

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1297 of 2012

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

The sole accused in S.C.No.142 of 2009, on the file of the II Additional Metropolitan Sessions Judge, Hyderabad, is the appellant. He was tried for the offence punishable under Section 302 IPC, for causing the death of his wife Smt.Laxmi Bai, on the intervening night of 21/ 22-04-2008 at Sanjay Nagar, Ziaguda, Hyderabad, by strangulating her neck with a saree.

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

(i) The accused is the husband of the deceased, while PW2 is their son. PW1 is the brother of the deceased. PW2 is the son of the deceased.

(ii) There were some disputes between the accused and the deceased with regard to selling of the house. The accused was insisting the deceased to sell the house, for which she was refusing to do so. On the date of incident also there was a quarrel between the accused and the deceased with regard to selling of the house, as proposed by the accused. When the deceased did not agree for the same, the accused strangulated the deceased with a saree by putting it around the neck. PW2 who saw the incident deposed that on the following morning, the accused left the house stating that his mother

(deceased) was suffering with head ache. PW2 informed about the incident to one Sharnappa, Umesh and Nirmala, who were tenants in the house. He also informed about the same to PW1, who is the maternal uncle of PW2. Thereafter, PW1 and Sharnappa took the deceased in the auto, and brought her back stating that she is dead. On the same day, i.e., on 22.04.2008, at about 10.30 a.m., while PW6 was in the police station, Kulsumpura, PW1 lodged a written report Ex.P1, basing on which a case in Crime No.69 of 2008 came to be registered under Section 302 IPC. Ex.P7 is the FIR. PW6 who took up the investigation, visited the scene of offence, prepared a crime scene observation panchanama in the presence of PW5, which is marked as Ex.P3. During the said proceedings, he seized MO.1, green colour flower designed saree, lying on the cot. He also prepared a rough sketch of the scene, which is placed on record as Ex.P4. Ex.P5 is bunch of photographs of the crime scene. Later, he conducted inquest over the body of the deceased, in the presence of PWs.5 and another, which is marked as Ex.P6. During inquest, he examined and recorded the statements of PWs.1 and another and thereafter sent the body for post mortem examination. PW3, the Tutor in the department of forensic medicine, Osmania Medical College at Hyderabad, conducted autopsy over the dead body on 23.04.2008 and issued Ex.P2 the post mortem examination report. According to her, the cause of death was due to strangulation. PW6 continued with the investigation and arrested the accused on 02.05.2008 at about 04.45 p.m. at Seerthalamathala temple, Jummerath bazaar.

(iii) After completing the investigation, he filed a charge sheet, which was taken on file as PRC No.53 of 2008, on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad. On committal to the Court of the II Additional Metropolitan Sessions Judge, Hyderabad, the same came to be numbered as S.C.No.142 of 2009.

(iv) On appearance, a 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.

(v) In support of its case, the prosecution examined PWs.1 to 6 and got marked Exs.P-1 to P-7 and M.O.1. No oral or documentary evidence is adduced on behalf of the defence.

(vi) After 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.

(vii) 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 legal aid counsel.

3. Learned counsel for the appellant mainly submits that there is any amount of doubt as to whether PW2 could have really seen the incident. He relied upon the admissions of PW2 in the cross examination to show that the deceased must have been slept by the time the incident took place and as such, he witnessing the incident would not arise. He further submits that when one Sharnappa came

and informed PW1 about the deceased lying in their house, there was no response from PW1, who subsequently set the law into motion narrating the facts. In view of the said discrepancy, he tried to point out that PW2 never saw the incident.

4. On the other hand, learned public prosecutor would contend that PW2 is a natural witness and he being the son of the accused and deceased, one cannot rule out his presence in the house at the time of incident. Definitely, his version assumes importance, in view of the independent evidence of PW4, to whom, he informed about the incident immediately. Having regard to the above, learned public prosecutor submits that the findings warrants no interference.

5. The question that arises for consideration is whether the accused is responsible for the incident and if so, whether he can be convicted for an offence punishable under Section 302 IPC?

6. It is to be noted here that the entire case rests on the evidence of PW2, the eye witness. In his evidence, PW2, who is the son of the deceased and accused, deposed as under:

“About one year ago my father came to the house during night time after days work. There was quarrel between my father and mother since my mother did not agree to sell the house as proposed by my father who is the accused. The accused strangled my mother with the help of saree putting on her neck.”

