

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
AND
THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL No.743 OF 2013

JUDGMENT:- (per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 15.07.2013, in Sessions Case No.246 of 2012 on the file of the Principal Sessions Judge, Ongole by the sole accused whereunder and whereby, he was found guilty of the offence punishable under Section 302 I.P.C., and accordingly, convicted under Section 235(2) Cr.P.C. and sentenced to undergo imprisonment for life and also to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for a period of six months.

2. Heard the submissions of Smt. A.Malathi, the learned Legal Aid counsel appearing on behalf of the appellant-accused, learned Additional Public Prosecutor (Andhra Pradesh) representing the respondent-State and perused the record.

3. Learned counsel for the appellant/accused would contend that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt for the offence punishable under Section 302 I.P.C.; that there are no eye witnesses to the alleged incident, but the trial Court was pleased to convict and sentence the accused; that there was no *mens rea* and also intention on the part of the accused to do away with the life of the deceased Lakkimsetty Srinivasa Rao; that the prosecution also failed to prove the motive and attempt of the accused; that the pestle (M.O.1) said to have

been seized from the scene of offence was sent to Forensic Science Laboratory (F.S.L.) and there were no blood marks as per the F.S.L. report; that due to strained relationship with P.W.2, the accused is falsely implicated in this case; that the other witnesses are planted for the purpose of prosecution; that there are grave laches on the part of the Investigating Officer and ultimately, prayed to set aside the conviction and sentence recorded against the accused for the offence punishable under Section 302 I.P.C.

4. On the other hand, learned Public Prosecutor appearing for the respondent would contend that there is evidence of P.W.2, who is none other than the wife of the accused, and there is no reason for her to depose against the accused; that the scene of offence is the house of the accused, situated at Gajulapalem, Addanki Town; that there are also neighbours particularly, P.W.3, who saw the accused leaving the house; that there is also other evidence of the neighbours and wife of the deceased Lakkimsetty Srinivasa Rao (P.W.1) with regard to the accused suspecting that the deceased Lakkimsetty Srinivasa Rao was having a relation with his wife and it is a motive for the accused to commit the offence; there is ample evidence to substantiate the same; that finding no blood stains on pestle (M.O.1) would not belie the prosecution case; that the manner how the injury was caused, there is no possibility of pestle (M.O.1) to get blood stains; that there is no inconsistency in the oral evidence and the documents marked on behalf of the prosecution; that the prosecution had proved the guilt of the accused beyond all reasonable doubt; that the trial Court had examined all the contentions raised before this Court and rightly convicted and sentenced the accused; that there is no infirmity in

the impugned judgment and there is nothing to take a different view; that even the offence does not fall under anyone of the exceptions in Section 304 Part - I or 304 Part - II I.P.C. and ultimately, prayed to dismiss the appeal.

5. In view of the submissions by the learned counsel on either side, the points that arise for determination are:

“1. Whether the accused beat the deceased Lakkimsetty Srinivasa Rao with a pestle on 27.09.2011 and caused the death ?

2. Whether non-finding of blood stains on pestle (M.O.1) is fatal to the case of the prosecution?

3. Whether the prosecution failed to prove the guilt of the accused for the offence punishable under Section 302 I.P.C., or whether the offence committed fall under Section 304 Part I or Section 304 Part II I.P.C.,? and

4. To what relief?”

6. Case of the prosecution, as delineated by the prosecution witnesses, is stated as follows:

(a) The accused and the deceased Lakkimsetty Srinivasa Rao are residents of Addanki. The accused is a tailor by profession whereas the deceased Lakkimsetty Srinivasa Rao was plying a tractor and carting bricks, sand and house material for hire basis and thereby, eking out his livelihood. P.W.1, *de facto* complainant, Lakkimsetty Umamaheswari, is the wife of the deceased Lakkimsetty Srinivasa Rao and whereas P.W.2, Thanga Leela Rani, is the wife of the accused and they are friends. Due to their friendship, the deceased Lakkimsetty Srinivasa Rao was moving with P.W.2 closely and while the matter stood thus, when P.W.2 was constructing a house, the deceased Lakkimsetty Srinivasa Rao supplied sand and bricks, and in this connection, P.W.2 fell due Rs.50,000/- to the deceased Lakkimsetty Srinivasa Rao. The

accused started suspecting the fidelity of his wife. As such, he decided to do away with the life of the deceased Lakkimsetty Srinivasa Rao.

