

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1307 of 2011

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

The sole accused in Sessions Case No. 441 of 2010 on the file of the XI Additional District and Sessions Judge, Fast Track Court, Kakinada is the appellant herein. He was tried for the offences punishable under Sections 498-A and 302 IPC for causing the death of his wife, Ananthalakshmi. By its judgment dated 18.08.2011, the learned Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/-, in default to simple imprisonment for a period of one month. He was also convicted for an offence punishable under Section 498-A IPC and was sentenced to suffer imprisonment for one year and to pay a fine of Rs.200/-, in default to undergo simple imprisonment for a period of fifteen days. Both the sentences were directed to run concurrently.

2. The gravamen of the charge against the accused is that on the intervening night of 16th and 17th February, 2010, at about 2 a.m., the accused caused the death of his wife, while she was sleeping in the house of Oleti Lakshmi, by hitting her with a country made hearth (kumpati) on the head.

3. The facts, as unveiled by the prosecution witnesses are as under:

PW1 is the sister of the deceased, while PW2 is the brother of the deceased. PW3 is the mother of PW1 and the deceased. PW4 is the sister of the accused and mother of PW5. The marriage of the accused and the deceased took place about eight years prior to the date of incident. Out of wedlock, they were blessed with two male children. After marriage, for about four years, the accused and deceased lived together at Nagarajupeta, and the two children were born during their stay at Nagarajupeta. It is stated that the accused looked after the deceased well for a period of four years. Subsequently, the accused got addicted to alcohol and used to beat the deceased, suspecting her fidelity. Later, the accused changed his residence and shifted his family to the house of Oleti Peramma, situated in Bhiravapalem. There, the accused and deceased lived for one year. However, the accused continued to harass the deceased, suspecting her fidelity. Unable to bear the said harassment, the deceased came to her parents' house along with her two children. On 14.02.2010, two elders of Bhiravapalem and Nagarajupeta came to parents' house of the deceased for mediation. They requested the father and brother of the deceased to send the deceased to the accused, assuring them that the accused would look after the deceased affectionately. The accused was also present with the said mediators. Believing the representation made, the deceased was sent to the accused two days after the said mediation. During the said two days, the

accused and deceased stayed in the parents' house of the deceased.

4. On 16.02.2010, the accused took the deceased and their children to the house of Oleti Lakhmi-PW4, who is the elder sister of the accused. The house of Oleti Lakshmi was at a distance of hundred feet from the house of PW1. The evidence of PW4 would show that for a period of two days prior to the incident, the accused and deceased stayed in the house of PW3, and thereafter, on the third day night, the accused and deceased slept in the house of PW4. On that day, PW4 and her daughter by name, Oleti Ramana, slept in the adjoining house. PW4 deposed in her evidence that on 16.02.2010, at about 2 a.m., on hearing the cries of the deceased as "Champestunnadu champestunnadu (killing killing)", she and others went to the house of PW4 and found the accused running away with his younger child. They also noticed the house of PW4 being bolted from outside. All of them entered the house and with the help of a torch light, noticed the deceased lying on the ground with head injury and having blood on the face. According to the evidence of PW1, PW4 and others, the injured(deceased) was conscious and when examined, she is alleged to have disclosed that it was the accused who hit her on the head with 'boggu poyya'. PW2 went outside, brought an auto and took the deceased to Government General Hospital, Kakinada.

5. PW19-the Chief Medical Officer, Government General Hospital, Kakinada treated the injured at the earliest point of

time. As per the evidence of PW19, at about 4.04 a.m., the injured was admitted in casualty by her brother and sister and she was not in a position to speak. Ex.P8 is the intimation given by PW19 to the police. On 17.02.2010, the Head Constable received the intimation from Government General Hospital, Kakinada and on receipt of the said intimation, PW17-the Circle Inspector of Police, C.C.S. I Town, Rajahmundry examined the injured in a conscious state and recorded her statement, which is placed on record as Ex.P1. Basing on the said report, a case in Crime No. 27 of 2010 came to be registered under Sections 498-A and 307 IPC. Ex.P.9 is the original F.I.R. On the same day, at 7.45 a.m., PW17 examined PWs 2 and 3 and recorded their statements. At about 9.40 a.m., he visited the scene of offence and prepared an observation report in the presence of mediators, which is marked as Ex.P3. During the preparation of observation report, he seized M.Os 1 to 5 in the presence of PWs 13 and 14. He also got the scene of offence photographed through PW16. Ex.P7 are the positive photographs. At the scene of offence, he examined PWs 4 to 7. On 19.02.2010, on receiving credible information, he collected the mediators PWs 13 and 15 and rushed to Balayogi Statue along with the mediators and arrested the accused. On interrogation, the accused is said to have confessed about the commission of the offence. Pursuant to the confession made, he recovered M.O.6, the blood stained shirt from the accused, under Ex.P4. On 25.02.2010, PW17 received the death intimation of the injured. Basing on the same, he altered

