

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

CRIMINAL APPEAL NO.393 OF 2011

Between:

Gottipati Hanumayamma

.. Appellant

and

The State represented by the
Public Prosecutor

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 10.11.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to
see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

T.AMARNATH GOUD, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

+ CRIMINAL APPEAL NO.393 OF 2011

% DATED 10th NOVEMBER, 2017

Gottipati Hanumayamma

.. Appellant

Vs.

\$ The State represented by the
Public Prosecutor

.. Respondent

<Gist:

>Head Note:

! Counsel for the Appellant : Sri T. Sreedhar

^Counsel for the Respondent : Public Prosecutor (AP)

? CASES REFERRED:

1. (1976) 4 SCC 382
2. 1982 CRI.L.J. 1821
3. AIR 1987 SC 1151
4. 1994 CRI.L.J. 2232
5. 1995 SCC (Cri) 169
6. 2004 (114) DLT 245
7. (2005) 9 SCC 650
8. (2006) 10 SCC 639
9. (2009) 8 SCC 796
10. (1975) 3 SCC 831
11. AIR 1958 SC 465
12. (1976) 2 SCC 788
13. (2009) 16 SCC 316
14. SARKAR on the Law of Evidence 16th Edition, Reprint 2008, Page 569
15. AIR 1942 Lahore 37
16. AIR 1948 Lahore 43
17. AIR 1952 Madras 586
18. 2015 SCC OnLine Delhi 11550
19. 2010 (1) ALD (Crl.) 699 (AP)

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.393 OF 2011

J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

By judgment dated 28.03.2011 in Sessions Case No.210 of 2006, the learned III Additional District and Sessions Judge (Fast Track Court), Ongole, convicted A1 under Section 302 IPC for the murder of Gudipati Hanumantha Rao and sentenced her to life imprisonment apart from paying a fine of Rs.1,000/-, in default of which she had to suffer simple imprisonment for three months. A2 and A4 were acquitted of the charge under Sections 302 r/w 114 IPC and the case against A3 abated due to his death. Be it noted that A4 is the husband of A1 while A2 is his elder sister and A3 is his maternal uncle. Aggrieved by the conviction and sentence visited upon her, A1 is in appeal under Section 374(2) CrPC.

By order dated 05.12.2016, this Court granted conditional bail to the appellant/A1 pending disposal of this appeal.

The case of the prosecution was that A1 threw acid on the deceased at 5.00 AM on 12.05.2005, whereupon he suffered burns and ultimately died on 14.05.2005. She was accordingly charged with his murder. A2 to A4 were charged with abetting A1 in the commission of the offence. A1 to A4 however denied the charges and claimed to be tried. During the trial, the prosecution examined 15 witnesses and marked 16 exhibits in evidence. The defence did not adduce any oral evidence, but marked contradictions in the Section 161 CrPC statement of P.Ws.1 and 2 as Exs.D1 to D6. Case properties were shown as M.Os.1 to 7.

Salient points emerging from the evidence may be noted.

P.W.1, the wife of the deceased, stated that her husband died at about 8.30 PM on 14.05.2005. One year prior to his death, he developed illicit intimacy with A1. Prior to that, he had illicit intimacy with A2. A4

came to know about the illicit intimacy of P.W.1's husband with A1 a month prior to the incident. A2, A3 and A4 came to their house and quarrelled with her husband in this regard and threatened him with dire consequences. The deceased asked A4 to control his wife, A1. On 12.05.2005 at about 4.30 AM, P.W.4 came to her house and woke up her husband for engagement of their tractor for transport of Subabul wood. Her husband asked P.W.4 to wake up the driver of the tractor and take it for transportation of the wood. At about 5.00 AM on the same day, her husband left the house to answer the call of nature. He went to Marripalem road and returned in fifteen minutes in a hurried manner. She found him with burn injuries on his face, chest, abdomen and legs. She enquired with him as to who caused him such injuries and he informed her that A1 had poured acid on his face and other parts of the body. He informed her that he found three other persons along with A1 and that all of them went away from the scene. He asked her to bring her elder brother (P.W.2) to go to the hospital for treatment. Immediately, she went to the house of P.W.2 and brought him. She, her brother (P.W.2) and her husband went to the Government Headquarters Hospital, Ongole, by motorcycle. After he was admitted in the hospital, the police came there and recorded his statement. The Doctor advised them to take the injured to Guntur Government General Hospital for better treatment as his condition was critical. Then they took her husband to Srinivasa Private Hospital, Guntur. He was provided medical treatment there for two days and on the third day of the incident he succumbed to the injuries in that private hospital. P.W.1 identified M.O.1 and M.O.2 as the clothes of the deceased. In her cross-examination, she stated that the police visited her village for the first time on 18.05.2005 in connection with the incident. She said that she was examined by the police at about 4.30 PM on 12.05.2005 in Guntur for the first time. Only the police and

the doctor were present with her husband in the room for about twenty minutes when they examined him. Her husband lost consciousness in the evening of 12.05.2005. She said that the police did not record her statement in Ongole. She said that they left Gudipudivaripalem village at about 6.00 AM to go to the hospital. She said that they did not inform any of the villagers as they felt ashamed and also did not report the matter to Chimakurthy Police Station. She denied having stated before the police as in Exs.D1 to D3 portions of her 161 CrPC statement about the involvement of four others. On 12.05.2005 at about 2.00 or 2.30 PM, they left Ongole to go to Guntur. The police came to Guntur at about 5.30 PM. One policeman came to the Government Hospital, Guntur, but she did not know his designation. He came at about 10.30 AM on 12.05.2005 and they had admitted her husband in the hospital at about 8.00 AM. Her husband changed his dress before they went to Ongole Government Hospital and his clothes were kept in the house. She admitted that misunderstandings arose between her and her husband due to his illicit intimacy with other women and that she gave a complaint against him to the Sarpanch.

