

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.1461 of 2007

-

ORDER:

This criminal revision case under sections 397 and 401 of the Code of Criminal Procedure ('the CrPC' for short) by the petitioner/sole accused is directed against the judgment dated 16.02.2006 of the learned IV Additional Sessions Judge, (Judge, Fast Track Court), Nizamabad in CrI.A.No.96 of 2004 whereby the learned Judge while dismissing the said appeal of the said accused had confirmed the judgment dated 09.12.2004 in SC.No.99 of 2001 passed by the learned Assistant Sessions Judge, Nizamabad.

1. (a) The trial court had found the accused guilty of the offence punishable under Section 304-II of the IPC and convicted him under Section 235 of the CrPC and sentenced him to undergo simple imprisonment for seven years and pay a fine of Rs.2,000/- and suffer simple imprisonment for six months in default of payment of the said fine amount; and had further directed that the said fine amount shall be paid to PWs1 and 2 as compensation.

2. I have heard the submissions of the learned counsel for the petitioner/accused and the learned Additional Public Prosecutor appearing for the respondent/State.

2. (a) The learned counsel for the accused had contended that the ingredients constituting the offence alleged against the accused are not made out from the evidence adduced by the prosecution and that the highly interested testimonies of PWs 1 to 3, 6, 7 and 8 are totally discrepant on material particulars and that the prosecution had failed to establish the presence of PWs6 and 7 at the scene of offence and that their presence is doubtful and that there is no credible evidence brought on record by the prosecution and that the stick with which the accused had allegedly beaten the deceased was not recovered during the course of investigation and that the court below had erred in placing reliance on the evidence of the above

said witnesses despite the fact that PWs 4 and 5 did not support the case of the prosecution. He had forcefully contended that non-examination of the Investigating Officer resulted in deprivation of an opportunity to prove contradictions and omissions and that therefore, prejudice has been caused to the accused and that in any view of the matter, the accused is entitled to a reasonable benefit of doubt and a consequential order of acquittal.

2. (b) Per contra, the learned Additional Public Prosecutor had contended that the prosecution by examining PWs 1 to 3, 6, 7 and 8 had brought on record the required standard of evidence and that the said evidence was properly appreciated by the courts below and that the concurrent and well-reasoned findings in the well-considered judgments of the courts below are sustainable and that there is no merit in the revision case and that the contentions urged in this revision are devoid of merit and that therefore, the revision is liable to be dismissed.

3. Now the points for determination are:

- 1. Whether the deceased met with a homicidal death? And, if so, whether the deceased was murdered?**
- 2. Whether the accused is the culprit responsible for the death of the deceased?**
- 3. Whether the prosecution could bring home, beyond all reasonable doubt, the guilt of the accused for the offence with which he is charged?**
- 4. Whether the accused had made out valid and sufficient grounds for his acquittal?**

4. POINTS:

4. (a) The gravamen of the charge and the case of the prosecution, in brief, are as follows: - “The informant who had lodged the first information dated 24.03.2000 at 09:30 AM with the Station House Officer, Dharpalli Police Station is the father of the deceased. In his report, he had stated as follows: - ‘His daughter Rena (the deceased) was given in marriage to the accused about six years back as his second wife. She used to live with the accused and his first wife and the children. Under lawful wedlock, she gave birth to a male child. The first wife of the accused is also having five living children. The accused is addicted to alcohol. He used to beat his

