

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Criminal Appeal No.1136 of 2011

Between:

1) Syed Arif

2) Syed Saif. ...Accused Nos.1 and 2/
Appellants

And

The State of Andhra Pradesh

Rep. by the Public Prosecutor,

High Court of A.P, Hyderabad.
Respondent

DATE OF JUDGMENT PRONOUNCED: **09.02.2016.**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes /
No

2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes /
No

3. Whether Their Lordship wish to
see the fair copy of the Judgment?

Yes / No

*** HON'BLE SRI JUSTICE G. CHANDRAIAH**

AND

*** HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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....

! Counsel for Appellants

: Smt. Deepika Gadde

^ Counsel for Respondent

: Public Prosecutor

(T.G)

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? Cases referred:

1) (2009) 17 SCC 497

- 2) (2014) 12 SCC 410
- 3) (2014) 5 SCC 697
- 4) (2015) SCC Online SC 495
- 5) AIR 1999 SC 3830 = (1999) 8 SCC 555
- 6) AIR 1999 SC 883
- 7) AIR 2002 SC 1965

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
and
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
CRIMINAL APPEAL No. 1136 of 2011

JUDGMENT: (*per Hon'ble Sri Justice U.Durga Prasad Rao*)

This appeal is preferred by the appellants/A1 and A2 aggrieved by the judgment dated 26.08.2011 in S.C.No.188 of 2008 passed by learned I Additional Sessions Judge, Nizamabad convicting A1 and A2 for the charge under Section 302 r/w 34 IPC and sentencing them to undergo rigorous imprisonment for life and also to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for a period of one month, while acquitting them of the charge under Section 307 r/w 34 IPC.

2a) The prosecution case is that on 22.05.2007 at about 11 PM, when PW2 and LW3 went to fetch water from the bore well situated in front of house of accused in the open place of Dwakra Mahila Sangham in Rajaramnagar Colony, Armoor, A1—Syed Areef abused them in filthy language and thrown them on the ground. On hearing the quarrel, PW1 and deceased—Chaika Gangadhar went to the bore well and all the accused abused them in filthy language and suddenly A1 went into the house and brought a knife and stabbed the

deceased on the left chest while A2 and 2 JCLs. (Juvenile in Conflict with Law) held the deceased and thereafter, the accused persons hit the deceased person to the CC road and when PW1 went in rescue of the deceased, A1 stabbed him on his right hand with an intent to kill him but PW1 escaped. PW1 lodged Ex.P1—complaint with the SI of Police, Armoor PS (PW10) at about 11.50 PM and he registered in FIR No.160 of 2007 under Sections 302, 307 r/w 34 IPC against A1 and A2 and other two JCLs and sent the Express FIR to all concerned.

b) While so, the further case of the prosecution is that PW11—CI of Police, Bheemgal in-charge of Armoor took up investigation and during investigation he rushed to the Government Hospital, Armoor and secured the presence of PW5 and LW10—T.Kamalakar and in their presence he conducted inquest over the dead body of the deceased in the presence of PW5 and LW10 and got prepared Ex.P3—inquest report and later sent the dead body to autopsy. PW8—Civil Assistant Surgeon, Armoor conducted autopsy over the dead body of the deceased and issued post mortem report—Ex.P7 opining that cause of death was due to shock and haemorrhage as a result of grievous stab injury. On 23.05.2007, PW11 rushed to Perkit village and apprehended A1, A2, JCL-3—Sibat Ali @ Mohammed Imran and JCL-4—Sujjath Ali @ Mohammed Safdar and interrogated them in the presence of PWs.6 and 9 and the accused confessed the

offence produced MO1—knife which was used in the commission of offence and the same was seized under the cover of panchanama and later the accused were arrested and remanded to judicial custody. On completion of investigation PW12 laid charge sheet.

c) On appearance, the trial Court framed charges under Sections 302 r/w 34 and 307 r/w 34 IPC against A1 and A2.

d) During trial, PWs.1 to 12 were examined and Exs.P1 to P9 were marked and MOs.1 to 9 were exhibited on behalf of prosecution. Ex.D1 was marked on behalf of accused but they have not examined any witnesses.

