

HON' BLE Dr. JUSTICE B.SIVA SANKARA RAO

AND

HON' BLE SRI JUSTICE M.GANGA RAO

Criminal Appeal No.778 of 2013

JUDGMENT: (per Hon'ble Dr.Justice B.Sri B.Siva Sankara Rao)

The sole accused aggrieved by the conviction judgment of the learned Additional District & Sessions Judge, Wanaparthy of Mahabubnagar District in SC.No.327 of 2012 (outcome of PRC.No.22 of 2012 and crime No.43 of 2011 registered for the offences punishable under Sections 498-A & 302 IPC) dated 26.04.2013 in finding the accused guilty for the offence under Section 302 IPC on the sole charge to undergo imprisonment for life with fine of Rs.2,000/- with default sentence of six months simple imprisonment, maintained the present appeal.

2. The contention in the grounds of appeal vis-à-vis the written arguments and oral submissions of the learned counsel for the appellant/ accused in nutshell are that the conviction judgment of the learned Sessions Judge is contrary to law, weight of evidence and probabilities of the case, the learned Judge went wrong in placing reliance on the so called circumstantial witnesses evidence of PWs.1 to 4 (among PWs.1 to 9), that too with no eye witness to speak and there is no proof on even last seen theory and the evidence placed on record by the prosecution is riddled with contradictions. Further the presence of PW.3 at the scene of offence is highly doubtful to rely on his evidence. PW.1's evidence is self inconsistent. The trial Judge should have seen from all the above that the prosecution miserably failed to bring home the guilt

of the accused beyond reasonable doubt and should have acquitted rather than conviction on unsound and unsustainable conclusions apart from no basis to convict for the offence under Section 302 IPC even taken the entire prosecution case as concluded is as if proved and thereby sought for setting aside the conviction judgment and acquit the accused by allowing the appeal.

3. The learned Public Prosecutor supported the trial Court's conviction judgment on all material aspects with the contentions of for this Court while sitting in the appeal with reasoned conclusions arrived by the trial Court in finding the guilt for the offence under Section 302 IPC in sentencing him to undergo life imprisonment with fine no way requires interference in any manner and sought for dismissal of the appeal.

4. Heard both sides and perused the entire material on record for re-appreciation with reference to the facts and law from what is heard in detail.

5. The sum and substance of the accusation of the prosecution in the charge sheet which is outcome of investigation from Ex.P1 report of PW.1-P.Niranjanamma dated 27.09.2011 setting the law in motion in registering the crime and issued Ex.P6-FIR by PW.8-K.Satyanarayana, SI of Police Lingal and from examination of witnesses including the defacto complainant-PW.1 supra, PW.2-P.Hussain husband of PW.1 and father of the deceased, PW.3-Balaswamy uncle of deceased, PW.4-Venkataiah another uncle of deceased besides PW.5 mediator to the scene of offence and inquest panchanama and PW.7 mediator to the arrest and apprehension of the accused covered by Exs.P2, P3 & P5 and is

specifically leading to discovery of the facts during the investigation conducted by PW.9-Inspector of Police B.Kishan including in referring the dead body to autopsy where PW.6-Doctor, Civil Assistant Surgeon conducted autopsy and issued the PM report-Ex.P4 with final report based on Ex.P8-FSL report and the photos covered by Ex.P7 during inquest and scene observation and with reference to MOs.1 to 5 which include the above weapon of offence pestle, the other MOs.1 to 4 i.e., Mat, Bontha, Saree & Langa and after completion of said prosecution evidence and examination of accused under Section 313 Cr.P.C. bringing to his notice the entire incriminating material, which truth he denied by pleading innocence and with no independent defence evidence and from completion of said trial and after hearing in arriving the conclusion of PWs.1 to 4 in one voice deposed about they went to the house of the Laxmi and found the dead body in pool of blood with injuries also reflected in Ex.P7 photos particularly the head injury of the deceased and from the medical evidence showing fracture of occipital bone, fracture of parietal bone, fracture of frontal bone, besides deep lacerated injury over the parietal region and from the medical evidence death is from the head injury and also from shock and haemorrhage by cardio respiratory arrest and these injuries are possible to cause by using MO.5-pestle and said evidence proves the guilt of the accused for the said offence.

