

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

CRIMINAL APPEAL No.628 OF 2011

JUDGMENT:

(Per Hon'ble Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has challenged the order and judgment dated 24.03.2011 passed in S.C. No.305 of 2010 on the file of Principal Sessions Judge, Khammam, whereby the appellant was found guilty for the offence punishable under Section 302 IPC and convicted under Section 235 (2) Cr.P.C., and sentenced to LIFE IMPRISONMENT and also to pay fine of Rs.100/-, in default to suffer R.I. for one month.

2. The brief facts of the case as per prosecution is that :

The appellant is the son of elder brother of Rayavarapu Veeraiah (hereinafter referred to as the "deceased"). There is land dispute between the appellant/accused and the deceased on the piece of wet land to an extent of Ac.0.10 guntas of their ancestral property. Three days prior to the incident the appellant picked up a quarrel with the deceased for sharing of the above wet land. The appellant threatened the deceased to do away his life at any time. On 20.12.2009 morning at about 9.00 a.m. while PW.1, PW.2 along with the deceased were proceeding in the village for coolie works, when they reached the house of one

Koppula Munaiah near Telugudesham Party flag base, the appellant came across to them and keeping land dispute in mind, abused the deceased in filthy language and with an intention to kill him assaulted the deceased with a sickle and axed on his left side of the neck. The deceased received severe bleeding cut injury on his neck and fell down on the ground in front of the TDP flag post. At that time, PWs.1 and 2 who accompanied with the deceased, PWs.3 to 5, who were there at the place, witnessed the incident and tried to rescue the deceased. While PW.1 with the help of PW.6 and another shifting the deceased to the hospital, Khammam, in a trolley Auto of Banka Nageswar Rao, the deceased died on the way. Later, the dead body of the deceased was brought to his house in the same auto. Due to the dispute between the appellant and the deceased, the appellant bore grudge against the deceased and killed the deceased by assaulting with a sickle and caused neck injury. On receipt of complaint-Ex.P1 given by PW.1, PW.12-Sub Inspector of Police, Mudigonda Police Station had registered a case in Crime No.231 of 2009 under Section 302 IPC.

3. After investigation, charge sheet was filed by PW.13-Circle Inspector of Police before the concerned Magistrate, who after taking cognizance assigned to the Court of Sessions. After appearance of the appellant, Sessions Court framed charges under Section 302 IPC. The appellant pleaded not guilty and claimed to be tried.

4. To bring home the guilt of appellant, the prosecution examined PW.1 to PW.13 and marked Exs.P-1 to P-9 and MOs.1 to 5.

5. After closure of prosecution evidence, the appellant was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of various prosecution witnesses. The appellant stated that he does not know anything and the prosecution falsely implicated him in this case. However, he has not adduced any oral evidence on his behalf, but Ex.D1 is marked. The plea of the appellant is one of the total denial.

6. Rayabarapu Jyothi, wife of the deceased was examined as PW.1. She deposed that the appellant is son of the elder brother of her husband. Her husband was a labourer. They have agricultural lands admeasuring Ac.0.08 guntas in joint with the father of the appellant. Three days prior to the incident, the appellant and his mother had ploughed the lands that fell to their share claiming that they want that land. On that day, the appellant and his mother beat her husband in the fields. Next day morning also both the mother of the appellant and the appellant beat her husband in her village centre. Next day, when her husband was going for labour work, the appellant called her husband and hacked him on the neck with sickle. The incident was witnessed by herself and her mother-in-law Tirupamma.

When they were shifting her husband in an Auto to the hospital, on the way her husband died. She gave police complaint-Ex.P1. She identified the clothes of her deceased husband. MO.1 is cotton towel with stripes, MO.2 is blue colour sweater. MO.3 is the sickle with which her husband was hacked.

7. PW.2 is the mother of the deceased and mother-in-law of PW.1. She deposed that she had three sons. She gave Ac.0.04 guntas of land each to her elder son Papaiah and deceased Veeraiah. For about 2 years, they have jointly cultivated, and thereafter, the appellant started disputes with the deceased claiming that he wants the entire land. On the date of incident at about 9.00 a.m., the deceased and PW.1 were walking ahead of her and she was behind them by about 10 yards. They were all going for labour work. When they were near the TDP flag the appellant came in opposite direction and suddenly hacked her deceased son with sickle having teeth (kakku kodavali). Herself and PW.1 held the deceased and thereafter shifted him to the hospital, however on the way, he died. The incident was witnessed by herself, PW.1, Jilla Babu (LW.5), R. Upendra (PW.3) and K.Upendra (PW.4).

