

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.955 of 2012

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

1) The sole accused in Sessions Case No.5 of 2010 on the file of the III Additional District and Sessions Judge (FTC), Ranga Reddy District, is the appellant herein. He was tried for the offences punishable under Sections 302 and 309 IPC, for causing the death of his son by name Haricharan (hereinafter referred to as "the deceased"), on 14.07.2009 at 2.00 p.m., by stabbing him with knife and thereafter trying to cut his throat with an intention to commit suicide. By its judgment, dated 14.02.2011, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" and to pay fine of Rs.100/-, in default to suffer simple imprisonment for a period of one month, for an offence punishable under Section 302 IPC. As he was sentenced for life under Section 302 IPC, no separate sentence was awarded for the offence under Section 309 IPC, though found guilty for the said charge.

2) The case of the prosecution as unveiled from the evidence of the prosecution witnesses is as under:

i) The accused is the father of the deceased, while PW.1 is the wife of the accused. The evidence on record shows that the

accused got addicted to alcohol and used to beat PW.1 for money. It is the evidence of PW.1 that the accused became a vagabond and on 14.07.2009 at about 11.00 a.m., the accused left the house by taking money and returned to the house in a fully drunken condition. He demanded money again for consuming liquor. When PW.1 expressed that she has no money to pay, the accused took out a kitchen knife and tried to stab PW.1, when the deceased intervened, the accused stabbed her son on right side below stomach. Immediately the injured was taken to Prime Hospital. The information about the incident and also about taking the injured to the hospital was furnished to PW.2. Accordingly, PW.2 went to Prime Hospital and found a stab injury below the right side of the stomach of the injured. According to PW.2, he came to know that there was an altercation between PW.1 and the accused and when the deceased intervened, the accused stabbed the deceased. On 14.07.2009, PW.1 went to the police station and lodged a report, basing on which a case in Crime No.896 of 2009 came to be registered for the offences punishable under Sections 302 and 309 IPC. Ex.P8 is the first information report. After registering the crime, PW.9-the Inspector of Police, visited the scene of offence and conducted a scene of offence panchanama in the presence of PW.6 and another and also prepared a rough sketch of the scene. Ex.P3 is the scene of offence panchanama and Ex.P4 is the rough sketch of the scene. During the said proceedings, he seized blood stained pant and blood stained cement floor. At the scene of offence, he examined PWs.2 and 3.

He, then proceeded to the hospital and conducted inquest over the dead body of the deceased in the presence of PW.6 and another. Ex.P9 is the inquest report. During inquest, he seized blood stained cloths of the deceased. Thereafter, he sent the body for postmortem examination.

ii) PW.8-the Assistant Professor of Forensic Medicine, Gandhi Medical College, conducted autopsy over the dead body of the deceased and issued Ex.P7-the postmortem certificate. According to him, the cause of death was due to “hypo polemic shock due to stab injury involving major vessels.”

iii) On the same day, the accused surrendered before the police station with injuries. He was sent to Ark Hospital, Kukatpally, for treatment. Ex.P10 is the medico legal certificate of the accused. After his discharge from Ark Hospital, PW.9 took the accused into custody and recorded his confessional statement in the presence of PW.7 and another. His confession lead to seizure of blood stained shirt of the accused, which is marked as M.O.3. The accused also showed the weapon used in the commission of offence, which was seized under Ex.P5. After completing the investigation, PW.9 filed a charge sheet before the Court of the IX Metropolitan Magistrate, Cyberabad at Kukatpally, which was taken on file as P.R.C.No.127 of 2009. After complying with Section 207 Cr.P.C., the case was committed to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.5 of 2010.

3) On appearance, charges under Sections 302 and 309 IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 9 and got marked Exs.P1 to P13 and M.Os.1 to 3. After the closure of prosecution 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 of the accused.

5) Believing the evidence of PWs.1 to 4, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that the prosecution has not come forward with true version of the case and has suppressed the genesis of the incident. According to her, when the accused also sustained injuries, which is evident from the medico legal certificate issued by Ark Hospital, Kukatpally, which was produced by the prosecution themselves through the investigating officer, a doubt arises as to whether the accused can be held liable for the offence of murder. Hence, she would submit that even the entire prosecution case is to be accepted, the accused cannot be convicted under Section 302 IPC.

