

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER
AND
THE HONOURABLE DR. JUSTICE CHILLAKUR SUMALATHA**

CRIMINAL APPEAL NO: 672 OF 2014

Appeal under Section 374(2) of CrI.P.C against the Judgment dated 05.06.2013 in SC.No.375 of 2013 on the file of the Court of the VII Additional District and Sessions Judge at Bodhan, Nizamambad District.

Between:

Panchal Bhoomaiah, S/o. Vittal, aged about 39 years, Occ:Labour, R/o. Menoor Village, Madnoor Mandal, Nizamabad District.

**...APPELLANT
(ACCUSED)**

AND

The State Of Telangana, through Station House Officer, Madnoor Police Station, Nizamabad district rep., by Public Prosecutor, High Court at Hyderabad.

**...RESPONDENT
(Complainant)**

For the Appellant : M/s. M BHAGYASRI, Advocate

For the Respondent : PUBLIC PROSECUTOR

The Court delivered the following : JUDGMENT

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

CRIMINAL APPEAL No.672 OF 2014

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 05.06.2014, passed in S.C.No.375 of 2013 by the VII Additional Sessions Judge, Bodhan, whereby, the Court below, while acquitting the appellant/accused of the offence under Section 307 of IPC, found him guilty of the offence under Section 302 of IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for two months.

2. We have heard the submissions of the learned legal aid counsel for appellant/accused, 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 02.07.2013 at about 06:00 hours, PW.1-Ganapathiwar Satyanarayana lodged a complaint with police, Madnoor, stating that he is a resident of Shantapoor. He is having five sisters.

The marriage between his second sister Swaroopa (the deceased) and Panchal Bumaiah (the accused) was held on 11.03.2005. After marriage, both of them lived happily for some days. As the accused was not attending any work to maintain the family, the deceased worked as Vidya Volunteer at Menoor Village for two years. At that time, the accused suspected the deceased that she had developed illegal contacts with others and harassed her and driven her out from his house. At that time, his sister was pregnant. Left with no other option, the deceased came to his house and stayed in his house and she gave birth to a son. Though he requested the accused to take the deceased to his house, the accused refused. On 01.07.2013, while he was at Sangareddy, the deceased informed him over phone that she was going to Menoor Village to take photos for Aadhar Card. At about 05:30 PM, when he called the deceased, some Menoor Villagers lifted the phone and informed him that the accused killed the deceased by beating with a pestle. Immediately, he went to Menoor Village and found the deceased in a pool of blood on the mat in front of her house. On enquiry, he came to know that the accused also caused injuries to his mother Ganapathiwari Bagavva (PW.2) on

the head and the villagers shifted her to hospital at Madnoor. On that, he went to hospital at Madnoor and on his enquiry, his mother informed him that she along with the deceased went to the house of the deceased at about 02:30 PM to take Aadhar Card photo and they sat on the mat in front of the house, at that time, the accused picked up quarrel with the deceased saying that why she left him and went away and that at about 03:30 PM, the accused picked up a pestle and beat the deceased on head, due to which the deceased fell down on the ground and the accused again beat the deceased on head two times and when PW.2 tried to rescue, the accused also beat her on the head with an intention to kill her and thereafter, the accused fled away. As a result, the deceased died on the spot. Hence, requested to take necessary action against the accused.

4. Basing on the said report lodged by PW.1, PW.12-Sub Inspector of Police, Madnoor Police Station, registered a case in Crime No.82 of 2013 for the offences punishable under Sections 302 and 307 of IPC against the accused and issued Ex.P12-FIR. He recorded the statement of the complainant and handed over the CD file to PW.11-Circle Inspector of Police, Bichkunda, for further investigation. PW.11 took up the case for further

investigation, visited the scene of offence, secured presence of witnesses, recoded the statements of witnesses, conducted the scene of offence panchanama, prepared rough sketch and seized blood stained earth and controlled earth, blood stained mat and wooden pestle in the presence of mediators. He also held inquest over the dead body of the deceased and seized the clothes of the deceased. He sent the dead body of the deceased to Government Hospital for postmortem examination. On 05.07.2014, he apprehended the accused in Shakkarga Village and conducted seizure panchanama and seized one blood stained shirt from the accused in the presence of panchas. Thereafter, the accused was remanded to judicial custody. On completion of investigation, he filed charge sheet before the Judicial Magistrate of First Class, Bichkunda, against the accused for the offences under Sections 302 and 307 of I.P.C.

