

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON' BLE MS.JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.830 of 2011

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

The sole accused in S.C.No.19 of 2011, on the file of the Additional Sessions Judge, Hindupur, is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Mohammed Irshad, on the intervening night of 12.07.2010. Vide judgment dated 15.02.2011, the learned Sessions Judge convicted the accused for an offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life.

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

(i) PW1 is the brother of the deceased, while PW2 is the mother of PW1 and deceased. PW3 is the son-in-law of PW2. PWs.4 and 6 are neighbours. One Hajeema Bee is the mother of the accused.

(ii) As per the evidence of the witnesses, the accused and his mother were residing in one portion of the house of PW1 on rental basis. The brother of PW1(deceased) developed illegal intimacy with the mother of the accused. In that regard PW1 chastised the deceased to discontinue his affair with the accused, however, there was no change in the attitude of the accused. Since the deceased was continuing his illegal affair with the mother of the accused, PW1

and his family made the accused to vacate the said premises. Two months prior to the date of incident, the deceased was found in the company of the mother of the accused in the house and at that time, the accused threatened the deceased with dire consequences, if they continue their relation. On the date of incident i.e., on 12/ 13.07.2010 at about 01.30 a.m., while PW1 was sleeping on a cot in front of their house, he heard cries of his brother and immediately thereafter, he woke up and noticed the accused hacking the deceased with a sickle on his head, five or six times, resulting in bleeding injuries. On seeing PW1, the accused ran away from the scene armed with sickle. It is stated by PW1 that he identified the accused under the burning light of the house. Immediately, thereafter, they called an ambulance and took the injured to the Government hospital, where the deceased succumbed to injuries. On 13.07.2010 at about 04.00 a.m., PW1 lodged a report before the Circle Inspector(P.W.9), Hindupur II Town Police Station, which came to be registered in Crime No.74 of 2010, under Section 302 IPC. Ex.P1 is the report given and Ex.P7 is the express FIR issued to concerned officers. Immediately, he took up investigation and rushed to the Government hospital, Hindupur, and found the dead body of the deceased in the mortuary. After posting a guard therein, he left the place and went to the scene of offence situated in the house of the deceased. In the presence of PW7 and another, he prepared an observation mahazar of the scene of offence, which is placed on record as Ex.P3. He then prepared a rough sketch of the scene of offence which is marked as Ex.P8.

During the said procedure, he seized M.Os.4 to 8 which are blood stained earth, control earth, blood stained mat, blood stained pillow, blood stained plastic nawaar pieces of cot. From the scene of offence, PW9 rushed to the Government hospital, Hindupur, examined PWs.1, 2, 4 and 6 and recorded their statements. The inquest was conducted between 07.00 a.m. and 09.00 a.m. During inquest, he seized MOs.2 and 3, which are the wearing apparels of the deceased. Ex.P4 is the inquest panchanama. After completing inquest, he sent the body for post mortem examination. PW5 the Deputy Civil Surgeon in the Government hospital conducted autopsy of the dead body at 11.30 a.m. on the same day i.e., on 13.07.2010 and issued Ex.P2 the post mortem report. He noticed five incised injuries on the body of the deceased and one fractured. According to him, the cause of death was due to multiple bleeding injuries on the head of the deceased. He further states that injury No.4, which is incised injury and fracture of the skull itself is sufficient to cause the death of the deceased in the ordinary course of nature. Further investigation was taken up by PW9, who effected the arrest of the accused on 16.07.2010 at about 11.30 a.m. He is alleged to have confessed about the offence leading to recovery of MO1-sickle, which was used in the commission of offence. After collecting necessary documents, a charge sheet came to be filed, which was taken on file as PRC No.53 of 2010, on the file of Judicial Magistrate of First Class, Hindupur. On committal to the Court of the Additional District and Sessions Judge,

Hindupur District, under Section 209 Cr.P.C., the same came to be numbered as S.C.No.19 of 2011.

(iii) On appearance, charge under Section 302 IPC was framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

(iv) In support of its case, the prosecution examined PWs.1 to 9 and got marked Exs.P-1 to P-10 and M.Os.1 to 9. No oral or documentary evidence was adduced on behalf of the defence.

(v) After the closure of prosecution 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.

(vi) Relying upon the circumstances placed on record by the prosecution, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed through a legal aid counsel.

3. Learned counsel for the appellant, Smt.Naseeb Afshan, mainly submits that even accepting the allegations against the accused are true, no offence under Section 302 IPC is made out against him. According to her, the incident in question is an outcome of grave and sudden provocation. It is her version that though the accused and his mother were made to vacate the portion, from house of the deceased, but the deceased and the mother of the accused continued

their relation, which provoked him to commit the offence. She placed reliance on the judgment of the *Apex Court in Budhi Singh Vs. State of Himachal Pradesh* {(2012) 13 SCC 663}, in support of her plea.

4. On the other hand, learned public prosecutor would contend that though the accused and the deceased continued their relation, the manner in which the accused caused the death of the deceased would show that he came to the house of the deceased with a vengeance. Things would have been different, if the incident happened at the house of the accused. Since the accused came to the house of the deceased armed with weapon, it cannot be said that the incident was an outcome of grave and sudden provocation.

