

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.1147 OF 2011

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

The sole accused in S.C.No.214 of 2011 on the file of III Additional Sessions Judge (Fast Track Court), Bhimavaram, is the appellant herein. He was tried for the offences punishable under Section 302 IPC, for causing the death of his wife by name Pilli Deenakumari (hereinafter referred to as "the deceased") on 15.01.2011 at about 11.30 a.m at Door No.1-8(2), Chinapet, Mahadevapatnam Village, Undi Mandal of Undi Police Station limits. Vide its judgment dated 12.08.2011, the learned Sessions Judge convicted and sentenced the appellant to suffer imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for six months, for the offence punishable under Section 302 IPC.

The facts, as narrated by the prosecution witnesses, are as under:

P.W.1 is the son of the accused and the deceased. P.W.2 is the sister of the P.W.1 and daughter of the accused and the deceased. P.W.3 is the husband of the P.W.2. According to P.W.1, the deceased went to Dubai and stayed there for 10 years and came back. The accused was habituated to drinking and used to quarrel with the villagers and abuse his son P.W.1, his daughter and the deceased and also used to beat them. The evidence on

record shows that the accused used to consistently demand the deceased to give money in order to meet his habits. About 3 days prior to the incident, at about 12.00 mid night while P.W.1 and the deceased were sleeping in the house, the accused came and bolted the doors from out side, opened the gas and threatened to lit fire to the gas and abused them. P.W.1 broke opened the doors, came out the room, admonished the accused and sent him away. On 15.01.2011 at about 11.30 a.m, P.W.1 went to his fields at 5.00 a.m and returned back to his house at 11.30 a.m. At that time the accused was demanding money from the deceased for his vices. The deceased replied that she had no money with her. P.W.1 stood out side the door way and heard the conversation. When the deceased refused to give money, the accused is said to have picked up 'Mancham Kodu Chekka' and beat the deceased on her head and on face. Immediately thereafter P.W.1 rushed to rescue of his mother. At that time, the accused caught hold of neck of the P.W.1 and pushed him out. The deceased fell down raising cries. Thereafter, the accused went away on the cycle proclaiming that the deceased died as she did not give money in spite of "requests." P.W.1 went inside, raised cries. On receiving the information about the galata in the house of the deceased, P.W.2 came to the house of her mother and by the time she entered the house of the deceased, P.W.2 noticed that her father beating the deceased with a stick on the head and thereafter leaving the house on his cycle. Immediately after the incident, P.W.1 went to the police station and lodged a report with P.W.10. The same was marked as Ex.P.1. Basing on the Ex.P.1 report, P.W.10 registered a case in Crime No.9 of 2011 under Section 302 IPC and issued F.I.R which is

marked as Ex.P.9. Thereafter, P.W.10 went to the scene of offence. After receiving the phone call from P.W.10, P.W.11 the Circle Inspector of Police rushed to the scene of offence at 2.00 p.m where P.W.10 handed over a copy of the F.I.R and in the presence of mediators P.W.7, L.W.13 Vegesna Rambaburaju, observed the scene of offence which is a dwelling house of the deceased bearing D.No.1-8(2). P.W.11 seized the blood of the deceased in bandage cloth and also the controlled gauze cloth piece from the scene of offence. P.W.11 got photographed the scene of offence through P.W.6 and also prepared rough sketch of the scene of offence. Ex.P.10 is the rough sketch of the scene of offence. Later, P.W.11 conducted inquest over the dead body of the deceased in the presence of the mediators which is marked as Ex.P.7. P.W.8 is the doctor who conducted the postmortem over the dead body of the deceased on 16.01.2011 at about 10.50 a.m. He opined that the deceased would have appeared to have died due to head injury. Ex.P.8 is the P.M certificate issued by the P.W.8 is the P.M certificate issued by the P.W.8.

