

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

AND

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL APPEAL No. 1207 OF 2011

JUDGMENT: (Per AVSS,J)

In the present Criminal Appeal, filed under Section 374(2) of the Code of Criminal Procedure, 1973, challenge is to the judgment, dated 30-08-2011 rendered by the I Additional Sessions Judge, Khammam in Sessions Case No.47 of 2011. By way of the said judgment, the learned I Additional Sessions Judge, Khammam convicted the accused (appellant herein) for the offence punishable under Section 302 IPC and sentenced him to undergo Rigorous Imprisonment for life and to pay fine of Rs.500/-.

2. The case of the prosecution is that the accused is the husband of the deceased and when the accused asked the deceased to give money for consuming liquor, deceased told him that she had no money and thereby the accused got angry, picked up a knife and killed his wife by inflicting a cut injury on her neck. Later, on the complaint of Pw.1, police registered a crime and laid a charge sheet against the accused.

3. The court below framed charge under Section 302 IPC against the accused. During the course of trial, prosecution examined Pws.1 to 14 and marked Exs.P-1 to P-8 apart from Mos.1 to 5. On behalf of the accused, none were examined and no documents got marked.

4. On the basis of the material available on record, the learned I Additional Sessions Judge, Khammam framed the following point for consideration:-

“Whether the accused intentionally murdered his wife as she did not give money for his consuming liquor and thereby committed the offence punishable under Section 302 IPC; and whether the prosecution has proved the guilt of the accused beyond reasonable doubt?

5. The learned Sessions Judge by way of impugned judgment convicted the accused for the offence under Section 302 IPC and sentenced him to undergo Rigorous Imprisonment for life and also imposed a fine of Rs.500/-.

6. Heard the learned counsel for the appellant and learned Public Prosecutor and perused the material available on record.

7. The learned counsel for the appellant contends that the learned Sessions Judge grossly erred in convicting the accused for the offence punishable under Section 302 IPC; that in view of the contradictions in the evidence of prosecution witnesses, the impugned conviction cannot be sustained; that the case made out by the prosecution at the most attracts Part II of Section 304 IPC and not 302 IPC. It is further contended that no motive was attributed to the accused by the complainant herein nor any witnesses spoke of the same.

8. *Per contra*, it is contended by the learned Public Prosecutor that there is no error in the impugned judgment; that in view of the cogent and convincing reasons assigned by the court below, the

impugned judgment does not warrant any interference of this court under Section 374(2) Cr.P.C.

9. With the above background, now the issue that arises for consideration of this court is:-

“Whether the judgment rendered by the court below warrants any interference of this Court under Section 374 (2) Cr.P.C.; and whether the prosecution proved the guilt of the accused beyond reasonable doubt?

10. PW.1 is the *defacto complainant*, who stated that on 21-10-2010 at about 6.30 P.M on hearing shouting from the house of the accused, he went there and found that the deceased and accused were quarreling and when the accused asked for money for consuming liquor, deceased stated that she had no money and there upon the accused picked up a knife and stabbed on her neck. He also stated that PW.3 also came there and out of fear the accused fled away and thereafter the deceased was shifted to the Government Hospital, Bhadrachalam where she was declared ‘dead’. PW.3 also spoke in the same lines as that of PW.1.

11. PW.2 is none other than son of the deceased and accused who stated that on 21-10-2010 in the evening when he was returning to his village after attending labour work noticed that PW.1 and others were taking his mother to the hospital and that he was told by PW.1 about the quarrel and stabbing by his father. Prosecution also examined one Auto Driver as PW.4, who stated that he along with PW.1 and others shifted the deceased to Bhadrachalam Government Hospital where she was declared ‘dead’. Pws.5 and 6 who are independent witnesses categorically stated that they saw the accused

running away with the knife when they were returning from cooli work and stated further that they saw the deceased in pool of blood and she was with stab injury on her neck. PW.8 who is the mother of the deceased spoke about the stabbing of the deceased by the accused and also stated that her daughter did not commit suicide as she was suffering from stomach pain. PW.9 stated that accused was holding a knife in his hand and asked him to give way and that she saw the deceased in a pool of blood with a stab injury. The panch witnesses were examined as PWs.10 and 11 and they spoke about the recovery of Mos.1 to 5.