3 a) The trial Court having regard to the evidence on record held that prosecution failed to prove its case for the charge under Section 307 r/w 34 IPC and accordingly acquitted them but convicted them for the charge under Section 302 r/w 34 IPC and sentenced as stated supra.

Hence, the appeal by the appellants/A1 and A2.

4) Heard arguments of Smt.K.Sesharajyam, learned senior counsel appearing for Smt. Deepika Gadde, learned counsel for appellants and learned Public Prosecutor for the State (TG).

5) Learned Senior Counsel, fulminated the judgment of trial Court on the main argument that no offence as alleged by the prosecution took place on the night of 22.05.2007 at

the bore well in front of the house of accused but on the other hand the deceased who was an active member of RSS was killed somewhere in a communal violence and the police in order to see that no communal riots erupted on account of his death created a false story and implicated the accused and hence it is liable to be rejected. In her strenuous effort to establish the prosecution case as false, she cited the following circumstances.

a) Firstly, referring Ex.P1—complaint she argued PW1—the complainant mentioned that the accused at first attacked and injured him and when he ran away from the scene later they attacked his brother i.e. deceased and murdered him. If it is true, the question of PW1 witnessing the accused killing his brother does not arise as on his own admission, he fled away from the scene before that incident. However, in his evidence PW1 claimed as an eye-witness to the killing of the deceased by the accused and to establish his presence he twisted the facts in FIR and deposed as if the accused at first attacked on the deceased and when PW1 tried to rescue him A1 gave a knife blow on his right forearm. He conveniently did not state that he fled away from the scene on receiving injury. In view of this crucial variation between Ex.P1 and the evidence of PW1, it is highly doubtful about the presence of PW1 and his witnessing the occurrence. This doubt intensifies for the reason that the prosecution could not medically prove the injuries of PW1 though he claimed to

sustain injury in the hands of accused during the same transaction and thereby the trial Court gave clean acquittal to accused for the charge under Section 307 r/w 34 IPC for attempting on the life of PW1. Further, in Ex.P1, PW1 narrated the weapon as having double sharp edges but MO1 allegedly seized by the police from the accused is admittedly a simple sharp edged weapon which causes doubt not only on the presence of PW1 and his witnessing the incident but also on the entire prosecution case. She further argued that in Ex.P1 the names of A2 and other two JCLs. appeared in smaller fonts than the rest of the matter thus giving a clear indication that their names were interposed subsequently. It further signifies that FIR was not disclosing true facts. Added to it, in Ex.P1 though PW1 referred the names of four accused, but while narrating the attack on his brother he vaguely mentioned as *“above three held him, stabbed him with knife and hit his head on the ground and murdered him”* without clearly mentioning which three out of the four. So, the unexplained vagueness about the assailants again creates a doubt about the presence of PW1 at the scene and the veracity of FIR contents.

b) Secondly, commenting on the eye-witnesses i.e. PWs.1 to 3, learned counsel argued that PWs.1 and 2 being the brother and mother of the deceased are the interested witnesses and hence their evidence needs a careful scrutiny. In view of variations between the evidence of PW1 and Ex.P1

on material particulars creating doubt about his presence at the scene and also in view of the rejection of the evidence of PWs.1 to 3 for the charge under Section 307 r/w 34 IPC, it is not safe to believe their evidence in respect of the other charge under Section 302 r/w 34 IPC. Though PW3 is an independent witness, he cannot be trusted as there were so many improvements in his evidence from his earlier 161 Cr.P.C. statement. Further, though PWs.1 to 3 deposed that the accused hit the head of the deceased on the road, PW8 —autopsy doctor did not find any injury on the backside of the head implying the claim of PWs.1 to 3 as false. Above all, the statements of PWs.1 to 3 were not recorded by the police either immediately after the incident at the scene or during the inquest but some time later. Hence, the chances of their improvements are plenty.

