

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SMT.JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.471 of 2012

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

The sole accused in S.C.No.46 of 2009, on the file of the Additional District and Sessions Judge, West Godavari District, Kovvur, is the appellant. He was tried for the offence punishable under Section 302 IPC, for causing the death of his wife Modakam Ramalakshmi, on 08.06.2008 between 08.00 p.m. and 09.00 p.m. at Itikalakota village, Polavaram Mandal, West Godavari District. Vide judgment dated 14.02.2012, 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.1,000/- in default to undergo rigorous imprisonment for two months.

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

(i) PW1 is the sister of the deceased, while PW2 is the son of the accused and deceased. The accused is the husband of the deceased. PW4 is the wife of PW3, while PW5 is the daughter of the deceased. PW6 to 10 are residents of Itikilapadu village.

(ii) As per the evidence of the witnesses, there were frequent quarrels between the accused and the deceased. The evidence of PW5 would show that her parents used to frequently quarrel and both

of them used to drink alcohol. On the date of incident, PW.2 and his brother went to Gubbamma Gudi, Kamavaram village, Buttaigudem Mandal. At 12.00 p.m., when they went to the temple, their parents, who are accused and the deceased, were in the house. On the next day, when they returned home and enquired PW1, she stated that his father beat his mother, because of which she fell down unconscious. PW1 in her evidence stated that on receipt of information about the injuries sustained by the injured, she rushed to the house of the accused and found her sister at the back side of the house with bleeding injuries. Then, the neighbours, who gathered there, called 108 ambulance and shifted the injured to the Government hospital, Rajahmundry. The evidence of PWs.3 and 4 would show that the accused used to quarrel with the deceased everyday. On the date of incident also the accused and his wife were quarreling, but as it was a routine matter, PW3 slept in his house. On the next day morning, PW3 saw the deceased lying on the back side of the house in an unconscious state, which fact was informed by PW3 to PW1. Similar is the version of PWs.4 and 6. The evidence of PW7, who is the neighbour, would also show that he used to see the accused and the deceased quarreling and prior to the date of the death of the deceased, there was a quarrel at 05.00 p.m. As it was a routine quarrel, he did not interfere. On the next day morning, he found the deceased lying unconscious by the side of the house. The said version was also spoken to by PWs.8 and 9. On 09.06.2008 at about 02.30 p.m., PW14 the Head Constable, Polavaram Police Station, received an intimation from the Government hospital, Polavaram,

about the admission of the injured in the hospital, pursuant to which, he proceeded to the hospital. He could not record the statement of the injured as she was in unconscious state and hence recorded the statement of PW1, the sister of the deceased. Since the patient was unconscious and the statement of PW1 does not bear full details of the offence, PW14 made a GD entry. He also states that he did not notice any visible injuries on the body of the deceased, when he went to the hospital. On 11.08.2008, at about 08.00 a.m., PW16 received the death intimation from the Government Hospital, Rajahmundry. On receipt of the same, he registered Crime No.41 of 2008 under Section 174 Cr.P.C. of Polavaram Police Station. Ex.P9 is the death intimation. Ex.P10 is the registered FIR. PW16 proceeded to the scene of offence and in the presence of mediators, prepared a rough sketch, which is placed on record as Ex.P11. He also prepared observation report of the scene, which is marked as Ex.P12. Thereafter, he conducted inquest over the dead body in the presence of PW12. Ex.P5 is the inquest report. He got photographed the scene of offence. Ex.P12 is the bunch of photographs. Thereafter, he sent the body for post mortem examination. PW11, the Deputy Civil Surgeon, Government Hospital, Tuni, conducted autopsy over the dead body. At about 06.30 p.m., he issued Ex.P3 the post mortem certificate. According to him, the death was due to head injury. Subsequent investigation was taken up by PW17. He verified the investigation done by PW16 and also checked up the statements recorded by the earlier investigating officers. On 15.06.2008, at about 02.30 p.m., on receipt of credible information about the

accused, PW17 along with his staff reached Gunjavaram cross road of Repallivada, and apprehended the accused. Pursuant to the confession made, he seized Billedu stick from the house of the accused under the cover of mahazar.

