

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.940 of 2012

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

1) The sole accused in Sessions Case No.213 of 2011 on the file of the II Additional Sessions Judge (FTC), Khammam, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Padma (hereinafter referred to as "the deceased"), on 25.07.2010 at 2.30 a.m. at Petramchelaka Village, by throwing a big stone on her head. By its judgment, dated 16.05.2012, the learned Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.1000/-, in default to suffer simple imprisonment for a period of six months, for the said offence.

2) The case of the prosecution as unveiled from the evidence of the prosecution witnesses is as under:

i) Accused is the husband of the deceased. PW.1 is the brother-in-law of the deceased. PW.2 is the wife of PW.1 while PW.3 is the mother of the deceased. PW.4 is the mother-in-law of PW.1 and mother of PW.2. The marriage between the accused and deceased took place about 10 years prior to the date of incident. Out of wedlock they blessed with one son and one daughter. After

marriage, both of them lived happily for a period of eight years. Thereafter, the accused used to harass the deceased suspecting her chastity. He used to frequently pick up quarrels with the deceased. Unable to bear the harassment, the deceased came to the house of PW.1, but, however, PW.1 and other family members convinced the deceased and sent her back to her in-laws house. A panchayat was held before the elders. PW.8, who acted as one of the elders in the said panchayat, advised the accused not to harass the deceased. But there is no change in the attitude of the accused. Due to harassment in the hands of the accused, the deceased left the company of the accused and came to the house of PW.1 along with her children. This happened about four months prior to the incident. She used to attend coolie work by residing in the house of PW.1. The accused used to visit now and then and during his visit he used to pick up quarrel with the deceased in the presence of other family members. About four days prior to the date of incident, the accused came to the house of PW.1 and requested PW.1 and others to send the deceased along with him assuring them that he will look after the deceased well. At that time, PW.1 asked the accused to get one elder from his side and only then they will send the deceased with him. To get an elder from his side, the accused left the house. On the date of incident, the accused came to the house of PW.1 at 10.00 p.m. when all the family members were sleeping, after taking food. It was one room house and all of them were sleeping together. At about 2.00 a.m. PW.1 heard a big sound. On hearing the said

sound, PWs.1 to 3 woke up and noticed the accused having a big stone in his hand and the deceased lying dead with a head injury and an electrical bulb on in the said room. On seeing PWs.1 to 3, the accused ran away by pushing PW.1 inside. On 26.07.2010 at about 9.00 a.m. while PW.12-the Sub-Inspector of Police, was in the police station, PW.1 lodged a report, basing on which a case in Crime No.11 of 2010 came to be registered for the offence punishable under Section 302 IPC. Ex.P6 is the first information report.

ii) After receiving the first information report, PW.13-the Circle Inspector of Police, took up investigation, proceeded to the scene of offence, prepared a Crime Details Form which includes a rough sketch of the scene. Ex.P4 is the Crime Details Form. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW.10 and others. Ex.P5 is the inquest report. During inquest, he examined PWs.1 to 6 and others. Later he sent the dead body to the Government Civil Hospital, Yellandu, for postmortem examination. PW.9-the Civil Assistant Surgeon, Government Civil Hospital, Yellandu, conducted autopsy over the dead body of the deceased and issued Ex.P3-the postmortem certificate. According to the doctor, the cause of death was due to “cardio respiratory failure as a result of fracture of right frontal and parietal bones.”

iii) It is said that the accused surrendered before the Judicial Magistrate of First Class, Yellandu. PW.13, took the accused into

police custody from 16.08.2010 to 17.08.2010 and on interrogation he confessed about the commission of offence. After completing the investigation, PW.13 filed a charge sheet before the Court of Judicial Magistrate of First Class, Yellandu, which was taken on file as P.R.C.No.73 of 2010. After compliance with Section 207 Cr.P.C. the case was committed to the Sessions Division under Section 209 of Cr.P.C., the same came to be numbered as S.C.No.213 of 2011.

3) On appearance, charge under Section 302 IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P7 and M.Os.1 to 9. After the closure of prosecution 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.

5) Believing the evidence of PWs.1 to 4, the Sessions Judge convicted the accused for an offence punishable under Section 302 IPC. Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that there is any amount of doubt with regard to presence of the accused in the house of PW.1 at that time. In the absence of any positive evidence with regard to the presence of the accused in the house of PW.1, the counsel for the appellant would contend that

the conviction of the accused is not sustainable. She would further contend that the prosecution failed to take the finger prints on the stone, so as to connect the accused with the crime.

7) On the other hand, learned Public Prosecutor would contend that the evidence of PWs.1 to 3, who were examined as eye witnesses to the incident, amply established the presence of the accused at the time of the incident. He submits that the evidence of PWs.1 to 3 is sufficient to base a conviction.

8) The short point that arises for consideration is whether the accused is responsible for the death of the deceased.

9) In order to appreciate the rival contentions, it would be useful to refer to the relevant portion of the evidence of PWs.1 to 5, which is as under:

10) PW.1, who is the brother of the deceased, deposed as under:

“Due to harassment of accused, four months prior to the death of the deceased, the deceased left the accused and came to my house along with children. The deceased used to attend coolie work by residing in our house. In the four months accused visited the house now and then. In our house also the accused picked up quarrel with the deceased in our presence. Four days prior to the incident the accused came to our house and requested us to send the deceased along with him by giving assurance that he will look after her without harassing. Then, we asked the accused to get one elder from your side and then we

will send the deceased with him. Then, accused left my house to get elder. On the date of the incident the accused came to our house at 10.00 p.m. by that time we are sleeping after having meals. We are all including the deceased sleeping in the room as my house containing one room. On that day night myself, my wife, my mother, my mother-in-law, my son, deceased and her two children in one room. At about 2.00 a.m. (mid night) I heard one big sound. On hearing that sound we all woke up and observed that a big stone in the hands of the accused and the deceased is found dead with head injury in the pool of blood. At that time one electrical bulb is in on. Then, the accused pushed us aside and ran away by leaving the stone.”

