

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI  
AND  
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL APPEAL No.578 OF 2012**

**JUDGMENT:-** (per Hon'ble Sri Justice A.V.Sesha Sai)

Accused No.1 in Sessions Case No.134 of 2011 on the file of the II Additional Sessions Judge, Karimnagar at Jagtial is the appellant in the present Criminal Appeal, filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.").

2. This Criminal Appeal is directed against the judgment, dated 17.04.2012, in Sessions Case No.134 of 2011 rendered by the aforesaid Court. By virtue of the impugned judgment, the learned Judge convicted accused No.1/appellant herein under Section 302 I.P.C. and sentenced him to undergo Imprisonment for Life and to pay a fine of Rs.500/- and in default, to suffer simple imprisonment for one month, while acquitting accused No.2.

3. The case of the prosecution is that A-1 is the father of A-2 and the deceased. The mother of the deceased was the first wife of A-1 and the mother of A-2 is the second wife of A-1. After the death of the mother of the deceased, A-1 married the mother of A-2. After the death of the mother of the deceased, the deceased was brought to the house of his aunt, P.W.1, and he lived in the house of P.W.1 till he attained 14 years. Thereafter, P.W.3, the maternal uncle of the deceased, and his wife, P.W.2, took the deceased to Mumbai to provide education to him and till he attained 20 years, the deceased lived in Mumbai. Subsequently,

he came back to the village and at the instance of his grandmother, A-1 divided his residential house into two portions and gave one portion to the deceased to live in the said half portion and A-1, along with his second wife and A-2, was living in the other portion. Since the second wife of A-1 spoke badly about the deceased, marriage alliances stopped coming to him and for the said reason and the same developed ill-feelings between the deceased and the mother of A-2 and she left the house and started living with her parents 15 days prior to the incident. The marriage of the deceased was settled with one Rodda Sunitha and the marriage was fixed to be celebrated on 6.6.2010. In connection with that marriage, on 3.6.2010, pooja to Goddess Pochamma was scheduled to be held and before going for distribution of wedding cards, the deceased asked his father/A-1 to prepare chicken curry for the said pooja. But on the ground that he failed to prepare the chicken curry, the deceased picked up a quarrel with A-1 and P.Ws.2 and 3 pacified the same and thereafter, all of them had dinner and on the same day, at 11:00 P.M., the deceased went along with P.Ws.2 and 3 to their house to sleep. On the following day, at about 5:40 A.M., A-1 armed with M.O.1 – crow bar attacked the deceased on his head and he died on the spot.

4. On the complaint of P.W.1, police registered F.I.R. and after investigation, filed charge sheet against the appellant herein/A-1 for the offence punishable under Section 302 I.P.C. and also against A-2, the son of A-1 through his second wife, under Section 202 I.P.C.

5. In order to prove its case, the prosecution examined P.Ws.1

to 13 and got marked Exs.P-1 to P-12 besides case properties – M.Os.1 to 8. On behalf of the defence, none were examined but Ex.D-1 was marked.

6. The learned II Additional Sessions Judge, by way of the impugned judgment, convicted A-1 for the offence punishable under Section 302 I.P.C. and sentenced him to undergo Life Imprisonment and imposed fine of Rs.500/- and in default, to suffer simple imprisonment for one month, and acquitted A-2. In the present appeal, the said judgment is under challenge.

7. Heard Smt B.Vasantha Lakshmi, Legal Aid Counsel appointed for the appellant/A-1, and the learned Public Prosecutor (TG) appearing for the respondent/State apart from perusing the material available before this Court.

8. It is contended by the learned counsel for the appellant/A-1 that the impugned judgment is erroneous and contrary to law; that in the absence of corroboration in the evidence of prosecution witnesses, the learned Judge grossly erred in convicting A-1; that in view of the contradictions in the evidence of P.Ws.1 and 3 and Ex.D-1, A-1 is entitled to the benefit of doubt and consequently, entitled for acquittal; that the evidence of P.Ws.2 and 3 show the absence of any dispute between the deceased and A-1 prior to the alleged incident and that the prosecution failed to place any evidence to prove motive on the part of A-1 to commit the offence.

9. On the other hand, it is maintained by the learned Public Prosecutor that there is absolutely no illegality nor there exists any infirmity in the impugned judgment and in the absence of the

same, the impugned judgment is not amenable for any correction or interference of this Court under Section 374 Cr.P.C.; that the evidence of P.W.2, who is the eye witness, is sufficient to convict A-1/appellant herein under Section 302 I.P.C. and that only after elaborately and meticulously considering the entire material available before the Court, the learned Judge convicted the appellant herein.