12. The Civil Assistant Surgeon, Government Hospital, Area Hospital, Bhadrachalam, who conducted autopsy over the dead body of the deceased was examined as Pw.13 and he stated that the cause of the death of the deceased was due to haemorrhage shock due to cut throat injury and spoke about the injuries found on the dead body. Ex.P7 post mortem report shows anti mortem injuries i.e., 5 cm long 3 cm deep incised wound over right side of neck just below the jaw causing cut injury of jugular vein and larynx. According to the evidence of PW.13, the said injury occurred due to sharp edged weapon like Mo.1. PW.14, Investigation Officer, spoke about the seizure of Mo.1 from the possession of the accused.

13. The learned Sessions Judge obviously taking into account the evidence of eye witnesses and taking into consideration the evidence of Doctor, PW.13, who conducted autopsy over the dead body of the deceased and who issued Ex.P-7 post mortem certificate, convicted the accused and sentenced him to undergo imprisonment for life. The evidence of Pws.1 and 2, eye witnesses, read with

other witnesses including the evidence of son of the accused, and medical evidence available on record shows that the prosecution proved the guilt of the accused beyond all reasonable doubt. In this connection, it is the submission of the learned counsel for the appellant that since no motive was attributed by any of the witnesses examined by the prosecution, the offence alleged to have been committed by the appellant/accused falls under Part II of Section 304 IPC and not Section 302 IPC. In this connection, it may be appropriate to refer to Section 304 IPC, which reads as under:-

“304. Punishment for culpable homicide not amounting to murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

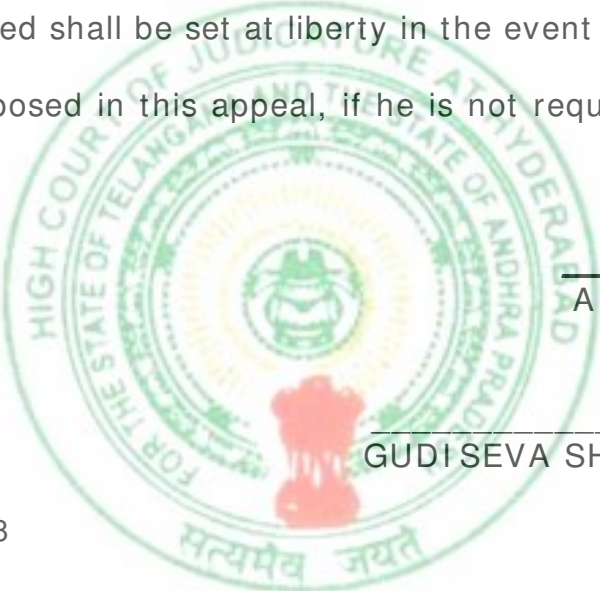
or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

14. A reading of the evidence available on record reveals that none of the witnesses examined by the prosecution did speak about the motive of the accused in killing the deceased and none of the witnesses spoke about the intention of the accused for killing the wife. On the other hand, it is the categorical case of the prosecution that when the accused asked for money for consuming liquor, the deceased refused to pay money for consumption of liquor and immediately thereafter accused picked up a knife and stabbed the deceased. Therefore, the act of the accused clearly indicates that he had no intention to commit murder and there is no premeditation in the commission of offence. Therefore, in the considered opinion of

this court, the conviction can be sustained under Section 304 Part II IPC but not under Section 302 IPC.

15. For the aforesaid reasons, the conviction imposed by the court below is modified to that of one under Section 304 Part II IPC in stead of Section 302 IPC.

Accordingly, the Criminal Appeal is partly allowed. The appellant is sentenced to undergo Rigorous Imprisonment for a period of eight (8) years for the offence under Section 304 Part II IPC. The sentence undergone by the appellant, during remand period, shall be given set off under Section 428 Cr.P.C. The appellant/accused shall be set at liberty in the event of his completion of sentence imposed in this appeal, if he is not required in any other cases.



A.V.SESHA SAI, J

GUDI SEVA SHYAM PRASAD, J

Date: 17.03.2018
TSNR

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