

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SMT.JUSTICE T. RAJANI

CRIMINAL APPEAL No.564 of 2012

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

The present appeal is filed under Sections 378 (3) & (1) of Cr.P.C. against the order and judgment dated 16.04.2011, passed in S.C.No.444 of 2008 by the learned Special Sessions Judge for Trial of Scheduled Castes and Scheduled Tribes cases – cum – Addl. Sessions Judge, Ananatapuramu, wherein, the sole accused who was tried for an offence punishable under Section 302 IPC was acquitted.

2. The substance of the charge against the accused is that on 22.02.2008, the accused demanded the deceased to give money and when she refused, he beat her at about 06.00 p.m. and then forcibly poured pesticide in her mouth. The deceased is said to have died while she was being shifted to the hospital.

3. The facts as disclosed in the evidence of prosecution witnesses are as under:

(i) The accused is the husband of the deceased, while PW1 is the daughter of the accused and deceased. It is stated that the deceased and accused used to quarrel as the accused never cared for their family, since he was addicted to bad vices like consuming liquor, playing cards and matka. It is stated that the accused never gave money for raising crops in their land and it

was the deceased who used to arrange the amount. On 22.02.2008, the accused quarreled with the deceased demanding her to pay the amount realized from the sale of Bengal gram crop. On the date of incident, both the accused and the deceased were quarreling right from the morning. On that day, in the evening time, the accused threw all the vessels outside the house. Then the deceased and her daughter were placing them inside the house. At that time, the accused dragged the deceased inside the house, poured pesticide available in the house into her mouth stating that she would not give any money if she is alive. PW1, who is said to have witnessed the incident, raised cries saying that the deceased was being killed by the accused. On hearing the cries, PWs.2, 3 and others came there. When PW1 asked the deceased as to what happened, she seems to have narrated the manner in which the incident took place. Thereafter, the deceased started vomiting and accordingly she was taken to a doctor at Palthur. At that time, the accused who was present accompanied them. As per the advice of the doctor at Palthur, she was taken to the Government hospital at Uravakonda in an ambulance. At that time the accused left the deceased and ran away. It is stated that the deceased died on the way, i.e., while they were at Kuderu and as such she was kept in a mortuary at Government hospital, Uravakonda. On the next day, at about 03.30 p.m., PWs.1, 4 and 5 lodged a report before PW11, the Superintendent of Police, Palthur Police Station, which came to be registered as

Crime No.6 of 2008 for the offence punishable under Section 302 IPC. Ex.P7 is the FIR registered. PW11 along with his constable went to the Government Hospital, Uravakonda, where the deceased was found in a mortuary. As it was late in the night, he did not conduct inquest over the body on the same day. On 24.02.2008, at about 08.00 a.m., he conducted inquest over the body of the deceased in the presence of PWs.7, 8 and others. PW11 also examined PWs.1 to 4 and recorded their statements. Thereafter, he sent the body for post mortem examination. PW10 the Civil Assistant Surgeon, Government Hospital, Uravakonda, conducted autopsy over the body of the deceased and issued Ex.P6 post mortem examination certificate. According to him, the deceased might have died due to administration of Monochrotophos a poisonous substance. At the time of inquest, PW11 seized MOs.1 to 4 i.e., MO1 is the saree, MO2 is jacket, MO3 is gold nose stud and MO4 is black bead chain. PW12, the Inspector of Police, took up further investigation in this matter. According to him, he left Uravakonda at about 01.45 p.m., along with PWs.1 and 11, reached the scene of offence at 02.20 p.m., and in the presence of PWs.9 and 7, examined the scene of offence. He also prepared a rough sketch of the scene of offence, which is placed on record as Ex.P8. Ex.P9 is the panchanama of the scene. On 24.03.2008, he arrested the accused at Havaligi bus stop. After collecting all the necessary documents, including FSL report, he filed a charge sheet for the offence punishable under

Section 302 IPC, which was taken on file as PRC No. 22 of 2008 on the file of Judicial Magistrate of First Class, Uravakonda.

(ii) On appearance of the accused, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal under Section 209 Cr.P.C., the same came to be numbered as S.C.No.444 of 2008.

(iii) Basing on the material available on record, a charge under Section 302 of IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

(iv) In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P10. Out of 12 witnesses, PWs.8 and 9 did not support the prosecution case and were treated hostile.

