

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12<sup>TH</sup> DAY OF JULY, 2016

PRESENT

THE HON'BLE MR.JUSTICE MOHAN M. SHANTANAGOUDAR

AND

THE HON'BLE MR.JUSTICE BUDIHAL R.B.

CRIMINAL APPEAL NO.210/2012

BETWEEN :

Manjunath C.N  
S/o Late Nanjappa  
Aged about 49 years  
Occ: Car Driver, R/o Near  
Kabeerananda Math  
Alageri  
Kabeerananda Nagar  
Chitradurga

..Appellant

(By Sri Venkatesh.C, Adv.,)

AND :

State by Town Police Station  
Chitradurga, Rept. By  
State Public Prosecutor  
High Court of Karnataka

..Respondent

(By Sri Vijaykumar Majage, Addl. SPP)

This Appeal is filed under Section 374(2) Cr.P.C. praying to set-aside the judgment and orders of conviction passed by the Additional District and Sessions Judge, Chitradurga in S.C.No.7/2010 on 24.1.2011, convicting the appellant/accused for the offences punishable under Sections 504 and 302 of IPC. The appellant/accused is sentenced to undergo R.I. for life for the offence punishable under Section 302 of IPC and to pay fine of Rs.500/-, in default to pay fine, he shall undergo S.I. for one month for the offence punishable under Section 504 of IPC. The period of judicial custody undergone shall be given set-off under Section 428 of Cr.P.C.

This Appeal coming on for Hearing, this day, MOHAN M. SHANTANAGOUDAR, J., delivered the following:-

### **J U D G M E N T**

The judgment and order of conviction dated 24.1.2011 passed by the Additional District and Sessions Judge, Chitradurga in S.C.No.7/2010 convicting the accused/appellant herein for the offences punishable

under Sections 302 and 504 of IPC is called in question in this appeal by the convicted accused.

2. Case of the prosecution in brief is that the accused is the husband of PW.3 – Lalithamma; their marriage was performed about 18-20 years prior to the incident in question; two children were born out of the wedlock, among them PW.1 is the son; the deceased Lakshamma is the mother of PW.3 and the mother-in-law of the accused (i.e. the maternal grand-mother of the complainant PW.1); the accused was working as a driver in Bangalore; he was residing with his family at Bangalore for about ten years after his marriage; since the relationship between the accused and PW.3 were strained, the wife of the accused viz., PW.3 came back to her mother's house and started living with her mother (deceased); two children accompanied their mother and started living in their maternal grand-mother's house at Chitradurga along with their mother; however, the

accused continued to work and live at Bangalore; he used to come to Chitradurga once in a month etc.; about a year prior to the incident in question, the accused left the job of driver at Bangalore and he also joined his family, which was residing in the house of the deceased; the accused started living with his wife and children but he was not doing any work; he cultivated the habit of consuming alcohol; he used to quarrel with his wife, mother-in-law and his children on one or the other reason; the accused used to torture his wife for money; whenever the money is not provided by the wife of the accused, the accused used to assault her; whenever the children of the accused used to play, the accused did not like the children playing and he used to assault and scold the children with a view that they should study and they should come-up in life; whenever the accused used to quarrel with his wife and children, the maternal grandmother of the complainant (deceased) used to intervene with a view to pacify the quarrel and at that point of

time, the accused used to quarrel with his mother-in-law (deceased).

At about 2.30 p.m. on 23.7.2009, when the complainant, aged about 17 years as on that date of the incident was playing cricket with his friends in front of his house, the accused came in an auto-rickshaw to the house; on seeing the complainant playing game, the accused was enraged and he attempted to beat the complainant with the cricket wicket; the complainant in order to escape, ran into his house and took the shelter of his maternal grand-mother; Lakshmamma being the grand-mother of the complainant/mother-in-law of the accused interfered and tried to interrupt her son-in-law from beating the complainant; the accused being enraged, scolded the deceased in a filthy language and he assaulted on the face and head of the deceased with a stump of 4-5 times without any pre-meditation, consequent upon which, the deceased fell down with bleeding injuries on her face. Immediately, thereafter

the complainant and his friends shifted the victim to the Hospital wherein she succumbed to the injuries within an half-an-hour of the incident in question.

