

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.1273 of 2012

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

Originally A.1 and A.2 in Sessions Case No.665 of 2007 on the file of the IV Additional District and Sessions Judge (FTC) at Mahabubnagar were tried under Section 302 r/w 109 and 302 IPC for causing the death of one Slumaram Maddileti @Madhu, aged 6 years. Vide judgment dated 18.11.2008, the learned IV Additional District and Sessions Judge (FTC) at Mahabubnagar while acquitting A.2, convicted the first accused for the offence punishable under Section 302 IPC and sentenced him to suffer "imprisonment for life" and shall also pay a fine of Rs.1,000/- (Rupees One thousand only) in default of payment of fine, he shall undergo simple imprisonment for a period of three months for the offence punishable under Section 302 IPC.

2. The facts, as culled out from the evidence of the prosecution witnesses, are as under:

PWs.1 and 2 are the parents of the deceased and also parents of PW.3. PW.3 is none other than the daughter of PWs.1 and 2. Accused No.1 is husband of PW.3 and Accused No.2 is father of Accused No.1. Prior to the incident, Accused No.1—

husband of PW.3 used to harass her in respect of which panchayats were held for about four times.

3) On 04.06.2007 at 08.00 hours, LW.1 Slumaram Venkataiah, lodged a report in Wanaparthy Town Police Station alleging that about 7 years back his daughter Smt. Maheshwaramma was given in marriage to one Vullamgondla Swamulu. Since then he started subjecting his wife to cruelty suspecting her fidelity. In spite of panchayats being held, Vullamgondla Swamulu and his father Bakkanna continued to harass her. About 10 days back A-1 came and blamed stating that the informant had tried to kill him by administering some poison and also intimidated to kill one of his family members so as to take a revenge. In the afternoon of 01.06.2007, his wife, Smt. Shanthamma (LW.2) went to Gummadam Village and brought his daughter and son-in-law to Wanaparthy, with an intention to go to Nayanapally Maisamma temple for darshan. On the same day evening at about 4.00 pm, his son Maddileti @ Madhu, aged about 6 years accompanied A.1, when he went to attend nature calls but did not return till 6.00 pm. Since then, Maddileti @ Madhu was found missing and could not be traced in spite of searching for him at various places including at the houses of their relatives. Two days thereafter, their neighbour by name K. Balakrishna, who was examined as PW.4 informed that the dead body of his son was lying in cheeky bushes near the burial ground. Immediately, thereafter he went there and found that there were no hands to the body and the eyes and nose were eaten

by wild boars. The hands also appeared to have been eaten by wild boars. Further, the neck appears to have been throttled.

4) PW1 proceeded to the police station and lodged a report, basing on which, PW-10—the Sub-Inspector of Police registered a case in Crime No.36 of 2007 for the offence punishable under Section 302 IPC, and issued the First Information Report, which was marked as Ex.P11. On receiving the F.I.R., PW10—the Sub-Inspector of Police visited the scene of offence and recorded the statements of PWs.1 to 10. Further investigation in this case was taken over by Mohd. Jaffer Javeed, C.I of Police. He prepared a panchanama of the scene and conducted inquest over the body in the presence of two panchas and seized M.Os 1 and 2. Exhibit P7 is the inquest panchanama and Ex.P8 is the Scene of Offence Panchanama along with Rough Sketch. Thereafter, he sent the dead body for postmortem examination.

5) PW-9, the Civil Assistant Surgeon, Government Area Hospital, Wanaparthi, conducted autopsy over the dead body and issued Ex.P10—the post mortem report. According to him, the cause of death was asphyxia due to throttling and chest injury. The said Post Mortem examination was conducted on 04.06.2007 at 12.00 noon. On 12.06.2007, the police arrested the accused No.1 while accused No.2 was arrested on 30.07.2007.

6) After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.29 of 2007 on the file of Judicial First Class Magistrate, Wanaparthi. After

complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions which came to be numbered as S.C. No.665 of 2007 on the file of IV Additional District & Sessions Judge (Fast Track) Court at Mahabubnagar. Basing on the material on record, a charge for the offence punishable under Section 302 IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

7) To substantiate their case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to 11 and M.Os.1 and 2. After the closure of the 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 by the accused in support of his defence.

8) Relying upon the evidence of PWs.1 to 3 and the plea taken by the accused in his examination under Section 313 Cr.P.C, more particularly the answer to question No.8, the learned Sessions Judge while acquitting A.2 convicted accused No.1 under Section 302 IPC. Challenging the said conviction and sentence, the present appeal came to be filed.

9) The learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the circumstances relied upon the prosecution do not form a chain of

events to connect the accused with the crime. According to him, the theory of last seen by itself is not sufficient to base a conviction.

10) On the other hand, the learned Public Prosecutor opposed the same, contending that the theory of last seen is supported by medical evidence. He also placed reliance on the answer given to question No.8 in the 313 examination, to show the involvement of the accused in the commission of the crime.

