

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CRL.A.NO. 1325 of 2012

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

1. The sole accused in Sessions Case No. 58 of 2012 on the file of the II-Additional Sessions Judge, Karimnagar at Jagtial is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of one Sunke Ramulu on 16.3.2011 at about 9.00 A.M. at Thirmalapoor village of Kodimial Mandal. By its judgment dated 23.7.2012 the learned Sessions Judge found the accused guilty under Section 302 IPC and sentenced him to suffer imprisonment for life and pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days. Aggrieved by the same, the present appeal is filed.

2. Brief facts of the case, as culled out from the evidence of the prosecution witnesses, is as under,

The deceased Sunke Ramulu was the husband of P.W.1-Sunke Narsavva and P.W.2-Gangadhara Devavva is the mother of P.W.1. The deceased came to the house of P.W.2 as an illotom-son-in-law and was living with his wife-P.W.1 happily in the house of P.W.2. Out of wedlock they were blessed with three children. P.W. 3-Manku Bakkaiah is a co-worker of the deceased. P.W.4-Thaidala Anjaiah and P.W.5-Thaidala Mysaiah are the caste elders. P.W.6-Sunke Devamma is the grand-mother of P.W.7-Sunke Sumalatha, while the

deceased was the son of P.W.6's brother-in-law and uncle by relation to P.W.7.

3. It was said that the accused developed illicit intimacy with P.W.7 and used to visit her house and harass her by abusing and beating her saying that he would marry her. P.W.7 complained the same to caste elders i.e., PW.4, P.W.5 and two others who convened a panchayath, sent for the accused and P.W.7 and advised them to live separately from each other without having any illicit relation. About 7 or 8 days thereafter, the accused again went to the house of P.W.7 during midnight in a drunken state and entered into an altercation stating that he would kill her and her grandmother. On the next day morning, P.W.7 informed the deceased about the incident that took place on the previous night. The deceased advised her to go and report to the caste elders against the accused who overheard their conversation.

4. On the date of incident at about 7.00 A.M. the deceased, P.Ws 3 and 8 went to the house of one Nerella Ramulu as coolies for the purpose of cutting firewood into pieces. At about 9.00 A.M. P.W.8 kept his axe aside and went out for drinking water. At that time the accused came on a bicycle, picked up the axe kept by P.W.8 and hit the deceased on the back side of his neck, while he was cutting firewood, which resulted in instantaneous death. After hitting the deceased with the axe, the accused left the place on his bicycle.

5. On 16.3.2011 at 11.00 A.M. P.W.1 went to the police station, Kodimial and lodged a report with P.W.14, the then Sub-Inspector of

Police, Kodimial. Ex.P1 is the said report. Basing on the said report, a case in Cr.No. 32 of 2011 came to be registered under Section 302 IPC. Ex.P9 is the copy of FIR. Further investigation in the matter was taken up by P.W.13, the then Circle Inspector of Police, Jagtial. After receiving a copy of the FIR, he proceeded to the scene of offence at Thirmalapur village and noticed the dead body of the deceased lying at the scene of offence. In the presence of P.W.9 and another, he conducted inquest over the dead body of the deceased. Ex.P3 is the inquest report. Thereafter he conducted panchanama of scene of offence and seized M.Os. 1 and 2-control earth and blood stained earth respectively from the scene in the presence of the same witnesses under Ex.P2-the crime details form. Thereafter he sent the dead body of the deceased to Government Hospital, Jagtial for post mortem examination.

6. P.W.10, the Civil Assistant Surgeon in Government Area Hospital, Jagtial conducted autopsy over the dead body of the deceased and issued post mortem report. According to him, the cause of death of the deceased was due to shock as a result of injury to vital organ (hind brain) and spinal cord, at cervical region. He noticed only one injury on the body of the deceased i.e., incised wound measuring 3 x 1 inches over the back of neck exposing the bone and cervical spine. Ex.P4 is the post mortem report.