P.W.2, the elder brother of P.W.1, stated that the deceased first developed extra-marital relations with A2, later he also developed such relations with A1. He stopped his relationship with A2 after developing relations with A1. A2 came to know about the relations between the deceased and A1 and brought it to the notice of A1's husband, A4. A2, A4 and A3 bore a grudge against the deceased for developing extra-marital relations with A1 and one month prior to the incident, they came to the house of the deceased and quarrelled with him. The deceased asked A4 to control his wife. On 12.05.2005 at about 5.15 AM, P.W.1 came to his house and informed him that her husband left the house to answer nature's call and returned with burn injuries and informed her

that while he was answering the call of nature, A1 brought one pitcher of acid and threw it at his face. P.W.1 requested him to take her husband to the Government Hospital, Ongole. Immediately, he went to the house of the deceased and found him with burn injuries on the face and he enquired with him about the burn injuries and the deceased informed him that A1 had poured acid on his face and caused burn injuries when he went to answer the call of nature. The deceased requested him to take him to the hospital at Ongole. Thereupon, he took P.W.1 and the deceased to the Government Hospital, Ongole, by motorcycle. The police came to the hospital and asked him and P.W.1 to go out of the room. The police and the doctor were alone present with the deceased. Later, the doctor advised them to take the injured to Guntur General Hospital for better treatment as his condition was serious. They then took him to Srinivasa Private Hospital, Guntur, as they suspected that proper medical treatment would not be available in Guntur General Hospital. P.W.1 stayed in the hospital with her husband and he returned home on the same night. On 13.05.2005, the police visited his house in the morning and asked him to take them to the place of the offence. He then took them to Marripalem road and showed them the scene of the offence. He then left the village and went to Guntur. On 14.05.2005 at about 9.00 PM, the deceased succumbed to the burn injuries. Extra-marital relations between the deceased and A1 was the reason for the incident. In his cross-examination, P.W.2 said that the police examined him for the first time at Srinivasa Hospital, Guntur, on 15.05.2005 in the morning. He said that the police did not examine him at Guntur at the time of the inquest. He again said that on 13.05.2005 he was examined by the police at Gudipudivaripalem village, while he was examined by the police at Guntur on 15.05.2005. He did not know the designation of the police. He denied having stated as in Exs.D4, D5 and D6 portions of his

Section 161 CrPC statement as to the inability of the deceased to talk due to the burns. He said that after admission of the deceased in the Government Hospital, Ongole, the police came there half an hour later. They left from Ongole to go to Guntur at about 10.00 or 11.00 AM on 12.05.2005 and reached there at about 2.30 PM. In his re-examination, he said that he was examined by the police three times, i.e., on 13.05.2005, on the date of the inquest and again, on 18.05.2005.

P.W.3, the daughter of the deceased, spoke on the same lines as P.W.1 and P.W.2. P.W.4 said that he went to the house of the deceased at about 4.30 AM on the fateful day and woke him up. He requested him to provide his tractor for transportation of Subabul wood and the deceased asked him to go to his driver and take the tractor. He then went to the house of the driver and while they were talking, the deceased came there, spoke to them and then went to Marripalem road to answer nature's call. He said that the driver then went inside the house to wear his shirt and at that time he found A1, A2, A3 and A4 coming hurriedly from Marripalem road and going to the house of A1. He said that he saw one plastic tin in the hands of A1. At about 4.00 PM on that day, he came to know that the deceased had sustained burn injuries and was taken to Government Hospital, Ongole, for treatment and was then shifted to a hospital at Guntur for better treatment. Later, he learnt that he had succumbed to the injuries. In his cross-examination, P.W.4 said that four days after the death, the police visited Gudipudivaripalem.

P.W.5, a relation of the deceased, affirmed the extra-marital relations of the deceased with A2 in the first instance and with A1 thereafter. P.W.6, a resident of Chimakurthy, Prakasam District, took photographs of the dead body. He identified Ex.P1 as the three photographs of the body of the deceased along with negatives.

