

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY, THE TWENTY SIXTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

&

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

CRIMINAL APPEAL No.598 of 2010

Between:

Tholem Lovaraju @ Lovayya @ Rai

..... APPELLANT

AND

State of A.P. rep.by Public Prosecutor

High Court, Hyderabad

....RESPONDENT

The Court made the following:

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

&

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

CRIMINAL APPEAL No.598 of 2010

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

This criminal appeal is filed by the sole accused against the judgment in Sessions Case No.44/2008 on the file of the III Additional District & Sessions Judge, Kakinada, East Godavari District, dated 21.01.2010 in convicting him for the offence under Section 302 IPC and sentencing him for life imprisonment and to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for one month.

2. The case of the prosecution, in brief, is that one Penkey Satyanarayana @ Annavaram (hereinafter referred to as "the deceased"), aged about 50 years, was originally resident of Mallavaram village of Kotananduru Mandal. About 8 years ago from the date of incident, the marriage of the accused was performed with PW 4- Tolem Venkata Lakshmi, who is the niece of the deceased Penkey Satyanarayana @ Annavaram. After marriage, the deceased and PW 4 were shifted from Mallavaram to Patha Isukapalli village for eking out their livelihood, and they lived happily for some time. After one year of the marriage, the accused used to beat his wife PW 4, due to which, the father-in-law of the accused-Kandipalli Ramu took PW 4 to his house in Moolapeta. The deceased and his wife Penkey Rajeswari-PW 1 interfered and compromised the matter between the accused and his wife PW 4, and brought PW 4 to Patha Isukapalli village. But there was no change in the attitude of the accused, due to that, PW 4 again went away to her parents home. The accused suspected the deceased and his wife PW 1 are responsible for desertion of his wife and developed grudge against them and was waiting for an opportunity to do away with the life of the deceased.

3. On 15.03.2007 at about 9.30 p.m. when the deceased was standing on the road in front of his house after completion of his dinner, the accused, armed with M.O.1-curved knife, attacked the deceased and hacked him on the lower portion of the stomach i.e., groin region. On hearing the cries of the deceased, his wife PW 1 rushed to the spot and noticed the accused running away from that place, she chased him to some distance, but he escaped. Due to over bleeding, the deceased fell down on the ground, removed the knife, asked for some water and died on the spot.

4. On 16.03.2007 at about 1.00 a.m. on receiving telephone message, PW 9- the Sub-Inspector of Police, U.Kothapalli Police Station, along with his staff visited

the scene of offence and recorded the statement of PW 1, the wife of the deceased, and registered the same as a case in Cr.No.21/2007 under Section 302 IPC. On receipt of copy of First Information Report, PW 9-the Inspector of Police took up investigation, visited the scene of offence, examined the scene of offence in the presence of mediators, got drafted Ex.P4-scene observation report, got photographed and seized M.O.1-curved knife, M.O.2-Waist thread, M.O.3-blood stained earth, M.Os.4 & 5-controlled earth and prepared Ex.P8-rough sketch of scene of offence. PW 9 held inquest over the dead body of the deceased in the presence of inquestdars and blood relatives and got prepared Ex.P5-inquest report. He examined the other witnesses and sent the material objects through Court with letter of advice to Regional Forensic Science Laboratory, Vijayawada. He also got recorded 164 Cr.P.C statements of PW 1, PW 4 and Kandipalli Ramu by the Special Judicial Magistrate of First Class, Kakinada. PW 8-Dr.K.Anitha, Civil Assistant Surgeon, Government Hospital, Pithapuram conducted autopsy over the dead body of the deceased and issued Ex.P6-post mortem certificate. She opined that the deceased died due to cardio respiratory arrest and due to hemorrhagic shock. On 06.06.2007 PW 10 arrested the accused at the out gate of Pithapuram RTC bus complex in the presence of PW 7 and one Y.Varaprasad under cover of mediators report and sent the accused for judicial custody.

