

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Appeal No.582 of 2010

JUDGMENT: (Per the Hon'ble Sri Justice G.Chandraiah)

This Criminal Appeal is preferred by the appellant/accused against the judgment dated 10.03.2010 in S.C. No.80 of 2009 passed by the learned I Additional District and Sessions Judge, Ongole, whereby the appellant-accused was convicted under Section 235(2) Cr.P.C. for the offences punishable under Sections 302 and 307 of the Indian Penal Code, 1860 (for short, "IPC") and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.100/- (one hundred only) for the offence under Section 302 IPC, and in default of payment of fine to suffer one month simple imprisonment, and also sentenced him for the offence under Section 307 IPC to suffer rigorous imprisonment for five years and to pay a fine of Rs.100/- (Rupees one hundred only) for the offence under Section 307 IPC, and in default of payment of fine to suffer simple imprisonment of one month, and both the sentences were directed to run concurrently.

2. The brief facts of the prosecution case that are necessary for disposal of this appeal may be stated as follows:

The Inspector of Police, Giddalur, filed a charge sheet against the accused in Crime No.39 of 2000 of Racherla Police Station alleging that the accused attempted to commit murder of his wife/P.W.1 and caused injury to P.W.1 and when her mother intervened, the accused axed and caused fatal injuries to her, as a result of which the mother of P.W.1 died.

The appellant/accused is the son-in-law of the deceased-Janavath Thirupalamma and P.W.1-Bhukya Nagamani is the wife of the appellant.

P.W.1 was given in marriage to one Krishna of Guntur District and later she took divorce with him. The accused is a smuggler in red sandal. He got two sons and one daughter through his first wife. As the accused got acquaintance

with P.W.1 at forest, both of them married and lived in Nagasanipalli Village. The accused sold away his entire property and performed the marriage of his daughter with the son of his brother-in-law and admitted his two sons in a welfare hostel. Due to the misunderstandings between the accused and P.W.1, the accused used to beat P.W.1.

About ten months prior to the date of incident i.e., 06.10.2000, the accused fell down from a tamarind tree in Nagasanipalli and sustained injury to his back bone. P.W.1 got treated the accused by spending Rs.3,000/- at Nandyal. The doctors advised the accused not to do any hard work. Thereafter, they came down to Velthurla Thanda. The accused was harassing P.W.1 by suspecting her character, abusing and beating her and the same was known to P.W.4 and the deceased, who is mother of P.W.1.

On the night of 05.10.2000, the accused demanded P.W.1 to come to Nagasanipalli, for which P.W.1 refused due to fear. The deceased also declined to send P.W.1 along with the accused. At that time P.W.4 and L.W.4 were present.

On 06.10.2000 at 10.30 a.m. the deceased, P.W.1. and P.W.2 went to their cotton field to pluck cotton. At 11.30 a.m. the accused went there by covering shoulders with blanket by hiding axe and demanded P.W.1 to give Rs.200/-, for which P.W. 1 stated that she had no money. Then the accused beat and abused her by saying where she kept ill-gotten money. Without caring the words of the accused, P.W.1 was doing her work by bending, then the accused axed on her back, as a result, P.W.1 sustained injury and fell down. When the deceased went to rescue P.W.1, accused grew wild and axed on the stomach and neck of the deceased, as a result, the intestines of the deceased came out and she died on the spot.

On hearing cries of P.Ws 1 and 2 and due to fear of arrival of neighbours, the accused left that place with the axe and went into the forest. The same was witnessed by P.W.6-E.Pakeeraiah, who was grazing his oxen in the forest. P.W.1 rushed to the village and informed the same to P.W5-B.Kesavulu Reddy, V.A.O. P.W.5 deputed L.W.7-Y.Kejiyamma to guard the dead body of the deceased. P.W.5 along with P.W.1 went to Racherla Police Station and gave Ex.P1 statement to P.W.7-P.J.Samson, P.C.500 of Racherla Police Station, who registered the same as a case in Crime No.39 of 2000 for

the offences under Sections 302 and 307 I.P.C and submitted original F.I.R.- Ex.P1- to the Court and all the concerned.

