

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

CRIMINAL APPEAL No.1495 of 2010

DATED:- 24-10-2016

Between:

Arjun Singh

..... APPELLANT

AND

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

.....RESPONDENT

COUNSEL FOR THE APPELLANT : Sri E.VENKAT REDDY

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (TG)

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.1495 of 2010

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

This criminal appeal is filed against judgment dated 07.09.2009 in Sessions Case No.12 of 2009 on the file of the Additional Metropolitan Sessions Judge, Cyberabad, by and under which, the learned Sessions Judge has convicted the appellant/accused for the offence punishable under section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for a period of three months.

2. The case of the prosecution in brief is that on 05.10.2008 at 11 a.m. PW 1 lodged a report before Sanathnagar Police stating that maid servant by name Parvathamma (hereinafter referred to as "the deceased"), staying in his house on rent basis was found dead and the same was informed to him by the accused who used to stay with the deceased. The said report was registered as Cr.No.430/2008 of Sanathnagar P.S. under Section 174 Cr.P.C. The Sub-Inspector of police visited the scene of offence and prepared scene observation report in the presence of mediators and sent the dead body of the deceased for post mortem examination. After receipt of medical opinion, the section of law was altered to Section 302 IPC and the Inspector of Police took up the investigation.

3. That in the night of 09.11.2008, the accused came to the house of PW 4 and admitted that he killed the deceased. On his advise, on 10.11.2008 the accused surrendered before the police and made a

confessional statement, stating that on 04.10.2008 when he returned home, the deceased was found sleeping and was in a drunken state, that when he questioned her, the deceased behaved in a rude manner, that on suspecting that she had illegal contacts with others, he gave first blows on her mouth and ribs and other parts of the body, due to which, the deceased received injuries and died, and that in the morning on the next day, he informed the death of the deceased to PW 1 and went away. After completion of investigation, the police filed the charge sheet.

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

5. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 9 and marked Exs.P1 to P8 and M.O.1. On behalf of defence, no oral or documentary evidence was adduced. Based on the oral and documentary evidence on record, the learned Sessions Judge has convicted the appellant/accused and sentenced him, as stated supra.

6. The learned counsel for the appellant submitted that none of the witnesses examined by the prosecution spoke about their having seen the incident and that except the confessional statement said to have been made by the accused, there is no evidence whatsoever which connects the accused with the crime. Therefore, it is submitted by the learned counsel for the appellant that the learned Sessions Judge erred in holding that the accused caused injuries to the deceased, which proved fatal. The learned counsel submitted that in the absence of any evidence direct or circumstantial, the court below ought not to have convicted the appellant and hence the appeal.

7. The learned Public Prosecutor, on the other hand, submitted that there is consistent evidence of the prosecution witnesses that the deceased was having illegal intimacy with the accused prior to the date of

incident and neither the deceased nor the accused discontinued the same. He further submitted that in view of the evidence on record, it cannot be said that the learned Sessions Judge erred in finding the accused guilty of the charge and hence there are no grounds warranting interference with the findings of the trial court.

8. We have heard the learned counsel elaborately and also perused the voluminous oral and documentary evidence available on record.

9. The point for consideration is whether the prosecution proved its case against the appellant/accused 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.

10. The admitted fact (as recorded in the confessional statement) is that the accused and the deceased were working in a Sweet shop at Panjagutta, and the husband of the deceased by name Bheemaiah was working as watchman in the house of the shop owner. After the death of Bheemaiah, the accused developed illicit intimacy with the deceased and both started living in a rented house belonging to PW.1 at Borabanda. Later, the deceased was working as a domestic help and the accused was driving an auto. Both were addicted to consuming alcohol. On some occasions when the accused returned home, he found the deceased in an inebriated condition and talking with strangers. He developed suspicion against her character. On 04.10.2008 when the accused returned home, he found two whisky bottles in the house and the deceased was sleeping being drunk. The accused is alleged to have woken up the deceased and started quarrelling with her by questioning her as to with whom she consumed the liquor. In that process, a galata took place and the

accused is alleged to have slapped the deceased, due to which she fell down on utensils and thereafter the accused is alleged to have smothered her to death with the pillow-MO-1. Next day morning, it is alleged, that the accused informed PW.1 about the death of the deceased and went away. According to the prosecution, on being informed by the accused, PW.1 went to the portion in the occupation of the accused and the deceased and suspecting the cause of death of the deceased, he filed a complaint with the police, which is Ex.P.1. Subsequently, after more than a month, the accused is alleged to have gone to the house of PW.4 with whom he was having business dealings and informed that it was him who killed the deceased. This happened on 09.11.2008. PW.4 advised the accused to surrender before the police but instead the accused tried to flee to his native place at Jarkhand. In the meantime, the police apprehended him on 10.11.2008 and during the course of interrogation, he confessed to have committed the crime, as stated above.

11. The presence of the accused in the house at the time when the deceased died is spoken to by PWs.1 and 2. PW.1 is the landlord of the portion in which the accused and deceased were living as man and woman. He categorically asserted that on one day, when the accused came and told him that the deceased was lying dead in the room, he went there and suspected about her death. While the fact that the accused and the deceased were living together in the portion of the house belonging to PW.1 is not challenged, what is all that was put to PW.1 in the cross-examination is that in the night of the incident, the accused was not in the house he having gone on his vocation. The other witness who spoke about the presence of the accused in the house at that time is PW.2. He is a neighbouring resident and he deposed that three days after Ramzan

festival, in the morning, PW.1 informed him about the death of the deceased, that he went there and found the accused weeping, that on the previous night till 12.00 in the midnight, he heard the accused and the deceased quarrelling with each other and that he observed some bruises on the face of the deceased. A similar suggestion as was put to PW 1 was made to PW.2 about the absence of the accused in the house in the fateful night and he too denied the same.