c) Thirdly, it is argued though FIR was claimed to be promptly registered at 11.50 PM but it reached the learned Magistrate belatedly on the next day which infers that the FIR was not registered at the given time. The interpolations relating to names of A2 and 2 JCLs. and delayed remittance to Magistrate indicate that it was embellished. On this point, learned counsel relied upon the decision of the Apex Court reported in ***Chikkarangaiah v. State of Karnataka***^[1]

d) Fourthly, citing the lapses in investigation, learned counsel argued that the police though claimed to have promptly registered FIR but did not visit the scene of offence

immediately and no sketch of scene of offence is produced to establish its topography. It is not known who shifted the dead body to hospital and the police did not establish that the blood stains on MO1 and on the seized earth belong to the deceased. All these, she argued, would cumulatively show the perfunctory and armchair investigation of police and belie the offence. She thus concluded that in the light of above infirmities the prosecution case had to be rejected. However, the trial Court on perverse appreciation of facts, evidence and law wrongly convicted them.

e) Alternatively, learned counsel submitted that assuming prosecution case is true, still charge under Section 302 IPC is not sustainable against the accused for the reason that the facts and evidence would only show that it was not a case of pre-planned and premeditated murder but on account of trivial incident of fetching water a galata was occurred and in a fit of anger A1 might have stabbed the deceased without any intention or knowledge to kill the deceased and therefore, his act would not attract the charge under Section 302 IPC but Section 304 IPC. On this point, she relied upon the following decisions of the Apex Court.

1. *Jhaptu Ram v. State of Himachal Pradesh*^[2]

2. *Manjeet Singh v. State of Himachal Pradesh*^[3]

3. *Ramanlal v. State of Haryana*^[4]

f) Sofaras A2 is concerned, learned counsel vehemently

argued that even if prosecution case is believed in its entirety, the charge under Section 302 r/w 34 IPC cannot be sustained against him for the reason that the element of common intention does not exude from the evidence because A2 and 2 JCLs. neither know nor asked A1 to go to the house and bring knife to kill the deceased and so, the question of sharing common intention does not arise from a mere fact of their holding the deceased when A2 was stabbing him. Hence, A2 deserves a clean acquittal. On this point she relied on the following judgments of the Apex Court.

1. *Ramashish Yadav v. State of Bihar*^[5]

2. *Mohan Singh v. State of M.P.*^[6]

6) In oppugnation, supporting the judgment learned Public Prosecutor argued that the evidence of PWs.1 to 3 was cogent, consistent and mutually corroborative except containing some minor and trivial variations and therefore, the trial Court rightly believed their evidence and convicted the accused.

a) Nextly, explaining the interpolation in the FIR, he submitted that at the time of giving FIR PW1 did not know the names of A2 and the other 2 JCLs. and so, space was left and after ascertaining their names he mentioned in Ex.P1 and hence, there was a slight change in the fonts and PW1 clarified the same. He vehemently argued that if really no offence took place as alleged in the FIR and FIR was not

lodged at the given time but lodged belatedly, the prosecution would have taken care to see that no interpolations and variation in the fonts occurred in FIR. In fact, the difference in fonts is an indication of prompt lodging of FIR and adding the names of A2 and 2 JCLs. subsequently.

b) Regarding difference in description of weapon, learned Public Prosecutor submitted that PW1 saw the weapon during the night in galata and so he might mistook it as a double edged weapon though in fact it is a single edged weapon. This slight variation will not falsify his testimony. He thus prayed to dismiss the appeal.

7) In the light of above rival contentions, the point for determination is:

“Whether the prosecution could prove the charge under Section 302 r/w 34 IPC against the accused beyond all reasonable doubt and the judgment of the trial Court is factually and legally sustainable?”

8) **POINT**: That the deceased—Chaika Gangadhar met with a homicidal death is amply established by PW8—autopsy doctor who found the following injuries during the post-mortem:

- 1. A stabbed perforated incised wound on the left front and lateral to left nipple measuring 1½” x 1” x 3”*
- 2. A contusion on middle of forehead measuring 1” x 1/2”.*

Besides she also found other injuries on the left knee and left index and thumb which are all ante-mortem injuries. She also

found rupture of middle lobe of the lung and small laceration on the left ventricle of heart and fracture of 4th rib of chest on the left side. Basing on those injuries she noted the cause of death as shock and haemorrhage as a result of stab injury. She deposed that stab injury was sufficient enough in ordinary course to cause death of the deceased and stab injury could be possible with the weapon like MO1. In Ex.P3—inquest report also the Panchayatdars found a stab injury on the left side chest. Thus, the death was a homicidal one and in fact the defence also did not dispute the same though their version is that they were not responsible for the homicidal death of the deceased. Hence, it has to be seen whether the evidence on record established the culpability of accused and whether the finding of the trial Court is right or not.

