

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.1218 OF 2011

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

1) The sole accused in Sessions Case No.87 of 2009 on the file of the II Additional Sessions Judge, Kadapa at Proddatur, is the appellant herein. She was tried for an offence punishable under Section 302 IPC, for causing the death of her husband by name T.Venkata Subbaiah (hereinafter referred to as "the deceased") on 24.08.2008 at about 12.00 a.m., at D.No.12/64, Svuni Manyam Street, Mydukur Town. Vide judgment, dated 21.10.2011, the learned Sessions Judge, convicted the accused and sentenced her to suffer "imprisonment for life" and to pay fine of Rs.3000/-, in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 302 IPC.

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

i) PW.1 is the mother of the deceased while PW.2 is the younger brother of the deceased. PWs.3 and 4, who are residents of the said area, did not support the prosecution case. PW.5 is the servant maid of the deceased. Accused is the wife of the deceased and her marriage with the deceased took place about 30 years prior to the date of incident. It is said that the accused was 12 years old

at the time of marriage and she was taking tuitions with the deceased at the time of marriage. They could not beget children as such differences cropped up between them. The evidence on record discloses that the accused used to demand the deceased for transfer of the property in the name of her brother's son but the deceased refused to do so. It is said that the accused used to threaten the deceased to see his end. The deceased is running an educational society in the name of Aravind Educational Society and also running a school in the name and style of T.V.S.M.School. It is said that a day prior to the date of incident ie., on the day of Krishnashtami eve, PW.1, who is the mother of the deceased, came to the house of the deceased at Mydukur from Nandyal. On the night of the incident PW.1 heard a quarrel between the accused and deceased regarding the property. Immediately she heard a loud cry of the deceased as such she went to the room where the accused and deceased slept and found the accused beating the deceased with a pestle on his head. On seeing PW.1, accused threw the pestle, pushed PW.1 aside and ran away. Immediately thereafter, PW.1 informed the same to PW.2, who is the brother of the deceased, and staying nearby. PW.2 came to the house of the deceased and saw his brother with an injury on head. His enquiries revealed that there was a quarrel between the accused and the deceased, pursuant to which the accused beat the deceased with pestle. According to him, the motive for the accused to cause the death of the deceased was that the accused suspected that the deceased was going to marry another woman as they were

issueless. Later, PWs.1 and 2 went to the police station and lodged a report before PW.9-the Inspector of Police, Mydukur Urban Police Station. Basing on the said report, PW.9 registered a case in Crime No.207 of 2008 and issued Ex.P8-the first information report. He examined PWs.1 and 2 in the police station and recorded their statements. Thereafter, PW.9 visited the scene of offence, where he prepared a rough sketch and also observation of the scene in the presence of panchayatdars. Ex.P9 is the rough sketch of the scene. Later, he conducted inquest over the dead body of the deceased in the presence of PW.6, which is placed on record as Ex.P4. During inquest, he seized blood stained white colour window curtain, blood stained wooden pestle, blood stained pillow covers and bed sheet. He also seized wearing apparel of the deceased. Thereafter, he forwarded the dead body to the Government Hospital, Proddatur, for post mortem examination.

ii) PW.8-the Civil Assistant Surgeon, Government Hospital, Proddatur, conducted autopsy over the dead body of the deceased and issued Ex.P7-the post mortem examination report. As per the opinion of the doctor, the deceased died "due to neurogenic shock, brain damage, head injury caused by blunt object".

iii) On the date of incident at about 4.30 p.m., while PW.9 was present in the police station, the accused came and surrendered before him. On interrogation, she is said to have confessed about the commission of offence, which was recorded in the presence of PW.7. Pursuant there to, PW.9 seized blood

stained saree of the accused with the assistance of women police constable. After collecting all the material papers and after completing the investigation, PW.9 filed the charge sheet, which was taken on file as P.R.C.No.82 of 2008 on the file of the Judicial Magistrate of First Class, Mydukur, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal the same came to be numbered as S.C.No.87 of 2009.

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

4) To substantiate its case, the prosecution examined PWs.1 to 9 and got marked Exs.P1 to P11. After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against her, in the evidence of the prosecution witnesses, to which she denied. No oral evidence was adduced but Exs.D1 to D8 marked on behalf of the accused.

5) Relying upon the evidence of PWs.1 and 2, the trial Court convicted the accused for the charge referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there is any amount of doubt with regard to presence of PW.1 in the house of the deceased, on the date of incident. According to him, the evidence of PW.1 indicates that Krishnashtami was a very auspicious and important day to their family as her grandson

Aravind was born on the said day and normally they celebrate the birthday of Aravind on the said day at Nandyal. Therefore, urged that there is any amount of doubt with regard to presence of PW.1 in the house of the deceased. He further submits that the evidence on record indicate that the accused could not have used the pestle as her muscles are contracted. He further submits that the version given by PW.1 with regard to her presence in the house at the time of incident is in-consistent, hence pleads innocence of the accused.

