

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
MONDAY, THE TWENTY EIGHT DAY OF MARCH
TWO THOUSAND AND SIXTEEN
(28.03.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.913 of 2010

Between:

Md.Saleem

..... APPELLANT/ACCUSED

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellant : **SRI V.RAGHU**

Counsel for the Respondent : **PUBLIC PROSECUTOR**

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.913 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

This criminal appeal is filed against judgment dated 28.01.2010 in

Sessions Case No.218 of 2009 on the file of the Sessions Judge, Mahabubnagar, by and under which, the learned Sessions Judge convicted the appellant/accused for the offence punishable under section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.500/- in default, to suffer simple imprisonment for a period of six months.

2. The case of the prosecution in brief is that the deceased-Rabiya @ Harshiya was the wife of the appellant/accused. The appellant and the deceased fell in love and got married two years prior to the incident against the wishes of their respective family members. They were blessed with a male child. The appellant was doing saree design works and the deceased was doing tailoring works. The appellant was suspecting the fidelity of his wife and even suspected that the boy was not born to him, and having developed hatred against the deceased he decided to kill her. On 18.05.2008, the appellant, on the pretext that he desires to visit J.P.Darga of Kothur Mandal, asked his wife to come along with him and took her to a far off place, which was within the limits of Veljerla village. When they reached there at about 4 p.m, the appellant asked his wife to mend her ways and when she replied in the negative, the appellant attacked her and slit her throat with a knife, as a result of which, the deceased died on the spot. The accused fled away from the scene of offence and left the knife at the spot. On the same day at about 9 p.m., PW 1, who was the Sarpanch of Veljerla village, lodged a report before the Police, Shadnagar P.S. and the same was registered as Cr.No.210/2008 under Section 302 IPC. The Inspector of Police (PW 14) took up investigation, visited the scene of offence, recorded the statements of the witnesses, got photographed the dead body and seized the material objects at the scene of offence in the presence of mediators. PW 14 held inquest over the dead body and sent the same to the Government Hospital, Shadnagar for post mortem examination. PW 14 gave wide publicity through print and electronic media about the incident, whereupon the relatives of the deceased identified the deceased. On

24.05.2008 the accused approached PW 7 and Mohd Ayub (LW 11) confessed his guilty and requested them to extend their help which they refused. On 26.05.2008 at 6 a.m, on information, the I.D.party apprehended the accused at his house and produced him before PW 14. PW 14 recorded the confessional statement of the accused in the presence of mediators and seized the bloodstained clothes of the accused from his house, arrested and sent him to judicial remand. After completion of the investigation, PW 14 filed the charge sheet.

3. The plea of the accused is one of denial.

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 14 and marked Exs.P1 to P10 and M.Os.1 to 10. On behalf of defence, no oral or documentary evidence was adduced. Based on the oral and documentary evidence, the learned Sessions Judge convicted the appellant and sentenced him for the offence under Section 302 IPC, as aforesaid.

5. Learned Counsel appearing for the appellant submits that except for the evidence of PWs.5 and 6, there is no evidence whatsoever to show that it is the appellant who killed the deceased, that the prosecution witnesses bore grudge against the appellant for the reason that he married the deceased against their wish, that the alleged confession of the appellant is relied upon by the Court below even though it does not satisfy the requirements of law and that merely on the basis of the evidence of PW.7 in whose presence the accused is alleged to have made confession, the appellant cannot be convicted and hence the appeal.

6. Learned Public Prosecutor, on the other hand, submits that admittedly the appellant and the deceased were married about two years prior to the incident and the said marriage being against the wishes of the parents of the deceased, she was virtually disowned by her family members, who even prevented her from coming to their house after the marriage and therefore except for the appellant, the

deceased had none with whom she was in contact. He has further submitted that the appellant did not deny the factum of his marriage with the deceased and their living together and also the fact that the deceased was found lying dead at a distance of one Kilometre from Jahangeerpeer Darga near Shamshabad. He has further submitted that the fact that the death was homicidal in nature is not disputed. That appellant being the husband has to show the probable cause for the homicidal death of the deceased since it is he in whose company the deceased was living. Except for saying that he does not know as to how it happened, nothing is contended by the appellant and that the conduct of the appellant even though his wife disappeared is unnatural which clearly indicates that it is he who is the perpetrator of the crime. Learned Public Prosecutor submits that the Court below has properly appreciated the evidence on record and hence the appeal is liable to be dismissed.

