

THE HON'BLE SRI JUSTICE K.LAKSHMAN

AND

THE HON'BLE SMT JUSTICE K. SUJANA

CRIMINAL APPEAL NO.31 OF 2014

JUDGMENT: *(per Hon'ble Smt Justice K.Sujana)*

The appellants have filed this appeal aggrieved by the judgment dated 12.12.2013 in S.C.No.271 of 2013 on the file of Principal Sessions Judge, Medak at Sangareddy, where under the learned Sessions Judge, convicted the Appellants 1 to 4/Accused Nos.1 to 4 and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each, and in default of payment of fine, to suffer simple imprisonment for six (6) months for the offence punishable under Section 302 r/w.Section 149 of the Indian Penal Code (for short 'IPC'). They are also sentenced to undergo rigorous imprisonment for three (3) years and also to pay a fine of Rs.10,000/- each and in default of payment of fine, to suffer simple imprisonment for (6) months for the offence punishable under Section 148 of the IPC and both the substantive sentences of imprisonment to run concurrently.

2. The facts of the case are that on 18.11.2012 at 10.00 hours, the complainant-Poturaju Kishtaiah lodged a complaint with the Police, Municipally stating that since two years their villager by name Gadila Vittal was cultivating the agricultural land of one Poturaju Srisailam on half share basis. The said Vittal delayed payment of half share that was due to Srisailam. The Accused Nos.1 to 4 who are family members of the said Srisailam, were suspecting that Shivaiah who is the deceased was preventing the said Vittal from paying the half share to Srisailam. As such, the Accused Nos.1 to 4 bore grudge against the deceased and quarreled with the complainant and the deceased. In connection with the said dispute, on 18.11.2012, when the deceased and complainant i.e., Pw.1 were proceeding to the village elders to inform about the same, on the way when they reached near the house of Begari Kamalamma, Accused Nos.1 to 7 caught hold and assaulted them with sticks and hands due to which the deceased sustained severe head injuries and died on the spot and Pw.1 also sustained injuries. Meanwhile the brother of Pw.1 came to their rescue. The accused also tried to kill him by beating with sticks on his head and left leg and caused bleeding injuries.

3. Basing on the said complaint, a case was registered in Cr.No.86 of 2012 for the offences punishable under Sections 147,

148, 302, 307, 504 r/w. Section 149 of the IPC and after completion of investigation, charge sheet was filed against the Accused Nos.1 to 7.

4. To prove the case of the prosecution, the prosecution examined Pws.1 to 10, got marked Exs.P.1 to P.11 and MOs.1 to 4 were marked. On behalf of the Appellants/Accused, Exs.D.1 to D.3 were marked during cross-examination of the witnesses.

5. After completion of trial and after hearing both sides, the learned Sessions Judge, convicted Accused Nos.1 to 4 for the offence punishable under Section 302 r/w. Section 149 of the IPC and under Section 148 of the IPC. The Accused Nos. 5 and 6 are convicted for the offence punishable under Section 323 r/w. Section 149 of the IPC and sentenced to pay a fine of Rs.10,000/- each and in default of payment of fine to undergo simple imprisonment for six (6) months. The Accused No.7 was found not guilty of any of the charges. The present appeal is filed by the Accused Nos.1 to 4 against the conviction and sentence imposed against them.

6. The grounds of appeal are that the trial Court had committed grave illegality by convicting the appellants for the offence punishable under Sections 302 r/w. Section 149 of the IPC which is against the settled principles of law. As seen from the

record, Pws.1 and 2 are not eye witnesses to the incident because according to them, the deceased and Pw.2 resides separately at different places and Pw.4 is not a trustworthy witness as he stated in his chief-examination that he saw the accused assaulting the deceased with sticks when he was at his house, but in his cross examination he stated that he cannot see anything happening in front of the house of Kamamma where the incident took place and to cover up the defect he states in cross examination that he along with LW.5 was standing near the house of Kamamma at the time of incident. The trial Court failed to observe that none of the witnesses who are within the vicinity of the house of Kamamma were examined and there are no specific over tact's against any of the appellants to convict them under Section 302 of the IPC and there is material contradiction in PW.3's evidence and there is correction of dates in the Police records. PW.10 has clearly admitted in his cross examination that the date mentioned in Exs.D.2 and D.3 is 18.11.2012 but he mentioned the date as 20.11.2012 as such on the very committal itself the appellants ought to have been acquitted. Therefore, he prayed the Court to set aside the judgment of the trial Court by acquitting the appellants.

7. Heard Sri B.Vengal Reddy, learned counsel representing Smt. A.Gayathri Reddy, learned counsel for appellants and Sri T.V.Ramana Rao, learned Additional Public Prosecutor.

