

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SMT JUSTICE T.RAJANI**

CRIMINAL APPEAL No.1411 of 2011

JUDGMENT: (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present Appeal, the appellant challenged the judgment dated 28.03.2011 passed in Sessions Case No.442 of 2010 on the file of VI Additional Sessions Judge (Fast Track Court) East Godavari, Rajahmundry, whereby he was found guilty for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month.

The case of the prosecution is that, about 14 years prior to the incident, the accused married the deceased Pochamma. It is the second marriage for both of them and they married on mutual consent. The deceased, along with her daughter, born to her first husband, resided at Kovvur and for some time at Arikirevula, the native Village of LWs.1 and 2. About four years ago, the accused shifted his residence to Vemulapalli Village. Later, LWs.1 to 4 came to Vemulapalli Village for better livelihood. About 15 days prior to the occurrence, on 20.05.2010, the accused with the deceased and two female children occupied house No.139 and LWs.1 to 4 occupied house No.140, the adjacent house of the deceased. The accused, suspecting the fidelity of the deceased, was harassing and altercating

with her right from the time of marriage. LWs.1 to 3, having come to know about the harassment and ill-treatment of accused towards deceased, interfered and admonished the accused and pleaded that she is not ill-charactered, but accused has not changed his attitude towards the deceased. On 20.05.2010, the accused, deceased, their daughter and LWs.1 to 4 attended function of sending Nagamani with sare, the grand-daughter of LWs.1 and 2 at Patha Thungapadu. The accused noticed the deceased talking to some one familiarly and became infuriated and raised quarrel there itself and threatened that he would see her after returning to house. All of them returned to their houses at about 10.00 p.m. and, at about 11.00 p.m, when the deceased rested on the cot in the bed-room, the accused caught hold of the neck of the deceased and throttled her neck. On hearing the hue and cry of the deceased as 'Champesthunnadu Baboi', LWs.1 to 4, LW.5 and LW.6 rushed to the house of the deceased and witnessed the accused catching hold of the neck of the deceased and severely throttling saying that she shall not be allowed to live. On seeing LWs.1 to 6 and their attempt to rescue the deceased, the accused pushed them aside and ran out of house. Later, LWs.1 to 6 observed that the deceased died. On the complaint of V.R.O, Vemulapalli, Mandapeta Rural police registered a case and investigated

the same and, after investigation, police filed charge sheet against the appellant before the Judicial Magistrate of I Class, Alamuru. The Judicial Magistrate of First Class committed the case to the District Court as the offence under Section 302 IPC is exclusively triable by the Court of Sessions. Later, it was made over to VI Additional Sessions Judge (Fast Track Court), East Godavri District, Rajahmundry, for trial and disposal of case in accordance with law.

On production of accused, the Trial Court framed a charge against him for the offence under Section 302 IPC and the contents of the charge were read over and explained to him in Telugu and he pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, PWs.1 to 8 were examined, marked Exs.P.1 to P.8. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining the incriminating material available against him, he denied the same and reported no defence.

Upon hearing arguments of both the counsel, the Trial Court found the appellant guilty for the offence punishable under Section 302 IPC and convicted and sentenced him as stated supra.

Aggrieved by the conviction and sentence passed under the impugned judgment in S.C.No.442 of 2010, the present appeal is preferred under Section 374(2) Cr.P.C.

Learned Counsel appearing for the appellant argued that PW.3 specifically stated that the appellant – accused and deceased used to quarrel but they had cordial relationship. Therefore, there was no occasion for the accused to kill the deceased. PW.4, the daughter of the deceased, deposed that at the time of incident she was sleeping in kitchen and, therefore, she could not be an eye-witness. More over, the accused in his confessional statement deposed that, since the deceased was talking with some male person, quarrel took place and, thereafter, the accused, in a bit of anger, caught hold of her neck and throttled her neck. The accused had no intention to kill the deceased. However, the neck of the deceased was caught hold of and, in scuffling, the deceased died. The Trial Court ignored all these facts and convicted under Section 302 IPC instead of Section 304 IPC.

We have heard the learned Counsel for the appellant and learned Public Prosecutor for the State and perused the material on record.

PW.1, Village Revenue Officer of Vemulapalli Village, who is the informant, deposed that he know about the incident and gave a complaint to the police and proceeded

to the scene of offence along with the police and in the presence of mediators, inquest was conducted over the dead body of the deceased.

PW.2, the mother of the deceased, deposed that on 28.05.2010, herself and her family members, including the accused, attended the function of their relative and, when a nearest relative talked with the deceased, the accused suspected her fidelity and warned the deceased that he would see her after reaching the house. At 11.00 p.m. they returned from the function. Thereafter, they heard cries from the house of the deceased that 'Champestunnadu Baboi'. As two houses are separated by a wall, PW.2 and her husband went to the house of the deceased and at that time the accused was pressing her neck while she was lying on the cot and on seeing them, the accused fled away. Later the matter was reported to Village Munsif.

PW.3, the brother of the deceased, corroborated the evidence of PW.2, and he stated about the incident.

PW.4, who is the minor daughter of the deceased, deposed that, on 20.05.2010, she along her family members went to the function at Tungapadu. When the deceased was talking with one Raju, accused warned that he would see her after going to village. Later after reaching the accused, the accused and deceased slept inside the

house and she slept in the kitchen room. Her grandmother house is situated by the side of their house. When the deceased raised cries, her grandmother - PW.2, grandfather and others went to the room of the deceased and saw that the accused was pressing her neck while she was on the cot.

PW.5, neighbour, also corroborated the evidence of PWs.2 and 4.

PW.6 is the Civil Assistant Surgeon, who conducted examination over the dead body of the deceased, opined that the death of the deceased may be due to pressure over the front of neck and issued post-mortem certificate.

PW.7, the Sub-Inspector of Police, registered the case and PW.8 is the Investigating Officer, who investigated into the matter.

PW.2 has categorically deposed about the incident and previous incident and the witnesses discussed above have witnessed while the accused was pressing the neck of the deceased. It is pertinent to mention that PW.4, the minor daughter of the deceased, categorically stated the manner the incident has taken place. Had this not happened, there was no occasion for PW.2, who is none other than the mother of the deceased, to speak against her son-in-law i.e. the accused.

Therefore, keeping in view the depositions of witnesses examined by the prosecution and relied on by the Trial Court, We find no illegality or infirmity in the order of the Trial court.

The Criminal Appeal fails and is, accordingly, dismissed. Miscellaneous applications, pending if any, shall stand disposed of.

SURESH KUMAR KAIT, J

T.RAJANI,J

Dt:12.04.2018
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