

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL NO.1494 OF 2010

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal, under Section 374(2) CrPC, is directed against the judgment dated 31.03.2010 in Sessions Case No.392 of 2008 on the file of the learned V Additional Sessions Judge (FTC), Khammam at Kothagudem, convicting the accused of an offence punishable under Section 302 IPC and sentencing him to rigorous imprisonment for life along with payment of a fine of Rs.2,000/- or to undergo simple imprisonment for six months, in default thereof.

The accused was charged with the murder of Daravath Janaki, his mother-in-law, during the night hours on 23.10.2003 at Vengalrao Colony, Paloncha, by beating her on her head with a pestle, thereby committing an offence punishable under Section 302 IPC. The accused denied the charge and claimed to be tried.

To prove the gravamen of the charge before the Sessions Court, the prosecution examined 12 witnesses and marked 9 exhibits. Case properties were shown as M.Os.1 to 5.

P.W.1, the husband of the deceased, stated that the accused was his son-in-law, having married his third daughter, Banoth Leela (P.W.3). According to him, the accused was in the habit of quarrelling with P.W.3 and the deceased used to interfere and try to control the accused. P.W.1 said that on the date of the incident also, the accused quarreled with P.W.3 and the deceased interfered. Despite the same, the accused continued quarreling without stopping. The deceased tried to stop the quarrel and expected that the accused would go. In the meanwhile, P.W.1 slept

on one cot while his wife, the deceased, slept on the other. A pestle was stated to have been near the cot on which the deceased slept. In his examination-in-chief, P.W.1 stated to the effect that he was an eye-witness to the attack on the deceased by the accused. However, in his cross-examination, he admitted that he did not see as to who actually beat the deceased, as it was dark and he was sleeping. P.W.1 stated that the accused bolted the door of the house of Shaik Ali (P.W.6), who was known to them so that he would not come and stop him from attacking his wife. P.W.1 admitted that he gave a report to the police upon the death of his wife and confirmed that Ex.P.1 was the said report. In his cross-examination, P.W.1 stated that P.W.3, the wife of the accused, was brought by the deceased to their house about three days prior to the incident, fearing for her life. According to him, on the night of the incident, he felt thirsty and woke up his other daughter, Kalavathi (P.W.2), for water and when she switched on the light, they saw the deceased on her cot in a pool of blood. P.W.1 said that he first took the deceased to the hospital of one Dr.Jilani and thereafter, the Government Hospital, Paloncha, but the doctor said that she had already died, so he brought her body back to the house. He further stated that the deceased was not in the habit of consuming liquor but on the day of the incident, she attended a funeral and consumed country made liquor and in that intoxicated state, she had slept on the cot.

Kalavathi (P.W.2), the daughter of P.W.1 and the deceased, spoke of the marital issues between the accused and P.W.3, her sister. She said that one day prior to the incident, she and P.W.3, the wife of the accused, went to his house to lock it and he observed the same with anger. On the fateful day, she said that

the deceased went to see the body of a person who had died in the locality and in the evening they took their supper. P.W.1 and the deceased then slept in front of the house in a shed on two cots. She further stated that she and her sister, P.W.3, slept inside the house. According to her, during the night before they went to sleep, P.W.6 came to her father and told him that the accused had bolted the door of his house from outside and P.W.1 told him that he would ask the accused as to why he did so. They then went to sleep and P.W.1 woke her up during the night for drinking water and when she switched on the light, she saw the deceased on her cot in a pool of blood. Upon her raising a hue and cry, Banoth Hari (P.W.7) and Shaik Ali (P.W.6) came there and told them that a little earlier, they saw the accused running from the shed.

