

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

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

CRIMINAL APPEAL No.1023 of 2011

Between:

Boddu Bhumaiah

..... Appellant/ A1

VERSUS

1. The Sub Divisional Police Officer,
SDPO, Jagtial, Karimnagar District.
2. State of Andhra Pradesh, rep.by its P.P.

..... Respondents

Date of Judgment Pronounced: 17.11.2017

SUBMITTED FOR APPROVAL:

1. Whether Reporters of Local newspapers may
be allowed to see the Judgments?
2. Whether the copies of judgment may be marked yes
to Law Reports/ Journals?
3. Whether Their Ladyship/ Lordship wish to see the yes
fair copy of the Judgment?

C.PRAVEEN KUMAR ,J

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

CRIMINAL APPEAL No.1023 of 2011

JUDGMENT: (Per Justice C.Praveen Kumar)

%Dated 17.11.2017

Between:

Boddu Bhumaiah

..... Appellant

VERSUS

\$

1. The Sub Divisional Police Officer,
SDPO, Jagtial, Karimnagar District.
2. State of Andhra Pradesh, rep.by its P.P.

..... Respondents

! Counsel for Petitioners : Sri K.Prabhakar Rao

^ Counsel for Respondent : Public Prosecutor

< GIST :

> HEAD NOTE :

? Cases referred :

- ¹ AIR 1978 SC 315
- ². (2003)3 SCC 528
- ³. 2012(12) SCC 289
- ⁴. 2011 9 SCC 462
- ⁵. (2007) 14 SCC 588
- ⁶. 2017(2) ALT (Cri) 184 (SC)
- ⁷. 2017(2) ALD (Cri.) 15 SC

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

CRIMINAL APPEAL No.1023 of 2011

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

The appellant herein, the sole accused (A-1), who was tried on three charges; the first charge under Section 302 read with 34 IPC, for causing the death of Theegala Narayana @ Anarapu Linganna (hereinafter referred to as "the Deceased No.1"), Bandameedi Shekar (hereinafter referred to as "the Deceased No.2") and Theegala Mallavya @ Bochu Mallavva (hereinafter referred to as "the Deceased No.3), the second charge under Section 307 read with 34 IPC, wherein Boddu Bhumaiah (A-1) along with one Boddumallesham (A-2) (since A-2 is juvenile, a separate charge sheet is filed against him before the Juvenile Court, at Karimnagar) tried to kill one Theegala Linganna, thereby causing an injury on his right hand; and the third charge under Section 307 read with 34 IPC against A-1 wherein he is alleged to have stabbed one Bandameedi Sayamma on her stomach, was convicted by the II Additional District and Sessions Judge, Karimnagar, at Jagtial, by judgment, dated 20.04.2011, in Sessions Case No.729 of 2010, under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for two months and was also convicted under Section 307 IPC and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.100/-, in default to suffer simple imprisonment for (15) days and both the sentences were directed to run concurrently.

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

i). The Deceased No.1 was the father of PW.1, the Deceased No.2 was the son of senior maternal aunt of PW.1 and the Deceased No.3 was the mother of P.W.1; PW.2 is the younger

