

*** THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**
AND
THE HONOURABLE Dr. JUSTICE SHAMEEM AKTHER

+ CRIMINAL APPEAL No.472 of 2013

% Dated 21.04.2018

Between:

Yaragada Govind

...Appellant/accused

AND

**\$ The State of A.P., rep. by
Public Prosecutor, High Court of A.P., Hyd.**

...Respondent

! Counsel for the appellant: Smt. Hema Jaiswal, advocate.

^ Counsel for the Respondents: Public Prosecutor, State of A.P.

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? Cases Referred:

1. AIR 1953 SC 364

THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.472 OF 2013

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

This Criminal Appeal, under Section 374 of the Code of Criminal Procedure, 1973, is filed by the appellant/accused, challenging the judgment, dated 09.04.2012, passed in S.C.No.4 of 2012 by the Special Judge for Trial of Cases under The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-Additional District & Sessions Judge, Vizianagaram, whereby, the Court below convicted the accused of the offence punishable under Section 302 I.P.C. and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs.1000/- and to undergo Rigorous Imprisonment for six months, in default.

2. Heard the submissions of Smt. Hema Jaiswal, learned Legal Aid Counsel appearing on behalf of the appellant/accused, learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The learned Legal Aid Counsel appearing on behalf of the accused would contend that P.Ws.1 to 3 are interested witnesses. There is no consistency in their evidence. The accused did not confess commission of the offence. M.O.1-knife was not recovered pursuant to the confession of the accused. There are omissions and contradictions in the evidence of prosecution witnesses. The Court below erred in finding the accused guilty of the offence

punishable under Section 302 of I.P.C. In the alternative, it is contended that the evidence on record did not make out an offence under Section 302 of I.P.C. and at the most, it makes out an offence under Section 304 Part-II of I.P.C. and ultimately prayed to set aside the conviction and sentence recorded against the accused by the Court below.

4. The learned Additional Public Prosecutor representing the respondent-State would submit that there is direct evidence of P.Ws.1 to 3 explaining the manner in which, the deceased, who is the mother-in-law of accused, was hacked to death by the accused with M.O.1-Knife. M.O.1-Knife was recovered pursuant to the confession made by the accused. There is also evidence of Panch witnesses and other witnesses to connect the accused with the alleged offence. The prosecution proved the guilt of the accused for the offence punishable under Section 302 of I.P.C. beyond reasonable doubt. Further, no case is made out for the offence punishable under Section 304 Part-II of I.P.C. and ultimately prayed to dismiss the appeal by confirming the conviction and sentence recorded by the Court below.

5. In view of the above contentions put-forth by both the learned counsel, the points that arise for determination in this Criminal Appeal are:

1. Whether the accused caused the death of the deceased-Mandala Gowrama?
2. Whether the conviction and sentence recorded against the accused for the offence punishable under Section 302 IPC by the Court below is liable to be set aside ?

6. The case of the prosecution is that the deceased- Mandala Gowramma is the mother-in-law of accused. P.W.1 is the sister of deceased. P.W.2 is the daughter of deceased and wife of accused. P.W.3 is the neighbour of the deceased. There are marital disputes between the accused and P.W.2, his wife. P.W.2 was staying with her mother, i.e., the deceased. The deceased was not willing to send P.W.2 to lead marital life with the accused, in view of his unruly behaviour. Therefore, accused bore grudge against the deceased. On 23.08.2011, around 12:00 noon, the accused went to the house of the deceased armed with M.O.1-Knife and demanded her to send his wife, P.W.2, to lead marital life with him and stated that he would not go back unless the deceased sends his wife with him. Unable to bear continuous threats, the deceased came out of the thatched house and rebuked the accused for his improper behaviour. Then, the accused attacked the deceased with M.O.1-Knife and inflicted an injury on the left side of the neck with force, causing her instantaneous death. While P.W.1 and L.W.3-Yaragada Kumar & others tried to catch the accused, he fled away from the scene of offence with M.O.1-Knife.

7. On a report lodged by P.W.1 (sister of the deceased), the police registered the crime, completed investigation and filed Charge-sheet before the Magistrate concerned. The learned Magistrate, has taken cognizance and committed the case, vide P.R.C.No.16 of 2011 to the Court of Session, Vizianagaram, under Section 209(a) Cr.P.C., since the offence under Section 302 I.P.C. is exclusively triable by the Court of Session. On committal, the learned Principal Sessions Judge, Vizianagaram, registered the case

as S.C.No.4 of 2012 for the offences punishable under Sections 302 and 506(ii) of I.P.C., and made over the case to the Court below for trial and disposal in accordance with law. The Court below framed charge under Section 302 of I.P.C. against the accused, read over to him for which, he pleaded not guilty and claimed to be tried.

