

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.502 of 2012

Date: 23.11.2018

Between:

Arasada Lakshmana Rao

... Appellant/Accused

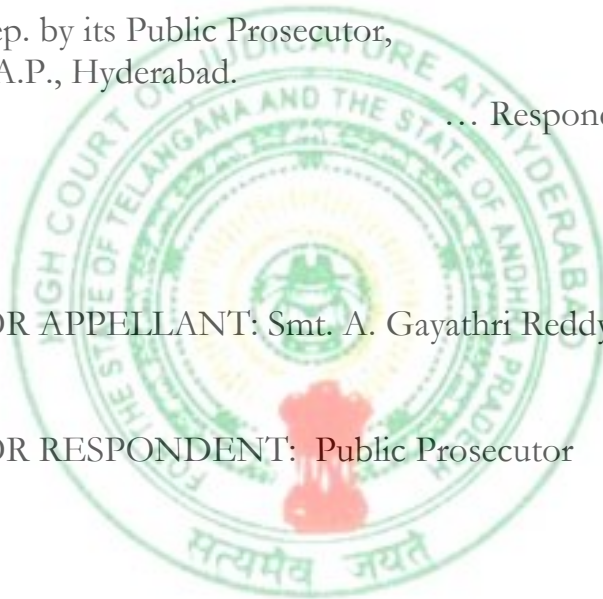
And

State of A.P., rep. by its Public Prosecutor,
High Court of A.P., Hyderabad.

... Respondent/Complainant

COUNSEL FOR APPELLANT: Smt. A. Gayathri Reddy

COUNSEL FOR RESPONDENT: Public Prosecutor



THE COURT MADE THE FOLLOWING:

JUDGMENT: (per the Hon' ble Sri Justice Gudiseva Shyam Prasad)

This appeal arises out of the judgment dated 23.04.2012 in S.C. No.139 of 2009 passed by the Sessions Judge, Mahila Court, Visakhapatnam (trial Court) convicting the appellant/accused for the offence punishable under Section 302 IPC and sentencing him to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, and in default, to suffer S.I. for six months.

The brief facts of the case of the prosecution are that, the deceased – Bujji @ Pydithalli is a native of Bheemavaram village and her marriage was solemnized 5 years prior to the alleged incident occurred on 07.09.2006 with one Butchi Pydiraju and within 2 years of her marriage, the deceased gave divorce to her first husband due to family disputes before the village elders.

About 4 years prior to the incident, she had migrated to Siddharthanagar, New Resapuvanipalem and used to reside in a rented house by doing coolie works and during that course, she developed intimacy with the accused – Arasada Lakshmana Rao. The accused was a married person, having wife and two children. Even then, he accepted the deceased as his second wife and kept her in his house under the same roof. He had conjugal life with both of his wives under the same roof. Subsequently, the deceased became pregnant and while she was carrying seventh month pregnancy, the accused started suspecting her fidelity and harassing her mentally and physically.

The mother of the deceased, on coming to know about the harassment of the accused, advised her daughter to lodge a complaint against her husband, but the deceased refused to lodge the complaint against the accused. The accused became angry and used to beat her indiscriminately and on the fateful day night i.e., on 05.09.2006 at 20.30 hours, the accused beat the deceased indiscriminately, he caught hold of her tuft and kicked on her stomach and hit her head against the wall. On hearing the cries, the neighbours – LWs.3 to 5, namely Smt. S. Lakshmi (PW.3), Smt. Y. Nooka Ratnam (PW.13) and Smt. Rajana Saraswathi, respectively, came and admonished the accused. On 06.09.2006, the deceased complained stomach pain, on that the accused took her to Sri Uma Hospital at 4.00 p.m., where the Doctors referred her to Victoria General Hospital for evaluation, but the accused had not taken the deceased to the said Hospital and brought her back home. On the same day night, at about 10.00 p.m., when the deceased complained severe stomach pain, the accused took her to Victoria General Hospital, where the Doctors confirmed her death. The accused had informed the same to the defacto-complainant on the morning of 07.09.2006 at 5.00 a.m. The defacto-complainant lodged a report to III Town Police Station, Visakhapatnam City, suspecting the complicity of the accused in the commission of offence.

