Andhra Pradesh High Court - Amravati
Golla Kollapuri, Anantapur Dt, vs Inspector Of Police, Hyd on 18 May, 2020
Bench: M.Satyanarayana Murthy, B Krishna Mohan

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

AND

THE HONOURABLE SRI JUSTICE B.KRISHNA MOHAN

CRIMINAL APPEAL No.937 OF 2014

ORDER:- (Per Hon'ble Sri Justice M.Satyanarayana Murthy)

The appellant/accused was found guilty for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, "I.P.C.") in Sessions Case No.405 of 2012 vide judgment, dated 22.08.2014, passed by the learned Additional Sessions Judge, Hindupur and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine, to suffer simple imprisonment for three months.

2. Aggrieved by the calendar and judgment recording conviction and imposing sentence on 22.08.2014, the present appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.").

3. This is a case where the appellant/accused allegedly murdered his oldaged father-in-law by name Sanjeevaiah (herein after referred to as deceased) at Dharmavaram Town on 01.12.2011 at the house of deceased bearing Door No.27-66, Durga Nagar, Dharmavaram town. The appellant/accused by name one Golla Kolla Puri is a conductor in APSRTC, Dharmavaram Depot. He killed the deceased by hitting with a

boulder on his forehead i.e., left side temporal region. On seeing the incident, the complainant Dasari Rangamma, her daughter Ramanjinamma and the neighbours rushed to the scene of offence

to rescue Dasari Sanjeevaiah. But the appellant/accused pushed them aside and escaped from the scene of offence by throwing the boulder aside. The reason for causing injury on the forehead of Sanjeevaiah was that the deceased was not willing to send his daughter Ramanjinamma to lead marital life with the appellant/accused, who is no other than the son-in-law of deceased and husband of Ramanjinamma. Due to refusal to send Ramanjinamma to lead conjugal life with the appellant/accused, he developed grudge against the deceased and so beat him with a boulder on forehead, which resulted in death of Sanjeevaiah.

4. Basing on the report of Dasari Rangamma, wife of deceased Sanjeevaiah, case in crime No.210/2011 for the offence punishable under Section 302 of IPC was registered by Dharmavaram Police Station on 01.12.2011 at about 9.30 p.m., and investigated the case.

5. During the course of investigation, P.W.6 held inquest over the dead body of Sanjeevaiah on 02.02.2011 from 7.00 a.m., to 10 a.m., at Government hospital, Dharmavaram town in the presence of blood relatives, eye witnesses and Panchayatdars. During the course of inquest, P.W.6 T.Anjaneyulu examined the witnesses,

recorded their statements under Section 161 of Cr.P.C., and visited the scene of offence. On the basis of the statements recorded during the inquest, the mediators unanimously opined that the cause of death of deceased is that the accused hit the deceased with boulder vide Ex.P2.

6. After inquest, forwarded the dead body of the deceased to the Government Hospital, Dharmavaram for autopsy. After conducting

postmortem examination, postmortem certificate was issued by the medical officer Dr.P.A.Khan (P.W.5), he opined that Sanjeevaiah died due to Neurogenic shock, due to pressure over the brain on account of intra cranial hemorrhage, due to injury to blood vessels intra cranially and the injuries can be caused due to hit either with a hard object like stone or head hitting against a hard object. Ex.P5 is the postmortem certificate. P.W.6 seized the blood stained boulder at the scene of crime under the cover of Mahazar and the blood stained clothing and forwarded to the RFSL, Tirupathi for examination vide RFSL No.TPT/SER/315/2011, dated 14.12.2011.

7. On 03.12.2011 at about 10.30 a.m., the appellant/accused Golla Kolla Puri appeared before the Village Revenue Officer (P.W.4) (Kotte Hari Prasad), made an extra judicial confession and the same was reduced into writing, produced before the investigating officer at about 11.30 a.m., on the same day.

8. After collecting entire material during the investigation,

P.W.6 concluded that the accused caused death of Sanjeevaiah by beating with a boulder on his forehead and filed charge-sheet against the appellant/accused for the offence punishable under Section 302 of IPC.

9. The learned Judicial Magistrate of First Class, Dharmavaram, before whom the charge sheet was filed, after following the necessary procedure under Sections 207 and 209 Cr.P.C., committed the case to the Sessions Division, Ananthapur, as the offence is exclusively triable by a Court of Sessions.