8. Learned counsel for the appellants submits that there are contradictions and omissions in the evidence of PWs.1 to 4 and there is no eye witness to the incident. All the evidence is hearsay evidence and prosecution failed to prove the offence under Section 302 of the IPC beyond reasonable doubt and the evidence of PWs.1 to 4 is not corroborating with each other. Therefore prayed the Court to set aside the trial Court judgment by allowing the appeal.

9. On the other hand, the learned Additional Public Prosecutor vehemently opposed and the prosecution version is that there is no illegality in the judgment of the trial Court. The trial Court rightly came to the conclusion that these appellants have committed the offence. Therefore, there is no need to interfere with the judgment of the trial Court. Hence, prayed the Court to dismiss the appeal.

10. Now, the points for determination are :

1. Whether the death of the deceased is homicidal ?
2. Whether the prosecution proved the guilt of the Appellants/Accused Nos.1 to 4 for the offences under

Sections 302 and 148 of the IPC beyond reasonable doubt?

3. Whether the judgment of trial Court needs interference ?

POINT NO.1 :

11. The prosecution examined PWs.1 to 10. PWs.1 and 3 sons of the deceased and PW.2 is the wife of the deceased. They were present at the time when allegedly all the accused attacked the deceased. PW.4 is an independent witness who witnessed the incident. PWs.1 to 3 also alleged to have sustained injuries in the quarrel.

12. The evidence of PW.1 is that Gadila Vittal cultivated the land of one Srisailam who is the brother of A.2 on lease for two years. All the accused are relatives of Pw.1. They suspected that the deceased is the cause for the said Vittal for not paying the amount to Srisailam, as such, the accused, related to each other chased and bet the deceased. As per the evidence of PW.1, A.1 is the junior paternal uncle. A.2 and A.3 are younger brothers, A.4 is the brother-in-law, A.5 is the younger sister, A.6 is the sister-in-law of Srisailam and wife of A.2, A.7 is the junior paternal aunt of Srisailam. His further evidence is that A.1 to A.4 were armed with sticks and they bet the deceased with the said sticks while A.5 and

A.6 bet him with hands. The said sticks are identified and they are marked as M.O.1.

13. On 17.11.2012 when PW.1 was alone in his house, all the 7 accused along with Srisailam came to him and took him forcibly to the hotel in their village and bet him. He informed the same to his father and told that the accused are under the impression that he is not allowing Vittal to give money to Srisailam and advised him that the matter should be settled before the elders. As such on 18.11.2012 at about 07:30 A.M., he along with his father were going to meet the elders, his younger brother and his mother were also following them and at a close distance, when they reached near the house of Pedda Begari Kamalamma, all the accused attacked his father, also bet him and his younger brother – Shantaram. His father died on the spot.

14. PW.2 is the mother of PW.1 and wife of the deceased. She also deposed on the same lines as PW.1, and that his younger son also received injuries.

15. PW.3's evidence is also corroborating with the evidence of PW.2. PW.4 is an independent witness and he deposed that at the

time of incident, he was at his house and he saw the deceased and PW.1 passing by the house of Kamalamma in order to go into the village. All the accused came and bet the deceased with sticks and he clarified that the male accused were carrying sticks while female accused do not have any sticks. They bet the deceased with their hands. His house is by the side of the house of Kamalamma and he witnessed the incident.

16. The scene of offence, panchanama, rough sketch also proves that the incident occurred near the house of Kamalamma. In the statement of PW.3, there is contradiction that he went to the spot on knowing the death of the deceased. Pw.3 stated that he went to Makta Kyasaram on knowing that the accused were beating his father and brother. The presence of Pw.3 is proved on the strength of the complaint given by Pw.1, wherein it was clearly mentioned that Pw.3 was present and he interfered while the accused were beating them and in that process, he also sustained bleeding injuries on the left leg and Ex.P.8, medical certificate issued by the doctor also reveals that PW.3 was beaten by unknown persons with sticks. Therefore, the presence of Pw.3 at the time of incident is proved.

17. PW.10 is the Circle Inspector of Police, who took up investigation from Pw.9 in this case. He recorded the statement of

PW.1 and proceeded to the scene of offence, conducted scene of offence panchanama. In the cross-examination, he admitted that a copy of panchanama supplied to A.1 was marked as Ex.D.2 and the recovery panchanama from A.2 is marked as Ex.D.3. He also admitted that the date mentioned in Ex.D.3 is 18.11.2012, but he explains that the date mentioned underneath his signature as 20.11.2012 is the correct date. Hence, the date mentioned therein is the date of incident and not the date of panchanama. The other contention of learned counsel for the appellants is that the blood stained earth was not collected and not sent to FSL.