11) The short question that arises for consideration is whether the accused can be liable for punishment under Section 302 IPC.

12) It is true that there are no eye witnesses to the incident, but it is to be seen whether the circumstances relied upon by the prosecution are proved and whether they form a chain of events connecting the accused with the crime.

13) PW.1 in his chief examination deposed that on 02.06.2007, Saturday at about 4.00 pm, A.1 along with his son (deceased) left the house to attend calls of nature as there was no toilet in his house. As they did not return till 10.00 p.m., he along with others searched for them in the village. On 04.06.2007, Monday, at about 4.00 or 5.00 a.m., LW.7—Balakrishna informed PW.1 about the dead body of his son lying in Cheeky bushes, near the burial ground. He identified the dead body as that of his son, but there were no hands to the body and the eyes, nose appeared

to have been eaten by wild boars. Then he went to the police station and lodged a written report.

14) PW.2 in her chief examination deposed that on that day at 4.00 p.m., A.1 along with deceased went to attend calls of nature. Till 8.00 pm, they did not return home. Then they searched for the deceased and A.1 for three days, but in vain. On Monday at about 5.00 pm, their neighbour LW.7, when he went to attend nature calls, identified the dead body of the son of PW.2 and informed the same to them. Immediately, they rushed towards the said place and identified it to be the deceased. She states that she does not know whether the hand etc., were eaten by wild animals or not but the neck portion was throttled.

15) PW.3 in her chief examination deposed that her husband—A1 left with her younger brother (deceased) to attend the calls of nature. Till 6.00 pm they did not return and as such they searched for them till 10.00 p.m and also contacted their relatives, but in vain. On Monday morning their neighbour Balakrishna informed about the dead body of her brother lying near the burial ground. Immediately they went there and identified it. There were no hands on to the dead body and the clothes were also not found on the body. The dead body was lying between the two mounds. She further deposed that her brother was throttled to death and her husband murdered her brother.

16) Though all these witnesses were subjected to cross examination, nothing useful was elicited to discredit their testimony.

17) From the evidence of PWs.1 to 3, it is clear that the accused and the deceased left the house at about 4.00 pm to attend the nature calls. Thereafter, they did not return home till 6.00 p.m., as a result of which, all the family members started searching for the accused and deceased till 10.00 pm and also contacted their relatives. On the morning of 04.06.2007, PW.4 informed them about the body of the deceased lying at the burial ground. It is true that the dead body was traced, at a distance of about 10 mtrs from the house of PWs.1 and 2 and the dead body was traced after two days. It is to be noted that the dead body was found in the grave yard between the two mounds. Therefore, the possibility of body being traced, immediately would not arise, as the relatives of the deceased would not have searched in the burial ground as one never expected the body of the deceased to be kept in between the two mounds in the burial ground. Therefore, the fact that the dead body was traced at a distance of 10 mtrs from the house of PWs.1 and 2 cannot falsify the entire prosecution case.

18) Once the theory of last seen has been established, the burden shifts on the accused to give proper explanation as to what happened to the deceased later.

19) At this stage it is relevant to extract the answer to question No.8 given by the accused in 313 examination i.e.,

Q.8: PW.3 further deposed that on Friday, her mother went to her house and at her request on Saturday she along with you (A-1) and her younger brother accompanied her mother to go to temple and reached to her parent's house on Saturday. After taking lunch at about 2.00 p.m., you (A.1) along with her brother left to attend to nature call, but did not return till 6.00 pm. They searched for both till 10.00 p.m but in vain. What do you say"

Ans: Vellindi nijame. Tarwatha emaindi naku teliyadu.

20) From the answer given to question No.8, it is clear that the accused admits taking the deceased along with him to attend the nature calls but he say that he does not know what happened thereafter. That being the position, the accused has to explain as to what happened to the deceased after both of them left the house. The Supreme Court in *Dilip Mallick vs State of West Bengal*¹ held that Section 106 of Indian Evidence Act, 1872 imposes an obligation on the Accused to explain as to what happened after they were last seen together.

21) In the absence of any explanation given by the accused, the prosecution can rely upon the said circumstances to connect the accused with the crime. The other circumstances, which is staring at the accused is the post mortem report. In his

¹ AIR 2017 SC1133

report, the doctor who conducted post mortem examination categorically states that the post mortem was conducted on 04.06.2017 at 12.00 noon over the dead body of Maddileti Madhu, and the cause of death was due to asphyxia due to throttling and chest injury, and the deceased would have died about 48 to 72 hours prior to post mortem examination, which is approximately the same time as stated by the prosecution witnesses and which correlates with the time of the incident.

22) In view of the judgment of the Apex Court and as the three circumstances established by the prosecution amply prove the guilt of the accused in the commission of the offence, we find no reason to interfere with the findings of the Sessions Court in S.C. No.665 of 2007 on the file of the IV Additional district & Sessions Judge (Fast Track) Court at Mahabubnagar.

23) Accordingly, the Criminal Appeal is dismissed. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

19.12.2017
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