10. The learned District and Sessions Judge, Ananthapur, after receipt of record, registered the same as Sessions Case No.405 of 2012 and made over the same to the Court of the learned Additional Sessions Judge, Hindupur to try and dispose of the case in accordance with law.

11. Upon securing the presence of the appellant/accused, the trial Court framed sole charge against the appellant/accused for the offence punishable under Section 302 I.P.C., read over and explained to him in Telugu. He pleaded not guilty and claimed to be tried.

12. During trial, prosecution examined P.Ws.1 to 6 and got marked Exs.P-1 to P-9 besides case property - M.Os.1 to 5.

13. After closure of the prosecution evidence, the

appellant/accused was examined under Section 313 Cr.P.C. explaining the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same and reported no defence evidence.

14. Upon hearing the argument of both the learned Public Prosecutor for the State and the learned counsel for the defence, the trial Court found the accused guilty for the offence punishable under Section 302 I.P.C., convicted and sentenced him as stated supra.

15. Aggrieved by the calendar and judgment, the present appeal is filed on various grounds.

16. The main ground urged before this Court in this appeal is that the accused is not responsible for the death of Sanjeevaiah and presence of P.W.2 at the time of alleged incident, who is working as an employee in the Judicial First Class Magistrate's Court, Hindupur is highly doubtful at the time of incident. If, her evidence is disbelieved, except the evidence of P.W.3, who is the neighbour, and P.W.4, who is the Village Revenue Officer, whose presence is improbable, there is absolutely no other evidence. Even otherwise, the defence set up by the appellant/accused was not appreciated by the learned Sessions Judge in proper perspective and that the evidence available on record is not sufficient to record conviction against the accused. Thus, the learned trial Court

committed grave error in recording the conviction against the accused for the grave offence under Section 302 of IPC.

17. During the course of hearing, Sri T.Pradyumna Kumar Reddy, learned counsel for the appellant/accused, while reiterating the contentions urged in the grounds of appeal contended that the trial Court shall appreciate the evidence in proper perspective, more particularly, when the accused is tried for the grave offence punishable under Section 302 of IPC, but it failed and rendered erroneous judgment. More so, the defence set up by the appellant/accused is that the deceased Sanjeevaiah suddenly had a contact with mortar and sustained grave injury on the forehead, which resulted in death and this defence was not considered in proper perspective and committed an error. Even otherwise the accused did not approach Sanjeevaiah with the premeditation to kill or with an intention to cause any bodily injury, which may result in death. In the absence of any evidence with regard to his

premeditation or approaching Sanjeevaiah with an intention to kill him for his refusal to send the wife of appellant/accused, at best the facts may attract the offence punishable under Section 304 Part-II of IPC and consequently recording the conviction against the accused for the offence punishable under Section 302 IPC is contrary to the law laid down by the Hon'ble Apex Court in LAVGHANBHAI DEVJIBHAI VASAVA VS. STATE OF GUJARAT1.

He also specifically contended that the circumstances narrated in paragraph No.7 (a) to (j) have to be considered whether the appellant/ accused had any intention to kill his father-in-law Sanjeevaiah and came to scene of offence with a premeditation to kill him, when he suddenly picked up a boulder or a big stone available at the scene of offence allegedly and caused injury on the fore head of Sanjeevaiah, which resulted sudden death. Therefore, such incident cannot be termed as homicide committed by the appellant/accused amounting to murder. But, it is only a culpable homicide not amounting to murder, hence the accused is liable for punishment under Section 304 Part-II of IPC. Therefore, requested this Court to set aside the conviction and sentence imposed against the appellant/accused while setting aside the impugned calendar and judgment by exercising the power under Section 374 (2) of Cr.P.C.

18. Whereas, the Public Prosecutor for State while supporting the conviction and sentence in all respects contended that even otherwise if the appellant/accused had no intention when he suddenly beat Sanjeevaiah with a big boulder collected at the scene of offence and causing injury on the forehead of the deceased

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is sufficient to hold that the appellant/accused had an intention to kill. Hence the conviction for the offence punishable under Section

302 of IPC cannot be converted into conviction for the offence punishable under Section 304 Part-II of IPC, requested to confirm the conviction and sentence imposed against the appellant/accused while dismissing the appeal.

19. Considering rival contentions, perusing the material available on record, the points that arise for determination are;

1) Whether the appellant/accused caused injuries on the body of Sanjeevaiah (deceased), which lead to his death?

