

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra
Pradesh

Criminal Appeal No.599 of 2010

Between:

Chintakayala Kurmaiah

... Appellant/accused

and

-
The State of Andhra Pradesh
rep. by Public Prosecutor
Hyderabad

...Respondent

-
Date of Judgment Pronounced: 20-06-2016

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice G.Shyam Prasad

1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the judgments ?

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2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordship wish to
Yes/No
see the fair copy of the Judgment ?

**_____
(C.V.Nagarjuna Reddy, J)**

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(G.Shyam Prasad, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice G.Shyam Prasad

+ Criminal Appeal No.599 of 2010

% Dated 20.06.2016

Between:

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Hyderabad

...Respondent

! Counsel for the appellant: Mrs.A.Gayatri Reddy

^ Counsel for the respondent: The Public Prosecutor
(TG)

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? Cases cited:

(2006) 1 SCC (Crl.) 540

(2007) 1 SCC (Crl.) 425

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Counsel for the appellant : Mrs.A.Gayatri Reddy

**Counsel for the respondent : The Public Prosecutor
(TG)**

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The Court made the following:

Judgment: (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Criminal Appeal arises out of
judgment, dated 08.01.2010, on the file of the V

Additional Sessions Judge, (Fast Track Court), Mahabubnagar, whereby the appellant/sole accused was convicted for the offence under Section 302 IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.500/- and in default to undergo simple imprisonment for a period of one year.

The prosecution laid charge sheet against the appellant with the following allegations:

On 04-10-2003, at about 9.00 hours, PW.1 went to the Police Station and lodged a complaint stating that the marriage of his elder sister-Smt.Kalamma (hereinafter referred to as 'the deceased') was solemnized with C.Kurmaiah (hereinafter referred to as 'the accused') about 12 years ago; that they were blessed with two children viz., Nagalakshmi, aged eight years, and Paramesh, aged four years; that both the accused and the deceased along with their children were staying at Dilsukhnagar, Hyderabad; and that the accused has been driving an auto for the past five years and eking out their livelihood. It is further stated that the accused developed illicit intimacy

with one Lakshmi, daughter of Chinna Narsimha; that therefore, the accused was not looking after his sister properly; that the accused used to quarrel with his sister frequently; that on coming to know about the harassment, himself and other family members have intervened in the matter and the dispute subsided; that about fifteen days back, the deceased along with her children came to their house for celebrating Dasara Festival; that about three days back, the accused came to their house; that on the previous day evening *i.e.*, on 03.10.2003, the accused got secured toddy and made all the members of the family including the deceased drunk; and that after taking their dinner, the accused and the deceased slept inside the house, while others have slept outside the house. It is further stated that during the midnight at around 2.00 a.m., the complainant heard some noise in the house; that at that time, the accused, while fleeing away, brought and made his son (PW.2) lie by the complainant's side; that PW.2 told him that after cutting the neck of his mother, his father was fleeing away; and that immediately, the complainant went inside the house and found

his sister lying dead in a pool of blood.

Based on the above report, PW.11- Sub-Inspector of Police, Nagar Kurnool, registered Crime No.112 of 2003 for the offence under Section 302 IPC and investigated into the same. Later, PW.9- Circle Inspector of Police, Nagar Kurnool, took up the investigation, visited the scene of offence at Nagar Kurnool, examined the dead body of the deceased lying dead in a pool of blood, secured the presence of mediators- LW.7 and PW.5, conducted inquest over the dead body of the deceased and subjected the same to postmortem examination at the Government Area Hospital, Nagar Kurnool. PW.9 seized the blood stained clothes of the deceased *i.e.*, Saree, Jacket and Petticoat. During the inquest, he has examined and recorded the statements of PWs.1 to 3, LW.4- Kavali Venkataiah and LW.5- Kavali Pullaiah. The scene of offence panchanama was conducted in the presence of LW.7- Cheviti Laxmamma and PW.5 and the sketch was drawn with crime details incorporated therein. The blood stained earth and its control were seized

from the scene. PW.10- Civil Assistant Surgeon, Area Hospital, Nagar Kurnool, conducted autopsy over the dead body of the deceased and furnished his opinion that the death was due to stab injury in the abdomen and the neck. The material objects seized in the course of investigation were sent to the Forensic Science Laboratory, Andhra Pradesh, Hyderabad, for its analysis and report. PW.9 also got photographed the scene of offence through PW.7. After analyzing the material objects, the FSL authorities opined in their report that the blood was detected on items 1 to 4 and 5; that human blood was detected on items 1 to 4; that the blood group of the blood stains detected on the said items was of 'B' origin; that the blood stains on item No.5 could not be determined; and that the blood was not detected on item No.6.

