

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

CRIMINAL APPEAL No.271 of 2012

JUDGMENT: (per Hon'ble Sri Justice A.V.Sesha Sai)

The accused in Sessions Case No.63 of 2011 on the file of the Court of IV Additional District and Sessions Judge, Visakhapatnam, is the appellant in the present Criminal Appeal, filed under Section 374(2) of Code of Criminal Procedure. This Appeal challenges the conviction and sentence imposed by the said Court by way of judgment dated 19.7.2011.

2. By virtue of the impugned judgment, the learned IV Additional District and Sessions Judge, Visakhapatnam, convicted the appellant herein for the offence punishable under Section 302 of Indian Penal Code and sentenced to undergo life imprisonment and to pay a fine of Rs.500/- and in default, to undergo simple imprisonment for one month.

3. The case of the prosecution is that the accused is the husband of the deceased, one Smt.Kumuduboyina Parvathamma and they were living together and that whenever the Accused consumed liquor, he used to assault and harass the deceased and he also used to harass P.W.2, who is the widow of brother of the Accused. It is the further case of the prosecution that on 28.8.2010, after return of the deceased from Shandy, during night time, the Accused assaulted the deceased with stout stick, marked as M.O.1, and the same was witnessed by P.Ws.4 to 6. In order to establish its case, during the course of trial, the prosecution

examined P.Ws.1 to 10 and marked Exs.A1 to A7 and M.Os.1 to 3. Pursuant to the closure of evidence on behalf of prosecution, the accused/appellant herein was examined under Section 313 of Cr.P.C. with regard to incriminating circumstances against him and the accused denied the allegations. Nobody was examined on behalf of the accused/appellant herein and no documents were marked on his behalf.

4. On the basis of the material available, the learned Sessions Judge framed the following points for determination.

1. Whether the death of the deceased was homicide or suicide?
2. If it is homicide, whether the accused killed the deceased, his wife Smt.Kumuduboyina Parvathamma on 28.8.2010 in his hosue at Baramasi village, Hukumpeta mandal as sought to be contended by the prosecution?
3. Whether the prosecution established the guilt of the accused beyond all reasonable doubts?

5. Heard the learned counsel for the Appellant and the learned Public Prosecutor for the State, apart from perusing the material available before the Court.

6. P.W.1 is the son of the accused. P.W.2 is brother's wife of the accused. The evidence of P.W.2 is to the effect that whenever the accused consumed liquor, he used to assault her and the deceased. She further deposed that on the date of occurrence of the incident i.e. on Saturday, she along with deceased went to Shandy and returned home in the evening and the deceased went

to her house. She further deposed that the accused demanded money from her for liquor and out of fear, she went to the house of her daughter and she spent the night there and on the next day morning, she returned to her house and noticed the death of Parvathamma in their house and also noticed the injuries on the head of the deceased.

7. According to P.W.3, he advised the accused not to assault the deceased, on his return to the village on the date of incident. The learned Sessions Judge principally relied upon the evidence of P.Ws.4 to 6 for convicting the accused. According to P.W.4, whenever the accused consumed liquor, he used to pick up quarrel and assaulted the deceased. She also deposed that the accused assaulted the deceased with stick and that she went to the house of the accused and noticed that the accused was assaulting the deceased with a stick. She also stated that she tried to intervene in the matter and the accused questioned her authority by saying that it was a dispute between husband and wife. According to P.W.4, she is a neighbour of the accused. Prosecution also examined P.W.5 and according to P.W.5, her house is separated by one house from the house of the accused and she is the neighbour of P.W.4. According to P.W.5, when she was taking meal in the night, she heard cries from the house of the accused and on hearing the same, she along with P.W.4 went to the house of the accused and noticed that the accused was beating the deceased with stick. It is the further case of P.W.5 that when she questioned the accused, he acted adamantly and she left the spot. P.W.5 further deposed that in the morning she came to know about the death of the deceased. P.W.5 also stated that she observed the

accused, in the morning, proceeding to the Police Station, proclaiming that he killed his wife and thereafter she went to the house of the deceased and noticed that the deceased was lying dead with injuries. P.W.6 was examined by the prosecution, who deposed that he is a resident of Baramasi village and is residing opposite to the house of the accused. He also spoke in the same lines as P.Ws.4 and 5. P.W.6 also deposed that in the morning, accused was proceeding to the Police Station while proclaiming that he killed his wife and later he went to the house of the accused and noticed the dead body with injuries.