9) PWs.1 to 3 are the eye-witnesses to the incident that occurred on the night of 22.05.2007 at 11 PM in Rajaramnagar Colony, Armoor. Their evidence precisely is that a quarrel took place between the accused and deceased family members regarding fetching of water at the borewell in front of the house of accused in the open land near Dwakra Mahila Sangham. PW2 and LW3 who are the mother and sister of the deceased went to bore well to fetch water and at that time the accused family members were drawing water. When their turn came, PW2 and LW3 were drawing water. Then four persons including the accused abused them on

the ground that they were drawing more water for more time. The accused and two other JCLs. pushed PW2 and LW3 on the ground. On hearing the galata the deceased followed by PW1 came to the scene. The deceased questioned the action of the accused and two JCLs. Enraged by his questioning, A1 went inside the house and brought a knife (MO1), meanwhile A2 and two JCLs. caught hold the deceased and then A1 gave a stab blow on the left side chest of the deceased and thereby the deceased collapsed on the ground. When PW1 tried to rescue the deceased, A1 stabbed him also on his right side forearm. Subsequently both the accused and two JCLs. struck the deceased's head to CC road causing his instantaneous death.

10) PW1 is the injured and complainant. PW2 is the direct witness for the genesis of the offence. Whereas PW3 is residing near to the bore well who witnessed the incident by coming to the scene on hearing the galata. PWs.1 and 2 being the brother and mother of the deceased are related witnesses and hence their evidence needs careful scrutiny. PW3, of course, is an independent witness. The veracity of these witnesses has to be tested on the anvil of the points raised by the defence side.

11) Admittedly, PWs.1 to 3 were residing in and around the scene of offence in the same colony and therefore, their presence at the given time of the offence cannot be disputed. On a careful analysis, it must be said that the evidence of

PWs.1 to 3 is consistent and mutually corroborative and there is a ring of truth around their version in respect of the particulars of the offence given by them. They were intensely cross-examined by the defence side, but no material aspects were extracted to reject their evidence. Further, the ocular evidence of PWs.1 to 3 was corroborated by the medical evidence of PW8 in respect of nature of injuries and type of weapon used and their evidence was also supported by PWs.6 and 9 in whose presence the IO recovered MO1—knife on being produced by A1.

12) Now, coming to points raised by the defence, they sought to project certain variations between Ex.P1—compliant and the evidence of PW1. It is argued that in Ex.P1 PW1 mentioned as if he was first attacked by A1 and on receiving the knife blow he fled away and thereafter the accused stabbed the deceased, but in his evidence he deposed as if deceased was attacked first and when he went to rescue, the accused attacked him. Another variation shown was regarding the nature of the weapon. Showing these variations it was argued that the version of PW1 in Ex.P1 and in his evidence is totally false. This argument cannot be appreciated for the reason that the other two eye-witnesses have consistently spoken about the presence of PW1 at the scene and accused first attacking the deceased and PW1 trying to rescue him and their attacking him (PW1) also. In that view of the matter, the variations between Ex.P1

and the evidence of PW1 can be considered only as minor ones. It is true that in Ex.P1 PW1 mentioned that the weapon was having two sharp edges, but in fact MO1 has a single sharp edge. This variation also cannot be taken as a material one for the reason that PW1 happened to see the weapon in a charged atmosphere when the life of his brother was in a perilous condition and it was night time and within short time he went to police station and reported the matter to police. In such circumstances, he might not have given the correct description of the weapon. However, the fact remains that all the three eye-witnesses have unerringly deposed that A1 used the knife to stab the deceased and PW8 stated that the stab injury found on the chest of the deceased could be possible to be caused with a knife like MO1. The very same MO1 was recovered by IO from the possession of A1 on his own showing in the presence of mediators. Further, Ex.P9—FSL report shows human blood was noticed on MO1. So, the minor variations between Ex.P1 and the evidence of PW1 will not in any way defile the purity of PW1's evidence.

