

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CRIMINAL APPEAL No.1229 OF 2010

Dated: 04-07-2016

Between:

Gayakwad Balaji @ Chandrashekar. ... Appellant.

AND

The State of Telangana,
Rep. by Public Prosecutor,
High Court at Hyderabad. ... Respondent.

Counsel for the appellant : Sri. Naseeb Afshan.

Counsel for the respondent : Public Prosecutor (TS).



THE COURT MADE THE FOLLOWING:

JUDGMENT: (per Hon'ble Sri Justice G. Shyam Prasad)

1. This Criminal Appeal arises out of the judgment dated 17-08-2010 in Sessions Case No.424 of 2009 on the file of the Court of II Additional Sessions Judge (FTC), Adilabad (for short, 'the trial Court'). The appellant was convicted for the offence under Section 302 of the Indian Penal Code (for short, 'I.P.C.') and sentenced to suffer life imprisonment and also to pay a fine of Rs.100/- and in default to suffer simple imprisonment for 15 days.

2. According to the prosecution, this is a case of murder of one Goulambai (hereinafter referred to as 'the deceased') committed by her own husband Gayakwad Balaji. The marriage of the deceased was performed with the accused thirteen years prior to the incident and they were blessed with three daughters and one son out of their wedlock. The accused used to suspect the fidelity of the deceased and he had even suspected the paternity of the son born out of their wedlock. In that connection, the accused used to quarrel with the deceased, harass and beat her. About six months prior to the incident, the accused beat her having suspected her fidelity and to that effect a report was lodged to the Police, who pacified the matter by giving a warning to the accused. On the intervening fateful night of 13/14.03.2009 at 02:00 a.m., while the deceased and their children were sleeping, the accused had quarreled with the deceased and beat her with pestle and hammer. The eldest daughter of the deceased – PW.2, aged about eleven years, old woke up from her sleep due to the noise and saw the accused beating his mother and she had also seen the pestle and hammer in the hands of her father. On PW-2 raising hue and cry, the villagers came there and on seeing them the accused fled away. PW.5 – Jambe Babu, who was the neighbour of the accused, had heard some noise from the house of

accused, went there and saw the deceased being shifted in a bullock cart to the hospital. The deceased succumbed to the injuries on the way to the hospital. PW-5 informed the incident to PW.1, paternal uncle of the deceased, who went to PW.4 – Sarpanch of the village, got drafted Ex.P-1 complaint and lodged the same in the police station. Basing on Ex.P-1, the criminal law was set in motion. On receipt of the complaint from PW.1, the police registered a case against the accused and, after investigation, filed charge sheet under Section 302 I.P.C. The learned Judicial First Class Magistrate at Utnoon, after supplying the documents to the accused had committed the case to the Court of Sessions as the case is exclusively triable by the Court of Sessions, where it was numbered as Sessions Case No.424 of 2009 and, later, it was made over to the trial Court. The trial Court, after supplying the documents to the accused, as required under the law, had framed the charge against the accused under Section 302 I.P.C. The accused had pleaded not guilty of the charge and claimed to be tried.

3. The prosecution has examined PWs.1 to 11 and got marked Ex.P-1 to P-9 and M.O.s. 1 to 4. The defence reported no evidence before the trial Court. When the incriminating evidence appearing against the accused was put to him during his examination under Section 313 Cr.P.C., he denied the evidence as false. The trial Court, having considered the evidence on record, had found the accused guilty for the offence under Section 302 I.P.C., and convicted and sentenced him as stated hereinabove.

4. The appellant/accused being aggrieved by the impugned judgment had preferred this Criminal Appeal on various grounds.

5. We have heard the arguments of learned counsel for the appellant and the learned Public Prosecutor.

6. After perusing the material available on record, including the oral and documentary evidence, the points that arise for consideration in this Appeal are:

1. Whether the prosecution proved the guilt of the accused beyond reasonable doubt for the offence under Section 302 I.P.C.?

