

HON' BLE SRI JUSTICE A. V. SESA SAI
&
HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CrI.A. No. 978 of 2013

JUDGMENT:- (Per GSP,J)

This Criminal Appeal is arising out of the judgment dated 31.10.2012 in S.C.No. 352 of 2012 passed by VI Additional District and Sessions Judge (FTC), Machilipatnam, Krishna District.

The learned counsel for the appellant is a legal aid counsel appointed by the High Court Legal Services Committee. As he is not present today, Smt.A.Gayathri Reddy, Advocate is requested to assist us in this case on behalf of the appellant. On her acceptance, we have heard her and the learned Public Prosecutor and proceeded to dispose of this case.

The learned counsel for the appellant has mainly submitted that there is evidence with regard to the commission of the offence by the accused.

The learned counsel has mainly contended that the incident occurred out of grave and sudden provocation, as the deceased had provoked the accused which led to the commission of offence by the accused.

We are only on the point as to whether there is grave and sudden provocation which led the accused to commit the offence under Section 302 IPC.

The facts are that Ex.P1 was lodged by PW1. The contents of Ex.P1 reveal that PW1 was a rickshaw puller by profession. On 03.01.2011, at about 11:00 p.m., when PW1 was having his meal, which was brought from Subbaiah Hotel, along with his friends Shaik Mastan Vali @ Chinna (accused) and Gunnapalli Eswar by sitting on the steps of the shop beside hospital of Dhanavatha Chary, a rickshaw puller by name Krishna (deceased), who was taking her daughter in a rickshaw, and on seeing them, the deceased stopped his rickshaw and asked them why they were along with the pick-pocket, Mastan Vali. The deceased stated that he was going on some work and he would return after leaving his daughter. Then again, at 12'o clock mid-night, he came to the accused and caught hold of his collar and asked him how many times he had committed pick-pocketing, and fisted him saying that he had not only committed pick-pocketing from him, but also from others, and an altercation took place between the accused and the deceased. The accused took the baby seat of the rickshaw (a wooden plank) and beat on the head of the deceased. The deceased fell down having received head injury and died. The accused dragged the body

of the deceased to the road side. PW1 was an eye-witness to the incident, who goes to the police station and gives a report.

The learned counsel for the appellant placing reliance on Ex.P1 submitted that there was an altercation between the appellant and the deceased on the fateful night. The deceased provoked the accused stating that the accused was a pick-pocket, on that the accused got wild. There was an altercation between them. It is argued that the offence may fall under Section 304 Part-II IPC as the ingredients under Section 302 IPC are not present.

The learned Public Prosecutor has also fairly submitted that this case falls under Section 304 Part-II IPC as due to sudden provocation of the deceased, the accused had committed the offence.

It is appropriate to refer to Section 304 IPC.

Section 304 IPC reads as under:

“304. Punishment for culpable homicide not amounting to murder:

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but

without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

To invoke the provision under Section 304 Part-II IPC, we have to fall back on the exceptions given under Section 300 IPC.

Section 300 IPC provides four Exceptions. Exception 4 reads as under:

“Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner”.

The version of the prosecution clearly reveals that there was a sudden provocation made by the deceased. The altercation between the accused and the deceased led to the commission of the offence by the accused. There was no premeditation in the commission of offence. The deceased had provoked the accused. The accused had taken a wooden plank in his rickshaw and beat the deceased on his head. Therefore, the offence falls under Exception 4 of Section 300 IPC which amounts to culpable homicide not amounting to murder.

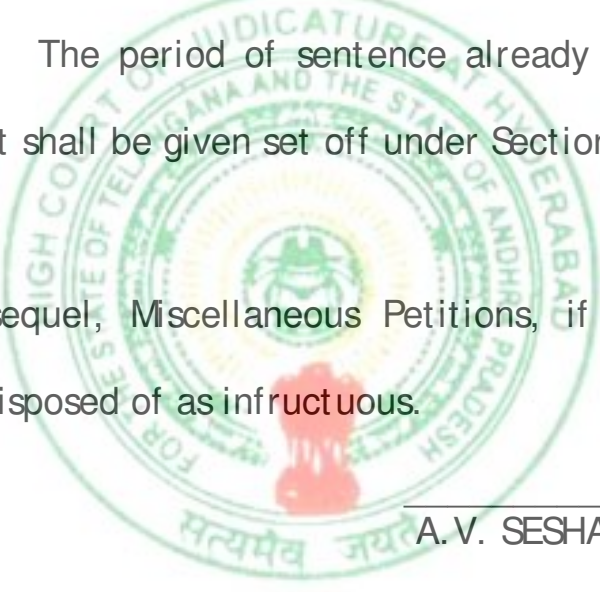
We are convinced with the arguments advanced by the learned counsel for the appellant and of the considered view that the accused is liable for the offence under Section 304 Part-II IPC.

We appreciate the learned counsel, Smt.A. Gayatri Reddy, in assisting as *amicus curie* in this case.

In the light of the above discussion, the trial Court judgment is modified accordingly to Section 304 Part-II IPC.

In the result, the Criminal Appeal is partly allowed modifying the conviction under Section 302 IPC to that of Section 304 Part-II IPC. Consequently, the sentence imposed by the trial Court to undergo rigorous imprisonment for life is modified to that of rigorous imprisonment for a period of seven years. The period of sentence already undergone by the appellant shall be given set off under Section 428 Cr.P.C.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.



A.V. SESA SAI, J

24.11.2018

GUDISEVA SHYAM PRASAD, J

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