

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.509 OF 2012

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

1) The sole accused in Sessions Case No.400 of 2011 on the file of the XI Additional District and Sessions Judge, Krishna at Gudivada, is the appellant herein. He was tried for the offences punishable under Sections 302 and 449 IPC. By its judgment dated 29.03.2012, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" and to pay fine of Rs.5,000/- for the offence punishable under Section 302 IPC and further sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5000/- for the offence punishable under Section 449 IPC. Both the sentences were directed to run concurrently.

2) The gravamen of the charge against the accused is that on 28.12.2010 at about 12.00 noon the accused trespassed into the house of Syed Azedunnia (hereinafter refer to as "the deceased") and caused her death by stabbing on her abdomen with sphere type knife.

3) The facts in issue are as under:

i) PW.1 is the daughter and PW.2 is the husband of the deceased. PW.3 is the neighbour. The accused is none other than the son-in-law of the deceased and husband of PW.1. The record

show that the deceased divorced her first husband and married PW.2 and thereafter, she changed her name and religion. PW.1 also divorced her first husband by name Narayana and married the accused on 10.01.2010. On the date of incident at about 10.30 or 11.00 a.m., while PW.3 was in her house, she heard the cries of the deceased. Thinking that the deceased fell in bathroom, PW.3 went there and did not notice her in bathroom. Then, she went into the house and noticed the deceased on ground. She also noticed the accused going out of the house with a knife. On seeing blood, PW.3 fell unconscious and she regained consciousness after one hour in the hospital. At about 11.30 or 12.00 noon, PW.2 received information about his wife being stabbed by the accused. Then, he started from Bhimavaram, contacted PW.1 over phone but could not get connection till he reached Mudinepalli. On phone PW.1 was informed that the condition of the deceased was serious and is advisable to shift her to Vijayawada. Accordingly, the deceased was shifted to Vijayawada without waiting for him. On 28.12.2010 at about 1.15 p.m. while PW.11-the Head Constable was on duty at out post, Government Area Hospital, received an intimation (Ex.P12) about the admission of the injured in the hospital. Immediately, he proceeded to the hospital and recorded the statement of the injured, which is marked as Ex.P13. The said statement was attested by the doctor showing the condition of the injured. On the same day, PW.12-the Sub-Inspector of Police, received the statement recorded by PW.11, basing on which a case in Crime No.118 of 2010 was registered for the offences punishable

under Sections 448 and 307 IPC. Ex.P14 is the first information report. Thereafter, he visited the Government Hospital, Gudivada, examined the injured and recorded her statement. He also recorded the statements of PWs.1 and 2. From the hospital, he visited the scene of offence situated at Valivarthipadu road and got drafted the observation report in the presence of PW.8 and another. Ex.P8 is the observation report while Ex.P16 is the rough sketch of the scene. He got photographed the scene of offence and examined PWs.3 to 6. On 29.12.2010 at about 6.00 a.m. he arrested the accused and seized M.O.1 from the accused in the presence of mediators. As PW.12 was transferred, subsequent investigation was taken up by PW.13.

ii) On 04.02.2011 ie. nearly 35 days after the incident, PW.13-the Sub-Inspector of Police, received a death intimation from Government Hospital, Vijayawada. Ex.P16 is the death intimation relating to the deceased. Immediately thereafter he altered the section of law to 302 IPC. Further investigation was carried on by PW.14-the Inspector of Police. After receiving the altered F.I.R, PW.14 verified the scene of offence panchanama and rough sketch and thereafter proceeded to the Government Hospital, where he conducted inquest over the dead body of the deceased in the presence of PW.10 and others. During inquest, he examined the blood relatives of the deceased and recorded their statements. Thereafter, the body was sent for postmortem examination. Then, he returned to Gudivada, proceeded to the scene of offence and recorded the statements of PWs.4 to 6.

PW15-the Professor, Department of Forensic Medicine, Siddhartha Government Medical College, conducted autopsy over the dead body of the deceased and issued Ex.P20-the postmortem examination report. According to him, the cause of death was “due to multiple stab injuries and their complications.” After completing investigation, PW.14 filed a charge sheet before the Court of Additional Judicial Magistrate of First Class, Gudivada, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.400 of 2011.

4) On appearance, charges under Sections 302 and 449 IPC were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P20 and MOs.1 to 3. 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 of the accused.

6) Out of 15 witnesses examined by the prosecution, PWs.1,2 and 4 to 6 did not support the prosecution case and they were treated as hostile. Relying upon Ex.P13-statement of the deceased recorded by the police and also the oral testimony of PW.3, the Sessions Judge, convicted the accused for the offences punishable

under Sections 302 and 449 IPC. Challenging the same, the present Criminal Appeal came to be filed.

7) Learned counsel for the appellant mainly submits that the trial Court erred in believing the evidence of PW.3 to base a conviction since the evidence on record discloses that she was not an eye witness to the incident. He would further submits that Ex.P13-the statement of the injured recorded by the police cannot be taken into consideration since no reasons are given as to why no effort was made to get the declaration of the injured recorded by the Magistrate. In view of the above, he submits that the conviction and sentence imposed by the trial Court is illegal, improper and incorrect.

