

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.890 OF 2010

JUDGMENT:

This appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the appellant/accused aggrieved by the judgment, dated 12.07.2010, rendered in Sessions Case No.512 of 2009 on the file of Judge, Family Court-cum-Additional District and Sessions Judge, Nalgonda, whereunder and whereby, the learned Sessions Judge while acquitting the appellant/accused for the offence punishable under Section 302 IPC, convicted him for the offence punishable under Section 304-I IPC and accordingly, he was sentenced to suffer rigorous imprisonment for a period of ten years and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for a period of six months for the said offence.

2. Heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent-State. Perused the record.

3. Learned counsel for the appellant/accused would submit that there is animosity in between the appellant/accused and the deceased M.Venkataiah with regard to keeping of their sheep nearby their houses; that there was no electricity supply at the time of incident; that P.Ws.1 to 3 are not at all eyewitnesses to the alleged offence; that the weapon alleged to have been used in the commission of offence is not a dangerous one; that from the circumstances, it cannot be said that the appellant/accused caused the subject death or he has any intention to do so; that

there are inconsistencies and contradictions in the evidence of material witnesses; that the prosecution failed to prove the guilty of the appellant/accused beyond all reasonable doubt and ultimately, prayed to set aside the impugned judgment and acquit the appellant/accused for the offence punishable under Section 304-I IPC.

4. Learned Additional Public Prosecutor appearing for the respondent-State would contend that there are three direct witnesses (P.Ws.1 to 3) and two circumstantial witnesses (P.Ws.4 and 5), who have categorically deposed about the involvement of the appellant/accused in causing the subject death; that the subject death was caused due to some differences among the deceased and the appellant/accused with regard to keeping of sheep in a shed; that P.Ws.1 and 3 are the truthful witnesses and there is consistency and corroboration in their evidence; that there are no material contradictions and omissions in the evidence of prosecution witnesses; that the Court below rightly convicted and sentenced the appellant/accused for the offence punishable under Section 304-I IPC and ultimately, prayed to dismiss the appeal by confirming the impugned judgment.

5. In view of the submissions made by both sides, the following points have come up for determination:

- (1) Whether the appellant/accused had caused the death of the deceased M.Venkataiah?
- (2) Whether the prosecution had proved the guilt of the appellant/accused for the offence punishable under Section 304-I IPC beyond all reasonable doubt?

(3) Whether the conviction and sentence recorded against the appellant/accused under Section 304-I IPC is liable to be set aside?

POINTS 1 TO 3:

6. To prove the guilt of the appellant/accused, the prosecution examined P.Ws.1 to 11 and got marked Exs.P.1 to P.8, besides M.O.1-pole stick.

7. The specific case of the prosecution is that the appellant and the deceased are neighbours. They have vacant site adjacent to their houses. Both of them occupied the site and erected thorny fencing and kept their cattle and sheep in it. In that process, a dispute arose in between them. On 13.04.2008 at 10:00 P.M., when the deceased was setting right the fencing, which has fallen down on the road due to hale storm, the appellant came and beat the deceased with M.O.1-pole stick on his head and caused instantaneous death.

8. P.W.1 is the wife of the deceased, who stated that her husband erected cattle shed (doddi) surrendered by thorny fencing to keep their sheep. The said cattle shed is located on the back side of their house. P.W.1 and her husband got 50 sheep. The appellant resides on the back side of their house. He also erected similar cattle shed with thorny fencing for keeping his goats and cattle. There were some differences between the appellant and the deceased with regard to erection of cattle shed with thorny fencing. On the date of the incident, the thorny fencing belonging to the deceased had fallen down on the road and while the deceased was setting right the same, the appellant on seeing the deceased, all of

a sudden came there from the back side with a pole stick, which was marked as M.O.1 and identified by P.W.1, and beat the deceased on his head. She also stated that on the date of incident, she was standing on the back side of her husband (deceased). She further stated that her mother also witnessed the incident, as she came there after attending the calls of nature. When P.W.1 and her mother raised hue and cry, P.Ws.3, 4 and others came there. The deceased had fallen down on the ground. They lifted him in the auto of P.W.4 and taken to P.W.5-R.M.P Doctor, who gave First Aid and advised them to take the deceased to Government Hospital, Devarakonda, as the condition was serious. The Medical Officer at Government Hospital, Devarakonda, after examining the deceased advised P.W.1 to take the deceased to Kamineni Hospital, Hyderabad, as the condition was serious. Accordingly, she had taken the deceased to Kamineni Hospital, Hyderabad, where Doctors declared him as dead. Thereafter, she went to police station concerned and lodged Ex.P.1-report. Ex.P.1 corroborates with the evidence of P.W.1.