Complaint came to be lodged as per Ex.P1 by PW.1 at 4.15 p.m. on 23.7.2009 before Chitradurga Town Police Station, which came to be registered in Crime No.224/2009 by the Inspector of Police (PW.13). After completion of investigation, PW.13 laid the chargesheet against the accused for the aforementioned offences.

3. In order to prove its case, the prosecution, in all, has examined 13 witnesses and got marked 16 exhibits and 5 material objects. On behalf of the defence, no witness is examined and no document is marked. As mentioned supra, the trial Court, on evaluation of the material on record convicted the accused for the offences punishable under Sections 302 and 504 of IPC and sentenced him to undergo imprisonment accordingly.

4. Sri Venkatesh C., learned counsel appearing on behalf of the appellant/accused taking us through the entire material on record and the judgment of the trial Court submits that the accused did not have intention to commit the murder of the deceased; the accused wanted to teach a lesson to his son in order to see that his son studies well instead of wasting time by playing with his friends; as the incident has taken place at the spur of the moment and as in the absence of any intention on the part of the accused to commit the offence of murder, the trial Court ought not have convicted the accused for the offence punishable under Section 302 of IPC. According to him, at the most, the offence may fall under Section 304(ii) of IPC.

Sri Majage, learned Additional SPP appearing on behalf of the State opposes the contention of the learned Counsel for the appellant and has argued in support of the judgment of the trial Court.

5. Case of the prosecution mainly rests on the ocular testimony of P.W.1. P.W.1 is none other than the son of the accused and the grand son of the deceased. The case is also supported by the evidence of P.Ws.3 to 5 and 7 to 9, who are the circumstantial witnesses and who come to the spot immediately after the incident. These witnesses have seen the accused chasing the complainant with the wicket/stump in his hand inside the house and the accused running away from the scene. They have also seen the wicket which had broken into two pieces and had fallen at the place of the incident. Immediately after the incident, the witnesses shifted the victim to the hospital. P.W.10 (doctor) who conducted autopsy over the dead body of the deceased submitted the P.M. report as per Ex.P.5 wherein the doctor has opined that the death is due to shock as a result of the head injury.

6. Before proceeding further, it is relevant to note the versions of each of the witnesses in brief.

P.W.1 is the complainant and he is an eye witness to the incident. He is the son of the accused and the grand son of the deceased. He has deposed about the actual incident in question.

P.W.2 is the witness for inquest mahazar (Ex.P.3).

P.W.3 is the wife of the accused. She was the teacher by profession and she left to the school as usual on the date of the incident. Immediately after getting the news from Chandrika (neighbour), she went to the house. By then, the victim was shifted to the hospital. She has deposed almost on par with the evidence of P.W.1.

P.W.4 is the neighbour of the accused and the deceased. He has deposed that he has seen the accused chasing the complainant since the accused was enraged by the activities of the complainant indulging in sports.

Immediately thereafter, all the other persons came to the spot.

P.W.5 is the witness for the mahazar (Ex.P.2) under which the two pieces of wicket/stump (M.Os.1 and 2) were seized. He is also the witness for the mahazar (Ex.P.4) under which the blood stained clothes of the deceased were seized. However, he has turned hostile to the case of prosecution.

P.W.6 is the witness for the mahazar (Ex.P.4) under which the blood stained clothes of the deceased were seized. He has also turned hostile to the case of prosecution.

P.W.7 has deposed about he seeing the complainant coming out of the house crying loudly. He is also the witness for seizure of M.Os.1 and 2.

P.W.8 is the scribe of the complaint (Ex.P.1). She is the neighbour. She has deposed that she has seen the accused chasing the complainant inside the house with the wicket in his hand and immediately thereafter, she

heard the crying sound of the complainant; she saw the accused running away from the scene; immediately thereafter, the victim, who had sustained the bleeding injuries, was brought out by P.W.1 and his friends and taken to the hospital for treatment. She informed P.W.3 about the incident. She has also deposed about the motive for commission of the offence.