P.W.8-M.Kalika Prasad Reddy, the then Inspector of Police, Giddalur, took up investigation, visited the scene of offence and conducted inquest over the dead body of the deceased in the presence of mediators P.W.5, L.W.9-A.Ranga Reddy and L.W.10-P.China Rangaiah and also took photographs of the dead body of the deceased, Exs.P2 to P6 and scene of offence through L.W.6-Mahaboob Basha, photographer.

At the time of examination of P.W.1, P.W.8 seized MO1, blood stained jacket, MO2, blood stained saree of P.W1. At the time of inquest panchanama, the Inspector seized MO3, slippers, which were left by accused after commission of the offence.

P.W.3, Dr.C.Ranga Reddy, Civil Surgeon, Community Health Centre, Giddalur, examined P.W.1 and issued Ex.P7 wound certificate opining that P.W.1 sustained simple injuries. P.W.3 also conducted post mortem over the dead body of the deceased and issued Ex.P9, Post Mortem certificate.

L.W.15, Inspector of Police, Giddalur after receipt of Post mortem certificate and wound certificate filed charge sheet on 18.12.2000 by showing the accused as absconding.

The charge sheet was taken on file by Additional Judicial First Class Magistrate, Giddalur, for the offences under Sections 307 and 320 I.P.C. in P.R.C.3 of 2002 and issued N.B.W. On 16.06.2009 the accused was produced under NBW and was remanded to judicial custody.

3. After complying with the mandatory provisions of Code of Criminal Procedure, and on being satisfied that the case was triable exclusively by Court of Sessions, the learned Magistrate committed the same to the Sessions Division at Prakasam, wherein it was registered as S.C.No.80 of 2009 and was made over to I Additional District & Sessions Judge, Ongole, for disposal according to law.

4. Charges referable to Sections 307 and 302 I.P.C. were framed against the accused, who pleaded not guilty and claimed to be tried. During the course of trial, the prosecution examined PWs.1 to 8, and marked Ex.P.1 to Ex.P.10; and M.Os.1 to 3 were taken on record. The accused examined under Sec.313

Cr.P.C., where they have denied the incriminating material appearing against them, Accused denied the same and stated that P.W.1 got sold his property and kept his children for some days in hostel and was working at Hyderabad and when he was at his village he was caught hold and brought to the court. He stated that he was innocent and ignorant of the case. He also stated that he had no defence witnesses.

5. Through its Judgment dt. 10.03.2010, the trial Court on points 1 and 2 came to the conclusion that the prosecution proved that the accused attempted to commit murder P.W.1 by giving a blow with an axe on the shoulder of P.W.1 and caused injury as found by P.W.3 in Ex.P7-wound certificate. The prosecution also proved that the accused axed on the stomach and neck of the deceased and caused fatal injuries. Thus prosecution proved that the accused committed murder of the deceased and accordingly convicted him for the offences punishable under Sections 302 and 307 I.P.C. The accused was imposed the sentence of rigorous imprisonment for life, and fine of Rs.1,00/-, in default simple imprisonment for one month for the offence under Sec.302 IPC; and rigorous imprisonment for five years and fine of Rs.100/- in default simple imprisonment for one month for the offence under Sec.307 I.P.C.

6. Aggrieved by the said conviction and sentence, the appellant preferred the appeal.

7. It is a legal aid case and the appeal is entrusted to the counsel on record by the Legal Services Committee.

8. Learned counsel for the appellant contended that the judgement is contrary to law, weight of evidence and probabilities of the case; that there are no independent witnesses to occurrence; that the wife gave a report against her husband because she was having illegal contacts with a forest guard; that there is delay of 11 hours in lodging the F.I.R. and the prosecution failed to explain the said delay; that the injuries are possible by any naxalism groups as the fields are nearer to the forest; that P.W.2 was a six years child witness; that the injuries stated by witnesses not supported by medical evidence; that the weapon axe was not seized from the accused; that the injuries can be caused with forceful manner so that the blood easily spread at the plucked cotton not seized and that P.W.6 turned hostile. Learned counsel further submitted that as the accused earlier used to work in a wood shop, he had practice of carrying

