APHC010831762018

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3578]
(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT
THE HONOURABLE SRI JUSTICE K. SURESH REDDY
AND
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

CRIMINAL APPEAL NO: 2897/2018

Between:
Kancharaya **...APELLANT**

AND
State of Andhra Pradesh rep. by Public Prosecutor, High Court of A.P. **...RESPODENT**

Counsel for the Appellant:
Sri G VIJAYA SARADHI

Counsel for the Respondents(S):
ADDL. PUBLIC PROSECUTOR (AP)

The Court made the following:

JUDGMENT : (per Hon'ble Sri Justice K. Suresh Reddy)

Sole accused in Sessions Case No.90 of 2018 on the file of the Court of II Additional District and Sessions Judge, Hindupur, is the appellant in the present Criminal Appeal. He was tried and convicted by the learned Additional Sessions Judge for the offence punishable under Section 302 IPC and was sentenced to undergo imprisonment for LIFE and also to pay a fine of Rs.500/- (Rupees Five Hundred only), in default, to suffer simple imprisonment for three months.

2. The substance of the charge is that on 08th October, 2017, at about 8.30 P.M., the accused attacked one T.Jagannath (hereinafter referred to as “deceased”) at Indiramma Colony, Agraharam Village, with hands and legs and pressed his throat, causing his death, thereby committed an offence punishable under Section 302 IPC.

3. Case of the prosecution, briefly, is as follows.

a) The accused and material prosecution witnesses are residents of V.Agraharam Village, Amarapuram Mandal, Anantapuramu District. The deceased was also a resident of the same village. PW.1 is the brother, PW.2 is the wife of the deceased respectively. PW.3 is friend of the deceased and PW.4 is running a toddy shop in the neighbouring village. The deceased borrowed an amount of Rs.100/- from the accused about six months prior to the date of incident. In spite of repeated demands, the deceased did not repay the amount.

(b) While so, on 08.10.2017, at about 7.00 P.M., the deceased, PW.3 and others, along with the accused, went to the toddy shop of PW.4 and were consuming toddy. At about 8.30 P.M., the accused demanded the deceased for the payment of Rs.100/-. In that regard, an altercation took place between the accused and the deceased. Then the accused grew wild, beat the deceased with hands and legs

and pressed his throat and the deceased fell down. Hearing the information, brother of the deceased-PW.1 came to the scene of offence and shifted the injured to his house. While PW.1 was taking the injured to Parusurampuram Government Hospital, the deceased breathed his last. On the next day morning, at about 7.00 A.M., PW.1 went to the Police Station and gave report. On 09.10.2017, at about 7.00 A.M., PW.8 Sub-Inspector of Police, Amarapuram Police Station, received Ex.P1 report from PW.1 and registered a case in Crime No.44 of 2017 for the offence punishable under Section 302 IPC. He issued copies of F.I.R. to all the concerned. F.I.R. is marked as Ex.P6.

(c) On the same day, at about 9.15 A.M., PW.9 Inspector of Police, having received the information, went to the scene of offence. He recorded statements of PWs.1 to 3. He prepared Ex.P3 observation report at the scene of offence. He also prepared Ex.P7 rough sketch of the scene of offence. He held inquest over the dead body of the deceased in the presence of PW.6 and another. Inquest report is marked as Ex.P4. He sent the dead body for post-mortem examination.

(d) PW.7 Civil Assistant Surgeon, Government Hospital, Madakasira, conducted autopsy over the dead body. He opined the cause of death was due to asphyxia caused by neck compression (throttling). He issued post-mortem certificate-Ex.P5.

(e) On 10.10.2017, PW.9 secured the presence of PW.4 and another and recorded their statements. While so, at about 9.30 A.M., on 12.12.2017, the accused approached Village Revenue Officer-PW.5 and confessed about the commission of offence. He took the accused to the police station and handed him over to PW.9 along with statement Ex.P2. PW.9 questioned the accused and recorded his statement under Ex.P8. He reconstructed the scene of offence under Ex.P9 Mahazar. Thereafter, he arrested the accused, who was remanded to judicial custody. After completion of investigation and after receiving all the documents, PW.9 filed charge-sheet.

4. In support of its case, the prosecution examined PWs.1 to 9 and marked Exs.P1 to P9. Neither the oral evidence nor the documentary evidence was adduced on behalf of the accused.

5. When the accused was examined under Section 313 Cr.P.C., he denied the incriminating evidence appearing against him.

6. The mediator for scene of offence observation and inquest, who was examined as PW.6, did not support the prosecution, and he was declared as hostile.

7. Accepting the evidence of PW.1, PW.3 and PW.4, coupled with the medical evidence adduced through PW.7, the learned Additional

District and Sessions Judge convicted the accused as aforesaid, vide impugned judgment, dated 07.09.2018. Aggrieved by the said judgment, the present Criminal Appeal has been preferred.