brother of PW.1 and the Deceased Nos.1 and 3 are his parents. The prosecution party, including the deceased, suspected that A-1 was practicing sorcery. It has come on record that previously when some of the sheep of PW.1 died, they suspected A-1 to be responsible for the same because of the act of sorcery done by him. In respect of the same, there was a quarrel between the father of P.W.1, the Deceased No.1, and A-1. On 09.03.2010, PWs.3, 6, 7 and L.W.11, by name Kasthuri Gangaram, along with Deceased Nos.1 and 2 and A-2 went to the village tank for the purpose of filling water from ~~SRSP~~ canal. A-1 went to the forest for grazing sheep. During night time, all the persons, who worked at the water tank, arranged a dinner. A-1, who did not attend the work during day time, came to participate in the dinner. A quarrel ensued between A-1 and the Deceased No.1 as to the participation of A-1 in the dinner. The Deceased No.1 is said to have commented saying that, during day time, A-2, the son of A-1, worked for filling water and why another person came for dinner. After the quarrel, A-1 left the place without taking dinner. After dinner, the Deceased Nos.1 and 2 returned to home. Both the deceased Nos.1 and 2 informed PW.5 and others about the quarrel that took place between A-1 and the Deceased No.1, at the time of dinner. At about 01.00 a.m., the Deceased Nos.1 to 3 and PW.5 went to the house of A-1 to question him as to why he was practicing sorcery. After reaching the house of A-1, all of them, questioned A-1 as to why he quarreled with the Deceased No.1 and also practicing sorcery. Immediately, A-1 went inside the house, brought a knife and stabbed the Deceased No.2 on his chest and neck. Thereafter, with the same knife, A-1 stabbed the Deceased No.1 on his chest and immediately the deceased Nos.1 and 2 died. When the mother of P.W.1 (Deceased No.3) intervened, A-1 stabbed the Deceased No.3 with knife on the waist and immediately she fell down at a corner of the house and died. A-1 is said to have stabbed PW.5 on his abdomen. When PW.1 intervened to save PW.5, A-1 inflicted injuries on his hand. It is said that because of the quarrel that took place at the village tank, A-1 stabbed the Deceased Nos.1 to 3. At

the time of quarrel, there were street lights in front of the house of A-1 and inside the house of A-1 as well. After the incident, both the accused ran away from the scene, along with the knife. Some one informed to Police, Mallapur, about the incident, and, accordingly, the S.I., of Police came to the village at about 02.30 or 03.00 am. As the right hand of PW.1 was bleeding, he could not give written report, but narrated the incident to PW.16, the S.I. of Police, who reduced the same into writing, and then PW.1 signed on it. Basing on the said statement, he registered a case in Crime No.31 of 2010 for the offences punishable under Sections 302, 307 read with Section 34 IPC and issued Ex.P.23-FIR. PW.16 sent the original FIR through a constable to the Judicial Magistrate of First Class, Metapally. Thereafter, PW.17, the C.I of Police, and PW.18, the SDPO, came to the scene of offence. As per the instructions of SDPO, PW.17 held inquest over the dead body of the Deceased No.2 from 06.30 a.m., to 08.30 a.m., on 10.03.2010, in the presence of PW.9 and LW16. He seized MO.4, blood stained lungi, and MO5, blood stained banian, under a cover of inquest. PW.11 acted as panch for the inquest conducted over the dead body of the Deceased No.3 in the house of A-1. Ex.P.16 is the inquest panchanama of the Deceased No.3. Ex.P.15 is the inquest panchanama of the Deceased No.2. He seized M.O.6, red colour blouse, M.O.7, blue colour saree, bloodstained earth, and control earth. After the inquest, the dead bodies were sent for postmortem examination.

ii). The evidence of PW.17, the Circle Inspector of Police, would show that, as per the instructions of SDPO, he held inquest over the dead body of the Deceased No.1 at 06.30 a.m., at the house of accused, in the presence of PW.9. Ex.P.12 is the inquest report. During inquest, he seized M.Os.2 and 3, which are clothes of the Deceased No.1, under a cover of Ex.P.12. During inquest, PW.17 examined PWs.1 to 4, 8 and others. He also conducted a panchanama of the scene of offence in the presence of PW.9 and LW.14, under a cover of Ex.P.13. During inquest, he seized MO10, blood stained earth, and MO.11, control earth. Ex.P.14 is the rough

sketch of the scene. Thereafter, the bodies were sent for postmortem examination.

