

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

Crl.A.No.446 of 2012

Between:

Gude Vijayaram,
S/o.Bhaskara Rao, Aged: 32 years,
R/o.H.No.61-20-8/8,
V.M. Ranga Road,
Ramalingeswara Nagar,
Vijayawada.

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

... Respondent

JUDGMENT PRONOUNCED ON **17.09.2018**

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

(C.V.NAGARJUNA REDDY,J)

(GUDISEVA SHYAM PRASAD, J)

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

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!Counsel for the Appellant : Mrs. C.Vasundhara Reddy

Counsel for the Respondent: Public Prosecutor (AP)

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>Head Note:

?Cases referred:

1. 1991 CRL.L.J.597
2. (1979) 4 SCC 501

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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CrI.A.No.446 of 2012

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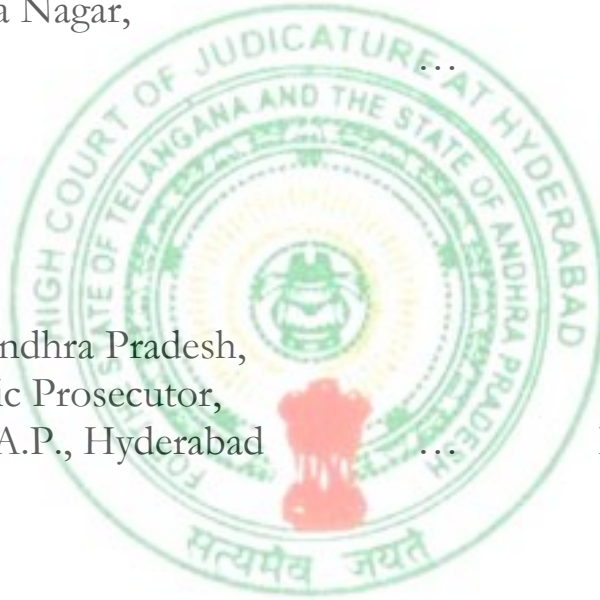
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 High Court of A.P., Hyderabad

Respondent



Counsel for the Appellant : Mrs.C.Vasundhara Reddy

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

A-1 in Sessions Case No.211 of 2007 on the file of the Metropolitan Sessions Judge, Vijayawada, filed this appeal, feeling aggrieved by his conviction for the offence under Section 302 I.P.C. and sentencing *inter alia* to imprisonment for life.

2. The charges framed against the accused who are nine in number, read as under:

“Firstly: That you A.1 on 19.02.2006 at about 8.30 p.m. at Eenadu Colony, Ramalingeswara Nagar, Vijayawada did commit murder by intentionally or knowingly causing the death of one Sunkara Rambabu i.e. you hit the deceased Sunkara Rambabu on his right side of head and causing the death of the said Sunkara Rambabu and that you thereby committed an offence punishable under Section 302 IPC and within my cognizance.

Secondly: That you A1 and A2 on the same date, time and mentioned on charge No.1 *supra*, did an act to attempt murder with such intention and under such circumstances that if by that act both of you *had* caused the death of LW.1 Yerramsetti Narasimha Murthy, both of you would have been guilty of murder with an intention of doing away his life, you A.1 hit the LW.1 Yerramsetti Narasimha Murthy with iron rod and you A-2 hit the LW.1 Yerramsetti Narasimha Murthy with stick on his head and that both of you thereby committed an offence punishable under Section 307 IPC of the Indian Penal Code and within my cognizance.

Thirdly: That you A3, A4, A5, A6, A8 and A9 along with A-7 on the same date time and place mentioned on charge No.1 *supra*, all of you abetted the A.1 and A.2 to commit the offence and all of you present at the scene when A.1 and A.2 committed the offences and that you thereby committed an offence punishable under Section 114 IPC and within my cognizance.”

3. As the plea of the accused was one of denial, they were made to stand trial during which, the prosecution examined PWs.1 to 16, got marked Ex.P1 to P23 marked and produced MOs. 1 to 6. On behalf of the defence, no oral evidence was let in. However, they got Ex.D1 to D5 marked.

4. On appreciation of oral and documentary evidence, the trial court has acquitted A3 to A9, convicted and sentenced the appellant (A-1) as stated above and convicted A-2 for the offence under Section 324 I.P.C. and sentenced him to suffer rigorous imprisonment for six months. In addition to the sentence of imprisonment, fine was also imposed on the appellant.

5. Smt.C.Vasundhara Reddy, learned counsel for the appellant submitted that her client did not have the intention to commit murder of Sunkara Rambabu, the deceased, even as per the first charge framed against the appellant and that, therefore, the court below has committed a manifest error in convicting the appellant for the offence under Section 302 I.P.C. The counsel further submitted that the fact that only one blow was given by the appellant to the deceased, shows that he did not have the intention of committing murder.

6. The learned Public Prosecutor for the State of A.P. opposed the above submissions and stated that even though the appellant might not have the intention to kill the deceased, still, the act

committed by him attracts Section 301 I.P.C. and that, therefore, the Court below has rightly convicted the appellant for the offence punishable under Section 302 I.P.C. and appropriately sentenced him.

7. This is a peculiar case where the appellant caused injury to the deceased when he attempted to attack PW-1. In other words, while PW-1 was the target of attack for the appellant, the former escaped and the deceased has unwittingly fallen victim.

