

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No. 400 of 2012

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

The sole accused in Sessions Case No. S.C.No. 418 of 2010 on the file of the II Additional District and Sessions Judge (Fast Track Court) at Sangareddy is the appellant herein. He was tried on three charges. The first charge was for the offence punishable under Section 302 IPC for causing the death of Rumandla Anjamma on 15.09.2009 at about 10.30 p.m. The second charge was for the offence punishable under Section 380 IPC., alleging that on 15.09.2009, he committed theft of gold gundlu, one iron box and cell phone from the house of the deceased. The third charge is under Section 506 IPC, for threatening Rumandla Gauramma, Balaiah and Sai Baba with dire consequences. Vide judgment dated 24.08.2011, the learned Sessions Judge convicted the accused on all the three counts and sentenced him to suffer imprisonment for life for the offence punishable under Section 302 IPC and also to pay a fine of Rs.1000/- in default to undergo simple imprisonment for a period of three months. He was also sentenced to suffer simple imprisonment for one year and pay a fine of Rs.1000/- under Sections 380 and 506 IPC in default to suffer simple

imprisonment for three months. All the sentences were directed to run concurrently.

2. The facts, as culled out from the prosecution witnesses is as under:

PW1 is the daughter of the deceased and PW2 is the son of the deceased. The father of PWs 1 and 2 (husband of the deceased) died eight years prior to the incident. Later, the accused developed intimacy with the deceased and used to go to their house. On the date of the incident, in the afternoon, the accused came to the house of the deceased and asked PW1 to provide food. On that, she refused to provide food and asked the accused to leave the house. He left the house, but, came back at 10.30 p.m., and knocked the door, requesting PW2 to open the door. On entering the house, he quarreled with the deceased, i.e., mother of PWs 1 and 2 in respect of cell phone. Later, he told the deceased that in the afternoon, when he asked for food, PW1 refused to do so. So saying, he took a stick and came upon PW1 to beat her. At that time, the deceased intervened, saying that as her children are grownup, it would not be proper for him to come to their house. At that point of time, the accused beat the deceased with a stick, all over her body. Thereafter, he is said to have snatched away the cell phone and gold gundlu chain of the deceased. Out of fear, PWs 1 and 2 came out of the house. The accused is said to have threatened them stating that if they inform to the police, he will kill them also. Thereafter, PWs 1 and 2 ran

to the house of PW5 and informed him about the incident. On receipt of the information from PWs 1 and 2, PW5 came to the house of deceased and found the deceased lying on the ground. PWs 1 and 2 requested PW5 to take their mother to the hospital. The deceased refused to go to the hospital, stating that she would go to the hospital on the next day. On the next day, the brother of the deceased came to PW1 and informed her that their mother was not responding. Immediately, PW1 proceeded to their house and found her mother dead. Then, PW1 is said to have lodged a report before PW11-the Sub Inspector of Police, Srgapoor on 17.09.2009 at 9 a.m., which led to the registration of a case in Crime No. 83 of 2009 under Sections 302, 380 and 506 of IPC. Ex.P11 is the original First Information Report. Thereafter, he handed over further investigation to PW9.

3. On 17.09.2009, PW9 took up investigation and proceeded to Gosaipally Village of Srgapur Police Station, where he examined PWs 2 to 6 and recorded their statements. At the scene of offence, he prepared a panchanama and also a rough sketch of the scene in the presence of PW7, which are placed on record as Ex.P3 and Ex.P4 respectively. Thereafter, he conducted inquest over the dead body of the deceased, in the presence of PW7. Ex.P5 is the inquest report. During inquest, he examined PWs 2 to 6. After conducting inquest, he sent the dead body for post mortem examination.

4. PW10-the Civil Assistant Surgeon at Government Hospital, Narayanakhed conducted autopsy over the body of the deceased and issued Exhibit P8-the Post Mortem Report. According to him, he found two external abrasions on the left arm of the deceased and contusion on the back, apart from internal injuries. He also noticed bleeding in both the lungs, in kidney and liver of the deceased. According to him, the cause of death was due to injuries resulting in internal bleeding. He also opined that if a person is beaten with a stick like M.O.3 indiscriminately, there is possibility of sustaining the aforementioned injuries.

5. As the accused was absconding, PW9 deputed his men in search of the accused and on 20.05.2009, he received information about the accused consuming pesticide and lying in the outskirts of the village. Immediately, the villagers shifted him to Narayanakhed Government Hospital. On 20.05.2009, the accused was discharged from the hospital, pursuant to which, he was arrested and brought to the office of PW9, wherein he is said to have confessed about the commission of the offence, in the presence of PW8 and another. The accused is said to have revealed that he snatched M.Os 1, 2 and 4 from the possession of the deceased. Accordingly, he led PW9 to his house, from where the police seized M.Os under a panchanama.

