

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

CRL. APPEAL No. 423 OF 2013

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

The impugned judgment is passed by the Sessions Judge, Anantapur in S.C. No. 471 of 2012 on 18.12.2012. By virtue of the said judgment, the said Judge convicted the appellant / accused for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.100/-, in default to undergo simple imprisonment for a period of fifteen days.

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

On 01.03.2012, the complainant (L.W.1) came to the house of her parents and on the same day, at 09.00 P.M., the accused, who is her father, picked up a quarrel with his wife (deceased), by suspecting her fidelity and at 09.30 P.M., while the wife of the accused was sleeping on a cot, he beat on her head thrice, with a granite stone, with an intention to kill her. The same was witnessed by L.Ws.1 to 3. Later, the accused ran away. L.W.1 shifted her mother, who lost her consciousness after she sustained severe injuries, to Government Hospital, Anantapur. On the basis of the report given by the complainant, a case in Crime No. 57 of 2012 was registered on the file of Anantapur II Town Police Station for the offence punishable under Section 307 IPC. While undergoing treatment, on 02.03.2012, the wife of the accused died.

After receipt of death intimation, the Inspector of Police altered the section of law into 302 IPC and after due investigation, a charge-sheet was laid against the accused for the said offence. The Court, which took the case on file, committed the same to the Sessions Division, Anantapur, as the case is exclusively triable by a Court of Session. The Sessions Judge, after due trial, passed the impugned judgment, against which, this Appeal is preferred on the following grounds:

The Court below ignored the statement of the accused made in his examination under Section 313 of the Code of Criminal Procedure, that while the deceased was walking after consuming alcohol, she slipped and fell on the stone and sustained injuries and the same was probabalised by the evidence of P.W.8, who stated that the injury can be caused by fall from height. The lower Court did not consider that P.W.1 is an adolescent witness and his evidence is not corroborated by any other evidence.

Heard the arguments of learned counsel for the appellant and learned Public Prosecutor.

The counsel for the appellant contends that the evidence of P.W.1 does not receive corroboration from any other witness and that P.W.3, who is also the son of the deceased and the accused, makes the case of the prosecution inconsistent, as he does not corroborate the evidence of P.W.1 and that according to his evidence, P.W.1 telephoned to him while he was at Narasanayunikunta. He argues that the said fact would belie the evidence of P.W.1 that she witnessed the incident by being with the deceased, who resides at Anantapur.

The Public Prosecutor, on the other hand, contends that the circumstances proved by the prosecution would clinchingly prove the guilt of the accused for the offence with which he is charged.

Based on the arguments and the material on record, the following points can be framed for determination:

- 1) Whether the evidence of P.W.1 would suffice to prove the guilt of the accused beyond all reasonable doubt, for the offence punishable under Section 302 IPC.
- 2) Whether the judgment of the lower Court is sustainable.
- 3) To what result.

P O I N T No.1: It is true that the evidence of P.W.3, who is not declared as a hostile by the prosecution, would show that P.W.1 telephoned to him from Narasanayunikunta, informing that their mother was admitted in the hospital. The case of the prosecution, which is supported by the evidence of P.W.1, is that the deceased was residing in Anantapur. The accused is no other than the father of P.Ws.1 and 3. The facts narrated by P.W.1 which lead to the attack of the accused on the deceased are, that on the date of incident, at about 07.00 P.M., she came to the house of her parents in Anantapur from Narasanayunikunta, to see her mother. She saw her father and mother quarrelling with each other and her father abusing her mother, stating that she has illicit intimacy with some other person, while her mother was pleading innocence. Her father proclaimed that he would kill her since she was lying and her mother retorted stating as to how he

would kill her, though she did not commit any sin. Later, her mother slept outside the watchman room. Her father took out a sharp-edged polished stone and beat on her head. In spite of P.W.1 raising cries, her father dealt two or three blows on the head of the deceased, on which, the deceased fell unconscious and started bleeding. She raised hue and cry, on which two night watchmen came to the spot and shifted her mother to Government Hospital. On the advice of the doctors, she was taken to Kurnool Hospital. One Buse Naik (L.W.9) accompanied her mother to Kurnool, in the ambulance. They reached the hospital by about 02.30 P.M. and the deceased died half-an-hour after admission into the hospital. Police came to the hospital and took a complaint from P.W.1, which was marked as Ex.P1. She identified M.O.1 as the stone, with which the deceased was beaten. She also explained that the stone was much longer, but when the blows were given, it broke into pieces.

