

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Appeal No.1376 of 2011

JUDGMENT : (per the Hon'ble Sri Justice N.Balayogi)

The sole accused preferred this appeal being aggrieved by the judgment dated 21.9.2011 in S.C.No.179 of 2011 on the file of Principal Sessions Judge, Kadapa convicting and sentencing the appellant to undergo R.I. for one year and to pay a fine of Rs.100/-, in default, to suffer S.I. for one month for the offence under Section 498-A IPC; further sentencing him to suffer imprisonment for life and to pay a fine of Rs.100/- for the offence under Section 302 IPC and further to undergo S.I. for a period of one year for the offence under Section 324 IPC. All the sentences were directed to run concurrently.

2. The prosecution case, in brief, is that the accused is none other than the husband of the deceased-Aktharunnissa, whose marriage was performed about 16 years back. They were blessed with one daughter-Shaik Shabana and a son-Shareef. The appellant-accused without attending to any work, neglected the welfare of the family, due to which, the deceased used to do tailoring work and maintain the family. The appellant used to demand amounts from the

deceased and harassed and subjected her for cruelty both mentally and physically.

3. About 6 months prior to the incident, due to unbearable harassment and torture, the deceased came to her mother's home at Ganugapenta. Subsequently, on the request of the appellant-accused, the deceased along with her children joined the accused at Badvel. Again, the appellant started harassing the deceased. Twenty days prior to the murder, the deceased unable to bear the harassment subjected by the appellant, came over to her mother's home along with daughter and that the mother of the deceased kept her in a rented house. The deceased was maintaining the family by doing tailoring works.

4. While so, on 13.12.2010 in the morning, the accused came to his in-law's house and asked to send the deceased with him, but she refused to go along with him since he was not changing his ways. The relatives of the deceased also admonished the appellant-accused. Then he left the in-law's house.

5. Again on 14.12.2010, the appellant-accused along with his younger brother Shaik Valli and his relative Shaik Masthan came over to the house of the deceased and there was a mediation before the elders Moghal Chinna Hussain and Bandi Subbaiah along with elders of both sides. Before the elders, the appellant-accused promised to look after the deceased and children, but the deceased bluntly refused

to go with him in view of his previous attitude and conduct. After the panchayat, the elders left the place. The accused-appellant requested the deceased and his mother-in-law to permit him to stay for the night in their house. Though the deceased expressed her apprehension, her mother consoled her saying that all the problems would be solved. The accused, deceased and their daughter-Shaik Shabana watched T.V. upto 9.30 p.m. and later they slept in the same room. At about 10.30 p.m., while the deceased and her daughter were sleeping, the accused having grudge against the deceased as she refused to join him, in order to eliminate her, took up a pestle in the room and hit the deceased on her head. On hearing the shouts, their daughter-Shabana woke up and when tried to intervene and snatch the pestle from the hands of the accused, the accused also beat her with the pestle.

6. In the said incident, the pestle broke into two pieces. Immediately, their daughter-Shabana went to her grandmother's house which is nearby and informed the incident. On hearing the cries of Shabana while going, the neighbours also woke up and on being informed, the mother of the deceased immediately rushed along with Shaik Khajavalli, the elder brother of the deceased and in the meanwhile, locality people gathered and on seeing them, the accused, due to fear, fled from the house with the broken piece of pestle. Immediately, the deceased was shifted to Government Hospital, Badvel and while undergoing treatment in the hospital, the deceased succumbed to the injuries at about 11.55 p.m.

7. On registration of the case and after filing charge sheet on completion of investigation, the learned Magistrate took cognizance of the case for the offences under Sections 498-A, 302, 324 IPC, assigned PRC No.20 of 2011 and after following due procedural law, committed the case to the Sessions Division, which was numbered as S.C.No.179 of 2011. On consideration of material brought on record, the Sessions Judge framed charges under Sections 498-A, 302 and 324 IPC, read over and explained the same to the accused, for which, he denied and claimed to be tried.

