

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

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

CRL.A.NO.562 OF 2010

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

The Inspector of Police, Tadipatri filed charge sheet against the accused in Cr.No.19/06 under Sections 302, 324, 307 I.P.C. of Yellanur Police Station alleging that accused and the deceased were earlier friends and were residents of Chakali street, Yellanur village and Mandal, Tadipatri, Anantapur District. On 12.4.2006 at about 9 p.m., accused went upon the house of the deceased and questioned him, abused him and threatened to kill him and went away. P.W.1, the wife of the deceased was present in the house at that time. The motive for the attack was that the deceased hosted a dinner to his relatives and friends some time prior to the offence and he did not invite the accused for the said dinner. Therefore, the accused felt insulted and there was altercation between accused and the deceased and they were not on talking terms since then. After abusing the deceased, accused went away. P.W.2 son of the deceased came to the house, to whom P.W.1 informed about the high handed behaviour of accused. Then, P.W.2 went to the house of the accused in order to question him for his unruly behaviour. There was an altercation between accused and P.W.2. The accused took out a sickle and tried to attack P.W.2, but he escaped. When the deceased intervened and questioned the accused, he tried to hack the deceased on his neck, but deceased raised his left hand to prevent the blow. It fell on his left hand and there was serious cut injury on the left hand. The deceased fell on the ground. He again tried to hack the deceased and P.W.1 intervened and she received cut injury on her left wrist. Then P.Ws.1 and 2, took the deceased to Yellandur Police Station, where P.W.16, the Sub Inspector of Police, Yellanur recorded the oral statement of P.W.1 and registered a case in Crime No.19/06 under Section 307 I.P.C. and referred the deceased and P.W.1 to the hospital. Deceased succumbed to the

injuries in the hospital at 12.15 a.m. on the same day while undergoing treatment. After receiving death intimation, F.I.R. was altered to Section 302 I.P.C. and altered F.I.R. was issued and P.W.17, the Inspector of Police took up the investigation, conducted inquest on the deceased and referred the dead body to post mortem examination. P.W.11 - doctor, examined P.W.1 and issued wound certificate stating that she sustained simple injury. P.W.12, conducted autopsy on the deceased and gave final opinion that the deceased died of shock due to haemorrhage. In the course of investigation, accused was arrested on 16.4.2006 near Electric Sub Station, Yellanur and the sickle used for commission of offence was seized under the cover of panchanama in the presence of mediators. Thus after completion of investigation, charge sheet was filed.

2. On appearance of the accused before the trial court, charges were framed against him under Sections 324 and 302 I.P.C. were explained to him in Telugu and he denied the same claimed to be tried.

3 . In order to prove the case of prosecution, P.Ws.1 to 17 were examined and Exs.P-1 to P-22 and M.Os.1 to 6 were got marked. On behalf of the defence, no witness was examined, Ex.D-1 portion of a Section 161 Cr.P.C. statement of P.W.2 was marked.

4 . After closure of the evidence of prosecution witnesses, the incriminating circumstances appearing in their evidence was put to the accused under Section 313 Cr.P.C. and he denied the same.

5. Appreciating the evidence on record, both oral and documentary, the trial court found the accused guilty of the offence punishable under Section 302 and 324 I.P.C. and for the offence punishable under Section 302 I.P.C., the accused was sentenced to suffer imprisonment for life and to pay a fine of Rs.200/- and in default to suffer simple imprisonment for one month. For the offence under Section 324 I.P.C., the accused was sentenced to suffer rigorous imprisonment for three months and no fine was imposed. Aggrieved by the conviction and sentenced, the accused preferred the present

appeal.

6. The learned counsel for the appellant contended that the trial court did not appreciate the evidence available on record in proper perspective. He stated that except the interested testimony of P.Ws.1 and 2, there is no other evidence and all the prosecution witnesses turned hostile and therefore, the accused is entitled for benefit of doubt and the consequential acquittal. Alternatively, he contended that the incident occurred in a fit of rage and there was no intention on the part of the accused to kill the deceased and therefore, the offence falls under the second part of Section 304 I.P.C. With these submissions, he sought to set aside the impugned judgment of the trial court.

