

**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
CRIMINAL APPEAL No. 585 of 2013**

JUDGMENT: *(per Hon'ble Sri Justice U.Durga Prasad Rao)*

This appeal, under Section 374(2) of Cr.P.C, is filed against the judgment dated 03.04.2013 in Sessions Case No.261 of 2011 on the file of the V Additional District & Sessions Judge (FTC), Khammam, at Kothagudem. By the impugned judgment, the appellant/sole accused was convicted for the offences punishable under Sections 304 and 498-A IPC. For the offence punishable under Section 304 IPC, he was sentenced to undergo Rigorous Imprisonment for life and to pay fine of Rs.3,000/- and in default of payment of fine, to further undergo Simple Imprisonment for three months. For the offence punishable under Section 498-A IPC, he was sentenced to undergo Rigorous Imprisonment for one year and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for one month. The sentences imposed were ordered to run concurrently.

2) The case of prosecution in brief is as under:

a) The accused and the deceased-Parsika Munikaantha are husband and wife, and they have three children. The accused, having got addicted to alcohol, started harassing the deceased mentally and physically. Unable to cope up

with the harassment, the deceased left to her parent's house and a panchayat was held in which the elders reprimanded the accused, and the deceased joined the accused to lead conjugal life. On the intervening night of 25/26.11.2010, the accused came in an inebriated condition and woke up the deceased and told her to serve food and also to cooperate in sexual intercourse, to which the deceased refused. An altercation ensued between the two and the accused throttled the deceased which led to her death.

b) On the complaint filed by the *defacto* complainant-PW1/ brother of the deceased, a case in Crime No.59 of 2010 of Venkatapuram Police Station was registered initially under Sec.174 Cr.P.C as a suspicious death and later on receiving post-mortem report, Section of law was altered for the offences punishable under Sections 302 and 498A IPC, and the police after due investigation filed charge sheet before the Judicial Magistrate of First Class, Bhadrachalam. Learned V Additional District & Sessions Judge (FTC), Khammam, at Kothagudem conducted trial.

c) On behalf of the prosecution, PWs.1 to 16 were examined and Exs.P1 to P19 were marked. No witness was examined and no document was marked on behalf of the accused.

d) After due trial, the trial Court found the accused guilty

of the offence under Sec.304 and 498A IPC and accordingly convicted and sentenced him as aforesaid. Questioning the conviction and sentence, the accused is before us with this appeal.

3) Heard arguments of Sri P. Prabhakar Reddy, learned counsel for appellant/accused and learned Public Prosecutor for the State.

4) Learned counsel for appellant challenged the conviction and sentence passed by the trial Court on the main argument that the prosecution in this case utterly failed to prove the presence of accused at his house on the fateful night of the death of deceased but however the trial Court on surmise held as if the accused was present and he owed responsibility to explain the reason for the death of his wife and accordingly convicted him on the observation that he failed to give reasons for the death of his wife. He argued that the accused was an auto driver and used to move with his auto in Badrachalam and surrounding places and whenever he faced any difficulty he used to stay in Badrachalam or some other places without returning home during night times and this fact was clearly spoken by PW.3 and further, the factum of the death of deceased was informed to her relations by the father of the accused, which would show that the accused was not present in his house and therefore, the accused cannot be held responsible for the death of deceased. He vehemently argued that the

accused deserve clean acquittal and prayed to allow the appeal and set aside the conviction and sentence.

5) Per contra, learned Public Prosecutor argued that the deceased was none other than the wife of accused who died because of the compression of the neck structure as opined by PW.14—the post-mortem doctor who found compression marks over the neck of the deceased and as the deceased met with a homicidal death in the house of accused, he owed explanation for her unnatural death. He argued that except extracting from PW.3 that sometimes on account of his auto driving work, he used to stay back at Badrachalam or some other place and giving a vague suggestion that he was not there in the house on the night of death of deceased which was refuted by the prosecution witnesses, the accused has not come up with a strong plea of *alibi* stating the specific place where he was on the crucial night of the death of deceased and he also did not adduce any positive evidence in that regard. Learned Public Prosecutor argued that the trial Court therefore rightly held that accused failed to offer explanation for the homicidal death of his wife and in view of his conduct of harassing her in a drunken state, rightly held that he was responsible for her death and there is no need to set aside the conviction and sentence passed by the trial Court. He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the points for

determination in this appeal are:

