THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY
AND
THE HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

Criminal Appeal No.1155 of 2013

JUDGMENT (per Hon'ble Sri Justice A. Venkateshwara Reddy)**:**

This Criminal Appeal is directed against the judgment dated 26.11.2013 in Sessions Case (SC) No.239 of 2012 on the file of the learned VI Additional District and Sessions Judge at Siddipet, wherein and whereunder the accused No.1 was found guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short 'IPC'), convicted under Section 235 (2) of the Criminal Procedure Code, 1973 (for short 'Cr.P.C.') and sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for two months for the said offence, whereas the accused No.2 was found not guilty and he was acquitted under Section 235 (1) of Cr.P.C. for the said offence.

2. The appellant is the accused No.1 (for short 'A.1'). The prosecution story in brief is that A.1 is the younger brother of PW.1. The deceased is the father of PW.1 and

A.1, whereas accused No.2 (for short 'A.2') is the younger brother of deceased and they are native of Jaligama Village, Gajwel Mandal, Medak District. There was a land dispute between the deceased and A.2 and as such, A.2 developed enimity over the deceased and his family, instigated A.1 to kill the deceased by making him to addict liquor. On 24.10.2012 A.1 brought bullocks, but he did not give fodder and water to them, as such on 25.01.2012 the deceased scolded A.1. But he did not listen the words of his father (deceased person), taking advantage of the same, A.2 abetted A.1, made him to consume liquor and instigated to kill the deceased-Ramulu. A.1 returned to the house at about 23:00 hours and again the deceased scolded A.1 for not fetching water and fodder to the bullocks. On that A.1 picked up quarrel with the deceased stating that the deceased has been insulting him by scolding in the public, beat him with hands, pushed him down, thereby the deceased collapsed. Thereafter, A.1 poured kerosene on the deceased which was available in the stove and set fired him. Meanwhile, PW.1 rescued the deceased, shifted him to the Gandhi Hospital at

Secunderabad. On the report lodged by PW.1, this case in Crime No.22 of 2012 of P.S. Gajwel, was registered for the offence punishable under Section 307 of IPC.

3. In the course of investigation, the Investigating Officer gave a requisition to the learned Additional Chief Metropolitan Magistrate to record the dying declaration and obtained the dying declaration of the deceased. While the investigation was in progress, the accused were arrested on 27.01.2012 and that on 29.01.2012 received message that the deceased while undergoing treatment at Gandhi Hospital succumbed to injuries and on this the section of law is altered. The investigation discloses that A.1 and A.2 have committed the offences punishable under Sections 302 and 109 IPC.

4. From the material available on record, it appears that after giving necessary copies as required under Section 207 of Cr.P.C., the case was committed by the learned Magistrate to the Court of Sessions. The learned Sessions Judge having registered the case, vide SC No.239 of 2012, made over the same to the learned VI Additional District

and Sessions Judge, Siddipet. The learned VI Additional Sessions Judge has framed the charges against the accused for the offences punishable under Sections 302 and 109 of IPC, to which they pleaded not guilty and claims to be tried.

5. During the trial on behalf of the prosecution, in all PWs.1 to 14 are examined and Exs.P.1 to P.20 are marked. After closure of prosecution evidence, the accused were examined under Section 313 of Cr.P.C. with reference to incriminating oral and documentary evidence, the accused have denied the said offence *in toto*. No defence evidence is adduced. The trial Court after hearing the parties, found A.1 guilty for the offence punishable under Section 302 of IPC and he was sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, in default to suffer two months simple imprisonment. Whereas, A.2 was found not guilty and he was acquitted under Section 235 (1) Cr.P.C. Against the said judgment dated 26.11.2013 in SC No.239 of 2012, the appellant/A.1 has preferred this appeal.

6. Heard the learned counsel for the appellant/A.1 and the learned Public Prosecutor. Perused the material available on record. The detailed submissions made on either side have received due consideration of this Court.

7. The prosecution has in all examined 14 witnesses in support of their case. Among them, PW.1 is the *de facto* complainant and eye witness to the occurrence of the incident. He gave First Information Report. He is the elder son of deceased and also elder brother of A.1. This witness turned hostile and did not support the contents of the report lodged by him as in Ex.P.13. He has only identified his signature on Ex.P.13 as in Ex.P.1. PW.2 is the wife of PW.1. Though she is also cited as eye witness to the occurrence of the incident, she too turned hostile and did not support the prosecution case. PW.3 is another family member. This witness also not supported the prosecution case. Thus, PWs.1 to 3 who are the immediate family members did not support the prosecution case.

