

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.1464 of 2011

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

1) The sole accused in Sessions Case No.244 of 2011 on the file of the V Additional District & Sessions Judge, Prakasam District, Ongole, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife Bapatla Anjamma (hereinafter referred to as "the deceased") by hacking her on the right side of the neck with a knife on 12th March, 2011 at Mallelacheruvu. By its judgment dated 03.11.2011, the V Additional District & Sessions Judge, Prakasam District, Ongole, convicted the accused under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.1,000/-, in default, to undergo imprisonment for a period of one month.

2) The facts as culled out from the evidence adduced by the prosecution are as under:

The accused who is the husband of the deceased was living with her at Mallelacheruvu Village. P.Ws.2 and 3 are the sons of the accused and deceased, while P.Ws.4 to 8 are the residents of Mallelacheruvu Village. The accused used to suspect the character of the deceased and pickup quarrels with her. As per the evidence, P.Ws.2 to 8 used to leave the house at 6.00 a.m and go to cut trees, up to 1.00 p.m. As usual on the date of incident also at 6.00

a.m, the accused, deceased and others went in an auto to Mallelacheruvu to cut trees. At about 1.00 p.m, the deceased along with the other coolies had lunch and later loaded the sticks into the tractor. At about 4.00 p.m, P.Ws.5 to 7 boarded an auto to return home. When the deceased was about to get into the said auto, the accused went there and hacked her on the right side of the neck with a knife and later ran into the bushes. The deceased fell down in a pool of blood. Immediately thereafter, she was shifted to the hospital of one Kodandaram at Medarametla, where she was declared dead. On 12.03.2011 at about 6.00 p.m, P.W.1, P.Venkata Ramaiah, on coming to know about the death of the deceased, went to the house of the deceased and recorded the statement of P.W.2, the son of the deceased, which is brought on record as Ex.P.1. Basing on Ex.P.1 report, P.W.17 the Assistant Sub Inspector of Police registered a case in Crime No.13 of 2011 under Section 302 IPC of Medarametla Police Station on 12.03.2011 and issued Ex.P.14, the F.I.R. Further investigation was taken up by P.W.18, the A.S.I of Police. On the same day at about 7.00 p.m, after receiving the information about the death of the deceased, P.W.18 the A.S.I of Police proceeded to Medarametla, visited the scene of offence and posted a Constable to guard the dead body of the deceased for that night. On the next day, he conducted a Panchanama of the scene of offence in the presence of P.W.1. Ex. P.15 is the Rough Sketch of the scene of offence. He also got photographed the scene of offence with the help of P.W.9. During the said process, P.W.18 seized blood stained earth, control earth and also one cell phone from the scene of offence, in the presence of P.W.1. Later, P.W.18 visited the house of the deceased

and recorded the statement of P.Ws.1 to 3 and others. Thereafter, he conducted inquest over the body of the deceased in the presence of P.W.1. Ex.P.3 is the inquest report. After the completion of inquest proceedings, P.W.18 sent the body for autopsy. P.W.15 the Civil Assistant Surgeon working at Community Health Centre, Addanki conducted autopsy over the dead body and issued Ex.P.12, the postmortem report. According to him, the cause of death was “shock due to hemorrhage and nuerogenic shock” and death took place about 20 to 24 hours prior to postmortem examination.

3) On 17.3.2011 P.W.18, visited Mederametla and at about 3.00 p.m arrested the accused. The accused said to have been made a confessional statement in the presence of mediators and lead the police party to the scene of offence from where an iron knife (M.O.2) used in the commission of offence, was recovered, under the cover of pancha. Ex.P.5, prepared in the presence of mediators. On 21.03.2011, P.W.18 sent a letter to the Sub Divisional Police Office, Darsi for issuing a letter of authorization, to send the material objects to the RFSL, Guntur. After receiving the necessary documents; obtaining the R.F.S.L report from the Sub Divisional Police Office, Darsi and after completion of investigation, P.W.18 filed the charge sheet, which was taken on file as P.R.C.No.11 of 2011 on the file of Additional Munsif Magistrate, Addanki after complying with the Section 207 Cr.P.C. and as the case was triable by a Court of Session, was committed to the Court of Session, which came to be numbered as S.C.No.244 of 2011.

4) On appearance a charge under Section 302 IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5) In support of its case, the prosecution examined PWs.1 to 18 and got marked Exs.P.1 to P.16 and M.Os.1 to 5. 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 his behalf, in support of his defence.

