

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.438 of 2012

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

1. The sole accused in Sessions Case No. 68 of 2012 on the file of the VIII Additional District Sessions Judge (Fast Track Court), East Godavari, Rajahmundry is the appellant herein. He was tried for the offence punishable under Section 302 IPC, for causing the death of his wife, Andala Ammamma and was sentenced to suffer 'imprisonment for life' under Section 302 IPC.

2. The facts, as culled out from the evidence of the prosecution witnesses, are as under:

PW1 is the father of the accused, while PWs 2 and 3 are the brothers of the accused. The deceased is his daughter-in-law. He deposed that on 18.03.2001, the accused hacked his daughter-in-law with an axe for the delay in bringing him food, and later, took her to the village with bandage. He also deposed that they shifted the injured to Chodavaram Hospital, and on the advice of the doctors, shifted her to Rajahmundry, where she succumbed to the injuries.

3. As per the evidence of PW7-the Sub Inspector of Police, Rampachodavaram, S.G.V.Krishna Murthy (Head Constable,

Rampachodavaram) registered a case in Crime No.39 of 2001 under Section 307 IPC basing on the dying declaration of the injured. The said statement is marked as Ex.P.4. The F.I.R came to be marked as Ex.P.5. Thereafter, on receipt of the intimation that the injured died, PW7 altered the Section of Law from 307 IPC to that of 302 IPC. Ex.P.7 is the altered F.I.R.

4. Thereafter, the Circle Inspector of Police, Maredumilli took up further investigation. In the matter on receipt of altered F.I.R., on 24.03.2001, he proceeded to the Government Hospital, Rampachodavaram and in the presence of PW4 and PW5, conducted inquest over the body of the deceased. Ex.P2 is the inquest report. Thereafter, he sent the dead body for postmortem examination.

5. PW6, the Deputy Civil Surgeon, Community Health Centre, Rampachodavaram conducted autopsy on the body of the deceased and issued Ex. P3, the Post Mortem Report. According to him, the cause of death was due to shock and haemorrhage due to the injury to the left side chest wall, especially injury to vital organ the lung.

6. Further investigation was taken up by the Circle Inspector of Police, Maredumilli. On 25.02.2001, he apprehended the accused, and when questioned, the accused is said to have admitted the offence. He then visited the scene of offence, prepared a rough sketch of the scene of offence and recovered the blood stained axe. The said axe was marked as M.O.1.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.6 of 2008 by the Judicial First Class Magistrate, Rampachodavaram. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.68 of 2012 on the file of VIII Additional District and Sessions Judge (FTC), East Godavari District, Rajahmundry. A charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

8. To substantiate their case, the prosecution examined PWs.1 to 8 and got marked Exs.P1 to P8. 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 or documentary evidence was adduced on behalf by the accused in support of his defence.

9. Since the prosecution established the case against the accused beyond all reasonable doubt, the Court below convicted the accused. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellant mainly submits that there is absolutely no evidence to connect the accused with the crime. PWs 1 to 3 were examined by the prosecution as eye witnesses, though none of these witnesses mention in their

evidence about witnessing the incident. Insofar as Ex.P4 is concerned, he would submit that the Head Constable, S.G.V.Krishna Murthy, who recorded the statement of the injured, is no more, and hence, the said statement cannot be made the basis to convict the accused. Even the Doctor who is said to have endorsed on the said statement, was not examined to say as to whether such statement was made by the deceased.

11. On the other hand, the learned Public Prosecutor would submit that the evidence adduced by the prosecution, more particularly, Ex.P4-the dying declaration is sufficient to base a conviction.

12. As seen from the record, the prosecution pressed into service the evidence of PWs 1 to 3 as eye witnesses to the incident. PW1, in his evidence deposed that about (6) hours prior to the incident, the wife of the accused went to the field with food, and there, the accused hacked his wife and took her to the village. He claims to have noticed the incident, as he was grazing his cattle nearby. He further deposed that he, along with others shifted the injured to Chodavaram Hospital, where the doctors advised them to shift the injured to Rajahmundry, where she succumbed to the injuries. In the cross-examination, he stated that he was not examined by the police and that he has not witnessed the incident in person. On the other hand, he stated that the accused and the deceased were living happily. In view of the said admission of PW1, he cannot be believed and his evidence cannot be relied upon.

13. PW2 did not support the prosecution case and was treated hostile by the prosecution. Similarly, PW3, in his chief examination itself admits that he does not know how the deceased sustained injuries and that he came to know that the accused killed her. Therefore, even PW3 cannot be treated as an eye witness to the incident.

14. On the other hand, the evidence of PW1 indicates that it was the accused who shifted the deceased, first to the village and then to the hospital. Therefore, if really, the accused was the culprit, his conduct would have been otherwise.

15. Coming to Ex.P4, the statement said to have been given by the deceased, which forms the basis of the F.I.R., it is to be noted that F.I.R. is not a substantial piece of evidence. But, if the said statement is to be treated as a Dying Declaration, at least the person who recorded the statement or the Doctor who certified the said statement, should have been examined, to the contents of the same. As seen from the record, neither S.G.V.Krishna Murthy, the Head Constable who recorded the statement of the deceased and who is no more, nor Smt. C.Anitha, the Medical Officer who endorsed the said statement were examined by the prosecution.

16. Therefore, in the absence of any other evidence on record, we are not inclined to believe the statement of the deceased recorded by S.G.V.Krishna Murthy, Head Constable, to base a conviction.

17. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 19.03.2012 in Sessions Case No.68 of 2012, on the file of the VIII Additional Sessions Judge, (Fast Track Court), East Godavari district, Rajahmundry for the offences punishable under Section 302 is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

20.11.2017
DMG



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI