

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.858 of 2013

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

The sole accused in Sessions Case No. 28 of 2011 on the file of the Court of the VI Additional Sessions Judge (FTC), Krishna, Machilipatnam, is the appellant herein. He was tried for the offences punishable under Section 498-A and Section 302 IPC, for causing the death of his wife by name Kilaru Jayamma, on 14.06.2010 at about 5 p.m., by poking her with a crowbar on the head as well as on the back side of her right ear. Vide judgment dated 31.05.2013, the learned Sessions Judge convicted the accused for the offences punishable under Section 498-A and Section 302 IPC and sentenced him to suffer rigorous imprisonment for three years and also to pay a fine of Rs.100/- in default to undergo simple imprisonment for one month, for the offence punishable under Section 498-A IPC and to suffer imprisonment for life and also to pay a fine of Rs.200/- in default to undergo simple imprisonment for a period of three months, for the offence punishable under Section 302 IPC.

2. The facts, as culled out from the evidence of the prosecution witnesses, are under:

The deceased is the wife of the accused. Their marriage was performed about 25 years prior to the date of incident. At that time, Rs.5,000/- was given towards pasupu kumkuma. Out of wedlock, they were blessed with two daughters. The accused is said to have been harassing the deceased to bring money from her parents. The deceased used to attend the coolie work and run a hotel to earn her livelihood. The accused used to take away the earnings of the deceased, consume liquor and beat the deceased. While matters stood thus, Government granted 3 cents of house site to the deceased. The accused is said to have forced the deceased to give the said site to his younger brother for a lower price. When the deceased wanted to sell the said site to outsiders as she would get a higher price, differences ensued between the deceased and accused.

3. On the date of incident, i.e., on 14.06.2010, when the deceased went to coolie work, the accused sold the Idly vessel in the hotel run by the deceased, for an amount of Rs.1,600/- and spent the said amount in consuming alcohol, in the shop of PW7. At about 12 noon, when the deceased returned from the coolie work, came to know about the sale of the Idly vessel. A quarrel ensued between the deceased and accused in which the accused picked up a crowbar from the house and went upon the deceased, who tried to escape from him. While running away from the accused, the deceased slipped down at the road margin. At that point of time, the accused killed her by poking her with the crowbar on her head as well as on the back side of her right ear.

4. Thereafter, one Bikki Venkataiah-father of PW1 gave a report to PW13-the Inspector of Police, CCS Machilipatnam, basing on which a case in Crime No. 170 of 2010 came to be registered under Sections 498-A and 302 IPC. Ex.P12 is the First Information Report.

5. PW12-the Circle Inspector of Police who took up further investigation, visited the scene of offence at Kammavaripalem of Nandigama Mandal. In the presence of PW9 and others, he conducted inquest over the dead body of the deceased. Ex.P3 is the inquest report. During inquest, he seized M.O.5-blood stained earth and M.O.6-control earth from the scene of offence. He also prepared a rough sketch of the scene, which is placed on record as Ex.P7. After conducting inquest, he sent the body of the deceased for post mortem examination.

6. PW11-the Civil Assistant Surgeon, Area Hospital, Nandigama conducted autopsy over the body of the deceased and issued Exhibit P7-the Post Mortem Report. According to her, the cause of death was due to head injury, caused by known person using a weapon with pointed end and long body.

7. On 15.06.2010, PW12 apprehended the accused, and the confession of the accused led them to recover M.O.4-iron crowbar, said to have been used in the commission of the offence. The same was seized under Ex.P6-the seizure report.

8. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 65 of 2010 on the file

of the Additional Judicial Magistrate of First Class. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 28 of 2011 on the file of the VI Additional Sessions Judge (FTC), Krishna, Machilipatnam. Basing on the material on record, charges for the offences punishable under Section 498-A and Section 302 of IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

9. In support of their case, the prosecution examined PWs.1 to PW13 and got marked Exs.P1 to P12 and M.Os.1 to 6. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced by the accused in support of his defence.

10. Relying upon the evidence of PWs 3, 5 and 6, who are said to be the eye witnesses to the incident, coupled with the recovery of M.O.4, the learned Sessions Judge convicted the accused under Section 498-A and Section 302 IPC. Challenging the same, the present appeal came to be filed through legal aid.

11. The learned counsel for the appellant mainly submits that the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime.

12. On the other hand, the learned Public Prosecutor opposed the same, contending that the evidence of PWs 3, 5 and 6 who are eye witnesses to the incident, and the recovery of M.O.4 from the accused are sufficient to establish the guilt of the accused.

13. The point that arises for consideration is whether the accused was responsible for the death of his wife.

14. The accused was tried on two charges. The first charge was under Section 498-A IPC and the second charge was under Section 302 IPC. In order to substantiate the charge under Section 498-A IPC, the prosecution examined PWs 1 and 2. PW1 is the sister of the deceased while PW2 is the mother of the deceased. PW1, in her evidence, deposed that the marriage of the deceased was performed with the accused about 25 years back, and at the time of marriage, cash of Rs.5,000/- was given to the accused towards dowry. She further deposed that right from the inception of their marital life, the accused used to harass the deceased to bring money from her parents, and the deceased used to earn her livelihood by running a hotel. She further deposed that government gave three cents of house site to the deceased and the accused forced the deceased to sell the said site to his younger brother at a lower price, when the deceased wanted to sell the site for her needs. Pursuant to which differences ensued between the accused and deceased.

