

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO. 984 OF 2011.

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

This appeal is filed by the appellant-A1 under Section 374 (2) Cr.P.C. challenging the judgment, dated 21.01.2011 in Sessions Case No.140 of 2010 on the file of the Sessions Judge, Mahabubnagar, wherein and whereby the learned Sessions Judge while acquitting A2 for the offence punishable under Section 302 r/w 109 IPC, convicted A1 under Section 302 IPC and accordingly, sentenced him to undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer Simple Imprisonment for a period of three months.

2. The grave-man of the charge against the accused is that on 22.06.2009 at about 12.15 hours, both the accused dragged Smt.Kaki Jayamma (hereinafter referred to as 'the deceased'), who is the wife of A1 from the auto while she was proceeding from Gummakonda to Kaurampet and then caused her death.

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

The deceased is the wife of A1, sister-in-law of P.W.2 and daughter of P.W.4. The marriage of A1 with the deceased was performed about 18 years prior to the date of incident. At the time of marriage, P.W.4 presented Rs.20,000/- as dowry. Both of them lived happily in Hyderabad for 10 years. Thereafter, both of them came to Thimmajipet and A1 started living by cultivating the lands. One year thereafter, A1 stated that he wants to go to Hyderabad to eke out his livelihood and on such, P.W.4 sent A1 and the deceased to Hyderabad by keeping their children with him. It is stated that after return their to Thimmajipet, the accused sent the deceased to the house of P.W.4 demanding her to get additional dowry. On that, a

panchayat was convened and in the presence of elders, sent his daughter to the house of A1. Both of them lived for one month. Thereafter, again A1 started harassing the deceased to bring additional dowry. A panchayat was again convened, pursuant to which, the deceased was again sent to the house of A1. As the harassment continued, a report came to be lodged before the Superintendent of Police and a case was also registered. At that time, A1 approached P.W.4 for compromise. At that time, A1 stayed in their house for 15 days. During his stay in the house, A1 beat P.W.4 once. On the date of incident i.e., on 22.06.2009, P.Ws. 1 and 2 and the deceased were going to Government Hospital, Jadcherla, from their village Gummakonda in an auto. When the auto reached Thimmajipet, A1 took the deceased from the auto. A2 joined him on the way and thereafter, both A1 and A2 took the deceased together by dragging her. On seeing A1 and A2 taking the deceased in such a way, P.Ws. 1 and 2 followed her. By the time they reached the house of A1, the deceased was already done to death. The said information about the incident was passed on to P.Ws. 3 and 4. Basing on the report given by P.W.1, S.I. of Police registered a case in Cr.No.69 of 2009 under Sections 302 and 109 IPC and issued F.I.R., which is placed on record as Ex.P9. After registration of the crime, he recorded her statement. After registering the crime and receiving the F.I.R., P.W.12, the Circle Inspector of Police, visited the scene of offence and conducted scene of offence panchanama, which is brought on record as Ex.P5. The said panchanama was prepared in the presence of P.W.10 and L.W.14. Thereafter, in the presence of panchayatdars, he conducted inquest over the dead body of the deceased. Ex.P6 is the inquest report. During the inquest, he recorded the statements of P.Ws. 2 to 4 and thereafter, sent the dead body for post-mortem examination. P.W.13, Women Assistant Surgeon, Community Health Centre, Badepally, conducted autopsy over the dead body of the deceased on 23.06.2009 and issued Ex.P10-post mortem certificate. According to her, the cause of the death

of the deceased was due to injury to head. She also noticed several injuries on the body of the deceased. P.W.12 continued his investigation by examining P.Ws. 5 to 8. He arrested A1 and A2 on 25.06.2009 in the presence of P.W.11. Pursuant to the confession made by the accused, M.O.1-axe was seized. After collecting F.S.L. report, he filed charge sheet, which was taken on file as PRC No.73 of 2009 by the Judl. Magistrate of I Class, Nagarkurnool. On appearance of the accused, all the necessary documents were furnished in terms of Section 207 Cr.P.C. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Session, the learned Magistrate committed the case to the Court of Session under Section 209 Cr.P.C., which came to be numbered as Sessions Case No.140 of 2010.

