

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THURSDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE P.SREE SUDHA**

CRIMINAL APPEAL NO: 758 OF 2014

Appeal under Section 374(2) of Cr.P.C against the Conviction and Sentence awarded in S.C.no. 397 of 2013 dated 20.03.2014 on the file of the Court of the IX Additional District and Sessions Judge, Wanaparthy.

Between:

Vadlakonda Saidulu,

...APPELLANT/ACCUSED

AND

The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad,
Hyderabad

...RESPONDENT

Counsel for the Appellant: SRI. VENKAT REDDY KODUMURY

Counsel for the Respondent: ADDITIONAL PUBLIC PROSECUTOR

The Court made the following: JUDGMENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CRIMINAL APPEAL No.758 of 2014

JUDGMENT: *(per Hon'ble Smt. Justice P.Sree Sudha)*

This Criminal Appeal is filed against the Judgment dated 20.03.2014 in S.C.No.397 of 2013 passed by the learned IX – Additional District and Sessions Judge, Wanaparthy.

2. The case of the prosecution is that the appellant/accused alleged to have killed the deceased with an axe, as a result deceased succumbed to injuries and thus it is alleged that accused committed offences punishable under Section 302 of IPC. To prove the guilt of the accused prosecution examined P.Ws.1 to 15 and marked Exs.P1 to P8 on their behalf and also marked M.Os.1 to 8. The Trial Court after considering the arguments of both sides and also the entire evidence on record, convicted the accused under Section 235(2) of Cr.P.C and sentenced him to undergo life imprisonment with a fine of Rs.5,000/-, in default to suffer simple

imprisonment for a period of six months for the offence punishable under Section 302 of I.P.C. Aggrieved by the said judgment, accused preferred the present appeal.

3. Learned counsel for Accused mainly contended that the motive suggested for committing murder is irrelevant not established and there is no positive evidence except the evidence of interested witnesses i.e., P.Ws.1 to 3. He further contended that the trial Court erred in consisting the meaning of motive and intention for the purpose of section 302 of IPC. The evidence of P.Ws.1 and 2 are contrary to each other. P.Ws.2 and 3 are set up to screen the real culprit and the case is foisted against the appellant. The trial Court failed to note the inconsistencies and oddities and misread the evidence. The trial Court erred in treating admittedly the third party witnesses as direct witnesses. Therefore, requested this Court to set aside the judgment passed by the Trial Court.

4. Heard arguments of both sides and perused the entire evidence on record.

5. The case of the prosecution is that as per Ex.P.1, complaint given by father of the deceased, Balamani is that he performed the marriage of her daughter with the accused and her daughter had happy conjugal life, thereafter started quarrels among them. The accused asked him to give Rs.20,000/- for construction of house and he refused to pay expressing his inability and on that the accused picked up quarrel with him. As such panchayath was held on 04.10.2009 and accused agreed not to quarrel with them and the deceased stayed at house of P.W1 in Achampet. He stated that P.W.2 is his brother-in-law. He stated that about four days back, accused came to his house and asked him to send the deceased and he told him that the deceased was sick and after recovery she will be sent with him. On 28.10.2009, when P.W.1 went to work and his wife went to coolie work, the deceased was alone in the house. When the deceased was washing the clothes in front of her parent's house in an open place, the accused went there with an axe and hacked her to death. When the accused was running away from that place P.W.2 and his son by name Srikanth saw the accused. As such,

P.W.1 gave a complaint to take action against his son-in-law for killing his daughter and P.S. Achampet registered FIR in Crime No.135 of 2009 under Section 302 of IPC.

6. P.W.1 also added that accused asked him Rs.20,000/- for construction of house, but he expressed his inability to pay. In the cross-examination, he admitted that he has not said it in the complaint. Ex.B1 is marked through him, in which it was suggested that he stated to the police that accused and deceased lived together happily for 3 ½ years as in Ex.D1. He stated that accused was in Achampet and consuming alcohol and he gave Ex.P1, complaint. It was suggested to him that another daughter witnessed the murder of Balamani by Madhu, but he prevented her by giving complaint to the police. He admitted that Madhu was son of his wife's another brother and the said Madhu asked P.W.1 to give his daughter, Balamani in marriage, prior to her marriage with the accused, but they refused his proposal and even the deceased, Balamani also refused to marry Madhu. The house of the said Madhu is situated in Gokul Nagar

locality. It was suggested that though Madhu murdered deceased as he is brother's son of /P.W.2.