15. PW1 further deposed that on information from some of the villagers that the deceased died, she went to Kammavaripalem

village and noticed the dead body of the deceased in front of the house of the accused, in a pool of blood with a head injury. She deposed that she was informed by the neighbours that on the date of the incident, the deceased went to the fields to attend coolie work, and after returning to the house, she came to know that the accused sold away the idly vessel in the hotel. When questioned, the accused is said to have picked a crowbar and chased the deceased with an intention to kill her, and when the deceased fell down on the road, the accused poked her with the crowbar on her head, causing instantaneous death.

16. PW1 was subjected to lengthy cross examination. In the cross examination, PW1 speaks about lodging of the report by her father and she identifying the signature on Ex.P1-report. She further admits that she is living in a different village, at a distance of 5 kms from the place where the deceased was living. It was further elicited that on the date of incident, she was in her house when she received information about the incident, and the other family members went to attend work in their agricultural land. She could not say as to the time taken by them to reach Kammavaripalem Village. But, however, states that it could have taken about one hour. She further admits that by the time they went to the village, police were already present and one P.Narasimharao, who is the son of the maternal aunt of PW1, was present. It is further stated that PW2 is the daughter of the deceased and the accused and she was given in marriage to the brother-in-law of the said Narasimharao. After they reached the

village, PW2 and her in-laws came to Kammavaripalem village. It was further elicited that the house of the accused is situated at a distance of two yards from the road in front of the house.

17. PW2 is the daughter of the deceased. In her evidence, she deposed that the accused used to consume liquor and harass the deceased. She further deposed that the deceased used to attend to coolie work and run a petty coffee hotel to earn her livelihood. It is stated that government gave three cents of house site to the deceased, and when the deceased wanted to sell the said site to outsiders, with a view to get a higher price, the accused compelled her to sell the same to his younger brother for a very low price, due to which quarrels ensued between the deceased and accused. She further deposed that she was at her in-laws place, when she came to know about the incident, she found the deceased lying in a pool of blood on the road in front of the house of the accused with injury on her head. When enquired as to what happened, PW2 was informed by the neighbors that pursuant to a quarrel that ensued between the accused and the deceased with regard to sale of idly vessel by the accused, the accused chased the deceased with a crowbar in his hand, and when the deceased fell down, he poked on the head of the deceased and caused her death.

18. A reading of the evidence of PW2 shows that she was also not an eye witness to the incident and she came to the village on coming to know about the incident.

19. In the cross examination, PW2 admits that the accused used to consume alcohol with his earnings of cycle shop and the deceased and accused owned one acre of land, and in the said land, subabul trees were grown and there is no income on the said land. The said one acre of land is in joint possession of herself and her sister. She admits that she does not know the sale particulars for which 3 cents of house site belonging to the deceased were sold to the younger brother of the accused.

20. The evidence of both PW1 and PW2 would show that they were informed about the incident by PW3 and other neighbours. The evidence of these two witnesses does not anywhere indicate that the accused has subjected the deceased to any harassment for money. But, their evidence only refers to some dispute between the accused and deceased, with regard to the deceased not agreeing to the sell her house site to the brother of the accused, as he was offering a very low price. Though PW1, in her evidence, refers to demand of dowry at the time of marriage of the accused and deceased, there is no evidence on record to show that the accused was harassing the deceased for more property or for more money, except the deposition of PW1 that some quarrels ensued between the accused and deceased. The evidence of PW2 also does not anywhere indicate that the accused used to harass the deceased for property or money. In fact, except stating that there were some quarrels between the accused and deceased, neither of the witnesses gave specific instances to prove any harassment on the part of the accused, constituting an offence under Section 498-

A IPC. Further, as observed by the Apex Court, every quarrel between husband and wife does not come within the ambit of Section 498-A IPC.

21. Having regard to the above circumstances, we feel that the prosecution failed to prove the offence punishable under Section 498-A IPC. Accordingly, the accused is acquitted under the said charge.

22. Coming to the incident proper, PWs 3, 5 and 6 were examined as eye witnesses to speak to the incident proper. PW3, who is the neighbour of the accused and deceased and who is an eye witness to the incident, in his evidence in chief, deposed that on the date of incident, after the deceased returned to the house after attending to coolie work, she questioned as to why the accused sold the idly vessel, to which the accused scolded the deceased. Thereafter, the accused is said to have picked up a crowbar and chased by the deceased, and the deceased, while running from that place, slipped and fell down on the road, upon which the accused poked her with the crowbar saying "die, die". PW3 deposed that he witnessed the said incident and informed the said incident to the relatives of the deceased.

