

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

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.625 of 2012

Date: 27.10.2018

Between:

Prathipati Babu Rao

....Appellant

And:

State rep. by Public Prosecutor
High Court of Andhra Pradesh
Hyderabad.

....Respondent

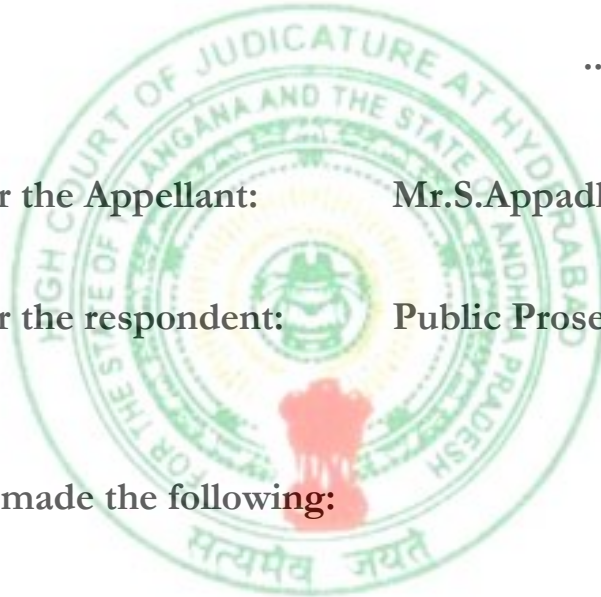
Counsel for the Appellant:

Mr.S.Appadhara Reddy

Counsel for the respondent:

Public Prosecutor (AP)

The Court made the following:



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

The Accused in Sessions Case No.383 of 2011 on the file of the II Additional District and Sessions Judge, West Godavari District at Eluru, filed this Appeal against Judgment, dated 30.01.2012, passed therein, whereby he was convicted for the offence punishable under Section 302 IPC and sentenced to undergo Imprisonment for Life apart from payment of fine of Rs.500/-, and in default of payment of fine, to suffer Simple Imprisonment for one month.

The sole charge, for which the appellant was subjected to trial, reads as under:

“That you on 24th day of November, 2010 at about 4.30 a.m., in a clash between you and the deceased at the road close by the house of Golime Chittemma in Khandrika Narasimhapuram village, did commit murder intentionally or knowingly causing death of Maddula Issac (deceased) and that you thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.”

During the course of trial, the Prosecution examined PWs.1 to 11, got Exs.P.1 to P.8 marked and produced Mos.1 to 3. On behalf of the defence, no evidence was adduced.

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

Mr.S.Appadhara Reddy, learned Counsel for the appellant, submitted that the Prosecution failed to prove motive by producing any material to show that the appellant was indebted to the deceased to the tune of Rs.5,000/-. He further submitted that the offence has taken place in darkness and that therefore, there was no scope for PWs.2 to 5 to identify the appellant as the offender. The learned Counsel alternatively submitted that even according to the eye witness's account, a quarrel between the appellant and the deceased preceded the occurrence and that at best, the case may fall within Exception 4 to Section 300 IPC *i.e.*, culpable homicide not amounting to murder and that the lower Court has committed a serious error in convicting the appellant for the offence punishable under Section 302 IPC.

Opposing the above submissions, the learned Counsel representing the learned Public Prosecutor argued that as the Prosecution case is based on the evidence of eye witnesses, motive has no role to play and that in the light of the

unequivocal evidence of PWs.2 to 5, who are the eye witnesses, the appellant was rightly held guilty of commission of murder. As regards the alternative submission, the learned Counsel submitted that the defence was unable to adduce any evidence, which would make the case fall under any of the exceptions to Section 300 IPC.

As regards the submission relating to motive, the Prosecution pleaded that the deceased was a cleaner under the appellant, who was working as a lorry driver; that the latter was indebted to the deceased a sum of Rs.5,000/- towards salary; and that when the demand was made by the deceased, the appellant has killed him.

As rightly submitted by the learned Counsel for the Prosecution, this case is based on the evidence of PWs.2 to 5- eye witnesses. Therefore, motive does not play much role in a case of this nature. If the Court is convinced about the trustworthiness of the eye witnesses and their testimony, motive gets relegated to the background. We shall, therefore, carefully consider the testimony of the eye witnesses.

PW.2 deposed that he along with his son- Peddi Raju organises a belt shop at his residence; that the appellant is his son-in-law; that the deceased belongs to his village; that about one year back, on one day at about 4.00 a.m., the appellant and the deceased came to his belt shop, purchased liquor and went away; that after some time, there was a fight between them on the road near to his house; and that he saw the appellant beating the deceased. That when he shouted at the appellant, neighbours gathered and on seeing them, the appellant fled away. It could be elicited from the cross-examination of PW.2 that the road, on which the appellant went after purchasing the liquor, is not visible from his house.

