

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.963 of 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

The sole accused in Sessions Case No. 106 of 2012 on the file of the II Additional Sessions Judge, East Godavari District, Amalapuram is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Chappidi Meeramma, aged 65 years, by hitting her on the head. Vide Judgment dated 23.06.2012, the learned Sessions Judge convicted the accused for the charge leveled against him and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for three months.

2. The case of the prosecution, as culled out from the evidence of the prosecution witnesses, is as under:

PW1 is the grandson of the deceased. PW2 is the mother of PW3. PWs 4, 5 and 6 are residents of I.Polavaram village. The accused, who was a son by courtesy to the deceased, was residing alone by the side of the house of the deceased. The evidence on record shows that as the accused was committing petty thefts, his wife deserted him about two years back, and since the date of

desertion of his wife, the accused himself was preparing food. On one occasion, while he was filtering gruel, the same spilled on his two thighs and caused burn injuries. After the said incident, the deceased used to prepare food and send the same to the accused.

3. PW1, in his evidence, deposed that around the house of the deceased, there were six or seven coconut yielding trees, and the accused used to pick up coconuts from the said trees and sell them clandestinely. The deceased raised a dispute before the elders who admonished the accused. Thereafter, the accused stopped committing theft of coconuts from the trees. A year thereafter, the accused repeated the said offence, and also took away articles from the house of the deceased and sold them without the knowledge of the deceased. The deceased informed her neighbours, both about the commission of theft from the house of the deceased and plucking of the coconuts. Because of the complaint given by the deceased against the accused, it is stated that the accused bore grudge against the deceased.

4. While things stood thus, on the intervening night of 28th and 29th June, 2011, the accused, armed with a stick, went upon the house of the deceased while she was sleeping and raised cries loudly. On hearing the cries of the accused, the deceased came out of her house. At that time, the accused beat the deceased with a stick on her head, hands and ear, as a result of which, she fell down in an unconscious state. One of the tenants of the deceased, who was examined as PW4, came to the house of PW1

and woke him up. Then, PW1, along with PW2, went to the house of the deceased and found the deceased in a pool of blood in an unconscious state. Immediately, they telephoned to 108 ambulance and shifted the injured/deceased to Kakinada Government Hospital.

5. On 29.06.2011, while PW8-the Head Constable, Polavaram was in the police station, he received intimation about the admission of the injured/deceased in Kakinada Government Hospital. Accordingly, he proceeded to the said hospital and found the injured/deceased in an unconscious state. He recorded the statement of PW1 and obtained his signature, which is treated as first report. Ex.P1 is the said report. Basing on the same, a case in Crime No. 43 of 2011 of I.Polavaram Police Station came to be registered under Section 307 IPC. Ex.P7 is the original F.I.R. Thereafter, PW8 sent Ex.P7 and Ex.P1 to the Judicial First Class Magistrate, Mummidivaram.

6. Further investigation in this matter was taken up by PW10-the Sub Inspector of Police, Traffic II Police Station, Kakinada. PW10 proceeded to the police station, collected a copy of the F.I.R. and then proceeded to the scene of offence, i.e., house of the deceased, which is situated in Settibalijapeta. As the house of the deceased was locked, he employed a Constable to safeguard the scene of offence and went to Government General Hospital, Kakinada, where the injured/deceased was undergoing treatment in an unconscious state. He recorded the statements of PWs 1 and

2, who were found to be by the side of the injured/ deceased. PW1 is said to have handed over blood stained green coloured cotton towel, which was tied to the head of the injured/ deceased. The same was seized as M.O.3. On the next day, he visited the scene of offence and in the presence of PW7, prepared a panchanama of the scene, which is marked as Ex.P2, and also a draft sketch, which is placed on record as Ex.P10. He also got the scene of offence photographed by PW6. He seized controlled earth and blood stained earth from the scene of offence. He examined PWs 2 and 5 and recorded their statements.

7. On 01.07.2011, PW10 received credible information about the presence of the accused in his house, and accordingly, he proceeded to the house and apprehended him in the presence of PW7. On interrogation, the accused is said to have confessed about the commission of the offence. Pursuant to the confession made, the stick, which is said to have been used in the commission of the offence, was seized in the presence of PW7. M.O.4 is the said stick.

8. On 10.07.2011, at about 8 a.m., PW9-the Head Constable of I.Polavaram Police Station, received the death intimation of the injured/ deceased from Government General Hospital, Kakinada. Ex.P8 is the intimation. Basing on the same, he altered the section of law from 307 to 302 IPC. Ex.P9 is the altered F.I.R.

9. Further investigation was handed over to PW11-the Circle Inspector of Police. On 10.07.2011, PW11 proceeded to the

mortuary at Government Hospital, Kakinada and conducted inquest over the body of the accused in the presence of PW1. Ex.P6 is the inquest report. Thereafter, the dead body was sent for post mortem examination.

