

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1375 of 2011

JUDGMENT : (per Hon'ble Sri Justice C.Praveen Kumar)

1) The sole accused in Sessions Case No.112 of 2011 on the file of the V Additional Sessions Judge, Rayachoty, is the appellant herein. He was tried for the offences punishable under Sections 498(A), 364 and 302 IPC. By its judgment dated 16.09.2011, the Sessions Judge while acquitting the accused for the offence under Section 498-A IPC, convicted the accused for the offence under Section 302 IPC, for causing the death of his daughters; and sentenced him to suffer imprisonment for life. He was further found guilty for the offence punishable under Section 364 IPC and was sentenced to suffer imprisonment for a period of 5 years and to pay a fine of Rs.100/- in default of fine to suffer simple imprisonment for one month. The sentences under both the counts were directed to run concurrently.

2) The gravamen of the charge against the accused is that on 06.07.2010 at Ramapuram village, the accused is said to have kidnapped his two daughters viz., Sravani @ Bujji and Manisha and thereafter he is said to have caused death of the said two daughters with a sharp edged weapon.

3) The facts as culled out from the evidence of the prosecution witnesses are as under:-

P.W.1 is Village Revenue Officer, while P.W.2 is the village servant. P.W.3 is the daughter of the accused and elder sister of the two deceased. P.W.4 is the uncle of P.W.3 and brother of the accused while P.W.5 is an Auto-driver. P.W.3 in her evidence deposed that the accused is her father and her mother is living in Kuwait. They were blessed with three daughters, of whom P.W.3 is the eldest. The other two daughters are the two deceased, who are aged about 13 and 9 years respectively. Her evidence discloses that the accused used to quarrel with her mother on the ground that she begot only girl child and wants to go for a second marriage, for which her mother denied. Apart from that the accused also suspected the fidelity of her mother. In view of the disputes, mother of P.W.3 went to her parent's house and informed the same to the elders by name Venkatesu and Ramesh Reddy. The mother of P.W.3, left along with D-1 and D-2. Sometime later, the accused came to her mother and took her back, but, however, he continued to harass her. Then, the mother of P.W.3 again approached the above elders, pursuant to which, there was a mediation, wherein the elders advised the accused to give an amount of Rs.50,000/- to P.W.3 and also to deposit Rs.50,000/- each in the name of D-1 and D-2, by keeping the mother of P.W.3 as a guardian to Sravani and the accused to Maneesha. Thereafter, the mother of P.W.3 left D-1 and D-2 at Chennur with the

grandmother of P.W.3 and left to Kuwait. About ten days prior to the date of incident, P.W.3 brought D-1 and D-2 to her house at Kadapa. While D-1 and D-2 were with P.W.3, the accused came and asked P.W.3 to send D-1 and D-2 along with him stating that he will send them back after two days. Accordingly, P.W.3 sent the two deceased along with her father, but however the accused did not send the two sisters back even after the expiry of two days. Therefore, P.W.3 and her husband went to the house of the accused at Ramapuram but the doors were found locked. Their enquiries with the neighbours proved futile. After ten days, she came to know through neighbours that the two girls were killed near Galiveedu. Immediately, P.W.3 and her husband went to Rayachoty, saw the bodies of D-1 and D-2 at Government Hospital, Rayachoty and identified the two bodies as that of her sisters. It is to be noted here that on 08.07.2010 at about 11.00 a.m., P.W.2 claims to have seen the two dead bodies in the fields of K.Reddenna and accordingly went to P.W.1 and informed about the same. Thereafter, P.Ws.1 and 2 came to the fields of Reddenna and noticed injuries on the deadbodies. Immediately thereafter, P.W.1 lodged a report with P.W.11-Sub Inspector of Police, basing on which, a case in Cr.No.57 of 2010 came to be registered under Section 302 IPC. Ex.P-8 is the FIR. The same was informed to C.I., through VHF set. Immediately, C.I., came to the police station and he along with P.W.11 proceeded to the scene of offence, which was situated at a distance of 1 $\frac{1}{2}$ kilometer from Galivedu police station. P.Ws.11 and 12

found the dead bodies of two girls but were not able to fix their identity. Hence, P.W.12 the C.I. of Police conducted inquest over D-1(Sravani) in the presence of PW.7. Ex.P2 is the inquest report pertaining to D-1. P.W.11-the Sub-Inspector of Police conducted inquest over the deadbody of D-2 (Maneesha) in the presence of PW.7. Ex.P-3-inquest report. After inquest, both the dead bodies were sent to Government Hospital, Rayachoty, for postmortem examination. P.W.9, the Civil Assistant Surgeon, Government Hospital, Rayachoty conducted autopsy over the deadbody of D-2 and issued Ex.P6-postmortem certificate, while P.W.10 conducted autopsy over the deadbody of D-1 and issued Ex.P-7-postmortem certificate. Both the Doctors opined that the cause of death was "due to cardio-respiratory arrest due to injury to major vessels on both sides of neck due to sharp edge weapon." The approximate time of death was estimated to be 40 to 60 hours prior to the post mortem examination.

