

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.399 of 2012

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

1) Assailing the judgment dated 21.11.2011, passed in S.C.No.254 of 2011, on the file of First Additional Sessions Judge, Kadapa, wherein the sole accused was found guilty for an offence punishable under Section 302 IPC, the present Criminal Appeal came to be filed through legal aid.

2) The gravamen of the charge against accused is that on 23.03.2011 at about 01.00 a.m., the accused is alleged to have caused the death of his wife by holding her tuft and forcibly beating her head on the wall and later created an atmosphere of suicide. The accused was found guilty for an offence punishable under Section 302 IPC and sentenced him to undergo 'Imprisonment for life' and to pay a fine of Rs.1000/ -.

3) The case of the prosecution as culled out from the evidence adduced by the prosecution witnesses is as under:

The accused is the husband of the deceased. PW1 is the mother of the deceased, while PW2 is the father of the deceased, PW3 is the sister of the deceased and PW4 is the neighbour.

The marriage between the accused and the deceased took place about 4 ½ years prior to the date of incident. Out of wedlock, they were blessed with a daughter. The accused was working as a car driver. The evidence on record would show that the accused was harassing the deceased by not providing financial assistance to meet their household expenses. PWs.1 and 2 in their evidence deposed that the accused got addicted to consumption of alcohol, and the same was informed by the deceased to PWs.1 and 2 on different occasions. The evidence on record also shows that both of them lived happily for a period of three months. About 15 days prior to the death of the deceased, the accused and the deceased went to Thirumala along with their daughter and three of them had tonsuring to offer it to lord Venkateswara. On 22.03.2011, at about 09.00 p.m., the deceased went to the house of PW1 and informed her about the accused not providing money to meet the house hold expenses. The parents of the deceased pacified her and sent her back to home. On the next day, at about 06.30 p.m., after the parents of the deceased returned home from the coolie work, they sent their second daughter to enquire about the situation at her sister's home. When she reached the house of her sister (deceased), she found the deceased hanging to a pipe of the roof with a saree and the legs were touching on the floor. On knowing about the same, PW2 and her husband reached the spot and started raising cries, due to which, the neighbours gathered at the scene of offence. Immediately, PW1 lodged a report Ex.P1 at the RIMS Police Station. Basing on Ex.P1, PW8 the Incharge SHO registered a case in Crime No.23 of 2011 under

Section 174 of Cr.P.C. and issued FIR copies to all the concerned. Ex.P4 is the FIR submitted to the Court. A requisition was sent to PW7 to conduct inquest over the body of the deceased. PW8 visited the scene of offence by 12 a.m., and found the dead body hanging to a pipe on the roof. He posted a guard to preserve the scene of offence. On the next day morning, PW8 visited the scene of offence, prepared a rough sketch, which was marked as Ex.P5. He also seized the saree which was around the neck of the deceased, vide Ex.P6. At that point of time, PW7 visited the scene of offence, brought down the body to the ground and conducted inquest. During inquest he recorded statements of PWs.1, 2 and 3 and noticed ligature mark around the neck of the deceased. The panchayatdars and eye witnesses opined that the husband of the deceased harassed her due to which the deceased might have committed suicide on her own or her husband might have killed her and hanged her body to the roof. The said proceedings were closed at 10.30 a.m. and thereafter the body was sent for post mortem examination. Ex.P2 is the inquest report, MOs.1 to 7 were seized during the inquest proceedings. PW6, the professor of Forensic Medicines, RIMS hospital, Kadapa, conducted autopsy and issued Ex.P3 the post mortem certificate. According to him, he noticed two Ante-mortem External Injuries, which are as under:

“1. Ligature mark on the front of neck on upper part passing on to the back with a knot mark on the back of the neck measuring 28x2 ½ cm. blackish red in colour. Internally on cut section ecchymosis of

the neck tissues present. Hyoid bone, Thyroid and Cricoid Cartilages are normal.