10. PW12-the Assistant Professor, RMC, Kakinada conducted autopsy over the body of the deceased on 10.07.2011 and issued Exhibit P12, the Post Mortem Report. He noticed five external injuries and five internal injuries on the dead body, and opined that Injury Nos. 6 to 10 could have been caused by M.O.1. According to him, the cause of death was due to cranio cerebral injury, i.e., head injury.

11. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.14 of 2011 by the Judicial First Class Magistrate, Mummdivaram. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.106 of 2012 on the file of II Additional Sessions Judge, East Godavari district, Amalapuram. A charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

12. To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P12. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him

in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf by the accused in support of his defence.

13. Basing on the evidence of PWs 2, 3 and 4, the learned Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life'. Challenging the said conviction and sentence, the present appeal came to be filed through Legal Aid.

14. The learned counsel for the appellant mainly submits that since there are no direct witnesses to the incident, the conviction of the accused under Section 302 IPC cannot be sustained. According to him, even if the evidence of the prosecution witnesses is to be believed, they only heard cries from outside the house, but, have not seen the accused committing the crime. In any event, he would submit that since the deceased died nearly ten days after the incident, the accused cannot be convicted under Section 302 IPC.

15. On the other hand, the learned Public Prosecutor countered the same stating that having regard to the nature of the injuries found on the body of the deceased, it cannot be said that the accused had no intention to cause the death of the deceased. Insofar as the incident in question is concerned, he would submit that the evidence of PWs 2, 3 and 4, which is consistent with each other, is sufficient to base a conviction.

16. The question that falls for consideration is: “whether the accused is liable to be punished under Section 302 IPC.”

17. As seen from the record, PW1 is the grandson of the deceased. Pursuant to the information given by PW3, he proceeded to the scene of offence and thereafter, he lodged a report with the police. The evidence of PWs 2 and 3 would show that on 29.06.2011, at about 3 a.m., the deceased was sleeping inside her portion, while PWs 2 and 3 were residing in another portion. At that time, they heard abusive language of the accused and on hearing the same, PW2 and another came out of their portion and saw the accused armed with a stick. The evidence of PW2 is to the effect that the accused beat the deceased on her shoulder, ear and head, as a result of which, she fell down on the ground. On seeing the blood oozing out from the injuries of the injured/ deceased, PW2 got reeling sensation and fell down unconscious. On gaining consciousness, she enquired about the deceased, and was informed that the deceased was taken to the hospital.

18. Though PW2 was cross-examined at length, nothing useful was elicited to discredit her testimony, with regard to the incident, except bringing out some discrepancy with regard to motive and also the earlier disputes between the accused and the deceased. On the other hand, it was elicited from PW2 that the accused pushed PW2, LW3 and daughter of PW2, but none of them sustained any injuries. It was also elicited in the cross-examination

that when PW2 came out of the house, she noticed the deceased sitting on the threshold of her house, and at that time, the accused ran towards the deceased and beat her. It was also elicited that the children of PW2 went and informed the neighbours, who came to the scene of offence.

19. Coming to the evidence of PW3, who is also one of the tenants in the house of the deceased, he deposed as under:

“On 29.6.2011 at 3 a.m. the accused beat the deceased with stick on her head, ear and on hand indiscriminately, as a result, the deceased fell down in blood pool in unconscious state of mind. On 29.6.2011 at about 3.30 a.m. PW2 heard the cries from outside and then, she woke up and switched on electrical bulb and then, she woke up me. Then myself and PW2 came outside of our house and saw the deceased, who was sat on the threshold of her house, in the meanwhile, the accused came to there and beat her indiscriminately. When, myself and PW2 questioned the accused, why you have been beating the accused, for which, the accused replied, ‘you have nothing to do with this’ and pushed away us. PW2 fell down and became unconscious. Then, myself and my sister Gangabhavani went to the house of LW.5 to 10 and informed to them about the offence. When, we came back to the scene of offence, the accused escaped from there. The deceased was lying in blood pool in unconscious state of mind. PW1 telephoned to 108 ambulance, which came, took the deceased to hospital. PW1 and his mother Satyavathi followed the deceased in 108 ambulance to hospital.”

Though PW3 was subjected to cross-examination, nothing useful was elicited to discredit his testimony.