18. Pw.7 is a witness for the confession made by A.1 to A.4 and he went to the police station at the request of police, Municipally and from there they went to Cheelapally-T Road, where all the accused were present and on the instructions of C.I., of Police, he enquired A.1 to A.4 individually and separately and they confessed that they have committed the murder of the deceased. Basing on the confession of A.2, they went to Maktha Kyasaram village to the house of A.2 and from his house, four sticks which are marked as M.O.1 are recovered. A.2 is none other than the younger brother of Srisailam. In Ex.P.11 FSL report also shows that there are blood stains which are sent as item Nos.1 to 3 to the FSL and the blood stains on item No.1 could be determined as that of human.

19. The evidence on record shows that the death of the deceased is a homicidal death and A.1 to A.4 are responsible for the said death. Accordingly, point No.1 is answered.

POINT NOs.2 AND 3 :

20. Now, it is to be seen that whether culpable homicide is amounting to murder.

21. Section 299 of the IPC defining culpable homicide, is attracted, if a person, caused the injury with such knowledge that he is likely, by such act, to cause death. Illustration (b) to Section 300 IPC gives an exception, if the accused did not have the knowledge about the deceased laboring under such a disease that a blow is likely to cause his death. In the present case, the accused did not take any defense that the deceased was laboring under such disease that the blow could not have in the ordinary course, caused his death. The post mortem report shows injuries on temporal region, left eye and on the mandible. There are internal injuries in the form of fracture on left side of temporal, parietal bones, hemorrhage on left side and the scalp was found to be congested.

22. Learned counsel for the appellants relied on the Judgment in **Jugut Ram Vs State of Chattisgarh**¹, wherein the accused has bet the deceased with a Lathi. The trial Court convicted him for the offence under Section 302 of IPC and the High Court has also confirmed the same, whereas the Hon'ble Supreme Court while discussing various judgments and on coming to a conclusion that the injury was not within the knowledge of the accused that it is likely to cause death, altered the same to Section 304 Part-II IPC.

23. In the present case also, the weapon used by the accused is sticks, which is not a deadly weapon and the occurrence of incident was not a premeditated but on a trivial dispute, attack was made. Therefore, it cannot be said that they intended to cause injury which is sufficient to cause death. At the most, it can be said that by inflicting such injuries, they had knowledge that he was likely to cause the death in which case the offence committed by him would be culpable homicide not amounting to murder.

24. In **Chamru Budhwa Vs State of Madhya Pradesh**², wherein the appellant dealt a blow on the head of the deceased with a lathi and which proved fatal. The injury was medically opined sufficient

¹ 2020 (2) ALD (CRL) 985 (SC)

² AIR 1954 SC 652

in the ordinary course to cause death, conviction under Section 302 of the IPC followed and the Hon'ble Supreme Court observed as under :

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“5. It now remains to consider whether the offence which he committed falls within the first part or the second part of Section 304 of the Indian Penal Code. When the fatal injury was inflicted by the appellant on the head of the deceased by only one blow given in the manner alleged by the prosecution it could as well be that the act by which death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death within the meaning of Part-II of Section 304 of the Indian Penal Code.

6. We accordingly allow the appeal to this extent that the conviction of the appellant under Section 302 of the Indian Penal Code and the sentence of transportation for life awarded to him will be set aside, but the appellant will be convicted of having committed the offence under Section 304 Part-II of the Indian Penal Code and will be sentenced to seven years' rigorous imprisonment.”

25. However, in **Gurmukh Singh Vs State of Haryana**³, the deceased died three days later after an assault on the head with a lathi opined to be sufficient in the ordinary course of nature to cause death. Holding that the assault was made on the spur of the moment without premeditation, the conviction was altered

³ (2009) 15 SCC 635

from one under Section 302 to Section 304 Part-II and a sentence of seven years was handed down.

26. In the present case also admittedly, the accused bet the deceased with sticks which are normally used in the villages and they cannot be termed as deadly weapon. Except payment of amount which was due by the Vittal to Srisailam, there are no other serious disputes between the accused and the deceased which leads to murder him. Therefore, it cannot be said that it is a planned murder and they attacked the deceased with an intention to cause death. As such the conviction under Section 302 of the IPC is altered to Section 304 Part-II IPC.

27. Accordingly, we alter the conviction of the appellants from Section 302 IPC to Section 304 Part-II IPC. Accordingly, the points are answered.

28. Therefore, the appellants are guilty for the offence punishable under Section 304 Part-II IPC and their conviction under Section 302 IPC is therefore, set aside. Hence, the sentences imposed on the appellants are reduced to the period already undergone by them. Therefore, the appeal preferred by the appellants is partly allowed and the Appellants/Accused Nos.1

to 4 be set at liberty forthwith. The Bail bonds executed by the accused are cancelled.

Miscellaneous applications, if any, pending in this Criminal Appeal shall stand closed.

K.LAKSHMAN, J

K. SUJANA, J

Date :29.08.2023

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