On 18.01.2011, at 1.30 p.m, the accused went to the house of P.W.7 and confessed about the offence. The same was reduced into writing. Ex.P.5 is the confessional statement and Ex.P.6 is the covering letter. Later at 3.30 p.m, P.W.7 is said to have taken the accused to the police where P.W.11, on intimation from P.W.10, proceeded to the police station and arrested the accused under the cover of Ex.P.7. After obtaining the R.F.S.L report, P.W.11 filed the charge sheet, which was taken on file as P.R.C No.20 of 2011. On appearance of the accused, copies of documents were furnished to him as required under Section 207 Cr.P.C. and then committed the

case to the Court of Sessions, as the offence alleged against the accused is triable at the Court of Sessions.

Basing on the material available, a charge under Section 302 of IPC came to be framed against the accused, read over and explained to him in Telugu, for which the accused pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P11 and M.O.1. After the closure of 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 but did not choose to examine any witnesses on his behalf.

After considering the oral and documentary evidence on record, coupled with the medical evidence, III Additional Sessions Judge (Fast Track Court), Bhimavaram found the accused guilty for the offence punishable under Section 302 of IPC and sentenced him to imprisonment for life. Assailing the same, the present Criminal Appeal came to be filed.

The learned counsel for the appellant would submit that even assuming that the offence was committed by the accused, it has taken place suddenly as the same was preceded by a quarrel between the accused and the deceased. It is urged that when the deceased refused to give money to the accused, the accused picked up a "Mancham Kodu Patti" and beat on the head of the deceased and left the place. Learned counsel for the appellant further

submits that even if the entire case of the prosecution is taken in toto, no offence under Section 302 IPC is made out, in the absence of any motive for the accused to cause the death of the deceased.

Learned Public Prosecutor would contend that even 3 days prior to the incident, at about 12.00 mid night, while P.W.1 and the deceased were sleeping in the house, the accused came and bolted the doors from out side, opened the gas and threatened to lit fire to gas by abusing them. According to him, this incident is sufficient to prove the intention of the accused. He further submits that the reasons given by the trial Court convicting the accused under Section 302 IPC warrants no interference.

As stated earlier, the sole ground urged by the learned counsel for the appellant is that there was a quarrel between the deceased and the accused, leading to the incident.

The evidence of P.W.1 is to the effect that about 3 days prior to the incident, at about 12.00 mid night while P.W.1 and the deceased were sleeping in the house, the accused came and bolted the doors from out side, opened the gas and threatened to lit fire by abusing them. P.W.1 broke open the door, came out the room, admonished the accused and sent him away. His evidence is also to the effect that his mother went to Dubai and stayed there for ten years. During her stay in Dubai, P.W.1 also went to Dubai along with his mother. He further deposed that the accused was habituated to drinking, used to quarrel with the villagers, abuse P.W.1 and his sister and the deceased, and also used to beat the deceased. In the cross-examination of P.W.1, it was stated that by the date of the death of the deceased, she was not having any

ailments and he did not state before the police that his mother was suffering with any disease. All other suggestions which were given to the P.W.1 disputing the manner in which the incident took place, were denied.

His evidence also makes clear that, on the date of incident, P.W.1 went to the agricultural land at 5.00 a.m, returned back to the home at 11.30 a.m and noticed the accused quarreling with his mother. He stood at the door and noticed the quarrel. According to him, the accused was demanding the deceased for money, which was being denied by the deceased. When the deceased refused to give money, the accused picked up a "Mancham Kodu Patti" and beat on the head of the deceased pursuant to which the deceased fell down. The fact of P.W.1 witnessing the offence is not demolished. In fact the evidence of P.W.1 gets corroboration from the report given by him on the next day. Apart from that, the evidence on record also shows that on 18.01.2011 itself, the accused approached the V.R.O and confessed about the commission of offence which was reduced into writing by P.W.7. Thereafter, the said V.R.O along with confessional statement and the covering letter Ex.P.6, produced the accused before the police. In the said extra judicial confession recorded by P.W.7, it is categorically stated by him that on the date of incident there was a quarrel between the deceased and his wife when the accused asked for money. It is said that when his wife refused to give money, the accused picked up a "Mancham Kodu Patti" and beat on the head of the deceased. There is no reason to believe the evidence of P.W.7, before whom the said extra judicial confession was made. In fact nothing is suggested to P.W.7 which belies his version.

