

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

Criminal Appeal no.1430 of 2010

JUDGMENT

(Per Hon'ble Sri Justice M. Seetharama Murti)

This appeal under Section 374(2) CrPC by the accused is preferred against the judgment, dated 12.07.2010, in SC.No.86 of 2010 on the file of the Court of the I Additional Sessions Judge, Vizianagaram. By the said judgment, the learned Additional Sessions Judge found the sole accused/ appellant guilty of the offence punishable under Section 302 IPC, convicted and sentenced him to suffer imprisonment for life and to pay a fine of Rs.600/- and to undergo simple imprisonment for three months in default thereof.

2. We have heard the submissions of *Mrs. Shanthi Neelam*, learned Legal Aid counsel, appearing for the appellant/accused and the learned Public Prosecutor appearing for the respondent/ State. We have perused the material on record.

3. The learned I Additional Sessions Judge framed the following charge against the accused:

‘That you, on or about the 8th day of January 2010 at about 8 p.m at your house at Ompilli village, did commit murder by intentionally or knowingly causing the death of the deceased Routhu Easwaramma who is your wife by hacking her with a kitchen knife on the back of her head twice and that you thereby committed an offence punishable under Sec.302 I.P.C and within my cognizance.”

[Reproduced verbatim]

4. At trial, the prosecution examined PWs 1 to 16 and exhibited P1 to P11 and marked MOs 1 to 8. No evidence was adduced on the side of the defence.

5. The evidence, which was adduced by the prosecution to bring home the guilt of the accused, which needs a detailed examination, is as under:

PW2, Bali Yellamma, is the mother of Routhu Easwaramma, the deceased. The accused is the husband of the deceased. The marriage of the accused with the deceased is a second marriage for the accused as well as the deceased. The deceased and the accused had no issues. After their marriage, they lived in the house of PW2, the mother of the deceased. The accused always used to come to the house in a drunken state and beat the deceased. He also used to suspect her fidelity. About one month prior to the incident of the murder of the deceased, a dispute was raised before the elders, viz., PW4, Bali Venkata Ramana, who is the junior paternal uncle of the deceased, PW3, Bali Appala Swamy Naidu, who is the elder brother of the father of the deceased, LW15, Majji Laxmana, LW16, Routhu Ramana and PW9, Routhu Adinarayana and others. Before the said elders, the accused promised that he would look after the deceased well. One week after such settlement before the elders, the accused took the deceased to Visakhapatnam in connection with coolie work. They both stayed at Visakhapatnam for two weeks and came back to the house of PW2. Even after such return to the house of PW2, the accused continued to harass the deceased as in the past. He did not give any money to the deceased for family maintenance. A week prior to the Pongal festival, on the day of incident, which is a Friday, the deceased returned to the house at 6 PM after attending to coolie work. At about 7 PM, the accused returned to the house in a drunken state. After completion of dinner, the accused and the deceased went to bed. At about 8 PM on that night, PW2, the mother of the deceased, went to the house of PW3 for money. She returned to her house at about 10 PM and found that the front door of her house was locked from outside. In the first instance, she thought that her daughter and son-in-law, the accused, went outside. After some time, she peeped through window of the house and found pool of blood in the room. Then, she raised alarm. PW5,

Illapu Ramunaidu, PW6, Bali Krishnamnaidu, and PW3, Bali Appala Swamy Naidu, came there. They broke open the lock of the door and entered the house after opening the doors. They found by the side of the cot, the dead body of the deceased on the floor, facing downwards. They noticed injuries on the backside of her head and blood spread over the room. They also noticed one kitchen knife (KATTI PEETA) and one towel near the dead body of the deceased and that the accused was not there at that time. PW2 stayed near the dead body on that night. On 09.01.2010 at about 6 AM, PW1, the V.R.O of Ompilli village, immediately visited the house of PW2, having come to know that the deceased was murdered on the previous night, and found the dead body of the deceased in the house of PW2. He noticed injuries on the backside of the head of the deceased and a kitchen knife near the dead body and pool of blood in the room where the dead body was found. By the time he went to the house of PW2, PWs 2 and 3 and some others were already present there. On his enquiry, PW2 narrated the facts to him. She further stated to PW1 that the accused murdered her daughter, Eswaramma, on account of the disputes between them. Thereafter, PW1 reduced the facts as stated to him by PW2 into writing and gave Exhibit P1, report, to Bondapalli Police Station. He then returned to the scene of offence. LW26, SI of the said Police Station, registered the crime and issued FIR, having received Exhibit P1 from PW1 on 09.01.2010 at about 9 AM. Exhibit P9 is the copy of the FIR. He sent the original FIR to the Court of Judicial Magistrate of First Class, Gajapatinagaram, and informed about the registration of the crime to PW16, the Inspector of Police. PW16 immediately took up investigation. After collecting the copy of the FIR, he sent a requisition to PW15, Tahasildar, Bondapalli, to come over and conduct inquest on the dead body of the deceased. On receiving such requisition, PW15 came to the scene of offence at about 10.15 AM and held inquest over the dead body of the deceased and prepared Exhibit P5, inquest report, in the presence of panchayatdars, PW14, Gorli Rama Krishna, and