daughter/the deceased-Rena. About two years prior to 24.03.2000 the accused picked up a quarrel with the deceased and drove her out from his house. However, he (the informant) had convinced his daughter/the deceased and sent her back to the house of the accused. On 23.03.2000 he received information through one Siva of Vengalpadu that his daughter Rena was in a serious condition. He along with his family members visited Vengalpadu on 24.03.2000 at about 06:00 AM and found the dead body of the deceased lying on the ground in the house of the accused and that no inmates were present in the house. On suspecting that the accused is responsible for the death of his daughter, he had lodged the report.' On registration of the said report as case in crime no.10 of 2000 under Section 174 of the CrPC, investigation was taken up. Inquest was held on the dead body of the deceased and the dead body was sent to Government Hospital for post mortem. After conducting the autopsy, the Doctor had opined that the deceased died due to injuries to C2 and C3. After examining the witnesses, the section of law was altered on 23.04.2000, from 174 of the CrPC to Section 304 – II of the IPC. The investigation had revealed that PWs4 to 7 are the direct witnesses to the offence and that PWs6 and 7 visited the house of the accused on 23.03.2000 along with the first wife of the accused and that the accused having consumed alcohol had picked up a quarrel with the deceased and caught hold of tuft of her hair and slapped her and that due to the beating she had sustained injuries to brain resulting in partial dislocation of C2 and C3 and had died on the spot. Therefore, the investigating officer had laid a charge sheet after completing formalities.”

4. (b) Now it is necessary to examine the evidence on the side of the prosecution. The prosecution examined PWs1 and 2 who are the father and mother of the deceased and PW3 a neighbor of the house of the accused. PWs6 and 7 are the direct witnesses to the incident in which the deceased who was beaten by the accused had died on account of the injuries sustained in the said incident. PWs1 and 2, the parents of the deceased, only spoke about the marriage of the deceased with the accused and her giving birth to a son under lawful wedlock and the frequent beating of their daughter by the accused while being in a drunken condition and their daughter's return to their house on being driven out of the house by her husband and their immediate intervention and pacifying and convincing their daughter to join the accused and their daughter again joining the accused at his house and their coming to know, about one week there after, through one Siva that their daughter/Rena was admitted in the hospital and that her condition was serious.

They had further deposed that they, along with their caste elders, had visited Vengalpadu thanda and that they had found Rena, their daughter, lying on ground in the house of the accused and that they had tried to offer water to her but she did not either take water or talk to them and that they had found that her head was twisted and that at that time there was nobody else in the house and that their enquiries with the neighbors were of no avail. Therefore, they had suspected that the accused had twisted the neck/head of the Rena and caused her death. PW3 testified that about four years back Rena died due to hanging and that on hearing the cries of the children of the accused and the deceased she went to the house of the accused and that by that time the body of Rena was brought down. Thus she did not support the case of the prosecution. PW4 is the first wife of the accused. She testified that the accused is her husband and that the deceased is the second wife of the accused and that four years prior to her giving evidence the deceased had died and that the accused and her son Gangaram went to fields for watering and that she was also not in the house and that she had also gone to the fields and that she does not know the cause of death of Rena and that the dead body of Rena was in the house and that on their return from the fields they had found that Rena was dead. She also did not support the case of the prosecution. PW5 is the son of the accused through his first wife. He also did not support the case of the prosecution. PW6 is the sister of the accused. Her evidence which is of significance reads as under: 'Rena, the deceased, is her sister-in-law. Rena died about four years three months before her giving evidence before the trial court. The parents of the deceased belong to her village. About five or six days prior to the death of the deceased, PW4, who is the first wife of the accused, came to her house and informed them that the accused beat her. She went along with one Guja (PW7) and PW4 to the house of the accused to leave her (PW4) in the house of the accused. On that day the accused brought one hen and toddy and served food to all of them. When they were having food in the house of the accused, the accused and the deceased had a quarrel. The deceased abused the accused on the issue of doing household work. The accused beat the deceased with a stick. He gave two or three beatings to the deceased with the stick. He caught her head portion and lifted her and dropped her to the ground with force; and, he did like that for three times. She (PW6) tried to rescue Rena-the deceased, but the accused did not leave her. After lifting the deceased from the ground and dropping her three times, the accused hanged the deceased. She had witnessed all this and had later returned to her house.' Similarly, PW7 Guja testified as follows: -