P.W.7 was a witness to the scene of the offence panchanama and the inquest report. He said that the police seized earth with pieces of burnt hayrick and also controlled earth at the scene of the offence. M.O.3 was identified by him as the plastic tin containing earth soaked with acid and M.O.4 as the plastic tin containing the controlled earth. He said that the inquest over the dead body was conducted on 15.05.2005 from 9.00 AM to 11.00 AM at Srinivasa Hospital, Kothapeta, Guntur, and that Ex.P3 was the inquest report. In his cross-examination, P.W.7 admitted that the deceased was his nephew and volunteered that A1 to A4 were also his relations. He however admitted that he did not know the contents of the inquest report. P.W.8 was another witness to the inquest proceedings. He said that he scribed the inquest report and he identified his signature in Ex.P3 inquest report. Nothing useful was elicited from him in his cross-examination. P.W.9 was a witness to the confessions allegedly made by A1 to A4 before the Circle Inspector of Police, Ongole Rural Circle. A1 allegedly produced her partly burnt saree and two plastic tins before the Circle Inspector of Police from the house of A2, which were seized. P.W.9 identified M.O.5 as the saree, M.O.6 as the white plastic tin, and M.O.7 as the plastic orange coloured tin. Ex.P4 is the confessional mahazar, wherein he identified his signature.

P.W.10, a Plastic Surgeon at Srinivasa Burns, Trauma and Plastic Surgery Nursing Home, Guntur, stated that on 12.05.2005 at 2.00 PM, the deceased was brought to their hospital for treatment. On examination, he found that the patient was incoherent, restless and unable to give proper history. He had third degree burns on his face, chest, abdomen, upper limbs and lower limbs. A small area of burns was seen scattered on the back also. The total burns were nearly 25% deep in nature with skin destruction and oedema of surrounding areas. He said that the patient died at 9.00 PM on 14.05.2005 during treatment. Ex.P5

is the death intimation given by him to the Station House Officer, Kothapeta Police Station, Guntur. Ex.P6 was identified as the case sheet of the deceased. He opined that the patient succumbed to the injuries due to metabolic disturbances, shock and renal problems along with diabetic condition and acid burn injuries. In his cross-examination, he confirmed that the condition of the patient was critical by the time he was brought to their hospital.

P.W.11, a Professor in the Department of Medicine, Guntur Medical College, Guntur, conducted the post-mortem examination of the body of the deceased. He spoke of the injuries found by him on the face, including the lids of both eyes, front of the neck, chest, abdomen, upper limbs, forearms and hands on both sides, front of both lower limbs, front and inner sides of lower parts of both thighs and the feet on both sides. He confirmed that the injuries were ante-mortem in nature. He opined that the cause of death was due to shock as a result of vitriolage. He identified Ex.P7 as the post-mortem report. He explained that vitriolage means throwing of corrosive acid or alkali on the body. He stated that the FSL report dated 29.06.2005 received by him revealed that sulphuric acid, a corrosive mineral acid, was found to have been used.

P.W.12, the Head Constable in Ongole I Town Police Station, stated that on 12.05.2005 at 9.45 AM, he received intimation from the Government Hospital, Ongole, about admission of the deceased with acid burns. He said that he immediately rushed to the hospital at about 10.00 AM and met the Duty Doctor. He stated that he went to the injured and recorded his statement. The injured also affixed his thumb impression upon the statement. The Duty Medical Officer was present at the time of recording of the statement and certified therein that the patient was conscious while the statement was being recorded. After recording the statement of the deceased, he returned to Ongole I Town Police Station

and sent the statement of the deceased to Chimakurthy Police Station along with a Memo on the point of limits of his Police Station. He said that he commenced recording the statement at 10.00 AM and took half an hour to complete it. He identified Ex.P9 as the statement of the deceased recorded by him. In his cross-examination, he denied the suggestion that he recorded the statement of the deceased in the absence of the Duty Medical Officer. He admitted that he did not obtain a certificate from the Duty Medical Officer that the patient was fit to give a statement before recording it. He said that he did not remember the time at which he sent the statement to the Chimakurthy Police Station along with a Memo. He said that he, the patient and the Duty Medical Officer were alone present at the time of recording of the statement. He denied the suggestion that the patient was not conscious and coherent at the time of his admission in the hospital and that he and the Chimakurthy Police created documents to build up the case against the accused.

P.W.13, a Civil Assistant Surgeon in Government Headquarters Hospital, Ongole, stated that on 12.05.2005, the deceased was brought to the hospital by his brother-in-law (P.W.2) at about 9.20 AM. He said that he found acid burn injuries on his body and immediately gave intimation to Ongole I Town Police Station about the same. Ex.P8 is the intimation. He said that he examined the deceased and found acid burn marks with brown discolouration present on the face, right side of the neck, front side of the chest, right upper limbs, anterior aspect of the left upper limb, right side of the abdomen, back side of the chest, both thighs and legs and dorsal aspect of the left foot. He said that the eyebrows were burnt and the left eye cornea was hazy while the right eye was congested. He further stated that the patient was conscious and coherent and was able to give answers to questions. Later, the patient was referred to the Government General Hospital, Guntur, for better treatment. Meanwhile,

the Head Constable of Ongole I Town Police Station came to the hospital and recorded the statement of the patient in his presence. He made an endorsement on the statement that the patient was conscious and coherent while recording the statement. On 12.05.2005 at about 10.45 AM, the patient was taken from the Government Headquarters Hospital, Ongole. He identified Ex.P10 as the case sheet. In his cross-examination, he admitted that he did not send any intimation to the concerned Judicial Magistrate of First Class to record a dying declaration. He said that the police came to the hospital at 10.00 AM and that he did not make any specific endorsement that the statement of the patient was recorded in his presence. He however denied the suggestion that the police never recorded the statement of the injured in the hospital. He also denied the suggestion that by the time he was brought to the hospital, the patient was not conscious.