5. The learned Magistrate had taken cognizance of the case and registered as P.R.C.No.23 of 2013 and committed the same to the Court of Session, since the case is exclusively triable by the Court of Session and the same was numbered as S.C.No.375 of 2013 and made over to the VII Additional Sessions Judge, Bodhan, for trial and disposal, in accordance with law.

6. After hearing both sides, the Court below framed charges under Sections 302 and 307 of I.P.C. against the accused, read over and explained to him, for which, the accused pleaded not guilty and claimed to be tried.

7. To prove the guilt of the accused, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P12, besides case properties, M.Os.1 to 9.

8. PW.1-Satyanarayana is the *de facto* complainant and brother of the deceased. PW.2-Ganapathiwari Bagavva is the mother of the deceased. PW.3-Maruthi and PW.4-M.Naveen are the neighbours of the accused. PW.5-Naganathappa is the photographer, who took the photographs of the dead body of the deceased. PW.6-P. Laxman is one of the panch witness to the Ex.P6-scene of offence panchanama along with rough sketch and Ex.P5-inquest panchanama, but turned hostile. PW.7-Padma is one of the panch witness to Ex.P5-inquest panchanama. PW.8-K.Hamandloo is another panch witness to Ex.P5-inquest panchanama and Ex.P6-scene of offence panchanama with rough sketch. PW.9-P. Sangeevrao is the panch witness to Ex.P7-confession and seizure panchanama.

PW.10-Dr.Sunil is the Doctor, who conducted post-mortem examination over the dead body of the deceased. PW.11-A.Venkatesham is the Investigating Officer, who conducted investigation in the subject crime. PW.12-P. Satyanarayana is the Sub-Inspector of Police, who registered the subject crime and issued Ex.P.12-FIR. Ex.P1 is the complaint given by PW.1 to the police. Ex.P2 is the Section 161 Cr.P.C. statement of PW.3. Ex.P3 is the signature of PW.6 on the scene of offence panchanama along with rough sketch. Ex.P4 is the signature of PW.6 on inquest panchanama. Ex.P5 is the Inquest panchanama. Ex.P6 is the scene of offence panchanama along with rough sketch. Ex.P7 is the confession and seizure panchanama. Ex.P8 is the post-mortem examination report. Ex.P9 is the Forensic Science Laboratory Report. Ex.P10 is the Final Opinion Report, dated 21.10.2013. Ex.P11 is the Forensic Science Laboratory Report, dated 25.10.2013. Ex.P12 is the First Information Report. MO.1 is the pestle, which is alleged to have been used in the commission of offence. MO.2 is blood stained earth and MO.3 is controlled earth. MO.4 is the blood stained shirt. MO.5 is the blood stained mat. MO.6 is the blood stained red colour

blouse. MO.7 is the blood stained red colour saree. MO.8 is the cement colour petticoat. MO.9 is the blood stained towel.

9. When the accused was confronted with the incriminating material appearing against him and was examined under Section 313 of Cr.P.C., he admitted his relationship with the deceased and also admitted that he beat the deceased and her mother, but denied rest of the allegations. On behalf of the accused, no evidence, either oral or documentary, was adduced.

10. The trial Court, having considered the submissions made and the evidence available on record, *vide* the impugned judgment, dated 05.06.2014, while acquitting the accused of the offence under Section 307 of IPC, convicted him of the offence under Section 302 of IPC and sentenced him as stated above. Aggrieved by the same, the accused preferred the present appeal.

11. Learned counsel for the appellant/accused would vehemently contend that the accused is an innocent person. He is not responsible for the death of the deceased. He was falsely implicated in the present case. Though PW.2-Bagavva stated that she also sustained injuries in the hands of the accused, no

medical record is filed to substantiate the same. There are material omissions and contradictions in the evidence of prosecution witnesses. The testimony of PWs.1, 2 and 4 and other witnesses is not trustworthy and cannot be acted upon. The whole case of the prosecution is false. There is no evidence to prove the guilt of the accused, so as to convict and sentence him of the offence under Section 302 I.P.C. Without there being any evidence on record, the trial Court came to a conclusion that the accused had caused the subject death and accordingly, convicted and sentenced him of the offence under Section 302 of I.P.C., which is erroneous and ultimately, prayed to set aside the conviction and sentence recorded against the accused of the offence under Section 302 of I.P.C. *vide* the impugned judgment and acquit the accused of the said offence.

