

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.1106 of 2011

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

The sole accused in Sessions Case No. 181 of 2010 on the file of the Court of the I Additional Sessions Judge, Adilabad is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of his wife by name Surekha on 16th December, 2009 at 5 p.m. near Reliance Petrol Pump on NH No.7 road, Adilabad. Vide judgment dated 30.06.2011, the learned Additional Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.10,000/-, in default to suffer simple imprisonment for a period of six months. Assailing the same, this appeal came to be filed.

2. The facts, as culled out from the evidence of the prosecution witnesses are as under:

The deceased is the niece of PW1. She was given in marriage to the accused in this case. On 16.12.2009, the accused and the deceased boarded a jeep driven by PW2 to go to Dollara Village. It is stated that the accused sat inside the jeep, whereas the deceased sat at the outer edge of the seat. The accused and the

deceased were quarrelling with each other in the jeep. The evidence of PW2 further shows that when the jeep reached near Reliance Petrol Pump, the accused pushed his wife out from the jeep and held her legs, which PW2 could see from the rear view mirror. Since the vehicle was stopped, the accused left the legs of his wife, as a result of which, she fell down and died.

3. PW3, in his evidence, states that on one day at about 4.30 to 5.00 p.m., he went to Reliance Petrol Pump in Adilabad to drink water. After drinking water, he was returning to the field and when he reached the road edge, he found a jeep going on the road from Adilabad to Dollara. He saw a male person in the jeep pushing out a woman from the jeep, and the said male person was holding the legs of that woman. When the head of the woman came into contact with the road, the jeep stopped. PW3 proceeded towards the jeep and saw a woman dead in a pool of blood.

4. On 16.12.2009, PW10-the Head Constable, Adilabad Rural received a report from PW1, basing on which, a case in Crime No. 167 of 2009 came to be registered under Section 302 IPC. Ex.P7 is the First Information Report. Thereafter, further investigation was taken over by PW12-the Circle Inspector of Police, Adilabad Rural. On receipt of the F.I.R., he proceeded to the scene of offence at 8.30 p.m. At that time, the accused-husband of the deceased, was present and as such, he was taken into custody. He also prepared a rough sketch of the scene, which is marked as Ex.P8. During the

said process, he seized M.Os 1 to 6. He also got the scene of offence photographed and the same is marked as Ex-P2.

5. He then gave a requisition to PW11-the Tahsildar, Mudhole Mandal to conduct inquest over the dead body. Accordingly, PW11 conducted inquest over the dead body of the deceased. During inquest, he examined PWs 2 to 5 and others. Ex-P6 is the inquest report. Thereafter, he shifted the body of the deceased to RIMS, Adilabad for postmortem examination.

6. PW8-the Tutor, RIMS, Adilabad conducted autopsy over the body of the deceased and issued Exhibit P5-the Post Mortem Report. According to him, the cause of death was due to injury to brain matter and haemorrhage.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 30 of 2010 on the file of Court of the I Additional Sessions Judge, Adilabad. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 181 of 2010 on the file of Court of the I Additional Sessions Judge, Adilabad. Basing on the material on record, a charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

8. In support of their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P9 and M.Os.1 to 6. After the closure of evidence, the accused was examined under Section 313 Cr.P.C.,

with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced by the accused in support of his defence.

9. Basing on the evidence of PWs 1, 2, 3 and 5, the Court below convicted the accused. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellant, Sri Surender Reddy mainly submits that PW1 is not an eye witness to the incident, and as such, the F.I.R. given by him, on the basis of the information furnished to him, cannot be made the basis to connect the accused with the crime. Insofar as the evidence of PW2 is concerned, he would submit that since the accused and the deceased were sitting in the rear seat, PW2 could not have seen the quarrel between the accused and the deceased or assault by the accused on the deceased, as he was driving the vehicle. Insofar as the evidence of PW3 and PW5 are concerned, he would contend that they are planted witnesses, and no material is placed on record to show as to why they were present at the scene of offence. In any event, he would submit that having regard to the facts and circumstances of the case, it cannot be said that the accused had any intention to cause the death of the deceased.

11. On the other hand, the learned Public Prosecutor opposed the same, contending that the evidence of these witnesses, viz.,

PWs 1, 2, 3 and 5 amply establishes that there was a quarrel between the accused and deceased, and in pursuance of the said quarrel, the accused pushed the deceased out of the jeep, leading to her death. He further submits that the fact that the accused pushed the deceased out of the jeep clearly shows that he had intention to kill her. Hence, pleads that the judgment of the trial court warrants no interference.

12. The point that arises for consideration is whether the accused was responsible for the incident, and if he was responsible, whether an offence under Section 302 IPC is made out.

