

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

CRIMINAL APPEAL No.54 of 2011

Between:

Kotaparthi Jogayya

..Appellant

And

The State of Andhra Pradesh,
represented by the Public Prosecutor, Hyderabad

..Respondent

JUDGMENT PRONOUNCED ON : 10th July, 2017

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

1. Whether Reporters of local
Newspapers may be allowed
to see the Judgments? : yes/no

2. Whether the copies of
judgment may be marked to
Law Reporters/Journals? : yes/no

3. Whether their Ladyship/Lordship
wish to see fair copy of the
Judgment? : yes/no

C.V.NAGARJUNA REDDY, J

M.S.K.JAI SWAL, J

* THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

+ CRIMINAL APPEAL No.54 of 2011

% 10.07.2017

Kotaparthi Jogayya

..Appellant

Vs.

\$

The State of Andhra Pradesh,
represented by the Public Prosecutor, Hyderabad

..Respondent

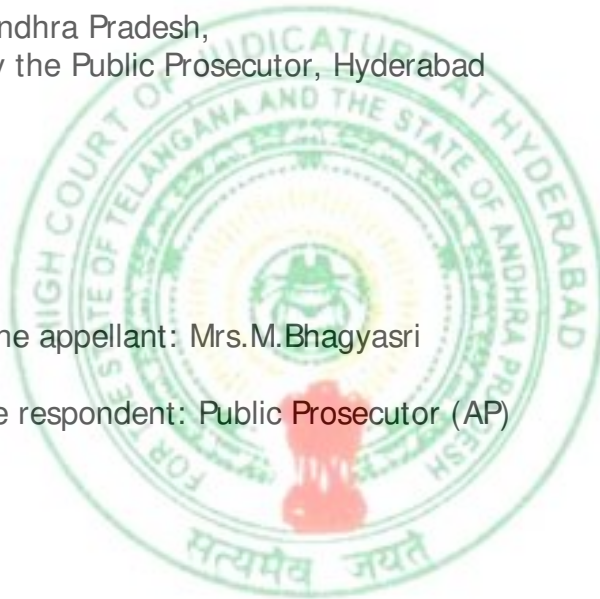
! Counsel for the appellant: Mrs.M.Bhagyasri

Counsel for the respondent: Public Prosecutor (AP)

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> Head Note:

? Cases referred:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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Counsel for the appellant: Mrs.M.Bhagyasri

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal arises out of judgment, dated 03.12.2010, in Sessions Case No.170 of 2010 on the file of VIII Additional District and Sessions Judge (Fast Track Court), Visakhapatnam, whereby he has convicted the sole accused therein, who is the appellant in this appeal, for the offence punishable under Section 302 I.P.C. and sentenced him to suffer rigorous imprisonment for life and also to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one month.

2. The case of the prosecution is briefly stated hereunder:

The deceased was the wife of the brother of the appellant. There was a dispute between them regarding the share of joint tamarind produce for ten years prior to the occurrence. During the life time of the husband of the deceased, the appellant used to get his share of produce and after her husband's death, the deceased stopped giving the appellant, his share in tamarind produce. The appellant requested the deceased to pay his share in tamarind produce several times, but the latter bluntly refused to give share to him. Due to this reason, the appellant bore grudge against the deceased and decided to end her life and was waiting for an opportunity in this regard. The appellant thought that if he kills the deceased, he will become the sole owner of the tamarind trees.

On 28.07.2010 at 12.00 hours, the deceased went to the hut of P.W.1, the appellant also reached there and both of them decided to stay at the house of P.W.1 during that night as the latter was a close blood relative of both these persons. At around 8.00 p.m. on that night, some discussion took place between the appellant and the deceased regarding the share of tamarind produce. The appellant picked up a country wooden stump (M.O.1), beat the deceased on her chest and also pressed

her chest causing several internal injuries. P.W.1 tried to intervene, but he could not prevent the appellant from causing injuries to the deceased who succumbed to the injuries.

On 30.07.2010 at about 8.00 p.m., P.W.1 came to the Police Station and presented a report to P.W.7. P.W.7 registered Ex.P-7 - F.I.R. P.W.8 took up further investigation, during the course of which, he examined the witnesses and recorded their statements in detail. He also visited the scene of offence and prepared Ex.P-8 - the rough sketch of the scene of offence, and also the observation report in the presence of the mediators - P.W.4 and L.W.9 – Surra Thamayya. He seized M.O.1 – the wooden stump under the cover of the mediators report, held inquest over the dead body of the deceased in the presence of P.W.4 and L.Ws.10 and 11 – Surra Ramu and Surra Sriramulu and sent the dead body of the deceased to P.W.6 for autopsy. On 31.07.2010, P.W.8 arrested the appellant in the presence of the mediators - P.W.4 and L.W.9 under the cover of Ex.P-4 mediators report, recorded the confessional statement of the appellant and he was subsequently remanded to judicial custody. P.W.5 took photographs of the scene of offence and the dead body of the deceased and L.W.13 – Mrs.D.Satyavathi recorded the statements of P.Ws.1 and 2 and L.Ws.3 and 4 – Kotaparthi Latchayya and Silpajenni Sanyasi. P.W.6 – the Medical Officer, who conducted autopsy over the dead body of the deceased, issued Ex.P-6 post mortem examination report, in which, he opined that the deceased might have died due to the blunt injury on the chest and abdomen. After completion of investigation, P.W.8 filed charge sheet. It is stated in the charge sheet that during the investigation, it revealed that the appellant brutally murdered the deceased on the pretext that the

latter did not give his share in tamarind produce, with an intention to become the sole owner of twenty tamarind trees.

