

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.990 of 2012

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

The sole accused in Sessions Case No. 161 of 2012 on the file of the Court of the Sessions Division at Anantapur at Anantapur is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife, Sankaramma by hitting on her head with a pestle. Vide Judgment dated 24.08.2012, the learned Sessions Judge convicted the accused for the charge leveled against him and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.200/-, in default to undergo simple imprisonment for three months.

2. The case of the prosecution, as culled out from the evidence of the prosecution witnesses, is as under:

The accused is the husband of the deceased. PWs 1 and 2 are children of the accused and the deceased, while PW3 is the father of the deceased. PW4 is the brother-in-law of the deceased. All the other witnesses are residents of the same locality. The accused was eking his livelihood by doing the job of a painter, and the deceased used to attend to the masonry work. Due to financial problems in the family, there were quarrels between the accused

and the deceased. PW1 was studying IX Class as on the date of incident. It is her version that at about 10.30 p.m., she heard some sounds and found her father holding a pestle in his hand and her mother lying on the floor with bleeding injuries. She claims to have removed the pestle from the hands of her father, telephoned to her maternal aunt, by name, Nagaveni and informed her about the incident. The said Nagaveni came along with one Bala Madhu- PW4 and shifted the injured/ deceased in an auto to Government General Hospital, Anantapur, where the doctors advised them to shift her to Kurnool. On the way to the hospital, the injured/ deceased died and the dead body was brought back to Government General Hospital, Anantapur.

3. It is the case of the prosecution witnesses that the accused used to suspect the fidelity of the deceased and used to abuse her frequently. On 15.03.2011, at about 00.15 hours (midnight), PW12-the Sub Inspector of Police, Anantapur II Town Police Station, received intimation about the admission of the injured/ deceased with bleeding injuries in Government General Hospital, Anantapur. At that point of time, the deceased was unconscious. PW12 secured the presence of PW1 and recorded her statement, which is marked as Ex.P1. Basing on the said statement, a case in Crime No. 70 of 2011 came to be registered under Sections 302 and 307 IPC of Anantapur II Town Police Station. Ex.P8 is the F.I.R. After registering the crime, PW12 visited the scene of offence and posted a guard to preserve the scene. At about 7 a.m., he came to the scene and conducted

panchanama in the presence of PWs 9 and 10. Ex.P6 is the panchanama. He also prepared a rough sketch of the scene, which is placed on record as Ex.P9. During the said proceedings, he seized M.O.2-plastic mat, M.O.3-pillow, M.O.4-kerchief and M.O.5-lungi piece. On the same day, at about 10.30 a.m., he received the death intimation of the deceased, which is placed on record as Ex.P10. Basing on Ex.P10, he altered the section of law from 307 IPC to 302 IPC and issued an altered F.I.R., which is marked as Ex.P11. On the same day, he visited Government Hospital Mortuary and conducted inquest over the dead body of the deceased. Ex.P5 is the inquest report. During the inquest proceedings, he recorded the statements of PWs 1 to 4 and seized M.O.6-saree, M.O.7-blouse and M.O.8-petty coat. Thereafter, he sent the dead body for post mortem examination.

4. PW14-the Professor of Forensic Medicine, Kurnool Medical College, Kurnool conducted autopsy over the body of the deceased on 15.03.2011 and issued Exhibit P13, the Post Mortem Report. According to him, the cause of death was due to cranio cerebral injury, i.e., head injury as a result of laceration of head.

5. PW15-the Circle Inspector of Police conducted investigation and after collecting all the necessary documents and effecting arrest of the accused, filed charge sheet, which was taken on file as PRC No.130 of 2011 by the Judicial First Class Magistrate, Anantapur. 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.161 of 2012 on the file of the Court of the District and Sessions Judge, Anantapur. A charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P15. Out of the 15 witnesses examined by the prosecution, PWs 5, 6, 7, 9, 10 and 11 did not support the prosecution case and were treated hostile by the prosecution. 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 on behalf by the accused in support of his defence.

7. Though no oral evidence was adduced by the accused, but basing on the testimony of prosecution witnesses, coupled with the corroboration which the oral evidence gets from the medical evidence, the learned Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life'. Challenging the said conviction and sentence, the present appeal came to be filed through Legal Aid.

