

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.294 OF 2011

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

1. This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.') is filed by the accused questioning the judgment dated 31.01.2011, passed in Sessions Case No.384 of 2010 by the IV Additional District and Sessions Judge (Fast Track Court) at Khammam (for brevity, 'the trial Court'), whereby the trial Court convicted the accused under Section 235(2) Cr.P.C. and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs.100/- (Rupees one hundred only), in default, to suffer simple imprisonment for one week, for the offence under Section 302 of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.'), by holding that the accused is entitled to the benefit of set off under Section 428 Cr.P.C.

2. Heard Sri Suresh Kumar Reddy Kalava, learned counsel appearing for the appellant-accused, and Sri C.Pratap Reddy, learned Public Prosecutor, appearing for the respondent-State (T.G.).

3. The case of the prosecution, in brief, is R.Sai Baba (P.W.14), Circle Inspector of Police, Kusumanchi, laid charge sheet against the accused alleging that Kamalla Mojes (P.W.1),

V.R.O. of Pynampalli village, lodged a telugu written report in Tirumalayapalem Police station, stating that on 17.03.2010 morning at 08:00 hours Yelka Chandraiah (P.W.2), Village Servant, informed him that in view of Ugadi festival on 16.03.2010 morning, accused quarreled with his wife Kancham Kasamma (hereinafter referred to as 'the deceased') and beat with a stick on her face; due to which, the deceased received severe injuries and died at 07:00 p.m., on that P.W.1 went to Pynampalli village and saw the dead body of deceased with injuries on her fore-head, top of right eye, both thighs and knees and requested to take necessary action in the matter. On receipt of the written report, S.Jayapal, P.W.14, Sub-Inspector of Police, Thirumalayapalem Police Station, registered the same as a case in Crime No.33 of 2010 for the offence under Section 302 I.P.C., issued copies of express F.I.Rs. to all the concerned, visited the scene of offence, prepared rough sketch, held inquest over the dead body of deceased and sent the corpse to Government Head Quarters Hospital, Khammam, for autopsy, duly taking photographs of the dead body of deceased and recorded the 161(3) Cr.P.C. statements of the witnesses. P.W.13 Dr.P.Seshagiri Rao, Civil Assistant Surgeon, who conducted autopsy over the dead body of deceased on 18.03.2010, opined that the deceased appears to have died 34 to 48 hours prior to his examination due to shock and haemorrhage due to injury to her head. P.W.14, Circle Inspector, took up further investigation in the matter, arrested the accused on 17.04.2010 and sent the

accused to judicial remand, after seizing the crime weapon, stick (M.O.1).

4. The learned Magistrate committed the case to the Court of Principal District and Sessions Judge, Khammam, and the same was made over to the Court of IV Additional District and Sessions Judge (Fast Track Court) at Khammam *i.e.*, the trial Court. The trial Court framed charge against the accused for the offence under Section 302 I.P.C., for which he denied the charge and claimed to be tried. The prosecution to substantiate its case examined P.Ws.1 to 15, marked Exs.P.1 to P.16 and M.O.1, and on behalf of the defence, Exs.D-1 to D-6 were marked. The accused was examined under Section 313 Cr.P.C., denied the incriminating evidence, did not adduce any evidence to defend his case. The trial Court, on appreciation of the entire evidence on record, convicted and sentenced the accused as stated above. Aggrieved by the conviction and sentence, the present Appeal is preferred by the accused.

5. Sri Suresh Kumar Reddy Kalava, learned counsel for the appellant/accused, would submit that the trial Court erred in relying on the evidence of P.Ws.3 to 5. The prosecution failed to prove the guilt of the accused beyond all reasonable doubt for the offence under Section 302 I.P.C. The medical evidence on record does not corroborate with ocular evidence. The deceased was in the habit of drinking alcohol. There is evidence of P.W.7 that the deceased and accused lived amicably. The deceased

fell down, suffered injuries and succumbed to death. P.Ws.3 to 5 are planted witnesses; the trial Court failed to consider Exs.D-1 to D-6 and ultimately prayed to allow the Appeal setting-aside the conviction and sentence recorded against the accused.

