

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE Mrs. JUSTICE T.RAJANI

CRIMINAL APPEAL No.448 of 2012

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

The sole accused in S.C.No.44 of 2011 on the file of Principal Sessions Judge, Nellore, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing death of one Gunji Prasad, on 05.05.2009 at about 03.30 p.m. at the house of one Uppu Badrakalamma, situated at Vandluru colony of Kothuru Panchayath, Nellore District.

2. The facts in issue are as under:

(i) PW1 is the brother of the deceased, PW2 is the wife of the deceased, while PW3 is the sister-in-law of the accused, PW4 is the daughter of PW3, PW5 is the tenant and PW6 is the friend of PW1. The accused is the father-in-law of the deceased.

(ii) The deceased along with PWs.2 to 5 and 9 were living in Bhagat Singh Colony, Buja Buja Nellore (V), SPSR Nellore District. The marriage between the deceased and the daughter of the accused took place about 1 ½ years prior to the incident. Out of wedlock, they were blessed with one male child. It is stated that the deceased used to drink and quarrel with his wife PW2. On 05.05.2009, at about 02.30 p.m., the deceased came home in an inebriated condition and picked up a quarrel with PW2, due to

which, PW2 poured kerosene on herself, as the accused used to harass her with an intention that he wanted to marry his elder sister's daughter. The neighbours witnessed the same, chastised the deceased about his attitude and took PW2 to the house of her mother's elder sister (PW3), which is situated four or five houses away from their house. Thereafter, the husband of PW2 also came to her house. PW1 also came there and chastised the husband of PW2 with regard to his acts. It is stated that PW2 gave information to her father (accused) about the incident and hence her father was coming to them. Then the sister of PW2 and her mother's elder sister made her to take bath. At about 03.30 p.m., the accused came to the house of PW3 and picked up a quarrel with the deceased. In that quarrel, the accused picked up a cot leg and beat the deceased on his head and ran away. PWs.1 and 6 tried to catch him, but in vain. PWs.2 and 4 shifted the injured to Government hospital, Nellore. As his condition became serious, the injured was shifted to Narayana hospital, Nellore on the next day. At about 04.30 p.m., PW12, the Head Constable, received an intimation about the admission of the deceased, proceeded to the hospital and recorded the statement of the deceased, which is marked as Ex.P12. PW12 read over the statement to the injured, who admitted the same to be true and thereafter obtained her left thumb impression on Ex.P12. The doctor also endorsed with regard to the mental condition of the injured. On 08.05.2009, at about 10.00 a.m., while PW16 the Sub Inspector of police, V Town Police Station, Nellore, was

present in the police station, he received an intimation from the Government hospital, Nellore, basing on which a case in Crime No.91 of 2009 of V Town Police Station, Nellore, for an offence punishable under Section 324 IPC came to be registered. Ex.P18 - the original FIR, was submitted to the Court and thereafter PW16 proceeded to Government hospital, Nellore, by which time the injured was already shifted to Narayana hospital, Nellore. He then proceeded to Narayana hospital, secured the presence of PW1 and recorded his statement. From the hospital, PW16 proceeded to the scene of offence and prepared a rough sketch of the scene, which is marked as Ex.P19. He also examined PWs.2 to 5 and 9 and recorded their statements. On 26.05.2009, the injured died and on the same day at about 10.00 a.m., PW15 received express FIR under Ex.P13 and took up further investigation in the matter. He then conducted inquest over the body of the deceased in the presence of LW12 and another. Ex.P7 is the inquest panchanama. During inquest, he examined PWs.1, 3 and others. After completing the inquest proceedings, PW15 sent the body for post mortem examination to Government Head Quarters hospital, Nellore. PW8 the Civil Assistant Surgeon in DSR Government Head Quarters hospital, Nellore, conducted autopsy over the body of the deceased. According to him, the cause of death was due to Septicemia and head injury. On 04.06.2009, PW15 arrested the accused and sent him for judicial custody. On 09.06.2009, he sent material object to RFSL, Guntur and on 15.06.2009, recorded the statement of PW2.

After collecting all the documents, PW17 the CI of Police filed a charge sheet, which was taken on file as PRC No.39 of 2009 on the file of IV Additional Judicial Magistrate of First Class, Nellore.

(iii) On appearance of the accused, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal under Section 209 Cr.P.C., the same came to be numbered as S.C.No.44 of 2011 on the file of Principal Sessions Judge, Nellore.

(iv) On the basis of the material on record, charges as mentioned above, came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P19 and MOs.1 and 2. Out of 17 witnesses, examined by the prosecution, PWs.2, 3, 4 and 9 did not support the prosecution case and were treated hostile by the prosecution.

(vi) After the closure of prosecution 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 adduce oral or documentary evidence, except getting marked Exs.D1 to D7.

(vii) Relying upon the evidence of the eye witness i.e., PWs.1, 5 and 8, the learned Judge convicted the accused for the aforementioned charge. Assailing the said conviction and sentence, the present appeal came to be filed.