‘PW6 is her co sister. About four years three months prior to her giving evidence, the deceased died. The accused is the husband of the deceased. PW4 is the first wife of the accused. She is her sister in law. About four or five days prior to the death of the deceased, PW4 came to her house. They took PW4 to the house of the accused for leaving her in the house of the accused. On the date of incident they had started from their village at about 02:00 pm and had reached the house of the accused at about 05:00 pm. The accused and the deceased were in the house. The deceased gave Rs.100/- to Gangaram for bringing one hen. Gangaram brought one hen. Food was prepared for them. They were served with food. The accused was in the house. They had started taking food. She did not take drink. Others had taken drinks (alcohol). When they were having food the deceased questioned PW4 as to why she left the house for all these days by leaving her five children. On that issue both the deceased and PW4 were quarrelling. Then the accused went and beat the deceased with hands and gave four or five beatings. She (PW7) and others had intervened. But they were not allowed by the accused to intervene and rescue the deceased. After beating with hands, the accused had lifted Rena/the deceased from ground and dropped her to the ground three times. Rena/the deceased did not get up. Then they had given water to her but she did not take the water. The water came out from her mouth. Then they thought that Rena/the deceased had died. Then the accused took Rena into the house and hanged her. The accused threatened them not to disclose the incident to anybody. Thereafter they had returned to their houses.’

4. (c) These are the two witnesses who spoke directly about the complicity of the accused and also his overt acts particularly in lifting the deceased from the ground and dropping her to the ground three times and her succumbing to the injuries sustained by her in that incident. In the cross examination, PW6 had stated to the following effect: - ‘I stated to the police that the accused hanged Rena. I asked the accused as to why he was hanging Rena but the accused dragged her. The neighbors were sleeping at that time (10 or 11 PM). On that day I and others consumed toddy (white toddy) and not arrack. At about 9 or 10 PM we had our food. There are two portions in the house of the accused. There are three doors to the house. Two portions are separated by one wall. The children of the accused were sleeping in the inside room. I had enquired with the accused; and he had told me that he was beating the deceased as she was abusing him. Megya and his wife

were present there at that time. No others were present. Guja was present. I stated to the police that the accused had beaten Rena with a stick. I cannot say with which stick the accused had beaten Rena. [Witness added 'as the current went off and as there was darkness']. Dharpalli police took me to the Armoor court. I was not tutored by police. It is true that I am not in good terms with the accused since the date when he beat PW4.' She had denied the following suggestions: 'It is not true to say that on the date of incident we consumed arrack and were lying on the ground in unconscious state and that I did not see anything and that I am deposing false at the instance of the police.' When it was further suggested to PW6 that she is deposing falsehood at the instance of the police and that the accused did not lift and drop the deceased to the ground with force thrice and that the accused had not hanged Rena, PW6 had denied all the suggestions as 'not true'. In the cross examination of the other witness PW7, the following points were elicited. 'PW4 was in my house for fifteen days after she came out from the house of the accused. On the day on which we went to the house of the accused along with PW4 the incident had happened and Rena had died. In the house of the accused there are three rooms and in the inside room I and Rena were there. In the middle room the accused and PW4 were there. I consumed toddy, others consumed ID liquor. PW6 took food. The incident had occurred at the place where we were having our food. We all were eating together at one place. Total five persons were eating. On that day current went off. The bus fare from our village to the village of the accused is Rs.10/- per head. I was not examined by the police. I stated to the Magistrate that the accused hanged Rena. When we went to the house of the accused along with PW4, Rena was in the house. The accused was also there. While eating I had consumed toddy and the others had consumed ID liquor. As the current was not there I did not observe whether the accused beat Rena with hands or with stick. There was no enmity between me and the accused. PWs1 and 2 came to the court today. They requested me to depose the facts that occurred before me. One police officer is outside the court. It is not true to say that the police officer had tutored me and I am giving false evidence. It is not true to say that I gave false statement at the instance of the police. A person from the village of the accused went and informed about the death of Rena to PWs1 and 2, and on the next day they came to the house of the accused.' She had denied the following suggestions: 'It is not true to say that no incident as spoken to by me had happened and that the accused is not responsible for the death of Rena and that accused did not lift Rena and drop her to the ground three times and that the

