

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH  
MONDAY, THE FOURTEENTH DAY OF MARCH  
TWO THOUSAND AND SIXTEEN  
(14.03.2016)

PRESENT  
**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**  
**&**  
**THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

**CRIMINAL APPEAL No.724 of 2010**

Between:

Chaliki Venkatarao

**..... APPELLANT/ACCUSED**

AND

State of A.P., rep.by Public Prosecutor,  
High Court, Hyderabad

**.....RESPONDENT**

Counsel for the Appellant : **Sri SREENIVASA SARMA**

Counsel for the Respondent : **PUBLIC PROSECUTOR**

The Court made the following:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**  
**&**  
**THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

**CRIMINAL APPEAL No.724 of 2010**

**JUDGMENT:** (per Hon'ble Sri Justice M.S.K.Jaiswal)

This criminal appeal is filed against judgment dated 30.11.2009 in Sessions Case No.60 of 2007 on the file of the I Additional Sessions Judge, East Godavari at Rajahmundry, by and under which, the learned Sessions Judge has convicted the appellant/accused for the offence punishable under section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for a period of one year.

2. The case of the prosecution in brief is that the deceased-Jasthi Venkata Ramarao, accused and PW 6-Chilliki Santhakumari are all residents of Katavaram village, Seethanagaram Mandal, East Godavari District. The deceased developed illicit intimacy with PW 6-Chilliki Santhakumari, the wife of the accused and was continuing the same for the last 10 years. PWs 1 and 2, the brothers of the deceased advised the deceased to discontinue the said relationship with the wife of the accused, but the deceased paid a deaf ear. The accused bore grudge against the deceased as he got illicit intimacy with his wife and was waiting for an opportunity to take revenge. While so, on 05.07.2006 at about 10 p.m the accused found his wife and the deceased talking at his in-laws' house and he lurked by the side of a wall and observed them. The deceased noticed the accused and when he tried to escape from the said place, the accused attacked and hacked the deceased with an axe on his head and also beat him with the handle of the axe indiscriminately.

PW 10, the brother of PW 6 noticed the incident and intervened and when he tried to take away the axe from the hands of the accused, the latter escaped from the scene with the axe. The deceased fell down on the road as he sustained bleeding injury on his head. PWs 11 and 12 noticed the accused going to his in-laws' house armed with axe. PWs 9, 10 and 8 informed the incident to PWs 1 and 2, the brothers of the deceased. On receiving the information, all the relatives of the deceased rushed to the scene and found the deceased lying on the

road. When PWs 1 and 2 enquired, the deceased informed them that the accused hacked him and beat him with sharp edged portion of the axe. All of them shifted the deceased to the hospital, where the deceased was declared dead. On intimation, PW 17-the Sub-Inspector of Police, went to the Government Hospital and recorded the statement of PW 1 and registered the same as Cr.No.57/2006 under section 302 IPC, informed the same to PW.18, the Inspector of Police and who took up the investigation. During course of investigation, PW 18 along with PW 17 and other staff members proceeded to the scene of offence, got drafted the scene observation report in the presence of mediators, seized the bloodstained earth and control earth, white shirt with blue coloured stripes and also prepared a rough sketch of the scene of offence under Ex.P14. PW 18 got photographed the scene of offence by PW 13. Thereafter, PW 18 proceeded to the Government Hospital, got photographed the dead body of the deceased by PW 14, secured the panchayatdars, held inquest over the dead body of the deceased in their presence, and sent the dead body for post mortem examination. PW 16 conducted the post mortem examination over the dead body of the deceased and opined that the deceased died due to shock and hemorrhage and due to major cranio cerebral injury and injury to the chest viscera and issued Ex.P11 post mortem certificate. On 08.07.2006 PW 18 arrested the accused at his house and seized MO.3 axe, which was stained with blood. After completion of the investigation, PW 18, the Inspector of Police filed charge sheet.

