

BAIL SLIP: The Petitioner/Accused was directed to be released on bail by the order of the High Court dated 07.02.2018 in I.A.No.1 of 2018 in CRL.A.No.1162 of 2012

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

**SATURDAY, THE TWENTY NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY**

PRESENT

**HONOURABLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE SRI JUSTICE A.ABHISHEK REDDY**

CRIMINAL APPEAL NO: 1162 OF 2012

Appeal under Section 374(2) of Cr.P.C against the judgment in S.C.No.266 of 2012 dated 04.10.2012 on the file of the Court of the IV Additional Sessions Judge, Karimnagar,

Between:

Korepu Ramesh, S/o Bhumaiah, R/o Malkapur Village, Boinpalli Mandal, Karimnagar Dist.

...APPELLANT/ ACCUSED

AND

The State of A.P., Represented by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad.

...RESPONDENT

Counsel for the Appellant(s): SRI. A GAYATRI REDDY

Counsel for the Respondents: PUBLIC PROSECUTOR

Court delivered the following: Judgement

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY**

CRIMINAL APPEAL No. 1162 OF 2012

JUDGMENT: { Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan }

The appellant-accused, Korepu Ramesh, has challenged the legality of the judgment dated 04.10.2012, passed by the IV Additional Sessions Judge at Karimnagar, whereby the learned Trial Court has convicted the appellant for offence under Section 302 IPC, and sentenced him to undergo imprisonment for life.

Briefly, the facts of the case are that on 16.03.2011, around 11:45 a.m., Smt. Mallarapu Rajamma (P.W. 1), resident of Malkapur Village of Boinpalli Mandal, submitted a report (Ex. P.1) at the Boinpalli Police Station, wherein she stated that *"she is the resident of Malkapur (V), eking livelihood by means of doing coolie work, there are land disputes going on between her own brother-in-law, Korepu Anjaiah, S/o. Rajaiah, 60 years, Madiga, R/o. Malkapur, and Korepu Ramesh of the same village since many years, keeping the land disputes in mind, the above Korepu Ramesh, threatened so many times to kill her brother-in-law & sister and waiting for an opportunity to do away her sister and brother-in-law. While so, on 16.03.2011 morning, when her brother-in-law and her sister present in the shed belongs to their caste, at about 0930 hours, said Korepu Ramesh came to them having with a stick with an angry with an intention to kill*

her brother-in-law and sister by saying that today he will kill them, then only the land dispute will settled (sic), no body can rescue them, abused them in filthy language, beat on the head of her sister, Korepu Anjamma and her brother-in-law, Korepu Anjaiah with stick indiscriminately due to land disputes, due to which Anjamma sustained severe bleeding injury to her head. Anjaiah also sustained injuries to his head and right hand. At that time, she and her sister's daughter-in-laws Korepu Prameela and Mariyamma present there and tried to rescue them, then said Korepu Ramesh also threatened them with dire consequences. On seeing gathering of people, said Ramesh ran away from there with a stick. Later, both the injured persons were shifted to Karimnagar Hospital by 108 Ambulance for treatment. Hence, she requested to take action against the above said person who beat her brother-in-law and sister with stick."

On the basis of the said report, the police chalked out a formal FIR, namely FIR No. 26 of 2011 (Ex. P. 13) against the accused for the offence under Section 307 IPC. The investigation commenced. While undergoing treatment at Kanoori Nuero Super Specialty Hospital, Karimnagar, on 19.03.2011 at about 6:00 p.m., Korepu Anjamma (hereinafter referred to as 'the deceased') succumbed to injuries. On receipt of death intimation, E. Prabhakar (P.W. 16), Sub-Inspector of Police, altered the section of law from Section 307 IPC to 302 IPC, and issued altered memo (Ex.P. 14). The

accused was arrested on 31.03.2011, and he was put up for trial.

In order to support its case, the prosecution examined eighteen witnesses, submitted seventeen documents, and exhibited M.O.1, the stick. On the other hand, the defense did not examine any witness. However, it did submit three documents to buttress its case. After appreciating the evidence, by judgment dated 04.10.2012, the learned Trial Court convicted and sentenced the appellant as aforementioned. Hence, the present appeal before this Court.

Ms. A. Gayatri Reddy, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, despite the fact that the alleged incident had occurred in the broad day light, the prosecution has not examined any independent witness. It has examined only family members of the deceased, namely Mallarapu Rajamma (P.W. 1), the sister of the deceased, Korepu Srinivas (P.W. 2), the younger son of the deceased, Korepu Anjaiah (P.W. 3), the husband of the deceased, Korepu Prameela (P.W. 4), the daughter-in-law and sister of the deceased, Korepu Kamalamma (P.W. 5), the daughter-in-law and sister of the deceased, and Korepu Mariyamma (P.W. 8), also the daughter-in-law of the deceased as eyewitnesses.

