SUPREME COURT OF INDIA

Byvarapu Raju

Vs

State of Andhra Pradesh and Another

Appeal (Crl.) 899 of 2005

(Arijit Pasayat and D. K. Jain, JJ)

28.05.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of the Division Bench of the Andhra Pradesh High Court holding the appellant guilty of offences punishable under Section 302 and Section 201 of the Indian Penal Code, 1860(in short the 'IPC'). Before the High Court challenge was to the judgment of the learned IInd Additional Sessions Judge, West Godavari, Eluru whereunder appellant and his mother were found guilty of offences punishable under Section 302 read with Section 34 IPC and Section 201 IPC read with Section 34 IPC. Each was sentenced to undergo imprisonment for life and pay a fine of Rs.1, 000/- with default stipulation for the first offence and 5 years imprisonment and fine of Rs.500/- with default stipulation for the latter offence.

2. Background facts in a nutshell are as under:

Koduri Kasiviswanadham (PW-2) is having some agricultural lands at Mallavaram. There is a farmhouse containing one room in his fields. Byvarapu Raju (A-1) was working as a farm servant since 1 = years prior to the incident. The deceased who is no other than the father of A-l used to come along with him. Nagamani (A2) was the wife of the deceased. The deceased was the resident of Paderu in Visakhapatnam district. On 29.2.1996 both the accused and Venkatarao (hereinafter referred to as the 'deceased') were quarreling with each other at the farmhouse and at about 12.00

midnight. Bolla Venkat Rao (PW6) heard cries from the farmhouse of PW2, and when he enquired from Al, he informed that his father came in an intoxicant condition asking him and his mother (A2) to come to Pederu and was beating A2 and therefore they both beat the deceased. PW6 went to the house of PW2 and informed about the same. PW2 along with some other witnesses went to farmhouse and at that time both the accused were ready having packed their luggage to leave the place. Then PW2 questioned the accused, for which Al stated that his father came in an intoxicant condition and was beating his mother (A2) and in course of the quarrel he hacked his father with "Yerukalakatti" and A2 also hacked the deceased. Thereafter both the accused showed the dead body, which was in the field of sugar cane garden of China Venkat Rao (PW9). PW2 sent a word to the Village Administrative Officer. Thereafter he gave Ex.P7 report to the police on 1.3.1996 at 5A.M. PW13 who received Ex.P7 report, registered a case under Section 302 read with Section 34 IPC. PW15 took up investigation. By the time he went to Chagallu Police Station, both the accused were present in the police station. Thereafter Al led him and the mediators to the "Makamshed" of Viswanadham and produced the bloodstained knife, bloodstained T-Shirt and Lungi and they were seized under Ex.P3. PW15 prepared Ex.P4 observation report and seized M.Os. 7 and 8 (control earth and bloodstained earth). Thereafter he visited the place where the dead body was found lying and declaration report was drafted. At that place, he seized bloodstained earth and control earth. Thereafter he held inquest on the dead body of the deceased from 10.30 a.m. to 1 p.m. in the presence of PWI and another and examined the witnesses. After inquest, the dead body was sent to post mortem examination. PW10 conducted autopsy and found 13 injuries. He opined that the deceased died of shock due to hemorrhage on account of injury to vital organs. After completion of investigation, PW15 filed a charge sheet. To support the case of the prosecution, it examined 15 witnesses and marked 21 documents besides the case properties M.Os.1 to 11. Accused persons pleaded innocence.

3. Considering the evidence on record the trial Court ordered conviction and sentence as afore-stated. In appeal before the High Court A-2 i.e. mother of the accused was found not guilty and it directed her acquittal. However, the conviction and sentence so far as accused-appellant who was separately charged under Section 302 and 201 IPC is concerned was maintained.

4. In support of the appeal, learned counsel for the appellant submitted that the prosecution version as unfolded during trial shows that the incident took place during the course of a sudden quarrel and, therefore, Section 302 IPC has no application.

5. Learned counsel for the respondent-State on the other hand supported the judgments of the trial Court and the High Court.

6. For bringing in operation of Exception 4 to Section 300 IPC it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

7. The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception

deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. These aspects have been highlighted in Dhirajbhai Gorakhbhai Nayak v. State of Gujrat Â])and Parkash Chand v. State of H.P. Â .

8. On the background facts considered in the light of the principles set out above, it is clear that to the present case the Exception 4 to Section 300 IPC applies. Therefore, the appropriate conviction would be under Section 304 Part I IPC and not under Section 302 IPC. The conviction in terms of Section 201 IPC is well founded and does not warrant interference. In the ultimate conclusion, the appeal is allowed to the aforesaid extent by altering the conviction from Section 302 IPC to Section 304 Part I, IPC. The custodial sentence of 10 years would meet the ends of justice.