P.W.14, the Assistant Sub-Inspector of Police, Chimakurthy Police Station, stated that on 12.05.2005 he was the In-charge of Chimakurthy Police Station in the absence of the then Sub-Inspector of Police, Chimakurthy Police Station. On that day at 2.00 PM, while he was present at the Police Station he received the statement of the deceased along with the hospital intimation from the Station House Officer, Ongole I Town Police Station. He then registered Crime No.55 of 2005 under Sections 307 and 325 IPC. Ex.P11 is the FIR. Ex.P9 is the statement of the deceased. He then left Chimakurthy Police Station and went to the Government Headquarters Hospital, Ongole, and caused enquiries. He came to know that the injured was shifted to the Government General Hospital, Guntur, for better treatment. He immediately left Ongole and went to the Government Hospital, Guntur. Upon enquiry, he came to know that the injured was not admitted in the Government General Hospital, Guntur, and through the Station Writer at Chimakurthy Police

Station, he found out that the injured was admitted in Srinivasa Burns, Trauma and Plastic Surgery Nursing Home, Guntur. He then went to that hospital and found the injured undergoing treatment there. He tried to examine him, but the injured was unable to give a statement. He then examined and recorded the statements of P.Ws.1 and 2. He returned to Chimakurthy Police Station on the same day and went to Gudipudivaripalem on 13.05.2005 at 8.30 AM. There, he secured the presence of P.W.2 who showed him the scene of the offence. In the presence of mediators, Gudipudi Prasad (L.W.11) and P.W.7, he observed the scene of the offence and recorded Ex.P2 mediators report. Thereunder, he seized the burnt grass pieces and also controlled grass at the scene of the offence. M.O.3 and M.O.4 are the acid soaked earth and controlled earth seized by him. He prepared a rough sketch of the scene of the offence (Ex.P12). On 15.05.2005 at 2.00 AM, he received intimation of the death of the deceased from the Station House Officer, Kothapeta Police Station, Guntur Town. He then altered the provision as Section 302 IPC from Sections 307 and 325 IPC. Ex.P13 is the altered FIR. The Sub-Divisional Police Officer, Ongole, instructed him orally to conduct the investigation in the absence of higher ups. On 15.05.2005, he went to Srinivasa Burns, Trauma Plastic Surgery Nursing Home, Guntur, and held an inquest over the dead body in the presence of panchayatdars (Ex.P3). Thereafter, the then Inspector of Police, Ongole Circle (P.W.15), took up further investigation. In his cross-examination, P.W.14 confirmed that P.W.2 had stated before him as in Exs.D4, 5 and 6 portions of his Section 161 CrPC statement. He further stated that Chimakurthy Police Station was situated at a distance of thirty kilometres from the Court house of the learned III Additional Judicial Magistrate of First Class, Ongole, and that he submitted the FIR to the said Court through a Police Constable of Chimakurthy Police Station.

P.W.15, the Inspector of Police, Ongole Rural Circle, stated that he reported for duty after expiry of leave on 18.05.2005. On the same day, he received a copy of the FIR in Crime No.55 of 2005 on the file of Chimakurthy Police Station under Section 302 IPC. He took up the investigation from P.W.14 and having verified the steps taken by him, he went to Gudipudivaripalem along with P.W.14 and staff members. They visited the house of the deceased and he examined P.W.1 and P.W.3 and recorded their statements. He also secured the presence of P.W.2, Gudipudi Venkata Rao (L.W.3), and Gudipudi Alivelamma (L.W.5) and recorded their statements. He also recorded the statements of P.Ws.4, 5, Gaggera Venkaiah (L.W.7) and Gottipati Srinivasa Rao (L.W.9). He enquired with P.W.1 about the dhoti and towel of the deceased and she went into the house and produced them. He then seized them under cover of Ex.14 police proceedings. M.O.1 is the towel and M.O.2 is the dhoti. On 27.05.2005 at 8.45 AM, while he was present in Chimakurthy Police Station, he received reliable information about the accused. He then picked up P.W.9 and Gogineni Krishna Kishore Babu (L.W.16) and asked them to act as mediators. He left Chimakurthy Police Station along with the Sub-Inspector of Police, the mediators and staff and went to the Community Hall, Chilakapadu Village, at about 9.45 AM. There, they found the accused and they tried to flee upon seeing them. They were apprehended and upon enquiry they revealed their identity. They also confessed to commission of the offence. They were interrogated separately and their confessional statements were recorded in the presence of mediators under cover of Ex.P4. When he enquired with A1 about the acid tins and the saree which was worn by her at the time of commission of the offence, A1 went into the house of A2 and brought out one white bag. She removed one saree and two tins from the bag. The saree and the two tins were seized and A1 to A4 were arrested under

cover of Ex.P4 mahazar. The seized articles are M.Os.5 to 7. The accused were produced before the III Additional Judicial Magistrate of First Class, Ongole, on the same day. M.Os.1 to 5 were sent to the Regional Forensic Science Laboratory, Guntur, for analysis. Upon receipt of Ex.P16 report from the Regional Forensic Science Laboratory, he laid a charge sheet against all the accused. In his cross-examination, P.W.15 stated that one of the mediators drafted the mahazar at the Community Hall at Chilakapadu. He denied the suggestion that A1 did not produce any incriminating material before him from the house of A2. He confirmed that P.W.1 had stated as in Ex.D2 portion of her Section 161 statement.