4. Charges under Sections 302 IPC against A1 and under Section 302 r/w 109 IPC against A2 came to be framed, read over and explained to the accused in Telugu, to which they pleaded not guilty and claimed to be tried.

5. To substantiate their case, the prosecution examined P.Ws.1 to 13 and got marked Exs.P1 to P10 and M.O.1. Out of 13 witnesses examined by the prosecution, P.Ws. 1,6 and 7 did not support the case of the prosecution and they were treated hostile by the prosecution.

6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the offence. No oral evidence was adduced on behalf of the accused except marking Ex.D1, which is a portion of 161 Cr.P.C. statement of P.W.2.

7. After considering both oral and documentary evidence available on record more particularly the evidence of P.Ws.2 and 4, the trial Court while acquitting A2, convicted and sentenced

A1 as stated above. Challenging the same, the present appeal came to be filed by A1.

8. Now, the point that arises for consideration in this Criminal Appeal is whether the prosecution has proved its case against the appellant/A1 of the charge under Section 302 IPC, beyond all reasonable doubt and whether the judgment of the trial Court is correct, legal and proper?

9. Learned counsel appearing for the appellant-A1 mainly submits that since P.W.1, who set the criminal law into motion turned hostile, the entire fabric of the case collapses. He would further submit that the evidence of P.W.2 with regard to the accused dragging the deceased, taking her to the house of the accused and thereafter, assaulting on her head is a complete improvement over her earlier statement. In view of the above, he pleads that no reliance can be placed on the evidence of P.W.2. Insofar as P.W.4 is concerned, he is not an eye witness to the incident. He was informed about the incident by P.W.1. It was also not mentioned by P.W.1 in her earlier statement about the said fact. He further submitted that the evidence of P.Ws.8 and 9, who acted as mediators to the earlier dispute between the parties, does not inspire confidence in the mind of the Court since their evidence is an improvement to what they have stated in their earlier statements. However, apart from all the above, he would contend that since A2 was acquitted, the same benefit has to be extended to A1 since both A1 and A2 dragged the deceased to the house of A1 and attacked the deceased.

10. On the other hand, learned Public Prosecutor would submit that simply because A2 was acquitted, that by itself does not mean that A1 is innocent of the offence alleged against him. According to him, the evidence on record, more particularly the evidence of P.Ws.4, 6 and 9 amply establish motive for the accused to kill the deceased. He would further submit that the evidence of P.Ws. 1 and 2 would prove that the deceased was dragged from the auto to the house of the accused. But, however,

he admits that there is no material on record as to which of the accused or both caused the death of the deceased. However, he further submits that the finding of the trial Court with regard to the complicity of A1 in the commission of offence warrants no interference by this Court.

11. As stated earlier, the entire case rests upon the evidence of P.Ws. 1 to 9. P.W.1, who set the criminal law into motion, did not support the case of the prosecution and she was treated as hostile by the prosecution. But, however, in her evidence, she stated that on the date of incident, when herself, deceased and P.W.2 were going to hospital, A1 came there and took the deceased from the auto near Thimmajipet, to his house. Suspecting him, they followed the accused and by the time they reached the house, found the injured (victim) dead. She also deposed that A1 was not in the house at that time. It is to be noted that when she resiled from her earlier statement, the Public Prosecutor declared her hostile and cross-examined her. Though she was subjected to cross-examination, nothing useful was elicited except putting her the contents of her earlier statement, to which she accepted. At that stage, counsel for the accused cross-examined the witness, wherein she admits that she does not know the contents of F.I.R.-Ex.P1 as well as her statement which was marked as Ex.P2. Therefore, we are of the view that no reliance can be placed on the evidence of P.W.1 because of the inconsistent versions given by her. On one hand, she says that Ex.P2 was given by her, but when she was cross-examined by the counsel for the accused, she goes back on the contents of the said statement.

