

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE P. KESHA RAO**

CRIMINAL APPEAL No.472 OF 2011

JUDGMENT:

(Per Hon'ble Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has assailed the order dated 01.02.2011 passed in S.C. No.447 of 2009 on the file of III Additional District & Sessions Judge, East Godavari District, Kakinada, whereby the appellant is found guilty for the offence punishable under Section 302 I.P.C. and accordingly he is convicted under section 235 (2) Cr.P.C., and sentenced him to suffer LIFE IMPRISONMENT and to pay a fine of Rs.500/- in default Simple Imprisonment for one month.

2. The case of the prosecution is that the appellant who is no other than the husband of deceased Krishnaveni suspected fidelity by alleging that his wife had illicit intimacy with her brother-in-law i.e., elder sister's husband Ramireddy Srinu of Isukaplli village. The appellant was complaining that his wife was frequently leaving his house and going to the house of said Ramireddy Srinu. Once the matter was also placed before PW.5-Ex-Sarpanch of Kondevaram village. Finally, one week prior to the date of offence, she was sent to the house of the appellant, and that on 26.06.2009 at 7.00 a.m., when the deceased did not accede to the request of the appellant to fulfill his sexual desire, he got embraced, pushed

her aside, and caused cut injuries with MO.6 - folding type barber's knife being used by his father which resulted in her instantaneous death, and thus, committed murder.

3. Learned counsel appearing on behalf of the appellant does not dispute the killing of wife, however argued that, the said killing was on sudden and grave provocation given by the deceased, as she was not cooperating with the appellant for sexual desire and she pushed him. Thereafter only, caused injuries with the barber's knife being used by the appellant's father for shaving. Thus, it was not a predetermined or intention to cause death. Therefore, the present case falls under Exception- 4 of 300 IPC. However, the trial court without considering those facts convicted the appellant under Section 302 IPC.

4. Learned counsel for the appellant referred to deposition of PW.1, who is working as Village Revenue Officer (VRO), Kondevaram village, deposed that on 26.06.2009 at about 9.00 a.m., while he was at Panchayat office, the appellant came armed with a barber knife and made a confession before him stating that the appellant killed his wife by using the said barber knife. The appellant stated that he was married to one Krishnaveni about one year ago and his wife had illicit intimacy with her brother-in-law i.e., elder sister's husband. Frequently, she was going to his house and the appellant was raising disputes before elders and bringing

back her to his house. About three months prior to the date of incident, he brought his wife to his house. He was asking her to cohabit with him, but she was refusing. Even on that day morning, he was also asked her to cohabit with him, but she refused, and due to that, he got angry and picked a razor blade knife being used by his father for the purpose of shaving and cut at the throat of his wife. Due to which, she sustained bleeding cut injury and died. PW.1 also stated that the appellant came to him after taking bath and after changing the dress without going to the police station fearing that police may subject him to ill treatment. PW.1 further stated that he went to police station on his motor cycle by taking the appellant as pillion rider. The Sarpanch by name Polagala Raju (LW.14) was also accompanied them on his motor cycle. They went to police station at about 9.25 a.m. PW.1 presented Ex.P1 and Ex.P2 along with the appellant to the S.I of Police and S.I asked him to wait till the arrival of the Inspector of Police. After the Inspector came there, they all went in the police jeep to the place of offence. They went to a tiled house belonging to the father of the appellant. The said house consists of two rooms and in the Southern side room the appellant and his wife were staying and the father and mother of the appellant were staying in the Northern side room. They noticed the dead body of the wife of the appellant by name Krishnaveni lying on the Southern side room head facing towards North. They noticed bloodstains in the said

room and the clothes of the deceased were also stained with blood. The police seized cement pieces which were stained with blood and also controlled cement pieces from the scene of offence under cover of a mediators report. The scene observation report was prepared by him as Ex.P3.

