

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**

CRIMINAL APPEAL No.687 OF 2014

JUDGMENT: (Per Hon'ble Dr.SA,J)

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 11.04.2014, passed in S.C.No.531 of 2013 by the Principal Sessions Judge, Karimnagar, whereby, the appellant/accused was found guilty of the offence under Section 302 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.100/-, in default, to suffer simple imprisonment for two months.

2. Heard Sri Maddireddi Shankar, learned counsel representing Sri Bal Ram Reddy, learned legal aid counsel for the appellant/accused; Sri C. Pratap Reddy, the learned Public Prosecutor, appearing for the respondent-State and perused the record.

3. The case of the prosecution, in brief, is as follows:

On 19.06.2013 at about 04:00 hours, PW.1-Bongoni Govardhan lodged a complaint with Police, Keshavapatnam, stating that he is a resident of Keshavapatnam Village and eking his livelihood by running a dairy farm. He had two brothers and one

sister. On 18.06.2013 at about 17:00 hours, his mother-Bongoni Laxmi, aged about 70 years, (hereinafter called as 'the deceased'), was chit chatting with PW.3-Bongoni Sujatha, grand daughter of the deceased, at the steps of Bongoni Narayana's house. Meanwhile, his agnate i.e., the appellant/accused came to the deceased and alleging that the deceased was responsible for the death of his brother and sister-in-law, attacked the deceased with a stick indiscriminately on her neck and head, due to which, the deceased received bleeding injury on her head and fell down from the steps. On seeing that, PW.3 raised hue and cry. On hearing the same, his brother's daughter PW.2-Neelam Bhagya Laxmi came there. In the mean time, his cousin PW.5-Bongoni Srinivas called 108 ambulance and shifted the deceased to the Government Hospital, Karimnagar. The deceased succumbed to the injuries while undergoing treatment at about 18:50 hours. He requested to take necessary legal action against the appellant/accused.

4. Basing on the said report lodged by PW.1, the Station House Officer, Keshavapatnam Police Station, registered a case in Crime No.95 of 2013 for the offence punishable under Section 302 of I.P.C., against the appellant/accused and issued Express F.I.R. On completion of investigation, charge sheet was laid before the

Additional Judicial Magistrate of First Class, Huzurabad, against the appellant/accused for the offence under Section 302 of I.P.C. The learned Magistrate had taken cognizance of the case in P.R.C.No.81 of 2013 and committed the same to the Court of Session, since the offence under Section 302 of I.P.C. is exclusively triable by the Court of Session. The Principal Sessions Court, Karimnagar numbered the case as S.C.No.531 of 2013 and after hearing both sides, framed charge under Section 302 of I.P.C. against the appellant/accused, read over and explained to him, for which, the appellant/accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the appellant/accused, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P12, besides case properties, M.Os.1 to 5.

6. PW.1-Bongoni Goverdhan is the complainant and son of the deceased. PW.2-Neelam Bhagyalaxmi and PW.3-Bongoni Sujatha are the grand-daughters of the deceased. PW.4-Bongoni Rayamallu is the son of the deceased. PW.5-Bongoni Srinivas is the cousin brother of the appellant/accused. PW.6-Erroju Ravindra Chary is the photographer, who took the photographs of the deceased at the mortuary. PW.7-Muppidi Madhusudhan Reddy is one of the mediators for the inquest held over the dead body of the deceased.

PW.8-G. Raja Komuraiah is one of the signatories to the Crime Details Form and the Rough Sketch of the scene of offence and is a relative of PW.2. PW.9-Gajula Swamy is the photographer, who took the photographs of the scene of offence. PW.10-Dr.Harathi is the Doctor, who conducted autopsy over the dead body of the deceased. PW.11-Bakki Venkataiah is one of the signatories to the confessional panchanama of the appellant/accused and seizure panchanama of MO.1. PW.12-M.Kareem Baig is the Sub-Inspector of Police, who registered the subject crime. PW.13-R.Bheema Sarma is the Investigating Officer, who conducted investigation in the subject crime. Ex.P1 is the complaint given by PW.1 to the police. Ex.P2 is the six photographs with C.D. Ex.P3 is the Inquest Report. Ex.P4 is the Crime Details Form. Ex.P5 is the rough sketch of the scene of offence. Ex.P6 is the photographs of the scene of offence. Ex.P7 is the PME report of the deceased. Ex.P8 is the relevant portion in the confession panchanama of the appellant/accused. Ex.P9 is the seizure panchanama of MO.1. Ex.P10 is the FIR in Crime No.95 of 2013 of Keshavapatnam Police Station. Ex.P11 is the letter of advice and Ex.P12 is the RFSL report. MO.1 is the stick, which is alleged to have been used in the commission of offence. MO.2 is the blood stained saree and MO.3 is the blood stained blouse of the deceased. MO.4 is the blood stained earth and MO.5 is the controlled earth.

