

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

CRIMINAL APPEAL No. 746 OF 2010

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The sole accused in S.C.No. 171 of 2008 on the file of the VI Additional Sessions Judge (FTC), Anantapur at Gooty who has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life, is the appellant in this Appeal.

The prosecution laid a charge against the accused/appellant that on 31.08.2007, at about 11.30 P.M., he committed murder of his brother, by name Sri Nese Chinta Rangaswamy, by intentionally hacking him with a sickle, at their house at Chintalayapalli Village, Yadiki Mandal, Anantapur District.

To sustain this charge, the prosecution examined P.Ws. 1 to 16 and got marked Exs.P1 to P20. Various material objects, which were retrieved as part of the investigation into the crime, were got exhibited as M.Os. 1 to 9.

P.W.1 is the wife of the deceased. She has stated that though the accused is a married person, he deserted his wife and started living separately at Dharmavaram, whereas the deceased was the resident of Yadiki Village. At their native village Chintalayapalli, the mother of the deceased, the accused and their unmarried sister, by name Rangamma were residing. P.W.1 and the deceased were going once in a while to the village to take care of the mother of the deceased and his unmarried sister Rangamma. The deceased was anxious to see to it that his young- aged sister Rangamma is married in quick time. The deceased being the elder brother of the two, was looking for certain matches for his unmarried sister Rangamma. That was providing scope for quarrels between the accused and the deceased. There appears to be disagreement between the deceased and the accused with regard to the marriage proposals brought-forth by

the deceased. A couple of days prior to the incident, an alliance for Rangamma from Yadiki Village, where the deceased and P.W.1 were residing, was brought-forth. P.W.1 has stated that the marriage was fixed, but however, it is the accused, who got the proposal dropped. Hence, there was a quarrel in that respect between the accused and the deceased. The quarrel lasted for nearly three to four hours. There was also heated exchange of words and physical fists. The neighbours intervened and separated them. At this stage, the accused left the house uttering that he would see the end of the deceased. While the deceased, his wife P.W.1, his sister Rangamma and his mother Lakshmi Devi were talking to each other, at about 11.00 P.M., the accused came back with a sickle in his hand and uttering the words that 'if he can kill the deceased, he would be able to perform the marriage of Rangamma', he hacked the deceased with the sickle on the forehead of the deceased. Upon receiving the blow, the deceased fell down and almost immediately died. The accused fled away from the scene before the neighbours could arrive at the house because of the alarm raised by the other inmates. The next day morning, P.W.1 went to the Police Station and lodged the complaint marked as Ex.P.1. During the cross-examination of P.W.1 on behalf of the accused, she has stated that the accused and the deceased are having joint family properties, while the deceased has only Acs.3.50, the accused has Acs.10.00 of land. The following statement made by her thereafter has certain significance and hence, we would prefer to quote it:

“ We sold our Acs.3.50 of land. The accused is enjoying his property. It is not true to say that the deceased was having bad habits and he was playing Matka. We sold our land and kept money with us to perform the marriage of Rangamma.....”

P.W.1, all through, denied and disputed the suggestion that the deceased has not taken any active role in settling the marriage alliance for his sister Rangamma. On the other hand, P.W.1 has

clearly brought out that Acs.3.50 of their land has been sold-off to meet the expenses of wedding of Rangamma and they were anxiously processing matrimonial alliances for her. Though a strong line has been advocated to support the theory that the deceased was under the influence of liquor at the time of the incident, P.W.1 stoutly refuted any such allegation and stood her ground very firmly.

P.W.2 was the sister of the accused as well as the deceased. This witness has stated that the accused deserted his wife and living at Dharmavaram and that the deceased and his wife were living at Yadiki Village. She has also stated that the deceased was looking for a marriage alliance for her and there were disputes between the accused and the deceased on that issue. She also stated that the deceased was done to death at their house in the village, but suddenly departed from her earlier statement and denied the factum of her presence in the village on that day. She has also denied the knowledge of the cause of the death of the deceased. This witness has stated that her mother was available at home on that day and that the health of her mother was not also good. At that stage, the Public Prosecutor declared her to have turned hostile and during the cross-examination by the Public Prosecutor, she denied the suggestion that she was present at the village. In the cross-examination of this witness by the accused, she has stated that the deceased had drinking habit (consumption of alcohol) and for that habit, he sold his property and as he was unable to repay the loans, he shifted to Yadiki Village.