11) PW.2, who is the wife of PW.1 and sister-in-law of the deceased, deposed as under:

“Four months prior to the death of the deceased, since the accused used to harass the deceased, the deceased left the accused and came to our house. In this four months, the accused now and then visit to our house and picked up quarrel with the deceased. Four days prior to the incident the accused came to our house and requested us to send the deceased along with him. We asked the accused to get one elder then we will send the deceased along with him. Then accused left our house and came back at the time of incident at about 10.00 pm. At that time, after having meals we were sleeping. That day night the accused slept in our house. At about 2 or 2.30 a.m. we heard sound. Then, we woke up and observed a big stone in the hands of the accused and found the deceased dead with head injury in the pool

of blood. When PW.1 tried to catch the accused he pushed him aside and ran away by leaving stone there.”

12) PW.3, who is the mother of the deceased, deposed as under:

“Four months prior to the incident, due to harassment of the accused, the deceased left the accused and came to our house along with children. In these four months the accused came to our house and picked up quarrel with the deceased and went away. Five days prior to the incident the accused came to our house and requested to send the deceased with him. We asked the accused to bring one elder. Then the accused went away. On the date of incident accused came to our house at about 10.00 p.m. At that time after having meals while we are sleeping the accused came to our house. Then, he also slept in the house. As only one room is there in our house we all sleeping in that room. At about 2.00 a.m. we heard a sound. Then, we woke up and found stone in the hands of the accused and found the deceased in the pool of blood with head injury. The accused pushed PW.1 aside and ran away.”

13) PW.4, in her evidence, deposed as under:

“On the date of incident I was in the house of PW.1. I went to the house of PW.1 eight days prior to the incident. On the date of incident after having meals I was sleeping in the house of PW.1. In PW.1's house only one room is there. PWs.1,2,3, myself, the deceased and her children were sleeping in the room. On that day accused came to the house of PW.1 at about 10.00 p.m. At about 2.00 a.m. I heard big

sound and woke up and saw the accused with stone in his hands and also found the deceased with head injury in a pool of blood. When, PW.1 tried to catch the accused he ran away by leaving the stone there.”

14) PW.5, who is the brother of the deceased, deposed as under:

“My house is situated by the side of PW.1. About 1 ½ year back my sister died. Four days prior to the incident PW.1 told to the accused to get an elder to take the deceased. On the date of incident at about 2.00 a.m. I heard cries of PW.1. I rushed to the house of PW.1. By that time PW.1 was shouting that the accused is running away by beating the deceased with stone. I observed the accused ran away from the house of PW.1. I observed the blood oozing from the head of the deceased. The accused killed the deceased on suspicion that she is having illegal intimacy.”

15) Though all the witnesses were cross-examined at length, nothing useful was elicited in their cross-examination. The suggestions given to PW.1 relate to the dimensions of the room and whether the said room was having TV and almirah. It was elicited from his cross-examination that an electrical bulb was burning in the room at the time of the incident. It was also elicited that PW.1 and his family members were in the habit of keeping the light on, during night times. It was further elicited from PW.1 about the panchayat being held and he was present in the said panchayat.

16) Similarly, in the evidence of PW.2 it was elicited that there was a light in the room and they were in the habit of keeping

the light on during the night time. It was also elicited from PW.2 about the panchayat being held and she being present in the said panchayat. To a suggestion that the accused was not responsible for the death of the deceased was denied by her. Similar such suggestions came to be put to PWs.3 to 5.

17) Therefore, from the evidence of PWs.1 to 5, it is clear that though there were disputes between the accused and the deceased, but the accused was coming to the house of PW.1, now and then, and was insisting PW.1 and his family members to send the deceased to his house. On the date of incident, the accused came to the house of PW.1 at about 10.00 p.m., and at about 2.30 a.m., the inmates of the house heard a big sound. On that, they woke up and observed the accused holding a big stone and also noticed deceased lying dead with a head injury. The evidence of PW.9-the doctor, who conducted autopsy over the dead body of the deceased, categorically shows that the cause of death was “due to cardio respiratory failure as a result of fracture of right frontal and parietal bones”.

18) As stated earlier, though all the witnesses were subjected to cross-examination but the suggestions given to them appear to be on same lines. In fact what was not stated in the examination of chief, came to be elicited in the cross-examination, more particularly with regard to existence of light in the house at the time of the incident. Therefore, the argument of the learned counsel for the appellant that the presence of the accused in the house is doubtful cannot be accepted.

19) The next argument that was advanced by the learned counsel for the appellant is that the prosecution failed to take the finger prints on the stone used in the commission of the offence. Since the ocular evidence of PWs.1 to 5 amply established the presence and participation of the accused in the crime, we are of the view that non-taking of finger prints on the stone, cannot go to the root of the matter. It may be true that none of them have seen the accused actually causing the death of the deceased, but it is to be noted that by the time PWs.1 to 4, who were in the same room woke up, they found the accused with a stone in his hand preparing to attack again and the deceased lying dead with a head injury. If really the accused is innocent, there is no reason for him to run away from the scene after seeing PWs.1 to 4. His conduct would have been otherwise, if he is innocent of the offence.

20) Having regard to the above and since the conduct of the accused is un-natural, we see no reason to interfere with the conviction and sentence imposed by the trial Court.

21) Accordingly, the appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

18.12.2017
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