6. On the other hand, Sri C.Pratap Reddy, learned Public Prosecutor (T.G.), would contend that P.Ws.3 to 5 are the natural and reliable witnesses, moreover they are neighbours of the deceased and there is no reason for them to speak falsehood against the accused. The trial Court has appreciated all the facts and circumstances of the case and rightly convicted and sentenced the accused. There are no circumstances to set-aside the conviction and sentence recorded against the accused and prayed to dismiss the Appeal.

7. In view of the contentions put forth by both sides, the following **points** have come up for determination:

1. Whether the accused has caused the death of his wife Kancham Kasamma (deceased)?

2. Whether the conviction and sentence recorded against the accused is liable to be set-aside?

8. **POINT Nos.1 and 2:** The evidence of P.W.1, Kamalla Mojes V.R.O. of Pynampalli village, who resides at Khammam reveals that on 17.03.2010 at 08:00 a.m. P.W.2 informed him the death of deceased in this case; then he went to the house of the deceased, situated at Pynampalli village and found the dead

body of the deceased with several injuries on body. Then, he went to the Police station and lodged Ex.P-1 report. Ex.P-1 report corroborates with his testimony. On receipt of Ex.P-1 report, P.W.15, Sub-Inspector of Police, registered a case in Crime No.33 of 2010 against the accused for the offence under Section 302 I.P.C. and issued Ex.P-16 F.I.R. Later, he handed over the investigation to P.W.14, Circle Inspector of Police.

9. The evidence of P.W.2 Yelaka Chandraiah, Village Secretary, Pynampalli village, reveals that at 09:00 a.m. on 17.03.2010 he along with P.W.1 went to Pynampalli village; the accused was not found at his house and he observed the dead body of deceased in this case.

10. The evidence of P.W.3 Kanchem Veeramma, neighbour of the deceased, reveals that she is the resident of Pynampalli village. There is evidence on record that a road intervenes the house of the accused and her house; she knew accused and deceased and also stated that they both used to quarrel and beat each other. On the day of Ugadi festival *i.e.*, on 16.03.2010, when she along with others was sitting on the road, she heard cries twice; then she along with P.W.4 rushed to the house of deceased and noticed the accused and deceased, beating each other with sticks and the deceased fell down. Then, she along with P.W.4 advised the accused not to quarrel and placed the deceased on a cot and again at 06:00 or 06:30 p.m. on that day, P.W.5 noticed Kasamma died, when P.W.5 went to the house of

the deceased to secure hens. She heard the cries of P.W.5, then P.W.3 along with P.W.4 and others went there and noticed injuries on the dead body of deceased. P.W.4, Dussa Sarojanamma, who is also a neighbour of the deceased, corroborated with the evidence of P.W.3 in all respects.

11. The evidence of P.W.5 Bommanapalli Savithamma, who is also a neighbour of the deceased, reveals that on the festival day of Ugadi, she went to the house of the accused to secure hens and called the deceased and noticed deceased lying on a cot. When she tried to wake up the deceased, she found the deceased dead and came out of the house and cried. Then P.Ws.3, 4 and Kancham Komaraiah (L.W.6) came there, she informed the death of deceased to them. P.Ws.3 and 4 informed P.W.5 that the accused beat the deceased with a stick, P.Ws.3 and 4 also noticed injuries on the dead body of deceased. In cross-examination, all these witnesses reiterated what they have stated in their chief-examinations.

12. The evidence of P.W.6 Teegala Anjaiah, who is the brother-in-law of the accused, reveals that the marriage of accused and deceased was performed about 20 years prior to his examination but they were not blessed with children, adopted P.W.7 and performed her marriage. P.W.7, Kanthu Rambayulu, adopted daughter of the deceased and accused, also spoke the same.