To the extent that P.W.2 has stated that the deceased was searching for a marriage alliance for her and that he used to come to the village namely Chintalayapalli now and then and because of the marriage proposals brought-forth by the deceased, there were disputes between the accused and the deceased, the theory propounded by the prosecution has been supported by P.W.2 also. Most significantly, during the course of her deposition, P.W.2 did not utter one word that the accused was also looking for marriage alliance for her and/or

brought-forth any proposal in that regard. Since the mother of the accused died after the incident, she could not be examined at the trial.

P.W.3 is a neighbour and also a distant relative of the parties. He turned hostile. So was the case with P.W.4, another neighbour. P.W.5 also turned hostile. P.W.6 is the brother-in-law of the deceased i.e. the brother of P.W.1. He has stated that on the issue of the marriage of P.W.2, there were disputes between the accused and the deceased. P.W.7, who is a resident of the same village, has not supported the prosecution and turned hostile. Same is the case with P.Ws. 8, 9 and 10. P.W.11 is a signatory to the inquest panchnama, marked as Ex.P.3. He is the Village Revenue Officer of Kamalapadu Panchayat. P.W.12 is the Civil Assistant Surgeon of the Primary Health Centre at Tadipatri who conducted the Post-mortem examination. He found one ante-mortem external injury on the forehead extending from left temporal region to the right ear. The injury is measured to be of 10" x 1" having cavity deep. The brain matter was seen out through the injury. The skull was fractured deep to the injury and the brain was lacerated and got scattered. The doctor opined that the injury might have been caused with a sharp-edged heavy weapon and that the deceased might have died due to the injury to his brain. The Post-mortem report furnished by him has been marked as Ex.P.4. P.W.13 is the Panchayat Secretary. He was the one, who acted as a witness for recovery of M.O.1, sickle said to have been used by the accused and M.O.2 shirt worn by the accused. P.W.14 is also a witness to the recovery panchnama Ex.P.8 relating to recovery of M.os. 1 and 2. P.W.15 is the Sub-Inspector of Police, Yadiki Police Station, at the relevant point of time, who received the complaint Ex.P1 from P.W.1, registered it and issued the First Information Report Ex.P.9 and also forwarded it to all concerned. P.W.16 is the Circle Inspector of Police, who carried out the investigation. Ex.P10 is the rough sketch prepared by the Investigating Officer upon observation of the scene of offence.

Though the neighbours did not support the theory of the prosecution and consequently, turned hostile, but nonetheless, as was already noticed by us, they did lend support to the fact that there was some dispute going on between the brothers i.e. the deceased and the accused with regard to the marriage of P.W.2, their sister. Even P.W.2 has vouchsafed for this fact. While P.W.2 has made a convenient statement that she was not at home on the day of the incident, she did admit that her mother was not keeping good health, but she has not chosen to explain in spite of her mother's health condition, where she has gone on that day. P.W.1 has categorically stated that on the day of the incident, there was a quarrel between the two brothers, with regard to the marriage proposal brought-forth by the deceased for P.W.2. Though both the brothers have quarrelled with each other and that the accused has threatened the deceased, but however, the fact remains that he has gone out from the house. After lapse of three hours time, he returned with a sickle in his hand and dealt one single blow on the forehead of the deceased, which injury, as per P.W.12, led to the death of the deceased.

A careful analysis of the facts brought-forth would clearly disclose that the injury caused to the deceased was not a pre-meditated one. Obviously, the two brothers were quarrelling with each other with respect to their respective obligations for getting their sister Rangamma, P.W.2 married. The deceased, being the elder of the two, was pursuing the issue of marriage of Rangamma a little more seriously, but however, when the deceased brought-forth a proposal of marriage for Rangamma from Yadiki Village where he was residing, the accused obviously has taken an exception to such a proposal. In that context, the statement of P.W.1 that they have sold their Acs.3.50 of land and kept the money ready for performing the marriage of P.W.2 Rangamma offers a clear clue for us. It appears, while the deceased and his wife, P.W.1, were actively pushing-forward a particular proposal for getting P.W.2 married, it is the accused, who is not coming

forward for it. He has neither contributed in any meaningful manner nor did he lend support to the proposal brought-forth by the deceased, but however, the accused was indulging in quarrels frequently with his elder brother, the deceased, in that regard. On the day of the incident, the quarrel erupted between the two brothers because the proposal brought-forth by the deceased from Yadiki Village, which was almost about to be finalized, was not to the liking of the accused. This apart, as indicated by P.W.1, the accused had to either shell down money if he has saved any such amount or in the alternative, he has to sell a part of his own lands and provide for the necessary financial help. It is in this context, the quarrel took place between the deceased and the accused. Because of this provocation of the deceased, the accused not only abused the deceased but also indulged in a fist-fight with him. Though he has gone out to cool himself, obviously, he could not. He came back to the house armed with a sickle and delivered one single blow on the forehead of the deceased, which was fatal enough, resulting in the death of the deceased.

