

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1295 OF 2012

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

The sole accused in Sessions Case No.275 of 2012, on the file of Special Judge for Trial of Cases under the Scheduled Castes and Scheduled Tribes (POA) Act-cum-VIII Additional District Judge at Nizamabad, is the appellant. He was tried for an offence punishable under Section 302 of IPC, for causing the death of one Kadamalla Vijaya Rao. *Vide* its judgment dated 08.11.2012, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.500/- in default to suffer simple imprisonment for one month.

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

PW1 is the Assistant Divisional Engineer DPE-1, Electricity Department, Nizamabad Town. The deceased Vijaya Rao worked as Additional Assistant Engineer DPE-1, Electricity Department, Nizamabad. On transfer from Karimnagar, the deceased joined at Nizamabad on 29.04.2011.

PW2 is the wife of the deceased and PWs.3 and 4 are the employees of the Department; while PW3 was working as Driver, PW4, who is the younger sister of PW5 and married PW3 subsequent to the incident, was residing in one of the rooms of the guest house along with PW5 and his wife. PW5 was the then watchman of the guest house. PW7 is the Assistant Engineer working in DPE-II; while PW8 was working as

Senior Assistant in the Electricity Department and who knows the deceased.

3. The evidence on record shows that there are four rooms in the guest house including one hall. PW5 used to stay in one room, the deceased used to stay in one room and the accused used to stay in the first room of the guest house *i.e.*, the drawing room. The deceased used to leave the guest house in the morning and return to the guest house at about 11:00 or 11:30 P.M. The accused, who was sleeping in the drawing room, was not in the habit of opening the door planks whenever deceased used to knock the doors. As such there were quarrels between the accused and the deceased. It is said that on one occasion, the deceased warned the accused that, in future, if he fails to open the door, he would be sent out of the guest house; to which the accused replied that number of officers have come to the guest house but nobody has sent him out.

4. The evidence on record also establishes that PW4 was also staying in one of the rooms of the guest house. Her evidence discloses that on the date of the incident at about 09:30 P.M. when she was present in the guest house, PW3 came to her room in the night and after his arrival they heard some sound from the other room, in which the deceased was staying. On hearing the same, she along with PW4 went towards the room of the deceased and, by the time they reached there, they found the accused coming out of the room of the deceased. Then they went inside the room of the deceased and found the deceased with bleeding injuries. Their evidence shows that there were disputes between the accused and deceased, even prior to that incident. The information about the alleged incident was informed to PW1 through A.Ramesh, who was working as D.E.E. in the Electricity Department. On receipt of the said information, PW1 visited the scene of offence and noticed injuries on the head of the

deceased. PW1 enquired with PWs.3 and 4 as to the manner in which the incident occurred and thereafter lodged a report, Ex.P1, with B.Narahari, Sub-Inspector of Police, Nizamabad V Town Police Station. Basing on which, a case in Crime No.205 of 2011 for the offence punishable under Section 302 IPC was registered and Ex.P10 FIR was issued. Thereafter further investigation was taken up by PW13, B.Sai Sree, the Probationary Deputy Superintendent of Police, who was in-charge of Circle Inspector, Nizamabad Rural Circle.

5. After taking over the investigation, PW13 visited the scene of offence, examined PWs.1 to 9 and prepared the panchanama of the scene of offence in the presence of panch witnesses. Ex.P3 is the scene of offence panchanama. During the said proceedings, she seized blood stained half banian, black colour cut drawer and pink blue light linings lungi under the cover of seizure panchanama Ex.P5. She also got prepared a rough sketch of the scene of offence vide Ex.P4, in the presence of PW10. As the death was instantaneous, PW13 conducted inquest over the dead body in the presence of PW10. Ex.P6 is the inquest report. Thereafter, the dead body of deceased was sent for post-mortem examination.

6. PW12 Dr.M.A.Quadeer, the Civil Assistant Surgeon, Government Head Quarters Hospital, Nizamabad, conducted autopsy over the dead body of deceased and issued Ex.P9 post-mortem certificate opining that the cause of death was due to '*cardio respiratory failure due to multiple head injuries*'.

7. On 17.09.2011 at about 06:45 A.M., PW13 arrested the accused at Nagaram Rajaram Stadium in the presence of panch witnesses and recorded the confession statement of accused (Ex.P7) and his confession

lead to recovery of material objects MOs.1 to 7. MO.4 is stick and MO.7 is plastic chair. Ex.P8 is the recovery panchanama.