5. The learned Judicial Magistrate of First Class, Pithapuram took cognizance of the case as PRC.No.20/2007 and committed the same to the Court of Sessions, East Godavari at Rajahmundry under Section 209(a) Cr.P.C, vide orders dated 10.09.2007.

6. On appearance of accused, the learned Additional Sessions Judge framed a charge against the accused for the offence punishable under Section 302 of IPC, for which, the accused pleaded not guilty.

7. During course of trial, the prosecution examined PWs 1 to 10 and got marked Exs.P1 to P10 and M.Os.1 to 5.

8. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported that he did not harass his wife at any time and he was arrested by the police at his house in Mallavaram village, however, he did not choose to adduce any defence evidence on his behalf.

9. The trial Court, after hearing on either side and after considering the oral and documentary evidence, found the accused guilty of the offence punishable under Section 302 of IPC, convicted him for the said offence and sentenced him to suffer life imprisonment and to pay a fine of Rs.100/-, in default, to suffer simple imprisonment for one month.

10. Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred the present Criminal Appeal.

11. As the accused is in jail and is not in a position to engage any counsel on his behalf to defend himself, the case was referred to the Legal Services Committee of this Court directing to provide legal aid to the accused. Sri G.Ravinder Reddy was appointed as Legal Aid Counsel to defend the accused. Smt.P.Sujatha, representing Sri G.Ravinder Reddy, advanced her arguments on behalf of accused. She vehemently contended that the appellant/accused was falsely implicated in this case merely basing on Ex.P1 report recorded through PW 1, in which it is alleged that as PW 1 and her husband (deceased) were interfering with the disputes between the accused and his wife, the accused bore grudge against the deceased and killed him. She further contended that the dispute between the accused and his wife is only matrimonial in nature and not otherwise, therefore, there was no motive on the part of the accused in committing the offence of murdering the deceased. She also submitted that PWs 1 to 3 are interested witnesses, PW 4 who is the wife of the accused did not support the prosecution case and she was declared as hostile. She also submitted that there is no eyewitness and direct witness in this case, because nobody has seen the accused committing murder as per prosecution case. She further submitted that when the offence took place, PW 1 was inside the house and there is no chance to witness the offence committed by the accused. She further submitted that the evidence of PWs 1 to 3 and PWs 9 and 10 is not corroborated with each other with regard to nature of offence and it is only a cooked up case against the accused due to disputes in between the accused and the deceased with regard to toddy business. She further submitted that the accused is not responsible for the death of the deceased and some unknown persons who are inimical towards the deceased may cause injuries to the deceased which resulted in his death. She also submitted that the injuries sustained by the deceased are not grave in nature and when the deceased was given proper medical aid in time, he would be survived. The learned counsel further submitted that Ex.P6-post mortem certificate does not

indicate that the injury sustained by the deceased is on the vital part of body, therefore, if deceased was given medical aid in time, he would have been survived and hence it cannot be said that it is a case of murder and it does not fall within the parameters of Section 302 IPC and hence she prays to set aside the judgment of the Court below and acquit the accused.

12. On the other hand, the learned public prosecutor while narrating the case basing on the record, supported the impugned judgment. He further submits that the evidence on record clearly suggests that the prosecution has proved its case beyond all reasonable doubt. He further submits that as seen from the evidence of PWs 1 to 4, the motive is proved, the accused developed grudge against the deceased as the deceased and his wife were interfering with the disputes between him and his wife and thought that they are responsible for leaving his wife from his company. The learned Public Prosecutor further submits that the incident took place at 9.30 a.m, PW 1 gave Ex.P1 complaint and her evidence is corroborated with the contents of Ex.P1. He further submits that the evidence of PW 1 also corroborated by the evidence of PW 2, who is no other than the son of the deceased. He further submits that the evidence of PW 8, the Doctor, who conducted autopsy over the dead body of the deceased clearly indicates that the injuries sustained by the deceased are grave in nature due to which, the deceased died, therefore, the prosecution has proved that the accused with an evil intention to do away with the life of deceased, committed the offence of murder against the deceased. The learned Public Prosecutor further submits that the grounds urged by the learned counsel for the accused are not sustainable, and there is no infirmity legal or otherwise warranting interference with the findings of the trial Court, and hence prays to dismiss the appeal.

