

Per Hon'ble SMT Justice Anis This Criminal Appeal is filed by the appellant/accused, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), against the Judgment dated 22.03.2010 passed in Sessions Case No.410 of 2009 on the file of the II Additional Sessions Judge, East Godavari District at Amalapuram, whereunder and whereby, the appellant/accused was found guilty of the offences punishable under Sections 302 & 307 of the Indian Penal Code, 1860 (for short, 'I.P.C') and accordingly, convicted and sentenced to undergo life imprisonment and to pay fine of Rs.100/-, in default, to undergo simple imprisonment for fifteen days; and to undergo rigorous imprisonment for five years and to pay fine of Rs.100/-, in default, to undergo simple imprisonment for fifteen days for the said offences respectively. 2. The brief facts that are necessary for disposal of the appeal are stated as follows: The de facto complainant-PW.1 is the wife of the accused and mother of Guthula Musalaiah (hereinafter referred to as 'the deceased'). The deceased was their younger son living along with her mother and residing separately in a thatched house, whereas the accused is residing in another thatched house in Molla Cheruvu, hamlet of Vanne Chintalapudi in the same locality. Since three years, accused started disputing with his two sons for the landed property and also filed Maintenance Case No.48 of 2007 against them on the file of the Additional Judicial Magistrate of First Class, Amalapuram, wherein the maintenance of Rs.1,750/- was ordered to pay to the accused by his sons. Accused started disputing with the deceased and his wife-PW.1 not to use the drinking water well and not to take bath on the pretext that he may slip due to mud. Whilesso, on 21.06.2009 at 07:00 p.m, accused went to the well to take bath, to which the accused objected. But, the deceased went to the well to fetch water. Immediately, accused went into his house, returned with a trident and stabbed the deceased on his chest, due to which he fell down with bleeding injuries. When PW.1 came to rescue the deceased, accused also attempted to stab on her chest with the same weapon, as a result she sustained injury on her left elbow. Thereafter, the accused went towards the house of his elder son with the trident. Immediately, the deceased was shifted to hospital in 108 Ambulance, but after reaching Ramalayam temple, he died. Further, the de facto complainant was sent to Government Hospital, Amalapuram, for treatment. On the same day at about 7:30 p.m, on receipt of telephone message from Sub-Divisional Police Officer, PW.15-Sub-Inspector, Amalapuram Taluk Police Station rushed to the scene of offence, took report from the de facto complainant and registered the case in Cr.No.92 of 2009. He got drafted the scene of offence observation report, seized the blood stained earth, control earth and small wooden cot strip under the cover of panchanama and also got photographed the scene of offence through PW.11. Thereafter, PW.16-Circle Inspector of Police took up investigation, held inquest over the dead body of the deceased and thereafter, sent the dead body for post-mortem examination. PW.12 doctor treated PW.1 and issued wound certificate-Ex.P16 opining that the injury is simple in nature. PW.13 another doctor conducted autopsy over the dead body of the deceased and issued post-mortem report-Ex.P17 opining that the injury received to the heart of the deceased led him to death. PW.17 Circle Inspector of Police arrested the accused on 26.06.2009, seized the weapon and thereafter, after completing the investigation and after receiving the post-mortem report, Regional Forensic Science Laboratory report and wound certificate, filed the charge sheet into the Court. 3. On appearance of the accused, the trial Court framed the following charges against him: "FIRSTLY: That you on 21.06.2009 at 07:00 p.m at Molla Cheruvu, H/o Vanne Chintalapudi village committed murder by intentionally causing the death of your son Guthula Musalaiah with trident, which is sharp edged weapon on his chest and that you thereby committed an offence punishable U/S.302 I.P.C, and within my cognizance. SECONDLY: That you on the same date, time and place when LW.1 Lakshmi Tulasi intervened to rescue Musalaiah, you necked with the same trident on her left elbow and with such intention and under such circumstances, that if by that act you had caused the death of LW.1 Tulasi Lakshmi, you would have been guilty of murder and thereby you committed an offence punishable under Section 307 IPC and within my cognizance." 4. When the above charges were read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried. 5. To substantiate the charges, the prosecution examined P.Ws.1 to 17 and got marked Exs.P-1 to P-20, besides the case properties MOs.1 to 9. 6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same. On behalf of the accused, Ex.D1 is got marked. 7. The trial Court after hearing both sides and taking into consideration, the oral and documentary evidence available on record, convicted and sentenced the appellant/accused as stated above. Aggrieved by the said conviction and sentence, the present appeal has been preferred by the appellant/accused. 