4) Since there was no claim over the bodies, P.W.12 gave wide publicity about the identification of the deadbodies of the deceased 1 and 2. The news item came to be printed in the news paper on the next day i.e., on 09.07.2010. Pursuant to which, P.W.3 and her husband came to the Hospital and identified the bodies as that of her sisters. He examined P.W.3 and recorded her statement and thereafter he handedover the two bodies to P.W.3. Later P.W.12 prepared a rough sketch of the scene, which is brought on record as Ex.P-8. On 13.07.2010 at about 8.00 a.m., on receipt of information,

P.W.12 along with staff proceeded to Pathikona Narav reserve forest, found the accused in bushes and arrested him. On interrogation he confessed about the commission of the offence. PW.12 recorded the confessional statement of the accused in the presence of PW.8. The admissible portion of the confession is marked as Ex.P-4. Pursuant to which, the accused lead them to the Kamireddigaripalli fields and handed over blood stained knife and blood stained shirt (M.Os.11 and 12), which are seized under Ex.P-15. After collecting all the material papers and after completion of investigation, P.W.12 filed a charge-sheet for the offences punishable under Sections 498-A, 364 and 302 IPC, which was taken on file as P.R.C.No.3 of 2011. On committal, the same came to be numbered as S.C.No.112 of 2011.

5) On appearance, charges under Sections 498-A, 364 and 302 IPC were framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

6) To substantiate its case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P12 and M.Os.1 to 12. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the accused.

7) Believing the evidence of P.Ws.1 and 3, the Sessions Judge convicted the accused for an offence punishable under Sections 364

and 302 IPC as stated supra. Challenging the same the present appeal is filed.

8) Learned counsel for the appellant mainly submits that there are number of discrepancies in the evidence of prosecution witnesses which throw any amount of doubt on the case of the prosecution. According to him, as per the evidence of P.W.1 the report was given at 11.30 a.m. But the evidence of P.W.11 and the FIR show as if it was given at 3.15 p.m. When the FIR came to be registered at 3.15 p.m., the question of examining P.W.1 at 12.00 noon would not arise. He further submits that there are no eyewitnesses to the incident and the entire case rests on circumstantial evidence. He submits that the circumstances relied upon by the prosecution even, if proved does not prove the guilt of the accused. According to him, the theory of last seen set up by the prosecution through the evidence of P.W.3 is false and that P.W.3 was made to depose falsely so as to connect the accused, in view of the earlier disputes with the mother of P.W.3. Coming to the evidence of P.W.6, the counsel would submit that in the absence of any identification of the accused either with regard to the person or the property, which the accused is said to have purchased from P.W.6, no credence can be given to his evidence. Insofar as the recovery of certain ornaments from the shirt of the accused, he would submit that the same runs contra to the version in the enquiry report, as column VII of the inquest report shows presence of the gold ornaments over the deceased.

9) On the other hand, the learned Public Prosecutor would submit that there are no reasons to disbelieve the evidence of P.W.3. According to him, her evidence appears to be natural and even in the cross-examination nothing has been elicited to discredit her testimony. According to him, when the version of P.W.3 is truthful and inspires confidence in the court, the same can be made the basis for conviction. Apart from that he would submit that there is no explanation from the accused as to how the gold ornaments of the deceased were found in his shirt. In view of the above, he would submit that the conviction of the accused warrants no interference.

10) The short point that arises for consideration is "Whether the accused is responsible for the death of the deceased?"

11) There is no dispute that there are no direct witnesses to the incident and the case rests on the circumstantial evidence. It is also not in dispute that the entire case rests on the evidence of P.W.3, the married daughter of the deceased, who is said to have handed over her two minor sisters to the accused i.e., the father of the deceased.

12) Before dealing with the circumstances relied upon by the prosecution to connect the accused with the crime, it is to be noted that there are no witnesses, who have actually seen the incident.

13) It would be useful to refer to the relevant portion in the evidence of PWs.3,5, and 6, which is as under:-

14) PW.3 in her evidence deposed as under:

"My mother left D1 and D2 with her mother in Chennu and my mother left to Kuwait. 10 days prior to the death of deceased I brought them to my house Kadapa. Accused came to me and asked me to send D1 and D2 along with him saying that he would send back after two days. Accordingly I send them with my father, but he did not send my sisters to me. Myself and my husband went to the house of accused at Ramapuram and found the house was locked. We enquired the neighbours but they said they did not found them. After ten days we came to know through neighbours that two girls were killed near Galiveedu. Myself and my husband came to Rayachoty and saw the bodies of D1 and D2 at Government Hospital, Rayachoty. We identified the dead bodies of my sisters."

