



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA
REFERRED TRIAL NO: 2 OF 2022

Between:

1. THE STATE OF ANDHRA PRADESH rep. by Public Prosecutor, High Court of Andhra Pradesh,
Amaravathi, through the Inspector of Police, Proddatur I Town P.S.,
(Crime No. 146/2021 Of Proddatur I Town Police Station).

...PETITIONER(S)

AND:

1. UPPALURU KARIMULLA aged about 34 years,
S/o. Chand Basha, Almirah work,
D.No. 25/9, Matti Mosque Street,
Now at Hyderkhan street,
Proddatur Town

...RESPONDENTS

Counsel for the Petitioner(s): LETTER

Counsel for the Respondents:

The Court made the following: ORDER



**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI
PRATAPA**

**REFERRED TRIAL No.2 of 2022
AND
CRIMINAL APPEAL No.526 of 2022**

COMMON JUDGMENT:- (Per Hon'ble Sri Justice C.Praveen Kumar)

Referred Trial No.2 of 2022 is numbered pursuant to a letter, dated 19.10.2022, addressed by the learned II Additional District and Sessions Judge, Kadapa at Proddatur to this Court for confirmation of death sentence while Criminal Appeal No.526 of 2022 is filed by the accused challenging the conviction and sentence, dated 19.10.2022, imposed in Sessions Case No.162 of 2021 by the learned II Additional District and Sessions Judge, Kadapa at Proddatur.

2. Heard Ms. Santhi Sree Vallabhaneni, learned Legal Aid Counsel for the appellant/accused, and also Sri P. Veera Reddy, learned Senior Counsel, who was asked to assist the Court and Sri S. Dushyanth Reddy, learned Additional Public Prosecutor for the State.

3. The sole accused herein was tried for an offence punishable under Section 302 I.P.C. for causing the death of



Uppaluru Mohammad Rafi (hereinafter, referred to as “deceased No.1), Shaik Karimun (hereinafter, referred to as “deceased No.2) and Uppaluru Gulzar Begum (hereinafter, referred to as “deceased No.3) on 26.04.2021 at 7.15 a.m. at his parents’ house situated in D.No.25/9, Matti Mosque Street, Proddatur.

4. *Vide* judgment, dated 14.10.2022, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 I.P.C., and on 19.10.2022, sentenced him to death and to pay fine of Rs.2,000/-, in default of payment of fine, to suffer rigorous imprisonment for a period of two months.

5. The facts, as spelt out from the evidence of the prosecution witnesses, are as under:-

P.W.1 is the father of the accused. P.W.2 is the younger brother of the accused. P.W.3 is the son-in-law of P.W.1. P.W.4 is the daughter-in-law of P.W.1, who is the wife of P.W.2. P.Ws.5 and 6 are the neighbours of the accused. The accused is the elder son of P.W.1. Parents of the accused, sister and one brother were residing in one house while P.W.2 and his wife were residing in the upstairs portion of the same house. The accused and his wife were residing in another house in the adjoining street. It is stated that the accused was in the habit of avoiding to do any work and was quarrelling with his parents



and other family members for money. The accused also quarrelled with his parents suspecting the character of his wife and demanded his parents to take steps for divorce. A mediation was held but the accused did not attend the same. Thereafter, elders chastised the accused but there was no change in his attitude. It is said that quarrels of this nature ensued on 25.04.2021, which continued till mid night. P.W.2 and other family members advised the accused not to quarrel with his parents. On that, he went to his house, quarreled with his wife and came back to the house of P.W.1 at 8.00 p.m. and quarreled with them till mid night, demanding divorce from his wife. He was again sent to his house but however, he returned back to his house on the ground that his wife had not opened the doors of his house. When he was allowed to come inside, he again started quarelling with P.W.1 and other members and finally, slept on a sofa, which was in the varandah. While so, on the next day i.e., on 26.04.2021, at 7.45 a.m., P.W.2, on hearing cries from down stairs, came down and saw the accused with a blood stained pestle. He also noticed P.W.1 and neighbours standing there.

On 26.04.2021, P.W.1 went to bazaar at about 6.30 a.m., returned home at about 7.45 a.m. and noticed the dead bodies of his wife, elder son and daughter with injuries. It is said that



the accused was responsible for the death of the three deceased. All the witnesses deposed about the accused running away from the said house armed with a pestle and proclaiming that he had killed his mother, sister and brother. He also claimed to have stated that P.W.2 escaped from the assault as he is staying in the upstairs portion of the house.