LW22, Jogapurapu Kannamnaidu, and others. At that time, he examined PWs 2 to 5, who are the relatives of the deceased. He also observed the scene of offence and prepared scene of offence observation report, Exhibit P4, and seized MO1, Kitchen knife (Katti Peeta), which was found lying in the room near the dead body and handed over the same to PW16, the Inspector of Police. At the time of inquest, the inquestdars opined that the accused murdered the deceased as he suspected her character. Thereafter, the dead body was sent to the Community Health Centre, Gajapatinagaram for post mortem examination. On 09.01.2010, at 2 P.M., PW12, Dr. M.P.V. Naik, Civil Assistant Surgeon, Community Health Centre, Gajapathinagaram, conducted post mortem examination on the dead body of the deceased pursuant to the requisition received from PW16. He furnished Exhibit P3, Post Mortem Certificate, stating that the deceased sustained the following injuries:

1. A cut injury of 18 cm X 1 ½ cm X 1 cm (bone deep) present at the middle of head over sagittal suture, extending from the middle of frontal bone to occipital bone, edges are sharp, reddish in appearance anterior posterior in direction.
2. A cut injury of 18 cm X 1 cm X 2/3 cm present at the upper part of occipital area of scalp, edges are sharp, reddish in appearance, horizontal in direction.
3. A cut injury of 8 cm X 1 cm X 2/3 cm present at the lower part of occipital area of scalp, edges are sharp, reddish in appearance, horizontal in direction.” [Reproduced verbatim]

In his said report and in his statement before the Court, he stated that the cause of death is ‘shock due to cut injury on the head and haemorrhage’. PW11 took photographs of the scene of offence at the instance of PW16, the Inspector of Police, and furnished to him Exhibit P2, a bunch of seven photographs with negatives.

6. Thus, PW2 categorically stated about the marriage between deceased and accused, which is a second marriage for both of them, and also about their stay in her house and the habit of the accused to come to the house in a

drunken state and beating the deceased and his suspicion about the character of the deceased and the dispute raised before the elders and the assurance given by the accused that he would look after the deceased well. She further deposed that on the night of the incident, after dinner, the accused and the deceased went to bed and that at about 8 PM, she went to the house of PW3 to collect money and that by the time she returned to her house at about 10 PM, she found that the front door of the house was locked from outside and that at the first instance, she thought that the deceased and the accused might have gone out and that later she peeped through the window and found blood in the room and that on that she raised alarm and on that PWs 3, 5 and 6 came to her house and had broken open the lock of the door and entered the house and saw the dead body lying on the floor adjacent to the cot in downward position. PW2, PW3, PW5 and PW6 deposed about their noticing injuries on the back side of the head of the deceased and the presence of a kitchen knife and pool of blood in the room and the absence of the accused in the house. She further deposed about the narration of the incident to PW1, the V.R.O of Ompilli village, at about 9 AM on the next day when he came to the house on knowing about the incident. PW2 maintained her stand in cross-examination, but admitted that during the life time of the deceased, she did not give any complaint to the police against the accused regarding the ill treatment meted out by the accused to the deceased, but asserted that the accused used to suspect the fidelity of the deceased on the ground that she was having illicit intimacy with one Suri, tractor driver, and that she never admonished her daughter on that account and that on that night, except the accused, no other person was present in the house. PW1 supported the version of PW2 in regard to narration of the incident by PW2 to him and his lodging a report, Exhibit P1 with the police. PW3 corroborated the version of PW2 on all material aspects. PW3 stated in his evidence that one week prior to Sankranthi festival of the year 2010, the incident of murder of the deceased had occurred and that on