8. To prove its case, the prosecution has relied upon the evidence of PWs. 1 to 8. The Court below has disbelieved the evidence of PWs.2 to 8 as regards the alleged participation of A3 to A9. It has however relied upon the evidence of PW-1, who is an injured witness and the medical evidence, to hold that the appellant is guilty of committing murder. The learned counsel for the appellant submitted that when the lower court disbelieved the evidence of PWs.2 to 8, it is not safe to convict the appellant based on the sole testimony of PW-1. We are unable to accept this submission for, PW-1 is an injured witness. Ex.P6 is the wound certificate issued by PW-12 – doctor. As per the said certificate, PW-1 has suffered a cut lacerated wound measuring about 4 cm x 1 cm over left temporal region. It is not the case of the prosecution that the said injury is a self inflicted one. The prosecution was thus, able to prove the presence of PW-1 at the scene of offence. Merely because the prosecution was not able

to explain the injuries on A1, A2 and A6, its case regarding the attack on the deceased by the appellant, cannot be thrown out as the doctrine *falsus in uno, falsus in omnibus* is not applied in India. When clear and cogent evidence of PW-1 is available, we do not find any reason why that part of the evidence which related to the attack of the deceased by the appellant and that of PW-1 by A-2, cannot be believed. Moreover, the ocular evidence of PW-1 regarding the blow given by the appellant to the deceased on the head, is fully corroborated by Ex.P22 – postmortem certificate, as spoken to by PW-12 – doctor who conducted autopsy. The evidence let in by the prosecution as discussed above, has thus proved the attack by the appellant, causing the death of the deceased Rambabu. We are, therefore, entirely in agreement with the findings rendered by the lower court to this extent.

9. The submission of the learned counsel for the appellant is that, even according to the charge sheet and the version spoken to by the prosecution witnesses, the appellant intended to attack PW-1 and when PW-1 has avoided the blow, it landed on the deceased and thus, the appellant did not have the intention of causing the death of the deceased and that, therefore, he cannot be charged for the offence of murder. Though this submission appears attractive at the first blush, on a closer examination of the same, we do not find any

merit therein. In our opinion, the act committed by the appellant attracts Section 301 I.P.C. which reads as under:

Section 301 I.P.C. - Culpable Homicide by causing death of person other than person whose death was intended: If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

10. Section 301 I.P.C. posits of doctrine of *transfer of malice* as the appellant aimed at one person and killed another person. In **JAGPAL SINGH AND OTHERS VS. THE STATE OF PUNJAB**¹, the accused went in front of the house of one Kapur Singh (PW-2) to attack him and fired shots from their weapons. But Kapur Singh, to save his life went into the house of Udham Singh, husband of the deceased Surjit Kaur. At that time, Surjit Kaur was standing by the side of the door of a room and one of the shots fired by one of the accused hit at the deceased who succumbed to injuries sustained by her. On the said facts of the case, the Supreme Court applied the doctrine of transfer of malice as contemplated under Section 301 IPC and held that the accused who killed the deceased made himself punishable for the offence under Section 302 IPC.

11. In **HARI SHANKAR ALIAS HARI SHANKAR SHARMA VS. STATE OF MYSORE**², the accused wanted to kill PW-15 in that case and in the process, he has shot dead one Nazirunnissa. The Trial

¹ 1991 CRL.L.J.597

² (1979) 4 SCC 501

Court has convicted the accused for the offence punishable under Section 302 I.P.C. However, the High Court has held that the offence committed by the accused therein falls under Section 301 I.P.C.

While confirming the said view, the Supreme Court held as under:

“It is obvious that the appellant had intention to kill PW-15 and if with this intention, he kills some body else, he is undoubtedly guilty of committing murder”.

12. The submission of the learned counsel for the appellant that specific charge under Section 301 I.P.C. is not framed, has no merit.

The prosecution has alleged malice on the part of the appellant against PW-1. Therefore, the substance of Section 301 IPC is very much indicated in the charge sheet filed by the prosecution, apart from the witness speaking to the same. Therefore, failure to frame a charge pertaining to Section 301 I.P.C. specifically, did not cause any prejudice to the appellant.

13. The further question to be considered is whether the act committed by the appellant constitutes murder. The appellant is not accused of coming to the house of PW-1 armed with the rod. In the absence of a charge to that effect, it cannot be presumed that the appellant has carried the rod with him. Therefore, premeditated intention to kill PW-1 could not be proved by the prosecution. However, the nature of injuries, viz., fissured fracture 12 cm. in length on right frontal area, extra-dural haemorrhage on right side and diffuse sub-dural haemorrhage, as mentioned in the post-mortem

certificate, would show that the appellant has given a blow of high intensity, which in ordinary course, would cause the death of a person. Thus, the intention of the appellant to cause death is apparent. However, from the evidence on record, it appears that having felt insulted by PW-1 stating that the appellant's father has cheated him by not repaying the debt, the appellant has lost his self control and tried to give a heavy blow on the head of PW-1. If the intention to kill PW-1 had not developed at the spur of the moment, the appellant would not have caused such a serious injury as fissured fracture of 12 cm. in length. Though there does not appear to be an advance preparation for committing the murder of PW-1, nevertheless, the appellant has caused a fatal injury to the deceased, an unintended victim.

14. In our opinion, the facts and circumstances of the case would attract the provisions of Part-I of Section 304 I.P.C. Accordingly, the conviction of the appellant is altered from Section 302 to Section 304 Part-I I.P.C. In the peculiar facts of the case, the sentence is reduced to seven years of rigorous imprisonment. The sentence regarding fine is, however, confirmed. The bail bonds of the appellant shall stand cancelled. The accused shall immediately surrender before the Superintendent, Central Jail, Rajahmundry, for serving the remainder of sentence.

15. The appeal is, accordingly, partly allowed to the extent indicated above.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 17th September, 2018

Note:

L.R. copies

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