13. Now the points that arise for consideration in this appeal are:

1. Whether the prosecution has proved its case beyond all reasonable doubt?
2. Whether the Court below has committed any error in coming to the conclusion in the form of impugned judgment, whereby and whereunder the appellant has been imposed punishment of life imprisonment?

14. The case of the prosecution in nutshell is that PW 4, who is the niece of the deceased was given in marriage to the accused. After marriage, since the accused has been harassing PW 4, the father of PW 4 took her to his house. The deceased and his wife PW 1 used to pacify the disputes between the accused and PW 4 and used to bring back PW 4 from her parents house. As there was no change in the attitude of the accused, again PW 4 went away to her parents house, leaving the accused. The accused suspected the deceased and his wife PW 1 are responsible for desertion of his wife, developed grudge against them and was waiting for an opportunity to do away the life of the deceased and accordingly on 15.03.2007 at about 9.30 p.m. he hacked the deceased with a curved knife and killed him.

15. In this case, PW 8-Doctor, who conducted autopsy over the dead body of the deceased found the following injuries:

1. An irregular large laceration of 15 x 7 x 6 cm in the left groin. Femoral vessels were cut. The skin over these is avulsed;
2. A large irregular laceration of 21 x 8 x 4 cm on the right groin. Skin over it is avulsed;
3. Left testicle is visible out side of scrotal sac;
4. Penis is cut at the base. Skin is avulsed partially over it;
5. Right hip bone is visible;
6. Right femoral vessels are cut.

The Doctor as PW 8 deposed that all the organs were pale due to loss of blood and cause of death was due to cardio respiratory arrest due to hemorrhagic shock and the deceased would have died 18 to 24 hours prior to autopsy. She testified that she issued Ex.P6 post mortem report and the injuries found on the deceased were

possible with a weapon, like M.O.1. In her cross examination, it is elicited that the injuries found on the deceased were the result of causing several injuries at a particular point. It is also elicited that as the injuries were caused at a particular place the starting point of an injury and its end could not be made out clearly. She further clarified that even though M.O.1 is a weapon with clear cut edge, still, as the injuries are more in number, the edges of the wounds will be irregular. She also stated that because of those injuries death might have been caused within minutes. Therefore, the evidence of PW 8 coupled with Ex.P6 clinches that grievous injuries were caused in groin region and penis was cut, and they show that with much anguish the assailant appeared to have hacked the deceased causing the aforesaid injuries. The evidence of PW 8 clinchingly establishes that the death of the deceased was due to the injuries, as mentioned in Ex.P6, which are caused with a weapon like M.O.1.

16. The evidence of PW 10, Inspector of Police, coupled with Ex.P9 letter of advice shows that M.Os.1 to 5 besides blood stained sky coloured white stripes full hands polyester shirt and blood stained torn moss coloured with black squares lungi of the deceased were sent to Regional Forensic Science Laboratory, Vijayawada for examination and analysis and after examination Ex.P10 RFSL report was received, wherein the expert opined that blood is detected on items 1, 2, 3, 6 and 7 i.e., iron knife, waist thread, soil, full hands shift and lungi and the blood detected on items 1, 2, 3, 6 and 7 is of human origin.

17. PW 10, who conducted investigation in this case, deposed that on the intervening night of 15/16.03.2007 at about 3.15 a.m. he received information over phone from PW 9- the Sub-Inspector of Police about the murder of the deceased in Patha Isukapalli village and received copy of Ex.P7 F.I.R. He testified that he observed the scene of offence having secured mediators PW 6 and one Y.Suryanarayana Reddy, prepared observation report of the scene in Ex.P4 and also Ex.P8 rough sketch and seized M.Os.1 to 5 from the scene under cover of Ex.P4 observation report. He also deposed that he got the scene of offence photographed through PW 5 and took four photographs under Ex.P3.