12. On the other hand, the learned Public Prosecutor would submit that there is cogent and convincing evidence of PWs.1, 2, 4, 7, 10, 11 and 12 to substantiate the accusation against the accused. Though there are laches on the part of the investigating officer in not collecting the Wound Certificate of PW.2-Bagavva, the same would not create a dent in the case of prosecution and the whole prosecution case cannot be brushed

aside. There is direct evidence of PW.2-Bagavva to the commission of offence by the accused. Furthermore, the evidence of PW.4-M.Naveen, immediate neighbour of the accused, also substantiates the accusation against the accused. The accused was very much present in the house at the time of commission of alleged offence. Furthermore, the accused, while answering question Nos.7 and 8 put to him in 313 Cr.P.C. examination, has specifically stated that he beat his wife (deceased) with a pestle, so also PW.2. The Court below appreciated the entire evidence in right perspective and arrived at a just conclusion. The prosecution has proved the guilt of the accused of the offence under Section 302 of IPC beyond all reasonable doubt. The Court below is justified in convicting and sentencing the accused of the offence under Section 302 of IPC. 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 accused *vide* the impugned judgment.

13. In view of the submissions made by both sides, the following points arise for determination in this appeal:

1. Whether the death of the deceased-Swarupa is homicidal?
2. Whether the appellant/accused had caused the subject death of the deceased?
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 of the offence punishable under Section 302 of IPC is liable to be set aside?

POINTS:

14. The undisputed facts are that the accused is the husband of the deceased. Their marriage took place on 11.03.2005 and they begot one son during their wedlock. PW.1-Satyanarayana is the brother of the deceased. PW.2-Bagavva is the mother of the deceased. The case of the prosecution is that the deceased worked as Vidya Volunteer in Menoor Village for two years. While she was working as Vidya Volunteer, the accused suspected her fidelity. On 01.07.2013, the accused called the deceased to his house on the pretext of getting photographs to obtain Aadhar Card. The deceased went to the house of the accused along with her mother (PW.2) and son. Then the accused brought a pestle and beat the deceased on her head, which resulted in her instantaneous death. The accused also beat PW.2. On a report, dated 02.07.2013, lodged by PW.1,

brother of the deceased, the instant case was registered, investigated and a charge sheet was laid under Sections 302 and 307 I.P.C. against the accused.

15. PW.2 is the star witness in this case. She is a direct witness to the commission of the offence by the accused. She deposed that she is a resident of Shantapoor Village, Bichkunda Mandal, Nizamabad District. The deceased is her daughter and the accused is her son-in-law. The deceased and the accused were blessed with one son. The deceased used to work a Vidya Volunteer in Menoor Village and the accused did not like the deceased to work as Vidya Volunteer and stopped her from working as Vidya Volunteer. On the date of incident, the accused called the deceased to Menoor Village to take photograph for Aadhar card. On that, she along with the deceased and the son of the deceased went to the house of the accused in Menoor Village. When they sat in the courtyard on a mat, in the meantime, the accused came and beat on the head of the deceased with a pestle. Then, she raised cries and tried to save the deceased, but the accused also beat her on the head with pestle and she fell down. The deceased died on the spot and the accused went away. She was shifted to Madnoor

Hospital. She gave statement before the Judicial Magistrate of First Class, Bodhan. Though PW.2 was cross examined, nothing was elicited to doubt her testimony in examination-in-chief.

16. The evidence of PW.4, who is a neighbour of the accused, corroborates the evidence of PW.2. He has categorically stated in his evidence that he was present in his house which is situated opposite to the house of the accused. He further stated that when he went to the scene of offence, by that time, the accused beat the deceased and PW.2 with a stick and that PW.2 fell down on the ground with injury on her head and that PW.2 was shifted to the hospital. In his cross-examination, PW.2 denied the suggestion that he was not present in his house on the date of incident and he is deposing false at the instance of PW.1.

17. Though PW.2 is the mother of the deceased, her evidence cannot be discarded straightaway unless it is proved that her evidence suffers from serious infirmities. It is well settled that evidence of a witness cannot be discarded merely on the ground that he/she is an interested witness, if otherwise the same is found to be credible. Here, it is apt to refer to the decision of

the Honourable Apex Court in **Sarwan Singh v. State of Punjab**¹, wherein the Honourable Supreme Court has held as follows:

"Moreover, it is not the law that the evidence of an interested witness should be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the Courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the Court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration. Indeed there may be circumstances where only interested evidence may be available and no other, e. g. when an occurrence takes place at mid-night in the house when the only witnesses who could see the occurrence may be the family members. In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness."

