

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI**

CRIMINAL APPEAL No.949 of 2012

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

Accused Nos.1 and 2 in S.C.No.332 of 2011 on the file of III Additional Sessions Judge (Fast Track Court), Khammam, are the appellants. They were tried for the offence punishable under Section 302 read with Section 34 IPC for causing the death of one Korsa Prasad, on the intervening night of 14/15.03.2011 at 12.30 PM., at Domalagandi Tank adjacent to Korsavari Gumpu, h/o Mittapalli Village, Aswapuram Mandal.

2. By its judgment dated 28.03.2012 in S.C.No.332 of 2011, the learned Sessions Judge convicted both the accused for the offence punishable under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for a period of three months each.

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

P.W.1 is the brother of the deceased Korsa Prasad while P.W.2 is a resident of Korsavarigumpu village. P.W.1 in his evidence deposed that the accused were known to him prior to the incident since both of them belong to his neighboring village and that the deceased used to grow fish in Domalagandi Tank along with some of their villagers, by name, Ch. Anil Kumar, K. Narasimha Rao, Jampanna, P. Gopala

Krishna. He stated that, as usual, on the night of 14.03.2011, at about 9.00 PM., his younger brother K. Prasad along with others went to Domalagandi Tank for guarding the fish tank. They noticed A1, A2 and others getting down into the fish tank to commit theft of fish. At that time, P.W.2, deceased and others, who were present there, ran towards them in order to catch hold of them. The deceased is said to have caught hold of A1, but the other three persons caught hold the deceased tightly and A1 stabbed the deceased with the knife on his stomach forcefully. Then P.W.2 and others went to the spot shouting loudly and on seeing them, the accused ran away from the scene leaving the deceased at the spot. Immediately thereafter, they telephoned to P.W.1 and informed him about the incident. All of them carried the injured, in their hands to the hospital, meanwhile P.W.1 and K. Durga Prasad approached them on motorcycle and took the injured on motorcycle to the hospital. In the meantime, 108 ambulance came to Mittagudem cross roads, where the 108 staff declared him as dead. Subsequently, they shifted the dead body to the residence of the deceased.

4. On 15.03.2011, P.W.11 received a report Ex.P1 from P.W.1 and basing on which, he registered a case in Cr.No.15 of 2011 and issued FIR-Ex.P15 to all concerned. After issuance of FIR, P.W.12, the C.I. of Police, took up investigation. P.W.12 stated in his evidence that he visited the scene of offence situated at Domalagandi Cheruvu and prepared a mediator's report in the presence of P.W.7. During the said proceedings, he seized M.Os.4 to 7, 10 and 11. Ex.P8 is the mediator's report. He also examined P.Ws.1 to 5 during the said process.

Thereafter, P.W.12 proceeded to the house of the deceased where he noticed the dead body of the deceased and conducted inquest over the dead body of deceased in the presence of P.W.8 and another. Ex.P10 is the inquest report. During inquest, he seized M.Os.1 to 3 and also took photographs vide Exs.P3 to P7. Thereafter, he sent the body to the Government Hospital, Burugumpad, for post mortem examination, where P.W.3, the Civil Assistant Surgeon, Primary Health Centre, conducted autopsy over the dead body and issued Ex.P2-the post mortem report. According to him, the cause of death was due to heart failure due to stab injury. The post mortem report discloses one stab injury below the right side xiphisternum and the second injury by the side of the first injury. P.W.12 proceeded with the investigation.

5. P.W.6, who was the Sarpanch of Kummarigudem Village, deposed that on 21.03.2011 in the afternoon, A1 and A2 came to him and confessed about the commission of the offence. As per the extra judicial confession, it is stated that on the night of 14.03.2011, A1, A2 and two other persons planned to collect fish in Domalagandi tank and at that time, the deceased, P.W.2 and others were at water tank. It is further stated that when the deceased caught hold of A1, A1 raised cries loudly and that rest of the culprits surrounded the deceased, caught hold of him tightly and then A1 stabbed the deceased. On seeing others, they claimed to have left the place. A1 and A2 further confessed that they were hiding themselves in the forest till that day. Basing on the said statement, A1 and A2 requested P.W.6 to save them from the police. Accordingly, P.W.6 brought them to the Police station and informed the same to P.W.12, the Inspector of Police.

