

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

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(27.04.2016)

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

CRIMINAL APPEAL No.1144 of 2010

Between:

Koki Narayana Reddy

..... APPELLANT/ACCUSED

AND

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

.....RESPONDENT

Counsel for the Appellant : **Smt.A.GAYATHRI REDDY**

Counsel for the Respondent : **Sri C.PRATAP REDDY,**
REPRESENTING 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.1144 of 2010

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

This criminal appeal is filed against judgment dated 30.07.2010 in Sessions Case No.33 of 2010 on the file of the Sessions Judge, Guntur, by and under which, the learned Sessions Judge has convicted the appellant for the offence punishable under section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-.

2. The case of the prosecution in brief is that the deceased Koki Poleramma was the wife of the appellant. They have two sons and one daughter. Elder son and daughter were married. The appellant is addicted to bad vices and used to demand the deceased to pay money for consuming alcohol. The deceased, to prevent the appellant from consuming alcohol, refused to pay any amount. On 23.05.2009, the appellant threatened the deceased that if she fails to pay the amount, he will sell the she-buffalo. At about 11.00 a.m., the appellant in the presence of P.Ws.1 and 4 forced the deceased to give money for consumption of liquor, for which the deceased replied that she had no money, due to which, the appellant grew wild and picked up a sickle and hacked the neck of the deceased, as a result of which the deceased fell down on the pial and died instantaneously. Thereafter, the appellant fled away.

PW-1, the son of the appellant, lodged a complaint before PW.9-the Sub-Inspector of Police, who in turn registered the same as a

case in Cr.No.89 of 2009 under Section 302 IPC. PW.11 took up the investigation. During course of investigation, PW 11 visited the scene of offence, got taken the photographs of the deceased, examined the witnesses and recorded their statements and sent the dead body for postmortem examination. PW.10 conducted postmortem over the dead body of the deceased and opined that the deceased died due to shock and haemorrhage and due to injury to neck causing opening of big vessels. On 26.05.2009 at about 09.00 a.m., PW.11 arrested the accused and recorded his confessional statement in the presence of PW.8 and another. Based on the confession, PW.11 seized the blood stained sickle and also the blood stained shirt. After the completion of investigation, the Inspector of Police filed the charge sheet.

3. The plea of the accused is one of denial.

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 11 and marked Exs.P1 to P13 and M.Os.1 to 8. On behalf of defence, DW.1 was examined and Ex.D.1 was marked. Based on the oral and documentary evidence, the learned Sessions Judge has convicted the appellant and sentenced him, as stated supra.

5. The learned counsel for the appellant submits that excepting the testimony of PW 4, a child, aged about 9 years, absolutely there is no evidence whatsoever connecting the appellant with the crime. He has further submitted that it is not safe to record conviction against the accused on the basis of the testimony of the child witness who is prone to being tutored. It is further submitted that as a matter of fact, it is in the evidence of child witness-PW 4 that a day prior to her giving evidence, she was taken to the office of an advocate and that even at the time of recording her evidence, the said advocate was present in the court. The learned counsel also submitted that even if the

testimony of PW 4 is accepted, it does not amount to an offence under Section 302 IPC, since it is clear that there was no premeditation or any intention on the part of the accused to kill the deceased, and for a long time prior to the assault, both the appellant and the deceased were quarrelling and hence it cannot be said that the accused committed the offence which attracts Section 302 IPC. The learned counsel submitted that the court below has erred in convicting the accused for the offence under Section 302 IPC and hence this appeal.

6. The learned Public Prosecutor submitted that the cogent testimony of PW 4 leaves no room for doubt that the husband has killed his wife in a most gruesome manner, having cut her neck with a sickle over a trivial issue, and that therefore, the evidence of PW 4 can justifiably be made the basis for holding the appellant guilty of the charge. The learned Public Prosecutor submitted that the Court below has appreciated the evidence on record in proper perspective and convicted the appellant, which do not warrant any interference.

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

Point:

8. This is a case where the accused being the husband of the deceased Poleramma is alleged to have caused her death by hacking her neck with a sickle at about 11 a.m on 23.05.2009. It is not in dispute that on 23.05.2009 in the afternoon, the deceased was found lying dead in the house with slit throat. As per the medical evidence on record, PW 10 and postmortem certificate Ex.P11, the cause of the death of the deceased was cut injury on the neck of the deceased which could have been caused with sickle, M.O.7.

9. The deceased and the accused have three children, viz.

PW 1, Koki Rajasekhara Reddy and daughter PW 2. PW 2 was married to one Venkateswarlu and they in turn had four children. PW 4 is one of the daughters of PW-2, who is the solitary eyewitness to the incident.

10. The contention of the accused is that at the time when the deceased was killed, he was not in the house, so also PW 4, who was away, having gone to the house of PW 1. It is contended that some unknown thieves might have killed the deceased and since there were disputes between him and his daughter-PW 2 and son-in-law Venkateswarlu, he has been falsely implicated. The learned Public Prosecutor terms this contention as fallacious, contending that the daughter would have been the last person to implicate her own father for the death of her mother. His further contention is that nothing is placed on record to show that PW 2 was inimically disposed of towards her father to the extent that herself and her husband go to the extent of shielding the real culprits at the cost of incarceration of her father.

11. The material evidence in this case consists of PW 1-the son, PW 2-the daughter, PW 3-the mother, and PW 4- the grand daughter of the deceased. PW 5 is said to be a neighbouring resident who was also present in the house along with PW 4 at the time of the incident. There is no controversy with regard to the evidence of the rest of the witnesses, who spoke about conducting the inquest over the dead body, seizing material objects and medical evidence.