During the course of investigation on 06-10-2003 at 16.00 hours, PW.4- Sarpanch of Nagar Kurnool appeared before PW.9 along with the accused, produced a report and informed that the accused surrendered before him and made an

extrajudicial confession that he killed his wife on the night of 03-10-2013 and requested to render him assistance and support. PW.9 interrogated the accused and when the latter was about to confess the commission of offence, he secured the presence of PWs.6 and 8 and after affecting the arrest of the accused at 16.15 hours, he interrogated the accused thoroughly before the mediators. During the course of interrogation, the accused confessed to have killed the deceased in the midnight of 03-10-2003 around 12.00 p.m., by cutting her throat with a knife and also by piercing the stomach and caused her instantaneous death. That the entire incident was witnessed by his son- PW.2, who was made to sleep by the side of PW.1, by him while fleeing away after killing his wife.

PW.9 requested LW.13- Judicial First Class Magistrate, Mahabubnagar, for recording Section 164 Cr.P.C. statement of PW.4, before whom the accused made extrajudicial confession. On requisition, LW.13 recorded the statement of PW.4. After completing the investigation, PW.9

filed the charge sheet.

Based on the chargesheet, the trial Court framed charges. On being examined, the accused denied the charge. In order to prove the charges, the prosecution examined PWs.1 to 12, marked Exs.P.1 to P.17 and produced MOs.1 to 4. On behalf of the defence, no oral evidence was let in. It has, however, got Exs.D.1 to D.3 marked on its side.

On appreciation of oral and documentary evidence, the trial Court has convicted the appellant and sentenced him as noted herein before.

We have heard Smt.A.Gayathri Reddy, learned Counsel for the appellant, and the learned Public Prosecutor for the State of Telangana.

The learned Counsel for the appellant submitted that the evidence of PWs.1 to 3 clearly shows that the accused and the deceased were living amicably without any disputes and that therefore, there was no reason for the accused to

kill the deceased. She has further submitted that PW.1 clearly admitted that the appellant has visited the in-law's house on the latter's invitation; that if the accused had the intention of killing his wife, he would not have chosen his in-law's place for accomplishing such an act; and that, therefore, the whole case of the prosecution looks very artificial. She has alternatively submitted that the accused might have caused injuries to the deceased during the quarrel; that therefore, the intention to cause murder of the deceased cannot be presumed; and that the accused can be convicted for the offence under Section 304 Part II IPC. In support of her submissions, she has placed reliance on the judgments of the Supreme Court in **Jasram vs. State of MP**^[1] and **Saleem Saheb vs. State of MP**^[2].

The learned Public Prosecutor opposed the above submissions and argued that this is a clear case of the accused doing away with the life of his wife and that through the evidence of PW.2- direct witness and that of PWs.1 and 3- circumstantial witnesses, supported by the medical evidence

and seizure of the material objects, the prosecution was able to prove the guilt of the accused beyond all reasonable doubts. He has further submitted that the nature of the injuries, which caused the death of the deceased, clearly shows that the accused had the premeditated intention of killing his wife and that therefore, this is not a fit case for conversion of the conviction from Section 302 IPC to Section 304 Part II IPC.

I have carefully considered the submissions of the learned Counsel for the parties and perused the record.

PW.1 is the younger brother of the deceased and brother-in-law of the accused. He has deposed in his chief— examination that the appellant has developed illicit contact with a woman *viz.*, Nagalakshmi and started residing at Dilsukhnagar, Hyderabad; that prior to the occurrence of the offence, the deceased and her children were living at Hyderabad with the accused; that three or four days prior to Dasara Festival, his sister along with her children came to

their house and that the accused also accompanied them. He has further deposed that on the night of the incident, the accused made himself, his another sister- Mangamma and also the deceased consume large quantity of toddy and he consumed lesser quantity and that after having dinner, the accused and the deceased slept inside the house along with their son- PW.2 where as himself and his sister- Mangamma slept outside. He has further deposed that his mother- Yellamma and the daughter of the deceased left for Gaddampalli Village; that at around 11.45 p.m., or 12.00 midnight, the accused escaped from the house by leaving PW.2 by the side of PW.1; that PW.2 informed him that his father cut the throat of his mother and escaped from the house; that on hearing the same from PW.2, PW.1 has gone inside and found a cut injury on the throat of the deceased, who was lying in the pool of blood; that he has called the neighbours; and that on the next day morning at about 9.00 or 9.30 a.m., he has submitted Ex.P.1- report to the Police.

A careful perusal of the cross-examination of PW.1 reveals that nothing material could be elicited from him to falsify his testimony. Though several suggestions were put to PW.1, no suggestion was put to him to the effect that either the accused did not visit his in-laws' house or that he did not sleep with the deceased and PW.2 on the night of occurrence of offence. No suggestion that he has not left the house of his in-laws' house around midnight on the date of occurrence was also put to PW.1.