8. The learned counsel for the appellant mainly submits that the evidence of PWs 1, 2 and 3 cannot be made the basis to convict the accused, as none of them have seen the incident. He contends

that the version of the witnesses in the charge sheet and the oral evidence are totally inconsistent with each other and as such, no inference can be drawn as to the manner in which the incident took place. He further submits that if the evidence of PW4 is taken into consideration, the same is in contravention to the version of PWs 1 and 2 and the contents of the charge sheet. In any event, he would submit that even if the case of the prosecution is to be accepted to be true, the accused cannot be convicted under Section 302 IPC, as the prosecution failed to establish any intention or motive on the part of the accused to attack the deceased.

9. On the other hand, the learned Public Prosecutor countered the same stating that the fact that the accused gave two blows to the deceased is itself sufficient to convict the accused under Section 302 IPC, since his presence in the house stands established through the evidence of PWs 1 and 2.

10. The question that falls for consideration is: “whether the accused is responsible for the incident in question and whether he can be convicted under Section 302 IPC.”

11. It is to be noted here that in the charge sheet which has been filed by the police, the version of the witnesses is to the effect that on the date of incident, i.e., 14.03.2011, at about 10 p.m., LWs 1 and 2, i.e., PW1-Aggidi Manasa and PW2-Aggidi Mahesh Babu were lying in the front room of the house, and the accused was quarrelling with the deceased in the kitchen. On hearing the

same, PWs 1 and 2 went near the kitchen and saw the accused hitting the deceased on her head with a pestle causing bleeding injuries. PWs 1 and 2 are said to have intervened and caught the pestle and feet of the accused, requesting him not to beat their mother. On hearing the cries, PWs 5 and 6 rushed to the scene and on seeing them, the accused ran away. This appears to be the version spoken to by the witnesses in their earlier statements, which is reflected in the charge sheet.

12. Coming to the oral evidence, PW1, in her evidence, deposed that on the date of incident, at about 10.30 p.m., she woke up and found her father holding a pestle in his hand and his mother with bleeding injuries on head and ears. PW1 is said to have removed the pestle from the hands of his father and telephoned to her maternal aunt, Nagaveni informing her about the incident. Thereafter, Nagaveni came to the house along with PW4 and others and shifted the injured/ deceased to Government General Hospital, Anantapur. However, in the cross-examination, PW1 admits that herself and her brother slept in the front room and their parents were sleeping in the adjacent back room; that there is a door like passage between the two rooms and one can see each other from these two rooms. She stated that she alone woke up at 10.30 p.m. on hearing the sound resembling the one beating the other from the room of their parents. She admits that she did not see her father hitting on the head of her mother. However, it has been elicited that on the date of incident, at about 8 p.m., PW1, her brother and her mother were in the house, and there was a quarrel

between their father and mother, leading to the father (accused) giving a blow on the head of the mother(deceased).

13. PW2, in his evidence, deposed that in the midnight, PW1 woke him up and informed that their mother was bleeding and that she should be shifted to the hospital. PW2 stated that he saw some neighbours taking out her mother and keeping her in an ambulance, and that his father(accused) was also present outside the house. No cross-examination was done insofar as PW2 is concerned on the said aspects.

14. From the evidence of PW2, who is the brother of PW1, it is clear that PW1 only informed PW2 that the accused has caused the death of the deceased and that PW1 pulled the pestle from the hands of the accused after getting up from sleep on hearing the sounds.

15. From the evidence of these two witnesses, it is clear that the incident took place in the adjacent room and PW1 woke up on hearing sounds from the said room. Her evidence is to the effect that by the time she saw the accused, he had already assaulted the deceased, which version does not find place in the charge sheet. This version is sought to be brought out through the evidence of PW4. According to him, on 14.03.2011, at about 10.30 p.m., PW1 telephoned to him and informed that her father beat her mother with a pestle on her head and that her mother was lying down in the house. Immediately, he rushed to the house and found the deceased lying unconscious with bleeding injuries on her head. As

there was some delay in the arrival of the ambulance, they secured auto to proceed to the hospital. On the way, the ambulance reached them; shifted the deceased into the ambulance and then proceeded to Government General Hospital, where the doctors advised them to take her to any other hospital in Kurnool. In the latter part of the chief examination, PW4 stated that PW1 informed him that on the date of incident, the deceased came home late in the night, and there was a quarrel between her father and mother. However, in the cross-examination, he admits that PW1 did not inform about the deceased coming home late on the date of the incident. Apart from that, it was further elicited in the evidence of PW4 that the accused used to treat his wife affectionately. This evidence of PW4 shows that the incident took place because of the quarrel between the accused and the deceased at about 8 p.m.

