

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1669 of 2007

JUDGMENT:

This criminal appeal is preferred by the appellant/accused by invoking the provision under Section 378(4) of the Code of Criminal Procedure being aggrieved by the judgment, dated 21.11.2007, rendered in S.C.No.98 of 2005, by the Sessions Judge, Prakasam Division, Ongole, whereby and whereunder the learned Sessions Judge found the accused guilty of the offence punishable under Section 302 IPC for the lesser offence under Section 304 Part-I IPC, convicted and sentenced him to undergo rigorous imprisonment for nine (9) years and to pay a fine of Rs.100/-, in default to suffer simple imprisonment for fifteen (15) days.

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

The accused had taken away P.W.4, Patibandla Yesamma, who is the wife of the deceased Patibandla Devaiah about three months prior to the murder of the deceased and hence, the deceased was not residing at his village Chinthapallipadu, but put up his family at Ongole. While stood so, on 20.08.2004 the deceased went to his village Chinthapallipadu to pay installment of the loan obtained by him from the share organization. P.W.1, Gaddam Pulla Rao, who was residing at Parchur along with his in-laws although a native of Chinthapallipadu Village, also came to Chinthapallipadu Village on that day for the purpose of payment of loan installment. On the same day, at about 9.30 hours, P.W.1 along with the deceased and P.W.2, Kambalapati Devaiah and P.W.3, Atluri Rosaiah @ Bommala Rosaiah was going to bus stand,

when they reached old Malapalli of the village, the accused along with D.W.1, Alaparthi Sambaiah, was coming into the village. At that time, questioning the accused as to his uttering in the village that he would elope the wife of deceased, i.e., P.W.4 once again, the deceased caught hold of the shirt of the accused, then P.Ws.2 and 3 even tried to pacify the squabble; the accused whipped out the knife from his waist and stabbed the deceased into his stomach near the chest, resulting which the deceased fell into the nearby ditch with profusely bleeding. P.Ws.1 to 3 witnessed the occurrence and in the struggle took place between the accused on one hand and the deceased on the other hand, the accused also sustained injuries. When P.W.1 tried to rescue the deceased by catching hold of the hand of the deceased, the accused stabbed P.W.1 also with the knife on the throat questioning his interference. Again the accused when tried to stab P.W.1 with knife, in order to ward off the blow by stretching his left hand, he received a bleeding injury to his left hand little finger. When the accused chased P.Ws.2 and 3, they flee away from there. Owing to the injuries on the chest caused by the accused, the deceased died instantaneously in the ditch itself. On being informed about the occurrence, Patibandla Ramaiah, Patibandla Jayamma, Patibandla Yesamma and Patibandla Prasada Babu rushed to the spot and found the dead body of the deceased in the ditch.

P.W.7, the Sub-Inspector of Police of Yeddnapudi Police Station, on receipt of information about the occurrence, went to the scene and at 11.30 hours at the village, he recorded Ex.P-1 – statement of P.W.1 and registered the same as Crime No.26 of

2004 under Sections 302 and 324 IPC and issued Ex.P-7 - express FIR to the Court and the copies to the concerned. U. Koteswara Rao, (since died), the then Inspector of Police of Inkollu Circle took up investigation and P.W.8, K. Satyanarayana, who succeeded him, verified the investigation and conducted further investigation. At about 1.15 p.m., on the same day, the Investigation Officer got the dead body of the deceased removed from the canal, inspected the scene of occurrence in the presence of two mediators namely, P.W.5, Chitta Sesha Saila Kumar and Kalantha Prasada Rao, and prepared Ex.P-2 - observation report besides Ex.P-8 - rough sketch of the scene. The Investigation Officer also held inquest over the dead body of the deceased from 2.00 p.m. to 4.30 p.m. in the presence of P.W.5, Kalantha Prasada Rao and Bathula Kadric, examined Patibandla Ramaiah, Patibandla Jayamma, P.W.4 and Patibandla Prasada Babu and recorded their statements and prepared Ex.P-3 - Inquest Report. After the inquest, the dead body of deceased was sent to the Community Health Centre, Chilakaluripet through corpse Constable. P.W.6, Dr. Hannah Mamatha, held autopsy on the body of the deceased and issued Ex.P-9 - Post Mortem Certificate opining that the death of deceased was due to respiratory failure and shock on account of injury to the lungs. P.W.8, K. Satyanarayana, Inspector of Police, who concluded the investigation, filed the charge sheet against the accused on 17.02.2005 for the offence under Sections 302 and 324 IPC.