PW.2, who was aged about ten years at the time of giving evidence, was examined as a direct witness. Since he was a child witness, the Court put the required questions to know whether he understands the proceedings of the Court and was in a proper state of mind to give evidence. He has completely corroborated the testimony of PW.1. He has categorically stated that his father killed his mother by cutting her throat with a knife during the night and that he has witnessed the said incident. He has also deposed that after killing his mother, his father has made him sleep

by the side of PW.1 and ran away. The suggestions put to PW.2 that PW.1 and PW.3 tutored him to depose against the accused and that his father did not kill his mother were strongly denied by him. He has further stated in the cross-examination that when the accused was cutting the throat of his mother, he wept. He has also stated that he does not know with what instrument, the accused has cut the throat of his mother and that the room was dark at the relevant time.

PW.3- mother of the deceased and the mother-in-law of the accused stated that the accused and the deceased, who were living in Dilsukhnagar, Hyderabad, used to quarrel several times; that she did not know the reasons therefor; that the accused kept a woman viz., Lakshmi, daughter of Chinna Narsimha as his mistress; and that he used to quarrel with the deceased. She has further deposed that she has advised the accused to live amicably with the deceased. She has also stated that a Panchayat was also held with PW.4- Sarpanch, who advised both the

accused and the deceased to live amicably. She has stated that prior to Dasara festival, herself, her husband and the daughter of the deceased went to Gaddampally Village from Nagar Kurnool leaving PW.1, deceased and accused in their house; that when they were at Gaddampally, they have received telephonic information that their daughter was killed by the accused in their house; and that on coming to know about the same, herself, her husband and the daughter of the deceased came to their house and found the deceased dead; that PW.2 narrated the events relating to the offence; and that the Police recorded her statement. In the cross-examination, PW.3, however, stated that till the death of the deceased, the accused lived amicably with the deceased. Though no suggestion was put to the direct witnesses-PWs.1 and 2 to the effect that the accused was not present in the house on that night, such a suggestion was put to PW.3, which she has denied.

The evidence of PWs.1 and 2 reveals that

the accused went to the house of PW.1 and his family comprising himself, his mother and father on the occasion of Dasara festival. It also reveals that on the night of occurrence of offence, all the elder members available at the house *i.e.*, PW.1, the deceased and her sister were made to drink toddy by the accused in large quantities, while the accused appeared to have taken lesser quantity of toddy. It has also come out in their evidence that while PW.1 and his another sister slept outside, the accused and the deceased along with PW.2 slept inside the house. After inflicting injuries with knife on the throat and the abdomen of the deceased, the accused has taken PW.2 to the place where PW.1 was sleeping, made him lie by his side and escaped from the scene of offence. As noted herein before, nothing worth mentioning could be elicited from PWs.1 and 2 to falsify their testimony. The fact that no suggestion was put to these witnesses that the accused did not visit his in law's house or that he was not present in their house during the night of occurrence clearly proves that he was in the company of the deceased when the occurrence

has taken place. Such being the case, Section 106 of the Indian Evidence Act, 1872, places burden on the accused to explain as to how his wife has sustained injuries and died. A perusal of the cross-examination of PWs.1 to 3 reveals that no suggestions in this regard were put to them. Even in his examination under Section 313 Cr.P.C, except denying various questions, the accused has not tried to explain as to how his wife might have received injuries leading to her death. Therefore, in the face of the unequivocal evidence that the accused was in the company of the deceased and in the absence of any suggestions coming forth from the accused that there is any possibility of the deceased sustaining injuries in the hands of anybody else, the prosecution was able to establish the guilt of the accused beyond reasonable doubt.

The evidence of PWs.1 and 2 was corroborated by the medical evidence. Ex.P.15 is the Postmortem Examination report, which found one deep incised wound of 5x5x5 centimeters size on the left side of the neck and one deep

incised wound of 2x3x2 cms size on the right side of the upper abdomen of the deceased, both of which were found ante-mortem. PW.10- Doctor, who conducted autopsy spoke on the Postmortem Report and opined that the time of the death of the deceased was 16 to 18 hours prior to the Postmortem Examination. He has further opined that the injuries on the body of the deceased were possible with MO.1- knife.

