

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1378 of 2011

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

Assailing the conviction and sentence imposed in Sessions Case No.563 of 2010 by the X Additional District and Sessions Judge (Fast Track Court), Guntur at Narasaraopet, vide judgment, dated 15.4.2011, wherein the accused was convicted for the offence punishable under Section-302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default to suffer imprisonment for five months, the present Criminal Appeal is filed.

2. The gravamen of the charge, against the accused is that on 23.4.2010, at about 11.15 am., the accused is said to have hacked the deceased-his wife on her right color bone with an axe, which was used for cutting firewood.

3. The case of the prosecution, in brief, is as follows:

The accused is the husband of the deceased. P.W-1 is the son-in-law of the accused and the deceased. P.W-2 is the daughter of the accused. She was given in marriage to P.W-1. P.Ws.3 and 4, the neighbours of the accused, who claim to have heard some galata in the house of the accused. On hearing the

cries, they came out of their respective houses and saw the accused hacking the deceased with an axe. They also claimed to have tried to apprehend the accused, but in vain. P.W-5 is another neighbour of the accused. In his evidence, he deposed that at about 11 am., he noticed the accused demanding money from the deceased and when the latter refused, the accused became angry, picked up a quarrel and dealt a blow on the right side of her neck with an axe. Basing on Ex.P-1-report, P.W-9-Head Constable, Gurazala Police Station registered a case in Crime No.58 of 2010 under Section-302 IPC. Ex.P-7 is the original printed F.I.R. On receiving the copy of the F.I.R., P.W-11 took up the investigation, visited the scene of offence and prepared an observation report-Ex.P-2 in the presence of P.W-7. During the course of investigation, he seized M.Os.1 to 3 and 5. Thereafter, he conducted inquest over the dead body of the deceased in the presence of P.W-7 and others. Ex.P-3 is the Inquest report. During the inquest, he examined P.Ws.1 to 3. After completing the inquest proceedings, he sent the dead body of the deceased for post-mortem examination. P.W-10-the Civil Assistant Surgeon, Gurazala Area Hospital conducted autopsy over the dead body of the deceased at 4.35 pm and issued Ex.P-8-Post-mortem certificate. According to her, the deceased would have died due to shock and haemorrhage due to injury to

vital organs like lungs and major blood vessels. P.W-11 continued the investigation, examined P.Ws.3 and 4 and on 28.4.2010, arrested the accused at Saidulu Swamy Dargah, Charlagudipadu Village in the presence of P.W.7 and others. During interrogation, the accused was said to have confessed about the commission of offence. Pursuant to the confessional statement of the accused, the blood stained axe-M.O-4 came to be recovered under Ex.P-4-the admissible portion in the confessional statement of the accused.

4. After the completion of the investigation and after collecting all the relevant documents, P.W-11 filed the charge sheet which was taken on file as P.R.C.No.13 of 2010 on the file of the II Additional Junior Civil Judge, Gurazala.

5. On appearance of the appellant, copies of the documents were furnished to him. Since the offence punishable under Section-302 I.P.C. is triable by a Court of Sessions, the case was committed to the Court of Sessions, which came to be numbered as Sessions Case No.563 of 2010 on the file of the X Additional District and Sessions Judge, (Fast Track Court), Guntur at Narasaraopet.

6. A charge under Section-302 IPC was framed, read over and explained to the accused in Telugu, to which he pleaded not guilty and claimed to be tried.

9. As the plea of the accused was one of denial, he was made to stand trial, during which, the prosecution examined P.Ws.1 to 11 and got marked Exs.P-1 to P-10 and M.Os.1 to 5. On behalf of the accused, no oral or documentary evidence was adduced.

After completion of the prosecution evidence, the incriminating material appearing against the accused through the evidence of the prosecution witnesses was put to him during his examination under Section-313 Cr.P.C., to which he denied.

11. On appreciation of the oral and documentary evidence, the trial Court convicted and sentenced the appellant as stated supra.

12. At the hearing, Mrs. Padmalatha Yadav, learned counsel for the appellant-accused, would submit that the entire case of the prosecution rests on the evidence of P.Ws.3 and 4, who are neighbours to the accused. She would submit that since P.Ws.3 and 4 are agricultural coolies, there is any amount of doubt with regard to their presence at the scene of offence so as to hear the cries of the deceased and notice the deceased being hacked by the accused with an axe. She would further submit that even if the evidence of P.Ws.3 to 5 is accepted, still no offence under Section-302 IPC is made out, as the accused has no enmity or animosity or ill-will against the deceased. She would submit that the nature of the offence can be scaled down to

Section-304 Part-I IPC since the incident was an offshoot of a quarrel that took place between the accused and the deceased,.

On the other hand, learned Public Prosecutor for the State of Andhra Pradesh while opposing the above submissions of the learned counsel for the accused would contend that since the death of the deceased was due to the injury caused by the accused on clavicle region and as the death of the deceased was instantaneous, the findings recorded by the trial Court warrants no interference.

We have carefully considered the submissions of the learned counsel for both the parties with reference to the record.

The point that arises for consideration in this appeal is whether the accused is liable to be convicted for the offence punishable under Section 302 IPC.

The fact that death in the instant case was a homicidal death stands established through the evidence of P.W-10-the doctor who conducted autopsy over the dead body of the deceased. P.W-10 in her evidence deposed that she noticed four external injuries on the body of the deceased, which are as under:

- “1. An oblique incised wound of size 10 x 4 cm extending from right side base of neck to right side of external angle.
2. Fracture of right clavicle medial 1/3rd.

