

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

CRIMINAL APPEAL No.698 OF 2012

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

Assailing the judgment, dated 10.08.2011, rendered in S.C.No.241 of 2011 on the file of Principal Sessions Judge, Kurnool, wherein the sole accused, who is the appellant herein, was tried and convicted for the charges under Sections 498A and 302 I.P.C. and sentenced to suffer simple imprisonment for one and half years and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for two weeks for the offence punishable under Section 498A I.P.C. and further sentenced to suffer imprisonment for life and to pay fine of Rs.3,000/-, in default, to suffer simple imprisonment for one month for the offence punishable under Section 302 I.P.C., the present appeal came to be filed.

2. The gravamen of the charges against the appellant-accused are that prior to 18.01.2011 at Kurnool Town and District, the accused, who is the husband of the deceased, by name Nallabothula Santhoshamma, subjected the deceased to cruelty, both physically and mentally, by suspecting her fidelity, and that on 18.01.2011, he is said to have caused the death of the deceased by hacking her with a sickle on her right hand and head.

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

PW.1 is the sister of the deceased, while PW.2 is the daughter of the deceased. PW.3 is the mother of the deceased. PW.4 is another sister of the deceased. The marriage between the accused and the deceased took place ten years prior to the date of incident and they were blessed with two daughters and one son. It is stated that the accused used to quarrel and beat the deceased on every second or third day suspecting her fidelity. It is also stated that on the date of incident i.e., on 18.01.2011, when PW.1 visited the house of the deceased, she noticed the accused and deceased quarrelling with each other. She intervened and pacified the matter. Then the accused is said to have picked up a knife and hacked the deceased on her left shoulder, right side of the head and cut her right hand little finger. When PW.1 intervened, the accused pushed her aside saying that she was no way concerned with the issue. On receiving the said injuries, the deceased fell down. PW.2 was present in the house at the time of incident and noticed the manner in which the deceased was hacked by the accused. On the same day at about 06:00 PM, PW.1 lodged a report with PW.8, the Inspector of Police, Kurnool II Town Police Station, and the same came be registered as crime No.20 of 2011 for the offences punishable under Sections 498A and 302 I.P.C.

Ex.P5 is the F.I.R. Thereafter, as it was night, PW.8 could not proceed with further investigation. On the next day morning, he proceeded to the scene of offence and secured the presence of PWs.1 to 4 and recorded their statements. He is said to have conducted inquest over the dead body of the deceased in the presence of PW.5. Ex.P2 is the inquest report. During the course of inquest, he seized M.O.1 – bangle pieces, M.O.5 – blood stained cut hairs, M.O.6 – blood stained napa slab and M.O.7 – control napa slab. He also got prepared a rough sketch of the scene, which was placed on record as Ex.P6. He also seized the clothes of the deceased, which were marked as M.Os.2 and 3. After conducting inquest, the dead body of the deceased was sent to post-mortem examination. PW.7, the Assistant Professor, Department of Forensic Medicine, Kurnool Medical College, Kurnool, conducted autopsy over the dead body of the deceased and issued Ex.P4, Post-Mortem Examination Report. According to him, the cause of death to the best of his knowledge and belief was due to intracranial hemorrhage associated with skull vault fracture resulting from head injury.

On 22.01.2011 at about 09:45 AM, PW.8 received credible information about the accused proceeding towards a Church at Kappala Nagar, Kurnool. On seeing the police, the accused tried to run away, but PW.8 and his staff surrounded and detained the accused. On interrogation, he is said to have

confessed about the commission of the offence and the said confession lead to the recovery of M.O.4, the sickle used in the commission of the offence. Ex.P3 is the relevant portion of confession statement for seizure of M.O.4. He then arrested the accused and sent him to the police station.

4. After obtaining the necessary documents and examining the witnesses, a charge sheet came to be filed before the Court of Judicial Magistrate of First Class, Kurnool, which was taken on file as P.R.C.No.49 of 2011. On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C. 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.241 of 2011.

5. On consideration of material placed on record, the charges under Sections 498A and 302 I.P.C. came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs.1 to 8 and got marked Exs.P1 to P14 and M.Os.1 to 7.

7. After the closure of the 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 prosecution witnesses. He

denied the same. However, he did not adduce any oral evidence, but got marked Exs.D1 to D5, the relevant portions in Section 161 Cr.P.C. statements of PWs.3 and 4.

8. Basing on the evidence of PWs.1 and 2, the trial Court, vide its judgment under challenge, convicted the accused for the charges under Sections 498A and 302 I.P.C. and sentenced him to suffer imprisonment as aforesaid. Challenging the same, the present appeal came to be filed.

9. Learned counsel for the appellant would submit that there is any amount of doubt with regard to PW.2 witnessing the incident. According to him, the admission made by PW.2 in her cross-examination that she was speaking at the instance of the police shows that she has not seen the incident. He would further submit that there is any amount of doubt with regard to the presence of PW.1 in the house. It is alleged that if really she was present in the house, she could have averted the incident by interfering with the dispute between the accused and the deceased. He would further submit that having regard to the contents in the F.I.R., since the incident in question took place because of the quarrel between the accused and the deceased, the offence may be scaled down to one under Section 304 I.P.C.

10. On the other hand, the learned Public Prosecutor would contend that the fact that there are four lacerated injuries on the dead body of the deceased shows the intention of the

accused to kill the deceased. He would further submit that the contents of F.I.R., which gets corroboration from the evidence of PWs.1 and 2, establish the ingredients constituting offences under Sections 498A and 302 I.P.C.

