

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

CRIMINAL APPEAL No.106 of 2012

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

The sole accused in Sessions Case No.164 of 2011 on the file of the Sessions Judge, Mahila Court, Visakhapatnam, filed this Criminal Appeal against judgment, dated 02.11.2011, wherein he was convicted for an offence under Section-302 of the Indian Penal Code for causing the death of his wife by name Vadapalli Kotamma on 25.5.2011 at Yekalavya Colony, Chinamushidiwada, Pendurthi, Visakhapatnam, and sentenced to suffer imprisonment for life.

2. The case of the prosecution, in brief, is as follows:

P.W-1 is the informant, P.W-2 is the son of the appellant and the deceased, P.W-3 is a resident of Chinamushidiwada and P.Ws.4 to 7 are the official witnesses. The appellant is the husband of the deceased. Out of wedlock, the appellant and the deceased were blessed with three sons and one daughter and all the children were living with their parents. The appellant was eaking out his livelihood by rag-picking and he used to come to the house in a drunken condition. He was suspecting the fidelity of the deceased and used to quarrel with the deceased and also used to beat her indiscriminately. On the date of the incident,

i.e., on 25.5.2011, at about 12 noon, the appellant came to the house in a drunken condition and quarrelled with the deceased. When the deceased questioned the appellant as to why he was quarelling unnecessarily, he grew wild, picked up a wooden leg of the cot and forcibly battered the deceased with it. As a result of which, the deceased died instantaneously. P.W-2 and another person and the children of the deceased witnessed the incident and raised cries. On hearing their cries, P.W-3 and two others rushed to the scene of offence. On seeing the gathering, the appellant fled away from the said place. P.W-1, who was informed about the incident on phone, rushed to the scene of offence and found the deceased dead in the hut. Hence, he lodged Ex.P-1-report in Pendurthi Police Station on 25.5.2011 at about 3 pm. The further case of the prosecution is that based on Ex.P-1-report, P.W-7-the Inspector of Police, Pendurthi Police Station registered a case in Crime No.121 of 2011 under Section-302 IPC and issued express F.I.Rs to all the concerned. During the course of investigation, he visited the scene of offence, seized the Material Objects, i.e., blood stained wooden leg of the cot and prepared an Observation report-Ex.P-11, in the presence of the mediators. He also got photographed the scene of offence through P.W-4, (Ex.P-6 are the bunch of photographs numbering six and a Compact Disk). He also prepared a rough sketch of the scene of offence which is placed

on record as Ex.P-12. He then, conducted inquest over the dead body of the deceased in the presence of P.W-1, which is marked as Ex.P-3. During inquest, he examined P.Ws.1 to 3. Thereafter, he sent the dead body of the deceased for post-mortem examination. P.W-6-the Assistant Professor, Forensic Medicine, A.M.C. Vizag, conducted autopsy over the dead body of the deceased and issued Ex.P-9-the Post-mortem examination certificate. According to him, the cause of death of the deceased was due to head injury associated with blunt injury to abdomen.

3. Further investigation was taken up by P.W-7-the C.I. of Police, who arrested the appellant on 26.5.2011 in the presence of P.W-1 and another. Pursuant to the confession made by the appellant, M.O-2 was seized. After the completion of the investigation and after collecting all the relevant documents, P.W-7 filed the charge sheet, which was taken on file as P.R.C.No.18 of 2011 on the file of the III Metropolitan Magistrate, Visakhapatnam. On appearance of the appellant, copies of the documents were furnished to him. Since the offence under Section-302 I.P.C. is triable by a Court of Sessions, the case was committed to the Court of Sessions, which came to be numbered as Sessions Case No.164 of 2011 on the file of the Sessions Judge, Mahila Court, Visakhapatnam.

4. On appearance of the appellant, charge under Section-302 IPC was framed, read over and explained to the accused in Telugu, to which he pleaded not guilty and claimed to be tried.