6. After collecting all the necessary documents, a charge sheet came to be filed, which was taken on file as PRC No. 06/ 2010 on the file of the Judicial First Class Magistrate, Narayanakhed. On

appearance, copies of the documents were furnished and after satisfying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions, wherein it came to be numbered as S.C.No. 418 of 2010 on the file of the II Additional District and Sessions Judge (Fast Track Court) at Sangareddy. Basing on the material on record, charges for the offences punishable under Sections 302, 380 and 506 of IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

7. In support of its case, the prosecution examined PWs.1 to PW11 and got marked Exs.P1 to P9 and M.Os.1 to 4. 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. The accused got examined DWs 1 to 3 and got marked Exhibits D1 and D2 in support of his defence.

8. Relying upon the evidence of PWs 1 to 4, the learned Sessions Judge convicted the accused under Sections 302, 380 and 506 IPC. Challenging the same, the present appeal came to be filed.

9. The learned counsel for the appellants mainly submits that though PWs 3 and 4 are projected as eye witnesses to the incident, it is highly impossible to believe that they could have witnessed the incident. Insofar as PWs 1 and 2 are concerned, it is urged that since both of them are interested witnesses having animosity

against the accused, no reliance can be placed on their evidence. It is urged that since the oral evidence is inconsistent with the material evidence, there is any amount of doubt with regard to the participation of the accused in the commission of the offence. Insofar as the recoveries are concerned, it is urged that no proper test identification parade of the properties was conducted, which creates suspicion, with regard to the recovery and identification.

10. On the other hand, the learned Public Prosecutor opposed the same, contending that there is no reason to disbelieve the version of the inmates of the house of the deceased, who are eye witnesses, more so, when the First Information Report came to be lodged immediately after the incident. In view of the above, he pleads that the evidence of PWs 1 to 4, coupled with the recoveries made, amply establish the involvement of the accused in the commission of the offence.

11. The point for consideration is whether the accused is responsible for the death of the deceased.

12. Insofar as the incident proper is concerned, the prosecution mainly relied upon the evidence of PWs 1 to 4. Before referring to the evidence of PWs 1 to 4, it would be useful to refer to the contents of the F.I.R., which was given on 17.09.2009, wherein it has been specifically stated that about five months prior to the date of incident, the deceased advised the accused not to come to her house, as the children are grownup and that it may damage their image in the society. It is stated that on 15.09.2009, at

about 1 p.m., the accused came to the house of the deceased and asked PW1 to provide meals, but she refused to do so and asked him to go out. On the same day, at 10.30 p.m., the accused again came to their house and asked PW2 to open the door. After coming into the house, he picked up a quarrel with the deceased with regard to the cell phone and also with regard to the incident that took place in the afternoon. Saying as to why PW1 did not provide meals to him in the afternoon, the accused picked up a stick and tried to hit PW1. Seeing the same, the deceased intervened. Then, the accused is said to have beat the deceased with the stick. Being afraid of the incident and apprehending that they would be attacked by the deceased, PWs 1 and 2 ran into the house of PW5 and informed him about the incident.

13. Coming to the evidence in Court, PW1, who is the daughter of the deceased and whose presence in the house cannot be doubted, deposed about her mother developing intimacy with the accused, after the death of their father. On the date of incident, in the afternoon, the accused came to their house and asked her to provide food. She is said to have refused to provide food and asked him to leave the house. The accused left the house and again came back at about 10.30 p.m. and knocked the door saying "Sai, please open the door". Then, PW2 opened the door, which made the accused enter the house. In the house, the accused quarreled with the deceased in respect of the cell phone and started complaining to the deceased, about the incident that occurred in the afternoon. While informing about the incident, the

accused picked up a stick and came upon PW1. Meanwhile, the deceased intervened, saying that the children have grownup and that he should not come to their house. Then, the accused beat the deceased with the stick indiscriminately, all over the body. Though PW1 was cross-examined at length, nothing useful came to be elicited to disbelieve her version in chief, which gets corroboration in all respects from the contents in the F.I.R. In fact, a reading of the cross-examination does not, anywhere, indicate any suggestion being put to PW1 with regard to the incident, except eliciting the time as to when the incident took place.

14. Similarly, PW2, who was aged 12 years at the time of evidence, in his evidence, deposed about the accused coming to their house in the afternoon, PW1 refusing to provide him food; asking him to leave the house, and the accused coming again at 10.30 p.m. He also deposed about the accused picking up a quarrel with his mother (deceased) in respect of the cell phone and also complaining to her about the incident which took place in the afternoon of that day, when PW1 failed to provide food to him. After that, he took a stick and tried to attack PW1, but his mother intervened, stating that the children have grownup and that he should not come to their house. At that time, with the same stick, the accused is said to have beat the deceased indiscriminately. Due to fear, PWs 1 and 2 ran to the house of PW5 and informed him about the incident. Both PW1 and PW2 also spoke about the accused taking away M.Os, 1, 2 and 4 from the body of the

deceased. PW2 was also subjected to cross-examination, but, nothing useful came to be elicited to discredit his testimony.