accused did not hang Rena and that I am deposing falsehood.' Even the cross examination of PW6 would show that her presence at the scene of offence was admitted and not disputed by the accused. PW6 had categorically said that at the time of incident PW7 was also present and that the incident had occurred while they were taking food. Their evidence clearly lays bare that they are related to the first wife of the accused and that on that day they brought the first wife of the accused to pacify the dispute between the accused and his first wife (PW4) Therefore, their evidence speaks of not only their presence but also the presence of the deceased and the accused on that day. The aspects like the evidence of PWs1 and 2 that they had found the dead body of the deceased in the house of the accused and that by the time they found the dead body in the house of the accused nobody else was present and that the accused was absconding coupled with absence of any explanation from the accused for the death of his second wife in his house substantiate the direct evidence in regard to the complicity of the accused in the case. Though PWs4 and 5, the first wife and the son of the accused, had turned hostile to the case of the prosecution, their evidence also would show that the deceased was in the house on that day and that they had also found the dead body in the house of the accused. Even PW3 testified that on hearing the cries of the children of the accused and the deceased, she went there and observed the dead body of the deceased and that at that time the dead body was brought down from hanging position. Therefore, the evidence of PWs6 and 7 would show that at the time of incident PW4, the first wife of the accused, the accused, the deceased and PWs6 and 7 were present in the house of the accused and that on that night when they were having food, the incident had occurred and that during the course of incident the accused beat the deceased and had lifted her by holding her head and dropped her on floor three times and that on account of the injuries sustained in the said incident, she had died instantaneously. The evidence of PW7 shows that when the deceased was dropped for the third time on the floor and when she did not get up they had tried to offer water and that she did not drink water and that water has come out from her mouth and that therefore, they had decided that the deceased has died and that afterwards the accused took her to the next room and hanged her. The Doctor/PW9 who had conducted post mortem on the requisition of the police testified as follows: - 'I conducted autopsy on the dead body of Rena from 03:50 to 05:30 on 24.03.2000 and found the following external injuries: 'Abrasion 1" x ½"' on the right side upper part of neck; two abrasions 1 ½" x ½", 1" x ½" respectively, one on the left

side of forehead and another on the left lower jaw, below the jaw. I found the face cyanosed (turned into bluish colour) and congested. The said injuries might have been caused by blunt object and they were ante-mortem in nature.' This Doctor had opined in her exhibit P3 report that the cause of death of Rena is 'Neurogenic shock due to injury to the medulla oblongata with partial dislocation of vertebrae, C2 and C3, with asphyxia'. When it was suggested to him that the cause of death is due to hanging, he had denied the said suggestion as 'not true'. He stated that he did not find any ligature marks on the neck of Rena and that he also did not find any fracture to hyoid bone.' In fact the doctor mentioned the said aspects in exhibit P3 post mortem report.

4 . (d) Thus, the medical evidence corroborates the oral testimony of the direct witnesses PWs6 and 7 on the relevant aspects. The evidence to the effect that the accused had lifted the deceased thrice and dropped her on the floor and that when the deceased did not get up, the accused had hanged the dead body of the deceased would clearly show that he is having knowledge of the consequences of the acts committed by him. The incident as narrated by PWs6 and 7 also would show that the accused beat the deceased after a quarrel had ensued and that he knew the result of the acts committed by him. Therefore, the conviction of the accused for the offence punishable under section 304-II of the IPC is sustainable in the facts peculiar to the case and the evidence brought on record, which is reliable and which does not create any doubt much less a reasonable doubt.