The evidence of P.W.9 is almost on par with the evidence of P.W.8. He has also deposed about the accused chasing the complainant holding the wicket/stump in his hand and thereafter, hearing the crying sound of the complainant.

P.W.10 is the doctor. He conducted autopsy over the dead body of the deceased as per Ex.P.5. He has given his opinion, on examining M.Os.1 and 2, as per Ex.P.6.

P.W.11 is the police constable who carried FIR to the jurisdictional magistrate.

P.W.12 is the Sub Inspector of Police. He apprehended the accused on 17.11.2009 and handed over his custody to the investigating officer along with the report (Ex.P.7).

P.W.13 is the inspector of police. He completed the investigation and laid the charge sheet. He was the person who registered the case.

7. As mentioned supra, the complaint (Ex.P.1) was lodged by P.W.1. The complainant (P.W.1) was aged about 17 years at the relevant point of time. The complaint (Ex.P.1) discloses the details of the incident in question. Apart from the same, the complainant has deposed about the conduct of the accused coming once in a month or twice in a month from Bengaluru; the accused used to quarrel with the deceased as well as his wife (P.W.3). The complaint further discloses that when the complainant was playing with his friends Arjun, Sunil, Sadiq and Raghavendra at about 2.30 p.m. on

23.07.2009, the accused came in an auto rickshaw to the house; after seeing the complainant playing with his friends, the accused suddenly rushed towards the complainant to beat him. However, the complainant in order to save himself went inside the house and took the shelter of his grand mother (deceased); at that point of time, the deceased was washing the utensils; the deceased however intervened and advised the accused not to assault the complainant. Being enraged by such advisory remarks, the accused assaulted on the face and head of the deceased 4-5 times, consequent upon which the victim (deceased) fell down and sustained the injuries. Thereafter, she was shifted to the hospital. Within half an hour, the deceased succumbed to the injuries.

Almost exactly, the same version as found in the complaint lodged by P.W.1 is forthcoming in the evidence of P.W.1. In the evidence, P.W.1 has reiterated that while he was playing with his friends Arjun, Sunil, Sadiq

and Raghavendra at about 2.30 p.m. on 23.07.2009 in front of his house, the accused came to the house in an auto rickshaw and on seeing the complainant playing cricket, he went to beat him. However, the complainant escaped and ran inside the house and took the shelter of his grand mother (deceased). Thereafter, the deceased intervened and tried to pacify the accused. But the accused scolded the accused in filthy language and assaulted her 4-5 times. Though P.W.1 was subjected to lengthy cross examination, nothing worthwhile is elicited so as to discredit his evidence. Even in the cross examination, P.W.1 has deposed that the accused was not liking him playing and therefore, he used to beat him in order to see that the complainant studies well. P.W.1 has deposed that because of the assault, the wicket broke into two pieces and both the pieces fell down at the place of the incident. In the cross examination, P.W.1 has admitted that the inmates of the house of the deceased including P.W.1 and his mother (P.W.3) were

not allowing the accused whenever the accused used to come from Bengaluru. However, in the next sentence itself, the complainant (P.W.1) has improved his version by deposing that since the accused was quarreling with his mother, the accused was not allowed inside the house.

The evidence of P.W.1 is fully supported by P.Ws.4, 7 to 9. All these witnesses have deposed that they saw the accused alighting from the auto rickshaw; the accused being enraged by the complainant playing with his friends wanted to beat him with the wicket in his hand; the complainant ran away inside the house in order to save himself and the accused also followed the complainant. Immediately thereafter, all these witnesses heard the crying sounds of the complainant within the house. Immediately, they entered the house by which time, the victim had fallen to the ground with the bleeding injuries on her face. These witnesses have seen the accused running away from the scene. P.Ws.4, 7 to

9 have fully supported the case of prosecution as well as the evidence of P.W.1.