Law was set into motion by lodging a report with P.W.19 – Sub Inspector of Police, Proddatur I Town Police Station, who registered a case in Crime No.146 of 2021 under Section 302 I.P.C. Ex.P-11 is the F.I.R. Further investigation in this case was taken up by P.W.20 – Circle Inspector of Police, Proddatur Rural Police Station, who on receipt of copy of the F.I.R., visited the scene of offence and found three dead bodies in a pool of blood. He conducted inquest in the presence of P.Ws.14, 17 and another. At the time of inquest, he examined P.Ws.1 to 6 and recorded their statements. At the time of inquest, he seized blood stained yellow colour T-shirt, elephant grey pant, coffee colour underwear, which were marked as M.O.3. He also collected blood stained blue biscuit colour Punjabi dress, blue colour pyjama, blue colour chunni, which was marked as M.O.4. He also collected blood stained saree and blouse, petticoat and bangles, which were marked as M.O.5 apart from M.Os.6 to 9. Ex.P-5 is the Inquest Report of deceased No.1.



After completing the inquest proceedings, he sent the bodies for post mortem examination.

P.Ws.15, 16 and 18 conducted autopsy over the three dead bodies of the deceased and issued Exs.P-6, P-7 and P-10 – Post Mortem Reports of Mohammad Raji, Guljar Begum and Shaik Karimun respectively. On 26.04.2021, at 2.45 p.m., while P.W.7 was in Secretariate, the accused came to him and confessed about killing deceased Nos.1 to 3 in the morning hours of the same day, by beating them with a pestle. Ex.P-2 is the confessional statement. The statement of the accused was reduced into writing and thereafter, he was taken to P.W.20 along with a report by P.W.7. The Investigating Officer examined the accused, who confessed about the commission of the offence. Pursuant to the confession made, M.O.2 – blood stained pestle was said to have been recovered.

P.W.21, who took up further investigation in this case, examined the witnesses, collected the documents and filed a charge sheet, which was taken on file as P.R.C.No.20 of 2021 on the file of the learned I Additional Judicial Magistrate of First Class, Proddatur.

6. On appearance of the accused, copies of the documents, as required under Section 207 Cr.P.C., were supplied to him. As



the offence is triable by a Court of Sessions, the case was committed to the Court of Sessions under Section 209 Cr.P.C. Accordingly, the same was made over to the Court of the learned II Additional District and Sessions Judge, Kadapa at Proddatur for trial and disposal in accordance with law.

7. Basing on the material available on record, charge, as referred to earlier, came to be framed, read over and explained to the accused in Telugu to which, he pleaded not guilty and claimed to be tried.

8. To substantiate its case, the prosecution examined P.Ws.1 to 21, got marked Exs.P-1 to P-14 and M.Os.1 to 9. After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses to which he denied. On behalf of the accused, none were examined. However, got marked Exs.D-1 to D-4 – contradictions in the evidence of the prosecution witnesses.

9. Believing the evidence of eye witnesses, the learned Sessions Judge convicted the accused. Against this conviction and sentence, the present Criminal Appeal came to be filed.



10. Ms. Santhi Sree Vallabhaneni, learned Legal Aid Counsel, mainly submits that the evidence of any of the eye witnesses does not disclose the involvement of accused in the crime. She further contends that when the accused was living in a separate house in a different street, question of he causing the death of the inmates of the house of P.W.1 cannot be believed. She took us through the evidence of the eye witnesses and the answers elicited in the cross examination to show that no credence can be given to these witnesses to base a conviction.

11. Sri P. Veera Reddy, learned Senior Counsel, would submit that before imposing death sentence, a duty is cast upon the Court to call for a report about the health condition of the accused at the time of sentencing and in the absence of the same, the Court can award appropriate sentence only after obtaining a report from the medical officers. He relied upon the judgment of the Hon'ble Supreme Court in **Manoj and others vs. State of Madhya Pradesh**¹ in support of his plea. Insofar as the merits of the case are concerned, learned counsel would contend that though there are eye witnesses to the incident, but the manner in which the incident is narrated by the prosecution witnesses appears to be improbable. In any event, he would submit that he would make further submissions after obtaining

¹ 2022 SCC Online SC 677



report about the health condition of the accused. On receipt of report, the learned Amicus, also argued the case on merits.

12. On the other hand, Sri S.Dushyanth Reddy, learned Additional Public Prosecutor appearing for the State, opposed the same contending that the evidence of four witnesses, who were examined as eye witnesses, amply establishes the involvement of the accused in the commission of the offence. According to him, there is no motive for them to speak false against the accused as they are none other than the father, brother, brother-in-law and sister-in-law of the accused.