20. Similarly, PW4 in his evidence, deposed about the wife of the accused deserting him because of he committing petty thefts and also about deceased supplying food when the accused sustained injuries to his thighs. Coming to the incident proper, he deposed as under:

“On 28/ 29.6.2011 at about 3 AM the accused came upon the house of deceased. On hearing the cries of accused myself and my wife LW-8 opened the doors and came out. At that time PW3 and his sister Gangabhavani came to us and informed that the accused was beating the deceased with stick. Myself and LW-9, LW-10 rushed to the house of deceased and saw the accused beating the deceased with stick on her head. On seeing us the accused ran away from there with stick. The deceased was found laying in blood pool in unconscious state of mind. The LW10, PW1, LW6, one chappidi satyavathi were also came there. Then the PW1 telephoned to 108 Ambulance, shifted the deceased to government hospital. I can identified by stick used by the accused.”

21. The evidence of these witnesses would show that it was the accused who was responsible for the commission of the offence. Though all these witnesses were subjected to cross-examination, nothing useful came to be elicited to discredit their version with regard to the incident. On the other hand, a perusal of the cross-examination of the witnesses clearly indicates the presence of the

accused at the scene of offence at the time of incident. The evidence of all the witnesses, which is consistent, remained unimpeached. Therefore, we do not find any reason to disbelieve the evidence of these witnesses. Hence, the fact of accused participating in the commission of the offence stands established. The next question that arises for consideration is whether the accused can be convicted under Section 302 IPC.

22. As seen from the record, the incident in question is said to have taken place at 3 a.m. on 28/ 29.06.2011. Immediately after the incident, the deceased was taken to Government General Hospital, Kakinada, where she was treated till 10.07.2011, on which day she died. From the above, it is clear that the deceased survived for a period of twelve days after the incident. No material has been placed on record to show the nature of treatment that was given to the deceased, while being treated at Government General Hospital, Kakinada. PW12- the doctor who conducted post mortem over the body of the deceased, found two injuries on the head and three injuries on the left elbow, right hand and right thumb. According to PW12, the cause of death was due to cranio cerebral injury, i.e., head injury.

23. In *SELLAPPAN v. STATE OF TAMIL NADU*¹, the Apex Court dealt with a situation where the appellant-accused went to the house of the deceased and wanted his daughter PW4 to return the jewels which were given to her. She refused to part with the jewels on account of which the appellant was nurturing a grievance

¹ (2007) 15 Supreme Court Cases 327

against the deceased. At about 5.45 p.m. on 03.04.1994, PW2-the mother of PW1, who is the wife of the deceased, was collecting leaves for silk worms for the purpose of feeding them. At that time, PW3 went inside the house. The deceased left the house to bring agricultural labourers and while he was on his way, the appellant, armed with a stick and Selvaraj, armed with an aruval, appeared before him, and on seeing them, the deceased became panicky and shouted saying that they are about to beat him. Selvaraj is said to have thrown the aruval at the deceased, and the deceased sidestepped it. At that time, the appellant, with the stick which he had in his hand, beat the deceased on the head twice, as a result of which the deceased fell down. Leaving the stick at the spot, the accused ran away. Immediately thereafter, PW3 brought the deceased to Government Mohan Kumaramangalam Hospital, where he was produced before PW9-the Casualty Medical Officer. Subsequently, the deceased was shifted from Government Hospital to a private nursing home run by PW14 on 04.04.1994, and an operation was performed on the injured/ deceased. In spite of giving treatment, the deceased died on 09.04.1994. Dealing with the said circumstances, the Apex Court, after referring to VIRSA SINGH v. STATE OF PUNJAB² and ABDUL WAHEED KHAN v. STATE OF A.P.³, altered the conviction of the appellant therein from Section 302 IPC to Section 304 Part-II IPC.

24. The case on hand appears slightly better than the case referred to above. In the instant case, no material has been

² AIR 1958 SC 465

³ (2002) 7 SCC 175

placed on record to show as to the nature of treatment which was given to the deceased while she was in Government General Hospital at Kakinada. The prosecution has not made any effort to examine the doctor who treated the injured/ deceased at the said hospital nor have they produced any evidence to show the nature of treatment taken by the injured/ deceased at the Government Hospital. The fact that the deceased died nearly twelve days after the incident remains undisputed. It is also not in dispute that there were two injuries on the head of the deceased and the other three injuries were on the non vital parts, i.e., on hands, legs and ear.

25. Having regard to the above and in view of the judgment in SELLAPPAN's case, we feel that the conviction of the appellant under Section 302 IPC needs to be altered to one under Section 304 Part-II IPC.

26. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in the judgment dated 23.06.2012, in Sessions Case No.106 of 2012 on the file of the II Additional Sessions Judge, East Godavari District, Amalapuram for the offence punishable under Section 302 I.P.C. is altered to one under Section 304 Part-II IPC. For the altered conviction, the sentence of imprisonment is reduced to that of the period already undergone by the petitioner, in view of the representation made that the accused is already in jail for more than five years. The period of remand underwent by him during

investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused shall be set at liberty forthwith, if not required in connection with any other case. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

22.12.2017
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