15. PWs 4 and 5, who are the neighbours of the deceased, in their evidence, deposed that on the date of the incident, at about 10.30 p.m., they heard cries from the house of the deceased and when they proceeded to the house of the deceased, they witnessed the accused beating the deceased with a stick. However, due to fear, they did not interfere. They also stated that on hearing the cries from the house of the deceased, they reached there and witnessed the incident. According to them, the accused threw the stick at the scene and fled away.

16. It is also to be noted here that the evidence of PWs 1, 2 and 5 would show that after the arrival of PW5, the deceased was questioned about the incident. She is said to have informed about the accused beating her with a stick. She also refused to go to the hospital, stating that she would die, but would not go to the hospital. Hearing the version of the deceased, PW5 left the house. On the next day morning, PW1 went out for grazing of the cattle, while PW5 left to attend coolie work. In the evening of that day, the death of the deceased took place in the same house.

17. From the evidence of the aforementioned witnesses, coupled with the contents of the F.I.R., it is clear that it was the accused who was responsible for the incident. The fact that the accused was responsible for the incident also stands established with the recovery of the ornaments of the deceased at his instance. The

evidence of the investigating officer, coupled with the evidence of PW8-the mediator, amply establishes that pursuant to a confession made, the accused took them to the house and produced the gold ornaments which were identified by PW1 as that of the deceased.

18. As stated earlier, the counsel for the appellant mainly contended that even if the entire case of the prosecution is believed to be true, no offence under Section 302 IPC is made out.

19. As seen from the evidence of the four witnesses, viz., PWs 1, 2, 5 and 9, referred to earlier, the accused came to the house of the deceased in the afternoon and asked PW1 to provide food. PW1 is said to have refused and asked him to leave the house. Again, at 10.30 p.m., he came to the house of the deceased and entered the house when the door was opened by PW2. After entering the house, the accused quarreled with the deceased with respect to the cell phone, and thereafter, informed the deceased about the incident which occurred in the afternoon. He is said to have picked up a stick which was lying in the hut and then tried to assault PW1. Seeing the same, the deceased intervened, saying that since the children have grown up, the accused should not enter their house. Then, with the same stick, the accused is alleged to have beat the deceased indiscriminately.

20. From the above, it is clear that the accused never entered the house with an intention to cause the death of the deceased. It all happened in a spur of the moment. In fact, as stated by us earlier, he picked up the stick to assault PW1, but when the

deceased intervened, he beat her with the said stick. Further, things would have been different had the deceased took treatment immediately after the assault. From the evidence of PWs 1, 2 and 5, it is evident that though they wanted to take the deceased to the hospital, she refused to go to the hospital. If really the injuries were so grievous and were visible externally, definitely, some effort would have been made by PW5, PW1 or the neighbours, in taking the deceased to the hospital. The evidence of the doctor who conducted post mortem also does not anywhere, indicate, the number of the injuries on the body of the deceased, as spoken to by PWs 1 and 2. If really the deceased was beaten indiscriminately, one would find more injuries than what is reflected in the post mortem certificate, which discloses only two external abrasions on the left arm of the deceased; however, there were cut injuries to the lungs, kidney and liver internally. Absence of any visible injuries must have made PW1 to take the cattle for grazing and also PW5 to go to his labour work on the following day. Situation must have become serious later, leading to her death on 16.09.2009 in the house. If treatment was provided immediately, the possibility of the deceased, surviving cannot be ruled out.

21. Therefore, having regard to the circumstances stated above, the accused cannot be convicted under Section 302 IPC, more particularly, in view of the evidence of the doctor who conducted post mortem, wherein he admits that if the contusion is by a stick, there will be two parallel lines like a railway track or tamp lines,

which are not noticed by the doctor, while, on the other hand, he noticed abrasions on the left arm and a contusion on the back.

22. Having regard to the facts and circumstances of the case, since there was no motive on the part of the accused to commit the offence, and also, as there is a discrepancy with regard to the nature of the weapon used and the injuries caused, which is clear from the evidence of the doctor who conducted post mortem, we feel that the conviction of the accused under Section 302 IPC can be scaled down to that under Section 304 Part-II IPC.

23. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in the judgment dated 24.08.2011, in Sessions Case No. 418 of 2010 on the file of the II Additional District and Sessions Judge (Fast Track Court) at Sangareddy, for the offences punishable under Sections 302, 380 and 506 I.P.C. is altered to one under Section 304 Part-II IPC. For the altered conviction, the sentence of imprisonment of the appellant is reduced to that of the period already undergone by him, in view of the representation made by the learned counsel for the appellant that the appellant is already in jail for more than five years. 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 shall be set at liberty forthwith, if not required in

connection with any other case. Miscellaneous petitions pending,
if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

31.07.2018
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