13. The point that arises for consideration is:-

“Whether the prosecution has proved the guilt of the accused for the offence punishable under Section 302 I.P.C. beyond all reasonable doubt?”

14. **POINT**:-

Before going into the merits of the case, it would be appropriate for us to refer to the issue relating to sentencing of the accused to death, having regard to the medical certificate. Since the entire material is before this Court, it may not be necessary for this Court to send the matter back to the trial Court for imposing sentence in view of the medical reports. Hence, this Court has gone into the medical reports and the law



laid down in **Manoj's** case (1 cited supra) to decide as to whether the trial Court was right in imposing death sentence.

15. Coming to the merits of the case, the prosecution is mainly relying upon the evidence of P.Ws.1 to 8. P.W.1 is the father of the accused. He, in his evidence, deposed that on 26.04.2021, at about 6.30 a.m., he went out to Bongu Bazar and returned home at 7.45 a.m. By that time, P.Ws.4, 5 and 6 gathered at the house as there was some galata between the accused and deceased Nos.1, 2 and 3. When P.W.1 tried to go inside the house, the accused came out pushing the door, proclaiming that he killed his wife, son and daughter and also informed that his another son/P.W.2 escaped as he was living in the upstairs portion of the house. The reason for the accused causing the death of three persons appears to be that he was suspecting the character of his wife and when he tried to get divorce, his family members [deceased Nos. 1 to 3] did not help him to get divorce. There were frequent quarrels between the accused and his family members with regard to the issues involved and that on the previous day i.e., on 25.04.2021 also, there was a quarrel which went on till late night.

16. P.W.1 was subjected to lengthy cross examination but no incriminating material has been elicited to discredit his testimony with regard to the incident in question but to a



question put with regard to the mental condition, it is stated as under:-

“It is not true that the accused is not mentally sound since his childhood. It is not true that the accused has to take the tablets regularly otherwise his behaviour will be in different manner.”

It is to be noted here that P.W.1 is the father of the accused and he has no necessity to speak falsehood against his own son, more so, when there was no dispute except the dispute between the accused and his wife in the family, more so, when efforts have been made to settle the dispute between the accused and his wife through mediators.

17. P.W.2 is the younger brother of the accused, who has no enmity against his brother. His evidence also shows that accused was quarelling with his parents suspecting the character of his wife and demanded his parents to take steps for divorce. He also arranged mediation with elders but the accused did not heed to the said mediation. Thereafter, elders also chastised the accused but there was no change in the attitude of the accused. He also speaks about the quarrel that took place on 25.04.2021. On the fateful day, at about 7.45 a.m., on hearing the cries, he got down from the upstairs and saw the accused with a pestle stained with blood. He also



saw P.W.1 and P.Ws.5 and 6 in his house. Then the accused left the house saying that he has killed his mother, brother and sister and that P.W.2 had escaped, as he is staying in upstairs. He went inside and saw the dead bodies lying in a pool of blood with injuries. He was also cross examined at length but nothing has been elicited to show except as mentioned hereunder:-

“It is not true that the accused is mentally distorted since his childhood. It is not true that he also used to have the medicines regularly for his mental disorder.”

18. P.W.3 is the brother-in-law of the accused and husband of the deceased Karimunnisa. He, in his evidence, deposed that the accused was not in the habit of attending any work and not earning money for his livelihood. According to him, the accused used to quarrel with in-mates and other family members for money. On 25.04.2021, the accused threatened all the deceased, P.Ws.1 and 2 and P.W.4 with dire consequences if they do not provide divorce to his wife. On the next day, at 8.00 a.m., P.W.3 went to the house of his in-laws to bring his wife to the hospital for medical check up but by the time he reached, there was large gathering. He also heard hues and cries. He went inside the house and found the dead bodies of his mother-in-law, wife and brother-in-law in a pool of blood with injuries.



19. So also is the version of P.W.4, who is none other than the daughter-in-law of P.W.1 i.e., wife of P.W.2.

20. Two neighbours – P.Ws.5 and 6 were examined to speak to the incident. According to them, on the fateful day, at 7.30 a.m., P.W.5 went to the house of P.W.1 but P.W.1 was not there. However, they saw the accused coming out of the house and when P.W.5 asked about his mother, the accused replied that his mother went to his sister's house. By that time, P.W.6, her husband and P.W.1 also came there and they noticed accused coming out with blood stained hands with pestle, who informed P.W.1 that he killed deceased Nos.1 to 3 with the pestle and escaped from there by jumping the wall. All of them went inside the house and found the dead bodies in a pool of blood.