3. Right lung open is injured, a laceration of size 5 x 3 cm present.
4. Large haemorrhage present in the thoracic cavity.”

According to P.W-10, the cause of death of the deceased was due to injury to vital organs like lungs and major blood vessels.

In order to prove the guilt of the accused, the prosecution examined P.Ws.1 to 5. Out of the said five witnesses, P.Ws.3 to 5 were examined as eye-witnesses to the incident. Before dealing with their evidence, it is to be seen that basing on the information given by P.W-3, P.W-1 proceeded to the house of the deceased and then lodged a report-Ex.P-1. In the said report, he categorically stated that **though** he is not an eye-witness to the incident, but basing on **the** information furnished by the neighbours of the accused, he mentioned about the accused committing the offence.

Coming to the evidence of P.W-3, who is a neighbour to the accused and who also knows P.Ws.1 and 2, he deposed that on the date of the incident, at about 12 noon, while he was in his house, after returning from the fields, he noticed some galata in the house of the accused. Immediately, he came out and saw the accused pushing his wife (deceased) to the ground and thereafter, hacked her on the neck with an axe. Though P.W-3

was cross-examined at length, nothing useful was elicited to discredit his testimony. On the other hand, it was elicited from him that the distance between his house and the house of the deceased is only about 20 feet. All the suggestions given to P.W-3 with regard to the deceased sustaining injuries were denied by him.

The evidence of P.W-4 is also to the effect that on the fateful day at about 12 noon, while he was relaxing in his house after returning from the fields, he heard some galata in the house of the accused, which was situated by the side of his house. On hearing the cries, he rushed to the house of the accused and saw the accused hacking the deceased with an axe and that on raising cries, the accused ran away from there. P.W-4 refers to the presence of P.W-3 at the scene of offence. Thereafter, they called 108-Ambulance, who arrived at the scene of offence and declared the deceased dead. P.W-4 was also subjected to lengthy cross-examination. In the cross-examination, it was elicited from P.W-4 that it takes two or three minutes to go to the house of the accused from his house. It was further elicited that he heard the accused demanding money from the deceased. However, the suggestion that he had not seen the accused hacking the deceased with an axe was denied by him. The suggestion that the deceased fell down on

bamboo sticks due to slip of her leg and sustained injuries was also denied.

Coming to the evidence of P.W-5, he corroborated the version of P.Ws.3 and 4 in all aspects. He further added that on the fateful day, at about 12 noon, the accused demanded money from the deceased and when she refused, the accused went inside the house, picked up an axe and then dealt a blow on the neck of the deceased. In his cross-examination, suggestions as were given to P.Ws.3 and 4 were also given to P.W-5, which were denied by him.

From the evidence of P.Ws.3 to 5, it is clear that on the fateful day at about 12 noon, there was a quarrel between the accused and the deceased with regard to money. When the deceased refused to give money, the accused picked up a quarrel, grew wild and hacked the deceased with an axe, which was lying in the house. However, the evidence of P.W-3 is slightly different. He refers to the accused pushing the deceased down and then giving a blow on the neck which was not spoken to by P.Ws.4 and 5. Having regard to the above, it can be said that the accused has committed the offence.

P.W-10-the doctor, who conducted autopsy over the dead body of the deceased, opined that the cause of death was due to injury to vital organs like lungs and also to major blood vessels.

Insofar as injury No.2, there is no explanation from the prosecution as to how the deceased sustained the said injury. It is now urged by the prosecution that the deceased sustained the said injury when she was pushed to the ground by the accused, but the said fact was not spoken to by P.Ws.4 and 5. Apart from that, the prosecution did not elicit from P.W-10-doctor as to whether such an injury, more particularly, the rupture of lungs could be possible by a fall. On the other hand, the consistent evidence of all the prosecution witnesses is that there was a quarrel between the accused and the deceased, due to which, the accused gave a single blow on the neck of the deceased. It is not in dispute that single blow led to the death of the deceased. It does not mean that in all cases of such nature, the offence has to be scaled down. It has to be tested with the facts and circumstances of each case. As stated earlier, in the instant case, none of the witnesses, including P.W-2-the daughter of the deceased, spoke about the existence of animosity or ill-will between the accused and the deceased. She did not depose about the existence of any harassment of the deceased by the accused earlier to the said incident. Therefore, it is clear that on the date of the incident, there was a quarrel between the accused and the deceased and when the deceased refused to give money, the accused picked up an axe and dealt a blow on her.

From the above, it cannot be said that the accused had any motive to kill the deceased.

Having regard to the manner in which the incident took place and in the absence of any animosity or disputes between the accused and the deceased prior to the incident, it can be said that the accused had no intention and knowledge that such a blow will lead to the death of the deceased.

In view of the above discussion, we are of the opinion that the act of the appellant/accused would fall under Part-I of Section-304 I.P.C and his conviction by the X Additional District and Sessions Judge (Fast Track Court), Guntur at Narasaraopet, in Sessions Case No.563 of 2010, vide judgment, dated 15.4.2011, is accordingly, altered to the one punishable under Section-304-I I.P.C. instead of under Section-302 I.P.C.

With regard to the sentence, we are of the opinion that the ends of justice would be met if the appellant is sentenced to suffer rigorous imprisonment for 8 years.

As it is represented by the learned counsel for the appellant-accused that the accused has been in jail during investigation, pending trial and subsequent to his conviction, the period of imprisonment undergone by him shall be given set off. If the accused had already undergone eight years of

imprisonment including remission, if any, he shall be set at liberty if he is not required in any other case.

The Criminal Appeal is partly allowed to the extent indicated above.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

20th December, 2017

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