(b) While the matter stood thus, on 27.09.2011, the deceased Lakkimsetty Srinivasa Rao went to the house of P.W.2 on a motor cycle for demanding the amount due to him and he was sitting on a diwan cot in the house and chatting with P.W.2. At that time, the accused, who was stitching clothes in varasandu of his house, picked up a pestle available in the house, came behind the deceased Lakkimsetty Srinivasa Rao from kitchen room and dealt a blow on the head of the deceased Lakkimsetty Srinivasa Rao. The incident was witnessed by P.W.2. Due to the said blow, the deceased Lakkimsetty Srinivasa Rao sustained bleeding injury and fell unconscious on the diwan cot. After the attack, the accused absconded from the scene of offence.

(c) P.W.2, who witnessed the incident, called Koppu Jagannadham, a neighbour, who was examined as P.W.3, and informed him the attack made by the accused and requested him to call P.W.4, V.Rathnarao. Then, P.W.2 also informed the incident to Sambaiah (P.W.5) requesting him to inform the matter to P.W.1 and her relatives. Accordingly, P.W.5 informed the incident to the wife of the deceased Lakkimsetty Srinivasa Rao i.e., P.W.1 and one Thunga Ramulu (P.W.6) asking him to get a car to the house of P.W.2. Knowing the incident, the wife of the deceased Lakkimsetty Srinivasa Rao and others came to the house of P.W.2 in the car of P.W.6 and noticed the deceased Lakkimsetty Srinivasa Rao lying with injury in an unconscious state. Later, they took him to Government Hospital, Addanki in the car and from there, on the

advice of the doctor for better treatment, he was shifted to RIMS Hospital, Ongole and from there, to Dr.Venkata Ramana Hospital, Ongole and on his advice, the deceased Lakkimsetty Srinivasa Rao was shifted to Suraksha Hospital, Vijayawada. On the same day, P.W.1 lodged a report under Ex.P-1 to the police, which was registered by the Sub-Inspector of Police, examined as P.W.11 in Crime No.125 of 2011 of Addanki Police Station for the offence punishable under Section 307 I.P.C., visited the scene of offence, observed the same in the presence of panchas, seized the material objects and prepared observation mahazar and examined the witnesses there and later, on 11.10.2011, he arrested the accused and sent him to remand. While undergoing treatment, the deceased Lakkimsetty Srinivasa Rao succumbed to injuries on 15.10.2011 and on receipt of the death intimation, the section of law was altered from 307 I.P.C. to 302 I.P.C. by the Sub-Inspector of Police.

(d) Subsequently, P.W.14, the Inspector of Police, Addanki Circle took up investigation. He visited Suraksha Hospital, Vijayawada, held inquest over the dead body of the deceased Lakkimsetty Srinivasa Rao in the presence of panchas, got photographed the dead body and sent the dead body for autopsy. He examined the witnesses and subsequently, filed a memo into Court and obtained the custody of the accused and recorded his confessional statement. After receipt of relevant documents and after completion of investigation, he laid charge sheet.

7. The trial Court framed the following charge against the accused:

“That you, on 27th day of September, 2011 at about 15.00 hours, in your house at Gajulapalem of Addanki town and also on 15th day of October, 2010 at 18.35 hours, at Suraksha Hospital at Vijayawada, did committed murder by intentionally causing the death of the deceased Lakkimsetty Srinivasa Rao, S/o.Anjaiah, aged 40 years, Old Damavaripalem, Addanki town, as you beat the deceased in your house at Gajulapalem with the pestle on his head and who died in the said Suraksha Hospital at Vijayawada while under going treatment and that you thereby committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance.