13. As seen from the record, the entire case rests on the evidence of PWs 2, 3 and 5. PW2 is the driver of the jeep in which the accused and deceased traveled. The fact that the accused is the husband of the deceased, is not in dispute. The evidence of PW2 shows that on the date of incident, at about 4 p.m., he left Adilabad driving a jeep bearing No. MH26-243. At Tagore Hotel in Adilabad Town, the accused and deceased boarded his jeep to go to Dollara village. He deposed that the accused sat inside the jeep, whereas his wife-Surekha (deceased) sat at the outer edge of the seat. Both of them were quarrelling with each other in the jeep. The fact that both of them were in the jeep and were quarrelling, was also spoken to by PW3, who, in his evidence, states that on that day, at about 4.30 or 5 p.m., he went to Reliance Petrol Pump to drink water, and after drinking water,

while returning to the field and when he reached the edge of the road, he found a jeep going on the road from Adilabad to Dollars, and he saw a male person pushing out a woman from the jeep. He also noticed the male person holding the legs of that woman, and the head of the woman was coming in contact with the road, at which time, the jeep stopped. This version of PW3 was spoken to by PW2 also, who says that he viewed the quarrel between the accused and the deceased in the rear mirror of the jeep. It is his evidence that when the jeep reached Reliance Petrol Pump, the accused, all of a sudden, pushed the deceased out of the jeep, holding her legs, and when he stopped the jeep, the accused left her legs, as a result of which she fell down. Both these witnesses were cross-examined, but nothing useful was elicited to discredit their testimony. All the suggestions given by them disputing their version in chief examination, were denied.

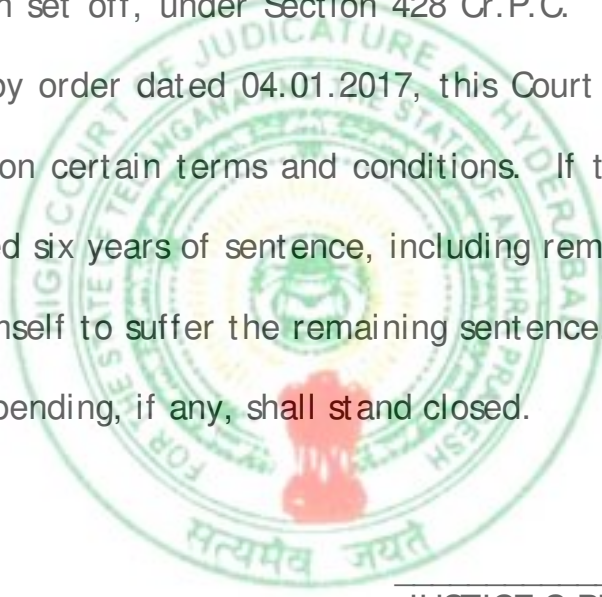
14. Apart from the evidence of these two witnesses, we have also on record the evidence of PW5, who was an auto driver. His evidence is to the effect that on the date of the incident, at about 4 or 4.30 p.m., he was at Tagore Hotel in Adilabad Town with his auto. He noticed the accused and deceased quarrelling with each other outside the hotel and later, left that place with his auto. He identified the accused and deceased as the persons present outside the hotel and quarrelling with each other.

15. From the evidence of these three witnesses, it is clear that both the accused and deceased were quarrelling at about 4.30

p.m., outside Taqore Hotel, Adilabad town, and at about 4.30 or 5 p.m., both of them boarded a jeep, which was driven by PW2. Both of them sat on the rear side of the jeep. It is on record that the accused was sitting inside the jeep, whereas deceased was at the edge of the seat. The consistent evidence of all the witnesses is that both the accused and deceased were quarrelling with each other even while they were traveling in the jeep, and in the said quarrel, the accused is said to have pushed the deceased out of the jeep, and also held her legs, so as to prevent her from falling. In the process, it appears that her head came in contact with the ground, at which time, the jeep was stopped.

16. Therefore, it cannot be said that it was a case of accidental death, as urged by the learned counsel for the appellant. At the same time, it cannot also be said that the accused had any intention to cause the death of the deceased. As narrated above, the evidence on record establish that even before they boarded the jeep, the accused and deceased were quarrelling with each other, and even after boarding the jeep, both of them quarreled with each other. The deceased was sitting on the edge of the seat of the jeep, while the accused was inside the jeep. In the quarrel, the accused pushed the deceased outside, but held her legs. If he had any intention to kill the deceased, he would not have made an effort to catch hold of her legs, preventing her fall from the jeep. This circumstance is sufficient to show that the accused never had any intention to kill the deceased, but, definitely, he has knowledge that his act is likely to cause the death of the deceased.

17. Taking the totality of the facts in issue, the appeal is allowed in part. The conviction and sentence recorded against the appellant/accused in the judgment dated 30th June, 2011, in Sessions Case No. 181 of 2010 on the file of the I Additional Sessions Judge, Adilabad for the offence punishable under Section 302 I.P.C. is altered to one under Section 304 Part-II IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of six years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. It is brought on record that by order dated 04.01.2017, this Court granted bail to the accused on certain terms and conditions. If the accused has not completed six years of sentence, including remissions, he shall surrender himself to suffer the remaining sentence. Miscellaneous applications pending, if any, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

11.06.2018
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