8. In order to prove its case, the prosecution examined P.Ws.1 to 8, got marked Exs.P.1 to P.14 and M.Os.1 to 11. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and he denied the incriminating material appearing against him.

9. Now, the point that arises for consideration in this appeal is ‘whether the prosecution proved the guilt of the appellant-accused beyond all reasonable doubt and whether the conviction and sentence imposed by the trial Court can be sustained?’

10. Learned counsel for the appellant contended that there is no evidence whatsoever or any circumstantial evidence showing that accused killed the deceased. The conviction based on circumstantial evidence without any direct witness cannot be sustained.

11. On the other hand, the contention of the prosecution is that there is consistent and corroborative evidence of P.Ws.1 and 2 to establish the harassment subjected by the accused and also the evidence of P.Ws.1 and 2 corroborated with the medical evidence of Doctor-P.W.5 and inquest report Ex.P2 supported by inquestdar P.W.4 coupled with seizure of M.O.1 in pursuance of Ex.P7 supported with the evidence of P.Ws.6 and 8 established that the accused intentionally killed his wife as he refused to join him and also caused injury to P.W.2.

12. To prove the guilt of the accused, the prosecution examined Shaik Ramthu Bi, the mother of the deceased Aktharunnisa and mother-in-law of the accused/appellant. P.W.2 Shaik Shabana is the daughter of the deceased and the appellant. The evidence of P.Ws.1 and 2 is consistent to the effect that P.W.1 is mother, P.W.2 is daughter of the deceased Aktharunnisa. The accused/appellant is the husband of the deceased and father of P.W.2. The marriage between accused and deceased was performed 16 years prior to the incident. The appellant along with his wife/deceased and daughter-P.W.2 used to reside at a Mamillapally, later shifted to Kalasapadu and therefrom shifted to Badwel as on the date of the incident and there is no cross-examination of P.Ws.1 and 2 on those aspects.

13. Further, it is the evidence of P.Ws.1 and 2 that P.W.2 attained puberty two months prior to the incident. For that function P.W.1 and Khaja Valli and others attended, but the accused beat Khaja Valli and P.W.1 and sent them away. Thereafter, the deceased along with P.W.2 and her brother, came over to the house of P.W.1 where a rented house was taken and the deceased, P.W.2 and her brother started living in the rented house. Subsequently, the accused visited the house and took away the younger boy. It is also specific evidence of P.Ws.1 and 2 that accused without attending any work used to harass the deceased demanding amount for his vices which was earned by the deceased by doing tailoring work. It is also a fact elicited from the evidence of P.W.1 that she used to pacify the deceased asking her to bear the harassment for the sake of P.W.2 and her brother and accused used to beat and harass the deceased.

14. The clinching evidence of P.Ws.1 and 2 is that the accused without working used to demand money from the deceased which she used to earn by doing tailoring work for his vices and the accused used to beat and harass her. From which the character of the appellant/accused is established that he without attending to any work, sitting idle, used to harass his wife/deceased demanding her hard earned money for his vices which ultimately, two months prior to the incident, led the deceased to go to her parents home along with her daughter P.W.2 and son.

15. Further, the evidence of P.Ws.1 and 2 is that one day prior to the murder the appellant came to their village and asked the deceased to join him. When the deceased refused to go along with him on the next day i.e., on 13.12.2010 again the appellant came along with his younger brother and elder and hold a panchayat. Before the elders the appellant promised to look after the deceased P.W.2 and their son, but the deceased refused on the ground that the accused is not working and maintaining the family. As the panchayat was failed, the elders and others left, whereas the accused stayed there till 8 PM.

