

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.A.No.1212 of 2011

Date: 30.07.2018

Between:

Koyalkar Mohan (A-1),
S/o.Shankarji, aged 26 years,
R/o.Boyagally,
Nizamabad.

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

... Respondent

Counsel for the Appellant : Mrs.C.Vasundhara Reddy

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal is filed by accused No.1 against the judgment in SC/ST Sessions Case No.45 of 2010 on the file of the Special Judge for Trial of Cases under SCs/STs(POA) Act, Nizamabad, whereby the appellant was convicted for the offence punishable under Section 302 I.P.C. and sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/- and convicted for the offence u/s.498-A I.P.C. and sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- and in default of payment of fine amounts, to suffer simple imprisonment for 3 months under each count.

2. The case of the prosecution in brief, is stated as hereunder:

The marriage of one Rajitha (hereinafter referred to as the deceased) with A-1 took place on 07.03.2006 at Bhainsa of Adilabad district and A-1 was given net cash of Rs.1,25,000/-, 5 tolas of gold and house-hold articles at the time of marriage by PW-1, the mother of the deceased. That the couple spent happy marital life for some time but later, A-1 sold away entire gold ornaments presented at the time of marriage for his personal needs and, thereafter, started harassing the deceased physically and mentally for additional dowry. That in the meanwhile, the deceased was blessed with a male child and the complete hospital expenditure was borne by PW-1. That as

A-1 did not take back the deceased, she stayed at her mother's place; that later, because of the intervention of caste elders, the deceased joined the company of A-1 and that the Illenthakunta police counseled the couple to lead a happy marital life, but there was no change in the behaviour of A-1. That, four months prior to the death of the deceased also, the caste elders held meeting in the house of PW-4 and counseled the couple to lead a happy life, but the relationship between the couple strained and that, on 10.04.2008, the caste elders held panchayat and decided that the deceased should not visit her parents' house for a period of one year. That later, at the instigation of A-2 to A-6, A-1 put a proposal before the deceased and her mother for taking divorce from the deceased, but as they refused the said proposal, the accused bore grudge against the deceased. That, on 14.05.2008, while A-1 was in his wine shop at about 2.30 p.m., he noticed that his mother-in-law (PW-1) was passing in front of his wine shop and when he returned home at about 11.30 p.m., he asked the deceased about the presence of her mother, upon which, an altercation took place between the couple and A-1 demanded the deceased to give divorce to him, but the deceased refused for the same, upon which, A-1 beat the deceased and in angry mood, picked up a knife and cut the throat of the deceased at about 1 a.m. on 15.05.2008, due to which, the deceased died on the spot.

That, on 15.05.2008 at about 8 a.m., PW-1 gave a complaint to the police stating that on 15.05.2008 at about 2.30 a.m., her relative Sairaj of Nizamabad district, made a phone call and informed her that A-1 - her son-in-law, murdered her daughter - the deceased, during night hours and that immediately, she started from Bhainsa and reached Nizamabad in the morning and went to her daughter's house and found her daughter lying dead in the front room of the house and that A-1 cut the throat of the deceased with a sharp weapon and brutally murdered her, as she refused to give divorce to him. That as per the complaint of PW-1, PW-10 – S.I. of Police registered a case in Crime No.56 of 2008 u/s. 302 r/w. 109 I.P.C., issued express FIRs to all the concerned and took up the investigation. That, PW-12, the Circle Inspector, re-examined the complainant and recorded her detailed statement and conducted the scene of offence observation panchanama and got the scene of offence videographed in the presence of two mediators, PW-6 and another, and seized blood stains, control earth and blood stained mat and shifted the body of the deceased to Government Headquarters Hospital, Nizamabad, for conducting inquest and postmortem examination. PW-12 examined PWs-2 to 5 and recorded their detailed statements. That, since the deceased was murdered within 7 years of her marriage, PW-12 has sent a requisition to PW-7, to visit the mortuary, for conducting inquest over the dead body; that accordingly, PW-7 conducted inquest and recorded the statements of PWs.2 to 4 and

others, who corroborated the contents of F.I.R. That, the doctors – PW-24 and another, conducted autopsy over the dead body and opined that the deceased died due to ‘incised injury to trachrea and laye vessels in the neck leading to Asphyxia and hypovolomic shock’. That, PW-12 seized the blood stained clothes of the deceased after postmortem examination in the presence of the mediators, under the cover of seizure and then handed over the body of the deceased to PW-1 for conducting last rites.

