

* HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

+Crl.A. No. 1568 of 2010

%13-02-2017

Nimmaraboina Kanakaiah

...Appellant

Vs.

\$ The State of Andhra Pradesh
Rep. by the Public Prosecutor

... Respondent

!Counsel for the Appellant: Sri E. Venkata Reddy

Counsel for Respondent: Public Prosecutor

< Gist :

> Head Note:

? Cases referred:



HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

Crl.A.No. 1568 of 2010

JUDGMENT:- (ORAL)

Per Hon'ble Sri Justice Suresh Kumar Kait)

1) This Criminal Appeal is preferred against the judgment dated 28.10.2010 delivered in S.C.No.255 of 2010 by II Additional Sessions Judge, Suryapet, Nalgonda District whereby the appellant - accused was found guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.5000/-, in default, to undergo Simple Imprisonment for three months.

2) The brief case of the prosecution is that the appellant is son-in-law of the deceased – Pittala Mangamma. After the death of the appellant's wife – Neelamma, he wanted to contract a second marriage. Whenever the appellant beat his children and abuse them in a drunken state, his mother-in-law vehemently opposed and warned him. While so, on 04.12.2009, when the appellant was beating his children, his mother-in-law intervened, as such, the appellant, bearing grudge against his mother-in-law, beat her with pestle and caused injuries on her head and other parts due to which she succumbed to injuries. The younger son of

the deceased lodged a complaint against the appellant. Based on the complaint, F.I.R. was registered against the appellant as a case in Cr.No. 110 of 2009 for the offence punishable under Section 302 IPC. After completion of investigation, the police filed charge sheet.

3) The trial Court framed the following charge against the appellant:

“That you on the 4th day of December, 2009 at 09:30 a.m. at Hussainabad village of Mothey Mandal, did commit murder by intentionally causing the death of your mother-in-law – Pittala Mangamma, by beating on her head with a pestle, on the ground that she questioned you why you are beating your children whose mother (daughter of the deceased) is no more, unnecessarily; and that you, the accused thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.”

The charge was read over and explained to the appellant in Telugu, however, he pleaded not guilty and claimed to be tried.

4) To substantiate the case of the prosecution, it examined PWs.1 to 11 and got marked Exs.P1 to P12 and M.Os.1 to 8.

5) After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. wherein he denied the incriminating evidence led against him. However, no defence witnesses were examined nor got marked any documents on behalf of the appellant.

6) The informant of the F.I.R. is the son of the deceased and brother-in-law of the appellant who is a circumstantial witness and examined as PW1. PWs.2 and 3 are daughters of the appellant and eye-witnesses to the incident. One of the neighbours of the appellant was examined as PW4. He came to the house of the appellant on hearing cries of PWs.2 and 3 and saw the appellant running away from his house with pestle after commission of the offence. He is also a circumstantial witness. One of the panch witnesses for the scene of offence and inquest, was examined as PW5. The professional photographer through whom the police took photographs of the scene of offence and of the dead body of the deceased, was examined as PW6. One of the panch witnesses for confession of the appellant which led to recovery of M.O.8 i.e. pestle (Rokal Banda), was examined as PW7. The Medical Officer, who conducted autopsy over the dead body of the deceased, was examined as PW8. The first investigation officer – Sub-Inspector of Police, who received complaint from PW1 under Ex.P1 and registered F.I.R against the appellant, was examined as PW9. The second investigation officer – Circle Inspector of Police, who was in-charge of Suryapet Circle on 04.02.2009, was examined as PW10. The investigation officer, who filed charge sheet, was examined as PW11.

7) Sri E Venkata Reddy, learned counsel for the appellant, submits that PWs.2 and 3 are the eye-witnesses to the incident. As per their version, whenever the appellant was beating them, their maternal grand-mother used to intervene. Moreover, as per the prosecution case, as the first wife of the appellant died three years before the alleged incident, he wanted to go for a second marriage. Since the three children of the first wife were staying with the appellant, their grand-mother (deceased) did not agree to his second marriage. However, on the fateful day, the appellant, as usual, came home in a drunken condition and beat his children i.e. PWs.2 and 3; when his mother-in-law intervened, the appellant hit her with pestle twice on the head, threw the pestle at back side of the door and fled away from the scene of offence.

8) The learned counsel for the appellant submits that in view of the statement of PWs.2 and 3, who are the eye-witnesses, the trial Court ought to have convicted the appellant for the offence punishable under Section 304 Part-II IPC instead of 302 IPC as the appellant had no intention to kill his mother-in-law. He has drawn the attention of this Court to the statement of PW1 - informant of F.I.R. who deposed that his sister – Neelamma, wife of the appellant, died about three years ago. She has got two daughters and two sons.

After her death, her last son – Gopi was taken by his another sister for his maintenance and the other three children are residing with the appellant in Hussainabad village of Mothey Mandal. PW1, along with his family members, is residing in Kusumanchi village and Mandal in Khammam District and his mother was also residing with him. Her mother used to look after the welfare of the three children of the appellant by visiting their house. After the death of his sister, the appellant was addicted to bad habits like drinking alcohol, etc. and used to beat his children who used to telephone his mother and inform about the beatings of their father. Thereupon, PW1 used to send his mother to the house of the appellant to enquire about welfare of the children of his sister. Whenever his mother used to visit the appellant's house, the appellant used to abuse his mother by saying that when he wanted to get second marriage, she was preventing him from doing so.

