

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1077 of 2012

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

1) The sole accused in S.C.No.96 of 2011 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad, is the appellant herein. He was tried on two charges. The first charge was under Section 302 IPC, for causing the death of one Smt. B.Lalitha (hereinafter referred to as the deceased) on 20.07.2010 around 8.00 a.m., in Flat No.103, Imperial House, greenlands road, Ameerpet, Hyderabad. The second charge was under Section 380 IPC for committing theft of cash of Rs.10,000/- and one digital camera in the building used as human dwelling house. The accused was found guilty on both the counts and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- in default to under go simple imprisonment for six months for the offence u/s.302 IPC and is further directed to undergo rigorous imprisonment for three years and to pay a fine of Rs.100/- in default to under go simple imprisonment for three months for the offence u/s.380 IPC. Both the sentences were directed to run concurrently.

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

P.W.1 is the husband of the deceased while P.W.2 is the watchman of the said building. P.W.14 is an employee of the deceased and working along with the accused under the deceased. P.W.1 and the deceased were maintaining one Mess known as Babu Mess. The accused herein was working along with P.W.14 in the said mess at the time of the incident. It is said that the accused joined in the said Mess as a supplier/cleaner. After working for four days, the accused asked the deceased to give Rs.20/- for purchasing a toothbrush. His request was accepted and an amount of Rs.20/- was given to the accused. He took the money, went out and returned after two hours. When the accused was questioned about the same, he stated that he went to an internet cafe, for which the deceased scolded and sent him away from the Mess. About four days later, the accused was again allowed to join in duty, as supplier-cum-cleaner in that Mess. Four days after joining the duty i.e., on 20.07.2010 around 7.00 and 7.45 a.m., P.W.1 went to vegetable market to bring vegetables. The deceased was attending to stitching work on her sewing machine in the hall of the house. P.W.14 and the accused were cutting vegetables. Then the accused went to bathroom and from there he called P.W.14 to the bathroom stating that some foul smell was emanating from the bathroom due to death of a rat. When P.W.14 went there, the accused pushed him inside the bathroom and closed the door from outside. Though he taped the door number of

times the accused did not open the door. Within no time, he heard the cries of deceased as "save save save".

The evidence of P.W.3 further discloses that when the accused did not use Rs.20/-, given to him for the purpose for which it was given, the deceased scolded him as to why he has not used the said money for purchasing the tooth brush and as such asked him to go away saying that he is lying. She did not accept the request of the accused to stay in the mess. According to him, 4 or 5 days later the accused came and rejoined in the very same Mess, after requesting the deceased number of times. The evidence of P.W.2 show that on 20.07.2010 at about 7.45 a.m., when P.W.2 was present at the gate of the Greenland towers, he heard some cries from the flat of P.W.1. Then he asked Rangamma, who is the wife of the other watchman, to go and see as to what happened in the said apartment. The evidence of P.W.1 show that he returned to the Mess at about 8.45 a.m., along with vegetables. The wife of the watchman by name Rangamma informed him that she heard some noise from his house and asked him whether he has bolted the door of his flat from outside while going outside. Then P.W.1 informed that he did not bolt it from outside. Immediately he rushed to his flat, found the door of the flat in an open position and the door was in a simply closed position. He entered into the flat and found his wife lying with bleeding injuries on her head, nose and on her hands and she was lying by the side of sewing machine. He came down from his flat to call for an auto but

could not find one. He returned back to the flat and informed the same to the police, by dialing 100. At that time he noticed knocking of the door from inside the bathroom, which was meant for workers of the Mess. Meanwhile, the police patrolling came to the said flat. The door of the bathroom was opened and P.W.14 came out from the bathroom. When questioned as to what happened, he narrated as to how he was detained in the bathroom and also about hearing of cries of the deceased. He also noticed that steel almyrah was in open position and cash of Rs.10,000/-, digital camera and some other items were missing. Then he noticed one scissor and a vegetable cutting knife with blood stains lying at the scene. Having regard to the above, P.W.1 lodged a report with P.W.15-Inspector of police, which came to be registered as Cr.No.602 of 2010 under Sections 302 and 380 IPC. Ex.P-1 is the report and Ex.P-9 is the FIR. After registration of the crime, P.W.15 conducted the scene of offence observation and prepared a observation-cum-seizure panchanama in the presence of P.W.8 and another, vide Ex.P-2. He also got prepared a rough sketch of the scene, which is placed on record as Ex.P-3. Ex.P-8 is the said photographs of the scene of offence. At the time of the said proceedings, he seized M.Os.1 to 4, 9 and 10 under Ex.P-2. Thereafter he shifted the dead body to Gandhi Hospital mortuary, where he conducted inquest over the dead body in the presence of P.W.9. Ex.P-4 is the inquest report. After

conducting the inquest he has sent the deadbody for post mortem examination.