2. Contusion present on the left parietal part of the scalp in its deeper layers 8x6 cm. blackish red in colour. Brain is partly liquefied and blood stained.”

As per the post mortem report, the cause of death was due to head injury associated with hanging.

4) PW10, the Inspector of Police, RIMS Police Station, Kadapa, took up further investigation in the case. He altered the Section of Law from 174 Cr.P.C. to 302 of IPC and submitted express FIR to all concerned. Ex.P9 is the copy of the FIR. On 29.03.2011 at 05.00 p.m., he arrested the accused at Bugga Vanka near Ravindra Nagar, Patha Bus Stand and in the presence of PW9 and one Siva Sankar, recorded the confessional statement of the accused under Ex.P8.

5) After completing the investigation, PW10 filed a charge sheet, which was taken on the file of II Additional Judicial Magistrate of First Class, Kadapa, as PRC No.19 of 2011. On appearance of the accused, necessary documents were furnished to him. Since the offence involved is under Section 302 of IPC, which is triable by Sessions Court, the matter was committed to the Sessions Court, wherein the case came to be re-numbered as S.C.No.254 of 2011. Upon production of the accused, charge under Section 302 of IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

6) In support of its case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P9 and M.Os.1 to 8.

7) 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 behalf of the accused in support of his defence.

8) Basing on the evidence of PWs.1 to 5, the learned Sessions Judge convicted the accused for an offence punishable under Section 302 of IPC. Challenging the same, the present appeal is filed through the legal aid counsel.

9) The admitted facts from the evidence of the prosecution witnesses are:

- i. As the deceased was not provided money to purchase house hold needs, the deceased is said to have complained to PWs.1 and 2 on the previous day at about 09.00 p.m. Both of them convinced the deceased and sent her back to her house at 09.30 p.m.
- ii. On the next day morning, PWs.1 and 2 went to attend their coolie works and returned home at 06.30 p.m.
- iii. Thereafter, they requested PW3, the sister of the deceased, to go to her house and enquire with the deceased. Accordingly, PW3 went to the house of the

deceased and noticed body of the deceased hanging to an iron pipe. It is her version that the dead body was found hanging to the iron pipe of the roof with the saree and the legs were touching the floor.

- iv. On receiving the information, PWs.1 and 2 and the neighbours rushed to the scene. But, however, none of them claimed to have removed the body and laid her on the ground. The evidence of investigating officer discloses that on the next day morning, he proceeded to the scene of offence and before conducting the inquest, the body was brought down to the ground.
- v. Neither PWs.1 to 3, nor PW4 speak about the presence of the accused in the house or atleast at the time when the deceased committed suicide.
- vi. At the time of inquest, a suspicion was entertained by the witnesses, that the deceased might have either hanged herself on her own or that the accused might have caused injury and hanged her to the roof.

10) Now, the point that arises for consideration is whether the accused was responsible for the death of the deceased?

11) Insofar as injury No.2 namely contusion present on the left parietal part of the scalp is concerned, the Doctor in his cross examination deposed that because of blood stains in the brain and contusions inside the scalp, the injury can be described as

ante-mortem in nature. But, however, he denied the suggestion that injury No.2 was due to physiological development in the process of decomposition. However, he admits that the death might have caused 46 hours prior to the post-mortem examination. If the evidence of the doctor is taken into consideration with regard to the time of death, he conducted post mortem examination on 24.03.2011 between 02.20 p.m. and 03.20 p.m. If the period of 46 hours is taken into consideration, the death of the deceased would be somewhere around 05.00 p.m. and 06.00 p.m. on 22.03.2011. No evidence has been placed on record to show that the accused was present in the house at that time. Neither PW1 to PW3 nor PW4, who is the neighbour, depose about the presence of the accused in the house at the time of incident.

12) The next question that falls for consideration is whether it was a case of suicide or a homicidal death?

