

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.357 of 2012

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

1) The sole accused in Sessions Case No.412 of 2011 on the file of the III Additional District and Sessions Judge, Tirupati is the appellant herein. He was tried for the offences punishable under Sections 302 and 506 (II) IPC, for causing the death of one Gooturu Savithri @ Fathima on 02.04.2011 at 06.30 p.m. at his house in Rajiv Gandhi Colony, Jeevakona, Tirupati (hereinafter referred to as "the deceased") and also threatening B.Santhamma, B.Ekambaram, N.Mahesh, N.Kalavathi and P.Nagaraju with dire consequences in the cause of the said incident. By its judgment, dated 21.02.2012, the Sessions Court convicted the accused under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay a fine of Rs.1000/-, in default, to suffer simple imprisonment for two months. The accused was also convicted under Section 506(II) IPC and sentenced to undergo rigorous imprisonment for a period of one year.

2) The facts in issue are as under:

PWs.1 to 6 are all residents of Rajeev Gandhi Colony, Jeevakona, Tirupathi. PW.1 is the landlord staying in one portion of the house, while the accused and deceased were staying as

tenants in another portion of her house. The evidence discloses that the first husband of the deceased discarded her and the accused also deserted his first wife. About five months prior to the date of incident, the deceased migrated to Tirupati and developed acquaintance with the accused. The accused and deceased started living in the house of PW.1 and were eking their livelihood by doing some coolie work. As the accused was suspecting the fidelity of the deceased, there were regular quarrels between them in that connection. In view of the above, PW.1 asked the accused to vacate the house portion and also kept the samans of the accused and deceased outside the house. However, the accused approached the mosque elders and assured them that he will look after the deceased properly. On the advice of elders, PW.1 allowed them to stay in her house. On 02.04.2011, in the after noon, there was a galata between the accused and the deceased. The evidence of PW.1 shows that after the quarrel, the deceased went to the house of one Narayanamma. The deceased informed the persons gathered there about the fight. On the same day at about 06.30 p.m., the accused went to the house of Narayanamma and asked the deceased to come along with him, promising that he would not beat her. Believing the same, the deceased joined the accused. It is said that even before opening the door of their house, the accused took out a pestle, which was kept by him in front of his house portion, and gave a blow on the head of the deceased from behind. Then the deceased ran towards

the street for a distance of 10 feet and fell down on the road. The accused again beat the deceased with the same pestle on her head and face saying that he will not leave her without killing. Immediately thereafter PW.1 took the deceased in a 108 ambulance to SVRR GG Hospital, Tirupati. PW.1 was in the hospital till 12.30 p.m., and thereafter returned home on the intervening night of 02/ 03.04.2011. The deceased is said to have died at 12.40 a.m., on the intervening night, which fact was informed to the Sarpanch who in turn informed the same to the relatives of the deceased. But they did not evince any interest in the death of the deceased. On 03.04.2011, PW.1 went to the police station and lodged a report with PW.8-the Inspector of Police. Basing on Ex.P.1-report, PW.8 registered a case in Crime No.76 of 2011 under Section 302 IPC and issued FIR, which was marked as Ex.P.7. On receipt of death intimation from the Hospital, PW.8 issued an altered FIR. At about 10.30 a.m., he visited the scene of offence and observed the same in the presence of PW.5 and one G.N.Ravi, noticed broken bangles, (MO.2), in front of the house of the deceased. At a distance of 10 feet from the house of the deceased, he seized blood stains earth-MO.3 and control earth-MO4, under the cover of mahazar, Ex.P.2. Thereafter, he prepared a rough sketch of the scene, which was marked as Ex.P.9. He then conducted inquest over the dead body from 09.00 a.m. to 11.00 am on 04.04.2011 in the presence of PW.6. Ex.P.5 is the inquest report. During inquest, he examined PW.4 and others and

recorded their statements. After completing the inquest, he forwarded the body for postmortem examination. PW.7-the Assistant Professor, Forensic Medicine, S.V Medical College, Tirupati, conducted autopsy over the dead body on 04.04.2011 at 12.00 noon and issued Ex.P.6-the postmortem certificate. PW.7 noticed 17 external injuries on the body. Out of which, injury Nos. 1 and 2 were on head, which are said to be vital. PW.8 continued with the investigation and arrested the accused on 05.04.2011; interrogated him in the presence of PW.5 and recorded his confession statement. After receiving the F.S.L. report, PW.8 filed the charge sheet, which was taken on file as P.R.C.No.39 of 2011 on the file of the III Additional Judicial Magistrate of First Class, Tirupati. On appearance of the accused, copies of the documents were furnished as required under Section 207 Cr.P.C and as the case is triable by a Court of Sessions, the same was committed to the Court of Sessions, which came to be numbered as S.C.No.412 of 2011.

- 3) Charges for the offence punishable under Sections 302 and 506 (II) IPC came to be framed, read over and explained to the accused, to which he denied the same and claimed to be tried.
- 4) In support of its case, the prosecution examined PWs.1 to 15 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 evidence was adduced on behalf of the accused in support of his defence, except marking Ex.D.1.

5) On appreciation of the entire evidence on record, the Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant would contend that the evidence of PW.1 is a complete improvement over the contents in the first report. It is urged by her that the first information report is silent with regard to the incident which is said to have been took place and also with regard to the manner in which the incident took place. She further submits that non-examination of the persons, who came to the place of offence immediately after the incident on hearing the cries, is fatal to the prosecution case. It is further urged that there was a quarrel between the accused and the deceased prior to the incident and in the said quarrel, the accused took up a pestle and hit her. Hence, she pleads that even if the entire case is accepted to be true, the offence would fall under Section 304 Part I IPC.