8. PW.3-Rayabrapu Upendra deposed that the appellant and the deceased are his agnates. On the date of incident at about 9.00 a.m., he was going to hair cutting

shop, in the meantime, the appellant came and gave one blow on the neck of the deceased with a sickle and ran away. At that time, PW.1, PW.2, himself and G. Tirupaiah (LW.7) were present. When they were shifting the injured from the scene of offence to Khammam hospital, on the way, 108 Ambulance came in the opposite direction. The persons of Ambulance examined the deceased and declared that the deceased was died and advised them to take back the dead body to the village. He heard that there were land disputes between the appellant and the deceased.

9. PW.4-Kanakpudi Upendra deposed that he is relative of the appellant and the deceased. He has lands adjacent to the lands of the appellant and the deceased. On 19.12.2009 at about 12.00 A.N., the appellant and his mother Venkamma beat the deceased Veeraiah in the fields. He intervened in the dispute and advised the appellant not to beat the deceased who was sick and already undergone a major surgery. At that time, both the appellant and deceased were claiming the lands. The appellant had threatened the deceased to see his end one day or the other. He provided some food to the deceased in that afternoon after washing him of the mud. On the same day, at about 5.30 p.m., when he was returning, he saw mob of people near the centre and he was told that the appellant and his mother Venkamma again beat the deceased. On 20.12.2009 at about 9.00 a.m. the deceased, PWs.1 and 2 were proceeding towards centre, at that time,

the appellant came there and they were altercating with each other. He heard that and came out of his house which was at a distance of about 10 meters from TTD Flag. When he was at a distance of 5 meters from the deceased, he had seen the appellant hacking the deceased on the left side of the neck with a sickle having small teeth. The appellant questioned the deceased about his activities on the field the previous day. The appellant also said that the deceased was saved yesterday. He has no right to live and he cannot live. So saying the appellant hacked the deceased on the neck and ran away from that place. The incident was witnessed by Gollamudi Krishnaveni, PWs.1 to 3 and Jilla Babu. One Yellaiah (LW.8) had tied the towel around the neck of the deceased. The appellant ran away from there. Thereafter, a trolley was called and the injured was sent to Khammam hospital. He did not accompany the injured. After sometime the deceased was brought back to the village since he died.

10. PW.5-Gollamudi Kumari deposed that she knew the deceased who was her maternal uncle. She knows the appellant who is also her relative. On the date of incident at about 9.00 a.m. while returning home after purchasing vegetables, she had seen PWs.1, 2 and the deceased near the house of Munaiah and TDP Flag post. They were going for getting labour. She was behind PWs.1 and 2 and the deceased. The appellant came in the opposite direction with sickle and started arguing with the deceased saying that the

previous day he has quarreled with his mother. They quarreled with each other for about 10 minutes and the appellant challenged the deceased to quarrel with him instead of his mother. Thereafter, the appellant hacked on the neck of the deceased with a sickle. The incident was witnessed by about 10 peoples namely Tirupaiah (LW.7), PWs.1 to 4 and others. The deceased fell down and the appellant immediately ran away from there. She further deposed that the appellant killed the deceased due to disputes in the matter of lands.

11. PW.6-Gollamudi Yellaiah deposed that he knows PWs. 1 to 5, the deceased and the appellant. On 20.12.2009 at about 9.00 a.m. when he was in his house, his uncle Tirupaiah (LW.7) came and informed that the appellant had hacked the deceased near the house of Munaiah. Hearing that, he rushed to the scene of offence and found the deceased bleeding, he tied towel around neck of the deceased to control the bleeding. He called for the auto of Banka Nageswara Rao (not examined) and shifted the injured on the auto and proceeded towards Khammam hospital. By the time, he reached near Gurralapadu, the 108 ambulance came who were informed by them prior to shifting the injured by the auto. The employee of 108 service who were in the vehicle examined the deceased and declared him dead. Thereafter they brought back the dead body to the village.

12. PW.7 is the photographer, who took photographs of the dead body and scene of offence. Ex-P2 is the bunch of photographs (6) along with CD.

13. PW.8-Kalepangu Srinu deposed that he knows the deceased and the appellant who belong to his village. On 20.12.2009 at about 12.30 p.m., police people prepared C.D.F. -Ex.P3 and panchanama in his presence. The police seized blood stained earth and controlled earth under cover of panchanama which were marked as MOs. 4 and 5. Thereafter, the police conducted inquest panchanama over the dead body and noticed injury on the neck of the deceased. Ex.P4 is the inquest panchanama.

