

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL APPEAL Nos.590 and 1104 of 2013

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

A1 and A2 in Sessions Case No. 247 of 2012 on the file of the IV Additional District and Sessions Judge (Fast Track Court), Tanuku, are the appellants herein. They were tried for an offence punishable under Section 302 read with 34 IPC for causing the death of one Koppineedi Lakshmi Narayana on 14.10.2010 at 7.30 p.m. Vide judgment dated 08.01.2013, the learned Additional Sessions Judge convicted both the accused for the offence punishable under Section 302 read with 34 IPC and sentenced them to suffer imprisonment for life and also to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for a period of three months.

2. The facts, as culled out from the evidence of the prosecution witnesses, are under:

The deceased is the brother of PW1 while PW2 is the father of the deceased. PW4 is also one of the brothers of the deceased. The marriage of the deceased took place with one Manga Devi, who is the niece of PW1, and who is A2 in this case. Out of wedlock, they were blessed with one daughter and two sons. However, one

of the sons expired. After the birth of the children, quarrels ensued between them as A2 developed intimacy with the deceased. Later, both of them got separated. After separation, the deceased left to Dubai and stayed there for a period of one year. Thereafter, he came to India, where he found A2 living with A1 in a separate house. When the deceased demanded A2 to give divorce, she is said to have demanded a sum of Rs.1 lakh and also threatened to file a criminal case. The deceased refused to pay the sum of Rs.1 lakh, as A2 was living with A1. Thereafter, the deceased married one Suryakumari, who was examined as PW3, and out of wedlock, they were blessed with one son.

3. The evidence on record further shows that A2 continued her relationship with A1 for three years, lived with him for some time at Tanuku and later at Velpur. Since ten months prior to the date of incident, they were living in the house of Pindi Veeraswamy at Arjunudipalem village. The daughter of the deceased is said to have joined the deceased about three months prior to the incident. On 14.10.2010, at 7.30 p.m., there was a Dasara festival procession in the village. The deceased and A1 participated in the said procession, during which their hands came into contact with each other, as a result of which a quarrel ensued. Subsequent thereto, A1 returned home and informed A2 about the dispute. Thereafter, both of them proceeded with a knife to Kapulavisranthi Bhavanam, Arjunudipalem village where A1 is said to have hacked the deceased, while he was in the festival procession on the left thigh and right foot. It is stated that A1 attacked the deceased pursuant

to the instigation of A2, since the deceased failed to concede to the request of A2 to pay an amount of Rs.1 lakh. Immediately thereafter, at about 3 a.m in the midnight, PW1 lodged a report before PW13-the Head Constable, Iragavaram Police Station, basing on which a case in Crime No. 112 of 2010 came to be registered under Section 302 read with 34 IPC. Ex.P7 is the First Information Report.

4. Further investigation in this matter was taken up by PW14-the Circle Inspector of Police, Palkol. According to him, on 15.09.2010 at about 3.30 a.m., when he was present in his office, he received information about the registration of the crime. After collecting a copy of the F.I.R, PW14, in the presence of PW9, inspected the scene of offence and prepared a scene observation report, which is marked as Ex.P4. At the scene of offence, he seized blood stained, curved knife, which were marked as M.O.1, chappals-M.O.6, controlled earth-M.O.11 and blood stained earth-M.O.12 under the cover of mediators report. Thereafter, he conducted inquest on the dead body in the presence of PW9 and another. During inquest, he examined PWs 2, 3, 4, 5 and 6 and recorded the statements. Later, he got the dead body photographed through one Rajahmundry Satyanarayana, and the said photographs were marked under Ex.P3. After conducting inquest and after preparing the rough sketch of the scene, he sent the body of the deceased for post mortem examination.

5. PW10-the Civil Assistant Surgeon, Government Area Hospital, Tanuku, conducted autopsy over the body of the deceased on 15.10.2010 and issued Exhibit P6-the Post Mortem Report. He noticed two injuries on the left thigh and right foot. According to him, the cause of death was due to shock and haemorrhage due to rupture of muscles and injury to blood vessels of left thigh.

