

HIGH COURT FOR THE STATE OF TELANGANA

HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.849 OF 2012

Date: 20.08.2019

Between:

Kongara Subramanyam Naidu.

...Appellant/Accused

AND

The State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court of Andhra Pradesh,
Hyderabad.

... Respondent/Complainant

Counsel for the Appellant

: Sri A. Gayathri Reddy

Counsel for the Respondent

: Smt. J. Sridevi,

Additional Public Prosecutor

The Court made the following:

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the appellant/accused, aggrieved by the judgment, dated 07.08.2012, passed in Sessions Case No.554 of 2011 by the Special Judge for trial of offences under S.Cs & S.Ts (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, whereby and whereunder, the accused was found guilty of the offence under Section 302 of IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.5,000/-, in default, to suffer Simple Imprisonment for six months and also to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for one month, for the offence under Section 324 of IPC. Both the sentences were ordered to run concurrently.

2. In brief, the case of the prosecution is that Smt.Bharathi (hereinafter referred to as 'deceased') is the wife of accused-Kongara Subramanyam Naidu. The deceased used to do saree business and P.W.1-K.Annapurna, was working as a sales lady in her shop. The accused was a sadist and used to harass and beat the deceased indiscriminately. Hence, the deceased deserted him and started living with P.W.5-P.Surender, the owner of the saree shop, which was adjacent to the shop of the deceased. Even then, the accused used to go to deceased and P.W.5 for food and money. On 28.03.2007, the accused took Rs.200/- from P.W.5 and purchased fish. The accused, deceased and P.W.5 went to the house of deceased, situated at Lalapet. P.W.1 also reached the

said house. P.W.1 and the deceased prepared food and all of them had their dinner. P.W.1 went to sleep on the upstairs and the accused also went to upstairs to sleep. At about 01:00 AM in the midnight, P.W.1 came down and knocked the door of the room in which the deceased and P.W.5 were sleeping and informed them that the accused was in a drunken state and she did not want to sleep on the terrace. On that, both the deceased and P.W.5 advised P.W.1 to sleep on the steps and they went inside the room to sleep. Again at about 02:15 AM, P.W.1 knocked the door of the room, in which the deceased and P.W.5 were sleeping and informed them that the accused was speaking meaningless words and touched her with his legs and pulled her. She further complained that the accused was looking at her from the terrace and requested them to allow her to sleep in the kitchen in the ground floor, for which, they agreed. At about 02:30 AM, the accused came down from the terrace, grumbled at the deceased for guarding P.W.1. Then the accused went into kitchen, brought one knife and stabbed the deceased on her chest and caused serious bleeding injury. When P.W.5 tried to save the deceased, the accused stabbed the PW.5 on left side of the waist and right index finger and ran away from the spot saying "*Lanja Savu Neku Ede Siksha*". The accused further threatened P.W.5 to see his end. Immediately, P.W.5 and P.W.1 shifted the deceased to Gandhi Hospital with the assistance of one auto driver (L.W.4-S.Venkatesh), where the doctors declared that the deceased was 'brought dead'.

3. On the report lodged by PW.5-*de facto* complainant, on 29.03.2007, P.W.12-Inspector of Police, Lallaguda Police Station, registered a case in Crime No.50/2007 against the accused for the offences under Sections 302, 307 and 506 of IPC and took up investigation. On 02.04.2007, the accused was arrested and upon completion of the investigation, laid charge-sheet against the accused for the offences under Sections 302, 307 and 506 of IPC before the Court of learned X Additional Chief Metropolitan Magistrate, Secunderabad.

4. The learned Magistrate has taken cognizance of the case against the accused for the offences under Sections 302, 307 and 506 IPC in P.R.C.No.53 of 2011 and committed the case to the Principal Metropolitan Sessions Judge, Hyderabad, since the offence under Section 302 IPC is exclusively triable by the Court of Session and thereafter, the case was registered as S.C.No.554 of 2011 and made over to the trial Court for disposal in accordance with law. After appearance of the accused before the trial Court, charges under Sections 302, 307 and 506-II IPC were framed against the accused, read over and explained to him in Telugu, for which, he pleaded not guilty and claimed to be tried.

5. To prove the case of prosecution, PW.1 to PW.12 were examined and Exs.P.1 to P.12 were marked, besides case properties MOs.1 to 5. PW.1 is the eye witness. PWs.2 and 3 are the circumstantial witnesses. PW.4 is the son of the deceased and accused. PW.5 is the *de facto* complainant and eye witness. PW.6 is the photographer. PW.7 is the circumstantial witness. PW.8 is the panch witness for scene of offence. PW.9 is the panch witness

for confession-cum-seizure panchanama. PW.10 is the doctor, who treated PW.5. PW.11 is the doctor, who conducted post-mortem examination over the dead body of the deceased. PW.12 is the Investigating Officer, who investigated the case and filed charge sheet.

6. After closure of prosecution evidence, when the accused was examined under Section 313 of Cr.P.C explaining the incriminating material appearing against him, he denied the same and did not choose to examine any witness on his behalf.

