HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.852 of 2011

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

1. Sole accused in Sessions Case No.314 of 2010 on the file of the I Additional Sessions Judge, Kadapa is the appellant herein. He was tried on two charges by the learned Sessions Judge. The first charge was under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') for causing death of his wife Smt. Durusu Lakshmi Devi on the intervening night of 08/09.08.2010 at 12.30 AM at his house in Vempally Town, and the second charge is under Section 498A IPC for harassing her physically and mentally with a demand of additional dowry. The learned Sessions Judge, vide judgment dated 21.04.2011, found the appellant/accused not guilty of the offence punishable under Section 498A IPC and accordingly acquitted him, but found him guilty of the offence punishable under Section 302 IPC, accordingly convicted him and sentenced to undergo imprisonment for life and to pay fine of Rs.500/- in default to suffer simple imprisonment for one month. Assailing the same, the present Criminal Appeal is filed.

2. The case of the prosecution, in brief, is as under:

Wife of accused Smt. Durusu Lakshmi Devi (hereinafter called as 'the deceased') is second daughter of P.Ws.1 and 2. A day prior to the incident, the deceased along with the accused

visited Pulivendula, where P.W.1 was residing. They requested her to give Rs.500/- to discharge their debts. Accordingly, she gave that amount to the deceased. On the next day evening, the accused and P.W.1 went to house of accused at Vempalli. At about 7.00 or 8.00 PM, the accused demanded the deceased to give Rs.100/- for his personal expenses, for which the deceased refused to give stating that she had to discharge debts. On that, the accused picked up quarrel with the deceased, beat her and left the house. After having dinner, the deceased was sleeping on cot, and P.W.1 was sleeping on floor, in the house. In the mid night, the accused returned home and questioned the deceased as to why she did not give the money, picked up M.O.1-pestle and beat her on right side of her head while she was lying on the cot. He also gave two or three blows. Immediately, P.W.1 went out of the house and raised hue and cry. On hearing the same, neighbours including P.W.3, gathered at the scene of occurrence. They found the accused running away with M.O.1-pestle and also noticed the deceased lying on cot with injury on right side of head. In the early hours of the next day, P.W.1 informed about the incident to P.W.2, who is her husband. Then, himself along with relations rushed to the house of the accused and found dead body of the deceased on the cot with injury on her head. Immediately, P.W.2 along with P.W.1 went to police station at Vempally and lodged Ex.P1-report, basing on which P.W.6 registered a case in crime No.54 of 2010 of Vempalli police station came to be registered for the offence punishable under Section 302 IPC. Further

investigation in this case was taken over by P.W.7. On receipt of Express F.I.R., he rushed to the scene of occurrence and conducted inquest on the dead body of the deceased under Ex.P2-inquest report in the presence of P.W.4 and others. Thereafter, he prepared rough sketch of the scene of occurrence, which is placed on record as Ex.P6. During the said proceedings, he seized M.Os.2 to 9. He also got photographed the scene of occurrence under Ex.P7-photographs. Thereafter, he sent the dead body for post mortem examination. P.W.5-Deputy Civil Surgeon, Area Hospital, Vempally conducted autopsy over the dead body of the deceased and Ex.P4 is the port mortem examination report. On the same day, at about 4.30 PM, P.W.7 arrested the accused and in pursuance of the confession made by him, M.O.1-pestle used by him in commission of the offence and M.O.9- white colour shirt were seized, under Ex.P3-panchanama. After obtaining Ex.P9-report of the Regional Forensic Science Laboratory and completion of investigation, the charge sheet came to be filed before the learned Judicial Magistrate of First Class, Pulivendula. The learned Magistrate took cognizance of the same as P.R.C. No.28 of 2010 and committed the case to the Court of Session under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.314 of 2010 and was made over the learned I Additional Sessions Judge, Kadapa for trial.

3. On appearance of the accused, the learned Sessions Judge framed charges under Sections 302 and 498A IPC, and when the

charges were read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

4. To substantiate its case, the prosecution examined PWs.1 to 7 and got marked Exs.P1 to P9 and M.Os.1 to 9. After closure of the 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.

5. Relying upon the evidence of P.Ws.1 to 3, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal is filed.

6. Learned legal aid counsel appearing for the appellant mainly submits that there is any amount of doubt with regard to presence of P.W.1 at the scene of occurrence at the relevant point of time of the incident. According to him, as per the evidence of prosecution witnesses, there was no light in the house and hence, identification of the appellant/accused as the assailant of the deceased is not established beyond reasonable doubt. He further submits that there are discrepancies in the contents of Ex.P1 and in the evidence of P.W.1 and hence, the prosecution version cannot be believed. He further submits that on the fateful day, when two women (the deceased and P.W.1) were present in the house, definitely, they would close the door before sleeping, but the case of the prosecution that the door was not closed from

inside with latch gives any amount of doubt whether P.W.1 was really present in the house or not at the relevant time and as to whether the accused is the person who was the assailant of the deceased, and hence, the appellant/accused is entitled to the benefit of doubt.

7. On the other hand, learned Public Prosecutor appearing for the State contends that the evidence adduced by the prosecution, more particularly the evidence of P.W.1, which remained unimpeached, is sufficient to base the conviction against the appellant/accused. He further submits that the material objects seized during the course of investigation contain the blood group which belongs to the deceased. Having regard to the above, he submits that the evidence of P.W.1 gets corroboration not only from the medical evidence but also from Ex.P9-report of the Regional Forensic Science Laboratory, and the trial Court, upon appreciation of the evidence on record, found the appellant/accused guilty, convicted and sentenced him, and there are no grounds to interfere with the same.

8. Now, the point that arises for determination is whether the appellant/accused can be held liable for causing death of the deceased or not ?

