

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRL.A.No.73 OF 2012

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

The sole accused in S.C.No.383 of 2009 on the file of I Additional Sessions Judge, Kadapa, is the appellant. He was tried for the offence punishable under Section 302 of IPC, for causing the death of his wife Rijwana on 03.07.2009, at about 11.00 p.m. at his house in Kadapa. Vide judgment dated 02.01.2012, the learned Sessions Judge convicted the accused for an offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and pay fine of Rs.500/- and in default to suffer simple imprisonment for three months. Assailing the same, the present appeal came to be filed.

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

PW1 is the mother of the deceased. PW2 is the father of the deceased. The marriage between the accused and the deceased took place about 3 ½ years prior to the incident. After marriage both the accused and the deceased started residing at Syed Sab Street at Kadapa Town in a single room and subsequently they shifted their residence to the house of PW1 at Masapeta, Kadapa. Out of wedlock they were blessed with a son by name Mubarak. About six months prior to the death of the deceased, the accused and the deceased shifted their residence to Syed Sab

Street. On the date of incident, i.e., on 03.07.2009 at about 07.30 p.m., the deceased and PW3 had dinner, thereafter the deceased fed her male baby and then all of them went to sleep. At about 11.00 p.m., the accused returned home, called the deceased aside, for which she refused to join him stating that the baby was sleeping. Then the accused stabbed the deceased. The evidence of PW1 further indicates that at about 12 mid night, the accused and his friend by name Munna-PW8 came to her house and enquired whether the wife of the accused came to her house. PW1 stated to him that she is not in the house and questioned as to whether there was any dispute. The accused denied the same and left the place in a motor bike. Subsequently, PWs.2 and 4 went in search of the deceased and about half an hour thereafter it was informed to PW1 that the body of her daughter was lying on a plastic mat in the house of the accused. Then PW1 and her neighbours rushed to the house of the accused and found the body of the deceased on a mat, in a pool of blood. PW1 noticed stab injuries on the left side chest, in the arm pit and on the left hand. Immediately, the deceased was shifted to RIMS Hospital, Kadapa. It is stated that the accused seems to have tutored PW1 and others in the hospital to state that she fell down from the upstairs. The daughter of PW1 i.e. the deceased died while undergoing treatment. On 04.07.2009 at about 08.45 a.m., PW1 lodged a report before PW15 the SI of Police, basing on which a case in Crime No.72 of 2009 came to be registered for an offence punishable under Section 302 IPC. Ex.P10 is the FIR. PW15

intimated about registration of crime to PW17 the Inspector of Police, who took up further investigation in the case. Thereafter, PW17 went to the scene of offence, situated at Masapeta in the house of PW1, where the body of the deceased was kept and in the presence of PWs.1 to 3 recorded their statements and conducted inquest over the body of the deceased. Ex.P5 is the inquest panchanama, according to which, the death was due to stabbing. The accused is said to have misguided them stating that the deceased fell down from the steps. PW17 further prepared a rough sketch which is marked as Ex.P11. At the time of inquest, Ex.P5 the blood stained clothes of the deceased were seized and then while preparing observation report in the house of the accused, Ex.P6 blood stained jacket, mat, pillow, saree and also broken bangle pieces were seized. PW17 also visited a lane in BKM Street and seized Ex.P7 the blood stained earth and blood stained petty coat under the cover of panchanama. Ex.P12 is the second rough sketch, wherein Ex.P13 blood stained earth and control earth were seized. Thereafter, the body was sent for post mortem examination. Dr.Nagalingam, who worked as Assistant Professor in Forensic Medicines Department at RIMS Medical College, Kadapa, conducted autopsy over the body and opined that the cause of death was due to shock and hemorrhage due to stab injury to the heart. Ex.P17 is the post mortem report. The post mortem doctor noticed one external injury on the chest and lung, which led to the death of the deceased. On 31.07.2009, the accused surrendered before PW17 and in the presence of PWs.14 and 16,

recorded the confessional statement, which is marked as Ex.P9. Basing on the confession made by the accused, blood stained knife which was used in the commission of offence was seized under Ex.P8. Thereafter, the accused was arrested and remanded to judicial custody. After completing investigation, police filed charge sheet which was taken on file as PRC No.19 of 2009 on the file of I Additional Judicial Magistrate of First Class, Kadapa.