5. As the plea of the appellant was one of denial, he was made to stand trial, during which, the prosecution examined P.Ws.1 to 7 and got marked Exs.P-1 to P-12 and M.Os.1 and 2. On behalf of the appellant, no oral evidence was adduced, but Ex.D-1, the Omission in the statement of P.W-3 was marked.

6. After completion of the prosecution evidence, the incriminating material appearing against the appellant through the evidence of the prosecution witnesses was put to him during his examination under Section-313 Cr.P.C., to which he denied.

7. On appreciation of the oral and documentary evidence, the trial Court convicted and sentenced the appellant as stated supra.

8. At the hearing, Mrs. D.S.Lakshmi Reddy, learned counsel for the appellant, would submit that except the evidence of P.W-2, there is no other witness to connect the appellant with the crime. She pleads that F.I.R was registered based on the report lodged by P.W-1, who is not an eye witness to the incident, and as the source of information to him was through his wife, who is also not an eye-witness to the incident, the entire fabric of the prosecution case collapses. She further submits that since the alleged incident happened while the

appellant was in a drunken condition, the offence alleged may be scaled down by altering the nature of offence.

9. Learned Public Prosecutor for the State of Andhra Pradesh sought to support the judgment of the lower Court by contending that FIR is only to set the law into motion and merely because the person who gave the report is not an eye-witness to the alleged incident, the entire case cannot be thrown out. He further submits that the evidence of P.W-2, who is a child witness, gets ample corroboration from the evidence of P.W-1, who was informed by his wife about the incident at the earliest point of time. Therefore, the judgment under appeal does not warrant interference by this Court.

10. We have carefully considered the submissions of the learned counsel for both the parties with reference to the record.

11. As seen from the record, neither P.W-1 nor P.W-3 was an eye witness to the incident. P.W-1 in his evidence deposed about the information which he received through his wife over phone stating that the appellant beat his wife indiscriminately leading to her death. Immediately, thereafter, he reached the house of the appellant and found several persons gathered there. According to him, there were quarrels between his family and the family of the appellant even prior to the incident. He further deposed that one day prior to the incident, there was a quarrel between the appellant and the deceased and he witnessed the

same. He is stated to have advised the appellant not to quarrel with the deceased. He further deposed that when he went to the house of the appellant, he was informed about the manner in which the incident took place.

12. Since the children of the appellant and the deceased were minors, P.W-1 being the resident of the locality discussed with the neighbours and then lodged a report. In the said report, he disclosed the source of information about the alleged incident. Taking advantage of the same, learned counsel for the appellant tried to build up the case that there was no basis for P.W-1 to give a report against the appellant. If the evidence of P.W-1, coupled with the statements of the mediators for inquest and also the evidence of P.W-3 is appreciated, it is evident that after receiving the information about the incident, P.W-1 went to the house of the appellant, enquired with the persons present there and also with the minor children of the appellant and the deceased, who informed to him about the involvement of the appellant in the commission of the offence. Therefore, it cannot be said that the F.I.R. was brought into existence at the instance of P.W-1. In fact, there is no reason for P.W-1 to foist a false case against the appellant.

13 Though P.W-1 was cross-examined, except eliciting from him that his wife has no cell phone, nothing useful was elicited to discredit his testimony. Absence of cell phone with the wife of

P.W-1 does not mean that P.W-1 could not have received information from his wife about the incident. Therefore, the version of P.W-1 and his source of information for lodging a report, cannot be found fault with. In the earliest document given immediately after the incident, there is a clear reference to the manner in which the incident took place and the source of information as well. The said version gets corroboration from the evidence of P.W-2.

14. Coming to the incident proper, the evidence of P.W-2 plays a crucial role. P.W-2 is a child witness aged about 10 to 12 years at the time of the incident.

15. Learned counsel for the appellant would contend that the evidence of child witness cannot be relied upon to convict the appellant in the absence of any other evidence.

16. In *Radhey Shyam v. State of Rajasthan*¹, the Apex Court categorically held that the evidence of child witness must be subjected to close scrutiny to rule out the possibility of tutoring and it can be relied upon, if the Court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. It was further held that as a matter of caution, the Court must find adequate corroboration by other evidence on record, in which event the same can be accepted without hesitation.

