

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

Criminal Appeal no.919 of 2009

JUDGMENT: (per Hon'ble Sri Justice M. Seetharama Murti, J)

This appeal under Section 374(2) of the Criminal Procedure Code, 1973 ('the CrPC', for short) by the accused is preferred against the judgment dated 28.07.2009 of the learned III Additional Sessions Judge (Judge, Fast Track Court), Asifabad of Adilabad District in SC.no.480 of 2008 taken on file pursuant to the Committal orders in PRC.no.37 of 2008 on the file of the learned Judicial Magistrate of First Class, Asifabad arising out of Crime no.5 of 2008 of Bellampalli II town Police Station registered for the offence punishable under Section 302 of the Indian Penal Code, 1860 ('the IPC', for short).

2. We have heard the submissions of the learned counsel for the appellant/accused and the learned Public Prosecutor appearing for the respondent/State. We have perused the material record.

3. The case of the prosecution constituting the gravamen of the charge is that on 08.02.2008 at 10:00 hours the first informant-Sayyed Yakub Ali-PW1 lodged a report with the police concerned stating that on 08.02.2008 at about 06:30 hours he along with his brother Afroz left the house with an Auto and that later at about 09:00 hours his brother Sayyed Khaza-PW2 informed him on phone that his father Mahaboob Ali, the accused, killed their mother-Sayyed Suhani Begum and that on that he went to the house and found that her dead body was lying on a cot with a bleeding injury below the chin and a contusion mark on her throat and that on enquiries with the neighbours, it is revealed that at about 08:30 hours there was a quarrel between his mother and father and that on hearing the noise, the neighbours went inside the house to know the reason for the quarrel and that at that time the accused who was carrying a small towel in his hand was going out of the house in a hurry and that they found that the deceased was dead.

4. The learned III Additional Sessions Judge had framed the following

charge against the accused.

‘that on 08-02-2008 at 0830 hours at goal bungalow Basthi of Bellampally you the above named accused intentionally committed murder of your wife Sayyed Suhani and thereby, you have committed an offence punishable under Section 302 IPC and within my cognizance.’

[Reproduced verbatim]

5. During the course of trial, PWs1 to 11 were examined and exhibits P1 to P14 were marked on the side of the prosecution. MOs1 to 3 were also marked. No witnesses were examined on the side of the accused. However, exhibit D1 was marked.

6. By the judgment impugned in this appeal, the learned Additional Sessions Judge found the accused guilty of the offence punishable under Section 302 of the IPC and sentenced him to undergo rigorous imprisonment for life and also to pay a fine of Rs.2,000/-. Therefore, the aggrieved accused preferred this appeal.

7. The learned counsel for the accused would contend as follows:

The learned Additional Sessions Judge ought to have seen that the case of the prosecution is based only on circumstantial evidence and that the circumstances relied upon by the prosecution are not proved by any legal and reliable evidence. The accused has no motive to kill his wife. PW1, who lodged the first information with the police; and PW2, who is his brother, and who are the sons of the accused and the deceased did not support the case of the prosecution. The material record discloses that the accused was taken into illegal custody on the same day of the alleged offence, but, his arrest was shown about 40 days thereafter. The learned Additional Sessions Judge ought not to have given any weight to the evidence of PWs3 and 4, who are the neighbours and who are not eyewitnesses and with whom the accused is having inimical relationships. Even otherwise, the evidence of PWs3 to 5 is highly discrepant. The evidence of the prosecution in regard to recovery of a handkerchief/small towel, MO3, from the possession of the accused on his arrest about 40 days after the alleged incident, is highly unbelievable. The further evidence that the group of the blood stain, which it allegedly contained, matched with the blood group of the stains on the blouse of the deceased is also unbelievable. The learned Additional Sessions Judge ought to have rejected the said evidence. There is absolutely no evidence to

prove the guilt of the accused much less beyond reasonable doubt. The circumstances from which the conclusion of guilt is to be drawn are not established, much less, conclusively.