8) On the other hand, learned Public Prosecutor would submit that the evidence on record amply establish that the accused alone is responsible for the incident, but however, he admits that as the injured survived for a long time and the death was due to complications, the nature of offence can be altered.

9) The question that falls for consideration is whether the accused is guilty for committing the murder of the deceased.

10) As stated earlier, the entire case rests on the evidence of PW.3 and Ex.P13. The fact that the deceased was living separately away from the accused, who is her son-in-law, was spoken to by PWs.1 and 2. The evidence of PWs.1 and 2 shows that there exist some disputes between the deceased and the accused. On the date of incident, PW.3, who is the neighbour of the deceased,

heard some cries of the deceased. Thinking that the deceased might have fallen in bathroom, she went there but did not find the deceased in bathroom. Thereafter, she went inside the house and found the deceased on the ground. She also noticed the accused leaving the house with a knife. From the evidence of PW.3, it is clear that immediately after hearing cries, she went there and found the accused leaving the house with knife. The knife which was seized pursuant to the disclosure statement made by the accused, was said to be the weapon used in the commission of offence. The said version of PW.3 gets ample corroboration from the statement of the deceased (Ex.P13). It would be useful to refer to the relevant portion of the statement of the injured/deceased, which is as under:

"As usual, this day ie. 28.12.2010 morning my daughter came to my house with late and we both quarreled with each other. My daughter then left for her house. My son-in-law phoned to me and asked as to why quarreled with his wife to which I answered that because she came late for the work I disputed with her. Then my son-in-law replied on phone that he is coming to my house but I asked him not to come and he kept the phone. I informed it to my husband. While I was in my house, at 12 noon my son-in-law by name Abdul Khadar came abusing and with a view to kill me, he stabbed on my stomach with a knife six times. While I am crying loud, he again stabbed on the left side chest and breast and I received bleeding injuries. On hearing my cries Sonti Janaki, Abimunnisa came and on seeing them, my son-in-law ran away meanwhile the neighbours and others of my locality came. Ambulance also came then. I was taken in the ambulance to Gudivada

Government hospital and was joined there. The doctor gave me treatment.”

11) Though the head constable, who recorded Ex.P13, was examined as PW.11, but nothing was elicited to discredit or disbelieve the said statement. From the version of PW.3 coupled with Ex.P13-the statement of the deceased, which was endorsed by the doctor, it can be said that the accused alone is responsible for the incident.

12) But, the next question that falls for consideration is whether the accused can be made liable for the offence punishable under Section 302 IPC.

13) Admittedly, the incident in question took place on 28.12.2010 and immediately thereafter the injured was shifted to the hospital. The evidence of PWs.1 and 2 would show that for three days the deceased was un-conscious and after three days she regained consciousness, but could not speak out properly. The evidence on record also shows that about three months prior to the date of incident, the deceased underwent a surgery, for removal of uterus. The evidence of investigating officer would show that he received intimation about the death of the deceased, which lead to alteration of section of law. After receipt of intimation about the death of the deceased, the Inspector of Police conducted inquest over the dead body and then forwarded the same to the hospital for postmortem examination. PW.15-the doctor, who conducted autopsy over the dead body of the deceased opined that the cause of death was due to multiple stab injuries and their

complications. In the cross-examination, PW.15 states that he cannot definitely say such injuries were spindle shaped, because when he saw the injuries they were infected and sutured. It would be useful to extract the relevant portion of the evidence of the doctor, which is as under:

“I am of the opinion, the cause of death to the best of my knowledge and belief, was due to multiple stab injuries and their complications.

If, double edged weapon is used spindle shape wound is caused. I cannot definitely say such injuries were spindle shaped, because, when I saw the injuries they were infected and sutured.”

14) Taking clue from the evidence of the doctor, learned counsel for the appellant pleads that since the injuries caused were not the direct consequence for the death of the deceased, as the evidence of the doctor itself reveals that the tissues are infected; and the cause of death was due to multiple stab injuries and their complication, the nature of offence has to be scaled down.

15) As seen from the above, the deceased died nearly 36 days after the incident. The medical evidence, more particularly the evidence of PW.15 clearly discloses that the tissues were infected and there was complication. Therefore, it cannot be said that the injuries which are caused by the accused on 28.12.2010 are responsible for the death of the deceased. Hence, from the evidence of the doctor, it can be said that the death was due to infection to the injuries and complications developed pursuant

thereto. Hence, we are of the opinion that the nature of offence can be scaled down from 302 to 304-II IPC.

16) In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.400 of 2011 on the file of the XI Additional District and Sessions Judge, Krishna at Gudavada, for an offence punishable under Section 302 IPC is altered to one under Section 304-I IIPC. For the altered conviction, the appellant is sentenced to imprisonment for the period already undergone by him. The conviction and sentence imposed by the trial Court for the offence punishable under Section 449 IPC remained un-altered. Consequently, the appellant/ accused shall be set at liberty forthwith, if he is not required in connection with any other case. Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

06.12.2017
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