

THE HON' BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No. 682 of 2011

JUDGMENT: (per the Hon' ble Sri Justice Gudiseva Shyam Prasad)

This criminal appeal is directed against the Judgment dated 01.04.2010 in Sessions Case No.858 of 2009 on the file of VIII Additional District and Sessions Judge (Fast Track Court), Guntur (for short, 'the trial Court'). The appellant-accused was found to be guilty for the offence punishable under Section 302 IPC, and was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-; and in default of payment of fine, to further undergo rigorous imprisonment for three months.

2. The case of the prosecution is that the deceased–Gade Jayasri, aged about 35 years, used to work as a house-maid in the houses of PWs.2 and 4. She had a daughter by name Gade Anusha aged 14 years and studying 9th Standard by the date of incident. The husband of the deceased left her and thereafter, she developed illicit intimacy with the accused–Shaik Alla Bakshu @ Allu @ Alla Basha, aged about 33 years, a Coolie in Fish Market. The accused, deceased and her daughter – PW.1 were residing together in a house in Lalapet, Guntur District. The accused got addicted to vices and used to demand money from the deceased and whenever she refused to give money, the accused used to pick up quarrels and beat her. On one occasion in the year 2007, the

accused caused a cut injury on the throat of the deceased with a blade and thereafter a police report was given in Lalapet Police Station, however, at the intervention of elders, the matter was compromised before the Lok Adalat. On 23.08.2009 at 5.00 p.m., the accused came home in drunken condition and asked the deceased to give money and when she refused to give money, the accused left the house by throwing the meals plate away. On the same day at 10.00 PM, the accused came to the house, again quarrelled with the deceased and went away. Thereafter, the deceased was proceeding to the house of PW.3 to inform her about the incident. At about 11.00 or 11.30 PM in the night, they heard the cries of the deceased and they rushed towards Ramulavari Temple, where she saw the accused beating the deceased with a stone on her face and head and the deceased lost consciousness. PW.2 called the ambulance and on seeing PWs.1, 2, 3 and 4, the accused fled away from the scene of offence. Then they shifted the injured-deceased to the Hospital. The police recorded her statement under Ex.P.1 – written report and registered a case in Crime No.163 of 2009 for the offence punishable under Section 307 IPC. On 28.08.2009, the deceased succumbed to the injuries while undergoing treatment at Government General Hospital (GGH), Guntur. On receipt of death intimation, PW.10 re-registered the case for the offence punishable under Section 302 IPC and PW.12 conducted investigation and filed charge sheet before the IV Additional Junior Civil Judge, Guntur and the charge sheet was taken on file as PRC No.24 of 2009. As the case involves the offence punishable under Section 302 IPC, which is exclusively triable by the Court of

Sessions, the learned Judge committed the case to the Court of Sessions which numbered the case as Sessions Case No.858 of 2009 and made over the same to learned VIII Additional District & Sessions Judge (FTC), Guntur (“the trial Court”) for disposal in accordance with law. The trial Court framed the charge for the offence punishable under Section 302 IPC against the accused, which the accused denied and claimed to be tried.

In order to bring home the guilt of the accused, the prosecution has examined witnesses PWs.1 to 12, got marked Exhibits P1 to P15, and Material Objects MOs.1 and 2. The defence has not examined any witness nor marked any document. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with regard to the incriminating material against him. The accused denied the incriminating circumstances appearing against him. The trial Court, on appreciating the oral and documentary evidence available on record, found the accused guilty of the offence punishable under Section 302 IPC and sentenced him as stated above vide the impugned judgment. Aggrieved by the judgment of the trial Court, the accused preferred the present appeal.

3. Heard Sri S. Nagender, learned counsel for the appellant-accused, and the learned Public Prosecutor representing the respondents-State.

