and keeping the same in his mind, the appellant (accused No.1) killed his father. He identified the two sticks, which were recovered by the police during the course of investigation, as the sticks used by the appellant in order to assault his father. His testimony has been corroborated by the testimonies of Govindamma (PW.2), S.Anjaneyulu (PW.3) and P. Thippanna (PW.5).

Although, according to the site plan (Ex.P.3), the deceased is shown to have fallen in the field belonging to the appellant, but mere discrepancy between the said site plan and the ocular testimony of Govindamma (PW.2), S.Anjaneyulu (PW.3) and P. Thippanna (PW.5) would not be fatal to the case of the prosecution. For, the principle *falsus in uno, falsus omnibus* (once a liar is always a liar) is not followed in this country. Moreover, the eye-witnesses are categorical in stating that it is the

appellant, who had hit the deceased on the right side of his head. Their testimony is further corroborated by the testimony of Dr. T. Sai Sudheer (PW.9), and by the Post-Mortem Report (Ex.P.6). According to the Post-Mortem Report (Ex.P.6), the deceased had suffered the following injuries:

- “1. Peri orbital contusion of reddish brown color present around right eye. On opening, sub conjunctival hemorrhage presents diffusely all over the right eye ball.*
- 2. Contused abrasion present 7 cms above to the middle of right eye brow of size 3 × 1.5 cms.*
- 3. Scalp reflection shows diffuse contusion and sub galeal hemorrhage of scalp associated with peri cranial hemorrhage over fronto parieto temporal region in the anterior half over an area of 38×24 cms. Extra cranial hematoma of 20 cc present over mid parietal region.*
- 4. Temporalis muscle was contused on both sides.*
- 5. Fissure fractures of vault of skull extending from mid right frontal bone to parietal eminence, to right temporal bone and from right parietal eminence to left parietal bone and left temporal bone.*
- 6. Epi dural hematoma present over right cerebral hemisphere of 20 cc in volume. Diffuse sub dural hemorrhage and diffuse sub arachnoid hemorrhage present all over cerebral and cerebellar hemispheres. Fracture of base of skull at junction of anterior and middle cranial fossa on right side of 5 cms in length. Blood clots present on the both cranial fossae on right side.*

7. Skin reflection shows chest wall contusion over an area of 8x6 cms at 3rd and 4th inter costal spaces in the mid clavicular line. On dissection 3rd and 4th ribs were fractured at anterior lateral angles with surrounded contusion at fracture site on left side of the thoracic cage.”

Moreover, the prosecution has also examined Bazaranna (P.W.4), who happens to be the driver of the tractor, which was used for ploughing the field. Bazaranna (PW.4) informs the Court that he was the tractor driver on the date of the incident. He went along with the tractor to plough the land of the appellant (accused No.1). While he was ploughing the land, the deceased came, and objected by stating that the land belongs to him. On that, the appellant beat the deceased with a stick on his head. He further informs the Court that Anjaneyulu (PW.1), Govindamma (PW.2), S.Anjaneyulu (PW.3) and P. Thippanna (PW.5) were present at the scene of the offence. He further claims that he took the deceased to the Uppair village in the tractor, and subsequently, the deceased was transported to the Government Hospital at Guntur. According to him, the deceased died, at night, during his treatment at Government Hospital, Kurnool.

Interestingly, despite the fact that this witness had changed the scene of crime from the land belonging to the deceased to the land belonging to the appellant (accused No.1), still the prosecution has not declared him as a hostile witness. Instead, the prosecution has chosen to rely upon his testimony in order to present the case against the appellant. More importantly, the testimony of this witness is corroborated by the testimonies of Anjaneyulu (PW.1), Govindamma (PW.2), S.Anjaneyulu (PW.3), and P. Thippanna (PW.5), on the point that it is the appellant, who had assaulted the deceased with the stick. Furthermore, the testimony of this witness is corroborated by the testimony of Dr. T. Sai Sudheer (PW.9) and by the Post-Mortem Report (Ex.P.6). Hence, the testimony of this witness is a reliable one.

Therefore, even if, for the sake of argument, it were to be accepted that ocular witnesses, namely Anjaneyulu (PW.1), Govindamma (PW.2), S.Anjaneyulu (PW.3), and P. Thippanna (PW.5), were not reliable witnesses, the learned trial Court would be justified in convicting the

appellant on the basis of the sole testimony of Bajaranna (PW.4). Since his testimony is corroborrated, both by the site plan (Ex.P.3), and by the Post-Mortem Report (Ex.P.6), he is a witness of sterling worth.

Although the learned counsel for the appellant (accused No.1) has pleaded that the injuries suffered by the deceased could be caused by his falling on a stone, or on a hard surface, but suffice it to say that such a defence has not been pleaded by the appellant in his Section 313 Cr.P.C., statement recorded by the learned trial Court. Moreover, there is no indication in the site plan (Ex.P.3) that there was any hard surface at the place where the deceased had fallen. Therefore, the defence being pleaded by the learned counsel for the appellant (accused No.1) is clearly unsustainable.

Ofcourse, the learned counsel has also pleaded that the occurrence took place at the heat of the moment and there was no pre-meditation to kill the deceased. Hence, the element of intention and knowledge are conspicuously missing in the case. However, a bare perusal of the

injuries, mentioned hereinabove, clearly reveal that there was fracture of the skull extending from the mid-right frontal bone to parietal eminence to right temporal bone, and from right parietal eminence to right temporal bone, and from right parietal eminence to left parietal bone, and left temporal bone. Thus, obviously the deceased was hit with such a force by the appellant that the skull almost cracked like an egg. Moreover, it is not a case of single injury caused by the appellant. For, the Post-Mortem Report (Ex.P.6) further reveals that even the third and the fourth ribs were fractured in the assault committed by the appellant. Obviously, the deceased was attacked on the vital parts of his body *i.e.*, the head and the chest, and that too, with such a force that they could fracture the bones. Therefore, the intention and knowledge of the appellant is writ large in the present case. Hence, the benefit of an exception under Section 300 of the IPC cannot be given to him.

For the reasons stated above, this Court does not find any illegality or perversity in the conviction and sentence recorded against the appellant (accused No.1), by

judgment dated 12-03-2013, in S.C.No.311 of 2012 on the file of the III Additional District & Sessions Judge (Fast Track Court), Gadwal.

Hence, this appeal, being devoid of any merit, is hereby dismissed.

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

(Raghvendra Singh Chauhan, CJ)

(T.Amarnath Goud, J)

Dt: 9th July, 2019
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