iii). PW.12, the Medical Officer, Government Hospital, Metpally, conducted autopsy over the dead bodies of all the three deceased and issued Exs.P.17, 18 and 19, the postmortem certificates, respectively. (1) External injury: stab injury on the left side of the chest in front, size 2 x ¼ x 6 inches; and, Internal injury: laceration of left lung with heart, size 2 x ½ x 3 inches deep, on the Deceased No.1; (2) External injuries: i) stab injury on the left side of the chest, size 2 x ½ x 3 inches deep; ii) laceration on the neck 7 x 2 x 4 inches deep; iii) stab injury on the back of right side of chest, size 3 x 1 x ½ inch deep; Internal injuries: i) laceration of left lung, size 2 x ½ x ½ inch deep; and ii) laceration of the heart, size 3 x ½ x 1 inch deep; on the deceased No.2; and (3) External injury: stab injury on the back of left side of chest, size 3 x ½ x 5; and Internal injury: laceration of left lung, stab 3 x ½ x 2 ½ inches deep. According to PW.12, all the injuries found on the three deceased are grievous and are antimortem in nature and the cause of death was due to haemorrhage and shock, as a result of the said injuries. Though PWs.1 and 5 were also taken to the hospital for treatment, no medical evidence has been placed on record. On 15.03.2010, at about 07.00 a.m., on reliable information, PW.17 arrested A-1 and A-2, at the jawar crop field of A-1, in the presence of PW.13 and LW.20. On interrogation, A-1 confessed about killing of the Deceased Nos.1 to 3, with knife. Pursuant thereto, the knife and the blood stain clothes, were seized under Ex.P.21.

iv). After completing the investigation and collecting F.S.L., report, PW.18 laid the charge sheet against A-1 only. As A-2 was a juvenile, separate charge sheet came to be filed against him before the Juvenile Court at Karimnagar. Hence, the charge sheet filed against A-1 was taken on file as P.R.C.No.68 of 2010, on the file of the Court of the Judicial Magistrate of First Class, Metpalli.

3. On appearance of A-1, copies of documents were furnished, as required under Section 207 Cr.P.C., and as the case is

triable by a Court of Sessions, the same was committed to the Court of Sessions, which came to be numbered as S.C.No.729 of 2010.

4. Charge for the offences stated above came to be framed, read over and explained to the accused (A-1), to which he pleaded not guilty and claimed to be tried.

5. To substantiate its case, the prosecution examined PWs.1 to 18 and got marked Exs.P1 to P25 and M.Os.1 to 11.

6. After closure of evidence, the accused (A-1) was examined under Section 313 Cr.P.C., with reference to the incriminating material against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the defence.

7. According to A-1, on the date and time of incident, he along with his son were sleeping outside the house, and some body suspecting him to be practicing sorcery beat him on the back side. Then, he, along with his son, ran away from the said place to the Mallapuram Police Station where they informed about the same and sat in the police station.

8. Basing on the evidence of PWs.1 to 3 and 5 and also the confession made by the accused (A-1), which led to the recovery of MOs.1, 8 and 9, the Sessions Judge convicted the accused and sentenced him, as stated supra. Challenging the same, the present appeal came to be filed through legal aid.

9. Learned counsel for the appellant would submit that even accepting the entire case to be true, the accused (A-1) cannot be convicted for the offence punishable under Section 302 IPC. It is urged that when the prosecution party, consisting of the Deceased Nos.1 to 3, PW.1, PW.5 and five others visited the house of the accused (A-1), in the mid night, at 01.00 hours, the accused with a view to protect himself and his son brought a knife and attacked the prosecution party with the help of his son. In the course of the

same transaction, A-2, A-1 and the wife of A-1 also sustained injuries, which is clear from the report given by PW.1. In view of the above, he pleads that, by no stretch of imagination, the accused can be convicted for the offence punishable under Section 302 IPC.

10. On the other hand, learned Public Prosecutor would submit that when three persons were done to death and in view of evidence of PWs.1 and 5, who are injured eye witnesses to the incident, the plea of the appellant (A-1) that he acted in self defence apprehending threat to his life cannot be accepted. He submits that it is a fit case where the accused (A-1) has to be convicted under Section 302 IPC.