And I hereby direct that you be tried by this Court on the said charge.”

8. When the above charge was read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

9. To substantiate the charge, the prosecution examined P.Ws.1 to 14 and got marked Exs.P-1 to P-29 besides case properties-M.Os.1 to 5. Exs.X-1 to X-3 were also marked.

10. After 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 and reported no oral evidence. Exs.D-1 and D-2 were marked on behalf of defence.

11. The trial Court, after considering the evidence available on record, came to a conclusion that the prosecution is able to establish the guilt of the accused beyond all reasonable doubt and accordingly, found him guilty of the offence punishable under Section 302 I.P.C. and convicted him under Section 235(2) Cr.P.C. and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment

for a period of six months. Challenging the same, the accused filed the present appeal.

12. **POINT Nos.1 & 2:-**

P.W.2, who is the wife of the accused, is an important witness in this case. Her evidence reveals that she is a nurse. She knew the deceased Lakkimsetty Srinivasa Rao and his wife Lakkimsetty Umamaheswari (P.W.1). She got acquaintance with the deceased Lakkimsetty Srinivasa Rao in the hospital when he visited the hospital in connection with the ill-health of his daughters. The deceased Lakkimsetty Srinivasa Rao supplied sand and bricks at the time of construction of their house. In that process, her husband (the accused) started suspecting her fidelity. Her husband was due an amount of Rs.50,000/- to the deceased Lakkimsetty Srinivasa Rao in connection with the construction material supplied to them. The deceased Lakkimsetty Srinivasa Rao used to demand to repay the due amount and in that process, he used to visit the house of P.W.2 and the accused. Her husband was a tailor. On 27.09.2011, at about 2:30 P.M., she came to her house for meals and at that time, the accused was doing tailoring work in their house. After completion of meals, she was watching T.V. Meanwhile, the deceased Lakkimsetty Srinivasa Rao came to their house at about 3:00 P.M. She invited him and told him that they would pay the amount due to him after some time. At that point of time, her husband brought a pestle from back side i.e., through kitchen room, and beat the deceased Lakkimsetty Srinivasa Rao with the pestle on his head and escaped from the house by opening the doors. The deceased Lakkimsetty Srinivasa

Rao fell down on the diwan cot on which she sat. She raised hue and cry and called Jagannadham, P.W.3, she came and saw the same and ran away due to fear. Then, she telephoned to P.W.5 i.e., relative of the deceased Lakkimsetty Srinivasa Rao and informed him about the incident. Sambaiah (P.W.5), Ramudu (P.W.6) and P.W.1, who is the wife of the deceased Lakkimsetty Srinivasa Rao, came there. The neighbours also gathered there. The deceased Lakkimsetty Srinivasa Rao was shifted to hospital by Ramudu (P.W.6), Sambaiah (P.W.5) and others. She identified the photos taken at the scene of offence marked as Exs.P-2 to P-11. Ex.P-2 shows the pestle used by her husband. She stated that M.O.1 is the pestle with which her husband alleged to have beat the deceased Lakkimsetty Srinivasa Rao. She was subjected to lengthy cross examination. She clearly reiterated what she stated in the chief examination and also gave the details of the commission of offence by the accused.

13. There is also evidence of P.W.1, wife of the deceased Lakkimsetty Srinivasa Rao. She also corroborated the evidence of P.W.2 on the material particulars and also deceased leaving of the house on 27.09.2011 to the house of P.W.2 for asking the amount due to him and also seeing her injured husband in the house of P.W.2 and shifting him to the hospital. She also deposed with regard to lodging a report with the police under Ex.P-1. Ex.P-1 corroborates the evidence of P.W.1 and the circumstances narrated by P.W.2.