2) Whether the appellant/accused had any intention to kill his father-in-law Sanjeevaiah?

Before determining the points, it is appropriate to advert to the scope of Section 374 Cr.P.C.

20. Section 374 Cr.P.C conferred a substantive right of appeal on the accused who is convicted by the trial Court and this Court, while exercising power under Section 374(2) Cr.P.C., is bound to re-appraise entire evidence to come to an independent conclusion, uninfluenced by the findings recorded by the Court below and decide the legality of conviction and sentence passed by the Sessions Court. Therefore, it is the duty of this Court to re-appraise entire evidence recorded by the Court below after giving an opportunity to both the parties, i.e accused and the respondent. Unless the Court finds manifest perversity in the calendar and judgment or such findings were recorded without evidence, normally, this Court cannot interfere with such fact 8 MSM, J & BKM, J Crl.A.No.937 of 2014 findings in appeal while exercising jurisdiction under Section 374(2) Cr.P.C. It is the sacrosanct duty of the appellate Court,

while sitting in appeal against the judgment of the trial Judge, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record. Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate Court to be undertaken and when that is not done, the cause of justice is not sub-served, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt vide Kamlesh Prabhudas Tanna & Anr v. State Of Gujarat2. Keeping the scope of Section 374(2) Cr.P.C., we would like to re-appreciate the entire evidence on record to come to an independent conclusion, uninfluenced by the findings recorded by the Court below.

21. POINT No.1:

The case of the prosecution is based on direct evidence of P.Ws 1 to 4. P.W.1 is none other than the wife of deceased Sanjeevaiah and mother-in-law of appellant/accused and mother of Ramanjinamma who is no other than the wife of appellant/accused. The scene of offence is at the house of deceased Sanjeevaiah and P.W.1 Rangamma. There is absolutely no dispute with regard to the scene of offence and unnatural death of Sanjeevaiah. Moreover, the unnatural death of Sanjeevaiah is (2013) 15 SCC 263 9 MSM, J & BKM, J Crl.A.No.937 of 2014 substantiated by the medical evidence of P.W.5, Dr.P.A.Khan and Ex.P5 postmortem certificate, which clearly shows that cause of death of Sanjeevaiah was due to injury received on his forehead. Therefore, this Court need not record any finding as to unnatural death of Sanjeevaiah. The main contention of the appellant/accused is that the deceased contacted with a mortar suddenly, received grave injury on the forehead, succumbed to the injury. Whereas the prosecution case is that the appellant/accused beat Sanjeevaiah with a boulder on his forehead, which resulted in death of Sanjeevaiah, the father-in-law of the accused.

22. P.W.1 is the direct witness, whose presence at the house of deceased Sanjeevaiah is probable as she is the wife of Sanjeevaiah. According to her evidence, the incident took place on 01.12.2011. However, in her examination in chief, she categorically testified that on 30.11.2011, she went to Kalahasti to attend marriage and returned to her house at about 6.00 p.m. on 01.12.2011 and after about five (5) minutes when she went to kitchen room, her husband was sitting on sofa in the hall watching T.V. P.W.2 Ramanjinamma was in bed room at that time. While, P.W.1 was in the kitchen, she heard cries, then she came out from the kitchen and saw the accused quarrelling with her husband to send his wife. But, her husband Sanjeevaiah asked the appellant/accused to take away his wife with him for which he has no objection. Her elder daughter Ramnjinamma also came there on hearing cries. Then, the appellant/accused picked up a stone from compound of their house, first beat on the forehead of her husband Sanjeevaiah and later beat on the left side of above eye with the same stone. Later, the appellant/accused also beat Sanjeevaiah on head 10 MSM, J & BKM, J Crl.A.No.937 of 2014 several times and caused injuries. When P.W.1 and P.W.2 interfered, the appellant/accused pushed them away. Thereupon, they raised cries and the neighbours came there by names Gangadhara Reddy, Lakshmidevi, Srinivasulu, Venugopal Reddy. Then, the accused went away by jumping over the wall by leaving stone there, they took her husband Sanjeevaiah in an auto to Government hospital, Dharmavaram, doctor examined her husband and declared him dead.