a) It is true that trial Court acquitted the accused of the charge under Section 307 r/w 34 IPC for attempting on the life of PW1, despite the evidence of PWs.1 to 3 that accused inflicted injury on PW1. Such acquittal was mainly because the prosecution has not proved the injuries of PW1 by adducing medical evidence. The trial Court has not expressed any opinion on the evidence of PWs.1 to 3 in that

regard. So, merely because the accused were acquitted of the charge under Section 307 r/w 34 IPC that cannot be a ground to disbelieve the evidence of PWs.1 to 3 in respect of other offence under Section 302 r/w 34 IPC because the maxim "*falsus in uno falsus in omnibus*" is not a rule of evidence in India. This principle is laid down by the Apex Court in ***Krishna Mochi v. State of Bihar***^[7] and held as follows:

" xxxx Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" (false in one thing, false in everything) has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded."

b) Another variation sought to be projected is that as per PWs.1 to 3, the accused hit the head of the deceased to the CC road but curiously PW8 did not find any injury on the backside of the head. It is true PWs.2 and 3 stated in their cross-examination that the accused and 2 JCLs. struck the head of the deceased to the CC road on the back side but PW8 did not find any injury on the back side of the head of the deceased but found a contusion on the middle of the forehead. In our view, by this variation, the evidence of PWs.2 and 3 cannot be discarded. It must be noted that though it was extracted from PWs.2 and 3 that the accused hit the backside of the head of the deceased to the road but it

was not further elicited as to how much force was applied so as to cause a noticeable injury on the backside. When the witnesses have seen the ghastly incident perpetrated by a group of accused on a single man in the late night hours, it cannot be expected from them to give the evidence with mathematical precision. The core and substance of the evidence of PWs.1 to 3 is that A1 caused stab injury on the left side chest of the deceased when A2 and 2 JCLs. caught hold him and thereafter, they hit his head on the ground and their cumulative evidence is supported by medical evidence of PW8. It is not as though no injury at all was found on the head of deceased. So, minor variations cannot be pitted against the veracity of evidence of PWs.1 to 3.

c) Coming to PWs.2 and 3, it must be noted that PW2 is concerned, she was present all through the incident and in fact she was the genesis of the offence. No major contradictions or inconsistencies were extracted from her evidence by the defence except showing one variation between her and PW3 on one hand and PW8 on the other relating to the head injury of deceased which is discussed supra.

d) PW3 is concerned, admittedly he is a resident in the vicinity of scene of offence and he is an independent witness. He clearly deposed about the manner of occurrence of the offence. Except Ex.D1—contradiction, nothing useful is extracted. Even Ex.D1 also does not cut across the

genuinity of his evidence. It must be noted that no single suggestion was given to him as to the reason for him to speak falsehood against the accused who are the co-residents of the colony. So, the evidence of PWs.1 to 3 is unimpeachable.

13) The next attack is on the FIR. Ex.P1 shows that PW1 lodged the complaint with SI of police, Armoor at 11.50 PM on 22.05.2007 i.e. within short time after the incident. In Ex.P1 the names of A2 and 2 other JCLs. appear in smaller fonts than the rest of the matter. However, PW1 has given a cogent explanation for the same. He stated that he knows A1 by name and he can identify A2 and 2 other JCLs. but not by their names and so he mentioned the names of A2 and other 2 JCLs. by enquiring the neighbours of the accused. Since he knows the name of A1, he must have mentioned it first and a space might have been left for mentioning the names of other accused and after registration of FIR, PW1 might have returned to the colony and ascertained the names of other accused and intimated to the police and then the names of A2 and other 2 JCLs. must have been mentioned in the blank space. So, the variation in font size cannot be regarded as either implication of some more accused or falsity of contents of FIR or its belated registration. As rightly argued by learned Public Prosecutor, if really compliant was not lodged at the given time but was lodged belatedly and also registered belatedly, the police would have taken care to

see that there were no differences in the font size in Ex.P1. So, the difference in font size itself is an indication that FIR was lodged promptly without losing time and only the names of A2 and two other JCLs. were added subsequently for the reasons stated by PW1. In that view, mere delay in despatch of FIR to the learned Magistrate cannot be regarded as a circumstance to suspect the genuineness of FIR. In **Chikkarangaiah's** case (1 supra) the Apex Court has observed that delay in transmission of FIR to the Magistrate is not fatal to prosecution in all cases, but however when there is some doubt in respect of genesis of complaint, then the promptness in receipt of FIR by Magistrate assumes importance. In the instant case, the evidence and circumstances clearly establish the prompt lodging of FIR and so its belated transmission to the Magistrate cannot be given much weight.