12. The deceased is the sister-in-law of P.W.2. According to P.W.2, on the date of incident, herself, P.W.1 and the deceased were going to Government Hospital at Jadcherla, from their village Gummakonda, in an auto. On the way, A1 and A2 took the deceased and dragged her to their house. On seeing A1 and A2 taking the deceased in such a way, they followed her, but by

the time they reached their house, the deceased was done to death. She deposed about the disputes between them prior to the incident. But, in her earlier statement, P.W.2 failed to mention about she going to Gummakonda in an auto, as in Ex.D1. She did not state about seeing the accused taking the deceased in that way and also did not state before the Investigating Officer about seeing the accused beating on the head of the deceased. It will be relevant to extract the improvements made by P.W.2, which were elicited through the evidence of P.W.12, the Investigating Officer, which are as under:

“P.Ws. 1 and 2 did not mention in their statement that they gave information about the incident to P.W.4. It is true that P.W.2 stated before me that she went to her village Gummakonda village in an auto due to fear as in Ex.D1. P.W.2 did not state before me that on seeing the accused taking the deceased in such a way they followed them but by the time when they reached the death of the deceased was caused. P.W.2 did not state before me that on seeing them coming to there the accused beat on the head of the deceased and went away.”

In the Court, P.W.2 deposed that A1 and A2 dragged the deceased to the house of the accused. Thereafter, when they went to the house of the accused, the accused beat the deceased and went away. From the evidence of P.W.2, it appears that both the accused dragged the deceased to the house and when P.Ws. 1 and 2 went to the house, the accused on seeing them, beat the deceased on the head and went away. These are the two witnesses who were examined by the prosecution to prove the incident. Though P.W.2 deposed about A1 and A2 dragging the deceased and also attacking the deceased on the head, but she failed to mention in the earlier statements about going to the house of the accused and witnessing the attack on the deceased.

13. Apart from that, it is also to be noted that though the evidence in chief of P.W.2 discloses about A1 and A2 dragging the deceased, but the trial Court acquitted A2 on the ground that only A1 had a motive to attack the deceased, in view of the earlier disputes between him and the deceased. It would be

useful to extract the relevant portion of the finding given by the trial Court in para 33 of the judgment, which is as follows:

“The prosecution though is able to establish the complicity of A1 has failed to establish the complicity of A2 in the present case. P.Ws. 1,2 and 4 have not stated the involvement of A2 in the family affairs of the deceased and A1. The role played by him in the commission of offence has not been stated by P.Ws. 1 and 2. They have not stated the way in which he provoked A1 to commit the offence. Not even the words uttered by A2 at the time of taking the deceased by A1 forcibly from the auto are stated by them. In the absence of any evidence in this regard, I find that the prosecution is unable to make out the offence U/Sec.302 r/w 109 IPC against A2. Hence, he is entitled for acquittal. In the light of the discussion held above, I am of the view that the prosecution is able to establish the offence punishable U/Sec.302 IPC against A1. Hence, he is liable to be punished for the said offence.”

14. Coming to the motive part, the prosecution relied upon the evidence of P.Ws. 4, 8 and 9. According to P.W.4, the marriage between the accused and the deceased took place about 18 years back. Both of them lived happily for 10 years in Hyderabad and thereafter, shifted to Thimmajipet, where the accused was eking out his livelihood by doing agriculture. During that period, the accused is alleged to have demanded the deceased to get dowry and used to send her to the house of P.W.4, to fulfill his demand. In respect of these incidents, mediation was conducted, wherein P.Ws. 8 and 9 acted as mediators. It would be useful to refer to the evidence of P.Ws.8 and 9, which reads as follows:

“ **P.W.8-** After coming to know about the death of Jayamma, I went to Thimmajipet. I came to know that she was axed to death by her husband (A1). Prior to the death of the deceased, a panchayat was convened and during that time, we advised them to live cordially. Both the deceased and A1 lived cordially for more than 15 years and just two years prior to her death galata took place between them. I went only during the time of panchayat and advised them to live cordially. After the death of the deceased police examined me and recorded my statement.

