

# SUPREME COURT OF INDIA

Mallikarjuna @ Mallu

Vs.

State of Karnataka

Crl.A.No.335 of 2007

(P.P. Naolekar and P.Sathasivam,JJ.)

14.02.2008

## ORDER

1. The accused-appellant was tried for the offence under Section 302 IPC before the Court of I Additional Sessions Judge, Gulbarga, Karnataka, for committing the murder of Satish and acquitted by the Sessions Court. However, on an appeal preferred by the State, the High Court of Karnataka reversed the judgment and order of the Sessions Court and set aside the acquittal of the accused-appellant and convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo rigorous imprisonment for one year. That is how the accused-appellant is before us by way of appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

2. Learned counsel for the accused-appellant has taken us through the evidence and the judgment of the trial court as well as that of the High Court. The prosecution examined PW.1 to PW.15 in support of its case. PW.1 Basavaraj, a Pan Shop-keeper was examined as an eye witness. Similarly, PW.2, Ambaji, was also examined as an eye-witness. Both PW.1 and PW.2 did not support the prosecution case and turned hostile. The conviction of the accused-appellant was based on the complaint (later on treated as dying declaration) got recorded by Maruti, PW.15, Sub-Inspector of Police, through Head Constable Subhash when Satish (since deceased) was admitted in the hospital. This piece of evidence is supported by the evidence of PW.4, Hanmantha, brother of the deceased, whom the fact of incident was narrated by the deceased naming the accused-appellant as the assailant. The dying declaration is further corroborated by the recovery of the blood-stained pant and shirt on the disclosure statement made by the accused-appellant. we do not find any infirmity in the judgment of the High Court.

3. It is submitted by the learned counsel for the accused-appellant that in the facts and circumstances of the case, the case made out by the prosecution does not fall under Section 302IPC as the deceased suffered only one injury and that too was caused at the spur of the moment.

4. As per the case of the prosecution, on 3rd April, 1996, the deceased had taken his elder brother's son to the examination hall for enabling him to sit for SSLC examination and was waiting outside the examination Centre for taking him back to his residence. At that time the accused-appellant approached Satish (since deceased) near the examination hall and invited him to have a cup of tea with the accused- appellant. Accordingly, the deceased went along with the accused-appellant in an Auto Rickshaw. It is further the case of the prosecution that near the H.K.E. Society Office, the accused-appellant asked the Auto Rickshaw driver to stop the Auto Rickshaw and both the accused-appellant and the deceased disembarked from the Auto Rickshaw and started walking towards the Hotel. At that time, the accused-appellant suddenly caught hold of the neck of the deceased and punched him in the stomach and thereafter took out a button knife from his pocket and stabbed the deceased near the left rib. It has come in the evidence of PW.4 Hanmantha that the deceased was having love affairs with Jaishree PW.3. Appellant was close relative of Jaishree PW.3 and was not happy with the on-going affair between the deceased and Jaishree PW.3.

5. It appears to us from the above facts that some hot words might have been exchanged between the accused-appellant and the deceased on the issue of deceased's relationship with Jaishree and on his retorting, they stopped the Auto Rickshaw and got down from it and at the spur of the moment, the accused-appellant took out his knife and caused injury to the deceased which unfortunately turned into a fatal one and Satish died in the Hospital on the same day at night. These facts do not indicate any premeditation to cause the murder of Satish (since deceased). It is further evident from the above facts that only one injury was caused although there was enough opportunity to cause more injuries on the person of the deceased. Having considered the facts and circumstances of the case, we are of the view that the ends of justice will be sub-served if the conviction of the accused-appellant is altered from under Section 302 to 304 Part II IPC. We order accordingly. The accused-appellant shall undergo R.I. for 5 years. The accused-appellant shall be entitled for the remission of the period already undergone in jail.

6. The appeal stands disposed of accordingly.