In the above backdrop, we are required to examine as to whether the act of the accused amounts to culpable homicide, at the first instance, and if so, whether it would amount to murder as well for which offence the provision under Section 302 of the Indian Penal Code gets attracted.

Section 299 of the Indian Penal Code brought out the contours of the offence of culpable homicide in the following words:

“who ever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death, commits the offence of culpable homicide.”

Section 300 of the Indian Penal Code dealt with what amounts to murder. It declared that culpable homicide amounts to murder, if the act by which the death is caused is done with the intention of causing death, but however, Section 300 has carved out certain exceptions thereto. The first exception reads as under:

“ **Exception 1: When culpable homicide is not murder:-** Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.”

Thus the above exception brings out that culpable homicide would not amount to murder if the offender while being deprived of the power of self-control by grave and sudden provocation causes death of such a person, who provided such provocation.

The facts brought-forth in this case have clearly revealed that there were only quarrels between the accused and the deceased, who are the brothers, with regard to the obligation to perform the marriage of their young-unmarried sister Rangamma P.W.2 in quick time. Since the deceased was the elder of the two brothers, he was taking keener interest to get Rangamma married in quick time. Even P.W.2 stated that it is the deceased, who was looking for the marriage alliance for her and in the absence of any similar statement attributed to the accused, it would be reasonable for us to infer that it was only the deceased, who was diverting his energies and time towards P.W.2 Rangamma to perform her marriage but not the accused. This apart, P.W.1 has categorically deposed that the deceased has sold-off Acs.3.50 of his land and kept the money ready for getting the marriage of P.W.2 Rangamma. Thus, the deceased was prepared in all respects in getting his sister Rangamma married. Whereas the accused has not made any corresponding attempt to keep money ready for contributing to such marriage. There was disagreement between the brothers on the day of the incident with regard to the marriage proposal fetched by the deceased from Yadiki Village, where he was living. A quarrel erupted between the two, which lasted for number of hours till such time the neighbours intervened and separated the two brothers who were also exchanging blows by then. It is at this stage the accused left the house, but came back after few

hours time. P.W.1 has categorically stated that he came back with a sickle in his hand and before either the deceased or any other family member could realize as to what is going to happen, the accused has delivered one blow on the forehead of the deceased with the sickle. That injury, which was brain-deep, left the injured dying on the spot. It is therefore, a clear case where the accused may not have pre-meditated to kill the deceased, but however, he unleashed the violence possibly to scare away the deceased from his keenness to get P.W.2 Rangamma married. The result of his actions got translated into the homicidal death of the deceased. We are therefore, of the opinion that the case of the present nature falls within exception (1) to Section 300 of the Indian Penal Code.

Section 304 of the Indian Penal Code, which provided for the punishment for causing culpable homicide not amounting to murder, has clearly brought out that such a person shall be punished with imprisonment for life or imprisonment for a term which may extend to 10 years.

In the instant case, since the homicidal death of the deceased was caused in connection with the marriage of P.W.2, their sister, and possibly, the accused feeling frustrated for the marriage not fructifying as per his wishes or as desired by him, his conduct calls for a compassionate view to be taken in the matter. This apart, the accused has only dealt one single blow using the sickle M.O.8. That itself is viewed to be fatal. Hence, taking an overall view of all these factors, we consider that the conviction and sentence handed down by the learned Sessions Judge deserves to be modified to the one under Exception (1) of Section 300 of the Code instead of Section 302 of the Indian Penal Code. Consequently, the sentence of life imprisonment handed down by the Sessions Court also deserves to be modified by confining the imprisonment for a period of ten years.

Accordingly, we allow this Criminal Appeal to the extent of modifying the conviction and sentence of the appellant as indicated

supra and the period of imprisonment already undergone by the appellant will be set-off. The judgment of the Sessions Court with regard to imposition of fine amount of Rs.500/- is upheld.

Consequently, the miscellaneous applications, if any shall stand disposed of.

NOOTY RAMAMOHANA RAO, J

ANIS, J

10th September 2015
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