13. The evidence of P.W.8 Kancham Biksham reveals about the quarrels between the accused and deceased. He further stated about the death of the deceased, and noticing injuries on the dead body of deceased and those injuries were possible by beating with a stick. In cross-examination he reiterated the same.

14. The evidence of P.W.9 Gattigundla Ramaiah reveals that he is the Sarpanch of Pynampalli village and he spoke the disputes between the accused and deceased, death of deceased and seeing the dead body of deceased. He further stated that he noticed injuries on the dead body of deceased.

15. The evidence of P.W.10 Kancham Hussain is that he found injuries on the fore-head, above the right eye, thighs and knees and also on the face below the left eye of the deceased.

16. The evidence of P.W.11 Gurrala Malsoor reveals that he is a resident of Pynampalli village and knows the deceased and accused and five to six houses intervenes his house and the house of accused. He was examined by the Police and M.O.1 is the stick, seized from the accused in his presence.

17. The evidence of P.W.12 Mekala Raju reveals that he took photographs of the dead body of deceased *i.e.*, Exs.P-6 to P-13 and Ex.P-4 C.D.

18. Dr.D.Sheeshagiri Rao, P.W.13, doctor, who conducted post-mortem examination over the dead body of the deceased on 18.03.2010 at 01:00 p.m. and issued Ex.P-15 post-mortem

examination report opining that the death of the deceased was due to shock and haemorrhage, 34 to 48 hours prior to his examination. He found the following injuries on external examination over the dead body of deceased:

- 1) Right eye - red eye water fluid coming out ;
- 2) Contusion below left eye 2" x 1" ;
- 3) Contusion left temporal area 2" x 1" ;
- 4) Contusion right elbow joint 2" x 1" ;
- 5) Two contusions both thighs (anterior part) 3" x 1" each ;
- 6) Abrasion below right knee joint 6" x 1" ;
- 7) Abrasion below left knee joint 2" x 3" ;
- 8) Abrasion on left arm and above elbow joint 2" x 1½" and
- 9) Laceration on left shoulder 2 x 1 x ¼.

He further stated that the injuries on the dead body of deceased were caused with a blunt object. The injury on the head is fatal one and it is sufficient to cause death. A suggestion was given to many of the prosecution witnesses that the deceased consumed alcohol, fell down, suffered injuries and died but the same was denied by them. P.W.13 doctor also denied a suggestion that the injuries were possible in a motor accident and the injuries given by him are not fatal.

19. P.W.14, R.Sai Baba, Circle Inspector of Police, also denied the suggestion that the deceased did not die due to the injuries

mentioned in Ex.P15 post-mortem examination report. There is no evidence of deceased consuming alcohol. There is evidence of P.W.15, J.Jaipal, Sub-Inspector of Police, that the scene of offence is the house of the deceased; he secured the presence of P.W.10 and L.W.16 Mekaraboina Sydamma and with their help he conducted inquest over the dead body of the deceased. Ex.P-3 is the inquest report and thereafter he sent the dead body to the Government Hospital, Khammam, for conducting post-mortem examination. He also prepared crime details form Ex.P-2 in the presence of same mediators, thereafter recorded the statements of witnesses. P.Ws.3 and 4 are the eye witnesses who saw the accused beating the deceased. P.W.5 found the dead body of the deceased and on her cries, other witnesses went to the house of the deceased and saw the dead body. All of them have seen multiple injuries on the dead body including the head injury. Under Ex.P-1 report also there is mention of accused causing injuries to deceased. As per the evidence of doctor and Ex.P-15 post-mortem examination report, the death was caused due to the head injury. The injuries mentioned in Ex.P-15 post-mortem examination report were possible with a blunt object. P.Ws.3 and 4 have also deposed accused beat the deceased with stick, it is a blunt object. There is no reason for P.Ws.3 to 5 to depose falsely against the accused. There is consistency and corroboration in their evidence. There is direct evidence of P.Ws.3 and 4 against the accused.

