

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

CRIMINAL APPEAL NO.350 OF 2011

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

By Judgment dated 13.5.2010 in S.C.No.55 of 2009, the learned Principal Sessions Judge, East Godavari at Rajahmundry (for short, trial Court), found the sole accused guilty of the offences punishable under Sections 302 and 307 of the Indian Penal Code, 1860 and convicted him under Section 235(2) of the Criminal Procedure Code, 1973 and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, undergo simple imprisonment for one year for the offence punishable under Section 302 IPC and further sentenced to undergo imprisonment for a period of five years and to pay fine of Rs.2,000/-, in default, to undergo simple imprisonment for six months for the offence punishable under Section 307 IPC. Aggrieved by the convictions and sentences imposed upon him by the learned Sessions Judge, the sole accused preferred this appeal under Section 374(2) Cr.P.C.

2. The case of the prosecution in brief, was as under:-

On the intervening night of 15/16.07.2008 around 12.30 A.M., the crime occurred and information was received by the police on 16.07.2008 at 2.40 A.M. The complainant-P.W.1 is the wife of the accused and she is sister of the deceased and they were blessed with two daughters. The accused is not in the

habit of attending work regularly. He is addicted to alcohol and used to harass P.W.1 suspecting her fidelity. P.W.1 was working as a servant maid to eke out livelihood and feed the children. The accused is also in the habit of going out of home for months together and come back. Two months prior to 15.07.2008, the accused went out of the home and came back 15 days prior to the incident. On 15.07.2008 at about 11.00 PM., he returned home in a drunken state, started quarreling with P.W.1 for one hour and tried to take away an old table fan for which P.W.1 raised objection. The accused began quarrelling with P.W.1, abused her in filthy language, beat her and attempted to kill her. In the meanwhile at about 12.30 AM., the deceased Jagadish who is the brother of P.W.1 came there and admonished the accused and while taking P.W.1 and her daughter to his house which is located near to their house, the accused attacked him with a survey stick and beat him thrice on his head indiscriminately, as a result of which, the deceased sustained grievous head injury, fell on the ground and died on the spot. P.W.1 was also beaten and when P.Ws.2 and 3 came there and made hue and cry, the accused escaped from the scene of offence. Immediately, P.W.1 was shifted to District Hospital, Rajahmundry for treatment and on receipt of the information from the Hospital, the Head Constable of Outpost Police Station recorded the statement of P.W.1 and sent the same to Bommuru Police Station on the point of jurisdiction. The Station House Officer, Bommuru Police Station who received the statement of

P.W.1, registered a case in Crime No.152 of 2008 under Sections 498-A, 307 and 302 IPC on 16.10.2008 at about 2.40 A.M. The Inspector of Police, Rajahmundry Rural took up investigation, visited the scene of offence, got the scene of offence photographed, prepared rough sketch, conducted inquest over the dead body of the deceased, sent the dead body for post mortem examination to the District Headquarters Hospital, Rajahmundry. The Inspector of Police-P.W.11 arrested the accused on 17.10.2008, seized the blood stained lungi of the accused under a cover of mediators panchanama and on his confession, he seized the stick-M.O.1 which is the weapon used by the accused to commit the offence under a cover of mediators report. He sent the accused for judicial remand and sent the material objects to Regional Forensic Science Laboratory, Vijaywada with a letter of request. The Assistant Professor, Forensic Department-P.W.8 who conducted autopsy over the dead body of the deceased opined that the deceased died due to shock due to head injury. The Civil Assistant Surgeon, District Hospital, Rajahmundry-P.W.7 who examined and treated P.W.1 opined that the injuries sustained by P.W.1 are simple in nature.

3. On committal, the trial Court framed charges under Sections 498-A, 307 and 302 IPC and when the accused pleaded not guilty of the said charges and claimed to be tried, the trial Court examined P.Ws.1 to 11 and got marked Exs.P1 to P15 and M.Os.1 to 7. After closure of the prosecution evidence, the

accused was examined under Section 313 Cr.P.C. On consideration of the oral and documentary evidence, the trial Court found the accused not guilty of the offence under Section 498-A IPC and acquitted him. The trial Court found the accused guilty of the offences punishable under Sections 307 and 302 IPC, convicted and sentenced him to suffer punishment for the aforesaid offences. Aggrieved by the said Judgment, the appellant preferred the present appeal.