3. After taking cognizance of the charge sheet filed by the investigating agency, the Additional Judicial Magistrate of First

Class, Parchur, committed the case to the Court of Sessions, as the same was exclusively triable by the Sessions Court. In turn, the Sessions Judge registered the same as S.C.No.98 of 2005. On appearance of the accused before the trial Court, the charges under Sections 302 and 324 IPC were framed and explained to him, for which he pleaded not guilty and claimed for trial.

4. During the course of trial, P.Ws.1 to 9 were examined and Exs.P-1 to P-9 and M.O.1 were marked on behalf of the prosecution. On behalf of the accused, D.W.1 was examined and Exs.D-1 and D-2 were marked.

5. On appreciation of the oral and documentary evidence, the trial Court found the accused guilty of the offence under Sections 302 IPC for a lesser offence of it, under Section 304 Part-I IPC, convicted and sentenced him as stated above. Aggrieved by the conviction order, the present appeal is preferred by the appellant/accused.

6. Heard and perused the entire material available on record.

7. Learned counsel for the appellant/accused submitted that the trial Court has failed to see that the prosecution has not explained the injuries on the accused and that the trial Court ought to have observed that the prosecution evidence has failed to show that the appellant/accused neither carried sticks nor were armed and no overt acts attributed against the appellant/accused, and hence, the conviction and sentence recorded by the trial Court, cannot be sustained.

8. Learned Public Prosecutor, on the other hand, submitted that the conviction and sentence recorded by the trial Court are in accordance with law and there is no need to interfere with the same.

9. It is brought on record that the accused is a resident of Chinthapallipadu and the deceased Devaiah and his wife P.W.4 Yesamma were also residents of Chinthapallipadu before they shifted their residence to Ongole a month or so prior to the occurrence which took place on 20.08.2004 and P.W.1 Pulla Rao, P.W.2 K. Devaiah and P.W.3 Atluri Rosaiah @ Bommala Rosaiah are also residents of Chinthapallipadu, but P.W.1 was staying temporarily at Parchur in attending agricultural works and he came to the village two days prior to occurrence and the deceased also came to the village two days prior to the occurrence. It is P.W.1, who was injured at the occurrence whose Ex.P-1 statement was recorded in registering Ex.P-7 F.I.R. As per the evidence of P.W.1, on 20.08.2004 morning at about 9.30 a.m., himself, deceased, P.W.2 and P.W.3 were proceeding from the village from Chinthapallipadu towards bus stand on foot, when reached old Malapalli, at the road point, the accused and D.W.1 A. Sambaiah came across, who were also proceeding on foot. It is brought on record that P.W.1 and deceased also availed loans from Self-Help Group and P.W.1 was coming to the village for payment of installments and the deceased was also coming to the village for payment of installments generally on Wednesdays and the occurrence took place on Friday on 20.08.2004 morning. It is also brought on record that the deceased is maternal aunt's son of the

accused and P.W.1 is no way specially acquainted with or related to the deceased, but he is a villager. It is also brought on record that there used to be two groups in the village after the death of Ayinala Tirupathaiah 30 years ago and denied the suggestion that still those group factions are subsisting in the village. He deposed further that the accused and deceased are related to each other and one year prior to the occurrence, the deceased joined the group of P.W.3 from the group of the accused.

10. P.W.1 in his chief-examination deposed that the accused enticed away the wife of the deceased a few months prior to the date of occurrence and later the deceased secured her back and therefrom shifted his residence from Chinthapallipadu to Ongole a month before the date of occurrence and despite it, the accused was threatening to again entice away the wife of the deceased. P.W.4, who is the wife of deceased, deposed that two or three months prior to date of death of deceased, the accused threatened her to elope him else to eliminate her husband and she yielded to his threats to live with him and he kept her at some village and remained there for one month and later dropped her at her parents' house and in turn, her parents dropped her at her husband and even thereafter the accused was coming and threatening to again elope him to entice her away and therefore, the deceased and herself shifted their residence from their village to Ongole one month prior to the occurrence. In the cross-examination of P.W.1, it is suggested that the deceased was suspecting his wife P.W.4 and he was beating her frequently alleging as if she developed extra marital relationship with the