7. The trial Court, on analysis of both oral and documentary evidence and the submissions put-forth before it, held that the prosecution failed to prove the guilt of the accused for the offences under Sections 307 and 506-II of IPC, but was able to prove the guilt of accused beyond reasonable doubt for the offences under Sections 302 & 324 of IPC and accordingly, convicted and sentenced him as indicated above. Hence this Criminal Appeal by the accused.

8. Heard arguments of Smt.A.Gayathri Reddy, learned counsel for the appellant/accused and Smt.J.Sridevi, learned Additional Public Prosecutor for the State and perused the record.

9. Smt. A.Gayathri Reddy, learned counsel for the accused would contend that the conviction and sentence recorded against the accused for the offences under Sections 302 and 324 IPC is contrary to law and facts of the case. PWs.2 to 4 did not support the prosecution case and they were treated hostile by the prosecution. The record discloses that due to sudden and grave

provocation made by the deceased and PW.5, the accused committed the offence. There was no motive for the accused to kill his wife. No ingredients under Section 302 IPC are made out against the accused to punish him for the said offence and ultimately prayed to allow the appeal by setting aside the impugned judgment.

10. On the other hand, Smt. J. Sridevi, learned Additional Public Prosecutor for the State, would contend that there is specific evidence of PW.1 and PW.5 that the accused had caused the death of his wife (deceased). There is consistency and corroboration in the evidence of material witnesses. There was no sudden and grave provocation as alleged by the accused. The Court below had elaborately dealt with the entire evidence on record and rightly found the accused guilty of the offences under Sections 302 and 324 of IPC and accordingly, convicted and sentenced him. There is nothing to take a different view and ultimately prayed to dismiss the Criminal Appeal by sustaining the impugned judgment.

11. In view of the submissions made by both sides, the following points have come up for determination:

- 1. Whether the accused had caused the death of deceased (Bharathi)?**
- 2. Whether the trial Court is justified in convicting and sentencing the accused for the offences under Sections 302 and 324 IPC vide impugned judgment dated 07.08.2012?**
- 3. To what relief?**

12. **POINTS:** The specific case of the prosecution is that deceased deserted the accused on the ground that he is a sadist

and used to harass and beat her, and so she started living with PW.5. The accused was now and then visiting them. On 28.03.2007, the accused went to the house of deceased, situated at Lalapet, Secunderabad. P.W.1 also reached the said house. P.W.1 and the deceased prepared food and all of them had their dinner. P.W.1 and the accused went to sleep on the upstairs. In the midnight at around 01:00AM, P.W.1 came down and knocked the door of the room in which the deceased and P.W.5 were sleeping and informed them that the accused was in a drunken state and she did not want to sleep on the terrace. On that, they advised P.W.1 to sleep on the steps and went inside the room to sleep. Around 02:15 AM, P.W.1 again went to the deceased and P.W.5 and informed that the accused was speaking meaningless words and touched her with his legs and pulled her and looking at her from the terrace and requested them to allow her to sleep in the kitchen in the ground floor, for which, they agreed. At about 02:30 AM, the accused came down, grumbled at the deceased for guarding P.W.1, went into kitchen, brought one knife and stabbed the deceased on her chest and caused serious bleeding injury. When P.W.5 tried to save the deceased, the accused stabbed him on left side of the waist and right index finger and ran away from the spot. Immediately, P.W.5 and P.W.1 shifted the deceased to Gandhi Hospital with the assistance of one auto driver (L.W.4), where the doctors declared that she was brought dead.

13. According to PW.5, on 29.03.2007, the deceased, wife of the accused died due to stabbing by the accused with a knife on her chest. He was present there. When he made an attempt to rescue

the deceased, he too suffered injuries on his finger and neck. After causing injuries to the deceased and PW.5, the accused fled away. There is also evidence of PW.5 that the incident was also witnessed by PW.1-maid and both of them had shifted the injured (deceased) to the Hospital, where the doctor declared 'brought dead'.

14. PW.1 in her evidence stated that she used to work as sales lady with the deceased, who was doing business in Sarees. As the deceased was suffering from knee joint pains, she requested PW.1 to attend her household works. She further stated that on one day, when she was sleeping on the terrace of the building belonging to the deceased, the accused, PW.5 and the deceased consumed alcohol and had dinner. On that day, the deceased arranged bed on the terrace for the accused. PW.5 was resting with the support of a wall and the deceased was lying on him. In the meanwhile, the accused came there and went to kitchen. The deceased questioned the accused, why he came there. Thereafter, the accused came there by folding his hands backside and then stabbed the deceased with a knife on her chest. On that PW.5 kicked the accused and retaliated. On seeing the situation, the accused fled away from the scene. PW.1 was subjected to lengthy cross-examination, wherein, she specifically stated that the deceased was stabbed by the accused with a knife. She has also given the details of the incident that led to the stabbing of the deceased by the accused. She reiterated the presence of PW.5 at the house of the deceased. She also stated all other circumstances that led to the death of the deceased. Under these circumstances, the presence of PW.1, PW.5 and the accused at the scene of offence cannot be disbelieved.

