

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Appeal no.1391 of 2010

JUDGMENT

(per Hon' ble Sri Justice M. Seetharama Murti)

This appeal under Section 374(2) CrPC by the accused is preferred against the judgment dated 21.10.2010 in SC.No.61 of 2009 on the file of the Court of the IV Additional Sessions Judge (Fast Track Court), Mahabubnagar, whereby the learned Additional Sessions Judge found the sole accused guilty of the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.500/- and to undergo rigorous imprisonment for three months in default thereof.

2. We have heard the submissions of *Smt. A. Gayatri Reddy*, learned counsel appearing for the appellant/ accused and the learned Public Prosecutor appearing for the respondent/ State. We have perused the material on record.

3. The learned IV Additional Sessions Judge framed the following charge against the accused:

'that you, on or about the 6th day of August, 2008 at about 6.00 p.m., at Thirmalampally Village, Peddakothapally Mandal, did commit murder by intentionally causing the death of Chinna Laxmaiah, S/o. Buchaiah, Age: 65 years, Caste: Boya, Occ: Coolie, R/o Thirmalamppaly, H/o Mareduman Dinne of Peddakothapally Mandal by beating with wooden pestle stick on his head, and that you thereby committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance.'

[Reproduced verbatim]

4. At trial, the prosecution examined PWs 1 to 12 and exhibited P1 to P17 and marked MOs 1 to 7. No evidence was adduced on the side of the defence.

5. The gist of the evidence adduced by the prosecution to bring home the guilt of the accused and to sustain the charge under Section 302 IPC, which needs scrutiny, is as under:

PW1, Niranjanamma, is the wife of Chinna Laxmaiah, the deceased. PW2, Naramma, is their daughter. The accused, Viswanadham, and LW3, Ganapathi, are their sons. The accused is addicted to vices like consuming arrack. He used to quarrel with his parents (PW1 and the deceased) and demand them to give land. PW1 is the only daughter of her parents. Therefore, after the marriage of PW1 with the deceased, the deceased joined PW1 at the house of his parents-in-law as an illatom son-in-law. PW1 got some land from her mother. As the accused was in the habit of beating his parents (PW1 and the deceased), they were afraid of him. On the day of the incident of murder of the deceased, the accused came in an intoxicated condition. PW1 and her husband, the deceased, locked the door thinking of going to the market. However, the accused, who came there, abused the deceased in filthy language and stated that he would murder him. On that the deceased went to the accused and bent his head before him and asked the accused to do whatever he wanted to do. Then the accused picked up a pestle and beat the deceased on his head with force. The deceased fell down. On hearing the cries of PW1, people gathered and called '108' Ambulance on telephone. PW3, Aonke Narasimha, Kavalikar, and PW1 went in the ambulance to the hospital along with the deceased. The other villagers, who are afraid of the accused, did not accompany them to the hospital. The deceased died before he was taken to the hospital. After beating the deceased with the pestle, the accused threw it away and went away from the scene. On 07.08.2008 at 08:00 hours, PW1 lodged Exhibit P1, report, with the Assistant Sub-Inspector of Police, Pedakottapalli Police Station, *inter alia*, stating that on the previous day (06.08.2008) evening at about 6'0 clock near her house the accused abused the deceased saying "barre lanjakodaka where are you going wait here" and beat

