

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT. JUSTICE T.RAJANI**

CRIMINAL APPEAL No.285 OF 2012

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

Accused No.1 in S.C.No.178 of 2008 on the file of II Additional District and Sessions Judge, West Godavari at Eluru, is the appellant herein. He along with two others were tried for the offences punishable under Sections 302, 201 and 304-B read with 34 I.P.C. Vide judgment, dated 29.02.2012, the learned Sessions Judge, while acquitting accused Nos.2 and 3 of all the charges, acquitted accused No.1 for the charges under Sections 201 and 304-B read with 34 I.P.C., but, however, convicted him for the offence punishable under Section 302 I.P.C. and sentenced him to suffer imprisonment for life and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month. M.Os.1 to 3 were ordered to be destroyed after the appeal time is over. Challenging the same, the present appeal came to be filed by accused No.1.

2. The substance of the charge against accused No.1 is that on 16.04.2007 at about 09:00 AM, an altercation took place between accused No.1 and his wife, by name Mungara Lakshmi Narasamma, with regard to payment of balance of dowry amount and when the said Mungara Lakshmi Narsamma (hereinafter referred to as 'the deceased') questioned accused No.1 about his illicit intimacy with another woman, he beat her

with a wooden kitchen knife over her left side temporal region, leading to her death.

3. The facts of the case, as culled out from the evidence adduced by the prosecution witnesses, are as under:

PWs.1 and 2 are the maternal uncles of the deceased, while PW.4 is the father of the deceased and PW.5 is the grand mother of the deceased. The marriage of the deceased with accused No.1 took place on 14.12.2006. At the time of marriage, the mother of the deceased was in Dubai and hence, all the relatives looked after the works of marriage. It is stated that the marriage was settled on payment of Rs.80,000/- as dowry and Rs.10,000/- as Adapaduchu Lanchanam. A sum of Rs.50,000/- was given to the accused before marriage and Adapaduchu Lanchanam of Rs.10,000/- was given at the time of marriage. It was agreed that the remaining balance of dowry amount i.e., Rs.30,000/- would be paid within one year from the date of marriage. After marriage, the deceased was sent to her matrimonial home along with 'saree samans'. On the eve of Sankranthi festival, the deceased along with her husband – accused No.1 visited the house of PW.4, during which time, PW.4 gave Rs.20,000/- to accused No.1 for purchase of a motor-cycle. After the festival, PW.4 and his son left to Karnataka for fishing. The deceased used to inform PW.4 over phone that accused No.1 was demanding for payment of remaining dowry amount and also intimidating her. She also

informed that the mother and sister of accused No.1 were also harassing her for the balance dowry amount. However, PW.4 informed the deceased that he will come and settle the issue and accordingly, requested PWs.1 and 2 to take care of the deceased by talking with the accused. The record discloses that PW.2 visited the house of accused No.1 and requested him to look after the deceased well and also admonished him about his illicit relationship. The record also discloses that the deceased used to inform PWs.1 and 2 about the harassment by accused No.1. The deceased also informed PW.1 over phone about the illicit relationship of accused No.1 and when PW.1 questioned accused No.1 about the same, accused No.1 beating the deceased. On 16.04.2007, one Nepala Chinni Krishna received a phone call from his relatives at Agadalalanka that the deceased died. He informed the same to PW.1, who, in turn, informed his relatives and rushed to the house of accused No.1 at Agadalalanka Village. There they found the dead body of the deceased in front of the house. By that time, the R.M.P. Doctor was present and the neighbours were looking the happenings from some distance. However, accused Nos.1 to 3 were not present at the scene. PW.1 also noticed a '*Kattipeeta*' near the deceased and the hanging of a saree. As the villagers advised PW.1 to give a report, he lodged a report with PW.12 on 16.04.2007 at about 11:00 PM, basing on which, a case in Crime No.62 of 2007 came to be registered for an offence