10. In the above background, now the point that arises for consideration before this Court is:

***“Whether the judgment rendered by the Court below is sustainable and tenable and whether the same warrants any interference of this Court under Section 374(2) Cr.P.C.?”***

11. **P O I N T:-** The case of the prosecution, obviously, is mainly based on the evidence of P.Ws.2 and 3, who are the wife and husband. According to the prosecution, P.W.2 is the eye witness to the incident and according to her, their house is situated opposite to the house of the accused. The deceased along with A-2 (step brother of the deceased) was sleeping under a shed in front of their house and she and her husband were sleeping on the other side of the same shed. She further stated that at about 5:00 A.M., her husband, P.W.3 went for nature call and at about 5:40 A.M., on hearing big sounds of beating, she woke up and saw A-1 hitting on the head of the deceased with a crow bar and in the meanwhile, P.W.3 came there and asked A-1 not to hit the deceased. She also stated that she requested A-1 to stop beating the deceased and she further stated that A-2 was present when A-1 was hitting the deceased with a crow bar, but he remained silent without coming

to the rescue of the deceased. According to P.W.2, after seeing A-1 hitting the deceased with a crow bar, she raised cries and on hearing them, P.W.1, L.Ws.5 and 7 and others, whose houses are situated nearby, rushed to her house and by the time all the persons came, A-1 left the place by throwing the crow bar at the scene of offence. Admittedly, the scene of offence is the house of P.Ws.2 and 3. There is no dispute with regard to the scene of offence. The contention raised by the appellant is that the deceased might have received the injuries by falling from a motor cycle when he went for distributing the marriage invitation cards. The defence of the accused does not appear to be probable for the reason that there is no dispute with regard to the scene of offence where the incident occurred. The material objects recovered from the scene of offence clinchingly prove that the scene of offence is situated in the house of P.Ws.2 and 3. M.O.1 – crow bar, M.O.2 – blood stained bed sheet, M.O.3 – blood stained turkey towel and M.O.4 – blood stained nicker were seized at the scene of offence. It clearly indicates that there is no dispute with regard to the scene of offence and the occurrence of the incident. In view of the said fact, the defence raised by the appellant that the deceased might have fallen from the motor cycle and received injuries cannot be believed.

12. The appellant also placed reliance on the medical evidence to the effect that the medical officer has stated that the injuries received by the deceased might have been caused by a fall from a motor cycle also cannot be believed in view of the facts of this case. It is also significant to note that P.W.9 – the Doctor, who conducted autopsy over the dead body of the deceased, during the

course of evidence, stated in categorical terms that the cause of death, to the best of his knowledge, is Intra cranial haemorrhage and shock as a result of multiple fractures of right side skull bone. He also made it clear that the injuries were ante mortem in nature and might have been caused by a blunt object. The material object - M.O.1 in this case is the crow bar, which is a blunt object. Therefore, the commission of the offence by A-1 in the manner alleged by the prosecution is more probable than the defence raised by the appellant. There is no reason to disbelieve the evidence of P.W.2, who is a direct eye witness to the incident.

13. Learned counsel for the appellant contended that the motive for commission of this offence is not established and therefore, the testimony of P.W.2 cannot be believed. As a matter of fact, in a case where there is a direct evidence, the motive loses its significance.

14. In the light of the evidence of P.Ws.2 and 3, it can be clearly concluded that the alleged incident occurred in the manner alleged by the prosecution.

15. Learned counsel for the appellant also contended that there are contradictions in the evidence of P.Ws.2 and 3 with regard to the alleged incident. It is contended that P.W.2 stated in her evidence that she was alone present at the time of the incident and no one was there. Since she did not depose anything about the presence of A-2, her evidence cannot be believed. As a matter of fact, the entire testimony of P.W.2 has to be taken into consideration, which includes the chief and cross examination.

16. In the chief examination, P.W.2 clearly and categorically stated that the incident occurred below the shed and on hearing the cries, she went there and saw the incident of A-1 beating the deceased with a crow bar and A-2 was present there and remained silent without coming to the rescue of the deceased. However, the trial Court had acquitted A-2, as his involvement in the commission of the offence could not be proved by the prosecution. Therefore, considering the entire evidence of P.W.2, it can be safely concluded that the incident was witnessed by P.W.2 and there is no reason to disbelieve her evidence.