8. To prove the case of prosecution, P.Ws.1 to 10 were examined. Ex.P.1-Report is given by P.W.1 to Andra Police on 23.08.2011, Ex.P.2-Set of photographs relating to deceased along with one C.D, Ex.P.3-Scene observation Report Dt.24.08.2011, Ex.P.4-Inquest report dated 24.08.2011, Ex.P.5-Mediators report dated 24.08.2011, Ex.P.6-Scene observation report dt.24.08.2011, Ex.P.7-Post mortem certificate of deceased issued by Pw.8-Doctor, Ex.P.8-Final opinion issued by Pw.8, Ex.P.9-Questionnaire by the Inspector of Police, Gajapathinagaram, and answers given by Pw.8, Ex.P.10-Original FIR in Crime No.30/2011, Ex.P.11-Rough sketch of scene of offence dated 24.08.2011, Ex.P.12-Letter of Advice dt.14.10.2011 and Ex.P.13-RFSL report dated 14.10.2011 were marked. M.O.1-Knife, M.O.2-Shirt and M.O.3-Lungi were also marked.

9. When the accused was confronted with the incriminating evidence appearing against him in the prosecution evidence under Section 313 of Cr.P.C, he denied the same and pleaded innocence.

10. The evidence of P.W.1 – Jalumuri Sarojini reveals that deceased was her sister. P.W.2 is the daughter of the deceased. The marriage between P.W.2 and the accused was performed 13

years prior to the death of the deceased. They were blessed with a son. Three months prior to the death of the deceased, the accused, in a fully drunken state, beat his wife-P.W.2 and also the deceased with a stick and caused bleeding injuries. On that, the deceased lodged a report with the police against the accused. The accused was arrested in that case and the said dispute ended in compromise at the intervention of elders. In a panchayat, the accused promised to look after his wife/P.W.2 very well. Even then, there was no change in the attitude of the accused. Six months prior to the date of her deposition, at about 12.00 noon, the accused, in a fully drunken state, came to the house of the deceased, demanded the deceased to send her daughter to live with him and threatened to kill her, if she did not send her daughter. On hearing the cries of the accused, the deceased, P.W.2 and Kumar (son of the accused) came outside from the house of the deceased. Then, the accused hacked the deceased with M.O.1- knife on the left side of her neck. The deceased suffered bleeding injuries, collapsed on the ground and succumbed to the injuries. P.W.1 is the person who lodged the report with the police, which was marked through her evidence as Ex.P.1.

11. P.W.2 – Yelagada Sanyasamma is the wife of the accused. She deposed that she is the daughter of deceased. Her marriage with the accused was performed 13 years prior to the incident and they were blessed with a son. She also deposed about the harassment meted out to her by the accused and the Panchayat that took place in between the accused and herself. There is clear evidence of P.W.2 that the accused hacked on the left side of neck

of the deceased with a knife. Her evidence corroborates with the evidence of P.W.1 in all material particulars.

12. P.W.3 – Mallidi Yereribabu, is a neighbour of the deceased. He deposed that the accused used to go to his house in a drunken state, used to beat P.W.2. Six months ago on one day when he was at his house, the accused came to the house of deceased and asked her to send P.W.2 along with him. As the deceased was not willing to send P.W.2, the accused grew wild and hacked the deceased with M.O.1-Knife on the left side of the neck and caused injuries. He also deposed that P.W.1 gave complaint with regard to accused committing the alleged offence.

13. P.W.4 is the Ex-Sarpanch of Maguru village. He deposed about accused visiting the house of deceased in a drunken state, the deceased giving complaint against the accused and the dispute ending in compromise. He also deposed that though Panchayat was held, the accused did not change his attitude. He also stated that on receipt of information of the accused committing the alleged offence, he rushed to the scene of offence and found the dead body of the deceased lying there. He was also informed by P.W.1 that the accused caused subject death and she filed the report under Ex.P.1.

14. P.Ws.1 to 4 were subjected to lengthy cross-examination, where they have reiterated what they have stated in their examination-in-chief. There is no animosity, grudge or reason to falsely implicate the accused in this case was brought on record in their cross-examination.

15. P.W.5 is a Head Constable who deposed about issuance of First Information Report and other circumstances of the case. P.W.6 is a photographer who spoke about taking of photographs which were marked as Ex.P.2 along with C.D. P.W.7 is the Village Revenue Officer, Avuru village. He deposed about his finding the dead body of the deceased in front of the house of deceased and conducting scene observation and inquest over the dead body of the deceased. Ex.P.3 is the scene observation report. Ex.P.4 is the inquest report. Ex.P.5 is mediators report for seizure of M.O.1-knife. There is evidence of P.W.7 which reveals confession of commission of the offence in this case and pursuant to the said confession, M.Os.2 and 3-lungi and shirt were seized under Ex.P.6-panchanama.

16. P.W.8 is the doctor, who conducted Post-mortem examination over the dead body of the deceased and issued Post-mortem Examination report under Ex.P.7 and final opinion under Ex.P.8. He clearly stated that the deceased died due to cardio respiratory arrest and cerebral death, due to cutting of trachea spinal cord and carotid arteries with a sharp object.

