

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.119 OF 2012

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

1) The sole accused in Sessions Case No.164 of 2011 on the file of the III Additional Sessions Judge (FTC), Asifabad, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Manku (hereinafter referred to as "the deceased"), on 22.12.2010 at 23.00 hours at Mannewada, Darogapalli Village. By its judgment, dated 25.11.2011, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" and to pay fine of Rs.500/- in default to suffer simple imprisonment for a period of one month, for the said offence.

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

i) Accused is the husband of the deceased. PW.1 is the sister of the deceased, PW.3 is the cousin of the deceased, while PW.2 is the wife of PW.1. . The evidence of PW.1 would show that the marriage of the deceased with the accused was solemnized about 20 years prior to the date of incident. They lived happily for a period of one year. They had no issues and were residing in Dharagaripalli Village, eking out their livelihood by

converting katti boggulu to coal. Subsequently, the accused got addicted to alcohol and used to beat the deceased. It is stated that on one occasion the accused beat the deceased indiscriminately and later joined her in Government Hospital, Mancherial, where she was treated for a period of two to three weeks. Later the deceased started living with PW.1. The accused came to the house of PW.1 and asked him to send the deceased along with him. On an assurance given by the accused, PW.1 sent the deceased along with the accused. Three months later, at about 6.00 a.m. PW.1 came to know that the deceased was killed. Then he proceeded to the house of the accused and noticed that the body of the deceased was kept in front of the house of one Reddi Madhunu. He verified the injuries on the head, ear, hands and legs. He also noticed scratches on the face. The tuft of the deceased was also cut.

ii) On 23.12.2010 at about 7.30 a.m. PW.1 lodged a report (Ex.P1) with PW.10-the Assistant Sub-Inspector of Police. Basing on the said report, PW.10 registered a case in Crime No.194 of 2010 for the offence punishable under Section 302 IPC and issued the first information report, which is placed on record as Ex.P16. He recorded the statement of PW.1 and send the F.I.R. to all the concerned. On receipt of the first information report, PW.12-the Inspector of Police, took up investigation and proceeded to the scene of offence, prepared a panchanama of the scene of offence in the presence of PW.7 and others and also prepared a rough sketch of the scene of offence, which are placed on record as

Exs.P3 and P4. He also got photographed the scene of offence. Later he conducted inquest over the dead body of the deceased in the presence of PW.7 and others. Ex.P2 is the inquest report. During inquest, he examined PWs.2,3,4 and others. Later he sent the dead body to Government Area Hospital, Mancherial, for postmortem examination. PW.11-the Civil Assistant Surgeon, Government Area Hospital, Mancherial, conducted autopsy over the dead body of the deceased and issued Ex.P17-the postmortem certificate. According to the doctor, the cause of death was “due to head injury.”

iii) It is said that the accused confessed before the village elders that he killed the deceased with the stick portion of the axe as the deceased took Rs.100/- from his packet. The accused also stated that he cut the hair of the deceased due to anger and also dragged the body till the house of PW.5 and left it there.

iv) On 23.12.2010 at about 3.00 p.m., PW.12 arrested the accused and on interrogation, the accused is said to have confessed about the commission of offence. PW.12-the Inspector of Police, recorded the confessional statement of the accused in the presence of PW.7 and another. Pursuant thereto, the accused produced the axe, which was seized under a cover of panchanama, which is placed on record as Ex.P5. After completing the investigation, PW.12 filed a charge sheet before the Court of I Additional Judicial Magistrate of First Class, Mancherial, 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.164 of 2011.

3) On appearance, 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 12 and got marked Exs.P1 to P19 and M.Os.1 to 6. 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 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 to the incident and the case rests on the circumstantial evidence. According to her, the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. She further submits that even accepting the entire version of the prosecution to be true, the ingredients constituting an offence punishable under Section 302 IPC are not made out. It is stated that there is absolutely no motive for the accused to kill the deceased. It is urged that when

the deceased took Rs.100/- from the packet of the accused, because of angry, he beat the deceased with the stick portion of the axe and also cut the tuft of the deceased.

7) The learned Public Prosecutor opposed the same contending that the extra judicial confession made before PWs.1, 4 and 8 is sufficient to base a conviction. The fact that the extra judicial confession made by the accused was mentioned in the first information itself, it can be made the basis for convicting the accused.

8) As seen from the record, the entire case is now based on circumstantial evidence. There are no eye witnesses to the incident. The circumstances relied upon by the prosecution is the extra judicial confession made by the accused before the elders.

