

HON'BLE SRI JUSTICE K.C.BHANU
AND
HON'BLE SMT JUSTICE ANIS
CRIMINAL APPEAL No.848 OF 2010

J U D G M E N T: *(per Hon'ble Smt Justice Anis)*

This Criminal Appeal is filed by the appellant/accused, under Section 374(2) of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C'), against the Judgment dated 14.09.2009 passed in Sessions Case No.326 of 2009 on the file of the

I Additional Metropolitan Sessions Court, Hyderabad, whereunder and whereby, the appellant/accused was found guilty and accordingly, convicted and sentenced to undergo life imprisonment and to pay fine of Rs.2,000/-, in default, to undergo simple imprisonment for six months for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'I.P.C').

2. The brief facts that are necessary for disposal of the appeal are stated as follows:

One Chandramma (hereinafter referred to as 'the deceased') is the second wife of the accused. Their marriage was performed about fifteen years back and they were blessed with a son and a daughter. The accused is a habitual drunkard and never used to do any work and used to harass by beating the deceased for want of money for his drinking. On 12.02.2009 at about 7:45p.m, the accused demanded money from the deceased for consuming alcohol, for which the deceased refused. Then, the accused picked up a quarrel with the deceased and during the quarrel, he took a stick and beat on her head and body, as a result she received bleeding injuries and fell down and thereafter, the accused ran away along with the stick. The incident was witnessed by PWs.1 to 4, daughter of the deceased and others. PW.1 shifted the deceased to Osmania General Hospital, Hyderabad, for treatment and also lodged a complaint to the police under Ex.P1.

After receiving the complaint, PW.9 registered the case in Crime No.31 of 2009 for the offence punishable under Section 307 I.P.C and issued the First Information Report-Ex.P8. PW.9 visited the scene of offence and later, on the same night, as he received the message from Osmania General Hospital, Hyderabad, regarding the death of the deceased, he altered the section of law from Section 307 to 302 I.P.C and issued alteration memo under Ex.P9. On 12.02.2009, PW.11-Inspector of Police took up investigation, visited the scene of offence, prepared the scene of offence observation report, seized control earth, blood stained earth, broken bangle pieces (MOs.2 to 4) from the scene of offence in the presence of mediators, prepared rough sketch-Ex.P13, recorded the statements of witnesses, conducted inquest over the dead body of the deceased and seized a saree, petty coat and blouse of the deceased (MOs.5 to 7). PW.10-the Civil Assistant Surgeon conducted post-mortem over the dead body of the deceased and issued Ex.P11 post-mortem certificate by opining that the deceased died due to head injury. On 13.02.1999 at 06:30 p.m, PW.11 apprehended the accused at Ramkote Cross Roads, recorded the confessional statement of the accused in the presence of mediators PW.8 and another. As per the confession and at the instance of the accused, PW.11 seized the stick-MO.1 from the dust bin located at Vegetable Market, Sultan Bazar under the cover of seizure report-Ex.P7, sent the material objects to Forensic Science Laboratory and thereafter, after receiving the reports and after completion of investigation filed the charge sheet into the Court.

3. On appearance of the accused, the trial Court framed the following charge against him:

"That you on the 12th day of February, 2009 at 7-45 pm at your house bearing No.4-5-675, Qutbiguda, Hyderabad did commit murder by intentionally causing the death of your wife Smt. Chandramma by beating of her head and body mercilessly with a big stick and caused bleeding injuries and that you thereby committed an offence

*punishable under Section 302 of the Indian Penal Code
and within my cognizance."*

4. When the above charge was read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

5. To substantiate the charge, the prosecution examined P.Ws.1 to 11 and got marked Exs.P-1 to P-14, besides the case properties MOs.1 to 7.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. Accused denied the same and reported no oral or documentary evidence on his behalf.

7. The trial Court after hearing both sides and taking into consideration, the oral and documentary evidence available on record, convicted and sentenced the appellant/accused as stated above. Aggrieved by the said conviction and sentence, the present appeal has been preferred by the appellant/accused.