7. When the appellant/accused was confronted with the incriminating material appearing against him and was examined under Section 313 of Cr.P.C., he denied the same and pleaded innocence. On behalf of the appellant/accused, no evidence, either oral or documentary, was adduced.

8. The trial Court, having considered the submissions made and the evidence available on record, vide the impugned judgment, dated 11.04.2014, convicted the appellant/accused of the offence punishable under Section 302 of I.P.C. and sentenced him as stated above. Aggrieved by the same, the appellant/accused preferred the present appeal.

9. Learned counsel for the appellant/accused would vehemently contend that the appellant/accused is an innocent person. He is not responsible for the death of the deceased. Even if the prosecution case is taken as true, there was grave and sudden provocation by the deceased. At the most, the alleged offence would fall under Section 304 Part II of I.P.C. Without there being any evidence on record, the trial Court came to a conclusion that the appellant/accused had caused the subject death and accordingly, convicted and sentenced the appellant/accused of the offence under

Section 302 of I.P.C., which is erroneous. Moreover, ten days prior to the date of occurrence of the subject death, the brother and sister-in-law of the appellant/accused died and there was provocation by the deceased. Under these circumstances, the Court below ought not have convicted and sentenced the appellant/accused of the offence under Section 302 of I.P.C. and ultimately, prayed to set aside the conviction and sentence recorded against the appellant/accused of the offence under Section 302 of I.P.C. *vide* the impugned judgment and acquit the appellant/accused of the said offence. In support of his submissions, the learned counsel for the appellant/accused relied on a decision of the Orissa High Court in **Kusa Majhi v. The State**¹ and a decision of the Hon'ble Apex Court in **K.M. Nanavati v. State of Maharashtra**².

10. On the other hand, the learned Public Prosecutor would submit that there is direct evidence of PWs.2 and 3 to connect the accused with the alleged offence. PW.5 had also seen the appellant/accused at the scene of offence. PWs.2 and 3 are the natural witnesses. There is also evidence of PW.10-Doctor coupled with medical record. Multiple injuries were found over the vital organs of the deceased. The appellant/accused brought a stick i.e., MO.1 and beat the

¹ 1985 Crl.L.J. 1460

deceased to death. There is clear and cogent evidence on record to establish the guilt of the appellant/accused. Furthermore, there is evidence of panch witnesses to substantiate the recovery of MO.1, pursuant to the confession made by the appellant/accused. The prosecution has proved the guilt of the appellant/accused of the offence under Section 302 of I.P.C. beyond all reasonable doubt. There was no sudden provocation, as alleged. It is a pre-planned murder. The Court below had meticulously examined the entire evidence on record in right perspective and arrived at just conclusion. The Court below is justified in convicting and sentencing the appellant/accused of the offence under Section 302 of I.P.C. There are no circumstances to vary the impugned judgment and ultimately, prayed to dismiss the appeal by confirming the conviction and sentence recorded against the appellant/accused *vide* the impugned judgment.

11. In view of the above rival submissions, the points that arise for determination in this appeal are as follows:

- 1. Whether the appellant/accused had caused the subject death of the deceased?**
- 2. Whether there was sudden and grave provocation in commission of the subject death?**

² AIR 1962 SC 605

3. **Whether the prosecution was able to prove the guilt of the appellant/accused beyond all reasonable doubt?**
4. **Whether the conviction and sentence recorded against the appellant/accused for the offence punishable under Section 302 of I.P.C. is liable to be set aside?**

POINTS:

12. The case of the prosecution is that the appellant/accused was unhappy with the deceased, as he suspected that the deceased was responsible for the death of his brother and sister-in-law, who are the parents of PW.3. Accordingly, on 18.06.2013 at about 05:00 PM, when the deceased and PW.3 were chitchatting with each other sitting in front of the house of PW.3, the appellant/accused attacked the deceased with a stick and caused injuries on the neck and head. PW.3 raised hue and cry and on hearing the same, PW.2, who was just away from the scene of offence, came there and saw the deceased with injuries and the appellant/accused leaving that place with a stick in his hand. The information about the attack on the deceased was passed on to PW.5 and he reached the spot and shifted the deceased in 108 ambulance to the Government Hospital, Karimnagar. PW.1, who is the son of the deceased, on being informed about the attack, also reached the spot and accompanied the deceased to the hospital in the ambulance. On the same day, at

about 19:00 hours, the deceased succumbed to the injuries while undergoing treatment.

13. PW.1, who is the *de facto* complainant and son of the deceased, is not a direct witness to the alleged offence. He deposed that on hearing the cries of PWs.2 and 3, he came near the house of PW.3 and found his mother lying on the ground with bleeding injuries on her head and neck. By the time he reached the scene of offence, PW.5-Bongoni Srinivas was present there and he called 108 ambulance. The deceased was shifted to Government Hospital, Karimnagar. The deceased succumbed to the injuries at 06:50 PM at Government Hospital. PWs.2 and 3 informed him that the appellant/accused caused the injuries to the deceased with a stick saying that the deceased was responsible for the death of the brother and sister-in-law of the appellant/accused. He lodged the subject report, dated 19.06.2013, with the Station House Officer, Keshavapatnam Police Station, which was marked as Ex.P1. He further deposed that as he was at the hospital on the date of the alleged incident, he lodged the report on the next day.

14. PW.2, who is the grand-daughter of the deceased, is a direct witness to the alleged offence. She deposed that on 18.06.2013 at about 05:00 PM, the deceased was talking with PW.3 by sitting on

the pial in front of the house of PW.3. She was five yards away from the place of incident. At that time, the appellant/accused came there and inflicted injuries to the deceased on her head and neck with a stick saying that the deceased was responsible for the death of his brother and sister-in-law, who died due to ill-health. The deceased suffered bleeding injuries at the hands of the appellant/accused and fell down.

15. The evidence of PW.3, who is a grand-daughter of the deceased, corroborates the evidence of PW.2 on all material particulars.

16. There is no denial that PWs.2 and 3 are related to the deceased. The place of offence, as per the scene of offence panchanama and the investigation conducted, is in front of the house of the PW.3. PWs.2 and 3 are natural witnesses. Though they were cross-examined at length, their evidence remained unshaken. There are no material omissions and contradictions in their evidence. Nothing was brought out in their evidence to discredit their testimony. Furthermore, there is no animosity, grudge or any reason for these witnesses to falsely implicate the appellant/accused in a case of this nature. Moreover, the appellant/accused and the PWs.2

and 3 are related to each other and PW.3 is none other than the daughter of brother of the appellant/accused.

17. PW.4-Bongoni Rayamallu, who is a son of the deceased and father of PW.2, deposed that on 18.06.2013, while he was at his agricultural fields, PW.2 called him and informed that the appellant/accused caused injuries to the deceased with a stick and the deceased suffered bleeding injuries. Immediately, he came to the scene of offence and found his mother lying on the ground with injuries in front of the house of PW.3.

18. The evidence of PW.5 reveals that on hearing the cries of PWs.2 and 3, he went near to the house of PW.3 and found the deceased lying on the ground in a pool of blood. He had seen the appellant/accused running away from the scene of offence holding a stick in his hands. PW.3 informed him that the appellant/accused caused injuries to the deceased stating that the deceased was responsible for the death of brother and sister-in-law of the appellant/accused. He summoned 108 Ambulance and shifted the deceased to the Government Hospital, Karimnagar and the deceased succumbed to the injuries on the same day. Though PW.5 was cross-examined at length, nothing was brought on record to discredit his testimony.

19. As per the evidence on record, the appellant/accused is also a relative to the deceased. There is no reason to discredit the testimony of PWs.2, 3, 4 and 5, as their evidence is cogent, consistent and corroborated with the evidence of PW.1 and Ex.P1-complaint, dated 19.06.2013. Further, there are panch witnesses and photographs to substantiate the scene of offence i.e., in front of the house of PW.3.