18. In the instant case, the evidence of PW.2-mother of the deceased is corroborated by the evidence of PW.4-neighbour of the accused. It is natural for a mother to intervene when a person attacks her daughter. Likewise, when the accused beat the deceased on her head, PW.2 intervened and on that, the accused also beat PW.2 on her head and she fell down. The presence of PW.2 at the scene of offence is supported and corroborated by the evidence of PW.4, who is an independent

¹ AIR 1976 SC 2304

eye-witness to the offence. A careful perusal of the evidence of PW.2 and PW.4 goes to show that the prosecution has established the presence of PW.2 and PW.4 at the scene of offence.

19. On the basis of Ex.P1-report, PW.12-the then Sub-Inspector of Police, Madnoor, immediately registered a case in Crime No.82 of 2013 under Sections 302 and 307 of IPC and issued Ex.P.12-FIR. As seen from Ex.P12-FIR, there is no delay in issuing the same. PWs.1, 2 and 4 were cross-examined at length. No inconsistencies or omissions or contradictions are brought out in their evidence. There is no animosity or grudge to PW.4 against the accused to speak falsely and implicate the accused in a case of this nature. PW.2 being the mother of the deceased also has no reason to leave the real culprit and rope the accused in this case, who happens to be her son-in-law. Further, there is consistent, cogent and specific evidence that PW.2 accompanied the deceased to Mednoor Village to the house of the accused and at the time of commission of the offence, she was chit-chatting with the deceased by sitting on a mat in the courtyard of the house of the accused. In the course of conduct of scene of offence panchanama, the blood stained

mat was seized and marked as MO.5 and sent for FSL examination. MO.1-pestle was also lifted from the scene of offence. It was also sent for FSL examination. Ex.P6-scene of offence panchanama reveals the same. Further, there is also evidence of PW.8-K. Hanmandloo to substantiate the seizure of MO.1-pestle, MO.2-blood stained earth and M.O.3-controlled earth from the scene of offence under Ex.P6-scene of offence panchanama along with rough sketch. Furthermore, there is also evidence of PW.11-investigating officer to substantiate that on 05.07.2013, the accused was interrogated and he confessed with regard to commission of offence and pursuant to his confession, MO.4-blood stained shirt was seized. Ex.P7-confession and seizure panchanama substantiates the same. MO.4-shirt was also sent to the FSL examination. Ex.P11 is the FSL report, dated 25.10.2013, under which the material objects were examined and a report was obtained, which demonstrate that human blood was detected on those Material Objects, except controlled earth. PW.11-Investigating Officer has stated with regard to the seizure of Material Objects and sending them for examination. There is no reason to discard the evidence of PW.11 and also other witnesses. No explanation has been

putforth by the accused with regard to the presence of human blood on his shirt-MO.4.

20. Further, PW.10-Doctor, who conducted autopsy over the dead body of the deceased, had clearly stated that on 02.07.2013, he conducted autopsy over the dead body of the deceased between 02:40 PM and 03:40 PM and found the following injuries:

- I) Injury on head behind right ear along lamboid suture 3 X 3 cms.
- II) Fracture of skull on head behind right ear along lamboid suture 1 x 1 Cms.,
- III) Communitad fracture of skull with brain matter coming out of fracture opening, behind head along left lamboid suture involving major part of occipital bone with small two pieces of skull found inside brain 4 x 5 Cms.
- IV) Injury on fore head, left sagited suture 3 x 2.5 Cms.

He had also stated that the said injuries were possible by heavy blunt object like MO.1 and injury Nos.2 and 3 could cause death of a person in ordinary course of nature. He has given the approximate time of death as 20 - 24 hours prior to the post-mortem examination, which tallies with the time given in Ex.P1-report and also the evidence of PWs.1, 2 and 4. He also stated that he did not find any poisonous substance in the stomach of the deceased. Ex.P9-FSL report also demonstrates the same.

He has issued Exs.P8-PME Report. After obtaining Ex.P9-FSL report, he gave final opinion under Ex.P10, which demonstrates that the cause of subject death of the deceased was due to cardio-respiratory arrest due to head injury (fracture of skull). This injury was spoken to by PWs.1, 2 and 4 and it also finds place in the Inquest panchanama. Further, as seen from Ex.P6-scene of offence panchanama, blood stains were found at the house of the accused.

21. It is also pertinent to state that there is clear admission of the accused under Section 313 Cr.P.C. that he beat the deceased with a pestle and that he also beat PW.2-Bagavva. Question Nos.7 and 8 in the examination of the accused under Section 313 Cr.P.C. reads as follows:

"Q.No.7) She deposed that on the date of the incident accused called the deceased to Menoor Village to take Aadhar Card Photograph. On that she along with deceased and her son went to the house of the accused in Menoor Village. They sat in the Court yard in the mat, in the mean time the accused came and beat on the head of the deceased with pestle. What do you say?