8. The learned counsel for the appellant/accused argued that the accused in a fit of anger committed the offence and he has no premeditation to kill his wife and further, there is no evidence produced by the prosecution that the accused was in the state of intoxication at the time of alleged offence and finally prayed the court to take a lenient view by converting the sentence from Section 302 I.P.C to Section 304 Part-II I.P.C and to reduce the sentence.

9. On the other hand, the learned Public Prosecutor appearing for the State vehemently opposed for taking lenient view on the ground that deceased is the wife of the accused and she used to work hard, whereas the accused never worked and further on the date of incident, the accused attacked her with MO.1-stick for five or six times, as

such the skull of the deceased was broken and she died due to head injury; that the prosecution witnesses clearly supported the fact that the accused attacked the deceased with MO.1-stick, due to which she died and the said evidence is supported by the medical evidence and therefore, the prosecution able to prove the guilt of the accused beyond all reasonable doubt and prayed the Court to dismiss the appeal.

10. Now, the points for determination in this appeal are as follows:

1. Whether the death of the deceased is a homicidal death?
2. Whether the prosecution is able to prove its case beyond all reasonable doubt against the appellant/accused of the offence punishable under Section 302 I.P.C?
3. Whether the Judgment of the trial Court is correct, legal and proper?"

11. **P O I N T No.1:** A perusal of the evidence adduced by the prosecution shows that PW.1 lodged a complaint-Ex.P1 to the police, Sultan Bazar Police Station against the accused, wherein she clearly stated that on 12.02.2009 accused attacked the deceased with a stick on her head, due to which she received bleeding injuries. After receiving the complaint, PW.9-Sub-Inspector of Police registered the case in Cr.No.31 of 2009 for the offence punishable under Section 307 I.P.C and issued Ex.P8-First Information Report. Thereafter, he visited the scene of offence and later, received information about the death of the deceased as such he altered the section of law from Section 307 I.P.C to Section 302 I.P.C, issued alteration memo-Ex.P9 and handed over the Case Diary to PW.11. PW.11 took up investigation, conducted inquest panchanama in the presence of PW.7 under Ex.P5 and sent the dead body for post-mortem examination. After receiving the requisition from the police, PW.10-Civil Assistant Surgeon conducted post-mortem and found the following injuries:

1. Laceration of 4 X 2 cms with contused abrasion of 6 X 3 cms on lower 1/3 and upper 2/3 of right hand.
2. Horizontal laceration of 5 X 3 cm X boney deep on right side of frontal area, 8 cm above the right eye, margins are irregular.
3. Vertical split laceration of 4 X 1 cm X muscle deep on upper part of right temporal region, 4 cms above right ear.
4. Oblique split laceration of 5 X 2 cms X boney deep on upper part of right side occipital area 8 cm from right ear.
5. Multiple fracture of all skull bones present leading to both middle cranial fossae and base of skull.

PW.10 stated that the deceased received ante-mortem injuries and due to the head injury only she died. Ex.P11 is the post-mortem report. In the cross-examination of PW.10, nothing has been elicited to disprove the case of prosecution. Thus, from the perusal of the evidence of PW.10 coupled with Ex.P11 post-mortem report and the evidence of other witnesses, it is clear that due to the head injury the deceased died and it is homicidal in nature.

12. **POINT Nos.2 & 3:** A perusal of the evidence produced by the prosecution shows that PW.1 is the *de facto* complainant and eye witness to the incident. PW.1 stated that on 12.02.2009 at 7:00 p.m the accused started quarrelling with his wife and at about 7:45 p.m he took a stick and beat her on the head for five or six times, due to which she received bleeding injuries. She also stated that the accused is in the habit of consuming alcohol and he used to harass the deceased by asking money for his bad vices. Thus, it is clear that on the date of incident also when the deceased refused to give money, the accused beat her with MO.1-stick due to which she sustained bleeding injuries. In the cross-examination of PW.1, nothing has been elicited regarding the manner of incident and presence of witnesses. PW.2 is the son of the deceased and the