18. The evidence of PW 10 is corroborated by PW 6, the mediator of scene observation report and inquest under Exs.P4 and P5 and also seizure of M.Os.1 to 5 from the scene. PW 6 categorically testified that himself and other mediators opined that the deceased died due to injuries caused to him. A suggestion put to PW 6 that

the topography of the scene of offence and house of the deceased was prepared in the police station was denied by PW 6. No contra evidence is elicited in the cross examination of PW 6. No motive is attributed to this witness for giving any false evidence. There is no reason to disbelieve the testimony of PW 6, who is a social worker in S.A.S.S Organization, Pithapuram. His version is consistent with the contents of Exs.P4 and P5 and is in corroboration with the evidence of PW 10. Therefore, the evidence of PW 6 and Exs.P4 and P5 can be taken into consideration.

19. Coming to PW 5-Photographer, he deposed that at the request of police, he took Ex.P3 photographs covering the deceased at the place of incident, and nothing was elicited in his cross examination to disbelieve his version.

20. Therefore, the evidence of PWs 8, 10, 5 and 6 coupled with Exs.P6 and P3 to P5 suggests that the death of the deceased was homicidal and he died due to inflicting of the injuries as mentioned in Ex.P6 with a weapon like M.O.1.

21. It has to be seen whether the prosecution has proved that the accused is the person who attacked the deceased with a curved knife and caused him grievous injuries, resulting in his death.

22. The case of the prosecution is that there is a motive for the accused to kill the deceased, because the deceased and his wife PW 1 now and then used to interfere in the matrimonial affairs of the accused and his wife on some occasions, which resulted in PW 1 leaving the company of the deceased. It is the version of the accused that he never ill-treated and harassed his wife. The evidence of PWs 1 to 4 is available not only with regard to motive, but also in other respects. It has to be noticed that PWs 1 to 4 and the accused are close relatives and their evidence has to be appreciated with more care and caution. Merely because they are interested witnesses, it cannot be said that their evidence can be ruled out when they are present at the scene of offence and it is possible for them to give evidence about the commission of offence, place of occurrence and nature of offence.

23. PW 1 stated that the accused and his wife about 3 years prior to the death of her husband, shifted to their village Patha Isukapalli from Kotananduru village, as the accused was not having work at his native place. The accused and his wife were living in a rented house nearby her house. This piece of evidence of PW 1 was not

contradicted and the same is corroborated by PW 4, who is no other than the wife of accused.

24. PW 3, who is no other than the brother of the deceased, testified that the accused has been in the habit of taking alcohol and used to beat his wife and the deceased advised him not to harass his wife, for which, the accused got angry against the deceased. In his cross examination, it is elicited that there are three houses intervening his house and the house of the deceased and he is the eldest among his brothers and that he looked after all the affairs of performing the marriages of his brothers, sisters and family members. He categorically asserted even in the cross examination that the wife of the accused complained him against the accused on two occasions and he also advised the accused to treat his wife properly. He denied the suggestion that there were no differences between the accused and his wife and he never advised the accused not to harass his wife. The evidence of PWs 1 & 3 clearly shows that there are differences between PW 4 and the accused, which were used to be resolved by the deceased and PW 1.

25. PW 4, who is no other than the wife of the accused did not support the case of the prosecution, for which reason, she was declared as hostile. But her evidence to some extent is corroborated with the evidence of PW 1. PW 4 deposed in her evidence that after marriage, herself and accused lived at K.Mallavaram village of Kotananduru Mandal, that her husband was not doing any job and that her maternal grandfather brought her and accused to Isukapalli and they were living in the thatched hut of her grandfather. She categorically testified that some time later disputes arose between the accused and her grandfather Penkey Mahalakshmi who is the father of the deceased. She also testified that the accused used to take alcohol and used to beat her, that PW 3 used to come to her house and was admonishing the accused, and she also lodged a complaint against the accused with the police, U.Kothapalli. She further stated that PW 3 and his brothers including the deceased used to come to her house and enquire about their welfare. It is evident from her evidence that the accused used to take alcohol and used to beat PW 4. This piece of evidence of PW 4 disbelieves the version of the accused that he never harassed his wife and he looked after her well. It is also clear from her evidence that not only PW 3, but also the deceased used to enquire about their welfare and used to advise the accused to look after her properly. The evidence of PW 4 corroborates with the evidence of PWs 1 to 3 in respect of the prosecution version that the accused has

