

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

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CRIMINAL APPEAL NO.1380 OF 2010

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J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

By judgment dated 14.06.2010 passed in Sessions Case No.315 of 2009, the learned I Additional Sessions Judge, Krishna District, held the appellant/sole accused guilty of the charge under Section 302 IPC for the murder of his brother, Kanumuri Nagaraju, and sentenced him to undergo life imprisonment apart from paying a fine of Rs.500/- or undergo simple imprisonment for six months, in default thereof. Hence, this appeal under Section 374(2) CrPC.

The case of the prosecution before the Sessions Court, in brief, was as under: The Sub-Inspector of Police, Ghantasala Police Station (P.W.16), received intimation from the Government Hospital, Machilipatnam, at about 1.00 A.M. on 31.05.2009 and the recorded statement of the patient, Kanumuri Nagaraju, (Ex.P.16) and registered a case in Crime No.53 of 2009 under Section 307 IPC. Ex.P.18 is the FIR. Independently, the II Additional Judicial First Class Magistrate, Machilipatnam (P.W.11) received a requisition from the hospital and recorded the statement (Ex.P.10) of Kanumuri Nagaraju. P.W.16 deputed constables, HC 849 and PC 871, to the scene of the offence to guard the same and proceeded to the hospital. There, he examined and recorded the statements of Kanumuri Nagaraju and P.W.5, his sister-in-law. Ex.P.19 is the statement of Kanumuri Nagaraju recorded by P.W.16. He then secured the presence of P.W.12, the Village Revenue Officer, and Dhanikonda Bhanu Prasad (L.W.15) and proceeded along with them to the scene of the offence, the residence of the accused and his family at Chinakallepalli Village. Ex.P.20 is the rough sketch drawn up by P.W.16 at the scene of the offence. He seized the blood-stained full sleeved shirt of the deceased (M.O.1), blood stained earth (M.O.2) and controlled earth (M.O.3) from the scene of the offence. He also recorded the scene observation report (Ex.P.11). P.W.16 then examined and recorded the statements of P.W.1, P.W.2, D.Baburao (L.W.5) and P.W.3. On

01.06.2009 at about 2.00 P.M., P.W.16 received intimation from the Government Hospital, Machilipatnam, of the death of Kanumuri Nagaraju and altered the provision of law to Section 302 IPC. Ex.P.21 is the altered FIR. He, thereupon, submitted the case diary to the Inspector of Police for investigation.

The Inspector of Police, Challapalli Circle (P.W.17), received information on 01.06.2009 at 2.15 P.M. about Crime No.53 of 2009 registered under Section 302 IPC from P.W.16 and immediately proceeded to Ghantasala police station. He then went to Machilipatnam Government Hospital along with his staff; secured mediators and relatives of the deceased and conducted an inquest over the dead body. P.W.13, Bhanuprasad (L.W.15) and Shaik Baji (L.W.17) were the mediators present at that time along with the relatives. During the course of the inquest, P.W.17 examined and recorded the statements of P.W.1, P.W.3, Baburao (L.W.5) and P.W.4. Ex.P.13 is the inquest report. P.W.14, the photographer, took pictures of the dead body. Exs.P.1 to P.3 are the photographs and Ex.P.14 is the CD thereof. P.W.17 also examined and recorded the statement of P.W.14, the photographer. He then proceeded to Chinakallepalli Village where he recorded the statements of P.W.5 and P.W.2. On 02.06.2009, he examined and recorded the statements of P.W.6, P.W.7, B.Suresh (L.W.12), P.W.8 and Kanumuri Papa (L.W.3). On 04.06.2009, P.W.17 received information about the accused and having secured two mediators, P.W.12 and Banu Prasad (L.W.15), he proceeded to Chinakallepalli Village and found the accused at his house. He arrested him and the accused confessed to having killed his brother by stabbing him. The accused then produced the knife (M.O.4) used for commission of the offence from the eaves at the back of his house. Ex.P.12 is the admissible portion of the confession (Ex.P.12). The accused was found with a minor injury on the left side of his face near the eye and was sent to Challapalli Government Hospital and the doctor, P.W.9, examined him and issued Ex.P.7 injury certificate. The accused was thereupon sent for judicial remand. P.W.17 collected the dying declaration of the deceased recorded by the II Additional Judicial First Class Magistrate, Machilipatnam (P.W.11), and sent the case properties to the Forensic Science Laboratory, Vijayawada, for examination

