HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

AND

HON'BLE SRI JUSTICE M.GANGA RAO

CRIMINAL APPEAL No.819 OF 2013

JUDGMENT: (*Per* Hon'ble Dr. Justice B.Siva Sankara Rao)

1. The sole accused of Crime No.18 of 2012 of Khammam III Town P.S., registered on the report of Marri Anjali Devi, daughter of the deceased and accused, who subsequently died, dated 20.02.2012, at about 07:00 p.m. from the Police final report completing the investigation in P.R.C. No.20 of 2012 taken cognizance for the offence punishable under Section 302 I.P.C. by the learned committal Magistrate, from which the case committed to the Court of Session, allotted Sessions Case No.285 of 2012 by the Principal Sessions Judge, Khammam. After framing of the charge for the said offence and when explained the accused since pleaded not guilty and claims to be tried put to trial and after trial, from the evidence of P.Ws.1 to 8 and Exs.P-1 to P-11 and M.Os.1 to 4, with no independent defence evidence, convicted the accused by judgment, dated 14.08.2013, for the offence under Section 302 I.P.C. to undergo life imprisonment with fine of Rs.200/-, without mention of default sentence, mistakenly, and by impugning the same, present Appeal is filed by the accused with the contentions in the grounds of Appeal *vis-à-vis* the submissions by the learned counsel for the appellant/accused that, the trial Court's conviction judgment is contrary to law, weight of evidence, and probabilities of the case; failed to observe that there is no direct evidence to the prosecution case; failed to see that there is no evidence to say accused harassed the deceased; failed to see that the evidence of the prosecution

witnesses riddled with contradictions and inconsistencies and not reliable, failed to see that the M.O.1 is planted by creating a so called confession under Section 27 of the Indian Evidence Act, 1872 and the conviction is un-sustainable and the trial Judge also did not properly consider the factum of the prosecution evidence speaks the accused was intoxicated and there is no proof regarding the quarrels and no motive and material witnesses not examined and to show the alleged quarrels and disputes between the couple (accused and deceased), no previous reports and registration of crimes, if any, filed, and thereby there is no case within the meaning of Section 300 I.P.C. to attract the offence under Section 302 I.P.C., and thereby sought for setting-aside conviction judgment and to acquit the accused by allowing the Appeal.

2. The learned Public Prosecutor supported the trial Court's judgment saying the evidence of P.Ws.1 and 2 categorical about the deceased with axe fleeing away, even PW.1 tried to catch hold of him but in vain, when he is fleeing away after killing the deceased with the axe from the accused and that evidence is consistent, no other than the children of the deceased and accused, and in the cross-examination there is nothing to say any motive for their false implication of the father, the accused, but for truth and the evidence of P.W.3 is otherwise consistent with the evidence of P.Ws.1 and 2 *supra* and it is corroborated by the other evidence on record including the medical evidence and on the axe human blood is detected as per the Ex.P-11 - R.F.S.L. report by the scientific examiner and P.M.E. report also correlates the possibility of the injuries by use of M.O.1 - axe *i.e.,* deposed by P.W.7, the doctor, and thereby for this Court there is nothing to interfere either with the conviction judgment or the

quantum of sentence including the fining for the offence under Section 302 I.P.C. and sought for dismissal of the Appeal.

3. Heard both sides at length and perused the entire material on record.

4. Before discussing the facts, this Court is conscious of the legal position as well as the law laid down by the Three Judge Bench judgment of the Apex Court in ***Abdul Razaq Vs. Nanhey and others***[1] that once the conviction and sentence imposed by the trial Court holding the witnesses deposed not interested and there is nothing to show any motive for false implication, setting aside the conviction by the High Court by sitting against by pointing out minor discrepancies is not proper. However, the Court cannot ignore the factum from the settled law that being the Court sitting against the conviction judgment in the First Appeal entire material is at large and duty bound the appreciation of the entire facts afresh in arriving an independent conclusion in then comparing to the conclusions arrived by the trial Court are sustainable or not either to uphold or modify, as the case may be, with cogent reasons.

5. Before proceeding further on factual matrix, coming to the other settled legal position, the Constitution Bench of the Apex Court in ***M.G.Agarwal Vs. State***[2] referring to Sections 3 and 60 of the Indian Evidence Act, particularly, at Para 18, held that it is the well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made basis for an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the

[1] AIR 1984 SC 452
[2] AIR 1963 SC 2000

circumstances proved in the case are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. But, in applying this principle, it is necessary to distinguish between facts, which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The Court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.

