
(2010) 12 AP CK 0046
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 916 of 2007

Gandla Panagari Sailu

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2), 428
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2011) 1 ALD(Cri) 751

Hon'ble Judges : N.R.L. Nageswara Rao, J;K.C. Bhanu, J

Bench : Division Bench

Advocate : K. Satyanarayana Rao, J, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.C. Bhanu, J.—The accused in S.C. No. 384 of 2006 on the file of the VII Additional Sessions Judge, (Fast Track Court), Nizambad filed the present appeal u/s 374(2) of Code of Criminal Procedure, challenging the conviction and sentence recorded by the learned Sessions Judge against the Appellant/accused of the offence u/s 302 of I.P.C. and sentencing him to rigorous imprisonment for life and to pay a fine of Rs. 1,000/- , in default, to suffer simple imprisonment for three months.

2. The brief facts that are necessary for the disposal of the present appeal may be stated as follows:

3. The deceased is the wife of the accused. They were married about fifteen years ago. They were having two school going children. The deceased used to quarrel with the accused to give up his bad habits. While so, on 16.6.2006 around 10.30 A.M., a quarrel took place between the deceased and the accused and there was an altercation between both of them. Suddenly, the accused got angry and pushed the deceased to the ground and lifted a bag of potassium weighing about fifty kilo grams and put on the chest of the deceased and then

strangled her, due to which, she became unconscious. Thereafter, the accused locked the house and called his cousin brother Laxman, P.W.7 and tried to shift the deceased to hospital in an auto rickshaw for treatment, but the deceased died around 1.30 P.M. P.W.1, the brother of the deceased lodged a complaint with the police. Basing on which, a case in crime No. 121 of 2006 was registered for the offence punishable u/s 302 of I.P.C. The Sub-Inspector of Police, P.W.12, examined the witnesses and recorded their statements. He observed the scene of offence, prepared panchanama and rough sketch, held inquest over the dead body of the deceased and sent the dead body of the deceased to post mortem examination to Government Hospital, Bodhan. Thereafter, P.W.13, the Inspector of Police took up investigation and arrested the accused on 20.6.2006 and basing on his confession, 50 kilograms potassium bag was seized. On completion of investigation, he filed the charge sheet.

4. The charge leveled against the accused is that on 16.6.2006 at about 12.15p.m., the accused did commit murder by intentionally or knowingly causing the death of Smt. Gandla Pangari Prameela, by putting potassium bag on her chest and throttling her neck and thereby, committed an offence punishable u/s 302 of I.P.C.

5. When the charge was read over and explained to the accused in Telugu, the accused pleaded not guilty and claimed to be tried.

6. In order to substantiate the case of the prosecution, the prosecution examined P. Ws. 1 to 13 and got marked Exs. P1 to P7. Exs.D1 to D7 were marked on behalf of the accused. The case property is marked as M.O.1.

7. The trial Court, accepting the evidence of P. Ws. 4 to 7, found the accused guilty of the offence u/s 302 of I.P.C. and accordingly convicted and sentenced the accused as aforesaid. Challenging the same, the present appeal is filed.

8. Learned Counsel representing the accused contended that there is no evidence to show that the accused is the assailant of the deceased and that there is no evidence to connect the accused with the murder of the deceased; that the possibility of some other person committing the murder of the deceased cannot be ruled out; that preceding the incident, there is evidence on record, which would go to show that there was a quarrel ensued between the accused and the deceased and in that quarrel upon a sudden fight, the accused lost his control and pressed the neck of the deceased, but the death is not instantaneous, so as to infer that the accused has an intention to commit the murder and therefore, he prays to set aside the same.

9. On the other hand, learned Counsel representing the Additional Public Prosecutor contended that the evidence of P. Ws. 4 to 7 is very clear that on hearing the galata, they rushed to the scene of offence and found the house of the accused locked and P.W.7 opened the lock of the door with the key furnished by the accused and found the deceased in an unconscious state; that they immediately called the local R.M.P., P.W.10, who after examining the deceased

found her to be in a precarious condition and advised them to take her to a hospital for better treatment and that while the deceased was being shifted to the hospital, she died on the way and that therefore there is every possibility for the accused to commit the murder of the deceased; that prior to the incident, the accused and the deceased were alone present in the house, as spoken to by the son of the deceased, and that immediately after the incident, the lock of door was opened with key given by the accused, that therefore, within all human probability, the crime must have been committed by the accused and none else; and that there are no grounds to interfere with the conviction and sentence imposed against the accused.

