

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1616 OF 2005**

STATE OF ANDHRA PRADESH

...APPELLANT

VS

THUMMALA ANJANEYULU

....RESPONDENT

ORDER

1. This appeal against acquittal has been filed by the State of Andhra Pradesh impugning the judgment of the High Court of that State whereby the respondent herein, the sole accused, has been acquitted for an offence punishable under Section 302 of the IPC. The prosecution story is as under:

2. The accused Thummala Anjaneyulu by name, developed intimacy with Suguna, daughter-in-law of PW-2. On the 6th of January 1997 PW-2 found the respondent and his daughter-in-law in his cattle shed and that too in a compromising position. PW-2 raised an alarm on which the respondent ran away leaving behind a lungi and underwear belonging to him. Suguna was thereupon made to leave PW-2's house the next day. At about 4 p.m. on the 7th January 1997, the deceased Bhoomaiah went to the house of PW-6 for the purpose of organizing a Panchayat between G.Kistaiah and G. Ramulu with respect to some agricultural land. PW-3, the wife of the deceased, and another lady, Manemma by name, and his

sister-in-law also followed

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the deceased to oversee the outcome of the Panchayat. Several other persons too were present at that time including the accused and PWs. 3, 4, 5, and 6. During the Panchayat proceedings the deceased suspected that the accused was casting an evil eye on PW-3 and Manemma aforesaid. He thereupon confronted the accused and asked him as to why he was looking at the ladies whereupon the accused took out a knife and stabbed the deceased on the left side of his chest which resulted in a serious injury to him. Bhoomaiah was immediately removed (in a tractor belonging to PW-1, his younger brother) to Eldurti for medical aid but he succumbed to his injuries on the way on which the body was taken to the Eldurti Police Station instead. PW-1 also gave a report Ex.P1 which was registered as a FIR by PW-10 the Sub-Inspector of the Police Station for an offence punishable under Section 302 of the IPC. The Police Officer also visited the place of occurrence and made the necessary enquiries and also dispatched the dead body for its post-mortem examination to the Government Hospital, Medak and further handed over investigation to PW-11. The accused surrendered to the police and during the course of his remand made a disclosure statement leading to the recovery of the alleged murder weapon. On the completion of the investigation by PW-11, a charge-sheet was filed and the accused was ultimately brought to trial.

3. The prosecution in support of its case relied on the evidence of PW-3 to PW-6, PW-3 being the wife of the deceased, and PWs. 4, 5, and 6 being co-villagers of both the accused as also the deceased. The doctor, who had conducted the post-mortem examination, had, in the meanwhile passed away, and the post-mortem report was accordingly not proved by the prosecution. When the appeal came up before a Division Bench of the High Court, this flaw was noticed and by its order dated 17th September 2003, a direction was issued that the post-mortem report be proved by somebody who was familiar with the hand writing of the deceased doctor. The post-mortem report was, accordingly, proved by one Dr. P.Chandrasekhar.
4. The trial court relying on the evidence of PW-2 with regard to the motive and that he had seen his daughter in law Suguna in a compromising position with the deceased a day prior to the murder and the eye witness account of the other four witnesses held that the case against the respondent was proved beyond doubt. The trial court also noticed that the FIR did not refer to either PW-3 or Manemma as being present although the names of PWs. 4, 5 and 6 and several other persons, who had not been examined, had figured as eye witnesses. The Court observed that the prosecution story as given in the FIR was slightly discrepant vis-a-vis the statements in court inasmuch that in the FIR the story projected was that the accused had stabbed Bhoomaiah on account of annoyance as Suguna had been sent away whereas in the

evidence in court, it

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appeared that this story had been deviated from and the murder was attributed to the fact that the respondent had been ogling at PW-3 and Manemma during the Panchayat. The Court observed that in the light of the above facts, the presence of PW-3 was doubtful. The trial court, however, held that notwithstanding this apparent discordance there was absolutely no reason whatsoever for the other witnesses to have falsely named the accused as the assailant as they were truly independent. The trial court, accordingly, convicted the accused under Section 302 and sentenced him to imprisonment for life. An appeal was, thereafter, taken by the accused to the High Court and the High Court, has, by the impugned judgment, acquitted the accused primarily on the plea that there was no evidence as to whether a Panchayat had been called to settle the dispute between Kistaiah and Ramulu and as PW3's name had not been mentioned in the FIR or in the inquest report as an eye witness, her presence was doubtful. The High Court, while referring to PWs.4, 5 and 6 held that they too could not be believed for the simple reason that there appeared to be some discrepancy as to the motive for the attack.

