

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD**

CRIMINAL APPEAL Nos.269 of 2010 & 823 of 2011

COMMON JUDGMENT : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Criminal Appeal No.269 of 2010 is filed by the appellants/A-1 to A-3, challenging the judgment dated 10th February 2010, of the Principal Sessions Judge, Adilabad, in Sessions Case No.373 of 2009. By the aforesaid judgment, A-1 was convicted for the offence under Section 304 Part II of IPC and was sentenced to undergo rigorous imprisonment for Five years and to pay a fine of Rs.500/-, in default of payment of fine, to suffer simple imprisonment for three months. A-2 and A-3 were convicted for the offence under Section 304 Part II r/w. 34 of IPC and were sentenced to undergo rigorous imprisonment for Three years and to pay a fine of Rs.500/- each, and in default of payment of fine, to suffer simple imprisonment for three months.

2. Criminal Appeal No.823 of 2011 is filed by the State, challenging the above said judgment of the trial Court, seeking for enhancement of sentence by convicting A-1 to A-3 for the offence under Section 302 r/w.34 of IPC.

3. As both the appeals arise out of the same judgment in S.C.No.373 of 2009 on the file of Principal Sessions Judge, Adilabad, therefore, both these appeals are heard together and are being disposed of by this common judgment.

4. Case of the prosecution is that A-1 to A-3 and the deceased belong to the same community and stay in the same locality. The aforesaid accused and the family of *de facto* complainant/Ali Ahmed Khan, working as a Cashier in APSRTC Depot, Nirmal, were at loggerheads. On 27th April 2009 at 8.00 p.m., LW-8/Khaja Majeeduddin, who was the Councilor, arranged a party at Tirumala lodge, to which, A-2 and Ali Amjad Khan (LW-4) attended. During the party, LW-4 rang up PW-2/Waseem Ahmed Khan to bring the motorbike from his house to Tirumala lodge. Then PW-2 took the motorbike to the said lodge and met Ali Amjad Khan. PW-2 took some amount from Khaja Majeeduddin (LW-8) and went out. Later, PW-2 returned and sat in the party. At about 9.30 p.m., while all of them were getting down, PW-2 switched off the lights in the room. Upon that, A-2, who was still in the room, shouted at PW-2 for causing annoyance. Then a scuffle took place between them and PW-2 torn the clothes of A-2, and then, both Ali Amjad Khan and Khaja Majeeduddin intervened and pacified A-2 not to get angry. But A-2 did not heed to their request and fled away from there shouting that he would do away with the life of PW-2 at any cost. On the arrival of A-3 i.e. the son of A-2's brother at Shaiksahabpet Dargah at about 10.00 p.m., A-2 narrated the above incident to him. Then A-3 informed the same to A-1, upon which, A-1 rushed there with a knife. At 10.30 p.m., A-1 to A-3, with a common intention, proceeded to the house of the *de facto* complainant/Ali Ahmed Khan and started abusing PW-2 and their family members. Upon that, the deceased came down from the terrace and went near the accused, questioning them. Then,

A-1 to A-3 suddenly pounced upon the deceased and A-1 brutally stabbed the deceased with the knife mercilessly on his chest, while A-2 and A-3 tightly caught hold of him. It was witnessed by the *de facto* complainant, Mujahid Khan (LW-5), Asif Ali Khan (PW-3) and Shaik Saleem (PW-4). As a result of the said stabbing, the deceased sustained severe bleeding injuries and was struggling for life. Then A-1 to A-3 fled away by threatening the witnesses with dire consequences. Immediately, the *de facto* complainant shifted the deceased to Government hospital, Nirmal in an auto rickshaw for treatment. The Doctors, who gave first aid to the deceased, advised to take the deceased to Nizamabad for better treatment. Accordingly, PW-2 along with PWs.4 and 5, took the deceased to Nizamabad but on the way at Armoor at about 01.00 a.m., the deceased succumbed to injuries. On 29th April 2009, the accused were arrested and the knife was seized at the instance of A-1 from his house under the cover of panchanama.

5. The aforesaid accused were charged with the offence punishable under Section 302 r/w. 34 of IPC, to which, they pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution examined PWs.1 to 10 and marked Exs.P-1 to P-12 and M.Os.1 to 5. Ex.D-1 is marked on behalf of defence.