16. At this stage, the learned Public Prosecutor would contend that since the contents of the charge sheet are not substantive piece of evidence and since the contents of the said charge sheet were not put to the accused, the same should be eschewed from consideration.

17. It is true that the content of the charge sheet is not substantive piece of evidence. The witnesses were neither confronted with the averments in the charge sheet, nor was it suggested to any of the witnesses that the police arrived at a different conclusion in the investigation. Though the evidence of

PWs1 and 2 is slightly at variance with the evidence of PW4, but the evidence of both the witnesses clearly establish that the incident took place in the house of the accused and deceased, and prior to the incident, there was a quarrel between the accused and deceased, when the deceased came home late, on the date of incident. It was further elicited from PW4 that the accused used to treat his wife affectionately.

18. In the absence of any material to show the existence of any animosity or disputes between the accused and deceased and having regard to the admission made by PW4, which remained unrebutted by the prosecution, it can safely be held that there was no prior animosity, enmity or motive for the accused to kill the deceased. In fact, none of the witnesses speak about the existence of any animosity between both of them. On the other hand, PWs 1 and 2 and PW4 only referred to existence of some quarrel between the accused and deceased when the deceased came late to the house. In the quarrel, the accused is said to have given a blow with a pestle on the head of the deceased, leading to her death. However, the learned Public Prosecutor tried to contend that the fact that the accused gave two blows itself is sufficient to show that he had the intention to kill the deceased. The Apex Court, time and again, has held that one has to see the circumstances under which the incident took place and not the number of blows given, so as to find out the intention of the accused.

19. In the instant case, there was no animosity or motive for the accused to kill the deceased. But the incident in question appears to have occurred after a quarrel between the accused and deceased when the accused questioned the deceased as to why she came home late in the night. In the said quarrel, the accused appears to have picked up a pestle which was lying in the house and hit the deceased.

20. In an identical case, i.e., in KOTHALA SRINU v. THE STATE OF ANDHRA PRADESH¹, this Court held as under:

“14. From the consistent evidence of the prosecution witnesses, it is clear that the appellant was not leading a disciplined life. He used to come home after consuming alcohol after his marriage, every night and pick up quarrels with the deceased. Though he appeared to have been harassing the deceased, there is no evidence to show that he had ever attempted to do away with her life. Even according to the version of the deceased, as reflected from her both the dying declarations, even on the fateful day, a quarrel ensued between them, leading to her suffering burns. In the manner in which the occurrence has taken place, as reflected from the evidence on record, we have no doubt in our mind that the appellant had no intention of killing his wife. However, due to the serious quarrel between them, the appellant probably, in a fit of rage, would have set fire to the deceased. This conclusion of ours is firmed up by the fact that at the time of occurrence, the appellant was in a drunken condition and that he has brought kerosene from a bottle lamp and poured the same on the deceased which shows that

¹ 2016 (2) ALD (CrI.) 412 (AP)

he would not have had the premeditation of causing the death of the deceased. The further fact that the burns were only 55% and they have not cause immediate death – the deceased died five days after the occurrence – also shows that the appellant had no intention of causing the death of the deceased. Therefore, we feel that this is a fit case to convict the appellant for the offence under Section 304 Part-II I.P.C and accordingly, we modify the judgment of the Court below to this effect. As regards the sentence, having regard to the nature of the offence, we feel that interests of justice would be met if the appellant is sentenced for a period of seven years, besides a fine of Rs. 500/-”.

21. Further, in DEVENDRANATH SRIVASTAVA², the Apex Court dealt with a situation where, there was a quarrel between the husband and wife, when the husband was in drunken condition, and subsequently, the dead body of the wife was found in the house. No explanation was given by the husband as to how his wife died. In the facts of the said case, the Apex Court convicted the accused under Section 304 Part II IPC, and not under Section 302 IPC.

22. Taking into consideration the facts under which the incident took place, it can be said that an offence under Section 302 IPC has not been made out by the prosecution. Having regard to the judgments of the Apex Court referred to above, we feel that the accused cannot be fastened with the liability under Section 302

² AIR 2017 SCW 612

IPC, but it can be said that he had the intention to cause bodily injury as is likely to cause death, falling within the purview of Section 304 Part-I IPC.

23. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in the judgment dated 24.08.2012, in Sessions Case No.161 of 2012 on the file of the Court of the Sessions Division of Anantapur, Anantapur for the offence punishable under Section 302 I.P.C. is altered to one under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of eight years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused shall be set at liberty forthwith on completion of eight years rigorous imprisonment, if not required in connection with any other case.

JUSTICE C. PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

02.01.2018
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