Thereupon, a complaint under Ex.P1 was lodged against the appellant/accused before the police, who in turn issued FIR under Ex.P6. Thus, her testimony in the examination in chief is consistent that she is the eye-witness to the incident of beating directly, along with her daughter Ramanijinamma. The learned counsel for the appellant/accused cross-examined her at length to disprove her return to her house from Kalahasti after attending marriage. But, she categorically admitted that without attending marriage muhurtham function, she started about 6.30 or 7.00 a.m., from Kalahasti and reached Madanapalli at 6.00 p.m. In the entire cross-examination except suggesting that she was not present, there was no suggestion that Sanjeevaiah himself came in contact with mortar and received injury. Therefore, the defence set up by the appellant/accused cannot be accepted since it is invented for the first time before this Court. More so, when the specific defence is set up by the appellant/accused, unless it is put to the witness more particularly to the eye-witness the same cannot be considered in view of the judgment in A.E.G.CARAPIET VS. A.Y.DERDERIAN3 Therefore, the defence of the appellant/accused that the deceased AIR 1961 Cal 359 11 MSM, J & BKM, J Crl.A.No.937 of 2014 had contact with mortar is rejected. In the entire cross- examination, nothing could be elicited by the learned counsel for the appellant/accused before the trial Court to discredit the testimony of P.W.1 about her presence, at the scene and time of offence. On the other hand, her presence at the scene of offence is highly probable being the wife of the deceased. Therefore, at any stretch of imagination, her presence cannot be disbelieved since her consistent evidence inspires confidence of the Court and no material is elicited to discredit or improbablise her presence at the scene of offfence. Hence, the evidence of P.W.1 is rightly accepted by the trial Court.

23. Prosecution also examined P.W.2 who is no other than the elder daughter of the deceased and P.W.1, who is the wife of the appellant/accused is also consistent. But there is a little doubt about her presence at the time of incident because of the distance between her place of working and scene of offence. Though evidence of P.W.1 inspires confidence and is corroborated by independent witness Gangadhara Reddy (P.W.3), who testified about the hearing of cries from the house of deceased Sanjeevaiah at about 7.00 p.m., on 01.12.2011, immediately he rushed to the house of deceased Sanjeevaiah and saw the accused beating the deceased with a round stone, he raised cries, but the accused ran away. The other neighbours also came to the scene of offence. P.W.3 found head injury and another injury over the left eye of the deceased. He also spoke about the presence of P.W.1 and P.W.2 at the time of incident. He identified MO1 with which the injury was caused on the body of Sanjeevaiah. In the cross-examination to improbablise the presence of P.W.3, the learned counsel for the 12 MSM, J & BKM, J Crl.A.No.937 of 2014 appellant/accused pointed out certain omissions which we will not go into the details more particularly to disbelieve his presence at the time of incident. However, he admitted that he did not hear any sounds from the house of the deceased while he was coming there on his motor bike. He also admitted that he did not state to the police that he came on the motor bike. But, these are all minor inconsistencies, which can be ignored. Therefore, the testimony of P.W.1 is corroborated by independent witness P.W.3, whose presence is highly probable being a neighbor. Hence, the evidence of P.W1 and P.W.3 is sufficient to record conviction, holding that the appellant/accused caused bleeding injury to the deceased, which resulted in death.

24. The prosecution also placed reliance on extra judicial confession of P.W.4, who is the Village Revenue Officer of Dharmavaram. According to testimony of P.W.4 on 03.12.2011 at about 9.00 a.m., the accused came to his office and made his confession that he murdered his father-in-law on 01.12.2011 at about 7.00 p.m., while explaining the reason for causing such injury and the same was reduced into writing by P.W.4 and obtained signature vide Ex.P4. Though extra judicial confession is not a substantive piece of evidence, it is one of the circumstances to be taken into consideration to decide the complicity of the accused, more particularly, when the accused made extra judicial confession.

25. In Baldev Singh v State of Punjab4, the Supreme Court held that extra judicial confession is a weak type of evidence and that by itself is not sufficient to record the judgment of conviction 2009(3) Supreme Court Cases (Crl.) page 66 13 MSM, J & BKM, J Crl.A.No.937 of 2014 against accused, unless the same is corroborated and in the absence of any disclosure before a particular person, a conviction cannot be recorded.

26. In State of A.P. v. Kanda Gopaludu5, the Division Bench of the Apex Court held that extra judicial confession is admissible, if it inspired confidence and made voluntarily and basing on that, court can record conviction of the accused. Undoubtedly, if the extra judicial confession is believed and made voluntarily, the same can be made basis for recording conviction.

