IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.278 OF 2008

AASARI KRISHNA MURTHY @ KRISHNA ...APPELLANT

VERSUS

SUPREME COURT OF INDIA

JUDGMENT

STATE OF A.P. ...RESPONDENT

O R D E R

This appeal by way of special leave arises out of the following facts:

The deceased, Chitrada Varahalu, had converted to Christianity and constructed a Church in village Kotnapalli to propagate Christianity though he belonged to village Sagaram. About two months prior to the incident, which happened on 14th April, 2000, P.W.1 the wife of the deceased (Chitrada Lakshmi) had gone to her father's house at Burugupalem and had stayed on for about two months, but on her return home to Sagaram on 12th April, 2000, at about 12.00 midnight, she saw that her husband had brought Jaggayamma (wife of the appellant) to live with him as well. On this PW.1 and her husband had a quarrel but by a settlement it was agreed between them that all three would live together. This development created some friction between the appellant and the deceased.

At about 7:30 p.m. on 14th April, 2000, the appellant and five others entered the house of PW.1 as the deceased was taking his food and whereas some of the persons caught hold of the deceased the appellant caused him one injury with a knife on the chest. The deceased, being seriously injured, rushed to the house of his elder brother Chitrada Mutyalayya a short distance away and fell in Pooja room and shouted out to PW-3, his sister-in-law, that he had been attacked by the appellant, and then succumbed to his injury.

All the accused then attempted to run away but two of them were caught and taken to the police station. On interrogation these two revealed the names of the others and they too were arrested.

On the completion of the investigation all the accused were brought to trial for offences, punishable under Sections 449, 341, 302 and 302 read with 114 of the IPC. The trial court in its judgment on 22nd April, 2003 held that the eye witnesses account with respect to the murder was not worthy of belief as it appeared that PW.1 had not seen the actual incident as she was bathing her young daughter on one side and as such there was no evidence with respect to the murder. It also found that the prosecution story with regard to the involvement of other accused was not made out and having so held acquitted five of the accused in toto and convicted the appellant herein for the offence punishable under Section 449 of the IPC.

An appeal was thereafter, preferred by the State of Andhra Pradesh with respect to the acquittal of all the accused. The High Court in its judgment dated 23rd October, 2006 dismissed the appeal qua the five accused but allowed the same qua the appellant and in doing so convicted him for an offence punishable

under Section 302 as well, for having committed the murder. The present appeal is before us in these circumstances.

Mr. S.N. Bhat, the learned counsel for the appellant, has first and foremost, argued that the finding of the trial Court that there was no eye witness to the murder was fully justified as PW.1 who was statedly an eye witness and had been bathing her child in remote part of the house and was, thus, not in a position to have seen the actual assault on the deceased. He has further submitted that the evidence of PW.4 that he had seen the accused running away with the knife was also not worthy of belief as he had made a glaring improvement in his evidence in Court by deposing that he had seen a knife in the hand of the appellant whereas he had not stated so to that effect in his statement under Section 161 of the Cr.P.C.

The learned State counsel has, however, pointed out that in addition to the eye witness account of PW.1 the dying declaration made by the deceased to PW-3 was fully in order and in the light of the fact that the site plan prepared contemporaneously indicated that the deceased had run from his kitchen to the house of PW.3, proved the prosecution story beyond doubt.

We have heard counsel for the parties very carefully. We find absolutely no reason whatsoever to disbelieve PW.1 the primary witness. PW.1 is the wife of the deceased and she stated that she had seen the incident from the place where she was bathing her daughter. She further stated that the house of her sister-in-law i.e. PW.3 was at a very short distance from her house and after the injury had been suffered by her husband he had rushed into her house, called out the name of the appellant as his assailant and had then died in the Pooja room. We find that this statement finds full corroboration from the site plan (Ext.P.22) which had been prepared on 15th April, 2000 by the police officer. It reveals a trail of blood from the kitchen where the incident had happened to the bed room, then to the verandah, then to the open site, and finally to the Pooja room of PW.3 where the dead boy was found. The High Court has observed that even assuming that PW.1 was bathing her child in the open space, the very fact that the house in question was of very small dimensions would have made it possible for her to observe the actual incident. We also notice that the parties were well known to each other, being virtual neighbours, and as there was no previous history of rancour or ill-will the question of any false implication would not arise. We are further of the opinion

that the medical evidence corroborates the eye witnesses account given by PW.1, as the doctor found one injury in the chest which had penetrated deep into the rib cage and caused very severe injuries to several vital organs.

Mr. Bhat has finally submitted that the present case would fall within the scope of exception (1) to Section 300 of the IPC and that the appellant was entitled to claim that the offence should be punishable under Section 304 (I) or (II) of the IPC. He has pointed out that the wife of the appellant had eloped with the deceased about a week prior to the incident and as the wife of the deceased had returned from her parents home two days earlier something untoward had happened which had led to the incident. He has also relied upon the judgment reported in *K.M. Nanavati Vs. State of Maharashtra* [AIR 1962 SC 605].

We have gone through the aforesaid cited judgment and find that the facts therein were distinct and different. In that case although Nanavati was conscious of his wife's affair with Ahuja deceased, the actual incident happened as Ahuja had made a vulgar remark about Nanavati's wife. The Supreme Court held that this would amount to grave provocation and would be covered by Exception (1). In the case before us it is virtually the admitted

position that wife of the accused had eloped with the deceased about a week before the incident and it was after 12th April, 2000 when Laxmi the wife of the deceased returned that the incident happened in the evening of 14th April, 2002. This matter would, thus, not fall within exception (1) as the provocation, even if grave, could not be said to be sudden.

Mr. Bhat has finally submitted that as only one injury had been caused though on the chest of the deceased, the matter would fall within Section 304 part I or II as there was no apparent intention to cause death or the specific injury that caused the death. He has in this connection relied upon *Jagtar Vs. State of Punjab* [1982 (2) SCC 342], *Hemraj Vs. State (Delhi Admn.)* [1990 (Supp.) SCC 291, *Khanjan Pal Vs. State of U.P* [1990 (4) SCC 53]. We see that all three judgments are virtually on the same footing and as such we will deal with only one. In Jagtar Singh's case (supra) undoubtedly one injury had been caused on the chest of the deceased but this was a sequel to a sudden quarrel when the accused and the deceased happened to suddenly meet outside the house and prior to the actual assault there had been an exchange of abuses as well. We are, therefore, of the opinion that the

judgments cited above by the learned counsel, do not support his case. For the reasons above, we find no merit in the appeal.

Dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(J.M. PANCHAL)

NEW DELHI
AUGUST 6, 2009.