punishable under Section 304-B read with 34 I.P.C. PW.12 sent the copy of express F.I.R. to the S.D.P.O., Jangareddigudem, and submitted the original F.I.R. to the Court. Ex.P10 is the F.I.R. On the same day night, PW.12 visited the scene of offence, which is situated at Viyannapeta, Agadalalanka, along with his staff. There he noticed the dead body of the deceased and as it was late in the night, he posted a Guard at the scene. On the next day, on the directions of PW.13, who is the in-charge S.D.P.O., Jangareddigudem, sent a requisition for holding the inquest. Thereafter, he handed over the investigation to PW.13, who proceeded to the scene of offence on 17.04.2007 at about 05:00 AM. At the scene of offence, he noticed dead body of the deceased, which was laid on its back in the varanda outside the house and the head towards the west. In the room, where the incident is said to have taken place, a piece of saree was found hanging to the ceiling beam, which is made of palmyra wood. Underneath the cot, they also noticed one '*Kattipeeta*'. In the presence of PW.9, he prepared a panchanama of the scene of offence, which was placed on record as Ex.P5. At the time of panchanama proceedings, he seized M.Os.1 to 3 and also got photographed the scene of offence. The rough sketch of the scene of offence is placed on record as Ex.P11. It is further stated that in the presence of PW.10, he conducted inquest over the dead body of the deceased. Ex.P6 is the inquest report. After inquest, he

examined PWs.1 to 5. Thereafter, the dead body of the deceased was sent for postmortem examination. PW.11, the Civil Assistant Surgeon, Government Hospital, Eluru, conducted autopsy over the dead body of the deceased and issued Ex.P7 – Post-Mortem Certificate. According to him, the deceased appears to have died due to injury to vital organ - brain. On 19.04.2007, PW.13 arrested the accused. Thereafter, PW.14, who worked as S.D.P.O., Eluru, at the relevant time, filed the charge sheet before the Court of II Additional Judicial Magistrate of First Class, Eluru, which was taken on file as P.R.C.No.51 of 2007.

4. On appearance of the accused, copies of the documents were furnished to them, by following the procedure laid down under Section 207 Cr.P.C. and later, the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.178 of 2008.

5. After hearing the learned Advocate for the accused and the learned Additional Public Prosecutor, the learned Sessions Judge framed the charge under Section 302 I.P.C. against accused No.1, charge under Section 201 I.P.C. against accused Nos.1 and 2 and charge under Section 304-B read with 34 I.P.C. against accused Nos.1 to 3.

6. On consideration of material placed on record and on appearance of the accused, the charges, referred to above, were

framed, read over and explained to them, to which, they pleaded not guilty and claimed to be tried.

7. To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P11 besides M.Os.1 to 3.

8. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. However, no oral evidence was adduced in support of their plea, except getting marked Ex.D1.

9. Relying upon the evidence of the prosecution witnesses, which would show that accused No.1 was present in the house at the time of incident, coupled with the answer given by accused No.1 in his examination under Section 313 Cr.P.C., which establishes his presence at the scene, and as the death was homicidal in nature, the learned Sessions Judge, while acquitting accused Nos.2 and 3 of all the charges and accused No.1 for the charges under Sections 201 and 304-B read with 34 I.P.C., convicted accused No.1 for the offence punishable under Section 302 I.P.C. Assailing the same, the present appeal came to be filed by accused No.1.

10. Learned counsel for the appellant – accused No.1 mainly submits that there is absolutely no evidence on record to show

that accused No.1 was present in the house at the time of incident. According to him, when accused Nos.2 and 3 were acquitted of the charges levelled against them, the same benefit ought to have been extended to accused No.1 also. In any event, he would submit that having regard to the fact that the incident occurred due to a sudden quarrel, the nature of offence requires to be scaled down.

11. On the other hand, the learned Public Prosecutor would submit that there is no reason to disbelieve the presence of accused No.1 in the house at the time of incident, since his version in the examination under Section 313 Cr.P.C. itself shows that he was present in the house on that day, as he was taking treatment for Jaundice. Having regard to the nature of evidence, learned public prosecutor would contend that the conviction and sentence imposed by the trial Court warrants no interference.

12. Hence, the point that arises for consideration is whether the appellant is responsible for the death of the deceased and whether the conviction of appellant under Section 302 I.P.C. is proper?

