THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE No.315 OF 2011

ORDER:

1 This criminal revision case, under Sections 397 and 401 Cr.P.C. is filed aggrieved by the judgment dated 07.02.2011 passed in Crl.A.No.113 of 2009 on the file of the Court of the IV Additional District and Sessions Judge (FTC) at Mahabubnagar, whereunder the learned Additional District Judge confirmed the conviction and sentence imposed against the petitioner in S.C.No.23 of 2005 by the learned Assistant Sessions Judge, Nagarkurnool for the offences punishable under Sections 304-II and 323 of IPC and was sentenced to suffer rigorous imprisonment for five years and also to pay fine of Rs.1,000/- for the offence under Section 304-II IPC and to pay fine of Rs.1,000/- for the offence under Section 323 IPC.

2 The gravamen of the charge is that the Inspector of Police, Jadcherla filed charge sheet against accused Nos.1 to 3 for the offences punishable under Sections 302, 504 and 323 r/w 34 IPC basing on the complaint lodged by one Upparipally Anjamma of Kodparthy village of Thimmajipet Mandal. The accusation was that on 06.02.2002 at 7.00 pm

while she was returning home along with her husband Upparapally Chinna Jangi Reddy to their house from their fields and when they reached near the house of one K.Venkat Reddy on the road, suddenly the petitioner and his wife A.2 and their nephew A.3 attacked them abusing them in foul and filthy language and beat them with hands and legs on the premise that she objected the driving of double bullock cart of A.1 through their fields. On hearing the cries, Boya Nagamma and Petla Sathyamma intervened and separated them. Basing on the above complaint, a case in Cr.No.7 of 2002 under Sections 341, 323 and 504 r/w 34 IPC was registered and investigated into. The injured was shifted to Government hospital, Mahbubnagar where he succumbed to the injuries. After completion of investigation charge sheet was laid against the petitioner and the other two accused for the offences punishable under Sections 304, 504 and 323 r/w 34 of IPC. After the case was made over to the trial Court charges under Sections 304, 504 and 323 r/w 34 of IPC were framed against the accused, read over and explained to them in Telugu to which they pleaded not guilty and claimed to be tried.

3 During the course of trial, the prosecution examined P.Ws.1 to 16 and got marked Exs.P.1 to P.12. No oral or documentary evidence was adduced on behalf of the accused. The learned Assistant Sessions Judge, Nagarkurnool, having appreciated the evidence available on record, both oral and documentary, found all the accused guilty of the offences punishable under Sections 304-II and 323 IPC and accordingly convicted and sentenced them to suffer rigorous imprisonment for five years and sentenced to pay fine of Rs.1,000/- each and further sentenced them to pay fine of Rs.1,000/- each for the offence under Section 323 r/w 34 IPC, however, acquitted them of the offence punishable under Section 504 IPC.

4 Aggrieved by the judgment dated 15.9.2009 of the trial Court, the petitioner and the other accused preferred Criminal Appeal No.113 of 2009 on the file of the Court of the IV Additional District and Sessions Judge (FTC) at Mahabubnagar. The learned appellate court, having re-appreciated the entire evidence available on record, by judgment dated 07.02.2011 modified the judgment of the trial Court by acquitting the accused Nos.2 and 3 of the offence punishable under Section 304-II IPC,

but confirmed their conviction and sentence for the offence punishable under Section 323 r/w 34 IPC. However, the appellate court confirmed the conviction and sentence imposed on the petitioner – A.1 by the trial Court on both counts. Hence the present revision by the petitioner – A.1.

5 The learned counsel for the petitioner contended that the learned appellate court having held that there is no intention on the part of the accused Nos.2 and 3 or knowledge that it may likely to cause death of the deceased and acquitted them, ought to have given the same benefit to the petitioner also. He further submitted that the doctor who conducted the postmortem examination over the deceased was not examined and hence the postmortem examination report was not proved. It is his further contention that both the courts below failed to appreciate that abrasion on abdomen of the deceased is not having any corresponding internal injury. He further argued that the prosecution examined only interested witnesses, but the eyewitnesses to the alleged incident have not supported the case of the prosecution. It is his further contention that P.W.3 admitted that the deceased had received injury

due to fall in the well 15 days prior to the incident and the case of death is due to septicemia which is possible due to previous injuries to the deceased. He further submitted that the prosecution suppressed the prior 161 Cr.P.C. statement of P.W.1 wherein it was mentioned that the deceased received injuries due to fall in his agricultural well and prayed to set aside the impugned judgment.

6 On the other hand, the learned Assistant Public Prosecutor submitted that both the courts below have appreciated the evidence available on record both oral and documentary in right perspective and no interference is warranted in this criminal revision case and prayed to dismiss the revision.

7 Now the point for consideration is whether the prosecution proved the guilt of the petitioner for the offence punishable under Section 304-II IPC beyond reasonable doubt or whether there is any illegality or material irregularity in the impugned judgment warranting interference of this Court in exercise of revisional jurisdiction under Section 397 Cr.P.C.

8 Section 304 Part II of the Indian Penal Code (IPC) deals with culpable homicide that is not murder. It states that a person who commits an act that results in death, but without the intent to kill, can be sentenced up to 10 years in prison, a fine, or both.

9 The evidence of P.W.1, the wife of the deceased, goes to show that two months prior to the death of her husband, her cattle grazed in the fields of others on which A.2 bear her daughter and A.1 threatened her with dire consequences and it was pacified. Two or three months thereafter, when A.1 was taking his double bullock cart through their agricultural fields, she (P.W.1) objected along with her son. On that A.1 abused them in filthy language. Later they came back to their house. After sometime A.1 and A.2 came out and quarreled with them. A.2 trampled her daughter when she tried to rescue her, then A.2 beat her daughter. At that time, when her husband who came there to rescue them, the accused took her husband and pushed him on the ground and trampled him. Then they took her husband to Jadcherla hospital from there to Government hospital Mahabubnagar. On the next day her husband died.

