

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL APPEAL No.692 of 2011

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

Assailing the judgment dated 25.02.2011, passed in SC.No.468 of 2008 on the file of the III Additional District and Sessions Judge (FTC), Medak, wherein the sole accused was found guilty for the offence punishable under Section 302 IPC and sentenced to suffer imprisonment for life and also to pay a sum of Rs.500/-, in default to suffer simple imprisonment for two months, the present appeal is filed by the accused.

2. The gravamen of the charge against the accused is that on 16.11.2007 the accused is alleged to have gone to the house of M.Pentamma with whom he was having illicit relationship and then beat her with pestle with an intention to kill her, as she was having illicit relationship with one R.Divakar.

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

PW.1 is the brother of the deceased while PWs.2 and 3 are the residents of the same locality. The evidence of PW.1 shows that he performed the marriage of the deceased with one Sddiramulu and few days thereafter, the deceased obtained divorce from him. Thereafter, she stayed with PW.1 for some time and was eking out her livelihood by rolling beedies. Subsequently, the deceased

shifted to her house and developed illicit intimacy with the accused. The evidence on record discloses that both the accused and the deceased lived as wife and husband. On the date of the incident, accused came to the said locality at about 7.00 p.m. or 7.30 p.m. and sat on the basement, near PW.3's house and was talking with the daughter of PW.3. At that point of time, PW.3 went there to find out the person with whom her daughter was talking. She noticed the accused and accordingly asked the accused to go to the house of the deceased to find out as to who the another person present in the house was. But, however, the accused PW.3 to go to the house of the deceased and find out as to who the said stranger is. Accordingly, PW.3 went there and heard the voice of a male person from the house. She came back and informed the same to the accused. The accused asked PW.3 to go to the house again and get some curry for him. The evidence of PW.3 further discloses that after sometime PW.3 went to her house and accused went to the house of the deceased in a angry mood. On the next day morning she heard the cries of PW.2 and on that went to the scene of offence and saw the deadbody of the deceased in her house without cloths except blouse. She suspected that the accused might have killed the deceased. A report, Ex.P1, came to be lodged with PW.9, Asst.Sub-Inspector of Police on 17.11.2007. Basing on the said report, a case in Crime No.162 of 2007 came to be registered against the accused. Ex.P8 is the FIR. PW.11, the C.I. of Police, took up further investigation into the matter. On the same day, he proceeded to the scene of offence, recorded the statements of PWs.1 to 3 and prepared a panchanama of the

scene in the presence of PWs.5 and 6, which was marked as Ex.P2,. At the time of conducting panchanama he seized Mos.1 to 6 and one condom. Thereafter, he prepared a rough sketch, which is marked as Ex.P4 and sent the body to Government hospital for postmortem examination. PW.7, the Civil Assistant Surgeon, conducted autopsy over the deadbody of the deceased and issued Ex.P5, post mortem certificate. According to him, the cause of death was due to cardio respiratory failure due to haemorrhage on the medullary region. On 24.11.2007, the accused was apprehended near bus stand Medak in the presence of PW.10. Pursuant to the confession made by the accused, MO.7 was seized.

4. After recording the Section 164 Cr.P.C. statement of PW.3 and after obtaining F.S.L report, PW.12, the successor of PW.11, filed the charge sheet, which was taken on file as P.R.C.No.33 of 2008 on the file of the Judicial First Class Magistrate, Medak, which on committal came to be numbered as SC.No.468 of 2008.

5. After complying with Section 207 Cr.P.C., charge under Section 302 was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P12 and M.Os.1 to 7. 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 by the accused in support of his defence.

7. On appreciation of the entire evidence on record, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal is filed.

8. Learned counsel for the appellant mainly contended that there is absolutely no evidence to connect the appellant/accused with the crime. According to him, though PW-3 was examined as eyewitness to the incident, but her evidence does not anywhere show witnessing the attack by the accused. He further submits that the evidence on record discloses the presence of a stranger in the house and it appears that it was he who killed the deceased.

9. The same is opposed by the learned Public Prosecutor. According to him, the evidence of PW-3 itself is sufficient to base a conviction.

10. As seen from the record, the entire case rests on the evidence of PWs.1 to 3. Though PWs.1 and 2 were examined to speak about the incident neither of them deposed about witnessing the incident. On the other hand their evidence is hearsay and the version spoken to by them is based on the information disclosed to them by PW-3. PW-3 in her evidence states that the appellant and the deceased were living in the locality as wife and husband for the last 3 years and on the date of incident, she noticed the appellant talking with her daughter by sitting near the basement. She asked the accused to go to the house of the deceased to find out as to presence of male person in his house. It is said that pursuant to the request made by the appellant, PW-3

went to the house of the deceased and heard a male voice from the house. She came back and informed the same to the appellant. After that she claims to have gone to the house and while going she noticed the appellant going to the house of the deceased in an angry mood. That is all the evidence available on record. There is no evidence to show that the appellant has actually gone to the house of the deceased and attacked her. The evidence of PW-11 shows that during the course of investigation, it was informed to him, that the deceased was killed by throttling. However, the injuries found on the body of the deceased and the evidence of Doctor, who was examined as PW-7, does not indicate that the death was due to throttling. It was elicited from PW-11 that none of the witnesses stated to him as to whether the deceased was alive when the second person went from the house of the deceased. His investigation revealed that the appellant was visiting the house of the deceased regularly. His investigation does not any way establish that the appellant was present in the house at the time of incident. Therefore, from the evidence available on record, it is clear that on the date of the incident there was another male person in the house of the deceased, which is evident from the evidence of PW-3. The evidence of PW-3 only discloses about the appellant going towards the house of the deceased in an angry mood. Even assuming that the appellant had gone to the house of the deceased, there is no evidence as to who killed the deceased in view of presence of a stranger/male person in the house of the deceased at that point of time. Having regard to the

circumstances stated above, we feel that it is a fit case where benefit of doubt can be extended to the appellant.

11. Hence, we hold that the prosecution failed to establish the guilt of the appellant and as such the conviction given by the trial Court warrants interference.

12. In the result, the criminal appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 25.02.2011, in Sessions Case No.468 of 2008, on the file of the learned III Additional District and Sessions Judge (FC), Medak, for the offence punishable under Section 302 IPC, is set aside and the accused is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case.

Miscellaneous petitions, if any, shall also stand dismissed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHA RAO

Date: 26.10.2017.
ES/CCM

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P. KESHA RAO



CRIMINAL APPEAL No.692 of 2011

Judgment of Bench delivered by
Hon'ble Si Justice C.Praveen Kumar,J

Date:26.10.2017

ES/CCM