the section of law from 307 IPC to 302 IPC. Ex.P11 is the altered F.I.R.

6. Further investigation was taken over by PW18-the Inspector of Police. According to him, on 25.02.2010, at about 8 a.m., he received a telephonic message from the Sub Inspector of Police, I Town about the alteration in the F.I.R. Accordingly, he visited the scene of offence, verified the observation report made by PW17 and found it to be on correct lines. On the same day, he visited the mortuary at Government General Hospital, Kakinada at 9.45 a.m., and conducted inquest over the dead body of the deceased in the presence of PW13. During inquest, he examined PWs 1 to 5 and also got the scene of offence photographed. Ex.P5 is the inquest report. Thereafter, he sent the dead body for postmortem examination.

7. PW14-the Assistant Professor, Department of Forensic Medicine, RMC, Kakinada conducted autopsy over the body of the deceased on 25.02.2009 and issued Exhibit P6-the Post Mortem Report. According to him, the cause of death was due to injury to the brain along with fractures to skull vault and base of the skull by hitting with a hard blunt medium to middle size object or weapon.

8. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 6 of 2010 on the file of III Additional Judicial Magistrate of First Class, Kakinada. After complying with the requirements of Section 207 of Cr.P.C., the

matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 441 of 2010 on the file of XI Additional Sessions Judge (Fast Track Court), East Godavari, Kakinada. Basing on the material on record, charges for the offences punishable under Sections 498-A and 302 of IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

9. In support of their case, the prosecution examined PWs.1 to 19 and got marked Exs.P1 to P13 and M.Os.1 to 6. 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 by the accused in support of their defence.

10. Though there are no direct witnesses to the incident, taking into consideration the circumstances that led to the commission of the offence, the trial Court convicted the accused under Sections 498-A and 302 IPC. Challenging the same, the present appeal came to be filed through legal aid.

11. The learned counsel for the appellant contends that there are no eye witnesses to the incident, and the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the offence. He would further submit that there was no motive on the part of the accused to kill the deceased, since both of them were living happily.

12. On the other hand, the learned Public Prosecutor would contend that the very suggestions given by the accused to the witnesses during cross-examination establish that the accused was present in the house at the time of incident. He would further submit that no explanation is given by the accused for the cause of death of the deceased, and if really, the plea of the accused that the injuries sustained by the deceased were due to fall from the staircase, is to be accepted to be true, there could not have been so many injuries on the vital parts of the body of the deceased. In the absence of any explanation in this regard by the accused, an inference has to be drawn that the accused alone is responsible for the incident.

13. The point for consideration is: "whether the accused is liable for the offences charged against him."

14. As seen from the record, there are no direct witnesses to the incident. The whole case rests on the circumstantial evidence. The prosecution has to establish each of the circumstances relied upon and then establish the said circumstances, so as to connect the accused with the crime. Admittedly, in the instant case, the marriage between the accused and deceased took place about eight years prior to the incident. Both of them lived happily for four years and out of wedlock, two children were born to them. Thereafter, the accused got addicted to alcohol and started harassing the accused, suspecting her fidelity. Subsequently, the accused shifted his family to the house of one, Oleti Peramma

situated in Bhiravapalem and lived there for one year. Disputes arose when the accused was harassing the deceased continuously, suspecting her fidelity. Unable to bear the same, the deceased left the accused and started living with her parents along with her children. At that time, mediation took place and on assurance given by the accused to the mediators, the deceased was sent to the house of the accused. Thereafter, for a period of two days, both the accused and deceased, along with their children, stayed in the house of the parents of the deceased, and on the third day, they shifted to the house of PW4, who is none other than the sister of the accused.