20. When the entire incriminating evidence is put to the accused under Section 313 Cr.P.C. examination, he simply denied the same and stated that he has been falsely implicated in this case. Though the accused has contended that the deceased consumed alcohol, fell down, suffered injuries and died, there is no such evidence on record. As per the medical evidence the deceased died at about 02:00 p.m. on 16.03.2010. The accused absconded after committing the offence. Exs.D-1 to D-6 reveals the marital relationship between the accused and the deceased and the accused beating the deceased to death with a stick and hiding the stick in his house. These documents are not inconsistent with the evidence of P.Ws.3 to 5 and other ocular and documentary evidence on record; therefore, they are not at all beneficial to the accused to establish his innocence.

21. The evidence adduced by the prosecution is consistent, unerringly pointing towards the guilty of the accused and it is not inconsistent with the innocence of accused. The prosecution has proved beyond all reasonable doubt that the accused and deceased were in the habit of quarrelling with each other and on the day of Ugadi *i.e.*, on 16.03.2010 at 07:00 a.m. morning, the accused attacked the deceased with M.O.1. stick and caused the aforesaid injuries mentioned under Ex.P-15 post-mortem examination report and due to those injuries the deceased died. There is nothing to take a different opinion. All contentions put forth on behalf of the accused that he did not

cause death do fail. The trial Court had rightly found that the accused caused the death of his wife.

22. Now the point is whether the prosecution proved the ingredients of Section 302 I.P.C.?

23. In the instant case, the prosecution could not establish the intention on the part of the accused to cause death of deceased. At this stage, it is apt to refer the decisions of the Hon'ble Supreme Court in ***Alister Anthony Pareira Vs. State of Maharashtra***¹, wherein the Supreme Court drew a distinction between the two parts of Section 304 I.P.C.

“For punishment under Section 304 Part I, the prosecution must prove the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death.....”

24. Again in ***Kasam Abdulla Hafiz Vs. State of Maharashtra***², the Hon'ble Supreme Court held as follows:

"....Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death

¹ 2012 (2) SCC 648

² 1998 (1) SCC 526

and therefore the offence would squarely come within the 1st Part of Section 304 IPC. The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed. In that view of the matter we are of the considered opinion that the High Court has rightly convicted the appellant under Section 304 Part I IPC.... "

25. This being the legal position and given the irrefutable fact in the case on hand that the accused has beaten his wife to death with a stick and when she fell down he did not bother to take her to any hospital. Water fluid was coming out of the right eye. P.Ws.3 and 4 have put the deceased on a cot and thereafter P.W.5 found the deceased died. The accused was not present at that time. The acts of the accused made it clear that he was fully aware of his action and probable consequences there from. Even if he had no intention of causing the death of his wife, he caused such bodily injuries as was likely to cause her death. It is evident from the injuries found on the dead body of the deceased, the time of the incident and the death is very short. So, the case would fall within Section 304 Part I I.P.C., as it transcends mere knowledge and verges on actual intention. Thus the prosecution has proved all the requirements of Section 304 Part I I.P.C. So, the conviction and sentence recorded against the accused is liable to be modified from Section 302 I.P.C. to Section 304 Part I I.P.C., culpable homicide not amounting to murder.

26. In the result, the conviction and sentence recorded by the trial Court in Sessions Case No.384 of 2010 dated 31.01.2011 against the accused for the offence under Section 302 I.P.C. is set-aside and the accused is convicted and sentenced for the offence under Section 304 Part I I.P.C. to suffer imprisonment for ten years and also to pay a fine of Rs.100/-, in default of payment of fine, to suffer simple imprisonment for one week. Accordingly, with the above modification, the Criminal Appeal is allowed in part.

27. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall stand closed.



SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 06-10-2017
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HON'BLE SRI JUSTICE SANJAY KUMAR

AND

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CRIMINAL APPEAL No.294 OF 2011

(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date.06-10-2017

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