Upon consideration of the aforestated evidence, the Sessions Court found that the prosecution had failed to prove the guilt of A2 to A4 as the deceased did not mention to P.Ws.1 to 3 that they were the persons who were at the scene of the offence along with A1 on the fateful day. The evidence of P.W.4 to the effect that he saw A2 to A4 along with A1 leaving hurriedly from Marripalem road at the relevant time was disbelieved as it did not inspire confidence. A2 to A4 were accordingly acquitted of the charge against them, but the Sessions Court opined that it could be safely held that the prosecution had established the guilt of A1 beyond all reasonable doubt for the offence punishable under Section 302 I.P.C. Reliance in this regard was placed on Ex.P9 statement of the deceased and his declaration against A1 to P.Ws.1 to 3 to the effect that she had thrown the acid on him while he was attending to a call of nature. A1 was accordingly convicted and sentenced, leading to this appeal.

Heard Sri T.Sreedhar, learned counsel for the appellant/A1, and the learned Public Prosecutor, State of Andhra Pradesh.

Though an attempt was made before the Sessions Court to highlight the lapses in the investigation by the police, this Court is of the opinion that even if the same are accepted, it would be of no avail to the

appellant/A1 as overwhelming evidence is placed on record in support of the prosecution's case that she threw acid upon the deceased during the early hours of 12.05.2005 at Marripalem road while he was in the process of answering a call of nature. P.Ws.1 to 3 consistently spoke of this and it is but natural that the deceased would have informed them of who the assailant was after returning hurriedly from Marripalem road. That apart, when he was examined by P.W.12 at Ongole Government Headquarters Hospital, Ongole, in the presence of the duty doctor (P.W.13), the deceased specifically stated in Ex.P9 statement that the accused came to the scene of the offence while he was answering a call of nature and threw acid upon him. According to him, A1 was aggrieved by the fact that he was not speaking to her after the attack upon him a month earlier by A2 to A4. Though this part of Ex.P9 statement requires to be considered with caution, the inescapable fact that emerges from a conspectus of the overall evidence and leaves this Court in no doubt is that it was A1 who threw acid upon the deceased on the fateful day.

However, the question would then arise as to whether this act would amount to culpable homicide *simpliciter* under Section 299 IPC or whether it would qualify as murder under Section 300 IPC.

Sri T.Sreedhar, learned counsel, would stress upon the facts and circumstances in which A1 is alleged to have committed the offence and submit that she would, at best, be liable to be punished for culpable homicide and not murder. He cited the following case law:

In **STATE OF ANDHRA PRADESH V/s. RAYAVARAPU PUNNAYYA**¹, the Supreme Court dealt with the distinction between cases falling under Sections 299 and 300 IPC. It was observed that in the scheme of the Penal Code, 'culpable homicide' was the genus while 'murder' was its specie. All 'murders' would be 'culpable homicides' but not *vice versa*. According to the Supreme Court, speaking generally,

¹ (1976) 4 SCC 382

culpable homicide *sans* the special characteristics of murder would be culpable homicide not amounting to murder. It was pointed out that the Penal Code recognizes three degrees of culpable homicide - the first is what may be called 'culpable homicide of the first degree' which would be the greatest form of culpable homicide, defined in Section 300 IPC as 'murder'; the second may be termed as 'culpable homicide of the second degree' punishable under the first part of Section 304 IPC; and lastly, there is 'culpable homicide of the third degree' which is the lowest type of culpable homicide and the punishment provided for it is the lowest among the punishments under the second part of Section 304 IPC.

Dealing with the academic distinction between 'murder' and 'culpable homicide not amounting to murder', the Supreme Court observed that the safest approach to interpretation and application of the provisions would be to keep in focus the keywords used in the various clauses of Sections 299 and 300 IPC. A comparative table was set out to appreciate the points of distinction between the two offences.

Section 299

A person commits culpable homicide if the act by which the death is caused is done--

Section 300

Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done —

INTENTION

- (a) With the intention of causing death; or
- (b) With the intention of causing such bodily injury as is *likely* to cause death; or

- (1) With the intention of causing death; or
- (2) With the intention of causing such bodily injury as the *offender knows to be likely* to cause the death of the person to whom the harm is caused; or
- (3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is *sufficient in the ordinary course of nature* to cause death; or

KNOWLEDGE

- (c) With the knowledge that the act is *likely* to cause death

- (4) With the knowledge that the act is so *imminently dangerous that it must in all probability cause death* or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

The Supreme Court concluded that when the Court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be as to whether the accused has done an act, by doing which he caused the death of another. The second stage would be to consider whether that act of the accused amounts to 'culpable homicide' as defined in Section 299 IPC. If the answer is found to be in the affirmative, the third stage for consideration would be to determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300 IPC. If the answer to this question is in the negative, the offence would be 'culpable homicide not amounting to murder' punishable under the first or the second parts of Section 304 IPC, depending on whether the second or the third clauses of Section 299 IPC is applicable. If, however, the answer to the question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300 IPC, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 IPC.