PW.3 is a neighbour to the house of PW.2 and his son. She deposed that the family of the petitioner and his son is running a belt shop at their residence; that at about 4.00 a.m., in November of the previous year, she heard some shouts/cries near her house; that on coming to know the same, she came out of her house and saw the appellant beating the deceased; and that on seeing the same, she shouted at the appellant, who thereafter fled away. An

interesting suggestion was put to this witness that she has seen only the injured but not the appellant at the scene of offence. This witness, however, stated in the cross-examination that the incident occurred at a distance of 20 feet in front of her house. She also stated that the villagers gathered at the scene of offence and that though it was dark at the time of the incident, the street lights were on.

PWs.4 and 5 are also neighbours to the house of PW.2 and his son. Both of them have deposed on the same lines as deposed by PWs.2 and 3. Nothing material could be elicited from their chief-examination in order to doubt the veracity of their testimony. The only suggestion worth mentioning put to PWs.2 and 3 was that it was dark at the time of the incident, but such a suggestion was not put to PWs.4 and 5. PW.2 categorically stated that there were street lights. PWs.2 to 5 being independent witnesses, their testimony deserves highest credibility. It was not even suggested to these witnesses that they had any ill-will towards the appellant to depose falsehood. Therefore, we have no reason to disbelieve the version of the eye witnesses.

Once the evidence of these witnesses is accepted, no further evidence is required to prove the guilt of the appellant.

As regards the alternative submission, the learned Counsel for the appellant pleaded that the fact that the appellant was neither armed nor used any weapon in the commission of offence shows that he did not have the intention to kill the deceased. He further submitted that due to sudden fight that ensued between the appellant and the deceased after consuming liquor, the appellant has beaten the deceased, which lead to the latter's death. He therefore, pleaded that the case falls under exception 4 to Section 300 IPC.

Exception 4 to Section 300 IPC 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 offender's having taken undue advantage or acted in a cruel or unusual manner."

PW.2 deposed that some time after purchase of liquor and moving away from his shop, a fight ensued between the appellant and the deceased on the road, in the course of which, the appellant beat the deceased. PW.3 also deposed

in the same vein. PW.4 also testified that on hearing the cries near her house, she came out and witnessed the incident. PW.5 also deposed in the same fashion. The consistent version of these witnesses shows that a quarrel preceded the occurrence. Obviously, after consuming liquor, a heated exchange of words between the appellant and the deceased appeared to have taken place during which the appellant has hit the head of the deceased against the floor.

Ex.P.5- Post-Mortem Certificate shows that one crush injury near right ear with irregular lacerated injury measuring 6 x 0.5 x 1 cm retro auricular area, one small lacerated injury on the temporal area and multiple streak abrasions (scratches) were present on the lateral side of the dead body of the deceased. PW.9- Civil Assistant Surgeon, Government Hospital, Eluru, who issued the Post-Mortem Certificate opined that the cause of death was due to shock and haemorrhage due to head injury. It, thus, appears that the appellant has caused one fatal injury causing the death of the deceased. If the appellant had the intention to cause death, he would have caused multiple injuries, but, at the same time, the injury was caused to the head, which lead to the death of

the deceased. Therefore, the appellant is presumed to have the knowledge that the injury caused to the deceased was such that in ordinary course, it is likely to cause the death of the deceased. We are, therefore, of the opinion that the appellant is liable to be convicted for the offence punishable under Section 304 Part II IPC.

As regards the sentence, the appellant had already been convicted in connection with another Crime registered under Section 302 IPC and sentenced to Life Imprisonment, which was confirmed by this Court today by a separate Judgment in Crl.A.No.623 of 2012. As both the sentences were imposed upon the appellant on the same day simultaneously by the lower Court, he will not have the benefit of Section 424 Cr.P.C. Therefore, in the facts and circumstances of the case, we feel that interests of justice would be served, if the appellant is sentenced to undergo five years of Rigorous Imprisonment.

In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant *vide* Judgment, dated 30.01.2012, in SC.No.383 of 2011 on the file of the II Additional District & Sessions Judge, West Godavari District

at Eluru, for the offence punishable under Section 302 IPC is modified to that of the offence punishable under Section 304 Part II IPC. The appellant is, accordingly, convicted and sentenced to suffer Rigorous Imprisonment for five years. The sentence regarding imposition of fine is confirmed.

(C.V.Nagarjuna Reddy, J)

Dt: 29th October, 2018
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(T.Amarnath Goud, J)