13. It is no doubt true that there are no direct witnesses to the incident and the case rests only on circumstantial evidence. PWs.1 to 5, in their evidence, deposed about the relationship of accused No.1 and the deceased and their relationship *inter se*. It

is stated that the marriage was settled on payment of Rs.80,000/- as dowry, out of which, a sum of Rs.50,000/- was paid at the time of agreement/settlement of the marriage. The balance amount of Rs.30,000/- was agreed to pay at a later point of time. It is further stated that a sum of Rs.10,000/- was paid as Adapaduchu Lanchanam. On the eve of Sankranthi Festival, accused No.1 and the deceased went to the house of PW.4, during which time, PW.4 gave a sum of Rs.20,000/- to accused No.1 for purchasing a motor-cycle. After the festival, PW.4 and his son went to Karnataka for fishing. He requested PWs.1 and 2 to take care of the deceased and accused No.1. The evidence of PWs.1 and 2 would show that the deceased used to call and inform them about the harassment by the accused for payment of balance dowry amount. When the same was informed to PW.4, he told her that he will come and settle the issue soon. The evidence of these two witnesses also shows that accused No.1 has illicit intimacy with some other woman, because of which, he used to harass the deceased as well. PW.2, in his evidence, also deposed that on one occasion, he visited the house of accused No.1 and admonished him for having illicit relationship with others. PW.1 deposed that on 16.04.2007, one Nepala Chinni Krishna received a phone call from his relatives at Agadalalanka, who informed about the death of the deceased, which was conveyed to PW.1, who in turn, informed the same to his relatives. Thereafter, all of them went to the house of

accused No.1 and found the deceased lying dead in the Varanda. PWs.1 to 5 and all the prosecution witnesses spoke about the incident in question and were cross-examined at length. Nothing useful was elicited to discredit their testimony. The suggestion given to the witnesses was that the death of the deceased was not due to the act of accused No.1, but because of the fault committed by the deceased. But, the same was denied. The other suggestions which were given to the prosecution witnesses with regard to demand of dowry, payment of dowry etc., were denied. In fact, the learned counsel for appellant did not go into these aspects minutely, as the plea was that having regard to the manner in which the incident happened, it does not amount to offence punishable under Section 302 I.P.C.

14. It would be appropriate to extract the evidence of PW.2, who deposed about the marriage, payment of dowry and the information which accused No.1 passed on to PW.7 after the incident. The same is extracted as under:

“8. The accused and the deceased lived happily for about a period of 2 months from the date of marriage. Thereafter when ever I visited Agadalalanka village the deceased used to tell me about the harassment of all the accused with regard to remaining balance of dowry.

9. On that I have asked the 1st accused to look after well and also admonished on illicit relations.

10. I asked about the illicit relations as it was informed by my niece.

11. I even assured him that I will talk to my brother in law about the remaining settlement of dowry amount. After 2 months of marriage my brother-in-law left to Karnataka. Meanwhile 2 to 3 times 1st accused and the deceased visited the parents house of the deceased at Ganapavaram.

12. On the eve of Sankranthi festival my brother in law gave Rs.20,000/- to 1st accused for purchasing a motor cycle.

13. The information of harassment by my niece was conveyed to my brother in law through phone and also Kotaiah/P.W.1.

14. My brother in law told me that he will come soon and settle the balance dowry amount and also asked me to convey the same to the 1st accused.

15. On 16-4-2007 at about 9-00 a.m., one Chinni Krishna of Ganapavaram said that he received a phone call from Agadalalanka that the 1st accused beat the deceased and it resulted her death immediately we rushed to the house of 1st accused at Agadalalanka in an auto.

16. There we found the dead body of the deceased in the front yard of the house of the 1st accused.

17. No accused were present at that time and the neighbours were looking from some distance.

18. There one RMP doctor was present and the neighbours informed me that as the 1st accused beat the deceased with *Kattipeeta* (a large knife standing slant wise with a block of wood up on which vegetables are sliced)."

15. As stated earlier, even PW.2 was cross-examined at length, but nothing useful was elicited to belie his testimony.

The argument of the learned counsel for appellant mainly appears to be with regard to the nature of offence committed by accused No.1. Though a faint attempt is sought to be made to show that accused No.1 was not present in the house at the time of incident, but the attempt made is futile, since, it was not even suggested to any of the witnesses that accused No.1 was not present in the house at the time of incident. On the other hand, a perusal of the suggestion given to the witnesses would show that accused No.1 was suffering with Jaundice, because of which, he remained in the house. This suggestion coupled with the answer given by accused No.1 in his examination under Section 313 Cr.P.C. to the effect that on the date of incident, as he was suffering with Jaundice, he was present in the house and the deceased gave him medicines, would show that accused No.1 was present in the house at the time of incident.

