

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.980 of 2011

JUDGMENT: (*per the Hon'ble Smt Justice T. Rajani*)

The judgment of the II Additional District and Sessions Judge (FTC), Ongole in SC.No.96 of 2010 dated 12.05.2011, is brought to question, by way of this appeal. The learned Sessions Judge found the accused guilty for the offence under Sections 302 and 324 of the Indian Penal code and convicted him for the said offences and sentenced him to undergo rigorous imprisonment for life and also to pay fine of Rs.200/- in default to undergo simple imprisonment for a period of one month for the offence punishable under section 302 IPC and also sentenced him to undergo rigorous imprisonment for a period of six months under each of the two counts for the offence under Section 324 IPC.

2. The facts of the case, briefly, as per the charge sheet are as follows:

A1 is the husband, A2 is the father-in-law and A3 is the mother-in-law of the deceased and all of them are residents of Mugachinthala village of Kondapi Mandal. The marriage between A1 and the deceased was performed five years prior to her death and she gave birth to two female children out of the wed lock. A1 got addicted to drinking and used to harass the deceased. He was a mason by profession and he used to stay in Hyderabad. He was insisting the deceased to come along with him to Hyderabad, for which she was not ready. A2 and A3

also asked the deceased to go to Hyderabad and she did not heed to their request. While so, on 15.02.2009 at about 7.00 PM, when the deceased was in the house of L.W.1, A2 and A3 went there and picked up a quarrel with L.W.1 and abused the deceased, stating that she was not listening to A1. The mother of the deceased informed A2 that the deceased was pregnant and she could not go to Hyderabad, upon which A2 and A3 abused them and left the house.

At about 8 PM, A1 to A3 came to the house of the mother of the deceased and picked up a quarrel with her mother, for not sending her to Hyderabad. The deceased and her mother expressed that the deceased could not follow A1 to Hyderabad, as she was not well, upon which, the accused grew wild and in pursuance of a common intention to cause hurt, A1 inflicted injury on the mother of the deceased, with knife, on the right side of her back and left shoulder, thereby causing bleeding injury. The sister of the deceased came weeping and A1 inflicted injury with knife on her chin and also right hip. When the deceased came to rescue them, A1 stabbed the deceased with knife on her left side back and the deceased succumbed to the injury, on the spot. The mother and sister of the deceased were shifted in 108 Ambulance to Government Hospital, Ongole.

The statement of the mother of the deceased was recorded, on the basis of which, a case was registered in Cr.No.5 of 2009 under Section 302, 307 read with Section 34 of the Indian Penal Code. After due investigation, charge sheet was laid against the accused for the same offences. The learned Additional Munsif Magistrate, Kandukur took cognizance of the case against the accused for the same offences

and as the case is exclusively triable by the Sessions Court, the case was committed to Sessions Division, Ongole by virtue of orders in PRC.No.17 of 2009. The Sessions Court, Ongole, in turn, made over the case to the II Additional District and Sessions Judge (FTC), Ongole, who conducted the trial and passed the impugned judgment.

3. Against the said judgment, the present appeal is preferred on the following grounds:

The Court below failed to see that there was no motive for the accused to kill the deceased. The Court below ought to have seen that P.Ws.1 to 3 are interested witnesses. The Court below failed to see that there were contradictions in Ex.P1 report and evidence of P.Ws.1 to 3 and that there was delay in lodging the report. The Court below failed to see that there were deliberate improvements in the version of P.Ws.1 to 3. The Court below ought to have seen that the report sent by P.W.6, VRO, is suppressed by the prosecution. The Court below failed to see that the scene of offence did not support the manner of offence.

4. Heard Smt. A. Gayathri Reddy, counsel for the appellant and the learned Public Prosecutor appearing for the respondent.

5. The counsel for the appellant contends that the motive alleged against the accused is not sufficient to commit the alleged offence and hence, the prosecution case cannot be believed. She also contends that the scene of offence panchanama does not support the version of P.Ws.1 to 3 with regard to the place of offence.

6. The learned Public Prosecutor, on the other hand, contends that the contentions raised by the counsel for the appellant are not sufficient enough to ignore the cogent evidence of the witnesses, who directly witnessed the incident. He also contends that the motive becomes insignificant when the offence is proved by direct evidence.

7. Based on the arguments of the counsel and the material on record, we frame the following points for determination:

1. Whether the evidence of P.Ws.1 to 3 is cogent enough to place reliance upon and to prove the guilt of the accused.
2. Whether the judgment of the Court below is sustainable.
3. To what result.

POINT Nos.1 and 2:

8. P.W.1, who is the mother of the deceased, initiated the prosecution by giving a report with regard to the acts committed by the accused. The appellant is the husband of the deceased. The Court below acquitted A2 and A3 while it convicted A1 for the offence under Sections 302 and 324 IPC. The case of the prosecution is projected through the evidence of P.W.1 and her report is the basis for initiation of prosecution. Hence, it would be beneficial to peruse the contents of the report in the foremost.