2. Whether the judgment of the trial Court is illegal and perverse?

7. **POINT Nos.1 and 2:** Both these points go together. In this case, on receipt of telephonic information at 02:00 a.m., from PW-5 about the deceased having been beaten by her husband with pestle and hammer, PW.1, the brother of the paternal uncle of the deceased, lodged the complaint - Ex.P-1 in the police station. In his evidence before the trial Court, PW-1 deposed that the appellant used to suspect his wife and beat her; that about 1½ year prior to the deceased, the appellant beat her at Patan, Maharashtra; that the deceased was admitted in the hospital; that a mediation was held in that regard; that a police complaint was also given and that as the accused and the deceased were having four children, the deceased was advised to live with the appellant. Pw-1 further deposed that when the appellant beat the deceased subsequently, another panchayat was held and the appellant was advised to live happily. PW-1 stated in his cross-examination that originally he was informed by one Balaji about the incident through a phone call. He had admitted that it was not mentioned in Ex.P-1 that the daughter of the appellant informed him about the appellant beating the deceased.

8. PW.2, aged 11 years, is the daughter of the deceased and the appellant. She categorically deposed that her father, the

appellant/accused, used to beat her mother, the deceased, by suspecting her stating that she was looking at others and that on two occasions the appellant beat the deceased in her presence. PW-2 further deposed that at about midnight, due to the noise she woke up from her sleep; that at that time the appellant was holding a pestle and hammer; and that she saw the appellant twisting the hands of the deceased and beating the deceased on her head, chest and legs. She further deposed that when her senior paternal uncle came, the appellant fled away, and that the deceased died while being shifted in a bullock cart to the hospital.

9. PW.3, who is the brother of the appellant/accused, stated that his house is abutting the house of the appellant and that he can hear the noises in his brother's house from his house. His testimony reveals that the deceased was the wife of the appellant and they were blessed with four children *i.e.*, three daughters and one son, out of their wedlock; that the appellant used to suspect the deceased and beat her; that they had tried to convince the appellant several times in vain; that on the fateful night at 02:00 a.m. he heard some cries from the house of the appellant and went to the house of the appellant; that when he was entering the house of the appellant, the appellant was running from his house; that he chased the appellant to some extent and returned to his house and learnt about the incident through PW.2; and that the deceased died on the way while being shifted to the hospital, after going for about 4 K.Ms.

10. PW.4, the Sarpanch of Gadiguda Village, scribed the complaint-Ex.P-1 on the request of PW.1.

11. PW.5, a neighbor of the appellant, deposed that on hearing some noises from the house of the appellant on the fateful night at 2:00 a.m., he went there and saw the deceased while being shifted to the hospital. He spoke about his informing the same to PW-1 and PW-4. He further

testified that the appellant used to beat the deceased by suspecting her character.

12. PW.6 is the photographer, who took photographs of the dead body of the deceased, with his digital camera, at the instance of the Police. Ex.P-2 is the bunch of five photographs.

13. PW.7 is the panch witness for the inquest held over the dead body of the deceased. He deposed that he was present when the inquest panchanama - Ex.P-3 was conducted and the material objects MO.1 – Iron hammer, MO.2 – Pestle, MO.3 – broken bangle pieces and MO.4 – blood stained blouse of the deceased, were seized from the scene of offence.

14. PW.8 is the Medical Officer, who conducted *post-mortem* examination over the dead body of the deceased and found the following *ante-mortem* injuries:

1. Deep laceration 8 x 3 x 2 c.m. on left side of scalp.
2. Laceration of 4 x 2 x 1 c.m. on right side forearm.
3. Laceration of 2 x 1 x ½ c.m. on right forearm.
4. Fracture of right elbow.
5. Deep laceration of 3 x 2 x 1 c.m. on dorsal aspect of right hand.
6. Abrasion of 2 x 1 c.m. over left leg

He also found some internal injuries. He opined that the cause of death was “hemorrhagic shock due to poly trauma *i.e.*, head injury and blunt injury to her abdomen”. The approximate time of death of the deceased was around 12 to 18 hours prior to the post-mortem examination. Ex.P-5 is the post-mortem examination report. PW-8 stated in his cross-examination that injury No.1 was possible only by beating with a heavy blunt object. He denied the suggestion that the injuries mentioned in Ex.P-5 are not possible to be inflicted with M.Os.1 and 2. He has further stated that the said injuries might be possible due to falling from the height of a second-floor.