Accordingly, P.W.12 arrested both the accused and recorded the statement of P.W.6. He also recorded the confession of A1 and A2 in the presence of mediators. Pursuant to the same, he seized two knives from the possession of A1 which are marked as M.O.8 and M.O.12. Ex.P11 is the panchanama for the said seizure.

6. The evidence on record further shows that on 11.07.2011, P.W.10, the I Additional Judicial First Class Magistrate, Kothagudem, received a requisition from the C.I. of Police to conduct the test identification parade of A1 and A2. Ex.P13 is the said requisition. As per the said requisition, test identification parade was conducted on 16.07.2011 and Ex.P14 is the Test Identification Parade proceedings. In the test identification parade, P.W.2 is said to have identified A1. After completion of investigation, a charge sheet came to be filed which was taken on file as P.R.C.No.28 of 2011 on the file of Judicial Magistrate of First Class, Guntur.

7. On appearance of the accused, copies of documents were furnished to them as contemplated under Section 207 Cr.P.C., and the matter was committed to the Court of Sessions. Basing on the material available, a charge for the offence punishable under Section 302 read with Section 34 IPC was framed, read over and explained to them, to which they pleaded not guilty and claimed to be tried.

8. In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P16.

9. After the closure of the prosecution evidence, the accused were examined U/s. 313 Cr.P.C., wherein they denied the incriminating material appearing against them. However, they did not adduce any oral evidence, except marking the portion of 161 Cr.P.C. statement of P.W.2, as Ex.D1.

10. Basing on the evidence of PW.2 and also the extra judicial confession made by accused before P.W.6, coupled with the identification made in the test identification parade conducted by the Magistrate, the trial Court convicted both the accused and sentenced them to suffer imprisonment for life, as stated supra. Aggrieved by the same, the present appeal came to be filed.

11. As seen from the record, the point that arises for consideration is, whether the accused can be held liable for the offence punishable under Section 302 read with Section 34 IPC.

12. As seen from the record, P.W.2 was examined as an eyewitness to the incident. The evidence of P.W.2 discloses that on the date of incident, at about 9.00 PM., himself, deceased and four others went to Domalagandi fish tank to watch during night time and at about 12.00 mid night, four persons of Ramnagar village, came to the fish tank and started collecting fish stealthily. At that time, himself, deceased and four other persons ran towards them in order to catch them. When the deceased raised cries, the other accused are said to have apprehended the deceased and then, A1 said to have stabbed the deceased in the stomach. The intimation about the said incident was

given by P.W.2 to P.W.1, who set the law into motion by giving a report. In the first information report given by P.W.1, he refers to the participation of both the accused in the commission of offence i.e., stabbing the deceased as stated earlier. P.W.1 was examined as eyewitness to the incident. In his evidence, he never deposed about the participation of A2 in attacking the deceased. His evidence is only to the effect that when A1 raised cries, A2 along with others caught hold of the deceased and then A1 stabbed the deceased.

13. At this stage, it will be useful to know the circumstances under which the incident happened. Neither the prosecution party nor the accused had any animosity against each other. On the other hand, the accused and others came there to commit theft of fish from Domalagandi tank, which was taken on lease by P.W.2 and others to rear fish for business purpose. When both the accused and others were about to commit theft, at that time, the deceased, P.W.2 and others apprehended one of the accused. Before P.W.2 and others could reach the spot, A2 and others caught hold of the deceased and A1 stabbed him. From this, it cannot be said that there was no intention or motive for any of the parties to kill the deceased. In fact it was the deceased, P.Ws.1 and 2, who chased the deceased and others. Only after one of the accused was apprehended, they retaliated to protect themselves. Apart from that, it is also to be noted here that P.W.3-the Doctor refers to only one stab injury in the stomach of the deceased. If really, there was an intention to cause the death, definitely, the accused would have caused more injuries. Further, there was no intention to cause the death of the deceased, and as it cannot

also be said that accused shared any common intention, and in view of the version of P.W.2, who is eyewitness to the incident, that it was only A1, who caused the death, it cannot be said that A2 had any common intention to cause the death of the deceased. Hence, the conviction against A2 for the offence punishable under Section 302 read with Section 34 IPC, is set aside.

