



IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 948/2021

AMOS THAMONG

Appellant(s)

VERSUS

THE STATE OF TELANGANA

Respondent(s)

O R D E R

1. The appellant was charged and convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC'). The case of the prosecution in a nutshell is that the appellant came to the place of residence of the deceased who was living there along with PW-1 and took him outside. Thereafter, the deceased returned and PW-1 and PW-2 found him in a very serious condition. The deceased suffered multiple stab injuries. PW-2 thereafter, called the ambulance. In the hospital, the deceased was given treatment. However, he succumbed to his injuries in the hospital.
2. Before the Trial Court, the prosecution examined six witnesses. While exhibiting eight documents, six material objects were produced before the Court. On question under Section 313 of the Code of Criminal Procedure, 1973, the appellant denied to accept the

## VERDICTUM.IN

offence committed by him. The Trial Court rendered conviction upon hearing the learned Public Prosecutor and the counsel who represented the appellant by way of a legal aid.

3. The appeal filed by the appellant was also dismissed by placing substantial reliance upon the evidence of PW-1 and PW-2 before whom a dying declaration was given by the deceased. The contention of the appellant regarding link not having been established was rejected.
4. Mr. A. Sirajudeen, learned senior counsel appearing for the appellant, submitted that the onus was wrongly fixed on the appellant by placing reliance upon Section 106 of the Indian Evidence Act, 1872 (hereinafter referred as the 'IE Act, 1872'. It is very unfortunate that the lawyer who conducted the trial on behalf of the appellant did not even ask basic questions. Bloodstain was not available, despite the fact that the appellant was stabbed continuously. The knife recovered under Section 27 of the IE Act did not indicate any bloodstain, notwithstanding the statement made by the Investigating Officer. Neither the doctor who examined the deceased was shown as a witness nor the ambulance driver. The motive has not been proved and the photographs, though taken, have not been marked.

## VERDICTUM.IN

Alternatively, the learned senior counsel submitted that the evidence of the Investigating Officer (PW-6) also indicates that the appellant also suffered injuries and was given treatment. Learned counsel further submits that absolutely no investigation was done on the said issue. Therefore, the appellant is entitled for acquittal and, in any case, this is a case which might come under an offence punishable under Section 304 part 1 IPC.

5. Learned counsel appearing for the State submitted that both the Courts below have placed reliance upon the testimonies of PW-1 and PW-2. There is no motive attributed against them for implicating the appellant. In such view of the matter, no interference is required particularly, when the grounds sought to be raised before this Court have not been raised before the Courts below.
6. We are willing to take the evidence of PW-1, as such, this witness has clearly deposed that the appellant was the one who took the deceased along with him and thereafter the deceased returned alone with multiple stab injuries and gave a statement to him that they were caused by the appellant. We also accept the evidence of PW-2 who saw the deceased along with PW-1. The question for consideration is as to whether the case would come under a culpable

## VERDICTUM.IN

homicide amounting to murder or otherwise.

7. PW-6, namely, the Investigating Officer has deposed that the appellant did suffer injuries and he was given treatment in the hospital. Unfortunately, no investigation was then done with respect to the nature of injuries suffered by him and circumstances under which they occurred. The injuries suffered were also not marked nor the doctor was examined who gave the treatment to the appellant.
8. Whenever a homicide takes place, an Investigating Officer is expected to conduct a fair investigation. When the accused suffers injuries, it is the duty of the Investigating Officer to conduct investigation on the same before giving his opinion. A final report filed by the Investigating Officer is only an opinion. Admittedly, there is a homicide. In that eventuality, what is expected of the Investigating Officer is to rule out the possibility of an offence attracting punishment under Section 304 Part 1 IPC, before charging the accused under Section 302 IPC. Unfortunately, the said exercise has not been done, especially, when the appellant has sustained substantial injuries warranting immediate treatment. We are dealing with a case of circumstantial evidence. Therefore, all the more reason, the aforesaid procedure ought to have been adopted.

9. In the light of the aforesaid discussion, we are inclined to modify the conviction to the one punishable under Section 304 Part 1 IPC, instead of 302 IPC.
10. In such view of the matter, the appeal stands allowed in part. Consequently, the sentence of life imprisonment given to the appellant stands modified to 10 years. The appellant shall be released forthwith, unless required in any other case, as he has already completed the said period of sentence.
11. The appeal stands allowed in part accordingly.
12. Pending application(s), if any, shall stand disposed of.

.....J.  
[M.M. SUNDRESH]

.....J.  
[ARAVIND KUMAR]

NEW DELHI;  
25<sup>th</sup> JULY, 2024

**VERDICTUM.IN**

6

ITEM NO.114

COURT NO.13

SECTION II

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Criminal Appeal No(s). 948/2021

AMOS THAMONG

VERSUS

Appellant(s)

THE STATE OF TELANGANA

Respondent(s)

IA No. 89157/2023 - EARLY HEARING APPLICATION  
IA No. 97081/2021 - INTERIM BAIL)

Date : 25-07-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH  
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. A. Sirajudeen, Sr. Adv.  
Ms. Manjeet Chawla, AOR  
Mr. Abid Ali, Adv.  
Mr. Manek Sharma, Adv.

For Respondent(s) Ms. Devina Sehgal, AOR  
Mr. S.uday Bhanu, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in part in terms of the signed  
order.

The relevant portion of the order reads as under:-

'In such view of the matter, the appeal stands allowed in part. Consequently, the sentence of life imprisonment given to the appellant stands modified to 10 years. The appellant shall be released forthwith, unless required in any other case, as he has already completed the said period of sentence.'

Pending application(s), if any, shall stand disposed of.

(GEETA JOSHI)  
SENIOR PERSONAL ASSISTANT  
(Signed order is placed on the file)

(POONAM VAID)  
COURT MASTER (NSH)