

THE HON'BLE SMT. JUSTICE ANIS CRIMINAL APPEAL No. 750 OF 2010 JUDGMENT: (Per the Hon'ble Smt. Justice Anis) 1. This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is directed against the judgment dated 10.02.2010 in Sessions Case No.460 of 2009 on the file of the learned II Additional Sessions Judge (Fast Track Court), Khammam, whereunder and whereby the appellant/sole accused was found guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') and accordingly convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to suffer simple imprisonment for one month. 2. The case of the prosecution, in brief, is as follows: On 22.04.2009 at 0030 hours, PW1 lodged a complaint to the Sub-Inspector of Police, Sathupally camping at Siddaram village stating that her brother Regula Ramulu (hereinafter referred to as 'deceased No.1') has been residing in her house since three years. The houses of Amudala Adinarayana (accused) and his brother Amudala Ramulu (hereinafter referred to as 'deceased No.2') are situated nearby the house of PW1. The accused and his brother used to quarrel and assaulted each other for petty matters. When the accused and his brother were quarreling, the brother of PW1 used to interfere between them. As usual, on the night of 21.04.2009 at about 11.00 p.m., while accused was quarreling with his brother i.e. deceased No.2, her brother i.e. deceased No.1 tried to interfere. Meanwhile, the accused beat his brother deceased No.2 on the head with pestle and also beat her brother deceased No.1 on his head with the same pestle when her brother deceased No.1 intervened into the dispute. Due to the head injury, the brother of PW1 – deceased No.1 and the brother of accused – deceased No.2 were dived on the spot. After receiving the complaint, the Sub-Inspector of Police, Sathupally registered the same as a case in Crime No.98 of 2009 for the offence punishable under Section 302 IPC and issued express FIR. On receipt of telephonic information and express FIR, the Circle Inspector of Police, Sathupally visited the scene of offence, conducted scene of offence panchanama in the presence of witnesses, got photographed the scene of offence and shifted the dead bodies to mortuary room where the inquest was conducted in the presence of mediators. On 24.04.2009 at about 11.00 a.m., the accused came to Sathupally Police Station and confessed his guilt of offence. Immediately, the confessional statement of the accused was recorded in the presence of panchas and thereafter the accused led the police and panchas to the mango garden of Siddaram village, where MO1 was seized under the cover of seizure panchanama. The Medical Officer, Government Hospital, Sathupally conducted post-mortem over the dead body of deceased No.1 and issued post-mortem examination report by opining that the cause of the death was shock and haemorrhage and death due to fracture left temporal, fracture left parietal bone and intracranial haemorrhage. The Medical Officer also conducted post-mortem over the dead body of deceased No.2 and issued post-mortem examination by opining that the cause of the death was shock and haemorrhage and death due to ultra cranial haemorrhage, fracture left frontal bone fracture, left maxilla fracture left mandible and fracture base of skull. The Investigating Officer arrested the accused and sent the controlled earth and bloodstained earth to the Forensic Science Laboratory. After receiving the post-mortem reports and Forensic Science Laboratory report, the Investigating Officer filed Charge sheet into the Court. 3. The trial Court framed the following Charge against the accused: "That you on or about 21st day of April, 2009 at about 11 PM at Siddaram Village committed murder intentionally causing the death of Regula Ramulu @ Rambabu, S/o Appaiah, 37 years, R/o Siddaram and Amudala Ramulu, S/o Subbaiah, 42 years, R/o Siddaram, by beating with stick on their head and caused head injury and you thereby committed an offence punishable u/s.302 IPC and within my cognizance." When the said charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried. 4. To substantiate its case, prosecution examined PWs. 1 to 13 and got marked Exs.P.1 to P.11, besides case property MO1. 5. After closure of prosecution side evidence, the accused was examined under Section 313 Cr.P.C. to explain the incriminating circumstances found against him in the evidence of prosecution witnesses. The accused denied the same and stated that he had no defence evidence. 6. Upon considering the evidence on record, particularly, the evidence of PWs 1 to 5 who are eyewitnesses to the occurrence and the confessional statement of the accused leading to recovery, the trial Court found the accused guilty and accordingly convicted and sentenced him as stated supra. Aggrieved thereby, the present Criminal Appeal is preferred by the accused. 7. Now, the points that arise for determination are – 1. Whether the cause of death of both the deceased is homicidal in nature? 2. Whether the prosecution is able to prove the guilt of the appellant/accused for the offence punishable under Section 302 IPC beyond all reasonable doubt? 