8. PWs.4 and 5 are neighbours and eye witnesses to the occurrence of incident. Both the witnesses turned hostile.

PW.6 is the circumstantial witness. This witness also did not support the prosecution case. PW.7 is the son-in-law of deceased, who is cited as circumstantial witness and he has also not supported the prosecution version. PW.8, who is a panch witness for scene of offence and inquest, turned hostile, whereas PW.9 is only a panch for inquest, this witness also turned hostile. Thus, PWs.1 to 3 being the immediate family members and *de facto* complainant did not support the prosecution case. PWs.4 to 7, who are the neighbours and son-in-law and who are cited as circumstantial and eye witnesses, also did not support the prosecution case. Equally, PWs.8 and 9 who are the panch witnesses for seizure and inquest panchnama turned hostile and they did not support the prosecution case.

9. The rest of the witnesses are PW.12, the learned Additional Chief Metropolitan Magistrate, who recorded the dying declaration as in Ex.P.19. PW.13 is the Doctor, who conducted autopsy over the dead body of deceased at Gandhi Hospital as in Ex.P.20. PWs.10, 11 and 14 are the Investigating Officers. Thus, in essence the prosecution has

only relied on the oral evidence of PWs.10 to 14 and Ex.P.19-dying declaration and the trial Court believed the same and found A.1 guilty for the offence punishable under Section 302 of IPC.

10. The learned counsel for the appellant/A.1 seeks to submit that the plea of accused is one of the total denial and when he was examined under Section 313 of Cr.P.C., he denied the entire evidence as false. Though as per the prosecution case PW.1 was present at the time of incident, he failed to support the prosecution case and he has not even supported the FIR-Ex.P.13. Even as per the dying declaration, the accused was in intoxicated condition and that he was not in his senses. Accordingly, if the dying declaration is believed to be true and reliable, the A.1 has only inflicted burn injuries on the deceased, he had no intention to kill the deceased and that the offence punishable under Section 302 of IPC is not made out and at the most, the offence may fall under Section 304 Part-II of IPC and relied on the principles laid in the following decisions:

i) ***Kalu Ram v. State of Rajasthan***[1];

ii) ***Ramasamy v. State by the Inspector of Police***, Erode Taluk Police Station, Erode in Criminal Appeal No.674 of 2017 dated 05.02.2019 before the High Court of Judicature at Madras.

iii) ***Surain Singh v. State of Punjab*** in Criminal Appeal No.2284 of 2009 dated 10.04.2017 on the file of the Hon'ble Supreme Court of India.

11 i) In ***Kalu Ram***'s case (first supra), the appellant/ accused was in a highly inebriated stage when he approached the deceased with a demand for sparing her ornaments and as her refusal to oblige, he poured kerosene on her and wanted her to lit the match-stick. When she failed to do so, he collected the match-box and ignited one match-stick, but when flames were up, he suddenly and frantically poured water to save her from the tongues of flames. Therefore, considering the fact that the accused was in highly inebriated stage at the time of incident,

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[1] AIR 2000 SC 3630

conviction from the offence punishable under Section 302 IPC was altered to Section 304 Part-II IPC.

ii) In ***Ramasamy's*** case (2nd supra) also, a Division Bench of Madras High Court was dealing with similar facts wherein the appellant/accused was inebriated condition and in a fit of anger, whilst deprived of his power of self control, committed the offence by a single hit. Accordingly, conviction and sentence was altered from 302 IPC to 304 Part-II IPC taking into consideration of the nature of injuries, time gap between the time of infliction of the injury till the date of death of injured and the inebriated condition of the accused.

iii) In ***Surain Singh***'s case (3rd supra), the Apex Court considering the facts of the case in view of the bitter hostility between the warring factions to which the accused and the deceased belonged, as criminal litigation was going on between these two factions, altered the conviction and sentence from 302 of IPC to 304 Part-II of IPC.

12. Reverting back to the facts of the case on hand, the trial Court has believed and relied upon the Ex.P.19-dying

declaration of the deceased, recorded by the learned Magistrate-PW.12 and the appellant/A.1 was found guilty for the offence punishable under Section 302 of IPC.

13. For better appreciation of the facts, the relevant portion of Ex.P.19-dying declaration is extracted as under:

> "Q: How you are burnt?
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> Ans: Yesterday when I sat in our house along with my elder son and my younger son Sreenu and I requested my sons to give money, then my younger son suddenly get up from his place and poured kerosene on me and set ablaze.
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> Q: What is the reason to pour the kerosene on you?
>
> Ans: I asked money, for that only my younger son poured kerosene on me.
>
> Q: Are you speaking true?
>
> Ans: Yes, I am speaking true. At that time Sreenu was in drunken condition."