14. Further, there is the specific evidence of P.W.3. She has also stated that on the date of incident, at about 3:00 P.M., she heard

the cries of P.W.2 saying that Srinivasa Rao sustained injury and she was called. Then, she rushed into the house of P.W.2 and at that time, she noticed the accused coming out with pestle. She also spoke about calling of the other neighbours and taking the deceased Lakkimsetty Srinivasa Rao in a car to the hospital. In the cross examination, she reiterated what she stated in the chief examination and denied that she was deposing false.

15. P.Ws.3 and 4 were referred by P.W.2. They also corroborated the evidence of P.W.2. P.W.4 also gave the date of commission of the offence as 27.09.2011. He also stated about P.W.3's presence at the scene of offence and also other details related to the said crime and shifting the deceased Lakkimsetty Srinivasa Rao in a car to the hospital. He learned from P.W.2 that when the deceased Lakkimsetty Srinivasa Rao visited their house, her husband beat the deceased Lakkimsetty Srinivasa Rao and escaped from there.

16. There is also evidence of P.W.5 with regard to the finding of the deceased Lakkimsetty Srinivasa Rao with injury on 27.09.2011. All these witnesses deposed about the deceased Lakkimsetty Srinivasa Rao suffering injury on his head and also shifting him by car to a hospital. This witness denied in the cross examination that they were giving false evidence.

17. P.W.6 deposed that he was a car owner. On a telephonic call made by P.W.5, Sambaiah, on 27.09.2011, at about 3:30 P.M., he went to the house of P.W.2 and came to know that when the deceased Lakkimsetty Srinivasa Rao went to the house of P.W.2 to collect money, the incident occurred. It is also his specific evidence that he took P.W.1, wife of the injured, along with P.W.5

and went to the house of P.W.2 where he found the deceased Lakkimsetty Srinivasa Rao in a pool of blood on the diwan cot in an unconscious state. He also found an injury on the head of the deceased Lakkimsetty Srinivasa Rao. He deposed about shifting the deceased Lakkimsetty Srinivasa Rao along with P.Ws.1 and 5 to Ongole Hospital. As per the evidence of P.Ws.1, 3, 4 and 5, the deceased Lakkimsetty Srinivasa Rao was found with head injury on 27.09.2011 around 3:30 P.M. at the house of P.W.2. The evidence of P.W.2 is specific that the accused is the person, who caused the said head injury with a pestle. The evidence of P.W.3 is also that she saw the accused coming out of the house with a pestle at the door frame. Though P.Ws.4, 5 and 6 were subjected to lengthy cross examination, they reiterated what they have stated in the chief examination. Nothing was elicited to discard their testimony.

18. Further, there is evidence of P.W.7, who took the photographs of the scene of offence on 27.09.2011. He also stated that the photographs were taken in the house of P.W.2 and those photographs were marked as Exs.P-2 to P-11. Ex.P-2 to P-11 photos exhibit blood stains at the scene of offence. There is also Compact Disc of Exs.P-2 to P-11 photographs relating to the scene of offence marked as Ex.P-12.

19. There is also evidence of P.W.7 that he had also photographed the dead body of the deceased Lakkimsetty Srinivasa Rao at Vijayawada under Exs.P-13 to P-15.

20. There is also evidence of P.W.8. He was working as a clerk in a shop. He deposed that on 27.09.2011, he was one of the

witnesses to the observation of the scene of offence panchanama, which is marked as Ex.P-17. He also deposed about the conduct of scene of offence panchanama. The Sub Inspector of Police seized M.O.1 – pestle, from the lane adjacent to the building i.e., varasandu, which is part of the house of P.W.2. He stated that M.O.2 is bloodstained newspaper, M.O.3 is bloodstained mat, M.O.4 is the bloodstained pillow cover and M.O.5 is another pillow cover. M.Os.1 to 5 were seized under Ex.P.17-scene of offence observation report. He also identified the photos marked as Exs.P-2 to P-11 and stated that those photos relate to the scene of offence. He also deposed about the photographs taken before drafting Ex.P-17. He denied that no scene of offence was conducted at the house of the accused on 27.09.2011 and denied that Ex.P-17 – scene of offence was not genuine.