9. The report is in the form of statement recorded from P.W.1. It is marked as Ex.P1. The report was given on 16.02.2009 at 01.15 AM. The facts narrated in the statement are that the deceased is her daughter and A1 is her son-in-law, being the husband of the deceased.

He used to beat the deceased in a drunken state and harass her since marriage. On 15.02.2009, at about 7 'O' Clock, while the deceased was in her house, A2 and A3 came and quarrelled with her and abused her daughter and went away stating that their son wants her to go to Hyderabad and questioned them as to what work the deceased has with her mother. Again at 8 'O' clock, all the accused came to her house and raised quarrel and questioned her as to whether she wanted to send her daughter or not, with them, for which she stated that the deceased would not come. The deceased also expressed that she is not willing to go with them. Then the appellant came behind her, with a knife in his hands and stabbed on the right side of her back, thereby causing bleeding injury. Thereupon, when she was fleeing with fear, the appellant again stabbed her with knife, beneath her left shoulder, thereby causing bleeding. Thereupon, when her younger daughter came near her, the appellant cut her with knife on her chin and caused bleeding injury. He again stabbed her on the hip and caused bleeding injury. When the deceased intervened, the appellant stabbed her with knife in the stomach and immediately she fell down and died. On that, the appellant and his parents escaped from there. They called 108 Ambulance and shifted them to Ongole Government Hospital.

10. The evidence of P.W.1 is consistent with the report given by her, except for slight elaboration of the facts stated in the report, which can be considered as highly probable, as the report can be expected to only put forth important aspects, it being intended only to set the prosecution in motion. The evidence shows that A2 and A3 came to her house initially and when P.W.1 expressed that the deceased would

not go with A1, they left the house and again came to her house along with A1 and later, the incidents, as stated in the report, took place. The evidence would show that the accused brought the knife, while they were coming, which shows a pre-meditation on the part of the accused to commit the alleged offences.

11. The evidence of P.W.1 shows that A1 was standing on the road, in front of her house, outside the compound wall and then herself and A2 and A3 came on to the road. She went to her she buffalo and then A1 suddenly came from behind and stabbed with knife on the back of her right shoulder. He again took the knife from the ground and attempted to stab her. Out of fear, she moved towards her house. Then A1 stabbed on the left arm and she received bleeding injury and then she sat down. P.W.2 came to her rescue and asked A1 not to kill her. A1 caused injury on her chin with the knife and she also received bleeding injury and sat down. A1 stabbed P.W.2 on right side hip. Then the deceased came out and asked A1 not to kill them. Then A1 caught hold of her tuft and stabbed on her back. She explained that A1 turned the knife round in the body, which can be understood as twisting the knife in the body and later, he took it out and went away with the knife, leaving the deceased to die on the spot. She also stated that L.W.3, Shiva, witnessed the entire incident and she called L.W.4, Yesudasu and L.W.4, Harikrishna. They came and neighbours also gathered and somebody called for ambulance. In the ambulance, P.W.2 and she were taken to GGH, Ongole and they were treated. They were there for nine days. After they were taken to the hospital, at about 1.00 AM, police came there and asked her as to what

happened and recorded her statement. She fairly stated that she cannot identify the knife used for the commission of the offence. According to her, two or three days after the offence, the police seized her blood stained clothes i.e. saree and petty coat and marked them as M.Os.1 and 2.

12. P.W.2, who is the sister of the deceased, also corroborated the evidence of P.W.1 on all material aspects. P.W.2 also stated that the incident occurred outside the house. She corroborated the evidence P.W.1 with regard to the overt acts of the appellant. The cross-examination of P.Ws.1 and 2 does not succeed in eliciting any fact, which would belie their evidence.

13. P.W.3 is the son of P.W.1 and twin-brother of P.W.2. He also narrated the entire incident, as if he was present at the time of the incident. His presence, though was not spoken to by P.Ws.1 and 2, does not affect his credibility. There is no need for planting him, as already the evidence of P.Ws.1 and 2, which is of same quality, is available for the prosecution.

P.W.4 is a resident of the village of P.W.1. At the time of the incident, he was in his house, which is at a distance of half furlong from the house of P.W.1. He heard some galata from the house of P.W.1 and went to the house of P.W.1 and found the dead body of the deceased at the gate, in a pool of blood. P.Ws.1 and 2 were beside the dead body. When he questioned P.W.1, she stated that A1 killed the deceased and stabbed them also. There were 20 people there and somebody called for 108 Ambulance and P.Ws.1 and 2 were shifted in the ambulance to the Government Hospital, Ongole. His evidence is in

the form of *Res gestae*, as he was contemporaneously, informed about the incident by PW.1 and falls out of the hearsay category of evidence.

14. P.W.5 is a Photographer. P.W.6 is the VRO of Kondepi and in-charge of the village of P.W.1. His evidence is that on 15.02.2009 at about 9 PM, the village nouker informed him that the deceased was killed by her husband. Immediately, he went to the house of P.W.1 at about 12.30 midnight and found the dead body of the deceased lying in the front of the house of P.W.1 to the east of the boundary wall. He asked the Talari Nagoor to be present near the dead body and watch it. On the next morning, at about 8.30 or 9 AM, he went to the police station and informed that the deceased was killed by her husband and that he went there and kept the talari to watch the dead body. He came to know that A1 caused injuries to P.Ws.1 and 2 and they were taken to the hospital and he went to give report. The police stated that already report was given. His evidence is supported by the evidence of Pws.1 and 2, who stated that the deceased died on the spot and they were taken to the hospital.