the night of the incident of murder at about 8 PM, PW2 came to his house for money and stayed up to 10 PM in his house by watching TV and that thereafter, she returned to her house and that after hearing the alarm of PW2, he went to her house and found that the front door of the house of PW2 was locked from outside. He further stated that PWs 4 and 5 had broken open the lock of the house and that on entering the room they found the dead body of the deceased facing downwards and that he also noticed injuries on the back side of the head of the deceased and that the accused was not present in the house at that time. PWs 4 and 5 also supported the version of PWs 2 and 3 to the effect that on hearing the cries of PW2, they both went to the house of PW2 and that they had found the house of PW2 locked from outside and that they had broken open the lock after they peeped through the window and found blood in the room and that they, PW6, Bali Krishnam Naidu, and others entered inside the house and found the dead body with injuries on the back side of the head and also MO1, kitchen knife, near the dead body. They also deposed about the abscondance of the accused from the house and the village and the visit of the police on the next day to the village.

7. It is pertinent to note that PWs 4 to 10 consistently spoke about the harassment and ill-treatment meted out by the accused to the deceased and the disputes between them and the accused's suspicion about the character of his wife, the deceased. Further, PWs 4, 9 and 10 deposed that about 1 ½ months prior to the death of the deceased a panchayat was held in the village regarding the complaint of harassment meted out by the accused to the deceased. PWs 4 and 10 further deposed that in the said panchayat, wherein they acted as elders, the accused promised that he would look after the deceased well without harassing and that thereafter, the accused and the deceased went to Visakhapatnam to attend cooli work and that the accused and the deceased came back to Ompilli village from Visakhapatnam, one week prior to the incident and that after such return to the house of PW2 also, the

accused continued the harassment of the deceased in a drunken state. PW13 was examined to establish that on the day of the incident at about 10.30 PM, when he was returning from his thrashing floor, he saw the accused coming in a hurried mood from opposite direction and on his questioning the accused stating to him that he was going on his work. He denied the suggestion that as he and the accused belong to different political parties, he is deposing falsehood against the accused. PW14 is the panch witness said to have been present at the time of inquest and observation of scene of offence by the Tahasildar, PW1, and the seizure of MO1, knife, (Katti Peeta) in the presence of PWs 15 and 16 and preparation of scene of offence observation report, Exhibit P4, and inquest report, Exhibit P5. He also spoke about the arrest of the accused by PW16, the Inspector of Police on 10.01.2010 at about 11 AM and seizure of MO7, T-Shirt, MO8, Lungi, that is, the blood stained clothes of the accused, pursuant to his confession/disclosure statement as stated in Exhibit P6, confessional/disclosure panchanama. He deposed that the accused confessed that he would show the place where he had hidden the bloodstained clothes and led them to the cattle shed of his uncle, Appala Swamy, wherein he had kept the blood stained clothes and produced MOs 7 and 8 and that the same were seized by the Inspector of Police under the cover of Exhibit P8, Mediator's Report, which was signed by the accused. He denied the suggestion that he is deposing falsehood against the accused as he and the accused belong to different political parties; and, maintained his stand in the cross-examination. He further denied the suggestion that the accused did not make any confession/disclosure in his presence before the police and that no discovery of fact and recovery of any blood stained clothes took place pursuant to the alleged confession/disclosure of the accused. As already noted, PW16, the Circle Inspector of Police conducted investigation and filed the charge sheet.

8. In the entire evidence, no contradictions or material omissions are there and the prosecution witnesses consistently deposed in support of the prosecution case.