15. According to PW.3, the deceased was doing business in sarees. According to PW.4-son of the deceased and accused, the deceased was doing business in sarees during her lifetime. His testimony discloses that on the date of incident when PW.5 was about to stab the accused, his mother (deceased) went to rescue the accused and in that scuffle, his mother suffered stab injury on her chest and died. PW.4 is a highly interested witness. He is the son of the accused as well as the deceased. He does not want his mother to be blamed. He setup a different story relating to the death of the deceased. PW.1 is an independent witness. She deposed that she used to work in the shop of the deceased and also help the deceased in her domestic work. There is no reason for PW.1 to depose falsely to implicate the accused in the instant case. PW.6 deposed about taking of photographs (Ex.P.4) at the scene of offence. The investigation conducted by the police, the evidence of PW.12-Investigating Officer, Ex.P.5-crime details form and the recoveries made from the scene of offence clearly establish that the incident took place on the intervening night of 28/29.03.2007 at the house of the deceased, situated at Lalapet, Secunderabad. Moreover there was no dispute with regard to the scene of offence. There is also other evidence to substantiate the place of death. Furthermore, there is evidence of PW.11-Doctor that the subject death was caused due to stab injury on the chest of the deceased and the same is corroborated with Ex.P.9-post-mortem examination report.

16. There is cogent and overwhelming evidence on record to believe that the accused had caused the subject death. PW.1 had

categorically stated in her evidence that when PW.5 was resting with the support of a wall, the deceased was lying on him. When she questioned the accused as to why he came there, the accused went inside the kitchen and brought a knife and stabbed the deceased.

17. The trial Court held that the prosecution established the guilt of the accused for the offences under Sections 302 and 324 IPC and accordingly convicted and sentenced him as indicated above. Here, it is apt to extract **Exception 1** to Section 300 of IPC, which reads as under:

Explanation I : Culpable homicide will not amount to murder, if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

In the instant case, when the accused came down from the terrace, he saw his wife (deceased) lying on her paramour (PW.5). Seeing his wife in the company of another person in an indecent posture, would certainly cause provocation to any husband. Under those circumstances, the accused, while deprived of his self control by grave and sudden provocation, had stabbed the deceased with a knife. Moreover, the accused was in an intoxicated condition at the time of the offence. Thus it can be safely concluded that there was no intention on the part of accused to cause the death of the deceased and that it was caused by the accused due to sudden and grave provocation made by the deceased and PW.5. Therefore, the act of the accused would not attract the provisions of Section 302 of IPC but it would fall under the provisions of Section 304

Part-I IPC. The trial Court had not analysed this aspect in correct perspective. It erroneously concluded that the offence was committed by the accused under Section 302 IPC.

18. It is appropriate to extract Section 304 Part-I of IPC, which reads as under:

“Section 304 -Punishment for culpable homicide not amounting to murder: *Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.....”*

19. It is relevant to refer the following decisions rendered by the Hon’ble Apex Court:

i) In **Alister Anthony Pareira vs. State of Maharashtra**¹, the Hon’ble Supreme Court drew a distinction between the two parts of Section 304 IPC and held as follows:

“For punishment under Section 304 Part I, the prosecution must prove the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death.”

¹ (2012) 2 SCC 648

ii) In **Kasam Abdulla Hafiz vs. State of Maharashtra**², the Hon'ble Supreme Court observed thus:

"....Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the 1st Part of Section 304 IPC. The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed. In that view of the matter we are of the considered opinion that the High Court has rightly convicted the appellant under Section 304 Part I IPC...."

20. As seen from the facts and circumstances of the case on hand, there is no premeditation to cause the subject death. The prosecution case and also evidence is that the deceased having deserted her husband (accused), started living with PW.5 and at the time of incident, the accused saw the deceased resting on her paramour(PW.5). These circumstances would certainly cause sudden and grave provocation to the husband.

21. Under these circumstances, the conviction and sentence recorded against the accused for the offence under Section 302 IPC is modified to Section 304 Part-I IPC.

22. Since the evidence of PW.5, PW.10 and Ex.P.8-accident register, establishes that the accused had caused injuries to PW.5, the trial Court is justified in recording conviction and sentence against the accused for the offence under Section 324 IPC.

² (1998) 1 SCC 526

23. For the reasons stated above, the Criminal Appeal is partly allowed. The impugned judgment dated 07.08.2012, passed in S.C.No.554 of 2011 by the learned Special Judge for Trial of offences under S.Cs & S.Ts (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, is modified as under:

The conviction of the appellant/accused, is converted from the offence under Section 302 IPC to Section 304 Part I IPC. The sentence of imprisonment imposed upon him is, therefore, reduced from the Life Imprisonment to the period already undergone by him i.e, seven years, nine months and ten days. The imposition of fine shall be maintained. Since the appellant/accused happens to be on bail, his bail bonds shall stand cancelled. The appellant/accused shall be set at liberty forthwith, if he is not required in any other case.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

Date: 20.08.2019
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