

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B.RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE P.KESAVA RAO**

CRIMINAL APPEAL No.202 OF 2013

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

This Criminal Appeal is preferred by the appellants/A.1 and A.2 challenging the Judgment, dated 17.01.2013, passed in Sessions Case No.353 of 2012 by the learned Principal Sessions Judge, Medak at Sangareddy, whereby the learned Principal Sessions Judge found the appellants/A.1 and A.2 guilty for the offences under Sections 302 and 324 IPC and accordingly convicted, and sentenced them to suffer imprisonment for life and to pay a fine of Rs.10,000/- (Rupees ten thousand only) each, in default, to undergo rigorous imprisonment for a period of six months each, for the offence punishable under Section 302 IPC. The learned Judge further sentenced them to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.1,000/- (Rupees one thousand only) each, in default, to undergo simple imprisonment for a period of two months each, for the offence punishable under Section 324 IPC.

2. Heard the learned counsel for the appellants/A.1 and A.2 and the learned Public Prosecutor for the State of Telangana.

3. The case of the prosecution is that on 13.05.2012 at about 19.00 hours, while the complainant and her husband Mondhi Yeshaiah (deceased) were at their house, the deceased asked his brother-in-law, A.2 about hand loan of Rs.40/- on which, A.2 picked up a quarrel with the deceased. Meanwhile, A.1 beat the deceased with an iron chair, while A.2 beat the deceased with a stick and caused cut injuries. When the complainant intervened to rescue the deceased, A.1 and A.2 also beat on her face and hands. She made hue and cries. Neighbours came and on

seeing them, the accused went away. The deceased fell unconscious. The complainant took him to a local doctor, who stated that the condition of the deceased was serious. On 14.05.2012, the complainant shifted the deceased to the Government Hospital, Narayankhed, where he was declared dead. On the same day, the complainant made a complaint before the SHO, Narayankhed and the Police registered Crime No.63 of 2012 for the offences punishable under Sections 302 and 324 IPC. The appellants/A.1 and A.2 were arrested and after concluding the investigation, charge sheet was filed against the accused for the same offences.

4. To prove the guilt of the appellants/A.1 and A.2, prosecution examined P.Ws.1 to 11 and marked Exs.P.1 to P.8 and M.Os.1 and 2. On behalf of the accused, neither any evidence was adduced nor any exhibit was marked.

5. On appreciation of oral and documentary evidence, the Court below convicted the appellants/A.1 and A.2 for the offences punishable under Sections 302 and 324 IPC and accordingly sentenced them as stated above.

6. P.W.1, the complainant, is the wife of the deceased, and P.W.3, a minor, is the daughter of the deceased. They deposed that when they were in their house, A.1 and A.2 came to their house and then the deceased asked A.1 and A.2 to give Rs.40/-, which was due to him for the work done by him in the mango garden of the accused. On that, A.2 instigated A.1 to bring chair and beat the deceased and as such, A.1 brought the chair and beat the deceased. A.2 also brought a stick and gave it to A.1, and A.2 and A.1 beat the deceased with that stick. When P.W.1 intervened, she was beaten by them on her face and mouth, on which, she sustained bleeding injuries. Immediately, P.W.3 went to the house of P.W.2 and brought her to the place of incident. P.W.2, the elder daughter of the deceased, who

resides four houses beyond the house of her parents, deposed that on the date of incident, P.W.3 came to her house and informed that both the accused were beating their parents and when P.W.2 went to the house of her parents, A.1 and A.2 were beating the deceased and P.W.1. She asked A.1 and A.2 not to beat their parents. The neighbours also gathered at the spot. P.W.1 and P.W.2 took the deceased to the hospital. P.W.4, who is neighbour of the deceased, deposed that on hearing the galata, he rushed to the place of incident and by that time, A.1 and A.2 were beating the deceased and that A.2 beat with a stick while A.1 beat with a chair. P.W.5 is the neighbour, who attested the Inquest Panchanama and Ex.P.2 is the scene of offence panchanama. P.W.6 is the ex-sarpanch of the village, who deposed that at the request of the police, he went to the house of the accused and that both the accused confessed about the offence. P.W.7 is the Doctor, who deposed that P.W.1 and her daughter brought the deceased to his hospital, and he expressed inability to treat him as the condition of the deceased was serious. P.W.8, who is the Civil Assistant Surgeon in Primary Health Centre, Sirgapur, deposed that he conducted autopsy over the dead body of the deceased and found external anti mortem injuries in the form of lacerations, abrasions and scratches and internal injuries which are rupture spleen and laceration over left kidney and fracture of 9th rib. P.W.9 deposed that he is a photographer and he took photographs of the dead body of the deceased at Government Hospital, Narayankhed and Ex.P.7 is the bunch of four photographs. P.W.10 is the Sub Inspector of Police, Mirdoddi Police Station. He deposed that he received the complaint and registered as Crime No.63 of 2012 for the offences under Sections 302 and 324 IPC. P.W.11, the Investigating Officer, conducted investigation and laid charge sheet against the accused for the same offences.

7. Considering the oral and documentary evidence adduced on behalf of the parties, this Court has drawn an inference that the entire incident occurred at the spur of moment and that there is no intention by the appellants/A.1 and A.2 to kill the deceased. This Court has drawn that inference because the occurrence happens when the deceased along with her wife was at his house, A.1 and A.2 came there and then only, the deceased asked A.2 about the hand loan of Rs.40/-, there upon A.1 and A.2 picked up quarrel with the deceased and at that spur of moment, A.1 and A.2 attacked the deceased, and later, the deceased died. The act of the accused is 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. Therefore, it cannot be held that the appellants/A.1 and A.2 is having any intention to kill the deceased. Therefore, the conviction of the accused under Section 302 IPC is altered to one under Section 304 Part II IPC. Insofar as the sentence for the offence punishable under Section 304 Part II IPC is concerned, this Court is justified to taper the sentence to be to the extent of the period already undergone by the appellants/A.1 and A.2. The fine amount of Rs.10,000/- (Rupees ten thousand only) each, imposed by the Court below, is not interfered with. Insofar as the offence under Section 324 IPC is concerned, this Court confirms the conviction and sentence imposed by the Court below.

8. The Criminal Appeal is accordingly allowed in part. The conviction imposed on the appellants/A.1 and A.2 under Section 302 IPC through the Judgment, dated 17.01.2013, by the Court of the Principal Sessions Judge, Medak at Sangareddy, is altered to one under Section 304 Part II IPC. Considering the material available on record, the sentence is modified to that of the period already undergone by the appellants/A.1 and A.2. The conviction and sentence imposed by the Court below for the offence

punishable under Section 324 IPC is confirmed. The appellants/A.1 and A.2 shall be set at liberty forthwith, if they are not required in any other crime.

Consequently, the miscellaneous petitions, if any pending in this appeal, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

P.KESAVA RAO, J

28.12.2018
pln

