

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.84 OF 2014

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

Vide the present appeal, the sole accused has challenged the judgment dated 27.11.2013 in Sessions Case No.429 of 2012 on the file of the Court of the II Additional Sessions Judge (Fast Track Court) at Nizamabad (for short, trial Court), whereby the appellant was found guilty of the offences punishable under Sections 302 and 326 IPC., and was convicted under Section 235(2) Cr.P.C., and sentenced to suffer imprisonment for life with minimum of 20 years without remission and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for one month for the offence punishable under Section 302 IPC and further sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for one month for the offence punishable under Section 326 IPC. The trial Court directed that the accused shall serve the sentence awarded for the offence under Section 326 IPC after serving out his life sentence.

2. The facts of the case in nutshell are that the deceased Smt.Padma is the second wife of the accused. P.Ws.1 and 3 are the daughters of the accused and the deceased. P.W.1 is a student of 1st year Engineering IIIT at Baasar. P.W.3 is studying 9th class. P.Ws.2 and 4 are mother and maternal uncle of the deceased respectively. On 14.07.2011 at about 4.00 am, P.W.1 lodged a complaint (Ex.P.1) with P.W.9 – S.I of Police, Nizamabad Rural

Police Station, stating that prior to 10 days back, there was a dispute between the accused and the deceased, on which, the deceased took P.W.1 and her two sisters and went to the house of P.W.2 situated at Chandrashekar Colony, Nizamabad. While so, on the intervening night of 13/14.07.2011 at 2.45 am to 3.00 am., the accused came to the house of P.W.2 and opened the door from the window and gained entrance into the house and attacked P.W.2 with kamma kathi (M.O.1) (fire wood & coconut cutting knife) and caused bleeding due to head injury. On hearing hue and cry of P.W.2, P.W.1 and her sisters woke up and when the deceased intervened, the accused thrown her and attacked her indiscriminately with M.O.1 and caused bleeding injuries. Then, P.W.3 intervened, on which, the accused attacked her also which caused bleeding injuries on her left eye and nose. P.W.1 stated that the accused, by suspecting the fidelity of the deceased and to kill her, stabbed the deceased and P.Ws.2 and 3. The accused left the scene of offence and, in few minutes, came back and again attacked the deceased with M.O.1 indiscriminately to ensure the death of the deceased.

3. Basing upon the said information, P.W.9 registered a case in Crime No.261 of 2011, for the offences punishable under Section 307 IPC and issued FIR (Ex.P.7). During the course of investigation, P.W.9 examined and recorded the statement of P.W.1 and rushed to the Government Headquarters Hospital, Nizamabad and filed a requisition before the Duty Medical Officer to treat the deceased and P.Ws.2 and 3 and to issue medical certificates. Later,

the deceased and P.Ws.2 and 3, upon medical advice, were shifted to Osmania General Hospital, Hyderabad, for better treatment. Then, P.W.9 visited the scene of offence and conducted the scene of offence panchanama in the presence of P.W.5 and L.W.9 Gokini Srinivas and prepared a rough sketch of scene of offence (Ex.P.2) and seized M.Os.2 (wooden handle of M.O.1) and 3 (white blanket with blood stains). On the same day i.e., on 14.07.2011, P.W.9 received information that the deceased died near Kompally area on the way to Osmania General Hospital, Hyderabad. Then, he added Section 302 IPC and issued section alteration memo, Ex.P.8.

4. P.W.11, the C.I of Police, Nizamabad, took up further investigation. Thereafter, P.W.11, in the presence of P.Ws.5, Gokini Srinivas (L.W.9) and Thota Jaya Laxmi (L.W.10), conducted inquest over the dead body of the deceased and recorded the statements of P.W.4, Hari Babu (L.W.3), Krishna (L.W.4) and Ram Prasad (L.W.5). He also got it photographed by L.W.5 and sent the dead body for autopsy. Thereafter, on 18.07.2011, he visited P.W.2 at Osmania General Hospital and P.W.3 at Sarojini Devi Eye Hospital and recorded their statements. On 27.07.2011, P.W.11 visited the house of the accused at Setharamnagar Colony, Nizamabad, and recorded the confessional statement of the accused in the presence of P.W.6 and Neeradi Hanmandlu (L.W.11) and recovered M.Os.1 and 3 to 6 under a cover of panchanama (Ex.P.2). P.W.11 arrested the accused and sent him for remand. After collecting the postmortem report (Ex.P.9), injury certificates of P.Ws.2 and 3 (Exs.P.5 and P.6) and FSL report (Ex.P.11), P.W.11 filed the charge

sheet, which was taken on file as PRC No.89 of 2012 on the file of the Court of II Additional Judicial Magistrate of First Class, Nizamabad.