7. On the other hand, the learned Public Prosecutor supporting the impugned judgment submitted that P.Ws.1 and 2, who are wife and son of the deceased are eye witnesses and the other witnesses who turned hostile belong to the same caste of the accused and are related to him and the deceased belong to different caste and hence they turned hostile. He submitted that P.W.1 is the injured witness and the evidence of P.Ws.1 and 2 is corroborated by medical evidence. He submitted that the accused threatened the deceased in his house to kill for the trivial incident of not inviting him to the dinner and therefore naturally his son, P.W.2, who returned home from work, on coming to know about the incident from P.W.1, went to the house of the deceased to question his highhanded behaviour and there was an altercation and the accused took out the sickle in his house and tried to hack the deceased and in the meanwhile deceased intervened and questioned him, the accused tried to hack him on his neck and when the deceased raised his left hand to prevent the blow, it fell on the left hand and thus there was sever cut injury on the left hand and he fell down and when the deceased again tried to hack him, P.W.1 intervened and the accused inflicted cut injury on her left wrist. Thereafter P.Ws.1 and 2 took the deceased to police station and then to the hospital, where he succumbed to the injury while undergoing treatment. He submitted that the trial court after

considering the evidence on record, by cogent and convincing reasons, convicted the accused and sentenced him. There are no grounds to interfere with the impugned judgment of the trial court. With these submissions, he sought to dismiss the appeal.

8. In view of the above rival contentions, the issues that arises for our consideration are (i) whether the prosecution could prove the guilt of the accused beyond reasonable doubt? and (ii) in the facts and circumstances of the case, whether the conviction of the accused by the trial court under Section 302 IPC, warrants interference?

9 . It is necessary to notice the case of the prosecution and the evidence available on record. The case of the prosecution in brief is that the accused and the deceased were earlier friends and were residents of Chakali street, Yellanur village and Mandal, Tadipatri, Anantapur District. It is alleged that the deceased hosted a dinner some time prior to the incident and he did not invite the accused and, therefore, he felt insulted and keeping that in mind, on 12.4.2006 at about 9-00 p.m., went to the house of the deceased and questioned him, abused him and threatened to kill him and went away. At that time, P.W.1, the wife of the accused was present in the house and subsequently, P.W.2, the son of the accused came to the house. P.W.1 informed his son P.W.2, the highhanded behaviour of the accused. Immediately, P.W.2 went to the house of the accused and questioned about his unruly behaviour. There was altercation between the accused and P.W.2. Accused took out a sickle and tried to attack P.W.2, but he escaped. In the meanwhile the deceased intervened and questioned him. Then accused tried to hack the deceased on his neck, but the deceased raised his left hand to prevent the blow. The blow fell on his left hand and it resulted in serious cut injury on the left hand and the deceased fell on the ground. When the accused tried to again hack the deceased, his wife P.W.1, intervened and she received a cut injury on her left wrist. Then P.Ws.1 and 2 took the deceased to Yellanur Police station and there the S.I. of police registered the case and referred the deceased to Government Hospital, Tadipatri, where while undergoing treatment,

he succumbed to injuries.

