

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Criminal Appeal No.43 of 2014

JUDGMENT: *(per Hon'ble Smt. Justice Kongara Vijaya Lakshmi)*

The sole accused in SC No.131 of 2011 on the file of the Principal Sessions Judge, Khammam, is the appellant herein. He was tried for the offence punishable under Section 302 of IPC. By its judgment dated 25.03.2013, the Sessions Judge found the accused guilty of the charge framed and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.200/- for an offence punishable under Section 302 IPC.

2. The case of the prosecution in brief is that, one Pingali Radha (PW.1) lodged a report on 20.11.2010 with the Sub Inspector of Police (PW.10), Wyra PS stating that the accused is her father and the deceased Papaganti Vimalamma @ Vimala, (hereinafter referred as 'deceased') is her mother; that the deceased was suspecting the accused as having illegal contacts with another lady in the same village, and that the accused was also suspecting the chastity of the deceased pursuant to which there were frequent quarrels between them and the elders of the village also held *panchayat* and admonished the accused, but there was no change in the attitude of the accused. On 19.11.2010 at about 11.00 hours, the accused picked up a quarrel with the deceased when PW.1 was at her in-laws house at Gandagalapadu village, her brother (PW.2) informed her about the same over phone and asked her to come to Tatipudi. At about 2.30 p.m. she reached Tatipudi and saw the accused quarrelling with the deceased and she admonished the accused. Then the accused went out of the house and came back at

about 3 p.m. consuming liquor in large quantity and beat the deceased with a crow bar on the head, right side jaw, right ear and cheek and left the place while she was washing clothes. On hearing the cries of the injured-deceased, PW.1 came out of the house and saw the deceased with bleeding injuries. Immediately the injured was initially shifted to Government Hospital, Khammam and due to seriousness of the injuries, the deceased was shifted to Mamatha General Hospital, Khammam on 21.11.2010. But on the way the injured succumbed to the injuries.

3. Basing on the said report, PW.10, the Sub Inspector of Police, Wyra PS, registered a case in Cr.No.137 of 2010, initially for the offence punishable under Sections 307 of IPC, and issued FIR Ex.P.8 to all concerned. He examined PW.1 and recorded her statement. On the next day, he went to the scene of offence which is at the house of the deceased and examined PW.2, P.Murali (LW.3) and P.Srinu (LW.4) and recorded their statements. He secured the presence of PW.6 and E Viswanadham (LW.11) to act as *panch* witnesses and in their presence, he conducted scene of offence *panchanama* vide Ex.P.3. During the course of the *panchanama*, he seized MOs.2 and 3 under a cover of the *panachanama*. On 21.11.2010 at about 5.15 hours, on receipt of death intimation from the Government Hospital, Khammam, he altered the Section of law from 307 to 302 of IPC and issued Ex.P.9 the alteration Memo. PW.11, the Inspector of Police, who on receipt of the message from PW.10 about the alteration of Section of law, took up investigation, visited the scene of offence at Thatipudi and observed the scene. He then went to the Government Hospital, Khammam, examined PW.3, PW.4 and LW.8 and re-verified the statements of PWs.1 and 3 and LWs.3 and 4 recorded by PW.10. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW.7 and LW.13-

P.Mariyamma, seized blood stained cloths (MOs.4 and 5) of the deceased. Ex.P.4 is the inquest report. Thereafter he sent the body for post-mortem examination. PW.9 conducted post-mortem and issued Ex.P.7 post-mortem report. According to her, the cause of death was due to cranio cerebral injury. On 24.11.2010, PW.11 apprehended the accused in the presence of PW.8 and Chava Ramesh (LW.14), in whose presence, the accused is said to have confessed the above commission of offence. Pursuant thereto accused led them to the culvert No.3 situated at the outskirts of Tatipudi village and showed MO.1 used in the commission of the offence, which was seized under a cover of *mahazar* Ex.P.6. He sent the seized material objects to FSL. Ex.P.10 is the FSL report. After collection of FSL report and post-mortem report, he filed a charge sheet against the accused before the Court of Judicial Magistrate of I Class, Madhira, which was taken on file as PRC No.9 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 by a court of Sessions.

