

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

CRIMINAL APPEAL No.66 OF 2012

Between:

Ambavaram Narayana Reddy .. Appellant

AND

The State of Andhra Pradesh .. Respondent

DATE OF JUDGMENT PRONOUNCED: 24-03-2018

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers Yes / No
may be allowed to see the Judgments?
2. Whether the copies of judgment may be Yes / No
Marked to Law Reporters/Journals.
3. Whether Their ladyship/Lordship wish Yes / No
to see the fair copy of the Judgment?

A. RAMALINGESWARA RAO, J

A. SHANKAR NARAYANA, J

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

CRIMINAL APPEAL No.66 of 2012

JUDGMENT: (per Hon'ble Sri Justice A.Shankar Narayana)

The accused-appellant herein, aggrieved by the conviction recorded under Section 235 (2) Cr.P.C. for the charges punishable under Sections 307 and 302 IPC inflicting sentence of Rigorous Imprisonment for ten years for the charge under Section 307 IPC with fine of Rs.3000/- with default sentence of imprisonment for life for the charge under Section 302 IPC with a fine of Rs.5000/-, preferred the present Criminal Appeal under Section 374 (2) Cr.P.C.

2. The aforesaid conviction was recorded by the learned I Additional Sessions Judge, Kadapa in S.C.No.220 of 2011 on 21.09.2011. The accused is undergoing sentences of imprisonment inflicted on him.

3. We have heard Smt.P.Suhasini, learned Legal Aid Counsel appearing for the accused, and the learned Public Prosecutor appearing for the State of Andhra Pradesh. We would like to advert to the submissions made by both, a little later having referred to certain basic facts.

4. The prosecution came up with the aforesaid charges against the accused stating that the accused married P.W.1, daughter of the deceased-Smt.Basireddy Chennamma, about

twenty years prior to the date of the incident and they lived happily for about five years. Out of their wedlock two sons were born and one son was studying Engineering at the relevant time in Kurnool District and the other is working at a stone crusher machine near Kalasapadu village. The prosecution story further reveals that the accused, five years after their marriage, started consuming alcohol and thus, addicted to it and he was suspecting the fidelity of P.W.1 and thereby used to abuse her and beat her.

5. While the things thus stood, in the year 2007, it appears that the accused quarrelled with two of the prosecution witnesses i.e. P.W.5 and one Sri Polireddy in connection with which there was a crime registered against him vide Cr.No.55/2007 for the offence punishable under Section 324 r/w 34 IPC. Thereafter, in the year 2008, on the allegation that the accused attempted to murder P.W.1, the offences punishable under Sections 498-A, 324 and 307 IPC were also clutched against him by registering the crime on the complaint of P.W.1. However, both the cases ended in acquittal. Thereafter, the present incident came into picture.

6. The accused continued suspecting the fidelity of his wife and therefore, he planned to kill her at some time or the other. It is also stated by the prosecution that the accused used to threaten his wife to kill in case she does not change her behaviour *in spite* of his earlier warnings and that

culminated into P.W.1 communicating the same to her mother, who is the deceased herein, and her brother-P.W.2 on which the deceased and P.W.2 went to her house at about 6.00 p.m. with a view to discuss with the accused and patch up the differences between them but the accused was not available at the house.

7. The prosecution story further reveals that the accused, having learnt that the deceased and P.W.2 came to their house, grew wild and he returned home at 6.30 p.m. armed with a pestle and having found P.W.1 working outside her house went to her and uttering that despite several warnings she did not change her behaviour and moreover, she called her mother and her elder brother to his house and expressing that he will kill her then itself and uttering so he beat P.W.1 with pestle on her head, back and right elbow causing bleeding injuries and when she raised cries, her mother intervened and then the accused abused her in filthy language and dealt blow with pestle on her head and neck resulting in her instant death.

8. The prosecution alleges that P.Ws.2 and 3, who witnessed the occurrence, tried to catch the accused, but by threatening them to kill if they intervene, the accused fled away from the scene of occurrence carrying away the pestle also. P.W.4-Sri K.Nagasubba Reddy, who witnessed the incident, called 108 ambulance and P.W.1 and the deceased

both were shifted to Government hospital, Badvel, where P.W.7-doctor treated P.W.1 but, however, the mother-in-law of the accused was declared dead. Then P.W.7 sent a medico-legal case intimation to P.W.9, who authorised P.W.8 to visit the hospital and to resort to do necessary action on which P.W.8 went to the hospital and there he reduced the statement of P.W.1 into writing as in Ex.P1 and sent the same to P.W.9 basing on which First Information Report-Ex.P8 was registered and he handed over the C.D. file to the Inspector of Police-P.W.10.

9. During the course of investigation, P.W.10, having observed due formalities of visiting the scene of occurrence, conducting panchanama in the presence of mediators, holding inquest over the dead body of the deceased, arrested the accused, recorded his confessional statement and laid charge sheet alleging the aforesaid offences against the accused.

