

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.256 of 2012

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

1. The sole accused in Sessions Case No. 60 of 2010 on the file of the Principal Sessions Judge, Khammam is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of his wife, Lachapathula Manga. Vide judgment dated 11.06.2010, the learned Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life'.

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

The accused is the husband of the deceased. PWs 1 to 4, who are residents of Mothugudem village are neighbours of the accused and deceased. The evidence of all the witnesses would show that the accused and deceased used to frequently quarrel on the ground that the accused was having illicit intimacy with one, Buchamma. The evidence on record discloses that about a week prior to the date of incident, the accused had vomittings and the entire house was spread with his vomit. The deceased/ wife took the accused to Bhadrachalam hospital for treatment. It is her evidence that for

about three days, the accused and deceased were in Bhadrachalam and they returned to their house at 8.30 p.m. on 07.04.2009. At that time, they noticed the accused with injuries and in a drunken condition. On 08.04.2009, at about 9 a.m., while PWs 2, 3 and 6 were filling water from the tap which is in front of the house of the deceased, they heard cries of 'ammo ammo' from the house of the accused and deceased. All of them ran to the house of the deceased and noticed the deceased lying with injuries behind the house, in the open courtyard, in a pool of blood. At that time, they found the accused sleeping on a cot inside the house and also noticed a chutney powder by the side of the cot.

3. On receipt of information, PW1-the Sarpanch of Mothugudem village, shifted the injured to GENCO Hospital, Mothugudem, where she died while undergoing treatment. Since nobody was willing to come forward to lodge a report, PW1 gave a report to PW9, which came to be registered as Crime No. 31 of 2009. Ex.P7 is the report and Ex.P8 is the copy of the F.I.R.

4. Thereafter, PW10 conducted further investigation, visited the scene of offence and drafted a panchanama of the scene. During the said proceedings, he seized M.Os 1 to 6. After getting the scene of offence photographed, he conducted inquest over the dead body and sent the dead body for postmortem examination. Ex.P5 is the inquest panchanama.

5. PW8-the Civil Assistant Surgeon, Primary Health Centre, Tulisipaka conducted autopsy over the body of the deceased and

issued Exhibit P6, the Post Mortem Report. According to him, the cause of death was due to head injury. On 17.04.2009, on receipt of credible information, PW10-the Inspector of Police arrested the accused at Mothugudem centre and recorded his confession.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.80 of 2009 on the file of Judicial Magistrate of First Class, Bhadrachalam. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.60 of 2010 on the file of Principal Sessions Judge, Khammam. Basing on the material on record, a charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

8. In support of their case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P8 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 by the accused in support of his defence.

9. As the evidence of the prosecution witnesses establish the guilt of the accused beyond all reasonable doubt, the Court below

convicted the accused. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellant mainly submits that there is absolutely no material to show that the accused alone was responsible for the death of the deceased. According to him, the dead body of the deceased was lying in the courtyard of the house in a pool of blood and the accused was sleeping on a cot inside the house. It is his contention that if really, the accused had caused the death of the deceased, he would have escaped from the scene of offence, instead of sleeping on the cot inside the house. In any event, he would submit that since the accused was in a totally drunken condition, even if the prosecution case is to be accepted as true, the accused cannot be convicted for the charge of murder. The same was opposed by the Public Prosecutor.

11. The question that arises for consideration is: “whether the accused can be held liable for causing the death of the deceased”.

12. As seen from the record, the person who has set the law into motion, i.e., PW1 did not support the prosecution case and turned hostile. He deposed that he does not know the contents of the report. However, that by itself cannot make the entire prosecution case suspicious. First Information Report is only to set the law into motion. Merely because PW1 went back on his evidence, the entire prosecution case cannot be thrown out as false.

13. Coming to the incident proper, the evidence of PWs 2 and 3 clearly shows that there was a quarrel between the accused and the deceased, since the accused developed illicit intimacy with one, Buchamma. The grievance of the deceased appears to be that the accused was concentrating more on his mistress and was neglecting his family. Though PWs 2 and 3 were cross-examined, nothing useful was elicited to discredit their version.

