

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.685 OF 2011

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

The sole accused in Sessions Case No.495 of 2010 on the file of the IV Additional Sessions Judge (Fast Track Court), Anantapur, is the appellant herein. He was tried and convicted for the offence punishable under Section 302 IPC and sentenced to suffer Rigorous Imprisonment for life for causing the death of one Rathnamma on 08.06.2010 at about 2:00 A.M., in her house.

2. The facts, as culled out from the evidence, are as under:

PWs.1 and 3 are brothers of the deceased. PW.2 is son of the deceased. Husband of the deceased predeceased her. Out of wedlock, the deceased had two sons and one daughter. After the death of her husband, the accused developed illicit intimacy with the deceased and used to live with her in the same house. The evidence on record discloses that there were frequent quarrels between the deceased and the accused, as he was suspecting the fidelity of the deceased and also used to beat her. It is said that PWs.1 and 3 used to chastise the accused asking him to mend his behaviour if he intends to live with the deceased. But, there was no change in the attitude of the accused. The evidence on record further discloses that the accused also had children through his wife, who were living in Koukuntla Village. On the date of incident, at

about 2:00 A.M., PW.1 and 3, who were living in the adjacent house, got up from sleep, on hearing the cries of the deceased and proceeded towards the house of the deceased. They claim to have seen the incident of accused beating the deceased with a stone on her head and on the right side of the cheek near the ear, through the window. When they were about to enter into the house, they noticed the accused running away from the house after seeing them. They tried to catch hold of the accused, but in vain. This portion of the evidence of PW.1 gets corroboration from the evidence of PW.3. PW.2 is the son of the deceased. According to him, on the date of incident, the accused took his sister along with him for purchasing anklets, left her at his relatives' house and came back alone. On that night, the accused and the deceased slept together, whereas PW.2 slept in the front room. In the middle of the night, he heard some cries. Within few minutes thereafter, PWs.1 and 3 came to their house and on seeing them, the accused pushed them and ran away. He also claims to have witnessed the incident, wherein the accused beat the deceased with a stone on the right side of the cheek. According to him, as the lights were on in the room, he could see the incident. On the next day i.e., on 09.06.2010, PW.8 received a report from PW.1, which came to be registered as Crime No.40 of 2010 under Section 302 IPC. Ex.P.1 is the report. Subsequent investigation was taken up by PW.7, the Circle Inspector of Police. According to him, on that day, at about 11:00 A.M., he received Express FIR. Immediately, he proceeded to

the scene of offence and conducted inquest over the body of the deceased, in the presence of PW.4 and another. Ex.P.2 is the Inquest Report. He also got prepared a panchanama for scene of offence and the rough sketch of the scene, which is marked as Ex.P.5. Thereafter, he sent the body for Post Mortem Examination, where PW.6, the Civil Assistant Surgeon, Community Health Centre, Kalyandurg, conducted autopsy over the dead body at 4:15 P.M. Ex.P.4 is the Post Mortem Examination Report. According to him, cause of death was due to head injury caused with hard object like stone. After arresting the accused and collecting the material, a charge sheet came to be filed.

3. Learned Judicial Magistrate of First Class, Kalyandurg, took the case on file as P.R.C.No.28 of 2010 for the offence punishable under Sections 302 IPC. After furnishing documents to the accused and by following the procedure laid down under Section 209 Cr.P.C., the case was committed to the Court of Sessions, Anantapur, wherein, it came to be numbered as Sessions Case No.495 of 2010.

4. On production of the accused, and after appointing an Advocate to defend the accused through District Legal Services Authority, and on consideration of material placed on record, a charge under Section 302 IPC was framed against the accused, read over and explained to him, to which he pleaded not guilty and claimed to be tried.

5. In support of its case, prosecution examined PWs.1 to 8 and got marked Exs.P.1 to P.7 and M.Os.1 to 3.

6. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., explaining the incriminating material, which appeared against him in the evidence of prosecution witnesses and the same was denied by him. No oral evidence was adduced by the accused, but however got marked Ex.D.1.

7. After considering the material available on record, the trial Court recorded the conviction as stated above. Challenging the same, the present appeal came to be filed.

8. Learned counsel for the appellant would submit that the evidence of PW.1 to 3, who are examined as eye witnesses to the incident, cannot be accepted, as they are interested witnesses. Apart from that, learned counsel for the appellant would submit that there is absolutely no motive for the accused to kill the deceased. It is urged that in the absence of any motive, conviction of the accused for the offence punishable under Section 302 IPC, is improper and incorrect. It is further urged that though PW.2 was present in the house, he being the child witness, his evidence cannot be accepted moreso, when there was no light for him to see the incident.

9. The same is opposed by the learned Public Prosecutor contending that since the evidence of PWs.1 to 3 inspires confidence and as the suggestions do not falsify their evidence. There is no

justification to disbelieve their evidence. Learned Public Prosecutor also contends that the evidence of PW.1 itself would show that there is motive to the accused to kill the deceased, which remained unchallenged in the cross-examination.