3. Whether the judgment of the trial Court is correct, legal and proper or not? 8. The learned counsel for the appellant/accused argued that the appellant and the deceased No.2 are brothers and there was no enmity between them, likewise there was no enmity between the appellant and the deceased No.1, who was his neighbour. It is also argued that there is no intention on the part of the appellant to commit the murder, but due to grave and sudden provocation the incident was happened. It is further argued that as per the evidence of prosecution, the deceased No.2 and the appellant used to quarrel on some issue or the other and on the date of incident also, initially the deceased No.2 attacked the accused with a stick, at that time the deceased No.1 intervened and pacified the matter and again the accused and the deceased No.2 started quarreling regarding sharing of the coolie amount, then the accused beat deceased No.2 with the stick on his head and also beat the deceased No.1 with the same stick when he intervened between them and due to the said attack, both the persons were died. It is further argued that that accused had no intention to commit the murder of his brother and the brother of PW1, but due to grave and sudden provocation the incident was happened, and finally prayed the Court to take a lenient view by converting the imprisonment for the offence punishable under Section 302 IPC to Section 304 Part II IPC. 9. The learned Public Prosecutor argued that on the date of incident, no doubt there was a quarrel between the accused and his brother – deceased No.2 regarding the sharing of the coolie amount and when they were quarreling, deceased No.1 intervened; that again there was a quarrel between the accused and his brother – deceased No.2 and initially deceased No.2 attacked the accused with a stick, thereafter the accused all of a sudden took the stick and attacked both the deceased, due to which both were died; that the prosecution was able to prove the charge under Section 302 IPC and the findings of the trial Court need no interference of this Court, and finally, prayed the Court to dismiss the appeal. 10. Point No.1: PW9 – the doctor, who conducted the post-mortem examination on 22.04.2009 over the dead body of the deceased No.1 as per the requisition given by the police, found the following injuries: Laceration 3 X 2 X 1" over left side of the scalp. On opening of scalp and skull, he found fracture of left temporal bone. Fracture of left parietal bone. Intracranial hemorrhage Ex.P.5 is the post-mortem examination report of the deceased No.1. PW9 also stated that injury No.1 is ante mortem and grievous in nature. 11. PW9 further stated that on the same day, he conducted the post-mortem examination on the dead body of the deceased No.2 and found the following injuries: 1. Laceration 3 X 2 X 1" on left side forehead. 2. Laceration 4 X 2 X 2" on left side face. 3. Laceration 3 X 2" on top of scalp. Ex.P.6 is the post-mortem examination report of the deceased No.2. PW9 also stated that the above three injuries are grievous in nature and cause of death to the best of his knowledge was due to intracranial hemorrhage fracture of left frontal bone, fracture of left maxilla, fracture left mandible and fracture base of skull. 12. In the cross-examination of PW9, it was elicited that the injuries caused to both the deceased are possible when a person beat with a hard weapon by using force. Except the said suggestion, nothing has been elicited to discredit the evidence of PW9. 13. A perusal of the evidence of PW9 clearly established that the injuries caused to both the deceased are ante mortem in nature and the cause of death was clearly shows that the death of both the deceased is homicidal in nature. 14. Points 2 and 3: A perusal of the evidence of PWs 1 to 5 shows that PW1, who is the brother of deceased No.1, gave Ex.P.1 complaint to the police stating that she came to know about the incident on 21.04.2009 that the accused attacked her brother and also his brother, due to which they died. PWs 2 to 5 are the eyewitnesses who clearly stated about the quarrel took place between the accused and the deceased No.2 and also stated that the deceased No.1 interfered to pacify the matter, but the accused attacked his brother and also the brother of PW1 with a stick on their heads and other parts of the body, due to which they both died on the spot. The evidence of PWs 1 to 5 clearly established that the accused attacked the deceased 1 and 2 with MO1 on 21.04.2009. 15. PW7, who is the Village Revenue Officer, stated that he is the scribe of Ex.P.1, whereas PW8 is the panch witness to the scene of offence, witness for Ex.P.2 rough sketch and inquest panchayatdar to Ex.P.3. 16. After receipt of Ex.P.1, the Sub-Inspector of Police registered the same as a case in Crime No.98 of 2009 and issued FIR Ex.P.9. After receipt of express FIR, PW12 – C.I. of Police proceeded with the investigation. During the course of investigation, the accused surrendered before PW12 and confessed about committing the offence in the presence of PW10 and other witnesses. After confession, the accused led the police and witnesses to a place where MO1 was hidden and MO1 was recovered in the presence of panch witnesses. Ex.P.7 is the confession panchanama which led to recovery of stick and Ex.P.8 is the seizure

panchanama regarding the seizure of MO1. PW10 identified both the signatures on Exs.P.7 and P.8 reports. 17. The appellant has not seriously disputed about the conducting of inquest panchanama on the dead bodies of both the deceased under Exs.P.3 and P.4. The Investigating Officer after completing the investigation, filed the Charge sheet into the Court. PW12 – Investigating Officer clearly stated that the accused committed the offence punishable under Section 302 IPC. The trial Court also clearly held that PWs 2 to 5 witnessed the occurrence of the offence and the accused is the person who beat both the deceased with MO1 due to which both of them died on the spot. 18. The contention of the appellant/accused that he had no motive or intention to kill his brother as well as deceased No.1, but due to sudden and grave provocation, he attacked both the deceased. A perusal of the evidence produced by the prosecution shows that there is no criminal intention or motive for the appellant to kill his brother. On the date of incident, both the accused and deceased No.2 went to do coolie work, returned to the house and had their dinner. Further, at the time of sharing the coolie amount, the accused and the deceased No.2 quarreled with each other and when the deceased No.1 tried to interfere, the accused not only beat his brother – deceased No.2 and also beat the deceased No.1, due to which both the deceased died on the spot. 19. The learned counsel for the appellant also argued that the appellant was not armed with any weapon at the scene of offence and when there was a sudden altercation taken place between the accused and his brother – deceased No.2 and deceased No.1 interfered, then only in a fit of anger, the accused picked up MO1 stick, which is available at the scene of offence and dealt blows on both the deceased and he had no intention to kill them, and therefore, prayed the Court to extend the benefit of Exception 4 to Section 300 IPC and convert the conviction and sentence. 