

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.28 of 2012

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

1. The sole accused in S.C.No.705 of 2010 on the file of I Additional Sessions Judge, Guntur, is the appellant. He was tried for an offence punishable under Section 302 of IPC, for causing the death of his wife Shaik Shamshad, by pressing her neck. Vide judgment dated 02.08.2011, 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/-, in default to undergo simple imprisonment for one month. Assailing the same, the present criminal appeal came to be filed.

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

(i) The accused is the husband of the deceased. PW1 is the resident of Ambati Nagar, Sriram Nagar, Yerrabalem village and niece of the deceased.

(ii) The accused and his wife used to reside in Sriram Nagar, Yerrabalem, since three years prior to the death of the deceased. Out of wedlock they were blessed with two sons. It is stated that as the accused used to harass the deceased by consuming liquor,

the accused and the deceased were brought to Sriram Nagar by their relatives and were residing near the house of PW1. Even after shifting of their residence to Sriram Nagar, the accused continued to harass the deceased. On 17.05.2010, at about 07.00 p.m., one Shaffian, son of the accused and the deceased, came to the house of PW1 and told her that his father was beating his mother. Immediately, PW1 rushed to their house, found the deceased lying on a cot, accused was squeezing the neck of deceased with his left hand and beating her with right hand. PW1 went to her rescue, but the accused pushed her aside, pursuant to which she ran out of the house raising cries stating that the accused was killing the deceased. On hearing the same, PWs.2 and 3 came there and then PWs.2 and 3 along with PW1 entered the house of the accused, pushed him aside and found the deceased lying unconscious. Immediately, she was shifted to Satyanarayana Reddy Hospital, Mangalagiri, where the doctor declared her as dead. Then the body was brought to the house of PW1. On the next day morning, PW1 lodged a report – Ex.P1 at Mangalagiri Police Station, basing on which, PW7 the Sub-Inspector of Police, registered a case in Crime No.84 of 2010 and issued Ex.P4 – the FIR. PW9 the Inspector of Police took up further investigation and proceeded to the scene of offence. In the presence of mediators, PW6 and one Shaik Subhani, PW9 examined the house of the accused and also prepared a rough sketch and observation report, which are placed on record as Exs.P6 and P2 respectively. Thereafter, he conducted inquest over the body of the deceased at

the house of her parents in the presence of panchayatdars, who opined that the cause of death was due to throttling. Ex.P3 is the inquest report. Subsequent to the inquest, the body was sent for post mortem examination. PW8 the Civil Assistant Surgeon, Government Hospital, Mangalagiri, conducted autopsy over the body of the deceased and issued Ex.P9 the post mortem certificate. According to PW8, the cause of death was Asphyxia due to throttling. He found fractured Hyoid bone, neck structure and airway ruptured and small haematoma with congestion. PW9 continued with investigation. He examined PWs.4 and 5 and arrested the accused on 19.05.2010. After completing the investigation, he filed a charge sheet which was taken on file as PRC No.59 of 2010 on the file of Judicial Magistrate of I Class, Mangalagiri.

(iii) On appearance of the accused, the Magistrate furnished copies of documents to the accused as contemplated under Section 207 of Cr.P.C. and on committal, the same came to be numbered as S.C.No.705 of 2010.

(iv) Basing on the material available on record a charge under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 9 and got marked Exs.P1 to P7.

(vi) 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. No oral or documentary evidence was adduced by the accused in support of his defence.

(vii) Relying upon the evidence of PWs.1 to 3 coupled with the evidence of PW8, 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 even accepting the entire case to be true, no offence under Section 302 IPC is made out against the accused. According to him, the incident in question is preceded by a quarrel and as the accused was in a drunken condition at the time of incident, pleads that no offence under Section 302 IPC is made out against the accused and the offence can be scale down to Section 304 IPC.

4. On the other hand, the public prosecutor would contend that in the absence of any evidence to show that there was quarrel and that the accused was in a drunken condition at the time of incident, the question of scaling down of the offence to Section 304 IPC does not arise.

5. The point that arises for consideration is whether the offence can be scaled down to Section 304 IPC?

6. In order to appreciate the rival submissions made by both the counsels, it would be useful to refer to the evidence of PWs.1 to 3, who were examined as eye witnesses to the incident. As seen from the record, the evidence of PW1 would show that the son of the accused and the deceased came to her and informed that his father was beating his mother. On receipt of the said information, PW1 proceeded to the house of the accused and found the deceased lying on the cot and accused squeezing the neck of the deceased with his left hand and beating her with right hand. When she went to her rescue, the accused pushed her aside. Immediately, she ran away raising cries. The evidence of PW.2 would show that on 17.05.2010 at about 07.30 p.m., while he was chitchatting with PW3 in front of their house, the son of the accused came to PW1 and told her that his father was beating his mother, pursuant to which PW1 ran to the house of the accused. After some time, PW1 came to PWs.2 and 3 stating that the accused was killing his wife. Immediately, all of them rushed to the house of the accused and saw the deceased lying on a cot and the accused squeezing her neck with left hand and slapping her with his right hand. All of them came to the rescue of the deceased and shifted her to the hospital, wherein she was declared dead. The said version of PW2 gets corroboration from the evidence of PW3, who was also examined as an eye witness to the incident. Though all the three witnesses were cross examined at length, nothing useful was elicited to discredit their version.

7. As stated earlier, the only plea taken by the counsel for the petitioner is the existence of quarrel between the accused and deceased prior to the incident. From the evidence of all the three witnesses, it is clear that on the date of incident, they saw the accused squeezing the neck of the deceased with his left hand and beating her with his right hand. The cause of death, as per the post mortem report given by PW8 was Asphyxia due to throttling. The doctor also noticed fracture of the hyoid bone. He also noticed neck structure and airway ruptured, and small haematoma with congestion. As the evidence of PWs.1 to 3 gets corroborated with the evidence of the doctor, it can be held without hesitation that the accused alone was responsible for the death of the deceased.

8. The other ground urged by the counsel for the appellant is that the incident was preceded by a quarrel and as such nature of offence requires to be scale down. But no witnesses speak about any quarrel prior to the incident. It was not even suggested to any of the witnesses that the incident in question was preceded by any quarrel. To a suggestion that the accused beat the deceased and squeezed her neck was not denied by PWs.1 to 3, who witnessed the incident. From the evidence of PWs.1 to 3, it is clear that neither of them spoke about any existence of any quarrel prior to the incident and also about the accused coming home in a drunken condition. Infact, neither any suggestions were given to that effect nor did the witnesses speak about it during their examination.

9. In view of the above and in the absence of any evidence on record, we cannot presume and hold that there was a quarrel pursuant to which the incident in question took place.

10. Hence, we see no reasons to either acquit the accused or to scale down the offence to one under Section 304 IPC.

11. In view of the evidence of PWs.1 to 3, who are the direct witnesses to the incident and whose evidence remained unimpeached, the appeal is dismissed confirming the conviction and sentence dated 02.08.2011, passed in Sessions Case No.705 of 2010 on the file of the I Additional Sessions Judge, Guntur.

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



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

27.03.2018
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