

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

* * *

CRIMINAL APPEAL No.1599 of 2018

Between:
Jabari Shankar.

Appellant

VERSUS

The State of Telangana.

Respondent

JUDGMENT PRONOUNCED ON: 30.04.2024

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**
AND
THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU
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! Counsel for Petitioner(s) : Mr. Chetluru Sreenivas

^Counsel for the respondent(s) : Learned Public Prosecutor

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> HEAD NOTE:

? Cases referred

1) (2021) 3 SCC 238

2) (2020) 9 SCC 524

3) 2024 SCC OnLine Ori 1276

4) (2006) 11 SCC 444

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

CRIMINAL APPEAL No.1599 of 2018

JUDGMENT:(per the Hon'ble Sri Justice **P.SAM KOSHY**)

The instant appeal under Section 374(2) of the Criminal Procedure Code, 1973, has been filed by the appellant/accused No.1 assailing the judgment of conviction dated 16.04.2018 passed by the learned III Additional District and Sessions Judge, at Asifabad (for short, the 'Trial Court') in S.C.No.169 of 2016.

2. Heard Mr. Chetluru Sreenivas, learned counsel for the appellant/accused No.1 and learned Public Prosecutor appearing for the respondent – State.

3. Vide the impugned judgment, the Trial Court has found the appellant hereingilty for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC'). Upon convicting the appellant, the Trial Court has sentenced the appellant to undergo life imprisonment and fine of Rs.100/- along with default stipulation.

4. The case of the prosecution in brief is that there was a love affair between Srikanth (hereinafter referred to as the deceased) and Juvenile in conflict with law who is the daughter of accused No.2. The

relationship was allegedly not approved by accused No.1, who is the brother-in-law of accused No.2 and the uncle of the Juvenile. This disapproval festered into a grudge against the deceased and eventually leading to a premediated conspiracy to murder him.

5. According to the prosecution's case, on the night of 20.06.2015, the juvenile in conflict with law invited the deceased to her house as part of their devised plan. Upon his arrival at the house of accused No. 2, the accused No.2 had called accused No. 1 to her house. This subsequently led to a heated quarrel between accused No.1 and the deceased. During the altercation, accused No.1 attacked the deceased with an axe by striking him on the head. The blow rendered the deceased unconscious and on hearing the hue and cries from the scene of occurrence, the neighbors noticed the incident. At that juncture PW.6 (patrolling police) came to the site of incident and shifted the injured deceased to the Government Hospital, Asifabad for treatment with the intention that he was alive and struggling with his life, but he eventually died due to injuries.

6. Subsequently, after the incident, PW.4 (Lunare Suresh) who is the neighbor of the appellant went to the deceased's mother PW.1 (Karu Suguna) and informed about the incident. She visited the hospital where she found her son dead and then rushed to the scene

of offence. Subsequently PW.1 lodged a complaint in the Asifabad police station and the police authorities in turn registered Crime No.85 of 2015 and took cognizance of an offence under Section 302 of IPC.

7. On 22.06.2015, at 8:00 A.M, PW.10 (Gurrala Shashank) the TRS party town president brought accused Nos.1 and 2 and the juvenile in conflict with law and made them surrender before Inspector of Police, Asifabad. Meanwhile, P.W.12 (Medical Officer) held autopsy over the body of the deceased and opined that deceased died due to cardio pulmonary arrest due to fracture of skull and laceration of the brain.

8. In the course of trial, the prosecution examined as much as thirteen (13) witnesses; however, there was no evidence on the part of the defence. Subsequently, on recording the statement of the appellant under Section 313 of Cr.P.C, the impugned judgment of conviction was passed with the sentence of life imprisonment and fine amount of Rs.100/-.

9. Learned counsel for the appellant assailing the impugned judgment contended that the findings of the Trial Court are pervasive and in contravention to the evidence on record. The trial Court strongly relied on the statements of PWs.2 to 4 who claimed to have witnessed the attack on the deceased and was able to provide first

hand evidence of the incident. Despite some contradictions in their testimonies, the Trial Court found their evidence to be consistent and credible enough to be accepted. Their testimonies provided the necessary details about the incident, which helped the Trial Court understand the sequence of events and the role of the appellant. Likewise, the Trial Court also relied on the statement of PW.12 (Medical Officer), who provided crucial evidence through the autopsy findings. His report supported the claim of the aforementioned witnesses regarding the cause of the death. The medical evidence, particularly the observed injuries and the identified cause of death were found to be consistent with the evidence provided by the PWs.2 to 4.