10. As per the case of the prosecution P.Ws.1 to 8 are the eye witnesses.

11. P.W.1 is the wife of the deceased. She deposed that she is resident of Yellanur, living by doing coolie work; P.W.2 is her son; that the deceased is her husband and that she knew the accused; that she knew Chakali Kullayappa, Venkataramudu, Rajamma, Gangadhar, Chinna Obulesu and Ramakrishna, who are witnesses in this case; P.Ws. 3 and 4 are related to the accused; P.W.5 is the elder sister of the accused; P.W.6, is the son of P.W.5; P.W.7 is related to the accused; P.W.8 is the husband of P.W.5 Rajamma; that her husband was murdered about 2 years back; that her husband and Subba Rangaiah (accused), were in cordial terms prior to the offence; that subsequently enmity arose between them; that on the occasion of Ugadi, her husband had given dinner to some of the villages; that her husband did not invite the accused for the said dinner; that on the date of offence at about night meals time, accused came to their house and abused her husband, saying that if he kills him, who will come to his rescue and went away; that later her son P.W.2 came to the house and that she informed about the said threat to her son; that her son went to the house of the accused to question about the act; that herself and the deceased husband went to the house of the accused; her son questioned the act of accused and there, some verbal altercation took place in between accused and her son, then her husband intervened; then accused tried to hack on the neck of her deceased husband, he raised his left hand to ward off the blow; that it fell on the left hand of the deceased; that her deceased husband sustained bleeding injury; that her deceased husband fell on the ground and that when she intervened and questioned the accused for attacking her deceased husband, the accused hacked her on left hand; that she sustained bleeding injury; that P.Ws.3 to 8 saw the offence and went away; that the accused also left the scene of offence; that herself her deceased husband and her son went to Yellanur police station; gave a complaint in the police station; that

Ex.P-1 is the complaint dated 12.4.2006; that the police sent her and the deceased to the Government Hospital, Tadipatri; that her husband died in the hospital; that she was examined by the police on the next day during inquest; that M.O.1 is the blood stained cut banian, M.O.2 is the blood stained cotton pancha of her husband, M.O.3 is the blue coloured underwear of her husband, M.O.4 is the waist thread, M.O.5 is the sickle with which the accused hacked her deceased husband; that the offence took place in front of the house of the accused; that the house of the accused is situated in Chakali gera; that P.Ws.3 to 8 belonged to washermen community; that there was street light burning at the scene of offence, besides there was also light burning in front of the house of Chinna Obulesu near the scene of offence and; that the police examined her.

12. In her cross-examination, no contradictions with her chief, could be elicited by the defence counsel and her evidence is consistent.

13. P.W.2 is the son of the deceased. He deposed that he knew the accused and P.Ws.3 to 8 and they are related to the accused; that P.W.5 is his own sister; that P.W.8 is the husband of P.W.5; that P.W.6 is the son of P.W.5; that the offence did take place on 12.4.2006; that he was preparing coal with fire wood; that on the date of offence; he returned to his house at about 9.30 p.m.; that P.W.1 informed him that the accused came to their house and abused his father for not inviting him to the dinner hosted by his father on the occasion of Ugadi festival; that he went to the house of the accused and questioned him why he abused his father; that the accused threatened him stating that who would come to his rescue if he kills him; that his father and mother came to the scene of offence when accused tried to hack him with hunting sickle; that he escaped from the attack; that his deceased father came to his rescue questioning the accused; that the accused tried to hack on the neck of his deceased father; that his deceased father raised his left hand to prevent the blow to fall on his neck; that the blow fell on the left hand

on his deceased father; that he sustained bleeding injury; that his deceased father fell on the ground, and P.W.1 intervened; that the accused hacked on the left hand of his mother and she sustained bleeding injury; that P.Ws.3 to 8 intervened and rescued them; that the accused escaped from the scene of offence; that there was also bulb burning in front of the house of Chinna Obulesu at the time of offence; that himself, his deceased father and P.W.1 went to Yellanur Police Station; that P.W.1 gave complaint in the police station; that P.W.1 and his deceased father and himself went to Yellanur Police Station; that P.W.1 gave complaint in the police station; that P.W.1, his deceased father and himself went to Government Hospital, Tadipatri in an Auto; that the distance between Yellanur and Tadpatri is about 28 kms.; that his father died in the hospital soon after he was admitted; that prior to offence, his deceased father and the accused were friends, but some time later, some disputes arose between them; that he do not know why disputes arose between them; that on the date of offence, himself and his deceased father had taken dinner before going to the house of the accused; that M.O.5 is the sickle with which the accused hacked P.W.1 and his deceased father; that there was heavy bleeding from the injury to his deceased father and that police examined him at the time of inquest and; that the house of the accused is 4th house from his house.