6. On 14.10.2009, PW14 arrested both the accused in the presence of PW9 and another and recorded their confessional statements. Pursuant to their confession, he seized M.Os. 7 to 10 from A2.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 36 of 2011 on the file of the II Additional Judicial First Class Magistrate, Tanuku. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 247 of 2012 on the file of IV Additional District and Sessions Judge (Fast Track Court), Tanuku. Basing on the material on record, a charge for the offence punishable under Section 302 read with 34 of IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

8. In support of its case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P10 and M.Os.1 to 12. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances

appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

9. Relying on the evidence of PWs 1, 2, 4 to 6 and 8, coupled with the medical evidence, the learned Sessions Judge convicted the accused under Section 302 read with 34 IPC. Challenging the same, the present appeals came to be filed.

10. The only ground urged by the learned counsel for the appellants is that even accepting the entire case of the prosecution to be true, no offence under Section 302 IPC is made out. It is urged that since the injury was caused on a non vital part of the body, it cannot be said that the accused had any intention or motive to kill the deceased.

11. On the other hand, the learned Public Prosecutor opposed the same, contending that the evidence of PWs 1, 2, 4 to 6 and 8, who are eye witnesses to the incident in question, is sufficient to base a conviction.

12. The evidence on record, more particularly, PWs, 1, 2, 3 and 4 amply establish the involvement of the accused in the commission of the offence. All the witnesses, in one voice, say that there were disputes between the deceased and A2 when she started living with A1, after deceased left to Dubai. The evidence on record also shows that even after the deceased returned from Dubai, A2 did not join the deceased, and on the other hand, she

was demanding the deceased to pay a sum of Rs.1 lakh to her, to which the deceased refused. Since then, disputes arose between the deceased and A2 and both of them were living separately. On the date of incident, i.e., 14.10.2010, A1 and deceased participated in the Vijaya Dasami festival and during the festival procession, the hands of A1 and deceased came into contact with each other, which led to a quarrel. Immediately, A1 went home, returned back with a knife along with A2 and is said to have stabbed the deceased on the left thigh and right foot. The said incident was witnessed by all the persons who were present in the procession. The evidence of PWs 1 to 4 establish the said fact. Therefore, the fact that A1 stabbed the deceased in the presence of A2 stands established.

13. Now, the question is whether both the accused can be convicted under Section 302 read with 34 IPC, or in other words, whether it can be held that the accused had any motive to cause the death of the deceased.

14. As seen from the record, if really the intention of A1 was to cause the death of the deceased, definitely, he would have attacked on the vital parts of the body of the deceased, which did not happen in this case. On the other hand, the evidence on record shows that he gave two blows on the left thigh and right foot of the deceased. The same would not show that A1 had any intention to cause the death of the deceased, but indicate that he only wanted to cause grievous injuries on the body of the

deceased. As observed earlier, nothing prevented A1 to give blows on the vital parts of the body of the deceased, having come over there with a deadly weapon. Merely because there were some disputes between the accused and the deceased, no inference can be drawn that the accused had any intention to cause the death of the deceased. But having regard to the weapon used and the manner in which the blow was given, it can be said that A1 had knowledge that such injury is likely to cause death.

15. Though the case of the prosecution is that A1 attacked the deceased only on the instigation of A2, the evidence on record does not anywhere indicate that A2 was responsible for the incident, though her presence at the time of incident cannot be disputed.

16. In the result, the Criminal Appeals are allowed in part. The conviction and sentence recorded against the appellants/ accused in the judgment dated 08.01.2013, in Sessions Case No.247 of 2012 on the file of the IV Additional District and Sessions Judge (Fast Track Court), Tanuku for the offence punishable under Section 302 I.P.C. is altered to one under 304 Part-II. For the altered conviction, the appellant in Criminal Appeal No. 590 of 2013 is sentenced to suffer rigorous imprisonment for a period of six years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ A1 shall be set at liberty forthwith on completion of six years rigorous imprisonment, if not

required in connection with any other case. For the altered conviction, the sentence of imprisonment of the appellant in Criminal Appeal No. 1104 of 2013 is reduced to that of the period already undergone by her, in view of the representation made that the accused is already in jail for more than five years. The period of remand underwent by her during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ A2 shall be set at liberty forthwith, if not required in connection with any other case. Miscellaneous petitions pending, if any, stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

30.06.2018
DMG