the axe to the forest to cut the firewood and that as on the date of incident, the accused and P.W.1 were living at the place of their in-law and P.W.1 and her mother (deceased) went to forest to cut the wood; that the accused also sustained injuries earlier on account of falling down from a tamarind tree, unable to do work, he used to work firewood by way of going to forest and on the way the field belong to mother-in-law was also there, to which place P.W.1 and the deceased went there to pluck cotton and the accused went there to ask money to P.W.1 for his needs. P.W.1 declined to give the money and during the course of conversation, the accused beat P.W.1 and caused injuries and also when the deceased came to rescue, she also received some injuries unfortunately and died and the doctor certificate shows that the injuries on the deceased are simple in nature. Therefore, she submits that he accused never wanted to kill either the wife or the deceased. It was only due to situation at the relevant point of time. It was only an occurrence that took place unexpectedly. Therefore, it is not a case of murder and does not fall within the scope of either under for the offence under Sections 302 and 307 I.P.C. as the charges framed against the accused. Overlooking the same, the trial Court convicted the appellant for the said charges and the same is liable to be set aside.

9. Learned Additional Public Prosecutor, on the other hand, vehemently contended that the accused was aged about 50 years at the time of committing the offence whereas P.W.1 was aged about 20 years, that P.W.1 is the second wife, since the accused lost his first wife after begetting three children; he started suspecting the fidelity of P.W.1 thereby used to quarrel with P.W.1, therefore P.W.1 went to her parents house and the accused also went there and started living there. Even then he used to have regular quarrel with P.W.1. Therefore, the accused on the fateful day decided to do away P.W.1 by developing a quarrel in one way or the other and went to the fields, where she was working and intentionally the accused carried axe along with him by hiding it under a blanket and to draw the attention of P.W.1 he started canvassing by way of asking Rs.200/-, when P.W.1 declined to give and with a view to kill her, he gave a blow with axe and when she fell down, the deceased came, the accused also beat her with an axe resulting death of the deceased. When P.W.1 escaped from the further beating, the accused hit the deceased with axe and instantly she died. Therefore the accused has committed the said offences

and the prosecution had proved beyond reasonable doubt and therefore the impugned judgment does not suffer from any legal infirmity.

10. The point for consideration is “Whether the prosecution proved its case against the accused beyond reasonable doubt, so as to sustain the conviction and sentence imposed or whether the impugned Judgment needs to be set aside or modified?”

11. **Point:**

P.W.1 was given in marriage to one Krishna of Guntur district and some time thereafter that marriage ended in divorce and she was residing at her parents village at Velthurla Thanda. The accused, who was the husband of P.W.1 was resident of Nagasanipalli Village of Khajipet Mandal. He got one daughter and two sons through his first wife. After the death of his first wife, the accused had acquaintance with P.W.1 as he used to smuggle sandal wood from forest and both of them married. P.W.1 resided at Nagasanipalli for two years. The accused performed the marriage of his daughter with the son of his brother-in-law.

12. As per P.W.1 the accused sold away his property and admitted his two sons in Government Hostel and as there was no property, she along with the accused came down to Velthurla Thanda. About ten months prior to the date of incident, the accused fell down from a tamarind tree in Nagasanipalli and sustained injury to his back bone. P.W.1 got treated the accused by spending Rs.3,000/- at Nandyala. The doctors advised the accused not to do any hard work. Thereafter, they came down to Velthurla Thanda. It was alleged by P.W.1 that the accused was harassing P.W.1 by suspecting her character, abusing and beating her and also demanding her to come to Nagasanipalli. P.W.1, who was afraid of accused refused to go to Nagasanipalli. On the night of 05.10.2000 accused demanded P.W.1 to come to Nagasanipalli and when P.W.1 refused, accused threatened her by saying that he would cut her leg or hand and the same was heard by deceased and L.W.4-J.Sankar Naik, who is cousin of P.W.1.

13. It was stated by accused that by hearing the words of P.W.1, the accused sold his property and purchased a house at Velthurla Thanda, where P.W.1 was having illegal intimacy with a forest guard. So, the accused demanded P.W.1 to

come to Nagasanipalli to look after his children. But P.W.1 refused to do so and the accused admitted his children in a hostel and he was working at Hyderabad.