15. PW.9 is a social worker in whose presence Ex.P-6-confessional statement of the accused was recorded.

16. PW.10 is the Investigation Officer who had received Ex.P-1 complaint from PW.1 and registered it as a case in Crime No.26 of 2009 under Section 302 of IPC. He issued Ex.P-7 - F.I.R, recorded the statement of PW.1 and handed over further the investigation in the case to the Inspector of Police.

17. PW.11, the Investigation Officer, had investigated into the crime and filed charge sheet. During the course of investigation, PW-11 had drawn the rough sketch of the scene of offence – Ex.P-8 and seized the material objects from the scene of offence in the presence of the panch witnesses. He conducted inquest panchanama – Ex.P-3 over the dead body of the deceased in the presence of the same panch witnesses. Ex.P-4 is the crime detail. He had recorded the statements of the witnesses and arrested the accused and recorded their confessional statements. Nothing worthwhile is elicited in his cross-examination to discredit his testimony with regard to the investigation done by him.

18. The confessional statement-Ex.P-6, of the appellant/accused had been recorded by PW-11 in the presence of Sub-Inspector of police and as such it was hit by Sections 25 and 26 of the Act of 1872. The confessional statement of the accused is of no help to prove the case of prosecution as the accused was in the police lockup when his statement was recorded and as such it is inadmissible in evidence. It cannot be looked into for any purpose except for proving the discovery of fact of recovery of the material objects.

19. The learned Counsel for the appellants/accused contended that PW-1 stated in his chief-examination that originally he was informed by PW-5 about the incident on phone, but he stated in the cross-examination

that the information was given to him by one Balaji through a phone call. In our considered opinion, this is a minor discrepancy which do not go to the root of the case and basing on the said discrepancy, the genuineness of the testimony of complaint cannot be doubted.

20. According to defence, PW-2, is a child witness; that as she was staying with her paternal grant father, she must have been tutored to give false evidence against the appellant. In our opinion, this submission has no legs to stand. The learned Sessions Judge had recorded the evidence of PW-2 after taking all the precautions by putting preliminary questions to her and after ascertaining her capacity to speak about the incident. In her evidence PW-2 categorically stated that she had seen the incident of her father/the appellant, beating her mother on her head, chest and twisting her hands. She saw hammer and pestle in the hands of her father and when she raised cries, her senior paternal uncle came there and then the appellant fled away from the scene. She further testified that while the deceased was taken to the hospital in a bullock cart, she died on the way. It is revealed in the cross-examination of PW-2 that she goes to school in the morning and returns in the evening; that the appellant was not working and was staying at home; and that her mother, the deceased, used to work and earn. PW-2 further testified that the deceased used to go to work before she leaves for school and come back only after she returns from the school. The testimony of PW-2 reveals that her father used to suspect the fidelity of the deceased. PW-2 is a natural and eye witness to the incident. Her testimony is cogent and convincing about the incident. If really the incident had not occurred, there is no reason for PW-2 to depose falsely against the appellant, who is her own father. Therefore, we do not find any reason to disbelieve the testimony of PW-2.

21. PW.2 being an eye witness to the incident, there is every possibility of her informing PW.3 about the incident. In the circumstances, the principle of *res gestae* as per Section 6 of the Act of 1872 is applicable. The said provision reads as under:

“6. Relevancy of facts forming part of same transaction –
Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

In view of the above noted provision, the testimony of PW.3 assumes importance. PW-3 is no other than the brother of the appellant. He deposed about the appellant running from the house immediately after the incident and his chasing the appellant for some distance. It is also his testimony that PW.2 informed him about the incident. There is no need for PW-3 to depose against his own brother. His testimony is trustworthy, cogent and convincing. From the evidence of PW-2 and PW-3, it is obvious that the appellant/accused was at the scene of offence and it connects him with the crime.

