

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON' BLE SMT. KONGARA VIJAYALAKSHMI

CRIMINAL APPEAL No.302 of 2012

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

The sole accused in SC No.474 of 2011 on the file of the IV Additional Sessions Judge, Kurnool, is the appellant herein. He was tried for the offence punishable under Section and 302 of IPC for causing death of deceased Narayanamma @ Mugamma by beating her with a cot peg over her head on 12.03.2011 at about 13.00 hours at Weaker Sections colony, Kurnool. By its judgment dated 02.02.2012, the IV Additional Sessions Judge found the accused guilty of the charge framed and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.2,000/- for an offence punishable under Section 302 IPC, in default of payment of fine, to undergo simple imprisonment for a period of three months.

The case of the prosecution as seen from the evidence adduced by the prosecution is as under:

The deceased Narayanamma @ Mugamma (hereinafter referred as 'deceased') is the first wife of the accused. The accused also married one Telugu Malleswari (PW.2) as his second wife. The accused was a tenant in a house bearing D.No.76-97-126-1A, Weaker Section Colony, Kurnool. He took the said house on monthly rent from PW.1, about two years ago and stayed in the said along with his second wife Telugu Malleswari (PW.2). One Nagaraju is the son, born through the first wife of the accused. The accused married Narayanamma, three years prior to the marriage

of PW.2. The deceased left the company of the accused as she could not tolerate his harassment and hence, he married PW.2 and they were blessed with five children. PW.3, Madhavi is the daughter born through second wife of the accused. It is said that the accused is addicted to drinking and he was always harassing PW.2 and the deceased for want of money and to fulfill his lust. He was not even bothered about the presence of children in the house. On the date of incident, he came home fully drunk and asked PW.2 to share bed with him. But she refused to join with him for sex as it was day time and children would come at any time. Then the accused asked deceased Narayanamma to fulfill his lustful desire. As it was 1 p.m. in the afternoon, she also desisted to have intercourse. Being afraid of the accused, both PW.2 and the deceased came out of the house and sat under the tree near the house of one Devaraju. The accused again called them from the house and on being afraid of the accused, PW.2 started proceeding towards the house of one Atchamma. In the meanwhile, the accused brought a cot peg from inside the house, went near the tree and when the deceased refused to accompany him into the house, hit her over the head with the cot peg and caused a bleeding injury. The incident was witnessed by PW.2 and others. Immediately they called an ambulance and PWs.2 and 3 took the deceased to Government Hospital, Kurnool, but she died at about 3 p.m., while undergoing treatment.

On 12.03.2011 at about 3.15 p.m., when PW.13 Inspector of Police, Kurnool IV Town PS was in the police station, PW.1 came

and presented Ex.P.1 report. Basing on Ex.P.1, PW.13 registered a case in Cr.No.74 of 2011, for the offences punishable under Sections 307 and 302 of IPC of Kurnool IV Town PS. Ex.P.8 is the FIR. Immediately thereafter, he proceeded to the Government Hospital, Kurnool where he secured the presence of PWs.10, 12 and one Ramakrishnaiah Setty and the blood relatives of the deceased and also eye witnesses to the incident and conducted inquest over the dead body of deceased under ExP.3. During the course of inquest, he seized MOs.3 to 8 under the same *panchanama*. Later he proceeded to the scene of offence and prepared *panchanama* of the scene of offence and rough sketch of the scene, which are marked as Ex.P.7 and Ex.P.9 respectively. During the said process, he examined PWs.1 to 5, 7 to 9 and recorded their statements. Later the body was sent for postmortem examination.

PW.11 the Assistant Professor of Forensic Medicine, conducted autopsy over the dead body of the deceased and issued Ex.P.6 the postmortem certificate. According to him, the cause of death was due to intracranial bleeding associated with skull bone fractures resulting from head injuries. He also stated that the injuries on the dead body of the deceased are possible by means of MO.1, the cot peg.

On 13.03.2011, PW.13 produced the properties seized at the time of the inquest before the JMFC court for onward transmission to FSL with letter of advice Ex.P.10. On 16.03.2011 at 7 a.m. he arrested the accused near All India Radio Station area, Kurnool, in

the presence of PWs.10 and 12, interrogated him and recorded his confession. Pursuant to the confession, he recovered MO.2 under a cover of *panchanama* Ex.P.5. After completion of the investigation, he filed charge sheet before the Court of the Judicial Magistrate of I Class, Kurnool, which was taken on file as PRC No.89 of 2011. On appearance of the accused, copies of documents were furnished to him as required under Section 207 Cr.P.C. and then committed the case to the Court of Sessions, as the offence alleged against the accused is triable by the court of Sessions.

On committal, a charge under Section 302 of IPC came to be framed against the accused, read over and explained to him in Telugu, for which the accused pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 13 and got marked Exs.P.1 to P.11 and MOs.1 to 10. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., by putting to him the incriminating material against him, in the evidence of prosecution witnesses to which he denied but did not choose to examine any witnesses on his behalf.

Basing on the evidence of PWs.1 to 6, coupled with the medical evidence, the IV Additional Sessions Judge, found the accused guilty for the offence punishable under Section 302 of IPC and sentenced him to imprisonment for life.

The only ground urged by the learned counsel for the appellant is that even accepting the case of the prosecution to be

true, no offence under Section 302 of IPC is made out against the accused. According to him, there was no motive or intention for the accused to kill the deceased. It is pleaded that the incident in question was not due to any disputes between himself and the deceased, but as the deceased refused to share the bed, the accused beat her with a cot peg on the head. It is further submitted that since the accused was in a drunken condition and having regard to the circumstances under which the incident took place, the offence cannot be termed as a murder.

Learned Public Prosecutor opposed the same contending that the evidence of PW.2 is sufficient to base a conviction.

