

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.481 OF 2008

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the appellants/A.1 to A.3 against the judgment, dated 14.03.2008, in Sessions Case No.284 of 2000 on the file of III Additional District & Sessions Judge (Fast Track Court), Gadwal, whereunder and whereby, appellants/A.1 to A.3 were found guilty of the offence punishable under Section 304 Part-II read with 34 IPC and sentenced to undergo rigorous imprisonment for seven years each and to a pay fine of Rs.100/- each, in default to suffer simple imprisonment for one month.

2. Case of the prosecution, in brief, is as follows:

Sri Jangala Tikkanna (hereinafter referred to as, 'the deceased') has performed the marriage of his sister L.W.2-Smt Shanthamma with A.2 of A.Burdipad Village about four years back. On 16.02.2000 evening L.W.2 came to Putandoddi Village to the house of deceased alleging that she was beaten by her husband A.2 and as such she was staying at Putandoddi Village in the hut of the deceased. On 18.02.2000 at 1200 hours, A.2, husband of L.W.2 came to Putandoddi Village along with his elder brother-A.3 and brother-in-law-A.1 and picked up a quarrel with the deceased and asked the deceased to send his sister along with them for leading conjugal life. But, the deceased refused to send L.W.2 along with them. Then A.1 to A.3 got enraged and threatened the deceased saying that they would see his end in case he did not send L.W.2 along with them to A.Burdipad Village. In a bit of rage, A.1 caught hold the neck of the deceased and dragged him upto the hut of L.W.5 and then A.2 and A.3 beat the deceased on his abdomen and chest indiscriminately. On

seeing the incident, L.Ws.2 to 4 intervened and pushed A.1 to A.3, but A.1 kicked the deceased on his testicles, due to which, the deceased fell down and died on the spot. Therefore, A.1 to A.3 committed the offence punishable under Section 302 IPC.

3. After apprehension of the accused, the learned Magistrate framed the charge under Section 302 read with 34 IPC against the accused. The charge was read over and explained to them in Telugu and they pleaded not guilty and claimed to be tried.

4. To substantiate the case of the prosecution, P.W.1 to P.W.5 were examined and Exs.P.1 to P.6 were marked.

5. After closure of the evidence on the prosecution side, the accused were examined under Section 313 Cr.P.C., for which they denied the incriminating circumstances appearing against them in the evidence of prosecution witnesses. On behalf of the defence, none was examined, but Ex.D.1 was marked.

6. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found A.1 to A.3 guilty for the offence punishable under Section 304 Part-II read with 34 IPC and accordingly, convicted and sentenced them, as stated supra. Challenging the same, the appellants filed the present appeal.

7. Heard and perused the material available on record.

8. A perusal of the material on record discloses that on the date of incident, A.1 went to the house of deceased and requested him to send her sister along with him, for which he refused. In this regard a quarrel took place between the deceased and A.1. Then A.1 to A.3 got enraged and threatened the deceased. A.1 caught hold the neck of deceased and dragged him upto the hut of L.W.5 and then A.2 and A.3 beat the deceased on his abdomen and chest indiscriminately, for

which he sustained injuries and died on the spot. P.W.1 is an eyewitness to the incident. Except P.W.1, the Investigating Agency has not examined the witnesses, who are residents of the locality. The trial Court convicted the accused only based on the evidence of P.W.1. Even according to the evidence of P.W.1, the quarrel took place between the appellants and the deceased in a sudden provocation and the deceased died on the spot. The appellants do not have any pre-enmity. Therefore, the Court below convicted the appellants under Section 304-II instead of 302 IPC.

9. This Court perused the record. The facts remains that the entire incident took place all of a sudden over a quarrel between A.1 to A.3 and the deceased and further the injuries are also not serious in nature. To convict a person under Section 304-II IPC, there should be evidence to show that the accused aware of the fact that their act will cause death to a person concerned. There is no evidence that the appellants have knowledge that their acts will cause the death of the deceased concerned. Hence, the conviction imposed by the Court below is modified from 304-II IPC to 304-A IPC.

10. In the result, the appellants/A.1 to A.3 are found guilty of the offence punishable under Section 304-A IPC and accordingly, convicted for the said offence. However, the sentence of imprisonment is set off to the period already undergone by the appellants/A.1 to A.3. The fine amount imposed by the trial Court is not interfered with.

11. Accordingly, the Criminal Appeal is partly allowed. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE RAJA ELANGO

04.08.2016
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