22. The evidence of PW-2 proves the presence of the appellant at the scene of offence at the time of the incident. It is appropriate to refer to Section 106 of the Act of 1872, at this juncture, which reads as under:

“Burden of proving fact especially within knowledge: - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

The burden is on the appellant/accused to prove the facts especially within his knowledge. The appellant, being the husband of the deceased, has to explain how the deceased had received injuries while she was in his house.

23. In this context, it is appropriate to refer to the provisions under Section 313 Cr.P.C., which reads as under:

“Power to examine the accused-

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

b) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case:

Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1)

(3) The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he had committed.”

24. In ***Neel Kumar Vs. State of Naryana***¹, it was held at para-13 as follows:

"It is the duty of the accused to explain the incriminating circumstance to prove against him while making a statement under Section 313 Cr.P.C. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him. Recovery of incriminating material, at his disclosure statement, duly proved is a very positive circumstance against him."

¹ 2012 (5) SCC 766

25. During his examination under Section 313 Cr.P.C., the appellant/accused had not offered any explanation for the deceased receiving injuries on that night though he was with her at his house. Therefore, in the absence of any explanation forthcoming from the appellant/accused as to how the deceased received injuries, it must be held that he alone is responsible for the injuries received by his wife and none else. The motive for commission of the offence was suspicion of the appellant/accused about the fidelity of the deceased and the paternity of the son born out of their wedlock. Therefore, the *mens-rea* of the appellant/accused to kill the deceased is proved beyond reasonable doubt. There is direct and also circumstantial evidence available on record to connect the appellant/accused with the crime.

26. Since PW-7 is an independent witness, his testimony is trustworthy. The seizure of material objects is proved through this witness. Nothing is elicited in the cross-examination of PW-7 to discredit his testimony.

27. The testimony of PW.8 clearly reveals that this is a case of homicide and the deceased died due to the injuries received by her, which are alleged to have been caused by the M.Os.1 and 2. Nothing is elicited in the cross-examination of the Medical Officer to disbelieve his observations and opinion about the cause of death and the possibility of using those material objects for causing injuries to the deceased. The testimony of the Medical Officer clearly reveals that the injuries caused are fatal to cause death and they can be caused by blunt objects. The medical evidence is corroborated with the ocular testimony.

28. The evidence of PWs.1 to 3 and 5 clearly proves the conduct of the accused that he used to suspect the fidelity of his wife, the deceased, beat and harass her. Nothing is elicited in the cross-examination of these witnesses to discredit their testimony. It is also proved from their evidence

that on the fateful night, the accused had caused injuries to the deceased due to which she died while being shifted to the hospital. In the light of the evidence of PWs.1 to 3, 5, coupled with the testimony of PW.8, it can safely be concluded that this is a case of murder committed by the accused intentionally.

29. On consideration of the entire evidence on record, we are of the considered opinion that this case is based on direct evidence of PW.2, supported by the medical evidence, and also the circumstantial evidence of other witnesses. The evidence of the prosecution witnesses is trustworthy, cogent and convincing.

30. Having regard to the facts and circumstances of this case, we are of the considered opinion that the prosecution has proved the guilt of the appellant/accused beyond reasonable doubt for the offence under Section 302 of I.P.C. The trial Court had properly appreciated the evidence on record and rightly convicted the accused for the offence under Section 302 of I.P.C.

31. In view of our foregoing discussion, we do not see any infirmity or illegality in the impugned judgment of the trial Court in convicting the appellant/accused for the offence under Section 302 of I.P.C. Accordingly, the Criminal Appeal is dismissed.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

Date: 04-07-2016.

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CRIMINAL APPEAL No.1229 OF 2010

(Judgment of the Division Bench delivered by
Hon'ble Sri Justice G. Shyam Prasad)

DATE: 04-07-2016

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