3. The only ground urged by the learned counsel for the appellant is that even accepting the entire case to be true, no offence under Section 302 IPC is made out to connect the accused with the crime. The accused, who is the father-in-law of the deceased, came to the scene of offence, on receipt of the information about the quarrel between the deceased and his wife and then picked up a quarrel with his son-in-law. In the course of the said quarrel, he picked up the leg of a cot, and gave a single blow on the head of the deceased leading to his death 21 days later.

4. On the other hand, learned additional public prosecutor, would contend that because of the single blow, the deceased went in coma for 21 days and then died. Since the death was due to blow and taking into consideration the manner in which the blow was given, he would submit that the trial Court was right in convicting the accused under Section 302 IPC.

5. The point that arises for consideration is whether the accused is responsible for the death of the deceased and whether the accused is liable to be convicted under Section 302 IPC?

6. PWs.1, 5 and 6 are the witnesses, who spoke about the manner in which the incident took place. PW1 in his evidence deposed that the deceased is his brother and PW2 is the wife of the deceased. One and a half years prior to the incident, the marriage between the deceased and PW2 took place. Out of wedlock they were blessed with one male child. The accused is the father-in-law of the deceased. The deceased and his wife used to reside at Bhagath Singh Colony. It is stated that the deceased used to quarrel with his wife by consuming alcohol. But PW1 and others never interfered in their quarrel as it was their family quarrel. On the date of incident, at about 02.30 p.m., there was a quarrel between the deceased and his wife, due to which PW2 poured kerosene on herself. On that, PW5 and one Ayesha (PW9) went to the house and brought PW2 to the house of PW3. The accused also went to the house of PW3 after sometime and sat on the cot underneath a 'kanuga' tree at the house of PW3. Thereafter, PW1 also came there. Both of them were talking with each other. By the time the accused arrived, the deceased was in a drunken condition. There was a quarrel between the accused and deceased and in the said quarrel, the accused picked up a cot leg and beat on the head of the deceased. As a result of which, the deceased fell down. The accused threw the stick and ran away from the scene of offence. The said version of PWs.1, 5 and 6 establishes the manner in which the incident took place. It would be appropriate to extract

relevant portion in the evidence of PWs.1, 5 and 6, which reads as under:

PW1 in his evidence deposed as under:

“....While I was at my house at about 03.00 p.m., in the afternoon on 05.05.2009, the daughter of Ragala Seenamma (LW4) came to me and informed me that there was quarrel in between the deceased Prasad and his wife Lakshmi and they were sitting at the house of Bhadrakalamma (LW3) and on that I rushed to the house of said Bhadrakalamma and found the deceased Prasad, and his wife Lakshmi, Sennamma and Bhadrakalamma are present there. At which time the deceased Prasad was sitting on the cot under a Kanuga tree. Then I enquired the deceased Prasad and his wife that why disputes are arousing in between them and enquired about the said quarrel. Then Lakshmi informed to me that she telephoned to her father with regard to the incident and her father is now coming. In the meanwhile, the accused came there by 03.30 p.m., and the accused questioned my brother Prasad why he beat his daughter Lakshmi. At which time the accused was in a drunken state. The accused also beat the deceased Prasad with a cot leg on his head and then the deceased Prasad was fallen down with the said blow. The accused thrown away the said cot leg and try to went away. Then myself and Sekhar chased him while he was running away but we were unable to caught hold of the accused as he ran away”.

PW5 deposed as under:

“At about 03.30 p.m., the father of PW2 i.e., accused herein came running towards the house of Bhadrakallam and picked up a cot leg and beat Prasad with that cot leg on his head due to which Prasad sustained bleeding injury on his head. Haribabu and Sekhar try to caught hold of the accused but the accused escaped from their hand and ran away. The cot leg was thrown away on the ground by the accused.”

PW6 deposed as under:

“...By the time while I was talking with PW5 about my necessity, I observed another lady Ayesha was talking with PW2 Lakshmi that the said Lakshmi poured kerosene on herself. Then PW5 also followed them after the house of PW3. Immediately the deceased Prasad also followed them to the house of PW3 along with his son. Then PW2 take bath in the bathroom of PW3 and came out from the house of PW3. For some time thereafter Hari Babu (PW1) also went there to the house of PW3 and sat on the cot under the tree by talking along with PW3 and Prasad. At about 03.25 or 03.30 p.m., the accused also came to the house of PW3. On seeing the accused, I also went to the house of PW3. The accused while talking with the deceased Prasad questioning why he is harassing his daughter and so saying he picked out the leg of a broken cot situated there and beat with the said cot leg on the head of Prasad. Due to which Prasad sustained bleeding injury on his head and fell down on the ground. Then the accused threw the said cot leg and ran away. Then PW1 asked him “stop stop” and wanted to caught hold of the accused but the accused ran away.”