P.W.12-the Assistant Professor of Department of Forensic Medicine, Gandhi Medical College conducted autopsy over the dead body and issued Ex.P-7 the post mortem report. According to him, the cause of death was due to multiple stab injuries noted in Ex.P-7 and also opined that the external injuries are possible with a weapon like M.Os.1 and 2 i.e., Scissors and knife respectively. The Doctor was not subjected to any cross-examination.

On 21.07.2010 at about 12.15 hours, P.W.15 arrested the accused near Sai Sanjeevini Hospital, near Rajadhani theatre in Dilsukhnagar. In the presence of P.W.10 and another, he interrogated the accused wherein he confessed about the commission of the offence. His confession leads to recovery of M.O.12-cash, M.O.9-Camera, M.O.11-cell phone and Ex.P-11-the medical prescription issued by Sai Sanjivini Hospital. The said properties were seized under Ex.P-6. Thereafter he sent the accused to Gandhi Hospital for treatment. Ex.P-12 is the wound certificate of the accused. After completing the investigation, P.W.15 filed the charge-sheet, which was taken on file as P.R.C.No.14 of 2010 on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad. After complying with the requirement of Section 207 Cr.P.C., the case was committed to the Court of Sessions under Section 209 Cr.P.C.

wherein it came to be numbered as S.C.No.96 of 2011.

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3) Basing on the material available on record, charges under Sections 302 and 380 IPC were framed, read over and explained to the accused, to which the accused voluntarily pleaded guilty for causing fatal injuries to the victim by means of scissors but he further stated that when he was committing theft of Rs.500/- from the purse of the victim, the victim attacked him with a pair of scissors and then out of confusion, he has attacked her with that scissors. Since the accused stated that in the first instance that the victim has attacked him with scissors and then he attacked her, the Sessions Judge ordered for a trial.

4) In support of their case, the prosecution examined PWs.1 to 15 and got marked Exs.P-1 to P-13 and M.Os.1 to 14. 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.

5) Taking into consideration the evidence and the circumstances relied upon by the prosecution to connect the accused with the crime, the Sessions Judge convicted the accused for the above mentioned charges. Challenging the same, the present appeal came to be filed.

6) The main ground urged by the learned counsel for the appellant is that there is any amount of doubt with regard to the manner in which the incident took place. He tried to take advantage of the variation of the time given by P.W.1 and P.W.14, as to when P.W.1 left the house to get vegetables to show that the incident did not happen as per the prosecution version. He would further contend that the accused would not have caused the death of the deceased, when she scolded him for spending Rs.20/- for a purpose other than for which it was given. Having regard to the above and in the absence of any witness seeing the incident he would submit that the appellant is innocent of the offences alleged.

7) On the other hand, the learned Public Prosecutor would contend that the presence of the simple injuries on the accused coupled with his plea taken at the time of framing of the charge amply establish his presence in the house at the time of the incident and that he was alone responsible for the murder of the deceased.

8) The fact that it was a case of homicidal death stands established through the evidence of P.W.12-the Doctor, who conducted Post Mortem examination and issued Ex.P-7-the post mortem certificate. A perusal of Ex.P-7-post mortem certificate, would reveal that there were as many as 26 stab injuries on the body of the deceased. Therefore, the fact that it was a case of homicidal death stands established through the evidence of P.W.12 and the

post mortem certificate, which in fact was not denied by the accused.

9) The question is "Whether the accused was responsible for the death of the deceased?"

10) In order to appreciate the same it would be useful to extract the evidence of P.W.3 and P.W.14.