7. P.W.2 is brother-in-law of P.W.1. He stated that he along with P.W.3 were going the street from in front of the house of P.W.1, the deceased was washing clothes in front of the house and accused went to her and axed her to death. Both P.Ws.2 and 3 raised cries and tried to catch the accused, but the accused fled away by leaving the axe on the spot. He identified M.O.1, axe. He stated that after the marriage, accused and the deceased were living happily for one year and later quarrels took place between them. He further stated in the cross-examination that Balamani came to house of P.W.1 for Dussehra festival and remained there till Diwali festival. He also stated that he along with his son came out of their house to go to the market for vegetables and when they reached in front of Upper Primary School, which is near the house of L.W.9, Balaiah saw the accused approaching the deceased. The house of P.W.2 is at a distance of 60-70 yards to the house of P.W.1. It was also suggested that Madhu killed Balamani as he is

son of his brother, he got filed false case but he denied it. P.W.3, aged 16 years, son of P.W.2 stated that he along with his father went to the market for purchasing book for him and at that time, Balamani was washing clothes in their house and accused came and axed her on her neck and head towards right side. He and his father raised cries and accused fled away from that place. He identified M.O.1. It was suggested that neither P.W.2 nor P.W.3 were present at that place and they have not witnessed the offence, but he denied it.

8. P.W.4 is another brother of P.W.1. He stated regarding the panchayath and also stated that accused is suspicious in nature and was suspecting fidelity of Balamani. In the panchayath it was held that she was sick and she will be sent later. In the evidence, he stated that during panchayath, earlier the accused poured kerosene on the deceased. But In the cross-examination, he admitted that he has not stated so before the police. P.W.5 is scribe of Ex.P1. P.W.6 is photographer. P.W.7 is panch for scene of offence and M.Os.1 to 3 were also seized in his

presence. P.W.8 and P.W.10 are panch for inquest panchanama. The deceased died within seven years after the marriage. The Tahasildar, Achampet was also present at the time of inquest along with P.W.8. Inquest Panchanama was recorded under Ex.P4. M.Os.4 to 7 were seized. P.W.9 is panch for confession and seizure. M.O.8 was seized in his presence. He stated that the accused confessed that he killed his wife with an axe and left the axe and fled away from that place.

9. P.W.11 is Civil Assistant Surgeon, who conducted autopsy on the dead body of Balamani and found that the cause of death was due to multiple stab injuries and it was possible by sharp object. P.W.12 is S.I. of Uppununthala and previously worked at Achampet P.S., he received Ex.P1 and registered as Cr.No.135 of 2009 under Section 304-A IPC and issued FIR under Ex.P7. It was suggested to him that Ex.P1 was prepared on 29.10.2009 as the G.D. Entry number is mentioned as '1' in the FIR, but he stated that it was mentioned due to oversight. P.W.13 is Inspector of Police, he received FSL report under Ex.P8 and PME report

under Ex.P6 and filed charge sheet. P.W.14 is Inspector of Police, who conducted investigation. P.W.15 is another Inspector of Police, who conducted investigation and collected M.O.8 at the instance of the accused. After considering the entire evidence, the trial Court convicted the accused.

10. Now, it is for this Court to see whether conviction and sentence passed by trial Court on proper appreciation of facts or not?

11. The main case of the prosecution is that the marriage of Balamani was performed with the accused. P.W.1 in his statement stated that they lived happily for 3 ½ years. Later accused was addicted to drinking also suspected that Balamani developed illegal intimacy with one Madhu. He is the son of P.W.1's wife's brother and initially Madhu approached P.Ws.1 and 2 for his marriage with Balamani, but P.W.1 and Balamani refused his proposal. P.W.1 in his evidence stated that Madhu died about one year back. The defence of the accused is that in fact Madhu murdered Balamani as he is close relative of P.Ws.1 and 2 though it

was seen younger daughter-in-law of P.W.1, falsely implicated the accused. It was contended that eye witnesses P.Ws.2 and 3 are brother-in-law and his son of P.W.1. P.W.2 stated that he was going to the market to get vegetables. P.W.3 stated that he was going to purchase book. One Balaiah, L.W.9 was not examined by the prosecution. In the charge sheet it was mentioned that he was reported died. Another suggestion was that another sister of the deceased was also in the house and she was eye witness, but she was not examined. In the statement of P.W.1, it was stated that another daughter, Sujatha, went to the house of his brother-in-law, as such, the deceased was alone in the house and the accused went to the house of the deceased, picked up axe from inside house and attacked his daughter. P.Ws.2 and 3 stated that while they are going out, they saw the accused attacking the deceased. But in the complaint, under Ex.P1, P.Ws.2 and 3 stated that they saw the accused running away from that place. But the other daughter of P.W.1 was not examined as PW.1 stated that she is not in his house, she went to his brother-in-law's house. In the complaint, he clearly stated

that while accused was running away from that place, P.Ws.2 and 3 saw the accused. But in the evidence, P.Ws.2 and 3 stated that they have seen the accused axed the deceased. P.W.2 also stated that they tried to catch the accused, but he ran away from that place. If they have really seen the accused attacking the deceased, P.W.1 should have mentioned the same in the complaint. Moreover, both of them are close relatives of P.W.1 and interested witnesses and thus their evidence is to be scrutinized with more caution. P.W.9 stated that accused confessed his guilt and at his instance, M.O.8, shirt was seized from his house. The recovery panchanama under Ex.P5 was drafted on 02.11.2009.

