

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.860 of 2017

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

1) Assailing the judgment dated 17.01.2017, passed in S.C.No.322 of 2015 by the Principal Sessions Judge, Warangal, wherein the sole accused was acquitted for the offence punishable under Section 302 of IPC, the present appeal came to be filed by the State under Section 378 (3) & (1) of Cr.P.C.

2) The facts in issue are as under:

The accused married the deceased, as second wife, who is the younger sister of his first wife/ PW5. Out of wedlock, they were blessed with two children PWs. 1 and 9. The deceased used to attend coolie works for their livelihood, whereas the accused, who got addicted to liquor, used to pick up quarrel with the deceased by mortgaging and selling the household articles.

On 05.03.2015, the accused brought mobile of PW8 –resident of the same village, for which the deceased picked up quarrel with her husband –accused. At about 07.30 p.m. when the accused returned home again carrying the same mobile, the deceased abused and beat him with chappal and snatched away the cell phone. Thereby the accused developed grudge against the deceased and accordingly picked up a quarrel with the deceased at about 11.30 p.m., for her

absence in the house during night hours. Thereafter, the accused picked up spade stick and attacked the deceased on her forehead, nose and on chest, causing bleeding injuries. On the next day, while PW1 – daughter of the deceased reached home from the jatar, she found the deceased – mother lying dead with injuries. She raised cries which attracted others leading to lodging of a report in Mangapet Police Station. Ex.P1 is the report. After receiving Ex.P1, a criminal case was registered vide Ex.P6 the FIR. Thereafter, an intimation was given to the concerned officials and the dog squad.

PW15 the investigating officer visited the scene of offence, got photographed the dead body. He then conducted inquest in the presence of PW12 and also prepared a panchanama of the scene of offence and a rough sketch for the scene of offence. After conducting inquest, the body was sent for post mortem examination. PW16/ Doctor at Government Community Health Centre, Eturnagaram conducted autopsy over the body and issued post mortem report EX.P7. According to the doctor, the cause of death was due to shock and hemorrhage due to injury to head and brain. On 09.03.2015, at about 10.30 a.m., PW11 the VRO informed the police about the extra judicial confession made by the accused before him and took him to MRO's office at Mangapet. From there, PW15 along with his staff, took the accused into custody, interrogated him, recorded the confessional statement and recovered the material objects at the instance of the accused from the hillocks of Malluru. PW13 is the panch for Ex.P4 confession and recovery panchanama made under Ex.P5. Through the evidence of PW 13, MOs.1 to 3 were marked,

which were recovered pursuant to the confession of the accused. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.21 of 2015 by the Judicial Magistrate of First Class, Mulug. 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.28 of 2011 on the file of Court of Sessions Judge, Sessions Division, Warangal. A charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

3) To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P8 and M.Os.1 to 8. 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 on behalf by the accused in support of his defence.

4) There are no direct witnesses to the case and the case rests on circumstantial evidence. Since prosecution failed to prove the chain of circumstances connecting the accused with the offence alleged, the Court below acquitted the accused. Challenging the same, the present appeal came to be filed by the State.

5) Learned public prosecutor would state that the evidence of PWs.1 and 2 is sufficient to connect the accused with the commission of offence.

- 6) We have perused the records and also the judgment.
- 7) Admittedly, there are no direct witnesses to the incident and the case rests on circumstantial evidence. In support of the two circumstances relied upon by the prosecution, they examined PWs. 1 and 2. PW1 in his cross examination stated that she went to jatara with PW4, but PW4 failed to mention about he accompanying PW1 to jatara. PW1 also stated that Ex.P1 was scribed by the police constable at her house. PW10 states that he scribed the report under Ex.P1 at the request of PW1. Therefore, a doubt arises whether really PW1 herself lodged a report and also as to whether she went to jatara. Coming to the evidence of PW2-Sister of the deceased, she deposed that she went to jatara along with PW1 and returned from jatara on the next day morning. That being the position, she could not have heard any quarrel between the accused and the deceased which is said to have took place on the intervening night. Therefore, the evidence of PW2 to the effect that she heard quarrel between the accused and deceased appears to be incorrect. Further, the evidence of PW1 appears to be doubtful since she stated that the accused and deceased picked up quarrel on the intervening night, but in her cross-examination, she stated that she do not know as to what happened in the intervening night.
- 8) In view of the above circumstances, we are not inclined to interfere with the findings arrived at by the Court below.
- 9) Accordingly, the criminal appeal is dismissed at the admission stage.

10) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

06.11.2017
vnb