7. The point for consideration is whether the prosecution proved its case beyond reasonable doubt so as to sustain the conviction and sentence recorded against the appellant/accused, or whether the same needs to be set aside, modified or varied?

8. The deceased was the daughter of PW.5. Her dead body was found lying in Sy.No.84 of Velijerla village on 19.05.2008. It was firstly seen by PW.2, a cowherd. He immediately informed the same to Kavali, who is examined as PW.3. PW.3 having gone to the spot and getting it confirmed that the deceased was a muslim woman since she was covered with burkha and the throat was cut, informed the matter to PW.1, the Sarpanch, who visited the spot and thereafter lodged the complaint-Ex.P.1. After due investigation, it was revealed that the dead body is that of one Rabiya who was the daughter of PW.5 and the wife of the appellant. The same was identified by PW.5 and other relations. During the further investigation, scene of offence

panchanama was conducted, inquest was held and the dead body was sent for post-mortem examination. The evidence of PWs.1, 2, 3, 4 and 8 establishes the above facts.

9. PW.10 is the Medical Officer who conducted the autopsy over the dead body and found an incised injury at the level of thyroid cartilage.

10. Admittedly there are no eyewitnesses to the incident and the case is based on circumstantial evidence. According to the prosecution, the appellant made the confession in the presence of PW.7 and thereafter he also made the confession in the presence of PW.9 after his apprehension.

11. It is in the evidence of PW.5 that since the deceased married the appellant against her wishes, they have disowned her and also directed that she should not visit their house. She further deposed that the deceased was in contact with PW.6 who was the paternal uncle of the deceased and she used to inform PW.6 that the appellant is harassing her suspecting her fidelity. PW.6 deposed that on coming to know about the death of the deceased in the morning hours of 19.05.2008, they went to Shadnagar police station and identified the body in the hospital. Thereafter, the body was brought to the house of the accused at Aman Nagar (B), Talabkatta, Hyderabad. It is also in his evidence that by the time they went to Shadnagar Police Station, the appellant was in the police station and that the other family members of the appellant and neighbours have buried the dead body in the graveyard. He further deposed that on two occasions the deceased met him and informed that the accused was suspecting her fidelity.

12. From the evidence of PWs.5 and 6, what could be gathered is that having married the deceased against the wishes of her family members and after having blessed with a son, the appellant was

suspecting the fidelity of his wife and that the said suspicion is the motive for the offence.

13. PW.7 is an independent witness and he deposed that on 24.05.2008 the appellant came to his house and informed that he had seen the deceased talking to some male persons and suspected her fidelity and he murdered her. PW.7 further deposed that since it was a police case, they advised him to go to police station and refused to offer any help. PW.7 is a resident of the locality where the appellant and the deceased were living and he claims some acquaintance with them. Even though PW.7 was elaborately cross-examined, nothing concrete is elicited for disbelieving his statement that the appellant came to him and informed that he murdered his wife suspecting her fidelity.

14. The further case of the prosecution is that when apprehended, the appellant made confession in the presence of PWs.11 and 12 but both of them turned hostile and denied that the appellant made any confession in their presence inculcating himself in the crime. PW.14 is the Investigating Officer and he deposed that during the course of investigation, the appellant was arrested and he made the confession and in pursuance thereto, the wearing apparel of the appellant M.Os.5 and 6 T-Shirt and pant were recovered at the instance of the appellant and that the same contained blood stains. The same were analyzed by the Regional Forensic Science Laboratory and Ex.P.10 is the report which shows that the T-Shirt and Pant of the appellant contained blood stains. As per Ex.P.10, the T-Shirt and pant of the appellant and the burkha and brassier which were on the dead body were analyzed and all the four items contained the blood stains which were of 'B' blood group.

15. Ex.P.10 clearly shows that the blood stains found on the pant and T-Shirt of the appellant and the burkha and brassier of the

deceased were of the same blood group and it abundantly proves the involvement of the appellant. The Investigating Officer – PW.14 speaks about the material objects being analyzed by the Regional Forensic Science Laboratory.

16. The evidence of PW.7 and the Investigating Officer – PW.14 coupled with the documents that were produced leaves no room for doubt that it is the appellant who committed the crime.