9) PW1 further deposed that on 03.12.2009, at about 05:00 or 06:00 p.m., PW2 telephoned him and informed that her father came in a drunken state, beat her and her sister - PW3, abused them and she requested him to come to their house or send his mother to enquire about the situation. On the next day, his mother left the house in the morning at 08:30 a.m. and went to Hussainabad village of Mothey Mandal

to the house of the appellant. On the same day, at about 10:30 a.m., PW2 again gave a call and informed him that her father beat his mother with “pestle” and killed her. Immediately, PW1, along with his elder brother and other relatives, went to the house of the appellant and found his mother lying in a pool of blood with injuries on the head. At that time, the appellant was not present in the house. On enquiry, PWs.2 and 3 informed that their father beat the mother of PW1 with pestle on her head and caused injuries, and on watching this, they pushed him and cried loudly. On hearing their cries, several persons including PW4 came to their house. On seeing PW4, the appellant left the house. PW1 lodged complaint – Ex.P1 against the appellant, based on which, the police registered F.I.R.

10) PW2 is daughter of the appellant. She deposed on the same lines as deposed by PW1 to the extent that on 03.12.2009, in the evening at about 05:00 p.m. she telephoned to PW1 and informed that her father, in a drunken state, beat her, her sister and brother and quarreled with them. She asked her maternal uncle – PW1 either to come to their house or to send her grand-mother. On the next day at 09:00 a.m., her grand-mother came to their house. When her grand-mother asked the appellant as to why he quarreled and beat his children, the appellant told her who was she to ask

him, and beat her grand-mother with pestle on her head due to which she fell on the ground with bleeding injuries and died on the spot. Thereafter, her sister and herself tried to rescue her grand-mother by dragging out their father from the house and cried out. On hearing their cries, PW4 – Veeraiah came there, and on seeing him, her father fled away from the scene of offence with the pestle through the door on the rear side.

11) PW3, another daughter of the appellant, supported the version of PW2.

12) The learned counsel for the appellant further submits that PWs.2 and 3 are the eye-witnesses and as per their version, the appellant beat the children in a drunken state on the previous day and when his mother-in-law came on the next day and questioned, he beat her with pestle on her head. When PW4 came there, the appellant left the place of offence. At the time of the incident the deceased was 65 years of age and due to severe head injuries she died on the spot.

13) The learned counsel submits that even if the above evidence is accepted to be true, the appellant had no intention to kill the deceased. Since his mother-in-law intervened, in a fit of anger he hit her with pestle on her head. The learned counsel further submits that the deceased was 65 years of old lady and the appellant at best could be

attributed with the knowledge that if he hit on her head she would die, but he had no intention to kill her. Therefore, the conviction of the appellant may be converted from Section 302 IPC to Section 304 Part-II IPC. The learned counsel also submits that the appellant has already undergone sentence for a period of seven years and two months and pleaded that in view of the sentence already undergone by him a lenient view may be taken.

14) The learned Public Prosecutor appearing on behalf of the respondent – State has argued that the appellant is the son-in-law of the deceased; his wife died three years before the date of the commission of offence; he had four children, out of them, three were staying with him at the time of the incident; Whenever he consumed alcohol, he used to beat his children and the deceased used to intervene to avoid the beatings. He further submitted, on the date of offence, when the deceased enquired, the appellant due to anger hit her on the head, as a result, she died instantaneously on the spot. The learned Public Prosecutor fairly conceded that in the above circumstances, the offence committed by the accused falls under Section 304 Part-II instead of 302 IPC and hence he may be convicted accordingly.

15) As per post-mortem examination – Ex.P8, following are the injuries sustained by the deceased:

External Injuries:

1. Laceration over frontal region 8 x 3 x 3 cm
2. Laceration over left zygomatic region 6 x 4 x 1 cm

Internal Injuries:

1. Fracture frontal bone and fracture left zygomatic region in skull.

16) From the evidence of PWs.1 to 3, it is proved that the appellant had hit the deceased with the pestle on the head twice due to which the aforesaid injuries were inflicted. She was aged 65 years and succumbed to the aforementioned injuries. As stated by PWs.2 and 3, when the deceased asked the appellant as to why he was beating the children, all of a sudden, he lifted the pestle and hit her in the heat of passion which resulted in her instantaneous death.

17) Exception 4 of Section 300 IPC reads as under:

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 offenders having taken undue advantage or acted in a cruel or unusual manner.

18) In view of the above exception, which in our view applies to the case on hand, we are of the considered opinion that the alleged incident had taken place all of a sudden and was not premeditated, and while in a drunken condition, the appellant beat the children on the previous day; and when the deceased, being mother-in-law of the appellant and grand-

mother of the children questioned his high-handedness on the next day, he could not tolerate that and hit the deceased due to which she died.

19) As per Section 304 Part – II IPC, the accused shall be punished if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

20) It is not in dispute that the appellant hit with the pestle twice on the head of the deceased i.e. vital part of the body which implies his knowledge that the deceased, who was 65 years old lady, would probably die. However, keeping in view the facts noted above, we are of the considered opinion, the appellant had no intention to kill the deceased.

21) Therefore, in the light of the facts and circumstances of the case and the evidence of PWs.1 to 3, we hereby make the following observations:

22) The conviction imposed on the appellant-accused by the learned II Additional Sessions Judge, Suryapet, Nalgonda District for the offence punishable under Section 302 IPC, vide judgment dated 28.10.2010 in S.C.No. 255 of 2010, is hereby converted into one under Section 304 Part-II IPC as this case falls under Exception 4 of Section 300 IPC.

23) In respect of the sentence, the trial Court sentenced him to undergo life imprisonment. As per the record, the appellant has already undergone imprisonment for a period of seven years and two months. Hence, we hereby modify the sentence by limiting it to the period of sentence already undergone by him.

24) Hence, the Superintendent, District Jail, Nalgonda, is hereby directed to set the appellant at liberty if he is not required in any other case.

25) Accordingly, the Criminal Appeal is partly allowed.

26) As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

13.02.2017

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Note: L.R. Copy to be marked.
b/o
bcj