10. It was further contended by the learned counsel for the appellant that key eyewitnesses evidence demanded a higher level of scrutiny from the Trial Court. In this case, the Trial Court seems to have failed to adequately appreciate the contradictions and appreciate the authenticity and reliability of the testimonies. Any oversight in this regard could result in an unjust outcome, damaging the principles of fairness and justice that the judicial system upholds. Thus, prayed for setting aside of the impugned judgment of conviction and for acquitting the appellant from all the charges leveled against the appellant.

11. Per contra, the learned Public Prosecutor took the Court through the evidences led by the prosecution in the Trial Court and contended that, since it is a case of eye witness i.e. PWs.2 to 4 which shows that the incident happened between 3.00 AM and 4.00 AM and PWs.2 and 3 are the immediate neighbor of the appellant's house. PW.4 is separated by 4 or 5 houses from the house of the appellant. Except that PW.4 is distantly related to PW.1 there was no other material even to suggest as to why they deposed against the appellant and there is hardly any scope left for accepting the contentions put forth by the learned counsel for the appellant. Therefore, there is hardly any scope left for interfering with the impugned judgment.

12. Learned Public Prosecutor further submits that the fact that the appellant suspected that the deceased was in a love affair with the daughter of the accused No.2, it was not liked and accepted by the accused Nos.1 and 2. After cautioning the deceased earlier, he used to visit accused No.2's house to meet Juvenile in conflict with law, which was not appreciated by accused No.2 and which led to a grudge against deceased.

13. Learned Public Prosecutor also submits that the motive for the murder was the disapproval of the relationship between the deceased and the Juvenile in conflict with law which led to grudge upon the

deceased. As a result, the three accused persons i.e. the appellant Nos.1 and 2 along with the juvenile conspired to eliminate the deceased and the juvenile in conflict with law is said to have called the deceased to the house of appellant No.1 during night hours. It was then that appellant caught the deceased and there was a heated argument between the appellant and the deceased. In the course of heated arguments, the appellant is said to have picked up an axe which was lying in the house and assaulted the deceased on the backside of the head on account of which he collapsed.

14. Having heard the contentions put forth on either side and on perusal of records, admittedly the entire case of the prosecution rests upon the evidences of PWs.2 to 4. In the given factual backdrop, it would be relevant to take note of the evidences of PWs.2 to 4. The relevant portion of the statement of PW.2 for ready reference is reproduced herein under:

“I am resident of Tharakram Nagar at Asifabad. I know PW1 and her children including deceased Srikanth. I also know the accused. All of them are residents of my neighbourhood. The houses of A1 and A2 are side by side. Their houses are separated from my house by 2 houses. Srikanth died on 20-06-2015. On that night at about 03.00 or 04.00 a.m., I was coming from the house of my mother to my house. On the way near the house of A2 I heard some cries. I noticed A1, A2 and daughter of A2 by name Jyothi in that house. I also noticed A1 hacking on the head of

Srikanth with an Axe in the compound of house of A2. A1 also hacked on the back of head of the deceased the same with the same Axe. Then Srikanth fell down. Then I went to house of PW1 and informed her. Meanwhile people gathered there. Meanwhile police petrolling that area came to that place and shifted the injured to Government hospital. Subsequently Srikanth died. Police examined me. I also gave statement before Magistrate Sirpur-T.”

15. The relevant portion of the statement of PW.3 for ready reference is also reproduced herein under:

“I am resident of Tharakram Nagar at Asifabad. I know Pws. 1, 2, accused. and deceased and also Jyothidaughter of A2. A thatched fencing separates my house with that of A2. House of A1 is by the side of house of A2. Srikanth died about 3 year back on one night. At about 3.00 or 4.00 a.m., I heard some sound of quarrel at the house of A2. At that time I was sleeping. Then I woke up came out of the house and saw A1, A2 and Srikanth quarreling. Then A1 took out an Axe found in the near by and hacked with it on the head of Srikanth. Then Srikanth fell down. A1 again hacked him on the back of the neck with the same Axe. Later A1 left the scene along with Axe. Within 15 or 20 minutes police came there and shifted the injured Srikanth to hospital. Srikanth died even before he was shifted to hospital. Police examined me on the same day in the morning. I also gave statement before Magistrate. I came to know that the dispute was relating to deceased and daughter of A2.”

