

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.719 of 2006

JUDGMENT:

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1. This Criminal Appeal is filed by the appellant-accused challenging the conviction and sentence imposed against him in S.C No.473 of 2005 by the IV Additional District & Sessions Judge (Fast Track Court) at Siddipet, Medak District vide judgment dated 30.5.2006.

2. The case of the prosecution is as follows:

The appellant-accused is a resident of Pamulaparathi village of Wargal Mandal. P.W.4-Narani Narsimulu, P.W.5-Narani Bhoomaiah, P.W.6-Boina Ramchandram, P.W.7-Chinnaboina Laxmaiah, P.W.8-Boini Jayaram and others are working along with the accused as coolies. On 13.5.2005 in the morning, the deceased-Danaboina Narsimulu, the accused along with P.Ws.4 to 6 and 8 to 11 attended to unload dung on a tractor in the village. Around 9 a.m, after completing the work, all of them received batta and went to a toddy shop. They consumed toddy in that shop. Around 10.30 hours, they came out of the toddy shop, reached the house of Rama Goud. Then, P.W.4 demanded the accused to pay amount of Rs.1,000/- due to him. On that, the accused got annoyance and started assaulting him. When the deceased went to rescue P.W.4, the accused caught hold of the collar of the deceased, pushed him and sat on him. P.Ws.5 to 11 interfered and found the deceased unconscious. P.W.5 shifted him to P.W.12, who declared that the deceased died. On 3.5.2005 at 12 noon, the father of the deceased lodged a report, basing on which a case was registered against the appellant for the offence under Sections 302 and 324 IPC and investigated into. After completion of the investigation, charge sheet was filed against the appellant. The case was taken on file by the Committal Court and committed to the Court of Sessions, Medak. The Court of Sessions made over the case to the

learned IV Additional District & Sessions Judge (FTC) at Siddipet for disposal.

3. The trial Court framed a charge under Section 302 IPC against the appellant-accused, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 19 were examined and Exs.P1 to P16 and M.Os.1 and 2 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. The trial Court after considering the oral and documentary evidence, found the appellant-accused guilty for the offence punishable under Section 304-II IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of three years for the said offence. Aggrieved by the conviction and sentence imposed by the trial Court, the appellant-accused filed this appeal.

6. Learned Counsel for the appellant submitted that the incident took place due to a sudden quarrel and the appellant has no intention to commit the offence and that the ingredients to constitute the offence under Section 304 Part II were not proved and that P.W.4 having enmity with the accused spoke falsehood against the accused and that except P.W.4 all the eye witnesses did not speak any overt acts and that all the eye witnesses stated that no injury was noticed on the body of the deceased and that the deceased died due to consumption of adulterated toddy and that the trial Court has not appreciated the evidence in a proper perspective and that the conviction and sentence imposed by the trial Court are not sustainable.

7. Learned Additional Public Prosecutor submitted that the prosecution has proved its case and that the trial Court has rightly appreciated the evidence, convicted and sentenced the accused and

that the judgment under appeal does not warrant any interference.

8. Before going into the merits of the case, it is relevant to examine the evidence of the prosecution witnesses.

9. P.Ws.1 and 2 are the father and mother of the deceased. P.W.1, who lodged the complaint, stated that he came to know that his son, the accused and others went to toddy shop and while returning, a quarrel took place between the accused and P.W.4 and when his son intervened, the accused pushed him and sat on his chest and beat him, on account of which, he died. P.W.2 also deposed in the same manner.

10. P.W.3, who is the sister of the deceased, deposed that she came to know that the accused beat her brother, as a result of which he died.

11. P.Ws.4 to 6 and P.Ws.8 to 11 are the co-workers. P.W.4 deposed that they went to toddy shop and while coming out of the shop, he demanded the accused to pay Rs.1,000/- due to him. The accused pushed him aside by force. Then, he fell down. Meanwhile, the deceased came to his rescue. The accused pushed the deceased, on account of which, he fell down. Immediately, the deceased was shifted to hospital. He died.

12. P.W.5 deposed that by the time, he went to toddy shop, the deceased was in the toddy shop. While they were coming out, they found a quarrel between P.W.4 and the accused in regard to payment of amount. The accused pushed P.W.4. Meanwhile, the deceased fell on the ground. He came to know that the accused pushed the deceased.

13. P.Ws.6 to 11 turned hostile. P.W.12 is the RMP doctor. He deposed that the deceased was brought dead. P.W.13 is the panch

witness to the inquest and seizure of toddy bottles. P.W.14, who is the panch witness, did not support the case of the prosecution. P.W.15- mediator also did not support the case of the prosecution. PW.16 is the ASI, who received Ex.P1 report from P.W.1.

14. P.W.17 is the Medical Officer, who conducted autopsy over the dead body of the deceased. She stated that the cause of death of the deceased was due to head injury. P.Ws.18 and 19 are the police officials, who spoke about the investigation.

15. The evidence of P.Ws.4 and 5, who are the eye witnesses clearly establishes the occurrence. Their evidence is consistent and corroborative. Nothing was adduced to disprove the evidence of P.Ws.4 and 5. Further, it is evident that the incident took place out of a sudden quarrel between P.W.4 and the accused. It is evident that there is no intention to the accused to attack the deceased or to cause any harm to him. During the course of a quarrel, when the deceased intervened, the accused pushed him. Because of that act of the accused, the deceased sustained injury and died.

16. Considering the evidence on record and the facts and circumstances of the case, this Court is of the view that the trial Court has rightly convicted the appellant-accused for the offence under Section 304-II IPC.

17. At this stage, the learned Counsel for the appellant submitted that the incident took place in a sudden quarrel and the appellant has no intention to cause any harm to the deceased and that the appellant has to look after his family members and therefore, a lenient view may be taken.

18. Considering the submissions made by the learned Counsel for the appellant, this Court is inclined to reduce the sentence of imprisonment imposed by the trial Court against the appellant-

accused.

19. In the result, the conviction recorded by the trial Court against the appellant-accused for the offence under Section 304-Part II IPC is confirmed. However the sentence of three rigorous imprisonment imposed against appellant-accused for the said offence is modified to that of the period, which the appellant has already undergone.

20. Accordingly, the Criminal Appeal is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:21st July, 2016

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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