(v) 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. DW1 was examined on behalf of the defence and Exs.D1 and D2 were also marked.

(vi) Since the prosecution failed to prove the case beyond reasonable doubt, the learned Sessions Judge acquitted the accused. Challenging the same, the present appeal came to be filed.

4. Learned Additional Public Prosecutor would submit that the evidence of PWs.1 to 3 establishes the involvement of the accused in the commission of crime. According to him, when the presence of PW1 in the house cannot be disputed, her evidence cannot be brushed aside on minor discrepancies. According to him, the finding of the trial Court, that if really, the poison was forcibly administered, the deceased would have struggled during which time, she would have received injuries on the body and in the absence of the same the evidence of PW1 is doubtful and appears to be totally baseless.

5. As seen from the record, the entire case rests on the evidence of PW1 and the evidence of the investigating officer. PW1 is no other than the daughter of the deceased and the accused. According to her, there were frequent quarrels between the accused and the deceased, as the accused was addicted to bad vices. It is stated that even on the date of incident, the accused and deceased were quarreling since morning of that day i.e., on 22.02.2008. In the evening the accused threw all the house-hold articles outside. When PW1 and the deceased were trying to set right the vessels inside the house, the accused is said to have caught hold of the tuft of the deceased, dragged her inside the house and then forcibly administered poison. PW1, who saw the incident, claims to have raised cries, which attracted the attention of the neighbours. PWs.2 and 3, who heard the cries, rushed to the house of the accused and noticed the deceased vomiting outside

the house. Immediately, thereafter, the husband of PW2 brought his tractor, in which the deceased was taken to Palthur. When they reached Undabanda, an ambulance came and from there the deceased was shifted to Government hospital, Uravakonda. The accused who was present along with them shifted the injured from tractor to the ambulance, and then left the place. The said version finds place in the evidence of PWs.1 to 3. PW1 was subjected to lengthy cross-examination. According to her, her father used to go to Bellary once in three months and used to stay in the village during the remaining period. PW1 in her cross examination admits that on the date of incident, the deceased started quarreling from 06.00 a.m., to 06.00 p.m. and the accused fisted PW1 with hands and legs, which was also informed to the police. According to her, her mother, sold Bengal gram crop for Rs.30,000/-. It is said by PW1 that the accused caught hold of the tuft of the deceased, bent her head backwards and poured pesticide into her mouth. PW1 admits that she did not state all these facts either in Ex.P1 report or in her statement recorded by police under Section 161 of Cr.P.C. She further admits that the deceased never sustained any injuries, when she was dragged. She also admits that though the accused was beating them, neither of them sustained any injuries. She further admits that she did not make any effort to escape, when the accused was pouring pesticide in the mouth of the deceased. The suggestion that Ex.P1 came to be prepared at the instance of one Shankaraiah

was denied by PW1. The suggestion that the accused has nothing to do with the murder of the case was also denied by her. The suggestion that the present case came to be foisted to get rid of the accused was denied by her.

6. The evidence of PW11, the investigating officer, would show that PW1 did not state to him about the amount realized by the deceased through sale of Bengal gram. He further admits that he has not received any information about the crime till receiving of Ex.P1. The suggestion that the deceased committed suicide after consulting PW4 came to be denied.

7. PW12, who conducted investigation into the case and filed charge sheet, admits that though the incident took place on 22.02.2008, he did not receive any information till 03.00 p.m., on 23.02.2008. According to him, though it is the duty of the doctor or hospital concerned to send an intimation about the case to the police, no such information was sent. He admits that PW1 never stated about the involvement of the accused in another case, in Nadivi village in Karnataka state. He further admits that at the scene of offence, three bags of Bengal gram were seized and the same was reflected in Ex.P9 seizure panchanama. He further admits that the deceased was an agriculturist. The suggestion whether the poison came to be administered to the person was denied by him. He further states that if poison is administered forcibly, grievous injury marks would be present. He also admits that there are no

injuries on the body of the deceased. He further admits that PW1 never stated to him about the resistance of the deceased while administering the poison.

8. From the evidence of PW1 and the evidence of PW11 investigating officer, it is clear that PWs.2 and 3 are the two persons, who came to the scene on the date of offence and thereafter the deceased was shifted in a tractor by the father of PW3 and from there to Government hospital, Uravakonda. According to PW2, she accompanied the deceased to the hospital and her evidence also shows that the accused also accompanied them till Palthur. On the way, when the body was shifted into an ambulance, the accused left the place. The said version also finds place in the evidence of PW3.