4. (e) The learned counsel for the petitioner/accused mainly contended that the non examination of IO in this case is fatal to the prosecution case. In support of his contention he had placed reliance on a decision in **State of UP v. Punni and others**. He had further pointed out that the incident in this case had occurred on 23.03.2000 and that the witnesses particularly PWs6 and 7 were examined by the police on 23.04.2000 i.e., one month after the incident and that the said witnesses are only the crucial witnesses and that no reason or explanation is forthcoming for the belated examination of the important witnesses and that therefore, for the defects in the investigation, the accused is entitled to a reasonable benefit of doubt. As the law is well settled that deficiencies in investigation by way of omissions or lapses on the part of investigating agency cannot themselves justify a total rejection of the prosecution case, to counter that proposition, reliance was placed upon a recent decision of the supreme court in **Surajit Sarkar v. State of West Bengal** wherein

the supreme court held as follows: **'we are not prepared to accept as a broad proposition of law that in no case can defective or shoddy investigations lead to an acquittal. It would eventually depend on the defects pointed out. If the investigation results in the real culprit of an offence not being identified, then acquittal of the accused must follow. It would not be permissible to ignore the defects in an investigation and hold an innocent person guilty of an offence which he has not committed. The investigation must be precise and focused and must lead to the inevitable conclusion that the accused has committed the crime. If the investigating officer leaves glaring loopholes in the investigation, the defence would be fully entitled to exploit the lacunae. In such a situation, it would not be correct for the prosecution to argue that the court should gloss over the gaps and find the accused person guilty. If this were permitted in law, the prosecution could have an innocent person put behind bars on trumped up charges. Clearly, this is impermissible and this is not what this court has said.'** I have carefully gone through the cited cases. In the case on hand, no contradictions were elicited and no omissions were brought on record. Hence, the absolute necessity of examination of the investigating officer did not arise in the case on hand and the non examination has not caused any prejudice to the accused. IN a case where there are omissions and contradictions to be proved through investigating officer his examination is indispensable. But a perusal of the evidence of PWs6 and 7 clearly would show that no material omissions and contradictions were brought on record. Further, PWs6 and 7 are of tribal community and they have neither interestedness nor motive to falsely implicate the accused in the crime. Further as already pointed out, the defence is not that they are implanted witnesses. In fact when PW6 was cross examined on behalf of the accused, it was suggested to her as follows: 'that on the date of incident they consumed arrack and were lying on the ground in unconscious state and that she did not see anything and that she is deposing false at the instance of police.' These suggestions given to PW6 would clearly establish her admitted presence at the scene of occurrence on the fateful day. PW6 as already noted spoke about the presence of PW7 on the night of occurrence in the house of the accused. Except stating that PWs6 and 7 are deposing falsehood at the instance of parents of the deceased and the police officer, nothing material was elicited from these witnesses to discredit them. Therefore, the ratios in the decisions are not helpful to the accused to advance his case any further.

4. (f) Viewed thus, this court finds no reason to interfere with the concurrent findings recorded by the courts below and as a sequel it must be held that there is no merit in the revision and the revision case is liable to be dismissed. The points are accordingly answered in favour of the prosecution and against the accused.

5. The learned counsel for the accused had alternately contended that the sentence imposed is excessive and that the accused is having a first wife and six children and that the offence was committed in an intoxicated condition and on a grave and sudden provocation and hence, the sentence may be reduced. However, having regard to the facts peculiar to the case and the manner and the circumstances in which the death was caused, this Court does not find any merit in the submissions of the learned counsel for reduction of the sentence. There are no mitigating and extenuating circumstances to reduce the sentence imposed on the accused.

6. In the result, the criminal revision case is dismissed confirming the conviction recorded and sentence imposed on the petitioner/accused by the trial Court. It is stated that the accused is at large being on bail; therefore, the accused is directed to surrender before the trial Court within two weeks from the date of the receipt of a copy of this order. On failure of the accused to do so, the trial Court shall take steps for his apprehension and send him to prison for serving the remaining period of sentence.

Miscellaneous petitions pending, if any, in this revision shall also stand dismissed.

M.SEETHARAMA MURTI, J

19th January 2015

Vjl