¹ (2014) 5 SCC 389

17. In the case on hand, the Sessions Judge before examining P.W-2, had put some preliminary questions and only after being satisfied that he is capable to give evidence, proceeded to record his statement. In his chief-examination, P.W-2 stated that on the date of the incident, himself, his brothers and sister were playing outside their hut and his father and mother were inside the hut. He deposed that his father (appellant) quarrelled with his mother, beat her with MO-1, as a result of which she sustained bleeding injuries on her head and thereafter, his father absconded from the said place.

18. Learned counsel for the appellant tried to demolish the evidence of P.W-2 by stating that PW-2 could not have been present at the time of the incident since he was a school going boy.

19. In this regard, it is to be noted that P.W-2 stated that on the date of the incident, he did not go to school apprehending danger to his mother from his father-the appellant, as there was a dispute between them on the previous day. It was further elicited that on the date of the incident, himself, his brothers and sister were playing outside their hut and their mother was sleeping inside the hut in a corner and on hearing the cries of his mother, himself, his brothers and sister went inside and

noticed their mother (deceased) with bleeding injuries and she was unconscious. He further deposed that he also saw his father running away from the place.

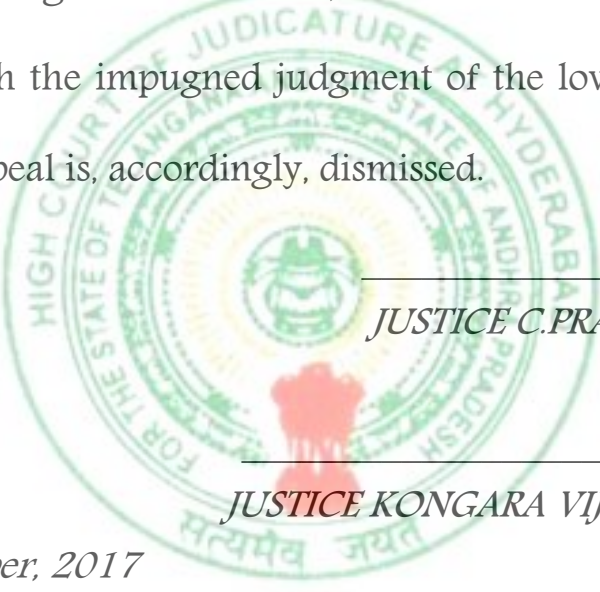
20. In fact all these answers came to be elicited through the cross-examination of P.W-2. It was not even suggested to P.W-2 that the appellant was not responsible for the death of the deceased. On the other hand, it was only suggested to P.W-2 that as the deceased used to move freely with their senior paternal uncle, the appellant bore grudge against the deceased and that there were ill-feelings between the appellant and his paternal uncle. Not only the suggestions and the answers elicited in the cross-examination of P.W-2, but also the evidence on record establish that the appellant was suspecting the fidelity of the deceased. Hence, we feel that there are no circumstances to indicate that P.W-2 was incapable of giving evidence and was tutored to speak falsehood. On the other hand, the suggestions given to P.W-2 establish his presence and the involvement of the appellant in the commission of the offence.

21. The record discloses that immediately after the incident, the dead body of the deceased was sent to post-mortem examination. P.W-6-the doctor who conducted autopsy over the dead body of the deceased noticed as many as 18 external injuries on the body of the deceased, some of which were

abrasions and some fractures. Having regard to the nature and number of injuries found on the dead body of the deceased, we feel that even the benefit which the appellant sought with regard to the nature of the offence, cannot be acceded to.

22. For the aforesaid reasons, we hold that the appellant alone is responsible for the death of the deceased and the lower Court rightly held him guilty of the charge levelled against him.

23. Having regard to the above, we do not find any grounds to interfere with the impugned judgment of the lower Court. The Criminal Appeal is, accordingly, dismissed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

08th November, 2017

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