7) On the other hand, learned Public Prosecutor would contend that the evidence of PWs.1,3 and 4 amply establish the

presence of the accused at the time of the incident and that the evidence of PW.1 alone is sufficient to base a conviction.

8) The short point that arises for consideration is whether the accused is responsible for the death of the deceased, if so whether he can be convicted under Section 302 IPC.

9) In order to appreciate the same, it would be useful to refer to the relevant portion in the evidence of PWs.1 to 4, which is as under:

10) PW.1, who is the mother of the deceased, deposed as under:

“Accused is my husband. The deceased Hari Charan is my son. My husband addicted to alcohol and used to beat us. The accused used to beat us for money. He became a vagabond. On 14.07.2009 at about 11.00 a.m., the accused left the house taking money and returned fully drunken state. He demanded money for further drinking. Then no money was available. Then the accused took out a kitchen knife to stab me. As my son intervened, the accused stabbed my son on right side below stomach. My son came down the stairs and was taken to hospital. The accused with the same knife tried to cut his throat. We joined our son Hari Charan in Prime hospital and my son died due to the bleeding injury. I lodged police complaint on the same day. Ex.P1 is the complaint lodged by me.”

11) PW.2, who is the relative of PW.1, deposed as under:

“I am resident of Kailashnagar, Chandanagar. PW.1 is my relative. Vinesh Kumar is relative of accused. I

know accused. PW.1 and the accused were residents of KPHB. Accused was working as Electrician after obtaining VRS from ICRISAT. I know Hari Charan, he died on 14.07.2009. I was not present at the time of actual incident. LW2-Vinesh Kumar, informed me about the incident through phone. He informed me that accused stabbed Hari Charan and that they are taking the injured to hospital and asked me to come to Prime hospital. I found the stab injuries below the right stomach of the injured. I came to know that when there was altercation between PW.1 and the accused, Haricharan intervened and the accused stabbed Haricharan.”

12) PW.3, who is the brother-in-law of the deceased, deposed as under:

“Accused has no avocation at the time of incident. Hari Charan died on 14.07.2009. There was altercation in the house of accused and PW.1. I rushed to the house of PW.1 from down stairs and foundt he accused stabbed Hari Charan and there was bleeding injury below the right stomach of Hari Charan. I found a knife. Thereafter, we shifted Hari Charan to Prime Hospital. Hari Charan died within one hour of the incident. The accused inflicted injury to his body with a blade.”

13) PW.4, in her evidence, deposed as under:

“I came to know that PW.1 and the accused quarreled. Accused in a drunken state tried to stab PW.1 and when Hari Charan intervened, the accused stabbed Hari Charan and Hari Charan came down the stairs with bleeding injury below his stomach. The injured informed me that the accused stabbed with a kitchen

knife. The accused also inflicted injuries to his neck. Hari Charan was joined in hospital and he died in the hospital.”

14) All the witnesses in one voice say that the accused was habituated to alcohol and used to quarrel with his wife in drunken condition. It is the case of PW.1 that on 14.07.2009 at about 11.00 a.m., the accused left the house by taking money and returned home in fully drunken condition. He again demanded money for consuming alcohol. When she refused to give money, the accused took out a kitchen knife and tried to stab PW.1. At that time, the son of PW.1 (deceased) intervened and the accused is said to have stabbed the deceased on right side below stomach. On receiving the injury, deceased came down the stairs and was shifted to hospital. Though PW.1 was cross-examined at length, nothing useful was elicited to discredit her testimony. However, it was elicited in the cross-examination that there were disputes between PW.1 and the deceased prior to the incident. To a suggestion that the accused was not addicted to alcohol was denied by her. To a suggestion that PW.1 stabbed the deceased with the help of others, was denied by her.

15) PW.2 is the relative of PW.1. He came to know about the incident and shifting of the injured to Prime Hospital through Vinesh Kumar. Accordingly, he went to Prime Hospital and came to know that there was an altercation between the accused and PW.1 and the incident of stabbing occurred when the deceased

intervened in the said quarrel. He was also cross-examined at length, but nothing useful to falsify his evidence was elicited.

