

Aradadi Ramudu & Aggiramudu

v.

State,Rep.By Insp. Of Police,Pondicherry

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE ANIL R. DAVE

Criminal Appeal No. 404 Of 2012 (@ Special Leave Petition (Crl.) No. 8012 Of 2010) | 15-02-2012

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Judicature at Madras in Criminal Appeal No.1083/2007 dated 05.11.2009. By the impugned judgment and order, the High Court, after re-appreciating the entire evidence on record, has confirmed the Order of the Additional Sessions Judge, Pondicherry in S.C.No.99 of 1997 dated 29.04.1999, by which the appellant-accused was convicted under Section 302 of the Indian Penal Code (for short "the IPC") and sentenced to undergo rigorous imprisonment for life.

3. The deceased (Gangammal) was the wife of appellant-accused. It is the case of the prosecution that the accused was an alcoholic, and habitually beating his wife after picking up a quarrel with her for silly reasons. He also didn't reside under the same roof with her, and only occasionally visited her. Gangammal was eking her livelihood by working as a domestic servant. At the time of the incident, Gangammal and the accused had a son and a daughter.

4. It appears that on the previous night of the incident, the accused severely beat Gangammal as he doubted her fidelity. On 13.08.1997, around 6.45 a.m., the accused attacked her neck with a kitchen knife, causing her to bleed profusely, which ultimately led to her death.

5. It has come in the evidence of P.W.2 (the neighbour) that she barged into the Gangammal's house on hearing her shriek in pain, and found Gangammal in a severely injured condition. In her evidence, she has also stated that Gangammal told her that the accused had caused the knife injury on her neck. Thereafter, P.W.2 has deposed that she asked Gangammal to change her blood soaked saree and arranged for a rickshaw puller to shift Gangammal from the house to the Government Hospital at Yanam.

6. In the hospital, P.W.1 (the doctor) treated the deceased. In the Examination-in-Chief, he has elaborated the nature of the injuries that Gangammal had suffered and the treatment that was given to her. He has further stated that, for better treatment, he had advised P.W.2 to take her to the Government Hospital, Kakinada. He has further stated that Gangammal had told him that the accused had first tried to throttle her neck and later on stabbed her on the neck with a knife.

7. We have the evidence of P.W.3 (son of the accused and deceased) and P.W.4 (daughter of the accused and deceased), who, at that time, were 16 years and 14 years respectively. Both of them, in one voice, have stated that there used to be quarrel between their mother and father and their father used to beat their mother. They have also stated that after they came back to the house, they were informed that the accused had caused the knife injury on the neck of their mother.

8. P.W.5 (the rickshaw puller who transported the deceased to Government Hospital, Yanam) has testified that the deceased had stated to him that the accused had stabbed her on the neck. P.W.12 (the doctor who treated the deceased at Government Hospital, Kakinada) has explained the treatment she gave to the deceased in her evidence, and has confirmed that the death of the deceased was caused by the stab injury inflicted on her neck. In the evidence of P.W.13 (the medical examiner who conducted the post mortem) and the post mortem report, the nature of the injury on the body of the deceased and the seriousness of the same has come on record.

9. The Trial Court, after appreciating and analysing the entire evidence on record, has come to the conclusion that the knife injury caused by the accused on the neck of the deceased was sufficient to cause her death. Accordingly, it has convicted and sentenced the accused under Section 302 of the IPC, awarding rigorous imprisonment for life. The same is confirmed by the High Court, which decision is impugned before us.

10. We have heard Shri. Shekhar Prit Jha, learned amicus curiae appearing for the appellant and Shri. V. Kanagaraj, learned senior counsel appearing for the respondent. We have also perused the evidence on record and the testimonies of the various witnesses.

11. After a careful analysis of the evidence on record, we are of the firm opinion that the conviction and sentence awarded by the Trial Court and confirmed by the High Court, does not suffer from any legal infirmity which would call for our interference under Article 136 of the Constitution.