In **PARVESH V/s. STATE**², a Division Bench of the Allahabad High Court indicated the broad differences between murder and culpable homicide, stating that in the case of murder, the offender has a positive intention to cause the death of the victim and assaults him with the intention of causing death or with the definite knowledge that the bodily injury inflicted by him would cause death, or the injury would be sufficient in the ordinary course of nature to cause death, or the injury was so imminently dangerous that it must cause death. But in the case of culpable homicide, the intention or knowledge is not so positive or

² 1982 CRI.L.J. 1821

definite as the injury caused may or may not cause death and even if Exceptions 1 to 4 to Section 300 IPC are not applicable, the offence can still be culpable homicide. To find an offender guilty of murder, his case must fall within any of the four clauses of Section 300 IPC; otherwise, he will be guilty of culpable homicide not amounting to murder.

In **GURDIP SINGH V/s. STATE OF PUNJAB**³, the Supreme Court held on facts that it was not fully satisfied that the appellants intended to kill the deceased and the correct approach, on the evidence and other circumstances of the case, would be to find the accused guilty under Section 304 Part I IPC and not under Section 302 IPC.

In **AVULA VENKATESHWARLU V/s. THE STATE**⁴, a Division Bench of this Court was dealing with a case where a quarrel ensued between the accused and his wife resulting in the accused stabbing her to death. The inquest report established that the accused suspected the character of his wife but there was no evidence to that effect. The motive for the attack was only his suspicion of the fidelity of the deceased but not to cause her death. Injuries caused were not to cause death. In those circumstances, the Division Bench held that the offence committed would fall under Section 304 Part I IPC and not under Section 302 IPC.

In **RAM JATTAN V/s. STATE OF U.P.**⁵, the Supreme Court found that the injuries on the deceased were not serious and that he died due to shock and haemorrhage the next day. There was no indication from the evidence that any of the injuries were sufficient in the ordinary course of nature to cause death. The conviction under Section 302 IPC was accordingly reduced to one under Section 304 Part II IPC.

In **DHARAMPAL V/s. STATE OF DELHI**⁶, a Division Bench of the Delhi High Court was dealing with a case where the accused mixed

³ AIR 1987 SC 1151

⁴ 1994 CRI.L.J. 2232

⁵ 1995 SCC (Cri) 169

⁶ 2004 (114) DLT 245

sulphuric acid with whiskey and forcibly poured it down the throat of the deceased. The Supreme Court found that the accused, after administering the acid mixture, ran away leaving the deceased in pain and they had no intention to cause his death though they had knowledge that acid mixed with liquor would result in such injuries to the stomach as were likely to cause death. Their conviction under Section 302 IPC read with Section 34 IPC was accordingly reduced to conviction under Section 304 Part II read with Section 34 IPC.

In ***THANGAIYA V/s. STATE OF TAMIL NADU***⁷, the Supreme Court observed that it cannot be said as a rule of universal application that whenever only one blow is given, Section 302 IPC is ruled out and it would depend upon the facts of each case, the weapon used, the size of the weapon, the place where the assault took place, the background facts leading to the assault, and the part of the body where the blow was given. These are the factors to be considered and in that case, as only one blow was given with a small stick and the place where the assault took place was dimly lit, the Supreme Court was of the opinion that the inevitable conclusion that could be drawn was that the case was covered under Section 304 Part I IPC and not Section 302 IPC.

In ***BUNNILAL CHAUDHARY V /s. STATE OF BIHAR***⁸, the Supreme Court found that the injury inflicted on the left side of the chest of the deceased was a single one which was not sufficient in the ordinary course of nature to cause death. It was not even likely to cause death. No attempt was made by the accused to cause serious injury on any vital part of the body of the deceased. The Supreme Court therefore held that the case was not covered by clause 3 of Section 300 IPC and accordingly converted it into a conviction under Section 304 Part II IPC.

⁷ (2005) 9 SCC 650

⁸ (2006) 10 SCC 639

In **MANIBEN V/s. STATE OF GUJARAT**⁹, the Supreme Court was dealing with a case where the Terylene clothes of the deceased were set on fire by means of a burning wick of rags. The deceased remained under treatment in hospital for eight days and died thereafter. She had sustained about 60% burn injuries and also developed septicaemia, which was the main cause of death. The evidence on record proved that the action of the accused in throwing the burning wick was preceded by a quarrel between the deceased and the accused. The Supreme Court therefore concluded that it could not be said that the accused had the intention to cause death or such bodily injury to the deceased which was sufficient in the ordinary course of nature to cause death. The Supreme Court therefore opined that the case could not be said to be covered under clause 4 of Section 300 IPC. The conviction was accordingly reduced to one under Section 304 Part II IPC.

Per contra, the learned Public Prosecutor relied upon **SUDERSHAN KUMAR V/s. STATE OF DELHI**¹⁰, which was also a case relating to an acid attack and ended in a Section 302 IPC conviction. The contention of the accused was that he did not **intend** to kill the deceased but only to disfigure her, thereby attracting either Section 304 Part I IPC or Section 326 IPC. Dealing with clause 3 of Section 300 IPC, the Supreme Court observed that when the act by which the death is caused was done with the intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death, it would amount to murder. Reference was made to **VIRSA SINGH V/s. STATE OF PUNJAB**¹¹, wherein it was observed as under:

“To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, “thirdly”:

First, it must establish, quite objectively, that a bodily injury is present;

⁹ (2009) 8 SCC 796

¹⁰ (1975) 3 SCC 831

¹¹ AIR 1958 SC 465

Secondly, the nature of the injury must be proved;

These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Once these four elements are established by the prosecution (and of course, the burden is on the prosecution throughout) the offence is murder under Section 300, thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature

The Supreme Court found that it was established beyond reasonable doubt that the accused intended to cause injuries by throwing acid and the medical evidence was to the effect that the injuries were collectively sufficient in the ordinary course of nature to cause death. However, the deceased lingered for about 12 days before succumbing to the injuries. This fact, *per* the Supreme Court, did not show that the death was not the direct result of the act of the accused in throwing acid upon her. Conviction under Section 302 IPC was upheld.

He would also rely upon **JAYARAJ V/s. STATE OF TAMIL NADU**¹², wherein the Supreme Court was dealing with the question as to whether the case would fall under the first or second part of Section 304 IPC. In this regard, it was stated as under:

“32. For this purpose we have to go to Section 299 which defines “culpable homicide”. This offence consists in the doing of an act

- (a) with the intention of causing death, or
- (b) with the intention of causing such bodily injury as is likely to cause death, or

¹² (1976) 2 SCC 788

- (c) with the knowledge that the act is likely to cause death.

33. As was pointed out by this Court in **ANDA V/s. STATE OF RAJASTHAN (AIR 1966 SC 148)**, “intent” and “knowledge” in the ingredients of Section 299 postulate the existence of positive mental attitude and this mental condition is the special *mens rea* necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the likelihood of the death of the person.

34. The first clause of Section 300, reproduces the first part of Section 299. Therefore, ordinarily if the case comes within clause (a) of Section 299, it would amount to murder. However, if one of the special exceptions in Section 300 applies, the offence would be culpable homicide not amounting to murder. Such is not the case before us.

35. If the act of the accused falls under clause (b) of Section 299, that is to say, if the intended bodily injury is *likely* to cause death as distinguished from one which is *sufficient* to cause death in the ordinary course of nature, clause Thirdly of Section 300 would not apply. Exactly this is the situation in the present case. The offence committed by the appellant would therefore fall under the first part of Section 304, Penal Code. Accordingly, we partly allow this appeal, alter the conviction of the appellant from one under Section 302 to that under Section 304, Part I, Penal Code and reduce his sentence to 8 years’ rigorous imprisonment.”

Lastly, he would rely on **VEERLA SATYANARAYANA V/s. STATE OF ANDHRA PRADESH**¹³, wherein the Supreme Court was dealing with a case where the accused was convicted under Section 302 IPC by the High Court, modifying the judgment of the Sessions Court which had convicted him under Section 304 Part I IPC. The accused had thrown acid on the deceased as well as P.W.1, his paramour, when they were sleeping in their house at night. The argument advanced was that the offence would not come under Section 302 IPC. Reliance was placed upon the fact that the deceased had suffered 60% burn injuries but the cause of death was septicaemia. The Supreme Court however found that the prosecution had established beyond reasonable doubt the motive of the accused and that the act of the accused in pouring the acid was a pre-planned one; he had selected the night time when the deceased and

¹³ (2009) 16 SCC 316

P.W.1 would be sleeping and poured acid, causing 60% burn injuries which were sufficient in the ordinary course of nature to cause death. The conviction under Section 302 IPC was accordingly upheld.

Learned Public Prosecutor would however concede that there may be mitigating circumstances presently which may have to be taken into account by this Court while ultimately deciding the case.

It may be noted that as per Ex.P9 statement of the accused, A1 caused the attack due to the fact that he had stopped speaking to her. If that be so, A4, the husband of A1, would hardly assist A1 when she vented her anger upon the deceased because of being spurned by him. His claim was therefore illogical and is not worthy of acceptance. Significantly, the confession statement of A1 (Ex.P4) cast a different light on the nature and cause of the attack.