23. Though PW3 was subjected to lengthy cross examination, nothing is elicited to discredit his testimony, except eliciting that when the deceased wanted to sell three cents of her house site, the accused asked the deceased to sell the same to his younger brother, for which the deceased replied that he will offer low price

and if they sell to others, they will get higher price. It was further elicited through the evidence of PW3 that having regard to the distance between the house of the deceased, PW3 could not have heard the cries from the house of the deceased. But, PW3 deposed that the distance between his house and the house of the deceased was only twenty yards and he could hear what was happening in the house of the deceased.

24. Even assuming that PW3 could not have heard the conversation of the deceased and accused, his evidence would amply establish that the deceased came out running from the house, followed by the accused, with a crowbar in his hand. While running from the house, the deceased slipped and fell down in front of the house and thereafter, the accused hacked her with the crowbar on her head, saying "die, die". This was witnessed by PW3 and the neighbours who were present there. PW3 further states that when the relatives of the deceased came to Kammavaripalem village and enquired as to what happened, he is said to have disclosed about the incident, which gets corroboration from the evidence of PWs 1 and 2.

25. Though the learned counsel for the appellant tried to contend that the injury sustained by the deceased was due to fall on the ground when she was being chased by the accused, the evidence of PW11-the doctor who was made to speak about the contents of the post mortem report, categorically states that the four injuries which were found on the body of the deceased are in

the neck region and they are all stab injuries and deep cut wounds. It was not even suggested to PW11, who spoke about Ex.P6, that these injuries could have been possible due to fall on the ground.

26. In view of the above, the argument of the learned counsel that the injuries on the body of the deceased could have been possible by fall on the ground, cannot be accepted.

27. The other witness who was examined by the prosecution to speak about the incident is PW5. According to him, he is a neighbour to the accused and deceased, and his house is situated besides the house of the accused. He deposed that the accused sold an idly vessel which led to a quarrel between the accused and deceased. On hearing the quarrel, PW5 came out of his house and found the deceased in a pool of blood. The accused was going away from the place with a crowbar in his hand. Though PW5 does not speak about the incident proper, his evidence would establish the presence of the body of the deceased in front of the house of the deceased and the accused leaving the place with a crowbar in his hand.

28. PW6 is also a resident of Kammavaripalem village and his house is situated opposite to the house of the accused and deceased. According to him, the accused and deceased used to quarrel with each other, and the deceased was killed by the accused two years back. He deposed that on the date of incident, he went to attend work under the 'food for work' programme and

returned to his house at 12 noon. At about 12.30 in the afternoon, while they were taking meals, they heard cries of the deceased, upon which they came out and observed the deceased falling on the road, and the accused poking an iron crowbar into the head of the deceased. He further states that besides him, other neighbours also witnessed the incident.

29. This evidence of PW6 gets corroboration not only from the evidence of PW5, but also from the evidence of PW3. All the three witnesses categorically deposed in one voice about the involvement of the accused in the crime.

30. At this stage, the learned counsel for the appellant tried to contend that since there is evidence on record to show that the accused purchased alcohol in the morning, possibility of he committing the offence in an aberrated condition, cannot be overlooked.

31. But, there is no evidence on record to show that the accused, who is said to have purchased alcohol in the morning, consumed the same and committed the offence. It is nobody's case that the incident occurred while the accused was in a drunken state. Even assuming for argument sake that the accused was in a drunken condition, the provisions of law do not give any protection to the accused on the ground that he was under the influence of alcohol at the time of the incident, unless it is proved that alcohol was administered on him without his knowledge.

32. As an alternative plea, the learned counsel for the appellant contends that having regard to the manner in which the incident took place, viz., that the incident was preceded by a quarrel, he seeks alteration of the nature of offence.

33. It is, no doubt, true that there was some quarrel between the accused and deceased, with regard to selling away of the idly vessel, but, things would have been different had the accused struck the deceased giving a blow or two. But the evidence on record would show that the deceased sustained four stab and deep cut injuries on vital parts of her body, which are as under:

1. sloping stab wound with 5" level from middle to right side deep over head. 3 inches deep with bleeding;
2. 2" length 1" deep cut wound (stab type) back side head with bleeding;
3. stab injuries over the right temporal region back side of right ear and it is 1" deep with bleeding;
4. 2" cut wound over the right ear pinna.

All the above injuries referred to are found on the back side of the right temple, right ear and over the head of the deceased.

34. Therefore, having regard to the manner in which the accused attacked the deceased, it cannot be said that he is entitled to alteration in the nature of offence. Hence, the conviction of the trial court for the offence punishable under Section 302 IPC warrants no interference.

35. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in

the judgment dated 31.05.2013 in Sessions Case No. 28 of 2011, on the file of the VI Additional District Judge, (FTC), Krishna at Machilipatnam, for the offence punishable under Section 302 I.P.C. is confirmed, while acquitting him under Section 498-A IPC. Miscellaneous petitions pending, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

03.11.2018
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