On receipt of Ex.P.1 - complaint, the police registered a case in Crime No.713/2006 under Section 174 Cr.P.C., and during the course of investigation, the S.I. of Police inspected the scene of offence in the presence of mediators and prepared Ex.P.2 - Observation Report dated

07.09.2006. He shifted the dead body of the deceased for inquest. The Mandal Executive Magistrate held inquest over the dead body of the deceased and later the Postmortem Examination was conducted by the Medical Officer over the dead body of the deceased. On receipt of Ex.P.4 - Inquest Report and Ex.P.13 - Postmortem Examination Report, the Investigation Officer has altered the Section of Law from Section 174 of Cr.P.C. to Section 302 of IPC vide Ex.P.12 - Alteration Memo. The accused was arrested on 12.09.2006 in the presence of mediators and he was sent for remand. After completion of investigation, Ex.P.10 - Charge Sheet was filed against the accused alleging that he committed the offence punishable under Section 302 IPC.

The learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam, has taken cognizance of the case and after completion of all the legal formalities; he has committed the case to the learned Metropolitan Sessions Judge, Visakhapatnam. The learned Sessions Judge, to whom the case was made over ; had framed a charge against the Accused for the offence punishable under Section 302 IPC, for which the Accused pleaded not guilty and claimed to be tried.

In order to bring home the guilt of the accused, the prosecution has examined PWs.1 to 13, and got marked the documents under Exs.P.1 to P.13. On behalf of defence, none were examined and no documents were marked.

The trial Court, on consideration of the oral and documentary evidence available on record, vide aforesaid judgment dated 23.04.2012,

found the accused guilty of the offence punishable under Section 302 IPC and sentenced him to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, and in default, to suffer S.I. for six months. Aggrieved by the said judgment dated 23.04.2012, the appellant has preferred the present appeal.

Heard the arguments of Smt. A. Gayathri Reddy, learned counsel for the appellant/Accused and the learned Public Prosecutor appearing for the respondent-State. Perused the impugned judgment and the material on record.

Learned counsel for the accused contended that there are no direct witnesses to the occurrence; the case mainly rests on circumstantial evidence, that the circumstances relied upon by the prosecution are unreliable and are wholly insufficient to base a conviction; that there is no positive indication that the death was due to beating; that there is no motive for the accused to kill the deceased; that the evidence of PW.1 inspires no confidence as there are inconsistencies in the evidence of the witnesses; that the extra-judicial confession is inadmissible in evidence and hence, the accused is entitled for benefit of doubt.

On the other hand, the learned Public Prosecutor appearing for the respondent-State contended that the evidence of witnesses and the documents relied upon by the prosecution would prove the guilt of the accused beyond all reasonable doubt. It is also contended that various circumstances appearing against the accused shows that he alone was responsible for commission of offence against the deceased.

The point for determination in this appeal is –

Whether the prosecution proved the guilt of the accused beyond reasonable doubt for the offence punishable under Section 302 IPC and whether the trial Court erred in convicting the accused?

From the evidence of witness available on record, we refer to the evidence of PWs.1 to 3 and 13, which plays a vital role in determining the guilt of the accused.

PW.1 is the mother of the deceased. In her Ex.P.1 – Complaint, she stated that the deceased was the second wife of the accused and while she was carrying seventh month pregnancy, the accused used to come home in a drunken condition and beat the deceased. The deceased used to tell her about the accused beating her and on that she asked the accused about the same. Later on 07.09.2006, at about 5.00 a.m., she came to know through phone that her daughter died on the previous night i.e., on 06.09.2006. On that, she went to Amarnagar village and saw the dead body of her daughter lying on the road. She suspected that her son-in-law might have killed her daughter by beating her.

A perusal of Ex.P.1 – Complaint reveals that the deceased is the second wife of the accused. The accused used to beat her in a drunken condition and it was informed by the deceased to her mother. This is not in respect of the alleged incident; it is only a general incident occurred prior to the death of the deceased. The contents of the complaint reveal that the complainant was suspecting that the accused might have killed by beating her daughter.

