

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

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(19.04.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.1007 of 2010

Between:

Elamuthu Selvam

..... APPELLANT/ACCUSED

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellant : **Sri G.VIJAYA SARADHI**

Counsel for the Respondent : **Sri POSANI VENKATESWARLU,
PUBLIC PROSECUTOR (AP)**

SUBMITTED FOR APPROVAL:

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Ladyship/Lordship wishes to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.1007 of 2010

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal is filed by the sole accused in Sessions Case No.52 of 2009 on the file of the V Additional District & Sessions Judge, Tirupati. He is aggrieved by the judgment dated 24.07.2009 in the above mentioned case, whereby, he was convicted for the offence under Section 302 IPC and sentenced to suffer imprisonment for life and also to pay a fine of Rs.100/- (Rupees one hundred only), in default to suffer simple imprisonment for one month.

2. For convenience, the appellant is referred to as "the accused". The case of the prosecution, as set out in the charge sheet, briefly is as follows:-

The accused is the native of Suthukulam village, Kadalore District, Tamilanadu State and was temporarily staying at Alipiri Link Bus Stand, Tirupati, eking out his livelihood by collecting waste papers and plastic covers. The *de facto* complainant Manikyam Chandran (hereinafter referred to as the 'deceased') was a native of Tiruvanamalai, Tamilanadu and was also temporarily staying at Alipiri Link Bus Stand, Tirupati. PW 1 is a resident of Tirupati and owner of a tea-stall, located at Alipiri Link Bus Stand, Tirupati. During the nights, both the accused and the deceased used sleep in the open two wheeler parking sheds, located at Alipiri Link Bus Stand, Tirupati.

They became friends. The deceased was in the habit of drinking alcohol with his earnings and used to get liquor through the accused. On the evening of 09.08.2008 the deceased gave cash of Rs.30/- to the accused and asked him to get 90 ml of liquor for his consumption. The accused went with money and returned late without bringing liquor. When the deceased questioned the accused, the latter did not give proper reply and stated that as the deceased already had dinner, he will get liquor on the next day. On hearing this, the deceased got angry and beat the accused with stick on his shoulder. Having got enraged, the accused abused the deceased in filthy language by stating how dare was he to beat him, and he picked up a paper cutting knife from his waist and slashed on the stomach of the deceased with an intention to kill him. As a result of the said stabbing, the deceased has suffered severe bleeding injury on his stomach and intestines came out. The deceased was immediately shifted to SVRR Government Hospital, Tirupati through 108 ambulance and got admitted for treatment. The report of the injured was recorded, based on which, Cr.No.137/2008 under Section 307 IPC was registered at Alipiri P.S at about 1 a.m on 10.08.2008 by PW 9. After registering the crime, PW 9 examined the injured and PWs 1 to 4 and recorded their statements. PW 9 also examined the scene of offence and prepared a rough sketch of the scene. On 10.08.2008 at 3.30 p.m the accused was arrested at Alipiri Link Bus Stand, Tirupati and his confessional statement was recorded, the crime weapon was seized under Mahazar, attested by PW 5 and LW 7 and the accused was sent for judicial custody.

3. While undergoing treatment, the injured succumbed to injuries on 11.08.2008 at 12.05 a.m, upon which, the section of law was altered to Section 302 IPC by re-registering Cr.No.137/2008 on 11.08.2008 by PW 9, who has issued express FIRs to all the officers

concerned. On receipt of the FIR, PW 10 took up further investigation in the case and held inquest over the dead body of the deceased on 12.08.2008 from 10 a.m to 12.30 p.m at I.D.H Mortuary, SVRR Government Hospital, Tirupati in the presence of PWs 1 to 4 and LWs 9, 11 and PW 6. During the inquest, PW 10 examined PWs 1 to 4 and recorded their statements. Panchayatdars unanimously opined that due to petty quarrel, the accused with an intention to kill the deceased, stabbed him with a paper cutting knife and caused his death while undergoing treatment. After completion of inquest, PW 10 sent the dead body of the deceased to PW 7 for autopsy. PW 10 also examined PW 4 and LW 6 and recorded their statements. PW 7, who conducted autopsy over the dead body, opined that the cause of the death of the deceased was due to perforation of small intestines as a result of stab injury over the left side of the abdomen and injury No.5 was fatal. The viscera contents and the crime weapon were sent to RFSL, Tirupati for analysis. After completing the investigation, PW 10 filed the charge sheet.

4. As the accused denied the commission of offence and pleaded not guilty, he was put to trial, during which, the prosecution examined PWs 1 to 10, marked Exs.P1 to P12 and produced M.O.1 before the Court below. No evidence was let in by the defence.

5. On appreciation of oral and documentary evidence, the trial Court has disposed of the criminal case in the manner, as noted above.