14. As per the case of the prosecution on 06.10.2000 at 10.30 a.m. the deceased, P.W.1. and P.W.2 went to their cotton field to pluck cotton. At 11.30 a.m. the accused went there by covering shoulders with blanket by hiding axe and demanded P.W.1 to give Rs.200/-, for which P.W. 1 stated that she had no money. Then the accused beat and abused her by saying that where she kept ill-gotten money. Without caring the words of the accused, P.W.1 was doing her work by bending, then the accused axed on her back, as a result, P.W.1 sustained injury and fell down. Then the deceased went to rescue P.W.1, then accused axed on the stomach of the deceased, as a result, the deceased fell down. Then the accused also axed on left side of neck of the deceased, for which the intestines of the deceased came out. P.Ws 1 and 2 raised cries. At that time a person, who is the husband of one Dudekula Kasamma was along with the tractor at nearby hillock, rushed to the cotton field. Then accused ran away along with the axe. The deceased died on the spot. P.W.1 rushed to the village and informed the same to P.W5. P.W.5 sent a village servant to guard the dead body of the deceased. P.W.5 along with village servant L.W.7 Kejiyamma took P.W.1 to Racherla Police Station and gave Ex.P1 statement to P.W.7.

15. It is also the case of the prosecution that P.W.6-E.Pakeeraiah, who was grazing his oxen in his land, witnessed when accused was going on the way along with axe in hurried manner as if he committed the offence. The accused contended that he was innocent of the offence and residing in Hyderabad and that P.W.1 falsely implicated him in the case. But P.Ws 1 and 2 witnessed the incident. P.W.6 found the accused near to the scene of offence. In the report of P.W.1 she stated that the husband of one Dudekula Kasamma came to the place of incident by hearing the cries of P.Ws 1 and 2. The said husband of Kasamma was not cited as witness. So the remaining witnesses are P.Ws 1 and 2, who supported the case of the prosecution. P.W.3 is the doctor who conducted post mortem over the dead body of the deceased and issued Ex.P8- post mortem certificate. The following are the injuries:

External Injuries:

1. a deep incised injury on the left side of neck with 4"x1/4" size cutting skin, muscles and main vessels of left side neck.
2. a deep incised wound on the middle of the abdomen, above umbilicus with 4"x1/4" size, cutting skin muscles peritoneum intestines protruded through the injury.
3. an incised wound on right upper arm with 4"x1/4" size cutting skin and muscles.
4. an incised injury on left palm extending from little finger to centre of palm, skin deep.
5. an incised injury on the left arm with 2 1/4" x 1/4" size with skin deep.

internal injuries:

1. left side of the neck muscles (pretracheal, sternocleidomastoid, and the middle), level scapula, cordysha muscles are cut. Main vessels of left side of neck, common carotid artery and internal jugular are cut. No fracture to skull bone.
2. Thorax: no fracture to thorax cage. Heart chambers are empty. Lungs pale (cut section) pale.
3. Abdomen: Lobe pale-cut section pale. Stomach contains undigested food about 300 gms. Present. Big perforation about 1 1/4" size present on the body of stomach.
4. Kidney: pale, cut section pale. Bladder: empty. Uterus_Normal. Undigested food might be taken 1 to 1 1/2 hours before death as undigested food is present not only in the stomach but also in small intestine.

16. The doctor opined that the deceased appears to have died of hemorrhage and shock and due to grievous injuries mainly cutting of common carotid and internal jugular. Time of death is 40 to 48 hours prior to his examination. The doctor also opined that the above injuries are possible if an axe is used with force.

17. P.W.1 in Ex.P1 statement stated that herself and her mother after having

meals started from their house at 10.30 a.m. and went to the land and were plucking cotton, accused came there at 11.30 a.m. and therefore the incident took place. During the post mortem examination the doctor found indigestive food in stomach and intestines and stated food might be taken one to one and half hour before death as indigested food is present not only in stomach but also in small intestines and opined that the deceased died about 40-48 hours prior to post mortem. The post mortem was conducted at 9.30 a.m. on 08.10.2000. So, there is every possibility of the offence taking place at 11.30 a.m. on 06.10.2000.