7. PW-1 is the *de facto* complainant, PW-2 is the brother of the deceased, who was examined to prove the motive in view of previous incident. PWs.3 and 4 are the eyewitnesses. PW-5 is the mediator for

inquest. PW-6 is the mediator for crime detail form. PW-7 is the panch witness for confession and recovery. PW-8 is the Medical Officer who conducted postmortem examination. PW-9 is the Sub-Inspector of Police who issued FIR and PW-10 is the investigating Officer. Ex.P-1 is the complaint given by PW-1 to the Police. Ex.P-2 is the bunch of photographs taken at the scene of offence. Ex.P-3 is the CD containing the photographs. Ex.P-4 is the inquest panchanama. Ex.P-5 is the crime detail form. Exs.P-6 to P-8 are the confessions of A-1 to A-3 and recovery panchanama of A-1. Ex.P-9 is the postmortem examination report. Ex.P-10 is the FIR. Ex.P-11 is the rough sketch of the scene of offence and Ex.P-12 is the FSL report. M.O.1 is the control earth seized at the scene. M.O.2 is the blood stained earth. M.O.3 is the knife. M.Os.4 and 5 are the clothes of the deceased.

8. The accused were examined under Section 313 Cr.P.C. on 01.12.2009 and they denied the evidence.

9. Learned counsel appearing on behalf of appellants/accused submitted that the incident did not happen in the manner spoken to by the prosecution witnesses. Neither the time of incident nor the place of incident is correct. The incident took place some time at the dead end of night and only after seeing the dead body, the appellants/accused have been implicated due to a trivial incident, which took place on the previous night. On suspicion, the accused have been falsely implicated in this case. There are no eyewitnesses to the incident. PWs.1, 3 and 4 are planted witnesses. The evidence of PWs.1, 3 and 4 and Ex.P-1

indicate that the incident took place right in front of the house of PW-1, which has been falsified by the evidence of PW-10/investigating officer, who stated that he seized blood stained earth at a distance of 40 yards from PW-1's house. Moreover, Ex.P-11/rough sketch of the scene of offence shows that there was blood stained earth. However, at the house of PW-1, there were no blood stain marks, whereas, Pw-1 deposed that on the deceased being stabbed, there was heavy bleeding due to injuries.

10. Learned counsel for the appellants/accused further submitted that the learned trial Judge has not discussed anything regarding Ex.P-11/rough sketch of the scene of offence, whereas, PW-10/investigating officer clearly deposed that blood stained earth was seized from a distance of about 40 yards from the house of PW-1. In addition to above, the theory of taking the deceased to Government hospital by PWs.1, 3 and 4 for first aid and later in TATA Sumo to Nizamabad and on the way deceased succumbed to injuries, is falsified for the reasons that the auto driver who shifted the injured to the hospital, the Doctor alleged to have given first aid and the driver of the TATA Sumo who shifted the injured to Nizamabad, were not examined. Further, the clothes of PWs.1, 3 and 4 have not been seized, which would have proved that the aforesaid witnesses had carried the deceased immediately after the attack and their clothes would have been stained with blood of the deceased. Moreover, as per Ex.P-12/FSL report, blood group of the deceased was not determined on item No.5/knife, thus, the knife is not connected with the crime. However, the trial Court erroneously relied upon Ex.P-12/FSL report. Ex.P-11/rough sketch of the scene of offence does not show any

street light at the place from where the blood stained earth was seized. The evidence of PWs.1, 3 and 4 is at variance and there are lot of improvements in their depositions before the Court. PW-4 does not speak that A-2 and A-3 were holding the deceased at the time when A-1 stabbed him with knife. PW-1/father of PW-2 deposed that A-1 to A-3 came and knocked the Western door of their house, upon which, he opened the door and came out, whereas, as per the rough sketch of the scene of offence, there is no door on Western side of the house of PW-1. PW-3 is known to PWs.1 and 2, therefore, he is interested witnesses. However, the learned trial Court has wrongly relied upon his evidence.

11. To strengthen his argument, the learned counsel for appellants/accused has relied upon the judgment of Supreme Court in **State of M.P. v. Ghudan**¹, wherein, it is held that if really there was a tube light at the place of incident, the investigating officer would not have failed to mark the existence of that tube light in the sketch. The omission to do so creates a doubt as to the possibility of there being sufficient light for identification of accused.

12. Learned counsel submits that in the present case also, there is no marking of street light in the sketch of the scene of offence, therefore, the benefit of the same is to be given to the accused.