4. On committal, the Principal Sessions Judge, Khammam, framed a charge against the accused for the offence punishable under Section 302 of IPC, read over and explained to him, to which he pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution examined PWs.1 to 11 and got marked Exs.P.1 to P.10 and MOs.1 to 5. After closure of the evidence, the accused was examined under Section 313 Cr.P.C. with regard to the incriminating evidence found against him in the evidence

of the prosecution witnesses, for which he denied the same, but did not choose to examine any witnesses on his behalf.

6. After considering the evidence on record, the Principal Sessions Judge, found the accused guilty for the offence punishable under Section 302 of IPC and sentenced him as stated supra. Aggrieved by the same, the accused preferred the present appeal.

7. Heard the learned counsel for the appellant and the learned Public Prosecutor for the respondent-State.

8. PW.1 Pingali Radha and PW.2 P. Venkata Narayana are the children of the deceased and accused. PWs.3 and 4 are the elders of the village, who held *panchayat* when there were disputes between the deceased and accused. According to them one year prior to the incident, they held mediation and reprimanded the accused to look after the deceased well.

9. PW.5 is the Photographer, who took photos of the deceased and handed over the photos (Ex.P.3) along with CD to the police. PW.6 is the *panchayatdar*, who attested Ex.P.3 scene of offence. He stated that in his presence MOs.2 and 3 blood stained earth and controlled earth were seized by the police. In the cross-examination he stated that the police obtained his signatures on the white papers and he does not know anything about the case.

10. PW.7 is the inquest *panchayatdar*. His evidence discloses that in his presence, the police conducted inquest (Ex.P.4) over the dead body of the deceased and seized the cloths of the deceased (MOs.4 and 5) and he attested the Ex.P.4 *panchanama*.

11. PW.8 is a resident of Somvaram Village. His evidence discloses that on 24.11.2010 at about 7 a.m., when he and LW.14 were standing at the centre, police called him to the house of the accused and asked to interrogate the accused. On his interrogation, the accused confessed about the commission of offence under Ex.P.5. The accused then lead them to the culvert situated at the outskirts of the village and showed MO.1 crowbar, which was seized under Ex.P.6.

12. PW.9 is the Civil Assistant Surgeon, Government Hospital, Khammam. Her evidence discloses that on 22.04.2010, she conducted autopsy over the dead body of Vimala and found two lacerated wounds on the right side of the nose and cheek, one contusion on right side of cheek with fracture and fracture of right frontal parietal bone with intra cerebral haemorrhage. According to her the cause of death was due to crania cerebral injury. Ex.P.7 is the Post-mortem report.

13. PW.10 is the Sub Inspector of Police, who registered the crime, examined PWs.1 and 2, visited the scene of offence and altered the Section of law after receipt of the death intimation from the Government Hospital. PW.11 is the Inspector of Police, who conducted investigation and filed the charge sheet.

14. Mrs. D. Madhavi, learned counsel for the appellant contended that the appellant was falsely implicated in the case and that the trial court convicted the appellant without properly appreciating the evidence on record. She further submits that the trial court failed to appreciate the evidence of PW.1, who is the daughter of the deceased, who admitted in her cross-examination that the deceased fell down by slip while washing cloths and sustained injuries. She further submits that the trial Court ought to have seen that there are no eye-witnesses to the

alleged offence, which is evident from the statement of PW.1, who in her cross-examination stated that nobody witnessed the appellant herein beating the deceased. She further submits that the trial Court ought to have seen that there is no motive attributed to the accused-appellant to commit the offence under Section 302 of IPC. Except some omnibus allegations, no specific evidence is adduced by the prosecution to prove the alleged offence and prays to allow the appeal by setting aside the conviction and sentence passed against the appellant.

15. On the other hand, the learned Public Prosecutor would contend that the evidence of PW.2, who is the son of the deceased and accused, clinchingly establish the guilt of the accused. He further submits that the recovery of MO.1 crowbar at the instance of the accused and the opinion of PW.9 that the injuries mentioned in Ex.P.7 post-mortem report might have been caused with MO.1, establish the guilt of the accused and that the trial court rightly convicted and sentenced the accused for the offence punishable under Section 302 of IPC which needs no interference from this Court.

16. We have carefully considered the respective submissions of the learned counsel for the parties with reference to record.