On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal, the I Additional Sessions Judge, Kadapa, numbered the case as S.C.No.383 of 2009. On the basis of the material on record, a charge under Section 302 of IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

In support of his case, the prosecution examined PWs.1 to 18 and got marked Exs.P1 to P18.

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 on his behalf in support of his defence, however, he got marked Exs.D1 and D2.

Basing on the evidence of PWs. 1 to 8 and the medical evidence, the learned Sessions Judge convicted the accused. Challenging the same, the present appeal came to be filed.

3. The learned counsel for the appellant/accused mainly submits that there is no material on record to connect the accused with the crime. It is his plea that except the evidence of PW3, who is aged about 10 years, there is no material to show that the accused was responsible for the death of the deceased. He further submits that though it was held that the accused gave false explanation as to how the deceased sustained injuries, but that circumstance alone cannot be made the basis to convict the accused, in view of the evidence of PWs.7 and 8 which gave a totally different version to that of PW1. Apart from that, learned counsel for the appellant would submit that none of the witnesses deposed about the existence of any dispute between the accused and the deceased prior to the incident and even if the entire case is to be accepted to be true, the nature of offence would only be an offence punishable under Section 304 IPC.

4. On the other hand, learned public prosecutor would contend that the evidence of PW8 would show that the accused made a confession before him admitting his guilt, which is sufficient to show that the accused was responsible for the incident. He however, admits that the evidence on record does not establish existence of any motive or any prior quarrel between the accused and the deceased.

5. Having regard to the submissions made, the question that arises for consideration is whether the accused is responsible for

the death of the deceased and if so whether he is liable to be convicted for an offence punishable under Section 302 IPC?

6. PWs.1 and 2 are parents of the deceased, whereas, PWs.3 and 4 are brothers of the deceased. The evidence of PWs.1, 2 and 4 nowhere indicates existence of any prior quarrel between the accused and the deceased from the date of the marriage. The evidence indicates that initially, both of them stayed in the house of PW1 for few days and thereafter they shifted their residence to Syed Sab Street. The evidence on record further establishes that as on the date of the incident, PW3 was staying in the house of the accused and the deceased. The accused was doing business of chicken pakoda and was away from the house most of the time. The evidence of PW3 also discloses that at about 07.30 p.m., he along with the deceased had dinner and then the deceased fed her baby. At about 11.00 p.m., the accused returned home and called the deceased aside for which she refused, stating that the baby was sleeping. It is stated that immediately the accused stabbed the deceased. The evidence on record also shows that soon after the incident the accused is said to have gone to the house of PWs.1 and 2 and enquired about the deceased. Thereafter, all of them went in search of the deceased. About half an hour later, it was informed to PW1 that the body of the deceased was lying at the house of the accused. The evidence of PW8 would show that the accused informed him that he beat his wife twice in the night and by the time they reached the street of the house of the accused, PW8 and others noticed traces of blood, the accused carrying the

body of the deceased in his arms and by shouting he took the body of Rizwana to his house.

7. PW7 in her evidence deposed as under:

“...By the time I wake up to attend for calls of nature, I found Rizwana without saree around her body running in the lane of our house and then fell on the ground. The accused came chasing behind her and lifted her into his hands and carried her towards their house, by holding her jacket”.

This evidence of PW7 gets corroboration from the evidence of PW8.

8. Further, the material on record, more particularly, the answers elicited in the cross examination would show that initially the prosecution has come up with a version that on 03.07.2009 at about 11.00 p.m. when the accused called the deceased to come aside, she refused for the same and as such the accused stabbed her. This version was given a go-by by PW3, during his cross examination which reads as under:

“..It is true that I did not state to the police that the accused called Rizwana to a side and when she refused the accused stabbed her. It is true that I did not state about the arrival of accused and accused leaving the house.

I did not state even to PWs.1 and 2 that accused stabbed the deceased Rizwana. I do not know that Rizwana was stabbed at her sandhu near market and her body was brought by PWs.1 and 2 to the house and later shifted to hospital.”

