

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.354 of 2013

JUDGMENT: (*per Hon'ble Smt Justice T. Rajani*)

This appeal is preferred assailing the judgment of the IV Additional District and Sessions Judge, (FTC), Siddipet in SC.No.12 of 2011 dated 21.02.2013, whereby the appellant/accused was convicted for the offence under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.2,000/- and in default to suffer simple imprisonment for three months.

2. The facts of the case, briefly, as per the charge sheet are as follows:

On 31.05.2010, at about 09.00 hours, the complainant lodged a complaint, stating that he has four daughters and that his elder daughter was given in marriage to the accused. Out of their wedlock, the couple had a son and a daughter. The accused was working as a lorry driver and the deceased was assisting him by doing tailoring. The accused got addicted to alcohol and used to harass the deceased, suspecting her character and used to take money from her, which she earned from tailoring. The accused was residing at Mahashakthi Nagar in Siddipet from 20 days prior to the incident. After shifting his residence to Mahashakthi Nagar, the accused used to quarrel with the deceased, suspecting her fidelity. About four days ago, the complainant, along with his wife, went to Siddipet and asked his son-in-law to come over to their house, along with the deceased, as they intend to pour "ODI BIYYAM" to their second and third

daughters, but the accused picked up a quarrel and did not send the deceased.

On 30.05.2010, at about 6 AM, the neighbours of the accused informed them over phone that they have seen the deceased and the accused while they were in the house at about 2300 hours on the previous night. But in the early hours of 31.05.2010, at about 0515 hours, when they woke up, they found the deceased lying at the front door of her house, with severe head injury and struggling for her life and on seeing them, the accused fled away from the house. They called 108 Ambulance and the staff of 108 examined the deceased and declared her dead. Further they informed that the accused killed the deceased, by hitting her with an iron rod, on her head and fled away.

On receiving the information, the complainant and his family members went to Siddipet and found the deceased dead, with several bleeding injury over the head. He gave a report to the police. Based on the said report, a case was registered in Cr.No.63 of 2010 for the offence under Section 302 of the Indian Penal code. In the course of investigation, the statements of the witnesses were recorded, the scene of offence panchanama was conducted, the dead body was subjected to inquest and post mortem examination and the material objects were sent to FSL for chemical analysis. The accused was arrested and his confession was recorded. After concluding the investigation, charge sheet was laid against the accused A1 for the offence punishable under Section 302 IPC.

The Additional Judicial Magistrate of First Class, Siddipet took cognizance of the case and after complying with the required legal formalities, committed the case to the Sessions Division, Medak by virtue of orders in PRC.No.74 of 2010. The Sessions Judge, in turn, made over the case to the IV Additional District and Sessions Judge, (FTC), Sangareddy for trial and disposal in accordance with law. The trial Court, on appearance of the accused, framed charges against him for the same offence and after recording the plea of not guilty by the accused, conducted the trial of the case, during which the court examined P.Ws.1 to 11 and marked Exs.P1 to P12 and M.Os.1 to 11 on behalf of the prosecution. After concluding the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence, which he denied. He neither did choose to examine any witness on his behalf.

3. The Court below, after appreciating the evidence and considering the material on record, passed the impugned judgment, convicting the accused for the offence under Section 302 IPC, against which the present appeal is preferred on the following grounds:

The Court below failed to see that the entire case of the prosecution is based on circumstantial evidence. The Court below failed to note that the prosecution failed to prove the relevant circumstance to conclude the chain of circumstances and failed to prove the alleged offence against the accused. The Court below ought to have seen that the prosecution failed to prove the case against the accused with cogent and convincing evidence. The Court below erred to see that the blood group of stains on the material objects 5, 7 and

11 could not be determined and failed to note that P.Ws.1 and 2 never stated in their evidence against the accused, about suspecting the fidelity of the deceased.

4. Heard learned counsel for the appellant and the learned Public Prosecutor.

5. The counsel for the appellant submits that there are discrepancies with regard to time of P.Ws.1 and 2 reaching the scene of offence. He contends that the motive alleged against the accused is not consistently stated by the witnesses. He contends that no offence under Section 302 IPC can be made out against the accused, as the content of the quarrel that took place between the accused and the deceased is not spoken to by any of the witnesses and in such circumstances, a benefit of doubt has to be extended to the accused. He alternately pleads that if the Court comes to the conclusion that it is the accused, who has committed the offence, the conviction that can be awarded has, at best, be under Section 304 Part II IPC.