12. From the evidence of PWs.1 and 2, it is established that in the night when the deceased met with an unnatural death, the accused was in her company in a one room tenement.

13. PW.3 is another neighbouring resident who deposed that the deceased and the accused used to frequently quarrel and in the night of the incident also, she heard the sound of quarrel between the accused and the deceased. She also claimed that the deceased used to tell her that the accused was frequently beating and threatening to kill her. That on coming to know about the death of the deceased, PW 3 went there and found the dead body of the deceased with bruises on the face. Nothing concrete is elicited from PW 3 for disbelieving her claim that even in the night of the incident, she heard the accused and the deceased quarrelling with each other.

14. As already stated, PW.4 is the person to whom the accused allegedly went and informed about his killing the deceased. PWs.5 and 6 are the witnesses for the scene of offence panchanama and inquest panchanama conducted by the Investigating Officers.

15. From the above evidence on record, it is abundantly established that on the night of the incident, the accused and the deceased were alone in the room, that on the next day morning by about 06.00 a.m., the

deceased was found lying dead and that after informing about the death of the deceased to the neighbouring residents, the accused made himself scarce only to appear again on 09.11.2008.

16. The medical evidence comprises of the evidence of the Doctor, who was examined as PW.7 and the post-mortem report-Ex.P.5. The Medical Officer found the following injuries:-

- 1) Contused abrasion of size 11 x 6 cm over the right cheek;
- 2) Contused abrasion of size 4 x 1 cm over the inner aspect of the upper lip;
- 3) Laceration of size 7 x 3 cm., over the lower lip;
- 4) Laceration of size 2 x 2 cms., below the left ear;
- 5) Diffuse scalp contusion all over the scalp;
- 6) Sub-dural haemorrhage over both parital areas;
- 7) Contusion over the chest wall
- 8) Fracture sternum;
- 9) Mesentery contusion about 500 ml of partially clotted blood in both pleural cavities;
- 10) Fracture ribs complete left side 4 & 5 ribs right side;
- 11) Fracture cervical spine C2-C3; and
- 12) Both kidney contusion.

The Doctor opined that the deceased died due to smothering associated with multiple injuries. The Medical evidence proves that the deceased met with a homicidal death due to smothering. This evidence conforms to the case of the prosecution that the accused after having beat the deceased with hands, smothered her with the help of the pillow-M.O.1 after she fell down on utensils. Upon carefully perusing the evidence on record, we see no reason to disbelieve the evidence of the prosecution

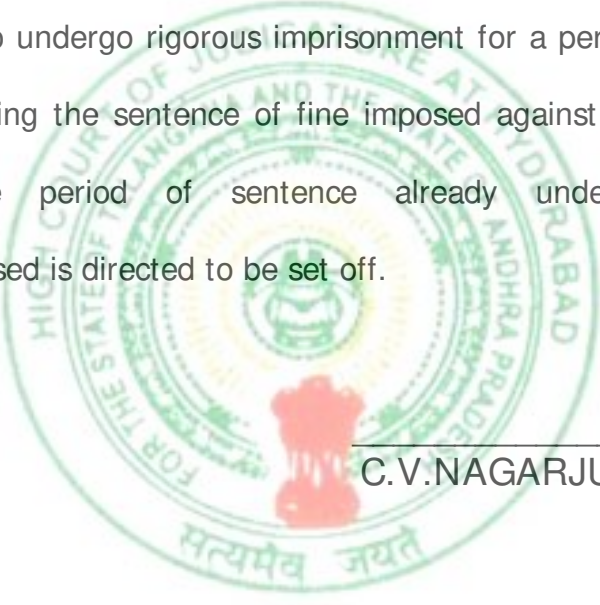
witnesses which is cogent, convincing and inspiring the confidence of the Court. Nothing is elicited from them for disbelieving their version. The accused who admitted his companionship with the deceased could not place on record any evidence, either oral or documentary, to show that on the night when the deceased met with the unnatural death, he was not in the house he having gone out on his vocation.

17. The next aspect of the matter is as to what is the nature of the offence that is committed by the accused.

18. The facts of the case that are established do not show that the accused killed the deceased with any premeditated mind. According to the evidence on record, he returned home and having found the deceased sleeping in an intoxicated condition, woke her up and questioned her as to with whom she consumed liquor and when the deceased did not give any satisfactory reply, he allegedly slapped the deceased, due to which she fell down on the utensils kept in the one room tenement and thereafter by picking up the pillow-M.O.1, the accused smothered the deceased, due to which the deceased sustained the injuries, as noted above, and died instantaneously. Therefore, the accused cannot be attributed with any premeditated intention to kill the deceased. The incident appears to have taken at the spur of the moment when both the accused and the deceased were in inebriated condition. Admittedly, the accused had not used any deadly weapon to cause death of the deceased, but he smothered her to death with the help of a pillow. Therefore, in our opinion, the accused can be said to have committed an offence which falls within the contours of Part-I of Section 304 I.P.C., namely he acted with the intention of causing the death of the deceased, caused multiple injuries and smothered her to death, however, without premeditation.

19. In view of the above, while upholding the finding of the Court below that it is the accused who is responsible for the death of the deceased, it is held that he cannot be said to have committed an offence punishable under Section 302 I.P.C., but that instead his acts squarely fall within the mischief of Section 304 Part-I of I.P.C. The accused is liable to be convicted and sentenced accordingly. The point is accordingly answered.

20. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded by the trial Court against the appellant/accused is modified to that under Section 304 Part-I IPC and he is sentenced to undergo rigorous imprisonment for a period of ten 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.JAI SWAL,J

Date: 24.10.2016
Dsr/Smr