P.W.3, the wife of the accused, stated that on the night of the incident she, along with P.W.2, and her daughter, Mounika, were sleeping inside the house, while the deceased and P.W.1 slept on two different cots in the cement-sheets shed in front of the house. She further stated that as her father had not yet slept, P.W.6 came to him and told him that the accused bolted the door of his house from outside and went away. P.W.6 was stated to have brought one biscuit packet belonging to the accused that fell at his house and gave the same to P.W.1. Then, P.W.6 was stated to have left and P.W.1 went back to sleep. According to P.W.3, during the night, P.W.1 called P.W.2 by name to bring drinking water and when she went and switched on the light, they found the deceased. She also confirmed that P.W.6 and P.W.7 reached there upon hearing their cries and told them that they saw the accused leaving the shed. She stated that the blood stained pestle was observed near the cot of the deceased.

P.W.6 stated that the house of the deceased was situated three houses after his and that the accused lived in a rented house opposite his house. He confirmed that the accused was in the habit of quarrelling with his wife and one day, he asked her to go away whereupon she went back to the house of her parents. A week or ten days thereafter, according to P.W.6, the accused came to his house and bolted the door of his house from outside. As he was in the house and had not gone to sleep, he realized the same and his wife also told him that someone had bolted the door from outside and asked him to go and see. P.W.6 said that he opened the back door and came to the front side of the house and observed that the door of his house was bolted. He further stated that there was a transformer and a light near his house whereby, his wife and he saw the accused running away. P.W.6 further said that his wife told him that the accused was running so he must have bolted the door from outside and asked him to question the accused about the same. P.W.6 stated that when he was going towards the accused, he ran away from the place and at that time, a biscuit packet slipped down from his pocket. P.W.6 said that as he could not catch the accused, he went to the house of P.W.1 and told him about the accused bolting the door of his house from outside. He further stated that he gave the biscuit packet to P.W.1 and then returned to his house. After sleeping for some time at about midnight, P.W.6 said that he heard shouts from the house of P.W.1 and went there. He observed the deceased on the cot and the blood underneath. He stated that when he had gone to P.W.1 to tell him about the accused bolting the door of his house from outside, the light at the house of P.W.1 was switched off at that time and it was dark but upon hearing his call, P.W.1 came

outside and asked him why he had come in the night. He then told him about the accused bolting the door of his house from outside and returned to his house. P.W.6 said that he came to know from P.W.1 that in the night when he asked for drinking water, the light was switched on and they found the deceased lying in a pool of blood. In his cross-examination, he said that when his wife asked him to see who had bolted the door of his house from outside, he opened the back door and searched there and within half an hour from the time his wife asked him and after his search, he saw the accused at the transformer under the street light. He said that the distance was about 30 yards. Within one hour from the time he complained to P.W.1 against the accused, he heard the shouts from the house of P.W.1. He again said that when he came out from the back door of his house and searched outside, nobody was there and at that time, the accused was coming from the side of P.W.1's house from the bushes to the road and he saw him clearly under the transformer, in the light. He further said that he did not see the accused again on that day.

Banoth Harilal (P.W.7) stated that P.W.1 was his maternal uncle. He also confirmed the marital troubles between the accused and P.W.3, his wife. As to the day of the incident, he said that between 10:00 PM and 11:00 PM on that day he came out of his house to attend to a call of nature and saw the accused roaming at the house of the deceased. He stated that he was under the impression that the accused might have gone there for his wife and went back into the house and slept. After a few minutes he said that he heard P.W.6 shouting at somebody. 30 to 45 minutes thereafter, he heard weeping and rushed to the house of the deceased and observed the deceased lying on a cot in a pool of

blood. He said that P.W.6 was already there at that time and told him and the family members of the deceased that he had seen the accused running away from the house of the deceased.

The doctor who conducted the post-mortem examination of the body of the deceased was examined as P.W.11. He confirmed that the cause of death of the deceased was shock and haemorrhage due to skull fracture. He further confirmed that the injuries sustained by the deceased could be caused by the pestle (M.O.4).

