

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO**

CRIMINAL APPEAL NO. 186 OF 2011.

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

This appeal is filed by the appellant-accused under Section 374 (2) Cr.P.C. challenging the judgment, dated 23.12.2010 passed in Sessions Case No.441 of 2010 on the file of the IV Addl. District and Sessions Judge (FTC), Mahabubnagar, wherein and whereunder the learned Sessions Judge found the accused guilty of the offence punishable under Section 302 IPC and accordingly, convicted and sentenced him to undergo Imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine, to suffer Simple Imprisonment for a period of three months.

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

The accused is the son and P.W.3 is the cousin brother of Smt.Pathiavath Saji (hereinafter referred to as 'the deceased'). P.W.4 is the wife of P.W.3. P.W.5 is the uncle of P.W.1. The accused is the step brother of P.W.1 and the deceased was the step mother of P.W.1 and mother of the accused. The evidence on record discloses that the accused was having two children and there were frequent quarrels between the accused and the deceased on petty issues. As there was a marriage of son of Janya in their tanda, P.W.4 attended the marriage and returned home. After returning home from the marriage function, at about 9.00 P.M., he noticed the accused weeping at his house along with his children. Then P.W.4 went to the house of the accused along with tanda people. On enquiry, they came to know from the accused that his mother died. They found the dead body of the deceased lying in front of the house of the accused and noticed injuries on the head of the deceased. P.W.5 deposed that the accused used to consume alcohol and beat the deceased, due to which, she received injuries. Then the persons

belonging to tanda informed about the incident to police, who came to the tanda and visited the house of the accused. On receipt of information about the incident, P.W.1 proceeded to tanda and found the dead body of his step mother in front of the house. He noticed injuries on the chest of the deceased. By the time he reached the place, police were already there. Then he lodged a report with the police. The evidence of P.W.1 would show that by the time he reached the house of the accused, the accused was present and was weeping. The evidence also shows that on the date of incident police came to the scene of offence and there he gave Ex.P1 to the police. On the other hand, the evidence of P.W.12- the S.I. of Police, Shadnagar, would show that on 05.04.2010 at about 1.00 A.M., P.W.1 came to Police Station and preferred a report, which came to be registered as Cr.No.143 of 2010. Ex.P15 is the F.I.R. He recorded the statement of P.W.1, visited the scene of offence and prepared a rough sketch of the scene of offence in the presence of P.Ws.8 and 9. Ex.P10 is the scene of offence panchanama. During the said process, he seized M.O.2-controlled earth, M.O.3-blood stained earth and M.O.4-bontha. Thereafter, he conducted inquest over the dead body of the deceased in the presence of panchayatdars and also obtained photographs of the dead body through P.W.6. Ex.P9 is the inquest report. At the time of inquest, he examined P.Ws. 2 to 6 and recorded their statements. Thereafter, he sent the dead body for post-mortem examination. P.W.11- the then Civil Assistant Surgeon, Community Health Centre, Shadnagar, conducted autopsy over the dead body of the deceased and issued Ex.P14-post-mortem report. According to him, the cause of the death of the deceased was due to injuries on the body. He noticed fracture of left and right humerus, fracture of left thigh bone, fracture of ribs on left and right side and laceration of right lung. According to him, the injuries are possible by a blunt object like M.O.1-pestle. Later, P.W.13 arrested the accused and recorded confessional statement of the accused, which led to recovery of M.O.1 near

the scene of offence, which is beside the house of one Desya in Cheeky bushes. Thereafter, he sent M.O.1 for F.S.L. report. After receiving the report from the F.S.L., and after completion of investigation, he filed charge sheet, which was taken on file as PRC No.50 of 2010 by the Judl. Magistrate of I Class, Shadnagar. On appearance of the accused, all the necessary documents were furnished in terms of Section 207 Cr.P.C. As the offence alleged is punishable under Section 302 IPC, which is exclusively triable by a Court of Session, the learned Magistrate committed the case to the Court of Session, which came to be numbered as Sessions Case No.441 of 2010.

3. Charge under Section 302 IPC against the accused was framed, read over and explained to the accused in Telugu, for which he pleaded not guilty and claimed to be tried.

4. To substantiate the case, the prosecution examined P.Ws.1 to 13 and got marked Exs.P1 to P16, besides case property M.Os.1 to 4.

5. 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 prosecution witnesses. He denied the offence. No oral evidence was adduced on behalf of the accused except marking Exs.D1 and D2, which are the portions in 161 Cr.P.C. statement of P.W.2.