15) PW.5, who is an auto driver and whose auto was engaged by the accused on 08.07.2010, deposed as under:

"I am resident of Galiveedu. I am auto driver. My auto number is AP 04 W 2572. On 08.07.2010 the accused engaged my auto to go to Lakkireddipalle at 8.00 a.m. Again on 14.07.2010 I saw in news paper the photo of accused that he cut throats of two girls and killed them. I identified the accused, who engaged my auto. "

16) PW.6, who has seen the accused in the company of the deceased deposed as under:

"I am running fancy shop in Galiveedu. On 06.07.2010 at about 4.00 p.m. the accused came to his shop and

purchased a knife by paying an amount of Rs.15/-. He came along with two female children. On the next day he came to know that two girls were killed. On 14.07.2010 I saw the photo of the accused in news paper and identified him as the person who purchased knife in my shop. I identified the accused. I can identify the knife sold to accused by me. M.O.11 is the knife purchased by the accused from my shop."

17) As seen from the record, there were disputes between the accused and his wife. On the demand made by the mother of the deceased and on the advise of the elders, accused deposited an amount of Rs.50,000/- each in the name of D1 and D2. The mother of the deceased left for Kuwait leaving the two deceased with their grandmother. The evidence of PW.3 makes it clear that the accused took away the deceased from the lawful custody of PW.3 prior to their death. Apart from that the accused was last seen with D1 and D2 by PW.6, when the accused came along with the deceased to his shop and purchased a knife. Further, the auto of P.W.5 was engaged by the accused on 08.07.2010 at 8.00 a.m. to go Lakkireddipalli. Though P.Ws.3, 5 and 6 were cross-examined at length, nothing useful was elicited to discredit their testimony. All the suggestions which were given relate to disputing the incident and that they were speaking falsehood were denied. Therefore, we see no reason to disbelieve the evidence of P.Ws.5 and 6. Further, there is no reason for P.W.3 to speak falsehood against the accused, who is her father. When the accused has taken the two deceased from the custody of

P.W.3, promising to send them back within two days, he should have given some explanation about them. Except denial, no explanation is given even in 313 Cr.P.C. examination.

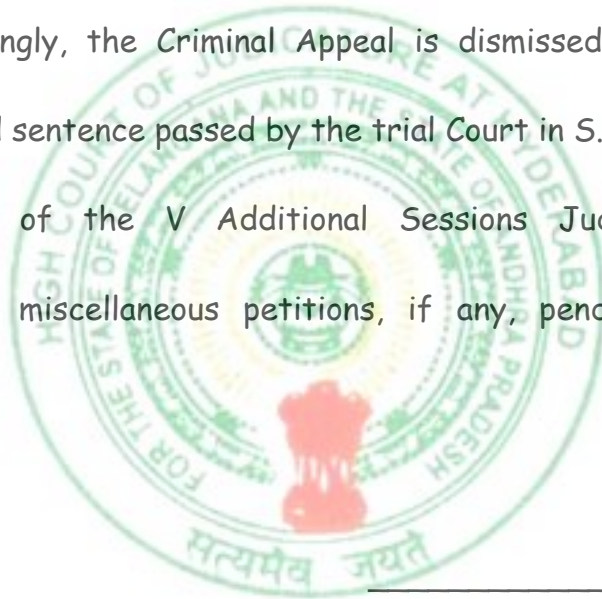
18) The other circumstance, which is pressed into service by the prosecution is recovery of gold ornaments belonging to the deceased from the shirt of the accused. Though PW.3 did not state in her evidence with regard to wearing of gold ornaments by the deceased but, PW.8, in whose presence the accused confessed about the commission of offence, deposed as under:

"Police interrogated the accused in our presence. Accused admitted the crime that he had taken away his two daughters and killed them so that he can enjoy the property and also marry again as his wife left to Kuwait. On search of the person of the accused police found one ring, two ear studs and one gold butta and two silver anklets. Accused revealed the above articles belonged to the deceased."

19) No explanation is forthcoming from the accused as to how the gold ornaments belonged to the deceased were found in his shirt at the time of his arrest. Further, the contents in Column-VII of the inquest report does not refer to the gold ornaments that were seized after the arrest. They relate to different ornaments of the deceased.

20) In similar circumstances, the Apex Court in *Jagroop Singh v. State of Punjab*¹ held that "all the three circumstances namely last seen, recovery and extra judicial confession if established by the prosecution, complete the chain and there can be no trace of doubt that the circumstances prove the participation of the accused beyond reasonable doubt. Since the case on hand is some what identical to the judgment referred to above, we see no reason to differ with the judgment of the trial Court.

21) Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence passed by the trial Court in S.C.No.112 of 2011 on the file of the V Additional Sessions Judge, Rayachoty. Consequently, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE N. BALAYOGI

14.12.2017
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¹ (2012) 11 SCC 768