Before dealing with the incident in question, it would be useful to note that there were some disputes between the accused and the deceased earlier, pursuant to which, she left the company of the accused. Thereafter, the accused married PW.2 and out of the wedlock, he begot five children. The evidence on record discloses that he had two children through the deceased. Subsequently, the deceased joined the accused and started living along with the accused and PW.2 (2nd wife of the accused). On the date of incident, the accused came to the house in a drunken condition and demanded both i.e., deceased and PW.2 to fulfill his lust. But both of them refused to have intercourse with him, as it was after-noon and the children may come at any time. Initially PW.2 left the house and sat under a tree near the house of one Atchamma. Thereafter, the accused asked the deceased to come and share bed with him. But she also refused and she also left the

house and sat under a tree. Thereafter, PW.2 started going towards the house of Atchamma. At that time, the accused armed with a cot peg, came towards the deceased, who was under the tree and insisted to come along with him into the house. When the deceased refused his request, he beat the deceased on the head once with a cot peg. The said fact was spoken to PW.2, who was examined as an eye witness to the incident. Though she was cross-examined, nothing useful was elicited. All the suggestions given were denied by her. There is no reason to disbelieve her. Therefore, the fact that the deceased died due to the blow given by the accused stands established.

Now the question is whether the accused can be convicted for the offence punishable under Section 302 of IPC?

In '*Mavila Thamban Nambiar vs. State of Kerala*¹', the apex court while dealing with a case, wherein on 10.05.1988 at about 8 p.m. at Kattapunna, a Thaiyyam (a village ballet) was arranged by Madhavan in the evening and for that purpose, he needed a petromax, which was available in the shop of the appellant. Madhavan had gone to the shop of the appellant and requested him to give a lighted petromax. The appellant refused to oblige him. Earlier in the day, the brother of Madhavan also went to the shop of the appellant and requested him to give him two benches to celebrate the said festival. When Madhavan had gone to the shop of the appellant, with a request to give him a lighted petromax and on the latter's refusal, there was exchange of words which was

¹ (2009) 17 SCC 441

followed by a scuffle. The appellant who was then sitting on a stool picked up a pair of scissors lying on the table in front of him and caused a stab injury on the right side of the chest of Madhavan. Thereafter, he again tried to inflict one more blow which landed on the right cheek of Madhavan, who thereafter fell down on the ground. In the circumstances, the apex court held as follows:

“Mr. Lalit then, seriously challenged the conviction of the appellant under [Section 302](#) of the Indian Penal Code. He urged that the appellant had neither intention nor knowledge that such an injury would result into the death of Madhavan. He, therefore, urged that the appellant at the most could be convicted for any other minor offence. Mr. George, appearing for the State of Kerala urged that the appellant was rightly convicted under [Section 302](#) of the Indian Penal Code and no interference was called for. After giving our careful thought to the nature of offence, we are of the considered view that the offence of the appellant would more appropriately fall under [Section 304](#) part II of the Indian Penal Code. The appellant had given one blow with a pair of scissors on the vital part of the body of Madhavan and, therefore, it would be reasonable to infer that he (appellant) had knowledge that any injury with the pair of scissors on the vital part would cause death though he may not have intended to commit the murder. We accordingly alter the conviction of the appellant from 302 IPC to one under [Section 304](#) part II of the IPC.”

In ‘*Ranjit Sarkar vs. State of Tripura*², the court was dealing with a situation wherein, on 17.06.2007 at about 10 a.m. an altercation took place between appellant and deceased over draining out of the rain water through paddy field. At about 9 p.m. on the same day, the deceased accompanied by PW.2 was returning from Tuichindrai Market, and when they reached near

² (2016) 15 SCC 756

the house of the appellant, the appellant armed with wooden file gave a severe blow on the head of the deceased, as a result the deceased fell down. The injured was immediately taken to Teliamura Hospital from where he was shifted to G.B. Hospital, but finally succumbed to the injuries on the next day. Dealing with the said situation, the apex court held that the act on the part of the appellant is covered by Part II of Section 304 IPC.

In the instant case, the evidence of PW.2, who was an eye witness to the incident, discloses that the appellant gave one blow with a cot peg on the head of the deceased which is on a vital part of the body, leading to her death. But the evidence of PWs.2 and 5 discloses there was absolutely no motive or intention on the part of the appellant to cause death of the deceased. As stated earlier, the appellant wanted his wife to share bed with him in the afternoon, for which she refused and went away. The appellant, who was in a drunken condition, went out side of the house and once again insisted the deceased to come and share the bed and when she refused to do so, he gave a blow on the head with the cot peg. Definitely, it is not a case where he had any motive or intention to cause death of the deceased. May be there was some disputes earlier, but at the time of incident, all of them living happily in the house at the time of incident. Hence, having regard to the facts and circumstances of the case, and in view of the decision of the apex court in '*Mavila Thamban Nambiar*'s case (supra), the conviction of the appellant under Section 302 of IPC is liable to be modified to one under Section 304 Part II of IPC.

In the result, the Criminal Appeal is allowed in part by modifying the conviction from Section 302 IPC to Section 304 Part II of IPC and sentence of Life Imprisonment awarded by the IV Additional Sessions Judge, Kurnool, against the Appellant, namely, Kummari Venkateswarlu, in S.C.No.474 of 2011, by judgment dated 02.02.2012, is reduced to SEVEN years. If the appellant has completed seven years of sentence after giving remission to which he is entitled to, he shall be set at liberty, if he is not required in any other case. Miscellaneous petitions, if any, pending in this appeal shall stand closed.



C. PRAVEEN KUMAR, J

KONGARA VIJAYALAKSHMI, J

Date: 09.11.2017
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