18. P.W.5 deposed that he sent P.W.1 to police station to give report and he kept village servant as guard to the dead body in the cotton field. Thereafter, he along with L.W.7 went to Racherla Police station. Then P.W.1 was giving statement to police. P.W.7 also in his chief examination stated that at the time of P.W.1 giving statement to the police, P.W.5 and L.W.7 were present and they also signed in Ex.P1. In cross examination he deposed that while recording the statement of P.W.1, P.W.5 and L.W.7 came there. He further deposed that ten minutes after, while recording statement of P.W.1, they came there. In Ex.P1 it is not there that the police recorded the same and P.W.1 came to him at 3 p.m. and completed the recording of Ex.P1 by 3.45 P.M. Having regard to the same, the learned counsel for the appellant submitted that P.W.1, P.W.5 and L.W.7 are stating different versions at different places with regard to giving of Ex.P1.

19. P.W.6, who is alleged to have witnessed the accused going on the way along with axe, did not support the case of the prosecution. In his cross examination he admitted that he stated to police as per his 161 Cr.P.C. statement on 06.10.2000 at 12.00 noon and that he did not stop or talk with the accused and at the time of incident, he saw the accused at a distance of half k.m.

20. It is admitted fact that P.W.1 is the second wife of the accused. The accused developed a doubt about the fidelity of P.W.1. As seen from the record, on the date of occurrence the accused was 50 years and P.W.1 was 25 years. They used to quarrel with each other on one ground or the other. As seen from the complaint given by P.W.1 and also in her statement, the accused beat her with axe and caused injuries and when the deceased came to rescue,

the accused also beat the deceased, which resulted in her death. Therefore, having regard to the facts and circumstances, the Court below had rightly come to the conclusion that the accused is responsible for causing the death of the deceased and that the accused with an intention killed the deceased. Even as per the case of the prosecution, the accused was proceeding to the forest to get firewood in that process, he carried the axe. On the way, he went to the field, where P.W.1 and her mother were plucking the cotton. When P.W.1 refused to give money to the accused, an altercation took place between them and in that process unfortunately the deceased died due to the blow given by the deceased. Ex.P8-post mortem report also clearly shows that the deceased died due to the injuries sustained by her. The accused knows that he was using a dangerous weapon i.e., axe for committing the offence and causing injuries to P.W.1 as well as the deceased, resulting the death of the deceased. When P.W.1 had given money when asked by the accused, probably the accused would have gone through the forest for firewood. As seen from the sketch, there are huts near the field. Though there was a regular quarrel between the accused and P.W.1, but if he wanted to kill P.W.1, it could be possible for him at any time and no need to go to the field to kill P.W.1.

21. In these circumstances, we are of the view that no doubt the prosecution proved the charges levelled against the accused but this case falls within the scope of Section 304 Part-I I.P.C. Having regard to the fact that the accused intentionally used the weapon, which is dangerous and sharp in nature and by using it, naturally there is every possibility of sustaining grave injury to P.W.1 and also the deceased. Under these circumstances, we set aside the impugned judgment and consequently imposed the punishment on the appellant/accused for the offence under Section 304 Part-I I.P.C. and impose the punishment of seven years.

22. For the foregoing reasons, the conviction and sentence imposed by the Court of I Additional District and Sessions Judge, Ongole in S.C. No.80 of 2009 dated 10.03.2010, against the accused for the offence under Section 302 I.P.C. is set aside and he is found guilty for the offence punishable under Section 304 Part-I I.P.C. and sentence to suffer imprisonment for a period of seven years and to pay a fine of Rs.100/- and in default to suffer simple imprisonment for

one month. The conviction and sentence imposed by the trial Court for the offence under Section 307 I.P.C. is upheld. Both the sentences shall run concurrently. The accused is entitled to the benefit of Section 428 Cr.P.C.

23. The Criminal Appeal is accordingly partly allowed.

G. CHANDRAIAH, J.

M.S.K.JAISWAL, J.

Date: 18.03.2015

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HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

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Criminal Appeal No.582 of 2010

(Judgment of the Division Bench delivered by

Hon'ble Sri Justice G. Chandraiah)

Dated: 18.03.2015

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