

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

MONDAY, THE EIGHTEENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(18.04.2016)

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

CRIMINAL APPEAL No.995 of 2010

Between:

Mekala Katta Mallu

..... APPELLANT/ACCUSED

AND

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

.....RESPONDENT

Counsel for the Appellant : **Smt.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.995 of 2010

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

The appellant was charged for the offences under sections 498-A and 302 IPC and made to stand trial for those offences in S.C.No.453 of 2009, on the file of the I Additional District and Sessions Judge, Khammam. By judgment dated 11.08.2010, the learned Sessions Judge found the appellant not guilty and acquitted him for the offence under Section 498-A IPC. However, the appellant was found guilty of killing his wife Yaka Lakshmi @ Yekamma (the deceased) and was accordingly convicted for the offence under Section 302 IPC and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.500/- (Rupees five hundred only), in default, to suffer simple imprisonment for one month.

2. For convenience, the appellant is referred to as "the accused".

3. PWs 1 and 10 were the brothers, PW 2 was the father, PW 3 was the co-sister, PW 4 was the brother-in-law, PW 9 was the maternal aunt and PW 14 was the sister-in-law of the deceased. PWs 7 and 8 are the tenants of the accused and PW18 is the sister of PW-8. The case of the prosecution in brief is that the accused married the deceased about 14 years prior to the incident, but they were not blessed with any children. The accused was drunkard and was subjecting his wife to cruelty on the pretext that she did not beget any children. The accused started construction of a house about 10 years back and could not complete the same due to lack of funds, and in the said process, he borrowed an amount of Rs.30,000/- from PW 1. After completion of construction of the house, PW 1 requested the accused for repayment of the loan amount, where upon the accused having grown wild used to beat the deceased. When the matter was placed before the panchayat, the accused promised to look after the deceased

well.

4. On 26.02.2008 there was an altercation between the accused and his wife. In view of the said quarrel between himself and his wife, on the intervening night of 26/27.02.2008, with an evil idea to do away the life of the deceased, when she was in sleep, the accused pressed her neck with his foot. The deceased woke up and pushed him aside. The accused took a sickle and beat the deceased, and when she tried to evade the sickle and cried for help, the accused took a crowbar and beat on her head repeatedly, as a result of which the deceased fell down and died. At about 3 a.m the accused came to the house of PW.8 and asked P.Ws.7 and 18 for drinking water and confessed before them that he killed his wife. On receiving information PWs 3 and 4 rushed to the scene of offence and found the deceased lying in a pool of blood and further noticed a crow bar and sickle near the dead body. In the meanwhile, PWs 1 and 2 rushed to the scene and PW 1 lodged a complaint before the jurisdictional police. On receiving Ex.P1 complaint, PW 20 registered a case in Cr.No.17/2008 and issued Ex.P12 FIR. PW 22 took up investigation, visited the scene of offence and seized M.Os 1 to 6 under Ex.P9 panchanama in the presence of PW 15. He held inquest over the dead body in the presence of PW 14 and sent the dead body for post-mortem examination. On 27.02.2008 PW 19 held autopsy over the dead body and opined that the cause of death of the deceased was due to cardio respiratory failure due to head injury. During the course of investigation, on 01.03.2008 PW 22 recorded the statements of PWs 7, 8 and 18 and on 06.03.2008 arrested the accused. PW 21 took up the further investigation and after completion of the same, filed the charge sheet.

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

6. In support of its case, the prosecution examined PWs 1 to 22 and marked Exs.P1 to P13 and M.Os.1 to 6. No oral or documentary

evidence was adduced on behalf of accused.

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

8. Learned Counsel appearing for the appellant submitted that absolutely there is no evidence, whatsoever, connecting the appellant with the unfortunate incident wherein the wife of the appellant was brutally killed. She further submitted that there is no evidence on record to show that the appellant and the deceased were last seen together, that they had any quarrel prior to the incident and that the appellant was seen going away from his house after the incident. According to the learned Counsel, the so called confession said to have been made by the appellant before PW.7 was not established and therefore absolutely there is no evidence on record for the learned trial Court to find the appellant guilty of the charge under Section 302 I.P.C., while acquitting him of the charge under Section 498-A I.P.C. Alternatively, the learned Counsel submitted that even if a presumption is drawn that the appellant has caused the injuries on the head of the deceased which proved fatal, since there was no pre-meditation or any intention on the part of the appellant and as has been observed by the learned Sessions Court the incident appears to have taken place in a fit of anger, the appellant can, at best, be said to have committed the offence punishable under Section 304 Part-II of I.P.C.

