

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.993 OF 2012

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

1) The sole accused in Sessions Case No.64 of 2012 on the file of the II Additional Sessions Judge (FTC), Parvathipuram, is the appellant herein. He was tried for the offences punishable under Sections 302 and 506 (2) IPC. By its judgment, dated 07.08.2012, the Sessions Judge, convicted and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.500/- in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 302 IPC, while acquitting him under Section 506 (2) IPC.

2) The case of the prosecution is as under:

i) The deceased is the wife of the accused. PWs.1 and 2 are children, while PW.3 is the brother of the deceased. PWs.1 to 4 are residents of Kontikipenta Village, Pachipental Mandal. PW.5 is resident of Salur and working as Panchayat Secretary. As per the evidence of PW.1, the accused, deceased, himself, his wife and brothers and sisters have been residing jointly under one roof. On the date of incident, PW.1 and his wife slept in first room while the deceased and accused slept in the middle room, whereas the brothers and sisters being un-married slept in the backyard of

PW.1's maternal grand parents house, which is situated at the back yard of their house. On that day at about 3.00 a.m. PW.1 got up on hearing tapping of the middle door and as such he opened the door. Upon which, the accused came out of the middle room and left the place proclaiming that he has killed the deceased with an axe and threatened to kill PW.1 and others. As per the evidence of PW.1, the accused left the place armed with an axe. Immediately thereafter PW.1 went inside of the room and observed the injured-deceased lying on the cot and blood oozing from the right temporal region. Thereafter, he went outside the house, approached one Appala Naidu (PW.4), who is the Ex-Sarpanch of their village and informed about the incident. Pursuant thereto, PW.4 called for an ambulance and then the deceased was shifted to Government Hospital, Salur in the said ambulance. The Medical officer at Salur Government Hospital, advised PW.1 to shift the deceased to Government Hospital, Vizianagaram, as her condition was serious. Accordingly, they took the deceased to Government Hospital, Vizianagaram, but on the way she died. Thereafter, they return back to the Government Hospital, Salur.

ii) On 22.01.2012 at about 8.00 a.m. while PW.8-the Sub-Inspector of Police, Pachipenta Police Station, was in the police station, he received a report from PW.1. Ex.P1 is the report. Basing on which, a case in Crime No.6 of 2012 came to be registered. Ex.P16 is the first information report. After registering the crime, he informed the same to PW.10-the

Inspector of Police, who took up further investigation in the matter.

iii) The evidence of PW.10 discloses that on receipt of a copy of the first information report, he reached Kotikapenta Village at 9.05 a.m., prepared a panchanama of the scene of offence in the presence of PW.5 and others. Ex.P3 is the panchanama of the scene. During the observation, he seized blood stained bontha, pillow cover and lungi. Thereafter, he prepared a rough sketch of the scene which is placed on record as Ex.P23. He, then conducted inquest over the dead body in the presence of PW.4 and others. Ex.P2 is the inquest report. During inquest he examined PWs.1 to 3 and others. The witnesses opined that there were differences between the accused and deceased in respect of marriage alliance of their daughter because of the same he killed the deceased. After completing the said proceedings, PW.10 forwarded the dead body for postmortem examination.

iv) PW.9-the Civil Assistant Surgeon, Community Health Centre, Salur, conducted autopsy over the dead body of the deceased and issued Ex.P22-the postmortem certificate. According to him, the cause of death was “due to bleeding injuries, pain and damage to the vital centers of the brain.”

v) PW.10 continued with investigation, visited the village, examined the witnesses and on 28.01.2012 he arrested the accused at 4.30 p.m. in the presence of PWs.5 and 7 near the bus

stop of the village. On interrogation, the accused confessed the guilt. Pursuant to the confession made, M.O.1-Axe is said to have been recovered. Ex.P23 is the relevant portion of the confession statement. The weapon-M.O.1 was seized under Ex.P25. After collecting all the material, PW.10 filed a charge sheet before the Court of Judicial Magistrate of First Class, Salur, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.64 of 2012.

3) On appearance, charges under Sections 302 and 506 (2) IPC were framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P27 and MOs.1 to 4. 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 of the accused. The plea of the accused appears is one of total denial. But however, it was suggested to the witnesses that it was a case of an accidental death, as the axe which was kept in the attick, fell on the deceased leading to her death.

5) After considering the oral and documentary evidence on record, the learned Sessions Judge convicted the accused in

the manner referred to above. Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that there are no direct witnesses to the incident and the case is mainly based on circumstantial evidence. According to him, the circumstances, if any, relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime.