17. As discussed above, the evidence of PW.1 reveals that when her brother PW.2 informed her about quarrelling of accused and the deceased with each other when she was at her in-laws house at Gandagalapadu. Immediately she came to Tatipudi village, saw her father and mother quarrelling with each other and she admonished her father. Thereafter, her father went out of the house and came back after some time by consuming liquor, beat her mother with a crow bar on the head, right side jaw, right ear and cheek and left the place. On

hearing the cries, she came from inside the house and saw her mother with bleeding injuries. In her re-cross-examination, she deposed that she did not witness while her father beating her mother and that her mother fell down by slip of leg while washing cloths and sustained injuries. She also deposed that nobody witnessed while her father was beating her mother. Basing on the re-cross-examination, PW.1 was re-chief examined by the Public Prosecutor, wherein she denied the suggestion that she was giving false evidence to help the accused, who is her father.

18. PW.2, who is the son of the deceased, deposed that her father and mother were having disputes and his father was used to harass his mother for the last four years prior to the her death and also suspecting the chastity of his mother, since his father is having illicit intimacy with another woman of Tatipudi village. According to him, when his father and mother were quarrelling, he telephoned to his sister PW.1, who came to his house and admonished the accused. Thereafter his father went away, came back after consuming liquor, beat her mother with a crowbar and left the place. On hearing the cries, he came out from inside the house and saw his mother with bleeding injuries. He stated that when the incident took place, he was inside the house, which is very near to the place of incident and he saw his father beating his mother with MO.1. In the cross-examination, PW.2 stated that his father and mother used to quarrel every day. The evidence of PW.2 shows that on the date of incident, the accused was quarrelling with the deceased and that when PW.1 admonished, the accused left the house and after some time, came back by consuming liquor, beat the deceased with a crowbar.

19. No evidence was let in by the prosecution to show that the accused came back with a crowbar. But the evidence of PWs.1 & 2 would show that the accused was quarrelling with the deceased on the fateful day and on being admonished by his own daughter, PW.1, the accused left the house and came back in a drunken condition, picked up a crowbar which was lying there and beat the deceased on the head. PWs.3, 4, 6 to 8 are the *panch* witnesses for the scene of offence, arrest of the accused and inquest. PW.5 is the photographer. PW.9 is the doctor and PWs.10 and 11 are the investigating officers. Thus, the prosecution relied only on PWs.1 and 2 to prove guilt of the accused.

20. From the evidence of PWs.1 and 2, it is clear that the accused used to pick up quarrels with the deceased everyday. Though the accused appeared to have been harassing the deceased, there is no evidence to show that he had ever attempted to do away with her life. Even on the fateful day, a quarrel ensued between them, leading to the incident. From the manner in which the occurrence took place as reflected from the evidence on record, we have no doubt in our mind to hold that the accused had no intention of killing his wife. The prosecution has not placed any material on record to show that the accused has brought a crowbar with him when he entered the house. As usual, there was some altercation in between the accused and in the course of the quarrel, the accused picked up a crowbar and hit her. Further, neither PW.1 nor PW.2 saw as to what transpired between the accused and the deceased prior to the incident. The essential ingredients constituting the offence of murder i.e., premeditation and intention to cause death, have not been established. On the contrary, the accused can be attributed with the knowledge that his act was likely to cause the death, which attracts the ingredients of Part II of Section

304 of IPC and therefore, we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder.

21. In view of the above, the accused is liable to be convicted for the offence punishable under Section 304 Part II of IPC, instead of the offence punishable under Section 302 of IPC.

22. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant-accused vide judgment dated 25.03.2013 in SC No.131 of 2011 on the file of the Principal Sessions Judge, Khammam for the offence punishable under Section 302 of IPC is altered to one under Section 304 Part-II of IPC. For the altered conviction, the appellant-accused is sentenced to suffer rigorous imprisonment for SEVEN (7) years. The sentence regarding the fine imposed by the trial court is confirmed. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant-accused shall be set at liberty forth with on completion of seven years rigorous imprisonment, if not required in connection with any other case.

Consequently, miscellaneous petitions, if any, pending in this criminal appeal, shall stand closed.

C.PRAVEEN KUMAR, J

KONGARA VIJAYALAKSHMI, J

Date: 14.06.2018
BSS

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(per Hon'ble Smt. Justice Kongara Vijayalakshmi)



Date: 14.06.2018

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