

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

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(19.04.2016)

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

CRIMINAL APPEAL No.998 of 2010

Between:

Banka Srinu

..... APPELLANT/ACCUSED

AND

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

.....RESPONDENT

Counsel for the Appellant : **Mr.B.PARAMESWARARAO**
Legal Aid

Counsel for the Respondent : **Sri POSANI VENKATESWARLU,**
PUBLIC PROSECUTOR (AP)

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.998 of 2010

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused, in Sessions Case No.05 of 2010 on the file of the Special Judge for trial of cases under SCs & STs (POA) Act-cum-Additional District & Sessions Judge, Vizianagaram, filed this appeal, feeling aggrieved by the judgment, dated 08.07.2010, whereby, he was convicted for the offence under Section 302 IPC and sentenced to suffer rigorous imprisonment for life and also to pay a fine of Rs.1000/- (Rupees one thousand only), in default to suffer rigorous imprisonment for six months.

2. For convenience, the appellant is referred to as "the accused". The case of the prosecution in brief is that the accused is a resident of Siripuram village within the limits of Gantyada police station. The deceased Appayamma is the wife of the accused. They were married 8 years prior to the date of offence. They were blessed with two male children. On 01.08.2009, PW 1, the accused, the deceased and PW 4 went to Vizianagaram to discuss the forthcoming murder case trial against the accused with his advocate and returned home on the same day. An altercation ensued between the deceased and the accused about the expenditure for the criminal case, and at the intervention of PW 4, the quarrel subsided. During dinner time of that night also the issue flared up between the accused and the deceased, and the accused tried to wind the helm of the saree around neck of the deceased and the same was prevented by PW 5, the father of the accused. Thereafter, the accused slept in the house while the deceased slept in the front yard of the house on a cot with her younger son. PW 5 also slept in the front yard on a separate cot.

3. The accused, fuming with anger against his wife for her coming in his way of spending money for his defence in the murder case, decided to kill her, and with that end in view, he got up at about

02.00 A.M, came out of his house with an iron hammer and dealt a heavy blow on the head of the deceased. The deceased raised cries, so also her child. On hearing the cries, PWs 3 and 5 woke up and saw the accused going away with the weapon. They have found the deceased lying unconscious, and bleeding.

4. Thereafter, PW 3 brought PW 4 to the scene of offence and shifted the injured initially to the hospital at Vizianagaram and from there to K.G.Hospital, Visakhapatnam, where she succumbed to the injury on 03.08.2009 at 11.45 a.m. On a report given by PW 2, the village sarpanch, PW 12 issued FIR altering the section of law from Section 324 IPC to Section 302 IPC, and thereafter PW 14 took up the investigation.

5. The accused who was absconding was arrested by PW 14 in the presence of mediators on 1.45 a.m on 04.08.2009 at Thamarapalli junction while he started running towards Vasadi village and was interrogated, during which, the disclosure statement of the accused was reduced into writing and he has volunteered to show the weapon. Accordingly, he has lead the police to the front part of the mango tope of Sundarada Apparao of Siripuram at about 1 p.m, picked up a heavy iron hammer with wooden handle and stated that he beat his wife with that weapon. The hammer was seized under cover of a separate mediators report. The accused was later produced before the Judicial Magistrate on 04.08.2009 and was remanded to judicial custody. LWs 17 and 18 conducted test of identification on 11.08.2009 and submitted a report to PW 14. PW 10 conducted post mortem examination over the dead body of the deceased, found 17 injuries and opined that the deceased died of injury to brain due to head injury. After completion of investigation, PW 14 filed the charge sheet.

6. As the accused pleaded not guilty and requested to be tried, the prosecution examined as many as 14 witnesses, marked Exs.P1 to

P15 and produced M.Os.1 to 4. On behalf of the accused, no evidence was let in.

7. On appreciation of oral and documentary evidence, the lower court has disposed of the criminal case in the manner, as stated above.