15. The evidence on record, more particularly, the evidence of PWs1 to 4 clearly shows that on 16.02.2010, at about 2 a.m., they heard loud cries of the deceased as “champestunnadu, champestunnadu (killing killing)”. On hearing the same, not only PW4, but also PW1 rushed to the house and found the accused running away with his younger child. When they entered the house, they found the deceased with number of injuries and blood on her body. Thereafter, they shifted her to the government hospital. Though the learned counsel for the appellant would contend that the accused cannot be fastened with the liability of killing the deceased, as there is evidence to show that the accused was present in the house on the date of incident, the said contention appears to be incorrect.

16. The evidence of PW4, who is the elder sister of the accused, shows that on the date of incident, the accused and deceased

came to her house and slept in the said house, and because the accused and deceased slept in their house, herself, along with her daughter, slept in the neighbouring house. This evidence of PW4 remained un-impeached. In fact, her evidence also shows that on the date of incident, at about 2 a.m., she heard cries of the deceased, rushed towards her house and noticed the accused running away with his younger child. She also refers to the presence of PWs 1 and 2 and others, and all of them noticing the injured lying on the ground with blood on her face. Though PW4 was cross-examined, nothing useful was elicited to discredit her testimony. However, the suggestions given to the witnesses appear to be that no one has seen the incident and that there was enmity between the accused, PW1 and PW3. All the witnesses, i.e., PWs 1 to 3 denied the suggestion that they have foisted a false case against the appellant. However, PW4 deposed that she is not in talking terms with the accused from the date of borrowing money from the accused which is about four years prior to the incident. PW4 denied the suggestion that the accused and deceased never slept in her house. The suggestion that due to vengeance against the accused, she is speaking false, was also denied.

17. The second circumstance which falsifies the defence of the accused is the stand taken by PW1 in the cross-examination. It would be useful to refer to the suggestions given to PW1, which are as under:

“.....There is a bathroom on the North of the 1st tiled house. There is a ground in between bathroom and the 1st tiled house which is a slippery due to wet. There is one stair step to the 1st portion of the house. We informed to the doctor that the deceased fell down from the steps and sustained injury.....

.....It is not true to suggest that we have converted this case into homicide after arrival of the police though the deceased received injury by fall on the wall of bathroom...”

18. From the above two suggestions, it stands established that the case of the accused was that the cause of death of the deceased was not due to the injuries alleged to have been caused by the accused, but due to fall from the staircase and also due to falling on the wall in the bathroom due to a slip. Both the suggestions are contrary to the record. Firstly, the scene of offence panchanama, which is placed on record as Ex.P3, does not anywhere refer to the existence of any staircase in the house of PW4. Therefore, the theory set up by the accused that injuries were sustained by the deceased due to a fall from the staircase, appears to be false. Insofar as sustaining injuries due to a hit to the wall in the bathroom, it also appears to be false, for the reason that no blood stains were found on the walls of the bathroom. One other aspect which requires to be considered is that, if really, the plea of the accused that the deceased sustained injuries due to a fall from the staircase, is to be accepted to be true, there could not have been so many injuries, as found by the doctor, in the postmortem report. As per the evidence of PW14-the Assistant Professor, Department of Forensic Medicine, RMC, Kakinada, there

were about eight external injuries on the body of the deceased, and out of the eight injuries, there were four fractures at different places on the head, apart from clotting of blood along with diffusion in different parts of the head. We feel that if the death of the deceased was due to a fall from the staircase, there could not have been four different injuries at four different places on the head.

19. It is also to be noted here that immediately after the incident, PW1, who stays at a distance of hundred feet from the house of PW4, visited the house on hearing the cries of the deceased, who, in turn, informed PW1 as to how she sustained the injuries. In her oral dying declaration, the deceased stated that the accused hit her with a 'boggula poyya'. Though PW1 was subjected to cross-examination, nothing useful was elicited to discredit her testimony.

20. Having regard to the above, the conviction of the accused for the offences punishable under Sections 498-A and 302 IPC imposed by the XI Additional District and Sessions Judge (Fast Track Court) at Kakinada in Sessions Case No. 441 of 2010 dated 18.08.2011 warrants no interference.

21. Accordingly, the Criminal Appeal is dismissed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

13.12.2017
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