6. From the above in deciding the appeal by sitting against the legality and correctness of the trial Court's conviction judgment with offence supra, the following points arise for consideration:

i) Whether the deceased met with homicidal death and if so, whether it is in the hands of the accused and whether same is proved by the prosecution beyond reasonable doubt?

ii) Whether the trial Court's conviction judgment is unsustainable and requires interference either to set aside or to modify and if so, to what extent and with what observations?

iii) To what result?

7. As all the points can be dealt with together conveniently and to avoid repetition of facts, same are taken up together for decision. The accused is husband of the deceased-Laxmi. PWs.1 & 2 are the parents of the deceased. The deceased met with death at the house of the accused at Lingal and there are injuries found on the body of the deceased particularly with head injuries. What PW.1 deposed is on knowing the death of the deceased at the house of the accused they went there and found the dead body with head injury. Regarding the motive what she deposed is in the wedlock of deceased and accused they blessed with a male child. The accused has been suspecting the fidelity of the deceased and therefrom there were disputes occasionally between them. She deposed that it is the accused therefrom committed murder of the deceased and she reported it by Ex.P1 report to police. She also deposed that by the time of death of deceased, she was 7th month pregnant. PW.2 also deposed of the deceased was murdered by the accused at Lingal and they noticed the dead body there with head injury to the deceased as accused was suspecting the character of the deceased and therefrom he killed while deceased was 7th month pregnant and they already blessed earlier with a male child now 5 years old. In the cross examination of PW.1, she

deposed that they belong to Mala caste (SC) and accused belongs to Erukala caste (ST) and theirs was a love marriage. She denied the suggestion of she earlier lodged a report against one Ballari Paramesh S/o. Eshwaramma as responsible for pregnancy of the deceased. She deposed that the dead body of the deceased was inside the house of the accused, which they noticed. She deposed that their house is only 100 yards away to the house of the accused in the same area and she went to the house of the accused at 7 AM and lodged the police report thereafter against the accused. She also deposed about earlier also twice she approached the police against the accused for harassing by suspecting her. She denied the suggestion of accused was not present in the house on that day and they filed a false case against him.

8. The sum and substance of said cross examination of PW.1 by accused is that the accused was not at the house on the date of death of the deceased. It is further established in support of her chief examination by the cross examination of the deceased was killed inside the house of the accused, who is husband of the deceased and the dead body was lying there by the time of PWs.1 & 2 went there which is the scene of offence. It also establishes the motive of the accused against the deceased by suspecting her fidelity and character. It is also brought on record no doubt she denied and nothing could be substantiated including from any material under Section 313 Cr.P.C. examination of any report allegedly given by PW.1 against Ballari Paramesh S/o. Eshwaramma as responsible for the pregnancy of the deceased, even remotely to suspect any others as responsible to the homicidal death of the

deceased. It is not even suggested for the said alibi as to where he did go if at all was not in the house and what he suggested of he was not at the house was denied by her categorically even. He did not even explain in the Section 313 Cr.P.C. examination to substantiate any such alibi if at all with any basis, that too when himself and his wife, the deceased are living together at his house for not otherwise even his case, but for to say on that day he was as if not at the house. From this coming to the evidence of PW.2, he also deposed of not an eye witness to the incident and his cross-examination is substantiating the motive and other aspects discussed supra from what is elicited of between accused and deceased earlier there was a document of divorce by elders written, however accused and deceased later started living together by continuing their marital life. He also deposed about earlier 4 times they reported against the accused about he was suspecting her fidelity and harassing her. It is stated that the accused even assured earlier in those times to treat his wife, the deceased well. He deposed that on the same day of the incident police examined him and he denied the suggestion of accused did not commit any offence or he is deposing falsehood.