6. It is also held in Para 32 of the Apex Court's expression in ***Usman Main Vs. State of Bihar***[3] that where a case is rested wholly on circumstances from which an inference of guilt is sought to be drawn, it must be on the circumstances taken cumulatively, complete a chain with no escape from the conclusion and within all human probabilities of the crime was committed by the accused and none else.

7. So far as the proof in a criminal case concerned, it is proof beyond reasonable doubt and not proof beyond doubt is well settled from the expression of the Apex Court in ***Yogesh Singh Vs.***

[3] (2004) 2 ALD Crl.916 SC

Mahabeer Singh[4], particularly, from Paragraphs 15 to 18 that the cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. ……

8. So far as the benefit of doubt to apply concerned, the Apex Court in ***State of Haryana Vs. Bhagirath***[5] at Paragraphs 7 and 8 observed that the benefit of doubt giving to accused as a mater of abundant caution is not proper. The rule of proof beyond reasonable doubt is nothing but moral certainty of Judge……..Benefit of doubt is not a legal dosage, to be administered at every segment or every portion of evidence or of each witness, but an advantage is to be afforded to accused at the fag end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of accused. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the ranges of a reasonable doubt, of course, the expression "*reasonable doubt*" is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty of the Judge. There is also caution time and again giving by the Apex Court including from the expression in ***State of Punjab Vs. Karnail Singh***[6] that exaggerated devotion to the rule of benefits of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escapes than to

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[4] 2016 (4) R.C.R. (Criminal) 753
[5] 1999 [5] SCC 96
[6] 2003 (11) SCC 271 Para 12

punish an innocent. Letting guilty escape is not doing justice according to law.

9. Taking consideration of these principles, in re-appreciation of the factual matrix in deciding the correctness or otherwise of the findings of the Court below by this Court in Appeal against it, now the points that arise for consideration are:

1. Whether there is homicidal death?

2. If so, whether the accused is responsible for the death of the deceased and, if not, whether the conviction judgment of the trial Court is un-sustainable and liable to be set-aside?

3. If not, whether the conviction judgment of the trial Court for the offence under Section 302 I.P.C. with imprisonment for life and fine of Rs.200/- liable to be altered either under Section 304 Part-I or 304 Part-II of I.P.C., as the case may be?

4. To what result?

10. **POINT Nos.1 to 4**: All these points can be dealt with by common discussion to avoid repetition of facts with reference to law.

11. Ex.P-9 F.I.R. registered by P.W.8 – Police Inspector Ganesh at 07:00 A.M. on 20.02.2012 is the outcome of report under Ex.P-10 by Anjali (later died), the unmarried daughter of the accused and deceased, in setting the law in motion. Said Anjali - the *de-facto* complainant committed suicide within one month after the Ex.P-10 report of the occurrence on same day the homicidal death of her

mother at about 04:30 A.M. or so of 20.02.2012 *i.e.,* within 2½ hours of the occurrence said of the statement in the report of Anjali, in setting the law in motion, is admissible and relevant but for the evidentiary value from accused lost the opportunity to confront and cross-examine with the same and on any other material aspects from non availability, for not a dying declaration within the purview of Section 32(1) of the Evidence Act, though comes either under other provisions of Section 32(1) to (8) or Section 14 of the Evidence Act, at least, besides relevant as statement form part of the same transaction in setting the law in motion immediately with no lapse of time after the occurrence in reporting the same to the Police while the inference is there of the occurrence, within the meaning of Section 6 of the Indian Evidence Act.

