

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CRIMINAL APPEAL No.654 OF 2013

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

Assailing the judgment dated 10.04.2013, passed in S.C.No.447 of 2012 on the file of VI Additional District Judge, Kurnool, wherein the sole accused was convicted and sentenced to suffer imprisonment for life and to pay fine of Rs.500/- in default to suffer simple imprisonment for one year, for the offence punishable under Section 302 IPC, the present appeal came to be filed.

2. The substance of the charge against the accused is that on 21.01.2012, at about 11.00 p.m., near YSR Statue, Allur Road at Nandikotkur, the accused is said to have caused the death of one S.Khaleel of Nandikotkur.

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

(i) PW1 is the brother of the deceased. The accused and the deceased were friends. On 21.01.2012 at about 10.45 p.m., while PW2 was going to his house from the bus stand, he noticed a quarrel between the accused and deceased, in which the accused beat the deceased with a stone twice, as a result of which, he died on the spot. The facts further disclose that on coming to know about the said

incident, PW1 rushed to Nandikotkur and came to know through PW2 and another, that the deceased paid Rs.300/- and got redeemed the cell phone of the accused and when the accused demanded the deceased for return of the cell phone, he refused to give the cell phone, on which the accused picked up a quarrel with the deceased. In the course of the said quarrel, he is said to have picked up a stone and threw it on the head of his brother, due to which he died. At about 11.30 p.m., on the very same day, PW8 the SI of Police, on receiving information about the incident, proceeded to the scene of offence and posted one guard. On the next day at about 07.30 a.m., PW1 went to the police station and lodged a report under Ex.P1, pursuant to which a case in Crime No.15 of 2012 of Nandikotkur Police Station, Kurnool, came to be registered by PW7-the Head Constable, Nandikotkur Police Station. Ex.P6 is the FIR. Thereafter, he along with his staff proceeded to the scene of offence, secured the relatives and conducted inquest over the dead body in the presence of PW5 and another. Ex.P4 is the inquest report. He also prepared a rough sketch of the scene of offence, which is placed on record as Ex.P7. During the said proceedings he seized MOs.1 to 3, one Nokia cell phone with sim card, one lephone mobile, one pair of chappals of the deceased. After completion of inquest, he sent the body for post mortem examination. PW6, the Medical Officer at Community Health Centre, conducted autopsy over the dead body on 22.01.2012

at about 11.50 a.m. and issued Ex.P5 the post mortem examination certificate. According to him, the cause of death was due to hypovolemic shock as a result of injuries sustained to skull and blood loss. PW8 took up further investigation. On 23.01.2012, at about 04.30 p.m., while PW8 was present in his office, he received credible information about the movements of the accused and as such he along with his staff proceeded Pagidala road near paluchani wine shop and arrested the accused. On interrogation, he is alleged to have confessed about the commission of offence.

(iv) After collecting the necessary documents, PW8 filed a charge sheet before the Judicial Magistrate of First Class, Nandikotkur, which was taken on file as PRC No.15 of 2012.

(v) On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.447 of 2012.

(vi) On consideration of material placed on record, the charge as stated above came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

(vii) To substantiate its case, the prosecution examined PWs.1 to 8 and got marked Exs.P1 to P9 and M.Os.1 to 9. Out

of the 12 witnesses examined, PWs. 3 and 4 did not support the prosecution case and were treated hostile by the prosecution.

(viii) After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses, to which he denied, but, however, did not place on record any defence evidence.

4. Relying upon the evidence of PWs.1 and 2, learned Sessions Judge convicted the accused. Assailing the same, the present appeal came to be filed.

5. Learned counsel for the appellant mainly submits that in view of the evidence of PW1 wherein it is stated that the accused and the deceased were friends and as the incident in question is not a premediated one, he would submit that the incident, at the most may fall under Section 304 IPC. Learned public prosecutor opposed the same contending that the findings arrived at by the trial Court requires no interference.

6. As seen from the record, the entire case rests on the evidence of PWs.1 and 2. PW2 is said to be the eye witness to the incident. Before referring to the evidence of PW2, it is to be noted that PW1 in his evidence stated that the accused

and deceased are good friends. PW2 in his evidence deposed that on 21.01.2012 at about 10.45 p.m., while he was going to his house at Nandikotkur, and while he was smoking at Ramana Reddy bunk, he observed a galata between the accused and the deceased. In the course of said galata, the accused is said to have beat the deceased with stone on the head due to which he fell down and died on the spot. From the evidence of PWs.1 and 2, it is clear that both the accused and the deceased were good friends and the incident in question occurred due to a quarrel between the accused and the deceased. The reason for the said incident was also spoken to PW1 by PW2. According to PW1, his enquiries reveal that the deceased paid Rs.300/- and got redeemed the cell phone of the accused. When the accused demanded the deceased for return of the cell phone, he refused to give the same, due to which the accused picked up a quarrel with the deceased and in the course of the said quarrel, the accused picked up a stone and beat the deceased on his head. The post mortem certificate, which is placed on record as Ex.P5, shows six external injuries. Out of six injuries, injury No.6 is on the right hand wrist and fore arm, injury No.2 is on the left middle index finger and injury No.1 which is on the scalp appears to be fatal. Injury Nos.2 to 6 were found to be on different places on the hands of the deceased.

7. The law is well settled that the following ingredients must be established to attract Exception 4 of Section 300 IPC.

(i) There must be no premeditation.

(ii) There must have been a sudden fight upon a sudden quarrel.

8. From the evidence of PWs.1 and 2 and the facts and circumstances of the case, it is clear that there was no mediation and the incident in question took place upon a sudden quarrel. Hence, it is clear that the ingredients to attract Exception 4 of Section 300 IPC are established against the accused and as such we are of the view that the appellant is, entitled to the mitigative protection of Exception 4 and conviction of the petitioner could be scaled down to Section 304 II of IPC.

9. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/accused in the judgment, dated 10.04.2013, in Sessions Case No.447 of 2012, on the file of the Special Judge for Trial of Cases under SC/ST (POA) Act-cum-VI Additional District Judge, Kurnool, for an offence punishable under Section 302 IPC is altered to one under Section 304 II IPC, and the appellant is sentenced to suffer rigorous imprisonment for a period of five years. The period of remand underwent by him during investigation, trial and after

conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case, on completion of five years of rigorous imprisonment, including remissions, if he is entitled to.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

March 08, 2018
vhb