been addicted to alcohol and used to harass his wife PW 4. The evidence of PWs 1 to 3, which was corroborated to some extent by PW 4, clinchingly proves that the deceased used to interfere and pacify the disputes between the accused and his wife and used to advise the accused to look after his wife properly. So, it can be said that the accused had got every reason to develop grouse against the deceased and to bore grudge against him. PW 1 clearly stated that the accused threatened her and her husband, the deceased with dire consequences.

26. Coming to the incident which allegedly took place on 15.03.2007 at about 9.30 p.m, PW 1 deposed that on the fateful day at about 9.30 p.m. her husband and children after having their meals were standing in front of their house and their two children started for temple, the accused came there armed with a knife and attacked her husband and caused grievous injuries near groin region. She also deposed that she raised cries and ran after the accused and by that time, the accused was running away from the place of incident and her two children came running towards them on hearing her cries. She also deposed that the knife with which the accused attacked her husband was at the place of injury, that her husband holding the knife in his hand came out, that she gave water to her husband and her husband died while taking water. She further deposed that on hearing cries, neighbours gathered there, her son Gangadhar (PW 2) went to the village Sarpanch and informed him about the incident, that village Sarpanch came to their house, that police were informed over phone and they came to their house and recorded her statement under Ex.P1. She testified that M.O.1 knife is the weapon used by the accused in attacking her husband.

27. In the cross examination of PW 1, it is elicited that her house is situated by the side of the road on the way to Patha Isukapalli from Isukapalli Centre, that the door way opens to East, that there is road and thereafter a tank to the west of her house and that the attack on her husband took place when he was on the road i.e. on the rear side of her house towards west. It is also elicited that the accused attacked her husband in the night time of Thursday and there is power connection to her house, but she does not know the service connection number and hundreds of people gathered near her house after the attack was made on her husband. It is further elicited that the house of Kosetti Mahalakshmi is situated towards East of her house and the temple of Durgamma is at a distance of 200 yards from her house and her

husband and children used to go near the temple everyday after taking dinner. She also stated that by the time of incident she was about to take meals and she saw the accused when he was actually attacking her husband. She further stated that it took 15 minutes for the accused to attack her husband and leave that place, that accused after attacking her husband, ran towards Durgamma temple, that herself and her two sons all ran after the accused, but they could not catch hold of him and the accused was not traced out. Suggestions put to PW 1 that there were differences between the deceased and one Nurukurthi Suribabu, that there were also differences between the deceased and his brother, that a complaint was also given against her son Gangadhar about theft of fowl, that her husband (deceased) used to commit theft of toddy and mix some poisonous substance in the toddy and that elders used to find fault with her husband (deceased) and fine was also imposed against him and that in all cases, accused gave evidence against the deceased before the elders, that the accused did not attack her husband at 9.30 p.m on that day and did not cause injuries, that some unknown persons attacked her husband, that when she got up from sleep and went to answer calls of nature, she found dead body of her husband at about 4 a.m. and that the accused was falsely implicated etc., are all emphatically denied by PW 1.

28. Though the accused raised several contentions and put suggestions to PW 1 in her cross examination, he did not choose to adduce any oral or documentary evidence to substantiate his contentions. Mere putting suggestions, which are not proved by adducing any oral or documentary evidence, it cannot be said that the accused was falsely implicated in this case. The evidence of PW 1 is corroborated with the contents of Ex.P1 report.

29. PW 9-the Sub-Inspector of Police, U.Kothapalli P.S. at the relevant point of time, deposed that on intervening night of 15/16.03.2007 at about 1.00 a.m he received telephonic message from a male person informing about the death of the deceased, that immediately he went to Patha Isukapalli and saw the dead body of the deceased near his house, enquired PW 1, the wife of the deceased, recorded her statement under Ex.P1 and registered the same as a case in Cr.No.21/2007 under Ex.P7 F.I.R.