on 20.06.2009. Upon receipt of the report (Ex.P.23) from the Forensic Science Laboratory, P.W.17 completed the investigation and filed the charge sheet. Ex.P.8, the post-mortem examination report, was also filed with the charge sheet.

Upon committal, the Sessions Court framed the charge that the accused, on 30.05.2009 at about 6.00 P.M., at the house of the deceased, Kanumuri Nagaraju, his younger brother, in Chinakallepalli Village, Ghantasala Mandal, committed his murder by intentionally and knowingly causing his death by stabbing him with a knife on the abdomen and thereby committed an offence punishable under Section 302 IPC.

The accused denied the charge and claimed to be tried.

To substantiate its case before the Sessions Court, the prosecution examined 17 witnesses and marked in evidence 23 exhibits. Case properties were marked as M.Os.1 to 4. The defence did not adduce any oral evidence but marked 15 exhibits, mostly portions of the statements of the prosecution witnesses recorded under Section 161 CrPC. Ex.D.15 was the copy of the charge sheet given to the accused. This exhibit was pressed into service to highlight the discrepancies and variations in the charge sheet filed in the Court and the charge sheet furnished to the accused.

Heard Sri Jogram Tejavath, learned counsel for the appellant/accused, and the Public Prosecutor for the State of Andhra Pradesh.

This is a case where the killing was evidenced by eye-witnesses. P.W.1, the father of the accused and the deceased, was present at the time of commission of the offence. In his deposition, he stated that he had four sons and two daughters and that all his sons used to reside in separate houses within the same site belonging to him. He further stated that about three years prior thereto, the wife of the deceased deserted him and started residing with her two daughters at Gudlavalleru. He said that there used to be quarrels between the accused and the deceased. The deceased was stated to have worked as a lorry cleaner but the accused had no avocation. As to the events of the fateful day, P.W.1 said that at about 5.30 or 6.00 P.M. on the evening of that day, the deceased came back in a drunken state and asked Kanumuri Pavan (L.W.9), the son of the accused, to bring him drinking water. However, Kanumuri Pavan (L.W.9) did not obey. The deceased

thereupon abused him in filthy language. The accused and his wife, Kanumuri Kotamma (P.W.6), then picked up a quarrel with him for abusing their son. The quarrel became severe and in the altercation, the accused stabbed the deceased with a knife in the stomach and the intestines came out. P.W.1 said that the accused again stabbed the deceased just below the chest and thereafter the accused and his wife fled the scene. The deceased fell down and an ambulance was called for. The deceased was taken to Challapalli Government Hospital and his injuries were sutured. The police were stated to have recorded the statement of the deceased to the effect that he was stabbed by the accused. As the hospital at Challapalli could not treat the stomach injury of the deceased, he was shifted to the Government Hospital, Machilipatnam. P.W.1 said that there also the deceased informed the police that the accused had stabbed him. The stabbing incident was stated to have taken place on Saturday and the deceased expired on Monday at the Government Hospital. P.W.1 further stated that his daughter, Nancharamma (P.W.3), and her husband, Baburao (L.W.5), had come to their house to see him as he was unwell but he did not remember as to whether they came after the stabbing incident or before. P.W.1 further stated that the deceased used to come home in a drunken state and abuse the accused as he was not having an avocation. In his cross-examination, P.W.1 stated that on one occasion, the deceased consumed rat poison and it was the accused that took him in a rickshaw to the hospital and rescued him. He also spoke of an incident when the accused beat the deceased on his head with an iron rod and of other altercations between the brothers.