16. PW.11, the Doctor who conducted post-mortem examination, noticed the following external injuries on the dead body of the deceased:

- “1. Haematoma 3' x 3' present over frontal bone underneath the skin left side.
2. Haematoma 3' x 3' over left temporal bone underneath the scalp.
3. Sub-dural Haematoma over left temporal region.”

17. PW.11, in his evidence, deposed that the injury sustained by the deceased is possible by hitting with the wooden portion of 'Kattipeeta'. In the cross-examination, it was elicited that if the wooden portion of 'Kattipeeta' is used with force, it would result in visible head injury. From the evidence of the Doctor, it is clear that the injury 'haematoma', which was found on the upper portion of the head of the deceased, was caused due to hit by wooden portion of the 'Kattipeeta'. Since, there is no visible head injury, except haematoma, it can be said that much force was not used by the accused, while hitting the deceased. The suggestions given to all the witnesses and the statements of witnesses recorded at the time of inquest would show that when the deceased questioned her husband i.e., accused No.1 about his illicit intimacy with another woman, accused No.1 beat her with wooden portion of the vegetable cutting tool, on the back side. The said version is also reflected in the statements of the witnesses.

18. As observed by us earlier, there are no eye witnesses to the incident as the incident happened within the four corners of the house of accused No.1. The fact that accused No.1 was present in the house stands established in view of the findings given earlier. In fact, even the learned counsel for the appellant did not seriously dispute the presence of appellant – accused No.1 in the house at the time of incident. But, his plea was with regard to the manner in which the incident happened. If really

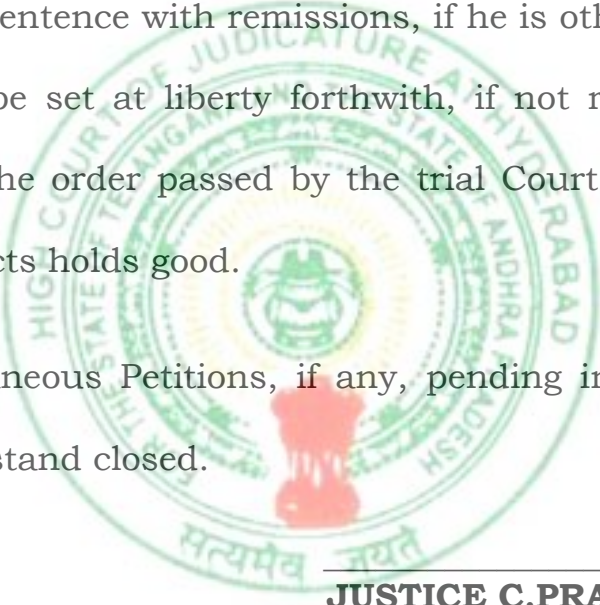
the intention of accused No.1 was to cause the death of the deceased due to non-payment of dowry, as alleged by the prosecution, there was no reason for him to beat the deceased only once that too with the wooden portion of the vegetable cutting tool. He would have used the sharp edge of the knife attached to the tool to cause death of the deceased. Further, he would not have stopped after giving a blow. Hence, it appears to be a case where there was some kind of verbal altercation between the deceased and accused No.1, when the deceased questioned accused No.1 about his illicit intimacy, pursuant to which, accused No.1 picked the kitchen knife and hit the deceased on the back side of her head with the wooden portion of the knife leading to her death. It is also to be noted that, as per the evidence of the Doctor, there would be a visible injury when force is used. But, except haematoma on the back side of the head, there was no visible or lacerated injury or abrasion on the head.

19. Taking into consideration the totality of the circumstances and the manner in which the incident took place, we feel that the offence can be scaled down to one punishable under Section 304 Part II I.P.C., as it can be said that accused No.1 had only knowledge that such injury is likely to cause death, but definitely had no intention to cause the death of the deceased.

20. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant – accused No.1 in

S.C.No.178 of 2008 on the file of II Additional District and Sessions Judge, West Godavari at Eluru, for the offence punishable under Section 302 I.P.C. is altered to one under Section 304-II I.P.C. and the sentence of life imprisonment inflicted on the appellant is reduced to five years imprisonment, while confirming the fine amount imposed. The period of remand, if any, undergone by the appellant shall be given set off, if he is otherwise entitled to. If the appellant has completed five years of sentence with remissions, if he is otherwise entitled to, he shall be set at liberty forthwith, if not required in any other case. The order passed by the trial Court with regard to material objects holds good.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE T. RAJANI

July 18, 2018
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