

Andhra Pradesh High Court - Amravati

Kalidasu Jaman Srinu, vs The State Of Ap Rep By Its Pp Hyd., on 17 June, 2021

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

&

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

Criminal Appeal No.642 of 2013 JUDGMENT: (Per Hon'ble

Sri Justice M. Satyanarayana Murthy)

One Kalidasu Jaman @ Srinu, the sole accused in S.C No.190 of 2013 on the file of Special Judge for trial of cases under SCs & STs (POA) Act-cum-VIII Additional District & Sessions Judge, West Godavari, Eluru preferred this appeal under Section 374 (2) of Criminal Procedure Code (for short Cr.P.C), challenging the conviction passed against him, finding him guilty for the offence punishable under Section 302 of the Indian Penal Code (for short I.P.C) and sentenced him to undergo imprisonment for life and pay fine of Rs.500/- with default sentence.

2. The case of the prosecution in nutshell is that the marriage of the accused and Kalidasu Anjamma was performed about twenty years ago, they led marital life for five years, blessed with a daughter during their wedlock. The accused deserted his wife by name Kalidasu Anjamma after five years of marriage and again joined with her, resumed conjugal life. The accused suspected the fidelity of his wife and started harassing her. He used to return to house late in night in drunken state and used to abuse her frequently. Thus, the accused suspected the fidelity of his wife, decided to do away with her life and waiting for an opportunity.

3. While so on 24.06.2012 at about 6:30 pm, while Kalidasu Anjamma was returning to her house after completion of her house maid

work, reached Kadakatla fly over bridge towards Dommara colony, the accused way laid and picked up quarrel with her. During the quarrel, the accused suddenly picked up a stone and beat her indiscriminately on her

head, face etc. on receipt of injuries, Kalidasu Anjamma raised cries to 2

attract the attention of the neighbours. On hearing cries, one

Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao

(P.W.3) who were proceeding on the way, rushed to the scene of offence, found the accused beating

Kalidasu Anjamma and when they tried to apprehend the accused, he escaped. Kommireddy Anjaneyulu

(P.W.2) remained at the dead body and Kalidasu Lakshmi Someswara Rao

(P.W.3) went to the house of the mother of Kalidasu Anjamma i.e. Kommireddy Maramma (P.W.1), informed

about the incident of beating of Kalidasu Anjamma by the accused and causing her death near fly over.

4. On receipt of information from Kalidasu Lakshmi Someswara Rao(P.W.3),

Kommireddy Maramma (P.W.1) along with her relatives

visited the scene of offence and after verifying the dead body, she went to police station, submitted a report to

the police, the same was registered as a case in Cr.No.161 of 2012 for the offence punishable under Section

302 I.P.C and issued F.I.R. Investigation was taken by the Inspector of Police, on receipt of F.I.R, visited the scene of

offence and posted a guard at the dead body. On the next day morning, the Inspector of Police

again visited the scene of offence and in the presence of mediators he prepared rough sketch,

observation report, held inquest over the dead body in the presence of inquest panchayatdars and during

inquest based

on the statements of eye witnesses and blood relatives of Kalidasu Anjamma (deceased), the inquest panchayatdars unanimously opined

that the cause of death was due to murderous assault with stone and the accused caused injuries on the face and head of Kalidasu Anjamma (deceased).

5. During observation of scene of offence, the Inspector of Police seized blood stained earth and controlled earth from the scene of offence

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including blood stained stone, forwarded the same to RFSL for chemical examination and report. The dead body was forwarded to Government hospital for autopsy. On receipt of postmortem report and RFSL report, the Inspector of Police prima facie concluded that the accused caused the death of his wife Kalidasu Anjamma (deceased) and filed charge sheet before the jurisdictional Magistrate. The learned Magistrate in turn registered the same as P.R.C No.76 of 2012, as the offence is triable by the Sessions Court, exclusively. The Magistrate after following necessary procedure under Section 207 of Cr.P.C, committed the case to the Sessions Division under Section 209 of Cr.P.C and in turn the Sessions Judge registered the same as Sessions Case No.190 of 2013, made over the same to Special Judge for trial of cases under SCs & STs (POA) Act- cum-VIII Additional District & Sessions Judge, West Godavari, Eluru for trial and disposal of the case in accordance with law.