14. In the cross-examination nothing useful to the case of the defence could be elicited and the evidence of P.W.2 in the cross-examination is consistent with the chief examination.

15. P.Ws.3, 4, 5, 6, 7 and 8 are alleged to be the eyewitnesses along with P.Ws.1 and 2, but they turned hostile.

16. P.W.,9 is the punch witness to inquest, over the dead body of the deceased, conducted at Government Hospital, Tadipatri on 13.4.2006 from 9-30 a.m. to 12-00 by the Inspector of Police P.W.17, under Ex.P-8.

17. P.W.10 is also punch witness to the inquest and he turned hostile.

18. P.W.11 is the Medical Officer, who examined P.W.1 and found the following injuries:

“A lacerated injury on the lower 1/3rd of left fore arm measuring 2” x 1” X muscle deep. I am of the opinion that the injury is simple in nature aged about 1 to 3 hours prior to my examination.”

Ex.P-10 is the wound certificate and he deposed that the injury can be caused with the weapon like that of M.O.5.

19. P.W.12 is the doctor who conducted autopsy over the dead of the deceased on 13.4.2006 at 12.25 p.m. and found the following injuries:

“External Injury:- An oblique incised wound on the inner side of left elbow extending downwards. Size 4 1/2 “ x 1/2” X bone deep. The injury is an ante-mortem injury.

Internal Examination: Head:- Skull is normal. No injury to internal organs and all the organs are pale. Brakial artery and veins are cut deep to the injury. Flexor muscles are also cut.”

He is of the opinion that the deceased appeared to have died of shock due to haemorrhage and died 10 to 14 hours prior to the post mortem examination. He deposed that from neck portion up to hand, there would be major blood vessels; that due to the loss of blood vessels there must be heavy bleeding; that the injury caused to the accused is sufficient in the ordinary course, to result in his death; that the injury on the deceased can be caused by a weapon like M.O.5 and that Ex.P-11 is the post-mortem examination certificate.

20. P.W.13 is the panch witness for preparation of scene of offence mazahar, which is in front of the house of the accused, marked as Ex.P-12.

21. P.W.14 is the Panchayat Secretary, who signed in the arrest

mazahar and turned hostile.

22. P.W.15 is also a mediator to mazahar Ex.P-14, prepared for the arrest of the accused and for the recovery of M.O.5. He turned hostile.

23. P.W.16 the C.I. of Police deposed that on 12.4.2006 while he was in the Police station at about 10-30 p.m., P.W.1 and her husband i.e., the deceased came to the police and P.W.1 gave a oral complaint and he registered the same as Cr.No.19/06 under Section 307 IPC and both the injured were referred for medical examination to Government Hospital, Tadipatri and F.I.Rs. were sent to all the concerned and Ex.P-15 is the FIR sent to the court; that on the next day i.e., 13.4.2006, he received death intimation from Government Hospital, Tadiptri and basing on the death intimation of Kullayappa, section of law was altered to Section 302 IPC and copies of altered FIR were sent to the concerned. Ex.P-16 is the altered FIR and Ex.P-17 is the death intimation and that subsequently the Inspector of Police Tadipatri took up further investigation and he assisted him.