This is what the Court had to say:

“The fact that the names of PWs.4,5 and 6 were mentioned in Ex.P1 at the earliest point of time as eye witnesses to the occurrence lend credence to the fact that they were present at the scene of occurrence where the offence took place, but then it does not necessarily mean or lead to the conclusion that they are speaking the truth. All the above mentioned three witnesses consistently spoke in their evidence to the

effect that the 5
immediate

provocation for the attack on the deceased was the questioning the deceased as to why the appellant was looking at PW.3 and Manemma at the scene of occurrence recorded earlier, the evidence of PWs.4 to 6 regarding the occasion for the assault will have to be discarded. The inevitable conclusion would be that the prosecution has not come out with the true version. The benefit necessarily go to the accused/appellant. In view of the conclusion reach by us, we do not propose to go into the merits of the other submissions made by the learned counsel for the appellant.”

5. The present appeal has been filed by the State of Andhra Pradesh impugning the judgment of the High Court.

6. We have heard the learned counsel for the parties and gone through the record very carefully. It is true that PW-3's name does not figure in the FIR and there appears to be some uncertainty with regard to the motive for the murder. But we have no doubt that the evidence of PW's 4 to 6 who are truly independent witnesses ought to be believed in the facts of the case. It will be seen that the High Court has not discussed the evidence of these witnesses and has disposed off the matter in a some what sketchy manner. We have gone through the evidence of these witnesses with the help of the learned counsel. We see no reason to disbelieve their testimony. They have given categoric statements as to the manner in which the incident had happened. We must highlight that these witnesses were completely independent and had no axe to crime either in favour of the prosecution or the defence. They unanimously deposed to the manner in which the accused,

provoked by the 6

statement made by the deceased that he was looking at PW3 and Manemma in an ugly manner, had caused one injury and while running away from the spot had threatened those who were close by with dire consequences in case they intervened.

7. The spontaneity of the FIR also supports the eye witness account. The incident happened at about 4 p.m. in village Yeshwantraopet about 12 km. away from Police Station, Eldurti. An attempt was made to remove the injured to the hospital but he died on the way, on which the dead body was taken to the police station and the FIR was lodged at 8 p.m. The promptness of the FIR and the fact that the presence of PWs. 4 to 6 finds mention in it, clearly speaks to the truthfulness of the prosecution story.

8. The learned counsel for the accused has, however, submitted that even assuming for a moment that the prosecution story was correct and the accused liable for conviction, it was not still a case of murder as there was no evidence to show that the accused had intended to cause the very injury which had been caused and had led to the death of the deceased and he was, therefore, liable only for a charge of manslaughter and not murder. The facts of the case undoubtedly support the argument of the learned counsel. As per the prosecution story, the deceased and the accused and the witnesses had gathered outside the house of PW6 to organize a Panchayat to settle a dispute between

Kistaiah and Ramulu,

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who were not, in any manner, connected with either party and it was at that stage that the accused was apparently provoked by the remarks of the deceased that he should not cast an evil eye on PW-3 and Manemma on which he had suddenly taken out a knife which he was carrying and caused one injury in the chest. We are of the opinion that there was no intention on the part of the accused to cause the very injury which he caused which ultimately led to the death of the deceased. The accused would thus be liable for conviction under Section 304 Part I of the IPC and not under Section 302 thereof. We, accordingly, allow this appeal, set aside the acquittal recorded by the High Court and convict the accused for an offence punishable under Section 304 Part I of the IPC and sentence him to 7 years R.I. The appeal is allowed to the above extent.

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

.....**J.**
(CHANDRAMAULI KR. PRASAD)

NEW DELHI,
NOVEMBER 25, 2010.