9. On the other hand, learned Public Prosecutor submitted that it is not denied by the appellant that himself and the deceased were the only persons living in the house wherein the latter was found lying dead with grave injuries on her head. The appellant did not even deny that he was in the house at that time so as to infer that any person other than the appellant has committed the crime. Learned Public Prosecutor further submitted that since the death took place within the four walls of the matrimonial home to which the appellant and the

deceased alone had access, it is for the appellant to explain the circumstances in which the deceased came to meet a homicidal death. That when he does not deny his presence in the house, the appellant cannot be heard saying that he does not know as to how his wife died. That since the incident took place within the house, it is obligatory on the part of the appellant to say as to what happened and his version should be probablized with the material on record and that when the appellant maintains stoic silence , there is no option except to hold that it is the appellant who has committed the crime. Learned Public Prosecutor submitted that the trial Court has properly appreciated the evidence on record and hence the Judgment and sentence do not warrant any interference.

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

11. 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 the same need to be set aside, modified or varied.

12. The admitted fact is that the appellant and the deceased were in marriage for more than 15 years but they were not blessed with children. According to the prosecution, not only the deceased was not conceiving and procreating children, but was also persisting with the demand for Rs.30,000/- from the appellant to be paid back to her brother-PW.1, which was taken as a loan at the time when the deceased and the appellant were constructing the house. In view of the above, there used to be frequent quarrels between them and even a panchayat was held just few days prior to the incident wherein the elders chastised the appellant to behave well for which the appellant agreed, but unfortunately shortly thereafter, the deceased was found lying dead in her house when she was living in the company of her

husband/appellant. The fact that the death of the deceased was homicidal in nature is not in dispute. The Medical Officer – PW.19 who conducted the autopsy over the dead body found the following injuries:-

- 1) Deep laceration over right forehead with 7 x 2 x 1 cm.
- 2) Stab wound over right temporal fossa result of fracture of temporal skull bone.
- 3) Stab wound over right maxilla
- 4) Laceration over right angle of the mandible 3 x ½ x ½ cm.
- 5) Deep laceration over right neck 3 x 1 x 1 on left side of neck
3 x 11 x 1 resulted perforation of greater vessels
- 6) Contusion with right percranial clot formation seen
- 7) Fracture with perforative of the skull or bit.

The Medical Officer opined that the cause of death is due to cardio respiratory failure as a result of head injury and fracture of skull bones.

13. In view of the above, what is required to be seen is as to whether it is the appellant who caused the fatal injuries on the deceased on the intervening night of 26/27.02.2008.

14. Even before their marriage, the deceased and the appellant were related to each other. The appellant was the maternal uncle of the deceased. Therefore, the relations that were examined by the prosecution were as close to the deceased as they are to the appellant. PW.1 was the brother of the deceased and after speaking about the disputes between the couple, he deposed that on the date of the incident, he received a telephonic message from the villagers informing that his sister is lying dead in the house. That he immediately went there and found his sister with injuries and lodged complaint-Ex.P.1. That he reached the village at about 10.00 a.m., having come to know about the incident at about 07.30 or 08.00 a.m. through PW.12 who informed him over telephone. What was suggested to PW.1 is that the complaint is falsely lodged so as to

extract money from the appellant. Except that, nothing is put to PW-1 for disbelieving his claim that in between the deceased and the appellant there used to be quarrels in the matter of not begetting children and also the financial transaction of Rs.30,000/- involving himself and the appellant.

15. PW.2 was the maternal uncle of the deceased. His evidence is similar to that of PW.1. He spoke about one Punnamma (PW.5) informing the villagers about a quarrel that took place on the night of 26/27.02.2008. He asserted that as the appellant was not present in the house at the time when they went there, he is suspecting that it is he who killed the deceased. The suggestion that was put to PW.2 is that he was deposing falsehood with an intention to grab the property of the appellant.

16. P.Ws.3 and 4 are the wife and husband and PW.4 is the elder brother of the appellant. It is admitted by them that the relationship in between P.Ws.3 and 4 on one hand and the appellant on the other were so strained for more than fifteen years, that they were neither on talking nor visiting terms. Even the children of P.Ws.3 and 4 did not visit the deceased after her death, as admitted by PW.4. It is in their evidence that on coming to know about the death of the deceased, they went to the house and found her lying dead and that the neighbours informed them that on the previous night a quarrel took place in between the appellant and the deceased.

17. The material evidence is that of P.Ws.5, 7 and 8. According to the prosecution, it is PW.5, who being the immediate neighbour, heard the quarrel in between the appellant and the deceased on the night of 26/27.02.2008 and at about 03.00 a.m., on 27.02.2008, the appellant is said to have gone to the house of P.Ws.7 and 8 and informed them that he caused the death of the deceased. However, PW.5 did not support the case of the prosecution and she denied

having heard any galata or quarrel in between the appellant and the deceased on the night preceding the incident. She deposed that on one morning when she woke up, she found the villagers near the house of the appellant and the deceased and came to know that the deceased died. Therefore, no material evidence is forthcoming as to what transpired in between the couple just before the incident.