10. There is no direct evidence to show that the accused throttled the neck of the deceased. The entire case of the prosecution rests upon circumstantial evidence and when the case rests upon circumstantial evidence, in view of the decision of the Supreme Court in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, wherein it was held that the following circumstances must be fully established by the prosecution before passing conviction. They are:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis, except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

11. The deceased, Gandla Panagari Prameela, is no other than the wife of the accused. P.W.1 is the brother of the deceased. P.W.2 is the mother of the deceased. P.W.3 is the son of the deceased and the accused respectively. P.W.4 is having a toddy shop adjacent to the house of the accused. P. Ws.4 to 7 were examined by the police to prove the fact that when they were standing at the Hunuman Temple Chowrasta, Varni, they heard galata from the house of the accused, and they rushed to house of Accused.

12. P.W.12, who is the Sub-Inspector of Police registered a case and sent the F.I.R. to all the concerned. He proceeded to the scene of occurrence and observed the scene of offence under Ex.P2 and drafted the rough sketch under Ex.P3 in the presence of P.W.8 others. He also examined the witnesses, held inquest in the presence of the mediators. The inquest mediators opined that the deceased died as a result of pressing the neck as they found nail marks on the neck of the deceased. After inquest, the dead body was subjected to postmortem

examination.

13. P.W.11 is the doctor, who conducted postmortem on the dead body of the deceased and found the following ante mortem injuries:

1. Lenior contusion over antero lateral part on right side of neck measuring about 2" to 2 1/2" in length and 1/2" in breadth, extra laceration of blood, noticed on cut section.

2. Contusion 1/2" x 1/2" on left side of neck.

3. Timpanic membrane perforated right side with dried blood right side of ear.

14. On internal examination, he found patechial hemorrhages on both cerebral hemispheres and also noticed multiple nail scratches over lateral part of the neck and the neck of the deceased was swollen. He opined that the death of the deceased was due to throttling and issued Ex.P6, postmortem examination. Nothing has been elicited to discredit the testimony of P.W.11 and the recitals in Ex.P6 and the homicidal nature of the death of the deceased is established beyond all reasonable doubt.

15. P.W.1, who is the brother of the deceased is a resident of Chandoor Village. On coming to know about the incident, he rushed to the scene of occurrence and his evidence would only go to show that he came to know about the incident through the village elders; that the accused furnished the key of the house to the elders and they opened the house of the accused and found the deceased lying in an unconscious state.

16. The evidence of P.W.2 is also is almost more or less similar to the evidence of P.W.1.

17. Admittedly, P. Ws. 1 and 2 are residing in Chandoor Village and they came to know about the death of the deceased at about 2.00 p.m. By the time, they visited the house of the accused, the accused was not present. Therefore, the evidence of P. Ws. 1 and 2 is not much helpful to the case of the prosecution. To the fact in issue.

18. P.W.3 is the son of the deceased and accused. He was studying 8th class. According to him, on the date of incident, i.e. on 16.6.2006, at about 9.30 A.M., he along with his brother went to school and during interval, they both came to the house at 11.30 a.m. and at that time, the deceased and the accused were quarrelling with each other. The deceased questioned the accused for supply of food material, for which, the accused answered that she would do in any manner she like and that he would continue gambling, drinking alcohol etc. The accused sent them to school. Again, during lunch time, at about 1.00 P.m., when they returned from the school, they found the dead body of the deceased.

19. Therefore, from the evidence of P.W.3, it is clear that by 11.30 a.m., the accused and the deceased were alone present in the house. There is no other reason for him to speak falsehood against the accused.

20. In evaluating the evidence of a child witness, care and caution should be taken. If the evidence is found to be acceptable, it can be acted upon. On this aspect, it is pertinent to refer to a decision in *Nivrutti Pandurang Kokate and Others Vs. State of Maharashtra*, wherein the Supreme Court observed thus:

The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

21. It is quite possible for the children like P.W.3 to come to the house during interval and again go to the school immediately thereafter, after spending some time in the home. Again, they returned at about 1.00 p.m. during lunch recess and at that time, the body of the deceased was lying inside the house. It is suggested to P.W.3 that as per the instructions of the relatives of deceased, he was deposing falsely. He denied the same. If really, P.W.1 and P.W.2 who are brother and mother of deceased respectively tutored P.W.3 to give false evidence, P.W.3 would have definitely stated about the accused strangulating the deceased. Thus in our opinion, P.W.3 is a witness of truth and he testified about the facts which are within his exclusive knowledge.

22. P. Ws. 4 to 7 were examined by the police to show that it is the accused, who handed over the key to them and P.W.7 opened the lock of the door of house of the accused with the key furnished by the accused and found the deceased lying in an unconscious state. According to them, when they heard the galata, they immediately rushed to the house of the accused and found the accused in front of the house and on questioning the accused, the accused gave key of his house to P.W.7, who opened and found the deceased in an unconscious state. That they immediately called P.W.10, local Registered Medical Practitioner for treatment, who came to the house of the accused and found the deceased in a critical condition and in the meanwhile, P.W.1 came to know about the incident along with his mother rushed to the village of the accused and while the deceased was being taken to the hospital, she died on the way at about 1.30 p.m., on 16.6.2004, the dead body was brought back to the house of the accused and kept there. The house of the accused is a tiled house, which is having only one entrance as seen from Exs. P2 and P3, scene of observation and rough sketch,

respectively. Therefore, there is no scope or possibility for any third person to enter into the house.