13. Learned counsel has also relied upon the case of **Kadir v. The State**², wherein, it is held by the Delhi High Court that if the occurrence

¹ (2003) 12 SCC 485

² 1987 CRI.L.J. 101

had not taken place in the manner as projected by the prosecution, the benefit of the same is to be given to the accused.

14. Learned counsel for appellants/accused has further relied upon the case of **State of U.P. v. Bhagwant & others**³, whereby, it is held by the Supreme Court that failure by investigating agency to collect the blood stained earth from the place of incident to establish that the incident had taken place there, conviction cannot be based upon such evidence and accused is entitled to acquittal.

15. On the other hand, learned Public Prosecutor has argued that PWs.1, 3 and 4 are the eyewitnesses in whose presence the incident took place. Their evidence is cogent and convincing and they have supported the prosecution version. The prosecution was also able to bring home the guilt of the accused beyond all reasonable doubt. A-1 to A-3, with a pre-meditated plan to attack PW-2, armed with a knife, went to the house of PW-2. When they started abusing his family members, PW-1 and deceased came out. When the deceased questioned the accused as to why they were abusing their family members, the accused suddenly pounced upon the deceased and A-1 stabbed the deceased with a knife on his chest, while A-2 and A-3 caught hold of the deceased tightly. Thus, the common intention of A-1 to A-3 to kill the deceased, is established.

16. Learned Public Prosecutor further submitted that PW-2 was only a witness to speak about the factum of the case. He categorically stated that in the incident that initially took place at Tirumala lodge, he had

³ 2003 CRI.L.J. 2337

switched off the lights under the impression that A-2 had also come out along with others. But A-2 was still inside the room and having felt it as an insult, A-2 quarreled with PW-2 at the lodge, and in that process, the shirt of A-2 was torn.

17. In Ex.P-5, the scene of offence is described as under :

“Place of occurrence is H.No.2-3-56 of complainant situated in Shaik Sahebpet locality, Nirmal near to the neem tree. Near to the neem tree, there are blood stains on the earth. As per the complainant/Ali Ahmed Khan, on 27-4-09 at 10-30 pm, Md.Abdul Mazhar, Md.Abdul Imran caught hold the son of complainant Rashad Ahmed Khan. Mohd. Abdul Sajeed beat Rashad Ahmed Khan with knife in the chest and Rashad Ahmed Khan was being shifted to Nizamabad Govt. Hospital and during the journey at Armour, he died and that the offence took place here. To the scene offence, to the North road, and beyond it, H.No.2-3-42 of Sayyad Zakeer, to the East, an old incomplete house and by the side of it, H.No.2-3-56 is located, to the South H.No.2-2-74 of Borgaon Dharmanna, to the East of it vacant space, and beyond it, H.No.2-2-298 of Vasi Mohd is located, and to the West, H.No.2-3-37/1 is located.”

18. The road between the tree and the house of PW-1 is about 8 to 10 feet. That is not far away, but PW-1 may be little bit confused with the fact, since the incident had taken place on 27.04.2009 and he was examined on 17.11.2009. Therefore, such variance cannot be fatal for the prosecution case. PWs.1, 3 and 4, all are neighbours and they are witnesses to the incident. PW-1 may be interested witness being father

of the deceased, but not PWs.3 and 4. There are minor contradictions in the depositions of the prosecution witnesses, which cannot be taken seriously.

Ex.P-12/FSL report reads as under :

“Received five sealed cloth parcels only.

A sealed cloth parcel I contained,

A polythene cover contained,

1. Soil etc with punch chit marked as item no.1.

A sealed cloth parcel II contained,

A polythene cover contained,

2. Soil etc with punch chit and dark brown stains marked as item no.2.

A sealed cloth parcel III contained,

A polythene cover contained,

3. A torn white colour sleeveless banian with punch chit and dark brown stains marked as item no.3.

A sealed cloth parcel IV contained,

4. A grey colour pant with punch chit and dark brown stains marked as item no.4.

A sealed cloth parcel V contained,

5. A knife with whole length measuring 21 cms with punch chit and dark brown stains marked as item no.5.

Nature of Examinations :

Biochemical test.

Identification of Bloodstains : Benzidine test.

Immunological test.

Origin of Species : Gel Diffusion method.

Blood group of Bloodstains : Absorption Elution method.

REPORT

The item no's 1 to 5 are examined.

Human blood is detected on item no's 2 to 5.

Blood group of bloodstains on item no's 3 and 4 is of 'A'.