6. At the hearing, Mr.G.Vijaya Saradhi, learned counsel for the accused, submitted that though the occurrence is said to have taken place between 7.30 p.m and 8 p.m on 09.08.2008, Ex.P7 shows that the injured was admitted in the hospital at 10 p.m, though the distance between the place of occurrence and the hospital was very short, that though it is shown in Ex.P7 that intimation was sent to the police and the Magistrate and the deceased was alive till the following day, the

Magistrate has not recorded his statement, that though PW 9 in his evidence has stated that the second statement of the deceased was recorded on 10.08.2008, the prosecution failed to bring the same on record, and that in the light of the above *lacunae* in the case of the prosecution, the Court below has committed a serious error in holding that the prosecution has established the guilt of the accused beyond all reasonable doubt. Alternatively, the learned counsel submitted that as per his own statement, the deceased has provoked the accused by beating him with a stick, and therefore, the accused has stabbed the deceased under grave and sudden provocation, and accordingly, his act falls within sub-section (1) to Section 300 IPC i.e. culpable homicide not amounting to murder, and that the Court below has erroneously convicted the accused for the offence under Section 302 IPC.

7. The learned Public Prosecutor made strenuous efforts to sustain the judgment of the lower Court.

8. The case of the prosecution is mainly rested on Ex.P8 statement of the deceased, and the evidence of PWs 1 to 4 who are direct witnesses. In Ex.P8, the deceased gave categorical description of the manner in which the accused has caused stab injury to him. The evidence of PW 1 who was running a tea-stall near the place of offence fully corroborated with Ex.P8 statement of the deceased. He has deposed that when the quarrel took place between the accused and the deceased, himself and PWs 2 to 4 rushed to the place of offence, located near his tea-stall and witnessed the accused stabbing the deceased with a knife, due to which the deceased screamed aloud and on seeing the witnesses, the accused ran away from that place. He has further stated that the intestines of the deceased protruded due to the injury and himself and other witnesses have tied the injury with a cloth and telephoned to 108 ambulance, through which, the injured

was shifted to SVRR Government Hospital, Tirupati. He has also identified M.O.1 with which the accused stabbed the deceased.

9. The evidence of PWs 2 to 4 is also consistent with that of PW 1. Nothing worth mentioning has been elicited from these witnesses to discredit their testimony. PWs 1 to 3 were also witnesses to Ex.P2 inquest report and their version, as reflected in the said report, is consistent with the stand taken by them in their evidence before the Court below.

10. A careful reading of the evidence of PWs 1 to 4 does not leave us in any doubt about its credit worthiness. After all, PWs 1 to 4 are independent witnesses, who had no axe to grind against the accused. Consistent with their evidence is the medical evidence as reflected in Ex.P3 post mortem certificate and the deposition of PW 8, who conducted post mortem examination over the dead body of the deceased. PW 7 in Ex.P3 certified that out of 7 injuries found on the body of the deceased, injury Nos.4 to 6 are inter related and were sutured in the hospital and he opined that the death was as a result of stab injury over the left side of the abdomen i.e. injury No.5 which was fatal. M.O.1 knife was seized from the possession of the accused under Ex.P1 arrest and seizure mahazarnama on 10.08.2008. Ex.P3 was amply proved through the evidence of PW 7, who conducted post mortem examination on the dead body of the deceased. The above discussed evidence let in by the prosecution proves beyond all reasonable doubt that the accused has caused the death of the deceased.

11. Though there appears to be some degree of negligence on the part of the investigating agency on the aspect, such as, not ensuring recording of dying declaration of the deceased by the Magistrate and not producing the second statement of the deceased recorded by PW 9 under Section 161 Cr.P.C, we are of the opinion that they are not fatal to the case of the prosecution in view of the direct

evidence let in through PWs 1 to 4.

12. The further question that needs to be considered is whether the accused is guilty of commission of offence under Section 302 IPC. In Ex.P8 report, the deceased categorically stated that when he questioned and hit the accused with a stick for not bringing liquor with the money given by him, the latter got enraged and stabbed him with a paper cutting knife saying that "how can you beat me, was I servant to you?" Even in the charge sheet, it is alleged that the accused was got enraged on being beaten by the deceased with a stick. Therefore, as rightly submitted by the learned counsel, the accused has attacked the deceased under sudden provocation given by the deceased and his act therefore falls under first exception to Section 300 IPC. The circumstance under which the accused has attacked the deceased clearly suggests that he did not have the intention to cause the death though he had the intention of causing the bodily injury as is likely to cause the death of the deceased.

13. In the above facts and circumstances of the case, we are of the opinion that the accused is guilty of committing an offence under Section 304 Part-I IPC. Accordingly, the conviction of the accused for the offence under Section 302 IPC is modified as the one under Section 304 Part-I IPC and he is accordingly sentenced to suffer rigorous imprisonment for a period of 10 (ten) years. The conviction and sentence under the judgment impugned is accordingly modified, while the sentence relating to fine is sustained.

14. The Criminal Appeal is, accordingly, allowed in part.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date:19.04.2016

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Note:

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