

HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL APPEAL No.403 OF 2013

JUDGMENT: (Per Honourable Sri Justice P. Keshava Rao)

The present Criminal Appeal is preferred by the appellant/accused challenging the judgment dated 21.04.2011 in SC.No.19 of 2011 on the file of the VIII Additional District & Sessions Judge (FTC), Visakhapatnam whereby he was found guilty for the offence under Section 302 I.P.C. and was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple Imprisonment for one months.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor appearing for the respondent-State.

3. The case of the prosecution is that on 20.10.2010 at 8.30 p.m. the accused was quarrelling with his wife namely, N.Lakshmi and beat her with his hands. Meanwhile, the deceased Pentayya, who is brother of the accused, interfered and objected for the acts of the accused since his wife was carrying seventh month pregnancy. On that the accused became wild against the deceased and stated that his wife got pregnancy with the deceased. Since the accused bore-grudge against the deceased on that count, was waiting for an opportunity to end the life of the deceased. Therefore, on the same day, when the deceased after taking his dinner at about 8.30 p.m. and washing his hands in front of his house, the accused armed with a splinter came there forcibly beat the deceased on the back side of the head and neck thrice. As a

result, the deceased sustained severe injuries on the head and neck. When the deceased fell down, the accused kicked him with legs resulting his instantaneous death. The accused fled away leaving the splinter at the scene of offence. The said incident was witnessed by PW-1, who is the wife of the deceased, PW-2, the father of the deceased as well as N.Lakshmi i.e. wife of the accused. PW-1 reported the matter in the police station on 21.10.2010 at 5.30 p.m. leading to registration of crime No.42 of 2005. Pursuant to the complaint, PW-6 registered the F.I.R. PW-7, Circle Inspector of Police, taken up the investigation and examined the witnesses. He visited the scene of offence, prepared rough sketch and seized the splinter i.e. M.O.1 under the cover of panchanama in the presence of the mediators. PW-7 conducted inquest over the dead body of the deceased in the presence of PW-4 and one K. Tatayya Naidu. Thereafter, on 25.10.2010, PW-7 arrested the accused and sent him to judicial custody. The Medical Officer, who is examined as PW-5, conducted autopsy on the dead body of the deceased and opined that the deceased died of vagal shock due to hit by blunt object on the head and haemoperitoneum due to blunt injury over abdomen and urinary bladder.

4. After investigation, a charge sheet was laid before the Judicial Magistrate of First Class, Araku. The case was taken on file against the appellant and registered as P.R.C.No.40 of 2010. In compliance with the procedure contemplated under Section 207 Cr.P.C. the appellant was furnished with the copy of the charge

sheet and other documents and committed to the Sessions Division. The learned District and Sessions Judge, Visakhapatnam took the case on file and made over the same to the VIII Additional District and Sessions Judge (FTC), Visakhapatnam. Thereafter, the learned Additional Sessions Judge framed the charge against the appellant/accused for the offence under Section 302 IPC and when the same was explained to him, the appellant pleaded not guilty and claimed to be tried.

5. The prosecution in order to prove the guilt of the accused examined PWs.1 to 7 and marked Exs.P-1 to P-7 apart from M.O.1.

6. After examining the prosecution evidence, when the deceased was examined under Section 313 Cr.P.C. explaining the incriminatory evidence brought on record, he denied the same. In defence, he has not chosen to examine any witness.

7. The learned Sessions Judge, after appreciating the evidence and the material placed on record, found the appellant guilty for the offence under Section 302 IPC and convicted him as stated supra by judgment dated 21.04.2011. Aggrieved by the same, the present appeal is filed.

8. The learned counsel appearing for the appellant basically contended that PW-1 alone was an eye-witness and based on the solitary evidence of PW-1, conviction cannot be based. There is an inordinate delay of more than 20 hours in reporting the matter to the police after commission of offence and the said delay has not been properly explained by the prosecution. The learned counsel

also submitted that at the time of the incident, there was darkness outside and it was not possible to see the incident. There is no allegation of kicking of the deceased in the complaint. The learned counsel also submitted that in compliance with Section 207 Cr.P.C. no documents were furnished to the accused.

9. Per contra, the learned Public Prosecutor appearing for the respondent-State, supported the impugned judgment. He contended that no suggestion was given to PW-1 with regard to the delay. The evidence of PW-1 is corroborated by PW-2. On the basis of a solitary witness, conviction can be based. Since the learned counsel for the appellant raised an issue of suppression of 164 Cr.P.C. statement, unless it causes prejudice, the same cannot be accepted. He also further contended that the suppression of 164 Cr.P.C. statement is also not suggested to any of the prosecution witnesses.

