

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

CRIMINAL APPEAL No.1492 of 2010

DATED:- 18-10-2016

Between:

Kodidala Babu

..... PETITIONER

AND

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

.....RESPONDENT

COUNSEL FOR THE APPELLANT : Smt. A.GAYATHRI REDDY

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (TS)

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.1492 of 2010

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

This criminal appeal is filed against judgment dated 23.03.2010 in Sessions Case No.55 OF 2009 on the file of the Sessions Judge, Nizamabad, by and under which, the learned Sessions Judge has convicted the appellant/accused for the offence punishable under section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/- (Rupees five hundred only), in default, to suffer simple imprisonment for a period of 15 days.

For convenience, the appellant is referred to as "the accused".

The case of the prosecution, in brief, was that the deceased Sujatha was the wife of the accused and their marriage took place about 13 years prior to the date of incident. They were blessed with one son and daughter. The accused, addicted to bad vices, was neglecting the welfare of the family and frequently used to pick up quarrels with the deceased. The deceased used to maintain the family by doing coolie works. The deceased went to her parents' house on the eve of Rakhi festival and tied Rakhi to his brother (PW 1) and returned to her matrimonial home at Mamidipally. While so, on 23.08.2008 in the midnight, PW 4 informed PW 1 over phone that the deceased died. PW 1 and others went to Mamidipally and observed the dead body of his sister Sujatha in front of the house and made enquiries about her death. He came to know that the accused and the deceased quarreled in the morning and in the night they found that Sujatha committed suicide. PW 1 noticed injuries on the

neck and cheek of the deceased and suspected the death of the deceased as a homicide committed by the accused and hence he lodged a complaint before the jurisdictional police. PW 12-the Investigating Officer visited the scene of offence, held inquest over the dead body and recorded the statements of the witnesses in detail. PW 12 conducted scene of offence panchanama and drew its rough sketch in the presence of mediators and sent the dead body for post mortem examination.

After receipt of RFSL report, the section of law was altered from Section 174 Cr.P.C to Section 302 IPC. PW 14-the Inspector of Police conducted further investigation in the crime. PW 13 arrested the accused on 19.11.2008. The accused confessed before PW 14 and the mediators to have committed the offence. According to the confessional statement of the accused, he decided to kill the deceased as she was always quarrelling with him for everything, and that on 23.08.2008 when the deceased slept, he pressed her neck till her last breath and later created a scene of suicide. Hence the charge.

The plea of the accused is one of denial.

In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 14 and marked Exs.P1 to P16. On behalf of defence, no oral or documentary evidence was adduced. After taking into consideration the oral and documentary evidence on record and having heard the submissions of both sides, the learned Sessions Judge convicted the appellant/accused and sentenced him, as stated supra.

Learned Counsel appearing for the appellant submits that the prosecution which is relying upon circumstantial evidence has failed to prove the same by any legal and reliable evidence, that the learned Sessions Judge erred in holding the death of the deceased to be

homicidal, that there was absolutely no motive, whatsoever, for the appellant/husband to kill his deceased wife, that the Court below has relied upon the inadmissible and inconsistent evidence and erred in convicting the appellant and hence the appeal.

Learned Public Prosecutor submits that the prosecution has proved by cogent evidence that at the time when the death of the deceased took place, none other than the deceased/wife and the appellant/husband along with tender aged children were in the house, that it was at about 10.30 in the night, that the motive part is also spoken to by the relatives of the deceased consistently, that the prosecution has proved all the links in the chain of circumstances which lead to the hypothesis that the appellant is guilty of killing his wife by throttling, which fact is amply established from the medical evidence on record. Learned Public Prosecutor submits that in a case of this nature, the best possible evidence has been produced by the prosecution and the learned trial Judge has rightly appreciated the evidence and came to the conclusion that it is the appellant who is responsible for the death of his wife and hence there are no merits in the appeal and the same is liable to be dismissed.

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

The admitted case is that the deceased was the wife of the appellant and they were married in or about 1995. They had a tender aged son and a daughter. They were staying in a tenanted premises belonging to PW.8. The death of the deceased took place within the four

walls of her matrimonial home and none else other than the appellant, the deceased and their children were in the house. The incident occurred at about 10.30 p.m.

According to the appellant/husband, the deceased used to quarrel with him suspecting his character. In that connection, there used to be altercations between them. It is the defence, which could be culled out from the material on record, that on the date of the incident, the appellant went to Karimnagar in the morning on his business and when he returned home, he found the deceased lying dead. Apparently, the accused wants it to be believed that the deceased committed suicide and that he is in no way responsible therefor.

