

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.A.No.992 of 2011

Date:18.07.2018

Between.

Kesana Nageswar Rao @ Yesobu

.....Appellant

And.

The State of A.P, reptd.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Mr. P.Nagendra Reddy

Counsel for the respondent: Public Prosecutor for the State of Telangana

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarajuna Reddy*)

This Criminal Appeal is instituted against judgment, dated 10.01.2011, in Sessions Case No.155 of 2009 on the file of the Principal Sessions Judge, Nalgonda, whereby he has convicted the appellant/sole accused for the offence punishable under Section-302 IPC and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/- and in default thereof, to undergo simple imprisonment for one month.

The case of the prosecution, as reflected from the charge sheet, is briefly stated hereunder:

On 22.6.2008 at 8.30 pm., P.W-1 lodged a complaint stating that he solemnised his daughter's (deceased) marriage on 25.4.2007 with one Hemanth, the second son of the appellant; that she was blessed with one male child; that on 22.6.2008 at 7 pm., he was informed by his relatives through telephone that the appellant picked up a quarrel with the deceased, beat her with a stick on the head and killed her; and that he along with his family members and relatives went to Venkatapuram Village from Hyderabad, visited the rented house of the deceased and found her dead, lying in a pool of blood.

That on the basis of the aforesaid complaint, a case in Crime No.48 of 2008 on the file of Thurkapally Police Station was registered for the offence punishable under Section 302 IPC; that during the investigation, P.W-11 examined and

recorded the statements of P.Ws.1 to 6, visited the scene of offence, conducted scene of offence panchanama in the presence of P.Ws.6 and 7, drew rough sketch of the scene of offence, seized the stick which was used in the commission of offence before P.Ws.6 and 7 under the cover of panchanama, conducted inquest over the dead body of the deceased in the presence of P.W-8, LW.14-Marka Shankaraiah and L.W.15-Varadha Ramanjamma and shifted the dead body to Government Area Hospital, Bhongir, for post-mortem examination. That P.W-10-doctor, who conducted autopsy over the dead body of the deceased, opined that the cause of death was due to shock due to head injury; that subsequently, P.W-12 took up the investigation, he examined L.Ws.7 to 10-Malothu Narsimha, Kesana Roothu, Kesana Sreenu and Kesana Hemanthu, respectively, recorded their statements, arrested the appellant on 26.6.2008, recorded his confessional statement before P.W-9 and LW.17-Dyanaboyina Atchaiah and produced the appellant before the Judicial First Class Magistrate, Nakerakal, who sent him for judicial custody.

That the investigation disclosed that on 22.6.2008, the aunt of the appellant viz., Rayallamma quarrelled with the deceased on the pretext of the latter not preparing the food well; that while LW-10-Kesana Hemanthu (the husband of the deceased) went to the agricultural fields, he and his aunt-

Rayalamma went to Bhongir for offering prayer at church. That after returning to house, the appellant asked the deceased to provide lunch to them, but the deceased showed deaf ear to the same; that suddenly the appellant became angry and beat her with a stick, caused head injuries and killed her, laid her in a pool of blood, closed the doors and took away his grand son from the village; that P.Ws.3 to 6 on finding blood stains on the dhothi of the appellant, got suspicion, went to his house and found the deceased lying on the ground dead; and that the appellant went to Bhongir in the auto of L.W-7-Malothu Narsimha and handed over his grandson to L.W-8-Kesana Roothu, who is the wife of his elder son. After completion of the investigation and after obtaining all the necessary documents, the charge sheet was filed.

Based on the charge sheet and the material produced before it, the Court below has framed the following charge:

“That you on 22nd day of June, 2008 at about 1.30 pm at Venkatapuram Village did commit murder of your daughter-in-law viz., Bhagya by beating her with a stick on her head and thereby, you committed an offence punishable under Section-302 IPC and within my cognizance.”

As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws.1 to 13, got Exs.P-1 to P-15 marked and produced M.Os.1

and 2. On behalf of the appellant, neither oral nor documentary evidence was let in.

On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted above.

At the hearing, Mr. P.Nagendra Reddy, learned counsel for the appellant, has submitted that even according to Ex.P-9, the alleged confessional statement, the appellant did not have the intention of causing the death of the deceased (his daughter-in-law) and that, due to sudden anger as he was not served with food in spite of his request, he has hit the deceased with a stick on her head and that, therefore, the case falls under Part-II of Section-304 IPC.

We have heard the learned Public Prosecutor for the State of Telangana and perused the record.

As the learned counsel for the appellant has straightaway requested for conversion of conviction of the appellant from the offence under Section-302 IPC into one for the offence under Section-304 Part-II IPC, based on Ex.P-9, we have carefully gone through the said document which is an alleged confessional statement recorded by panchas. It is stated therein that the appellant has stated before panchas that after completing the prayers in the church, he has returned to his house in the afternoon and requested his younger daughter-in-

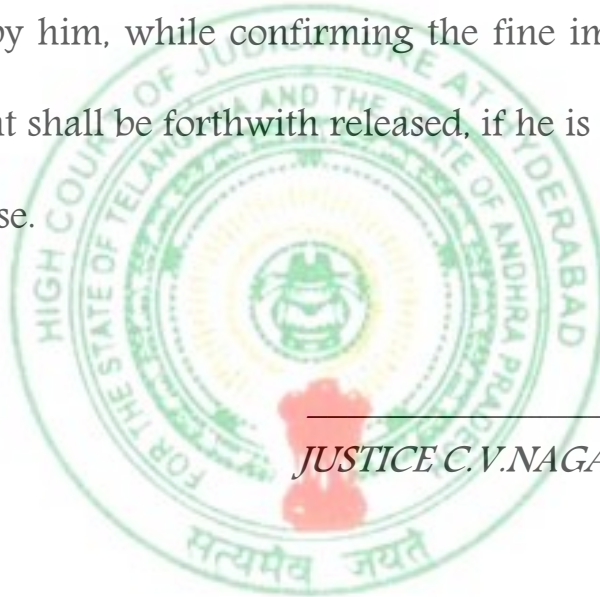
law i.e., the deceased to serve food to him; and that without acceding to his request, the deceased was loitering in the house by snapping her fingers and announced that she will not serve food to the appellant and his sister; and that they may cook their own food. That the appellant questioned the deceased as to what happened to her and whether they are not working for the benefit of the deceased and other family members; that in the said process, there was a quarrel, following which the appellant in a fit of rage took out a pestle and hit the deceased on the forehead and that consequently, she fell on the cot; that when the accused went and lifted the deceased, she was bleeding and fell down; that thereafter, the appellant has lifted the deceased with hands and made her lie in the verandah; and that as his hands were stained with blood, he has washed them and after taking his grand son and bolting the house, he went to his elder son's house.

Thus, the contents of Ex.P-9 would clearly reveal that in a heat of passion, the appellant has hit the deceased with a pestle on her forehead.

Section-300 IPC contains five exceptions. Under Exception-4, Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

In our opinion, the present case falls under the said exception.

In the result, the Criminal Appeal is allowed in part. The conviction of the appellant, *vide* judgment, dated 10.01.2011, in Sessions Case No.155 of 2009 on the file of the Principal Sessions Judge, Nalgonda, is altered from Section-302 IPC to that of Section-304 Part-II IPC and the sentence of life imprisonment imposed therein is reduced to the period already undergone by him, while confirming the fine imposed on him. The appellant shall be forthwith released, if he is not required in any other case.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

18th July, 2018

DR