21. There is also evidence of P.W.9, who deposed about the conduct of inquest panchanama over the dead body of the deceased Lakkimsetty Srinivasa Rao and the inquest panchanama, which was marked as Ex.P-18. Inquest panchayatdars opined that the cause of death of the deceased Lakkimsetty Srinivasa Rao was due to head injury.

22. P.W.10 is a Professor in Head of Department of F.S.L., who deposed about the conduct of autopsy over the dead body of the deceased Lakkimsetty Srinivasa Rao on 16.10.2011. He found ante mortem injuries mentioned in the Post Mortem Examination Report at Column No.11 of page No.1. He referred the head injury alleged to have been caused by the accused on 27.09.2011 and has clearly stated that the death of the deceased Lakkimsetty

Srinivasa Rao was due to head injury. In the cross examination, he reiterated the same.

23. P.W.11, the then Sub Inspector of Police, Addanki, deposed about the registration of Crime No.125 of 2011 under Section 307 I.P.C., conduct of scene of offence panchanama under Ex.P-17 and seizure of M.Os.1 to 5 on 27.09.2011. He gave the details of investigation conducted and also alteration of section of law to Section 302 I.P.C. on the death of the deceased Lakkimsetty Srinivasa Rao, and he has also deposed about the other details of the investigation.

24. P.W.12 is a retired Medical Officer, who deposed about the deceased Lakkimsetty Srinivasa Rao being admitted in the hospital on 27.09.2011 at 5:30 P.M. with a head injury alleged to have been beaten by a known person with a pestle at Addanki Town on 27.09.2011 at 3:00 P.M.

25. P.W.13 is a Consultant Neuro Surgeon. He also deposed about the accused getting admission into the hospital on 27.09.2011 at about 9:00 P.M. in an unconscious state. As per the evidence of the doctors, the accused did not regain consciousness after the alleged incident.

26. The evidence of P.W.14, the then Inspector of Police, Addanki Town, is with regard to the manner as to how he examined the witnesses and recorded their statements, subjected the dead body of the deceased Lakkimsetty Srinivasa Rao to post mortem examination and on obtaining Forensic Science Laboratory Report

and completion of investigation, filing charge sheet against the accused under Section 302 I.P.C.

27. P.W.2 is the material witness, who is none other than the wife of the accused. There is no reason to her to speak false against the accused, particularly, when she was living with him on the date of commission of the offence. Further, P.W.3 had seen the accused coming out of the house. There is no reason for these two witnesses to depose false and implicate the accused for an offence of this nature. Further, the deceased Lakkimsetty Srinivasa Rao was found with injury at the house of the accused at about 3:00 P.M., by P.Ws.1, 3, 4, 5 and other witnesses. The material collected at the scene of offence was sent to F.S.L. i.e., 1) One yellow coloured with snuff and brown colour designed pillow cover with dark brown stains, 2) One yellow coloured with snuff and brown colour designed small pillow cover with dark brown stains, 3) Andhra Jyothi paper with dark brown stains, 4) One light blue coloured welcome synthetic mat with dark brown stains and 5) One pestle labelled as "Cr.No.125/2011 of Addanki PS". On examination, blood was found on item Nos.1 to 4. No blood was found on item No.5 i.e., M.O.1 pestle. Learned counsel for the appellant would vehemently contend that M.O.1 pestle was planted in this case and had it been used in the commission of the offence, there would have been blood stains on it. The material on record establishes that one blow was given on the head of the deceased Lakkimsetty Srinivasa Rao, and thereafter did not regain consciousness and died. When a weapon is used with force, it reflects back. In every case, there need not be blood stains to that weapon. Merely because blood stains were not found on M.O.1, it

cannot be said that pestle (M.O.1) was not used in the commission of the offence and it was planted to suit case of prosecution. The medical evidence and the ocular testimony of witnesses clearly establish that the subject death is homicidal. Further, none of the witnesses is interested witnesses. They have no grudge or previous enmity against the deceased Lakkimsetty Srinivasa Rao. They are all natural witnesses. There is no reason for them to depose falsely and implicate the accused for the allegations of this nature. Therefore, it can be safely concluded that the subject death is homicidal and that the accused had caused the death of the deceased Lakkimsetty Srinivasa Rao. Accordingly, points 1 and 2 are answered.