P.W.2, the mother of the accused and the deceased, was not an eye-witness as she was admittedly indoors attending to household duties. She however affirmed that there was no amity between the brothers and that they always used to be at loggerheads.

P.W.3, the sister of the accused and the deceased, was an eye-witness. She spoke of the incidents, as stated by her father, P.W.1. This is what she had to say:

‘On the date of this incident, myself and my husband Baburao went to the house of my parents to see my father since he was said to have fallen down on previous day on account of low B.P. We reached my parents prior to this quarrel. We were talking to my father

by sitting outside the house of Nagaraju. In the meanwhile Nagaraju came there in drunken state. He asked Pavan the son of accused to fetch drinking water. Then Pavan refused to give the water. Then Nagaraju abused and behaved high-handedly over Pavan by questioning him as to why he was not bringing water. Nagaraju also called Pavan as 'bastard' in Telugu. Then the wife of accused came there and questioned Nagaraju for using such quarrel. She abused Nagaraju. The quarrel grew up. Then the accused also involved in the quarrel. Accused and Nagaraju challenged each other. Both of them went upon each other. In the meanwhile the accused brought a knife (Chaku) from his house and stabbed Nagaraju twice. Nagaraju fell down. Wife of accused took away the knife and hid it. Accused fled away.'

In her cross-examination, P.W.3 stated that the accused and the deceased were in the heat of passion on account of the quarrel and that there was sufficient light for her to witness the incident.

P.W.4, the brother of the accused and deceased, also witnessed the incident. He spoke of the events that unfolded, exactly in keeping with what was stated by P.Ws.1 and 3. P.W.5, the sister-in-law of the accused and the deceased, was another eye-witness. She also affirmed the testimony of the other eye-witnesses. P.W.6, the wife of the accused, is an interested party and her testimony is accordingly eschewed from consideration.

P.W.11, the II Additional Judicial First Class Magistrate, Machilipatnam, deposed to the effect that on 30.05.2009 at about 11.20 P.M., he received intimation from the Governmental Hospital, Machilipatnam, about the admission of the deceased and the necessity to record his dying declaration. He thereupon proceeded to the Government Hospital and recorded Ex.P.10. It is evident therefrom that P.W.11 scrupulously followed the prescribed procedure. Ex.P.10 is therefore not impeachable on technical grounds. It is however to be remembered that at the time Ex.P.10 was recorded, the case was registered under Section 307 IPC and the deceased himself may not have been aware that he was about to die. The contents of the statement would therefore have to be viewed accordingly. Therein, the deceased stated that when he returned home on 30.05.2009, his brother, the accused, and his sister-in-law were quarrelling and that he tried to stop them and his brother stabbed him in his stomach.

This variation in his statement is perhaps understandable as the

deceased was conscious of the fact that he was speaking to a Magistrate and would have tried to cover up his own role in the altercation and quarrel which resulted in the stabbing incident. He, however, did confirm that he was stabbed by the accused.

Though Sri Jogram Tejavath, learned counsel, would contend that this difference in Ex.P.10, when compared with the statements of the deceased recorded under Exs.P.16 and P.19, is sufficient to discard all of them, we are not persuaded to agree. In Ex.P.16 recorded by P.W.15, a traffic constable, the deceased confirmed the events as they unfolded in terms of the testimony of the eye-witnesses. The same is the case with Ex.P.19. In the light of the consistent and eminently trustworthy oral and documentary evidence, we are satisfied that the deceased identified the accused as his assailant and that he was fully in his senses when he did so.

The post-mortem report (Ex.P.8) confirmed that the deceased died due to shock and haemorrhage caused by injury to vital organs - liver, spleen and pancreas. Recovery of the knife (M.O.4) pursuant to the confession allegedly made by the accused is an admissible piece of evidence under Section 27 of the Indian Evidence Act, 1872. P.W.10 confirmed in his evidence that the injuries found on the deceased were possible with the said knife.