8. After completing the investigation, the Police filed the charge sheet, which was taken on file as PRC No.54 of 2012 on the file of II Additional Judicial First Class Magistrate, Nizamabad.

9. On appearance of the accused, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal to the Court of Special Judge for trial of cases under the SCs and STs (POA) Act-cum-VIII Additional District Judge at Nizamabad, the case came to be numbered as S.C. No.275 of 2012. On appearance, charge under Section 302 of IPC came to be framed against the accused, which was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

10. In support of its case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P10 and MOs.1 to 7. Out of the 13 witnesses examined by the prosecution, PW9 did not support the prosecution case and he was treated as hostile witness.

11. After completing the 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 and claimed to be tried. However, no oral or documentary evidence was adduced by the accused in support of his defence.

12. Relying upon the evidence of PWs.3, 4 and 5, coupled with the motive for the commission of the offence, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 of

IPC. Challenging the same, the present Appeal came to be filed through a legal aid counsel.

13. Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the case rests on the circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime.

14. On the other hand, learned Public Prosecutor would contend that the evidence of PW12, coupled with the evidence of PWs.3 and 4, clearly establish that the accused is responsible for the death of the deceased and, hence, the findings arrived at by the trial Court warrants no interference.

15. The point that arises for consideration is, whether the accused is responsible for the death of the deceased?

16. To prove that it is a case of homicidal death, the prosecution relied upon the evidence of PW12, Dr.M.A.Quadeer, who conducted post-mortem examination over the dead body of the deceased, and issued Ex.P9 the post-mortem examination certificate. As per Ex.P9, the post-mortem examination certificate issued by him, there were about 6 injuries on the dead body of the deceased and the cause of death was due to cardio respiratory failure due to multiple head injuries. Therefore, from the post-mortem examination certificate and the evidence of PW12, it is clear that it is a case of homicidal death and that the plea of the accused that it was a case of accidental death stands disbelieved. In fact no effort was made to prove that it was a case of accidental death.

17. As far as the incident proper is concerned, the prosecution mainly relied upon the evidence of PWs.3 and 4. Before dealing with the

evidence of PWs.3 and 4, the evidence on record shows that the accused, while working as L.D.C. at Bheemgal, was removed from service and, in spite of the same, he was staying in the guest house belonging to the Electricity Department at Nizamabad. The deceased in this case was transferred from Karimnagar to Nizamabad and after his transfer he used to stay in one room of the guest house and PW4, who is the sister of PW5 and wife of PW3 (married later), used to stay in another room of the guest house. The evidence on record, more particularly the evidence of PW7, who was working as Assistant Engineer, along with the deceased, shows that everyday they used to leave their place on duty in the morning at about 04:00 A.M. or 05:00 A.M. and return in the evening as per the work load ranging from 02:00 P.M. to 06:00 P.M. The evidence on record also shows that number of persons (friends) used to visit the deceased, who was staying all alone in the room. The evidence on record further discloses existence of disputes between the accused and the deceased. It is said that the deceased used to leave the guest house at 04:00 A.M. and return only at about 09:00 P.M. or 10:00 P.M. On more than one occasion, the accused, who used to stay in the drawing room, did not open the main door to enable the deceased to enter into the guest house and proceed towards his room. As a result of which there were frequent quarrels between both of them and, on more than one occasion, the deceased is stated to have warned the accused about the same. All these facts which were spelled out in the evidence of the prosecution witnesses remain uncontradicted.

18. Before referring to the evidence of PWs.3 and 4, would be it better to refer to the evidence of PW5, who spoke about the motive for the accused to kill the deceased. It would be appropriate to extract the evidence in the words spoken to by the witness, which is as under:

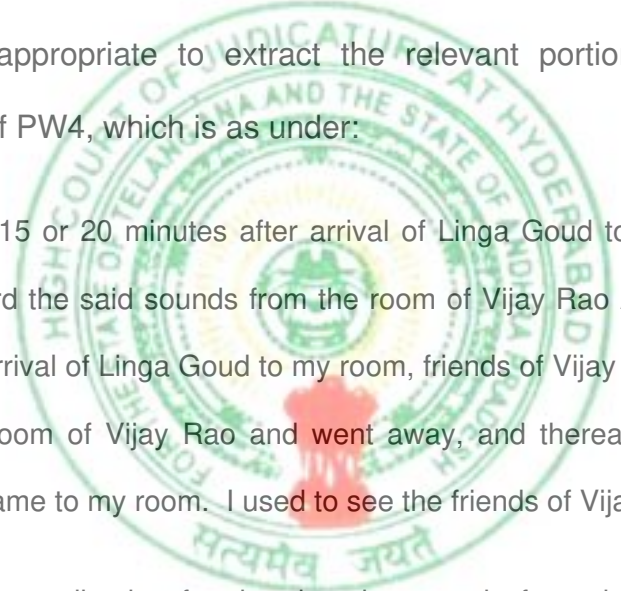
“Deceased used to visit Guest House late in the night and the accused was not in the habit of opening the door planks even though the deceased was knocking the door planks immediately. Deceased used to abuse the accused for not opening the door planks of Guest House immediately. In this way on three or four occasions accused failed to open door planks of Guest house immediately after knocking of the door planks by the deceased.

