

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CRIMINAL APPEAL No.192 OF 2013

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

The sole accused in Sessions Case No.338 of 2012 on the file of Additional District and Sessions Judge, Narsapur, is the appellant herein. He was tried for an offence punishable under Section 302 I.P.C., for causing the death of one Tella Appala Narasamma, on the intervening night of 02/03.03.2012 at Sri Hanuman Tours and Travels, Bhimavaram, by poking her on the chest with a stick and fisting her on the abdomen, as a result of which she died at Government hospital, Eluru on 04.03.2012 at about 05.10 a.m. Challenging the same, the present appeal came to be filed.

2. The facts in issue are as under:

PW.1 who is the resident of Bhimavaram, was doing soda business behind the RTC bus stand; the deceased used to work as maid servant and used to clean the shop nearby RTC bus stand. PW1 used to open his shop by 05.00 a.m. It is stated that the deceased used to stay at the platform of Hanuman Travels shop which was nearby the shop of PW1. On 03.03.2012 at about 05.00 a.m., when PW1 opened his shop, he found Appala Narasamma weeping near his shop. When questioned, she stated that the accused asked her to fulfill his desire of sexual intercourse with her, for which she denied and

at that time the accused poked her with a Sarve stick on her chest and stomach. On the same day at about 04.00 p.m., PW1 again noticed the deceased weeping and when asked she informed him that she is still suffering with pain. Then PW1 along with his grandson (PW2) took her to Government hospital, Bhimavaram, wherein the doctor examined and treated her. The doctor also informed PW9 the then Head Constable, Bhimavaram I Town Police Station, about admission of the injured. On receiving the said intimation, PW9 proceeded towards the said hospital at about 06.30 p.m., recorded the statement of the deceased, which is placed on record as Ex.P6. Basing on the said statement, a case in Crime No.64 of 2012 came to be registered for the offences punishable under Sections 509 and 324 of IPC. Ex.P7 is the registered FIR. PW2 along with one constable took the injured to the Government hospital, Eluru, and came back to Bhimavaram. On the next day, PW2 came to know that the deceased died in the hospital. On receipt of said intimation, PW9 altered the Section of law from Sections 509 and 324 of IPC to 302 IPC and issued Ex.P8 the altered FIR. He also recorded the statements of PWs.1, 2, 5 and LW3. On 04.03.2012 at about 08.00 a.m., he along with his staff visited the scene of offence, prepared a rough sketch, which is marked as Ex.P9. Further investigation in this matter was taken up by PW11 the Inspector of Police. On receipt of the altered FIR, he proceeded to the Government Head Quarters hospital at Eluru and conducted inquest over the dead body of the deceased, in

the presence of LWs.11, 12 and PW7. Ex.P4 is the inquest report. During inquest, MOs.1 to 4 were recovered from the body of the deceased. He then got taken the photographs of the deceased through PW10. Ex.P12 is the bunch of photographs. Thereafter, he sent the body for post mortem examination. PW8 the Civil Assistant Surgeon, Government hospital, Eluru, conducted autopsy over the body and issued Ex.P5. According to him, the cause of death was due to shock and hemorrhage due to injury to vital organs. Thereafter, PW11 completed his investigation, arrested the accused and recorded the confession in the presence of PW 6 and others. Pursuant to the confession made, MO5, the stick used in the commission of offence, was recovered.

3. After obtaining necessary documents and after examining all the witnesses, a charge sheet came to be filed, before the Court of I Additional Judicial Magistrate of First Class, Bhimavaram, which was taken on file as P.R.C.No.9 of 2012. On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.338 of 2012.

4. On consideration of material placed on record, the charge as stated above, came to be framed, read over and explained to

the accused, to which, he pleaded not guilty and claimed to be tried.

5. To substantiate their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P12 and M.Os.1 to 5.

6. After the closure of the 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 prosecution witnesses. He denied the same, but, however, did not adduce any defence evidence in support of his plea.

7. Basing on the evidence of PWs.1 and 2 and the oral dying declaration said to have been made before the Head Constable, which lead to registration of crime, the trial Court convicted the accused, for the charge under Section 302 I.P.C. and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

8. Learned counsel for the appellant mainly submits that there is absolutely no legal evidence to connect the appellant with the crime. According to him, there are no eye witnesses to the incident and the entire case is based on the oral dying declaration said to have been made before PWs.1, 2 and the Head Constable, who was examined as PW9. Since the said dying declaration was not certified by the doctor, she would contend that no reliance can be placed on the dying declaration.