8. Heard Sri G.Vijaya Saradhi, learned counsel for the appellant/ accused, and Sri Marri Venkata Ramana, learned Additional Public Prosecutor, representing the respondent/State.

9. At the outset, the learned counsel for the appellant fairly conceded that he is not arguing the case for acquittal and he is arguing only with regard to the nature of offence. Learned counsel for the appellant contends that, even according to the prosecution, there was no intention and premeditation on the part of the accused to kill the deceased, and the incident was preceded by a quarrel between the accused and the deceased with regard to repayment of hand loan. He further contends that the accused was not armed with any weapon. As such, he contends that even accepting the entire evidence of prosecution witnesses as true, the offence punishable under Section 302 IPC would not be attracted. At the most, the offence may attract Section 304 Part-II IPC.

10. On the other hand, the learned Additional Public Prosecutor opposed the appeal, contending that the accused throttled the deceased, by which act, he had knowledge that the deceased would

die with the said act. As such, he requests this Court to dismiss the appeal by confirming the impugned judgment.

11. We have carefully scrutinized the entire evidence on record. Though PW.1 claims to be an eyewitness to the incident, we are not inclined to accept the same, as PW.4 in her evidence has specifically stated that PW.1 came to the scene of offence after the incident was over. So far as PW.2 is concerned, she is none other than wife of the deceased and admittedly, she was not present at the scene of offence. There remains the evidence of PWs.3 and 4 alone. According to the evidence of PW.3, on the fateful day at about 7.00 P.M., he, along with the deceased and others, including the accused, went to the shop of PW.4 to consume toddy. At that juncture, there was a quarrel between the accused and the deceased in connection with repayment of Rs.100/- borrowed by the deceased from the accused. In the meanwhile, the accused caught hold of the deceased and pressed his neck with both hands, pushed him down, and left the place.

12. PW.4, who is none other than the owner of the toddy shop, also in her evidence stated that about 7.30 P.M., the deceased, along with others, including the accused, came to her shop to consume toddy. When the accused demanded repayment of Rs.100/- borrowed by the deceased, a quarrel took place between both of them. Meanwhile, the

accused pressed the neck of the deceased with both hands and fell him down. PW.4 further stated that the accused left the place and thereafter, PW.1 came to the shop and took the deceased from her shop.

13. So far as PW.5 is concerned, he is the Village Revenue Officer of Valasa Village. He was examined to speak to the so-called extra-judicial confession made by the accused under Ex.P2. Of course, the learned trial Judge disbelieved the so-called extra-judicial confession of the accused.

14. So far as PW.6 is concerned, he is also Village Revenue Officer of Valasa Village, did not support the prosecution. PW.7 is the doctor, who conducted autopsy over the dead body. PWs.8 and 9 are the Investigating Officers.

15. Having analysed the entire evidence on record carefully, the only evidence available on record is the evidence of PWs.3 and 4. PWs.3 and 4, in their evidence, have categorically stated that the accused, along with the deceased and others, went to the shop of PW.4 and were consuming toddy. PWs.3 and 4 further stated that the accused demanded the deceased for payment of Rs.100/- borrowed from him. Their evidence also states that, at that juncture, a quarrel

took place between both of them, and the accused pressed the throat of the deceased, pushed him down, and went away.

16. As seen from the evidence of PWs.3 and 4, absolutely, there is no material to show that there was premeditation on the part of the accused to kill the deceased. Further, PWs.3 and 4 also state that the accused was not armed with any weapon. As such, it cannot by any stretch of imagination be said that the accused was having an intention to kill the deceased. Admittedly, the incident was preceded by a quarrel between the accused and the deceased. Suddenly, the accused caught hold of the throat of the deceased, pressed the same and pushed him down and went away. As such, the offence punishable under Section 302 IPC is not made out. Instead, the accused can be convicted under Section 304 Part-II IPC.

17. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded by the learned II Additional District and Sessions Judge, Hindupur, Anantapuramu District, in Sessions Case No.90 of 2018, dated 07.09.2018, for the offence punishable under Section 302 IPC, are hereby set aside. Instead, the appellant/accused is convicted for the offence punishable under Section 304 Part-II IPC. As the accused has already served nearly six years of imprisonment, we sentence him to suffer to the period already

undergone by him, while maintaining the fine amount. As the appellant was released on bail, vide order in I.A.No.1 of 2024, dated 18.04.2024, his bail bonds shall stand cancelled.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Criminal Appeal shall stand closed.

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K. SURESH REDDY, J.

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CHALLA GUNARANJAN, J.

Date:16th June, 2026.
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