8. Per contra, the learned Public Prosecutor would contend that the evidence of PWs 3 to 5 sufficiently established the required circumstances pointing conclusively to the guilt of the accused and that there is sufficient evidence on record to show that the accused and his deceased wife are last seen together and that they are only in the house prior to and immediately after the offence of Murder and that the neighbours had heard some noise on account of the quarrel between them and that the neighbours who had gone to the house of the accused to find out the reason for the quarrel had seen the accused leaving his house hastily with a hand kerchief/small towel in his hand and that the said neighbours had also found the dead body of the deceased, that is, the body of the wife of the accused, lying in supine position on the cot inside the house and that therefore, it is established that the accused is the only person in the house along with the deceased at the relevant time and that the evidence brought on record also would show that just after the incident he had left the house hastily and that the MO was recovered at his instance after his arrest and hence, the learned Additional Sessions Judge was right in placing reliance on the circumstances established by the prosecution and in convicting the accused for the offence punishable under Section 302 of the IPC as the said established circumstances are conclusive in nature.

9. We have carefully gone through the evidence and given earnest consideration to the submissions.

10. Admittedly there are no eye witnesses to speak directly about the incident that had lead to the death of the deceased. PWs 1 and 2, who are the sons of the accused and the deceased, had turned hostile and did not support the case of the prosecution; and no important points, which support the case of the prosecution, are gained in their cross examinations. Therefore, the prosecution case rests on the evidence of PWs 3, 4 and 5. The prosecution relied mainly upon four circumstances in support of its contention that guilt of the accused is established as required under law for

the offence punishable under Section 302 of the IPC.

10.1 The first circumstance is that on the morning of the day on which the death of the deceased had occurred, the accused and the deceased, who is his wife, were only present in their house and that except the accused no body else was present with the deceased in that house prior to and immediately after the incident of Murder and that the neighbours who had heard some noise on account of the quarrel between them had gone to their house to find out the reason for the quarrel between them and that at that time the said neighbours had seen the accused leaving his house hastily with a small towel/handkerchief in his hand and that the neighbours who had entered the said house had found the dead body of the deceased lying in supine position on the cot inside the house and that all the said facts that are established coupled with the conduct of the accused in leaving the house hastily just after the incident establish his complicity and rule out any other hypothesis. On these aspects, **PW3**, who was said to be a neighbour of the accused, had deposed that the house of the accused is situate in-front of his house and that there used to be disputes between the accused and the deceased and that since 15 days they were fighting with each other and that at about 08:30, he went to the house of the accused and before that only the accused has left his said house and that he had observed injuries on the chin and neck of the dead body of the deceased, which was lying on a cot, and that along with him, PW4-SK.Gore and PW5-MD.Musthafa had also witnessed the incident and the dead body. Thus, in examination in chief, he did not state that he saw the accused leaving the house, but, had only stated that at about 08:30 hours he went to the house of the accused and that before that only the accused has left his said house. However, in his cross-examination he had stated as follows: 'I have seen the accused going from the house after he covered half of the road in our lane as such it is incorrect to suggest that I had not seen him. In fact accused was going fast after the incident.' [Reproduced verbatim for emphasis]. Even this statment in the cross-examination would only indicate that by the time PW3 saw the accused, he had already covered half of the distance of the lane and that he was going fast. PW3 had further stated that he is not on talking terms with the accused. PW4 deposed that the accused and the deceased having disputes between them is a regular and routine affair and that he, PW3 and PW5 went

to the house of the accused and found the accused going from the scene with a towel in his hand and that they had observed the dead body and found an injury and blood on the chin. In his cross examination he had stated that his quarter number is 11 and that he does not know the number of the quarter of the accused and the said house is three or four houses away from his house and that he and PWs 3 and 5 together went to the scene and that they had observed the accused within the compound wall while he was about to leave the house at 08.30 am. PW5 deposed that on the day of the incident, the quarrel started between them (the accused and the deceased) at 7.00 am and that he and PWs 3 and 4 were standing on the road in front of his house and that they had observed the accused going from the house with a hand kerchief in his hand and that they went inside the house and found that the deceased was lying on the cot and that they had observed blood stained injury on the cheek of the body of the deceased. He had also stated that it appeared to them that the neck was strangulated and was red in colour and that at that time nobody was present in the house. In his cross examination it was elicited that the accused and the deceased had three children and that the children also live in the same house and that the accused is working as General Manger in Singareni. He had also stated that they had observed the accused coming out of the house and when he was within his compound at 08.30 am. The inconsistencies in the evidence and the incoherent versions of PWs3 to 5 about their noticing the accused leaving the house at the relevant time, which are vital and of a substantial character in a case of this nature, create a reasonable doubt as to whether they have really seen the accused leaving the house immediately after the alleged incident.