12. Section 302 of IPC is important in many ways. Person accused of murder is tried under this section only. Further, if in the case an accused of murder is found guilty of an offence, Section 302 provides for punishment to such offenders. It states that whoever commits murder shall be punished with either life imprisonment or death (depending on the gravity of the murder) along with fine. The primary

point of consideration for the Court in matters relating to murder is the intent and purpose of the accused. That is why, it is important that the object and intention of the accused is proved in cases under this section. The required materials for murder include intention (must be intended to cause death), cause of death (the act has to be done with the knowledge that the act may cause the death of another and bodily injury (there must be intent to cause such bodily injury as is likely to cause death).

13. **In Basdev v. State of Pepsu**¹ the Apex Court held as under:

"Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion."

¹ AIR 1956 SSC 488

14. It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe to treat 'intent' and 'knowledge' in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this background that the expression used in Indian Penal Code namely "intention" and "knowledge" has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts

and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted. The Apex Court in **Pulicherla Nagaraju @ Nagaraja Reddy vs State of Andhra Pradesh**², held as under:

"Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid

² AIR 2006 SC 3010

the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances reference to individual cases which may throw light on the question of intention. Be that as it may."

15. It is for this Court to arrive at a conclusion, whether the present case falls under Section 302 or 304-II IPC. In

this case, the accused preserved blood stained shirt in his house from 28.10.2009 to 02.11.2009 without washing the same. Panchayath was conducted regarding the disputes between accused and the deceased. On 04.10.2009, even after panchayath, deceased was living with her parents, as such, accused along with his brother-in-law approached P.W.1 and requested him to send the deceased. But P.W.1 stated that she is sick and he will send her later. It seems Balamani was not intended to go along with her husband. Hence, in a sudden provocation, in a spur of moment, he went inside the house, picked up an axe and hacked her. As there is no provocation to kill his wife, he did not carry any weapon with him. As per the medical evidence, Balamani sustained injuries on the head and neck. M.O.1, axe was seized at the place of incident and was identified by P.Ws.2 and 3. No doubt deceased died due to the injury caused by the accused, but the said injury was caused in a fit of anger and he has no intention to kill the deceased. There is thin line between culpable homicide not amounting to murder and murder and this can falls under Section 304 part-II.

16. The accused herein is in jail from 20.03.2014 i.e., he has completed 9 ½ years of sentence. Therefore, this Court finds that it is just and reasonable to modify the sentence of imprisonment to the period already undergone by him, as it falls under Section 304 part-II IPC.

17. In the result, the Criminal Appeal is partly allowed. The conviction and sentence of imprisonment in SC.No.397 of 2013 passed by the trial Court on 20.03.2014 against the appellant/accused for the offence under Section 302 I.P.C is modified to that of Section 304 Part-II of I.P.C and is reduced to the period already undergone by him. The appellant/accused shall be set at liberty forthwith, if he is not required in any other case. M.Os.1 to 8 shall be destroyed after the expiry of appeal time.

Pending miscellaneous petitions, if any, shall stand closed.

Sd/- C.V.MALLIKARJUNA VARMA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The IX Additional District and Sessions Judge, Wanaparthy, Mahabubnagar District. (With Records if any)
2. The Additional Judicial First Class Magistrate, Achampet (With Records if any)
3. The Station House Officer, Achampet Police Station, Mahabubnagar District.
4. The Superintendent, Central Prison, Cherlapally, Ranga Reddy District. (By Special Messenger)
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad (OUT)
6. One CC to SRI. VENKAT REDDY KODUMURY, Advocate [OPUC]
7. Two CD Copies

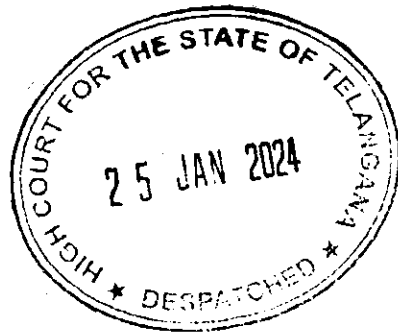
PR

HIGH COURT

DATED: 25/01/2024

JUDGMENT

CRLA.No.758 of 2014



PARTLY ALLOWING

THE CRL.APPEAL

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25/1/24