14. Coming to the role of A1 in the incident, it is to be seen that, A1 along with others came there to commit theft of fish from the tank and when the deceased and P.W.2 saw the accused party entering into fish tank, they chased them and in that process, A1 was apprehended, thereafter, the other accused caught hold of the deceased and then A1 stabbed the deceased. In the absence of any animosity between both the parties and in the absence of any intention to cause death, definitely, it cannot be said that the act of A1 amounts to an offence of murder, but definitely, it can be said that he has intention to cause such bodily injury likely to cause the death of the deceased.

15. In ***Shivappa Buddappa Kolkar @ Buddppagol v. State of Karnataka and others***¹, the Apex Court dealt with a situation where a single blow was given by the accused with an axe on the head of the deceased, leading to instantaneous death. In the facts of the said case, the Apex Court convicted the accused under Section 304 Part II IPC, and not under Section 302 IPC.

¹ 2005 SCC (CrI.) 93

16. In ***Indrasan v. State of U.P.***² the Apex Court held as under:

“11.....When on the very next day morning i.e. 14.10.1979, the accused-appellant saw the face of the deceased he simply picked up his lathi and with that gave one blow on the head of the deceased. The said blow was so forceful that as a consequence of which the deceased died within an hour and before he could be taken to the hospital. There is a direct nexus between the blow of lathi and death of the deceased which is immediately caused after giving the blow.

17. We, therefore, are of the considered opinion that although it is a case of culpable homicide not amounting to murder, but considering the nature of the injuries which was caused on a vital part of the body, we are of the considered view that there was intention on the part of the accused-appellant to cause death of the deceased.

13. We, therefore, alter the conviction of the appellant from [Section 302, IPC](#) to [Section 304](#) Part I IPC.”

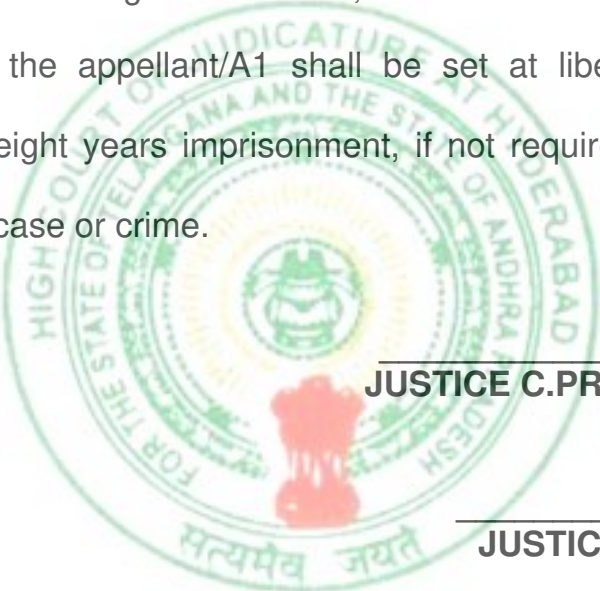
17. Having regard to the judgments of the Apex Court referred to above and taking into consideration the totality of the facts in issue, the offence alleged against A1 can be scaled down from Section 302 IPC to Section 304-I IPC and for the altered conviction, the appellant is sentenced to imprisonment for a period of eight years. As far as the material objects are concerned, the order passed by the learned Sessions Judge holds good.

18. In the result, the Crl.A.No.949 of 2012 is partly allowed. The conviction and sentence recorded against the appellant/A2 for the offence punishable under Section 302 read with Section 34 IPC vide judgment, 28.03.2012 in S.C.No.332 of 2011 on the file of III Additional Sessions Judge (Fast Track Court), Khammam, is set aside and he is

² (2009) 14 SCC 532

acquitted for the said offences. Consequently, the appellant/A2 shall be set at liberty forthwith, if he is not required in any other case or crime.

The conviction and sentence recorded against the appellant/A1 for the offence punishable under Section 302 read with Section 34 IPC vide judgment, 28.03.2012 in S.C.No.332 of 2011 on the file of III Additional Sessions Judge (Fast Track Court), Khammam, is altered to one under Section 304-I IPC. For the altered conviction, the appellant is sentenced to imprisonment for a period of eight years. The period of remand undergone by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/A1 shall be set at liberty forthwith on completion of eight years imprisonment, if not required in connection with any other case or crime.



JUSTICE C.PRAVEEN KUMAR

JUSTICE N. BALAYOGI

19th December, 2017
sj