4. According to the version of prosecution, PW.1, the minor daughter of the deceased lodged a complaint Ex.P1 before the Police stating that her father Krishna has deserted her mother about seven years

back and, thereafter, one Allah Baksh (the accused) used to visit her house and trouble her mother/deceased in a drunken condition and torture her mentally. That about two years back, the accused came to his house in a drunken condition and beat the deceased and caused cut injury to her throat with a blade, that the deceased lodged a complaint with the police and the matter was compromised in the Court and that thereafter, again the accused used to torture her mother. That on 23.08.2009 at 5.00 p.m., the accused came home in drunken condition and abused the deceased and threatened to kill her and threw the cooked rice while they were all taking food, that he came again later and threatened the deceased that he would kill her, that PW-1 tried to call her uncle and on that he went away. That on the same day night at 10 o'clock, the accused came to the house and after an altercation with the deceased he went away, that while her mother was going to the house of her senior paternal aunt Vasundhara Devi situated near their house, the accused picked up an altercation with the deceased near the Rama Temple and abused her and kicked her with an intention to kill her, that the deceased fell down and the accused took a hill stone lying by the side and beat on the head of the deceased causing bleeding injury and that when PW.1 went near the deceased, the accused threw away the stone and fled away. That the said occurred at 11.30 hours in the night and Narasimha Swamy (PW-5), Vasundhara Devi (PW-3) and her uncle Selvaraj (PW-2) witnessed the accused beating the deceased with the stone and that when they tried to catch him, he fled away. That they brought the deceased to the Government General Hospital, Guntur in an

ambulance and the deceased was unconscious, her statement was not recorded.

5. PW.11, the S.I of Police, Lalapet, received the statement of PW.1 on 24.08.2009-FIR and Ex.P10-intimation from the Government General Hospital, Guntur, and registered a case in Crime No.167 of 2010 under Section 307 IPC. He conducted Scene of Offence Panchanama in the presence of mediators and seized the stone (MO.1) and prepared rough sketch of scene of offence-Ex.P-12. He got photographed the scene of offence through a private photographer PW.8. He conducted observation Panchanama (Ex.P2). On receipt of the death intimation on 28.03.2009, at 11:30 PM, Pw-11 registered the case under Section 302 IPC and issued Ex.P14, altered FIR. During investigation, the police conducted the inquest panchanama (Ex.P-4) over the dead body of the deceased in the presence of PW.7.

6. The evidence of PW.7, in his cross-examination, reveals that he came to know the cause of death only through the opinion of the medical officer who conducted post-mortem examination. The testimony of this witness reveals that he did not state the cause of death in the inquest report as he came to know about the cause of death through the opinion of the medical officer who conducted post-mortem examination.

7. A perusal of Ex.P4 reveals that the deceased had nine injuries over various parts of her body and the cause of death was not stated. The inquest panch reveals that the unanimous opinion of the panchayatdars was that the accused was responsible for the death of the deceased as he

beat the deceased on her head with a hill stone and inflicted fatal injuries to her. Column 15 of the inquest report is nothing but an extract of the FIR. Therefore, the inquest report is of no consequence in this matter except for the proof of ante-mortem injuries.

8. Exs.P5 and P6 are the positive and negative photographs of the scene of offence. Exs.P7 and P8 are the positive and negative photographs of the dead body of the deceased. Ex.P9 is post-mortem examination report.

9. PW.9 is the medical officer who conducted autopsy over the dead body of the deceased and opined the cause of death was due to the injuries sustained by the deceased to her head. He has also deposed that the external injury No.1 and internal injury No.2 can be possible by a stone like MO.1, that the external injuries Nos.2 to 5 may be possible by falling on a rough surface and also as a result of kicking and that internal injury No.3 is the corresponding injury to external injury No.1.

10. The medical evidence clearly reveals that this is a case of homicide. The deceased received injuries caused due to kicking and also due to falling on a rough surface and injuries to her head are likely to have been caused by MO.1. Therefore, the circumstances in this case clearly show that the deceased died due to the said injuries.

11. The prosecution has relied on the oral testimony of the direct witnesses to the incident of accused beating the deceased with a stone on her head and causing injuries which resulted in her death.