him with pestle and that the deceased having sustained serious injury fell down and that while PW1 was cleaning the wounds one of the neighbours, PW3, Narsimhulu, Kavalikar, called an Ambulance and that they both took the deceased to Kollapur Government hospital and that the Doctor at the hospital declared that the deceased was brought dead and that as it was late night the body was kept aside and that she lodged the report with the police on 07.08.2008 and that the accused who had an eye on the land killed her husband with pestle as the deceased refused to register the land in the name of the accused. PW11, ASI of Police, on receiving the said report registered the case and issued Exhibit P13, FIR. PW1 testified accordingly and in line with the contents of her report lodged with the police. PW2, the daughter of the deceased deposed that her deceased father Laxmaiah is no more and that he was murdered by the accused and that the accused used to consume arrack and quarrel with her parents for land for the reason that her another brother sold away some land and as her parents have not registered any land in the name of the accused as he was addicted to arrack and has got children and as he may waste the land by selling it. She further stated that there used to be regular quarrels between the accused and the parents. PW3, Kavalikar, who called the ambulance, testified that he accompanied PW1 and the deceased in the ambulance to the hospital at Kollapur and that in the ambulance, on enquiry, PW1 informed him that her younger son, accused, beat her husband, the deceased. He further stated that the accused was not present when the deceased was being shifted to the hospital in the ambulance and that he did not enquire with PW1 as to why the accused beat Laxmaiah. He also stated that the relationship between the accused and his father was a little good but the relationship between the accused and PW2 is strained. However, he did not support the case of the prosecution on the aspect that on hearing cries of a lady he went to the house of the deceased and found the deceased in a pool of blood with injury on his head and observed that PW1 was crying and that on

enquiry PW1 informed that while she and her husband were going to the Bazar after locking the door, the accused came and addressed the deceased in filthy language and beat the deceased with a pestle and that when PW1 questioned him he threw it away and ran away. PW4 is the photographer who had taken photographs of the dead body of the deceased at the instance of the police. He and PWs 5 to 8 turned hostile to the case of the prosecution. PWs7 and 8 are the panch witnesses said to have been present at the time of inquest held by the police on the dead body of the deceased and preparation of inquest Panchanama, Exhibit P14. PW9 is a panch witness who was said to have been present at the time of recovery of one shirt, MO2, which allegedly belonged to the accused. Though he was also a panch witness for recovery of MO1, pestle, pursuant to the confession made by the accused on his arrest, he did not support the case of the prosecution on the said aspect. However, he admitted his signatures, Exhibits P10 and P11, on the confession Panchanama and seizure Panchanama respectively. PW10 is the Doctor who conducted post mortem examination on the dead body of the deceased and furnished Exhibit P12, Post Mortem Examination Report. The contents of the same and the testimony of the said Doctor would show that the deceased sustained the following ante mortem injuries: (i) Injury at occipital region around 6 cm x 3 cm x 2 cm, bone fracture visible; (ii) Injury at left parietal occipital region around 10 x 4 x 3 cm bones fracture visible; (iii) Cerebral haemorrhage present; and, (iv) Contusion at left eye region present. He opined that the cause of death is due to head injury and cerebral haemorrhage. PW12 is the investigating officer. He testified about the investigation done and filing of the charge sheet.

6. Though the learned counsel for the accused would contend in vain that the deceased who was in an inebriated condition fell down and died and that because of serious disputes between the accused and PW2, his sister, the case was foisted against the accused to knock away his share of property in the

mother's land, we are not inclined to accept the said submissions. The mother of the accused is a direct witness. Her presence at the scene of offence is natural. She categorically deposed about her son's (accused) addiction to arrack and his habit of beating his parents (PW1 and the deceased) and the frequent quarrels he used to indulge in in connection with demand for giving land to him and the refusal of her husband (deceased) for the reason that if the land is given he would sell away the land and spoil it on his vices. She candidly deposed about the entire incident including the occurrence proper in which the accused first threatened to murder his father and later dealt a blow on the head of his father with a pestle when he bent his head before the accused and stated to the accused to do whatever he wanted to do. PW2 also corroborated the version of PW1 on the aspect of the addiction of the accused to consumption of arrack and his quarrelsome nature and the refusal of the deceased to give land to the accused for the reason that if the land is given he would sell it away as he is addicted to vices. In the cross examination done at length PW1 maintained her stand and asserted that she, her daughters and sons-in-law went to the police station to lodge a complaint and that she does not remember the name of the scribe of the report, which was drafted in the village before it was lodged by her at the police station, and that she informed the police that the accused used to come in an intoxicated condition and used to beat them and that on the date of the incident she and her husband locked the door and that while they were going to the Bazar, the accused who is in an intoxicated condition beat the deceased. She denied the suggestion that her husband is in the habit of consuming toddy or arrack and that the accused is innocent and that her husband died by accidental fall and that a false case is foisted at the instance of PW2, her daughter, due to land disputes and to grab away the share of land of the accused. Be it noted that there is neither a motive nor a reason for the mother to falsely implicate her son, the accused, in the crime.