5. In order to appreciate the above submission, it would be useful to refer to the evidence of PWs. 1 to 4.

PW1 in his evidence deposed that the accused and his mother were residing in one portion of his house on rental basis. Subsequently, his brother and the mother of the accused developed illicit intimacy. In that regard they chastised the deceased to discontinue the illegal intimacy. About two months prior to the date of incident, the deceased was found in the company of the mother of the accused in her house. The same was noticed by the accused and he is said to have threatened the deceased with dire consequences. Two months thereafter, the incident in question took place. Though PW1 was cross examined at length, nothing useful was elicited to discredit his testimony. On the other hand, in the cross examination

of PW1, the suggestion that the deceased was having number of friends in Hindupur, was denied. The suggestion that PW1 never chastised the accused or his mother for their illicit relationship was denied.

PW2 was also examined as eye witness to the incident. According to her, the accused and his mother entered the house as tenants about six months prior to the incident. The deceased who is the son of PW2 developed illicit intimacy with the mother of the accused, while she was staying as a tenant in her house. In that regard PW2 chastised the deceased and mother of the accused. But, there was no change in the attitude of the deceased. As their relationship continued, they got the house vacated. In spite of it, their illicit intimacy continued. About two months after vacating the house, the deceased was found in a compromising position with the mother of the accused and in that regard the accused is said to have threatened the deceased stating that he would face dire consequences if the said relation is continued. In the cross examination, it was elicited that the family of the deceased chastised the deceased as he was a vagabond. The accused and his mother staying at the house of PW2 was never denied. The suggestion that the deceased was having illicit intimacy with the mother of the accused was not denied.

The evidence of PW3, who is an auto driver and who is the son-in-law of PW2 would show that on the date of incident, on hearing cries, PW2 opened the door, came out of the house and noticed the

accused after hacking the deceased with a sickle, was running away with the sickle on seeing them. Immediately, the injured was shifted to a Government hospital wherein he died. Though PW3 was cross examined at length, nothing useful was elicited. On the other hand, it was elicited that on hearing the cries, PW3 came out of the house and saw the accused running away armed with sickle.

The evidence of PW4 is also to the effect that on hearing the cries, PW2 came out of the house, saw the accused running away after hacking the deceased. He speaks about the presence of PWs.1 to 3 at the scene of offence. He also speaks about the illicit relationship of the mother of the accused and deceased.

6. From the evidence of all these witnesses, it is clear that there was illicit relationship between the deceased and the mother of the accused and inspite of caution by the family members of PW1, there was no change in the attitude of the deceased. As such, the mother of the accused and the accused were asked to vacate the portion of the house. Even then, their illegal relationship continued. Two months prior to the date of incident the accused noticed the deceased and the mother of the accused in a compromising position and hence the accused threatened him with dire consequences. The evidence on record would show that the deceased continued his relationship with the mother of the accused.

7. From the evidence of PWs.1 to 3, it is also clear that on the date of incident, the accused came to the house of the deceased and

hacked him, while he was sleeping on a cot by the side of PW1. On hearing cries, PW1 woke up and saw the accused hacking the deceased. The evidence of PW2 to 4 would also show that on hearing the cries from the house, PWs.2 and 3 came and saw the accused leaving the place after hacking the deceased, they also spoke about accused being armed with a sickle. The evidence of PW4 is to the effect that when he came out of the house, he noticed the accused leaving the place after hacking the deceased. From the evidences of the above said witnesses which remain unimpeached, it is clear that it is the accused alone who was responsible for the incident.

8. The next point that arises for consideration is whether the accused is liable to be punished for an offence under Section 302 IPC or whether the offence can be scaled down to 304 IPC?

9. As stated earlier, the learned counsel for the appellant mainly submitted that since the mother of the accused was maintaining the illicit relationship with the deceased, the accused attacked the deceased out of grave and sudden provocation and hence, the nature of the offence for which the accused has been convicted requires reconsideration. As observed earlier, the accused and his mother were residing in one portion of the house on rent basis, thereafter the deceased and the mother of the accused developed illicit intimacy. About two months prior to the date of incident, the deceased was found in the company of the mother of the accused in her house, then the accused threatened the deceased with dire consequences, but the

deceased continued his affair with the mother of the accused. Two months thereafter, the incident in question took place. It is also to be noted that after vacating the house of P.W.1, the deceased and the mother of the accused continued the relationship. In that regard the accused is said to have threatened the deceased with dire consequences. Under those circumstances, can it be said that there was grave and sudden provocation for the accused in attacking the deceased, falling within the exceptions to Section 300 IPC.

10. The doctrine of grave and sudden provision is incapable of rigid construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury.

11. Another test that is applied more often is the behaviour of the assailant with that of a reasonable person. A fine distinction has to

be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of self-control and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain the dominion over the mind. Once it is a premeditated act with the intention to kill, it will obviously fall beyond the scope of culpable homicide not amounting to murder. (Budhi Singh v. State of Himachal Pradesh¹).