Secondly, the appellant has not used a lethal weapon to commit the crime. Instead, he has merely used merely a

stick. Moreover, he has not repeated his blows. There is a single injury on the head of the deceased. Furthermore, according to all the eyewitnesses, even earlier on the day, there was an altercation between the accused and the deceased. The accused had come to the house of the deceased, and challenged her husband to come out of the house, and to fight with him. The deceased intervened, and objected to the accused challenging her husband. Immediately, the accused picked up a stick, which was lying at a nearby place, and hit the deceased on the head. Thus, the accused did not come armed with any lethal weapon, but on the spur of the moment, he caused a single injury on the head. Thus, the case would not fall within the scope of Section 302 IPC, but would fall within the scope of Section 304 Part-II IPC.

On the other hand, Ms. Sridevi, the learned Additional Public Prosecutor has vehemently submitted the following counter-contentions:-

Firstly, it is not important for the prosecution to always produce independent witnesses. Since the incident had occurred in front of the house of the deceased, in broad day light, the eyewitnesses produced by the prosecution are natural witnesses.

Secondly, the deceased has not suffered a single injury, but has suffered seven injuries. Thus, it is not a case of

single injury. Hence, the learned Additional Public Prosecutor has supported the impugned judgment.

In rejoinder, Ms. A. Gayatri Reddy has drawn the attention of the Court to the Post-Mortem Report (Ex.P. 12). According to the learned counsel, the other injuries are simple in nature; there is only one single injury which proved to be fatal i.e. the injury on the head of the deceased.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record produced before this Court.

Admittedly, according to the prosecution, the incident had occurred in day light. Therefore, the presence of the eyewitnesses is natural. There is no requirement in law that the prosecution must examine independent witnesses, especially, when the independent witnesses do not wish to be involved in a crime. Moreover, because the witnesses are relatives of the deceased, they would not have let go off the real culprit, and would not have falsely implicated the appellant. Hence, the first argument of the learned counsel that the non-production of independent witnesses is fatal to the prosecution is unacceptable.

Korepu Anjaiah (P.W. 3) in his examination-in-chief clearly states that *"The accused beat my wife with stick. There were land disputes between accused and us. Keeping them in mind, accused assaulted my wife. On that day, I and my wife were in front of my house. Accused came there and*

beat with stick on her head. She fell down. I tried to intervene. He beat me also and run (sic) away. ...She died three days after admission in the hospital." In his cross-examination, the witness has not been shattered.

According to Mallarapu Rajamma (P.W. 1), the deceased was her elder sister. "There were land disputes between the accused and my sister. Accused and husband of Anjamma exchanged wordy altercation in the field and returned to village. Accused challenged on road Anjaiah (husband of Anjamma) to come to fight and decide in front of his house. So Anjaiah and his wife came out of the house and Anjamma objected the accused about his challenge. He went to some distance, secured a stick of hands some size, returned and beat Anjamma and ran away. My house is in front of house of accused with a road in between. House of Anjamma is beside house of accused. Pushpa (LW.6), Prameela (LW.4), Kamalamma (LW.5) and Srinu (LW.2) came and intervened. Accused threatened them also. He beat Anjaiah also (LW.3). Villagers gathered. 108 Ambulance came and had taken both the injured to Govt. Hospital, Karimnagar. I followed them. I lodged police complaint. It is Ex.P1."

Similar deposition has been given by Korepu Srinivas (P.W. 2), the son of the deceased. Even according to him, there was a wordy altercation between his father and the accused. The accused challenged his father to come out of his house, and to fight. His mother objected about the

challenge. The accused went to some distance, picked up a stick, and beat his mother. His father rushed to her rescue. The accused beat him also with his hands and with stick. He further names the other eyewitnesses.

Similar testimonies have been given by Korepu Prameela (P.W. 4), Korepu Kamalamma (P.W. 5), Mallarapu Pushpa (P.W. 6), and Korepu Mariyamma (P.W. 8).

Thus, according to all these witnesses, even earlier also, there was an altercation between the accused, the deceased and her husband. The accused came to the house of the deceased unarmed, and challenged her husband to come out and fight. When the deceased objected to the challenge, the accused picked up a stick from nearby place, and hit her on the head. He also injured Korepu Anjaiah (P.W. 3), who rushed to the rescue of the deceased. And having hit the deceased on her head once, and having injured Korepu Anjaiah (P.W. 3), the appellant ran away. Since Korepu Anjaiah (P.W. 3) is an injured witness, his presence at the scene of the crime cannot be doubted. Since all these eyewitnesses have narrated similarly, since their presence is a natural one, since none of them have been shattered in their cross-examination, their testimonies have been accepted by the Court.