Blood group of blood stains on item no's 2 and 5 could not be determined.

Blood is not detected on item no.1, which is received as control for item no.2."

19. The learned Public Prosecutor submitted that human blood was detected on the knife. However, due to lapse of time, blood group was not determined, which cannot be fatal to the prosecution case. The evidence produced by the Prosecution established that A-1 to A-3 have attacked the house of PW-1 on 27.04.2009 at about 10.30 p.m. They started abusing the inmates, upon which, the deceased and PW-1 came out. The deceased, who came ahead of his father (PW-1), questioned the accused as to why they were abusing. Then, A-1 pulled out a knife and gave two blows with it on the chest of deceased while A-2 and A-3 caught hold of him tightly. It establishes that the accused came with an intention to liquidate PW-2, and when he was not found there, they attacked the deceased, who is another son of PW-1. Thus, the accused should be convicted and sentenced for the offence under Section 302 r/w. 34 of IPC instead of Section 304 Part-II IPC.

20. As discussed above, the prosecution, to prove its case, examined PWs.1 to 10 and marked Exs.P-1 to P-12 and also M.Os.1 to 5. In the present case, the trial Court has relied mainly upon the evidence of PWs.1, 3 and 4, whereby, it is established that the appellants/accused had attacked on the house of PW-1 and started abusing the inmates. When the deceased questioned the accused as to why they were abusing, the

accused pounced upon the deceased. A-2 and A-3 caught hold of the deceased tightly, while A-1 stabbed him twice on his chest with a knife, resulting in his death.

21. PW-1 is the *de facto* complainant, who gave Ex.P-1. It is stated in Ex.P-1 that on 27.04.2009, during night, when he was sleeping in his house, at about 10.30 p.m., the accused came to his house and started abusing his family members and his son Waseem in filthy language. Thereupon, his another son Rashad Ahmed Khan (deceased), who was sleeping in 1st floor, came down and questioned the accused as to why they were abusing. Then, suddenly, A-2 and A-3 caught hold of the deceased and A-1 took out a knife and stabbed the deceased twice in his chest, due to which, the deceased fell down. Neighbours Asif Ali Khan, Mujahid Khan, Saleem and others came and on seeing them, the accused fled away. Thereafter, they shifted his son to Government hospital, Nirmal for treatment. After first aid, on the advise of the Doctors, the deceased was taken to Nizamabad, however, on the way at about 1.00 a.m., at Armoor, the deceased died. They brought the dead body in the morning at about 6 a.m.

22. The motive for the attack was that the cousin brother of PW-1 by name Ali Amjad Khan and A-2 were at Tirumala lodge and on the request of Ali Amjad Khan, his son (PW-2) went there to bring him on motorcycle, however, there ensued some quarrel between them. Ali Amjad Khan was a Ward Councilor, who asserted that the accused were habituated to blackmailing. According to PW-1, A-1 to A-3 came to his

house at about 10.30 p.m. and started abusing PW-2/Waseem Ahmed Khan as there occurred some previous incident at Tirumala lodge at about 8.30 p.m. between A-2 and PW-2. For taking revenge on PW-2, the accused attacked the house of PW-1. When they started abusing PW-2/Waseem Ahmed Khan in filthy language, the deceased, who was sleeping in the house, came out and questioned the accused as to why they were abusing. Then, A-2 and A-3 caught hold of deceased while A-1 stabbed him with a knife on the chest and gave two blows, resulting in heavy bleeding. Later, the deceased succumbed to injuries.

23. PW-2 is son of PW-1. According to him, there was some quarrel between him and A-2 at Tirumala lodge at about 8.30 p.m. The said incident was the root cause for subsequent incident that had happened at the house of PW-1, resulting in the death of deceased. According to PW-2, one Ali Amjad Khan is his junior paternal uncle, who, on the date of incident at about 9 p.m., called him to Tirumala lodge to bring motorcycle. When he went there, he found that his paternal uncle, A-2 and one Khaja Mazeeduddin were taking liquor in the lodge. At about 9.30 p.m., they completed their drinks and his paternal uncle wanted to leave him at his house. When they were coming out, thinking that A-2 had also come out, he switched off the lights in the room. Thereafter, within 2 minutes, A-2, while coming out, started abusing him as to why he switched off the lights, leaving him in the room. A-2 started abusing him and tried to attack him. He stopped him by raising his hands. In that process, the shirt of A-2 was torn. Then, A-2 threatened that he would see his end. Remaining persons stopped A-2. Thereafter, he and Ali

Amjad Khan went to a function hall to attend a marriage. At about 10.30 p.m., there was a call to him from his father (PW-1) enquiring as to what had happened with the accused. PW-1 disclosed to him that accused went to his house and stabbed the deceased. Thereupon, he went to the hospital and found his brother with injuries in a pool of blood. Thereafter, on the advise of Doctors, they shifted the deceased to Nizamabad, but on the way, he collapsed.