7. In our considered view, in this case of patricide, the candid evidence of PW1, who is no other than the mother of the accused and the wife of the deceased, which inspires confidence and which is credible, is sufficient by any standards to come to a safe conclusion that the prosecution sufficiently and beyond reasonable doubt established the guilt of the accused for the charge of murder framed against him and that in the facts and circumstances of the case the learned Additional Sessions Judge is justified in finding the accused guilty of the said charge and convicting him for the offence punishable under Section 302 IPC.

8. Before parting, it is necessary to mention that learned counsel for the accused placed reliance on one specific answer given by the accused during his 313 CrPC examination wherein the accused stated to the effect that PW2, the sister of the accused, doused her husband in kerosene and killed him and that thereafter she came to the village of the accused and is staying with some other person and that she had obtained Ac.2.00 cents of land from the mother and that from then onwards there are disputes between the accused and PW2 and that keeping that in mind this false case is foisted though the deceased who was in an inebriated condition fell down and died. Having placed reliance on the said statement of the accused, she would further point out from the evidence that even as per the prosecution version when the accused threatened to kill the deceased, the deceased went and bowed before the accused and stated to him that he may do what ever he wanted to do and that on that only the accused gave one single blow to the deceased with a pestle and that therefore the ingredients of Section 302 IPC are not attracted. Further, having called in aid the ratio in the decision in Bunnilal Chaudhar and others v. State of Bihar [2006 (3) ALT (CrI) 58 (SC)] she had contended that the offence was committed without premeditation and in a heat of passion and only when provoked by the conduct of the father and hence, the offence

committed is not culpable homicide amounting to murder and that the appeal deserves to be allowed and that instead of under Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and that the sentence has to be reduced accordingly. We are not impressed with the said submissions. The facts of the cited case disclose that having regard to the incident of attack and the fact that no witness has proved that the accused persons had come on the scene of occurrence with an intention to commit the murder and as none of the accused had given any blow to the deceased with the weapons they allegedly were carrying with them, while acquitting some of the accused for the offence punishable under Section 302 read with Section 149 IPC, the Supreme Court held that where the accused causes an injury on the deceased which was not sufficient in the ordinary course of nature to cause death or likely to cause death, the offence comes under Section 304 Part II IPC and not Section 302 IPC. Therefore, on facts, the cited case is not helpful to the defence. The contention to the effect that the son gets a licence to cause the death of his own father by giving a fatal blow with a pestle on a vital part of the body simply because the father bowed before the son on a threat given by the son and that in the said circumstances the son is entitled to seek shelter under one of the exceptions to 300 IPC cannot be countenanced. The contentions on behalf of the accused are only required to be stated to be rejected. In deed, a careful analysis of the evidence brought on record, which is trustworthy, unfalteringly reveals that the instant case is clear case of murder and that the accused is therefore liable to be punished under Section 302 IPC for the offence of murder.

9. Having regard to the reasons aforesaid, we are satisfied that the evidence brought on record is adequate to safely hold that the prosecution sufficiently brought home the guilt of the accused beyond reasonable doubt for

the offence of murder with which he was charged and that there are no grounds calling for interference with the judgment of the Trial Court. We accordingly confirm the conviction of the accused and sentence imposed upon him for the offence punishable under section 302 IPC.

In the result, the Criminal Appeal is dismissed.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

27.08.2016
Vjl