That, on 15.05.2008 at about 1800 hours when the investigation was in progress, A-1 came to the Police Station Town-II, Nizamabad, with bloodstained clothes, surrendered himself and voluntarily confessed his guilt of killing his wife on the intervening night of 14/15.05.2008. That PW-12 recorded the confessional statement of A-1 in the presence of the mediators, that later, A-1 led the police to his house, where he has hidden the big knife which was used in the commission of offence, that PW-12 seized the bloodstained knife and blood stained clothes of the accused and also a photo copy of agreement dated 10.04.2008, that the entire episode of confession-cum-seizure panchanama was videographed by PW-11, and that A-1 was arrested and produced before the Court for his judicial remand on 16.05.2008. That, PW-12 sent the seized material to FSL for analysis and report, that the FSL report was received on 04.08.2008, wherein the expert opined that the blood detected on the clothes of

the deceased and on the crime weapon and the pant of the accused, were the same and belong to “A’ group. That on 19.05.2008 at 5 p.m., on receipt of reliable information, PW-12 along with staff rushed to Komanpally village of Armoor mandal and apprehended A-2 at 06.30 p.m. at her house; that, PW-12 apprehended A-3 at her son-in-law’s house in Kamareddy; that, on 05.08.2008, PW-12 apprehended A4 and A5 at their house at 9.35 a.m. in Sarampally village of Kamareddy; that, on 11.01.2008, PW-12 deputed SI, Town-II Police Station, Nizamabad, to apprehend A-6 and accordingly A-6 was apprehended, that on interrogation, they voluntarily confessed their guilt of abetting the offence committed by A-1 and that they all were arrested and produced before the Court for sending them to judicial remand.

3. Having regard to the charge sheet and the evidence collected during the investigation, the Court below has framed the following charges:

“Firstly: That A-1 of you on 15.05.2008, at 1.00 a.m., at Nizamabad committed murder intentionally (knowingly) causing death of your wife Rajitha @ Lavanya and that you thereby committed an offence punishable under Section 302 I.P.C. and within my cognizance.

Secondly: That A-1 of you on or prior to 15.05.2008 at Nizamabad being the husband of your deceased wife Rajitha @ Lavanya subjected your deceased wife to cruelty by harassing her when she refused to your proposal of giving divorce to her and that you thereby committed an offence punishable under Section 498 'A' I.P.C. and within my cognizance.

Thirdly: That A-2 to A-6 of you on or prior to 15.05.2008 at Nizamabad abated the commission of the offence of cruelty by A-1 of you, which offence was committed in consequence of your abatement and that you thereby committed an offence punishable under Section 109 IPC and within my cognizance”.

4. As the plea of the accused was one of denial, they were subjected to trial, during which the prosecution has examined PW1 to PW12, got exhibits P1 to P18 marked and produced M.Os.1 to 11.

5. Though initially Mrs.C.Vasundhara Reddy, learned counsel for the appellant tried to convince this Court that the Court below has erroneously found the appellant guilty of the offences for which he is charged, during the hearing, she has eventually submitted that based on Ex.P7- confessional statement, the appellant is liable for conviction for the offence under Section 304 Part-I I.P.C. and that the conviction may be accordingly modified.

6. We have heard Mr.C.Prathap Reddy, learned Public Prosecutor for the State of Telangana and carefully perused Ex.P7. The contents of Ex.P7, the confessional statement of the appellant, reveal that on the appellant questioning the deceased as to whether the latter's mother has come to their house, the deceased has replied in a rash manner, leading to serious altercation between them. This document further reveals that following the said altercation and the insults that were being heaped on the appellant by the deceased, terming him as

sexually incompetent, he lost his cool and composure and in a fit of rage, he took out a knife which was meant for cutting vegetables and slit the throat of the deceased, due to which she died. Ex.P9, post-mortem report, shows a deep wound in the neck of the deceased measuring 11cmsx5cmsx4cm.

7. In the facts and circumstances of the case, as could be seen from Ex.P7, on which the learned counsel for the appellant has placed reliance, we are of the opinion that the appellant did not have a pre-meditated intention to kill the deceased. But on the contrary, due to the sudden fight, the appellant has lost control and killed the deceased by causing injury on the neck. In our opinion, this case squarely falls under exception 4 to Section 300 I.P.C. and consequently it falls under Part-I of Section 304 I.P.C. As regards the sentence, we are of the opinion that as the appellant has slit the throat of the deceased causing her instantaneous death, he is liable to be sentenced for rigorous imprisonment for 10 years.

8. Accordingly, the judgment of the Special Judge for Trial of Cases under SCs/STs (POA) Act, Nizamabad, dated 28.07.2011 in SC/ST Sessions Case No.45 of 2010 is modified, by converting the conviction and sentencing of the appellant for the offence punishable under Section 302 I.P.C. into one under Section 304 Part-I I.P.C., while confirming the sentence imposed on him for the offence under

Section 498-A IPC. The fine imposed on the appellant is confirmed.

The appellant shall surrender himself before the Superintendent, Central Jail, Cherlapally, within fifteen (15) days from today, for serving the remainder of sentence.

9. The appeal is, accordingly, partly allowed to the extent indicated above.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 30th June, 2018

msb