The testimonies of these witnesses have further been corroborated by Dr. B. Srinivas (P.W. 15). In his testimony,

he clearly states that while carrying out the autopsy, he discovered seven injuries, namely:-

1. *Fracture of left frontal bone.*
2. *Epidural Hamarize over left frontal region.*
3. *Left side eye blank.*
4. *Sutured wound of 2 x 1 cm over left side forehead.*
5. *3 x 1 cm abrasion over right side forehead.*
6. *1 x 1 cm abrasion over nose.*
7. *2 x 1 cm abrasion over right elbow.*

In the cross-examination, Dr. B. Srinivas (P.W. 15) admits that injury Nos. 5 to 7 are simple in nature; it is only injury Nos. 1 to 3 are grievous in nature. But, injury No. 3 is merely a black eye on the left side. He has also proven the Post-Mortem Report (Ex. P. 12). Thus, through his testimony, the prosecution has succeeded in proving that the deceased had died of homicidal death. However, the deceased has suffered a single injury on her head, which has caused a fracture of the left frontal bone, and Epidural haemorrhage over left frontal region. The other injuries suffered by her are mere abrasions. Therefore, the appellant had caused a single injury on the head of the deceased. Hence, the learned Additional Public Prosecutor is not justified in claiming that it is not a case of single injury.

In order to appreciate whether a single fatal injury case falls within the scope of Section 302 IPC, or within the scope of Section 304 Part-II IPC, the Courts have to appreciate the circumstances in which the single injury is caused, the weapon used by the accused, the nature of the injury, and most importantly, the place of the injury. In the case of

Pularu v. State of M.P.¹, where the accused had caused a single blow with an agricultural implement, namely *tabbal* on the head of the deceased, the Hon'ble Supreme Court, has held as under:-

7. That takes us to the nature of the offence. All the three eyewitnesses have spoken that the appellant dealt only one blow with the agricultural implement. Having regard to the time and the surrounding circumstances it is difficult to hold that he intended to cause the death of the deceased particularly, when he was not armed with any deadly weapon as such. As an agriculturist he must have been having a tabbal in his hands and if in those circumstances he dealt a single blow it is difficult to convict him by invoking clause 1stly or 3rdly of Section 300 IPC. It cannot be said that he intended to cause that particular injury which unfortunately resulted in the fracture of bones. Therefore, the offence committed by him would be one amounting to culpable homicide punishable under Section 304 Part II IPC. We accordingly set aside the conviction of the appellant under Section 302 IPC and sentence of imprisonment for life awarded thereunder. Instead we convict him under Section 304 Part II IPC and sentence him to undergo rigorous imprisonment for seven years. The appeal is partly allowed to the extent indicated hereinabove.

In the present case, according to the eyewitnesses, admittedly, the appellant had come unarmed to the house of Korepu Anjaiah (P.W. 3). He had challenged Korepu Anjaiah (P.W. 3) to come out of his house, and fight with him. It is the deceased who had intervened, and objected to the challenge. The appellant had picked up a stick, a non-lethal weapon, which was lying nearby and hit the deceased on the head only once. Therefore, on the spur of the moment, when an altercation broke out, the intention of the appellant was not to kill the deceased. Hence, the present case clearly falls

¹ 1993 SCC (Cri) 1023

within the ambit of Section 304 Part-II IPC, and does not fall within the ambit of Section 302 IPC.

The appellant has already served the sentence of seven years, one month and fifteen days, according to the jail record. Therefore, this Court is inclined to modify the offence from Section 302 IPC to Section 304 Part-II IPC, and reduces the sentence of the appellant from life imprisonment to the period already undergone.

For the reasons stated above, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/accused for the offence punishable under Section 302 IPC in the judgment, dated 04.10.2012, in Sessions Case No. 266 of 2012, on the file of the learned IV Additional Sessions Judge, Karimnagar, is altered to Section 304 Part-II IPC. Consequently, the sentence is reduced from life imprisonment to the period already under gone by the appellant.

Since the appellant/accused is already on bail, his bail bonds shall stand discharged.

Miscellaneous petitions, if any, pending shall stand dismissed.

Sd/-M.SANTHI VARDHANI
JOINT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The IV Additional Sessions Judge, Karimnagar.(with records)
2. The Judicial Magistrate of First Class, Vemulawada, Karimnagar District.
3. The Superintendent, Central Prison, Warangal(Speed Post)
4. The Station House Officer, Boinapally Police Station, Karimnagar District.
5. One CC to Sri A Gayatri Reddy Advocate [OPUC]
6. Two CCs to the Public Prosecutor, High Court for the State of Telangana [OUT]
7. Two CD Copies

DG



HIGH COURT

DATED: 29/02/2020

~~ADVANCE~~ ORDER

CRLA.No.1162 of 2012



PARTLY ALLOWING THE CRIMINAL APPEAL

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HMA
05/24/4/2020,