We find that the evidence of P.Ws.1, 4, 7 to 9 is consistent, cogent and reliable. P.Ws.4, 7 to 9 are the independent witnesses. P.W.1 is none other than the son of the accused. He has not tried to save his father i.e., the accused. P.Ws.1, 4, 7 to 9 have fully supported the case of prosecution that the accused assaulted with the wicket on the face and head of the victim (deceased).

8. As mentioned supra, the P.M. Report (Ex.P.5) and the evidence of the Doctor - P.W.10 make it amply clear that the death has taken place due to shock and hemorrhage as a result of the head injury. The deceased has died within half an hour of the incident in question. The deceased was aged about 60 years at the time of the incident. We have already observed in the aforementioned paragraphs that the accused alone was responsible for causing the death of the victim.

9. But the question is that, whether the accused had got any intention to commit the murder of the deceased.

Looking to the evidence of P.W.1 as well as the complaint (Ex.P.1) lodged by P.W.1, it is clear that the accused came to the house in the normal manner in an auto rickshaw. There is no allegation that the accused had intention to commit the murder of anybody while coming to the house, so also there is no allegation that the accused was in drunken state of mind. On the other hand, the material on record reveals that the accused alighted from the auto rickshaw in a casual manner. However, after alighting from the auto rickshaw, he saw the complainant playing with his friends at about 2.00 p.m. on 23.7.2009. Being enraged by the act of the complainant playing with his friends in the afternoon (without indulging in studies), by pronouncing that the complainant is always found playing and is not studying, wanted to beat the complainant with the wicket in his

hand. Immediately, thereafter, the complainant ran inside the house in order to save himself from the beatings of his father. Thus, it is clear that till such time, there was no intention on the part of the accused to commit the murder of anybody including the complainant. On the other hand, the intention on the part of the accused was to bring up the complainant in life. He wanted that his son should study well and come up in life. When the complainant entered the house, the accused chased him inside the house. In the meanwhile, the deceased being the grand mother of the complainant tried to intervene and pacify the accused, but the accused being enraged by such act of the deceased scolded her saying that she is not allowing the accused to mould the career of the complainant and that, she is spoiling the members of the family. So saying, he immediately started assaulting on the face and head of the victim (deceased), consequent upon which, the deceased fell down and sustained injuries. From the

aforementioned facts as narrated by P.W.1 not only in his complaint (Ex.P.1) but also in his evidence, it is clear that the accused had no intention to commit the murder. On the other hand, the accused was deprived of his self control on seeing the deceased intervening in the affairs of the family of the accused and in moulding the career of the complainant. The incident has taken place without any premeditation in sudden heat of passion. Looking to the totality of the facts and circumstances of the case, we are of the opinion that the accused did not have any intention to commit the murder of anybody including the deceased. On the other hand, as mentioned supra, the incident has taken place without any pre meditation in the heat of passion suddenly. In view of the same, it can safely be concluded that the accused has committed the offences punishable under Sections 304(ii) and 504 of IPC.

On reconsidering the entire material on record, more particularly, the evidence of P.W.1, in our

considered opinion, the trial Court is not justified in convicting the accused for the offence punishable under Section 302 of IPC. On the other hand, the evidence on record clearly establishes that the accused shall be punished for the offences punishable under Sections 304(ii) and 504 of IPC.

10. Having heard the learned Counsel on both sides on the question of sentence, we proceed to pass the following order:

The judgment and order of conviction and sentence dated 24.1.2011 passed in S.C. No.7/2010 by the Additional District and Sessions Judge, Chitradurga, convicting the accused for the offence under Section 302 of IPC is modified. Instead, the accused is convicted for the offences punishable under Sections 304(ii) and 504 of IPC.

The accused is sentenced to undergo imprisonment for 8 (eight) years for the offence punishable under section 304(ii) IPC.

We make it clear that the sentence imposed by the trial Court for the offence punishable under Section 504 of ICP stands confirmed.

The appeal is ***allowed in part*** accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

\*LB/CS/-