accused. PW.2 stated that on the date of incident, his father asked his mother to give money for consuming alcohol; that when she refused to give money, his father beat his mother with MO.1; that his mother received bleeding injuries and the incident was witnessed by PWs.1, 3 & 4 and other neighbours and thereafter, they shifted the injured to hospital in Ambulance and while undergoing treatment, she died in the hospital. The evidence of PWs.3 & 4 is also similar in nature. They witnessed the incident. They are the neighbours of the deceased and accused and they clearly stated about the offence committed by the accused on 12.02.2009. PW.5 is the brother of the deceased. PW.5 stated that his sister was always working, whereas accused never worked and on the other hand, he used to harass the deceased by drinking alcohol. PW.5 also stated that on the date of incident, he came to know about the offence through PW.2 and rushed to the scene of offence. PW.6 has not supported the case of prosecution and turned hostile, whereas PW.7 panch witness for the inquest stated that the inquest panchayatdars opined that the deceased died due to the head injury received by her. PW.7 identified his signature on Ex.P5 inquest panchanama.

13. PW.8 is the panch witness for the confession and seizure of MO.1-stick from the possession of the accused. According to him, on 13.02.2009 at about 6:30 p.m, police took him to Ramkote chowrasta, where the accused was present. The accused made a confession about the commission of offence and also stated that he will produce the stick hidden by the side of the dust bin situated at Sultan Bazar. Accordingly, the panchanma was prepared and accused produced MO.1 in the presence of mediators and Investigating Officer. The evidence of PW.9 shows that after receiving the complaint, he registered the case in Cr.No.31 of 2009 for the offence punishable under Section 307 I.P.C and issued the First Information Report-Ex.P8

and after coming to know about the death of the deceased, he altered the section of law from Section 307 I.P.C to 302 I.P.C and filed Ex.P9-alteration memo into the Court. PW.11 is the Investigating Officer, who conducted investigation, visited the scene of offence, collected MOs.1 to 7, sent them to Forensic Science laboratory and after receiving the post-mortem report and other reports, filed charge sheet into the Court.

14. The evidence produced by the prosecution clearly establishes that PWs.1 to 4 were present when accused attacked the deceased with the stick-MO.1. All the witnesses clearly stated about the incident and they also stated that after beating the deceased with MO.1 stick, the accused ran away from the scene of offence along with the stick. In the cross-examination of PWs.1 to 4, nothing has been elicited to disprove their evidence. Further, all the witnesses categorically stated that accused is in the habit of consuming alcohol and used to harass his wife for the sake of money to meet his vices. The important witness is PW.2, who is the son of the deceased and the accused, aged about 13 years and studying 5th class. He clearly stated that accused is the person who attacked his mother and caused bleeding injuries due to which she died. Further, the presence of PWs.1 to 4 at the time of commission of offence cannot be disbelieved and the medical evidence also supported the ocular evidence, wherein the doctor also opined that the deceased died due to head injury. Therefore, in view of the consistent evidence of PWs.1 to 4, it is proved that the accused attacked the deceased on 12.02.2009 at about 7:45 p.m, due to which she sustained head injury and died while undergoing treatment. Thus, the prosecution able to establish the charge levelled against the appellant/accused for the offence punishable under Section 302 I.P.C beyond all reasonable doubt.

15. The learned counsel appearing for the appellant/accused prayed the Court to convert the conviction from Section 307 I.P.C to Section 304 Part-II I.P.C. Since the allegation against the accused is that the accused was harassing the deceased by demanding money for consuming alcohol and as the accused beat the deceased with MO.1 stick on her head five or six times mercilessly, in such case, we are of the view that no lenient view can be taken against him by converting the conviction of the appellant/accused from Section 302 to Section 304 Part-II I.P.C as there was no free fight or grave and sudden provocation taken place between the appellant/accused and the deceased at the time of incident.

16. Therefore, we are of the view that after proper appreciation of the evidence on record, the trial Court rightly convicted and sentenced the appellant/accused for the offence punishable under Section 302 I.P.C and there are no compelling or circumstantial reasons to interfere with the Judgment of the trial Court.

17. Accordingly, the Criminal Appeal is dismissed confirming the Judgment dated 14.09.2009 passed in Sessions Case No.326 of 2009 on the file of the I Additional Metropolitan Sessions Court, Hyderabad. Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE K.C.BHANU

JUSTICE ANIS

Date: 25.06.2015.

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