27. In Balbir Singh and another v. State of Punjab6, the Apex Court held as follows:

> "Extra judicial confession alleged to have made by the accused to the Municipal Commissioner having no friendship with the accused, cannot be accepted as trustworthy and basing on such evidence, accused cannot be convicted."

28. In K.Brahmachari @ Kammari Brahamachari v. State of A.P7, the Division Bench of this Court held that, when there was no relationship between the accused and the person before whom he made a confession, it is highly improbable to believe the confession of accused made before the third party and conviction cannot be recorded."

29. Extra Judicial confession, if inspires confidence of the Court and the true version of the accused is mentioned on extra judicial confession, conviction can be recorded, if corroborated by other circumstances. But, extra judicial confession itself alone cannot form the basis for conviction and such conviction is illegal. Before 2005(6) Supreme Court Cases page 551 1996 Supreme Court Cases (Crl.) page 1158 2004(1) ALT (Crl.) page 1 (A.P.) 14 MSM, J & BKM, J Crl.A.No.937 of 2014 touching evidentiary value of extra judicial confession, the court must look into various circumstances like prior acquaintance with the person to whom the accused gave statement and whether it is voluntary in nature.

30. In view of the law declared by the Apex Court referred above, extra judicial confession is a weak type of evidence and the same cannot be the basis in recording conviction for the grave charge punishable under Section 302 of IPC.

31. Even if the evidence of P.W.4 with regard to recording the extra judicial confession is disbelieved still the evidence of P.W.1 and P.W.3 inspires confidence of the Court and the presence of P.W.1 and P.W.3 is highly probable in the natural circumstances. Hence, the evidence of P.W.1, which is corroborated by P.W.3 is suffice to record the conviction against the accused holding that the accused caused the injury on the body of Sanjeevaiah. Since, the defence set up by the appellant/accused is highly improbable and no mortar was found in the observation report or in Ex.P7 rough sketch by P.W.6. As the initial onus is on the prosecution, the prosecution proved its case beyond doubt by adducing satisfactory and cogent evidence, directly connecting the accused with the offence and proved that the accused is a person who caused injury with MO1 on the forehead and other injuries on the head of the deceased.

32. On reappraisal of entire evidence we find that no error in the finding of the trial Court with regard to causing injury on the body of deceased by the appellant/accused with MO1 stone.

Consequently we hold that the accused caused injuries on the body of the deceased Sanjeevaiah.

33. POINT NO.2:

One of the major contentions raised before this Court is that the accused had no intention to kill his father-in-law Sanjeevaiah, since he came unarmed to the house of the deceased and requested him to send his wife along with him, but on account of sudden quarrel between them, the appellant/accused picked out a boulder, beat him in sudden and grave provocation, caused injuries on the body of the Sanjeevaiah, who succumbed to injuries. Therefore, in the absence of intention to kill Sanjeevaiah by the appellant/accused, the conviction recorded by the trial Court for the offence punishable under Section 302 is a grave error.

34. The learned counsel Sri T.Pradyumna Kumar Reddy placed reliance on the judgment of the Hon'ble Apex court reported in the case of LAVGHANBHAI DEVJIBHAI VASAVA (1 cited supra), wherein, the Court while referring the judgment in DHIRENDRA KUMAR VS. UTTARAKHAND8 laid therein circumstances (a) to (j), which are to be taken into consideration to form an opinion whether the accused had intention to commit the offence punishable under Section 302 of IPC. The defence, if able to establish any of the circumstances in its favour, the Court may record conviction of the accused only under Part II of 304 of IPC and not punishable under Section 302 of IPC. The circumstances to be considered are extracted hereunder for better appreciation.

a) The circumstances in which the incident took place;

b) The nature of weapon used;

c) Whether the weapon was carried or was taken from the spot;

d) Whether the assault was aimed on vital part of body;

e) The amount of the force used

f) Whether the deceased participated in the sudden fight;

g) Whether there was any previous enmity;

h) Whether there was any sudden provocation;

i) Whether the attack was in the heat of passion; and

j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.

35. The first and foremost circumstance as pointed out by the learned counsel for the appellant/accused is that the weapon was not carried by the accused to the scene of offence from his house, but it was taken from the spot itself. The consistent case of the prosecution from the beginning is that the appellant/accused picked out a boulder MO1 from the compound of the deceased itself and caused injury with the boulder MO1. Therefore, picking out MO1 from the scene of offence and causing injury on the head of deceased by the appellant/accused itself is sufficient to conclude that the accused had no intention to kill the deceased.