24. PW-3 deposed that on 27.04.2009 at about 10.30 p.m., while he was sitting by the side of his house, heard hue and cry from the house of PW-1. Then, he, along with Saleem and Muzahid Ali went towards the house of PW-1. His house is at a distance of 10 yards from the house of PW-1. When he went to the house of PW-1, he saw A-1 to A-3, PW-1 and deceased talking in front of the house and the deceased was asking the accused as to what had happened. Then, A-2 and A-3 caught hold of the deceased while A-1 stabbed him twice in the chest. Thereafter, the accused ran away.

25. PW-4 deposed that on 27.04.2009 at about 10.30 p.m., while he was talking to PW-3, they heard some hue and cry from the house of PW-1. They immediately rushed to the house of PW-1 and found that A-1 to A-3, PW-1, and deceased were talking. Then A-1 stabbed the deceased with a knife in the chest while A-2 and A-3 were standing there.

26. According to the prosecution story, the whole incident took place on account of some quarrel which took place between PW-2 and A-2 at

about 8.30 p.m. at Tirumala lodge, Nirmal. According to the version of PW-2, he was called by his paternal uncle Ali Amjad Khan to bring motor bike so as to attend a marriage. Accordingly, he went there and found that A-2, Ali Amjad Khan and Khaja Mazeeduddin were taking liquor in the lodge. At about 9.30 p.m., after finishing drinks, they came out of the lodge. PW-2, having thought that all the inmates went out, switched off the lights in the room and came down. However, A-2 who was inside the room, came down and started abusing PW-2, asking as to why he switched off the lights when he was inside the room. There ensued some scuffle, and in that process, the shirt of A-2 was torn. Keeping it in mind, A-2 brought A-1 and A-3 and attacked on the house of PW-1 at about 10.30 p.m. on the same day.

27. It is established from the evidence of prosecution witnesses that A-1 to A-3 went to the house of PW-1 at about 10.30 p.m. in order to teach a lesson to PW-2. As PW-2 was not available, they started abusing the family members of PW-1 in filthy language. Then, PW-1 and his son (deceased) came out. The deceased questioned A-1 to A-3 about their acts. There upon, A-2 and A-3 caught hold of deceased while A-1 stabbed him. The manner in which the said incident occurred, establishes that the target of A-1 to A-3 was not the deceased, but was PW-2, as some incident took place between PW-2 and A-2 at Tirumala lodge prior to this incident. Even as per the prosecution case, the accused did not attack the house of PW-1 in order to commit the murder of the deceased, but their target was PW-2. The photographs show that two blows were given with knife on the chest of the deceased and the

post-mortem examination report also shows that the deceased had received following injuries :

- “1. *Incised wound measuring 1 cm X 1 cm in the left hypochondrium.*
2. *Stab wound measuring 2.5 cm X 2.5 cm X 6 cm at Xiphisternum which is reaching the heart and perforation into heart into the left atrium.*
3. *Fracture of 5th rib on the left side due to stab wound.”*

Injury No.3 is the extension of injury No.2 and it is stated that all the injuries were ante-mortem in nature. Abdominal cavity is full of collection of blood and the death was due to hypovolemic shock due to stab injuries to heart. Ex.P-9 is the post-mortem report. It is specifically stated that injuries 2 and 3 are interconnected and injury No.1 is a separate injury, and that the fracture of rib may also cause hurt to the heart.

28. As per the evidence of PW-2, there was some previous quarrel at Tirumala lodge at about 8.30 p.m. on the date of incident between him and A-2. Therefore, the prosecution has fairly established that there was some motive for the accused to attack on the house of PW-1. The evidence of PW-1 is quite categorical to the effect that at about 10.30 p.m., A-1 to A-3 came to his house and knocked at the door. He opened the door and his elder son i.e. the deceased came out. When the deceased had questioned the accused as to why they were abusing them, A-1 took out a knife from his pocket and stabbed the deceased on his chest twice with it, while A-2 and A-3 caught hold of the deceased.