5. PW.2 – K.Gangalakshmi is the mother of the deceased Krishnaveni. She deposed that the marriage of deceased Krishnaveni was performed with the appellant about one year prior to the date of offence. After the marriage, Krishnaveni was sent to the appellant for leading marital life. The appellant started harassing Krishnaveni by beating her and by sending her to their house because of suspicion over Krishnaveni. The appellant was suspecting that she had illicit intimacy with her brother-in-law, Srinu, but in fact there was no such intimacy. Two months after their marriage, the appellant beat and sent Krishnaveni to their house. Thereafter, they placed the matter before elders and sent Krishnaveni to the appellant through elders. Later, her maternal grandmother died at her house and for that function, the appellant came to her house. At that time also the appellant beat Krishnaveni and went away. Thereafter, two persons by name G. Veerabhadra Rao (LW.9) and Jeelakarra Satyavathi (LW.8) came from the village of the appellant i.e., Kondevaram, and asked them to send Krishnaveni to the appellant. Accordingly, they sent

Krishnaveni to the appellant, however, within a week she was murdered.

6. In cross-examination of PW.1, she admitted that their elder daughter was given in marriage to one Ramireddy Srinu of Isukapalli village. She also admitted that on the death of her eldest daughter, she gave in marriage her second daughter to the said Srinu. Her second daughter is not suffering from any Polio. After death of their eldest daughter, they themselves proposed to give their second daughter in marriage to the said Srinu. She denied to the suggestion that at that time, said Srinu expressed his intention to marry their third daughter Krishnaveni. She denied to the suggestion that she did not state before police that appellant suspecting fidelity of the deceased, therefore, he used to beat her. She also denied to the suggestion that she did not state before the police that appellant suspected illicit intimacy between the deceased and said Srinu.

7. PW.3 is the cousin brother of the deceased Krishnaveni, who deposed that, after the marriage, the deceased Krishnaveni was sent to the appellant for leading family life. About one month thereafter, the appellant told him that the deceased was not cooperating with him in marital life. Second time the appellant sent away the deceased stating that she has illicit intimacy with her brother-in-law Ramireddy Srinu. Thereafter, through elders,

they sent the deceased to the appellant stating that there was no such illegal intimacy between the deceased and Srinu. Two months thereafter, a function took place due to death of his maternal grandmother and at that time the appellant and deceased came to their house. They enquired the appellant about his family life and the appellant told them that they were happy. But, 4 days thereafter, PW.2 went to the house of appellant and brought back the deceased because the appellant was beating the deceased suspecting her fidelity. Subsequently, the appellant and his mother came and asked them to send the deceased to the appellant. At that time, they told them that they will send the deceased through police Vontimamidi. Accordingly, they sent deceased through police to the appellant. Within a week thereafter, PW.2 came to him and informed that the deceased Krishnaveni was murdered.

8. PW.4 is brother-in-law of PW.2 being husband of younger sister of PW.2. He deposed that the marriage of the deceased and appellant took place in April 2008. Within a month thereafter, the appellant sent away the deceased by beating her stating that she has illicit intimacy with her brother-in-law. Later, they sent the deceased to the appellant by convincing both of them. Within three months thereafter, a function took place in the house of PW.2. The appellant and deceased attended the said function. At that time, the appellant beat the deceased and went away leaving the

deceased. Later, they sent the deceased through elders. On 8th day thereafter, the incident took place.

9. PW.7 is the photographer. He took three photographs covering the dead body of a woman as Ex.P5 and Ex.P7.

10. PW.8 is the Civil Assistant Surgeon, who conducted Postmortem, which is marked Ex.P8. He found ante mortem external injuries, as under :

1. An incised cut injury of 10 cm., transverse of which 5 cm., on right side and 5 cm., on the left side on the front of the neck and vertically 3.5 cm., and the depth varying 1.75 cm. to 2 cm., exposing the neck muscles and incised cut injury of trachea 2 cm., transverse x 1 cm., vertical. The injury is 7 cm., below the mid chin region and just above the thyroid cartilage;
2. An incised cut injury of 10 cm., transverse x 7.5 cm., vertical on the right side of the neck 8 cm., below the back of the middle of the right ear. Depth is varying from 1.5 cm., to 1.75 cm., exposing the muscles and the jugular vessels are cut. Haematoma formed about 3 cm., x 2 c.m., x 2 cm.
3. An incised cut injury of 1.5 cm., transverse x 0.75 cm., vertical x 0.5 cm., depth present 4 cm., below the right eye;
4. An obliquely placed incised cut injury of 2.5 cm., x 0.2 cm., on the dorsum of the left ring and middle fingers.