12. The expression of Division Bench of this Court in ***Bandela Nagaraju and others Vs. State of A.P***[7] speaks in this regard with reference to the illustration (a) of Section 6 of the Evidence Act, that a declaration made by a witness subsequent to the occurrence is admissible under Section 6 of the Act, provided it can be validly assumed that the existing influence continued. While examining whether the declaration is connected with the fact in issue so as to form part of the same transaction, all the surrounding circumstances obtaining in each case have to be taken into consideration. In that case, it was observed though the conduct of 'D' in not immediately rushing to the Police Station does not give room for the assumption that his declaration was not contemporaneous or that the interval was such as to allow fabrication. The conditions for admissibility of such a statement relevant are the proximity of time and the proximity of the

[7] APLJ 1984 (1) (HC)

police station and continuity of action. The statement contained in Ex.P-1 thereby held satisfies the requirements of Section 6 of the Evidence Act and it is admissible, for that conclusion referred to ***Rex Vs. Christie***[8], where it is laid down categorically that there cannot be any fixed limit of time and each case must depend upon its own facts and circumstances and a circumstance subsequent to the act may be admissible, if it is a part of it and not a mere report of the past occurrence. The expression in ***Christie*** *supra* referred the earlier expression of House of Lords in ***Bedingfield***[9] case that was referred in ***Wigmore's Treatise's*** in 3rd edition Volume VI page 1756 and also ***Sarkar's*** evidence 13th edition page 69. The same was reiterated and confirmed the conclusion though differed on facts by another Division Bench judgment in ***Daravath Kishen Vs. The State***[10], particularly Para 10.

13. Apart from it, P.W.1 is son of deceased and accused and P.W.2 is one of the daughters of the deceased and accused, who were also in the house at the time of the occurrence from their evidence *i.e.,* not even disputed in the cross-examination about their presence in the house by the accused. What P.W.1 deposed is, the deceased, mother of him, died on 20.02.2012 and the accused, father of him, doing fishing and habituated in consuming liquor and was quarreling with his mother and was harassing her for the last three (3) years for money. While so, on 19.02.2012 night at about 09:30 P.M., the accused came to the house and quarreled with the deceased by demanding money for his consuming liquor and the deceased and L.W.1 – Anjali (since died) went to the Women Police Station and

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[8] (1914) AC 545
[9] (1879) 14 Cox CC 341
[10] 1995 (1) ALT (Crl.) 504

lodged a written report against the accused. After that incident, P.W.1, L.W.1, P.W.2 and their maternal grand mother, L.W.4 – Moola Narsamma, slept in the front room of their house and the accused and deceased slept in the back room of the house.

14. It is further deposed that, at the early hours at about 04:30 A.M. on 20.02.2012, they heard cries of their mother (deceased), rushed there and found their mother in unconscious stage in pool of blood and on seeing them, their father, the accused, was escaping with axe and when P.W.1 tried to caught hold of him, he pushed him and ran away with the axe. He also deposed about P.W.2 and L.W.4 witnessed the incident though it is the omission in his statement brought in his cross-examination including to the Investigation Officer - P.W.8 of did not speak in his statement during investigation that P.W.2 and L.W.4 also witnessed. He deposed that M.O.1 is the crime weapon with which the accused ran away at that time *supra*, after killing the deceased. In the cross-examination, he deposed that no cases registered against his father – accused, for the harassment of his mother - deceased, but one case registered, and he cannot give the case number. He denied the suggestion of no incident happened on the night and there was no quarrel between the accused and the deceased and the accused did not consume liquor and not harassed the deceased; also denied the suggestion of accused is a hard working person and spending all his earnings for the benefit of family. He categorically deposed that he is residing in the house at the time of incident and now he is residing with P.W.2, his sister, and brother-in-law at Eluru. He denied the suggestion of himself and his sisters used to insist their father - accused, to transfer the house in the name of brother-in-law, husband of P.W.2, and the accused and deceased did

not accept for the same, and also denied the suggestion of accused left the house as they were insisting him to convey the property on the date of the incident. He also denied the suggestion of himself and other family members conspired to kill the deceased and implicate the accused, to get the property. He also denied the other suggestion of deposing falsehood.

15. What is suggested is the P.Ws.1 and 2 *etc.,* conspired together to kill their mother that too with no motive, that too when property allegedly standing in the name of their father, the accused, from their insisting to transfer the property by their father in the name of the husband of P.W.2. This suggestion is palpable and no way probablises any strong defence to belie the prosecution case, much less the evidence of P.W.1 on his credibility. The fact that he was in the house is even admitted in the cross-examination and he is the natural witness and it is on hearing cries, who was sleeping in the front room and the mother and father sleeping in the back room, he along with others rushed there and found the mother in pool of blood, unconscious, and the accused fleeing away with the axe and even tried to catch hold of him, pushed him by accused and fled away. There is nothing to disbelieve that evidence including from the cross-examination for no any discrepancy with reference to his statements during investigation that could be brought on record, much less any motive for deposing falsehood.