It is on the basis of the aforestated evidence that the prosecution seeks to prove beyond doubt that the accused murdered his mother-in-law. At the outset, it may be noted that this is not a case involving an eye-witness. The prosecution's case against the accused rests purely on circumstantial evidence. It is no doubt true that the evidence adduced sufficiently made out a strong motive for the accused to commit the offence. However, motive and suspicion are insufficient to sustain a conviction under Section 302 IPC, as such motive and suspicion, however strong, cannot take the place of proof beyond reasonable doubt to hold the accused guilty. It is a settled legal position that in a case based on circumstantial evidence, the prosecution must invariably establish the following elements.

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (**PADALA VEERA REDDY V/s. STATE OF A.P¹**).

Useful reference may also be made in this regard to the observations of a three Judge Bench of the Supreme Court, as long back as in the year 1952, in **HANUMANT GOVIND NARGUNDKAR V. STATE OF M.P²**:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

In the present case, the death of the deceased is shown to be homicidal in nature but there is no consistency in the case presented by the prosecution as to when exactly the offence was committed. As per P.W.6's claim, he saw the accused long before the deceased was found dead. After he saw the accused, P.W.6 went to the house of P.W.1 and spoke to him. He confirmed that it was dark at the house of the deceased at that point of time and

¹ 1989 Supp (2) Supreme 706 = 1989 Supp (2) SCC 706

² 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

P.W.1 came out upon hearing his call without switching on the light. It is possible that the deceased was already dead by this point of time. However, it was only much later that P.W.1 woke up his daughter (P.W.2) for water and the body of the deceased was found after the light was switched on. P.W.7's evidence gives an idea of the time frame in this regard as he stated that he saw the accused between 10:00 PM and 11:00 PM and a few minutes thereafter, he heard P.W.6 shouting. This was obviously at the time when P.W.6 came out of the back door of his house, found his front door bolted and raised an issue with P.W.1. According to P.W.7, it was 30 to 45 minutes thereafter that he heard the sound of weeping when the body of the deceased was found. It is not the case of either P.W.6 or P.W.7 that when they saw the accused, there was any physical evidence of his already having committed the crime. Had he attacked the deceased with a pestle and caused bleeding injuries, his clothes would also have been blood-stained. There is however no such evidence forthcoming from P.W. 6 and P.W.7, though the blood-stained shirt of the accused was allegedly recovered under Section 27 of the Indian Evidence Act, 1872, and marked as M.O.5. If P.W.6 could clearly see the accused under the light, he would have definitely noticed blood stains on his shirt.

Given the ambiguity as to the time of actual commission of the offence and the gap between the sighting of the accused by P.W.6 and P.W.7 and the detection of the death of the deceased, we are constrained to opine that the prosecution failed to establish an unbroken chain of events unerringly pointing towards the guilt of the accused obviating any scope to infer his innocence, which is essential to substantiate and prove a case based solely on circumstantial evidence.

One other aspect which requires to be noted is that the Crime Detail Form (Ex.P.3) records that the pestle (M.O.4) was seized for the purpose of investigation from the scene of the offence at 9:00 AM on 24.10.2003. However, the inquest panchanama (Ex.P.4) demonstrates that the inquest proceedings commenced at 10:00 AM on 24.10.2003 at the scene of the offence and strangely mentions the presence of the blood-stained pestle lying at a distance of about 20 feet from the body of the deceased. It is not explained as to how the pestle was still available at the scene if it had already been seized under Ex.P.3 at 9:00 AM. This kind of slipshod investigation by the police would invariably give rise to reasonable doubt as to the authenticity of the prosecution's case and the benefit thereof must be extended to the accused.

On the above analysis, this Court finds that the guilt of the accused has not been established and he is entitled to the benefit of doubt, given the gaps and lapses in the investigation and also the case of the prosecution.

The appeal is therefore allowed setting aside the conviction and sentence passed against the accused/appellant in Sessions Case No.392 of 2008 on the file of the learned V Additional Sessions Judge (FTC), Khammam at Kothagudem. The appellant shall be set at liberty forthwith if his confinement is not required in connection with any other case. The fine collected, if any, shall be refunded.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

8TH SEPTEMBER, 2016

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