21. The evidence of P.W.5 gets corroboration from the evidence of P.W.6, who is also a neighbour.

22. From the evidence of these independent witnesses, it has been established beyond reasonable doubt that on the fateful day, on hearing the cries, P.Ws.2 to 6 went to the scene and saw the accused coming out of the house with blood stained pestle and they noticed three bodies lying in the house.



23. At this stage, learned counsel for the appellant would try to contend that when the accused is not staying in the house of P.W.1., question of he causing the death does not arise.

24. It may be true that the accused was not staying along with P.W.1 and that he is staying separately in another house along with his wife in the adjoining street but on that day, the evidence on record, more particularly, the evidence of P.W.2 would show that after the quarrel, the accused was asked to go to his house. He went to his house, quarreled with his wife and again returned back. After coming back, he again started quarrelling with P.W.1 and others. As such, he was sent to his home again. He returned back saying that his wife did not open the door and was not allowed to enter the house. He stayed in the house of PW1 and on the next day morning, the incident in question took place. Therefore, the presence of the accused in the house of P.W.1 cannot be doubted.

25. At this stage, this Court felt that in view of the law laid down in **Manoj**'s case (1 cited supra), a report has to be called for from the District Collector, Kadapa, Deputy Superintendent of Police, Kadapa and the Superintendent of Central Prison/District Prison, Kadapa with regard to the health condition of the accused. As such, a detailed order came to be passed by this Court on 23.12.2022. After referring to various



judgments of the Hon'ble Apex Court coupled with the plea taken by him and the charge framed, this Court directed the District Collector, Kadapa, Deputy Superintendent of Police, Kadapa and the Superintendent of Central Prison/District Prison, Kadapa to send their reports within a period of two weeks in terms of the observations made by the Hon'ble Supreme Court in **Manoj's** case (1 cited supra). It was categorically held that the report should not only relate to soundness of mind of the accused but also with regard to other parameters laid down in the judgment referred to above. Pursuant thereto, a Memo, dated 14.02.2023, along with Medical Report is placed before this Court. The Medical Certificate enclosed along with the said memo, reads as under:-

"MEDICAL CERTIFICATE

This is to certify that Mr. Uppaluru Karimullah, S/o.Chand Basha, Aged 34 years with RP No.4094 was admitted in Central Prison, Kadapa on 28.04.2022. On his admission, he was examined by the Prison Medical Officer and it is learnt that he is not suffering any ailments (Diseases).

Further, he was complaining of severe headache and decreased sleep. Then the Prison Medical Officer referred to Government General Hospital, Kadapa on 05.05.2021 for psychiatry O.P. The Specialist Doctor of Government General Hospital, Kadapa examined him and diagnosed as Schizophrenia and prescribed medication and the same has continued in our prison Hospital.



Then, the prisoner was convicted and his status changed from R.P 4094 to CT 9262 on 19.10.2022. The prisoner was continued in Prison Hospital and continued the same medication prescribed by Psychiatrist. The Prisoner has being examined monthly once by psychiatrist in Government General Hospital, Kadapa.

On 02.01.2023 the Prison Medical Officer referred to Government General Hospital, Kadapa. For evaluation of soundness of mind as per the orders of the Hon'ble High Court of Andhra Pradesh.

The Psychiatrist of Government General Hospital, Kadapa has examined and referred to Government Hospital for Mental Care, Visakhapatnam.

On 04.01.2023, the Prisoner sent to Government Hospital for Mental Care, Visakhapatnam for evaluation of soundness of mind of the convict. They admitted the above said prisoner as inpatient and treated and discharged him on 05.02.2023.”

26. In view of the Medical Certificate issued by the Deputy Civil Surgeon, Central Prison, Kadapa and basing on the reports submitted by others, Sri P. Veera Reddy, learned Senior Counsel, would contend that the accused was diagnosed as suffering from schizophrenia and according to him, even the accused continued with the medication prescribed by the Psychiatrists and since the accused is under the supervision of Psychiatrists and taking medicines, the death sentence awarded by the trial Court would be illegal.



27. The same is seriously opposed by Sri S. Dushyanth Reddy, learned Additional Public Prosecutor, contending that there is no material on record to show that on the date of commission of the offence, the accused was suffering with schizophrenia and according to him, schizophrenia appears in spells and in the absence of any material to indicate he was mentally unwell as on the date of incident, question of interference with conviction and sentence may not be proper.

28. Learned Senior Counsel tried to contend that since the petitioner was suffering from schizophrenia or some psychiatric disorder, he is entitled for benefit under Section 84 I.P.C.