11. The point that arises for consideration is whether the accused is responsible for the incident and if so, whether the conviction under Sections 498A and 302 I.P.C. are justifiable?

12. The fact that the deceased died due to the injuries sustained by her is not in dispute. The doctor who conducted post-mortem examination clearly deposed about the injuries sustained by the deceased and the cause of the death.

13. Coming to the incident, the prosecution mainly relies upon the evidence of PWs.1 and 2. PW.1, in her evidence, deposed that there used to be frequent quarrels between the deceased and the accused on every second or third day, as the accused was suspecting the fidelity of the deceased. She used to pacify both of them now and then. On the date of incident, after selling the ground nuts, she visited the house of the deceased and found the accused and deceased quarrelling with each other. She intervened and pacified both of them. In the course of the same, accused picked up a knife and hacked the deceased causing one injury on the neck and other two injuries on the left shoulder and right hand of the deceased. Though PW.1 was cross-examined, nothing useful

was elicited to discredit her testimony. In fact, it was elicited in her evidence that the accused did not give her any scope to intervene and rescue the deceased. To a suggestion that she was not present at the time of galata and at the scene of offence, was denied. It was further elicited in her evidence that immediately after the incident, she rushed to the police station and lodged a report. The said version of PW.1 gets ample corroboration from the evidence of PW.2, whose presence in the house cannot be disputed.

14. PW.2, who was about four years old on the date of incident, categorically stated as follows:

“I came from Hyderabad. Deceased Santhosamma is my mother. The accused who is now present in the court hall is my father. I am the first issue to my parents. We are two sisters and brother. My father is painting houses. My parents used to quarrel. My father used to return home once in every three days. My father hacked my mother on the shoulder and forehead. My father hacked my mother with knife (Katti). My mother died due to hacked injuries. My father suspecting my mother hacked and killed her. My “Avva” present and witnessed. I am examined by the police.”

15. Though PW.2 was cross-examined, nothing useful was elicited to discredit her testimony, except eliciting that she was deposing as told by the police to her. But, the said admission will not go to the root of the matter, since she is a child of four years and she must have been advised as to how

to speak. Even if the evidence of PW.2 is kept aside, still there lies the evidence of PW.1, whose evidence cannot be disbelieved, as her presence in the house appears to be probable. In fact, immediately after the incident, she went to the police station and lodged a report. Therefore, the argument of the learned counsel for appellant that the presence of PWs.1 and 2 at the time of incident is doubtful, cannot be accepted.

16. Having regard to the above, we feel that the accused alone is responsible for the incident.

17. The next question that falls for consideration is whether the accused can be convicted for the offences punishable under Sections 498A and 302 I.P.C.

18. As seen from the record, the accused used to quarrel and harass the deceased, suspecting her fidelity. The said fact was not only spoken to by PW.1, but the same also gets corroborated from the evidence of PWs.3 and 4. Therefore, the finding of the trial Court with regard to conviction of the accused under Section 498A I.P.C. warrants no interference.

19. So far as the offence under Section 302 I.P.C. is concerned, PW.1 is the person who is said to have set the law into motion by lodging a report. In the said report, while referring to the frequent quarrels between the accused and the deceased and her interference, she stated that on the date

of incident, she came to the house of the deceased at about 05:00 PM and in the meantime, the accused abused the deceased and on seeing the same, she suggested not to harass the deceased every time and at that point of time, the accused told her that he got suspicion about the deceased having illegal intimacy with another person. So saying, he is said to have picked up a quarrel with the deceased, picked up a sickle situated by the side of the T.V. in the house and hacked on the left side back of the deceased. At that point of time, the deceased is said to have moved to the front room. Though PW.1 interfered, the accused again attacked the deceased causing injuries on the right hand and left side of the head. While giving evidence in the Court, PW.1, in her evidence, deposed about the quarrel which took place between the accused and the deceased and her intervention and also about the accused picking up sickle and causing three injuries, but there is no reference to the deceased escaping from the clutches of the accused and then going to the front room.

20. Be that as it may, fact remains that there was a quarrel between the accused and the deceased and a verbal altercation took place between them, as mentioned in the F.I.R., and during the course of verbal altercation, though, PW.1 interfered, the accused picked up a sickle, which was lying nearby, and hacked the deceased.

21. Having regard to the fact that the incident was preceded by a quarrel between the accused and the deceased, that the accused never came armed with any weapon, and that the accused beat the deceased only once on the vital part of her body, we feel that the case on hand falls under Exception - 4 of Section 300 I.P.C. In view of the judgment of this Court in **Patel Rasiklal Becharbhai vs. State of Gujarat**¹, we are of the opinion that the offence under Section 302 I.P.C. can be scaled down to one under Section 304-I I.P.C., while maintaining the conviction and sentence recorded for the offence punishable under Section 498A I.P.C.

22. Accordingly, the appeal is allowed in part. The conviction and sentence recorded against the appellant – accused in S.C.No.241 of 2011 on the file of Principal Sessions Judge, Kurnool, for an offence punishable under Section 498A I.P.C. are confirmed, but the conviction recorded against the appellant – accused for an offence punishable under Section 302 I.P.C. is altered to one under Section 304-I I.P.C. and the sentence of imprisonment for life inflicted on the appellant is reduced to ten years imprisonment, while confirming the fine. Both the sentences shall run concurrently. The period of remand, if any, undergone by the appellant shall be given set off, if he is

¹ AIR 1992 SC 1150

otherwise entitled to. 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

January 27, 2018
MD