16. The consistent testimony of P.Ws.1 and 2 established the harassment meted out by the appellant/accused on his wife/deceased demanding money for his vices which is her hard earned money by doing tailoring works. The trial Court taking into consideration the conduct of the accused rightly came to the conclusion that the testimony of P.Ws.1 and 2 proved the conduct of the accused which clearly falls within the purview of explanation B of Section 498-A I.P.C. i.e., meting out harassment with a view to coercing his wife to meet his unlawful demand for his vices. The testimony of P.Ws.1 and 2 is clearly proved and supported by 164 statement of P.W.2 before the Magistrate wherein she had categorically stated that her father/accused used to sit idle and her mother used to do tailoring work and used to maintain the family, but her father used to abuse and beat her mother demanding amounts for consuming liquor. So,

ultimately, found that evidence of P.Ws.1 and 2 clearly reflect the conduct of the accused and the same was squarely falls within the purview of Section 498-A I.P.C.

17. P.W.3 is panchayatdar acted on the request of P.W.1. P.W.1 stated in the evidence that on the next day of his request to send the deceased along with him, the appellant came along with his brother Valli and one Masthan who is elder for their marriage. Bandi Subbaiah was one of the elders. Before the elders in the panchayat the deceased refused to go and join the appellant since he was not working and he is harassing for the amounts for his vices. P.W.1 also refused to send her daughter. P.W.3 corroborates P.W.1 about her calling him to act as a mediator and appellant brought his brother and another person to panchayat which was held and deceased refused to go with the accused and P.W.1 also refused to send her back and more so, P.W.1 requested the accused to stay at Ganugapenta. Thereafter, the elders left. On the next day morning they came to know that the appellant/accused murdered his wife.

18. It is the consistent evidence of P.Ws.1 and 2 that as the panchayat failed, on the night of incident the accused stayed in the house of the deceased for which the deceased apprehended and P.W.1 being her mother tried to pacify and patch up and assured the deceased that everything would be settled. Therefore, the accused stayed in the night with his wife and daughter P.W.2. The evidence of

P.W.1 further established that she was in the house of the deceased till 8 PM. P.W.2's evidence is that she and deceased watched the TV till 9 PM. While so, the evidence of P.W.2 is that after watching TV serial till 9 PM, P.W.2 and deceased slept on one cot and accused slept in another cot in the same room. At about 10.30 PM she witnessed while the accused hitting her mother with a pestle on her head and when she tried to intervene, the accused also beat P.W.2 and she sustained injury on her right index finger and right knee and the pestle was broken. Immediately, she ran to the house of P.W.1. P.W.1 corroborates P.W.2 that at about 10.00 PM P.W.2 came running and stated that she found the accused beating the deceased with a pestle and when she intervened, she was also beaten. Immediately, P.W.1 along with Khaja Valli and P.W.2 rushed to the house. In the meanwhile, the neighbours gathered. The accused on seeing them fled away with the broken pestle in his hand and they found injury on the head of the deceased and also observed the broken pieces of pestle with blood stains in the house and bed sheet, pillow cover with blood stains. Immediately the deceased was shifted to the Badwel Government Hospital where she succumbed to injuries. P.W.2 identified the blood stained gown - M.O.3 along with pant - M.O.4 which was seized by the police.

19. The evidence of P.W.2 is consistent and cogent. There is no variation either in her 161 Cr.P.C. statement before the police or 164 Cr.P.C. statement before the Magistrate. P.W.2 stick to her

version and stated all the facts which she had deposed in the Court as P.W.2.

20. From the clinching evidence of P.Ws.1 and 2, we can infer that the time gap between the refusal of the deceased to join the accused and the incident is more than 12 hours and nothing is elicited through P.Ws.1 and 2 during their cross-examination that accused lost his temper or grew wild or there was any altercation between accused and deceased in that night. It is the clinching evidence of P.W.2 that while sleeping, she heard the cries of her mother, woke up and observed the accused hitting the deceased with a pestle on her head.

21. P.W.8 is the Inspector of Police, whose evidence is that on 25.12.2010, he took up investigation, that on reliable information, he along with his staff and panchayatdars P.Ws.4 and 6 proceeded to Kondugaripally cross-roads and found the accused present in the Court, sitting on a pial. On seeing them, he tried to escape. They surrounded him and when questioned, he revealed his identity. His admission portion of confession that led to recovery of M.O.1-pestle is marked as Ex.P.7.