According to her, if the dying declaration goes, there is no other material to connect the accused with the crime. In any event she would contend that even as per the statement of the deceased, incident in question happened when she refused to fulfill his desire and that there was no motive or incitement to the accused to do away with the life of the deceased.

9. On the other hand, learned public prosecutor would submit that since five days prior to the incident, the accused was pressurizing the deceased to fulfill his desire and as she refused to do so, he killed her.

10. The point that arises for consideration is whether the accused is responsible for the incident and if so whether the conviction under Section 302 IPC is sustainable?

11. It is to be noted here that there are no eye witnesses to the incident and the case rests on oral statement made by the deceased before PWs.1 and 2 and the statement made before PW9, the Head Constable.

12. PW1 in his evidence deposed that on 03.03.2012, at about 05.00 a.m., when he opened his shop, he found Appala Narasamma weeping near by the shop. When questioned, she seems to have stated that when she refused to fulfil the desire, the accused is said to have fisted her on her abdomen. There is no mention as to what happened thereafter. At about 04.00

p.m., when PW1 noticed the deceased weeping, he again questioned her, for which she seems to have stated that she is still suffering with pain. At that point of time, she was taken to Government hospital, Bhimavaram, wherein the doctor intimated PW9 about the admission of the injured. On receipt of the said intimation, PW9 proceeded to the Government hospital, Bhimavaram and recorded the statement. Basing on which, the law was set into motion. Simultaneously, the deceased was also shifted to Government hospital, Eluru, where she died on the next day. In the statement given by the deceased before the Head Constable (PW9), which is sought to be treated as dying declaration, it is stated that since few days, the accused was after her to fulfill his desire. On the date of incident, while she was sleeping in front of the shop, the accused came to her, woke her up and demanded her to fulfill his desire. When she refused, the accused picked up a stick which was lying there, poked her on the chest and abdomen. When she raised cries, the accused ran away. Since then she was getting pain in the stomach. PW8 the doctor who conducted post mortem examination on the deceased on 05.03.2012, did not notice any external injuries on the body of the deceased; no injuries on the hands and legs of the deceased and no bony fractures anywhere on the body of the deceased. Apart from that it is also to be noted that after the incident, the deceased did not go to the hospital. At about 05.00 a.m., she came to PW1 and informed about the incident and even after

that, no effort was made by her to get herself treated in the hospital. Again she came to PW1 and complained about the pain. At that time she was taken to Bhimavaram hospital and from there to Eluru hospital, wherein she died due to injuries to the vital organs. There is no evidence on record to show as to whether there was any inflammation on the vital organs. There was no evidence on record as to whether any injury was inflicted on the vital organs, more particularly, on the liver, but the medical certificate would show that liver was crushed. It is not known as to how she sustained such internal injury, because there was no pressure either on the body of the deceased, or any external injuries. Even the statement of the deceased would show that the accused tried to poke on the chest and abdomen. Be that as it may, the evidence on record, more particularly, the statement of the injured would show that there was no motive or intention for the accused to kill the deceased. He went to the deceased unarmed and demanded the accused to fulfill his desire and when she refused, he picked up a stick and poked her on the abdomen. If really, he had any intention to do away with the life of the deceased, he would have gone to the deceased armed with a weapon and attack her on the vital organs or on the head, causing serious injuries. The accused would not have anticipated the death of the deceased due to poking on the chest and abdomen. It was not even a sharp edge weapon making him to believe that such poking would lead to death.

12. Having regard to the facts and circumstances stated above, it can, at the most be said that he had knowledge that such beating would cause death of the deceased. Since there is no motive or intention on the part of the accused to cause death of the deceased, the nature of offence can be scaled down from Section 302 IPC to Section 304 II.

13. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/accused in the judgment, dated 04.01.2013, in Sessions Case No.338 of 2012, on the file of the Additional District and Sessions Judge, Narsapur, for an offence punishable under Section 302 IPC is altered to one under Section 304 Part II, and the appellant is sentenced to suffer rigorous imprisonment for a period of five years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case, on completion of five years of imprisonment, including remissions, if he is entitled to.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

February 07, 2018
vhb