17. As far as the motive is concerned, there is no specific evidence brought on record to show that A-1 had no motive with regard to commission of offence. The allegation of the prosecution is that there were private disputes between A-1 and the deceased and that is why, A-1 had committed this offence. Though the motive is not proved in this case by the prosecution, in the light of the direct evidence of P.W.2, the motive loses its significance. The motive attributed alleges to have arisen out of property disputes cannot be believed.

18. As far as the particular incident is concerned, on the previous night prior to the incident, there was a quarrel between A-1 and the deceased with regard to preparation of chicken curry for the purpose of pooja and that A-1 did not prepare the chicken curry for offering the same to the diety. Hence, there was a quarrel between A-1 and the deceased. A-1 voluntarily caused the death of the deceased by beating him with a crow bar. The intention of A-1 does not appear to be to kill him. There is no plan for him to kill

the deceased on the next day morning. Therefore, we of the considered view that due to the said incident occurred on the previous night, A-1 might have resorted to beat the deceased with a crow bar on the next day morning. However, the nature of the injuries would suggest that the injuries are fatal in nature, which are likely to cause death, and therefore, the provisions under Section 304 Part – I I.P.C. attracts to the offence. In this regard, we are unable to agree with the evidence of the trial Court in convicting A-1 for the offence under Section 302 I.P.C.

19. Section 304 of the Indian Penal Code, 1860 reads as under:-

**“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.”***

Section 304 of the Code provides punishment for culpable homicide not amounting to murder. Under it, there are two kinds of punishments applying to two separate degrees of culpable homicide depending upon: (i) intention to cause death or bodily injury likely to cause death under Part-1 (i.e., para-1) and (ii) knowledge that the act is likely to cause death under Part-II

(para-2). For conviction of the offence of culpable homicide not amounting to murder under Section 304, Part-I, the following two circumstances must be proved, viz., the act by which the death is caused is done: (a) with the intention of causing death; and (b) of causing such bodily injury as is likely to cause death. Under Part - 1 of Section 304 I.P.C., the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and fine. If the act is done with knowledge that is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to ten years, or with fine, or with both under Part-II of Sec. 304 of the Code.

20. On considering the entire material on record, it is obvious that this is a case of murder committed by A-1, who is the father of the deceased. A-1 is aged about 64 years by the date of commission of this offence. Now, he must be about 72 years and he has already undergone more than five years of imprisonment. Keeping in view the nature of the dispute between the deceased and A-1 and the circumstances in this case, we are of the considered opinion that in the light of circumstances, the interests of justice would be served if A-1 is sentenced to undergo sentence of imprisonment for the offence under Section 304 Part - I I.P.C. instead of Section 302 I.P.C.

21. Accordingly, the sentence of imprisonment imposed by the trial Court for the offence under Section 302 I.P.C. is modified to that of Section 304 Part - I I.P.C. and the appellant/A-1 is

sentenced to undergo rigorous imprisonment for a period of ten (10) years and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three (3) months.

22. Accordingly, the Criminal Appeal is partly allowed.

23. Miscellaneous Petitions pending, if any, in this Criminal Appeal shall stand closed.

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**JUSTICE A.V.SESHA SAI**

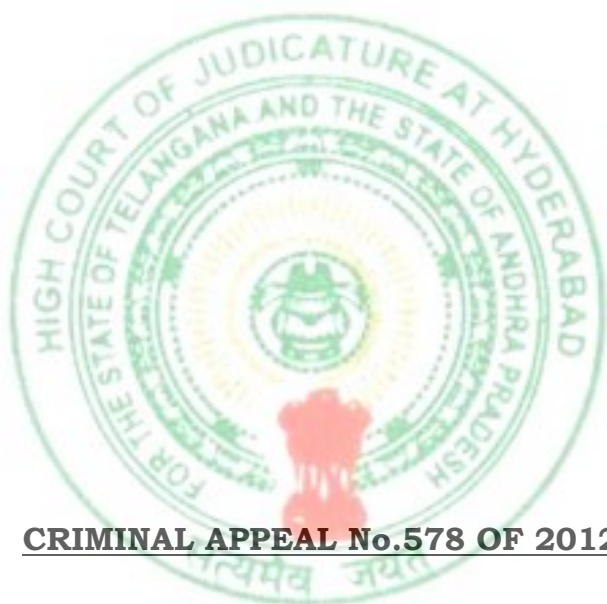
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**JUSTICE GUDISEVA SHYAM PRASAD**

Date : 17.03.2018  
AMD



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