3. The plea of the accused is one of denial.

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 18 and marked Exs.P1 to P16 and M.Os.1 to 5. On behalf of defence, no oral evidence was adduced, but Exs.D1 and D2 were marked. Based on the oral and documentary evidence, the learned Sessions Judge has convicted the appellant/accused and sentenced him, as stated supra.

5. The learned counsel for the appellant submitted that none of

the witnesses examined by the prosecution spoke about their having seen the incident and except the statement said to have been made by the deceased to two of his brothers that it was the accused who caused injuries to him, there is no evidence whatsoever which connects the accused with the crime. All the prosecution witnesses only spoke about the deceased lying with injuries on a kacha road soaked with blood and mud and none of them spoke about the presence of the accused nearby. Therefore, it is submitted by the learned counsel for the appellant that the learned Sessions Judge erred in holding that the accused caused injuries to the deceased which proved fatal. The learned counsel submitted that in the absence of any evidence direct or circumstantial, the court below ought not to have convicted the appellant and hence the appeal.

6. The learned Public Prosecutor, on the other hand, submitted that there is consistent evidence of the prosecution witnesses that the deceased was having illegal intimacy with the wife of the accused for about 10 years prior to the date of incident and neither the deceased nor the wife of the accused discontinued the same in spite of repeated warnings from both sides and ultimately on 05.07.2006 the accused has seen his wife and the deceased talking to each other at about 10 p.m and a quarrel ensued in which the accused gave a blow with an axe on the head and other parts of the body of the deceased and escaped from there. He submitted that within minutes of the incident, the deceased told his brothers that it was the accused who caused injuries and absolutely there is no material on record to disbelieve the said evidence. He further submitted that in view of the evidence on record, it cannot be said that the learned Sessions Judge erred in finding the accused guilty of the charge and hence there are no grounds warranting interference with the said findings.

7. We have heard the learned counsel elaborately and also perused the voluminous oral and documentary evidence available on

record.

8. The point for consideration is whether the prosecution proved its case against the appellant/accused beyond reasonable doubt so as to sustain the conviction and sentence recorded against him, or whether it needs to be set aside, modified or varied.

9. The case of the prosecution as spoken to by the prosecution witnesses is that the accused and PW 6 are husband and wife and about 10 years prior to July, 2006, the deceased, who was a resident of the same village, had developed illicit intimacy with PW 6, the wife of the accused, and was continuing the same unabashedly. It is alleged that on the date of incident i.e., on 05.07.2006, the wife of the accused/PW 6 went to her parents house. The accused had information that his wife/PW.6 and the deceased were carrying on their amorous activities and on suspicion, he went to her parents' house at about 10 p.m. and found his wife-PW 6 and the deceased talking with each other, and in that connection, a quarrel ensued, in which, it is alleged that the accused hacked the deceased with an axe on his head, and that the deceased fell down on the road and the accused escaped on seeing the people gathered there. The evidence of the prosecution witnesses is to the effect that immediately on information, the two brothers of the deceased, viz., PWs 1 and 2 came there and enquired the deceased as to what happened and that the deceased told them that the accused caused him injuries. On the way to hospital, the deceased died and therefore, at about 5.30 a.m on 06.07.2006 PW 1 lodged Ex.P1 complaint with the police.

10. Ex.P1 is the complaint given by PW 1. It was mentioned therein that on 05.07.2006 at about 11 p.m when he was sleeping in the house, PW 5-Duddipudi Srihari and PW 8-Bolli Subrahmanyam came and told him that his brother (deceased) had a quarrel with the accused on the gravel road at the house of in-laws of the accused and that his deceased brother was lying with bleeding injuries on his head. In the meantime, PW 3-Jashti Murali Krishna, who is the son of another

brother of the deceased, came there and PW 1 sent PW 3 to observe as to what happened, and he also followed him. In the meantime, PWs 3, 5 and 8 came carrying his deceased brother on to the road, that on enquiring his deceased brother as to what happened, the latter told him that the accused picked up a quarrel with him and hacked with an axe on his head. That PW 1 himself and PW 4-Nagendra Prasad took the deceased to the Government hospital for treatment where he was declared dead. It was also mentioned in Ex.P1 that the accused killed the deceased by hacking with an axe, as the deceased got illicit intimacy with wife of the accused.