14. The evidence on record further discloses that on 07.04.2009, at about 8.30 p.m., the accused and deceased came from Bhadrachalam, after taking treatment for high fever and vomittings. The evidence of PW3 further discloses that at that time, she noticed injuries on the accused and that he was also in a drunken condition. The incident happened on the next day morning, inside the house of the accused. It is the version of all the witnesses that on hearing cries of the deceased, they went there and found the deceased lying with head injury, while the accused was sleeping on a cot in a drunken condition. The evidence on record further discloses that at the time when the police party, along with the mediators, went to the scene of offence and conducted panchanama, the accused was still lying on the cot. It is the version of PW6 that on the very same day, the accused was taken by the police. However, the arrest of the accused was shown by the police on 17th April, 2009.

15. The main ground urged by the learned counsel for the appellant is that even if the evidence of all the prosecution

witnesses is to be accepted as true, and even if it is to be held that the accused was responsible for the death of the deceased, his act may not constitute an offence punishable under Section 302 IPC.

16. Admittedly, the accused was in drunken condition and he was not in his senses when all the witnesses entered the house of the deceased. The record discloses that when all the neighbours ran to the house of the deceased on hearing her cries, they found the accused lying on the cot in a drunken condition. Even PW6, in his evidence, deposed that the accused was lying on the cot when the police arrived at the scene of offence for conducting panchanama of the scene.

17. The evidence of all the witnesses shows that the accused and deceased were frequently quarrelling with each other, and on the date of incident also, there was a quarrel, pursuant to which the incident occurred. It is the evidence of PW3 that fifteen minutes prior to the time of the incident, the deceased carried water from the tap which is just in front of her house, and at about 9 a.m., she and other neighbours heard cries from the house of the deceased. When they all went into the house of the deceased, they found the deceased in a pool of blood behind the house in the open courtyard and the accused sleeping on a cot inside the house in a fully drunken condition. Having regard to the above, one can imagine the circumstances under which the incident might have taken place.

18. Further, the accused and deceased used to quarrel on the ground that the accused had illicit intimacy with one, Buchamma. The evidence of PW3 clearly shows that fifteen minutes prior to hearing the cries of the deceased, the deceased came out of her house to fetch water from the tap which is in front of her house. Therefore, something must have happened after the deceased went to the house, leading to death of the deceased in the hands of the accused.

19. In DEVENDRANATH SRIVASTAVA¹, the Apex Court dealt with a situation where, there was a quarrel between the husband and wife when the husband was in drunken condition, and subsequently, the dead body of the wife was found in the house. No explanation was given by the husband as to how his wife died. In the facts of the said case, the Apex Court convicted the accused under Section 304 Part I IPC, and not under Section 302 IPC.

20. Having regard to the findings in the judgment referred to above, and taking into consideration the facts in issue, we feel that in the instant case, the accused had no intention to cause death of the deceased, but, however, it can definitely be inferred that he has knowledge that his act may cause death of the deceased.

21. Hence, the accused cannot be fastened with the liability for committing the offence punishable under Section 302 IPC, however, having regard to the fact that he was in a fully drunken

¹ AIR 2017 SCW 612

condition and gave one single blow on the head of the deceased, which led to her death, and taking into consideration the totality of the facts in issue, we feel that the offence can be scaled down to Section 304 Part-I IPC.

20. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in the judgment dated 11.06.2010, in Sessions Case No.60 of 2010, on the file of the Principal Sessions Judge at Khammam, for the offence punishable under Section 302 I.P.C., is altered to one under Section 304 Part-I IPC., and the appellant is sentenced to suffer rigorous imprisonment for a period of ten years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ **accused** shall be set at liberty forthwith, if not required in any other case, on completion of ten years rigorous imprisonment, including remissions, if he is entitled to.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

05.12.2017
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