

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Criminal Appeal No. 1306 of 2011

Judgement: (per Honourable Sri Justice C.Praveen Kumar)

1) This appeal is filed by the appellant challenging the judgment dated 28.12.2010 in Sessions Case No.145 of 2008 on the file of Special Judge for Trial of Cases under S.Cs. & S.Ts. (POA) Act-cum-Additional District and Sessions Judge, Vizianagaram, wherein the accused was convicted for the offence punishable under Section 302 IPC and sentenced to imprisonment for life and to pay fine of Rs.500/-, in default to suffer simple imprisonment for a period of one month. However, he was acquitted for the offence punishable under Section 498-A IPC.

2) The gravamen of the charge against the accused is that, at about 8.30 at Srinivasa Colony, the accused is said to have caused the death of his wife, Kanakamma, by beating her and, thereafter, pressed her neck.

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

The accused is the husband of the deceased. Their marriage took place about five years prior to the date of incident. Out of their wedlock, they were blessed with a son.

Both of them were residing at the side of railway track at Srinivas Colony. As per the evidence of PW.3, the house of the accused was situated at a distance of 100 yards from his house. On the date of incident at about 7.30 a.m., while he was at his house, he heard galata between the accused and deceased from their house. Since it was a regular quarrel, he did give any importance to it. At about 11.00 or 12.00, when he returned from duty, he learnt that the deceased died. His enquiries revealed that the accused killed her and several persons gathered at the house. But, however, accused was not present at the house. According to PW.4, who is the neighbour, the deceased was suffering with paralysis and there were petty quarrels between the accused and deceased. At about 12.00 noon, he came to know about the death of the deceased. The evidence of PW.5, Anganvadi Teacher, also discloses that the deceased was a paralytic patient and the marriage between the accused and deceased was a love marriage. There were disputes between the accused and deceased as the accused was having illicit intimacy with another woman. The evidence of PW.5 discloses that she threatened the accused of giving police report if he fails to look after the deceased well. On 11.05.2008 at about 4.00 p.m., PW.6, the father of the deceased, was informed about the death of the deceased. Pursuant thereto, he came to the police station and lodged report with PW.10-the Sub-

Inspector of Police. Ex.P.1 is the report. Basing on Ex.P.1, a case in Crime No.52 of 2008 came to be registered for the offences punishable under Sections 302 and 498-A IPC and issued FIR. Ex.P.10 is the original FIR. PW.12, the Inspector of Police, took up further investigation. After receipt of F.I.R., he visited the scene of offence and prepared a panchanama of the scene in the presence of PW.8. Ex.P.8 is the observation report. He also got photographed the scene of offence. Later he prepared rough sketch of the scene which was placed on record as Ex.P.12. As it was late in night, he could not proceed with investigation and as such posted a guard at the scene of offence. On the next day, he secured PW.8 and others, recorded their statements and conducted inquest over body of the deceased. Ex.P.3 is the inquest report. Thereafter, the dead body was sent for postmortem examination. PW.11, the Civil Assistant Surgeon, conducted autopsy over the dead body of the deceased on 12.10.2010 and issued Ex.P.11, the postmortem certificate. According to him, the cause of death was “due to asphyxia due to mechanical compression of upper air way trench”. On 13.05.2008, while PW.12 was present in the police station, PW.7, the V.R.O., produced the accused before him along with Ex.P.4, the extra-judicial confession said to have been made by accused. Ex.P.5 is the covering letter enclosed along with Ex.P.5. On interrogation, the accused confessed about the offence which lead to

discovery of MOs.1 and 2 i.e. plastic pipe and blood stained banian. Ex.P.6 is the disclosure statement of the accused. After collecting all the relevant documents, PW.12 filed charge sheet, which was taken on file as P.R.C.No.12 of 2008 on the file of the Judicial Magistrate of First Class, S.Kota. On appearance of the accused, all the documents were furnished as contemplated under Section 207 Cr.P.C. and, as such, the case is triable by Court of Sessions, the matter was committed to the Sessions Division under Section 209 Cr.P.C., which came to be numbered as S.C.No.145 of 2008.

4) On appearance charges under Sections 498-A IPC and 302 IPC, came to be framed, read over and explained to the accused in Telugu, to which he pleaded not guilty and claimed to be tried.

5) To substantiate their case, the prosecution examined P.Ws.1 to 12 and got marked Exs.P1 to P13 and MOs.1 and 2. After the closure of prosecution 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 his behalf.