16. Similarly, the relevant portion of the statement of PW.4 for ready reference is also reproduced herein under:

“I am resident of Tharakram Nagar at Asifabad. I know PW1, her children including deceased

Srikanth. I also now Pws. 2, 3 and both the accused. There are 6 or 7 houses between my house and that of accused. About 3 years back Srikanth was murdered. On that night at about 3.30-4.00 a.m., I was sleeping at my house. Then I heard noise of some quarrel and woke up. Then I went to the place of quarrel which is at the house of A2. There I found A1, A2 and daughter of A2 by name Jyothi and Srikanth quarreling. Then A1 took up an Axe found in the near by and hacked on the head of Srikanth. Then Srikanth sustained injury and fell down. Again A1 hacked Srikanth on the back, of the neck with the same Axe. After attacking Srikanth A1 ran away. A2 and her daughter also ran away. Within 10 or 15 minutes police petrolling auto came there and shifted the injured Srikanth to hospital. Me and others also went to the hospital and came to know that Srikanth died. There was love affair between Srikanth and daughter of A2 viz., Jyothi. In that connection there were quarrels between A2 and PW1 two or three times. Police examined me.”

17. In addition to the aforesaid depositions of PW.2 to 4, it would also be relevant to take note of the evidence of PW.12, the Doctor who conducted the post-mortem examination, which reads as under:

1. A laceration at occipital region measuring 8x3 cm., and bone deep.
2. Fracture of occipital bone.
3. Laceration of occipital lobe of brain present measuring 5x2x2 cm.
4. Intra cranial bleeding present in the occipital lobe.
5. Laceration at right parietal region measuring 6x3 cm., bone deep.
6. Fracture of right parietal bone.
7. Laceration of parietal lobe of brain measuring 4x2x1 cm.
8. Intra cranial bleeding present in the right parietal region.

All the above injuries as antemortem in nature and might have been caused by a sharp object. On internal examination I found undigested food in the stomach. I did not find dry abnormalities in the internal organs. Based on my examination I am of the opinion that deceased died 8-12 hours prior to autopsy and to the best of my knowledge he died due to cardio pulmonary due to fracture of skull and laceration of brain Ex P20 is postmortem certificate issued by me.

18. From the evidences of PW.2 to 4, there can be no doubt as to the incident to have occurred. PW.2 reports hearing cries from accused No.2's house early in the morning and seeing the appellant/accused No.1 attacking the deceased with an axe. PW.3, who also woke up due to the noise of the quarrel, saw the appellant attack the deceased with an axe and says the deceased died before being taken to the hospital. PW.4 also woke up due to the noise, witnessed the attack, and mentioned that there had been previous quarrels between accused No.2 and PW.1 due to a love affair between the deceased and daughter of accused No.2.

19. The evidences of PWs.2 to 4 has gone uncontroverted and without any rebuttal. There is no any strong material available to disbelieve the said witnesses, coupled with the fact that the place of incident and the time also being one where it was only the appellant and the other accused persons who were available and nobody being present there, are the incriminating factors in support of the

prosecution case to be made out. We therefore find that the judgment of conviction passed by the Trial Court to the aforesaid extent is proper, legal and justified. We also do not find any case made out calling for an interference to the said judgment.

20. Now the only question to be appreciated by this Bench is whether the appellant can be charged and convicted for the offence under Section 302 of IPC. In the alternative, whether as per the case of the prosecution, the appellant can be held to have committed an offence under Section 302 of IPC. The reason to deal with the said issue is taking into consideration the postmortem examination given by PW.12 in which there appears to be a major injury on the head. The consistent evidences which have come on record shows that the appellant was disapproving the relationship between the deceased and the daughter of accused No.2. Despite prior warnings, deceased continued to visit accused No.2's house during the night to see the Juvenile, which accused No.2 found unacceptable.

21. The Hon'ble Supreme Court in the case of **Pardeshiram vs. State of Madhya Pradesh**¹ in paragraph Nos.5 and 6 has held as under:

¹(2021) 3 SCC 238

5. The accused is an agriculturist, and the shovel is a part of an agricultural tool that is possessed by agriculturists. The accused was attributed with the first blow with the shovel followed by a hit by a stone on the head of the deceased which was picked up from the street.

6. The accused and the deceased were from the same family. The cause of provocation was sudden, without premeditation. We find that, in the facts and circumstances of the case, it is a case falling under Exception 4 of Section 300 IPC. The injuries were inflicted without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken advantage or acted cruelly or unusually. In this view of the matter, we find that the appellant is liable to be convicted for an offence under Section 304 Part I IPC.”