14) The next argument of the defence side is with regard to the lapses in investigation. It was argued that the police did not visit the scene of offence immediately after registration of offence and they did not examine the witnesses at the scene in the presence of dead body but they were examined belatedly on the next day and it is also not known who shifted the dead body from the scene to hospital. This argument has no much force. The evidence of PWs.1 to 3 would show that police visited the scene of offence immediately after PW1 lodged the complaint and after finishing formalities they

shifted the dead body to the hospital. It is true that police did not examine the witnesses at the scene at that time. The reason can be found from the evidence of PWs.10 and 11—SI and CI of Police. Their evidence would show that immediately after issuing FIR when the SI contacted the DSP, Armoor, he advised them to shift the dead body to avert communal violence as the deceased was an active RSS worker. Another reason which prompted the police to shift the dead body is due to absence of regular CI of police in Armoor. PW11 is the CI of Police, Bheemgal and he was the incharge of Armoor circle when the incident was occurred. PW11 was staying at a distance of 20 KMs. from Armoor and he received the FIR through messenger at about 2 AM on 23.05.2007. Since PW11 was away at Bheemgal and it would take some time for his arrival to the scene of offence, the police of Armoor shifted the dead body to hospital as there were chances of flaring of communal violence if they wait till his arrival to the scene. So in those circumstances, PW10 and other police might not have got chance to examine any witnesses except shifting the dead body. PW11 being the IO, at first proceeded to the hospital at 5.30 AM on 23.05.2007 and conducted the inquest panchanama in the presence of PW5 and LW10—Tallapalli Kamalakar and sent the dead body for post-mortem and then visited the scene of offence and examined it in the presence of PW7 and LW12—Jangidi Suresh and prepared Ex.P6—scene of offence panchanama and recorded the statements of PWs.1

to 3 and other witnesses. In this backdrop of facts emanated from the evidence, no laches can be attributed to the investigating agency. Thus, the prosecution by cogent evidence established the culpability of A1 and A2 in causing death of deceased beyond all reasonable doubt.

15) Then coming to the alternative argument, it is submitted by defence counsel that even assuming prosecution case to be true, still charge under Section 302 r/w 34 IPC will not sustain because A1 and other accused had neither intention nor knowledge to kill the deceased and their act was not a pre-planned and pre-meditated one but was done out of fit of anger in a sudden fight.

16) In ***Jhaptu Ram***'s case (2 supra) the Apex Court taking into the facts emanated from the evidence to the effect that when the appellant and his son were altercating, the daughter of appellant called the deceased and his mother who were staying in the next door to intervene and on her request the deceased and his mother intervened and an altercation took place between appellant and deceased and the appellant/accused fired at him and on receiving gun shot injury the deceased fell down and died, held there was no prior intention for the accused to kill the deceased and accordingly converted conviction from Section 302 IPC to Section 304 Part I IPC.

17) In ***Manjeet Singh***'s case (3 supra) the facts were that

when appellant/accused and two others while drinking liquor in a hotel hall were enquired by PW5 about the hotel manager and upon that the appellant/accused enraged and retorted that he was not the Chowkidar of the hotel to answer and he abused PW5 and beat him and then PW5 went out and informed the deceased, PWs.6 and 7 about the incident and then they went to accused and questioned as to why the appellant/accused beat PW5 then an altercation took place wherein appellant's companions instigated appellant to use his carbine whereby the appellant/accused fired at the deceased and his companions and deceased got two shots on his chest leading to his death. The appellant/accused was convicted under Section 302 and 324 IPC and Section 27 of Arms Act which was confirmed by High Court. The Apex Court on re-appreciation of facts and evidence has held that the prosecution could not show the appellant had any motive to cause death or intend to cause such bodily injury which was sufficient in the ordinary course to cause his death and further the act was done on the spur of moment during heated exchange of words and accordingly held that accused was guilty of culpable homicide not amounting to murder under Section 304 IPC.