4. Heard the learned counsel appearing for the appellant-accused and the learned Public Prosecutor appearing for the respondent-State.

5. The learned counsel appearing for the appellant would contend that the Judgment of the trial Court is against law, weight of evidence and probabilities of the case; that the trial Court ought to have seen that the prosecution must establish the incriminating circumstances by reliable and clinching evidence; that the trial Court ought to have seen that P.W.1 is the wife of the accused, P.Ws.2 and 3 are relatives of P.W.1; that the trial Court failed to observe that P.W.1 filed a case against the accused under Section 498-A I.P.C., and that there are disputes between wife and husband and there is no intention for the accused to kill the deceased.

6. The salient points emerging from the evidence may now be noted:

P.W.1 stated that her husband was not working and he used to beat her often inebriated condition. Pw1 was servant maid and he abuses her by doubting her fidelity. Thus, most of the time, she is in her parents' house and the accused do not come back home for days together due to his irresponsible behavior. On 15.07.2008 at night time, the accused came to the parental house of P.W.1 in a drunken state. He took P.W.1 along with him to their house which is in the neighborhood. When the accused picked up quarrel with P.W.1, P.W.3-the daughter of P.W.1 and the accused, went to her grand parents' house and brought her maternal uncle/deceased to their house and the deceased tried to intervene and settle the quarrel and was bringing P.Ws.1 and 3 to his house and while they were on their way, the accused attacked the deceased with a survey stick-M.O1 from the back side and beat on the head of the deceased and when the deceased walked two steps ahead, again the accused beat the deceased twice on his head causing serious head injuries and the deceased collapsed. The accused also beat P.W.1 on her head. In the meanwhile, P.W.3 ran to her grand parents' house and alerted and the grand parents rushed to the scene of offence and on seeing them, the accused ran away.

The deceased found dead due to the head injuries caused by the accused, which attracts the ingredients of Section 300 IPC and he also caused injuries to P.W.1, attracting the ingredients of Section 307 IPC. Since no offence was made out

for the offence punishable under Section 498-A I.P.C., the Court below has acquitted the accused.

P.Ws.1 and 3 are the eye witnesses to the offence committed by the accused causing the death of the deceased. P.W.2-mother of P.W.1 and the deceased, confirmed the presence of the accused at the scene of offence with M.O.1-stick in his hand and the deceased and P.W.1 lying in pool of blood and on hearing the cries made by P.W.2, the accused ran away.

P.W.7 is the doctor who examined P.W.1 has confirmed the injuries and he issued wound certificate Ex.P9. P.W.8 is the doctor who conducted Post Mortem examination over the body of the deceased has confirmed that the cause of death is due to the head injury with laceration of brain and affirmed that the injuries are possible by means of a stick like M.O.1.

7. The evidence of P.Ws.1 to 3 would clearly disclose that it is the accused who killed the deceased by beating with M.O.1 and caused injuries to P.W.1 and the said evidence is corroborated by the evidence of the doctor-P.W.7 who treated P.W.1 and P.W.8 who conducted post mortem examination. The trial Court has rightly convicted the accused and has not committed any error in coming to the conclusion that the accused committed the offence punishable under Sections 307 and 302 IPC and, therefore, the said Judgment warrants no interference by this Court.

8. The learned counsel for the appellant argued that in the present case, the act of the accused falls under Exception-IV of Section 300 IPC., and it amounts to culpable homicide and not under Section 302 IPC.. This Court is not convinced with the said argument and as seen from the evidence on record, the accused intentionally beat the deceased firstly on the head of the deceased from his back and when the deceased fell down, again, the accused beat on his head twice indiscriminately and the deceased died in consequence of the said injuries and thus, he committed the murder of the deceased.

9. Accordingly, the Judgment dated 13.05.2010 of the learned Principal Sessions Judge, East Godavari at Rajahmundry in S.C.No.55 of 2009 is therefore confirmed and the appeal is dismissed.



SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date:23-10-2017
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