12. At this stage, it would be appropriate to refer to the judgment of the Apex Court in K.M.Nanavati v. State of Maharashtra². In the said case, the deceased-Ahuja was doing business in automobiles and the deceased was killed by the accused-Nanavathi, as the deceased was having illicit intimacy with the wife of the accused. The question that was framed was whether Ahuja gave provocation to Nanavathi within the meaning of explanation and where the provocation if given by him was grave and sudden.

13. The issue was whether a reasonable person placed in the same position as the accused, would have reacted to the confession of adultery by his wife in the manner in which the accused did. It was a case where on 27.04.1959, when they were sitting in the sitting-room for the lunch to be served, the accused put his arm round the wife of the accused affectionately, when she seemed to go tense and unresponsive. After lunch, when the accused questioned her about

¹ (2012)13 Supreme Court Cases 663

² AIR 1962 SC 605

her fidelity, she shook her head to indicate that she was unfaithful to him. Then the accused guessed that her paramour was Ahuja. As she did not even indicate clearly whether Ahuja would marry her and look after the children, he decided to settle the matter with him. Sylvia pleaded with the accused not to go to Ahuja's house, as he might shoot him. Thereafter, the accused drove his wife, two of his children and a neighbour's child in his car to a cinema, dropped them there and promised to come and pick them up at 6.00 p.m., when the show ended. From there he drove his car to his ship, and draw a revolver and six rounds from the stores and went to Ahuja's flat, and committed the offence on the same day.

14. Dealing with the said circumstance viz., as to whether the said act would amount to grave and sudden provocation, the Supreme Court held that the facts of the case do not attract the provision of Section 300 Part I of IPC. According to them the conduct of the accused shows that the murder was a deliberate and calculated one. It was held that even if any conversation took place between the accused and deceased in the manner described by the accused, it does not effect, the accused entering into the bedroom of the deceased to shoot him. Having regard to the above, the court convicted the accused under Section 302 IPC and sentenced to suffer imprisonment for life.

15. Learned counsel for the appellant relied upon the judgment of Budhi Singh's case in support of her plea. But it is to be noted here

that in Budhi Singh's case the situation was different. It was a case where on 09.11.2000 there was a quarrel between Gangaram and his father and during the fight between the father and the son, D.W.1 struck a danda blow on Gangaram. He shouted for help and called his son Budhi Singh who was inside the house. On hearing the shouts of his father, Budhi Singh came to the spot armed with a tobru(a small axe) in his hands, and inflicted a tobru-blow on the skull of Ganga Ram. As a result of which Ganga Ram sustained injuries on his head and fell down. The wounds of Ganga Ram were profusely bleeding. Budhi Singh, accused and his father, D.W.1 went to their house leaving Ganga Ram in the injured condition in the field. After some time they came back to the field and carried Ganga Ram to the verandah of their house, but by that time, Ganga Ram died due to injuries inflicted upon him. Having regard to the manner in which the incident took place and taking into consideration the fact that there was a quarrel prior to the incident; and as there was no previous enmity between the families of the deceased and appellant the court observed that the case would fall under exception to Section 300 IPC and accordingly convicted under Section 304 Part I IPC.

16. As stated earlier, situation on hand is different. In the instant case, the deceased was having illicit relationship with the mother of the accused. Originally, they were tenants in the house of P.W.1 and the deceased. Subsequently, on coming to know about the illicit relationship, P.W.1 and his mother sent away the accused and his mother from the said house. In spite of the fact that they vacated the

house, the relationship between them continued, because of which the accused is said to have threatened the deceased with dire consequences. On the date of incident, the accused came to the house of the deceased armed with a sickle and hacked him, while he was sleeping on a cot by the side of P.W.1. Had it been a case where the accused hacked the deceased while he was in compromising position with his mother in his house, things would have been different, but in the instant case the accused armed with an axe, came to the house of the deceased and hacked him while he was sleeping. It cannot be said that the incident of attacking the deceased in the house of the deceased in the midnight was an act of provocation. Definitely it can be said that no reasonable man placed in the position of the accused would have lost self-control momentarily or even temporarily, since the incident of his mother having intimacy with the deceased was in vogue since quite sometime and because of that intimacy they were sent out of the house of P.W.1 and the deceased. It is not as if the accused came to know about the same on that day, which provoked him to attack the deceased. He was aware about the same since quite longtime as they were sent out the house because of that. Therefore, it cannot be said that the previous act of the deceased has caused sudden and grave provocation for committing the offence. Further, the medical evidence, which has been placed on record through P.W.5 show that there were about 5 inside injuries viz., over the frontial area of scalp; over the front parietal area upto skull bone; over the occipital area upto skull bone; skull fractured

brain matter is coming from wound. There were multiple fractures on the skull which indicates the manner in which he attacked the deceased. Having regard to the above, we feel that the accused is liable for conviction under Section 302 IPC and sentence of imprisonment of life awarded by the trial court under Section 302 IPC warrants no interference.

17. In the result, the Criminal Appeal is Dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

Dt:08.02.2018

VHB/ GM