

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

and

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Criminal Appeal No.700 of 2012

30-12-2017

Between:

Kondapalli Chinnayya Tata, S/o late Tata 63 years,
Rajaka by caste, Kirtubarthi village, Gantiyada
Mandal, Vizianagaram District.

... Appellant

Vs.

The State of Andhra Pradesh, represented
by its Public Prosecutor

.. Respondent

For Petitioner : Mr. Venkatesh Kodumury

For Respondents : Public Prosecutor



**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE CHALLA KODANDARAM**

Criminal Appeal No.700 of 2012

JUDGMENT: *(V. Ramasubramanian, J)*

Aggrieved by the conviction handed over by the Sessions Court for alleged offences under Sections 449 and 302 of the Indian Penal Code and the sentence of imprisonment for life, to be undergone along with Rigorous Imprisonment for 10 years, both to run concurrently, the sole accused has come up with the above criminal appeal.

2. Heard Mr. Venkatesh Kodumury, learned counsel for the appellant and the learned Public Prosecutor for the State.

3. The appellant was charged with the commission of offences under Sections 449 and 302 IPC, on the allegation that on 19-06-2011 at about 12.00 P.M., he committed house trespass by entering into the house of PW.2 and committed the murder by inflicting a heavy blow with a knife on the neck of the deceased.

4. The prosecution examined 16 witnesses and marked 18 documents and 8 material objects. The appellant pleaded ignorance.

5. On the basis of injuries recorded on the body of the victim and on the basis of the testimony of PW.15, the doctor, who conducted Post Mortem, the Sessions Court came to the conclusion that the death was a homicidal one, caused due to a bleeding injury on the neck of the victim.

6. After reaching such a conclusion, the Sessions Court analyzed the evidence of PW.2 and the statement recorded by PW.12, Head Constable, from the deceased after he was admitted in the hospital and came to the conclusion that the charge was proved beyond reasonable doubt. Therefore, the Sessions Court convicted the appellant of committing the offences under Sections 449 and 302 IPC and awarded life imprisonment for the offence under Section 302 and Rigorous Imprisonment for 10 years for the offence under Section 449 IPC.

7. Even according to the prosecution, the attack of the deceased took place at 12.00 noon (wrongly mentioned as 12.00P.M.) on 19-06-2011. The victim was immediately taken to Government Headquarters, Hospital, Vijayanagaram in 108 Ambulance. From the Government Headquarters Hospital, the victim was shifted to K.G. Hospital, Visakhapatnam for treatment. In K.G. Hospital, Visakhapatnam, the victim succumbed to the injuries at 12.20 A.M., on 20-06-2011. In other words, the death of the victim occurred after more than twelve hours of the attack on him. Therefore, it follows that the death was not instantaneous with the blow allegedly inflicted by the appellant.

8. In the statement recorded by PW.12 from the victim in the hospital, marked as Ex.P.7, all that the victim stated was that the accused pounced upon him furiously and attacked him with a knife on the left side of the neck, causing a bleeding deep cut injury.

9. According to PW.2, who was in the same house at the time of occurrence, she heard some noise and saw the victim coming towards the door with a bleeding injury and then falling down.

10. The confession of PW.2 appears to have been recorded under Section 164 Cr.P.C. before the Magistrate on 23-07-2011. But unfortunately, the said confession statement marked as Ex.P.18 was not even put to PW.2 when she was examined-in-chief. In the chief examination, PW.2 stated that she was in the last room of the same house. But in the cross-examination as well as elsewhere, she stated that she was in the hall. According to PW.2, she saw the appellant/accused going out of the house with the weapon in his hand and that she shouted for help and that some villagers assembled there. It is quite strange that none of them could catch hold of the accused. It was not the case of the prosecution witnesses that the accused was running away from the place of occurrence. Therefore, at least to the extent that the accused had an intention to cause the death was not established. PW.1 stated in his chief-examination that the appellant used to proclaim in the village that he would kill the deceased. But we do not think that an intention to cause death is established by that stray sentence spoken to by PW.1.

11. Except PW.1, no one else spoke to the effect that the act done by the appellant was with an intention to cause death or to cause such bodily injury as is likely to cause death. Therefore, this is

a case that at the most would fall only under Part-II of Section 304 IPC and not under Section 302 IPC.

12. In so far as the offence under Section 449 IPC is concerned, there is absolutely no evidence on record as to how the accused gained entry into the house. As a matter of fact, we have ignored the confession statement recorded from PW.2 under Section 164 Cr.P.C. on the ground that in her chief-examination, the same was not put to PW.2. Nevertheless, there is a statement recorded from PW.2 in Ex.P.18 to the effect that the accused and the deceased came together to the house. Therefore, the offence under Section 449 IPC was not made out at all.

13. Unfortunately, the trial Court did not give any reason as to how the offence of house trespass under Section 449 IPC was made out.

14. Therefore, we are of the considered view that the conviction and sentence handed over for the offence under Section 449 IPC should go. In so far as the offence under Section 302 IPC is concerned, all that is made out is an offence under Section 304 Part-II IPC.

15. Therefore, the appeal is allowed in part to the following effect:

- 1) the conviction and sentence for the offence under Section 449 IPC is set aside;
- 2) the conviction for the offence under Section 302 IPC is converted into a conviction under Section 304 Part-II IPC. The

appellant is imposed with a sentence of simple imprisonment for a period of 10 years. The accused shall also pay a fine of Rs.3,000/- as ordered by the Sessions Court.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

CHALLA KODANDA RAM, J

Date: 30-12-2017

Ksn

