

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND SIXTEEN
(18.02.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.735 of 2010

Between:

Kunarapu Rajamallu @ Rayamallu

..... APPELLANT/ACCUSED

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellant : **Sri C.VASUNDHARA REDDY**

Counsel for the Respondent : **PUBLIC PROSECUTOR**

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.735 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

The appellant/accused is alleged to have committed an offence of matricide inasmuch as he is said to have caused death of his own mother on 12.07.2008 over a trivial issue of his deceased mother not giving money to him to consume liquor. The said refusal is said to have infuriated the appellant/accused due to which he picked up a pestle and gave one blow on the head of the deceased which unfortunately proved fatal. He was tried for the offence punishable under section 302 IPC on the file of the III Additional Sessions Judge, Warangal in Sessions Case No.221 of 2009 and by judgment dated 11.12.2009, the learned Sessions Judge found the appellant/accused guilty of the charge, convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month. The same is under challenge in the present appeal.

2. The allegations in brief are that the deceased Sammakka and PW 1 who is her husband had three children of whom the appellant/accused was the youngest son and PW 2 is the daughter. Even though PW 2 was married, she could not live with her in-laws for more than six months and thereafter she shifted back to her parental home in Gorlaveedu village and was staying with them. She was blessed with a daughter. In so far as the appellant/accused is concerned, he was also married and had two children and was living separately with his own wife and children in Chelpur village. The appellant/accused had some problems, due to which, he attempted to commit suicide somewhere in May, 2008. He survived. But at that time the father of appellant/accused, PW 1 and the deceased mother Sammakka did not call on the appellant/accused, due to which, he bore grudge against his parents.

3. On 12.07.2008 at about 10 a.m. when the deceased was in the house, the appellant/accused came there and started quarrelling with

his mother, demanding money for consumption of alcohol. When she refused, the appellant/accused is alleged to have beaten her with pestle-M.O.1 and gave one blow on her head which proved fatal for the deceased, succumbed instantaneously. The matter was informed to PW1, the husband of the deceased, who came there and subsequently at about 1 p.m. in the afternoon, the complaint-Ex.P1 was lodged, on the basis of which, the Inspector of Police of Bhupalpally Police Station registered a case in cr.No.129/2008 and issued First Information Report-Ex.P11. Statements of witnesses are recorded, inquest over the dead body was held, scene of offence panchanama was conducted and the dead body was sent for post mortem examination. The appellant/accused was arrested on 18.07.2008 and in pursuance to his confession, the crime weapon-M.O.1 was seized in the presence of PW 6 under Panchanama-Ex.P7, M.O.1 was analyzed by the Regional Forensic Science Laboratory vide its report-Ex.P14 and after completion of investigation, the charge sheet was filed.

4. The plea of the appellant/accused was one of denial. In support of its case, the prosecution examined PWs 1 to 10 and produced Exs.P1 to P14 and M.O.1. After taking into consideration the oral and documentary evidence on record and having heard the submissions of both sides, the learned Sessions Judge convicted the appellant/accused and sentenced him, as stated supra.

5. The contention of the learned counsel for the appellant/accused is that the learned Sessions Judge has not appreciated the evidence on record in proper perspective and has erroneously based his conclusions on the evidence of the interested and partisan witnesses, that there was no consistency in the evidence of the material witnesses, that the Court below failed to notice the intention of the family members of the appellant/accused, more particularly, PW 2 in implicating the appellant/accused in a false case so as to deprive him of his rights, if any, in the properties and had an evil intention of attempting to grab the properties of her parental family.

The learned counsel further submits that even if the entire case of the prosecution is accepted to be true, it cannot be said that the appellant/accused had committed the offence punishable under section 302 IPC and at best it falls within the contours of Section 304 part-II IPC.

6. On the other hand, the learned Public Prosecutor submits that the learned Sessions Judge has properly appreciated the evidence on record and accepting the testimony of the material witnesses, more particularly, since the Court below had an opportunity of observing the demeanor of the witnesses, delivered the verdict which does not warrant any interference. The learned Public Prosecutor further submits that there are no merits in the appeal and the same is liable to be dismissed.

