

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL NO.571 OF 2007

JUDGMENT:

1. This appeal is filed by the appellant-accused against the conviction and sentence imposed by the II Additional Sessions Judge (Fast Track Court), Adilabad in S.C.No.156 of 2006 vide judgment dated 30.11.2006.

2. Brief facts of the case are as follows:

On 14.1.2006 at about 9 p.m., the accused picked up a quarrel with his wife-P.W.8 and beat her over an issue for not preparing anything on the eve of Sankranti festival. Due to that, P.W.8 came to the house of her brother-in-law (P.W.5) and took shelter there. The accused while searching for his wife came to the house of P.W.5 and caught hold of his wife, proceeded to his house by dragging her. The nephew of the accused viz., Gangadhar (for short, 'the deceased') and P.Ws.2 to 4 followed the accused. After reaching the house of the accused, the deceased questioned the accused as to why he was beating P.W.8, for which, the accused became angry and asked him as to who was he to question him. While asking the deceased as such, the accused kicked the deceased over his testicles and tried to kill him by breaking a glass bottle, as a result of which, the deceased fell down there. When P.Ws.2 to 4 tried to pour water to the deceased, he could not swallow the water and he had succumbed to the injuries sustained by him. Hence, P.W.1 presented a report, basing on which a case was registered and investigated into. After completion of the investigation, charge sheet was filed.

3. The learned trial Judge framed a charge under Section 302 IPC against the accused, read over and explained to him for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 13 were examined and Exs.P1 to P15 and M.O.1 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court found the appellant-accused guilty for the offence under section 304 Part II IPC instead of Section 302 IPC. Hence, the trial Court convicted and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for three months for the offence under Section 304 Part II IPC. Aggrieved by the conviction and sentence imposed by the trial Court, the appellant-accused filed the present appeal.

6. The learned Counsel for the appellant-accused submitted that there is no previous enmity between the accused and the deceased and that there was no intention on the part of the appellant-accused to kill the deceased and that the deceased received injuries as he intervened in the scuffle that was taking place between the accused and his wife (P.W.8). Therefore, the conviction and sentence imposed by the trial Court are liable to be set aside.

7. The learned Public Prosecutor submitted that the prosecution has established the guilt of the accused beyond all reasonable doubt for the offence under Section 304 Part II IPC and the trial Court has rightly convicted the accused and there are no substantial reasons to interfere with the judgment under appeal and therefore, the appeal is liable to be dismissed.

8. Now, the point that arises for consideration in this appeal is :

“Whether the prosecution has proved the guilt of the accused for the offence under section 304 Part II IPC beyond all reasonable doubt ?”

9. **POINT:** P.Ws.2 to 5 are the eye witnesses to the incident. It is to be examined as to whether their evidence inspires confidence of this Court or not.

10. P.W.1 –brother of the deceased deposed that he was informed that the accused had beaten the deceased-Gangadhar.

11. P.W.2 deposed as follows:

On Sankaranthi day, the accused had beaten his wife (P.W.8) on the ground that she did not prepare special items for the festival and then, she came to the house of P.W.5-Narsaiah, younger brother of the accused. At about 9.00 p.m., the accused came to the house of P.W.5 and took away his wife by dragging her. Then, himself, the deceased and L.Ws.3 to 5 followed the accused apprehending that the accused may again beat his wife. After reaching there, the deceased questioned the accused as to why he was beating P.W.8. Then, the accused came back and questioned the deceased as to who he was to question him and so saying, he kicked the deceased on his testicles, as a result of which, the deceased fell down on Laxmi. Though water was poured to him, he could not gulp the water as he dead. In the meantime, the accused had broken a glass bottle and came upon the deceased to stab him. Then, he (P.W.2) took the bottle from the accused and threw it away.

12. P.Ws.3, 4 and 5 deposed in the same lines as spoken to by P.W.2. The evidence of P.Ws.2 to 5, who are the eye witnesses in their cross-examination remained unshaken. Further, it is apparent that P.Ws.2 to 5 are the relatives of the accused and particularly, P.W.5 is the real brother of the accused. Therefore, there is nothing on record to disbelieve their evidence.

13. P.W.11-Civil Assistant Surgeon, who conducted post mortem examination, deposed that the cause of death is due to Neurotic shock

due to severe pain and injury to the sensitive Vital Organ (Testicles).

14. The evidence of P.Ws.2 to 5 coupled with the medical evidence clearly establishes that the deceased died due to the injury caused by the accused on his vital organ. However, it is apparent on the face of the record that there was no intention or motive on the part of the accused to kill the deceased. When the deceased asked the accused as to why he was beating P.W.8, the accused got angry and kicked the deceased on his vital organ. Hence, the offence falls under Section 304 Part II IPC.

15. In view of the foregoing discussion, this Court is of the view that the trial Court has rightly convicted the appellant-accused for the offence under Section 304 Part II IPC and therefore, the judgment of the trial Court does not warrant any interference. Accordingly, the point is answered.

16. At this stage, the learned Counsel for the appellant-accused confined his arguments with regard to the sentence of imprisonment. He submitted that the appellant has to look after his children and he is a poor person and he approached the legal services authority for legal aid and he is not in a position to pay the fine amount, which is exorbitant.

17. Considering the facts and circumstances of the case and in view of the fact that occurrence took place in a sudden provocation among the relatives and that the accused has no intention to cause the death of the deceased, this Court is inclined to modify the sentence of imprisonment.

18. In the result, the conviction recorded by the learned II Additional Sessions Judge (FTC) Adilabad, against the appellant-accused in Sessions Case No.156 of 2006 for the offence under Section 304 Part II IPC vide judgment dated 30.11.2006 is hereby confirmed. But

however, the sentence of imprisonment imposed by the learned II Additional Sessions Judge is modified to that of two (2) years rigorous imprisonment. The sentence of fine is set aside.

19. The period already undergone by the appellant-accused shall be set off under Section 428 Cr.P.C.

20. The appellant-accused is directed to surrender before the Court concerned on or before 15th February, 2014. In default, the Court concerned is at liberty to take appropriate steps in accordance with law.

21. Accordingly, the Criminal Appeal is partly allowed.

RAJA ELANGO, J

31st December, 2013

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THE HONOURABLE SRI JUSTICE RAJA ELANGO
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