

**THE HONOURABLE SRI JUSTICE RAJA ELANGO
AND
THE HONOURABLE SRI JUSTICE P.KESHA RAO**

CRIMINAL APPEAL No.318 OF 2011

JUDGMENT: (per Hon'ble Sri Justice Raja Elango)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 20.12.2010, in Sessions Case No.238 of 2008 on the file of the IV Additional Sessions Judge, Ranga Reddy District at L.B.Nagar whereunder and whereby, appellant herein/sole accused was found guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, "I.P.C.") and he was convicted under Section 235(2) Cr.P.C. and sentenced to suffer imprisonment for life and also to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for three months.

2. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

The Inspector of Police, Alwal laid the charge sheet against the accused for the offence punishable under Section 302 I.P.C. in Crime No.13 of 2007 before the VI Metropolitan Magistrate, Cyberabad at Medchal with the following allegations:-

On 06.01.2007, at about 2:00 A.M., the accused throttled his wife Yamma in his hut situated at Muralikrishna Apartments at Devi Kalyani Estates in Yaprul with an electrical wire with an intention to kill her as he suspected her conduct. The accused used to quarrel with her. The accused was working as a

watchman since four months prior to the incident and was living in the said hut with his family. On 06.01.2007, at about 2:00 A.M., the accused requested P.W.2 - A. Kistaiah on phone informing him that he got fight with his wife and requested Kistaiah that his wife Yamma was in serious condition and then Kistaiah came to the hut of the accused and then shifted Yamma to Laxminarayana Hospital. The hospital authorities asked them to shift her to Gandhi Hospital as there was a mark of ligature on her neck and she was unable to breathe. While they were taking her to Gandhi Hospital, she died on the way. Her body was brought to the hut of accused. On the report given by P.W.1 – D.Ajay, police registered the case and investigated into. During the course of investigation, witnesses were examined, scene observation report, rough sketch were prepared, inquest over the dead body was conducted and photographs were taken over the dead body of the deceased and the scene of offence. The dead body was sent for post mortem examination. The doctor, who conducted autopsy, opined that she died due to ligature strangulation. The accused was arrested on 09.01.2007 and sent him to Court. Hence, the charge.

3. The trial Court framed charge under Section 302 I.P.C. against the accused.

4. When the above charge was read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

5. To substantiate the charges, the prosecution examined P.Ws.1 to 10 and got marked Exs.P-1 to P-8 besides case property – M.O.1.

6. After closure of the 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 prosecution witnesses. He denied the same. On behalf of the accused, none was examined and no documents were got marked.

7. The trial Court, after appreciating both oral and documentary evidence on record, found the accused guilty of the charge with which he was charged and accordingly, convicted and sentenced him as stated supra. Challenging the same, the present appeal is filed by the accused.

8. The learned trial Judge rightly framed the point as to whether the prosecution proved that the accused murdered his wife Yadamma by throttling her neck on 06.01.2007 at about 2:00 A.M. in his hut. The circumstantial witnesses, even though turned hostile, the fact remains that the accused and the deceased lived together under one roof and that the accused informed the neighbours regarding the illness of the deceased and took her to the hospital, but she was declared dead due to the throttling of her neck. So, it is evident that on the date of incident, the accused caused the death of the deceased, but at the same time, even as per the case of the prosecution, there were quarrels between the accused and the deceased since the accused suspected the character of the deceased. Further, it is evident that on the date of the incident, the accused himself informed the neighbours that he was afraid that something wrong might go on and he had taken the deceased to the hospital, but on the way, the deceased died due to the throttling of her neck. There is no evidence on record to show

that the accused, with an intention to kill the deceased, caused injuries on her. Even from the subsequent conduct of the accused regarding informing the neighbours and also trying to save the life of the deceased, it is evident that even though the act caused the death of the deceased, the intention to commit murder by the accused is not established. Hence, while accepting the case of the prosecution that the death is caused by the accused, as the same is not an intentional one and occurred only because of provocation and happened at the spur of the moment over a quarrel with the deceased, this Court is of the view that the accused is liable to be convicted under Section 304 Part-II I.P.C.

9. At this stage, learned counsel for the appellant sought to reduce the punishment imposed by the trial Court.

10. From the material available on record and in view of the fact that the accused is the sole bread winner to his family and he has to look after his old aged mother, who is ill, and minor daughter, this Court is inclined to modify the sentence.

11. In the result, the conviction and sentence recorded by the IV Additional Sessions Judge, Ranga Reddy District vide judgment, dated 20.12.2010, in Sessions Case No.238 of 2008 against the appellant/sole accused for the offence punishable under Section 302 IPC are set aside, instead, the appellant/sole accused is found guilty of the offence punishable under Section 304 Part-II I.P.C, accordingly convicted and sentenced to undergo rigorous imprisonment for a period of six (6) years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for three (3) months. The period of remand underwent by him during

investigation, trial and after conviction shall be given set off, under Section 428 IPC.

12. Accordingly, the Criminal Appeal is partly allowed.

13. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE RAJA ELANGO

JUSTICE P.KESHA VA RAO

Date: 21.09.2017
AMD



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