

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE T. AMARNATH GOUD

CrI.A.No. 1195 of 2012

JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This Criminal Appeal is preferred against the judgment dated 24.09.2012 delivered in S.C.No. 174 of 2011 by the Additional Sessions Judge, Vizianagaram whereby the appellant was found guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced to undergo imprisonment for life and pay fine of Rs.100/-.

The brief case of the prosecution is that the appellant is the daughter-in-law of Yeluri Suramma @ Kotamma – deceased. LW2, who is the son of the deceased, the appellant and the deceased are living in the same house. The deceased used to cook her food separately because of the bickering. On 07.05.2011 at about 10:00 A.M., as usual there were fiery exchange of words on trifling between the deceased and the appellant. LW2 was doing his tailoring work in the house. On 22.05.2011, at about 04:45 P.M., in the backyard hearth, water, which was kept in a vessel, was boiling. Incensed by satires given by the deceased, the appellant suddenly lifted the vessel and poured the hot water on the head of the deceased, who was sitting in the verandah. Immediately, the deceased rushed out of the house into the street screaming,

and hearing her shrieks, the neighbours gathered there. LWs.1 and 3 to 6 chastised the appellant for her inhuman behaviour who replied that her mother advised her to do so if the deceased picked up any quarrel with her. LW4 removed the jacket from the body of the deceased to give some relief. LW5 telephoned for 108 Ambulance in which the son of the deceased took her to Government Hospital, Cheepurupalli. LW21 – Civil Assistant Surgeon immediately sent intimation to the police of Garividi Police Station, who rushed to the hospital, recorded the statement of the deceased in the presence of the doctor, and based on which, F.I.R. was registered against the appellant.

LW25 - Judicial First Class Magistrate, Cheepurupalli also recorded dying declaration of the deceased. Besides, the Head Constable recorded the statement of the deceased under Section 161 Cr.P.C. on 22.05.2011, at about 04:45 P.M., LW9 - brother of the deceased, gave a report to the police about the death of the deceased, and on receipt of the same, the Head Constable altered Section of Law to the offence under Section 302 IPC.

As the offence punishable under Section 302 IPC is exclusively triable by the Court of Sessions, the case was committed to the Sessions Division, Vizianagaram, numbered

as S.C.No. 174 of 2011 and was made over to the Court of Additional Sessions Judge, Vizianagaram for disposal.

Charge under Section 302 IPC was framed against the appellant, read over and explained to her in Telugu to which she pleaded not guilty of the alleged offence and claimed to be tried.

To substantiate the case of the prosecution, it examined PWs.1 to 18 and got marked Exs.P1 to P21 and M.Os.1 and 2. No defence witnesses were examined nor got marked any documents.

After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. wherein she denied the incriminating material appearing against her in the evidence of the prosecution witnesses.

After considering the evidence on record, the trial Court found the appellant guilty and convicted her of the offence punishable under Section 302 IPC. Hence, the present appeal is filed.

The learned counsel for the appellant does not dispute the commission of offence by the appellant that she poured hot water on the deceased due to which she died after 15 days of the incident. However, he submits that due to the quarrel, which took place between the appellant and her mother-in-law, the appellant, on the spur of the moment,

poured the hot water available in the house itself, as a result, the deceased succumbed to injuries. The learned counsel further submits that the appellant had no premeditation or intention to kill the deceased, who is her own mother-in-law, however in the heat of passion, she poured the hot water on her. He submits that the present case falls under Exception 4 of Section 300 IPC and prays that if the conviction imposed on the appellant is modified from Section 302 IPC to Section 304 Part-II IPC substantial justice would be caused to the appellant.

The learned Additional Public Prosecutor appearing on behalf of the respondent – State submits that the trial Court has convicted the appellant of the offence punishable under Section 302 IPC. However, keeping in view the oral evidence and the facts and circumstances of the case, the present case falls under Section 304 Part-II IPC.

The alleged incident took place on 07.05.2011 and the deceased died on 22.05.2011 in Government hospital. In the dying declaration recorded by PW15, it is specifically stated as under:

“I stated to my son that Binde (vessel) will fall down and so stating asked my son to bring water with Tapela (vessel) and keep the same on the Binde. My daughter-in-law heard the said words and abused. By the time I returned, my daughter-in-law kept the water boiled. My daughter in law also stated to me that today I boil the hot water. Everybody was present. My son is doing stitching on machine. My son did not witness my daughter-in-law

bringing hot boiled water (esaru). My daughter-in-law poured boiled hot water (esaru) on my head. Esaru (hot boiled water) was completely boiled. My daughter-in-law's mother told to pour esaru on me. That is what happened".

A perusal of the evidence of the prosecution witnesses reveals that each and every witness deposed in the same manner as deposed by the deceased in Ex.P16 - dying declaration. It is established from the prosecution witnesses that in usual course there were hot discussions between the appellant and the deceased, and as usual on 07.05.2011, some quarrel between the appellant and the deceased took place and since the boiling water was in the house, the appellant, in anger, took the same and poured on the head of the deceased. Immediately, she was taken to hospital and after 15 days of the treatment she succumbed to injuries caused due to the boiled water.

Exception 4 of Section 300 IPC envisages that 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 the present case, admittedly, there was no premeditation and the incident had taken place in a sudden fight in the heat of passion and upon a sudden quarrel. The appellant has not taken undue advantage of the situation or

acted in a cruel or unusual manner and as boiled water was nearby, she poured it on the head of the deceased in the heat of passion which act attracts the offence punishable under Section 304 Part-II IPC.

In view of the above, we are of the considered opinion that the learned trial Court ought to have convicted the appellant of the offence punishable under Section 304 Part-II IPC 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. By pouring boiled water on the head of the deceased, who was 60 years old, the appellant had knowledge that her act is likely to cause death but there was no pre-determination or intention to cause death as is apparent from the evidence adduced by the prosecution witnesses.

For the foregoing reasons, the appellant is found guilty of the offence punishable under Section 304 Part-II IPC. Hence, the conviction for the offence punishable under Section 302 IPC imposed by the Additional Sessions Judge, Vizianagaram, on the appellant vide Judgment dated 24.09.2012 in S.C.No. 174 of 2011, is hereby modified to that of Section 304 Part-II IPC. Insofar as sentence imposed on the appellant is concerned, the appellant has already undergone almost six years of rigorous imprisonment, as such, we hereby

modify the sentence of life imprisonment by limiting the period of sentence already undergone by her. Consequently, the Superintendent, Central Jail, Rajahmundry, is directed to release the appellant forthwith if she is not required in any other case.

Accordingly, the Criminal Appeal is partly allowed.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

19.09.2018

SURESH KUMAR KAIT, J

bcj

T. AMARNATH GOUD, J

