

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice D.V.S.S.Somayajulu

Criminal Appeal No.1288 of 2012

Dated 17.02.2018

Between:

Kale Jagan

... Appellant

and

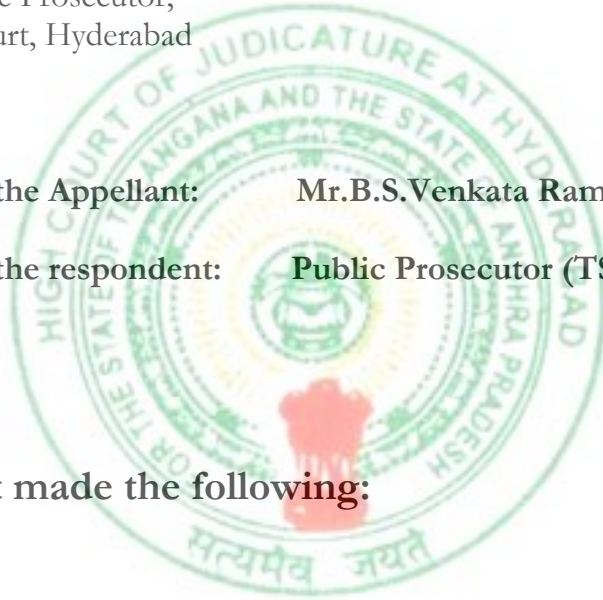
The State of A.P.,
Rep. by Public Prosecutor,
A.P.High Court, Hyderabad

...Respondent

Counsel for the Appellant: Mr.B.S.Venkata Ramesh

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:



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

The sole appellant in Sessions Case No.424 of 2011 on the file of the VII Additional District and Sessions Judge, at L.B.Nagar, Ranga Reddy District, was convicted for the offence punishable under Section 302 IPC and sentenced to suffer Imprisonment for Life and also to pay a fine of Rs.100/-, and in default to undergo Simple Imprisonment for one month.

The case of the Prosecution, as set out in the charge sheet, is as follows:

The appellant/accused along with his wife- PW.4, a five-year-old son and a two-year-old daughter- Vaishnavi (hereinafter referred as 'the deceased') was residing at Anmagal, Hayathnagar, on rent in the house of the younger brother of PW.1- Guddeti Ashok. PW.1 was residing in the adjacent house. The deceased had a problem at waist and she could not get up, stand or walk on her own. The appellant, having got addicted to alcohol, toddy and gutkha, was not doing any job and not looking after his family properly, due to which, there were frequent quarrels between him and PW.4. Three days prior to the incident, the appellant beat

PW.4. Vexed with the attitude of the appellant, PW.4 left to her mother's house at Jiyaguda, Hyderabad. The appellant did not permit his two children to accompany her. Having realized the problems due to her absence, the appellant asked PW.4 to return home but she refused and asked him to send the children to her. The appellant turned down the said proposal with a view to see that PW.4 would return to him for the sake of the children.

On 21-04-2011, in the afternoon at about 2.00 p.m., the appellant returned home from outside and found his son playing outside and his daughter lying in the bed. He thought that it was the right time to kill the deceased. Accordingly, he pressed on the flanks of the deceased with his knee, slapped on her left cheek and throttled her due to which she became inanimate. Immediately, he went outside and returned after some time as if he does not know anything about the deceased. He went inside the home and came outside crying and informed the outsiders that his daughter was dead. On hearing this, the neighbours went inside his house. They found nail marks on the neck of the deceased and suspected that the appellant was responsible

for her death. The appellant escaped due to fear of Police and Public.

On a complaint lodged by PW.1, PW.11- Inspector of Police, Hayathnagar, Cyberabad, registered a case against the appellant in Crime No.241 of 2011 under Section 174 Cr.P.C., and PW.9- Sub Inspector of Police, Hayathnagar, Cyberabad, investigated into the matter.

During the course of investigation, PW.9 examined PW.1- neighbour of the appellant, PW.4- wife of the appellant, LW.3- Mallegalla Muchinthala Srilatha, PW.2- house owner and PW.3- wife of PW.2 and recorded their statements in Part-II CD. PW.9- Sub-Inspector of Police, Hayathnagar, visited the scene of offence, conducted scene of offence panchanama in the presence of two panchas *i.e.*, PW.8 and LW.8- Jenige Kumar, drawn a rough sketch of the scene, conducted inquest over the dead body of the deceased in the presence of witnesses and two inquest panchas *i.e.*, PW.5 and PW.6, and sent the dead body for autopsy. On 23-04-2011, at 5.00 p.m., P.W.7 came to the Police Station and produced the appellant before PW.9 stating that on the same day at 4.00 p.m., the appellant confessed before him

that he killed the deceased. Thereafter, PW.11 took up further investigation from PW.9. PW.11 secured the presence of two panchas *i.e.*, PW.6 and LW.11- Katapaka Prabhakar and recorded the detailed confessional statement of the appellant in their presence.

Based on the confessional statement of the appellant, PW.11 altered the Section of Law from 174 Cr.P.C. (Suspicious Death) to 302 IPC and filed altered memo before the Court. PW.11 effected the arrest of the accused after explaining the grounds of arrest to him and his relatives by issuing arrest memo. PW.11 examined and recorded the statement of PW.7 and later, remanded the appellant to judicial custody. PW.11 re-examined PW.4. PW.12, who conducted autopsy over the dead body of the deceased, opined that the cause of death of the deceased was due to “throttling associated with blunt injury to chest and abdomen.”

