

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1030 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 appellant/A.1 against the judgment, dated 04.08.2008, in Sessions Case No.61 of 2006 on the file of Additional Metropolitan Sessions Judge, Cyberabad, NTR Nagar, Hyderabad, whereunder and whereby, appellant/A.1 was found guilty of the offence punishable under Section 304 Part-II IPC and accordingly, he was convicted and sentenced to undergo rigorous imprisonment for a period of five years. The case against A.2 was dismissed as abated.

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

A.1 is brother of deceased Papaiah and A.2 is son of A.1. All are residing at Nazdiksingaram Village of Ranga Reddy District. A.1 and A.2 keeping grudge against the deceased with regard to demand of his share in the joint family property and pressurizing them to divide his share, hatched a plan to put an end to the life of the deceased in order to avoid his share in the property. While so, on 05.12.2004 at about 6:00 PM while the deceased Papaiah was grazing cattle in the fields at the outskirts of village, A.1 and A.2 went to the deceased, picked up a quarrel and beat him with sticks. The said incident was witnessed by L.Ws.2 to 4. Immediately after the incident, the deceased was shifted to private hospital and thereafter, on the advice of the doctors, he was referred to Osmania General Hospital, but on the way he died on 08.12.2004. Basing on the report given by P.W.1, police registered

a case in Crime No.107 of 2004 for the offence punishable under Section 324 IPC and took up investigation. The Sub-Inspector of police, Yacharam Police Station, visited the scene of offence, conducted scene of offence panchanama and recorded the statement of witnesses. On 08.12.2004 the Section of law was altered to 302 I.P.C. from 324 I.P.C. on receiving death intimation. During course of investigation, police arrested the accused and remanded to judicial custody. After completion of investigation, police filed charge sheet before IV Metropolitan Magistrate, Ibrahimpatnam, who registered the case as P.R.C.No.41 of 2005 and committed the case to Court of Sessions for disposal in accordance with law.

3. On appearance of the accused, a charge under Section 302 I.P.C was framed against A.1, read over and explained to him in Telugu, for which he pleaded not guilty. The case A.2 was dismissed as abated.

4. To substantiate the case of the prosecution, P.W.1 to P.W.8 were examined and Exs.P.1 to P.9 were got marked besides case property M.Os.1 and 2.

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

6. The learned Sessions Judge, basing on the evidence adduced and after elaborate discussion, found A.1 not guilty of the offence

under Section 302 I.P.C. but, found guilty of the offence punishable under Section 304 Part-II I.P.C and accordingly, convicted and sentenced to undergo rigorous imprisonment for a period of five years. Challenging the same, the appellant/A.1 filed the present appeal.

7. Heard and perused the material available on record.

8. P.W.1 is wife of the deceased, who gave Ex.P.1 report to police about the incident. P.Ws.2 and 3 are eyewitnesses to the incident. P.W.4 is the mediator, in whose presence the Investigating Officer conducted the scene of offence panchanama and inquest report, which were marked as Exs.P.2 and P.3 respectively. P.W.5 is the Medical Officer, who conducted post-mortem examination over the dead body of deceased and issued Ex.P.4-postmortem report. She also opined that the cause of death is due to multiple injuries with super imposed cardiac arrest. P.W.6 is another mediator, in whose presence the accused is said to have confessed the fact leading to the discovery of weapons of offence under Ex.P.5 and also seized M.Os.1 and 2 under the cover of seizure panchanama. P.W.7 is the then Sub-Inspector of police, who registered a case basing on the report- Ex.P.1 and took up investigation.

9. A perusal of the material on record discloses that P.Ws.2 and 3 are only eyewitnesses to the occurrence. The other witnesses are only circumstantial witnesses. Originally, the Court framed a charge under Section 302 I.P.C, but, after evaluation of evidence adduced by the prosecution, the learned Sessions Judge convicted the accused under Section 304 Part-II instead of 302 I.P.C. This

Court, after perusal of entire evidence, found that there is no discrepancy regarding the factual aspect of the case projected by the prosecution. The presence of the accused, the manner in which injuries caused to the deceased and regarding the quarrel between the deceased and the appellant were established by the prosecution. Admitting the entire case of the prosecution, whether Section 304 Part-II IPC is attracted or Section 324 I.P.C. is attracted is the point to be decided.

10. Admittedly, the appellant does not have any deadly weapon in his hand on the date of incident and he has no intention to cause any injury on the vital parts of the body of the deceased. The deceased sustained fracture injury to his left forearm and left knee. To convict a person under Section 304 Part-II IPC, there should be evidence to show that the accused is aware of the fact that his act will cause the death of a person. There is no evidence that the appellant has knowledge that his act will cause the death of the deceased.

11. Taking into consideration the weapon used by the appellant/A.1 in the commission of offence and the injuries sustained by the deceased in the hands of A.1, it cannot be said that the death of the deceased was a direct or proximate consequence of the alleged injuries inflicted by the appellant/A.1. Hence, the act of the appellant will not fall under Section 304 Part-II IPC but it will fall under Section 326 IPC.

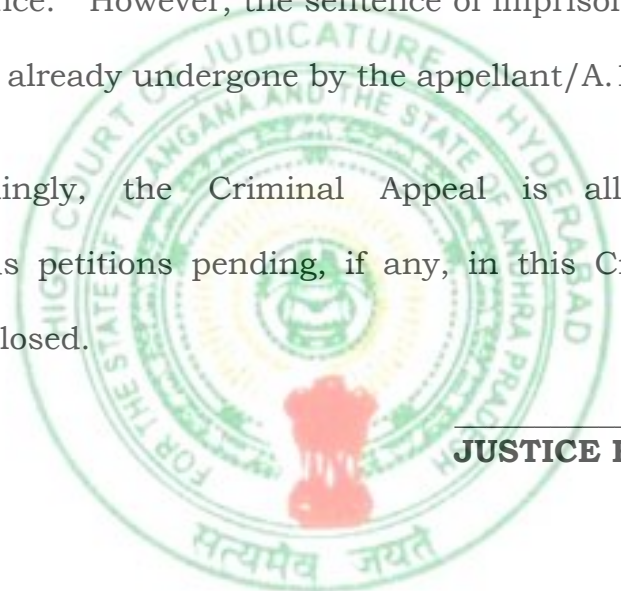
12. To attract offence under Section 326 I.P.C. also, there should be positive evidence by the prosecution that the injuries come under the category of Section 320 I.P.C. The prosecution also

failed to establish the same by producing the radiologist report and examining the concerned person. Hence, this Court is of the view that the offence would fall under Section 324 I.P.C. Therefore, the conviction and sentence imposed against the appellant/A.1 by the trial Court for the offence punishable under Section 304 Part-II IPC is set aside, however, the appellant/A.1 is found guilty for the offence punishable under Section 324 IPC.

13. In the result, the appellant/A.1 is found guilty of the offence punishable under Section 324 IPC and accordingly, convicted for the said offence. However, the sentence of imprisonment is set off to the period already undergone by the appellant/A.1.

14. Accordingly, the Criminal Appeal is allowed in-part. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

26.08.2016
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JUSTICE RAJA ELANGO

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Date: 26.08.2016

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