22. The Hon’ble Supreme Court also in the case of **Stalin vs.**

State²in paragraph Nos.11 to 13 has held as under:

“11. As per Exception IV to Section 300 IPC, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage and not having acted in a cruel or unusual manner. In the present case, at the place of incident the beer was being served; all of them who participated in the beer party were friends; the starting of the incident is narrated by PW 3, as stated hereinabove. Therefore, in the facts and circumstances, culpable homicide cannot be said to be a murder within the definition of Section 300 IPC and, therefore, in the facts and circumstances of the case narrated hereinabove and the manner in which the incident started in a beer party, we are of the opinion that Section 302 IPC shall not be attracted.

12. Now, the next question which is posed for consideration of this Court is whether the case would fall under Section 304 Part II IPC? Considering the totality of the facts and circumstances of the case and more particularly that the accused inflicted the blow with a weapon like knife and he inflicted the injury on the deceased on the vital part of the body, it is to be presumed that causing such bodily injury

²(2020) 9 SCC 524

was likely to cause the death. Therefore, the case would fall under Section 304 Part I IPC and not under Section 304 Part II IPC.

13. In view of the above and for the reasons stated above, the appeal is allowed in part. The impugned judgment [*Stalin v. State*, Criminal Appeal (MD) No. 122 of 2016, order dated 18-1-2017 (Mad)] and order passed by the High Court confirming the conviction of the accused for the offence punishable under Section 302 IPC is hereby modified from that of under Section 302 IPC to Section 304 Part I IPC. The accused is held guilty for the offence punishable under Section 304 Part I IPC and sentenced to undergo 8 years' RI with a fine of Rs 10,000 and, in default, to further undergo one year RI. The appeal is allowed to the aforesaid extent.”

23. Further, in the case of **Purna vs. State of Odisha**³, the High Court of Odisha in paragraph Nos.12, 14, 15, 16, 18 and 19 hasheld as under:

12. In case of *Mahesh Balmiki v. State of Madhya Pradesh*, (2000) 1 SCC 319, the Apex Court while deciding the question of whether a single blow with a knife on the chest of the deceased would attract section 302 IPC, held thus:

“9..... there is no principle that in all cases of a single blow Section 302 I.P.C. is not attracted. A Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C. and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant

³2024 SCC OnLine Ori 1276

case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.”

14.In case of PulicherlaNagaraju vs. State of Andhra Pradesh⁴, the Hon’ble Supreme Court while deciding whether a case falls under Section 302 or 304 Part I or 304 Part II IPC, held thus:

29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302.

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was

⁴(2006) 11 SCC 444

picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”

15. In case of *SingapaguAnjaiah v. State of Andhra Pradesh*, 2010 AIR OnLine SC 441, the Apex Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus:

“In our opinion, as nobody can enter into the mind of the accused, its intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crow bar as the weapon of offence. He has further chosen a vital part of the body i.e. head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly lead to one and the only conclusion that the appellant intended to cause death of the deceased.”

16. In case of *State of Rajasthan through the Secretary v. Kanhaiya Lal* (2019) 5 SCC 639, the Apex Court in paras 7.3, 7.4 and 7.5 held as follows:

“7.3. In *Arun Raj* (Supra) this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used

and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.”

“7.4 In the case of *Ashok kumar Magabhai Vankar* (Supra), the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 of Section 300 IPC. It is held by this Court that the injury sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.”

“7.5 A similar view is taken by this Court in the recent decision in *State of Rajasthan v. Leela Ram* (2019) 13 SCC 131 and after considering a catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether a case falls under section 302 or section 304 Part I or section 304 Part II, this Court reversed the judgment (*Leela Ram v. State of Rajasthan*, 2008 SCC OnLine Raj 945) of the High Court (in that case also the judgment impugned was from the Rajasthan High Court) and convicted the accused for the offence under section 302 of the IPC. In the same decision, this Court also considered Exception 4 of Section 300 of the IPC and observed in paragraph 21 as under:

“21. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are : (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden

quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

18. The accused and the deceased hail from rural background and are permanent residents of a village. Judicial notice of the fact can be taken that their temper usually run high and behaviour often even for silly reasons seen as abnormal and totally unexpected in a given situation.

19. Applying the law laid down in the aforesaid decisions more particularly the decisions on the aspect of single injury, to the facts and circumstances of the case as have emerged in evidence and aforesaid, we are of the considered view that the offence could be properly categorized as one punishable under section 304 Part-I of the IPC. We are thus of the considered opinion that for the role played and act done by the accused, he would be liable for conviction under section 304 Part-I of the IPC.”