9. From said evidence of PWs.1 & 2, the motive is established of disputes between the accused and deceased out of love marriage between them while living together even earlier of his harassing and ill-treating, complaints given to police and also mediations placed before elders and elders suggested for divorce and document was written and thereafter the deceased and accused even joined together and they were living together in the

house of the accused with their male child aged about 5 years and by the time the deceased met with homicidal death in the house of the accused she was with 7th month pregnancy.

10. Coming to the evidence of PWs.3 & 4-uncles of the deceased; PW.3-maternal uncle of deceased deposed that he also saw the dead body of the deceased at the house of the accused with injuries on the head of the deceased and earlier there were disputes between the accused and deceased from his suspecting her fidelity and quarrelling with her and they also advised the accused to behave properly and to look after her well and the couple got 5 years old male child and by the time of deceased was murdered by the accused she was carrying 7th month. In the cross examination, he deposed that his house is side by to the house of the accused and he advised the accused number of times to behave properly with the deceased and previously deceased was separated from accused in that regard and later accused again requested her by assured to look after well and thereby she joined from his taken her back to his house for family life. He categorically deposed in the cross-examination further that on that day night he heard galata from the house of the accused and deceased though he did not witness accused killing the deceased. He denied the suggestion of the accused did not kill the deceased and he is deposing falsehood. From this evidence particularly from the cross examination of PW.3 what elicited by the accused, besides positive chief examination of the witness of the accused killed the deceased, the accused and deceased even before the deceased killed in the house of the accused, were altercated and he heard

galata from their house being the neighbour. Then it is for the accused to say how if not in his hands being last seen together as man and wife living together as to where he went and how she was killed of the facts exclusively within his knowledge under Section 106 Evidence Act, so also to substantiate if at all he was not at the house to prove the alibi as to where he went and with what details to give any credence even, leave about no little credence to attach to the stray suggestion given to PW.1 by accused. It is not even the suggestion in the evidence of PWs.1 to 3 of accused and deceased were not living together.

11. Coming to the evidence of PW.4 the paternal uncle of the deceased no other than brother of PW.2 of the same village and area to the house of the accused and deceased and the witnesses PWs.1 to 3, that it was the accused that murdered the deceased by suspecting her fidelity and for that he was even quarrelling with the deceased earlier and he went to the house of the accused and found the dead body with injuries having come to know of the murder and it was the accused that murdered her while she was carrying 7th month. In the cross examination, he deposed that theirs was a love marriage and earlier there was divorce document through elders, however later they started living together and he is not eye witness to the incident. He denied the suggestion of accused not responsible for the death of the deceased and he is deposing falsehood.

12. Coming to the evidence of PW.5 also of the same village and the area of the accused and deceased and other witnesses supra, witness to the scene observations and inquest etc., he

deposed that the police inspected the scene of offence in his presence and in the presence of LW.7-Chinta Chennamma and seized from the scene of offence, which is the house of the accused where the dead body was lying with the blood stained injuries in the house, the blood stained mat, blood stained saree, blood stained bontha and petticoat and police also prepared a rough sketch of the scene of offence-Ex.P2 and he was also one of the witnesses to the inquest conducted by the police. In the cross examination, he denied the suggestion of no inquest conducted and police did not inspect the scene of offence in his presence and his thumb impressions were obtained in the police station on the documents and he is deposing falsehood. Nothing more is elicited from his cross-examination. Even from his evidence, it establishes the fact of the deceased met with homicidal death in the house of the accused which is the scene of offence with anti-mortem injuries.

