

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM  
AND  
THE HON'BLE SMT. JUSTICE T. RAJANI**

**Criminal Appeal No.402 of 2013**

**J U D G M E N T:** *(per Hon'ble Smt. Justice T. Rajani)*

This Appeal is preferred by the appellant, who, by virtue of the judgment in S.C. No. 630 of 2011, dated 31.12.2012, was convicted by the VI Additional Sessions Judge (III FTC), Warangal at Mahabubabad, and sentenced to undergo imprisonment for life and to pay a fine of Rs.100/-, in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 302 of the Indian Penal Code (IPC) and rigorous imprisonment for a period of two years for the offence punishable under Section 324 IPC.

The facts of the case, as per the charge-sheet, are briefly as follows:

On 25.03.2011, at 07.30 A.M., the complainant lodged a report stating that he was studying intermediate and residing with his parents and his injured grand mother and grand father. His grand mother is aged about 65 years and was suffering from ill-health, and his grand father, who is the accused in this case, was harassing her for sexual intercourse. His grand mother used to object for the same, on the ground that her health was not well. She used to inform the same to her son (deceased), who is the father of the complainant and the deceased used to chastise his father and in that regard, the grand father of the complainant, who is the accused in this case, bore grudge against his wife and his son, Syed.

On 24.03.2011, at about 09.00 P.M., after having dinner, the complainant and his grand mother slept on two cots, in the varandah of the house. His grand father and his father went to chilli thrashing ground situated behind their house to have a watch on the chillis and they slept on two different cots. His grand father i.e. the accused, who had grudge against his father i.e. the deceased, at about 02.30 A.M., came to the house and beat his grand mother – injured, with a pestle, on her forehead, causing bleeding injuries. She raised cries, on which the complainant woke up and noticed his grand mother, with injuries on her head. Due to fear, he rushed to the place where his father was sleeping and noticed that his father already died with bleeding injuries. Immediately, he raised hue and cry, on hearing which, his neighbours Shaik Yakub and his wife Hussain Bee rushed to the spot. On seeing them, the accused fled away, along with the pestle, through the guava garden. Based on the report given by the complainant, police registered a case in Crime No. 39 of 2011 for the offences punishable under Sections 302 and 307 IPC. After due investigation, charge-sheet was laid against the accused for the said offences. The Additional Judicial Magistrate of I Class, Medak, who took the case on file committed the case to the Sessions Division, by virtue of the orders in PRC No. 32 of 2011 as the case is exclusively triable by the Sessions Court. The Sessions Court, in turn, made over the case to the VI Additional Sessions Judge, Warangal for trial and disposal according to law. The said Court, by conducting the trial of the case, passed the impugned judgment, against which, this Appeal is preferred on the following grounds:

The lower Court ought to have seen that nobody witnessed the incident and that the police could not make out any case against the appellant. The lower Court ought to have disbelieved the evidence of P.W.1 to P.W.6 as there is no eye witness for the incident. The lower Court ought to have disbelieved the evidence of P.W.2, who stated that he was sleeping at the time of the incident.

Heard counsel for the appellant and learned Public Prosecutor.

The counsel for the appellant reiterated the grounds taken in the Appeal, while the Public Prosecutor contends that the circumstantial evidence would clinchingly prove the guilt of the accused.

Now the points that arise for determination by us are:

- 1) *Whether the judgment of the lower Court, with regard to concluding the guilt of the accused for the offence punishable under Section 302 IPC, can be sustained.*
- 2) *Whether the guilt of the accused for the offence punishable under Section 324 IPC. is proved beyond all reasonable doubt.*
- 3) *To what result.*

**POINT No.1:** Two charges are framed against the accused; one is for the offence punishable under Section 307 IPC, for attempting to commit the murder of the grand mother of the complainant and the second is for the offence punishable under Section 302 IPC for committing the murder of the father of the

complainant. The lower Court found that the prosecution failed to prove the guilt of the accused for the offence punishable under Section 307 IPC, but held that the prosecution succeeded in proving the guilt, for the offence punishable under Section 324 IPC. and likewise, awarded conviction for the same. With regard to the offence punishable under Section 302 IPC., the Court believed the evidence and held that the accused is proved to have committed the murder of the deceased, which is what is assailed in this appeal.