11. The admitted facts, in the instant case, are; (1) there was a quarrel between the Deceased No.1 and A-1 on the ground that the accused (A-1) was practicing sorcery on the sheep of PW.1; (2) On 09.03.2010, the Deceased Nos.1 and 2, PW.5, PW.6, PW.7 and others went to village tank to fill the same with water from SRSP Canal. A-2, son of A-1, participated in the said work. In the night, a dinner was arranged for the persons who were participated in the said work. But, A-1, though did not participate in the work, came for dinner, which was objected to by the Deceased No.1. A quarrel ensued between them wherein the Deceased No.1 questioned A-1 about his visit and also about the act of practicing sorcery on the villagers; (3) on the same day, at about 01.00 AM., PW.1, PW.5, the Deceased Nos.1, 2 and the Deceased No.3 were said to have gone to the house of A-1 to question him about the quarrel at that time and also about his practicing sorcery. When all of them questioned A-1, he is said to have gone into the house, brought a knife and attacked all the three Deceased by giving one blow to each of them. In the said process, A-1 is also said to have caused injuries to PWs.1 and 5. However, neither PW.1 nor PW.5 was sent to the Doctor evidencing the nature of injuries sustained by them; (4) The incident in question took place at the house of A-1 when the prosecution party

consisting of more than six persons went to the house of A-1; (5) It is not the case of the prosecution that there was any provocation from A-1 or that A-1, any point of time, challenged the Deceased.

12. Having regard to the above, the short question that falls for consideration is “whether the accused can be convicted for the offence punishable under Section 302 IPC, for causing death of the Deceased Nos.1 to 3 and also for causing injuries to PWs.1 and 5.”

13. Before proceeding further, it would be proper to refer few cases.

14. In *State of H.P vs Wazir Chand and others*¹, the Apex Court, in paragraph Nos.25 and 26, observed as under:

25. Accused No.1 has wielded a weapon like a knife indisputably a dangerous weapon. He has caused four injuries one of which is necessarily fatal. He has received six abrasions. The proper legal and reasonable inference to be drawn from all the circumstances is that because of the earlier incident in which Om Parkash alias Pashi and Joginder Singh were involved something like a challenge was taken up and Parshottam Lal definitely accompanied by some others, more presumably Om Parkash alias Pashi came over to the house of accused No. 1 and there was a 'mutual free fight between the parties. Accused No. 1 had returned to his house probably a little before the incident took place. Therefore, when Parshottam Lal appeared there was a sudden fight upon a sudden quarrel flowing from the earlier incident and in this both sides attacked each other. All the ingredients to attract Exception 4 to Section 300 I.P.C. are established. There is no premeditation. Parshottam Lal left the theatre and came over there. There was a fight that ensued in a sudden quarrel. The previous incident between Om Parkash alias Pashi and accused No. 3 Joginder was the cause and in that heat of passion and sudden quarrel parties grappled and attacked each other and it cannot be said in the circumstances that any undue advantage was taken. It may be recalled here that Parshottam Lal was a hefty well built fellow and if accused No.1 alone was to attack him he could not have escaped with few

¹ AIR 1978 SC 315

abrasions. Therefore, all the ingredients to attract Exception 4 of Section 300 I.P.C. are fully established.

26. As injury No. 1 was fatal in the ordinary course of nature and accused No. 1 had wielded a dangerous weapon and caused an injury on the vital part of the body and the blows were repeated inasmuch as four injuries were caused the offence but for the application of Exception 4 would be one under Section 302 I.P.C but as Exception 4 is attracted, it would be reduced to Section 304 Part I, I.P.C. and the conviction of accused No. 1 would be modified to one under Section 304, Part I, I.P.C. maintaining the sentence as awarded by the High Court as in our opinion that is adequate.