In the light of the documentary evidence under Ex.P.1 – complaint, if we look into the testimony of PW.1 to test her credibility, it reveals that 2 days after her daughter informed over phone that the accused was ill-treating her by abusing and beating her, she went to meet her daughter. Her daughter informed her that she was carrying seventh month pregnancy with the accused. She also informed that the accused got scanned her pregnancy and came to know that she is carrying a female child in her womb and on that he became angry and beat her indiscriminately stating that his first wife also gave birth to two female children. On that, PW.1 has asked the accused about his high-handed behavior of beating her daughter, but he did not care her advice. Then she asked her daughter to come along with her to the village, but she did not agree to come with her. On the very next day, at about 5.00 a.m. early in the morning, the neighbors of the house of the accused informed over phone that the accused murdered the deceased and asked her to come.

It is revealed in the cross-examination of this witness that she came to know that the accused took her daughter to the Hospital as she was suffering from severe stomach pain due to the beatings received by her in the hands of the accused. It is also revealed in her cross-examination that she did not gave the names of the persons, who are the neighbors of the accused who informed her about the harassment and cruelty meted out by the accused towards the deceased. She did not tell the name of the Hospital where her daughter was admitted one day prior to her death. However, she stated that she lodged Ex.P.1 – complaint to the police.

The testimony of PW.1, as a whole, in the light of Ex.P.1 – Complaint, reveals that the accused used to beat the deceased and the deceased used to inform her mother about the same. The testimony of this witness further reveals that as the accused got scanned his wife's pregnancy and found that she was carrying a female baby, on that he beat her indiscriminately and because of that she got stomachache ,and she was taken to the Hospital one day prior to the incident . PW.1 went to the house of the accused and asked him about the same ,and asked her daughter to come home along with her, but she refused to come home. Thereafter, PW.1 came to know that the deceased died due to the beatings of the accused.

PW.2 is the younger sister of PW.1. The testimony of this witness reveals that after the divorce of the deceased with her first husband, she came to Visakhapatnam and worked as coolie. During that period, the accused had developed friendship with the deceased and promised to marry her. After the marriage, both of them lived together in a rented house and the deceased became pregnant through the accused. She stated that PW.1, mother of the deceased, came to know that the accused was already married. It is also the evidence of this witness that the accused took the deceased to a Hospital in order to take a scan about her pregnancy. The Doctors told that the child in the womb was a female and after coming to know that, the accused started harassing the deceased and beating her indiscriminately. On 06.09.2006 in the morning hours, PW.1 came to know that her daughter was pregnant. In her presence, the accused beat the deceased indiscriminately. It is her testimony that PW.1 requested her to

come along with her to the house of the accused and accordingly they both went to the house of the accused and requested the deceased to come along with PW.1, but she did not come along with her mother. In that connection also, the accused beat the deceased in their presence indiscriminately. Even then, the deceased did not care to come along with them stating that she would live or die with the accused. On the next day i.e., on 07.09.2006, at about 7.00 a.m. in the morning hours, she received a call over phone from the local people, that the deceased died at the house of the accused. Immediately, she went to the house of the accused and found the deceased in a pool of blood in front of the house of the accused on the road. In the meanwhile, the police came over there and inquest was held over the dead body of the deceased.

It is revealed in the cross-examination of this witness that the accused beat the deceased in her presence on one occasion. At that time, she advised the deceased to come to her parents house at Vizianagaram, but the deceased did not come.

The testimony of PW.2 corroborates the testimony of PW.1 in respect of harassment meted out by the accused by beating the deceased indiscriminately for carrying a female child, though the accused begot 2 female children through his first wife.

PW.3 is the daughter of PW.1 and elder sister of the deceased. She spoke about the divorce of her sister and thereafter shifting to Visakhapatnam, living by doing coolie work, getting acquainted with the accused, marrying him and living with him in a rented house as wife and

husband and the accused beating the deceased indiscriminately when she was carrying seventh month as the scanning report reveals that she was carrying a female child, which led to her death on the very next day of the incident of beating.