11. The above statement was recorded at the earliest point of time i.e. at about 5.30 a.m on 06.07.2006.

12. What is now required to be seen is as to whether the evidence on record is consistent with what was alleged in Ex.P1 statement.

13. PWs 1 and 2 are the natural brothers of the deceased and their evidence is consistent to the effect that the deceased and the wife of the accused had illicit intimacy for about 10 years prior to the incident, due to which, there were quarrels in between the accused and the deceased. It is also in their evidence that on 05.07.2006 when they were at the house, PWs 5 and 8 informed them that there was an altercation between the accused and the deceased and immediately they sent PW 3 to verify as to what happened and they also followed him. It is further in their evidence that when they went to the scene of offence, they found PWs 5 and 8 carrying their injured brother in their hands on to the road and at that time they asked the deceased as to what happened, that the deceased told them that the accused hacked him with a sharp edged axe and poked with butt of the axe and that thereafter, the deceased was shifted to the Government hospital, where he was declared dead. Both these witnesses were elaborately cross-examined, but nothing contrary was elicited from them to

disbelieve their statements, which are to the effect that the deceased himself having sustained injury had told them that it was the accused who caused the injuries. Nothing was suggested to these witnesses so as to infer there being any enmity or rivalry in between the witnesses and the accused so as to implicate him falsely. The witnesses would not have implicated an innocent person by leaving the real culprit if it was not the case where the deceased told them that it was the accused who caused injuries.

14. The other evidence is that of PW 3, who is the person who went to the scene of offence in the company of PWs 5 and 8 and found the injured lying on the kacha road and being shifted on to the road and in the meantime, other witnesses came there and shifted the injured to the hospital. The evidence of these three witnesses is consistent with what was deposed by PWs 1 and 2. It is spoken to by PW 3, who is the son of PW 2, that when they were shifting the injured on to the road, PWs 1 and 2 came there and the injured told them that it was the accused who caused injuries to him.

15. PW 5 deposed that on the date of incident at about 11 p.m when himself and PW 8 were at the bus-stand, PWs 9 and 10 came there and they told them that the accused hacked the deceased with an axe, that immediately, they all went to the road near the father-in-law's house of the accused and observed the injured, and that thereafter, PW 8 went to the house of PW 1 and informed about the same.

16. PW 8 also gave identical version in his evidence. The evidence of these two witnesses is consistent with the evidence of PWs 1, 2 and 3.

17. The other evidence is that of PWs 9 and 10. PW 9 deposed that on the date of the incident, himself and PW 10 found the deceased lying on the road, that they tried to lift the deceased and carry him on to the main road, that in the meantime, PW 5 came there and that they all shifted the injured on to the road and in the meantime, the people of

the deceased came and took him to the hospital.

18. Similar is the evidence of PW 10. Even though PW 1 was declared hostile, his evidence is to the effect that he and PW 5 have seen the deceased lying on the stones on the road, but he does not know the cause of death of the deceased.

19. From the above evidence, the fact that the injured was found lying with injuries and was shifted to the hospital by PWs 1, 2 and others is established.

20. It is in the evidence of PW 4 that on being informed about the deceased sustaining injuries, he came to the place and noticed PWs 1, 2, 3 and others and the injured on the road and they were shifting the injured to the hospital. He further deposed that himself and PW 1 brought the deceased in a truck auto to the Government hospital, where the deceased was declared brought dead.

21. PW 6 is the villain of the peace. She is the wife of the accused. According to the prosecution witnesses, it is her illicit intimacy with the deceased which is the root cause for her husband committing the crime. It is not surprising that she turned hostile and categorically denied the insinuations on record. She denied her intimacy with the deceased and the accused having committed the crime. As a matter of fact, PW 6 is only the witness who has directly witnessed the incident, but however, she resiled from her previous statement which is Ex.P2.

22. Similarly, PW 7, the mother of PW 6 also did not support the case of the prosecution resulting in her being declared hostile. She also denied her previous statement given before the police as in Ex.P3.