17. In addition to the above, the conduct of the appellant also shows his culpability. There is no denial of the fact that the appellant and the deceased were living together at Talabkatta in Hyderabad. The dead body of the deceased was found lying in the fields near Jahangeerpeer Dargah, which is at a distance of more than 40 KMs. The deceased would have certainly disappeared from the house of the appellant on 18.05.2008. The appellant and the deceased had an infant son. If really the appellant is not involved in the crime, he would not have kept quiet without making any effort to locate and trace his wife who disappeared from his house on 18.05.2008 and surfaced as a corpse in the morning of 19.05.2008⁹ at a place which is sufficiently far off from their house. From his silence what could be inferred is that it is he who is responsible for the death of the deceased.

18. In this connection, reference can be made to a decision of the Supreme Court reported in **RAMESH VITHAL PATIL v. STATE OF**

KARNATAKA^[1] wherein it is observed as under in para 21:-

There is also another angle to this case. The prosecution has succeeded in proving facts from which a reasonable inference can be drawn that the deceased committed suicide by jumping in the river along with her daughter. The deceased was in the custody of the appellant. She left the appellant's house with the small child. Admittedly, neither the appellant nor any member of his family lodged any missing complaint. The appellant straightaway went to the house of the deceased to enquire about her. This conduct is strange. When his wife and small child had left the house and were not traceable the appellant was expected to move heaven and earth to trace them. As

to when and why the deceased left the house and how she died in suspicious circumstances was within the special knowledge of the appellant. When the prosecution established facts from which reasonable inference can be drawn that the deceased committed suicide, the appellant should have, by virtue of his special knowledge regarding those facts, offered an explanation which might drive the Court to draw a different inference. The burden of proving those facts was on the appellant as per Section 106 of the Evidence Act but the appellant has not discharged the same leading to an adverse inference being drawn against him.”

19. In the instant case also, it can be said that it is the appellant who has special knowledge about the circumstances in which his wife disappeared and ultimately was found dead at a far off place. It is for the appellant to offer an explanation which might require the Court to draw a different inference. Except for saying that he does not know as to how it happened, absolutely nothing is placed on record by the appellant to probablize his defence that he is innocent of the crime. The evidence on record clearly shows that the appellant married the deceased after having eloped with her and after about two years, he started suspecting her character of which the deceased was informing her paternal uncle-PW.6. On 18.05.2008 the deceased was killed by cutting her throat in the fields near Jahangeerpeer Dargah and the body was found by the local people in the morning of 19.05.2008. In the absence of any plausible explanation from the appellant, the only irresistible inference that can be drawn is that it is he who took his wife to dargah and took her to a secluded place and killed her. The wearing apparel of the appellant and the deceased at the relevant point of time had blood stains which were of one and the same blood group which clearly indicates that when the deceased was killed, blood spilled over the clothes of the appellant. The appellant has not denied that the T-Shirt and pant – M.Os.5 and 6 belong to him and that they were recovered at his instance from his house.

20. Learned Counsel appearing for the appellant while questioning the correctness of the confession leading to the recovery of M.Os.5 and 6 submits that according to the prosecution, the incriminating objects were recovered after the appellant was arrested on 26.05.2008. Learned Counsel submits that as per the evidence of PW.5, when they went to Shadnagar Police Station on 19.05.2008 itself the appellant was in the custody of the police. Therefore, the learned Counsel submits that the so called apprehension and confession leading to the recovery of the incriminating objects is planted. The submission of the learned Counsel no doubt sounds attractive but this aspect is not only denied by the Investigating Officer – PW.14 but also the appellant who himself during the course of his examination under Section 313 Cr.P.C., denied the statement made by PW.5 that the appellant was in the custody of the police on 19.05.2008 itself. Therefore, the appellant cannot take advantage of the statement made by PW.5 that he was in the Police Station on 19.05.2008 when he himself denied the said fact.

21. The cumulative effect of the above circumstances is that it is proved that it is the appellant who committed the crime. The Court below has appreciated the evidence on record in proper perspective and found the accused guilty and there are no grounds to interfere with the same. The appeal is therefore liable to be dismissed.

22. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence recorded against the appellant/accused by the learned Sessions Judge, Mahabubnagar, in S.C.No.218 of 2009.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 28.03.2016

Dsr/Smr/vgb

[\[1\]](#) (2014) 11 SCC 516