15. P.W.7, who is the Civil Assistant Surgeon in Government General Hospital, Ongole, conducted the post mortem examination on the dead body of the deceased. He found a spindle shaped stab injury on left side of chest on the back in the lower half 3 cm below the scapula on lateral side. Width was 2 cm in the middle and length was 4 cm. Edges sharp and the surrounding skin was oedematous. The injury entered the lung. Internal examination showed no fracture to skull and ribs. Left lung was injured posterior on lateral aspect. He opined that the death was due to haemorrhage and shock due to

injury to lung. Hence, the evidence of P.W.7 corroborates the evidence P.Ws.1 to 3 with regard to injury caused by A1 and it also shows that the said injury is the cause of the death of the deceased. The injury has injured the lung, which, consequently, resulted in the death of the deceased.

16. P.W.8, who is the Civil Surgeon, District T.B. Centre, Ongole, examined P.Ws.1 and 2. On the body of P.W.1, he found spindle shaped lacerated injury on the back right side near spine red in colour and spindle shaped laceration on left upper arm. On the body of P.W.2, he found a wedge shaped laceration below the lower lip red in colour and a spindle shaped laceration on the right buttock. The evidence of P.W.8 renders absolute corroboration to the evidence of P.Ws.1 to 3 with regard to the place of injuries sustained by P.Ws.1 and 2.

17. P.W.9, who was the Head Constable, I Town Police Station, received intimation from the Government Hospital, Ongole and immediately he went there and found P.W.1 in the emergency ward and recorded her statement and sent the statement to Kondepi Police Station on the point of jurisdiction, where P.W.10 registered the case. P.W.11, who is the DSP in CID Rajahmundry, worked as Inspector of Police, Singarayakonda and conducted investigation in the case and filed charge sheet after concluding the same. P.W.12, who is the DSP, ACB, Hyderabad, worked as Inspector of Police, Ongole Rural Police Station at that point of time and conducted part of the investigation.

18. A reading of the deposition of P.Ws.1 to 3 and that of the Doctors, P.Ws.7 and 8, would leave no doubt with regard to the injuries caused on the body of the deceased and P.Ws.1 and 2.

19. The counsel for the appellant contends that there is no pre-meditation on the part of the appellant and that it is only in a heat of passion and out of provocation from the refusal of P.W.1 and the deceased, for the deceased to accompany him to Hyderabad, that the appellant got enraged and committed the offence and hence, it cannot be treated as an offence punishable under Section 302 IPC.

20. The aforesaid argument does not impress us. The facts reveal that the parents of the appellant initially went to the house of P.W.1 and thereafter, they returned along with A1. The incident occurred on the road, in front of the house of P.W.1 and A1 was standing outside. There are injuries caused with the knife. The evidence shows that A1 had a knife and the same would imply that he came armed with a knife from his house and he had a pre-meditation to go the extent of inflicting injuries on P.Ws.1 and 2 and cause the death of the deceased, if the deceased does not follow him to Hyderabad. There is absolutely no scope left by the evidence, to infer that the appellant did not have any intention to cause the death of the deceased. Even if there was no intention on the part of the appellant to cause the death of the deceased, the cause of death of the deceased remains to be the stab injury inflicted on the back of the deceased, by the appellant, the impact of which is spoken to by P.W.7. It is the injury that caused the death of the deceased. The evidence of other witnesses i.e. P.Ws.4 and 6 would also support the evidence of P.Ws.1 to 3 with regard to the incident. At any rate, knowledge, that the injury inflicted by him,

is likely to cause the death of the deceased, can safely be inferred. The evidence also shows that, not being satisfied with stabbing the deceased, he twisted the knife in her body, before pulling it out. That would make his intention, explicit. The case of the prosecution receives support from all angles. Hence, there is absolutely no reason for us to express a different opinion than the one expressed by the II Additional District and Sessions Judge (FTC), Ongole in SC.No.96 of 2010 dated 12.05.2011, in arriving at the impugned verdict. Hence, the judgment of the Court below need not be interfered with.

The points are answered accordingly.

21. Learned Public Prosecutor submitted that the appellant is granted bail vide order dated 29.11.2016 in CRLAMP.No.1998 of 2016.

POINT No.3:

In the result, the criminal appeal is dismissed upholding the conviction and sentence imposed on the accused in SC.No.96 of 2010 dated 12.05.2011 by the II Additional District and Sessions Judge (FTC), Ongole. The period of detention/imprisonment undergone by the appellant/accused before trial and after trial shall be set off against the term of imprisonment. The appellant/accused, who is on bail, is directed to surrender before the trial Court, which shall commit him to the concerned jail for undergoing the remaining period of imprisonment. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

T. RAJANI, J

April 4, 2018/DSK

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith. (B/o) DSK