The deceased stated that the accused is not keeping the Guest House neatly and the deceased stated that if accused in future fails to open the door planks, the deceased will send out the accused from the Guest House. Accused replied saying Inthamandi Sirlu Vacchinaru Valleevaru Nannu Vellagottaedu Neevenduku Vellagodthavu. Accused also threatened me three or four times prior to the death of deceased. Sujatha is my younger sister and she resided in my room in the said Guest House. I know Linga Goud. I was not present on the date of death of the deceased. On the next day of the death of the deceased my sister Sujatha informed me through phone saying that the accused murdered the deceased.”

19. Though PW5 was subjected to lengthy cross-examination, nothing incriminating was elicited to discredit his testimony. A reading of the cross-examination shows that the deceased used to leave the guest house in the morning at 04:00 A.M. and return in the night around 11:00 or 11:30 P.M. It was further elicited from his evidence that on three or four occasions the deceased abused the accused for not opening the door planks of the guest house. To a suggestion that there were no disputes between the accused and the deceased, was denied. He admitted in his evidence that he used to clean the guest house and bring food from the

hotel, to the deceased. Therefore, the presence of PW5 in the guest house stands established.

20. PW4, who is none other than the sister of PW5 and wife of PW3, used to stay along with PW5 and his wife in the guest house. She deposed about hearing of the cries from the room of the deceased and on hearing the same, herself and PW3, went towards the room of the deceased and noticed the accused coming out of the room of the deceased. She also noticed the deceased lying with bleeding injuries. In her cross-examination, it has been elicited that on seeing her and PW3 entering the room, the accused ran away from the room of the deceased. It would be appropriate to extract the relevant portion of the cross-examination of PW4, which is as under:



“Within 15 or 20 minutes after arrival of Linga Goud to my room we heard the said sounds from the room of Vijay Rao A.E. Prior to the arrival of Linga Goud to my room, friends of Vijay Rao came to the room of Vijay Rao and went away, and thereafter, Linga Goud came to my room. I used to see the friends of Vijay Rao.

Immediately after hearing the sounds from the room of Vijay Rao we proceeded towards the room of Vijay Rao. I did not see empty glasses in the room of Vijay Rao. As Vijay Rao was residing in the neighbouring room I know Vijay Rao. I found oozing of blood from the person of Vijay Rao. I found the accused running away from the room of Vijay Rao.”

21. From the answers given by PW4, it stands established that on the date of the incident when PWs.3 and 4 heard the cries of the deceased, they went towards the room of the deceased and noticed the accused running away from the said room and the deceased was lying with injuries. No explanation is forthcoming from the accused as to why he was present

in the room of the deceased, and also as to how the deceased sustained injuries. As stated earlier, the accused was living in the third portion of the room of the guest house illegally; and in the absence of any explanation given by him in his 313 Cr.P.C. examination as to how the deceased sustained injuries, when he is present in the room through which one has to pass to go to the room of the deceased, which stands established through the evidence of PWs.3 and 4 coupled with his conduct of running away from the guest house, it can be held that it was the accused who is responsible for the death of the deceased.

22. Hence, we feel that the findings and conviction recorded by the trial Court warrants no interference.

23. Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence dated 08.11.2012, passed in Sessions Case No.275 of 2012, by the learned Special Judge for Trial of Cases under the Scheduled Castes and Scheduled Tribes (POA) Act-cum-VIII Additional District Judge at Nizamabad.

24. Miscellaneous Petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

T. RAJANI, J

Date: 27-01-2018.
Dsh

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE T. RAJANI

04



W-02042018

CRIMINAL APPEAL No.1295 OF 2012

(Judgment of the Division Bench delivered by
Hon'ble Sri Justice C. Praveen Kumar)

Date. 27-01-2018

DSH