22. P.W.4 admits that he signed on the report under Ex.P.7, but he denied the apprehension of the accused and recovery of M.O.1-pestle. When he was declared hostile and cross-examined, he admits his presence at the time of arrest of accused and also admitted that the

arrest proceedings and the seizure proceedings of M.O.1 contain his signatures.

23. Coming to the evidence of P.W.6, he speaks that on 25.12.2010 at 11.00 a.m., P.W.8 arrested the accused at Kondugaripally cross-roads in the presence of mediators including P.W.4 and on interrogation, the accused promised to show the pestle which he used in the commission of offence and in the said panchanama, he along with P.W.4 signed. On the same day, the accused led the team to Ganugapenta village, took them to the road leading towards Badvel and from the thorny bushes by the side of the road, he picked out M.O.1-pestle and the same was recovered by the police under panchanama Ex.P.8, which is signed by P.W.4 and himself. There is nothing suggested to disbelieve the evidence of P.W.6, who admits the signatures on Exs.P.7 and P.8 proceedings. The evidence of P.W.8, corroborated with the evidence of P.W.6 and supported by Exs.P.7 and P.8, clearly established the recovery of M.O.1-pestle that was used in the commission of offence, at the instance of the accused. On this aspect, the trial Court having considered the evidence of P.Ws.6 and 8 and Exs.P.7 and P.8, came to the right conclusion that the place where the broken pestle-M.O.1 was recovered is not a place which is accessible to all and no material is seen to infer that the broken pestle was planted to show recovery and there is also no material to infer that P.W.6 had any axe grind against the accused or that he is a stock mediator, though he admits that in

some police cases, he acted as mediator, but that alone will not suffice to brand P.W.6 as a stock mediator. Further the evidence of P.Ws.1 and 2 proved that the accused fled away with the pestle and the other portion of the pestle was lying near the scene of offence which was recovered by the police at the scene of offence.

24. P.W.7 is the Inspector of Police, whose evidence is that on the intervening night of 14/15-12-2010 at 1.30 a.m., he received telephone from Badvel C.I. about the hospital intimation. Immediately, he rushed to Badvel Government Hospital, found P.Ws.1 and 2 and the deceased-Aktharunnisa. He recorded the statement of P.W.1 under Ex.P.1 and posted a guard at the body in the hospital, returned to the station and on the strength of Ex.P.1, he registered a case in Crime No.150 of 2010 for the offence under Section 302 IPC, submitted F.I.R. to the Court and all the concerned along with Ex.P9 the original F.I.R. He also admits that Exs.P10 and P11 are useful intimations, again, he went to the hospital secured the presence of inquestdars and witnesses and held inquest over the dead body from 8.30 to 11.00 AM. During inquest they observed bleeding injuries to the head of the deceased and during inquest the wearing apparel of the deceased M.Os.5 to 7, 8 and two silver toe rings were seized and panchayatdar opined that the death of the deceased is homicidal.

25. The evidence of P.W.4 further shows at about 11.30 AM M.Os.3 and 4 recovered from P.W.2 under Ex.P3 panchanama which corroborates the evidence of P.W.2 about seizure of M.Os.3 and 4.

26. On the same day at about 1 PM, P.W.4 and other panchayatdars along with the police proceeded to the house of the deceased at Ganugapenta and observed the scene in their presence and seized blood stained light green coloured bed sheet – M.O.9, black coloured pillow cover – M.O.10 and light rose coloured blood stained pillow cover – M.O.11 and broken piece of pestle – M.O.2 under Ex.P4 observation panchanama.