15. In Ghapoo Yadav and others v State of M.P.², the Apex Court was dealing with a situation, where there were some land disputes between the prosecution party and the accused. On a request made by PW.1, measurement of land was done by revenue authority. On the basis of the said measurement, it was found that the land belonging to the accused was in possession of PW.1. In the said land, there exists a berry tree. Initially, the tree was in possession of PW.1. But, after the measurement, he parted with possession. The said tree was cut by the family members of PW.1 a day prior to the incident, for which the deceased had an altercation with the accused persons. On the date of incident i.e. on 09.06.1986, there were altercations between the accused persons and the deceased, his brother and father. When the accused enquired from the deceased as to when they cut the tree, the deceased responded stating that it was cut three days prior to the incident, as the tree belongs to them and it was planted by their family members. This led to an altercation and a scuffle among them. The accused persons are said to have assaulted the deceased, which resulted in the fracture of the leg. When PW.1 and another person went to save him, the deceased ran towards them, as such, both of them fled away from the place of incident and returned later on with other villagers and attacked. They took the deceased, who was then gasping for breath on a cot to

² (2003)3 SCC 528

Maharajpur Police station, where the deceased gave information to the police about the incident.

16. Keeping in view the manner in which the incident took place, the Apex Court held that, since the incident was in a course of sudden quarrel, without any premeditation, set aside the conviction, imposed by the lower Courts, under Section 302 IPC, and convicted the accused under Section 304 Part II IPC.

17. In *Rampaul Singh vs State of U.P.*³, the question before the Apex Court was “whether the accused had an intention to cause death”. It was a case where two months prior to the incident, the deceased had come to the village on leave from Agra, the place where he was posted. He erected a ladauri on his vacant land. After expiry of the term of leave, he went back to join his duty. The appellant, who also came on leave, broke the ladauri constructed by the deceased and started throwing garbage on the vacant land. About five days prior to the date of occurrence, the deceased had again come to his village on leave. Upon expiry of the term of his leave, on 13.02.1978, he was returning to Agra on his duty. At that time, the uncle of the deceased came to his house along with another person of Village Dhaniapur and they were all chatting. The appellant also reached there. The deceased enquired from him the reason for demolishing his ladauri and throwing garbage on his land. An altercation took place between them. They even grappled with each other. The deceased threw the appellant on the ground. Ram Saran also reached the spot and he along with Amar Singh separated the appellant and the deceased. Thereafter, the appellant went to his house and climbed on the roof of Muneshwar armed with a rifle and from there he asked his brother to keep away as he wanted to shoot the deceased. Consequently, the deceased remarked as to whether the appellant had the courage to shoot him. On this, the appellant shot at the deceased with his rifle and ran away. Pursuant to the injuries sustained the deceased died. After referring to the judgment of *Ajit Singh vs*

³ 2012(12) SCC 289

State of Punjab⁴ and also the judgment in Phulia Tudu vs State of Bihar⁵, the Apex Court altered the nature of offence committed by the accused from 302 IPC to one under Section 304 I IPC.

18. In Suresh Singhal vs State (Delhi Administration)⁶, the Apex Court was dealing with a situation where the deceased and his brother Kishan Lal were killed in an incident, that took place at the office of Lala Harkishan Dass, located at Rajendra Park, Nangloi. The appellant and his father Pritpal Singhal, accompanied by another person, reached the office at 5.00 p.m. As soon as they entered the office, there was an altercation between the appellant and the deceased. The appellant took out his revolver and shot at Shyam Sunder. Thereafter, the appellant and his father, Pritpal Singhal, who had come to the office, in a car, left the car behind and fled the place in the car of another visitor. In the incident, Shyam Sunder and Kishan Lal were killed. It is also to be noticed here that, at the time of quarrel, the appellant took revolver from his coat pocket and fired at the deceased Sham Sunder. Thereafter, Pritpal Singhal took out a revolver from his pocket and both the appellant as well as Pritpal Singhal started firing at the deceased and his brother Kishan Lal. In the firing, he got injured due to a bullet injury in his stomach, due to which Kishan Lal died, with bullet injuries. From the narration of facts, it is clear that there was scuffle pursuant to which the appellant as well as his father fired at the two deceased and killed them. Plea taken was that the appellant, in exercise of right of private defence, shot at the deceased. Accepting the plea of right of private defence, the Apex Court held as under:

“The appellant reasonably apprehended a danger to his life when the deceased and his brothers started strangulating him after pushing him down to the floor. As observed by this Court a mere reasonable apprehension is enough to put the right of self defence into operation and it is not necessary that there should be an actual commission of the offence in order to give rise to the right of a private defence. It is

⁴ 2011 9 SCC 462

⁵ (2007) 14 SCC 588

⁶ 2017(2) ALT (Cri) 184 (SC)

enough if the appellant apprehended that such an offence is contemplated and is likely to be committed if the right of private defence is not exercised.”

19. Hari Shankar Shukla vs State of U.P.⁷ was a case where the incident took place on 11.07.1992, due to a dispute between the parties with regard to the land. The accused encroached on to a part of land belonging to the injured eye witnesses and had placed cattle troughs there. On 11.07.1992, at about 6 a.m., the daughter of PW.4, by name Kumari Bindu, informed about the encroachment made by the above persons. At that point of time, PWs.3 and 4 came out of the house and questioned them, while putting soil on the land. An altercation took place between two sides, leading to a scuffle between the parties. Pursuant to which, A3 went back to his house, came back with a country made pistol and fired one bullet from the country made pistol, which lead to the death of Umesh Shukla. Dealing with the facts, in issue, the Apex Court confirmed the conviction of the accused for the offence punishable under Section 304 IPC holding that the injuries, said to have been caused by the appellant, show that there was indeed a scuffle.

20. In all the judgments of the Apex Court, referred to above, there was a sudden quarrel, and, in the said quarrel, the accused attacked the prosecution party.

21. In the case on hand, the evidence of PWs.1 and 5, who are the injured eye witness to the incident, show that there was an incident at about 9 p.m., wherein the deceased questioned the accused, when he went there to attend the dinner. Even prior to the said date, there was a quarrel between the deceased and the accused, when the accused was questioned by the deceased about the sorcery being practiced on the sheep of D1 and PW.1. Even on the date of incident, the prosecution party, including the deceased, went to the house of the accused, armed with a weapon and then questioned the accused as to why he quarreled with the

⁷ 2017(2) ALD (GrI.) 15 SC

deceased in the night at 9 or 10 p.m., near the water tank and also as to why he is practicing sorcery on the sheep.

22. The evidence of PW.4 also shows that the incident at the house of the accused went on for about half an hour and about 20 persons gathered at the time of incident.

23. The question is whether the act of the accused (A-1), in causing the death of three persons and injuries to PWs.1 and 2, would be to protect himself from the prosecution party?

24. Admittedly, two of the deceased sustained single stab injury and another deceased sustained two stab injuries on the chest.

25. At this stage, it is also to be noted that A1, A-2 and the wife of A-1 also sustained injuries in the incident, which is reflected from the first information report itself, wherein it was mentioned as under:

“The facts of the case are that, on 10.03.2010 at about 01.00 hours, the deceased D1 to D2 along with complainant and Bandamidi Sayamma went to house of accused to ask him about the quarrel picked up with D1 by the accused at the time of dinner, arranged by the villagers in view of pumping water in to their kunta, the D1 to D3 and family members were also suspected that the accused knows sorcery and he will play sorcery. Later discussion raised in between the accused and D1 to D3 and family members, the accused grew angry brought one knife from his house and stabbed D1 on the chest, D2 throat and left side chest and D3 back side, when the complainant and Bandamidi Sayamma try to rescue, he also stabbed, then D1 to D3 were died at the spot, complainant and Bandamidi Sayamma were received bleeding injuries. Hence the FIR.”