18. PW-7 is the wife of PW-8. PW.8 is said to be a fair price shop dealer who is a tenant in a portion of the house in which the appellant and the deceased were living. According to the prosecution, the appellant after having committed the crime, went to them and asked them to take away their stock from his house lest it may be damaged by the kith and kin of the deceased and further he told them that it is he who killed the deceased. However, that part of the material evidence is not forthcoming. According to PW.7, on the intervening night of 26/27.02.2008, her husband was not in the house and at about 03.00 a.m., the appellant came to her, enquired about her husband and asked for drinking water and thereafter went away from there. The next morning, she came to know that the deceased was lying dead in her house. Her husband-PW.8 also turned hostile and denied that he was present in the house on that night and he deposed that his wife PW.7 told him that the appellant came to their house in the midnight, took water and went away from there.

19. PW.18 is the sister of PW.8. She is a girl who was aged about 16 years when the incident is said to have taken place. She deposed that on the night of the incident, she went to the house of his brother-PW.8 and was in the company of PW.7. It is in her evidence that at about 03.00 a.m., the appellant came to their house, took water and also informed them that he killed his wife.

20. The evidence of PW.18 cannot be accepted on its face for the reason that firstly PW.7 did not speak about the presence of PW.18 in her house and secondly, when PW.7 did not say that the appellant

told them anything except asking for water, PW.18 claims that the appellant confessed before them of killing the deceased.

21. If the above evidence is carefully analyzed, what could be concluded is that the appellant and the deceased were in the house on the intervening night of the incident and the next day morning, the appellant was not in the house and the deceased was found dead with injuries. The whereabouts of the appellant were not known till 05.03.2008 when he was arrested. It is not his case that he was very much available or that he was taken into custody by the police immediately after the incident. When his wife with whom he was living was found lying dead in the house and the appellant does not come out with any plausible explanation as to where he has gone for nearly seven days immediately thereafter, the only irresistible inference that can be drawn is that the appellant has caused the injuries on the deceased and disappeared there from for nearly seven days. This conduct of the appellant is unfathomable and cannot be countenanced. It speaks for itself that he has attacked the deceased with deadly weapons over an incident which might have taken place between them of which he is the person having exclusive knowledge. His silence on this crucial aspect strengthens the case of the prosecution that it is the appellant who beat the deceased on the intervening night of 26/27.02.2008. Even during the course of his examination under Section 313 Cr.P.C., when the entire material was put to him, except for a bald denial, nothing is stated by him. Even to the question that the appellant was arrested on 06.03.2008 and he confessed having committed the crime, the answer given by him is that he does not know. This evasive tendency of the appellant makes the case of the prosecution reliable which is to the effect that the deceased was found lying dead on 27.02.2008 with bleeding injuries and it was the appellant who was in her company the previous night.

22. In view of the above, we have no hesitation in holding that it is the appellant who has caused the bleeding injuries on the deceased.

23. The next aspect of the matter is as to what is the nature of the offence that is committed by the appellant. Learned Counsel appearing for the appellant submits that since there was no evidence whatsoever on record to show that there was any quarrel on the night of 26.02.2008, the only presumption that can be drawn is that some heated argument took place in between the couple in the late hours of the night due to which in a fit of anger, the appellant gave blows on the head of the deceased which proved fatal.

24. It may also be borne in mind that the motive that is alleged for the appellant to have caused the death is too fragile and it cannot be taken to be sufficiently strong enough to attribute any intention on the part of the appellant to kill the deceased. As already stated, the only aspects on which the appellant and the deceased were frequently indulging in quarrels are said to be the inability of the deceased to conceive, and her persistent demand that the appellant repay the loan of Rs.30,000/- which the deceased has secured from her own brother-PW.1 at the time when the couple were constructing the house. Excepting for this, there is nothing for the appellant to have nurtured any serious grudge or grievance against the deceased so as to attribute that he has attacked the deceased with any premeditated plan or intention.

25. Having considered the evidence on record and since there is nothing to show that before going to bed the appellant and the deceased had a serious dispute or quarrel, we see substance in the submission of the learned Counsel that in a fit of anger in view of the certain disputes which would have taken place in the late night, the appellant has inflicted the injuries on the head of the deceased. Since the weapons used are sickle and crowbar, it can be held that the

appellant has committed the offence punishable under Section 304 Part-I of I.P.C. Subject to this modification, the Judgment of the Court below is liable to be confirmed insofar as it is in respect of holding the appellant guilty of having caused the death of the deceased. The point is accordingly answered.

26. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant/accused for the offence under Section 302 IPC is modified to that of the offence under Section 304 Part-1 I.P.C. Accordingly, the appellant/accused is sentenced to undergo rigorous imprisonment for a period of 10 (ten) years, while maintaining the sentence of fine imposed.

C.V.NAGARJUNA

REDDY,J

M.S.K.JAISWAL,J

Date: 18.04.2016

Dsr/smr