5. On appearance of the accused, the said Court furnished copies of the documents as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the same was committed, which came to be numbered as S.C.429 of 2012. Basing on the material available, charges under Sections 302 and 307 IPC., came to be framed, read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

6. In support of its case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P.1 to P.11 and M.Os.1 to 6. On behalf of the accused, Exs.X.1, X.2 and D.1 were marked. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against him in the evidence of prosecution witnesses, to which he denied. Basing on the prosecution evidence, the trial Court found the accused guilty for causing the death of the deceased and also causing grievous injuries to P.Ws.2 and 3 and accordingly convicted and sentenced the accused for the offences punishable under Sections 302 and 326 IPC and acquitted him of the charge under Section 307 IPC. Challenging the same, the present appeal came to be filed.

7. Smt.B.Vasanth Lakshmi, learned counsel for the appellant, would submit that basing on the testimony of P.Ws.1 to 4, who are

highly interested witnesses, recording conviction by the trial Court is illegal. She would further submit that the trial Court did not take into consideration the factum of non-examination of any neighbour by the prosecution. She would further submit that the prosecution has not proved the motive of the accused for killing the deceased and sought to set aside the judgment of the trial Court. She tried to throw light upon the discrepancies regarding the manner in which the accused entered into the house and the time.

8. On the other hand, the learned Public Prosecutor would submit that there is no reason to disbelieve the evidence of P.Ws.1 to 3, much less, P.Ws.1 and 3, as they are the daughters of the accused. He would further submit that the prosecution has proved the guilt of the accused beyond reasonable doubt and hence there are no grounds to interfere with the judgment of the trial Court.

9. As per the depositions of P.Ws.1 and 3, who are the daughters of the accused and the deceased and eye witnesses to the scene of offence, the deceased is the second wife of the accused and the accused used to suspect the fidelity of the deceased, due to which, there were frequent quarrels between the accused and the deceased. Ten days prior to the date of incident, due to the quarrels, the deceased took her three daughters i.e., P.Ws.1, 3 and Ms.Pinky, their youngest daughter, to the house of P.W.2. On the intervening night of 13/14.07.2011, the accused attacked the deceased, P.W.2 and 3 with M.O.1 indiscriminately. In that incident, the deceased died and P.Ws.2 and 3 got severe injuries. There are no contradictions in their depositions.

10. As per the depositions of P.Ws.1 to 3, the incident took place at about 2.00 am., to 3.00 am., of 14.07.2011 and P.W.1 informed the incident to the police on the same day at about 4.00 am. There is no delay in filing the complaint.

11. As per Ex.P.9, postmortem report of the deceased, there were as many as 10 injuries on the body of the deceased. On internal examination, the doctor found fracture skull bone and internal intra cerebral hemorrhage. The doctor opined that the cause of death of the deceased is due to cardio respiratory failure due to multiple fractures of skull with injury to brain with severe hemorrhage from multiple lacerations on scalp, back of chest and abdomen.

12. P.W.7 is the doctor who treated P.W.2. He issued Ex.P.5 medical report opining that the injuries caused to P.W.2 are grievous in nature. P.W.7 has categorically explained about the injuries (8 in number) causing fracture and wounds on the wrist, hand, right shoulder, amputation of 4th finger of left hand., etc. P.W.8 is the doctor who treated P.W.3. He issued Ex.P.6 medical report opining that the injuries caused to P.W.3 are grievous in nature. P.W.8 in his deposition explained about the injuries caused to P.W.3. As per Ex.P.6, P.W.3 sustained as many as 5 injuries on her body i.e., near eye portion like eye lids edematous conjunctiva congestion, cornea tear, iris prolapse, lens cataractuous, etc. As per Ex.P.11 forensic report, the human blood was detected on MOs which belong to the accused.

13. There is no reason to disbelieve the depositions of P.Ws.1 and 3, who are daughters of the accused, and there is no discrepancy in their depositions. The discrepancy urged by the learned counsel for the appellant with regard to the manner in which the accused entered into the house and the time, in our view, they are of no importance, when the accused was very much present at the scene of offence and in the presence of his daughters, the accused killed the deceased with M.O.1 indiscriminately and also caused grievous injuries to P.Ws.2 and 3. The accused has not led any evidence to prove his case in support of his denial under Section 313 examination. In the offence of this nature, the accused deserves no sympathy and the judgment of the trial Court is a well considered one and needs no interference.

14. For the aforesaid reasons, the Criminal Appeal is dismissed confirming the judgment dated 27.11.2013 in Sessions Case No.429 of 2012 on the file of the Court of the II Additional Sessions Judge (Fast Track Court) at Nizamabad.

SURESH KUMAR KAIT, J

T.AMARNATH GOUD, J

Date: .09.2018
TJMR