7. P.W.13 continued with the investigation in the case. He examined and recorded the statements of witnesses under Section 161 Cr.P.C. He apprehended the accused on 21.3.2011 and interrogated

him in the presence of P.W.12 and another. The accused is said to have made a statement which led to recovery of M.O.4, the axe which is said to have been used in the commission of offence and M.O.3, the bicycle on which he went to the scene of offence, under Ex.P7, the seizure panchanama. Thereafter he got recorded the statements of PWs. 3 and 4 under Section 164 Cr.P.C. After completing the investigation he filed the charge sheet which was taken on file as PRC No. 67 of 2011 on the file of the Additional Judicial Magistrate of First Class, Jagtial. After furnishing copies of documents to the accused as required under Section 207 Cr.P.C. the case was committed to the Court of Sessions under Section 209 Cr.P.C. for trial. On committal, the said case came to be registered as Sessions Case No. 58 of 2012. Basing on the material available on record, a charge under Section 302 IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. To prove its case, the prosecution examined as many as 14 witnesses and got marked Exs.P1 to P9. After concluding the prosecution evidence, the incriminating material appearing against the accused was put to him during his examination under Section 313 Cr.P.C. to which he denied. However, the accused did not adduce any oral or documentary evidence in support of his defence.

8. Basing on the evidence of P.Ws. 3 and 8 who were examined as eye-witnesses to the incident and also the evidence of PWs 1, 2, 4, 5, 6 and 7 to speak about the motive, the learned II-Addl. Sessions Judge found the accused guilty of the offence under Section 302 IPC, and

convicted and sentenced him to undergo imprisonment for life and pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days. Being aggrieved by the said conviction and sentence, the present appeal came to be filed through legal aid.

9. Learned counsel for the accused/appellant mainly submits that except the evidence of P.W.3, there is no other evidence connecting the accused with the offence. According to him, there is any amount of doubt with regard to P.W.3 being present at the scene of offence and witnessing the incident. Though P.W.8 was shown as eye-witness to the incident, but in the cross-examination he admits that he had not seen the incident. It is his case that the motive which is attributed for the commission of offence is very weak and even if the entire prosecution case is accepted, the same does not constitute an offence of murder.

10. On the other hand, learned Public Prosecutor submits that even if the evidence of P.W.8 is excluded from consideration, still there lies the evidence of P.W.3 which gets corroboration from the medical evidence and as such, he submits that the findings of the trial Court warrant no interference.

11. The point therefore for consideration is whether the accused/appellant is responsible for the commission of offence and if so, whether he can be convicted for the offence punishable under Section 302 IPC. In order to appreciate the same, it would be useful to refer to the evidence available on record.

12. It is not in dispute that PWs 3 and 8 were examined as eye-witnesses to the incident. But before adverting to their evidence, it would be useful to refer to the evidence of PWs 4 to 7 to show existence of some disputes between the accused and the deceased.

13. P.W.4, one of the caste elders in the village, deposed that about one year ago, P.W.6, the grandmother of P.W.7, came and informed him about the harassment meted out to P.W.7 by the accused by beating and stating that he would maintain her as his kept mistress. Then he, P.W.5 and other caste elders sent for the accused and P.W.7 and held a panchayath wherein they advised the accused not to have illicit intimacy with P.W.7 since the accused has wife and children and that both of them should live separately from each other without having any illicit relation. P.W.4 further deposed that 8 days after the panchayath the accused went to the house of P.W.7 and quarreled with her. On the next day P.W.7 went and informed the deceased about the quarrel that took place on the previous night.

14. P.W.5, another caste elder in the village, deposed that the accused had illicit intimacy with P.W.7 and P.W.6 complained to him and other caste elders against the accused about the latter harassing P.W.7 in a drunken state. So they sent for the accused and P.W.7, held a panchayath and advised both of them to live separately from each other without having illicit relation. He further deposed that 8 days after the said panchayath, he was informed by the deceased that the accused was again harassing P.W.7 in drunken condition and insisting her to continue the illicit intimacy.

15. P.W.6, the grandmother of P.W.7, in her evidence deposed that P.W.7 was living along with her as she was unmarried. The accused who has no relationship with P.W.7, used to visit her house in drunken condition and harass P.W.7 by abusing her. Since the accused was causing harassment to P.W.7, she complained against him to PWs. 4 and 5 and others.

16. P.W.7 admits in her evidence that the accused was having illicit intimacy with her. She deposed that the accused used to visit her house and harass her by abusing and beating stating that he would marry her. Since the accused was harassing her, she complained against him to the deceased and other caste elders. A panchayath was convened in which the caste elders sent for her and the accused, wherein they directed both of them to stop having any illicit intimacy between them and to live separately from each other without having any illicit relation. Seven days thereafter, the accused during mid night went to her house, tapped the door of her house and made galata saying that he would kill her and her grandmother. On the next day early morning she informed the deceased about the incident that took place on the previous night who in turn advised her to go and complain to the elders about the same which was overheard by the accused.

17. The evidence of the above witnesses would show that the accused was having illicit intimacy with P.W.7 and was insisting her to marry him though he was having wife and children. The harassment meted out to P.W.7 by the accused led to convening a panchayath by

the caste elders who admonished the accused and directed him to stop the illicit intimacy with P.W.7. P.W.7 also informed the deceased against the accused in that regard who suggested P.W.7 to go to the caste elders and make a complaint against the accused, which was overheard by the accused. It is clear from the above evidence that if there was any motive for the accused to commit the offence, it would be only against P.W.7 who was repeatedly making complaints against him while maintaining relationship with him.

18. As regards the commission of offence, there lies the evidence of PWs 3 and 8, who were examined as eye-witnesses to the occurrence.

19. P.W.3 in his evidence deposed that on the date of incident, he, P.W.8 and the deceased went to the house of one Nerella Ramulu at 7.00 A.M. At 9.00 A.M. while they were doing coolie work by using axes, P.W.8 kept his axe at the place and went out for drinking water. At that time the accused came on bicycle, took the axe used by P.W.8 and hit the deceased on the back side of his neck while the deceased was cutting the firewood leading to instantaneous death. After hitting the deceased with the axe, the accused left the place on his bicycle. He deposed that he and P.W.8 saw the accused killing the deceased with the axe. Though he was cross-examined, nothing useful was elicited from him to discredit his testimony. P.W.8 also stated the same, but in his cross-examination he admits that he has not seen as to who hit the deceased with the axe. Even if the evidence of P.W.8 is eschewed from consideration, there lies the evidence of P.W.3.

20. We have carefully scrutinized the evidence of P.W.3 and other evidence on record only with a view to assess whether the evidence of P.W.3 is of such quality that a conviction can be safely rested on his sole testimony. Having gone through the same, we find his evidence cogent, convincing and credible and the same is not shattered in any way so as to doubt his credibility. His evidence is free of any blemish or suspicion, and is wholly truthful and natural. Therefore, we have no hesitation in recording a conviction solely on the basis of the testimony of P.W.3 coupled with the medical evidence of P.W.10 and recovery of M.O.4-axe, the weapon of offence used by the accused and M.O.3-bicycle which was used by the accused to reach the scene of offence.

21. However, as stated earlier, the motive for the accused to kill the deceased is only because of P.W.7 complaining to him about the accused and also about the earlier panchayath convened by the deceased against the accused. Therefore, it cannot be said that there was a strong motive for the accused to kill the deceased. Apart from that, it is also to be noted that if really the accused had any intention to cause the death of the deceased, he would have gone to the scene of offence armed with the weapon. In the instant case, as seen from the evidence on record more particularly through PW 3, the accused went to the scene of offence on a bicycle unarmed. He is said to have picked up an axe which was kept aside by P.W.8 and then gave a blow on the deceased which landed on the neck causing his death. Having regard to the manner in which the incident took place and as the

accused went unarmed without any weapon, we feel that the accused never had any motive or intention to cause the death of the deceased. It appears that on seeing the deceased nearby, he picked up an axe and dealt a blow on the deceased. Hence while holding that the accused alone is responsible for the incident, we feel that the circumstances under which the incident occurred do not warrant a conviction under Section 302 IPC since the accused never had any intention to kill the deceased. As stated earlier, the accused went to the scene of offence unarmed and thereafter the incident in question took place. But definitely it can be said that the accused had the intention of causing of such bodily injury as is likely to cause the death of the deceased. Hence we feel that the accused is liable to be convicted under Section 304, Part-I of IPC.

22. The appeal is allowed in part, the conviction and sentence passed by the trial Court for the offence under Section 302 IPC is set aside and the accused is acquitted of the same. However, the accused is convicted of the offence punishable under Section 304, Part-I IPC and is sentenced to undergo Rigorous Imprisonment for Ten Years. The remand period, if any, undergone by the accused shall be set off. The material objects are ordered to be destroyed as per the direction of the trial Court.

Dt. 18.1.2018
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C.PRAVEEN KUMAR, J

J. UMA DEVI, J