A perusal of the evidence of the prosecution witnesses would show that the deceased was found dead, lying on a cot, in an open place, to which everyone has access. The evidence also shows that the deceased was not seen together with the accused prior to the incident. By the time P.W.1 woke up, the accused was seen beating his grand mother, who was examined as P.W.2, and after the said incident, he rushed to the place where the dead body of his father was lying. On the basis of the earlier incidents, P.W.1 comes to an opinion that it must have been the accused, who killed the deceased. Whether the said motive would suffice, in the circumstances brought-forth by the prosecution, to commit the murder of the deceased, has to be examined. The motive is that the accused was asking his wife for sexual favour and that she, on the ground that she is not well, had been rejecting his proposal. The deceased was expressing that it is not the age for the accused to ask for such favour from P.W.2. That is the reason for which the accused developed grudge on the deceased and committed his murder. One improbability is that bearing such grudge and committing the murder with a pre-plan. It is not only the deceased

that have been objecting for the request of the accused, but also PW.2. Hence, doing away with the deceased, would not serve his purpose. If the objection of the deceased had come at the point when there was a proposal by the accused to have sexual intercourse with P.W.2, it can be understood that the accused might have gone to the extent of killing the deceased by virtue of the heat of passion which he is likely to develop, due to the said objection. It somehow seems improbable to us, that keeping in mind the objection raised by the deceased at some point of time, the accused would commit the murder of the deceased.

P.W.1 after seeing the accused beating P.W.2, bandaged P.W.2, of the injuries and went to the deceased to wake him up and then found him dead. By the time he rushed home, the accused was not there. Whether the conduct of the accused in leaving the scene of offence is a consequence of his committing murder of the deceased or his beating P.W.2 cannot be gathered from the evidence, as, in all probability, the accused first committed the murder of the deceased and then came and beat P.W.2. He is well aware that P.W.2 was sleeping by the side of P.W.1 and that P.W.2 would raise cries, thereby drawing the attention of P.W.1 by waking him up from his sleep and if he had any thought of escaping on the fear that he would be caught, he would have done so, after he committed the murder of the deceased itself. The motive for killing the deceased, though is spoken to by P.W.1, is not stated by any other witness. P.W.2 does not state about the said motive. She is the person, who is competent to speak about the said fact. She does not state about any reason for the accused beating her.

P.W.3 is the daughter of the deceased. She received information about the death of the deceased and went to the spot. She was informed by P.Ws.1 and 2 that the accused killed the deceased. She also spoke about the behaviour of the accused earlier to the incident, which corroborates the evidence of P.W.1 regarding the motive. She further stated that the accused bore grudge on the deceased as he raised objection for the accused marrying another woman. The said fact is not, however, spoken to either by P.W.1 or by P.W.2.

P.W.4 is the grand daughter of the accused. She also came to know about the incident through P.W.1. She is, however, a hear say witness. Hence, her evidence with regard to the information given by P.W.1, is not admissible.

P.W.5 is a hostile witness. She is the niece of the accused. She heard cries from the house of the accused and rushed to the spot. She saw P.W.1 weeping and they came to know that the accused killed the deceased. She also stated about the harassment that the accused used to mete out, asking the deceased for sexual favours.

P.W.6 is a witness, who spoke about the accused coming to their house and calling his father. He informed the accused that his father is not available in the house. He saw the accused shivering and his clothes were stained with blood. Later, he came to know that the accused killed his son. Though the evidence of P.W.6 shows that the clothes of the accused were stained with blood and that he was shivering, the same cannot be appreciated to create a nexus between the death of the deceased and the

accused, as it is probable and possible that the accused would be seen with blood and would be shivering even if he attacked P.W.2, who sustained a bleeding injury.