7) On the other hand, learned Public Prosecutor would submit that the very suggestions given by the accused to the witnesses establish that he was present in the house and plea of the accidental death is falsified by the medical evidence. According to him, the evidence of the doctor shows that these injuries could be caused only by applying pressure. In view of the above, the Public Prosecutor would submit that the prosecution is able to prove the guilt of the accused beyond reasonable doubt.

8) The question that falls for consideration is whether the accused can be held guilty for the offence punishable under Section 302 IPC.

9) As seen from the record, there are no eye witnesses to the incident and the case rests on the circumstantial evidence, but at the same time it is also an admitted fact that the accused was present in the house on the date of incident and PW.1 along with the deceased, his brothers and sisters also present in the house on that day. It is also not in dispute that all of them slept

in the house in three different rooms. The accused and the deceased slept in the middle room. Though PWs.1 and 2 were subjected to lengthy cross-examination, it is not even suggested that the accused was not in the house on the date of incident.

10) PW.1 in his evidence deposed that on the date of incident himself, along with his wife, slept in the first room whereas his father and mother, who are the accused and deceased, slept in the middle room. His brothers and sisters slept in a open yard behind their house which adjoins the house of his grandfather. At about 3.00 a.m. when the middle door was tapped, PW.1 opened the said door, on which the accused came out of the room proclaiming that he has killed the deceased and also threatened PW.1 with dire consequences. PW.2 also noticed the accused running away with an axe. Immediately thereafter, PW.1 went inside the room and saw the deceased with bleeding injuries lying on the cot. After seeing the incident, he raised cries, proceeded to the house of PW.4 and informed about the incident.

11) PW.1 was cross-examined at length. The main line of cross-examination was to establish failure on the part of PW.1 in not lodging the report when PW.1 along with the injured passed in front of Pachipenta Police station. It was further suggested to him that there is no material to show that they have taken the deceased to Government Hospital, Salur and from there to Government Hospital, Vizianagaram. It was also suggested to him

that he demanded allotment of some land to be cultivated independently and separately, which was denied. It was also suggested to him that there are no ill feelings between the accused and the deceased muchless in connection with the alliance of his sister, which was denied. It was also suggested to PW.1 that the axe fell on the deceased from the attic, causing severe injuries, leading to her death while she was sleeping on the cot, which was denied by him. To a suggestion that the first information report which was given with a delay was brought into existence at the instance of others was also denied. However, in the earlier part of his evidence, PW.1 deposed that his parents had no disputes with regard to alliance of his sister Bhavani in his presence. It was also elicited from PW.1 that after dinner, all of them went to sleep and there was no bolt to the middle room from outside. He further admits that if there was any necessity, on tapping of the middle room, he used to open the bolt. It was further elicited from him that immediately after tapping, he opened the door and noticed the accused coming out of the room with an axe and running away from the place threatening PW.1 with dire consequences if he comes in his way.

12) A perusal of the evidence of PW.1 in chief and the cross-examination would reveal that, it is not the case of the accused that he was not present in the house on the date of incident. It is also not the case of the accused that he was not sleeping along with his wife in the middle room. His case appears to be that the axe which was kept on the attic fell on the

deceased and because of it she sustained injuries. From the evidence of PW.1 and the suggestions given, it stands established that the accused was sleeping along with the deceased in the middle room. Though the accused tried to elicit some discrepancies in the evidence of PW.1 as to whether the door was opened after the accused tapping the door or whether the accused himself pushed the door and came out of the room, we are of the view that these discrepancies cannot go to the root of the matter so as to eschew the entire evidence of PW.1 from consideration, in view of the stand taken by the accused.

13) As stated earlier, immediately after the incident, PW.1 went to the house of PW.4 and informed about the incident. In his evidence, PW.4 states that on the date of incident at about 3.30 or 4.00 a.m. PW.1 came to his house and informed about the deceased receiving injuries and as she was in her last gasp, requested him to make a call for an ambulance. PW.4 made a call for the ambulance and thereafter shifted the injured in the said ambulance to Government Hospital, Salur, where the concerned Medical Officer referred her to Government Hospital, Vizianagaram.

14) PW.2 is the brother of PW.1. In his evidence, he deposed that on the night, himself, his younger brother and sister slept in the house of his maternal grandparents, which is situated at the backyard of their house. He further states that his parents slept in the middle room while PW.1 and his wife slept in the first

room. At about 3.30 a.m. they have heard huge cries and on hearing the same, they woke up and rushed to the house. Immediately, he went inside the house and found the deceased lying on the cot with severe bleeding injuries on the head. He came to know through his brother-PW.1 that the accused killed the deceased. Though he was subjected to cross-examination nothing useful was elicited to discredit his evidence. On the other hand, it was elicited from him that after the incident they came to the scene and noticed the deceased lying on the cot with bleeding injuries. Through PW.1 and others they came to know about the accused causing the death of the deceased.