14. PW.9-Bathula Raju deposed that he knows the appellant and the deceased. On 23.12.2009 at about 2-00 in the afternoon himself and Daveed were at bus stand for going towards Khammam. The Circle Inspector of Police and other police officers along with the appellant came there in a jeep. Then Circle Inspector called him near the jeep and enquired that whether he knows the appellant. Thereafter, the Circle Inspector informed him that the appellant has killed the deceased in the village and C.I wanted him and Daveed to accompany them to Mutharam Village. Accordingly, both of them went in a jeep to the said village. On reaching, they went to the house of the appellant and police people entered inside the house and the appellant came out with a sickle.

The C.I. obtained their signatures on some panchanama and thereafter brought them and left at the bus stop. Ex.P5 is relevant portion of the recovery panchanama. MO.3 is the sickle which was produced by the appellant.

15. PW.10-Karlapudi Daveed deposed that on 23.12.2009 at about 2.00 A.N., when he came to bus stand for going towards khammam, he found PW.9 in the bus stand. At the bus stand, the police people, the appellant and PW.9 were present. None others were present. Since the appellant was known to him, he went near the jeep to speak to him. The Circle Inspector and the Sub Inspector of Police were questioning the appellant whether he has killed the deceased, and the appellant said "yes". The police people prepared some panchanama.

16. PW.11 is Doctor S.Mangala, who conducted postmortem examination and found the following injuries :

"Incised wound extending from below and behind left ear to left side of neck, to front of neck region.

Incised wound measuring about 6 inches in length, increasing from behind to front both breadth and depth.

One inch depth and 1 inch breadth behind the left ear, and two inches depth and 2 inches in breadth in the neck region. All the tissues and neck muscles and blood vessels cut and covered with blood.

The injury could have been caused with a sharp edged weapon such as sickle such as MO.3. Approximate time of the death of the deceased was 12.00 hours prior to my P.M.E. In my

opinion, the cause of death is due to hemorrhage and shock due to injury to the major vessels in the neck. Ex.P6 is the P.M.E report.”

17. PW.12 is the Sub Inspector of Police, Kusumanchi. He deposed that on 2012.2009 at about 11.30 a.m. PW.1 came along with written complaint and lodged it. On its basis, he registered a case in Crime No.231 of 2009 under Section 302 IPC, and issued the F.I.R-Ex.P7, and sent to all the concerned. He informed the Circle inspector of Police telephonically, who took up the investigation.

18. PW.13 is the Circle Inspector of Police, Khammam Rural, took up the investigation in the aforesaid case. He has conducted scene of offence panchanama and drafted C.D.F. in the presence of PW.8 and another. During the scene of offence panchanama, he seized MOs.4 and 5. He got photographed the scene of offence. He went to the house of the deceased along with same panchas, there he held inquest over the dead body of the deceased in the presence of PW.8 and another. During the course of inquest, he examined PWs.1 to 6 and others. He got photographed the dead body of the deceased and after that he sent the corpse to the Government hospital for postmortem examination. On 23.12.2009 at about 13.45 hours, he arrested the appellant at Kistapuram bus stage in the presence of PWs.9 and 10. The confession of the appellant was recorded as Ex.P8. In pursuance of the confession of the appellant, the appellant

led them to his house at Mutharam village and produced MO.3 sickle and same was seized under recovery panchanama (Ex.P5). He sent MOs. 1 and 2 to the F.S.L. He received the F.S.L report - Ex.P9. After completion of investigation, his successor filed charge sheet before the concerned Court.

19. Learned counsel appearing on behalf of the appellant submitted that there was a land dispute between the appellant and the deceased. As admitted by the eye-witnesses from PWs.1 to 5, there was a quarrel between the appellant and the deceased three days prior to the incident. On the date of incident, the appellant and the deceased were going to the respective fields for coolie work. Meanwhile, the appellant and the deceased had altercation between them and the appellant told that he need not fight with his mother better fight with him. Suddenly, he hacked the deceased with a sickle having teeth and ran away. He submits that PW.2, the mother of the deceased had admitted in cross-examination that the appellant was falsely implicated in this case. Learned counsel further submitted that the dispute was on the sharing of water in the agricultural land. The motive was not so strong to kill the deceased. However, on the date of incident, an altercation taken place between the deceased and the appellant while the appellant was going on to the fields for coolie work having sickle in his hand. There was no pre-meditation of the appellant to kill the deceased,

however, due to altercation, whatever the weapon he had in his hand, he attacked with that only and ran away from the spot. Thus, he had no intention to kill, however with the sickle, the cut injury caused to the neck, that is, vital part of the body, due to which, the deceased was died. He would submit that the learned trial Court ignored all these facts and convicted the appellant under Section 302 IPC. He further submits that the learned trial Court ought to have considered the above facts and could have convicted the appellant under Section 304 (2) Cr.P.C. but not under Section 302 IPC.

