

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 4TH DAY OF JULY, 2013

PRESENT

THE HON'BLE MR. JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE MR. JUSTICE B.V. PINTO

Crl.A. No. 569 of 2010

BETWEEN:-

Jayappa,
S/o. Gopala,
Age: 28 years,
Occ: Coolie,
Add: Near Veterinary Hospital,
Jannapura,
Mudigere Taluka,
Chikkamagalur District.

Appellant

(By Sri N.R.Krishnappa, Advocate)

AND:-

State by Gonibeedu Police.

Respondent

(By Sri P.M. Nawaz, Addl. SPP)

This Crl.A. is filed U/s.374(2) of Cr.P.C. by the advocate for the Appellant praying that this Hon'ble Court may be pleased to set aside the conviction and sentence dated 08/10.02.2010 passed by the Presiding Officer, Fast Track Court, Chikmagalur in S.C.No.18/2008 – convicting the Appellant/Accused for the offence punishable U/s.302 of IPC. The Appellant/Accused is sentenced undergo

imprisonment for life and pay fine of Rs.1,000/- for the offence punishable U/s.302 of IPC.

This appeal is coming on for final hearing this day, **B.V. PINTO, J.**, delivered the following:

J U D G M E N T

This appeal is filed against the judgment and order dated 8/10-2-2010 passed by the Fast Track Court at Chickmagalur in S.C.No.18/2008 convicting the accused of the offence punishable U/s.302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.1,000/-.

2. It is the case of the prosecution that on 18.02.2007 at 8.30 p.m. at Jannapura auto stand within the jurisdiction of Mudigere Police Station accused took quarrel with the deceased Lokesha who is an auto driver with regard to taking the wife of the accused to Gonibeedu in his auto and being enraged by the answer given by the deceased, the accused brought a sickle and committed the murder of the deceased by hitting him with a sickle thereby he is alleged to have committed an offence punishable U/s.302 IPC.

3. The prosecution in order to prove its case has examined PWs.1 to 18 and marked Exs.P1 to P.29 and produced M.Os.1 to 6. The defence of the accused was one of total denial. However by the impugned judgment the learned Sessions Judge was pleased to find the accused guilty of the offence and convicted him and sentenced him as aforesaid. It is the said order of conviction which is challenged in this appeal.

4. PW1 – Ganesha is an eyewitness to the incident. He has stated that on 18.10.2007 at 8.30 p.m. himself and one Kareem and deceased were waiting at the Jannapura auto stand. When accused came near the auto, he asked the deceased as to who carried his wife in the auto. At that time the deceased got enraged and asked as to why he is asking the said question and any person can transport any passenger since their vehicle is public service vehicle. The accused went back and came after some time along with a sickle in his hand and assaulted on the head of the deceased Lokesha. The deceased fell down and he sustained bleeding injuries on all parts of the body. One Mallesh was also

present at that time. Thereafter the injured was taken to Government Hospital. The Mudigere police have recorded the statement of PW1 and got marked Ex.P1. PW1 has identified the sickle used by the accused at the time of offence. In the cross-examination it is suggested that PW1 has not seen the incident and the accused is falsely implicated in the case. The said suggestions are denied by PW1.

5. PW2 is another eyewitness. He has stated that on the date of incident, the accused assaulted the deceased. PW2 has also identified sickle as the one which is used by the accused for commission of the offence. M.O.1 is the sickle. Further PW2 has received intimation that the accused assaulted the deceased. The prosecution treated this witness as hostile on the point of motive. PW3 is a witness to Ex.P7 under which cloths of the deceased were seized by the police. PW4 - Rudresh is the witness to Ex.P4 and P5. Ex.P5 is inquest proceedings. PW5 - Gopal is signatory to the spot mahazar - Ex.P6. PW6 - Ramesha has stated that the accused has signed Ex.P3. PW7 - Chandrashekar is the auto

driver who has carried the wife of the accused from Jinnapura auto stand for hire.