(iii) After collecting necessary documents, he filed charge sheet, which was taken on file as PRC No.56 of 2008, on the file of Judicial Magistrate of First Class, Jangareddygudem. On committal to the Court of the Additional District and Sessions Judge, West Godavari District, Kovvur, the same came to be numbered as S.C.No.46 of 2009.

(iv) On appearance, charges under Sections 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 17 and got marked Exs.P-1 to P-13 and M.Os.1 to 3. Out of 17 witnesses examined by the prosecution, PWs.6 and 10 did not support the prosecution case and was treated hostile. 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 even accepting the allegations against the accused is true, there are no eye witnesses to the incident and the case rests on circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events, so as to connect the accused with the crime. Even if the accused was present at the time of incident, he submits that it cannot be said that there is any amount of certainty that it was the accused alone who caused the death of the deceased.

4. On the other hand, learned public prosecutor would submit that the evidence of PWs.2, 3, 4 and 5 amply establish presence of the accused in the house and he quarreling with the deceased. In the absence of any explanation as to how the deceased died, when the body of the deceased is found outside the house, he stated that the accused can be held liable.

5. The point that arises for consideration is whether the accused can be held liable for the offence and if so as to what extent?

6. It is not in dispute that there are direct eye witnesses to the incident and the cases rests on circumstantial evidence. The main circumstance relied upon by the prosecution is with regard to the accused being seen in the company of the deceased, on the date of incident. In order to appreciate the same, the prosecution placed on record the evidence of PWs.1 to 7. The evidence of PWs.4,5 and 8 would show that the accused and the deceased were in a habit of quarreling every day. On the day prior to the incident, there was a

quarrel between the accused and the deceased and since it was a routine quarrel, none of them interfered. The eye witnesses, more particularly, PW8, state that when he peeped through the window, he noticed the accused beating the deceased with hands and legs. On the next day morning, the body was found lying at the back side of the house. The same was informed to PW1 and thereafter they called for an ambulance and took the deceased to the Government hospital for treatment, wherein she died on the next day. The said intimation was received by the police on 11.06.2008. In order to appreciate the same, it would be useful to extract relevant portion of PWs.3, 4, 5, 8 and 7, which is as under:

PW.3 in his evidence deposed as under:

“The accused by consuming alcohol every day used to quarrel with the deceased. On the day of her death it was raining. The accused and his wife were quarreling. As it is routine matter, I slept in my house. On the next day morning I saw the deceased lying on the back side of the house unconscious”.

PW4 in her evidence deposed as under:

“The deceased and accused used to quarrel frequently. Ramalakshmi died 3 years ago. As usual the deceased and accused were quarreling in that night. By the early hours in the morning when I saw Ramalakshmi was lying by the side of her house”.

PW5 in her evidence deposed as under:

“My parents used to frequently quarrel, both of them used to drink alcohol. My mother died 3 years ago. At the time of death of my mother my marriage took place and I was staying at Kannapuram”.

PW7 in his evidence deposed as under:

“I used to see the accused and the deceased quarreling and fighting. I did not go near to their quarrel. Prior to the death of Ramalakshmi there was quarrel at about 05.00 p.m.. The accused in that quarrel beat the Ramalakshmi with a stick. As it is routine quarrel I did not intervene to separate them. On the next day morning while it was raining, as Ramalakshmi was lying unconscious by the side of her house”.

PW8 in his evidence deposed as under:

“Since it is a routine quarrel, I peeped through the window and came out. When I saw the accused was beating Ramalakshmi with hands and legs. Some neighbours gathered when I peeped through the window. On the next day morning on seeing the people gathering at the house of the accused and the arrival of ambulance, I went to that place.

7. Though all the witnesses were cross examined, nothing useful was elicited to discredit their testimony. Similarly, PWs.2 and 3 states that on that day, at about 12 midnight, PW2 along with his brother went to Gubbamma Gudi, Kamavaram village, Buttaigudem Mandal, by which time, the accused and the deceased were present in the house and on the next day morning at about 03.00 p.m., they returned and it was informed to them about the incident by PW1. However, PW1, in their evidence, does not anywhere say about furnishing such information to PWs.2 and 3. The fact that the accused was present in the house, at the time of incident, stands established not only from the evidence of PW2, who is the son of the deceased, but also from the evidence of other witnesses, who heard the quarrel between the accused and the deceased on that day. Since that was a regular quarrel, none of them intervened.