- (i) *Whether the deceased met with homicidal death?*
- (ii) *If Point No.1 is held in affirmative, whether the appellant/ accused is responsible for her death and whether prosecution could establish the charges under Sec.302 and 498-A IPC beyond all reasonable doubt?*

7) **POINT No.1:** Whether the deceased met with homicidal death or suicidal death assumes importance in the light of defence side giving suggestions to PWs.1 to 4 that the deceased was suffering with stomach pain during menstrual period and due to that illness and also due to the fact that she did not get Anganwadi Teacher post, she got vexed with her life and committed suicide. The witnesses however staunchly denied this suggestion and in fact PW.3 who is none other than the elder sister of the deceased and who also resides in the same village i.e, Bodapuram, emphatically stated that her sister never suffered any disease and she was quite hale and healthy. Be that it may, the duty cast on the prosecution to establish that the death was a homicidal one. To prove that her death was a homicidal, the prosecution examined PW.14 who conducted autopsy and issued Ex.P.16—post-mortem report. The said evidence would clearly show that PW.14 found the following external and corresponding internal injuries:

“External injuries:

- 1) *Patterned abrasion 8 x 1 cm over left side of neck extending from 2cm below the angle of mandible to back of neck on left side may be caused due to pressure with a flexible blunt object of nearly 1cm diameter.*
- 2) *Abrasion of ½ x ½cm over left angle of mandible present shaped due to nail marking anti-mortem*
- 3) *Hairline abrasion on 3cm over right side of neck and is a scratch anti-mortem.*
- 4) *Abrasion of 3 x 4 cm over left knee cap blunt object.*
- 5) *Abrasion of 0.2 x 0.2cm over under surface of the neck crescent shape due to nail mark.*
- 6) *A scar of 1 x 1cm 10cm below a marker sterilisation.*
- 7) *Abrasion of 0.3 x 0.3 cm over frontal 2nd toe due to blunt object which is also anti-mortem.*
- 8) *A scar of 5 x 54 cm over back of left wrist due to burn and the same is an old scar.*

Internal examination:

- 1) *Hyoid bone greater cornu fracture on outside of left half with intact inner border.*
- 2) *Stomach contains partially digested food content.*
- 3) *There is a blood stain at the vaginal orifice.”*

Basing on the above injuries he opined that the deceased appeared to have died of compression over neck structure causing Asphyxia and cardio respiratory arrest and approximate time of death is around 12 to 18 hours prior to post-mortem examination. Since he mentioned about the fracture of her hyoid bone, it was put to him in the cross-examination that such fracture is possible only by hanging. The Doctor replied that if the fracture is in inner margin of Hyoid bone then it is out of hanging but when the fracture is

in the outer margin of Hyoid bone, it is due to giving of pressure over the neck structure. In the instant case, the fracture of her bone was on the outside of the left half with intact inner border. Therefore, it can be concluded that it is a case of death due to compression over neck structure i.e, pressing the neck by exerting pressure. The medical evidence gets support from the ocular evidence of PWs.1 to 4 and 9, who deposed that they found black marks and nail scratch marks on both sides of the neck indicating the pressing of neck. Further, Exs.P.2 and P.3—photos produced by the prosecution also reveal such black marks on either side of the neck of the deceased. In Ex.P.11 also it was mentioned about presence of the injury below the left jaw apart from scratch injuries on the left side of the neck. In view of the overwhelming oral and documentary evidence, there can be no demur that the deceased met with homicidal death and there is no substance in the defence contention that the deceased committed suicide due to her ill-health and not getting the teacher post. Thus the prosecution could amply establish that the death is a homicide and it has now to be seen in the point infra whether the accused was responsible for such death. This point is answered accordingly.