On the other hand, the case of the prosecution is that the accused was having certain financial problems, due to which there used to be frequent quarrels between the couple, that two days prior to the incident, the deceased had been to the house of PWs.1 and 2, who are her brother and mother, to celebrate the festival of Rakhi, and that she returned a day prior to the incident. That on that day, the accused returned home late in a drunken condition and there was a galata in between the couple, that next day also the accused went to Karimnagar to pay certain instalments to Sri Ram Finance Corporation from where he was said to have obtained loan for purchase of a mechanically propelled vehicle and returned home late in the night, that there ensued a quarrel between the couple and thereafter the deceased slept, and that taking advantage thereof, the accused has throttled her to death. That immediately thereafter PW.5 came there for the purpose of taking back the motorcycle which was given to the accused by PW.7, that at that time, PW.5 had seen the deceased on the ground lying at the feet of the accused, that the accused

requested PW.5 to get a Doctor since his wife was suffering with Fits, that PW.5 conveyed the said message to PW.7 who came there, summoned an ambulance and shifted the deceased to the hospital, but she was found dead. PW.5 informed PW.1, who along with PW 2 reached the spot and found certain injuries on the neck of the deceased and in view of the suspicious death, the complaint came to be filed. The dead body was subjected to post-mortem examination and the Medical Officer – PW.11 conducted autopsy and opined that the death of the deceased was due to asphyxia as a result of throttling (manual). Nearly three months thereafter, the appellant was arrested and he confessed in the presence of PW 10 of having committed the crime. learned Public Prosecutor submits that the above facts have been proved by cogent and reliable evidence and nothing has been elicited from the material witnesses to discard or disbelieve their veracity.

As already stated, the case is based on circumstantial evidence. PWs.1 and 2 are the brother and mother respectively of the deceased and it is in their evidence that they came to know on being informed about the death of the deceased and on enquiry, the accused told them that the deceased committed suicide by hanging. It is asserted by PW.1 that since they suspected the accused as there were injuries on the neck and cheek of the deceased, he went to Police Station and lodged the complaint- Ex.P.1. When PW.1 spoke about the above events, he has not been subjected to cross-examination on material aspects so as to disbelieve what he deposed in his chief-examination. The evidence of PW.1 when he spoke about the presence of the accused in the house at the time of the incident nor the statement said to have been made by the appellant

immediately after the incident took place, was not challenged by cross-examining him.

Similar is the evidence of PW.2. She also expressed suspicion about the cause of death of the deceased and also spoke about the frequent quarrels in between her daughter and son-in-law. She also spoke about having noticed injuries on the left side of the cheek of the deceased. She was also not subjected to any detailed cross-examination so as to discredit her statement.

From the evidence of PWs.1 and 2, the facts that bear out are that the deceased died at about 10.30 in the night on 23.08.2008, that immediately they reached there and found the deceased dead and that the appellant was present at that time.

The presence of the appellant in the house when the deceased died an unnatural death is also spoken to by PWs.5, 6 and 7. It is in the evidence of PW.5 that he went to the house of the couple in the night and when he knocked the door, it was the appellant who opened the door and handed over the keys of motorcycle when demanded, that at that time PW.5 saw the deceased lying at the feet of the accused, that the accused informed him to call for a Doctor so as to shift the deceased to the hospital as she was getting fits, and that he informed the same to PW.7 who came there and summoned an ambulance. It is further in the evidence of PW.5 that he observed scratch mark on the neck of the deceased. PW.5 is altogether an independent witness and is neither a friend of the deceased nor a foe of the accused.

Similarly, PW.6 is a neighbouring resident and she deposed that in the night of the incident, she heard the weeping cries from the house of the accused, and that she went there and noticed the children of the

deceased and the accused standing in front of their house weeping. She further claimed that the children of the deceased informed that their mother was not responding and accordingly she entered into the house and saw the deceased lying on the ground. Even though this witness was treated as hostile by the prosecution, her evidence is consistent to the effect that immediately after the incident, she reached the spot and found the deceased lying dead on the ground and the accused and their children weeping there at.

PW.7 also corroborated what was spoken to by PW.5. PW.8 spoke about the fact that the accused and the deceased were tenants in her house.