6. The Sessions Court upon securing the presence of the accused, on hearing Additional Public Prosecutor and defence counsel, framed a sole charge for the offence punishable under Section 302 of I.P.C, explained

the same to the accused in Telugu, he pleaded not guilty and claimed to be tried.

7. During trial, on behalf of prosecution, P.W.1 to P.W.12 were examined, marked Exs.P1 to P12, and M.O.1 to M.O.4.

8. After closure of prosecution evidence, accused was examined under Section 313 of Cr.P.C, explaining the incriminating material that appeared against him, he denied the same and reported no defence evidence.

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9. Upon hearing argument of both the learned Additional Public Prosecutor and learned defence counsel, considering the evidence on record, the Sessions Court found the accused guilty for the offence punishable under Section 302 I.P.C, sentenced him to undergo imprisonment for life and to pay fine of Rs.500/- with default sentence.

10. Aggrieved by the conviction and sentence passed by the Sessions Court under the calendar and judgment in S.C.No.190 of 2013 dated 15.07.2013, the present appeal is filed on various grounds. The main ground urged before this Court in the grounds of appeal is that the Sessions Court did not appreciate the evidence of Kommireddy Maramma (P.W.1), Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3) and omissions in the evidence of Kommireddy Anjaneyulu (P.W.2), Kalidasu Lakshmi Someswara Rao (P.W.3) which go to the root of the case and if those omissions are taken into consideration, the Sessions Court ought to have disbelieved the evidence

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of Kommireddy Anjaneyulu (P.W.2), and Kalidasu Lakshmi Someswara Rao (P.W.3). Further
Kommana Subba Rao (P.W.5), Monda Vijaya
Bharathi (P.W.6) and J.D Jasmin (P.W.7) who are independent witnesses did not support the prosecution
case and based on the testimony of related witnesses, conviction of the accused for the offence
punishable
under Section 302 I.P.C is illegal, requested to set-aside the conviction and sentence passed against the
accused, while finding him not guilty for the offence punishable under Section 302 of I.P.C.

11. During hearing, Smt A. Gayatri Reddy, learned counsel for the appellant while drawing the
attention of this Court to the omissions in the evidence of Kommireddy Anjaneyulu (P.W.2) and Kalidasu
Lakshmi Someswara Rao (P.W.3) who are related witnesses and their presence at

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the time of incident cannot be believed, contended that consequently, the testimony of Kommireddy
Anjaneyulu (P.W.2) and Kalidasu Lakshmi
Someswara Rao (P.W.3) if excluded there is absolutely no evidence to conclude that the accused
committed the grave offence punishable under Section 302 of I.P.C, but the Sessions Court did not consider
those omissions in proper perspective. It is also further contended that the accused allegedly picked up
quarrel with his wife by name Kalidasu Anjamma (deceased) on the road when she was returning to home
after attending to house maid work and during the said quarrel, the accused suddenly picked up a stone on
the road side, beat her with that stone, caused grave injuries which resulted in instantaneous death.
Therefore, taking into consideration of facts and circumstances of the case, the

Court cannot infer that the accused had intention to kill his wife Kalidasu Anjamma (deceased) initially and in such case, at best he is liable for conviction for the offence punishable under Section 304 Part-II of I.P.C and not under Section 302 I.P.C and that he already underwent sentence for a substantial period and requested to sentence him limiting to the sentence already undergone.

12. Whereas, the learned Additional Public Prosecutor strongly supported the calendar and judgment of the Sessions Court and the conviction and sentence passed there under for the offence punishable under Section 302 I.P.C. Even otherwise, the evidence of Kommireddy Maramma (P.W.1) who is the mother of Kalidasu Anjamma (deceased) substantiated that the accused had an intention to kill his wife Kalidasu Anjamma (deceased) and more so, the evidence of Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3) who are direct witnesses, supported the prosecution case in all respects. The

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omissions pointed out by the learned counsel for the appellant are not material omissions and they are liable to be over looked since, they are insignificant omissions, requested to confirm the conviction and sentence passed by the Sessions Court.

