

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Criminal Appeal No.18 of 2012

Date: 17.09.2018

Between:

Chowdaboina Eswaraiah and another

.....Appellants

and

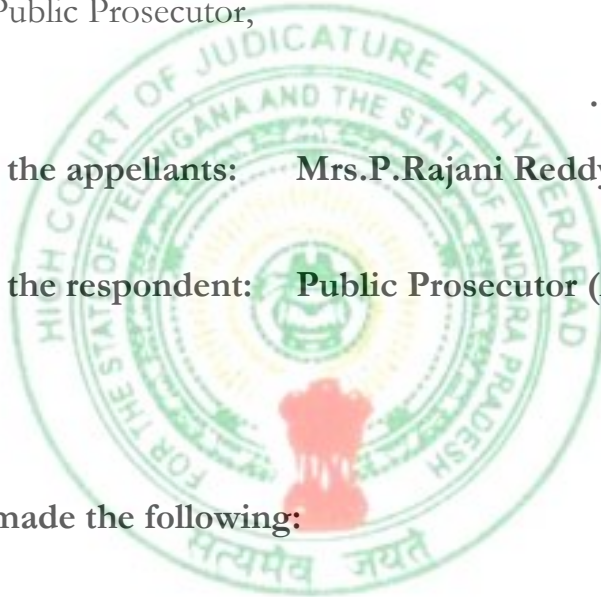
The State of A.P,
rep., by the Public Prosecutor,
Hyderabad.

.....Respondent

Counsel for the appellants: Mrs.P.Rajani Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:



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

Accused, two in number, filed this Criminal Appeal against Judgment, dated 29-11-2011, in Sessions Case No.225 of 2008 on the file of the II Additional Sessions Judge, Kadapa at Proddatur, whereby they were convicted for the offences punishable under Section 302 IPC and Section 302 r/w Section 34 IPC respectively and sentenced *inter alia* to undergo Imprisonment for Life and to pay a fine of Rs.1,000/- each and in default of payment of fine, to suffer Simple Imprisonment for a period of one month each.

Based on the chargesheet filed by the Police, the Court below has framed the following charges;

“Charge No.1: That A.1 of you on 16-2-2008 met about 10 a.m. in Chennamrajupalli village, Proddatur, did commit murder by intentionally or knowingly, causing the death of Majjari Venkata Subbaiah, by means of pestle, which is a deadly weapon and thereby committed an offence punishable u/s.302 I.P.C. and within my cognizance.

Charge No.2: That you A.2 on the same day, time and place and during the course of same transaction as stated in charge No.1 supra, with common intention instigated A.1 to kill Majjari Venkata Subbaiah, and A.1 killed him and committed the offence U/s.302 I.P.C. and that you A.2 thereby committed an offence

punishable U/s.302 r/w. 34 I.P.C. and within my cognizance.”

As the plea of the appellants was one of denial, they were subjected to trial, during which, the Prosecution has examined PWs.1 to 15, got Exs.P.1 to P.20 marked and produced MOs.1 to 7. On behalf of the appellants, no evidence was let in.

On consideration of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted herein before.

At the hearing, Smt.P.Rajani Reddy, learned Counsel for the appellants, submitted that even if the evidence on record is taken on its face value, the appellants did not have the premeditated intention to cause the death of the deceased and that therefore, the offence allegedly committed by the appellants falls under Section 304 Part II IPC.

The learned Public Prosecutor, while fairly conceding the submission of the learned Counsel for the appellants to the extent of the case falling under Section 304 IPC, however, submitted that the offence would fall under Part I

of Section 304 IPC, as appellant No.1 has dealt the blow with a pestle on the vital part of the deceased *i.e.*, head.

Having regard to the respective submissions of the learned Counsel for the parties, the short question that requires to be considered is, whether the offence alleged against the appellants falls under Part I or Part II of Section 304 IPC.

No doubt, in Ex.P.1- report given by PW.1, only one blow was attributed to appellant No.1. However, in Ex.P.12- Post-mortem report as deposed by PW.12, two external injuries on the head with a corresponding internal injury were found. The fact, however, remains that the appellants did not have the premeditated intention to kill the deceased and the same is evident from the fact that they did not carry pestle along with them. Even according to the case of the Prosecution, the pestle was available at the scene of offence and appellant No.1 has picked up the same and dealt two blows on the head of the deceased evidently having been humiliated on account of the latter giving exaggerated account to the villagers regarding the tractor driven by

appellant No.1 turning turtle on the previous day of occurrence.

As rightly submitted by the learned Public Prosecutor though the appellants may not have had the premeditated intention to kill the deceased, the fact that appellant No.1 has picked up the pestle available at the scene and given two strong blows on the head *albeit* under grave provocation shows that the appellants have developed an intention on the spot to cause the death of the deceased. Therefore, we are of the opinion that the offence committed by the appellants falls under Exception 4 to Section 300 IPC. Having regard to the nature of the injury caused by appellant No.1, the offence falls under Part I of Section 304 IPC.

Accordingly, the Criminal Appeal is partly allowed. The convictions recorded against (i) appellant No.1/accused No.1 for the offence punishable under Section 302 IPC and (ii) appellant No.2/accused No.2 for the offence punishable under Section 302 r/w Section 34 IPC are modified to that of the offence punishable under Section 304 Part I IPC. The appellants/accused Nos.1 and 2 are, accordingly, convicted and sentenced to suffer Rigorous Imprisonment for seven

years. The sentence regarding imposition of fine is confirmed. The period of sentence already undergone by the appellants is directed to be set off.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 17th September, 2018
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