10. In order to appreciate the rival contentions, it will be useful to refer to the evidence of PWs.1 to 3, which is as under:

PW.1, who is brother of the deceased, deposed that after the death of Laxmi Narayana, who is husband of the deceased, accused developed illegal contacts with the deceased and started living with the deceased in the same house. There were some quarrels between his sister and the accused, as he was suspecting the fidelity of the deceased. Pursuant thereto, PWs.1 and 3 have chastised the accused to mend his behaviour, but there was no change in the attitude. From the above, it is clear that there was sufficient motive for the accused to get away with the deceased, more so, when he has wife and children living in a different Village. The said version of PW.1, which is referred above, gets corroboration from the evidence of PWs.2 and 3, wherein identical version has been narrated with regard to the relationship between the accused and the deceased and also the accused suspecting the fidelity of the deceased. Though they were cross-examined, nothing useful was elicited to discredit their testimony.

11. Coming to the incident proper, even if the evidence of PWs.1 and 3 is excluded from consideration on the ground that they are

not living in the same house, but PW.2 in his evidence narrates the manner in which the incident has occurred. His presence in the house cannot be doubted as he is son of the deceased. At this stage, it is also to be noted that the presence of the accused in the house on that night, is not challenged.

12. The question is whether the accused is responsible for the death of the deceased or whether PWs.1 and 3 are responsible for the death of the deceased as urged before this Court ?

13. Insofar as the argument of the learned counsel for the appellant that PWs.1 and 3 might have killed the deceased as she was having illicit intimacy with the accused, no such suggestion to that effect was put to the witnesses during their cross-examination. In fact, it is not the case of the defence at all before the trial Court that PWs.1 and 3 are responsible for the death of the deceased. In fact, what was elicited from the cross-examination of PW.1 was something different . It is as under:

“We have never warned the accused or quarreled with him for having illicit contact with my sister.”

Therefore, the argument of the learned counsel for the appellant cannot be accepted, when they having neither questioned the attitude of the accused nor quarrelled with him.

14. Insofar as the incident in question is concerned, one of the arguments, which was advanced by the learned counsel for the appellant, is that PW.2 could not have witnessed the incident as

there was no light in the night. But, in chief-examination, PW.2 categorically stated that he has witnessed the incident in view of the light in the room. It was not even suggested to the witness that there was no light in the house on that night. Though in the chief-examination PW.2 categorically stated that the accused had beaten his mother (deceased) with a stone on right side of her cheek, in the cross-examination, learned counsel for the appellant elicited many answers from PW.2, which were really unwarranted. On the other hand, the said answers are sufficient to base a conviction. It would be useful to extract the relevant portion of the cross-examination of PW.2, which is as under:

“There are two windows to our house. One is front side and other one is on rear side. I did not see the accused coming to our house on that night because I slept on the night. It is true I stated before the police that I slept in the 2<sup>nd</sup> room. There was quarrel between the accused and my uncles for 3 or 4 times. I did not see the time when I woke up in the night. I got up from the bed after hearing the cries of my mother, when the accused had beaten my mother with stone. By the time I got up I saw the accused beating my mother. The accused had used the hand full of stone. I had seen the accused beating my mother twice with the stone. I did not raise cries at the time due to fear. The accused had taken away stone with him. Blood oozed from the injuries to my mother.”

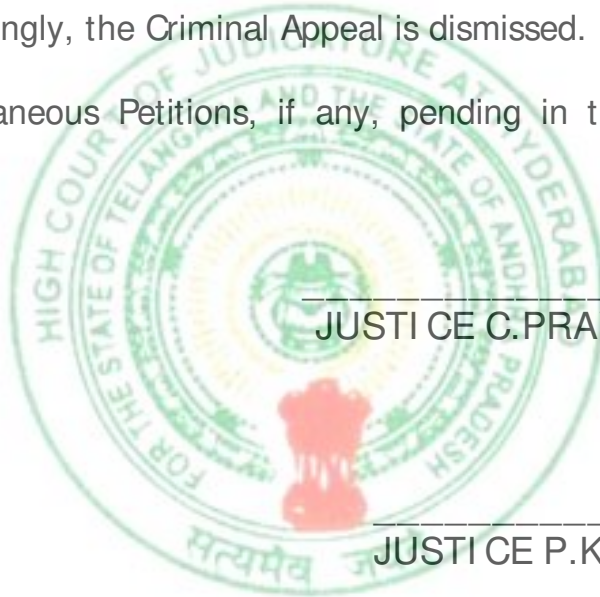
From the answers elicited by the learned counsel for the appellant through PW.2, it is clear that he woke up on hearing the cries and saw the accused beating his mother with stone and later the accused ran away.

15. From the evidence available on record, even if the evidence of PW.1 and 3, who are said to be eye witnesses to the incident and spoke about the manner in which the incident has happened, is not given much credence, still the evidence of PW.2 is sufficient to base a conviction.

16. In view of the above, we see no ground to interfere with the conviction and sentence recorded by the trial Court.

17. Accordingly, the Criminal Appeal is dismissed.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.



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JUSTICE C.PRAVEEN KUMAR

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JUSTICE P.KESHA RAO

Date:05.10.2017  
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