13. Considering rival contentions, perusing the material available on record, the point for determination is:

Whether the accused caused the death of his wife Kalidasu Anjamma (deceased) with an intention to kill her by causing injuries on her body with stone, knowing that the injuries caused on her body are sufficient to cause death in ordinary course of events, if so, whether the conviction and sentence

passed against the accused finding him guilty for the offence punishable under Section 302 I.P.C by the Sessions Court be sustained?

14. 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 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 GUJARAT¹). Keeping the scope of Section 374(2) Cr.P.C in view, we would like to re- appreciate entire evidence on record to come to an independent conclusion, uninfluenced by the findings recorded by the Court below.

15. POINT:

It is an undisputed fact that the death of Kalidasu Anjamma (deceased) is unnatural death and the relationship between Kalidasu Anjamma (deceased) and the accused is not in controversy. The evidence of mediators who were present at the time of holding inquest over the dead body vide Ex.P7, based on the opinion expressed by the eye witnesses and the neighbours including blood relatives is that the apparent cause of death of Kalidasu Anjamma (deceased) was due to the injuries caused by the accused with stone (M.O.4). Apart from that the postmortem report (Ex.P9) is sufficient to conclude that the cause of death was due to murderous assault against Kalidasu Anjamma (deceased) causing grave injuries resulting in instantaneous death and that the opinion of the doctor G.V.A Rama Rao (P.W.10) is sufficient to hold that the cause of death was due to the injuries received by Kalidasu 1 (2013) 15 SCC 263 Anjamma (deceased) on the head which were

referred in Ex.P9. Hence, we hold that the death of Kalidasu Anjamma (deceased) is homicidal.

16. The next question that arose for determination is who caused injuries on the body of Kalidasu Anjamma (deceased). Kommireddy Maramma (P.W.1) is admittedly not an eye witness to the incident, but Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3) though related to each other, they are the eye witnesses to the incident. Kommireddy Anjaneyulu (P.W.2) is a neighbour and resident of Dommara Colony, Tadepalligudem and father in law of Kommireddy Maramma (P.W.1) that means grandfather of Kalidasu Anjamma (deceased). He testified about performance of marriage between the accused and Kalidasu Anjamma (deceased), differences between them and again restoration of conjugal life and the accused developing suspicion about the character of Kalidasu Anjamma (deceased). But they are not relevant for deciding the present issue and they will be discussed at appropriate stage when the circumstance is required to be considered.

17. According to the testimony of Kommireddy Anjaneyulu (P.W.2) at about 6:00 pm while himself and Kalidasu Lakshmi Someswara Rao (P.W.3) were returning to their house after completion of masonry work, they got down from fly over and at a distance of 10 to 20 feet, they found the accused quarelling with Kalidasu Anjamma (deceased) and suddenly picked up a stone, caused injuries on the body of Kalidasu Anjamma (deceased), more particularly, on the face and head which resulted in instantaneous death. In the cross examination of Kommireddy Anjaneyulu (P.W.2), the defence counsel could elicit about the differences between the accused and Kalidasu Anjamma (deceased) and desertion of Kalidasu Anjamma (deceased) by the accused etc., and restoration of their conjugal society, but elicited an omission as to the company of Kalidasu Lakshmi Someswara Rao (P.W.3) with Kommireddy Anjaneyulu (P.W.2) while returning to their home after completion of masonry work. The same is supported by the evidence of Investigating Officer, except that nothing has been elicited to discredit the testimony of Kommireddy Anjaneyulu (P.W.2).