8) **POINT No.2:** It is the case of prosecution that the accused and deceased lived together as wife and husband for about 10 years and were blessed with two daughters

and one son and about 2 or 3 months prior to her death their marriage was solemnized in a temple. Further case of prosecution is that the accused who was addicted to liquor used to come home in a drunken state and beat the deceased by harassing her mentally and physically and on the night of her death also he came home in a drunken state and raised galata with her and asked food and she refused and he also asked her to cohabit with him and when she refused, he pressed her neck and caused her death. Admittedly there were no eye witnesses to the incident and the prosecution case pivots on circumstantial evidence. In a case of this nature, the precedential jurisprudence is that the circumstances on which prosecution relies must be proved and those circumstances shall form into a complete chain and point out towards the sole hypothesis of the guilt of the accused and not his innocence. This is the principle governing the appreciation of circumstantial evidence. The prosecution mainly relies upon the following circumstances:

- (i) The deceased met with homicidal death in suspicious circumstances.
- (ii) The death was occurred in the house where accused and deceased reside.
- (iii) The accused was present in the house during the relevant time when the death took place.
- (iv) Since sometime prior to the death of deceased, the accused used to beat her and harass her mentally and physically in an alcoholic condition.

- i) The first circumstance is concerned, it is held in the preceding point that the prosecution could establish that the deceased met with homicidal death.
- ii) The second circumstance is not in dispute because admittedly the dead body of the deceased was found in the house of accused and deceased.
- iii) We will discuss about the third circumstance a little while later with reference to the plea of *alibi* setup by the accused.
- iv) So far as the fourth circumstance is concerned, the prosecution through PWs.1 to 4 projected that the accused and deceased were living in the Bodapuram village and they have two daughters and a son and sometime prior to the death of deceased, both of them got married and the accused was addicted to liquor and he used to consume liquor frequently and he used to come home in an inebriated condition and quarrel with his wife to provide good meals and also used to demand money from her parents. It is the case of PWs.1 to 4 that about one year prior to her death, the deceased came back to the house of PW.2 who is her mother due to quarrel with accused and they raised a dispute before PWs.6 and 7—the elders, who advised the accused to treat his wife in a proper way and then they sent the deceased along with the accused. PW.3 stated that even after the Panchayat was raised before elders, the

accused did not stop consuming liquor and beating his sister. It may be noted that PWs.6 and 7 did not support prosecution case. They stated that no mediation was raised before them for settlement of the dispute between accused and his wife. They were declared hostile and cross-examined by the learned Public Prosecutor and their statements were marked as Exs.P.7 and P.8. Despite PWs.6 and 7 not supporting the prosecution case for obvious reasons, still the evidence of PWs.1 to 4 on the aspect of the accused meeting cruelty and harassing the deceased do not suffer any infirmity. It may be noted that PWs.1 to 4 are the brother, mother, sister and cousin brother of the deceased and more particularly they are residents of the same village. Therefore, they have every opportunity to know about the family affairs of the accused and deceased. I see no reason for them to speak falsehood against the accused, if he did not harass his wife. They are nearest kith and kin of the deceased and there is no reason to discard their evidence. Their evidence clearly reveals that the accused habituated to alcohol and used to harass his wife in a drunken condition for one or other reason and in fact sometime prior to her death the deceased came back to her mother unable to bear the harassment of the accused and on the advise of elders she was again sent to accused. Thus the prosecution could establish this circumstance also.

v) Coming to the third circumstance, it is the case of prosecution that the accused was very much present in the house on the night of the incident and though there is no direct evidence for showing his presence, still the same can be presumed, because the house in which the deceased died was the residential abode of the deceased and accused. I find force in the submission of prosecution. It is true that in criminal cases adversarial jurisprudence would be followed i.e, the accused would be presumed to be innocent and the burden lies on the prosecution to prove his guilt. However, that does not bar the prosecution to request the Court to presume the existence of certain facts which are concerning with the circumstance of the case. Admittedly, the death of deceased occurred in the residence of accused and deceased. The accused is an auto driver and after completing his day's job, he used to return his house on previous occasions prior to the death of his wife which is not in dispute. Having regard to the aforesaid common course of natural event and conduct of the accused in returning his home after his work, a presumption under Sec.114(d) of Indian Evidence Act can be drawn in my view to the effect that the accused returned home also on the night of the death of deceased. I must hasten to say that it is a rebuttable presumption and this presumption will not dethrone the presumption of innocence of accused but it will only create a burden on the accused to offer explanation for the unnatural death of his wife. The explanation of

