

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.42 OF 2014

JUDGMENT: *(per Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellant/accused has challenged the Judgment dated 27-09-2013 in S.C.No.249 of 2013 on the file of the Judge, Family Court-cum-Additional Sessions Judge, Karimnagar, whereby the appellant was found guilty of the offence punishable under Section 302 IPC., and was convicted under Section 235(2) Cr.P.C., and sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.1,000/- (Rupees one thousand only), in default, to suffer Simple Imprisonment for three months.

2. The prosecution came into motion on the complaint filed by PW.1, Rachapally Raju, who is son of the appellant and the deceased. He deposed that the appellant married the deceased about 25 years and they were blessed with PW.1 and one daughter. The appellant and the deceased lead happy marital life till 2010. The appellant suspected the character of his wife that she developed illegal intimacy with a villager. Since last one year to the date of incident, several quarrels took place between the appellant and the deceased, and due to harassment of accused about 8 months back, the deceased went to her parents' house. After two months, the accused took his village elders PW.4, LWs.7 and 8 Rachapalli Rajaiah and More Odelu, and conducted a panchayat where the appellant agreed to look after his deceased wife well and took her back to his house. After that, they lived happily for some time, but the deceased did not

change her attitude and continued illegal intimacy with the villager. On 17-10-2010 at 9.30 A.M., PW.1 went to Jammikunta on his personal work, while the appellant and deceased went to cotton fields for attending agricultural work to pluck cotton. There, the appellant picked up quarrel with the deceased and beat her with a stone on her forehead with an intention to kill her, due to which, the deceased received bleeding injuries and died on the spot.

3. It is not in dispute that on the same day at 3.00 PM., the appellant informed the matter to PW.7 and requested him to inform the same to PW.1. PW.1 along with PW.2 went to the spot and found the dead body of the deceased under kalakota tree with severe injuries and, on a report of PW.1, a case in Crime No.253 of 2012 under Section 302 IPC., was registered against the appellant.

4. After investigation of the case, PW.12 Inspector of the concerned Police Station filed the charge sheet and thereafter a charge was framed and explained the same to the appellant in Telugu under Section 228 Cr.P.C., and he pleaded not guilty and claimed to be tried.

5. During the course of trial, the prosecution examined PWs.1 to 12 and marked Exs.P1 to P7 and MOs.1 to 6 on its behalf. On conclusion of trial, the appellant was examined under Section 313 Cr.P.C., to explain the incriminating material appearing against him and he denied the same. However, the appellant did not examine any defence witnesses or marked any document on his behalf.

6. The present case rests upon the deposition of PW.1, who is son of the appellant and the deceased. The said witness has neither last seen the appellant and deceased nor the commission of offence. However, on the altercation took place in the fields while plucking cotton between the appellant and the deceased, the appellant thrown a stone upon the deceased, which hit on her forehead, and caused deep lacerated wound extending from middle of the head frontal region 4"x4"x4". Thereafter, the appellant left that place and informed to PW.7 and requested him to inform to PW.1.

7. It is not in dispute that the marriage between the appellant and deceased took place about 25 years prior to the incident and the appellant started harassment suspecting her character somewhere in the year 2012, due to which, the deceased left the matrimonial house and started living with her parents. Thereafter, the appellant himself approached the elderly persons and settled the dispute and brought back the deceased to his house and lived happily.

8. It is the case of the prosecution that the deceased did not change her attitude and she continued her illegal intimacy with the villager, still the appellant lived with the deceased happily. However on 17-10-2012, when they were attending agricultural work and plucking cotton, the appellant picked up a quarrel with the deceased and beat on her forehead with a stone and left the place.

9. It is not in dispute that the appellant had not hit the deceased repeatedly. He hit once on the forehead of the

deceased and thereafter left the place and requested PW.7 to inform to PW.1 his son. Thus, he had no intention to take away the life of the deceased. However, he hit the deceased due to the altercation taken place in the cotton fields. The aforesaid fact has been ignored by the trial Court and convicted the appellant for the offence punishable under Section 302 IPC.

10. For the purpose of convenience, Section 304 IPC., is reproduced hereunder:

“304. 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.”

11. It is clear from the aforesaid provision of law that if an 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, then the case of the accused comes under Part-II of Section 304 IPC.

12. As discussed above, the appellant married the deceased about 25 years prior to the incident and the incident occurred in the year 2012, and due to some altercations taken place in the cotton fields while plucking cotton, the appellant hit once on the forehead of the deceased with the knowledge that it may likely to cause death. However, there was no intention on the part of the appellant to kill the deceased. Accordingly, we hereby safely can

opine that the present case falls under Part-II of Section 304 IPC. Accordingly, we hereby modify the conviction and sentence to the extent that the appellant is guilty of the offence punishable under Part-II of Section 304 IPC.

13. The appellant was arrested on 25-10-2012 and till date, he was in jail for almost six years. Therefore, we hereby convict the appellant for the period already undergone and accordingly, the appeal is partly allowed holding the appellant guilty under Part-II of Section 304 IPC. Consequently, conviction and sentence dated 27-09-2013 passed by the trial Court in S.C.No.249 of 2013 is set aside. The Superintendent, Central Prison, Warangal, is directed to release the appellant-Rachapalli Saraiah forthwith, if he is not required in any other criminal case.



SURESH KUMAR KAIT, J

T.AMARNATH GOUD, J

Date:14-08-2018.
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