

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE T. AMARNATH GOUD
CRIMINAL APPEAL No.777 OF 2012

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

1) The sole accused in Sessions Case No.355 of 2011 on the file of the XIII Additional District and sessions Judge, Narasaraopet, Guntur District, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing THE death of his mother by name Mandalapu Chandra Kanthamma (hereinafter referred to as "the deceased") on 29.12.2010 at 12.00 noon at Lingamguntla Colony, Narasaraopet Rural Mandal, Guntur District. By its judgment, dated 16.09.2011, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" and to pay fine of Rs.5000/- in default to suffer simple imprisonment for a period of six months, for the said offence.

2) The case of the prosecution as unveiled from the evidence of the prosecution witnesses as under:

i) Accused is the elder son of the deceased. PW.2 is the husband of the deceased where as PW.1 is their third son. PW.3 is the daughter of the deceased. The evidence of PW.1 would show that earlier the accused killed his wife with crow bar, for which he was convicted and sentenced to suffer seven years imprisonment. After serving the sentence, the accused was released. Subsequent to his release from jail, the accused became lazy and got addicted

to alcohol. He used to demand money for his bad vices and also taken away the provisions from the house for purchasing alcohol. When the same was questioned, the accused used to threaten the family members with dire consequences. On 29.12.2010 at about 12.00 or 12.30 p.m. PW.1 and his brother returned from the field on TVS moped and on hearing the sound of the moped, the accused came out of the house with a chutney pounder in his hand. Immediately, PW.1 and his brother entered into the house and found their mother on the ground with injuries. They called the 108 ambulance and took their mother to the Government Hospital, Narasaraopet, where she was declared dead.

ii) On 29.12.2010 at about 1.00 p.m. PW.1 lodged a report (Ex.P1) with PW.7-the Assistant Sub-Inspector of Police. Basing on the said report, PW.7 registered a case in Crime No.182 of 2010 under Section 174 Cr.P.C. and issued the first information report, which is placed on record as Ex.P6. On receipt of the first information report, PW.9-the Inspector of Police, took up investigation, proceeded to the scene of offence and got photographed the scene of offence. Later he conducted inquest over the dead body of the deceased in the presence of PW.6 and others. Ex.P3 is the inquest report. During inquest, he examined PWs.1, 3 and 4. Later he sent the dead body to Area Hospital, Narasaraopet, for postmortem examination.

iii) PW.5-the Civil Assistant Surgeon, Area Hospital, Narasaraopet, conducted autopsy over the dead body of the

deceased and issued Ex.P2-the postmortem certificate. According to the doctor, the cause of death was “due to head injury.”

iv) On receipt of the postmortem examination report, PW9- the Inspector of Police, altered the section of law from 174 Cr.P.C. to 302 IPC. Ex.P8 is the alteration Memo. On 31.01.2011 at about 10.00 a.m. PW.9 arrested the accused at Narasaraopeta Railway Station. On interrogation, the accused confessed about the commission of offence. He recorded the confessional statement of the accused in the presence of PW.6 and another. Pursuant thereto, the accused lead the police to Lingamguntla Colony and picked up M.O.1-chutney pounder from the bushes and produced the same. M.O.1 was seized under a cover of panchanama. After completing the investigation, PW.9 filed a charge sheet before the Court of Judicial Magistrate of First Class, Narasaraopet, who intturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.355 of 2011.

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

4) In support of their case, the prosecution examined PWs.1 to 9 and got marked Exs.P1 to P8 and M.Os.1 to 3. After the closure of 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.

5) After considering the oral and documentary evidence on record, the Sessions Judge convicted the accused for the offence punishable under Section 302 IPC. Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that there are no eye witnesses and the case rests on the circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. He further submits that even accepting the entire version of the prosecution is to be true, the ingredients constituting an offence punishable under Section 302 IPC are not made out.

7) The learned Public Prosecutor opposed the same contending that the evidence of PW.4, who saw the accused leaving the house with M.O.1, is sufficient to base a conviction.

8) The admitted fact that the accused has killed his wife, for which he was convicted and sentenced to suffer imprisonment for seven years. After serving the sentence, the accused got himself released and joined his parents. On the date of incident only the deceased and accused were in the house. The evidence of the prosecution is that the accused used to demand money frequently and also used to quarrel with the deceased. The evidence of PW.2 shows that on the date of incident also there was

a quarrel between the accused and the deceased, when he demanded money for consuming liquor.