18. Similarly, in the evidence of Kalidasu Lakshmi Someswara Rao (P.W.3) who is also related to both the accused and Kalidasu Anjamma (deceased), he admitted that Kalidasu Anjamma (deceased) and the accused are distant relatives to him and testified about the marriage and differences between the accused and Kalidasu Anjamma (deceased) etc., but his evidence is more specific as to the incident. According to Kalidasu Lakshmi Someswara Rao (P.W.3), on 24.06.2012 at about 6:30 pm himself and Kommireddy Anjaneyulu (P.W.2) came down from fly over and while entering into road leading to their colony, they found the accused pulling down Kalidasu Anjamma (deceased) on the floor and beating with a stone on her face and that the size of stone (M.O.4) is approximately 2 kgs and immediately they rushed to the scene of offence, rescued Kalidasu Anjamma (deceased). On that the accused ran away leaving the stone (M.O.4) by the side of Kalidasu Anjamma (deceased). Thus, the consistent evidence of Kalidasu Lakshmi Someswara Rao (P.W.3) is that the cause of death of Kalidasu Anjamma (deceased) was due to the injuries caused on her head with stone (M.O.4) by the accused and they are the direct witnesses to the occurrence. In the cross examination, Kalidasu Lakshmi Someswara Rao (P.W.3) did not state about the company of Kommireddy Anjaneyulu (P.W.2) while returning to their house after attending to masonry work. But the Sessions Court concluded that these omissions are not material omissions, thereby the evidence of Kommireddy Maramma (P.W.1), Kommireddy Anjaneyulu and Kalidasu Lakshmi

Someswara Rao (P.W.3) cannot be discredited on the ground of omission to mention about the company of Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3) by one another. This finding is now assailed in the appeal by the learned counsel for the appellant.

19. No doubt both Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3) are masonary workers and their oral evidence before the Sessions Court is that while they were returning from masonary work to their house, they got down from fly over and at a distance of 10 to 20 feet, they found the accused quarelling with Kalidasu Anjamma (deceased) and suddenly picked up a stone, caused injuries on the body of Kalidasu Anjamma (deceased), but omitted to mention about the company of the other with him. But failure to state about the company of Kalidasu Lakshmi Someswara Rao (P.W.3) by Kommireddy Anjaneyulu (P.W.2) and similarly, Kommireddy Anjaneyulu (P.W.2) by Kalidasu Lakshmi Someswara Rao (P.W.3) is not a material omission and it is not sufficient to discredit the testimony of Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3).

20. Though Kommireddy Anjaneyulu (P.W.2) is grandfather of Kalidasu Anjamma (deceased) no interestedness can be attributed and that too he being the grandfather of Kalidasu Anjamma (deceased) made a serious attempt to rescue Kalidasu Anjamma (deceased) while causing injuries by the accused. Similarly, Kalidasu Lakshmi Someswara Rao (P.W.3) is also a distant relative to both the accused and Kalidasu Anjamma (deceased) and he is not supposed to speak false against the accused when he is relative to both the accused and Kalidasu Anjamma (deceased) and that too when there was no enmity between Kalidasu Anjamma (deceased), Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3). Thus, the incident occurred during dusk i.e. at about 6:30 pm, when Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3) directly witnessed the incident. The conduct of the witnesses is quite natural as they interfered to rescue Kalidasu Anjamma (deceased) from the murderous assault of the accused against her. Hence, the evidence of Kommireddy Anjaneyulu (P.W.2) and Kalidasu (P.W.3) is wholly reliable and no further independent corroboration is required, since corroboration is not a rule of evidence, it is a rule of prudence. Therefore, based on the direct evidence of Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3), ignoring minor omission which is not a material omission, the Sessions Court rightly found the accused guilty for causing injuries on the body of Kalidasu Anjamma (deceased) in a sudden quarrel picking up a stone available on the road side.