20. PW.7, who is one of the mediators for the inquest held over the dead body of the deceased, deposed that he found injuries on the lateral aspect of eye-brow, left side of chin, a sutured wound on the left side of the jaw and on the back of the neck. He also deposed that as per the version of the relatives of the deceased, the deceased sustained injuries in the hands of the appellant/accused being caused with a stick and the same was mentioned in the inquest panchanama. He also deposed that the blood stained saree and blouse of the deceased were marked as MOs.2 and 3, respectively. Ex.P3-Inquest Report, dated 19.06.2013, corroborates with his evidence.

21. PW.8, who is one of the signatories to Ex.P4-Crime Details Form and Ex.P5-rough sketch of the scene of offence panchanama,

also supported the case of the prosecution and his evidence reveals that blood stains were found in front of the house of PW.3 and police collected blood stained earth and controlled earth, which were marked as MOs.4 and 5, respectively.

22. The evidence of PW.11-VRO reveals that MO.1 was recovered pursuant to the confession made by the appellant/accused. Ex.P8 is the relevant portion in the confessional panchanama of the appellant/accused leading to recovery of MO.1 and Ex.P9 is the seizure panchanama of MO.1. Though PWs.7, 8 and 11 were cross-examined at length, they reiterated what they have stated in the chief-examination. There is nothing on record to discredit their testimony.

23. The evidence of PW.12 reveals that he received Ex.P1-complaint from PW.1, registered the subject crime for the offence under Section 302 of I.P.C. and issued printed format of FIR under Ex.P.10 and submitted Ex.P.10 to the Magistrate concerned and that investigation of the subject case was taken up by PW.13-Inspector of Police, Huzurabad (Rural).

24. The evidence of PW.13 reveals that he took up investigation in the subject crime and on completion of investigation, he filed charge

sheet before the Magistrate concerned. He also subjected the dead body of the deceased to the post-mortem examination. He also deposed about recovery of MO.1 in the presence of PW.11 and other panch witnesses under a seizure panchanama, marked as Ex.P9, pursuant to the confession made by the appellant/accused.

25. The evidence of PW.10-Doctor reveals that she conducted autopsy over the dead body of the deceased on 19.06.2013. She found the following injuries on the dead body of the deceased:

“External injuries:

1. Sutured wound over lateral aspect of left eye-brow of 2 cm x 1cm.
2. Sutured wound over left side of chin of 3 cm x 1 cm.
3. Sutured wound over left side of jaw of 2 cm x 1 cm.
4. Lacerated wound over occipital region of 2 x 2 x 1 cm.
5. Contusion below the left eye and left side of mouth.

Internal injuries:

1. Fracture of lower left mandible.
2. Clotted sub cutaneous bleeding in scalp.
3. Intra cerebral bleeding present.”

She categorically deposed that the death of the deceased was caused due to intra cerebral haemorrhage secondary to head injury. The approximate time of death was 15 to 17 hours prior to her examination. All the injuries found on the dead body of the deceased may be possible with the weapon like MO.1-stick. Ex.P7-PME report issued by her substantiates the injuries found over the dead body of

the deceased. There is no mismatch with regard to the time of commission of offence and the subject death.

26. As seen from the material placed on record, there is ample evidence to substantiate that the deceased was attacked in front of the house of PW.3 by the appellant/accused. There is no reason to discredit the testimony of the prosecution witnesses. The evidence of prosecution witnesses clinchingly establish that the appellant/accused had caused the injuries to the deceased as mentioned in Ex.P7-PME report and those injuries were caused with MO.1-stick. There is evidence of PW.10-Doctor to that effect. It is contended that all the injuries sustained by the deceased were due to her old age, as she had fallen on hard surface. But, there is direct evidence of PW.2 and 3 to substantiate that the appellant/accused was the person who caused the injuries on the head and neck of the deceased, which resulted in her instantaneous death. The Court below had analysed the whole evidence on record in right perspective and arrived at the conclusion that the appellant/accused caused the injuries to the deceased and is responsible for the death of the deceased.