10.2 Regarding the motive for the accused to commit the offence, though the said witnesses stated that the accused was suspecting the fidelity of his wife and had denied the suggestions given to the contra to them, their evidence on the motive aspect does not inspire confidence as they had barely stated so without details thereof and the source of their knowledge for the same. No investigation was done on the said aspect and no material in that regard was brought on record in the form of acceptable evidence. None of the witnesses spoke about the accused assaulting his wife at any time on account of the disputes or suspicion he had allegedly entertained. The evidence brought on

record, in our considered view, does not show that there is a deep rooted enmity between the spouses, who are said to be regularly quarrelling, and that the accused had developed a strong motive to do away with the life of the deceased, his wife.

10.3 The prosecution next relies upon the recovery of MO3, 'a small towel or Hand Kerchief' with blood stains, from the possession of the accused on his arrest on 18.03.2008 at 16.00 hours in the presence of the mediators including PW10 and the FSL report under exhibit P14, which discloses that human blood of 'O' group was detected on the examination of the dark brown stains on MO1-blouse and MO3-the light blue colour hand kerchief. In the first place it is to be noted that there is no consistency as to what the accused allegedly carried when he had allegedly left the scene of offence. PW3 did not speak of the accused carrying any such towel or kerchief. PW4 said that the accused was carrying a towel and that its colour is white. PW5 had stated that the accused left the house with a hand kerchief in his hand. The panchanaama shows that the towel recovered is white in colour with green and white stripes. The FSL report/exhibit P14 shows that the kerchief sent by the police for chemical examination is of 'light blue' colour. The IO, who was examined as PW11, had stated ingeniously that after the arrest of the accused on 18.03.2008 he had recovered from the accused a towel/kerchief, without specifying whether the object recovered is a towel or kerchief. Further, weirdly, PW10 the witness in whose presence the said material object was allegedly seized had stated that police seized a kerchief in his presence from the house of the accused and that MO3 is the kerchief seized by the police in his presence and that the accused himself produced MO3 from the place of wooden lot. The IO deposed in his evidence that he did not reduce into writing a separate scene of offence panchanaama and that he had only prepared exhibit P13, a rough sketch of scene of offence, as there are no material objects found at the scene. Had the kerchief been there, it would have been found at the time of preparation of the rough sketch during the course of investigation done even before the arrest of the accused on 18.03.2008. Contrary to the above evidence of PW10 and the contents of exhibit P10 recovery panchanamma, the PW11, the IO, had testified that the towel/kerchief was recovered from the accused on his arrest. It is necessary to recall that the incident that resulted in the death of the deceased had

occurred on 08.02.2008 and that the accused was said to have been arrested on 18.03.2008, that is, after about 40 days of the alleged offence. This version of the IO that the accused carried with him the MO3, which is likely to incriminate him, from that date 08.02.2008 till the date of his alleged arrest on 18.03.2008, that is, for about 40 days is preposterous and is unbelievable. All the above said factors and inherent contradictions about the recovery of MO3-handkerchief lay bare that this part of the pack of circumstantial evidence being relied upon by the prosecution is not trustworthy and that it is possible to infer that MO3 is planted to create some evidence to link the accused with the alleged offence.