Based on the Charge sheet and the material on record, the Court framed the following charge:

“That you on 21.04.2011 in the afternoon at about 2 pm at your house near Old Government

Hospital, Anmagal, Hayathnagar you committed the murder of your daughter baby Vaishnavi aged 2 years by knowingly and intentionally by pressing in the flanks of your daughter's baby Vaishnavi belly with your knee, slapped on her cheek and throttled her and she became inanimate and that grudge you thereby committed an offence punishable U/s.302 of Indian Penal Code and within my cognizance.”

As the plea of the appellant was one of denial, he stood trial. The Prosecution among other witnesses has examined the appellant's wife as PW.4. It is evident from her deposition that three days prior to the death of the deceased, the appellant beat her and forcibly took away her two children including the deceased from her and that on being informed, her parents and paternal uncle took her along with them. She has further deposed that the appellant has forcibly retained her daughter and son with him; that her husband used to commit thefts and spend money for consuming liquor; and that on hearing about the death of her daughter on 21-04-2011 through a phone call made by the people living in her Basthi, she went to the house, saw the deceased and observed several injuries on her neck and cheeks. She has, accordingly, deposed that the appellant has killed her daughter. The only suggestion given to this

witness on behalf of the appellant was that he did not beat his daughter and that she herself had fallen from the cot and died. The evidence of PW.4 is amply supported by the medical evidence as discussed below.

PW.10, who conducted autopsy over the dead body of the deceased, issued Ex.P.6- Post Mortem report. In her evidence, PW.10 has deposed that she has found the following injuries on the body of the deceased:

- “1. Abrasion 0.5x0.5 cm on left side of fore head
2. Contusion 3x2 cms on left cheek
3. 2 nail marks semi circular abrasions 1.0.2 cms, 1x0.2 cms on right side of neck, one below the other and 2.2 cms below the right angle of neck.
4. Contusion 5x2 cms on left side of the neck 1 cms below the left angle of mandible with underlined neck muscles contused.
5. Contusion on 6x2 cms on mid line of lower chest below the lower end of sternum.
6. Semi circular nail mark abrasion 1x0.2 cms on back side of left side of the chest with adjacent contusion of 3x1 cms produced by the same finger, 2 cms below the lower end of scapula bone.
7. Semi circular nail mark abrasion 1. 0.2 cms with adjacent contusion of 3 x 1 cms on left side chest 2 cm below the injury No.6.
8. Semi circular nail mark abrasion 1 x 0.2 cms with adjacent contusion 3 x 1 cms of same finger on left side of chest 2 cm below the injury No.7.

9. Semi circular nail mark abrasion 1 x 0.2 cms with contusion of 3 x 1 cms produced by the same finger on left sider of the chest and outer aspect of 2 cms below the injury No.8.

10. Abrasion 1 x 1 cms on medial aspect at right ankle at right lower limb. All above injuries are reddish and fresh.

11. Left side 5, 6 and 7th ribs fractured on posterior axillary line with surrounding intercostal muscles contused.

12. Multiple lacerations on left lobe of liver.

13. Both kidneys and adrenals contused.

14. About 800 CC of partial clotted blood in peritoneal cavity.”

In her cross-examination, a suggestion was put to PW.10 that the aforementioned injuries could be caused due to the deceased falling from the cot while sleeping. This suggestion was, however, denied by the witness. She has also denied the suggestion that she prepared Ex.P.6- Postmortem report under the influence of inquest panchanama report.

The evidence of circumstantial witnesses such as PW.2- owner of the house and PW.3- wife of PW.2 also amply prove the case of the Prosecution that both the children of the appellant including the deceased were in the exclusive custody of the appellant at the time of the death of

the deceased. No suggestion whatsoever was given to any of these witnesses that the appellant was not at home at the time of death of the deceased. The theory put forth by the defence that the injuries were sustained by the deceased due to her falling from the cot having been found false, the appellant being in the exclusive custody of the deceased at the time of the death, the burden lay on him under Section 106 of the Indian Evidence Act, 1872, to explain as to how the deceased had died. This burden not having been discharged, the Court below has rightly convicted him.

As regards the sentence, the learned Counsel for the appellant has fervently appealed to the Court to convert the same into the one under Section 304 IPC. We are afraid we cannot accept this request. In order to make an offence fall under Section 304 IPC, it must be shown that the accused has committed the offence of culpable homicide not amounting to murder. For this purpose, he must prove that the act committed by him falls in any of the five exceptions to Section 300 IPC. On a careful scrutiny of the evidence, we are not convinced that the offence proved against the appellant falls in any of those five exceptions. Therefore, it

is not possible to convict the appellant under Section 304 IPC.

For the foregoing reasons, the Appeal is dismissed and Judgment, dated 07.09.2012, in Sessions Case No.424 of 2011, on the file of the learned VII Additional District & Sessions Judge at L.B.Nagar, Ranga Reddy District, is hereby confirmed.

(C.V.Nagarjuna Reddy, J)

(D.V.S.S.Somayajulu, J)

Date: 17-02-2018
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