12. PW 1 deposed that on the date of incident, he was told about the death of the deceased but do not know who is responsible there for. He further deposed that he went to the house at 11.30 a.m and found his mother dead with a cut injury on her neck. Even though this witness turned hostile, he denied his statement given before the police as in Ex.P2. His evidence demonstrates that the deceased was

found lying dead in the house with a cut injury on neck.

13. PWs 2 and 3, the daughter and the mother of the deceased are admittedly not the eyewitnesses to the incident. PW 2 deposed that her father was addicted to bad vices and used to subject her mother to harassment and that on the date of the incident her brother PW 1 informed her that the accused killed the deceased. She further deposed that PW 4 is her daughter, who during summer vacation had been to the house of the deceased and the accused and was there when the incident took place. PW 3 was the mother of the deceased and she also deposed that the accused used to subject the deceased to harassment due to his bad vices and was demanding money for consumption of alcohol. She further deposed that having come to know about the death of the deceased, she went to the house and found the deceased lying dead and her son-in-law, the accused was absconding.

14. Both these witnesses were elaborately cross examined but nothing was elicited from them contrary to their earlier statements, which are to the effect that during her lifetime, the deceased was being harassed by the accused and on the date of incident they came to know that it is the accused who killed the deceased. Both of them denied the suggestion that some unknown persons have caused the death of the deceased and that the appellant has been falsely implicated.

15. As already stated, the main stay of the case of the prosecution is the testimony of PW 4, who is the grand-daughter of the accused and the deceased. She is a girl, aged about 9 years. She deposed that on the date of the incident, she was in the house having gone there for summer vacation, and that the accused and the deceased had quarreled during noon time and the accused was demanding money for drinking. She further deposed that in the

quarrel, the accused picked up a sickle and hacked on the neck of the deceased, due to which, she fell down and died instantaneously. This witness identified the sickle said to have been used by the appellant in the commission of the crime. PW 4 has been very elaborately and comprehensively cross-examined. Her evidence was recorded by the learned Sessions Judge after satisfying himself about the capability and the competence of PW 4 to understand the questions and give rational answers. In the cross-examination, what is elicited from PW 4 is that a day prior to her giving evidence, she was taken to the house of an advocate and that the said advocate was also present in the court when her evidence was being recorded. However, PW 4 stoutly denied that either her mother, her father or the advocate tutored her to give evidence in a particular manner. The child witness withstood the test of cross-examination and consistently asserted that it is the appellant who gave blow on the neck of the deceased which resulted in the latter's instantaneous death. PW 4 further admitted in the cross-examination that her deceased grandmother quarreled strongly with the accused and abused him for some time, and that then the accused grew wild and attacked the deceased.

16. PW 5 is another teenaged witness who happened to be present in the house along with PW 4 at the time when the incident took place. She spoke about the presence of PW 4 at the relevant time, since herself and PW 4 were watching T.V. in the house of the deceased. She deposed that while she was watching the television, she heard cries of the deceased, and came out and found the deceased lying on ground with the bleeding injury on her neck. Even in the cross-examination, nothing concrete is elicited from her except for suggesting that she was not present in the house along with PW 4 at the relevant time.

17. Upon carefully perusing the evidence of the prosecution

witnesses, more particularly that of PWs 2, 3, 4 and 5, we have no doubt in our mind that it is the appellant who caused the fatal injury on the neck of the deceased. Their evidence is cogent, convincing and trustworthy. They stood the test of cross examination and did not falter in so far as the material aspect is concerned. As already stated, while PW 2 is the daughter of the appellant and the deceased, PW 4 is the grand-daughter and it is difficult to believe that both of them would have an axe to grind against the appellant to inculcate him in the gruesome murder of the deceased. No reason or circumstance is brought on record to suspect their evidence or that these witnesses are not the truthful witnesses or their evidence is the outcome of any hostility in between them or due to any tutoring. The learned Sessions Judge who had the advantage of observing the demeanor of the witnesses has categorically held that the evidence of the prosecution witnesses is truthful and there is no room to doubt their veracity that it is the accused who caused the fatal injury on the neck of the deceased. In view of the above, the finding of guilt of the accused as determined by the trial Court is liable to be confirmed.

18. The next aspect of the matter is what is the nature of offence that is committed by the accused.

19. The learned counsel for the appellant submits that even if what PW.4 stated is to be believed, the same does not attract the ingredients of Section 302 IPC, since the incident is said to have taken place due to sudden provocation, but not due to any premeditation or intention of causing the death of the deceased. To determine this aspect, the evidence of PW 4 needs to be referred to once again. In the cross-examination, PW 4 categorically asserted that her deceased grandmother had quarrelled strongly with the accused, meaning thereby that the deceased was vociferous against her husband. PW 4 further admitted that her grandmother had abused the accused for

some time and then her grandfather/accused grew wild and picked up a sickle and cut the neck of the deceased.

20. In view of the above proved facts, we are of the opinion that the offence falls within the contours of the second part of Section 304 IPC instead of under Section 302 IPC. Therefore, the appellant/accused is liable to be convicted under Section 304 Part-II IPC.

21. In the result, the Criminal Appeal is allowed in part, and the conviction and sentence recorded by the trial Court against the appellant/accused is modified to that of offence under Section 304 Part-II IPC and the appellant/accused is sentenced to undergo rigorous imprisonment for a period of seven years, while maintaining the sentence of fine imposed against him by the trial Court. The period of sentence already undergone by the appellant/accused is directed to be set off.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 27.04.2016

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