29. We are not inclined to accept the said argument for the reason that in order to establish the same, there should be some positive evidence on record to show that he was of unsound mind as on the date of the incident. Even in his Section 313 Cr.P.C., examination, the accused except admitting to the question posed, never stated that he was of unsound mind as on the date of incident. In **Mariappan vs. State of Tamilnadu**² the Apex Court held that to bring a case within Section 84 I.P.C., or within any special exceptions, the burden is on the accused, as contemplated under Section 105 of the Evidence Act, 1872. In the absence of any material on record to

² (2013) 12 SCC 270



show that the accused was of unsound mind as on the date of commission of the offence, question of extending the benefit under Section 105 of the Evidence Act does not arise, more so, when the suggestions given to the witness with regard to the mental condition of the accused were denied by the family members of the accused themselves.

30. Under those circumstances, the conviction imposed by the trial Court for the offence punishable under Section 302 I.P.C. warrants no interference of this Court.

31. In **Manoj's** case (1 cited supra), the Hon'ble Supreme Court, in para No.223, while referring to Chhannu Lal Verma's case, observed as under:-

“In the matter of probability and possibility of reform of a criminal, we do not find that a proper psychological/psychiatric evaluation is done. Without the assistance of such a psychological/psychiatric assessment and evaluation it would not be proper to hold that there is no possibility or probability of reform. The State has to bear in mind this important aspect while proving by evidence that the convict cannot be reformed or rehabilitated.”

32. While dealing with the guidelines, to collect mitigating circumstances, the Apex Court, in para Nos.226 to 229 observed as under:-

“226. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid



slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

227. To do this, the trial Court must elicit information from the accused and the state, both. The state, must - for an offence carrying capital punishment - at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4) - an onus placed squarely on the state - conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

228. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

- a) Age*
- b) Early family background (siblings, protection of parents, any history of violence or neglect)*
- c) Present family background (surviving family members, whether married, has children, etc.)*
- d) Type and level of education*
- e) Socio-economic background (including conditions of poverty or deprivation, if any)*
- f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)*
- g) Income and the kind of employment (whether none, or temporary or permanent etc);*



h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any) etc.

229. This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.”

33. From the observations made, it is clear that before awarding death sentence, the accused should be given an opportunity to produce evidence in rebuttal towards establishing all mitigating circumstances namely age, early family background, present family background, education, socio-economic background, criminal antecedents, income and kind of employment, history of unstable social behaviour or mental or psychological ailments etc. Though the accused pleaded before the trial Court that he is normal, the persuasion of the learned Senior Counsel basing on the material available on record lead us to call for a report from the Superintendent, Central Prison, Kadapa, who, in categorical terms, stated that the specialists diagnosed the accused as suffering from schizophrenia and prescribed medication, which continued in the hospital. Even after conviction, the accused continued in the prison hospital and he is being given some medication prescribed by the Psychiatrists. It is further stated that he is under constant observation by the General Hospital, Kadapa.



The medical officers of the Government General Hospital have been examining the patients regularly for evaluation of the soundness of mind. In fact, in the month of February, 2023, the accused was sent to Government Hospital for Mental Care, Visakhapatnam for evaluation of soundness of mind where he was admitted in the hospital on 04.01.2023, treated and then, discharged on 05.02.2023. From the above, it is clear that the health condition of the accused is not good/not of sound mind as on the date of conviction and sentence. That being so, we feel that it is improper for the trial Court to award death sentence. In fact, the trial Court never went into this aspect or called for a report or gave an opportunity to the accused, as required under **Manoj's** case (1 cited supra), before imposing death sentence. Under those circumstances, the death sentence awarded by the trial Court, in our view, has to be set aside and the same is modified to imprisonment for life.

34. In the result, the sentence of death recorded by the learned II Additional District & Sessions Judge, Kadapa at Proddatur on 19.10.2022 *vide* judgment in Sessions Case No.162 of 2021 against the appellant/accused for the offence punishable under Section 302 I.P.C. is set aside. However, while confirming the fine amount, the appellant/accused is sentenced to undergo imprisonment for life. The appellant/accused is not



entitled for remission of sentence. It is needless to mention that the jail authorities shall provide treatment to the appellant/accused, as required, for the ailment with which he is suffering.

35. Accordingly, Referred Trial No.2 is answered and Criminal Appeal No.526 of 2022 is partly allowed.

Miscellaneous petitions pending, if any, in the Criminal Appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date : 15.02.2023
AMD/S.M.

Note:
LR copy to be marked.



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**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI
PRATAPA**

**REFERRED TRIAL No.2 of 2022
AND
CRIMINAL APPEAL No.526 of 2022**

Date : 15.02.2023

AMD/SM.