24. It is necessary, at this juncture, to appreciate certain ground realities and facts that transpired on the date of incident. From the overall evidences which have come on record, it appears that the deceased and the juvenile in conflict with law were having an affair which was not approved by the family members of the juvenile as also the appellant who is said to be the paternal uncle. Being a paternal uncle, he enjoys the status almost equal to that of a father. The incident in the instant case occurred at around 3:00 AM – 4:00 AM which is otherwise an odd hour for any person to visit anybody's house. Even if it was conspired by accused Nos.1 and 2 and the juvenile, the fact that the juvenile called at odd hours goes to show

that he had earlier also being called at odd hours to her house. Therefore, we are inclined to presume that even on the date of incident, the juvenile must have called the deceased to her house during night time. Accused No.2 must have learnt about it or must have saw them together, then accused No.2 called the appellant/accused No.1. Thereafter there was an heated altercation that took place between the appellant and the deceased and it appears that as the deceased was leaving the place when the appellant picked up an axe and attacked him from the back as such the blow hit him on the backside of the head. There appears to be only one major blow and all other injuries were incidental to the said blow.

25. Visualizing the aforesaid scenario, the further thing that needs to be appreciated is that, it is not a case where the appellant and the other accused have gone to the place of the deceased for attacking him, nor was the place of incident open to public access. On the contrary, it is the deceased who had come to the house of the juvenile or at the place where the juvenile had called. The time at which the incident occurred also is not a normal time which could be appreciated for two people for being together. A boy and girl being found at odd hours i.e. 3:00 AM – 4:00 AM in the instant case clearly indicate that there was an intimate relationship between the two. We therefore also

presume that it could be a case where the accused Nos.1 and 2 must have seen the deceased and the juvenile together at odd hours in their house which had led to the fight and heated altercations. That in the heat of passion and in the spur of moment, the appellant herein found his niece i.e. the juvenile in company of a boy at odd hours. Even may be they were found in an unacceptable position. Which he could not control himself and overreacted by hitting the deceased with an axe which was lying nearby. Unfortunately the blow fell on the vital part of the body and on one blow itself the deceased collapsed.

26. Once when we affirm the conviction, brings us to the next fore question of sentence in the given factual circumstances narrated in the preceding paragraphs. There does not seem to be any evidence of the appellant giving more than one blow on the head of the deceased. The injury ascertained by PW.12, the Doctor, also suggests that there was only one major injury and all other injuries were incidental to the blow inflicted with the axe. Though it cannot be said that under the said circumstances, even a single injury may not invoke Section 302 of IPC, but yet in the facts of each case, it may warrant interference if sufficient material evidence is available.

27. True it is that the appellant did possess a sharp cutting weapon which he picked up from the house which again he was not carrying

in his hands and he also did not go anywhere to bring that weapon. In the heat of passion and the spur of moment, a nearby axe which was lying down was picked up and he gave a hard blow which fell on the vital part of the head. There is no evidence to show that there were repeated blows given by the appellant herein.

28. From the factual matrix narrated in the preceding paragraphs, it could be a natural reaction on the part of the person who was otherwise like a fatherly figure finding his niece in the company of a young boy at odd hours at their own house which led to the grave and sudden provocation resulting in the death of the deceased.

29. In view of the aforesaid special facts and circumstances available on the case file and what appears to be a case where there was no pre-meditation on the part of the appellant and also for the reason that there was only one assault, though it was grave and severe in nature, we are of the considered view that appellant though had the knowledge that the assault may endanger the life of the deceased, but there appears to be total lack of intent and motive to commit murder as defined under Section 300 of IPC. Therefore, in our opinion, it would be a case which would not fall under Section 302 of IPC, but would be one which shall fall under Section 304 Part I of IPC.

30. Accordingly, we allow the present appeal in part. The conviction of the appellant under Section 302 of IPC is set aside and the appellant is found guilty for having committed the offence under Section 304 Part I of IPC and is sentenced to undergo rigorous imprisonment for ten (10) years with fine of Rs.100/- awarded by the Trial Court. In the event, if the fine amount is not deposited within thirty (30) days, the appellant would have to undergo further simple imprisonment for two (02) months.

31. As a sequel, miscellaneous applications pending if any, shall stand closed.

P.SAM KOSHY, J

SAMBASIVARAO NAIDU, J

Date: 30.04.2024

Note: LR Copy be marked.

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