16. With reference to it, coming to the evidence of P.W.2, no other than one of the two daughters of the deceased and accused, for the other daughter, Anjali, who set the law in motion, died one month thereafter by committing suicide as referred *supra*, what P.W.2 deposed is P.W.1 is her younger brother, accused and deceased are

her parents, and her marriage was performed prior to the incident. However, she came to the house of her parents, for delivery, and staying by the time of incident. She deposed that accused used to do fishing and he is habituated in consuming alcohol and quarreling with the deceased for the past three (3) years and was harassing her. She also in corroboration with what P.W.1 deposed of on 19.02.2012 at about 09:30 P.M. their father (accused) came to the house and quarreled with their mother (deceased) by demanding money to consume liquor and threatened her by saying '*Nee Anthu Chustha*' and left the house.

17. No doubt, in the cross-examination of this witness and also the Investigation Officer - P.W.8, it is brought on record of he did not use the words '*Anthu*' in those words '*Nee Anthu Chustha*' but used the words '*Sangathi'* in the words '*Nee Sangathi Chustha*'. There is no contradiction much less any material omission tantamount to contradict therefrom for non production of the exact words as it is not a parrot like story that too from the memory goes from afflux of time and witness need not reproduce exact words as parrot like story. In the further evidence, she deposed that immediately Anjali - L.W.1 since died, and their mother (deceased) went to the Women Police Station and lodged a written report against the accused. She further deposed that after taking dinner, herself and her sister (Anajli died) and P.W.1 and their maternal grand mother, Narsamma *supra*, slept in the front room and her father and mother (accused and deceased) slept in the back room. In the early hours of 20.02.2012 at about 04:30 A.M., they heard cries of their mother (deceased), rushed and found she was unconscious in pool of blood and on seeing them, the accused escaping with axe and P.W.1 tried to catch hold of the

accused but he pushed him and ran away, with the axe. She also deposed that accused axed the deceased on the neck and hand and L.W.1 – Anjali, since died, lodged the complaint and she identified the signature on the said report of Anjali. In the cross-examination, she denied the suggestion of her father is a responsible person and used to spend entire earnings for the benefit of family and father and mother were living cordially, with no quarrels, and also denied the suggestion of she, her brother and sister, and her husband used to insist the deceased and accused to transfer the house in the name of the husband of P.W.2 but they refused and for that reason, on the date of the incident, the accused left the house and also denied the suggestion of they all conspired to implicate the accused in the false case and also denied the suggestion of deposing falsehood at the instance of P.W.1 and also denied the suggestion of L.W.1's signature on the complaint was taken by force, by them, and she did not witness any incident. The evidence of P.Ws.1 and 2 respectively both are independent for not inimical in any way to the accused as accused and deceased are parents and they are the natural witnesses and one is corroborating to the other on all material aspects and once there is nothing to disbelieve and it shows as a ring of truth and the contention that there is no direct evidence to the occurrence is untenable for the above reason of for the presence of the deceased when rushed by the witnesses, who were in the side by room, found the deceased in pool of blood and accused fleeing away with the axe - M.O.1 identified, and even P.W.1 tried to caught hold of him, he pushed him and fled away. This evidence clearly and unerringly pointing out that accused alone had committed the murder of his wife, the deceased. As in similar facts rightly concluded by a Division Bench of Karnataka High Court referring to several expressions of the Apex Court including ***Eradu***

and others Vs. State of Hyderabad[11] and ***Ramesh Vs. State of Karanataka***[12] of where the deceased and accused last seen and accused failed to explain and on their converse raised a false defence as if some other persons might have murdered the deceased when the circumstances brought on record lead to only conclusion that accused alone committed the murder of the deceased and attempted to cause disappearance of evidence by setting fire to body of deceased confirmed the conviction.

18. Apart from that what P.W.3 – Koteswara Rao, deposed is the accused is an alcoholic and he was harassing the deceased, being neighbour to the accused and deceased. To that extent, it is corroborating the evidence of P.Ws.1 and 2 and the contents of Ex.P-1 with reference to the evidence of P.W.8 – Investigation Officer also in this regard. What P.W.3 further deposed is at about 06:00 or 07:00 P.M. on the date of incident, accused quarreled with the deceased; thereafter, they slept in the house and on the early hours heard cries of the deceased and rushed to the house of accused and son of the deceased informed that the accused axed the deceased and found the deceased in pool of blood.