10. The learned I Additional Sessions Judge, having examined the accused for the charges under Sections 302 and 307 IPC, proceeded with trial for the reason that the accused pleaded not guilty and claimed to be tried.

11. In order to bring the guilt of the accused to his home, the prosecution altogether examined ten witnesses-P.Ws.1 to 10 and exhibited thirteen documents-Exs.P1 to P13 besides

exhibiting the material objects-M.O.Nos.1 to 7, which are detailed in the appendix of evidence of the judgment rendered by the trial Court.

12. The learned trial Judge, deliberating on the evidence on record let in by the prosecution in assessing whether the accused caused such injuries leading to the death of his mother-in-law and also injuries sustained by P.W.1, has extracted the evidence of P.Ws.1 to 5 and on his analysis, keeping in view the answers given by P.Ws.1 to 5 in their cross-examination, arrived at the conclusion that the evidence of P.Ws.1 to 5 would indicate that the accused was the person who dealt pestle blows on P.W.1 and the mother-in-law of the accused and on account of the said blows only the deceased died. The learned trial Judge also arrived at the conclusion that it was a homicidal death in view of the evidence of the Medical Officer-P.W.7. Having found that the evidence of P.Ws.1 to 5 corroborates one another in all material particulars in the direction of proving the attack on P.W.1 and the deceased by the accused and also believing the recovery of weapon of offence and having found that nothing is brought out in the evidence of P.Ws.1 to 5 to view their evidence with suspicion or to discredit their testimony, held that the prosecution proved both the charges alleged against the accused beyond all reasonable doubt and thereby

recorded conviction and inflicted sentences as
aforementioned.

13. Turning to the submissions made by the learned Legal Aid Counsel appearing for the accused, the learned Legal Aid Counsel would submit that the evidence of P.Ws.1 and 2 is highly suspicious and at any rate the evidence on record would not clinchingly establish that the accused was the person who attacked both P.W.1 and the deceased and caused the death of the deceased. The main submission of the learned Legal Aid Counsel has been that even if this Court believes the attack on the deceased, there has been only one pestle blow and there was no intention at all on the part of the accused to kill the deceased and, therefore, it is a case where only knowledge of causing death of the deceased can be imputed to the accused but not with the intention to kill the deceased and thereby sought to modify the conviction recorded for the charge under Section 302 IPC to that of Section 304 Part II IPC.

14. Concerning the charge under Section 307 IPC so far as the injuries caused to P.W.1 by the accused, the learned Legal Aid Counsel would submit that the acts of the accused can be brought down to Section 326 IPC rather than Section 307 IPC.

15. Per contra, the learned Public Prosecutor would strongly resist the submissions made by the learned Legal Aid Counsel contending that there is convincing evidence on record to show that there has been intention on the part of the accused in causing the death of the deceased since the evidence of P.Ws.1 to 3 would clearly show that when the deceased tried to intervene at the time when the accused dealt pestle blows on P.W.1, he, even uttered that if she interferes he would not hesitate to kill her also. Thus, the learned Public Prosecutor intends to impute intention to the accused to kill the deceased and, therefore, according to him the acts of the accused so far as the charge under Section 302 IPC is concerned can only be brought down to Section 304 Part I IPC but not 304 Part II IPC. This has been the only controversy between the parties.

16. Turning to the evidence on record, on our independent examination of the evidence on record, we find nothing in the cross-examination of P.Ws.1 to 5 that they were actuated by any ill-will or false motive to implicate the accused for the charges alleged against him. There is no need to once again refer to the evidence of P.Ws.1 to 5 minutely. Absolutely neither any contradictions nor any omissions amounting to material contradictions have been elicited by the learned counsel appearing for the accused before the Court below. In such an event, we have no hesitation to hold that the

evidence of P.Ws.1 to 5 is sufficient to prove the guilt of the accused for the charge under Section 307 IPC, in causing injuries to P.W.1.

17. Not only the evidence of P.W.1 is corroborated through the evidence of P.Ws.2 to 4 but also the medical evidence on record through P.W.7 which clearly indicates that the description of injuries spoken to by P.W.1 on her person received in the hands of the accused were spoken to by P.W.7 in his evidence and also finds place in the wound certificate issued by P.W.7 marked as Ex.P.5. Therefore, to the extent of conviction of the accused for the charge under Section 307 IPC is concerned, unhesitatingly we hold that the prosecution proved the said charge beyond all reasonable doubt and, therefore, we incline to confirm the finding recorded by the learned trial Judge convicting the accused for the charge under Section 307 IPC.

