

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.60 OF 2008

JUDGMENT:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 11.1.2008, in Sessions Case No.133 of 2007 on the file of the VII Additional District and Sessions Judge, Madanapalle whereunder and whereby, appellants herein/A-1 and A-2 were found guilty of the offence punishable under Section 304 Part-II I.P.C. and under Section 304 Part-II read with 34 I.P.C. respectively and accordingly, A-1 was convicted under Section 235(2) Cr.P.C. and sentenced to suffer rigorous imprisonment for a period of ten years and also to pay a fine of Rs.500/-, in default of payment of fine, to suffer simple imprisonment for a further period of three months for the offence under Section 304 Part-II I.P.C.; and A-2 was convicted under Section 235(2) Cr.P.C. and sentenced to suffer rigorous imprisonment for a period of ten years and also to pay a fine of Rs.500/-, in default of payment of fine, to suffer simple imprisonment for a further period of three months for the offence under Section 304 Part-II read with 34 I.P.C.

2. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

On 4.9.2006, the relatives of Bitti Manohara (P.W.1) came to his house at Vijayanagara Colony, Madanapalle to perform the obsequies of one Venkatamma, who died on 25.8.2006, who is no other than the grandmother of P.W.1. Among the persons gathered, one G.Nageshwara Rao (hereinafter, referred to as "the deceased") came from Avulaiahgaripalli, H/o.Jandla of Piler Mandal on 4.9.2006 at 6:00 P.M. On the same day, at 9:30 P.M., the said Nageshwara Rao performed pooja and other formalities regarding the death ceremony of Venkatamma. P.W.2 (Patchipala Babu), L.W.3 (Thenepalle Chandra), P.W.5 (Bitti Yellappa), P.W.6 (Bitti Sankar) and others were chit chatting by sitting in front of the house of P.W.1 by chewing pans. At that time, A-2, who is residing opposite to the house of P.W.1, came there and questioned P.W.2, L.W.3, P.W.4 and P.W.6 as to why they were making nuisance as it was 10:30 P.M. when all were sleeping and advised them to go to bed for which, P.W.5 and P.W.7 (Chinna Maddaiah) told him that they are talking about the ceremony on that day only. A-2 grew wild and picked up a quarrel and abused them in filthy language. In the meanwhile, P.W.1 came there and advised his relatives to inside the house. By that time, the deceased also came there and tried to pacify the matter. Then, A-1, who is the son of A-2, involved in the quarrel and abused the deceased by saying "EMIRA NAA KODAKA MATLADEDI" and on the instigation of A-2, A-1 picked up a flower pot, which was placed on their compound wall, beat with it on the head of the deceased and caused bleeding injuries. Then, the deceased was shifted to Area Hospital, Madanapalle with the help of P.W.1 and others for treatment. On receipt of hospital intimation, P.W.13 – Head Constable, II Town Police Station, Madanapalle proceeded to the hospital and recorded the statement of P.W.1, as the deceased was in an unconscious state. Basing on the statement of P.W.1, he registered a case in Crime No.103 of 2006 of II Town Police Station, Madanapalle under Section 324 read with 34 I.P.C. Later, the deceased was referred to S.V.R.R. Hospital, Tirupati. On the way to the said hospital, the deceased expired near Piler at about 3:00 A.M. on 5.9.2006. The dead body of the deceased was brought back to Area Hospital, Madanapalle. On receipt of death intimation of the deceased, P.W.13 altered the section of law into Section 302 read with 34 I.P.C. The Inspector of Police – P.W.14 took up further investigation. After completion of investigation and after receipt of report from Regional Forensic Science Laboratory and the Post Mortem Certificate, the Inspector of Police filed charge sheet.

3. The learned II Additional Judicial First Class Magistrate, Madanapalle has taken cognizance of the offence under Section 302 read with 34 I.P.C. against A-1 and A-2 and registered the case as P.R.C.No.6 of 2006.

4. As the accusation is exclusively triable by the Court of Sessions, the case has been committed to the District and Sessions Court, Chittoor.

5. The learned District and Sessions Judge, Chittoor took the case on file as Sessions Case No.133 of 2007 and made over the same to the II Additional District and Sessions Judge, Madanapalle for disposal according to law.

6. The trial Court framed a charge under Section 302 I.P.C. against A-1 and another charge under Section 302 read with 34 I.P.C. against A-2.

7. When the above charges were read over and explained to the accused in Telugu, they pleaded not guilty and claimed to be tried.

8. To substantiate the charges, the prosecution examined P.Ws.1 to 14 and got marked Exs.P-1 to P-15 besides case properties – M.Os.1 to 5.

9. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. On behalf of the accused, none was examined and no documents were marked.

10. The trial Court, after appreciating both oral and documentary evidence on record, found A-1 and A-2 guilty of the offence punishable under Section 304 Part-II I.P.C. and Section 304 Part-II read with 34 I.P.C. respectively and accordingly, convicted and sentenced them as stated supra. Challenging the same, the present appeal is filed by A-1 and A-2.

11. The trial Court mainly relied on the evidence of P.Ws.1 and 2, who claims to be the eye witnesses to the occurrence. As per the evidence, it is not in dispute that there was a quarrel between the deceased and the accused. There is also no dispute with regard to the place of occurrence of the quarrel. As far as the deceased is concerned, he intervened in the quarrel to pacify the situation wherein A-1 has thrown a flower pot on his head and caused bleeding injuries. Even though it is the case of the prosecution that A-2 instigated A-1 to kill the deceased by throwing a flower pot, the same was not deposed by P.W.1. P.W.2 alone stated so. It is highly improbable and unbelievable that A-2 instigated A-1 that too, more specifically informing to throw the flower pot on the head of the deceased. Since A-2 also participated in the crime, he was added as an accused.

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

13. Even though A-1 and A-2 were charged under Section 302 and 302 read with 34 I.P.C. respectively, learned tri:

14. In the result, the conviction imposed against A-1 in the judgment, dated 11.1.2008, in Sessions Case No.133 o

As far as A-2 is concerned, his involvement is not established by the prosecution and hence, he is acquitted ur

15. Accordingly, the Criminal Appeal is partly allowed.

16. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE RAJA ELANGO

27.7.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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