7) On the other hand, the learned Public Prosecutor would contend that the evidence of PW.1 is truthful, which gets corroboration from evidence of PW.2. He further submits that if really PW.1 was in Nandyal, she could not have lodged a report before the police on the date of incident itself at 2.00 a.m. He further submits that having regard to the circumstances of the case, the findings of the trial Court warrants no interference.

8) The point that arises for consideration is whether the accused is responsible for the death of the deceased and if so, whether she is liable for conviction under Section 302 IPC.

9) The entire case revolves around the evidence of PW.1. PW.1 is the mother of the deceased. Her evidence in chief is to the effect that a day prior to the incident ie., on the day of Krishnashtami, she came to Mydukur from Nandyal. She further states that there were no issues to the deceased and the accused, and they were frequently quarrelling on the issue of children. She further deposed that the accused demanded the deceased to transfer the property

in the name of her brother's son as they are not having children, for which the deceased refused. She further deposed about the accused threatening the deceased with dire consequences. On the date of incident in the night an altercation took place between the deceased and the accused. On hearing the cries, she entered the room where the accused and deceased slept and found the accused beating the deceased with a pestle. On seeing PW.1, the accused threw the pestle, pushed her aside and fled away from the house. She went towards the deceased and tried to wake him up, but there was no response. Immediately thereafter, she informed the same to PW.2, who came to the house of the deceased, as he was staying nearby and thereafter at about 2.00 a.m., a report came to be lodged with PW.9.

10) This evidence of PW.1 is sought to be demolished by giving a suggestion that she was not present in the house, as the family of PW.1 used to celebrate the birthday of Aravind, the grandson of PW.1, which falls on the day of Krishnashtami, at Nandyal every year. PW.1 was also cross-examined at length to show that a false case has been foisted against the accused, as she was claiming property belonging to the family of accused and the deceased. In the cross-examination of PW.1, it was elicited that she filed suits against the accused more particularly a suit seeking permanent injunction restraining the accused from interfering with the suit schedule property.

11) But all the cases were filed couple of months after the incident. Therefore, the argument that because of the cases between the parties, a false case has been filed cannot be accepted.

12) The argument of the learned counsel for the appellant that PW.1 was not present in the house as the practice of family to be present at Nandyal on the birth day of Aravind, which falls on krishnashtami also appears to be incorrect. PW.1 in her evidence in chief itself says that on the date of Krishnashtami she came to Mydukuru from Nandyal. It could be that after celebrating the birthday of Aravind at Nandyal she must have come over to Mydukuru. Therefore, we hold that the presence of PW.1 in the house of the deceased on the date of incident cannot be doubted.

13) Coming to the incident in question, the evidence on record show that on that night there was a quarrel between the accused and the deceased and on hearing the cries of the deceased, PW.1 went inside the room and saw the accused giving a blow with pestle on head and on seeing PW.1, the accused ran away. The evidence of PWs.1 and 2 would show that the marriage between the accused and deceased took place about 30 years prior to the date of incident and at the time of marriage the accused was aged about 12 years. Disputes arose between both of them when the deceased refused to transfer the property in the name of accused's brother's son. Apart from that, disputes also existed between the accused and the deceased as the accused was suspecting that the deceased

was contemplating to marry another lady, as they are issueless. In view of the above, it appears that on that day a quarrel ensued and in the said quarrel, the accused must have picked a pestle and then beat the deceased. The evidence of post mortem doctor clearly discloses that both the injuries are caused due to one blow with pestle. The Public Prosecutor did not dispute that the incident in question was preceded by a quarrel. Since the incident is preceded by a quarrel, we feel that it is a case which attracts ingredients of Exception-4 to Section 300 IPC.

14) Having regard to the above, the conviction recorded against the appellant/ accused for an offence punishable under Section 302 IPC is altered to one under Section 304-I IPC. For the altered conviction, the accused is sentenced to suffer rigorous imprisonment for a period of nine years. The period undergone by the accused shall be given set off under Section 428 Cr.P.C. Consequently, the appellant shall be set at liberty forthwith, if not required in any other case, on completion of nine years rigorous imprisonment, including remissions, if she is entitled to.

15) Accordingly, the Criminal Appeal is partly allowed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

T. RAJANI, J

18.06.2018
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