26. From the averments made in the first information report, it is clear that the prosecution party went to the house of A-1 and questioned him the reason for quarrelling with the Deceased No.1. At that time, A-1 went inside the house, brought a knife and stabbed all the three deceased. But, the prosecution failed to prove as to how A-1 and A2 sustained injuries. The injuries on A-1

were found to be bleeding injuries, which remained unexplained by the prosecution.

27. It is well established law that the injuries sustained by the accused, if found to be grievous, have to be explained by the prosecution.

28. In the instant case, there is no medical evidence on record to show as to whether the injuries are simple or grievous. But, however, the evidence of the investigating officer and also the contents of FIR, do establish that the injuries on A-1, A-2 and the wife of A-1 were bleeding injuries. That being so, it can be said that the incident could not have been happened, in the manner spoken to by the prosecution, more so, when the incident took place at the house of A-1.

29. Admittedly, even as per the prosecution case, there are more than six people (two women) at the time of incident and about 20 people gathered outside the house, whereas from the side of the accused, A-1 and his son, A-2, being unarmed, were sleeping outside the house. The version of the prosecution is that the Deceased Nos.1 to 3 and other witnesses went to the house of A-1 only to question him. At first blush, the same appeared to be impressive but a perusal of the record proved to be otherwise. It is not the case of the prosecution that the injuries on the accused were self inflicted injuries. It may be true that the accused (A-1) did not produce any material to show the nature of injuries, but the evidence produced by the prosecution itself indicate that A-1, A-2 and the wife of A-1, received bleeding injuries. Therefore, the argument of the learned counsel for the appellant, A-1, that A-1 has acted to protect himself from the assault by the prosecution party and in the process, he caused injuries to the Deceased Nos.1 to 3, with a knife, which was available in the house of every villager, cannot be brushed aside.

30. Having regard to above, we feel that the accused (A-1) cannot be held liable for the offence of murder, since the entire

incident happened at the house of the accused and the prosecution party, numbering about 6 or 7, came on to the accused, in the mid night, when the accused, A-1, and his son, A-2, were sleeping outside the house.

31. Admittedly, there was no provocation from the side of the accused, even in respect of the incident, which took place at 09.00 p.m. As stated earlier, on the fateful day, there was a quarrel pursuant to which the accused, A-1, left the said place, came to his house and was sleeping in the house along with his son, A-2, and wife. At that time, the prosecution party came to the house of the accused No.1, and questioned him about the quarrel. Though, it is said that he went inside the house, brought a knife and attacked, but Ex.P.1 and the evidence of PW.1 discloses that A-1, A-2 and the wife of A-1 also sustained bleeding injuries. Hence, without any hesitation, we hold that the incident did not happen as projected by the prosecution. The genesis of attack is suppressed by the prosecution. If the prosecution version is to be accepted, then there is no explanation as to how accused No.1 and others received injuries. But, fact remains that, three persons died and two sustained injuries from the side of the prosecution and three sustained injuries from the side of the accused, apart from incident occurring at the house of the accused.

32. Having regard to the above, it can be said that both the accused have acted only to protect themselves from the attack by the prosecution party, who came to their house in the mid-night, in which event, the offence in all probability would fall within Exception 2 to Section 300 IPC.

33. Hence, the conviction of the accused, A-1, is altered from Section 302 IPC to one under Section 304-I IPC.

34. In view of the above, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.729 of 2010 on the file of the II Additional Sessions judge, Karimnagar at Jagtial, for an offence

punishable under Sections 302 is altered to one under Section 304 Part I of IPC. For the altered conviction, the appellant is sentenced to rigorous imprisonment for a period of ten years. The conviction and sentence awarded for the offence punishable under Section 307 IPC shall remain un-altered. However, both the sentences shall run concurrently.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

17.11.2017

Note: L.R. copy to be marked.

b/o

kvrn