P.W.9- Prior to the death of the deceased Jayamma I was having acquaintance with her and the accused. When a panchayat was convened between A1 and the deceased regard to the disputes between the accused and the deceased I advised them to live cordially. When disputes arose again between them I asked the accused to live in our village along with his wife. After I advised so, the accused came to my village and lived 2 to 3 months along with his wife and thereafter he went to his village. I do not know what happened after he returned back to his village. While I was in my

village some of our villagers stated about the death of the deceased to me. Immediately I rushed to their village. ”

15. The two mediators were subjected to cross-examination. During the course of cross-examination, it was suggested to P.W.8 about the panchaycat and galata which happened about two months prior to the incident. In his cross-examination, he stated that he does not know the date on which the panchayat was conducted. In his earlier statement recorded by the police under Section 161 Cr.P.C., he failed to mention about the galata which took place two months prior to the incident and also about he going to the house on coming to know about the death of the deceased. Coming to the evidence of P.W.9, in his cross-examination, he admits that he does not know whether a panchayat was convened. He also says that no documents were written during the time of panchayat. He admits that he does not know the date, month or year, during which the panchayat was held. In his earlier statement before the police, he failed to mention that he advised A1 and A2 to live in his village along with the deceased. Relevant portion of the admission made by P.W.8 is as follows:

“ I do not know when the panchayat was convened. No documents were written during the time of panchayat. I do not know the date, month or year, during which the panchayat was held. I did not state before the police that I advised A1 to live in my village. I did not state to the police that after coming to know about the death of Jayamma through one of my villagers, I rushed to Thimmajipet and found her death in the house of A1.”

The improvements which were elicited through the evidence of P.W.12-the Investigating Officer are as follows:

“P.W.8 did not state before me that only 2 months prior to the incident, there was galata though they lived happily for 15 years. P.W.8 did not state before me after coming to about the death of the deceased we went and saw the dead body. P.W.9 did not state before me that he advised A1 to live in his village along with the deceased he also did not before me that after coming to know about the death of the deceased he went and saw the dead body of Jayamma in the house of A1.”

16. Learned counsel for the appellant-A1 would submit that the prosecution suppressed the material fact i.e., P.W.4

giving a report to the police, which goes to the root of the case. The said argument cannot be brushed aside. Had that report been placed on record by the prosecution, the truth would have come to light. Apart from all these things, it is to be noted that as per the evidence of P.W.2, A1 and A2 dragged the deceased to the house of the accused and thereafter, when P.W.2 went to the house of the accused and by the time he reached the house, the deceased was lying with injuries. Even if the evidence of P.W.2, as deposed by her in the Court is to be accepted, she does not say as to which of the two accused beat the accused. On the other hand, her evidence is to the effect that both the accused dragged the deceased to the house and after they went to the house, noticed the body of the deceased with injuries. Her evidence, as stated earlier, is silent as to which of the accused caused the death of the deceased, more so, when there are so many injuries on the body of the deceased. In fact, suggestion was given to the doctor that the injuries on the body must have been caused by two different weapons, to which there was no definite answer. When it was suggested to the doctor that injuries might have been caused by two different weapons, she stated as under:-“she cannot say whether two different weapons might have been used as the injuries were having different sizes”.

17. Basing on the evidence of prosecution witnesses, the trial Court extended the benefit to A2. Hence, a doubt arises as to whether A1 alone can be convicted for causing the death of the deceased by holding that the head injury found on the body of the deceased was caused by A1 alone basing on the self same evidence, which was disbelieved against A2. It is to be noted that though the material shows both the accused beating the deceased, strangely no direct charge either under Section 302 or 302 r/w 34 IPC was framed against A2.

18. In the light of the findings arrived at and as the trial Court extended the benefit to A2 for the charge under Section 302 r/w 109 IPC, though both the accused are said to have

attacked, it cannot be said with certainty that A1 alone was responsible for the death of the deceased, more so, when the statement of P.W.2 is a complete improvement over her earlier statement.

19. In view of the foregoing discussion, we have no hesitation to hold that the prosecution miserably failed to prove the guilt of the appellant-A1 beyond all reasonable doubt and therefore, the appellant-A1 is entitled for an acquittal.

20. In result, Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused No.1 in S.C.No.140 of 2010 on the file of the Sessions Judge, Mahabubnagar, for an offence punishable under Section 302 IPC are set aside. Consequently, the appellant/accused No.1 shall be set at liberty forthwith, if he is not required in any other case.

C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

DATED: 01-11-2017
Hsd