6. The trial Court, after considering both oral and documentary evidence available on record, arrived at a conclusion that except the accused, there is no possibility of any other person committing the offence and accordingly convicted and sentenced the accused, as stated above. Challenging the same, the present appeal came to be filed by the accused.

7. Now, the point that arises for consideration in this Criminal Appeal is whether the prosecution has proved its case

against the appellant/accused of the charge under Section 302 IPC beyond all reasonable doubt and whether the judgment of the trial Court is correct, legal and proper?

8. The main ground urged by the learned counsel appearing for the appellant-accused is that there are no direct witnesses and the case rests upon the circumstantial evidence. According to him the circumstances relied upon by the prosecution do not found a chain of events so as to connect the accused with the crime. It is urged that none of the witnesses, who witnessed the assault, supported the case of the prosecution. He further submitted that even recovery of M.O.1-pestle is doubtful as the person in whose presence the accused made confession, which led to recovery of M.O.1, did not support the case of the prosecution.

9. On the other hand, learned Public Prosecutor made every attempt to support the findings of the trial Court. He submitted that the findings of the trial Court are based on the evidence available on record. which needs no interference by this Court.

10. As seen from the record, out of 13 witnesses examined by the prosecution, P.Ws.2 and 4 to 9 did not support the case of the prosecution and they were treated hostile by the prosecution. Therefore, this Court is left with the evidence of P.Ws. 1 and 3. Both of them are not eye-witnesses to the incident. P.W.1 in his evidence deposed that on receipt of information about the incident, he came to the house of his step mother and noticed the dead body of the deceased lying in front of the house of the accused. He also noticed the presence of the accused at the scene. Similar is the evidence of P.W.3. P.W.3 in his evidence deposed that on receipt of information about the death, he came to the scene of offence and found the deceased lying out side the house. He did not observe any injuries on the body of the deceased. The evidence of these two witnesses does

not show the complicity of the accused in the commission of offence.

11. Though the prosecution sought to project P.W.4 as an eye-witness to the incident, but he did not support the case of the prosecution with regard to the actual attack on the deceased. May be there were some disputes on petty quarrels between the accused and his step mother, but that by itself in our view, is no ground to presume that the accused is the assailant of the deceased and none else, when the dead body was found outside the house of the accused.

12. Insofar as giving of a report to police is concerned, it is to be noted that P.W.1 in his evidence stated that the report was given when the police came to the scene of offence on receipt of information about the incident. On the other hand, the evidence of Investigating Officer would shows that P.W.1 came to the police station at 1.00 A.M., in the mid night and lodged the report. Therefore, there is some inconsistency as to when and how the report came to be lodged.

13. The accused is said to have confessed about the commission of offence when he was present in the police station. Pursuant to the confession made, M.O.1-pestle was recovered near the house of the accused. But the prosecution failed to prove that the blood stains which were said to have been present on M.O.1 are that of the deceased. But another version is also projected by the prosecution whereby the accused made a confession, while he was with the dead body. As per the prosecution version, the entire proceedings are said to have taken place in front of the house of the accused where 150 people gathered. P.W.10 acted as a mediator. According to him, he signed in four copies of panchanama prepared in his presence. When the confession was alleged to have been recorded at the scene, how the police could have affected the arrest of the accused four days thereafter i.e., on 11.04.2010. At

this juncture, it would be relevant to extract the relevant portion of cross-examination of P.W.13, which is as follows:

P.W.13- I arrested the accused at his house. It is not true to suggest that the accused was in our custody from 04.04.2010 to 11.04.2010. It is not true to suggest that accused has not confessed about the offence before us and we have not seized any weapon at the instance of accused. It is not true to suggest that I obtained signatures of P.W.10 and L.W.12 on white papers. It is not true to suggest that I have not visited Errabidusu Tanda and I have not recovered M.O.1.”

Therefore, a doubt arises with regard to the confession and recovery made pursuant to the said confession on the same day.

14. In view of the foregoing discussion, we have no hesitation to hold that the prosecution has miserably failed to prove the guilt of the appellant-accused beyond all reasonable doubt and therefore, the appellant-accused is entitled for acquittal.

15. In the result, Criminal Appeal is allowed setting aside the conviction and sentence recorded by the learned IV Additional District and Sessions Judge (FTC), Mahabubnagar, vide judgment, dated 23-12-2010 in Sessions Case No.441 of 2010 against the appellant-accused of the offence punishable under Section 302 IPC. The appellant-accused is found not guilty of the above offence and accordingly, he is acquitted of the same. The appellant-accused shall be released forthwith, if he is not required to be detained in any other case.

C.PRAVEEN KUMAR, J

P.KESHAVA RAO, J

DATED: 02-11-2017
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