

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.2 of 2013

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

The sole accused in Sessions Case No. 69 of 2012 on the file of the Court of the Special Judge for the trial of offences under S.Cs and S.Ts (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad preferred the present appeal under Section 374(2) of Cr.P.C assailing the conviction and sentence imposed against him. The accused/ appellant was tried for an offence punishable under Section 302 IPC for causing the death of his wife, Smt.Narasamma on the intervening night of 12th and 13th November, 2010 in her house by smashing her head with a boulder. By its judgment dated 30.10.2012, the learned Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.5,000/-, in default to simple imprisonment for a period of one month.

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

The accused is the husband of the deceased. PW1 is the mother of the deceased, while PW2 is the daughter of the deceased and accused. The deceased joined as a tenant in the house where the

incident took place about two months before her death. The deceased, along with her children, was living in the said house. About ten days prior to the date of incident, the accused joined the company of the deceased. The evidence on record discloses that prior to the death of the deceased, the accused and deceased used to reside in Chikkadpally, and subsequently, disputes arose between them, which led to deceased leaving the company of the accused. A week or ten days prior to the date of incident, the accused came to PW1 and deceased and started staying with them till the date of incident.

3. On the date of incident, i.e., on the intervening night of 12th and 13th November, 2010, PW1, who is the mother of the deceased, and the children of the deceased were sleeping by the side of the deceased. In the midnight, PW1 woke up along with her grandchildren and found the deceased drenched in a pool of blood. On seeing PWs 1 and 2, the accused stood at some distance, and thereafter, fled away. In her evidence, PW1 deposed that the deceased was working as a maid servant and she used to come across many male and female persons, and on suspicion that the deceased was having illicit intimacy with others, the accused killed the deceased.

4. In respect of the incident in question, PW1 lodged a report on 13.10.2010 at 3 p.m., before PW11-the Inspector of Police, which is brought on record as Ex.P1. Basing on Ex.P1, a case in Crime No. 460 of 2010 came to be registered for the offence

punishable under Section 302 IPC. Ex.P8 is the F.I.R. After receiving the F.I.R., PW11 visited the scene of offence, which is situated at Old Bowenpally, and in the presence of PW5, prepared a rough sketch of the scene and also prepared a panchanama of the scene. Ex.P2 is the scene of offence panchanama, while Ex.P9 is the rough sketch of the scene. At the time of preparing the scene of offence panchanama, he seized M.O.2, blood swaps from boulder, wall, bed and M.O.3, a ganesh beedi. After conducting the scene of offence panchanama, he conducted inquest over the dead body in the presence of PW5. Ex.P3 is the inquest report. During inquest, he seized clothes of the deceased under M.Os. 4 to 7. Thereafter, the dead body was handed over for post mortem examination.

5. PW10-the Assistant Professor, Gandhi Medical College conducted autopsy over the body of the deceased on 30.10.2011 between 10 a.m. to 11 a.m. and issued Exhibit P7-the Post Mortem Report. According to him, the cause of death was due to head injury. He also noticed ligature marks in stiffening of the dead body and brain matter coming out of the ears and left arm in the form of nervous issue.

6. PW11 continued with the investigation and he is said to have arrested the accused on 15.11.2010 at 4 p.m., in the presence of PW9 and one, R.Shanker. On interrogation, the accused is said to have admitted his guilt and his confession lead to discovery of M.Os 8 and 9, which are the blood stained clothes of the accused. After

completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 20 of 2011 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad. 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. 69 of 2012 on the file of the Court of the Special Judge for trial of offences under S.Cs and S.Ts (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad. Basing on the material on record, 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.

7. In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P10 and M.Os.1 to 9. 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.

8. The main ground urged by the learned counsel for the appellant is that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. He would also submit that the incident took place when the deceased went out of the house to attend to calls of nature. According to him, she fell

down on a rock, as a result of which, she sustained head injury and died.

9. On the other hand, the learned Public Prosecutor would contend that the defence which is set out now was never the case of the accused during the course of the trial. According to him, PWs 1 and 2 are the eye witnesses to the incident and their version cannot be doubted. He took us through the evidence of these witnesses to show the presence of PWs 1 and 2 in the house and also the participation of the accused in the commission of the offence.

10. The question that arises for consideration is: “whether the accused is responsible for the death of the deceased.”

11. In order to appreciate the same, it would be useful to refer to the evidence of PW1, which is as under:

“I am residing in Ramalayam Temple, Nallakunta along with my daughter’s children. Accused is my son in law who killed my daughter Narasmma. The deceased daughter was blessed with one daughter and one son. 1 ½ year back, myself, my deceased daughter and her children were sleeping in the night accused hurled big stone on my daughter’s head. The said stone is M.O.1 wherein the complainant identified the same. On the day of incident, I am sleeping beside my deceased daughter. On hearing the noise I woke up along with her children. As soon as I woke up, my deceased daughter found in drenched condition. On seeing us, accused

stood at some distance thereafter he fled away. My deceased daughter used to work as maid servant as she used to come across male and female persons, on suspicious accused killed my daughter that is the reason of accused killing of my deceased daughter. I orally complained to police which was reduced into writing in telugu the contents of the statement read over to me thereafter. I affixed my LTI. Ex.P1 is the said oral statement. The children of deceased were also examined by the police and recorded their statement.”

12. In the cross-examination of PW1, it was elicited that Devenderappa was the first husband of the deceased and due to quarrels with the first husband, the deceased returned to her house. It was further elicited in the cross-examination that due to quarrel between the accused and deceased, the deceased came to the house of PW1. It was further elicited that about a week prior to the date of incident, the accused came to their house and resided there until the date of incident. It was further stated that after the accused hurled a stone on the deceased, PW1 chased him, but, he ran away.

13. PW2, who is the daughter of the deceased, deposed as under:

“P.W.1 is my grand mother. Accused is my father. Deceased Narsamma is my mother. As on today, Narsamma is no more. Accused(Daddy) killed my mother Narsamma.

Accused hurled M.O.1 on the head of my mother. Immediately, my mother sustained bleeding injuries. At that time, myself, P.W.1 my younger brother and accused were present. As soon as I heard the noise, I woke up at that time, P.W.1 also woke up and accused stood outside. The witness identified the same M.O.1 by which accused killed her mother. Later, police examined me and recorded my statement.”

In her cross-examination, it was elicited that her father and mother were in the habit of consuming liquor and on the date of incident, she heard sounds of hurling of stone and then woke up. It was also elicited that PW2 and PW1 woke up at the same time. However, she admits that she did not see her father hurling the stone. She also states that one person by name, Mohan used to come to his mother regularly and whenever the said Mohan visits, the accused and deceased used to quarrel with each other. She further states that Mohan used to take her deceased mother to coolie work and he used to accompany the deceased to their house. The suggestion that she did not witness the incident and the accused did not hurl the stone on the deceased, was denied.

14. PW3 is a doctor working in Ramya Nursing Home. He deposed that on the date of incident, one aaya came to the hospital and informed him about the attack made on the deceased by the accused, with a boulder. He rushed to the scene, checked the pulse and informed the death of the deceased.

15. PW4 is the landlord to the house in which the deceased was on rent. His evidence is to the effect that on the date of incident, PW2 woke him up and when he went inside the portion of the deceased, he noticed the deceased lying on the floor with a big boulder by her side.

16. From the evidence on record, it is clear that PW1 and PW2 were examined as eye witnesses to the incident. Both of them, in clear terms, deposed about the involvement of the accused in the commission of the offence. Therefore, the argument of the learned Legal Aid counsel that there are no eye witnesses to the incident, cannot be accepted.

17. Coming to the argument advanced before this Court that the deceased sustained injuries when she went out to attend calls of nature, the same was not suggested to any of the witnesses. It was not the case of the accused before the trial court that the deceased sustained injuries when she went out to attend to calls of nature. Even assuming that such suggestion was given, there is no material on record to substantiate the same. There is no evidence on record to show that the deceased was outside the house at the time of incident. Therefore, the second ground urged by the learned counsel for the appellant also cannot be accepted.

18. Taking a clue from the evidence of PW2, that one, Mohan used to come to their house regularly and whenever Mohan comes to the house, there was a quarrel between the accused and deceased, the learned counsel for the appellant would contend

that the accused was suspecting the chastity of the deceased, because of which he must have killed her. But, it is to be noted here that at the time of incident, the deceased was not in the company of the said Mohan. If really the incident has occurred at the time when the deceased and the said Mohan were together, things would have been different. In the instant case, there used to be some quarrel between the accused and deceased whenever the said Mohan visited the house of the deceased, and it is also stated by PW2 that he used to visit their house regularly. However, that by itself cannot be a ground to say that he has hurled the boulder on the deceased due to sudden provocation. Even as per the evidence of PW2, the said Mohan visited the house of the deceased since long and there was nothing new which provoked him to beat the deceased with a boulder, that too, in the middle of the night when she was sleeping.

19. On the other hand, the evidence on record, more particularly, the evidence of PW2 would show that there was some quarrel between the accused and deceased, pursuant to which the deceased left the company of the accused and started living in a separate house along with her children. Only a week prior to the date of incident, the accused came to the house of the deceased and started living with them. Therefore, the motive for the accused to cause the death of the deceased cannot be said to be remote, and it cannot also be said that there was no motive at all for the accused to kill the deceased.

20. Having regard to the evidence of PW1 and PW2, which gets corroboration from the evidence of the doctor, who was examined as PW10, we find no reason to interfere with the conviction and sentence imposed by the trial court on 30.10.2012 in Sessions Case No. 69 of 2012 on the file of the Court of the Special Judge for the trial of offences under S.Cs and S.Ts (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad.

21. Accordingly, the Criminal Appeal is dismissed. Miscellaneous petitions pending, if any, stand closed.

22.01.2018
DMG



JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI