

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

CRIMINAL APPEAL No.997 OF 2011

JUDGMENT:(per Hon'ble Sri Justice C.Praveen Kumar)

The sole accused in Sessions Case No.157 2009 on the file V Additional District and Sessions Judge (Fast Track Court), Guntur, is the appellant herein. He was tried for the offence punishable under Section 302 IPC and sentenced to suffer imprisonment for 'LIFE'. Challenging the same, the present appeal came to be filed.

2. The facts of the case, as culled out from the evidence, are as under:

P.W.1 is the wife of one Israil (hereinafter referred to 'deceased'), while P.W.2 is the father-in-law of P.W.1 and father of the deceased. The deceased developed illegal intimacy with mother of the accused by name Patibandla Rani. Thereafter, she was murdered by the deceased due to disputes between her and the deceased. In respect of the said incident, a case in Crime No.82 of 2001 came to be registered against the deceased for the offence punishable under Section 302 IPC. The said case ended in an acquittal on 29.09.2004.

It is the case of the prosecution that the accused bore grudge against the deceased, as he was responsible for the death of his mother Rani. On the date of the incident i.e., on 24.07.2008 at about 9:30 P.M., while P.W.1 and the deceased

were talking with each other, the accused came to their house along with another person, who was standing at a distance in a drunken condition and attacked the deceased saying “you killed my mother and I will kill you”. So saying, the accused took out a broken bottle from his pant pocket and pierced into the right thigh and right elbow of the deceased, due to which the deceased fell down. The evidence of P.W.1 also shows that the accused threatened her by showing the broken bottle. On hearing the cries of the deceased, P.W.8 came to the scene of offence and shifted the deceased to the Government Hospital, but on the way the deceased died. On the same day, while P.W.10, the Inspector of Police was in the police station, he received a telephone call from II Town Writer by name Anjaneyulu with regard to the incident. Upon which, he went to the Government Hospital, Tenali, and recorded the statement of P.W.1. Basing on the same, he registered a case in Crime No.74 of 2008 and issued Ex.P.1 FIR. Thereafter, P.W.11 the Inspector of Police took up further investigation. According to him, on 25.07.2008, at about 1:00 A.M., he received a telephonic information about the incident, pursuant to which, he visited the scene of occurrence and prepared a panchanama of the scene of offence, which was marked as Ex.P.5. He also prepared a rough sketch of the scene, which was marked as Ex.P.10. During the observation of the scene, he seized M.Os.1 to 5 from the scene of offence. He also examined P.Ws.1 to 3 and recorded their statements. Thereafter, he held inquest over

the body of the deceased between 8:00 AM to 10:30 AM., in the presence of P.W.8 and others. Ex.P.6 is the inquest report. He then sent the body of the deceased for Post Mortem Examination. P.W.6, who was working as a Doctor in District Hospital, Tenali, conducted Post Mortem Examination over the body at 12:30 P.M., and issued Ex.P.3 the Post Mortem Certificate. He noticed one lacerated wound on right upper arm and deep incised wound on right thigh and upper portion with femoral artery severed at femoral triangle. According to him, the cause of death was due to "Heaemorrhage and shock due to grievous injury to femoral artery on the right side of the thigh." After collecting all the necessary documents and after effecting the arrest of the accused, police filed a charge sheet, which was taken on file as P.R.C.No.17 of 2008 on the file of I Additional Munsif Magistrate, Tenali. After furnishing the documents to the accused as per Section 207 Cr.P.C., and by following the procedure laid down under Section 209 Cr.P.C., the case was committed to the Court of Sessions, Guntur, wherein, it came to be numbered as Sessions Case No.157 of 2009.

3. On consideration of material placed on record, a charge under Section 302 IPC was framed against the accused, which was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

4. In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P.1 to P.11 and M.Os.1 to 7.

5. After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., explaining the incriminating material which appeared against him in the evidence of prosecution witnesses, which was denied by him. No oral or documentary evidence was adduced by the accused, in support of his plea.

6. After appreciating the evidence available on record, particularly the evidence of P.Ws.1 to 3, the Sessions Judge convicted the accused under Section 302 IPC and sentenced the accused to suffer imprisonment for 'LIFE'. Challenging the same, the present appeal came to be filed.

7. Learned counsel for the appellant would submit that even accepting the case of prosecution to be true, no offence under Section 302 IPC is made out against the accused. She would submit that if really the accused had any intention to cause the death of the deceased, he would have stabbed on the vital parts of the body i.e., in the chest or in the stomach, with a broken bottle, with which he was said to have been armed. She would further submit that the case of the prosecution that the accused was carrying a broken bottle in his pant pocket itself appears to be improbable for the reason it would be difficult to carry a broken bottle in a pocket. She would further submit that there was no immediate or proximate motive for the accused to cause the death of the deceased.

8. On the other hand, learned Public Prosecutor would contend that though there was motive for the accused for cause of death of the deceased, but, the same was not immediate and proximate. According to him, the deceased was responsible for the death of the mother of the accused about eight years prior to the date of incident and after his acquittal in the year 2004, the accused developed a grouse to put an end to the deceased, which was executed in the year 2008. Learned Public Prosecutor, however, fairly submits that since the injury received by the deceased was on right thigh, it cannot be inferred that the accused had any intention to cause the death of the deceased.

9. As seen from the evidence on record, more particularly the evidence of P.W.1, the deceased, who is her husband, had illegal intimacy with the mother of the accused. Disputes arose between them and then the deceased is said to have killed the mother of the accused, pursuant to which, a case in Crime No.82 of 2001, came to be registered against the deceased for the offence punishable under Section 302 IPC. After a full-fledged trial, the said case ended in an acquittal in the month of September, 2004. It is also brought on record that, at the time of said incident, the accused was minor. Even as on the date of framing of charge in this case, the age of accused was shown as 19 years, but, the appellant was put in regular prison and is said to be in Jail since last seven years.

10. According to the prosecution, the motive for the accused to commit the offence was that deceased committed the murder of mother of the accused in the year 2001. No other circumstance is placed on record to show the existence of any incident or any other circumstance, for causing the death of the deceased herein. In respect of the incident, which was said to have taken place in the year 2001, the evidence on record discloses that on 24.04.2008, the accused is alleged to have been gone to the house to the deceased and questioned him about the incident and then the accused is said to have stabbed the deceased on the right thigh with a broken bottle. It would be appropriate to extract the relevant portion of evidence of P.W.1, which is as under:

“The accused was coming to our house since about one month prior to date of his death. I asked the deceased to inform to the accused not to come to our house. On 24.7.2008 at about 9-30 p.m. while myself and deceased were talking with each other, the accused came to our house. Another person was standing a little away from us. The said person, was fully drunk and vomiting. The accused questioned my husband for having murdering his mother and dragged him to the road. The accused removed a bottle from his pocket and stabbed with it the deceased his right thigh. The bottle with which the accused stabbed is a broken one. Due to stab, deceased fell down and I went to his rescue. The accused threatened us to stab us showing the broken bottle. Then my husband was in a pool of blood. Then I raised cries. On that Balayya came and we shifted my husband to the Government Hospital. My husband died on the way to the Govt. Hospital. The doctor declared

him as dead. The accused killed my husband due to the grudge that my husband killed his mother.”