PWs.3 and 4 also certified about the deceased receiving injuries in the hands of accused. The evidence of PWs.3 and 4 is quite consistent as regards their presence at about 10.30 p.m. When the deceased received injuries and fell down, they supported PW-1 in shifting the deceased to hospital for first aid. PW-2 also stated that he visited the Government hospital, Nirmal and found his brother (deceased) with injuries in a pool of blood. Thus, the injuries on the person of deceased had been certified by the Medical Officer and the photographs under Ex.P-2 clearly show that the deceased sustained stab injuries with a knife. The prosecution witnesses have established that the intention of the accused was to teach a lesson to PW-2 in retaliation of earlier incident that took place between PW-2 and A-2 at Tirumala lodge on the same day at about 8.30 p.m. In that pursuit, they went to the house of PW-1 and as PW-2 was not in the house, they started abusing the family members of PW-1, insulting them to come out of their house. Thereafter, A-1 stabbed the deceased with a knife while A-2 and A-3 caught hold of him. It is quite natural for PW-1 and his son (deceased) to come out of the house when A-1 to A-3 reached at their house and started abusing their family members. When they merely questioned the accused, they cannot take the law into their hands and cause the death of deceased by stabbing him. The intention on the part of accused to attack on the house of PW-1 is very much established. Though the appellants/accused might not have an intention to kill the deceased, but they have intention to attack PW-2, and with that aim only, they went to the house of PW-1 on that odd night. The meeting of minds of the accused and whether they have the common intention

to do a particular act as required under Section 34 of IPC, can only be gathered from the circumstances appearing in a particular case and there cannot be a uniform straight-jacket formula. Accordingly, the trial Court has held that A-1 to A-3, with a pre-determined plan of attacking on the house of PW-1 in order to teach a lesson to PW-2, reached there at 10.30 p.m. If they had any good intention, they would have sorted out the problem with PW-2 on the next day morning. Taking the law into their hands, A-1 to A-3 have attacked the house of PW-1 in the odd night, abused his family members and when PW-1 and deceased questioned them, A-1 stabbed the deceased with a knife while A-2 and A-3 caught hold of him.

29. Even in the absence of the evidence of PWs.3 and 4, the trial Court has come to the conclusion that the evidence of PW-1 alone is sufficient to bring home the guilt of the accused, as they have pre-meditated idea of attacking on the house of PW-1 to cause nuisance and to teach a lesson to PW-2. In the process, they have taken the valuable life of the deceased, who was at the young age of 27 years.

30. In the case of **Tholan v. State of Tamil Nadu**⁴, the Hon'ble Supreme Court held that as the deceased was having no previous dispute with the accused and his presence at the scene of occurrence is only accidental, even if exception (I) to Section 300 IPC was absent, conviction under Section 302 IPC is not proper. However, the Supreme Court held that when the accused, having wielded a weapon like a knife,

⁴ 1984(2) SCC 133

can be attributed with the knowledge that he was likely to cause injury which was likely to cause death. Relying on the said judgment, the learned trial Court convicted the accused for the offence under Section 304 Part-II of IPC.

31. Coming to the argument of learned counsel for the appellants/accused that there were contradictions in the depositions of PWs.1 to 4 and the prosecution had failed to project the case in the manner it happened, it is settled law that minor contradictions and variations are not to be taken very seriously. It happens due to lapse of time and also due to understanding of a witness in a particular manner. In the present case, all the witnesses have deposed that A-1 to A-3 attacked the house of PW-1 due to the incident that took place at 8.30 p.m. on the date of incident at Tirumala lodge between A-2 and PW-2. Thus, they had intention to teach a lesson to PW-2. However, when they reached the house of PW-1, as the deceased came forward, he was firstly pounced and stabbed by A-1 twice on the chest, due to which, he succumbed to the injuries. It establishes that the accused had no intention to kill the deceased, however, had an intention to teach a lesson to PW-2.

32. From the aforesaid discussion and the legal position, we are of the considered opinion that the learned trial Court has rightly convicted the appellants/accused under Section 304 Part-II r/w.34 of IPC instead of Section 302 of IPC.

33. Accordingly, finding no force in the submissions of the learned counsel for the accused as well as the learned Public Prosecutor, we

hereby confirm the judgment of the trial Court and maintain the conviction and sentences imposed against the accused persons.

34. Both the appeals are dismissed accordingly.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

T. AMARNATH GOUD, J

19th January, 2018

ajr