18. Turning to the charge under Section 302 IPC, we just would like to refer to the evidence on record in assessing whether the case falls either under Part-I or Part-II of Section 304 IPC. What all P.W.1 asserted in her chief-examination has been that when she fell down, having received injuries on her person in the hands of the accused, her mother intervened and the accused shifted towards her and beat her with the pestle on her head. She sustained bleeding injury on her head. P.W.2 also asserts on the same lines as asserted by

P.W.1 and so also P.W.3. The assertion of P.W.4 is not an exception and it also runs on the same lines. Though, P.W.5 attempted to prove himself as an eye witness, he cannot be treated as an eye witness for the reason that in the cross-examination he did admit that he did not witness the occurrence when the accused beat the deceased with M.O.1-pestle and he only stated that he heard about it. Nothing much is deliberated by the learned counsel for the accused nor by the learned Public Prosecutor on this answer given by P.W.5 in his cross-examination. It is no doubt true P.Ws.1 to 4 did assert that the accused, leaving P.W.1 after dealing blows, directed himself to attack the deceased and beat her when she tried to intervene. But, however, the evidence of P.W.1 to some extent casts some doubt since in her cross-examination, she gives an answer that she lost consciousness and fell on ground and by the time she regained consciousness she was in the hospital. So, keeping in view, the fact that the accused did not entertain the intention to kill the mother-in-law right from the beginning and his intention was only to kill his wife, suspecting her fidelity, it is difficult to accede to the submission of the learned Public Prosecutor that the accused intended to kill the deceased when he attacked with pestle on the head of the deceased. Since a single blow caused the instantaneous death of the deceased, in our considered view, the said act would attract the ingredients of part-II of Section 304 IPC. Therefore, we have

no hesitation in arriving at that and the learned trial Judge, somehow, overlooked this particular aspect. Hence, to the extent of modifying the charge from Section 302 IPC to Section 304 Part-II IPC, we are inclined to do so and, therefore, we acquit the accused for the charge under Section 302 IPC, and convict him for the offence punishable under Section 304 Part-II IPC.

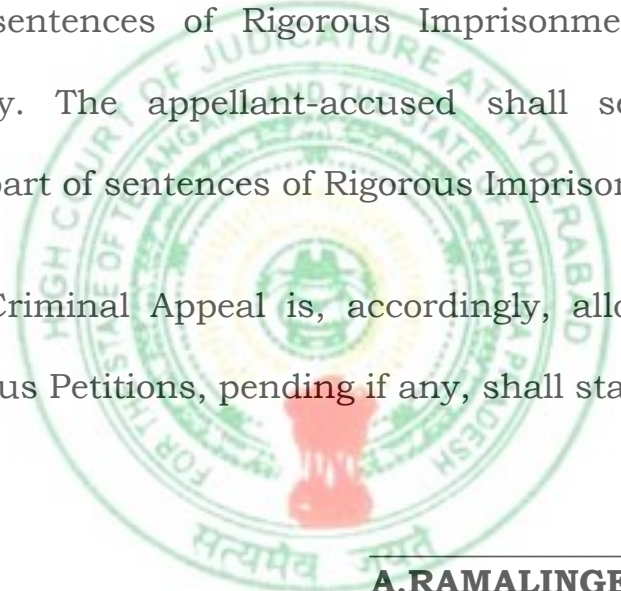
19. Turning to the sentence of Rigorous Imprisonment of ten years inflicted for the charge under Section 307 IPC, keeping in view, the conduct of the accused that can be gathered from the fact that even earlier he attempted to kill P.W.1, but he was acquitted, we are not inclined to reduce the sentence of Rigorous Imprisonment for ten years inflicted on him by the learned trial Judge. We are of the opinion that it would meet the ends of justice and, therefore, we confirm the same.

20. The punishment provided for the offence under Section 304 Part-II IPC is with imprisonment which may extend to ten years or with fine or with both. Keeping in view, the conduct of the accused as aforementioned, we are inclined to inflict the sentence of Rigorous Imprisonment for ten years.

21. Accordingly, the conviction for the charge under Section 307 IPC and sentence of Rigorous Imprisonment for

ten years and fine of Rs.3000/- in default of payment to suffer Simple Imprisonment for six months for the charge under Section 307 IPC inflicted on the accused are confirmed. As aforementioned, we acquit the accused for the charge under Section 302 IPC and convict him for the offence punishable under Section 304 Part-II IPC and sentence him to suffer Rigorous Imprisonment for ten (10) years and to pay a fine of Rs.5,000/- (rupees five thousand only), and, in default to suffer Simple Imprisonment for six (6) months. Both the sentences of Rigorous Imprisonment shall run concurrently. The appellant-accused shall serve out the remaining part of sentences of Rigorous Imprisonment.

22. The Criminal Appeal is, accordingly, allowed in part. Miscellaneous Petitions, pending if any, shall stand closed.



A.RAMALINGESWARA RAO

A.SHANKAR NARAYANA,J

24th March, 2018
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