13. PW.7 is the VRO of Rayavaram Village speaks about the police apprehended the accused at his house Lingal and at request of police he and one T.Sahadev (LW.10) acted as mediators and in their presence the accused made a disclosure and produced the MO.5-pestle brought from his house and the same was seized under said arrest and disclosure and seizure panchanama-Ex.P5. In his cross-examination it is brought on record that after arrest of the accused at his house by the police while under police custody he made a confession. He denied the suggestion of there is no recovery at the instance of the accused from his disclosure or confession and he is deposing falsehood at the instance of police

and he signed the panchanama-Ex.P5 after prepared at police station with no alleged recovery of MO.5. There is nothing to discredit evidence of this witness as to the disclosure statement of accused is a fact discovered of MO.5-pestle is the weapon of offence when he produced from his house where he concealed. Coupled with it, the evidence of PW.9-IO substantiates in relation to the investigation of these facts and in the cross examination of PW.9-IO what is elicited is accused and deceased belong to different castes and there was earlier a divorce document through elders and later they joined and lived together. He deposed that he examined the witnesses and recorded the statements at the scene of offence and denied the suggestion of accused did not commit any offence and false case is foisted against him and he is deposing falsehood. Therefrom there is nothing to discredit the evidence of IO who also categorically deposed the scene of offence which is the house of the accused where dead body of the deceased while inside the house with injuries which he noted in the scene observation panchanama and also in the rough sketch and seized the blood stained MOs.1 to 4 and the scene of offence-Ex.P2 and photographed the same covered by Ex.P7 photos, pursuant to receiving of copy Ex.P6 express FIR registered by PW.8 on the report of PW.1 covered by Ex.P1 in taking up the investigation and about accused made a disclosure and produced the MO.5-pestle which he kept at his house that was seized. PW.9 also deposed about the sending of material objects for chemical examination and received Ex.P8-FSL report which says human blood detected on blood stained saree-item No.2, green colour

cotton petty coat-item No.3, A torn blue colour polyester quilt (bontha) item-No.4, yellow colour plastic mat item-No.5 and item No.6 of human blood B group and human blood also detected on the item No.1 blouse. Further human blood detected also on item No.7 wooden pestle though blood group is not detected on the pestle and blouse. The facts established therefrom is the seized MO.5-pestle contains human blood and the same was seized at the instance of the accused and on his production having concealed at his house when arrested from his disclosure proved from the evidence of PWs.9 & 7 respectively is admissible as a fact discovered under Section 27 Evidence Act only to that extent.

14. PW.6 is the medical officer who conducted autopsy. PW.6 categorically deposed about the same and issued Ex.P4 PM report. He deposed that during the course of PM conducted by him, he found the anti-mortem injuries on the body of the deceased viz., fracture of occipital bone, fracture of parietal bone, fracture of frontal bone and deep lacerated injury over the parietal region. He deposed that all these injuries are possible with MO.5-pestle. He issued Ex.P4-PM report with final opinion of died from the head injury and due to shock and haemorrhage and cardio respiratory arrest. There was no any cross examination of him by the accused to disprove any of the same including on the factum of possibility of the injuries by use of MO-5. Ex.P4-PM report also speaks autopsy conducted at 04.00 PM on 27.09.2011 and the approximate time of death is within 24 hours and the deceased was 7 months pregnant.

15. From the above evidence, no doubt the case mostly lies on the circumstantial evidence on the role of the accused concerned besides what he disclosed leading to discovery of fact as to the weapon of the offence that is also proved from the medical evidence of which injuries possible by its use and it is the accused that produced the weapon of offence which he concealed in his house that is blood stained that is substantiating to the other facts of accused and deceased living together as man and wife and last seen together including from the evidence of PW.3, who categorically deposed of he heard in the night sometime prior to the death of the deceased on 26.09.2011 altercation from the house of the accused and deceased that also establishes the accused was in the company of the deceased and it is for him to explain how the deceased died if not in his hands and as to why he fled away after the occurrence and why did he not even report to police or to neighbours if at all the deceased was died in the hands of somebody and not in his hands. The factum of accused and deceased last seen together soon before or till her death from the above that too when undisputedly they are the man and wife living together and the deceased met with homicidal death inside the house of the accused and deceased and prior to that there was altercation in the night between them and the MO.5 is the weapon of the offence which was produced by the accused having concealed in his house, in the course of his disclosure while under police custody on arrest and the medical evidence shows the injuries are possible with MO.5 and the death taken place within 24 hours to the PM examination at 04.00 PM on next day to say after