9. From the evidence of these witnesses, coupled with the evidence of investigating officers and the post mortem report, it is clear that there were quarrels between the accused and the deceased from morning and he was beating PW1 and the deceased continuously. Strangely, no external injuries were found on the body of PW1 and the deceased. Further, the motive for commission of offence appears to be that the accused was insisting the deceased to give the sale proceedings of 15 bags of Bengal gram. As per the evidence of PW1, the deceased sold the Bengal gram and received an amount of Rs.30,000/-. If really, the evidence of PW1 is true, that 15 bags were sold and the amount of Rs.30,000/- was realized, for which the accused

was harassing the deceased, the evidence of the investigating officers, coupled with the panchanama prepared at the scene of offence falsifies the same. As referred to above, PW12 investigating officer admits that when they went to the scene of offence, they noticed three bags of Bengal gram in the house, which fact was incorporated in the panchanama of the scene of offence. That being so, the version of PW1 that the accused was beating the deceased for the sale proceeds of 15 bags of Bengal gram, appears to be doubtful.

10. It is to be noted here whether PW1 is really speaking to the truth, in the absence of any evidence corroborating the admission?

11. As seen from the record, on the date of incident, the accused is said to have thrown all the articles outside and when PW1 and the deceased were setting the things right, the accused is said to have caught hold of the tuft of the deceased, dragged her inside the house and poured poison in her mouth forcibly. Later on, the deceased vomited and the same was noticed by PWs.2 and 3. If really, the deceased was being beaten from morning and if really she was being dragged by catching her tuft, definitely there would have been some external injuries on the body of the deceased. There is no evidence on record to show that the place where the deceased was dragged was an even surface, which could not have caused any injuries on the body. In the absence of any injuries in the body of the deceased

and in view of the evidence of the investigating officer that if the deceased is dragged, there would have been some injuries on the body, a doubt arises as to whether really the accused was forcibly administered the poison. Further, PW1, who is aged about 19 years at the time of incident, was also attending to agricultural operations in the fields. That being so, she would have immediately intervened and tried to protect her mother when the accused was forcibly pouring Monocrotophos poison in the mouth of the deceased. She categorically admits in her evidence that no effort was made by her, except watching the scene. Further, the manner in which the accused is alleged to have poured poison in the mouth of the deceased by catching hold of the tuft, bending her neck backwards, pulling her down and pouring poison, does not find place either in the First Information Report or in the Statements under Section 161 of Cr.P.C.

12. At this stage, it is also to be noted that if really the accused has forcefully administered poison, he would not have stayed in the house after the incident, nor would he accompany the deceased to the hospital, after commission of the offence. He could have escape from the scene immediately. The evidence of PWs.2 and 3 amply establishes that he accompanied all of them along with the deceased in a tractor to Palthur and shifted the injured in to an ambulance. Therefore, his conduct also shows some doubt with regard to his participation in the offence.

13. Since two views are possible and this being an appeal against the acquittal, we feel that it is not a case to reverse the order of acquittal. Time and again, the Apex Court has laid down that when two views are possible, the High Court in an appeal against acquittal cannot substitute its reason to convict the accused. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. [Vide ***Kali Ram Vs. State of Himachal Pradesh***¹; ***State of Rajasthan Vs. Raja Ram***²; ***Chandrappa & Ors. vs. State of Karnataka***³; ***Upendra Pradhan Vs. State of Orissa***⁴ and ***Golbar Hussain & Ors. Vs. State of Assam and Another***⁵.

14. For the aforesaid reasons and the judgments of the Apex Court referred to above, we see no reason to interfere with the findings of the trial Court.

¹ (1973) 2 SCC 808

² (2003) 8 SCC 180

³ (2007) 4 SCC 415

⁴ (2015) 11 SCC 124

⁵ (2015) 11 SCC 242]

15. Accordingly, the appeal is dismissed confirming the judgment dated 16.04.2011, passed in Sessions Case No.444 of 2008 on the file of Special Sessions Judge for Trial of Scheduled Castes and Scheduled Tribes cases – cum – Addl. Sessions Judge, Ananatapuramu.

16. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

T.RAJANI, J

06.08.2018
vhb