The testimony of PW.3 also reveals that the accused promised the deceased to marry her stating that he was unmarried and the deceased believing his version accepted to live with him in a rented house as wife and husband in the year 2006. During the stay with the accused, the deceased became pregnant and thereafter she came to know that the accused's first wife was alive and his marriage with his first wife was in existence and she got two female children and in that connection, a quarrel took place between the accused and the deceased. On that, PW.3 telephoned to her deceased sister and advised her to go to her mother's house, but she refused to go. The said fact spoken to by this witness is corroborated with the testimony of PWs.1 and 2. The reason for the accused beating the deceased indiscriminately, as spoken by PWs.1 and 2, was that the deceased became pregnant and the scanning report reveals that the deceased was carrying a female child, which was not liked by the accused as he has already got two female children through his first wife.

This reason spoken to by PWs.1 and 2 is going against the version of PW.3. According to PW.3, the dispute was that the deceased coming to know that the accused was already married and had two children and without informing her that he was married, had started living with the deceased in a rented house. No doubt, this witness also stated about the

reason for the accused beating the deceased indiscriminately was due to the deceased carrying a female child.

In this connection, the prosecution has relied upon the testimony of PW.13 to connect the accused with the crime. PW.13 is a Social Worker and resident of Amarnagar. His house is situated in the first lane and the house of the accused is situated in the second lane in Amarnagar. 3 or 4 months prior to the death of the deceased – Bujji, the accused brought her to his house. He came to know that the deceased is the second wife of the accused and he used to live along with his first and second wives in his house. In the year 2006, on some occasions, he used to go to the house of the accused on hearing the disputes between the accused and his second wife and he tried to resolve the disputes and advise them, but the accused did not heed for his advice. The first wife of the accused was reluctant to keep his second wife in their house. Then he advised the accused to keep his second wife in a separate house, for that the accused said that he is unable to bear the rents for two houses and so he did not keep his second wife in a separate house.

The version of this witness is the second version of the prosecution for the alleged commission of offence by the accused. This version of the prosecution reveals that there was a dispute between the first wife and the second wife of the accused as the first wife did not like the second wife to stay in their house and, therefore, she used to pick up quarrels with the deceased frequently. In spite of the said quarrels, the deceased used to stay with the accused calmly. It is also the testimony of this witness that 3 months prior to the death of the deceased, on one morning, he had seen

the accused and his first wife beating the deceased – Bujji in his house indiscriminately. He had also witnessed the accused beating his second wife by holding the tuft of hair and kicking on her stomach and hitting her head to the wall of his house. Some time thereafter, the accused and his first wife brought the deceased to the Hospital. On the same day, at about 7.30 p.m., he heard the cries from the house of the accused and immediately he went there along with one Rajulamma and Saraswathi and noticed that the accused and his first wife indiscriminately beating the deceased. On coming to know that the deceased was carrying pregnancy, he chastised the accused and his first wife and came home. Around 10.30 or 10.45 p.m. on that night, he found an injury on the lip of the deceased and the accused and his first wife carrying the deceased in their hands, but he did not enquire them since there were relatives in his house. At about 3.00 a.m., he came out of his house and found the dead body of the deceased – Bujji by the side of the dust bin and all the villagers gathered there, but they did not find the accused and his first wife there. He found several injuries over the head of the deceased and her head injury was bleeding. In the meanwhile, PWs.1, 2 and 3 came there and they reported the matter to the police.

There are two different versions present before the Court in the evidence of the prosecution. According to PWs.1 to 3, the deceased married the accused and she used to reside with the accused as his second wife in the same house and she became pregnant. As the accused did not like her carrying a female child, he quarreled with her, which resulted in his beating her indiscriminately, led to her death.

The second version put forward by PW.13 is that the first wife of the accused did not like the deceased living with them, and so she used to quarrel with the deceased frequently and both the accused and his first wife beat the deceased indiscriminately, which led to her death.

On the other hand, Ex.P.4 - Inquest and Ex.P.13 - Postmortem Examination Report reveal that the cause of death of the deceased was due to the head injury.