the said galata in the night between the accused and deceased from the evidence of PW.3 coupled with the evidence of PWs.1 to 5 & 7 clearly establishes that the accused having killed the deceased raised a false plea as if he was not at the house with a stray suggestion with PW.1 and not even suggested much less pleaded with details under Section 313 Cr.P.C. examination and not even disclosed where he went and how the deceased died and when he came to know and of the facts exclusively within his knowledge including as to the alibi for which the burden lies on him under Sections 11 and 106 of the Indian Evidence Act and it clearly and unerringly establishes from the chain of circumstances linked together to the only hypothesis reasonably made basis to the conviction of the accused of only inconsistent with his innocence and consistent to only with his guilt so to conclude as also laid down in this regard in appreciation of the circumstantial evidence by the five Judge Bench expression of the Apex Court in *M.G.Agarwal Vs. State*¹, from taking into consideration of these circumstances culminating in complete chain with no escape from the conclusion with all human probabilities of the deceased was killed in his house by the accused, husband of the deceased and none else as laid down in this regard by the Apex Court in *Usman Mian Vs. State of Bihar*², Para 32 even from applying of the benefit of doubt on overall appreciation of facts with all moral certainty of the prosecution evidence establishes unerringly and beyond the reasonable doubt that to be applied on appreciation of entire

¹ AIR 1963 SC 2000

² (2004) 2 ALD CrI.916 SC

evidence as held in State of Haryana Vs. Bhagirath³ Paras 7 & 8 in arriving the conclusion of it is the accused alone and none else that killed the deceased (wife of the accused) in the night of 26.09.2011 after his galata with the deceased and he fled away and on the next morning, PWs.1 to 4 the parents and uncles of the deceased noticed the dead body and set the law in motion and from the investigation establishes including from his disclosure leading discovery of weapon of offence concealed and the medical evidence and the other evidence regarding scene of offence and the dead body with anti-mortem injuries with the possibility of causing by use of the weapon of the offence within the exclusive knowledge of the accused where he concealed that was from his disclosure as fact discovered and having regard to the above, there is nothing to interfere with the trial Court's said conclusion in finding the accused guilty, but for to say from said evidence on record there used to be galatas between the accused and deceased even earlier though there wedlock is outcome of love marriage and earlier even through elders they wanted to take divorce by execution of document and later at the instance of the accused both joined together and living together and sometime before the occurrence also there was galata between them from said evidence discussed supra it is in that course not with any pre-mediation and pre-plan irrespective of who was at fault and raised the galata, the accused used the house hold available pestle in attacking the deceased with it, from which she died, it attracts the offence under Section 304 part I IPC from his intention in causing the

³ 1999 [5] SCC-96

injuries resulting the death, though not with intention to murder from the exception No.4 of Section 300 IPC that applies so as to alter said sentence of life imprisonment to rigorous imprisonment for 10 years while confirming the fine with default sentence.

16. Having regard to the above and in the result, this Criminal Appeal is partly allowed while confirming the fine amount with default sentence modified imprisonment of life to rigorous imprisonment for 10 years for the offence that attracts is Section 304 (Part-I) IPC and not Section 302 IPC. The accused is entitled to set off of the period undergone under Section 428 Cr.P.C.

Consequently, miscellaneous petitions, if any, pending in this Criminal Appeal shall stand closed.



Dr. B.SIVA SANKARA RAO J,

M.GANGA RAO, J

Date: 23.11.2018
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