9) Before proceeding further, it would be useful to refer to the relevant portion of the chief evidence of PWs.1, 4, 7 and 8. PW.1 in his evidence deposed as under:

“I am resident of Dhoragaripalli village. The deceased Manku Pais is my sister. Accused is my brother-in-law. She died about 10 months back. She was married about 20 years back with the accused. There are no children. They are residing in our village at Dharagaripalli. They used to do Katti boggulu fire wood converted in cool. One year my sister and accused lived happily. Later the accused used to drink and beat my sister. In one occasion the accused beat my sister indiscriminately and we joined our sister in the Government Hospital, Mancherial. She was treated at 2 to 3 weeks. Later we shifted to our

house. Later one year they lived happily. The accused came and assured and asked to send her along with him and brought her along with him. After three months we came to know in the morning hours at 6.00 a.m. came to know that my sister was killed. Then I proceeded to the incident place my sister body was kept in front of the house of LW.7-Peddi Madunu and I verified the injuries on the head. There was hole on the right side of the head near the ear and hands and legs there was scratches on right side of the face. There was blood on the road. The tuft of the deceased was cut. The village sarpanch was brought to the place and the accused stated before me and others that he killed his wife. He stated before the villagers.”

10) PW.4 in his evidence deposed as under:

“ He along with Setti Sankar (LW9, Uradi Bheemakka (LW5) and other villagers and elders, asked the accused how the deceased died. The accused stated before us that he killed the deceased as his wife brought Rs.100/- from his packet. He also stated that he killed his wife with axe with stick and also cut her hair due to angry. He also confessed before us that he dragged the dead body till the house of PW.5 and left there to screen the evidence.

11) PW.7 in his evidence deposed as under:

“The villagers brought the accused to the dead body. When the villagers asked about the cause of death, the accused stated that in drunken state he searched for the deceased and found that she was hidden in the fields, he killed her.”

12) PW.8 in his evidence deposed as under:

“I found dead body of the deceased near the house of PW.5 at 6.00 a.m. and informed to PW.5 and others. They went to village and informed to village elders. After one hour accused was brought by the villagers elders and the accused confessed before us that he killed his wife because she brought Rs.100/- from his packet and killed his wife on the road and also cut her hair.”

13) Though PWs.1,4,7 and 8 were cross-examined at length, nothing useful was elicited to discredit their evidence. The extra judicial confession made by the accused finds place in the first information report given by PW.1 at 7.30 a.m. In the first information report, it is stated that the accused searched for the deceased in all the houses and finally at about 11.00 p.m. he could catch her in Mannewada and beat her with the stick portion of the axe. Pursuant to which she received injuries on right ear and temporal region. Thereafter, he cut the hair with axe. It is further mentioned in the first information that the accused made a confession before the village elders saying that he killed the deceased since she did not heed to his words.

14) From the above, it is clear that in a drunken condition the accused is said to have searched for the deceased, as she took some amount from his packet and then beat her with stick portion of the axe. The evidence of PW.11 would show that 12 external injuries were found on the body of the deceased. Most of the injuries were abrasions. As seen from the extra judicial confession made, the accused beat the deceased with the stick portion of the

axe. If really, he has any intention to kill the deceased, definitely he would have used the sharp portion of the axe. The deceased used the sharp portion of the axe only to cut the hair of the deceased. A look at the injuries mentioned in the postmortem certificate, show that most of the injuries are abrasions, which have been likely to be caused when the accused dragged the deceased on the cement road after cutting the hair.

15) As stated earlier, if really the accused had any intention to kill, he would have definitely use the sharp portion of the axe and caused injuries on the vital parts of the body. Further he would not have taken the effort of dragging her from the bushes upto the house of PW.5. Admittedly, the accused was in drunken condition at the time of incident. Therefore, in all probability the incident must have happened in a different circumstance, but it can be said that there was no intention to cause the death of the deceased. In fact the learned Public Prosecutor also states that the circumstances under which the incident happened must have been different.

16) In *Santosh v. State of Maharashtra*¹ the Apex Court while referring to the judgment of the Apex Court in *Kalu Ram v. State of Rajasthan*² reiterated the principle that the element of inebriation, when it is present in a case, may be taken into consideration as it considerably alters the power of thinking. It was further held that where the intention to kill is present, the act

¹ (2015) 7 SCC 641

² (2000) 10 SCC 324

amounts to murder and where such intention is not present, the act amounts to culpable homicide not amounting to murder and that in order to determine whether the offender had the intention or not, each case must be decided on its own facts and circumstances.

17) In *Indrasan v. State of U.P.*³ 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.

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](#).”

18) For the aforesaid discussion and in view of the judgments 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. At this stage, the

³ (2009) 14 SCC 532

learned counsel for the appellant would submit that the accused was in jail from 24.12.2010 till date. Hence, for the altered conviction, the appellant is sentenced to imprisonment for the period already undergone.

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

JUSTICE C. PRAVEEN KUMAR

29.11.2017
gkv



JUSTICE N. BALAYOGI