The learned Public Prosecutor would contend that that having regard to the incident that took place three days prior, it can be inferred that the accused was having intention to cause the death of the deceased. But it is to be noted that even as per the evidence of P.W.1, about three days prior to the date of incident, the accused bolted the doors from out side, opened the gas, threatened to lit fire by abusing them. P.W.1 is said to have broke open the door, came out of the house, admonished the accused and sent him away. If the evidence of P.W.1 is tested with the evidence of P.W.5 and Ex.P.5, it would show that on that day when the accused asked the deceased to give money, there was a quarrel between the accused and the deceased. The contents of P.5 would show that in a fit of anger, the accused picked up a stick and beat the deceased on the head, as a result of which the deceased sustained injuries and fell down. From the evidence referred to above, it cannot be said that the accused had any intention to cause the death of the deceased. If his intention was to cause death of the deceased, the accused would have gone there armed with a weapon, but that is not the case of the prosecution. Admittedly, the accused went home in a drunken condition, demanded the deceased to give money and when she refused for the same, a quarrel took place. Then, he picked up the stick which was lying there and beat the deceased. Further, if really the intention of the accused was to kill the deceased, definitely he would have dealt number of blows, as no one was there at that time in the house and he was not aware about the presence of P.W.1. Taking into consideration the nature of the weapon used, which according to the prosecution is stout, it can be said that the

accused was having intention and knowledge that the weapon with which he attacked the deceased is likely to cause death.

Having regard to the circumstances stated above, it can be said that the nature of the offence can be scale down to one under Part-I of Section 304 I.P.C since the incident was preceded by a sudden quarrel between the deceased and the accused for not giving the money, we feel it is a fit case to scale down the offence to one under Part-I of Section 304 IPC.

Accordingly, the Criminal Appeal is allowed in part by modifying the conviction from Section 302 of IPC to Section 304 Part-I of IPC and the sentence of Imprisonment for life awarded by the III Additional Sessions Judge (Fast Track Court), Bhimavaram, against the appellant/accused namely Pilli Subba Rao, in S.C.No.214 of 2011, by judgment dated 12.08.2011, is modified to that of imprisonment for a period of TEN (10) years for the offence punishable under Section 304 Part-I I.P.C, while maintaining the sentence of fine imposed against him. The period of sentence already undergone by him is directed to be set off.

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

JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

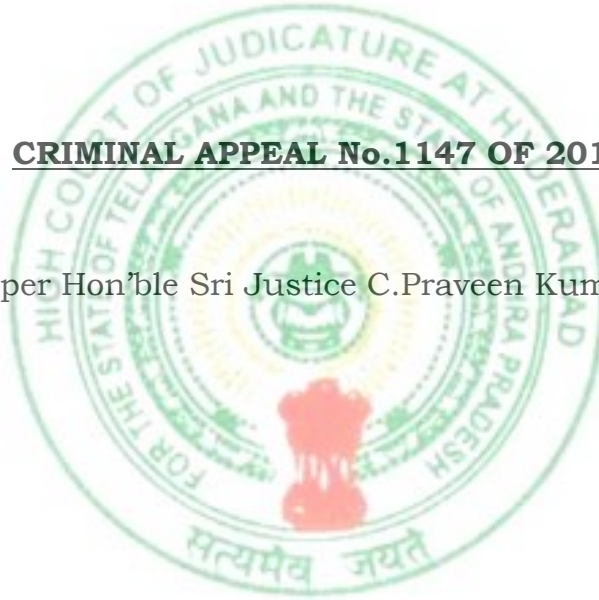
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Date: 12.06.2018

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