8. The learned counsel for the appellant/accused argued that the trial Court erroneously believed the evidence of PWs.1, 2 & 6 and came to a wrong conclusion that the accused committed the offence; that the plea of right to private defence is not considered as there was a free fight and scuffle taken between the accused and the deceased and there are inconsistencies and discrepancies in the evidence of prosecution witnesses; that to avoid the payment of maintenance and giving of share in the property, the present false case has been foisted; and that the prosecution failed to prove that the alleged offence took place at 7:00 p.m in the dark, there was no evidence of light and there was no possibility of witnessing the incident by anybody and therefore, the benefit of doubt should be given to the appellant/accused and finally prayed the Court to allow the appeal. 9. On the other hand, the learned Public Prosecutor appearing for the State argued that the evidence of PW.1, who is an eye witness and wife of the appellant/accused, is sufficient to prove that on 21.06.2009 at 7:00 p.m, accused attacked the deceased with a trident and stabbed the deceased on his chest, due to which he sustained bleeding injuries and while shifting to hospital in the Ambulance he died. The learned Public Prosecutor also argued that PW.1 was also injured when she tried to stop the attack; that the medical evidence is corroborated with the ocular evidence produced by the prosecution and the evidence produced by the prosecution clearly established that the accused with an intention to kill the deceased stabbed him with MO.1-trident and therefore, the findings of the trial Court are cogent and as per the evidence on record and those findings need no interference and prayed the Court to dismiss the appeal. 10. Now, the points for determination in this appeal are as follows: 1. Whether the death of the deceased is a homicidal death? 2. Whether the prosecution is able to prove its case beyond all reasonable doubt against the appellant/accused of the offences punishable under Sections 302 & 307 I.P.C? 3. Whether the Judgment of the trial Court is correct, legal and proper?" 11. P O I N T S : PW.13-doctor conducted post-mortem on the dead body of the deceased on 22.06.2009 and found the following injuries: Three stab injuries present vertically in the middle of the chest. 1st stab injury measuring 1 X 1 X 2 cms (Upper). Left side injury measuring 1 X 1 cms (deeply penetrating into middle of chest). A teat of 1 X 1 X 1 cms present on middle of heart. Right injury ½ X ½ X 1 cms. As per the evidence of PW.13, cause of the death of the deceased was due to injuries received to his heart. PW.13 issued Ex.P17-post-mortem report and also stated that heart is a vital organ and after the receiving of above injuries, survival would be 15 to 20 minutes and those injuries would be possible with MO.1-trident. In the cross-examination of the doctor, nothing has been elicited to disprove his evidence and also Ex.P17-post-mortem certificate. PW.14 received the complaint from PW.1-de facto complainant at about 10:30 p.m, registered the case in Cr.No.92 of 2009 for the offences punishable under Sections 302 & 307 I.P.C, issued First Information Report-Ex.P18 and handed over the investigation to PW.15-Sub Inspector of Police, Amalapuram. PW.15 after receiving the information proceeded to Vanne Chinthalapudi, where PW.13 and other police constables were present at the scene of offence and there, he enquired the de facto complainant about the offence committed by the accused. PWs.1 & 2, who are the eye witnesses to the incident, narrated the incident to him and there, he noticed blood stains on the cement and on the sand. He also found a bucket with water at the well, wooden strip and the dead body by the side of cement road. He got photographed the dead body and the scene of offence through PW.11 under Exs.P14 & P15. Thereafter, he drafted the scene of offence observation report under Ex.P11 and sketch of the scene of offence under Ex.P19. PW.16-Inspector of Police took up further investigation, conducted inquest proceedings in the presence of the mediators under Ex.P12 and forwarded the dead body with a requisition to the doctor to conduct post-mortem examination. All the witnesses categorically stated that the cause of death was that the accused attacked the deceased with MO.1 trident. Thus, a perusal of the evidence of the doctor PW.13, post-mortem report Ex.P17 coupled with the evidence of PWs.1 & 2 and the evidence of the inquestdars, the prosecution able to prove that the death of the deceased is homicidal in nature. 12. A perusal of the evidence produced by the prosecution shows that the accused is the husband of PW.1 and father of the deceased and PW.8 G. Venkareswararao. PW.8 is the eldest and deceased was the youngest son of the accused and PW.1. PW.1 and deceased were also having two daughters. PW.2 is the daughter of the younger sister of PW.1 and residing with her. Therefore, there is no dispute about the relationship. As per the evidence on record, there were disputes between the accused and

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