21. The learned Additional Public Prosecutor would contend that the evidence of Kommireddy Maramma (P.W.1) is sufficient to establish the motive to commit such a grave offence punishable under Section 302 I.P.C and when motive is established, the intention of the accused can be inferred from the other circumstances. The evidence of Kommireddy Maramma (P.W.1) is at best sufficient to establish the differences and desertion of Kalidasu Anjamma (deceased) by the accused, after giving birth to a child, but at the same time the evidence on record is sufficient to conclude that their family ties were restored and led conjugal life, blessed with two children after reunion. This itself indicates that the accused had not developed any motive to kill Kalidasu Anjamma (deceased), otherwise leading conjugal life and giving birth to two children does not arise. In any view of the matter, the evidence of Kommireddy Maramma (P.W.1) is consistent that the accused developed

suspicion over the character of Kalidasu Anjamma (deceased), frequently harassing her in drunken state. But that by itself is not a ground to conclude that the accused had intention to kill Kalidasu Anjamma (deceased) due to motive, he developed against her.

22. According to Section 8 of the Indian Evidence Act, motive is relevant fact and it is one of the circumstances to complete the chain of circumstances. Motive is double-edged weapon. It may be a ground for committing a crime and it may also be a ground for falsely implicating the accused. Proof of motive may lend additional support to the prosecution, but it cannot make good the deficiency of the prosecution case.

In Suresh Chandra Bahri Vs. State of BIHAR², the Apex Court held that, sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because AIR 1994 S.C. page 2420 most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of offence.

23. Therefore, applying the principle laid down in the above judgment, when the incident was established by adducing direct evidence, motive is more or less remains academic question. Apart from that the evidence of Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3) though related, inspires confidence of the Sessions Court and nothing was elicited to discredit their testimony more particularly, to disbelieve their directly witnessing the incident. Hence, the motive spoken by Kommireddy Maramma (P.W.1) is more or less irrelevant to decide the complicity of the accused.

24. Undoubtedly the evidence on record would establish that the accused initially picked up quarrel, but in the sudden quarrel he picked up a stone available on the road side, beat on the face and head of Kalidasu Anjamma (deceased). In view of the alternative submissions made by the learned counsel for the appellant Smt A. Gayatri Reddy, that in case the Court believed the evidence of witnesses on record and concludes that the accused is the person who caused injuries and his conviction is to be altered from Section 302 I.P.C to Section 304 Part-II I.P.C, since he had no intention to cause death, as the injuries found on the head of Kalidasu Anjamma (deceased) are only fracture injuries caused with a stone (M.O.4) in a sudden and grave provocation when he suddenly picked up quarrel with Kalidasu Anjamma (deceased) and relied on the judgment of the Apex Court in Surinder Kumar v. Union Territory, Chandigarh³, where the Apex Court held that, if on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the exception provided he has not acted cruelly. The Apex Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a

fit of anger. Dealing with the provision of Exception 4 to Section 300, the Apex Court observed:

". To invoke this exception four requirements must be satisfied, namely,

(i) it was a sudden fight;

(ii) there was no premeditation;

(iii) the act was done in a heat of passion; and

(iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor, but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which (1989) 2 Sessions Court 217 proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."

To constitute offence punishable under Section 302 I.P.C. The prosecution has to prove that the accused caused injury with an intention to kill him.

Section 300 I.P.C 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 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.

25. In the present case, when the accused found Kalidasu Anjamma (deceased) on the road, he suddenly caused injuries on the head of and face of Kalidasu Anjamma (deceased) with a stone (M.O.4). Till then, the accused had no intention to cause grave injuries or to kill Kalidasu Anjamma (deceased). In such case, when the accused had no intention to cause death of Kalidasu Anjamma (deceased), as the accused had no premeditation and came with a weapon, but suddenly in spur of moment, in grave and sudden provocation, suspected and caused injury with a stone (M.O.4). Such act would attract exception NO.1 of Section 300 I.P.C and liable to be punished, it would fall within