24. P.W.17 is the investigating officer, who worked as C.I. of Police at Tadipatri Rural Circle from 4.7.2005 to 19.4.2006. On 13.4.2006 after P.W.16, he took up the investigation, held inquest over the dead body of the deceased in the hospital from 9.30 a.m. to 12-00 noon and during inquest, examined P.Ws.1, 2, Narsamma, and Veeraiah and recorded their statements and later he visited the scene of offence, which is located in Yellanur village in front of the house of the accused bearing D.No.C-54 and drafted the scene observation mahazar in the presence of mediators, which is marked as Ex.P-12 and seized blood stained slab pieces, control slab pieces and that M.O.6 is the blood stained black stone. He prepared rough sketch of the scene of offence and Ex.P-18 is the rough sketch and examined P.Ws.3,4,5,6,7 and 8. On 16.4.2006, on receiving information about the accused, he apprehended him. After inquest, he sent the dead body of the deceased to the post-mortem examination and also sent the material objections to RFSL examination and after completion of

investigation, his successor filed the charge sheet.

25. Now from the above evidence adduced on behalf of the prosecution, it is necessary to examine whether the prosecution could prove the guilt of the accused beyond reasonable doubt.

26. The case of the prosecution is that the accused and the deceased were earlier friends and on the ground that the deceased having hosted a dinner in connection with Ugadi festival, failed to invite him, the accused bore grudge on him and while so, on 12.4.2006 at about 9-00 a.m., the accused went to the house of the deceased, questioned and abused him and also threatened to kill him and at that time, the wife of P.W.1 was present in the house. P.W.2 is their son and he is also living with them. At that time, after attending to his work, he returned home. Then P.W.1, his mother, informed him about the highhanded behaviour of the accused. Thereupon, P.W.2 went to the house of the accused, and questioned his highhanded behaviour and altercation took place and the accused took out a sickle and tried to attack P.W.2 and in the meanwhile the deceased went there and intervened and the accused tried to hack the deceased on his neck, the deceased raised his left hand to prevent the blow and the blow fell on his left hand and there was serious cut injury and he fell on the ground and when the accused again tried to hack the deceased, his wife P.W.1, intervened and his wife received injury on her left wrist. Then P.Ws.1 and 2 have taken the deceased to Yellanur Police Station, and P.W.16, the SI of Police registered the case and referred them to Government Hospital, where the deceased succumbed to injuries in the hospital at 12-15 on the same day while undergoing treatment.

27. On 13.4.2006 at 9-30 a.m., the inquest was conducted over the dead body of the deceased at Government Hospital, Tadipatri by P.W.17 C.I., in the presence of P.W.10 and Ex.P-8 is the inquest report. After the inquest, the dead body was sent to post-mortem examination and P.W.12 Civil Assistant surgeon, Government Hospital, Tadpatri conducted autopsy over the dead body of the

deceased and issued Ex.P-11 post mortem certificate opining that the deceased died of shock due to haemorrhage and died 10-14 hours prior to post-mortem examination. He deposed that from neck portion up to hand, there will be major blood vessel, and due to loss of blood vessels there must be heavy bleeding and that the injury caused to the deceased is sufficient in the ordinary course to result in his death and injury on the deceased can be caused by a weapon like M.O.5. Considering the above evidence, inquest and the post-mortem report, we hold that the prosecution proved that the deceased did die homicidal death.

28. In order to connect the crime with the accused, the prosecution relied on the evidence of P.Ws.1 to 8. Out of these witnesses, P.Ws.3 to 8 turned hostile. P.Ws.1 and 2 are the wife and son of the deceased and P.W.1 is also an injured witness. P.Ws.1 and 2, in their evidence, which is already noted above, categorically deposed that at about 9-30 p.m., the accused came to the house of the deceased and abused and threatened him to kill on the ground of not inviting him to the dinner hosted by the deceased in connection with Ugadi festival and at that time, P.W.2 came to the house after work and P.W.1 informed him about the unruly behaviour of the accused and therefore, P.W.2 went to the house of the accused to question him and there altercation took place and accused by taking the sickle, which is M.O.5, attacked P.W.2 and in the meanwhile deceased who came there, intervened and accused tried to hack the deceased on his neck and the deceased raised his left hand to prevent the blow and that fell on the left hand of the deceased and he received sever cut injury, and when P.W.1 interfered, she also received injury on her left wrist at the hands of the accused. The doctor who examined her, issued Ex.P-10 wound certificate and he deposed that the injury can be caused with the weapon like M.O.5. Though P.Ws.1 and 2 are wife and son of the deceased, their evidence is consistent and is supported by medical evidence. Their evidence is also consistent with the contents in Ex.P-1 complaint and no omissions amounting to contradictions, could be pointed out by the defence from the previous