23. It is clear from the evidence of P. Ws. 4 to 6 that while they were present at Hanuman Temple chowrasta at Varni, P.W.7 came there and informed that some galata was going on and they went to the house of the accused and at that time, the accused was standing outside his house. The accused gave the key to P.W.7, who opened the lock, whereas the evidence of P.W. 4 would go to show that on hearing some galata, he rushed to the house of the accused and found same to be locked. As the house of P.W.4 is also shown in Exs. P2 and P3, scene of offence and rough sketch respectively and since he is selling toddy, there is every possibility for him to be present at his toddy shop and on hearing the cries, there is every possibility for him to rush to the house of the accused. He also noticed blood on the forehead of the accused. When he enquired the accused, the accused informed him that there was a quarrel between himself and the deceased; that the accused gave the key, P.W.7 opened the lock of the house and found the deceased lying in an unconscious state. They also found finger marks in and around the throat of the deceased.

24. Therefore, the evidence of P. Ws. 4 to 7 would clearly go to show that they rushed to the scene of occurrence and after opening the lock with the key given by the accused, they found the deceased lying in an unconscious state. Therefore, from the evidence of P. Ws. 4 to 7 it is quite clear that the accused has got an opportunity to kill the deceased and there was no possibility for any third person to commit the murder of the deceased. In the cross-examination of P. Ws. 4 to 7, some contradictions are elicited, which are marked as Exs. D2 to D6. In Ex.D2, P.W.4 has stated that he caught hold of the hand of the deceased and checked the pulse and it was beating. P.w.5 stated before the police that by the time, he went to the house of the accused, Balagoud and Laxman were present. P.W.6 stated before the police that by the time he went there, only Gandla Laxman, Balagoud, Nagabhushanam were at the house of the accused. P.W.7 stated before the police that Dr. Mahender Goud examined her and declared her as dead. So, these contradictions recorded under Exs. D2 to D6, elicited in the cross-examination of P. Ws. 4 to 7, are innocuous and they do not go to the root of the case of the prosecution. These contradictions are bound to occur even in case of truthful witnesses and they can be said to be innocuous. Since P. Ws. 4 to 7 are independent witnesses and there is no other reason for them to foist a false case against the accused, their evidence can be accepted.

25. So, from the above circumstances, it is quite clear that it is the accused and none else is the assailant of the deceased.

26. Now, what is to be seen is whether the accused has committed the offence u/s 302 of I.P.C. ?

27. The death of the deceased is not in dispute. According to the prosecution, about 2.00 p.m. while the deceased was being shifted to the hospital, she died

on the way. There is evidence to show that a quarrel ensued between the accused and the deceased preceding the incident. There is no motive for the accused to commit the murder of the deceased. Except pressing the neck, he has not caused any other injuries. Further, the doctor, who conducted the postmortem examination has not stated that the injuries found on the body of the deceased are sufficient to cause death in the ordinary course or at any rate, they are likely to cause instantaneous death of the deceased. Exception 4 can apply only if all the four conditions laid down are satisfied (i) absence of premeditation (ii) there must be a sudden fight (iii) the killing must be heat of passion upon a sudden quarrel and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner. The first part of Section 304 I.P.C. is intended only on those cases in which the act of the accused person would be culpable homicide amounting to murder, but to the fact that it was committed in circumstances which render one or other of the exceptions in Section 300 I.P.C. applicable. The first part of the section postulates a more serious class of offences where the Courts can infer that there is a clear intention. On this aspect, it is pertinent to refer to a decision in Sachchey Lal Tiwari Vs. State of Uttar Pradesh,

The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be

noted that the "fight" occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

Therefore, it is a case of culpable homicide not amounting to murder and falls under Exception 4 of Section 300 I.P.C. and it is punishable u/s 304 Part-I of I.P.C.

28. Hence, it cannot be said that the accused pressed the neck of the deceased with an intention to kill her, but it was preceded by a sudden quarrel. Therefore, it would amount to committing of an offence u/s 304 Part-I of I.P.C.

29. In the result, the conviction and sentence recorded by the VII Additional Sessions Judge (Fast Track Court), Nizamabad at Bodhan vide judgment dated 26.4.2007 in Sessions Case No. 384 of 2006 against the Appellant/Accused of the offence punishable u/s 302 of I.P.C. are set aside. However, Appellant/accused is found guilty of the offence punishable u/s 304 Part-I of I.P.C. and accordingly he is convicted and sentenced to undergo rigorous imprisonment for seven years.

30. The remand period undergone by the Appellant/accused during the course of investigation, trial and after conviction shall be given set off u/s 428 of Code of Criminal Procedure

31. The appeal is partly allowed to the extent indicated above.