

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1614 OF 2006

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the appellant/A.1 against the judgment, dated 27.11.2006, in Sessions Case No.288 of 2005 on the file of IX Additional District & Sessions Judge, Guntur, whereunder and whereby, the learned Sessions Judge found A.1 to A.3 not guilty of the offences punishable under Sections 302 and 307 read with 34 IPC and accordingly, they were acquitted for the said offences, but, however, convicted them for the offence punishable under Section 304 Part-I IPC and sentenced them to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.100/-, in default to suffer simple imprisonment for a period of seven (07) days. Further, A.2 was found guilty of the offence punishable under Sections 323 and 324 IPC and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of one month for the offence punishable under Section 323 IPC and to undergo simple imprisonment for a period of three months for the offence punishable under Section 324 IPC. A.3 was found guilty of the offence punishable under Section 323 IPC and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of one month.

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

All the accused are residents of Turakapalem Village. A.3 is father of A.1 and A.2. L.W.1 is younger brother, L.W.3 is wife,

L.W.4 is father and L.W.5 is mother of the deceased Katta Samuel. L.W.7 is elder brother of L.W.6.

On 23.10.2004 at about 11:00 AM, A.1 and L.W.7 have consumed liquor in Turakapalem Village and due to consumption of liquor L.W.7 and A.1 fell on the road. L.W.6, who is younger brother of L.W.7, came and took L.W.7 to his house, where both L.W.6 and A.1 picked up a quarrel. Then the deceased went there and questioned A.1 as to why he is quarrelling with L.W.6 and beat A.1. Then A.1 while going home, has abused the deceased that he will see his end and he informed the same to A.2 and A.3.

On the same day at about 7:00 PM, A.2 and A.3 went to the centre (scene of offence) where the deceased and L.W.1 were present and questioned about the incident. Then a scuffle took place, where both the deceased and L.W.1 beat A.2 and A.3. Then A.2 and A.3 came to the house and hatched a plan to do away the deceased and L.W.1. Then A.1 and A.2 took two knives from the house and all the accused went to Turakapalem centre where they found L.W.1, then A.2 stabbed L.W.1 with a knife in his hand and on the chest, as a result, he sustained bleeding injury. When L.W.1 raised alarm and ran towards the deceased, who was standing at a little distance away, A.3 caught hold of the deceased from his back and A.1 had stabbed him on the left buttock with a knife. Then, the deceased forcibly took the knife from the hand of A.1 and stabbed A.3 on the left thigh, on the right buttock and on the left elbow. In the meanwhile, A.1 took knife from the deceased and stabbed him on the left side of abdomen and on the left elbow, due to which the deceased fell down with bleeding injuries. All the accused sped away towards Pedapalakaluru fields. L.Ws.6 to 10

and 12 and 13 witnessed the occurrence. A.3 went to Government General Hospital, Guntur and got himself admitted in the hospital for treatment. L.Ws.3 to 5 on coming to know about the incident, rushed to the scene of occurrence and shifted the injured persons in the auto of L.W.2 Government General Hospital, Guntur, where Doctors declared the deceased brought dead and admitted L.W.1 for treatment. Basing on the statement of L.W.1, a case in Crime No.319 of 2004 was registered against the accused for the offences punishable under Sections 302 and 307 read with 34 IPC. On 30.10.2004, L.W.22 arrested A.2 and A.3 in the presence of L.Ws.15 and 17. A.1 himself surrendered before the Court on 26.10.2004. After completion of investigation, police filed charge sheet.

3. On appearance of the accused, charges under Sections 307 and 302 read with 34 IPC were framed, read over and explained to them in Telugu, for which they pleaded not guilty.

4. To substantiate the case of the prosecution, P.W.1 to P.W.17 were examined and Exs.P.1 to P.33 were got marked besides case property M.Os.1 to 8.

5. After closure of the evidence on the prosecution side, accused were examined under Section 313 Cr.P.C., for which they denied the incriminating circumstances appearing against them in the evidence of prosecution witnesses. On behalf of the defence, D.W.1 was examined and Exs.D.1 to D.5 were got marked.

6. The learned Sessions Judge, basing on the evidence adduced and after elaborate discussion, found A.1 to A.3 guilty of the

offence punishable under Section 304 Part-I IPC and A.2 found guilty of the offences punishable under Sections 323 and 324 IPC and also A.3 found guilty of the offence punishable under Section 323 IPC and accordingly, convicted them for the said offences as stated supra. Challenging the same, the appellant/A.1 filed the present appeal.

7. Heard and perused the material available on record.

8. Learned counsel for the appellant after elaborately arguing the case and read the entire evidence before the Court, confined his arguments only to the extent of reducing the sentence of imprisonment on the ground that the petitioner is the only breadwinner of the family and he has to look after his wife, children and old age parents.

9. Even though the appellant/A.1 was charged for the offences punishable under Sections 307 and 302 read with 34 IPC, taking into consideration that at the time of causing death as the appellant was not having any intention to cause death of the deceased and at the same time, the cause of death is only a single stab on the deceased, the court below convicted the appellant for the offence punishable under Section 304 Part-I IPC and sentenced him to undergo rigorous imprisonment for a period of five years.

10. Considering the facts and circumstances of the case and submissions made by learned counsel for the appellant/A.1, the sentence imprisonment imposed by the learned Sessions against the appellant/A.1 for the offence punishable under Section 304 Part-I IPC to undergo rigorous imprisonment for a period of five

years is reduced to two years and the period already undergone by the appellant/A.1 is set off under Section 428 Cr.P.C. The appellant/A.1 is directed to surrender before the Court below on or before 30.10.2016 to serve the remaining sentence, on his failure, the Court below is directed to take appropriate steps to secure the his presence.

11. With the above observations, the Criminal Appeal is allowed in-part. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

08.09.2016
YVL

JUSTICE RAJA ELANGO



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YVL