11. PW.8 opined that Injuries 1 and 2 are sufficient to cause death. The injuries noted in Ex.P8 may be possible with weapon like MO.6.

12. PW.9 is the Administrative Officer, R.D.O.Office, Kakinada, who conducted inquest over the dead body of the deceased. He along with inquest Panchayatdars opined that the husband of the deceased was having grouse against her on the ground of illicit intimacy, and due to that, he caused cut injuries, and thereafter went and approached the V.R.O.

13. PW.10 - S .I. of Police, Reddigudem, who deposed that on 26.06.2009 at 10.00 a.m., V.R.O. (PW.1) and Sarpanch P.Raju (LW.14) of Kondevaram village, came to the Police Station and presented a written report Ex.P1 along with appellant and barber's knife. Ex.P2 is the endorsement of V.R.O. Basing on Exs.P1 and P2, he registered a case in Crime No.69 of 2009 - Ex.P9 under Section 302 IPC. Since the barber's knife produced before him contained bloodstains, he preserved the same by keeping it in a polythene cover. Later, himself along with above said V.R.O., Sarpanch and photographer-PW.7 went to scene of offence by about 10.30 a.m. He handed over copy of F.I.R to the Inspector, who conducted the investigation.

14. PW.11 is the Inspector of Police, who after investigation, filed charge sheet before the concerned Magistrate. Thereafter, the learned Magistrate took cognizance and committed the case to the Sessions Court and thereafter trial came into motion after framing charge.

15. It is not in dispute that all the witnesses mentioned above have deposed that the appellant made confessional statement Ex.P1 before the VRO-PW.1, whereby stated that he was married to deceased Krshnaveni about one year ago and his wife had illicit intimacy with her brother-in-law Rami Reddy Srinu. This fact has been narrated by all the witnesses mentioned above that the appellant was suspecting fidelity of the deceased and had quarrel on that issue earlier. On said issue, even once, the matter was reached to the elders, who thereafter sent the deceased with the appellant.

16. PW.2 is the mother of the deceased admitted in her cross-examination that she received information about the murder of the deceased, at that time her husband was not in the village. Subsequently, her husband on being informed on phone directly came to Kondevaram. She specifically admitted that Ramireddy Srinu did not come there. The said Srinu did not meet them subsequently on that date, and further added that he was not in the village. She deposed that she did not know to which village he went. She also admitted that he returned to the village about one month thereafter.

17. As stated by the learned counsel for the appellant that the appellant was suspecting the fidelity of the deceased having relation with Ramireddy Srinu and this fact has been established by deposition of PWs 2 to 4 and the conduct of

the Srinu. Had Srinu not in illicit relation with the deceased, there was no occasion for him not to be with PWs.2 and 3 and other relatives at the time of the death of the deceased. He had apprehension that he may be implicated in the case, therefore, he left the village and remained one month absconded.

18. The aforesaid fact cannot be disputed because there is no material contrary to that. It is not in dispute that PW.2 had given her eldest daughter, who died after sometime, to Srinu. Thereafter, they given in marriage their second daughter who was suffered with Polio. But, this fact has been denied by PW.2. However, the fact remains that the deceased had suspicion on the fidelity, due to that, the appellant used to beat the deceased and the matter referred to the elders. This fact is admitted by the above witnesses as discussed.