11. P.W.3, who came to the scene of offence on hearing the cries, was also informed about the incident by P.W.1. As per his evidence, he along with P.W.1 shifted the deceased to the Government Hospital. The evidence of P.W.1 gets corroboration from the evidence of P.W.2, who is father of the deceased. According to P.W.2, the deceased developed illicit intimacy with one Patibandla Rani, who is mother of the accused. Due to disputes between the deceased and the said Rani, the deceased is said to have killed the said Rani. A case was registered against the deceased and in the said case the deceased was acquitted. According to him, at the time of death of Rani, the accused was a small boy. It is his case that, on the date of incident, at about 9:30 P.M., the accused attacked the deceased and stabbed on his right thigh. On receiving the said injury, the deceased fell down and thereafter, P.W.1 shifted the deceased to hospital. Though P.Ws.1 to 3 were cross-examined, nothing useful was elicited to discredit their testimony, with regard to the incident proper, except suggesting that the witnesses are not speaking the truth, which was denied. It was also suggested to the witnesses that they have not seen the accused, but, however, the same was denied. The suggestions given to the witnesses indicate that the deceased being a rowdy was murdered by somebody and that the allegations made against the accused are false. From the evidence of P.Ws.1 to 3, it is clear that the incident took place on 24.07.2008 at about 9:30

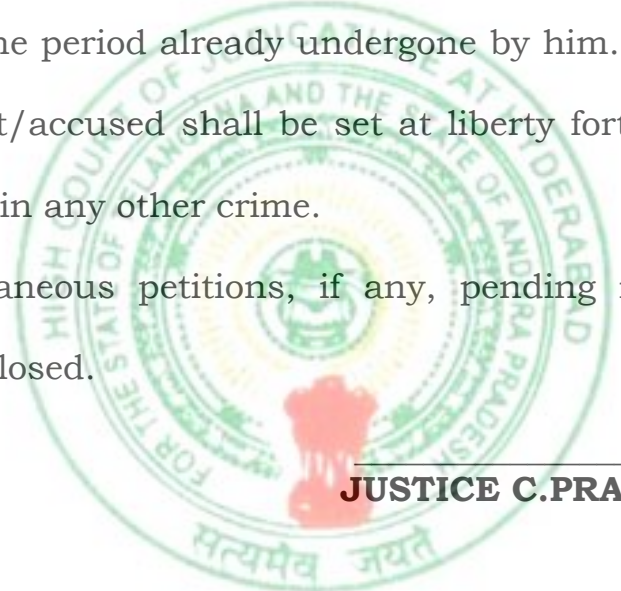
P.M., at the house of the deceased, wherein the accused questioned them about killing of his mother in the year 2001 and thereafter took out a broken bottle from his pocket and stabbed the deceased on his right thigh. It is to be seen that if really the accused had any intention to kill the deceased, definitely he would have either come there armed with a deadly weapon or would have stabbed the deceased on vital parts of the body. The fact that he gave a blow on the right thigh itself indicates that the accused, who was aged about 18 years, must have come there only either to threaten the deceased or to cause some grievous injury to the deceased, so as to ventilate his anger over the deceased. As per the evidence of Doctor there was a grievous injury to the femoral artery on the right side of the thigh. The said injury led to cut of the femoral artery leading to death of the deceased. The said injury was caused on non-vital part of the body. The accused has no motive or intention to kill the deceased, but it can be said that he had knowledge that such act would lead to the death of the deceased.

12. Having regard to the above and taking into consideration that there was no proximate or immediate motive for the accused to kill the deceased, even as per the prosecution case, as the death of mother of the accused was in the year 2001 and the acquittal order was in the year 2004, we feel that it will be appropriate to convict the accused under Section 304 Part-II

IPC. Since the accused is in jail for more than 6 years, the sentence is reduced to period already undergone.

13. In the result, the Criminal Appeal is allowed. The conviction recorded against the appellant/accused in the judgment, dated 04.01.2010, in Sessions Case No.157 of 2009, on the file of the learned V Additional District & Sessions Judge (Fast Track Court), Guntur, for the offence punishable under Section 302 IPC is modified to one Section 304 Part-II IPC and the sentence of imprisonment imposed against the appellant is reduced to the period already undergone by him. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other crime.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.



JUSTICE C.PRAVEEN KUMAR

T.AMARNATH GOUD

Date: 30.10.2017
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