9) PW.1, who is the brother of the accused and son of the deceased deposed that on 29.12.2010 at 12.00 noon or 12.30 p.m. himself and his brother returned from field on a TVS Moped to their house and on hearing the sound of the moped, the accused came out of the house armed with a chutney pounder. They entered into the house and found the deceased on the ground. He called 108 ambulance and took the deceased to Government Hospital, Narasaraopeta, where she was declared dead. PW.1 further deposed that the accused was addicted to vices, used to quarrel with his mother and when the deceased refused to give money, the accused beat his mother with M.O.1 and killed her. The said version of PW.1 also gets corroboration from the evidence of PWs.2 and 3. They categorically deposed that the accused used to quarrel with the deceased for money.

10) It is true that there are no eye witnesses to the incident, but PW.4, who is the neighbour of the deceased, deposed that on the date of incident, while she was sitting outside the house, she noticed the accused leaving the house. From the evidence of this witness, it is clear that the accused was present in the house.

11) Further, PW.1 and his brother noticed the accused leaving the house armed with chutney pounder when they arrived at the house on the date of incident. Immediately thereafter, they

entered into the house and found the deceased lying with injury on head. PW.4 also states that she noticed the accused leaving the house.

12) The fact that it was a case of homicidal death is evident from the evidence of PW.5-the doctor, who conducted autopsy over the dead body of the deceased. He noticed an abrasion over the forehead near to right eye brow, abrasion over the left mandible area, abrasion over the left mandible area below injury No.2, contusion over the left occipital area of head extended below to left side of the neck. On opening skull he also noticed sub-dural hemorrhage. He opined that the deceased died due to head injury, 6 to 12 hours prior to postmortem examination.

13) Admittedly, there is no evidence on record to how the deceased sustained the said injuries whether it was caused by the accused in a quarrel or whether the accused intentionally killed the deceased. But there was only one injury on the head of the deceased, which proved to be fatal. On the other hand there is evidence on record to show that the accused used to frequently quarrel with the deceased for money.

14) The question that falls for consideration is whether the incident in question, falls within Exception 4 to Section 300 IPC.

15) Exception 4 to [Section 300](#) I.P.C, is as under:

"Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel

and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault."

16) The requirements of this exception are : (a) without premeditation in a sudden fight; (b) in the heat of passion upon a sudden quarrel; (c) the offender has not taken undue advantage; and (d) the offender has not acted in a cruel or unusual manner.

17) Having regard to the fact that the accused used to quarrel with the deceased for money; since the evidence of PW.2 show that prior to the incident there was a quarrel and in the absence of animosity or grievance, which the accused has against the deceased, we feel that the incident must have occurred because of the quarrel. Hence, it is a case which falls under Exception-4 to Section 300 IPC, but not under Section 302 IPC.

18) In *Indrasan v. State of U.P.*¹ the Apex Court held as under:

"11....When on the very next day morning i.e. 14.10.1979, the accused-appellant saw the face of the deceased he simply picked up his lathi and with that gave one blow on the head of the deceased. The said blow was so forceful that as a consequence of which the deceased died within an hour and before he could be taken to the hospital. There is a direct nexus between the blow of lathi and death of the deceased which is immediately caused after giving the blow.

¹ (2009) 14 SCC 532

12. We, therefore, are of the considered opinion that although it is a case of culpable homicide not amounting to murder, but considering the nature of the injuries which was caused on a vital part of the body, we are of the considered view that there was intention on the part of the accused-appellant to cause death of the deceased.

13. We, therefore, alter the conviction of the appellant from [Section 302, IPC](#) to [Section 304 Part I IPC](#).”

19) For the aforesaid discussion and in view of the judgment referred to above, we are of the opinion that an offence under Section 304 Part-I of IPC is made out. Hence, the conviction under Section 302 IPC is set aside and consequently, the appellant is convicted under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of ten years. The period of remand undergone by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. The appellant/accused shall be set at liberty forthwith on completion of ten years rigorous imprisonment, if not required in connection with any other case.

20) Accordingly, the appeal is allowed in part. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

08.12.2017
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