Therefore, the argument of the counsel for the appellant that the accused was not present cannot be accepted.

8. The question is whether the accused can be convicted for the offence punishable under Section 302 IPC?

9. As seen from the evidence of witnesses, the accused used to drink everyday and quarrel with each other. Since it was a regular quarrel, none of them interfered in the quarrel. On the date of incident, as well, there was a quarrel between the accused and the deceased and both of them have consumed liquor. It is not as if the quarrel which took place was a new one, as the evidence of witnesses show that, both of them used to quarrel everyday. The record also discloses that when PW8 peeped through the window, he noticed the accused beating the deceased with hands and legs by which it can be said that the accused never had any intention or motive to kill the deceased. It appears that both of them quarreled with each other and pursuant to the said quarrel, the accused used to beat the deceased with his hands and legs. On the date of incident also there was a quarrel and in the said quarrel, the accused is said to have beat on the cheek of the deceased. None of the witnesses depose about usage of any weapon by the accused. The investigating officer PW17, who claimed to have arrested the accused only speaks about the recovery of clothes and not of any weapon alleged to have been used. Even the evidence of the post mortem doctor is to the effect that there was only one contusion in the right cheek and skull; on opening the skull there was a laceration of the brain with collection of blood

at its base; there was a fracture of 5th rib on the right side. According to the doctor, these injuries were possible by coming into contact with a blunt object.

10. PW7 in his evidence deposed that at the time of quarrel which took place about 05.00 p.m. previous day, the accused beat the deceased with a stick, but the stick was not seized. On the other hand, the public prosecutor never asked the doctor whether the said injuries are possible with the stick alleged to have been used by the accused, on the date of commission of offence. On the other hand, PW7 stated that when he peeped through the window, he noticed the accused beating with his hands and legs. The suggestion given to the Doctor was that the injury is possible by coming into contact with hard substance and when the deceased was about to fall.

11. From the above suggestion, doubt arises as to how the deceased sustained injuries. Admittedly, the death was due to head injury and there was only one contusion on the right cheek, which could have been possible with a blunt object. In the cross examination, the doctor further admits that he did not notice any fracture, in the post mortem examination.

12. Having regard to the above, doubt arises as to how the deceased sustained injuries. Whether it was due to attack with the stick or whether it was due to beating with hands and legs or when she was about to fall on the ground after she receiving the injuries.

13. PW7 in his evidence states that at 05.00 p.m., the accused beat the deceased with a stick, whereas, PW8 states that on hearing the

quarrel, when he peeped through the window, he noticed the accused beating with hands and legs.

14. 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

¹ 2016 (2) ALD (CrI.) 412 (AP)

sentenced for a period of seven years, besides a fine of Rs.500/-”.

15. 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.

16. Having regard to the above and as the quarrel between the accused and the deceased was regular quarrel and taking into consideration the nature of injuries inflicted on the body of the deceased, we feel that the accused never had any intention to cause death of the deceased. At most, it can be said that his intention was only to cause bodily injury to the deceased, which is evident from the nature of the injuries said to have been caused by the accused in the regular quarrel. It can only be said that there was quarrel and in the quarrel, he beat the deceased. Further, the accused only had knowledge that injury may lead to the death of the deceased, but definitely it can be said that he had no motive or intention to kill his wife.

17. Taking into consideration the facts under which the incident in question took place, it can be said that an offence under Section 302 IPC has not been made out by the prosecution. Having regard to the

² AIR 2017 SCW 612

judgments of the Apex Court referred to above, we feel that the accused cannot be fastened with the liability under Section 302 IPC, but it is a fit case to convict the appellant for an offence punishable under Section 304 Part-II I.P.C.

18. In the result, the Criminal appeal is partly allowed. The conviction and sentence recorded against the appellant/accused in S.C.No.46 of 2009 on the file of the Additional District and Sessions Judge, West Godavari District, Kovvur, for an offence punishable under Section 302 IPC is scaled down to one under Section 304-II IPC. For the altered conviction, the petitioner is sentenced to undergo rigorous imprisonment for a period of seven years. If the accused has completed seven years of imprisonment, including remissions, if any, he is entitled to, he shall be set at liberty forthwith, if he is not required in connection with any other case.

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

C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

02.01.2018
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