Sections 25 and 26 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') mandate that a confession made by an accused to a police officer or while in the custody of the police, and without a Magistrate being present, shall not be proved against such accused. In effect, law prohibits the use of a confession when it is sought to be proved *against* the accused, i.e., in support of the prosecution, but not when it is used *for* the accused¹⁴. Thus, explanation in a confession by the accused to the police, for the killing, may be relied on to prove motive or provocation, with a view to extenuate the offence or sentence. (See **HASIL V/s. EMPEROR**¹⁵, **LAL KHAN V/s. EMPEROR**¹⁶, **In re MOTTAI THEVAR**¹⁷ and **RAM ASHISH V/s. STATE**¹⁸). In **KANDI VENKATA SUNEEL KUMAR REDDY V/s. STATE OF ANDHRA PRADESH**¹⁹, a Division Bench of this Court pointed out that the law is well settled that

¹⁴ SARKAR on the Law of Evidence 16th Edition, Reprint 2008, Page 569

¹⁵ AIR 1942 Lahore 37

¹⁶ AIR 1948 Lahore 43

¹⁷ AIR 1952 Madras 586

¹⁸ 2015 SCC OnLine Delhi 11550

¹⁹ 2010 (1) ALD (CrL.) 699 (AP)

if the accused gives a confession, admissible to a limited extent under Section 27 of the Act of 1872, the same can be admitted to the extent it is favourable to the accused for any purpose, i.e., either for acquittal or for modifying the conviction. In effect, such a confession can be taken into account if it is beneficial to the accused.

Notably, in Ex.P4 confession statement, A1 stated that when the deceased cast the blame completely upon her by telling A4 to control his wife when the altercation took place a month prior to the fateful day, she got angry and stopped talking to the deceased. However, he pestered her to resume illicit relations with him and went to the extent of telling her that he would eliminate her husband so that they could continue their affair. Fearing for her marriage as the deceased was obstinate and would go to any length to attain his objective; she caused the acid attack upon him. As to the acid, she said that the said acid was given to them by the deceased himself for the purpose of cleaning Subabul seeds and as a large quantify of it was still available and stored with them, she used it.

It is an admitted fact that after throwing the acid, A1 immediately left the place. The deceased himself stated so, be it in his statement to the police (Ex.P9) or to P.Ws.1 to 3. It is therefore clear that she did not linger to ascertain and confirm as to whether she had caused sufficient harm to the deceased so that he would die. In fact, after the attack, the deceased not only returned home but also changed his clothes and then went to the hospital on a motorcycle accompanied by P.Ws.1 and 2. He died nearly three days later. As pointed out in **RAYAVARAPU PUNNAYYA¹**, it is the degree of probability of the likelihood of causing death that would decide as to whether the case would come within Section 299 (b)/(c) IPC or clauses 3 or 4 of Section 300 IPC. A1 is an illiterate woman who was apparently under extreme duress owing to the threat to her marriage by the insistence of the deceased to resume and

continue their affair, coupled with the threat of the deceased that he would do away with her husband. A mother of two children, A1, would obviously have been under tremendous stress. Her retaliation under such pressure was to throw acid upon the deceased, perhaps to send home the message that she did not wish to continue her relations with him. There was no apparent intention on her part to cause a particular injury or burn a particular part of the body. This is clear from the fact that the acid was indiscriminately thrown by her all over the deceased and he suffered burns on various parts of his body. No evidence is adduced to demonstrate that she was even aware of the potency of the acid or that it was sulphuric acid, one of the most corrosive acids. She only knew that the acid could be used for cleaning Subabul seeds. Significantly, no steps were taken by the prosecution to establish the potency of the sulphuric acid which was used, if it was still available with A1. In the absence of this crucial knowledge on the part of A1 that the acid was strong enough to cause death in the ordinary course of nature, the case cannot be brought under clauses 3 or 4 of Section 300 IPC as the intention and knowledge on her part would be of a far lesser degree, attracting either clause (b) or clause (c) of Section 299 IPC. These factors, taken cumulatively, indicate that there was no actual intention on the part of A1 to either cause the death of the deceased or inflict an injury which was likely or sufficient in the ordinary course of nature to cause death. There was neither an intention on her part to cause any particular injury nor is she shown to have had the knowledge that her act was so imminently dangerous that it must in all probability cause death.

On the above analysis, this Court finds that neither the intention of A1 nor her knowledge can be said to be of the requisite degree or vigour to bring the case within clauses 3 or 4 of Section 300 IPC. At best, her intention and knowledge would border upon the degree requisite

under Section 299 (b) and (c) IPC, that is, her intention would be to the extent of mere likelihood of her act causing death and her knowledge would also be to the same extent. The Sessions Court however did not note the distinction in the degree of intention and knowledge whereby a case would fall either under Section 300 IPC or under Section 299 IPC and baldly concluded that once her guilt was made out, A1 must be convicted under Section 302 IPC straightaway. On the strength of the aforestated analysis, we do not find it to be so simple.

In summation, we find that A1 is guilty of culpable homicide under Section 299 IPC punishable under Section 304 Part II IPC.

Given the peculiar circumstances of the case, as we find that A1 is more suited to the role of the victim rather than the perpetrator; we are of the opinion that the sentence already undergone by her would be sufficient punishment under Section 304 Part II IPC.

The appeal is accordingly allowed in part to the extent of converting the conviction of A1 to one under Section 304 Part II IPC, instead of Section 302 IPC, and reducing her sentence to the sentence already undergone. A1 shall however pay the fine amount as directed by the Sessions Court, failing which she would have to suffer simple imprisonment for a further term of three months. In the event the fine has already been paid, A1 who is presently on bail, shall report before the Superintendent, Central Jail, Kadapa, for completion of necessary formalities in terms of this judgment.

SANJAY KUMAR,J

T.AMARNATH GOUD,J

10th NOVEMBER, 2017
L/R copy to be marked - Yes
B/o PGS