statements of these witnesses, recorded by the police, to disprove their case. Further, P.W.1 is an injured witness, whose evidence cannot be brushed aside in the absence of any contradictions. The Apex Court in VIJAY SHANKAR SHINDE v . STATE OF MAHARASHTRA (2008 Cr.L.J. 1632), held that *“the evidence of the injured witness hold more credence. Injured witness normally would not shield real culprit. The injured witness would not falsely implicate any person by protecting the actual assailant.”* In these circumstances, the evidence of P.W.1, has to be given much credence. The other witnesses P.Ws.3 to 8 who turned hostile, as per the evidence of P.Ws.1 and 2 are the persons belonging to the same caste of the accused and all are residence of Chakalageri (street) and the offence took place in Chakalageri in front of the house of the accused. Therefore, though they turned hostile, the evidence of P.Ws.1 and 2, particularly the evidence of P.W.1, which inspires confidence and corroborated with medical evidence, is sufficient to hold the accused guilty. The learned counsel for the accused sought to contend that as per scene of mahazar Ex.P-12 there are no street lights, but in the evidence of P.Ws.1 and 2, they deposed that there are street lights and further P.W.2 deposed that deceased had dinner before coming to the house of the accused, but in the medical examination, no such food particles were found. Therefore, these are contradictions. In our considered view, there are not material omissions, amounting to contradictions and hence the contention in this regard is rejected. Thus, in our considered opinion, the prosecution, based on evidence, proved beyond reasonable doubt that the accused caused the death of the deceased. The issue (i) framed in this regard is answered in the affirmative.

29. The other aspect that requires to be examined is whether the accused with intention to cause death, inflicted injury with M.O.5 or with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. In the present case, the motive for the commission of

the offence is, not inviting the accused to the dinner hosted by the deceased. On the date of the incident, the accused went to the house of the deceased and abused him and went to his house and when P.W.2 came to the house, his mother P.W.1 informed him about the highhanded behaviour of the accused and thereupon, he went to the house of the accused and there altercation took place between them and when the accused tried to attack P.W.2 with a sickle, deceased intervened and in that process, the blow fell on the left hand of the deceased, which eventually resulted in his death. Immediately, the deceased was taken to the police station, rather than to a hospital, and after giving of the complaint, he was referred to the Government Hospital, Tadipatri, where he succumbed to injuries while undergoing treatment. In these set of facts and circumstances, we are of the considered view, the accused is to be found guilty under second part of Section 304 IPC instead of 302 IPC. The issue No. (ii) is answered accordingly.

30. For the foregoing reasons, the conviction and sentence imposed by the court of Sessions Division of Anantapur at Anantapur (Before I Additional Sessions Judge, Anantapur) in S.C.No.504/2007 dated 18.3.2009, against the accused for the offence punishable under Section 302 I.P.C. is set aside and he is found guilty for the offence punishable under Section 304 Part –II I.P.C. and sentenced to suffer imprisonment for a period of six years. The conviction and sentence imposed against the accused for the offence punishable under Section 324 I.P.C shall stand and the fine imposed by the trial court is also confirmed. Both the sentences shall run concurrently. After allowing the set-off and completion of sentence period, the accused shall be set at liberty forthwith, if not required in any case.

31. The criminal appeal is accordingly partly allowed.

G.CHANDRAIAH,J

M.S.K.JAISWAL,J

DATE:19.1.2015

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