accused and that keeping that in mind, the deceased decided to eliminate the accused and was taking the support of P.W.1 and that it is pursuant to that plan, they were waiting for an opportunity to eliminate the accused and on 20.08.2004 morning while they were coming together on seeing the accused along with D.W.1 coming in front of them at the Patha Malapalle Road junction, they tried to kill the accused by pouncing on him and stabbed him with knife and for the cries of accused, the villagers came armed with weapons and saved the accused and took him to the hospital and in the attack with villagers, the deceased and P.W.1 sustained injuries. D.W.1 also deposed as if the deceased was suspecting his wife. The evidence of P.W.1, D.W.1, Exs.P-17, P-18 and P-1 contents corroborated by P.W.1 evidence, along with the evidence of P.Ws.2 and 3 proves beyond doubt that the deceased questioned the accused having caught hold of his shirt as to why he was again uttering to entice away his wife and therefrom the scuffle arose and the occurrence took place.

11. From the contents of Ex.P-1, it is seen that the deceased was unarmed. The deceased caught hold of the shirt of accused and questioned from the fact that the accused had already enticed away the wife of deceased and was again threatening to entice away. Therefore, the scuffle arose between the accused and the deceased. After the deceased caught hold of the shirt of the accused by questioning him so, P.Ws.2 and 3 tried to prevent them not to altercate and despite it, in the scuffle between the accused and the deceased at the road junction, they fell into the side canal there and at the canal, the accused armed with knife at his waist,

which is marked as M.O.1, stabbed the deceased and caused bleeding injuries to P.W.1, who was there at the road, and in the scuffle between the deceased and accused, the accused also sustained injuries in the hands of the deceased and when the accused was attacking the deceased, P.W.1 at the road went there to rescue the deceased and caught hold of the hand of the accused to pull him, the accused stabbed P.W.1 also with the knife in his hands, once near his throat, again when P.W.1 stretched his left hand to ward off the blow, he received a bleeding injury to his left hand little finger and the accused, armed with knife, also chased P.Ws.2 and 3, who fled away and for the knife injuries caused by accused, the deceased lost his breath at the canal. P.W.1, in corroboration to the above, deposed that when the deceased caught hold of the shirt of the accused and questioning him, there was a scuffle between the two and P.Ws.2 and 3 despite attempted to prevent them, they both fell into the canal and the accused, by lying on the deceased, having picked out the knife from his waist, stabbed the deceased indiscriminately about five times at left upper arm, left forearm, left chest region and left leg. When P.W.1 reached to the deceased to rescue, the accused stabbed him at the lower part of front side of neck and again when stabbing him, he warded off his left hand and sustained injury to his left hand little finger. Out of fear to him in the hands of the accused and on seeing some people who were coming, he left the place and when the accused was chasing P.Ws.2 and 3, they fled away and P.W.1 also left the place.

12. P.Ws.2 & 3, who are eye witnesses, also deposed in corroboration to P.W.1's evidence.

13. P.W.5 is the Panchayat Secretary, who deposed about Ex.P-2 Scene Observation Report drafted of the scene of offence which is the canal with mud water by the Inspector of Police in the presence of himself and another on 20.08.2004 at about 1.15 p.m. and after that the inquest proceedings were conducted on the body of deceased in his presence under Ex.P-3 at about 2.00 p.m. In the cross-examination, he deposed that he did not scribe Exs.P-2 & P-3 and those were prepared near to the scene of offence.

14. P.W.6 is the Medical Officer, who deposed that she conducted autopsy on the body of the deceased on 21.08.2004 at about 9.00 a.m. (within 24 hours after the death) and in the post mortem examination, she found the external injuries viz.,

- (i). a lacerated injury over left side of chest, below left nipple of 10 x 7 x 8 cm;
- (ii). another lacerated injury of 6 x 4 x 6 cm over left upper arm;
- (iii). another lacerated injury of 6 x 5 x 3 cms medial to the left upper arm and
- (iv). another lacerated wound of 4 x 3 x 2 cms at left upper arm.

She opined that the deceased would have died of respiratory failure and shock due to the above multiple injuries and injuries to the lungs, therefrom she opined that the death might be occurred more than 12 hours prior to her examination. She deposed that the injuries (i) to (iv) may possibly be caused with M.O.1 - Knife

shown to her and those are sufficient in the ordinary course of nature to cause death of a human being as mentioned in Ex.P-4 - Post Mortem Certificate. In the cross-examination, she deposed that the M.O.1 - Knife is with sharp edge and that the fracture of 3 to 6 ribs may be even from single blow or different blows. P.W.6 further deposed about her examining P.W.1 on 20.08.2004 at about 5.00 p.m. when he was admitted in the Government Hospital, Chilakaluripet and found a lacerated injury over left hand little finger and an abrasion over lower part of neck, might have been caused with blunt object and or with blunt portion of M.O.1 Knife.