From the above material evidence, the fact that emerges is that the prosecution has placed the consistent evidence to the effect that when the deceased died an unnatural death, none other than the accused and their tender aged children were in the house. The evidence further falsifies the contention of the accused that the deceased committed suicide by hanging. Even though PWs.5 and 6 reached the spot within minutes after the deceased died, they did not find the deceased hanging, but on the other hand, they found her lying on the ground.

The crucial evidence in the case is that of the Medical Officer. It may be recalled that the accused would have it that the deceased committed suicide by hanging. The Medical Officer-PW.11 who conducted the post mortem found three injuries viz., an abrasion on the front of the neck; an abrasion on the neck below the hyoid bone; and an abrasion contusion on the chin of the deceased. He further deposed that on dissection of the neck, he noticed fracture of the tip of the hyoid bone on the right side. He opined that the cause of death was due to manual

strangulation asphyxia. In the cross-examination, what was elicited from the Medical Officer on behalf of the accused was that he found scratch marks over the chin, that there was congestion, that the protrusion of tongue itself indicates congestion over the face, that he did not observe finger print marks on neck, that the contusions and abrasions occurred because of manual handling, that the injuries were present from the front side, that there was no possibility of the deceased committing suicide by self-throttling, that the injuries noticed by him were not possible by a fall on hard-surface, that the contusion occurred because of the use of force, and that the injuries found by him were ante mortem in nature. The Medical Officer denied the suggestion that he had not properly conducted the post-mortem examination and that the opinion given by him is not scientifically correct.

From the evidence of the Doctor, as discussed above, it is noticed that in the cross-examination more vital aspects were elicited which proved to be the final nail in the coffin of the plea of the accused. The medical evidence not only establishes beyond doubt that the deceased died due to manual strangulation i.e., applying force on the front of the neck, but also it altogether rules out the possibility of the death having taken place in any other manner other than as alleged by the prosecution. It also shatters the contention of the accused that the deceased committed suicide either by hanging or by indulging in self-throttling.

We are conscious of the fact that in a criminal trial, it is not obligatory on the part of the accused to set up any specific defence. However, in a case of this nature, it is incumbent on the part of the appellant to take a specific stand as to the cause of the death of the deceased since it was he alone that was present in the house at the time

of the incident. It is noticed from the material on record that at one stage the accused wants it to be believed that the deceased committed suicide by hanging, and at another stage he wants it to be believed that the deceased strangled herself by applying force on her neck. Both the possibilities are ruled out by the medical evidence on record. When a specific stand is taken by the accused and if that stand is proved to be false by the evidence on record, an inference about the culpability of the accused can be drawn, more particularly, in view of the fact that the incident took place within the four walls of the matrimonial home and none other than the appellant had access thereto at the dead end of the night.

The other evidence on record comprises the evidence of PW 9, who spoke about the inquest and scene of offence panchanamas having been conducted in his presence, and the evidence of PW.10, the panch witness in whose presence the accused confessed that he killed the deceased in a drunken condition. According to PW.10, as per the confession of the accused, he killed his wife since she was suspecting his character. However, since, nothing incriminating has been recovered in pursuance to the said confession made by the appellant while he was in police custody, the same cannot be looked into.

The Investigating Officers are examined as PWs.12, 13 and 14 and they spoke about the lodging of the complaint, registering of the crime, investigation taken up, crime occurrence report, holding of inquest, the dead body having been sent to post-mortem examination, apprehension of the accused, his confession and after conclusion of investigation, the filing of the charge sheet.

From the foregoing discussion, we have no hesitation in holding that the prosecution has placed trustworthy and reliable evidence on record which proved beyond reasonable doubt that it was the appellant who had perpetrated the heinous crime of killing his wife by throttling her by applying pressure on her neck in view of her consistent nagging and insisting for an explanation from him for his coming late in the nights to the house regularly. It was also established that when the incident took place within a closed room, none except the appellant/husband and the deceased-wife along with their children were present. The death of the deceased was proved to be a homicidal death and as per the medical evidence the same was the result of asphyxia due to manual throttling. The learned Sessions Judge had taken all the aspects into consideration and on being satisfied that the same prove the case of the prosecution beyond reasonable doubt found the appellant guilty of the offence punishable under Section 302 IPC. We see no reason to take any view other than that taken by the learned trial Judge. There are no merits in the appeal and the same is liable to be dismissed.

In the result, the Criminal Appeal is dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 18.10.2016
Dsr/Smr