27. P.W.5 is the doctor who conducted autopsy over the dead body of the deceased Aktharunnisa and his evidence is that autopsy commenced on 15.12.2010 at 11.30 AM and concluded by 1.00 PM. On examination during autopsy the Doctor observed the following external injuries :

1. Depressed fracture of 3 cm diameter of shape roughly circular exposing bone & brain matter with depressed fracture over left parietal eminence.
2. Laceration of 3 cm x ½ cm x ½ cm irregular margin present over left parietal margin or eminence or No.2.
3. Contusion of No.4 each of 2cms. Diameter present over anterior chest.
4. Leniar contusions of Number more than 5 present over abdomen each of varying length 4 to 3 cm length and width is ½ cm.

28. The Doctor also stated that on internal examinations the skull cavity bones and membranes are fractured i.e., depressed fractured over left parietal eminence. Brain tissue is exposed over left parietal region. Intracranial hemorrhage is seen at left parietal and occipital region, which corresponds to external injuries Nos.1 and 2. The death is due to blunt injury to vital organ brain which leads cardiopulmonary arrest secondary to hemorrhage of brain and issued Ex.P5 PME report.

29. He also examined P.W.2 and found the injuries 1 to 3 as follows :

1. Laceration of $\frac{1}{2}$ cm x $\frac{1}{4}$ cm over right index finger with bleeding on touch with diffuse swelling.
2. Diffuse swelling of 1 cm diameter over right knee.
3. Diffuse swelling over left posterior aspect of left hand of size 2 cm x 2 cm.

He opined that injuries are simple in nature caused in less than 6 hours duration and they could have been caused with a blunt object like M.O.1 and issued Ex.P6-wound certificate. Though P.W.5 was cross-examined at length, he stated that it is not correct to state that injury No.2 in Ex.P5 is not possible by M.O.1. Therefore, there are fractures to the skull cavity bones and membranes as per the medical evidence of P.W.5 and Ex.P5 PME report.

30. The trial court having considered the ocular and oral evidence of P.Ws.1 to 8 and the medical evidence of P.W.5-Doctor and Ex.P5 - PME report and injuries of P.W.2 as testified by P.W.5 under Ex.P6, came to conclusion that there is no whisper in the testimony of P.Ws.1 and 2 that the accused quarreled with the deceased at the time of panchayat or there was any quarrel between the accused and deceased in the night before going to bed and the time gap between refusal of the deceased to join the accused and the incident is more than 12 hours and above and nothing is elicited that the accused lost his temper or grew wild or there was any altercation between accused and deceased in that night. It is the clinching evidence of P.W.2 that while she was sleeping, she heard the cries of her mother and she woke up, observed that the accused hitting the deceased with a pestle M.O.1 on her head. The medical evidence of Doctor P.W.5 and PME report under Ex.P5, the inquest report under Ex.P2 corroborating with the evidence of P.W.4 and seizure of M.Os.1 and 2, well establishes the intention of the accused in causing injuries on vital part i.e., head of the deceased that he in a premeditated manner stayed during that night even though the deceased/wife refused to join and killed her. The hammer on the head in vital part with M.Os.1 and 2 pestle established the intention of the accused to cause death of his wife and further established that the accused knowingly and intentionally with knowledge that the said injury will cause death had beaten his wife on the vital organ of head with pestle which is dangerously deadly weapon.

31. Accordingly, we are of the considered view that the trial Court marshalling the facts, appreciation of evidence and applying the law to the facts, came to the conclusion that the accused harassed his wife by abusing and beating and demanding money for his vices and also as the deceased refused to join, he developed an intention to put an end to her life and accordingly stayed in the house on that night and as per his plan, hit on the head, which is vital part of the deceased and killed her. We do not find any error in the finding of the trial Court warranting interference.

32. Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence imposed by the trial Court against the accused in the judgment dated 21.9.2011 in S.C.No.179 of 2011 for the offences punishable under Sections 498-A, 302 and 324 IPC.

33. The property order of the trial court is confirmed.

(JUSTICE C.PRAVEEN KUMAR)

(JUSTICE N.BALAYOGI)

29.11.2017
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