6. PW9 - Dr. Seema is the Medical Officer at Mudigere Government Hospital who has given first aid to injured Lokesha on 18.10.2007 at 9.40 p.m. at the Mudigere Government Hospital. She has stated that the deceased has sustained incised wound measuring 10 x 6 c.m. on the left side of the scalp and there was a fracture of skull. PW10 is a junior engineer who has drawn sketch of scene of occurrence. PW11 has stated that PW1 was auto driver in the vehicle owned by him. PW12 is the Constable who has carried the weapon - M.O.1 to KMC Hospital, Mangalore for the purpose of seeking opinion from the Doctor. After seeking opinion he has returned the weapon and handed over to I.O.

7. PW13 is the Inspector of Police during the relevant period. He has taken up further investigation on 10.12.2007 from CW24 and after receiving the medical opinion, he has filed the charge-sheet in this case. PW14 is

the Assistant Professor in KMC hospital, Mangalore who has stated that on 01.11.2007 he has conducted PM examination on the dead body of the deceased and has opined that the death of the deceased is due to injuries sustained by him. Ex.P14 is the PM report and Ex.P12 is the opinion given by PW14. PW15 – Manjachar is the A.S.I. of Gonibeedu P.S. He has registered a case for the offence U/s.302 IPC in Cr.No.59/07 of Gonibeedu police station. On 31.10.2007, after receiving the death intimation from KMC Hospital, Mangalore. Thereafter, he has sent information to the Jurisdictional Magistrate. PW16 is the Inspector of Police of Mudigere during relevant the period. He has sent materials to FSL examination, Mangalore and conducted part of investigation in this case. PW17 is the Scientific Officer, FSL Mangalore who has stated that he has examined the materials including the sickle sent by the I.O. containing blood-stains. He has stated that the blood-stains on the sickle contains blood of “O” group. Accordingly, she has given FSL report. PW18 is PSI who has received the complaint of Ganesha – PW1 at 10.45 p.m. on 18.10.2007

and registered a case for offence U/s.307 and 504 IPC. The complainant has also produced sickle said to have been used by the accused on the same day.

8. It is from the above evidence of the prosecution that the learned Sessions Judge has convicted the accused. Heard Sri Chandrashekar, learned counsel for the appellant and Sri P.M. Nawaz, learned Addl. SPP. The learned counsel for the appellant submitted that incident has occurred in the spur of a moment in connection with the wife of the accused going in auto and consequent upon an altercation between accused and deceased. He has also submitted that there was only one blow and death of the deceased is due to medical complication after the incident. Hence the appeal may be allowed. Sri P.M.Nawaz, learned Addl. SPP submitted that there are eyewitnesses to the incident. PWs.1 2 and 6 are eyewitnesses who have spoken regarding the act of the accused. He also submitted that the accused has assaulted on the head of the deceased with sickle and there was skull fracture of the deceased as a result of assault. He also

submitted the trial court has rightly convicted accused for the offence U/s.302 IPC.

9. We have considered the materials on record. Apart from the eyewitnesses, the serological report indicates that the sickle which was collected by PW1 at the time of incident contains "O" blood-group and deceased's blood group is also the same and therefore the case of the prosecution that the accused assaulted the deceased by means of sickle on the date of incident is proved beyond reasonable doubt. The learned Sessions Judge has rightly held that the accused assaulted on the deceased and caused the death.

10. So far as the nature of offence is concerned, the deceased has survived from 18.10.2007 to 31.10.2007 on which date he died in KMC Hospital, Mangalore. The opinion of the Doctor is that the death was due to head injury and its complications. In that view, we are of the considered opinion, that the act of the accused amounts to culpable homicidal not amounting to murder punishable U/s.304 Part-I IPC. It

is also to be noted that the accused assaulted only once to the deceased and thereafter he has run away from the scene of occurrence. Hence, we are of the opinion that the offence falls U/s.304-I IPC. Hence, the following

ORDER

The appeal is allowed in part. The conviction and sentence passed for offence U/s.302 IPC and sentencing him to undergo life imprisonment is set aside. In its place, the appellant is convicted for offence U/s.304-I IPC. The accused is in custody since 19.10.2007. He has undergone almost 6 years of imprisonment. Therefore, we deem it proper that the said detention would be sufficient punishment for the offence committed by the accused. Since the accused has already undergone the sentence, the appellant is directed to be released forthwith, if not required to be detained in any other case.

Sd/-
JUDGE

Sd/-
JUDGE

NM*