14. On careful perusal of the relevant portion of dying declaration, as extracted above, it is crystal clear that the deceased requested PW.1 and A.1 for money, then all of a sudden, A.1 got up from his place and poured kerosene on him and set fired him and at that time, A.1 was in drunken

condition. It is pertinent to note that it is also the case of the prosecution that A.2 instigated A.1 and on the fateful day he made A.1 to consume liquor and that after consuming liquor, A.1 returned to home at about 23:00 hours on 25.11.2012 and immediately after return, the said incident occurred.

15. It is not the case of prosecution that A.1 on his own voluntarily inebriated and that he had an intention to kill the deceased under the guise of intoxication to avoid consequences. Apart from Ex.P.19-dying declaration and evidence of PW.12-learned Additional Chief Metropolitan Magistrate, who recorded the dying declaration, there is no other piece of legally acceptable and reliable evidence to link the accused with the incident. Thus, even if Ex.P.19 and the oral evidence of PW.12 are taken into consideration in its entirety, it would only establish that A.1 was in intoxicated condition and that he along with PW.1 and deceased were sitting in the house, when the deceased requested for money, all of sudden A.1 got up from his place poured kerosene and set fired him.

16. None of the witnesses including PW.1, who is the *de facto* complainant and eye witness to the occurrence, have supported the prosecution version as to the manner of occurrence of the incident. There is no evidence of enimity between A.1 and the deceased. There is no evidence of premeditation to cause the death. The A.1 was in intoxicated condition as per Ex.P.19 and was not in his senses, he has no knowledge that his act is likely to cause death of the deceased. Thus, in that view of the matter, the A.1, who is deprived of self-control as he was in inebriated condition, in a fit of anger when the deceased demanded money, poured kerosene on him, pushed him on to the ground and set fired by him. Neither he had any intention or motive to kill nor aware or had knowledge that such injury would cause the death of deceased.

17. This evidence and fact situation would lead to the one and only irresistible conclusion that A.1 had no knowledge and he is deprived of self-control, as he was in involuntary inebriated condition, in a fit of anger, poured kerosene, pushed the lamp, thereby the deceased sustained burn

injuries. The incident occurred on 25.01.2022, whereas the deceased succumbed to injuries after four days i.e., on 29.01.2022. All these circumstances are sufficient to take a lenient view even against A.1. Therefore, we are of the considered view that the oral evidence of PW.12, contents of Ex.P.19 supported by the evidence of Doctor-PW.13 and the contents of Ex.P.20-post mortem examination report coupled with the evidence of Investigating Officers, PWs.10, 11 and 14 would only establish the essentials for the offence punishable under Section 304 Part-II of IPC and not under Section 302 IPC against A.1.

18. Be it stated that in similar circumstances, the Apex Court in ***Kalu Ram***'s case (first supra) held that in the absence of knowledge, intention or motive to the accused to kill the deceased, the conviction under Section 302 of IPC cannot sustain and altered to under Section 304 Part-II of IPC.

19. Thus, considering the factual scenario of the case on hand, legally acceptable evidence available on record, in the background of the legal principles laid down by the

Apex Court in ***Kalu Ram***'s case (1st supra), we arrive at a inevitable conclusion that the appellant/A.1 was in involuntary inebriated stage, he was not in his senses and it was not a premeditated act, he had no intention to kill the deceased and as such the offence committed may fall under Section 300 – Exception-4, consequently, the conviction of A.1 is altered from 302 of IPC to 304 Part-II of IPC. Both sides conceded that the appellant/A.1 is in jail from the date of judgment dated 26.11.2013 in SC No.239 of 2012.

20. In the result, the Criminal Appeal is partly allowed, to meet the ends of justice, the conviction of accused No.1 is altered from the offence punishable under Section 302 of IPC to the offence punishable under Section 304 Part-II IPC and the sentence of life imprisonment is altered and modified to one for the period already undergone since he is in jail from 26.11.2013 i.e., from the date of judgment in SC No.239 of 2012 and to pay a fine of Rs.500/- (Rupees Five Hundred only), in default to suffer simple imprisonment for one month.

21. The appeal is disposed of accordingly and the appellant/Accused No.1 shall be set at liberty forthwith, if he had already paid the fine amount as indicated above.

A. VENKATESHWARA REDDY, J.

G. ANUPAMA CHAKRAVARTHY, J.

Date: 26.08.2022
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