13) In the FIR, which was given by PW1, it has been stated that when he visited the scene of offence, he found the deceased hanging to the roof. In his deposition, PW1 stated that PW3 informed her that when she went to the house of her sister, she found the deceased hanging to the pipe of the roof with the saree. Only a suspicion came to be entertained against the accused. However, in the Court, a different version was given by PW3, wherein she stated that when she went to the house, the feet of the deceased was touching the floor. The said version was also spoken to by PW1, which is in total variance with the version in Ex.P1. The version of feet touching the

floor was introduced during the course of investigation. Even in the post mortem report, the doctor stated that the death was due to laceration and also associated with hanging. Therefore the argument that the accused has killed the deceased and then hanged her appears to be incurred. At this stage, we intend to point out that immediately after the incident, PW3 went to the scene and found the deceased hanging and thereafter PWs.1 and 2 proceeded to the scene. Everybody presumed that the deceased was dead, but there was no indication whether the deceased was dead by then. No effort was made to find out as to whether the deceased was dead by then. While the body was found hanging at 07.00 p.m., nobody made any effort to bring it down to the ground. The evidence of the investigating officer would show that on the next day morning, he went to the scene of offence and found the deceased hanging to the iron pipe on the roof. After preparing the rough sketch to the scene of offence and after the arrival of MRO-PW7, the body was brought down for holding the inquest. However, in the cross-examination, PW2 admits that the body was brought down to the ground at 10.00 p.m. on the same day night. This circumstance of bringing down the body to the ground either on the previous day night or on the next day, may not matter much in view of the evidence of the doctor who deposed that the death was about 46 hours prior to the post mortem examination, which would be in the evening of 22.03.2011. Hence, we feel the said suggestion which was sought to be highlighted to prove the commission of offence by the accused may not matter much. But, however, one aspect to be noted is that though the body

was found hanging by 07.00 p.m., nobody made any effort to bring it down. Everybody presumed that the deceased was dead by then. The evidence on record does not anywhere indicate any measures being taken to find out whether the deceased was dead. Except the version of the witnesses that the body was found hanging to the roof, no effort was made to know the truth. If the deceased was brought down immediately and taken to the doctor, definitely they could have saved the life of the deceased if she was alive. However, the evidence on record does not establish positively that the accused was responsible for the death of the deceased. His presence in the house was not spoken to by any of the witnesses except stating that the deceased might have either hanged herself or accused might have hanged her after causing injury.

14) Coming to the circumstances as to how injury No.2 was caused, as stated earlier, the doctor presumed that because of blood clots in the inner brain and the contusion inside the scalp, he decided that injury No.2 as ante-mortem. But, PW7 in his cross examination admits that he did not notice any visible injury on the head.

15) An argument is sought to be advanced by the public prosecutor that because of the hair on the head of the deceased, PW7 might have not scene the injury. But the evidence of PW7 shows that the hair of the deceased was tonsured and the deceased was having only ½ inch hair. Therefore, if really there was an ante-mortem injury on the body, definitely, PW7 would have noticed the same and recorded it in the inquest.

16) Having regard to the above circumstances, a doubt arises as to whether there was any injury on the head of the deceased. Even if such injury was there, there is a possibility of deceased sustaining injury when she was preparing to commit suicide by coming into contact with the iron rod, which is used to tie roofs.

17) In view of the above circumstances, we are inclined to extend the benefit of doubt to the accused and acquit him for the offence punishable under Section 302 of IPC.

18) Accordingly, the appeal is allowed. The conviction and sentence recorded against the appellant/ accused by name Nallamari Narayana Reddy in the judgment, dated 21.11.2011, in Sessions Case No.254 of 2011, on the file of the I Additional Sessions Judge, Kadapa, for an offence punishable under Section 302 I.P.C., is set aside and he is acquitted for the said offence. Consequently, the appellant/ accused shall be set at liberty forthwith, if not required in any other case.

19) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

09.11.2017  
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