23. PW 11 is the person who has only seen the accused carrying some object like a stick just before the incident took place. He deposed that when he was coming out of the house to ease himself, he found the accused coming with a sticklike weapon and subsequently

he heard that the deceased was murdered by the accused. Nothing concrete was elicited from him for suspecting his statement that he has seen the accused carrying any object, like stick, just before the incident took place and he having learnt on the next day morning that the accused has killed the deceased.

24. On similar lines is the evidence of PW 12, who also deposed that he has seen the accused going from bus-stand towards his own house at about 10.30 p.m in the night. Next day morning he came to know that the accused killed the deceased. No reasons were elicited in his cross-examination for disbelieving this part of testimony of PW 12.

25. PW 15 is the Panchayat Secretary and his evidence is to the effect that in his presence the scene observation panchanama was conducted and inquest was held on the dead body of the deceased. On 08.07.2006 the accused was arrested and he gave confessional statement and produced M.O.1 before the police and admitted that all the panchanama proceedings were conducted in his presence by the investigating officer.

26. If the evidence of PW 15 is read with that of the investigating officer, it establishes the fact that on being apprehended, the accused confessed having committed the crime and produced M.O.1 from the eaves of his thatched house.

27. PW 16 is the Medical Officer, who conducted autopsy over the dead body of the deceased and found the following injuries:

1. Lacerated injury on left forehead above the eyebrow spindle shape with size about 3¼ inches into ½ inch and of bone depth contused edge of the medial margin. Bone visible with fractured line and associated liner split fracture. Raged skin tag present at the superior corner of laceration, red in colour;
2. Small abrasive laceration on right shoulder blade above clavicle about 1.5 cm in length with split width (.3 cm) superficial dark red.

The Medical Officer opined that the cause of death is injury No.1 and he denied that such an injury is possible due to fall on road having stones.

28. If the entire evidence of the Medical Officer is scanned, the fact that is proved is that it is the accused who caused the injuries on the deceased, having seen his wife and the deceased talking to each other in the odd hours at about 10.30 p.m on 05.07.2006. It is also on record that the illicit intimacy in between the deceased and PW 6 is an open secret. The accused and the brothers of the deceased, who are all residents of the same village knew the said fact. The evidence on record established that it is the accused who caused the injuries to the deceased and there is no reason to disbelieve their evidence and take any view other than that was taken by the learned Sessions Judge, had an opportunity of observing the demeanor of the witnesses and accepted their evidence and truthful.

29. In view of the above, the finding of guilt as determined by the trial Court is liable to be confirmed.

30. The next aspect of the matter is what is the nature of offence that is committed by the accused.

31. The learned counsel for the appellant submits that even if the entire version of the prosecution witnesses is accepted, the deceased was found to have provoked the accused for committing the crime by his illegal acts of developing and continuing the illicit intimacy with the wife of the accused. He submitted that the accused had no premeditation or intention of causing the death of the deceased. On the basis of suspicion, the accused went to his in-laws' house and found his wife and the deceased talking to each other at 10.30 p.m. Thereafter a quarrel ensued between them and the accused who was carrying an axe, gave one blow on the head of the deceased with the axe and poked him with the butt of the axe and caused injuries and fled away from the scene.

32. In view of the above proved facts, we are of the opinion that

the offence falls within the contours of the first part of Section 304 IPC instead of under Section 302 IPC. Therefore, the appellant/accused is liable to be convicted under Section 304 Part-I IPC.

33. In the result, the Criminal Appeal is allowed in part, and the conviction and sentence recorded by the trial Court against the appellant/accused is modified to that under Section 304 Part-I IPC and the appellant/accused is sentenced to undergo rigorous imprisonment for a period of seven years, while maintaining the sentence of fine imposed against him by the trial Court. The period of sentence already undergone by the appellant/accused is directed to be set off.

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**C.V.NAGARJUNA REDDY,J**

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**M.S.K.JAISWAL,J**

Date:14.03.2016

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