3. As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws.1 to 8, marked Exs. P-1 to P-8 and produced M.O.1 wooden stump. On behalf of the appellant, no evidence was adduced. On appreciation of the oral and documentary evidence, the Court below has disposed of the sessions case in the manner as mentioned above.

4. Mrs.M.Bhagyasri, learned counsel for the appellant, has argued that the evidence of P.W.1 suffers from serious contradictions and that therefore, the same, which constitutes the sole basis for the Court below for convicting the appellant, is not reliable. She has further argued that though the prosecution has come out with the theory of the appellant having the intention to do away with the life of the deceased in order to become the sole owner of twenty tamarind trees, it failed to prove the said allegation. The learned counsel has alternatively submitted that from the evidence of P.W.1, it is clear that the deceased was the offender as she, at first, tried to attack the appellant with M.O.1 and thereupon, the appellant appeared to have caused injuries to the deceased in a grave and sudden provocation and that therefore, the Court below has committed a serious error in convicting the appellant for the offence punishable under Section 302 I.P.C.

5. The learned Public Prosecutor (AP) has tried to support the judgment of the Court below.

6. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the evidence on record.

7. Since P.W.1 is the relative of both the appellant as well as the deceased, he shall be considered as an independent witness and his evidence appears to be natural. It is clear from his evidence that both the appellant and the deceased stayed in his house during the night on 28.07.2010; that during that stay, an altercation appeared to have developed between the appellant and the deceased and also between the deceased and the witness on the issues of sharing the tamarind produce with the appellant and a share in the price of goat belonging to and sold by the deceased as the goat was reared by the witness. It is in the course of these arguments that the deceased tried to attack the appellant with M.O.1 and in that process, the appellant evidently snatched M.O.1 from the deceased and caused injuries to her. A careful perusal of the deposition of P.W.1 does not reveal any serious contradictions as submitted by the learned counsel for the appellant. On the contrary, his evidence reveals that the deceased tried to attack the appellant with M.O.1 and in that process, the appellant apparently snatched M.O.1 from the deceased and caused injuries to her. No suggestion was put to P.W.1 in order to prove that either he had any enmity with the appellant or that he was cited to unduly support the prosecution version. If we carefully scan through the evidence of P.W.1, it is clear that P.W.1 also must have had grievance against the deceased as the latter refused to pay P.W.1 his share in the proceeds derived by the deceased by the sale of the goat reared by P.W.1. Therefore, the possibility of P.W.1 deposing against the appellant is ruled out.

8. P.W.6, the Doctor, who conducted autopsy and issued Ex.P-6 post mortem certificate, deposed that there was only one external injury of 20 X 10 cms present on the mid chest and four internal fractures, which were stated to be corresponding with the external injury observed by him and

that there is a possibility of such injuries being caused if M.O.1 was forcibly pressed on the deceased or she was attacked with the said object. The medical evidence, thus, fully corroborates with the evidence of P.W.1. From this material, we have no hesitation to hold that the appellant caused the death of the deceased. Hence, we do not find any merit in the first submission of the learned counsel for the appellant.

9. As regards the alternative submission of the learned counsel for the appellant, as discussed above, P.W.1 categorically stated that the deceased started attacking the appellant initially with M.O.1 and the appellant obviously on the sudden provocation given by the deceased, caused one external injury to the deceased on her chest with the same weapon after snatching it from the deceased. Indeed, the confessional statement of the appellant recorded by the Police before the mediators fortifies this conclusion of ours. The appellant stated that when he questioned the deceased as to why she has not been paying his share in tamarind produce as he has a right therein, the deceased tried to hit him with a wooden stump and he escaped from the attempt made by the deceased, snatched the wooden stump from her and he tried to poke the deceased on the chest but it went apart, whereupon, he gave a strong blow on the chest of the deceased and pressed her chest with the wooden stump. He further stated that P.W.1, who was present at the scene, immediately snatched away the wooden stump from his hands. Thus, the confessional statement of the appellant clearly shows that the appellant did not have the intention of causing the murder of the deceased. He, obviously, reacted to the situation that has suddenly emerged due to the sudden provocation given by the deceased by trying to beat him with the wooden stump. The fact that there was only one external injury supports our conclusion that the appellant did not have the intention of killing the

deceased. Therefore, we are of the opinion that the act committed by the appellant falls within exception No.1 of Section 300 I.P.C attracting Section 304 Part II I.P.C. and accordingly, he is liable to be convicted for the offence punishable under Section 304 Part II I.P.C. As regards the sentence, we feel that interests of justice would be met if the appellant is sentenced to suffer rigorous imprisonment for seven years.

10. In the result, the Criminal Appeal is partly allowed. The conviction imposed and sentence recorded against the appellant in judgment, dated 03.12.2010, in Sessions Case No.170 of 2010, on the file of VIII Additional District & Sessions Judge (Fast Track Court), Visakhapatnam, for the offence punishable under Section 302 I.P.C. are modified to that for the offence punishable under Section 304 Part II I.P.C. and the appellant is sentenced to suffer rigorous imprisonment for seven years. The appellant shall, accordingly, be set at liberty as and when he completes the modified sentence of imprisonment and if he is not required in any other case(s) or crime(s). We, however, confirm the fine amount imposed by the Court below.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

10th July, 2017

Note: L.R. copies to be marked.
(B/o)
GHN

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL



CRIMINAL APPEAL No.966 of 2010

Dated 04th April, 2016

GHN