12. However, Shri Jha, learned amicus curiae would contend before us that in the instant case, the sentence requires to be modified from Section 302 IPC to Section 304 Part-II of IPC. According to the learned amicus curiae that the accused had no intention to kill the deceased and the injury which was inflicted on the deceased was not sufficient to convict and sentence the accused under Section 302 of the IPC.

13. Shri. V. Kanagaraj, learned senior counsel appearing for the respondent has stated that the factum of the accused causing the knife injury on the neck of the deceased has come in the testimonies of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 (a village elder). He would also state that the injury sustained by the deceased was of a serious nature and ultimately led to her death. The learned senior counsel would submit that in light of the evidence on record, our interference, in respect of the sentence, was not called for.

14. Though the submission of the learned amicus curiae looks attractive at the first blush, weighing the same with the facts of the present case and evidence on record, in our opinion, the same has no merit.

15. In *State of UP v. Indrajeet*, (2000) 7 SCC 249, this Court held:

"7.....Absence of intention to cause death coupled with the lack of knowledge that death would be inevitably caused on account of the injury would make the offence fall only under Section 304 Part II IPC, and not under Section 302 IPC....."

In *Satish Narayan Sawant v. State of Goa*, (2009) 17 SCC 724, this Court held:

"41.....It is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death."

16. In other words, this Court has held that for modification of sentence from Section 302 to Section 304 Part II, not only should there be an absence of the intention to cause death, but also an absence of intention to cause such bodily injury that in the ordinary course of things was likely to cause death.

17. There is concurrent affirmative finding of fact by both the Courts below regarding the intention of the accused to kill the deceased. Having perused the evidence on record, and on account of the concurrent findings, we are unable to accept the submission of Shri. Jha that there was an absence of intention to kill on the part of the accused, meriting our interference in sentence. Further, this Court, in *Chahat Khan v. State of Haryana*, (1972) 3 SCC 408, held:

"9.....When a person is causing an injury on such a vital part the intention to kill can certainly attributed to him..."

18. Assuming for a moment that the accused had no intention to kill the deceased, it can still be said that he had the intention to cause an injury which would in the ordinary course of things would cause her death. In *Virsa Singh v. The State of Punjab*, 1958 SCR 1495, this Court, speaking through Vivian Bose, J., held (at pg. 1501):

"...It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a license to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

19. In *Arun Raj v. Union of India*, (2010) 6 SCC 457, held:

"22..... The appellant in this instance has used a kitchen knife. A kitchen knife with sharp edges is a dangerous weapon and it is very obvious that the appellant was aware that the use of such a weapon can cause death....."

20. In the instant case, it has come on record that the accused was an alcoholic and he was in the habit of beating his wife regularly after consuming enough and more liquor. It is also a matter of fact confirmed by the two Courts below that on the date of the incident, there was a quarrel between the accused and the deceased, and the accused caused injury on the neck of the deceased with a kitchen knife.

21. The doctor (P.W.1) in his medical report has stated the nature of the injuries suffered by the deceased due to the knife injury caused by the accused. A perusal of the medical report would definitely indicate that those injuries were sufficient enough to cause the death of the deceased. That apart, we should also notice that before the deceased was shifted to the Government Hospital at Yanam for treatment of the injuries, the saree worn by the deceased was literally soaked in blood. Therefore, her neighbour, who has come on record as (P.W.2), has stated that she had to advise the deceased to change her saree. This would indicate that because of the injuries suffered, there was profuse loss of blood which itself was sufficient enough to cause the death of the deceased.

22. In our view, the evidence on record is more than sufficient to indicate that the accused had the intention to cause such injury on the body of the deceased that would be in all likelihood cause her death in the natural course of things, fulfilling the conditions imposed by Section 300 of IPC for punishment under Section 302.

23. Keeping in view all these aspects, the submission of Shri. Jha, learned amicus curiae that the conviction and sentence awarded by the Trial Court and confirmed by the High Court requires to be modified from Section 302 IPC to Section 304 Part-II IPC, cannot be accepted by us.

24. In view of the above, we do not see any merit in this appeal. Accordingly, the appeal stands dismissed.

25. Ordered accordingly.