20. Learned Public Prosecutor appearing on behalf of the State argued that there was a land dispute between the appellant and the deceased, due to which, three days prior to the incident, the appellant and his mother had ploughed the lands that fell to their share claiming that they want that land. On that day, the appellant and his mother beat the deceased in the fields. On the next day morning also the appellant and his mother had beat the deceased and thereafter very next day when the deceased was going for labour work, the appellant had altercation with the deceased and hacked him on the neck with sickle. The case of the prosecution has been supported by PW.1, wife of the deceased, PW.2, mother of the deceased and PW.3 to PW.5. PW.11, the Doctor, who conducted postmortem examination, opined that injury No.1 was sufficient to cause death. Keeping in view the evidence led by the prosecution, the

learned trial Court has rightly convicted the appellant for the offence punishable under Section 302 IPC. Thus, the present appeal deserves to be dismissed.

21. We have heard the learned counsel for the parties and perused the material on record.

22. PW.1, wife of the deceased deposed that there was a land dispute between the appellant and the deceased. Three days prior to the incident, the appellant and his mother beat the deceased and thereafter on the date of incident when her deceased husband was going for labour work, the appellant called her husband and hacked on the neck with sickle. The said fact has been supported by PWs.2 to 5. The appellant is the son of elder brother of the deceased. PW.2 is mother of the deceased. Though all the witnesses have supported the case of the prosecution, however as argued by the learned counsel for the appellant that there was no strong motive behind the incident which led the death of the deceased. There was a small quarrel between the appellant and the deceased three days prior to the incident, and on the date of incident, the appellant and the deceased had some altercation when they were going for coolie work. The appellant had sickle in his hand which is used for cutting grass for animal and cutting paddy etc., the said weapon of the offence is not unusual in the hand of the appellant as it is used on daily basis. The appellant and the deceased were in the avocation

of coolie work, therefore the weapon of offence is not unnatural.

23. As per Section 304 Part-II of IPC, an act of the culprit amounts to culpable homicide not amounting to murder if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

25. It is admitted by PWs.1 to 5 that there was some altercation in the morning when the appellant and the deceased were going for coolie work and thereafter the appellant attacked on the deceased once with sickle having in his hand and caused injury No.1 due to which tissues, neck muscles and blood vessels cut and the deceased died. Attacking only once is admitted by the witnesses mentioned above. The appellant attacked only once and thereafter ran away from the scene of offence, therefore we have no hesitation to say that he had no intention to kill the deceased. However, in fact he wanted to cause injury, therefore he just attacked once with sickle and ran away from the spot. In the circumstances, since injury was caused on the neck, he is attributable with the knowledge that the injury is likely to cause death. The said fact has been ignored by the trial Court and convicted the appellant under Section 302 IPC.

26. It is not in dispute that the appellant remained in jail around six years including remand period thereafter vide

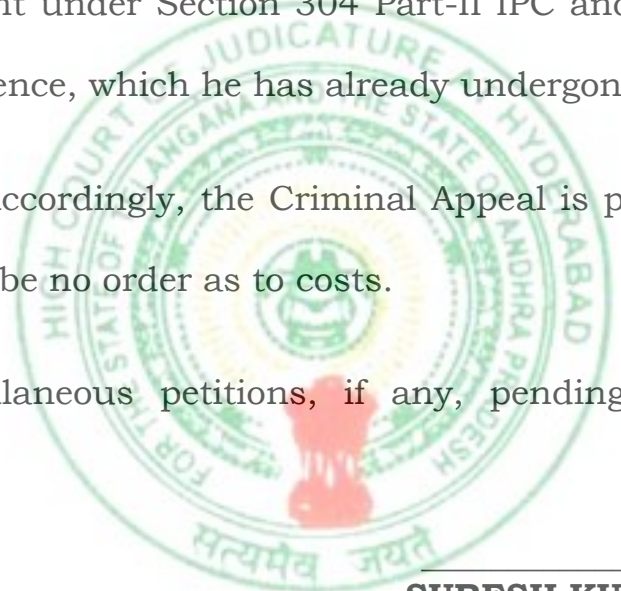
order dated 30.11.2016 passed in Crl.A.M.P.No.2052 of 2016, he was released on bail, by this Court.

27. Keeping in view the above discussion, evidence of the prosecution, the facts and circumstances, in which, the appellant had attacked on the deceased and the injury caused, we are of the considered opinion, the case of the appellant falls under Section 304 Part-II of IPC.

28. In view of the above discussion, we hereby convict the appellant under Section 304 Part-II IPC and set him free on the sentence, which he has already undergone.

29. Accordingly, the Criminal Appeal is partly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.



SURESH KUMAR KAIT,J.

U. DURGA PRASAD RAO,J.

Date : 29-12 -2017
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