9. P.W.2 is mother of P.W.1. She deposed that she saw the appellant beating the deceased on his head on the date of incident. P.W.3 is brother of P.W.1. He deposed that on hearing the cries, he went to the scene of offence and at that time the appellant was running away from the scene of offence and when he tried to chase him, his mother prevented him from doing so. All these witnesses have stated that the appellant had beat the deceased with pole stick. P.W.4 is the auto driver and P.W.5 is RMP Doctor, who have categorically stated that the witnesses informed them that the deceased was beaten by the appellant with a pole stick on his

head. P.W.6 is a panch witness, who speaks about conducting of panchanama, finding of head injury on the deceased and preparation of Ex.P.2-inquest panchanama in his presence. The evidence of P.W.7—panch witness speaks about preparation of observation of seizure panchanama at the house of P.W.1 and seizure of one blood stained earth and normal earth from the scene of offence and seizure of M.O.1-pole stick. He also spoke about Ex.P.3- scene observation and seizure panchanama and Ex.P.4 rough sketch map. All the witnesses P.Ws.1 to 7 in their cross-examination reiterated what they have stated. P.W.8 deposed about the events made by the appellant under Ex.P.5-confession statement. There is evidence of P.W.9-Doctor, who conducted autopsy over the dead body of the deceased on 14.04.2005 and found contusion of scalp around 10 x 20 cms right and mid head and also deposed about issuance of Ex.P.6-postmortem examination report, which corroborates with his evidence. P.W.9 also stated that the injury found in Ex.P.6-postmortem examination report is possible with M.O.1-pole stick. He was not subjected to cross-examination and reported as NIL. P.W.10 is the Sub-Inspector of Police, who speaks about the recitals in Ex.P.1-report lodged by P.W.1 and issuance of First Information Report in this case. There is also evidence of P.W.11-Circle Inspector of police, Yadagirigutta, who conducted inquest panchanama, scene observation panchanama, investigation, recording of confessional statements of witnesses, collection of postmortem examination report, other material documents, preparation of scene of offence and the rough sketch drawn in the presence of P.W.7 and other witnesses. He also got seized M.O.1-pole stick pursuant to the

confession made by the appellant under the cover of panchanama and also deposed about the appellant confessing guilty. Further, he deposed about collection of other evidence etc.

10. As per the evidence of P.Ws.2 and 3, they are also residing near the house of P.W.1 and the deceased. There is specific evidence of P.W.3 that he saw the appellant running away from the scene of offence and when he tried to chase him, he was prevented by his mother. However, learned counsel for the appellant would submit that there is a delay in lodging the report with the police. P.W.1 and her family members though passed through the police station after the incident, they did not even choose to lodge a report with the police. As per the evidence of witnesses, they were carrying the injured/deceased to the hospital. In the circumstances, the first and foremost requirement is to render medical aid to the victim and it is not appropriate for the parties to lodge First Information Report and then go for treatment. Therefore, the conduct of P.Ws.1 to 3 cannot be faulted. P.Ws.1 to 3 are truthful witnesses and P.Ws.4 and 5 are independent witnesses. They have no reason to support the case of the prosecution. Further, there is no enmity to any of the witnesses with the appellant/accused. There is no reason for them to falsely implicate the appellant for the offence of this nature. There is also medical evidence to substantiate the homicidal death. The trial Court had relied on the judgment of the Apex Court rendered in **Ramesh Krishna Madhusudan Nayar v. State of Maharashtra**¹ and held that there was a sudden provocation and due to that the subject death was caused by the appellant. As seen from the

¹ 2008 (2) ALD (CrI.) 556

evidence of P.W.9 doctor and Ex.P.9-postmortem examination report, P.W.9 found fracture skull and massive contusion on scalp around 10 x 20 cms right and mid head. He has also given the approximate time of death as 10 to 16 hours prior to his examination. In ***Alister Anthony Pareira v. State of Maharashtra***², the Apex Court held that for punishment under Section 304 Part I IPC, the prosecution must prove the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II IPC, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death. The evidence on record establishes that there was strained relation in between the accused and the deceased with regard to the cattle shed erected by them. When the cattle shed belonging to the deceased was disturbed due to the hailstorm, the accused got annoyed and suddenly provoked and caused head injury measuring 10 x 20 cms on right and middle of the head. The accused was aware, such head injury was likely to cause death, the force and size of the injury demonstrates that. So, all the requirements under Section 304-I IPC are proved against the accused beyond all reasonable doubt. The prosecution proved the guilt of the appellant/accused beyond all reasonable doubt for the offence punishable under Section 304-I IPC. The trial Court rightly appreciated the facts and circumstances of the case and justified in convicting and sentencing the accused for the offence under Section 304-I IPC.

² (2012) 2 SCC 648

11. As far as sentence of imprisonment is concerned, the appellant/accused and the deceased were neighbours. There were disputes among them three days prior to the death of the deceased with regard to fencing set up for their cattle. There is only one fracture injury, which caused the death of the deceased. However, since 10 years time has been elapsed from the date of offence, the sentence of imprisonment imposed against the appellant can be reduced from 10 years to 7 years.

12. In the result, the Criminal Appeal is dismissed confirming the conviction of the appellant/accused for the offence punishable under Section 304-I I.P.C recorded by judgment, dated 12.07.2010, in S.C.No.512 of 2009 on the file of Judge, Family Court-cum-Additional District and Sessions Judge, Nalgonda, but modifying the sentence from ten (10) years rigorous imprisonment to seven (7) years rigorous imprisonment, while maintaining the fine amount with default sentence. Period of remand, if any, undergone by the appellant/accused during the course of investigation, trial and after conviction shall be given set off under Section 428 Cr.P.C.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

FEBRUARY 08, 2019
YVL