6) Basing on the evidence of P.Ws.2 to 8, the learned Judge convicted the accused for an offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

7) The learned counsel for the appellant would contend that since P.Ws.2 and 3 are the children of the deceased, their evidence cannot be accepted. He further submits that even if the prosecution's case is accepted in toto, no offence under Section 302 IPC is made out.

8) On the other hand, learned Public Prosecutor opposed the same contending that merely because P.Ws.2 and 3 are the children of the accused and deceased, they cannot be termed as interested witnesses. Their presence at the scene is natural and they are natural witnesses. In so far as the case of the defence is concerned, learned Public Prosecutor would submit that in the absence of any provocation or any sudden quarrel, it has to be inferred that because of his suspicion over the deceased with

regard to her chastity, he has hacked the deceased on a vital part of the body.

9) In order to appreciate the same, it is useful to refer to the evidence of P.Ws.2 and 3, who are none other than the children of the accused and the deceased and who were examined as eye witnesses to the incident. Their evidence disclose that on the incident at about 6.00 p.m, P.Ws.2 and 3 along with the accused and deceased proceeded towards Medarametla to cut Japan Babul trees and at about 1.00 p.m, they had lunch. Thereafter, they loaded the said Japan Babul trees in a tractor. At about 4.00 p.m, P.Ws.5 to 7 boarded an auto and when the deceased was about to get into the auto, the accused went there and hacked on the right side of the neck of the deceased with a knife. Thereafter, he ran away into the bushes. The deceased fell down in a pool of blood and immediately thereafter she was shifted to the hospital of Kodandaram at Medarametla, where she was declared dead. Their evidence gets corroboration from the evidence of P.Ws.4 to 8. All of them in one voice deposed that at about 4.00 p.m, when the deceased was boarding the auto, the accused went there and hacked on the right side of the neck with a knife and later escaped into the bushes. Though all the witnesses were cross-examined, nothing useful was elicited to discredit their testimony. The evidence of the witnesses gets corroboration from the evidence of the doctor (P.W.15), who conducted the postmortem examination over the body of the deceased. According to him on 13.03.2011, he conducted the postmortem examination over the body of the deceased and noticed the following injuries:

- i) Right side of the neck muscles were completely cut
- ii) Major blood vessels (Namely carotid arteries) were cut
- iii) Internal and external jugular veins were cut
- iv) Fracture of cervical spine present. The total cut injury measurement about 6" X 2" X 1" bone deep.

10) According to him, because of the above said injuries, the deceased died of shock due to hemorrhage and nuerogenic shock. Therefore, the finding of the Court below that it was the accused who hacked on the right side neck of the deceased with a knife leading to internal damage on the right side of the neck, which caused the death, cannot be held to be illegal or improper.

11) At this stage, the learned counsel for the appellant would contend that since there is no motive for the accused to kill the deceased, the conviction may be altered to one under Section 304 Part-I IPC. But it is to be seen that merely because a single blow was given, the offence would not automatically get altered to one under Section 304 Part-I IPC. It all depends upon the facts and circumstances of each case. In the instant case, as seen from the record, the accused was suspecting the chastity of his wife, which was spoken to by P.W.3, who is none other than the son of the accused and deceased. Though all of them, depose that they went to cut trees and had lunch together, but definitely the act of the accused was without any provocation or quarrel from any quarters, which means he must have planned to eliminate the deceased at one point of time or the other. Otherwise, there is no reason for him to attack the deceased. It is to be noted here that the weapon with which the accused attacked the deceased is a dangerous weapon and the portion where the blow landed was on a vital part

of the body i.e., the neck. The observations of the doctor show that the blow given to the deceased appeared to be a very heavy blow, leading to cutting of arteries and muscles on the right side of the neck of the deceased. If really the intention of the accused was to cause only bodily injury definitely he would not have attacked on the vital portion of the body with such force. Hence, we hold that the prosecution proved its case through the evidence of P.Ws.2 to 8 who are the eye witnesses to the incident. In **Chenda @ Chanda Ram vs. State of Chhatisgarh**¹, the Apex Court held as under:

“14. It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors.”

12) In view of the above judgment of the Apex Court and for the aforesaid reasons, we feel that it is a fit case where the appellant is liable to be convicted for the offence punishable under Section 302 IPC.

13) In the result the appeal fails and it is accordingly dismissed, confirming the conviction and sentence passed in S.C.No.244 of 2011 on the file of the V Additional District & Sessions Judge, Prakasam District, Ongole. Consequently, miscellaneous petitions, if any, pending shall stand closed

C.PRAVEEN KUMAR,J

KONGARA VIJAYA LAKSHMI,J

Date:07.11.2017
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¹ Law (SC) 2013 (8) 68

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