12. PW.1 is the daughter of the deceased and an eyewitness to the incident of the accused beating the deceased with MO-1. The testimony of PW.1 is corroborated by her statement under Section 161 Cr.P.C. PW.1 is a natural witness being the daughter of the deceased. Her testimony is corroborated by the testimony of PW.2 with regard to the relationship of the deceased and the accused and the accused visiting the house of the deceased and harassing her for money in a drunken condition to meet his vices. Nothing is elicited in her cross examination to disbelieve her version of witnessing the incident of the accused beating the deceased with MO-1-stone on her head and causing the fatal injuries.

13. PW.3 is the elder sister of the deceased and PW.2 is the elder brother of PW.3. According to the testimony of PW.3, the accused kept the deceased as his mistress and there were quarrels between them as the accused used to demand money and beat her in drunken condition. She is also an eyewitness to the incident of the accused beating the deceased with MO-1-stone. She deposed that when they raised cries the accused left the place. According to her, PWs.1, 2 and PW.4 were present at the scene of offence when the accused beat the deceased with MO-1-stone on her face and caused injury. There is no reason to disbelieve the testimony of this witness as the same is corroborating with the version of PW.1 which is Ex.P-1-FIR.

14. PW.4 is the younger brother of the deceased. He deposed about the incident of accused beating the deceased with MO-1-stone.

15. PWs.1 to 4, no doubt, are related to the deceased but their testimony cannot be discredited as nothing was elicited in their cross examination to disbelieve their evidence.

16. PW.5 is another eyewitness to the incident and who is an independent witness. His testimony corroborates the testimony of witness of PWs.1 to 4.

17. The evidence of prosecution witnesses clearly reveals that the accused used to harass the deceased and demand money in a drunken condition. On the fateful day, there was a quarrel between the accused and the deceased and the accused followed her and there was an altercation and due to sudden provocation out of the said quarrel, the accused with an intention to beat her picked up the MO-1 stone lying nearby and beat her on the head causing bleeding injuries. This is not a case of pre-meditated murder. No doubt, the act of accused throwing a boulder on the head of the deceased clearly shows his knowledge and intention in the commission of the offence and that his acts are likely to cause the death of the deceased and, therefore Section 304 Part-I IPC attracts to the facts of this case.

18. In the result, the appeal is partly allowed, modifying the conviction of the appellant/accused into one under Section 304 Part I IPC. The appellant-accused is sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.500/-; and in default of payment of fine, he shall undergo Simple Imprisonment for a period

of three months. Miscellaneous petitions, if any pending, shall stand disposed of.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

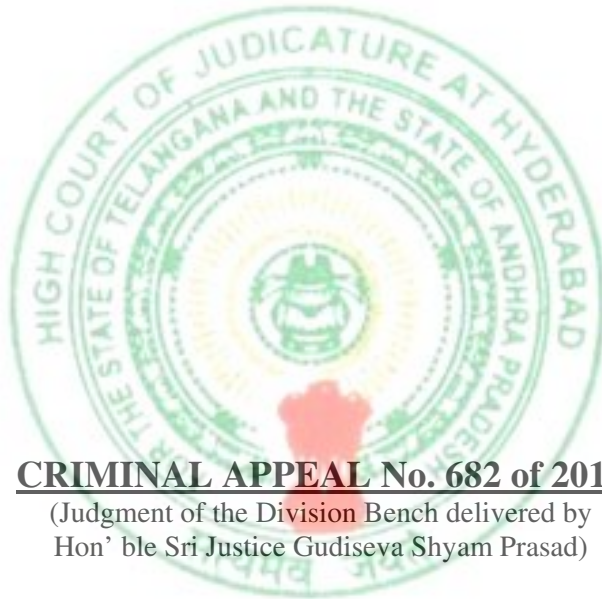
27th April, 2018
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(Judgment of the Division Bench delivered by
Hon' ble Sri Justice Gudiseva Shyam Prasad)

April, 2018

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