18) In ***Ramanlal's*** case (4 supra) taking the facts and circumstances into consideration, the Apex Court observed that the incident was occurred without any premeditation and sudden fight upon a sudden quarrel and injuries were inflicted

in the heat of passion and without the appellant taking any undue advantage or acting in a cruel or unusual manner. The Apex Court held that facts attracted Exception 4 to Section 300 IPC and accordingly convicted the accused under Section 304 IPC.

19) Hence, it has now to be seen whether the instant case comes under Section 302 IPC or not. The judgment shows, before trial Court it was argued that there was no premeditation or intention to kill deceased on the part of accused but the incident was occurred out of sudden quarrel between the deceased and accused. However, it appears, trial Court considering the facts that A1 went inside the house and brought knife and when other accused held the deceased, he inflicted stab blow on the left side of the chest which as per PW.8 was sufficient to cause death in the ordinary course and further, the accused hit the head of the deceased to the CC road, held as factors indicating the determined intention on the part of accused to kill the deceased. The Trial Court further observed that while going inside the house and bringing knife A1 had sufficient time to desist from the dangerous act which he intended, but he did not stop and hence the intention was manifest.

20) On a careful analysis of facts, evidence and finding of the trial Court, we are constrained to observe that the trial Court while holding that the accused had intention and knowledge to kill the deceased in terms of Section 300 IPC

and holding their act as murder, failed to consider the arguments of the defence side that the act comes within the Exception 4 of Section 300 IPC. It is true from the facts that A1 going inside house and bringing knife and stabbing deceased while other accused holding the deceased and then accused hitting his head to the ground, the requisite intention on the part of accused to kill the deceased can be inferred. However, we must not forget the vital background particularly, the genesis of the case. Admittedly, there were no previous disputes between the two families of accused and defence. Even the dispute that occurred on the night of incident was also a trivial one relating to fetching of water. So, as rightly argued by the defence side, there is no pre-planned and premeditated act on the part of accused rather it was committed in a sudden fight in the heat of passion upon a sudden quarrel and the accused have not taken any undue advantage or acted in a cruel or unusual manner. Therefore, in our considered view, it is not a case of murder, but the acts of the accused fall within the Exception 4 of Section 300 IPC i.e culpable homicide not amounting to murder. Therefore, A1 and A2 are liable for the offence under Section 304 Part I IPC but not under Section 302 IPC. It should be noted the defence argued that except holding the deceased, A2 has not committed any offence and he did not instruct A1 or know that A1 would go inside the house and bring knife and stab the deceased and therefore, there was no common intention on the part of A2. This argument cannot be accepted. It is

not a case of A2 simply holding the deceased while A1 was stabbing the deceased but on the other hand, after that act A2 along with other accused hit the head of the deceased to the ground showing his common intention along with A1. Therefore, A2 is also liable along with A1 for the offence under Section 304 Part I r/w 34 IPC. For this reason, the decisions cited by the defence cannot be accepted.

21) In the result, this Criminal Appeal is partly allowed and the conviction and sentence passed by the trial Court against A.1 and A.2 for the offence under Sec.302 r/w 34 IPC is set aside and on the other hand, A.1 and A.2 are found guilty of the offence under Sec.304 Part I r/w 34 IPC and accordingly they are convicted and each of them is sentenced to undergo R.I for a period of Seven(7) years and pay fine of Rs.1,000/- (Rupees One Thousand only) and in default thereof to undergo S.I for a period of One(1) month.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

Date: 09.02.2016

Murthy/scs

[\[1\]](#) (2009) 17 SCC 497

[\[2\]](#) (2014) 12 SCC 410

[\[3\]](#) (2014) 5 SCC 697

[\[4\]](#) (2015) SCC On Line SC 495

[\[5\]](#) AIR 1999 SC 3830 = (1999) 8 SCC 555

[\[6\]](#) AIR 1999 SC 883

[\[7\]](#) AIR 2002 SC 1965