With regard to the relationship between her parents, she stated that the accused was not staying with the deceased and he used to visit the house once in a month and stay for some time and leave and he did not have any permanent address. One month prior to the incident, her father joined as a watchman in a newly-constructed residential complex, situated at Kalyandurg Road, Anantapur and since then, her father and mother were residing in the watchman room, in that complex.

As against her evidence, which shows that the incident occurred in her presence, the evidence of P.W.3, as already stated, is that P.W.1 informed him about the incident from

Narasanayunikunta. The argument of the improbability of P.W.1 witnessing the incident, is based on the evidence of P.W.3. But the circumstances coming from the evidence of the other witnesses and the document marked by the prosecution i.e. Ex.P6, medical certificate, recording the admission of the deceased in the hospital, would support the version of P.W.1. Ex.P6 shows that one Muse Nayak accompanied the deceased to the hospital from Narasanayunikunta. There is a possibility of an error in the pronunciation of the name of L.W.9 Busi Nayak which may sound like Muse Nayak also. Hence, the discrepancy, if any, with regard to the name stands explained by the above reasoning.

The evidence of the doctor, which cannot be tainted with any bias, also comes as a support from the evidence of the Sub-Inspector of Police, II Town Police Station, Anantapur who was examined as P.W.6. He states that on 01.03.2012, at 11.00 P.M., while he was in the police station, P.W.1 came there and presented a complaint about the attempt to murder of her mother, Savitri, by her father and gave Ex.P1 complaint. Though there is slight inconsistency with regard to the place of lodging the report, the same can be ignored, by considering the fact that the case was nevertheless registered at 11.00 P.M. on the same day, at the instance of P.W.1. Whether her complaint was taken at the hospital, as stated by her or whether it was lodged by her by coming to the police station, as stated by P.W.6, the fact that remains unshattered is that the report was lodged by P.W.1 on the same day at 11.00 P.M. Hence, the evidence of P.W.3 does not take prevalence over the evidence of P.W.1. There cannot be any

motive attributed to P.W.1, to speak against the accused, who is no other than her father. The contention of the counsel for the appellant that the post-mortem examination report does not show the presence of any liquor in the viscera of the deceased, though the evidence of P.W.1 is that she consumed liquor along with the accused, does not find our favour, as reading of the evidence of P.W.1 shows that she did not anywhere specify that the deceased consumed liquor on the date of the incident. In the cross-examination, she only stated that her parents used to take liquor and that is not uncommon in their family. She also specifically denied the suggestion given to her that the deceased came along with two liquor bottles and food on the date of the incident.

The evidence of P.W.3, to the extent of P.W.1 telephoning to him and informing about the injuries sustained by the deceased, can be taken as a support to the fact that it was P.W.1, who saw the deceased with injuries at the earliest point of time. The deceased was initially taken to Government Hospital, Anantapur and later, on the advice of the doctors, she was shifted to Kurnool Hospital. Hence, the delay in giving the report also stands explained. Any prudent person would first endeavour to sustain the life of the injured, before rushing to the police station to give a report.

The scene of offence panchnama is witnessed by P.W.4, who spoke about the presence of blood stains and the stone, at the scene of offence, which would also lend support to the evidence of P.W.1. P.W.4 is an Ex-M.P.T.C. whose evidence can be considered as standing on higher pedestal of truth. The presence

of head injury on the deceased, is corroborated by the evidence of inquest panch, examined as P.W.5 and P.W.7, who is the doctor, who treated the deceased before referring her to higher centre. Hence, with all the above support coming for the evidence of P.W.1, the said evidence cannot be considered as tainted with any bias and hence, it can very well taken as a sole basis for arriving at the guilt of the accused.

P O I N T No.2: In view of the conclusion drawn by us under Point No.1, we opine that there is absolutely no need to interfere with the judgment of the lower Court and the same is sustained.

P O I N T No.3: In the result, the Appeal is dismissed.

CHALLA KODANDA RAM, J

T. RAJANI, J

31st March 2018

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