15. P.W.7, Sub-Inspector of Police, who recorded Ex.P-1 statement of P.W.1, deposed that on 20.08.2004 morning when he was at the Police Station at about 10.30 a.m., he received an anonymous phone call stating that somebody was lying dead out of galata in the village and he immediately made G.D. entry and proceeded to Chinthapallipadu and at the road of Patha Malapalle, noticed P.W.1 lying with injuries and he recorded his statement and registered the same as FIR in Crime No.26 of 2004 at 12.00 noon for the offence under Section 302 read with 34 IPC against the accused and issued Ex.P-7 - original Express FIR.

16. P.W.9 deposed that he recorded Ex.P-17 statement of accused while he was undergoing treatment at Chilakaluripet hospital on 20.08.2004 at about 12.30 noon and after he read over and explained from what he admitted is true and from what he stated, he endorsed and forwarded the same to the Station House Officer, Yeddnapudi Police Station. It reads that he is a resident

of Chinthapallipadu and there are party groups and he belongs to Congress party. He stated that on 20.08.2004 at about 9.30 a.m. at their village Patha Malapalle, when himself and his employer D.W.1 were coming from his house to see the she-buffalo purchased by D.W.1, P.Ws.1 to 3 and deceased were coming across on foot and because of the previous disputes, when the deceased caught hold of him, P.W.1 stabbed him with knife twice at his chest region and at his left hand wrist area and little finger and P.W.3 and deceased caught hold of his neck and dragged to the side canal. It is further mentioned that with the wife of the deceased, he got illicit relationship and it is because of that illicit relationship, the above persons stabbed him and when he was fallen lying, one Atluri Singaiah brought him to Chilakaluripet hospital and in the meantime, when he went to Martur Police Station, they asked him to admit in Chilakaluripet hospital, thereby he was admitted in the hospital and gave statement to Police. It is brought on record that P.W.1 did not state before Police that the accused stabbed the deceased five times.

17. Therefore, from the above evidence, it is clear that there is no suppression of truth of the occurrence by the prosecution witnesses on the genesis of the case and there is no any non-explanation of injuries sustained by the accused fatal to prosecution case, that too, those are minor injuries and the evidence clearly shows that there was scuffle between the accused and deceased and even shows there was also attack on P.W.1 by the accused and the accused sustained lacerated injuries in the hands of deceased and P.W.1, and the accused attacked and

caused injuries to P.W.1 and caused death of the deceased by stab injuries at the canal.

18. After evaluating the entire material available on record, this Court expressed its opinion that there are no valid reasons to interfere with the judgment of the trial Court in convicting the appellant/accused for the offences under Sections 302 and 304 Part-I IPC.

19. When this Court pointed out that there are no merits in the appeal, learned counsel for the appellant/accused conceded for the same, and confined his arguments only to the quantum of sentence, and as the appellant has already suffered considerable period in the prison, a lenient view may be taken in imposing sentence.

20. Considering the facts and circumstances of the case and the time elapsed, this Court is inclined to reduce the sentence of imprisonment for the offence under Section 302 IPC for a lesser offence of it, under Section 304 Part-I IPC imposed by the trial Court against the accused to Rigorous Imprisonment for a period of one (1) month.

21. In the result, the conviction recorded by the trial Court against the appellant/accused in S.C.No.98 of 2005 vide judgment, dated 21.11.2007, for the offence under Section 302 IPC for the lesser offence under Section 304 Part-I IPC is confirmed. However, the sentence of imprisonment imposed by the trial Court is modified and reduced to one (1) month Rigorous Imprisonment and the sentence of fine is not interfered with. The period of

imprisonment already suffered by the appellant/accused is directed to be given set off.

22. The appellant/accused is directed to surrender before the Court concerned on or before 15th September, 2016, in default, the Court concerned is at liberty to take appropriate steps in accordance with law.

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

RAJA ELANGO, J

Date: 8th August, 2016

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HONOURABLE SRI JUSTICE RAJA ELANGO



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