

(2024) 03 TEL CK 0017

High Court For The State Of Telangana:: At Hyderabad

Case No: Criminal Appeal No. 721 Of 2016

Bhairapu Chinna Rajaiah
Balaraju

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision: March 22, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 302, 304I, 304II
- Code Of Criminal Procedure, 1973 - Section 235(2)

Hon'ble Judges: K.Lakshman, J; P.Sree Sudha, J

Bench: Division Bench

Final Decision: Partly Allowed

Judgement

1. This Criminal Appeal is filed against the Judgment dated 03.06.2015 in S.C.No.245 of 2015 passed by the learned IX Additional Sessions Judge, Kamareddy.

2. The case of the prosecution is that appellant/accused alleged to have killed one Yadamma (herein after referred to as deceased) and thus accused committed offence punishable under Section 302 of I.P.C. To prove the guilt of accused, prosecution examined P.Ws.1 to 12 and got marked Exs.P1 to P10. No oral or documentary evidence was adduced on behalf of defense. The Trial Court after considering the arguments of both sides and also the entire evidence on record, convicted accused under Section 235(2) of Cr.P.C and sentenced him to undergo rigorous imprisonment for life with a fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 302 of I.P.C. Aggrieved by the said judgment, accused preferred the present appeal.

3. Learned counsel for accused contended that the trial Court erred in placing reliance on the interested and discrepant testimony of P.Ws.1, 2, 3, 5 and 7. He further contended that FIR was brought into light after deliberation only with

abnormal delay i.e., on the next day and FIR was manipulated with anti-time. P.Ws.3, 5 and 7 did not support the case of the prosecution and the motive is very vague. The marriage of the deceased and accused was love marriage which is against the wishes of family members and thus falsely implicated the accused in this case. There is no positive evidence that accused was in the house at the time of the incident. The medical evidence did not support the case of the prosecution. The case of the prosecution would not fall under the ambit of Section 302 I.P.C, as the alleged incident took place during the quarrel between accused and the deceased. Therefore, requested this Court to set aside the judgment.

4. Heard arguments of both the Counsel and perused the entire evidence on record.

5. The sister of the deceased/P.W.1 gave complaint dated 13.08.2015, stating that the marriage of the deceased was performed with one Raju in the year 2000 and they were blessed with a daughter by name Shravani and later they got divorced. In 2006, the deceased married the accused, Bhairapu Chinna Rajaiah Balaraju and it was a love marriage. At the time of marriage, accused agreed to look after the deceased's daughter, Shravani. They were blessed with a son, Dasharatham. Thereafter, accused did not care about the daughter of the deceased. Shravani was staying with the parents of the deceased at Gajwel and she attained puberty and the deceased requested the accused that she wants to see her daughter and present clothes to her, but accused picked up quarrel with her and threatened to kill, if she gives clothes to her daughter. The deceased informed the same to her paternal aunt and the same was informed to P.W.1 by their paternal aunt. On 12.08.2015 at about 07.30 P.M., when deceased and accused were alone in the house, he stated to the deceased to forget about her daughter and the deceased told that she will not forget her daughter and will definitely go and see her daughter and they both quarreled on that aspect and accused beat her and when she fell down, he throttled her neck with his leg and killed the deceased with an intention to get rid of Shravani. As she came to know about the incident at late night, she gave complaint on the next day and requested to take action against the accused. Basing on the complaint given by P.W.1, before the S.H.O, P.S. Kamareddy, under Ex.P1, a case in Crime No.248 of 2015 was registered under Section 302 of IPC.

6. Admittedly, it is a case of circumstantial evidence and there are no eye witnesses to the incident except the deceased, accused and their son. Their son Dasharatham, who was aged about 6 years was examined as P.W.3. He admitted in the witness box that he cannot identify his father and he does not know where he was at the time of incident. He turned hostile. In the cross-examination, he stated that his father killed his mother by keeping his leg on her throat. The accused did not give money to the deceased and he killed her. Thereafter, accused left the place. When he called his mother, she did not respond. In fact, the statement of the boy was recorded initially before the Magistrate and in the 164 Cr.P.C statement. It was clearly stated that his father asked for money, but his mother stated that she has no money, as such he

caught hold of the hand of his mother and pushed her. When the deceased fell down, he stampeded the deceased with his foot. As a result, deceased died. Initially his statement was recorded on 22.08.2015 and his evidence was recorded on 22.01.2016. He is the only eye witness, but he turned hostile. His evidence is not clear and it is vague and confused.