19. This statement of P.W.3 of what for the cries of deceased being a neighbour he rushed to the house of the deceased and accused and informed by son of the deceased, P.W.1, about the accused axing the deceased and he also found the deceased in pool of blood is admissible under Section 8 of the Evidence Act of the conduct of the witnesses, so far as the conduct of P.Ws.1 and 3 both; leave about, it is also forming part of the same transaction within the purview of

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[11] AIR 1956 SC 316
[12] 1995 (1) ALT (Crl.) 510

Section 6 of the Evidence Act. In the cross-examination, P.W.3 deposed of accused was doing fishing and he denied the suggestion of no quarrels between the accused and deceased and also denied the suggestion of Police did not examine, or he is deposing falsehood. There is nothing to discredit his version also in this regard, when his evidence corroborates on material aspects with the evidence of P.Ws.1 and 2, that too being a neighbour, natural and independent witness.

20. Apart from it, the P.W.4 deposed about Ex.P-1 photographs of the dead body at the scene of offence; that is corroborating to the evidence of P.W.8 as to the scene of offence with reference to the evidence of P.Ws.1 to 3 and also the deceased was with injuries and all the evidence establishes deceased met with homicidal death and the factum of deceased met with homicidal death is not even in dispute by accused but for disputing his complicity and presence, even from what is referred and discussed *supra*.

21. Coming to the evidence of P.W.5, he is witness to the scene observation panchanama and inquest panchanama, covered by Exs.P-2 and P-3, and seizure of the bloodstained and controlled earth and bloodstained clothes M.Os.2 to 4 *etc.,* It is only suggested in the cross-examination which he denied of he is a planted witness and deposing falsehood.

22. P.W.6 is witness to the so called disclosure panchamama of accused and discovery of the fact regarding seizure of M.O.1 - axe when disclosed and taken and shown by accused. On 20.02.2012 at about 04:00 P.M. or later thereafter, saying he is called as one of the witnesses along with another L.W.9 - Narasimha Rao to the

apprehension and arrest of the accused and the disclosure and seizure *supra*. The fact deposed by him of accused made a disclosure that he kept the weapon and he can show and led them and produced the same from his exclusive knowledge is admissible under Section 27 of the Evidence Act as fact discovered *i.e.,* also corroborated with the evidence of P.W.8. What P.W.8 categorically deposed in this regard is the accused, after apprehension in the presence of the two mediators *supra*, made a disclosure statement and in that disclosure stated that he can show the axe and led them to the open site situated behind the shop of one Nimmakayala Raju and therefrom he produced from the bushes the M.O.1, that was seized. Though the other facts are not admissible, the state of mind of accused is relevant as a fact discovered under Section 27 of the Evidence Act as laid down by the Apex Court in ***Mohmed Inayatullah Vs. The State of Maharashtra***[13], where it is laid down that four conditions are necessary *viz.,* discovery of a relevant fact in consequence of the information received from accused, the discovery must be deposed to, at the time of receipt of information accused must be in police custody and only '*so much of the information*' as relates distinctly to the fact discovered is admissible and rest is inadmissible.

23. The contention of learned counsel for the appellant/accused that it is an open place recovery is untenable for what he produced is from the bushes lying near to the open place which is behind the shop of Nimmakayala Raju. The accused got exclusive knowledge of the weapon of the offence. That weapon of offence is as stated and referred *supra* from the Ex.P-11 - R.F.S.L. report contained human blood and that weapon of offence is identified by P.Ws.1 and 2 as the

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[13] AIR 1976 SC 483

weapon the accused with which attacked the deceased and fled away, that they witnessed. That is also a corroborative piece of evidence and P.W.7 - Doctor deposed about the four external injuries which are lacerations and fracture of mandible right side at chin region of the deceased and also internal injuries, about conducting of the post-mortem examination report and gave final opinion with R.F.S.L. report saying the death of the deceased was from the multiple injuries and, particularly, injuries to the large blood vessels and also due to shock and hemorrhage, he issued the post-mortem examination report – Ex.P-6 and the R.F.S.L report is Ex.P-7 and final report is Ex.P-8 and he also deposed that M.O.1 weapon which is the axe referred *supra* can cause the injuries.