27. With regard to the intention, it is contended that there was no intention on the part of the appellant/accused to cause the subject

death. The intention has to be gathered from the circumstances of the case. As seen from the evidence on record, the appellant/accused came with MO.1-stick and caused injuries on the vital organs of the deceased with MO.1-stick. Multiple injuries were caused by the appellant/accused to the deceased. Had there been no intention on the part of the appellant/accused in causing the death of the deceased, he would not have beaten the deceased on the vital parts of the body, i.e., jaws and head. The place of injuries substantiates that the appellant/accused attacked the deceased in order to eliminate her and he was successful in doing so. Therefore, it cannot be said that there was no intention on the part of the appellant/accused to cause the subject death.

28. The learned counsel for the appellant/accused would contend that even if the prosecution case is taken as true, there was grave and sudden provocation by the deceased and that therefore, at the most, the offence allegedly committed by the appellant/accused would fall under Section 304 Part II of I.P.C. Here, it is apt to state that for claiming an exception on the ground of "grave and sudden provocation" the facts that are required to be proved are (1) that the accused received provocation; (2) that the provocation was (a) grave, and (b) sudden; (3) that he was deprived of his power of self-

control by the provocation; (4) that while thus deprived of his power of self-control and before he could cool down, he caused the death of the person who gave him the provocation. Further, the question whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact, but should not be treated as a question of law and should be decided basing on the facts and circumstances of each case. In the instant case, as per the evidence on record, ten days prior to the date of commission of the alleged offence, the brother and sister-in-law of the appellant/accused passed away and the appellant/accused suspected that the deceased was responsible for their death. Further, there is no evidence that at the time of alleged offence, the deceased had provoked the accused. There was no utterance of single word by the deceased, for claiming that there was sudden and provocation. Further, the appellant/accused with a premeditated mind and intention to kill the deceased, came with MO.1-stick, attacked the deceased, caused injuries to the deceased on the vital parts of the body and the deceased succumbed to the said injuries. There is nothing on record to hold that the appellant/accused received grave and sudden provocation from the deceased and thereby deprived of his power of self-control and whilst deprived of his power of self-control and before he cooled down, he caused the

death of the deceased. Therefore, the instant case does not fall within the exceptions given under Section 300 of IPC. It is a clear case of murder in order to wreak vengeance against the deceased suspecting that she was responsible for the death of the brother and sister-in-law of the appellant/accused.

29. I had gone through the decisions relied by the learned counsel for the appellant/accused. The facts of the case in **Kusa Majhi's** case (1 supra), are that when the deceased therein, who was the mother of the accused, was chiding the accused for his refusal to work, the accused went inside the house, brought an axe and dealt some blows on the deceased resulting in her death. The trial Court convicted the accused therein of the offence under Section 302 of IPC. However, the High Court, on appreciating the entire evidence on record, held that there was no pre-plan or premeditation on the part of the accused in killing the deceased; the blows had been dealt on the shoulder portion and not on the neck or head; In the circumstances, none of the clauses of Section 300 of IPC were applicable; the accused could be held to have intended to cause bodily injury likely to cause death of the deceased and therefore, the sentence for the offence under Section 300 was converted to Section 304 part I of IPC. But in the instant case, the accused intended to

kill the deceased suspecting that she was responsible for the death of his brother and sister-in-law, and with such a premeditated mind, beat the deceased on the vital parts of the body, i.e., head and jaws with MO.1-stick, without any sudden and grave provocation by the deceased. Therefore, the cited decision is not helpful to the appellant/accused.

30. The facts of the decision in **K.M. Nanavati's** case (2 supra) relied on by the learned counsel for the appellant/accused, are completely different from the facts and circumstances of the case on hand. Hence, the cited decision is distinguishable on facts from the case on hand.

31. In the instant case, there is overwhelming and unimpeachable evidence on record to arrive at a conclusion that the appellant/accused, with a premeditated mind to cause the death of the deceased, beat the deceased to death with MO.1-stick on vital parts of the body resulting in her instantaneous death. The Court below had meticulously dealt with these aspects and acted upon the cogent and convincing evidence on record. The conclusion reached by the Court below is in tune with the evidence on record. None of the contentions raised on behalf of the appellant/accused do merit consideration. The appeal is liable to be dismissed.

32. Accordingly, the Criminal Appeal is dismissed.

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

Dr. SHAMEEM AKTHER, J

Dr. CHILLAKUR SUMALATHA, J

Date: 16-03-2022
MD / BVV