Section 300(1) I.P.C, though the injuries are on vital part. The ingredient of intention mentioned under Clause (1) of Section 300 I.P.C give clue in a given case, whether the offence is murder or culpable homicide not amounting to murder. Here, it was not the case of the prosecution at any stage that the accused intentionally killed Kalidasu Anjamma (deceased). But, the only reason for causing fatal injuries on the head of Kalidasu Anjamma (deceased) which led to her death was that the accused found Kalidasu Anjamma (deceased) on the road while she was returning from her house maid work. In such case, the case of prosecution would fall under Part-II of Section 304 I.P.C. When the accused had no pre-meditation to kill the deceased or cause any bodily harm or injury to deceased, everything happened on spur of moment, possibility of accused losing self control on seeing Kalidasu Anjamma (deceased) cannot be ruled out and in such case the accused is liable to be convicted for the offence punishable under Section 304 Part-II instead of Section 302 of I.P.C (vide *Yomeshbhai Pranshankar Bhatt v. State of Gujarat*⁴). 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 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 2011 (2) ALD (Crl.) page 238 (SC) 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.

Thus, the view expressed by the Hon'ble Apex Court in *Yomeshbhai Pranshankar Bhatt* (4th referred supra), is a little bit conflicting, but the Larger bench judgment in *Gurdial Singh and others* (SEE:2011(2)SCC768) is totally in consonance with the principle laid down in the decision *Yomeshbhai Pranshankar Bhatt* (4th referred supra). However, the Larger bench judgment is binding on the Courts. 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 I.P.C. 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 pre-meditation. 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 I.P.C. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances. To decide whether that the accused caused injuries with an intention to kill deceased, certain guidelines are laid down by the Apex Court in *Pulicherla Nagaraju @ Nagaraja v. State of Andhra Pradesh*⁵ and they are as follows:

- (i) nature of the weapon used;
- (ii) whether the weapon was carried by the accused or was 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 pre-meditation;
- (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, of course, not exhaustive and there may be several other special

circumstances with reference to individual cases which may throw light on the question of intention.

26. In view of law declared by the Apex Court in various judgments referred above it is relevant to advert to the evidence of Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3) once again. Their evidence is consistent that in a sudden quarrel the accused picked up a stone (M.O.4) available on the road side and caused injuries which resulted in instantaneous death of Kalidasu Anjamma (deceased). AIR 2006 SC 3010 Apart from that the accused did not carry the stone (M.O.4) along with him to cause injury on the body of Kalidasu Anjamma (deceased) to infer that he had intention to kill Kalidasu Anjamma (deceased). Therefore, it is difficult to conclude that the accused has caused injuries on the face and head of Kalidasu Anjamma (deceased) with stone (M.O.4) with an intention to kill her. But the Sessions Court based on the evidence of Kommireddy Anjaneyulu (P.W.2) and Kalidasu Lakshmi Someswara Rao (P.W.3), without examining the issue with reference to Section 300 of I.P.C and law laid down by the Apex Court referred above, found the accused guilty, simply holding that the accused had intention to kill Kalidasu Anjamma (deceased) and knowledge that those injuries are sufficient to cause death in the ordinary course of events. But the finding of the Sessions Court that the accused caused death of Kalidasu Anjamma (deceased) with an intention to kill her is hereby set-aside as the accused suddenly picked up a stone available on the road side and caused injuries, that itself indicates that he had no intention to kill her. Hence, the accused is found not guilty for the offence punishable under Section 302 I.P.C, while finding him guilty for the offence punishable under Section 304 Part-II I.P.C.

27. In the result, the criminal appeal is allowed-in-part. The Calendar and Judgment in Sessions Case NO.190 of 2013 dated 15.07.2013 passed by the Special Judge for trial of cases under SCs & STs (POA) Act-cum-VIII Additional District & Sessions Judge, West Godavari, Eluru is hereby set-aside, finding the accused not guilty for the offence punishable under Section 302 I.P.C, while finding him guilty for the offence punishable under Section 304 Part-II I.P.C. Accordingly, the accused is sentenced to undergo rigorous imprisonment for a period of seven (07) years while maintaining the

fine imposed by the Sessions Court. The remand period if any and the sentence of imprisonment already undergone by the accused shall be given set-off under Section 428 of Cr.P.C.

28. Consequently, miscellaneous petitions, pending if any in the appeal, shall stand closed.

MURTHY JUSTICE M. SATYANARAYANA

JUSTICE NINALA JAYASURYA Dated
17.06.2020 RVK