7. P.W.2 is the paternal aunt of the deceased. She informed about the death of the deceased to P.W.1 over the phone. In the cross-examination, she stated that deceased obtained divorce from her first husband Raju. Accused and deceased returned to the village one year after their marriage. After their marriage, they were not in talking terms with them. Shravani did not live with the accused and deceased after their marriage. It was suggested that she had not state before the police that deceased came to her about 3 days prior to her death and informed her that accused harassing her, but she denied it.

8. P.W.4 is father of the deceased. He stated that no divorce took place between the deceased and her 1st husband. Accused and deceased fell in love with each other and two months thereafter they married. He stated that his daughter was addicted to drinking. He also stated that his daughter died two days after Shravani attaining puberty. P.W.5, resident of Harijanwada, Kamareddy turned hostile.

9. P.W.6 was the panch witness for inquest panchanama and also for scene of offence panchanama. P.W.7 was the resident of Kamareddy, but he turned hostile. P.W.8 was the V.R.O., Kamareddy, who acted as panch witness for confessional panchanama. P.W.9 was the photographer.

10. P.W.10 was the Civil Assistant Surgeon, who conducted autopsy over the dead body of the deceased. He stated that 8 anti-mortem injuries were found during the examination and the injuries are possibly by applying pressure by the leg. He issued Ex.P7, PME report and he stated the cause of death of the deceased as asphyxia due to throttling.

11. P.W.11 is daughter of the deceased. She stated that she came to know about the death of her mother through her maternal grandmother. She stated that accused quarreled with her mother. P.W.12 is the Inspector of Police, who conducted investigation and filed charge sheet.

12. Initially, the marriage of the deceased was performed with her aunt's son, Raju and they were blessed with a daughter, Shravani (P.W.11). Later, he deserted her. After some time, the accused and deceased fell in love with each other and got married and they were blessed with a son (P.W.3). After the birth of P.W.3, accused did not care about P.W.11, as she is not his own child and thus she was looked after by her maternal grandparents. When P.W.11 attained puberty, deceased intended to go there and wanted to give her new clothes, for which accused refused. They picked up quarrel and in a fit of anger, he beat her and when she fell down, he throttled her neck with his leg, as a result she died. Accused ran away from that

place. P.W.2 came to know about the death of the deceased through P.W.1 on phone. P.W.3 in his 164 Cr.P.C statement clearly stated that his father killed his mother, but when he was produced before the Court in the witness box, he turned hostile. His evidence was so confusing and it appears that it is a tutored version, as he was a child witness. There is a possibility of tutoring him and it cannot be relied upon. Though P.W.2 stated that about three days prior to the incident, deceased informed that accused beat her, as she was intended to go to her daughter and give new clothes to her, she clearly admitted that she was not on talking terms with accused and the deceased. Therefore, her evidence cannot be relied upon.

13. The accused beat his wife in a fit of anger and in a grave and sudden provocation. The Hon'ble Apex Court in Pulicherla Nagaraju @ Nagaraja Reddy vs State of Andhra Pradesh AIR 2006 SC 3010, held as under:

"Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances reference to individual cases which may throw light on the question of intention. Be that as it may."

14. In the present case, the accused and deceased were in love with each other and they got married and blessed with a son. The accused beat the deceased and when she fell down, he throttled her neck with his leg and ran away from that place. This shows that there was no premeditation to kill her. It was done in a fit of anger. It clearly shows that he has no intention to kill her. Therefore, this case falls under Section 304 Part-II.

15. The accused herein is in jail from 7 ½ years and apart from that he was in jail from 14.08.2015 to 03.06.2016. i.e., 10 months. Therefore, this Court finds that it is just and reasonable to modify the sentence as the period already undergone by him, as it falls under 304-II IPC.

16. In the result, the Criminal Appeal is partly allowed. The conviction and sentence of imprisonment passed in S.C.No.245 of 2015 by the trial Court on 03.06.2016 against the appellant/accused for the offence under Section 302 I.P.C is modified to that of Section 304 Part-II of I.P.C and is reduced to the period already undergone by them. The appellant/accused shall be set at liberty forthwith, if he is not required in any other case.

Pending miscellaneous petitions, if any, shall stand closed.