6. Learned Public Prosecutor, on the other hand, contends that the motive, though is not consistently, stated by the witnesses, it can be understood that the neighbours of the accused and the deceased have consistently spoken about the conduct of the accused in which he used to suspect the character of the deceased. Hence, he urged the Court to confirm the judgment of the Court below by believing the evidence of the witnesses.

7. Based on the above arguments and the material on record, we take up the following points for consideration:

1. Whether the motive against the accused is consistently stated by the witnesses and is proved cogently.
2. Whether the judgment of the Court below needs any interference.
3. To what result.

POINT No.1:

8. P.W.1 is the father of the deceased. According to him, the marriage between the accused and the deceased was performed 15 years ago. The couple was residing in a house at Housing Board, Siddipet for about six years and they were blessed with a son and a daughter out of the wedlock. Later, they shifted to Mahashakthinagar. The accused got addicted to alcohol and used to harass his daughter, demanding money. On 31.05.2010, he received a phone call from one Sai Kumar, stating that the accused and his daughter quarrelled in the night and the accused beat the deceased. P.W.2, who is the mother of the deceased, also states the same.

9. P.W.3, who is the neighbour of the accused and the deceased, gives a different version with regard to the motive. According to him, the accused and the deceased used to quarrel frequently. The accused used to suspect the character of the deceased and he also enquired with him one or two times about the character of the deceased and whether anybody was visiting the house during his absence. P.W.4, who is the wife of P.W.3, does not speak about any motive.

10. P.W.5 is the cousin of the deceased. According to him, it was informed to him, by the deceased, three or four times that the accused was harassing her, suspecting her character.

11. The above are the witnesses, who spoke about the motive of the accused. P.Ws.1 and 2 did not corroborate the evidence of P.Ws.3 and 5, as regards the motive.

12. In order to consider that the deceased felt modest to disclose that the accused was suspecting her character, she nevertheless disclosed it to P.W.5, who, in all probability, would inform the same to P.Ws.1 and 2. The harassment for money, as stated by P.Ws.1 and 2, is not stated by P.Ws.3 and 5. Hence, we consider that the motive as per the case of the prosecution is not cogently proved.

The point is accordingly answered.

POINT No.2:

13. The prosecution, in order to prove the complicity of the accused in the alleged offence, examined P.Ws.3 and 4, who are the neighbours of the accused and the deceased.

14. According to P.W.3, on the date of the incident, he returned home at about 10 PM and after dinner, himself and his wife, PW.4, slept. On the early morning of the next day, P.W.4 opened the door and found the deceased lying on the ground in a pool of blood. Immediately, she woke him up. He woke up and saw the dead body of the deceased in the pool of blood and saw the accused armed with iron pipe, who, on seeing them, ran away. He observed that the deceased was still alive. He informed to 108 ambulance and also P.W.1. When the ambulance came, the staff of 108 checked and informed that the deceased died. P.W.4 states that on the date of the incident, she saw the deceased lying in front of the front door, in a pool of blood and then she woke up her husband. They saw the deceased still

having life and on seeing them, the accused ran away. P.W.3 called 108 ambulance, the ambulance came, examined the deceased and declared her dead. The parents of the deceased also came there.

In the cross-examination of P.W.3, no material omissions were pointed out with regard to the incident proper and with regard to P.W. 3 seeing the accused at the scene of offence, armed with iron pipe. So is the cross-examination of P.W.4.

15. Hence, the fact that is proved beyond doubt is that the accused was present at the scene of offence, armed with iron pipe and on seeing P.Ws.3 and 4, he ran away. The fact elicited from the cross-examination of P.W.3 would show that except the accused and the deceased there was no one else in the house. It was elicited that about 5 days or 10 days prior to the incident, there was a quarrel between the accused and the deceased and the parents of the accused took the children with them. Hence, the above fact would throw the burden on the accused, to explain as to how the death of the deceased occurred.