24. In the cross-examination, what is asked is he did not mention the nature of the weapon in the post-mortem examination report but for that they did not dispute the credibility of the witness. There is nothing to shatter the medical evidence proving the deceased met with homicidal death and those were incised lacerations and fracture of mandible from which the deceased died and those are possibly caused by use of M.O.1 weapon and that M.O.1 weapon was used as per the direct evidence of P.Ws.1 and 2, who also identified the same, and that is seized from the disclosure made by accused from where he concealed as a fact discovered. All the evidence when cumulatively established beyond reasonable doubt, the complicity of the accused to the crime of accused killed the deceased; there is nothing to interfere with the trial Court's conviction judgment in finding him guilty as responsible for the death of the deceased having axed the deceased because of the disputes with the deceased, his wife.

25. Here, it is one of the contentions of the learned counsel for the appellant/accused by placing reliance on the expression of the Division Bench of the Gauhati High Court in ***Mahipal Nath Vs. The State of Assam***[14] saying, during the course of altercation picked up a knife by accused from kitchen of his shop and gave blow on the back of deceased resulting his instantaneous death. The conviction of the trial Court that too when found in the heat of movement and under influence of liquor, conviction of trial Court for the offence under Section 302 I.P.C. is altered to Section 304 Part-II of I.P.C. Here, that decision is not applicable, strictly, for the reason that the injuries are not on the back; it is not under grave and sudden provocation; it is not with intent to kill but for mere knowledge. Here, there is an intention to attack, that too used the axe, which is a deadly weapon, and medical evidence also shows the injury is sufficient to cause death and possible from use of M.O.1 – axe and P.Ws.1 and 2 evidence clearly speaks so also corroborated with P.W.3 neighbour evidence of deceased met with instantaneous death but for to say the accused and deceased led a marital life of nearly 25 years or so and the quarrels between them mainly are from his demanding to part with money for his needs of consuming liquor being alcoholic and it is therefrom from the previous night the altercation took place and deceased and L.W.1 reported to Police against the accused and immediately thereafter accused and deceased slept in one room and other family members slept in other room and the accused in the early hours picked out the axe, which is naturally available in all houses, particularly, in rural areas, being used in agricultural operations, and hacked the deceased. No doubt, there are four injuries, all around the neck region and that too the evidence referred, particularly, of P.Ws.1

[14] 2004 Crl.L.J. 765

and 2 shows accused under intoxication in the previous night and also demanded money to go for further intoxication and altercated and also by placing reliance on the latest expression of the Apex Court in ***Gurwinder Singh alias Sonu Vs. State of Punjab and another***[15], it is a case falls within the exceptions of Section 300 I.P.C., particularly, exception No.4 thereby converted the conviction of life sentence to conviction of life sentence for the offence under Section 302 to 10 years Rigorous Imprisonment by confirming the fine with default sentence for offence under Section 304 Part-I of I.P.C. The aforesaid conclusion of the Apex Court in ***Guruwinder Singh***[15], which refers to other expressions in this regard so also from the settled expression on the scope of Section 300 I.P.C. exception (4) of the Apex Court in ***State of Andhra Pradesh Vs. Wazeer Chand***[16]. Taking into consideration of these facts, the conviction judgment of the trial Court while modifying the sentence under Section 302 I.P.C. to 304-I I.P.C. read with 300 exception (4) I.P.C., by sentencing life imprisonment with fine of Rs.200/- to imprisonment for 10 years and by confirming the said fine with default sentence to undergo simple imprisonment for one month.

26. Accordingly, and in the result, the Criminal Appeal is allowed in part.

27. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall stand closed.

Dr. B.SIVA SANKARA RAO, J

M.GANGA RAO, J

Date: 06-10-2018
Dsh

[15] 2018 (2) ALD (Crl.) 505 (SC)
[16] AIR 1978 SC 350

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

AND

HON'BLE SRI JUSTICE M.GANGA RAO

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

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CRIMINAL APPEAL No.819 OF 2013

(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice B.Siva Sankara Rao)

Date.06-10-2018

DSH