8. Coming to the medical evidence, the prosecution examined one Dr.Ch.Sridhar as P.W.8, who conducted autopsy on the body of the deceased and he observed the following injuries as per his evidence.

- “1. A lacerated injury on right parietal region of scalp and skull of size 6 1/2 cm x 2 cm x bony deep.
2. A lacerated injury of size 3 cm x 2 cm x 1 cm on right occipital region.
3. A lacerated injury of size 3 cm x 1 1/2 cm x 1/2 cm on left ear pinna.
4. Left black eye of size 8 cm x 6 cm with surrounding skin inflammation seen.
5. Abrasion of size 3 cm x 2 cm on right side of chest in anterior auxiliary line region in 5th intercostal space region.
6. Abrasion on left side of chest lateral to sternum of size 3 cm x 2 cm.
7. Abrasion of size 6 cm x 3 cm on left arm medial aspect.
8. Right hand contusive injury on entire dorsum with abrasion on lumbar region on dorsum of size 2 cm x = cm is seen.

9. Laceration of size 5 cm x 2 cm x bony deep resent on left leg shin.”

9. The post-mortem report which is Ex.P4 clearly discloses the cause of death as hemorrhage shock due to multiple injuries as mentioned above. P.W.8 Doctor also stated in his evidence that the injuries described in Postmortem certificate are possible with M.O.1.

10. The burden is on the prosecution to prove that the accused has committed the offence under Section 302 IPC. The evidence of witnesses viz., P.Ws.1 to 3, which is discussed in the foregoing paragraphs, would clearly reveal that the accused has committed the offence. The main defence of learned counsel for the accused is that there are no eyewitnesses to the incident and that the case is based on circumstantial evidence. In the light of evidence of witnesses and the circumstances of this case, the burden is on the accused to prove that under what circumstances the incident occurred, in view of presumption under Section 106 of the Evidence Act, which reads as follows:

“106. Burden of proving fact especially within knowledge- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

11. It is revealed from the evidence of prosecution witnesses that the accused and the deceased were living under one roof as wife and husband. On the fateful day, there was a quarrel between the accused and the deceased and in that quarrel the deceased was found with as many as nine injuries on the vital parts of the body. The medical evidence revealed that the deceased died because of injuries received by her with a blunt object like

M.O.1-Stout stick. P.W.5 is the neighbour of the accused and the deceased, who stated that when she was taking meal in the night, she heard cries from the house of the accused, she along with P.W.4 went to the house of accused and noticed that the accused was beating the deceased with a stout stick. When she questioned the accused, he acted adamantly and she left the house of the accused. On the next day morning, she came to know the death of the deceased. The prosecution relied upon the evidence of P.W.5 and argued that Section 8 of the Evidence Act is applicable to this case, as this evidence forms part of the offence. On the very next day of the incident, P.W.5 came to know about the death of the deceased. The accused is the person, who was only available with the deceased at the time of incident and prior to the incident. The accused has to explain his conduct at the very occurrence of the incident as he was very much available at the time of incident. In view of presumption under Section 106 of the Evidence Act, the accused has to explain the circumstances, under which the deceased received so many injuries. No explanation is offered by the accused, as such he failed to discharge the burden to rebut the presumption under Section 106 of the Evidence Act. There are no reasons coming forth to interfere with the judgment of the trial Court. In view of foregoing reasons, we do not find any satisfactory reason to accept the defence of the accused.

12. Obviously, taking into consideration all the above aspects i.e. evidence of P.Ws. 4 to 6, P.W.8 and the medical evidence available on record, the learned Sessions Judge convicted the accused by assigning valid reasons in support of the conclusions. Therefore,

this Court does not find any valid reason to meddle with the impugned judgment.

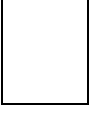
13. Accordingly, the Criminal Appeal is dismissed confirming the judgment. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

GUDISEVA SHYAM PRASAD, J

Date: 16.12.2017
DA/YVL





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