7. The point for consideration is whether the prosecution proved its case against the appellant/accused beyond reasonable doubt so as to sustain the conviction and sentence, or whether it needs to be set aside or modified.

Point:

8. As stated above, the incident allegedly took place over trivial issue of the deceased Sammakka refusing to give money to her estranged son, who is the appellant/accused for the purpose of consumption of alcohol. The uncontroverted facts are that the appellant/accused is one of the three children of the deceased Sammakka and PW 1, who is the husband of the deceased. PW 2 is the daughter who having left her maternal home had been staying with her parents for nearly five years prior to the incident. The appellant/accused had two children and was living away from the parents. On the date of incident the appellant/accused came to Gorlaveedu village to his parents' house and started quarrelling with his mother, which lead to the incident having taken place, in the

circumstances stated above.

9. The main stay of the case of the prosecution is the testimony of PW 1, the *de facto* complainant and the father of the appellant/accused and husband of the deceased. The other material witness is PW 2, who is the sister of the appellant/accused and PW 4 who is a neighbouring resident. The evidence of the rest of the prosecution witnesses need not be referred to at length for the reason that the fact that the deceased died of homicidal death on the date, time and place alleged is not denied.

10. PW 1 in his chief-examination deposed that on coming to know of the incident, he came to the house and finding his wife lying with injuries, he shifted her to the Government Hospital, Parkal, where she was declared dead. He further asserted in his chief-examination without however giving further details that it is the appellant/accused who caused the death of his wife. In the cross-examination, for obvious reasons, the father of the appellant/accused-PW 1 stated that he does not know anything about the case and that the present complaint is filed to harass the appellant/accused. Even though PW 1 made such statement in the cross-examination, the prosecuting agency did not challenge the said part of evidence by cross-examining the witness after seeking leave of the Court. Therefore, the evidence of PW 1 which is diametrically wavering cannot be taken as substantiating the allegations of the prosecution.

11. PW 2 is the direct eyewitness to the incident as per the prosecution. Her testimony is challenged by the appellant/accused on the ground that she had a nefarious design behind implicating her brother the appellant/accused for the death of her mother with an eye on the property of her parents. Since that is the nature of the allegation made against PW 2, her evidence needs to be scrutinized cautiously.

12. In the chief-examination, PW 2 deposed that on the date of the incident herself and her sister-in-law saw the appellant/accused beating the deceased Sammakka with a chutney pounder on the back

of the head of the deceased, the appellant/accused beat the deceased as she failed to give money to consume toddy, that she made a phone call to the ambulance and also to her father and others, who have shifted the deceased to the Government Hospital, Parkal where the deceased was declared dead. PW2 further asserted that after beating the deceased, the appellant/accused fled away from there. In the cross-examination, PW 2 admits that all is not well in her matrimonial home, due to which, she was staying with her parents. She claims to be eking out her livelihood by doing coolie work. She admits that the incident took place inside the house and on that day the appellant/accused came at about 9 a.m but was wandering in the village for about one hour and the incident took place at 10 a.m. on the day which happened to be "Yekadasi" and Saturday. It is in her evidence that when the incident proper took place, herself and sister-in-law Swaroopa were inside the house and by the time they came out, they have seen the deceased having fallen on the ground and noticed the appellant/accused standing there holding a pestle in his hands.

13. What could be gathered from the testimony of PW 2 is that she was very much in the house when the incident took place, but as is natural when her brother i.e. the appellant/accused was quarrelling with her mother in the house, she was in another portion of the house and by the time herself and her sister-in-law came hearing the cries, they noticed the deceased falling flat on the ground with a bleeding injury on head and the appellant/accused standing there with a pestle in his hands. The irresistible inference that can be drawn from the evidence of PW 2 is that even though she has not seen the actual assault, but within minutes, she came out and saw her mother with bleeding injury in the house and the appellant/accused standing nearby. In such circumstances, it cannot be said that any person other than the appellant/accused might have caused the injury and the evidence of PW 2 clinchingly establishes that it is the appellant/accused who alone caused the injury to the deceased when

the incident took place. The aspersion that is cast on the credibility of PW 2 has no significant effect for the reason that she would not go to the extent of implicating her own brother falsely in a case involving the death of her mother, merely because she intended to grab the property of the parents, more particularly, in view of the fact that the appellant/accused is not the only sibling of PW 2. As stated above, the deceased and PW 1 had three children and they had a son other than the appellant/accused in addition to daughter-PW 2.