9. From the above, it is clear that PW3, who was examined as eye witness to the incident neither spoke about the presence of

the accused in the house on the date of incident nor about accused causing injuries to the deceased. Therefore, we feel that his evidence cannot be made basis to show that the accused was present in the house and was responsible for the incident.

10. The next circumstance which is strongly pressed into service by the prosecution is the evidence of PWs.7, 8 and 12 to show that the accused chased the deceased and took her to the house. But the evidence of PWs.1, 2 and 3 would show that the accused along with PW8 went to the house of PWs.1 and 2 and enquired as to whether the deceased came to their house, for which they denied. Pursuant thereto, all of them went in search of the deceased and about half an hour later, it was informed to PW1 that the body of the deceased was lying in the house of the accused. At this stage, we intend to refer to the evidence of PWs.5,7,8 and 12.

11. PW5 in his evidence deposed as under:

“About two years back at about 11.00 p.m., in the night I was sleeping over the terrace of my house. By hearing the shouting in the neighbourhood I woke up and enquired the accused. He stated that his wife is missing. Then I advised him to go to her parents house and enquire for her. After half-an-hour, again I heard the shoutings and I saw the accused carrying his wife inside his house. Munna (PW8) called me to downs stairs and asked me to provide the service of my wife to change the blood stained clothes of the wife of the accused. But I refused to call my wife, because of fear.”

Though this evidence is relied upon by the prosecution, but it does not anywhere indicate that the accused was responsible for

the incident. It only indicates as if the accused brought the deceased to his house with injuries.

12. Coming to the evidence of PW7, who is also neighbour of the house, she deposed as under:

“..on the crucial date of occurrence at about 10.00 or 11.00 p.m., I was lying in front of my house. By the time I wake up to attend for calls of nature, I found Rizwana without saree around her body running in the lane of our house and fell on the ground, the accused came chasing behind her and lifted her into his hands and carried her towards their house, by holding her jacket. On the next morning I was informed that Rizwana died”.

In the cross examination, it was suggested to her that she did not inform about this immediately after seeing the accused and the deceased running in the street, which was denied. Even otherwise, her evidence is to the effect that the deceased who was running without saree on her body in the lane, fell down and then the accused lifted her and carried her to the house.

13. PW8 in his evidence states that about 11.30 p.m., the accused came to his house and asked him to assist him in searching for the deceased. Thereafter, himself along with the accused went to PWs.1 and 2 along with the son of the accused and informed them about missing of the wife of the accused. Later, they proceeded in search of her. In the cross examination, he admits that even prior to the accused coming to his house, he noticed the deceased near a lane in the street with blood stained injuries. However, he admits in the cross examination that the accused did not cause any injuries to the deceased.

14. PW12, who is also one of the neighbour, stated that at about 11.00 p.m., while he was walking in front of his house, he heard shoutings from the house of the accused. He noticed the deceased running out of the house with bleeding injuries and his enquires with the deceased revealed that her husband stabbed her. He also noticed the accused carrying his son on the shoulder. But however, in the cross examination, he admits that he did not witness the accused stabbing the deceased and did not even inform the information given by the deceased with regard to accused stabbing her and that she saw the deceased with bleeding injuries to the police when he was examined during the course of investigation.

15. A reading of the evidence of these witnesses would show as if the deceased was running with injuries followed by the accused and thereafter the accused carrying the deceased to his house, by holding her jacket. The evidence of these witnesses runs contrary to the contents of the inquest report, the panchanama of the scene of offence and also the evidence of the investigating officer. The investigating officer in his evidence admits that at the time of inquest, no witnesses stated about the accused stabbing the deceased. In column III of the inquest report it was mentioned that the deceased fell down in her house with bleeding injuries and at about 01.35 a.m., she was taken in 108 ambulance for treatment. Further, column XV of the inquest report reads as under:

“.....Then the husband of deceased searched about the deceased in surrounding places of his house, but the deceased was not found and then he went to his mother-in-law's house situated at Kotha Kottalu and asked about the deceased, and the mother of the deceased stated that she did not come to her house and then went for the search of the deceased, deceased mother, deceased father who is 2nd witness and deceased brother also searched for the deceased. The husband of the deceased brought the deceased from a lane leading towards Khaleel Basha's Hospital with bleeding injuries and laid in his house. In the meanwhile the father and brother of the deceased went to the house of the deceased and found the deceased with stab injuries and informed the mother of the deceased, immediately the deceased other, father and brother came to the house of the deceased and asked the deceased as to what happened, for which she did not give any reply and thereafter they called 108 ambulance and shifted the deceased in RIMS Hospital, Kadapa.