16. The witness, for the seizure of the blood stained shirt of the accused, examined as P.W.9, stated that the accused made confession before them about the commission of the offence and pursuant to confession, he lead them to Doolmitta village and has shown the blood stained shirt, which is marked as M.O.11. Though P.W.8 turned hostile, the evidence of P.W.9 is available to the prosecution to prove the seizure of the blood stained shirt of the accused. P.W.11, who is the Inspector of Police, CCS, Sangareddy and who was working as Inspector of Police, Siddipet at the relevant point of time, spoke about

the seizure of the blood stained shirt of the accused in the presence of P.Ws.8 and 9. He had sent the shirt to FSL along with other material objects. The FSL report, marked as Ex.P12, shows that there were blood stains on the shirt of the accused and that the blood is of human origin. Hence, the accused is saddled with two burdens viz. First one is to explain as to how the blood stains got on to his shirt and the second is to explain as to how the death of the deceased occurred.

17. In the 313 examination, the accused chose to remain silent and offered no explanation with regard to the above two facts, thereby, leaving scope for an adverse inference to be drawn by us. From the above facts, it can be concluded, without any demur, that it was the accused, who caused the death of the deceased.

18. In order to consider the contention of the counsel for the appellant that the punishment for which the accused would be liable would only be under Section 304 Part II IPC, we intend to read the evidence of P.Ws.1 to 5 once again.

19. According to P.W.1, P.W.3 informed him that on the previous night the accused and the deceased quarrelled and the accused beat the deceased. P.W.2 stated that they received information that the accused beat her daughter. Since the information has come from P.W.3, it would be beneficial to look at his evidence.

20. P.W.3 does not speak about any quarrel that took place on the previous night but he speaks that in the early morning when his wife opened the door, they found the deceased lying in a pool of blood. In the cross-examination also, he does not state about any quarrel

that took place on the previous night. He speaks about a quarrel 5 or 10 days prior to the incident. P.W.4, however, in the cross-examination, stated that on the previous night the accused and his wife were quarrelling but she does not know the reason for their quarrel. P.W.5 does not speak about any quarrel or any information given to him with regard to the said quarrel. Hence, the evidence of P.W.4 has to be taken as a basis to understand that there was a quarrel on the previous night, since she positively states so.

21. In such circumstances and in the background of the fact that the motive is not consistently spoken to by the witnesses, it can be assumed that there was some provocation for the accused to commit the offence, thereby, bringing his act within the definition of culpable homicide not amounting to murder, the punishment for which shall be under Section 304 IPC. Since we concluded that the reason for the act of the accused is provocation caused by the quarrel, we cannot also say that there was any intention on the part of the accused to commit the offence. But since the prosecution succeeded in proving that the death was caused by a hit with an iron rod and that too on the head of the deceased, it can be said that the accused had knowledge that the same would cause grievous injury, which is likely to lead to the death of the deceased. The evidence of the doctor, P.W.10, who conducted the post mortem examination, shows that there was a skull fracture at temporal area and the cause of death is intra cerebral haemorrhage. His evidence would prove the impact of the hit with the iron rod. Hence, the knowledge on the part of the accused can be clearly inferred. Therefore, on the basis of the above reasoning, we consider

that the accused would be liable for punishment under Section 304 Part II IPC.

The point is accordingly answered.

POINT No.3:

In the result, Accordingly, the appeal is partly allowed setting aside the conviction and sentence recorded against the appellant-accused in SC.No.12 of 2011 dated 21.02.2013 on the file of the IV Additional District and Sessions Judge, (FTC), Siddipet for the offence under Section 302 IPC and he is acquitted of the same. However, the appellant is convicted for the offence punishable under Section 304 Part II IPC and sentenced to undergo imprisonment for a period of Seven Years. The fine amount imposed on the appellant-accused for the offence under Section 302 read with 34 IPC shall be maintained as the fine for the offence under Section 304 Part II IPC, along with the default clause. The period of imprisonment undergone by the appellant-accused shall be set off against the imprisonment now imposed on him. The material objects shall be destroyed as per the directions of the trial Court.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

M.S. RAMACHANDRA RAO, J

T. RAJANI, J

August 18, 2018

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith.

(B/o) DSK