Sri Jogram Tejavath, learned counsel, would seek to make much out of the discrepancies in the charge sheet filed in the Court and the charge sheet furnished to the accused. However, P.W.17 explained in detail the reasons for the discrepancies and the steps taken to furnish all relevant documents to the accused. This Court finds no reason to doubt the veracity of the case established by the prosecution only on the technical ground of discrepancies in the charge sheet. No prejudice was caused thereby in terms of Section 215 CrPC, warranting interference in appeal.

Though the eye witnesses consistently spoke of the accused stabbing the deceased twice, P.W.10, the doctor, who conducted the post-mortem examination of the body of the deceased, confirmed that he found four external injuries. These injuries are as under:

1. A stab injury 2 x ½ c.m. on right side of navel region.
2. A stab injury 2 x ½ c.m. on left side of navel region.
3. A sutured wound above navel region measuring 3 x ½ c.m.

Contusion of 1 x ½ c.m. on right of chest, right side of neck.

This discrepancy in the evidence of the eye-witnesses and the medical evidence as to the number of injuries caused by the accused is not of such significance as to discredit their trustworthiness. It is brought out in the evidence that quarrels between the brothers were a routine matter and therefore, the eye-witnesses also may not have paid such attention to the finer details of the actual attack at dusk on the fateful day. The extent of lighting at the scene has not been clearly established and therefore, the particulars of the stabbing including the number of times that the accused actually stabbed the deceased may not have been clearly evident to all the eye-witnesses. That by itself would not be enough to discredit their testimony that they were present there when the accused stabbed the deceased. In the light of the eye-witness evidence, supported by the statements made by the deceased himself, be it before the police or the Magistrate, this Court finds no reason to disturb the finding of the Sessions Court that it was the accused that killed the deceased by stabbing him with a knife.

However, it has also been brought out in the evidence that on an earlier occasion it was the accused who rescued the deceased when he consumed poison. The accused and the deceased were after all brothers. Further, all the eye-witnesses confirmed that it was owing to the quarrel which built up that the stabbing took place.

The question would therefore arise as to whether the act of killing by the accused would qualify as murder or culpable homicide not amounting to murder. Exception 4 to Section 300 IPC would have application in a case where the killing took place without premeditation or planning and was the result of a sudden fight and the ensuing heat of passion. All ingredients required to attract Exception 4 to Section 300 IPC have been duly established in the present case, as eye-witnesses not only spoke of the sudden fight and quarrel but also the heat of passion which resulted therefrom. The act of killing by the accused was therefore culpable homicide not amounting to murder.

That being said, the next question that would arise is whether the offence would fall within Section 304 Part I IPC or Section 304 Part II IPC.

Though Sri Jogram Tejavath, learned counsel, would contend that it would qualify under Section 304 Part II IPC, we are not impressed. The evidence on record demonstrates that the accused stabbed the deceased multiple times. He did so twice as per the eye-witnesses but going by the medical evidence, four times. These repeated attacks by the accused with a lethal weapon, a knife, in the abdomen and chest areas would take the case into the realm of 'intention' and beyond that of mere 'knowledge'. It would therefore qualify as culpable homicide not amounting to murder falling within Section 304 Part I IPC. The Sessions Court failed to take note of the fact that the incident of killing was preceded by a sudden fight between the brothers and there was demonstrable heat of passion.

We therefore find that the conviction of the accused under Section 302 IPC and the consequential sentence imposed upon him are unsustainable in law and on facts. The appellant/accused is accordingly found guilty of the lesser offence of culpable homicide not amounting to murder punishable under Section 304 Part I IPC. The sentence of life imprisonment imposed upon him by the Sessions Court is therefore modified to rigorous imprisonment for a period of ten years apart from payment of a fine of Rs.500/- or simple imprisonment for six months in default thereof.

The appeal is accordingly allowed in part.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

24th AUGUST, 2016

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