30. In his cross examination, it is elicited that he received the phone call in the police station at 1.00 a.m, that he went to the scene of offence on his motor cycle, and that it

takes one hour for a person to go to Isukapalli from the police station of U.Kothapalli on a two wheeler. After seeing the FIR, he stated that it reached the Judicial Magistrate of First Class, Pithapuram by 5.30 a.m. It is also elicited in his cross examination that PW 1 did not mention in Ex.P1 that she saw the accused holding a knife in his hand, before actually attacking the deceased. From the evidence of PW 9, it is evident that within few hours of the incident, the statement of PW 1 under Ex.P1 was recorded. The time gap is so short to put forward any distorted version and therefore, possibility of putting forward any distorted version can be ruled out. A careful reading of Ex.P1, which was written in Telugu, it is evident that on hearing the cries of the deceased, PW 1 came out of the house and on seeing her, the accused started escaping from the place and she ran after the accused to some extent. The evidence of PW 1 elicited in the cross examination shows that she was about to take meals at the time of incident. The admissions of PW 1, coupled with the evidence of PWs 10, 5 and 6 and Exs.P3, P4 and P8 shows that the house of the deceased was facing towards East, that there is a compound wall opening towards West, that there is a small step in front of the said opening and that the eaves of the thatched house of PW 1 are low.

31. PW 6-Mediator of scene observation report stated that by sitting in front of the house, one cannot observe what is happening on the road which occurred on the Western side of the house. There is a road on the western side of the house of the deceased which runs from Isukapalli Centre towards Patha Isukapalli from North to South and there is a hut like temple of Lord Ganesh within a short distance and there is also an electrical pole on the roadside. If the topography of the house of the deceased is taken into consideration, coupled with the evidence of PW 1, PW 1 was about to take meals at the time her husband went outside of the house after taking dinner, and hence it can be said that it is not possible for PW 1 to see the actual taking place of the incident by standing in front of her house.

32. The evidence of PWs 6 and 10 coupled with Ex.P4 scene observation report and Ex.P3 photographs besides Ex.P8 rough sketch shows that there is a small step in front of the house of the deceased, opening in the western side compound wall and blood stains can be noticed at the said step. So, it can be said that the deceased was attacked in front of the said step which is on the western side of the thatched house of the deceased and PW 1. The evidence of PW 1 that on hearing the cries of her husband, she immediately rushed to the spot, found the deceased with injuries

and M.O.1 knife, saw the accused escaping from the scene, she chased him by running after him to some extent is consistent and her version in this regard can be believed. The evidence of PW 1 as to the place of offence at which the deceased was attacked has also been corroborated by the other circumstantial evidence.

33. PW 2, the son of the deceased, deposed that on the fateful day at about 9 p.m. himself and his younger brother were sitting near Durgamma Temple along with their friends and on hearing the cries of his mother as “*BABOY BABOY NARIKADU*”, himself and his brother came running towards their house, found the accused coming running towards them and they ran towards their father and mother and later ran after the accused, but they could not catch hold of the accused. He also deposed that his father revealed that the accused attacked him and his father died immediately after taking some water, and that later he went to the house of the village Sarpanch and informed him about the incident.

34. In his cross examination, it is elicited that the distance between their house and Durgamma temple may be about 200 yards, that he tried to catch hold of the accused when he was running towards them, but he could not catch hold of him and he chased the accused to a distance of 200 yards. Similar suggestions that were given to PW 1 attributing enmity between the deceased and other villagers were also given to PW 2 and he also denied the said suggestions. The evidence of PW 2 also corroborates with the evidence of PW 1 about their seeing the accused running from the scene of offence immediately on noticing of the incident by PW 1.

35. According to PW 10- the Investigating Officer, on 06.06.2007 on reliable information, proceeded to RTC bus stand, Pithapuram and arrested the accused in the presence of PW 7 and another.