10.4 Even the medical evidence, which generally would be one of the circumstances in favour of the prosecution in a given case, is not free from doubt. The case of the prosecution is that the death of the deceased was caused due to throttling of her neck. Post Mortem Examination Report-exhibit P9 ('PME Report' for short) discloses only one injury viz., fracture of Hyoid bone besides an abrasion on chin and it is stated therein that no abnormality was detected in any of the internal organs. The cause of death was stated as 'Asphyxia caused by throttling of neck and fracture of hyoid bone'. PW9-the Doctor who had conducted PM examination deposed that the modus operandi of throttling could have been by use of hands or cloth and that he did not find finger marks or ligature marks on the neck and normally there will be ligature mark on the neck if a towel is used to throttle and that if hands are used it would be called throttling and if cloth is used it would be called strangulation and that he did not find any blood froth from the nose or ears and that lungs would be congested in some cases of throttling and that it is not necessary that all internal parts to become congested and that in cases of asphyxia due to lack of oxygen fingers and lips turn blue in colour and that in this case he did not find any such changes and that he did not find any abnormality in the lungs and that he did not mention that tongue is protruded and that he feels that the death was caused mostly by using hands in this case as there is no abnormality in the internal organs. Thus, the evidence makes it obvious that except fracture of hyoid bone there is no other symptom of throttling and there are absolutely no symptoms of asphyxia. As a result, if the post mortem report and the evidence of the Doctor are collectively

considered, they do not unhesitatingly support the conclusion that the death of the deceased may be due to throttling of the neck.

10.5 Thus none of the aforesaid four circumstances relied upon by the prosecution are established as required under law to lend support to the prosecution case based on circumstantial evidence.

11. Further, there is a serious blemish in the prosecution case as to the date of the apprehension/arrest of the accused. According to the version of the prosecution, after the incident, the accused had immediately left the scene hastily with a towel or kerchief in his hand. PWs3 to 5 tried in vain to support the said case of the prosecution. PW11, the IO had also stated that he had apprehended the accused on 18.03.2008 at 16.00 hours. Nonetheless, the exhibit P10- the confession and recovery panchanaama also bears the date 18.02.2008 and not 18.03.2008. Further, PW3 had stated that police had examined him at the house of PW1/the scene of offence and that on that day evening they went to the police station and that at that time the accused was in the police station. PW8, who had acted as an inquest panch, stated in his evidence that the accused was also present at the time of inquest held on 08.02.2008. Therefore, the evidence divulges that the accused was in the custody of the police even by the date of the alleged offence, that is on 08.02.2008 and that he was kept in illegal custody and that his apprehension and arrest were falsely and illegally shown about 40 days thereafter, that is, on 18.03.2008 at 16.00 hours. Thus, the evidence brought on record makes it manifest that the arrest of the accused on 18.03.2008 and the recovery of MO3 at his instance are manipulated versions in the prosecution case and make the prosecution case unworthy of credit.

12. Before parting it is profitable to call in aid the decision of the Supreme Court in **Chattar Singh and Anr. V. State of Haryana**^[1] wherein the law on the appreciation of circumstantial evidence is stated as follows: "There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by this Court as far back as in 1952 in **Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh** (AIR 1952 SC 343), wherein it was observed thus:

“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 be 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.”

Further, in **Padala Veera Reddy v. State of A.P.**^[2] the Supreme Court laid down the principle that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

“(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.”

In view of the legal position obtaining, the inherent and vital inconsistencies and the fatal falsity in the prosecution case in regard to the arrest of the accused and the recovery of MO3, which cast an indelible shadow of doubt on the case of the prosecution we find that there is no acceptable evidence, much less complete and conclusive circumstances, consistent with the guilt of the accused and that the circumstances being sought to be relied upon by the prosecution are not definite and do not unerringly point out towards the guilt of the accused. For the aforesaid reasons, we hold that the learned Additional Sessions Judge had committed a grave error in ignoring the vital and material aspects of the case and in recording a conviction against the accused even in the absence of any legal, valid, reliable and conclusive

evidence, which is consistent only with the hypothesis of the guilt of the accused.

13. In the result, the Criminal Appeal is allowed and the judgment of the learned III Additional Sessions Judge (Judge, Fast Track Court), Asifabad of Adilabad District in SC.no.480 of 2008 holding the appellant/accused guilty of the offence punishable under Section 302 of the IPC and further recording a conviction and imposing imprisonment for life and fine is hereby set aside. The appellant/accused is accordingly acquitted of the said charge. He shall be set at liberty forthwith, if his confinement is not required in any other case. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

22.07.2016

Vjl

[\[1\]](#) 2008 (8) Supreme 178

[\[2\]](#) 1989 Supp (2) Supreme 706