15) PW.3 is the brother of the deceased. According to him on the intervening night of 21/22.01.2012 at about 3.00 or 3.30 am. PW.1 came to his house and informed about the incident. His house is situated at the back side of the house of the accused. On receipt of the said information, he rushed to the scene of offence and observed the deceased lying on the cot with bleeding injuries. According to him, the ambulance was called for and later the deceased was shifted to Government Hospital, Salur. His evidence discloses that to the dictation of PW.1, he drafted a report. Himself along with PW.1 went to the police station and lodged a report.

16) As stated earlier, neither PW.2 nor PW.3 have actually seen the accused leaving the house. Even PW.4 in his evidence never deposed about he seeing the accused leaving the house.

The entire case rests on the evidence of PW.1 and the conduct of the accused.

17) The motive for the accused to cause the death of the deceased was due to some disputes between him and his wife regarding the alliance of their daughter by name Bhavani. As referred to earlier, the said fact is spoken to by PWs.1 and 2. Though PWs.1 and 2 were cross-examined with regard to the said aspect but the accused could not elicit any material to prove the same as incorrect. On the other hand, the suggestions given to PW.1 that he had a motive for killing the deceased, as the accused refused to give land to live independently was denied. From the suggestions given to all the witnesses including the doctor, we feel that the accused has not come forward with a clean defence. It was suggested to PW.1 that he had a motive to kill the deceased, as the accused refused to give a share in the land and not permitting him to cultivate the same independently. If that version of the accused is to be treated as a correct one, PW.1 would have a strong reason to kill the accused. It is not the case of the accused that the deceased was coming in the way of allotment of land to PW.1.

18) The second circumstance which throws any amount of doubt on the innocence of the accused, is his conduct. He has come with another defence stating that the axe which was kept on the attick fell on the deceased in the middle of the night, leading to her death. The said suggestion was denied by the

doctor. To a suggestion as to whether falling of an axe from height would cause the said injury, PW.9 stated that it is most unlikely to cause the injuries referred to in the certificate, if a sharp edged weapon falls from a height. He clarifies that the said injury is possible if the axe falls from a height of ten feet and with great force. The accused was not able to prove that he was in the habit of keeping the axe on the roof in the middle room and that too at a height of about 10 feet.

19) As seen from the record, the deceased sustained an incised wound over the left temporal region 3 ½ inches brain deep making fracture of the temporal bone damaging the brain tissue and causing subdural hematoma and again producing pressure affect over the vital centres of the brain. Definitely the said injury, which lead to fracture of skull and temporal region could have been caused only if substantial pressure was applied. Further, when the axe is used by the villagers regularly, nobody will keep the axe at a height of about 10 feet since it would be difficult for them either to place it or remove daily or in the normal course of their pursuit.

20) One other circumstance which falsifies the defence of the accused is that, if really the accused was not responsible for the incident, there was no reason for him to run away from the scene. PW.4-the inquest panch categorically deposed that the accused was not present at the scene of offence and also during the inquest. No explanation is forthcoming from the accused as to

why he was not present at the scene. The record clearly discloses that he did not even accompany the deceased to the Government Hospital, Salur. The inconsistent pleas taken by the accused and his failure to explain as to how the deceased died when he was sleeping along with her in the same room amply proves that it was the accused alone who was responsible for the death of the deceased.

21) As a last straw, learned counsel for the appellant tried to contend that no effort was made by PW.1 to give a report while taking the deceased to Government Hospital, Salur, though they passed through Pachipenta police station. It is to be noted here that at that point of time, PW.1, who accompanied the deceased must have been worried about the health condition of his mother and as such he took her to Government Hospital, Salur and from there to Government Hospital, Vizianagaram. But the deceased died on the way to the hospital. Immediately after coming back, PW.1 proceeded to the police station and lodged a report. Therefore, the delay of five hours in lodging the report cannot be said to be fatal in the facts and circumstances of the case. As observed earlier, the entire family was more worried about saving the life of the deceased rather than giving a report since the person who caused the injuries was known to them.

22) For the aforesaid discussion, the conviction and sentence awarded by the Sessions Judge warrants no interference.

23) Accordingly, the Criminal Appeal is dismissed.
Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

08.12.2017
gkv