POINT:

9. P.W.4 is one of the inquest mediators present at the time of P.W.7 conducting inquest on the dead body of the deceased under Ex.P2-inquest report. He deposed about his presence at the time

of conducting inquest over the dead body of the deceased by P.W.7. He is a Village Revenue Officer. His evidence remained unshaken even during cross-examination and nothing has been elicited in his cross-examination so as to disbelieve the same. As per column No.XV of Ex.P2-inquest report, the inquest mediators opined that the deceased died as a result of beating by the accused on head with pestle. The objective findings of the inquest mediators are admissible in evidence so as to know the apparent cause of death of the deceased.

10. P.W.5 is the Deputy Civil Surgeon, Area Hospital, Vempalli, who conducted autopsy on the dead body of the deceased on 09.08.2010 and found the following external ante-mortem injuries:

1)An oblique lacerated injury of 10 x 4 x bone depth over right lateral temporal area;

2) The surrounding area up to eye ball is discoloured, oedemadous and haemorrhagic area.

He opined that the deceased would appear to have died of sudden shock and circulated failure due to right head injury with a blunt object. He issued Ex.P4 post mortem examination report. His evidence remained unchallenged as defence counsel reported no cross-examination. Therefore, from the evidence of P.Ws.4 and 5 and the recitals in Exs.P2 and P4, homicidal nature of death of the deceased is established. Now, it has to be seen whether the appellant/accused is the assailant of the deceased or not ?

11. As seen from the evidence of prosecution, entire case of prosecution rests upon the evidence of P.Ws.1 to 3. P.W.1, who is mother of the deceased, deposed in her evidence that one day prior to the incident in question, the accused and the deceased visited her house and requested her to give Rs.500/- and accordingly she gave it, and on the next day evening, herself along with the accused and the deceased went to the house of the accused. It is her further evidence that on that day, at about 7.00 or 8.00 PM, a quarrel ensued between the accused and the deceased when the accused demanded the deceased to give Rs.100/- towards his personal expenses and when the latter refused to give it, and on that the deceased beat her and left the house. It is her further evidence that after having dinner, P.W.1 and the deceased slept in the house, and during mid-night, the accused came there, questioned the deceased as to why she did not give the money, picked up a pestle and beat the deceased on right side of her head leading to instantaneous death. It is her further evidence that immediately thereafter, P.W.1 informed P.W.2, who is her husband, about the incident, and after arrival of P.W.2 to the house of the accused, Ex.P1 report came to be lodged on 09.08.2010.

12. The evidence of P.W.1 is cogent and consistent. Though she was subjected to cross-examination, we feel that nothing useful has been elicited to discredit her testimony. Suggestions given to the witness to the effect that she was not in the house and some unknown persons caused death of the deceased, remained as

suggestions. However, it has been admitted by P.W.1 in cross-examination that they did not close the latch of the door from inside and without opening of the latch, the accused himself entered into the house. Relying on this, learned counsel for the appellant/accused tried to contend that the conduct of not locking door from inside, appears to be improbable. It is to be noted that as seen from Ex.P6, the house of accused is a small room and hence putting latch or not closing the latch from inside, does not, by itself, create any amount of doubt as to the case of prosecution. As the accused has gone out of the house at about 8.00 PM after quarrelling with the deceased, P.W.1 and the deceased thought of keeping the door closed without putting latch so as to enable the accused to come into the house even during late hours in the night. Therefore, this circumstance, by itself, does not, in any way, a ground to disbelieve the prosecution case.

13. It is also elicited in the cross-examination of P.W.1 that there was no light in the house at the relevant point of time of the incident. But, it is to be noted here that the accused and P.W.1 are close relatives to each other, being son-in-law and mother-in-law respectively. The evidence shows that the accused came to the house during mid-night, questioned the deceased, picked up M.O.1-pestle and beat with it on her head. As seen from Ex.P4-postmortem certificate, medical evidence also corroborates the ocular testimony of P.W.1. Since the accused is known person to P.W.1, she can easily identify him even in darkness or slightest illumination of light. Apart from this, it is also to be noted that

immediately after the incident, the accused ran out of his house. The said fact was deposed by P.W.3, who is neighbour of accused. His evidence discloses that on hearing cries, he came to the house of the accused and saw the accused running away from the house where the deceased was lying with injury. When it is suggested to P.W.1 that she was not at all present in the house, the same is denied. It is also suggested that some unknown persons are responsible for death of the deceased, but it is also denied. Further more, the evidence of P.Ws.1 to 3 gets corroboration with the medical evidence under Ex.P4-post mortem certificate and Ex.P9-Report of the Regional Forensic Science Laboratory. As per the recitals in Ex.P9, M.Os.2, 3, 4, 8 and 9 contain 'B' group blood, which is tallying with the blood group of the deceased as noted in Ex.P__. We do not find any reason to disbelieve the recovery of material objects, more particularly M.O.1, made from the accused in pursuance of the disclosure statement made by the accused under Ex.P3. The trial Court, upon appreciation of the evidence on record in right perspective, found the appellant/accused guilty of the offence punishable under Section 302 IPC. We do not find any reason to interfere with the findings arrived at, by the trial Court. The appeal is devoid of merit and is liable to be dismissed.

14. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence passed against the appellant/accused in the judgment dated 21.04.2011 in Sessions Case No.314 of 2010 on the file of the I Additional Sessions Judge, Kadapa.

15. Consequently, miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE C.PRAVEEN KUMAR

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JUSTICE N.BALAYOGI

04.12.2017
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AND
HON'BLE SRI JUSTICE N. BALAYOGI

JUDGMENT
in

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

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

04.12.2017