7) On the other hand, learned Public Prosecutor would contended that the first information report cannot be called as a tainted one, it was given by the owner of the house on the next day morning and the fact of accused assaulting the deceased was mentioned in the first information report. He further submits that

the incident in question occurred in front of the house of the accused and the same was witnessed by number of persons, who were moving in the street at that point of time. In so far as the nature of offence, learned Public Prosecutor would contend that having regard to the number of injuries on the body of the deceased and more particularly injuries 1 and 2, show the force with which the blows were given. Therefore, pleads that it is a clear case where the act was committed with an intention to kill the deceased.

8) As seen from the record, in the first information report given by PW.1, it was stated that there were frequent quarrels between the accused and the deceased, as the accused was suspecting the fidelity of the deceased. In view of the frequent quarrels between them, PW.1 told the accused to vacate the house. It was also deposed that on 02.04.2011 at about 06.30 p.m., in front of the house, PW.1 noticed that the accused and deceased quarreling with each other and thereafter the accused beat the deceased with a pestle, due to which she sustained injury on his head; PW.1 took the injured to the hospital where the deceased died at 12.40 am. It is true that the first information report is silent with regard to the circumstances that happened prior to the incident and also after the first blow was given by the deceased. Since the fact of accused beating the deceased on the head was referred to in the first information report, apart from the quarrels between the deceased and the accused due to accused suspecting the fidelity of

the deceased it cannot be said that FIR was bereft of reasons. During the course of inquest, all the eye witnesses were examined, and in the inquest report contains the version, which is now spoken to before the Court. The contents of FIR gets corroboration from the version set out in inquest report and also in the Court. So, it cannot be said that the version spoken to Court is an after thought or a belated one. It is to be noted here that none of the witnesses had any enmity to speak falsehood against the accused. All of them were residents of the same colony.

9) Coming to the oral evidence of PW.1 in her evidence, she deposed about the frequent quarrels between the accused and the deceased, as the accused was suspecting the fidelity of the deceased. She also deposed about demanding the accused to vacate the house, in view of the quarrels and subsequently allowing them to stay in the house on the advice of the elders. According to her, on 02.04.2011 there was a galata, pursuant to which the deceased went to the house of Narayanamma. Thereafter, the accused is said to have gone to the house of Narayanamma and requested the deceased to come to his house, promising to take care of her. Believing the promise made by the accused, the deceased followed him to the house and when she was about to enter into the house, the accused took a pestle and hit on the head. On receiving the said injury, the deceased ran to a distance of 10 feet and fell down. Thereafter, the accused again beat her on the head and caused number of injuries on the body.

It may be true that though PW.1 deposed in her evidence about the incident, which occurred in the after noon and also about the deceased going to the house of Narayanamma but the same was not mentioned in the first information report. However, the said fact was also mentioned not only in the inquest, but also in the statement recorded by the police during the course of investigation. Though PW.1 was cross examined at length, nothing useful was elicited. Even assuming that the incident which took place in the after noon was an improvement, but that by itself cannot be a ground to disbelieve her presence at the scene of offence, when the evidence of PW.1 gets corroboration not only from other witnesses, but also from the medical evidence. PW.2 in his evidence, states that on the date of incident at 06.30 p.m., when he was in the house heard cries in front of house of PW.1 and immediately proceeded towards the said house. He saw the accused giving a blow with MO.1-pestle and the deceased falling down at some distance on the road. Thereafter, the accused again beat the deceased with MO.1 and then ran away. In fact nothing has been elicited in the cross examination to discredit his testimony. The evidence of PWs.1 and 2 gets corroboration from the evidence of PWs.3 and 4.

10) Apart from that, the evidence of PW.5, coupled with the evidence of Investigating Officer, shows that the prosecution seized broken bangles from the scene of offence under cover of Ex.P.2. Since the evidence of PWs.1 to 4 is consistence and as

their evidence gets corroboration from medical evidence, there are no grounds to disbelieve their evidence and throw out the case as false.

11) Coming to the nature of offence, learned counsel for the appellant relied upon by the judgment of the Apex Court in *Trimbak v State of Maharashtra*¹ and pleaded that even accepting the case of the prosecution to be true, the offence would only be under Section 304 Part I IPC. The fact of the said case are totally different. In the said case the accused gave one blow after picking up the axe and the death of the deceased was not immediate. The evidence in the said case also discloses that there was a sudden quarrel and in view of the same, the accused picked up the axe and dealt a blow. Having regard to the same, the Apex Court altered Section 302 IPC to Section 304 Part I.

12) In the instant case, the evidence of PW.7, the doctor who conducted postmortem examination discloses that there were 17 external injuries on the body of the deceased, out of which injuries 1 and 2 were proved to be fatal. The first injury was sutured wound of 5 cm over mid parietal area, placed obliquely with three black thread sutures and on removal a laceration of 5 x 1.5 c.m bone deep, and second injury is sutured wound of 6 cm over left side of occipital area, placed obliquely with 5 black threat sutures and on removal a laceration of 6 x 1.5 cm bone deep. Injuries 14

¹ 2008(2) ALD (GrI) 85(SC)

and 16 were said to be corresponding injuries to injuries 1 and 2. But, however, the doctor noticed number of abrasions, contusions and lacerations over the forearm, elbow and nose etc., which clearly indicate that the versions of PWs.1 and 2 with regard to giving one blow pursuant to which the deceased ran to a distance and then fell down and again, the accused gave blows on the head and also on the face, appear to be correct. Even assuming that there was some inconsistency or variations in the oral evidence, vis-à-vis medical evidence we feel that the same do not go to the root of the matter and the oral evidence cannot be thrown out on that score. Having regard to the above, the conviction and sentence imposed by the Sessions Judge are confirmed in all respects.

13) Accordingly, the criminal appeal is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

Date: 13.11.2017
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