

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1719 of 2007

JUDGMENT:

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This Criminal Appeal is preferred by the appellant-accused against the Judgment dated 23.11.2007 passed in S.C.No.441 of 2006 by the Principal Sessions Judge, East Godavari, Rajahmundry.

The case of the prosecution is as follows:

That on 06.08.2005 noon, when the deceased Batchala Gangaraju and some other villagers were having lunch at the death ceremony of one of their villager, the right hand of the deceased with food particles touched the hand of one Kalla Venkatarao, as a result of which, a quarrel took place between them and the accused intervened in the matter and separated both of them. But, as the deceased and said Kalla Venkatarao did not keep quite, the accused slapped both of them and sent them away from that place. Having felt insulted, the deceased questioned the accused about the said incident when the accused sat on a pedestal near Raavi tree at 2.30 p.m., and thereby, an altercation took place and the accused by stating that he would kill the deceased, went into his house and came back with a knife and hacked several times on the neck of the deceased and when the deceased fell down, he sat on him and cut his throat, as a result of which the deceased died instantaneous. The incident was witnesses by several villagers. A case was registered against the appellant-accused and the matter was investigated into. After completion of the investigation, charge sheet was filed.

During the course of trial, P.Ws.1 to 11 were examined and Exs.P.1 to P.14 besides M.Os.1 to 7 were marked. No oral evidence was adduced on behalf of the accused, but Ex.D1 was marked.

On appreciation of oral and documentary evidence, the trial Court found the appellant-accused guilty for the offence under Section

304 Part I IPC, and accordingly convicted and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- (Rupees five thousand only), in default, to suffer simple imprisonment for three months. Aggrieved by the same, the present appeal is preferred by the appellant-accused.

Heard both sides and perused the entire material available on record.

P.W.1, who is the Panchayat President, deposed before the Court that on information by one Yalangi Anjaneyulu, P.W.5, he rushed to the place of occurrence, where he saw the dead body of the deceased with cut injury on the front part of the neck, and thereafter, he went to the police station and informed about the death of the deceased to the SI of police, who in turn, recorded his statement and registered a case in Crime No.18 of 2005. On appreciation of the evidence adduced on behalf of the prosecution, the learned trial Judge, even though the charge was framed under Section 302 IPC, rightly convicted the appellant-accused for an offence under Section 304 Part-I IPC, as the accused was not having any intention to murder the deceased, but for the grave and continuous provocation made by the deceased, a quarrel took place between them and the accused committed the offence having knowledge of the consequences. Therefore, this Court is of the view that there are no valid reasons to interfere with the Judgment of the trial Court in convicting the appellant-accused for the offence under Section 304 Part-I IPC.

When this Court pointed out that there are no merits in the appeal, learned counsel for the appellant-accused restricted his arguments to the quantum of sentence, and prayed that as the accused has to look after his wife and children, as well as his old aged parents, leniency may be shown while imposing sentence.

Taking into consideration the above facts and circumstances and the submissions of the learned counsel for the petitioner, this Court is of the view that the sentence of imprisonment imposed by the

trial Court against the accused, can be reduced to that of one year.

In the result, the conviction recorded by the Principal Sessions Judge, East Godavari, Rajahmundry, against the appellant-accused for the offence under Section 304 Part-I IPC is confirmed. But, however, the sentence of imprisonment imposed by the learned Judge against the petitioner under the above head is reduced to that of one year rigorous imprisonment. The sentence of fine stands confirmed. The period already undergone by the appellant-accused shall be given set off.

The appellant-accused is directed to surrender before the Court concerned on or before 17th August, 2016. In default, the Court concerned shall proceed in accordance with law.

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

RAJA ELANGO, J

July 26, 2016.
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