Later the deceased died on 04.07.2009 at 04.00 a.m., while undergoing treatment in RIMS hospital. Then the dead body of the deceased was shifted to the house of mother of the deceased in SUMO, the husband of the deceased Khader Basha stated to the mother of the deceased that the deceased has fallen from the house and hence the husband of the deceased might have killed the deceased or somebody might have stabbed the deceased with knife and it is unanimous opinion of the panchayatdars”.

16. PW9 the doctor who first treated the injured deposed as under:

“On 04.07.2009 at about 01.35 a.m., the injured was examined by me at RIMS hospital, Kadapa and I found the following injuries:

- (I) One penetrated wound over left breast outer lower quadrant.
- (II) Lacerated over left upper arm. There is a complaint of heavy vaginal bleeding.”

In the cross examination, he states as under:

“The version of the injured regarding the injuries is that by accidental fall from steps she sustained injuries. The injuries found are probable by accidental fall from steps over a sharp object.”

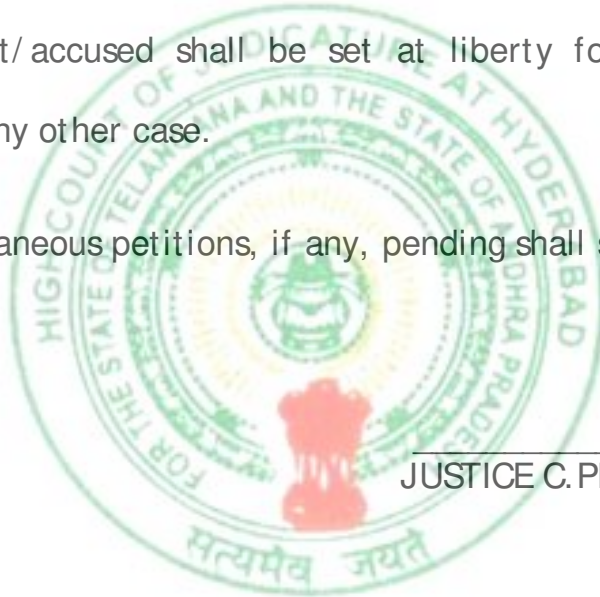
17. From the evidence of PW9 it appears that the deceased sustained injuries when she fell down and not by stabbing. A reading of panchanama of the scene of offence would show as if the dead body was lying in the street from where the deceased was taken to the hospital. Hence, two versions are coming forward. The first version relates to attacking the deceased in the house by the accused when she refused to come aside, as stated by PW3 in his evidence in Court. The second version is the deceased running in the street with injuries and then falling near the house of PW7. But her version of running away does not get corroboration from the evidence of PW8 and on the other hand, the evidence of PW8 would show that even prior to the incident, he noticed the deceased moving in the street and with injuries. If the evidence of PW8 is taken into consideration, the evidence of PWs.1 and 2 runs contrary to what PW8 stated.

18. Further, the incident in question is said to have taken place on 03.07.2009 and the accused was arrested on 31.07.2009. Pursuant to the confession made, blood stained weapon was recovered from the house of the accused. If really the accused was has used the said weapon, he would not have kept the same in the house for such a long time i.e., from 03.07.2009 to 31.07.2009.

19. Having regard to the above doubtful circumstances, we feel that it is a fit case where benefit of doubt can be extended to the accused.

20. Accordingly, the appeal is allowed. The conviction and sentence recorded against the appellant/ accused by name Shaik Khader Basha, in the judgment dated 02.01.2012, in Sessions Case No.383 of 2009, on the file of the I Additional Sessions Judge, Kadapa, for an offence punishable under Section 302 of I.P.C., is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

21. Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

02.04.2018
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