28. **POINT Nos.3 & 4:-**

It is the contention of the learned counsel for the appellant-accused that the accused has no intention to cause death of the deceased and hence his act falls under exception 4 of Section 300 I.P.C. On this aspect, it is pertinent to refer to a decision in *Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh*¹, wherein it is held that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury.

¹ (2006) 11 SCC 444

29. In the subject case, the specific evidence of P.W.2, wife of the accused, is that she came to her house at about 2:30 P.M., on 27.09.2011 and after completion of her meals, she was watching T.V. Then, the deceased Lakkimsetty Srinivasa Rao came to their house to demand Rs.50,000/- due to him. When he was talking to her, the accused went inside the kitchen, brought the pestle (M.O.1) and beat the deceased Lakkimsetty Srinivasa Rao with a pestle on head. There was no exchange of words in between the deceased Lakkimsetty Srinivasa Rao and the accused. There was no any kind of situation that caused sudden provocation to the accused to make an attempt with a pestle and cause the death of the deceased Lakkimsetty Srinivasa Rao. The atmosphere was cool. The specific evidence of P.W.2 and others is that the accused was suspecting that there was a relation between his wife (P.W.2) and the deceased Lakkimsetty Srinivasa Rao. For that, the subject death was caused. So, it goes to show that the accused had an intention to cause the death of the deceased Lakkimsetty Srinivasa Rao and with such an intention, he brought a pestle from the house and beat the deceased Lakkimsetty Srinivasa Rao on his head and caused the death. The attack was pre-meditated and pre-planned. There was no sudden fight or provocation. Had there been no intention to cause the death, the accused would not have brought the pestle, which is being exhibited in Ex.P-2 photo, but the measurements of M.O.1-pestle are wrongly mentioned in Ex.P-17, scene of offence panchanama, and he would not have beat the deceased Lakkimsetty Srinivasa Rao with that pestle. The details of the injury are marked in the Post Mortem Examination Report marked as Ex.P-20 i.e., 11 cms in length caused fracture of skull.

It goes to show that the accused had hit hard so as to do away the life of the deceased Lakkimsetty Srinivasa Rao. Had there been no intention, he might have not beat on the head of the deceased Lakkimsetty Srinivasa Rao and that too, with such force. All these circumstances would clearly establish that the accused had pre-determined and had an intention to cause the death of the deceased Lakkimsetty Srinivasa Rao. With that intention, he attacked and caused the subject death. The deceased was beaten on 27.09.2011 and he died on 15.10.2011. After assault, the deceased did not gain consciousness at any point of time. Weapon used in commission of the offence is pestle. The absence of any provocation and the size of injury clearly show that the accused with an intention to do away with the life of the deceased, attacked him with M.O.1-pestle and caused injury on his head which led to his death. Therefore, all the requirements to punish the accused under Section 302 I.P.C. are proved by the prosecution beyond all reasonable doubt. The act of the accused does not fall under any one of the exceptions under Section 300 I.P.C. The trial Court had rightly appreciated the facts and circumstances and convicted and sentenced the accused of the offence punishable under Section 302 I.P.C. There is nothing to take a different view. Therefore, the appeal is liable to be dismissed.

30. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 15.07.2013, in Sessions Case No.246 of 2012 on the file of the Principal Sessions Judge, Ongole .

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

SRI JUSTICE CHALLA KODANDA RAM

Dr.JUSTICE SHAMEEM AKTHER

Date : 27.10.2018
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