10 The evidence of P.Ws.2 and 3 is more or less in the version of P.W.1. Though there was a suggestion to the prosecution witnesses that 15 to 20 days prior to the alleged incident, the deceased fell in an agricultural well and sustained injury in abdomen, except P.W.3 all the other witnesses denied the same.

11 The incident was occurred at 7.00 P.M on 06.02.2002 and the report was given at 9.00 am on 07.02.2002. So there is not at all any inordinate delay in lodging the report inasmuch as after the incident every one would automatically complain to the nearby first and also concentrate how to rescue the injured. Moreover, the report was given in the morning hours of the next day. So the contention of the learned counsel for the petitioner that there was delay in lodging the FIR cannot be countenanced.

12 Insofar as the contention of the learned counsel for the petitioner that the doctor who conducted the postmortem examination over the deceased was not examined and hence the postmortem examination report was not proved is concerned, this court is of the view that the

said contention also holds no ground since it is well established that when the doctor who conducted autopsy over the deceased was not available and some other doctor who knows and identifies the handwriting and signature of the doctor, who conducted autopsy over the dead body, it can be safely concluded that the postmortem examination is proved. No doubt, it was the duty of the prosecution to examine the autopsy surgeon and to prove the postmortem report since it is a case of death. A postmortem report cannot be treated as a report of Government Scientific expert as contemplated in Section 293 of Cr.P.C. However, for fair ends of justice I have a glimpse to the postmortem report which is already on record and I find nothing to observe that had the autopsy surgeon was examined the case would have been otherwise than that what is concluded by the Courts below.

13 The normal rule is that a post-mortem certificate being a document containing the previous statement of a Doctor who examined the dead body can be used only to corroborate the statement under Section 147 or to contradict the statement under Section 145 or to refresh his memory under Section 159 of the Evidence Act. But the provision of

Section 32 of the Evidence Act is an exception to this rule. If the Doctor who held autopsy is dead or is not available for examination, the certificate issued by him is relevant and admissible under Section 32(2) of the Evidence Act, which reads thus:

> Section 32 of the Evidence Act provides that when a statement, written or verbal, is made by a person in the discharge of professional duty whose attendance cannot be procured without an amount of delay, the same is relevant and admissible in evidence. Besides, since the carbon copy was made by one uniform process the same was primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act. Therefore, the medical certificate was clearly admissible in evidence.

14 In that view of the matter, I am of the considered view that non-examination of the doctor who conducted autopsy over the deceased is not at all fatal to the case of the prosecution and that the postmortem examination report was proved through the evidence of P.W.16.

15 The further contention of the learned counsel for the petitioner that both the courts below failed to appreciate that abrasion on abdomen of the deceased is not having any corresponding internal injury is concerned, the postmortem examination report clearly shows that the deceased sustained injuries to intestine and kidney leading to septicemia shock and death. P.W.16 has categorically stated that the injuries mentioned in the P.M. report are possible when the deceased received

kicks with considerable force on his abdomen. The evidence of P.Ws.1 to 3 is categorical on this aspect. They stated in one voice that the petitioner took her husband and pushed him on the ground and trampled him. Therefore, the acts of the petitioner would clearly fall under the provisions of Section 304-II IPC which deals with culpable homicide not amounting to murder.

16 The further contention of the learned counsel for the petitioner that the prosecution examined only interested witnesses, but the eyewitnesses to the alleged incident have not supported the case of the prosecution is also not plausible. When the prosecution theory is believable and where there are no material contradictions in the evidence of the prosecution witnesses, the court can safely rely on the evidence of the prosecution witnesses though they are interested. Mere interestedness does not take away the case of the prosecution if it is otherwise trustworthy.

17 The next contention of the learned counsel for the petitioner that the deceased received injuries previously due to fall in an agricultural well is also not acceptable because the family members of the deceased

viz., P.Ws.1 and 2 have categorically denied the same and also there was no mention about the same in any other form. Even if the said contention is accepted, Explanation (1) to Section 299 I.P.C. says that a person, who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

18 The evidence of P.Ws.1 and 2 coupled with the medical evidence of P.W.16 clearly shows that the petitioner kicked the deceased to earth and trampled him indiscriminately due to which he succumbed to the injuries caused to the intestines and some other vital organs while undergoing the treatment.

19 For the aforesaid reasoning, I am of the considered view that the prosecution has proved the guilt of the petitioner for the offence punishable under Section 304-II of IPC beyond all reasonable doubt. Both the courts below have concurrently found the petitioner guilty of the said offence and hence the findings arrived at by the courts below do not warrant interference of this court in exercise of revisional jurisdiction under Section 397 Cr.P.C.

20 However, since the offence was of the year 2002 and since the petitioner has been roaming around the court all these years and since the petitioner has already undergone incarceration for some days, I am of the opinion that the sentence of rigorous imprisonment for five years is reduced to that of the period already undergone by the petitioner while enhancing the fine amount to Rs.2,00,000/- to be paid by the petitioner within three months from today to the credit of S.C.No.23 of 2005 by the learned Assistant Sessions Judge, Nagarkurnool. In default, the petitioner shall suffer simple imprisonment for one year. Upon payment of such fine amount, the legal heirs of the deceased are permitted to withdraw the same without furnishing any security and on proper identification by the learned trial Court.

21 Except the above modification in respect of the period of sentence, this criminal revision case, in all other aspects, is dismissed. As a sequel, miscellaneous petitions, if any pending, shall also stand dismissed.

JUSTICE E.V.VENUGOPAL

Date: 19--02--2025
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