Though all these witnesses were subjected to lengthy cross examination, but nothing useful came to be elicited to discredit their version. Infact, learned counsel for the appellant did not dispute the participation of the accused in the commission of offence. His only argument is that the accused never had any intention or motive to kill the deceased and that everything happened in a spur of moment due to a quarrel that ensued between the deceased and the accused. Hence, the involvement of the accused in the commission of offence stands established.

7. Coming to the nature of offence, the evidence of the three witnesses i.e., PWs.1, 5 and 6 would show that on the date of

incident, there was a quarrel between the deceased and PW2 and in the said quarrel, PW2 poured kerosene on herself. PWs.5 and 9 were informed about the same. Immediately, both of them came and took the deceased to the house of PW3, who is the sister of PW2. On seeing kerosene on the body of PW2, PW3 sent her to take bath. On receiving information about the quarrel between PW2 and her husband and PW2 pouring kerosene on herself, the accused came to the house of PW3 and questioned the deceased about the incident, picked up quarrel and in the course of the said quarrel, he picked up the cot leg, which was lying there and hit the deceased on his head. As a result of which, he fell down. About 21 days thereafter, the deceased died.

8. PW.8 the post mortem doctor, in his evidence deposed that the death of the deceased was due to sutured wound over frontal region of 8 c.ms. Injury Nos.1 and 2, as per the post mortem certificate, are sutured wounds.

9. It would be useful to refer to the evidence of PW8, the doctor, which is as under:

“I received requisition letter dated 26.05.2009 on 27.05.2009 from Inspector of Police, Nellore P.S. and I have conducted post mortem on the dead body of Gunji Prasad on 27.05.2009 from 12.15 p.m., to 02.15 p.m. I found the following external injured:

1. Sutured healed wound of size 21 c.m., ‘U’ shape starting from frontal bone and ending at temporal bone right side.

2. Tracheostomy wound over neck present of size 6c.ms.
3. Sutured wound over frontal region of size 8 c.ms. present.

On internal examination, I found the following findings:

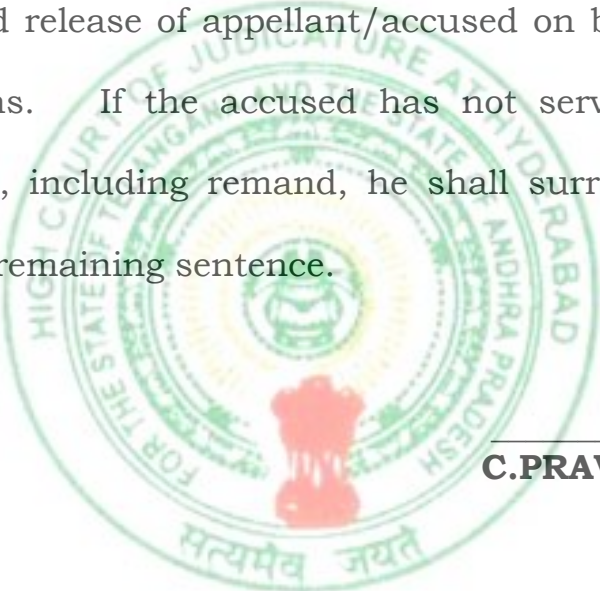
1. Skull left temporal and frontal bone is fractured and freely lying bone pieces of 5X6 c.ms. present.
2. Brain on cut section left temporal bone and left temporal lobe is floppy and softened and congestion present. Serosanguinous discharge present. Remaining brain matter on cut section congested.
3. Lungs on cut section specks of pus discharge present.

.....To the best of my knowledge, the cause of death is due to septicemia and head injury. Ex.P8 is post mortem certificate issued by me. The injury No.3 can be caused with MO1 cot leg, which is sufficient to cause the death of the deceased. Injury Nos.1 and 2 are surgically made. The victim has undergone brain surgery. Injury No.3 is an anti mortem injury.”

10. From the evidence of the above witness, it is clear that only one blow was given, pursuant to a quarrel between him and his father –in-law and the death was due to Septicemia.

11. Since the incident is not preceded by any motive; as the accused never came to the scene of offence with an intention to kill the deceased and since the assault took place during the course of the quarrel between the accused and the deceased, we feel that the nature of offence can be scaled down from Section 302 IPC to Section 304 II as the accused has the knowledge that such injury is likely to cause the death of the deceased.

12. Accordingly, the appeal is allowed in part. The conviction and sentence recorded against the appellant/accused in the judgment dated 15.05.2012, in S.C.No.44 of 2011, on the file of Principal Sessions Judge, Nellore, for the offence punishable under Section 302 IPC is altered to one under Section 304 II of IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of five years. The period of imprisonment undergone shall be given a set off. This Court, vide its order dated 31.07.2017 in CrI.A.M.P.No.1580 of 2017, directed release of appellant/accused on bail on the terms and conditions. If the accused has not served five years of imprisonment, including remand, he shall surrender himself to serve out the remaining sentence.



C.PRAVEEN KUMAR, J

T.RAJANI, J

31.07.2018
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