

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.948 of 2012

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

1) The sole accused in Sessions Case No.93 of 2011 on the file of the Special Judge for trial of cases under SCs & STs (POA) Act-cum-Additional District Judge, Vizianagaram, is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of his wife by name Pydamma (hereinafter referred to as "the deceased") on 14.02.2011 by beating her. Vide judgment, dated 16.02.2012, the learned Sessions Judge, convicted the accused and sentenced him to suffer "rigorous imprisonment for life" and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for a period of six months for the offence punishable under Section 302 IPC.

2) The facts in issue are as under:

PW.2 is the mother of the deceased, while PW.3 is the cousin of the deceased. The evidence of PW.3 would show that the accused used to consume alcohol and beat the deceased. On the date of incident, at about 4.00 p.m., the accused beat the deceased, upon which she fell down on the ground. Thereafter, PW.3 went there and when she tried to give water, the deceased was not in a position to swallow the water. She noticed injuries on the head and other parts of the body. Under an impression that

the deceased died, she came back. She claimed to have informed about the said incident to her husband. On 15.06.2011 at about 6.00 p.m. village Talyari by name Ramulamma informed PW.1 about the death of the deceased. On the next day morning, PW.1, who is the V.R.O., visited Cheruvuvalasa village and found dead body of the deceased with injuries on the head and other parts of the body. He sent a report to the S.H.O., Gantyada Police Station. On receipt of the said report, PW.6-the Sub-Inspector of Police, registered a case in Crime No.12 of 2011 and issued the first information report, which is placed on record as Ex.P7. Subsequent investigation was taken up by PW.8-the Inspector of Police. According to him, after receipt of a copy of the first information report, he proceeded to the scene of offence along with his staff and noticed the body lying on the cot in the house of the accused. He observed the scene of offence and prepared a rough sketch of the scene. Ex.P2 is the observation report and EX.P9 is the rough sketch. PW.8 claims to have collected the blood stained cement flooring pieces from the pedestal of the cement pole and also seized control earth from the scene, which are marked as MOs.1 and 2. Thereafter, PW.8 conducted inquest over the dead body of the deceased in the presence of Chinna Mallu and Buchi Babu. Ex.P11 is the inquest report. During inquest, he examined PWs.1 to 3 and others. Thereafter, the body was sent for postmortem examination. PW.4-the Civil Assistant Surgeon, Government Hospital, Vizianagaram, conducted autopsy over the dead body of the deceased and issued Ex.P6-the postmortem

certificate. According to him, the cause of death was “ due to anti mortem injuries on face and head, leaving hematoma beneath both bones with shock and multiple organs failure.” On 22.02.2011, PW.8 arrested the accused at the temple, on the way to D.K.Pathi village and recorded the confessional statement of the accused in the presence of Buchi Bau. After completing the investigation, PW.9-Inspector of Police, filed the charge sheet before the Court of the Judicial Magistrate of First Class, Gajapathinagaram, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.93 of 2011.

3) On appearance, charge under Section 302 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 9 and got marked Exs.P1 to P12 and MOs.1 to 5. 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. Neither oral nor documentary evidence was adduced on behalf of the accused.

5) Believing the evidence of PW.3 and also the contents of the inquest report, the Sessions Judge convicted the accused for the offence with which the accused was charged. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant would submit that there is absolutely no evidence to connect the accused with the crime. According to her, the evidence of PW.3, who was examined as an eye witness to the incident is shaky and cannot be accepted as true in view of the admissions made by her in the cross-examination, coupled with the evidence of investigating officer. It is her case that if the evidence of PW.3 goes, there is nothing on record to connect the accused with the crime.

7) On the other hand, learned Public Prosecutor would submit that the evidence of PW.3 is sufficient to base a conviction.

8) As stated earlier, PW.2, who is the mother of the deceased, did not support the case of the prosecution and was treated hostile by the prosecution. The only other evidence which remains on record is the evidence of PW.3, who is the relative of the deceased. As per her evidence, on the date of incident at about 4.00 a.m. the accused beat the deceased, upon which the deceased fell on the cot. She went there to give water but the deceased was not able to swallow the same. She claims to have noticed injuries on the head and other parts of the body of the deceased. Under an impression that the deceased died, PW.3 claims to have returned back to her house. In the cross-examination, PW.3 admits that she did not inform PW.2 about the accused taking alcohol. She also did not inform to the village elders and PW.2 about the accused beating the deceased. She admits that there are ten houses on either side of her house.

Though she admits that the accused beat the deceased, but she does not know how the deceased died. It would be useful to refer to the evidence of PW.8, the investigating Officer with regard to earlier version of PW.3, which is as under:

“PW.3 did not state to me that she has given water to the deceased to drink.”

9) As seen from the evidence of PW.3, if really she has gone there, on noticing the accused beating the deceased and if really her version that the deceased was not able to swallow the water is true, definitely her conduct would have been otherwise more so, when she was under the impression that the deceased died. PW.3 being a relative of the deceased would not have come back to her house leaving the body at the house. She would have taken some steps in informing the neighbours, about the body lying on the cot and also about the accused causing injuries to the deceased. Her conduct appears to be quite strange and unnatural.

10) Apart from that in her earlier statement she never state about giving of water to the deceased. This in our view is a material omission. In the chief examination, PW.3 states that when she went there to give water, the deceased was not in a position to swallow the water. It is not the version which PW.3 spoke in her earlier statement recorded under Section 161 Cr.P.C. by the police. Apart from that in the cross-examination, PW.3 states that she does not know how the deceased died. It is also to be noted here that PW.3, in her cross-examination deposed that her house is ten houses away from the house of the accused, hence

the possibility of she seeing the incident at 4.00 a.m. and coming to the house with water, also appears to be improper. Further, no reasons are given as to why she woke up at 4.00 a.m. in the morning. She did not say that it was her habit to get up at 4.00 a.m. on every day. Having regard to the above, there exists any amount of doubt with regard to PW.3 witnessing the accused beating the deceased. If the evidence of PW.3 goes, there is no other evidence on record to connect the accused with the crime.

11) In the absence of any evidence, the conviction and sentence imposed by the trial Court basing on the contents of inquest report cannot be sustained.

12) In the result the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.93 of 2011 on the file of the Special Judge for trial of cases under SCs & STs (POA) Act-cum-Additional District and Sessions Judge, Vizianagaram, for the offence punishable under Section 302 IPC are set aside. Consequently, the appellant/ accused shall be set at liberty forthwith, if he is not required in any other case or crime.

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

JUSTICE C.PRAVEEN KUMAR

JUSTICE N. BALAYOGI

18.12.2017
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