36. Section 300 IPC deals with 'Murder' and the following are the circumstances to constitute murder:-

Firstly Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing or-

Secondly- If it is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly - If it is done with the intention of causing bodily injury to any person and the bodily intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death of such injury as aforesaid.

37. The facts in the present case have to be considered, in the light of the principles laid down in case of DHIRENDRA KUMAR (8 cited supra) and the judgment in LAVGHANBHAI DEVJIBHAI VASAVA (1 cited supra) and which one is applicable to the facts of the present case. The deceased was just watching television in the sofa, the appellant/accused who is no other than the son-in-law of the deceased came to the scene of offence and demanded him to send his wife along with him. Thereupon a quarrel took place between them and in heat of passion, the accused picked up MO1 and caused injuries over the body of the deceased. In such case, when the appellant/accused had no pre-meditation to kill deceased or cause any bodily harm or injury to deceased, everything happened on spur of moment, possibility of accused losing self control on some provocative utterances of deceased cannot be ruled out and in such case the accused is liable to be convicted for the offence punishable under Sec.304 Part II instead 18 MSM, J & BKM, J Crl.A.No.937 of 2014 of Section 302 of IPC (vide Yomeshbhai Pranshankar Bhatt v. State of Gujarat9). In the facts of the above decision, the deceased was working in the house of accused as a maid. As she was absent from duties, accused visited her house asking her to rejoin duty and when she refused to join duty, altercation ensued between them. Then, accused allegedly picked a can of kerosene lying nearby, poured kerosene on the deceased and lit fire on her body, which resulted in death of servant-maid. The incident occurred only due to utterances between the accused and deceased and not pre-meditated to kill the deceased or cause injury over the body of deceased, thereby the Apex Court concluded that the accused is liable to be convicted for the offence punishable under Section 304 Part-II of Indian Penal Code.

38. In Veeran and others v. State of M.P10, the Apex Court had an occasion to decide the case with similar facts and held as follows:

> "When there was a fight between parties not pre- meditated and the incident occurred at spur of moment following heated arguments and altercations between parties, such incident could be the result of grave and sudden provocation without any intention in mind of accused to commit murder of deceased. The accused were not aware that injuries caused by them were sufficient in ordinary course of nature to cause death. Therefore, the case falls under Exceptions 1 and 4 of Section 300 of IPC and held guilty for the offence punishable under Section 304 Part-I of IPC."

39. By applying the law laid down in LAVGHANBHAI DEVJIBHAI VASAVA (1 cited supra) and

considering the consistent evidence of P.W.1 to P.W.3 as to picking out the boulder MO1 at the scene of offence and causing injury on the head of the 2011(2) ALD (Crl.) page 238 (SC) 2011(2) ALD (Crl.) page 344 (SC) 19 MSM, J & BKM, J Crl.A.No.937 of 2014 deceased, we hold that the appellant/accused had no intention to kill the deceased to attract the offence punishable under Section 302 of IPC. In the absence of intention to kill the deceased by the appellant/accused, he would have been convicted only for the offence punishable under Section 304 Part-II IPC but the trial Court committed an error. Therefore, the conviction recorded by the Court below for the offence punishable under Section 302 IPC is set-aside, converting the conviction of the appellant/accused from Section 302 IPC to Section 304 Part-II IPC.

40. In the result, the criminal appeal is partly allowed, setting aside the conviction and sentence in Sessions Case No.405 of 2012 passed by the learned Additional Sessions Judge, Hindupur by finding the accused not guilty for the offence punishable under Section 302 IPC while finding him guilty for the offence punishable under Section 304 Part-II IPC, sentenced him to undergo Rigorous Imprisonment for seven (7) years, while confirming the fine of Rs.2,000/-, in default of payment of fine, to suffer simple imprisonment for three months imposed by the trial Court, giving set-off under Section 428 of Cr.P.C.

Consequently, miscellaneous applications pending if any, shall stand closed.

_____ JUSTICE M.SATYANARAYANA MURTHY _____ JUSTICE B.KRISHNA MOHAN Date : 18.05.2020 GR 20 MSM, J & BKM, J Crl.A.No.937 of 2014 THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY AND THE HONOURABLE SRI JUSTICE B.KRISHNA MOHAN CRIMINAL APPEAL No.937 OF 2014 Date : 18.05.2020 GR 21 MSM, J & BKM, J Crl.A.No.937 of 2014