P.W.7 is a witness for the inquest and P.W.8 is a photographer whose evidence is not much material.

P.W.9 is the wife of the deceased. She is not an eye witness to the alleged murder committed by the accused, but she is a person, who went to the spot where P.W.2 was present, on hearing her cries and saw her with bleeding injuries. Later, P.W.1 went to Kallam, where the deceased was sleeping and saw him dead, on which P.W.9 also went to the said Kallam. They came to an opinion that the accused might have killed the deceased.

P.W.10 is a hostile witness. He speaks about P.W.2 being with bleeding injuries and his seeing the dead body of the deceased. He heard the cries of P.Ws.1 and 2 on the date of incident and came to their house and went to the spot.

P.W.11 is a witness for the confession made by the accused and for the seizure of M.O.1 Pestle. P.W.12 is the doctor, who examined P.W.2. P.W.13 is a witness, who heard the cries of P.W.2 and went to the spot. He woke up all the residents of the locality. He also was informed by P.W.1 that the deceased died. P.W.14 is also a similar witness. Both P.W. 13 and P.W.14 were declared hostile by the prosecution. P.W.15 is the doctor, who conducted post-mortem examination on the dead body of the deceased. P.W.16 is the Investigating Officer. P.W.17 is the Head Constable of Kuravi Police Station who registered the case.

The above evidence, though, would create a strong suspicion against the accused with regard to the murder of the deceased, cannot be taken as a basis for concluding the guilt of the accused for the offence punishable under Section 302 IPC., as, the law, that any amount of suspicion cannot take the place of proof, is too well-settled. It is only based on the earlier conduct of the accused that all the witnesses came to an immediate opinion that it was he, who committed the murder of the deceased, but whether the motive alleged against the accused is commensurate with the gravity of the offence has to be appreciated. We find that the same is not commensurate. The motive, being weak, requires more concrete proof with regard to the offence punishable under Section 302 IPC. As already observed, the offence took place in an open place to which everyone had access. Though there are no possibilities that were brought-forth by the evidence, with regard to anyone else committing the murder of the deceased, the said reason alone cannot be taken as a ground to conclude that it was the accused, who committed the murder of the deceased. Hence, we consider it appropriate to give a benefit of doubt to the accused so far as his conviction for the offence punishable under Section 302 IPC. is concerned and to that extent, we are inclined to set aside the judgment of the lower Court.

**POINT No. 2:** The evidence so far as the attack of the accused on P.W.2 is concerned, is ample. There can be no reason for P.W.1 to falsely implicate the accused and there is no unnaturality in the evidence of P.W.1 with regard to his witnessing the accused beating P.W.2. P.W.2, who is an injured witness, puts herself on a strong pedestal of credibility and she lends total

corroboration to the evidence of P.W.1. The witnesses, who went to the spot, are, in no manner, biased in favour of P.W.1, to speak against the accused. The recovery of pestle made from the accused would also lend strong support to the fact that he beat P.W.2 with the said pestle. The injuries on the body of P.W.2 are proved by the medical evidence. Hence, all the above evidence would clinchingly prove the guilt of the accused for the offence punishable under Section 324 IPC, requiring no interference with the impugned judgment.

**POINT No. 3:** In the result, the judgment dated 31.12.2012 to the extent it relates to the conviction handed down to the accused for the offence punishable under Section 302 IPC., is set aside and to the extent it relates to the conviction and sentence for the offence under section 324, is concerned, is confirmed.

The period of imprisonment already undergone by the appellant shall be given set-off and he shall be set at liberty forthwith, if he is not required in any other cases.

The Appeal accordingly, is allowed in part.

As a sequel, miscellaneous petitions, if any, pending shall stand closed.

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**CHALLA KODANDA RAM, J**

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**T. RAJANI, J**