8. At the hearing, Mr.B.Parameswararao, learned counsel for the accused submitted that PWs 3 and 5, who has allegedly seen the accused leaving the scene of offence with the hammer and the deceased lying with bleeding injuries, have turned hostile, and that therefore, the case of the prosecution has not received support from the material witnesses. He has further argued that in view of PWs 3 and 4 turning hostile, the case has got converted into one based on circumstantial evidence and the evidence of the remaining witnesses is not sufficient to convict the accused.

9. Opposing the above submissions, the learned Public Prosecutor (AP) has strongly submitted that the prosecution is able to prove the guilt of the accused beyond all reasonable doubt. He has further argued that being the husband and also a person who was present in the house at the time of occurrence, as could be proved by the prosecution, the onus lay on him to establish the probable reason for the homicide of his wife and that the defence has miserably failed to establish with any reasonable probability that the deceased would have been done to death by some one other than the accused.

10. We have carefully considered the respective submissions of the learned counsel for the parties and perused the evidence on record.

11. PWs 3 and 5 are material witnesses in this case. PW 3 is a neighbour of the accused. Though her statement was recorded by PW 13, the Judicial Magistrate of First Class, under Section 164 Cr.P.C, for the reasons best known to the prosecution, the same was not marked in spite of the fact that the witness turned hostile. Be that as it may, though PW 5 who is no other than father of the accused, turned hostile,

his evidence is highly useful to get at the truth. In his chief examination, he has deposed that on the day of occurrence he was at the house of the accused, that after taking his meal, he slept on verandah while the accused and the deceased slept inside the house, that during that night the son of the deceased came to him, upon which, he took him out side and that he does not know what happened in the house between the accused and the deceased and subsequently he saw the deceased lying on the ground. In the cross-examination by the Asst.Public Prosecutor, he has denied that he has given any statement to the police, marked as Ex.P4.

12. Though PW 5 has not supported the case of the prosecution as regards the involvement of his son in the act of killing his wife, his evidence clearly established that on the night of occurrence, the accused was very much at home, sleeping with his wife inside the house. It is also clear from his evidence that after he has allegedly returned home along with his grand-son, he saw the deceased lying on the ground. Thus the prosecution was able to not only prove that the death was homicidal, but also the fact that the accused was very much present in the house when the offence has taken place. Under Section 106 of the Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Therefore, the onus shifted to the accused to explain the cause of the death of his wife. No suggestions of whatsoever nature were put by the defence to the prosecution witnesses to probabalize that the deceased would have been killed by someone else and that the offence has not taken place in the manner as spoken to by the prosecution.

13. The medical evidence clearly supports the case of the prosecution that the deceased died out of a serious injury to head. Ex.P10 post mortem report issued by PW 10 showed 17 injuries which

are found ante mortem in nature and opined that the deceased would appear to have died due to the injury to the brain caused on account head injury. In his evidence, PW 10 testified that the type of weapon was hard and blunt, moderate to heavy, probably round shape, like hammer. He has reiterated his opinion on the cause of death as given in Ex.P10. In his cross-examination, PW 10 has denied the suggestion that the injuries may have been caused by a fall on a rough surface or object.

14. PW 14 has stated that on 04.08.2009 he has received the information on the movements of the accused, that he has secured the presence of PW 8 and LW 16, and that at about 11.30 a.m he arrested the accused at Thamarapalli road junction and when interrogated, the accused confessed the commission of offence and based on his confession, he has recovered M.O.1 hammer, which was seized under Ex.P8 mediators report. Recovery of M.O.1 hammer from the possession of the accused clearly proves his nexus with the offence and as noted hereinbefore, the medical evidence clearly shows that the deceased might have been killed with an object, like M.O.1.

15. In the light of the above evidence, we have no hesitation to hold that the accused has killed his wife and the Court below has rightly convicted and sentenced him, as stated above, for the offence under Section 302 IPC.

16. For the above mentioned reasons, we find no reason to interfere with the impugned judgment. The Criminal Appeal is, accordingly, dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date:19.04.2016

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