accused is in the form of taking plea of *alibi*. It is his argument that sometimes on account of his auto driving job he used to stay back in Badrachalam and some other places without returning home and on the night of the death of deceased he was not present in the house.

a) The plea of *alibi* is a rule of evidence recognized in Section 11 of the Indian Evidence Act and the burden will be heavy on the person who takes such a plea to establish the same. It was so held in a number of decisions. The Hon'ble Apex Court in the case of ***Binay Kumar Singh and others vs. State of Bihar***^[1] has reiterated the said principle and held thus:

"Para 23: The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence take place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the

prosecution through reliable evidence, normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.”

In the instant case except suggesting to prosecution witnesses that he was not present in his house on the night of incident which was denied by them, the accused has not come up with a specific plea as to where he went on the date of incident and more particularly, where he spent the night of incident and when he returned home. It was only suggested to PW.3 that the accused used to stay at Badrachalam as and when he faced difficulty to reach house along with the auto and PW.3 replied that in general he used to come back to the house everyday but any difficulty arises, he may stay at Badrachalam or some other place. In my considered view, this extraction will not help conclude that on the night of the incident, the accused stayed back at Badrachalam or some other place due to his auto driving job. As stated earlier, the plea of *alibi* should be established by strict proof, wherein the accused failed.

9) So when the chain of circumstances established by

the prosecution are taken into consideration, they would establish that the deceased who is the wife of the accused met with homicidal death in suspicious circumstances in the residence of the accused and the accused though present in the house could not account for her death and since some time prior to her death the accused used to quarrel with his wife and harass her in an inebriated condition. Therefore, the prosecution could establish the charge under Sec.498-A IPC. So far as the charge under Sec.302 IPC is concerned, as rightly observed by the trial Court, the accused had not pre-meditated to kill his wife and on the other hand even as per the prosecution case he went home in an inebriated condition and took up quarrel with his wife to serve food and also to have sex with him which she refused and in such condition he pressed her neck and caused her death. Therefore, having regard to the facts and circumstances of the case, it must be held that the prosecution failed to prove the charge under Sec.302 IPC but it could establish the charge under Sec.304 Part II IPC. We are convinced that the accused had no requisite intention to kill the deceased so as to bring his act under Sec.304 Part I IPC but however his act would show that he had requisite knowledge that his act would likely to cause the death of the deceased and therefore, his act squarely falls under Sec.304 Part II IPC. The trial Court though observed that the facts and circumstances of the case showed that the accused has not pre-meditated to kill his

wife, still it convicted and sentenced the accused under Sec.304 Part I IPC. The said conviction and sentence are liable to be set aside and instead the accused is convicted under Sec.304 Part II IPC. Having regard to the nature of offence and the circumstances under which the appellant/accused committed the offence, the sentence of life imprisonment and fine of Rs.3,000/- (Rupees Three Thousand only) passed by the trial Court under Sec.304 IPC is set aside and instead the appellant is sentenced to undergo Rigorous Imprisonment for a period of Seven(7) years and pay a fine of Rs.1,000/- (Rupees One Thousand only) for the offence under Sec.304 Part II IPC and in default of payment of fine, he shall further undergo S.I for a period of one month. The conviction and sentence passed by the trial Court for the offence punishable under Section 498A IPC however shall hold good. Both the substantive sentences passed under Section 304 Part II and Section 498A IPC shall run concurrently.

10) In the result, this appeal is partly allowed to the extent mentioned above.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

26th November, 2015

ksm/scs

[\[1\]](#) AIR 1997 SC 322