In this regard, the Inquest and Postmortem Examination Report assume importance. As per Ex.P.4 - Inquest Report, PW.7 - Mandal Executive Magistrate, Visakhapatnam, has conducted inquest over the dead body of the deceased - Bujji in the presence of punch witnesses and blood relatives. As per the Inquest Report, the cause of death was due to the injuries caused by the accused to the deceased on 06.09.2006.

In this connection, Ex.P.13 - Postmortem Examination Report reveals that the deceased would appear to have died of "injury to the brain due to head injury associated with traumatic separation of placenta".

In the instant case, the cause of death of the deceased is unnatural. It is a case of death due to head injury alleged to have been caused by the accused to the deceased. There are only 4 witnesses for the prosecution, who can speak about the circumstances of the case to connect the accused with the crime. The prosecution placed heavy reliance on the testimony of PW.13 to connect the accused with the crime. In fact, PW.13 is the neighbor of the accused and the deceased. According to his testimony, he

saw the accused beating the deceased prior to the incident and he tried to admonish him.

It is relevant to extract the injuries suffered by the deceased, which are ante-mortem in nature, which are as follows:

1. Abrasion 5 x 1 cms – noted on contact surface of each lip.
2. Contusion 4 x 3 cms – noted on inner aspect of each lip.
3. Abrasion 6 x 1 cms semicircular with opening outwards noted on back outer (L) elbow and adjoining forearm.
4. Contusion 20 x 8 cms noted from front center frontal areascalp to (L) parietal area scalp parietaleminence).
5. Diffuse Traumatic SDH, SAH noted all over brain more on @ 1/2, with bruising of both frontalk, temperal and parietal lobes of brain.
6. Bruising of 1/4 cms – noted along finger tips and nailtips junctions of both hands fingers noted.
 - All injuries are freshred in color.
 - No other antemortem injuries.
 - No signs of poisoning.”

Ex.P.13 – Postmortem Examination Report further reveals that the opinion regarding foetus is “a female 7 months intra uterine life, intra uterine dead foetus due to placental separation’.

A perusal of Ex.P.13 further reveals that the deceased received ante-mortem injuries, which are six, and one of the injury led to her death. Ex.P.13 further reveals that a female 7 months intra uterine life, intra uterine dead fetus due to placental separation.

Evidently, the deceased was living in the house of the accused by the date of incident of her receiving the injuries shown in Ex.P.13 – Postmortem Examination Report and that she was also carrying seventh month pregnancy and the foetus was lifeless due to pleasantal separation. It was a dead foetus of 7 months. The motive of the accused to beat her was that deceased was carrying a female child which was not of his liking.

This is a case of a brutal murder where the husband killed his wife by beating indiscriminately. The evidence on record clearly reveals that PW.13 was a witness for the accused beating the deceased on the previous night.

No doubt, there are two versions present before the Court with regard to the motive for the accused to commit the offence. The motives attributed to the accused for commission of this offence, whether proved or not, it is relevant to note that the deceased was living with the accused as his second wife and she was carrying seventh month pregnancy. She died of injuries, including the death of the fetus in her womb. There are no other reasons coming forward for the cause of death of the deceased, except the injuries received by her. The deceased was living with the accused in his house, where she received injuries and she was found dead on the road with the said injuries. The accused has not given any explanation when all the incriminating circumstances appearing against him in his Section 313 Cr.P.C. examination. Except denying the incriminating evidence appearing against him, he did not explain any reasons for the death of the deceased, who was residing with him. The death occurred under unnatural circumstances, which reveals that she died of head injury and the other injuries suggest that it was a case of indiscriminate beating as per the version of the prosecution.

Thus, it is obvious that the prosecution has proved the guilt of the accused beyond reasonable doubt. Therefore, the findings recorded by the trial Court convicting the accused for the offence punishable under Section 302 IPC and sentencing him accordingly do not require any interference.

In the result, the appeal is dismissed, confirming the judgment dated 23.04.2012 in S.C.No.139 of 2009 rendered by the trial Court convicting and sentencing the appellant/accused for the offence punishable under Section 302 IPC.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

23.11.2018.

Msr



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