14. The evidence of PW 2 before being accepted as truthful, needs some corroboration, in view of the attribution made to her and that is found in PW 4 who is an independent neighbouring resident and who has no axe to grind. PW 4 deposed that the appellant/accused is the second son of PW1 and the deceased and PW 2 is their daughter. He also speaks about the incident that took place two months prior to the present incident, wherein the appellant/accused is alleged to have attempted to commit suicide by consuming poison. He deposed that on the date of incident when he was in his house at about 10.30 a.m. he heard the cries and when he rushed to the house of the deceased, he found the appellant/accused standing with a chutney pounder and the deceased Sammakka was lying on the ground with bleeding injuries. He also deposed that the appellant/accused was threatening the people who tried to go near him by wielding chutney pounder in his hands. When the public gathered there, the appellant/accused fled away from the scene. Nothing is elicited from his cross examination for disbelieving his statement which is to the effect that it is the appellant/accused who dealt the deadly blow on the dead of the deceased. PW 4 is neither a friend of the prosecution witnesses nor a foe of the appellant/accused. His evidence squarely corroborates the evidence of PW 2 and their unshattered testimony will leave no room for doubt that it is the appellant/accused alone who is the author of the crime.

15. The learned Sessions Judge has appreciated their evidence

in proper perspective and accepting the same, found the appellant/accused guilty and we do not find any reason to take a view other than the view that has been taken by the Court below.

16. The next aspect of the matter is what is the nature of the offence that is committed by the appellant/accused.

17. As stated supra, the appellant/accused was charged with an offence punishable under section 302 IPC. The learned counsel for the appellant/accused submits that the alleged acts of the appellant/accused fall within the ambit of Section 304 part-II IPC, but not under section 302 IPC, for the reason that by no stretch of imagination the appellant/accused can be said to have any premeditated plan, motive or intention to cause the death of his own mother. The learned counsel submits that the incident took place at the spur of the moment when the appellant/accused was demanding his mother to give some money for consumption of alcohol and when she refused, he is said to have picked up a pestle lying nearby and gave one blow on the head which proved fatal.

18. To determine whether the offence is a murder or culpable homicide not amounting to murder, totality of the circumstances, the motive for the attack, the weapon used and the nature of the attack has to be looked into. In the instant case, the appellant/accused had no motive or intention to kill or to cause death of his mother. As rightly submitted by the learned counsel for the appellant/accused, the incident appeared to have taken place at the spur of the moment when the deceased refused to give money to her son, the appellant/accused. The appellant/accused was not armed with any weapon when he entered the house of the deceased. Only during course of altercation, the appellant/accused has picked up a pestle lying nearby and gave one blow on the head of the deceased. He can certainly be attributed to have knowledge that his act is likely to cause bodily injury as is likely to cause death, but he cannot be said to have any intention of causing death.

19. In view of the facts and circumstances of the case, we are of the opinion that the nature of the injury inflicted by the appellant/accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant/accused had the intention to kill the deceased, who is his own mother. All that can be said is that the appellant/accused had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under section 304 part-II IPC, instead of under section 302 IPC. The point is answered accordingly.

20. In view of the above, the conviction and sentence as recorded by the Court below under section 302 IPC is modified and converted to one under Section 304 Part-II IPC, and the appellant/accused is sentenced to undergo rigorous imprisonment for a period of 5 (five) years and to pay a fine of Rs.500/-(Rupees five hundred only) in default to suffer simple imprisonment for one month.

He is entitled to the benefit of section 428 Cr.P.C. Accordingly, Criminal Appeal is disposed of.

Pending miscellaneous applications, if any, shall stand closed in consequence.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date:18.02.2016

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