20. In a case law reported in Veeramaneni Srinivas Rao Vs. State, the Division Bench of this Court held as follows; “The first part of Section 304 IPC is intended only on those cases in which the act of the accused person would be culpable homicide amounting to murder, but for the fact that it was committed in circumstances which render one or other of the exceptions in Section 300 IPC applicable. The second part of Section 304 IPC applies to those rather rare cases of deliberate assault where the act of assault can be separated from the injury caused with the result, that knowledge of likelihood to cause death can be proved without intention to cause vital injury being established. It is slightly lesser class of offences where there is knowledge that the act is likely to cause death, but where the intention to cause death is not present. Exception 4 of Section 300 IPC is applicable because four conditions are satisfied (i) absence of premeditation (ii) there must be a sudden fight (iii) the killing must be in the heat of passion upon a sudden quarrel and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner. There is no prior intention of accused to kill the deceased. Accused was not armed with any weapon. Accused picked up a weapon available at the scene and dealt a blow on the head. In these circumstances, it can be said that accused actuated by heat of passion, all of a sudden, being provoked, used a handy weapon and smote on the head. Therefore, the act of the accused squarely falls under exception 4 of Section 300 IPC. The accused must be having knowledge that his act would likely to cause death. Hence accused is found guilty under Section 304 Part II IPC.” 21. Under Section 300 IPC, except in the cases excepted therein, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death; or secondly if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or thirdly, if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or fourthly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. Where culpable homicide falls under any one of the four clauses of Section 300 IPC and none of the exceptions applies, the culpable homicide is murder and is punishable under Section 302 IPC. Exception 4 of Section 300 IPC can apply if all the four conditions laid down are satisfied viz. (1) absence of pre-meditation; (2) there must be a sudden fight; (3) the killing must be in the heat of passion upon a sudden quarrel; and (4) the offender should not have taken undue advantage or acted in a cruel or unusual manner. 22. Admittedly, the prosecution witnesses have not stated anything against the appellant that he had a motive to kill his brother i.e. deceased No.2 and also the brother of de facto complainant i.e. deceased No.1. On the date of incident, the deceased No.2, who is the brother of the accused, initiated the quarrel and he started attacking the accused with a stick. Thereafter, there was a quarrel between the accused and his brother i.e. deceased No.2. When the deceased No.1 tried to interfere, the accused attacked his brother i.e. deceased No.2 and also the brother of de facto complainant i.e. deceased No.1, due to which both the deceased died. The evidence shows that there was a grave and sudden provocation to attack both the deceased and there is no intention on the part of the appellant to commit such grave offence. Further, the number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Though appellant had no pre-meditation to cause death of both the deceased, at the same time, he must have knowledge that the injuries are likely to cause death of both the deceased. However, a man is presumed by law to intend the ordinary and natural as well as the necessary consequences of his acts. Therefore, the act committed by the appellant squarely falls under Exception 4 of Section 300 IPC. Therefore, in view of the case-law cited supra, the appellant is liable to be convicted for the offence punishable under Section 304 Part II IPC. 23. Accordingly, the conviction and sentence recorded in the judgment dated 10.02.2010 in Sessions Case No.460 of 2009 on the file of the II Additional Sessions Judge (Fast Track Court), Khammam for the offence punishable under Section 302 IPC, are set aside. Instead, the appellant is found guilty of the offence punishable under Section 304 Part II IPC, and accordingly he is convicted and sentenced to undergo rigorous imprisonment for a period of five (5) years and to pay a fine of Rs.1000/- (Rupees One thousand only), in default to undergo simple imprisonment for one month. The period of detention underwent by the appellant during investigation, trial and after conviction, shall be given set off under Section 428 Cr.P.C. 24. The Criminal Appeal is partly allowed to the extent indicated above. Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed. ----- (K.C. BHANU, J) ----- (ANIS, J) 10.06.2015 Anr THE HON'BLE SRI JUSTICE K.C.BHANU AND THE HON'BLE SMT. JUSTICE ANIS CRIMINAL APPEAL No. 750 OF 2010 (per the Hon'ble Smt. Justice Anis) 10.06.2015 Anr 2011 (1) ALD (Cr.) 777 (AP) PAGE PAGE 14 KCB, J. & ANIS, J. Crl.Appeal No. 750 of 2010

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