36. PW 7, who is Village Revenue Officer, Pithapuram, testified that he accompanied the police and in his presence, police apprehended the accused in the bus stand on 06.06.2007. He deposed that the accused was residing nearby the house of the deceased and PW 1 by the time of incident. The evidence of PWs 1 and 2 shows that the accused could not be traced out since the time of incident. The evidence of PWs 10 and 7 shows that he could be apprehended only on 06.06.2007. Therefore, it is evident that for nearly more than two months since the time of incident, the accused remained absconded. This conduct of accused cannot be lost sight of in considering the involvement of the accused in the incident.

37. Considering the oral and documentary evidence, the Court below came to the conclusion that the accused is responsible for committing murder of the deceased. The Court below considered all the aspects, which meet the ingredients of the offence under section 302 of IPC and came to the conclusion that the accused committed murder of the deceased.

38. On reappraisal of the oral and documentary evidence on record, we see no ground to interfere with the findings of the Court below. The evidence of PWs 1 to 3 is consistent and corroborated with the contents of Ex.P1. The evidence of PW 4, who is no other than the wife of the accused, is also corroborated with the evidence of PWs 1 to 3 as to the disputes between herself and the accused and the intervention of the deceased and PW 3. The evidence of PW 8 Doctor who issued Ex.P6 post mortem report shows that due to injuries sustained by the deceased, the deceased died. Therefore, we are of the view that the prosecution has proved the guilt of the accused beyond all reasonable doubt.

39. Now the point to be considered is whether the offence committed by the accused attracts the ingredients of an offence punishable under Section 302 IPC.

40. It is proved that the accused with an intention to cause harm attacked the deceased and caused grievous injuries with M.O.1 knife.

41. The learned counsel for the appellant/accused contended that the Court below erred in coming to the conclusion that the accused caused death of the deceased by inflicting injuries on his vital organs. She further contended that as seen from Ex.P6, the injury is below the abdomen of the deceased and not on the vital part of the accused, and it is not a cruel murder and therefore prays this Court to take a lenient view.

42. As seen from the injuries as mentioned in Ex.P6, which are extracted herein above, injury Nos.1, 2 and 4 are more dangerous, but if deceased is given medical aid immediately after the incident, he would have definitely survived. The accused has not chosen to kill the deceased in a cruel manner. But, he attacked the deceased on emotion as the deceased had been interfering with his matrimonial affairs and he is responsible for desertion of his wife. In such circumstances, the Apex Court in ***Dashrath v. State of Madhya Pradesh*** held that when none of the

injuries was found on the vital organs of the deceased, it has to be held that the offence committed was covered under Section 304 (Part I) IPC, instead of Section 302 IPC.

43. Therefore, in the instant case also, since none of the injuries are found on the vital organs of the deceased, it has to be considered and held that the accused committed the offence punishable under Section 304 (Part I) IPC, instead of under Section 302 IPC. In that view of the matter, we are of the view that the impugned judgment is liable to be set aside.

44. In the result, the conviction and sentence of life imprisonment recorded by the learned III Additional District & Sessions Judge, Kakinada, East Godavari District against the appellant/accused of the offence punishable under Sec.302 of IPC, vide judgment dated 21.01.2010, in Sessions Case No.44 of 2008, is set aside, instead, the appellant/accused is convicted under section 304[Part I] IPC and sentenced to undergo 7 (seven) years rigorous imprisonment and to pay a fine of Rs.100/- (Rupees one hundred only), in default, to undergo one month simple imprisonment.

45. The remand period and sentence already undergone by the appellant/accused shall be given set off under section 428 Cr.P.C. M.Os.1 to 5 and the unmarked case property, if any, shall be destroyed after the appeal time is over.

46. The Criminal Appeal is accordingly allowed in part.

Pending miscellaneous applications, if any, shall stand closed in consequence.

G.CHANDRAIAH,J

M.S.K.JAISWAL,J

Date: 26.03.2015

Dsr