P.W.3 in his chief examination deposed as under:-

"The accused requested the deceased-Lalithamma to pay Rs.20/- for purchasing toothbrush and when she paid that amount to him at about 4.00 p.m., myself and the accused went to Bazar and at the request of the accused I have created an e.mail I.D., for the accused in an internet cafe. Later the accused purchased mobile recharge card. Then we returned to the Mess. When Smt.Lathamma enquired, the accused informed to her that he did not purchase a toothbrush and has shown mobile recharge card to her. For that said Lalithamma scolded the accused for not purchasing toothbrush when he was taken amount from her for purchasing tooth brush and then she asked the accused to go away as he was lieing. Inspite of the request of the accused, she did not accept to take him into their mess. Then the accused left on that day."

P.W.14 in his chief-examination deposed as under:-

"When I was working in that Babu Mess, the accused joined in that Mess as supplier cum cleaner. After working for four days, the accused asked the deceased Lalithamma to give Rs.20/- for him for purchasing a tooth paste. Said Lalithamma gave Rs.20 to accused. The accused went and returned after two hours. When the accused was questioned he stated that he went to Internet café along with Shiva and for that Lalithamma scolded the accused and sent him away from the Mess."

11) Though these two witnesses were cross-examined at length, nothing useful was elicited to discredit their testimony, except

suggesting that the accused was not responsible of the death, which was denied. From the evidence of these witnesses, it is clear that on the date of incident accused was working under the deceased as a supplier/cleaner and the evidence of P.W.14 amply establishes that he was present in her house along with him at the time of the incident. On a false pretext, the accused called P.W.14 to the bathroom stating that some foul smell was emanating and when P.W.14 went there, he pushed him inside and bolted the door from outside. Though he tapped the door repeatedly, the accused did not open. Within few minutes thereafter, he heard the cries of the deceased. If really the accused was innocent and if really he has not committed any offence, there was no reason for him to detain P.W.14 in the bath room and failed to open the same inspite of he tapping the door again and again.

12) One other strong circumstance, which establishes the presence of the accused, is the evidence of P.W.7-the Doctor, a private practitioner at Sai Sanjeevini Hospital, Dilsukhnagar. According to him, on 20.07.2010 at about 9.15 a.m., one person came with a cut injury to one of his hands. He identified the accused as the person who came to his clinic for treatment on that day. In his evidence he deposed about noticing bloodstains on the shirt of the deceased. According to him, he treated the cut-injury by suturing and dressing and thereafter advised him to come after two weeks for review, but he failed to do so. Apart from that the evidence of

P.W.7 gets fortified from the wound certificate issued by the Doctor at Gandhi Hospital, which is placed on record as Ex.P-12. A perusal of the said certificate would show presence of laceration on the right palm and right thumb, for which suturing was done outside and small cut on the left middle finger. The certificate is dated 21.07.2010 i.e., the date on which the accused was arrested, which was a day after the incident. In the absence of any explanation given by the accused as to how he sustained injuries, coupled with the evidence of P.W.7 and 14 and Ex.P-12, the presence of the accused at the scene of offence on the date of incident stands established.

13) One other factor, which proves the presence of the accused, is the evidence of P.Ws.5 and 6, who in their evidence, deposed that on 20.07.2010 at about 8.00 a.m., while P.W.5 was by the side of Radha Super Market, Greenlands, Ameerpet, Hyderabad and taking tea in a small tea stall by talking with others, he noticed the accused crossing the road, stopped one auto and proceeded in that auto towards Greenland side. Sometime later the police came there and he also went upstairs to the apartment and noticed wife of P.W.1 lying in pool of blood with stab injuries. His enquiries with P.W.14 revealed about the incident in question. Similar is the version of P.W.6. Virtually nothing incriminating came to be elicited in the cross-examination of these two witnesses. From the above evidence, it is clear that there was a motive for the accused to kill the deceased. He was present at the house on the date of incident and immediately after the incident

he absconded from the scene. These circumstances coupled with the injuries sustained on the right palm of the accused which could have been possible while he was attacking the deceased establish that it was the accused, who caused the death of the deceased. Further, the recoveries made pursuant to the confession of the accused also assume importance in connecting the accused with the crime. Though the recovery of cash may not prove that it belongs to the deceased, but when he requested the deceased to give a paltry sum of Rs.20/- for purchasing of a tooth brush, a duty is cast upon him to explain as to how such huge amount came into his possession. Apart from that P.W.1 identified the digital camera and also the cell phone, which were seized from the accused were identified as belonging to the deceased.

14) In view of the findings arrived at, we feel that the sentence imposed by the trial court warrants no interference.

15) In the result, the Criminal Appeal is Dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

Dt:28.12.2017
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