9. The learned counsel for the accused contended that all the witnesses who are material witnesses are related to PW2 and the deceased and that therefore, their evidence is unreliable. The learned counsel for the accused also contended that as per the version given to PW1 by PW2, PW1 stated in his report, Exhibit P1, that the dead body was found by PW2 and others on the cot but, in the evidence all the witnesses stated that the dead body was lying on the floor beside the cot and that one of the witnesses had also stated that there is a towel in the mouth of the deceased and that these aspects cast a shadow of doubt on the case of the prosecution. Dealing with the said contention, it is to be noted that PW9 is admittedly not a related witness. Further, when the witnesses are natural witnesses and their evidence is consistent and credible and does not admit any doubt, the same cannot be discarded on the mere ground that they are related. We are not impressed with the said submissions on a wholesome consideration of the entire evidence brought on record, which is convincing and trustworthy.

10. The learned counsel for the accused next contended that PW9 stated that at the time of settlement, he advised the accused and the deceased to live amicably and lead marital life and that he did not support the case of the prosecution about the accused's habit of taking liquor and the quarrels he used to have with the deceased and the request to settle the matter and admonition of the accused at the time of settlement before the elders and that PW13 is an implanted witness and his evidence appears to be artificial and not true. PW9 figured as one of the elders at a panchayat that was held in the village regarding the harassment meted out by the accused to the deceased. The other elders, PWs 4 and 10 fully supported the case of the prosecution. On a

careful consideration of the evidence, we are not in agreement with the contention that PW13 is an implanted witness. Even if the evidence of PW13 is kept out of consideration for a moment, yet, the prosecution case remains credible. As already noted, the entire evidence is cogent and there are no contradictions and material omissions in the evidence.

11. To sum up, the evidence brought on record clearly establishes that on the night of the incident, the accused, the deceased and PW2, who is the mother of the deceased, were in her house and that after dinner, the deceased and the accused went to bed, and that about 8 PM, PW2 went to the house of PW3 to collect money and that she watched TV in the house of PW3 till 10 PM and returned to the house and that by that time, the house was found locked from outside and that on entering the house, after the locks were broken open, PW2 and others, noticed the dead body of the deceased lying on the floor in downward position with injury on the backside of the head and one kitchen knife near the dead body and the absence of the accused in the house. The prosecution by adducing cogent evidence established the facts and circumstances from which the conclusion of guilt could be drawn. All the facts and circumstances established are of conclusive nature and are consistent only with the hypothesis of the guilt of the accused; and, in our considered view, they exclude every hypothesis but the one proposed to be proved. We may add that the chain of evidence is complete and leaves no scope for a view consistent with the innocence of the accused and we are satisfied that the circumstances and the evidence establish beyond reasonable doubt that the accused was responsible for the murder.

12. It is pertinent to note that the defence of the accused, as is borne out by the cross-examination of the prosecution witnesses and his answer given during his examination under Section 313 CrPC, reflects that prior to the death of his deceased wife, he and his wife went to Visakhapatnam and that they

both returned to Ompilli village one week prior to her death and that on 04.01.2010, he went to Visakhapatnam for money and that on 09.01.2010 evening at 5 PM when he was returning and was proceeding through Ex-Servicemen Colony, Malkapur, Visakhapatnam, with an intention to get the house whitewashed, the police arrested him and that he was later brought to Bondapalli police station and was produced before the Court on 11.01.2010 and that the case is foisted against him due to political grudge and that he did not commit murder of his wife. Thus, the accused raised a plea of alibi stating that he returned to Visakhapatnam, on 04.01.2010, and that he was at Visakhapatnam, and not at the scene of offence on the date of the incident. The law is well settled that when a plea of alibi is taken by the accused, the burden is upon him to prove his presence elsewhere and his absence from the scene of offence. When the prosecution is able to establish its case, the failure of the accused to prove the said plea of alibi would be an additional circumstance to accept that his guilt is established.

13. Having thus analysed the evidence critically, we are of the considered view that the evidence brought on record is adequate to come to a safe conclusion that the prosecution established the guilt of the accused beyond reasonable doubt for the offence of murder of the deceased punishable under Section 302 IPC and that in the facts and circumstances of the case and in the light of the evidence brought on record, the learned Additional Sessions Judge is justified in finding the accused guilty and convicting him.

14. Accordingly, we confirm the conviction recorded and the sentence imposed against the accused for the offence punishable under Section 302 IPC in SC.No.86 of 2010 on the file of the Court of the I Additional Sessions Judge, Vizianagaram.

15. In the result, the Criminal Appeal is dismissed.

SANJAY KUMAR, J

M. SEETHARAMA MURTI, J

02nd September, 2016

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