Besides the medical evidence, PW.9 has recovered MO.1- knife from the appellant under Ex.P.8- recovery panchanama. Though PW.6, who is one of the panch witnesses, has turned hostile and he was declared as such, he has deposed in his chief-examination that on 06-10-2003, at about 4.15 p.m., Police called him and another mediator, while he was at bus stand with his jeep; that he found the accused in the custody of the police nearby the bus stand; that the Police asked both the mediators to enquire with the accused as to what he did; and that when he has, accordingly, enquired the accused, the latter informed him that a quarrel took place between

him and his wife while they were living at Hyderabad; that thereafter, his wife came down to her parents' house at Nagar Kurnool; that the accused suspected his wife to have some illegal contacts with a person, who sells old scrap; that he insisted on his wife to join his company, but, she refused; that one day prior to 06-10-2003, he has killed his wife with the help of a knife; and that he has concealed the same at a place by the side of Siripuram Road. PW.6 further stated that the accused has led them to the said place and took out one knife from there and handed over the same to the Police in the presence of himself and another mediator. He has further stated that he cannot say whether the knife shown to him in the Court is the same as the one produced by the accused or not. He has further deposed that Ex.P.4- admissible portion of the confessional Panchanama/ disclosure statement bears the signatures of himself and another mediator and that Ex.P.5- recovery panchanama relating to the knife also bears their signatures. In the cross-examination by the Public Prosecutor, he has reiterated his stand reflected in the chief-

examination and further stated that he was informed by the accused that as the deceased refused to join his company, he has killed her; that on 03.10.2003, he purchased one knife in Nagarkurnool shandy, went to his in-laws' house, consumed toddy and made his wife drink toddy and that on that night, he killed his wife by cutting her throat/neck. PW.6 further stated that the accused did not inform him that on the night of 05-10-2003, he killed his wife. He has denied the suggestion that the knife shown to him is the same, which was tendered by the accused in their presence.

Despite the fact that PW.6 was treated as a hostile witness, his evidence clearly proves that the accused has not only allegedly confessed to the fact of killing his wife but also a knife was recovered from his possession. Whether MO.1 was the same knife as was recovered from the possession of the accused or not may not have much relevance or significance. The evidence on record, which includes PW.2- direct witness, clearly proves the involvement of the accused in

the commission of offence. Even the failure of the prosecution to produce the same weapon as was recovered from the accused will not be fatal to the case of the prosecution because there was no variation in the nature of weapon as described by PW.6 in his evidence and the one which was produced as MO.1 as both happened to be knives. This apart, PW.9- Investigation Officer clearly deposed the fact of recovery of MO.1- Knife from the possession of the accused.

The medical evidence clearly shows that the injuries were caused by a sharp object and that it was possible that the two injuries found on the body of the deceased could be caused with an object like MO.1. In these facts of the case, PW.6 turning hostile had no bearing on the case of the prosecution.

For the aforementioned reasons, we have no hesitation to hold that the prosecution has proved the guilt of the accused beyond reasonable doubt.

As regards the submission of the learned

Counsel for the appellant that the conviction of the appellant may be converted into the one under Section 304 Part II IPC, we are afraid we cannot accept this submission.

We have examined the judgments cited by the learned Counsel for the appellant in this regard. In **Jasram vs. State of M.P.** (1 supra), the deceased was found to have received a single hammer blow on her face; that the attack took place when the accused demanded ear rings from the deceased; that on the latter's refusal, he snatched and put them in his trouser pocket leading to a quarrel between the accused and the deceased during the course of which the accused hit the deceased, who is no other than his wife, with a hammer on her face. The facts and circumstances of the case reveal that in a sudden provocation during the quarrel, the accused has caused a single injury to his wife.

In **Saleem Sahab vs. State of MP.** (2 supra) also, a quarrel preceded the attack on the deceased by the accused and the weapon used was a small sized pair of scissors and the nature

of the weapon used and the circumstances in which the deceased was attacked convinced the Court to hold that the accused did not have the intention of causing the death or injury to the deceased, which was likely to cause death and accordingly, he was convicted for the offence under Section 304 Part II IPC.

But, the instant case is a clear case of cold blooded murder of the wife by the husband. As could be culled out from the evidence on record, the accused has planned the murder of his wife by making all the elders in the house inebriated and accomplishing his diabolic plan of killing his wife. The nature of the injuries and the weapon used in the commission of the offence would clearly show that the accused had a premediated intention of killing his wife and that he has meticulously planned and executed the same. If there was any quarrel preceding the attack as sought to be projected by the learned Counsel for the appellant, PW.2 being the child witness would have definitely deposed the same in the Court. Further, as the deceased was in a fully drunken

condition there would not have been a possibility of such a quarrel. Assuming that such a quarrel ensued, the fact that the accused has slit the throat of the deceased besides causing a deep stab injury on her abdomen shows that the blows caused to the deceased were not in a fit of rage and that they were intentionally caused both with the intention and knowledge to kill the deceased. Therefore, we do not find any extenuating or mitigating circumstances to convert the conviction under Section 302 IPC into the one under Section 304 Part II IPC.

For the above-mentioned reasons, the Criminal Appeal fails and the same is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

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(G.Shyam Prasad, J)

Dt: 20th June, 2016

Note:
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[\[1\]](#) (2006) 1 SCC (CrI.) 540

[\[2\]](#) (2007) 1 SCC (CrI.) 425