17. P.W.9 is the Sub-Inspector of Police, who deposed about the issuance of FIR under Ex.P.10, on receipt of Ex.P.1-report.

18. P.W.10 is the Circle Inspector of Police who conducted investigation and filed charge sheet against the accused, who corroborated with regard to the investigation conducted in this case.

19. The contention put-forth on behalf of the accused is that the accused is innocent and he is no way connected to the subject death. There is specific evidence of P.W.1 to P.W.3 that the accused hacked the deceased on the left side of the neck and caused her instantaneous death. There is also evidence of P.W.1 to P.W.3 that the accused gave threats to the deceased to do away with her life as the deceased was not willing to send her daughter P.W.2 to live marital life with the accused. P.W.1 is sister, and P.W.2 is daughter, of the deceased. There is no animosity or reason for them to falsely implicate the accused in the subject case. P.W.3 is the neighbour, who is also a direct witness to the commission of the offence by the accused in this case. There is consistency and corroboration in the evidence of P.W.1 to P.W.3. Their evidence is not shaken in cross-examination. There is no reason to discard their testimony. There are no omissions or contradictions in their evidence with regard to the accused hacking the deceased with M.O.1-curved knife. On this aspect, it is pertinent to refer to a decision in *Dalip Singh & others v. State of Punjab*¹, wherein it has been laid down as under:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of

¹ AIR 1953 SC 364

prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon.

20. M.O.1 is the knife seized pursuant to the confession made by the accused. As per the evidence on record, blood stained shirt and lungi of the accused, marked as M.Os.2 and 3, were seized pursuant to the confession of the accused, and they were subjected to examination by the Forensic Science Laboratory, and the expert opined that human origin blood was detected on M.Os. 2 and 3. It is also an incriminating circumstance against the accused. Human origin blood was also detected on M.O.1-knife, which was recovered pursuant to the confession made by the accused. There is no explanation for the side of the accused how the accused came into contact with such blood on his apparel. There is also specific evidence that the accused left the scene of occurrence with M.O.1 knife.

21. There is specific evidence of P.W.8-Doctor who conducted autopsy over the dead body of the deceased that the subject death was caused due to cutting trachea spinal cord and carotid arteries with sharp edged object. Under Ex.P7-post mortem report, there is specific mention of cause of death of the deceased, as deposed by P.W.8-Doctor. There is consistency and corroboration between the ocular testimony and medical evidence. Though P.Ws.1 and 2 are interested witnesses, mere interestedness is not a ground to

discard their evidence, unless they have a strong reason to falsely depose against the accused and their presence at the time of the incident is found to be improbable. P.Ws.1 and 2 are natural witnesses to be present at the time of occurrence of the incident. They have no grouse or animosity against the accused. P.Ws.1 to 3 are truthful witnesses.

22. Further more, there is no sudden provocation for the accused to commit the offence. As per the evidence on record, the accused proceeded to the scene of occurrence with a knife with pre-determined mind to do away with the life of the deceased as she was not sending P.W.2 to his company to lead marital life. There are also utterances made by the accused to that effect. Moreover, the subject death was caused in a broad day light in a residential area. This is substantiated by the evidence of P.Ws.1 to 3. There are long pending matrimonial disputes between the accused, his wife and the deceased. In spite of advice given by the elders, the accused did not change his behaviour. The accused had clear intention and motive to eliminate his mother-in-law, as she was not willing to send P.W.2 to lead marital life with him. There were instances to show that on earlier occasions also, the accused caused bleeding injuries to the deceased and thereafter, the accused promised in the presence of elders to look after P.W.2 well, but however, he did not change his attitude. Viewing from any angle, it cannot be said that the subject death was caused due to sudden provocation. Further, there is no evidence provoking the accused to cause the death. There are no inconsistencies or omissions or contradictions in the evidence of material prosecution

witnesses, to extend benefit of doubt in favour of the accused. There is no dispute with regard to the time and place of death of the deceased. Further, there is also no dispute that the subject death is homicidal in nature. The prosecution clinchingly proved the guilt of the accused beyond all reasonable doubt for the offence punishable under Section 302 IPC. The Court below had analysed the entire evidence on record and recorded the finding against the accused basing on the oral and documentary evidence. There is nothing to take a different view. All the contentions raised on behalf of the accused would fail. The Criminal Appeal is devoid of merit and is liable to be dismissed.

23. In the result, the Criminal Appeal is dismissed, confirming the conviction and sentence recorded against the appellant/accused by judgment, dated 09.04.2012, passed in S.C.No.4 of 2012 by the Special Judge for Trial of Cases under The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-Additional District & Sessions Judge, Vizianagaram.

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

P. NAVEEN RAO, J

Dr. SHAMEEM AKTHER, J

21st April, 2018
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