16) Coming to the evidence of PW.3, he stated that accused has no avocation and on 14.07.2009 there was an altercation in the house between the accused and PW.1. He rushed to the house of PW.1 and found the accused stabbing the deceased. Thereafter, he along with others shifted the deceased to Prime Hospital, where he died within one hour. Similar is the version of PW.4, who is the neighbour of PW.1.

17) From the evidence of all these witnesses, it is clear that the accused came to the house in drunken condition and demanded PW.1 to give more money and when she refused to give money, he took out a kitchen knife and tried to stab her, at that time the deceased intervened and the accused is said to have stabbed the deceased on his stomach. From the above, it is clear that the accused had neither any motive nor intention to kill the deceased.

18) It is also to be noticed that at the time of incident the accused was in drunken condition. Be that as it may, the evidence of PW.9-the investigating officer shows that on the date of incident the accused himself surrendered before the police station with injuries and immediately thereafter he was sent to Ark Hospital, Kukatpally. After his discharge from the hospital, PW9 took the accused into his custody. Ex.P10 is the medico legal certificate of the accused issued by the said hospital. A perusal of column No.2

of Ex.P10 show that the accused sustained injuries while he was quarrelling with his son at his house. It would be useful to extract the relevant portion in the said certificate, which is as under:

“Brief History of the case: Informants. *Injury while quarrelling with his son at his house.*”

19) Apart from that, the said certificate also shows that the accused sustained cut injury on left side of neck and another lineal incised injury over abdomen. Hence, the presence of the accused at the scene of offence stands established. It may be true that the accused might have sustained injuries, but at the same time one cannot rule out the involvement of the accused in stabbing the deceased, in view of the evidence of PW.1 which gets corroboration from the medical evidence.

20) In *Yomeshbhai Pranshankar Bhatt Vs. State of Gujarat*¹, the Apex Court held as under:

“When accused had no pre-meditation to kill deceased or cause any bodily harm or injury to deceased, everything happened on spur of moment, possibility of accused losing self control on some provocative utterances of deceased cannot be ruled out and in such case the accused is liable to be convicted under Sec.304 Part II instead of Section 302 of IPC.”

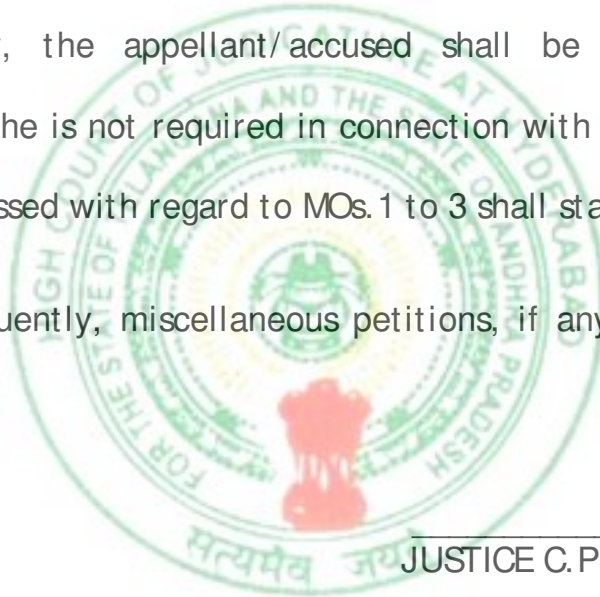
21) In view of the judgment referred to above; taking into consideration the totality of the circumstances and the manner in which the incident in question took place, we feel that it is a fit

¹ 2011(2) ALD (CrI.) 238 (SC)

case where the nature of offence can be scaled down from 302 IPC to 304 Part-II IPC.

22) In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.5 of 2010 on the file of the III Additional District and Sessions Judge (Fast Track Court), Ranga Reddy, for an offence punishable under Section 302 IPC is altered to one under Section 304-II IPC. For the altered conviction, the appellant is sentenced to imprisonment for the period already undergone by him. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in connection with any other case. The order passed with regard to MOs.1 to 3 shall stand confirmed.

23) Consequently, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

18.12.2017
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