7. The chief examination of the PW2 was recorded on 26.05.2009, and the cross examination was recorded as NIL since the counsel was not present. Ten days thereafter, an application was filed to recall PW2, pursuant to which PW2 the child witness was recalled. In his

cross examination, he states that he used to go to school from his house at 09.00 a.m. and return home by 03.00 p.m. After dinner, he used to go for sleep at about 10.00 p.m. He further admits that when his father came home in an intoxication state, he was sleeping by then. It was suggested that PW2 has not seen the incident at all, but the same was denied by PW2. Taking into consideration the admissions elicited in the cross examination of PW2, learned counsel for the appellant tried to contend that PW2 has not seen the incident and his version is a tutored one. PW2 is the son of the accused and the deceased, who was aged about 10 years at the time of incident. His presence in the house at the time of incident cannot be doubted. The scene of offence panchanama, which has been prepared would show that the deceased was living in a house which has two portions. The sketch of the scene, indicates that the accused and the deceased were sleeping in a small room. That being the position, possibility of PW2 waking up on hearing the quarrel between the accused and the deceased and then witnessing the incident cannot be said to be improbable. What has been elicited from PW2 relate to normal routine of PW2 going to school, coming back home and then going to bed. Apart from that, the evidence of PW2 would show that on the next day morning, the accused left the house informing PW2, the deceased was having headache. Though PW2 was cross examined at length, nothing useful was elicited to disbelieve her version. Apart from that the evidence of PW1 shows that on coming to know about the body of the deceased lying in the house, he went to the house, enquired PW2 who informed him the manner in which the deceased

was killed. Therefore, it cannot be said that PW2 has not witnessed the incident. His evidence gets corroboration not only from the evidence of PW4, but also from PW3, the doctor, who conducted post mortem examination. The evidence of these witnesses make it clear that it was the accused alone who is responsible for the incident, moreso, having regard to the conduct of the accused leaving the house in the morning stating that the deceased was suffering with headache, by which time she was dead.

8. The next question that arises for consideration is whether the accused can be convicted under Section 302 IPC?

9. As seen from the record, there was no prior enmity or animosity between the accused and the deceased. PWs.2 and 4 in their evidence deposed that there were frequent quarrels between the accused and the deceased with regard to selling of the house. Even on that day, the evidence on record discloses that the accused came to the house in a drunken condition and picked up a quarrel with the deceased with regard to selling of the house. In the said quarrel, the accused is said to have strangled the deceased with the help of a saree worn by the deceased.

10. From the above, it is clear that if really the accused had any intention, definitely he could have come armed with a weapon, to kill the deceased. In the instant case, as stated earlier, in the course of quarrel between both the parties, the accused tied a saree around the neck and killed the deceased.

11. In an identical case, i.e., in KOTHALA SRINU v. THE STATE OF ANDHRA PRADESH¹, this Court held as under:

“14. From the consistent evidence of the prosecution witnesses, it is clear that the appellant was not leading a disciplined life. He used to come home after consuming alcohol after his marriage, every night and pick up quarrels with the deceased. Though he appeared to have been harassing the deceased, there is no evidence to show that he had ever attempted to do away with her life. Even according to the version of the deceased, as reflected from her both the dying declarations, even on the fateful day, a quarrel ensued between them, leading to her suffering burns. In the manner in which the occurrence has taken place, as reflected from the evidence on record, we have no doubt in our mind that the appellant had no intention of killing his wife. However, due to the serious quarrel between them, the appellant probably, in a fit of rage, would have set fire to the deceased. This conclusion of ours is firmed up by the fact that at the time of occurrence, the appellant was in a drunken condition and that he has brought kerosene from a bottle lamp and poured the same on the deceased which shows that he would not have had the premeditation of causing the death of the deceased. The further fact that the burns were only 55% and they have not cause immediate death –the deceased died five days after the occurrence –also shows that the appellant had no intention of causing the death of the deceased. Therefore, we feel that this is a fit case to convict the appellant for the offence under Section 304 Part-II I.P.C and accordingly, we modify the judgment of the Court below to this effect. As regards the sentence, having regard to the nature of the offence, we feel that interests of justice would be met if the appellant is sentenced for a period of seven years, besides a fine of Rs.500/-”.

¹ 2016 (2) ALD (CrI.) 412 (AP)

12. Further, in DEVENDRANATH SRIVASTAVA², the Apex Court dealt with a situation where, there was a quarrel between the husband and wife when the husband was in drunken condition, and subsequently, the dead body of the wife was found in the house. No explanation was given by the husband as to how his wife died. In the facts of the said case, the Apex Court convicted the accused under Section 304 Part II IPC, and not under Section 302 IPC.

13. In the absence of any disputes other than the one referred to above and as the incident in question took place, while the accused was in an inebriate condition; and as no weapons was said to have been used at the time of the incident and in view of the judgments referred to above, we feel that the offence can be scaled down from Section 302 to Section 304 II.

14. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in the judgment dated 23.07.2009, in Sessions Case No.142 of 2009 on the file of II Additional Metropolitan Sessions Judge, Hyderabad, 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 eight years. Since it is represented that the accused is in jail since 2008, the period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused shall be set at liberty

² AIR 2017 SCW 612

forthwith on completion of eight years rigorous imprisonment, if not required in connection with any other case.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

N.BALAYOGI, J

04.01.2018
vhb