10. PW-1 is the wife of the deceased and PW-2 is the father of the deceased. PW-1 categorically deposed that on 20.10.2010 at 8.00 p.m. when the accused was quarrelling with his wife, the deceased interfered and objected to the same, since the wife of the accused was carrying seventh month pregnancy. On that the accused became wild against the deceased stating that his wife got pregnancy with the deceased. Since the accused was waiting for an opportunity to end the life of the deceased and is interfering with his family matters, at 8.30 p.m. when the deceased was washing his hands after dinner, the accused came with a splinter and forcibly beat the deceased on the back side of the head and

neck resulting the deceased sustaining severe injuries on the head and neck and fell down. PW-2, who is the father of the deceased, deposed the sequence of events corroborating the evidence of PW-1 and further deposed that when the deceased fell down, the accused kicked him with legs. Thereafter, leaving the splinter i.e. M.O.1 at the scene of offence, the accused ran away. PW-3 stated that he came to know about the incident through PWs.1 and 2. PWs.1 and 2 reported the matter to the Village Secretary and Police. PW.3 also deposed that he went to the house of the deceased, wherein he observed PW-4, who is the Village Revenue Officer of the village, drafted Ex.P-1 report and attested the scene of offence panchanama under Ex.P-2 and the inquest report under Ex.P-3. PW-5 is the Medical Officer who conducted post mortem examination on the deceased and found one lacerated injury over the occipital region of skull and the deceased died due to hit by blunt object on the head and haemoperitoneum caused due to blunt injury over abdomen and urinary bladder. PW-6 registered crime on the complaint lodged by PW-1. PW-7 is the Circle Inspector of Police, who investigated the case, examined the witnesses and laid the charge sheet.

11. The learned counsel for the appellant vehemently contended that there is a delay in lodging the F.I.R. and suppression of 164 Cr.P.C. statement of PW-1 recorded by the prosecution and the documents were not furnished while the accused was examined under Section 207 Cr.P.C. However, none of them have been suggested to the prosecution witnesses. From a perusal of the

material on record, it is noticed that such an argument is advanced for the first time before this Court.

12. The evidence of PWs.1 and 2 is supported by the medical evidence as deposed by PW-5. PW-5 in his examination deposed that there is a lacerated injury on the occipital region of skull i.e. 2 x 3 cm., the kidneys of the deceased are crushed, spleen was ruptured and abdomen organs were also ruptured. There is an injury on the pelvic of the deceased and the liver of the deceased also ruptured. Thus, the oral evidence of PWs.1 and 2 is corroborated by the medical evidence.

13. The specific case of prosecution is that the deceased, accused, PW-1, PW-2 and the wife of the accused are residents of Chinaputhikavalasa village and living together in a thatched house. The evidence of PWs.1 and 2 coupled with PW-3 supported and established the sequence of events leading to the death of the deceased. Further, the oral evidence of PWs.1 and 2, is supported by the evidence of PW-5 vide Ex.P-4. The specific contention raised by the learned counsel for the appellant that PW-2 in the cross examination deposed that he did not witness the accused beating the deceased cannot be countenanced, when the evidence of PWs.1 and 2 is corroborated by the medical evidence. PW-2 being an illiterate scheduled tribe person cannot be expected to withstand the rigour of cross examination. He being a rustic villager and not a refined person, is not expected to depose with mathematical precision. Though every inconsistency was pointed out by the learned counsel for the appellant in the form of delay in

registration of FIR, suppression of recording of 164 Cr.P.C. statement of PW-1 and non-furnishing of the relevant documents at the stage of Section 207 Cr.P.C., none of the same have been suggested to prosecution witnesses. In fact, the injuries found on the deceased and as certified by the medical officer, are corroborated by the ocular evidence of PWs.1 and 2.

14. As per the evidence of PWs.1 and 2, the deceased objected the accused when he was beating his wife. Whereupon, the accused became wild and stated that the deceased was responsible for the pregnancy of his wife. This fact clinchingly established the motive behind the attack by the accused on the deceased. Therefore, the accused caused the injury knowing fully well that it will result in the death of the deceased.

15. In those circumstances, this Court is of the opinion that there is no illegality or irregularity in the finding arrived at by the learned Sessions Judge in convicting the appellant for the offence under Section 302 IPC. As such, there are no merits in the appeal and the same is liable to be dismissed.

16. Accordingly, the criminal appeal is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. NAVEEN RAO, J

P. KESHAVA RAO, J

Date: 31.12.2018.
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HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO



CRIMINAL APPEAL No.403 OF 2013

(Judgment of the Bench delivered by the
Honourable Sri Justice P. Keshava Rao)

Date:31.12.2018

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