19. Learned counsel appearing on behalf of the appellant argued that the present case comes under Exception 4 of 300 IPC, which is reproduced as under:

Exception 4 - 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 offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.

20. To qualify the condition of Exception 4 of Section 300 IPC, it is required that culpable homicide, if it is

committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. Second qualification is that without the offender having taken undue advantage or acted in a cruel or unusual manner.

21. In the present case, the appellant stated before PW.1 that he was asking his deceased wife to cohabit with him, but she was refusing, and even on that day morning, he also asked her to cohabit with him, but she refused. Due to that, he got angry and picked a razor blade knife being used by his father for the purpose of shaving and cut the throat of his wife, and due to that, she sustained bleeding cut injury and died.

22. As per the confessional statement of the appellant, he deposed that as his wife had illicit intimacy with his co-brother Srinu, she was not leading conjugal life amicably with him and also there is no sexual life. She used to leave him often and went to her elder brother-in-law at Isukapalli. He many times brought her back for leading conjugal life. He and his wife went to attend the death ceremony function of his wife's grandmother, where he found that his wife was combined with his co-brother. Thereafter, he placed the issue before the elders and brought back his wife through elders. She went away again three months ago, however, settled the dispute through elders and brought back his wife just 8 days before the incident. Even though there was no sexual life

between them. In addition, his wife said that she will go to her elder brother-in-law's house. Since then, his wife did not take care of his family life and was talking as she likes by humiliating him. On 26.6.2009 at about 7.00 p.m. the appellant asked his wife to come for sexual intercourse, but she refused to do so and pushed him and uttered that she likes her elder brother-in-law and she will not lead conjugal life from right now. On that, he got angry and pulled her closely by using force, but she pushed him away. He got too angry and pushed his wife to the wall who fell down. Thereafter, immediately, he cut the neck of his wife with a razor barber knife, which was available in the house being used by his father for shaving.

23. In view of the above, there was no premeditation or intention to kill her. However, the said incident had taken place due to the quarrel on participating in sexual intercourse, to which, she did not cooperate. On the contrary, she pushed the appellant and stated that she likes her elder brother-in-law and she will not lead conjugal life from right now. Due to said sudden fight and provocation, the appellant took a barber knife, which was available in his house and cut the neck of the deceased.

24. Now the question for consideration is *whether the appellant had taken undue advantage or acted in a cruel or unusual manner?*

25. As discussed above, the appellant had suspected about the fidelity of deceased. Earlier also, they had quarrel on this issue. On 26.06.2009 when the appellant asked his wife to come for sexual intercourse, she pushed him and stated that she likes her elder brother-in-law and she will not lead conjugal life. This type of words and resistance of the deceased from the sexual intercourse, obviously it will come under sudden and grave provocation. Due to which, without taking undue advantage, whatever weapon available in the house, that is, shaving knife of his father, the appellant used the same, and cut the throat. When the appellant was in the heat of moment, at that point of time, he could not think, whether she would die. At that moment, he lost his temper because of sudden grave and provocation from the side of the deceased. By using weapon of offence, that is shaving knife of his father, is not comes under an unusual manner.

26. In case of **Pappu v. State of M.P**¹, the Supreme Court held that the Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed.

27. The aforesaid 4 ingredients as held by the Supreme Court are completely applicable in the present case.

¹ (2006) 7 SCC 391

28. In view of above discussion and the legal position, we are of the considered opinion that the appellant cannot be convicted for the offence punishable under Section 302 IPC. The case of the appellant comes under Exception 4 of 300 IPC. Thus, he has to be given benefit of the same.

29. It is not in dispute that the appellant remained more than six years incarceration, we hereby convict him under Section 304 Part-II IPC and set him free on the sentence, which he has already undergone.

30. The sentence of the appellant was suspended vide order dated 19.12.2016 passed by this Court in CrI.A.M.P.No.1994 of 2016. Since then, he is on bail.

31. Accordingly, the Criminal Appeal is partly allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

P. KESHAVA RAO, J.

Date :29-12-2017

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