Ans: నేను నాభార్య రోకలి బంద తో కొట్టినాను

Q.No.8) She raised cries and tried to save her daughter, but the accused also beat on her head with pestle and she fell down. The deceased died on the spot. She was shifted to Hospital in Madnoor Village. What do you say?

Ans: నిజం. బాగవ్వాను కూడా కొట్టినాను."

22. It is well established in law that admission or confession of accused in the statement under Section 313 Cr.P.C. in the course of trial can be acted upon and the Court can rely on these confessions to proceed to convict him. However, merely on the basis of statement of the accused under Section 313 Cr.P.C., it is difficult to secure conviction of the accused and it is for the prosecution to prove by reliable and dependable evidence that the accused was responsible for the death of the deceased. If an accused admits any incriminating circumstances appearing in evidence against him, there is no rule that those admissions should be ignored altogether merely on the ground that such admissions were advanced as a defence strategy. In the instant case, apart from the admission of the accused with regard to the commission of the alleged offence, PW.2 has specifically stated that the accused beat the deceased on her head with a pestle and the same was substantiated by the evidence of PW.4, who had spoken about the presence of accused at the time of commission of the alleged offence. The evidence of PW.2 corroborates with the evidence of PW.10-Doctor and Ex.P.8-postmortem examination report and so also the evidence of other material witnesses.

23. Ocular evidence is considered as best evidence unless there are reasons to doubt it. In the instant case, the evidence of PW.2 and PW.4 is unimpeachable. We find no inconsistency between the ocular and medical evidence. Further, it is not a case where two views are possible or the credibility of the witnesses is in doubt. Neither is it a case of a solitary uncorroborated witness. Further, the prosecution was also able to establish the motive of the accused for causing the subject death of the deceased i.e., the accused was suspecting the fidelity of the deceased and he does not want the deceased to work as Vidya Volunteer. Further, when the ocular evidence is found to be truthful, the 'motive' part assumes secondary role. It is pertinent to state that the deceased died on the spot. The injuries were found on the vital organs i.e., head etc. The size of the injuries, the consequences of the injuries found over the dead body of the deceased and the death of the deceased, clearly demonstrate that those were caused with an intention to eliminate the deceased and the accused was successful in doing so. Thus, there was clear intention on the part of the accused to do away with the life of the deceased. Further, as seen from the entire evidence on record, there was no sudden provocation by

the deceased or anybody to the accused to cause such injuries to the deceased.

24. Further, though the investigating officer had not collected the Wound Certificate of PW.2, the same cannot be a ground to brush aside the entire prosecution case, which is otherwise cogent, convincing and trustworthy, which leads to an irresistible conclusion that on 01.07.2013 at about 03:30 PM, the accused caused the subject death of the deceased with MO.1-pestle. There is overwhelming evidence on record to substantiate the accusations levelled against the accused. The entire evidence is consistent and cogent, leading to the only conclusion that the accused had caused the subject death of the deceased. There is nothing to disbelieve any of the material witnesses, as indicated above. Though some of the witnesses (PW.3 & PW.6) turned hostile, it is not fatal to the case of the prosecution. Though a charge under Section 307 I.P.C. was framed in addition of the charge under Section 302 I.P.C., the accused was not found guilty for the said charge, as medical examination report of PW.2-Bagavva was not placed before the trial Court by the Investigating Officer. The Court below had meticulously dealt with the entire evidence on record and

arrived at just conclusion and rightly found the accused guilty of the offence under Section 302 of IPC. There is nothing to take a different view. None of the grounds raised on behalf of the appellant/accused merit consideration. The appeal is devoid of merit and is liable to be dismissed.

25. Accordingly, the Criminal Appeal is dismissed, confirming the judgment, dated 05.06.2014, passed in S.C.No.375 of 2013 by the VII Additional Sessions Judge, Bodhan.

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

SD/-K.SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The VII Additional District & Sessions Judge at Bodhan, Nizamabad District(with records if any)
2. The Station House Officer Bichkunda Police Station, Nizamamabad District,
3. One CC to M/s. M BHAGYASRI, Advocate. [OPUC]
4. Two CC's to the PUBLIC PROSECUTOR, High Court for the State of Telangana at Hyderabad. [OUT]
5. Two CD Copies
6. One Spare Copy

SB



HIGH COURT

DATED:21/03/2022

JUDGMENT

CRLA.No.672 of 2014



DIMISSING THE CRL.A

⑧ VLV
18/6/22