6) After considering both oral and documentary evidence available on record, the trial Court, while disbelieving the

extra judicial confession made by the accused, and also the allegation of harassment against the deceased acquitted the accused under Section 498-A IPC. However, believing the evidence of PW.3 and recovery of MOs.1 and 2, convicted the accused. Challenging the same, the present appeal came to be filed by the accused through legal aid.

7) Learned counsel appearing for the appellant mainly submits that there are no eye-witnesses to the incident and the entire case rests on the circumstantial evidence. He would further submit that the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime.

8) Learned Public Prosecutor opposed the same contending that though it is a case of circumstantial evidence but the evidence of PW.3 is sufficient to base conviction. He submits that since both the accused and deceased were found in house and, in the absence of any explanation as to how the deceased died, the finding of the Trial Court requires no interference.

9) The point for determination is “Whether the accused is responsible for the death of the deceased”?

10) As seen from the record, there are no eye-witnesses to the incident and the entire case rests on the circumstantial

evidence. The version of the prosecution would show that the accused developed illicit intimacy with a woman residing at Burma Colony which was disbelieved by the Trial Court. Further, the Trial Court also disbelieved the extra judicial confession said to have been made by accused before PW.7. Hence, we are left with the evidence of PWs.1, 3, 4, 5 and 6 to establish the guilt of the accused.

11) As stated earlier, there are no eye-witnesses to the incident and the case rests on the accused being last seen in the company of the deceased. To speak to the said circumstance, the prosecution examined PW.3, whose house was situated at a distance of 100 yards away from the house of the accused. In so far as the allegation of harassment is concerned, all the witnesses i.e. PWs.1, 3, 4, 5 spoke about petty quarrels between the accused and deceased with regard to accused having illicit intimacy with a lady residing at Barma Colony. The said allegation, which form part for the charge under Section 498-A IPC, was disbelieved by the Trial court. If that goes, what remains on record is the accused being seen in the company of the deceased prior to the incident.

12) It is appropriate to extract evidence of PW.3.

“On the date of incident, at about 7.30 a.m. while I was at my house, I heard a galata in between the

accused and deceased at their house. The accused and deceased were frequently quarrelling as on lady was visiting their house. Since it was regular quarrel in between them, I did not visit the house of accused when they were quarrelling on the date of incident. At about 11 or 12 noon when I came home from my duty, I learnt that the deceased died.”

13) In the cross-examination, it was elicited that the house of PW.3 was situated at a distance of 100 yards and he did not inform anybody about the disputes between the accused and deceased till he was examined by police. It was further elicited in the cross-examination that the accused was looking after the family; that there were no disputes between the deceased and accused and on the date of incident there was no quarrel between them. Further PW.3 in his evidence never stated that he either saw the accused going into the house or the accused being present in the house at the time of incident. His evidence is to the effect that he claims to have heard the quarrel between the accused and the deceased. When the distance between the house of the accused and PW.3 is 100 yards; when there is a railway track and path way in front of their huts with hustle and bustle in the said area at the time of incident, it is difficult to believe that he could have heard the voice of the accused and the deceased and even if he has heard some voice definitely he

could not have identified with precision that it was that of the accused and a quarrel was going on between them.

14) Apart from that, the prosecution did not place any evidence as to what happened between 7.30 and 12.00 noon. None of the witnesses spoke about they going to the house of the accused at that time. Everybody appears to have come to know about the incident only at about 12.00 noon. It is not the case of prosecution that the accused was in the house between 8.00 am. and 11.00 a.m. Apart from that it is also to be noted that PW.3, in his evidence, never stated that he saw accused and deceased together. Therefore it cannot be said that the accused alone was responsible for the death of the deceased.

15) The other circumstance which was relied upon by the prosecution was the recovery of M.Os.1 and 2 i.e. plastic pipe and blood stained banian respectively. There are no blood marks and any special identification marks to say that the pipe belongs to the accused. Though M.O.2, the blood stained banian was recovered, the prosecution failed to establish that the group of blood on the banian matched with that of the deceased. Even otherwise, having regard to the manner in which the death took place (compression of trachea) it is strange as to how the prosecution could recover a blood stained banian, when no traces of blood were found on the

body of deceased. Hence, we feel that benefit of doubt can be extended to the accused. Therefore, the conviction of the appellant for the offence under Section 302 IPC is liable to be set aside.

16) In the result, the criminal appeal is allowed and the conviction and sentence imposed against the appellant-accused, vide judgment dated 28.12.2010, passed in S.C. No. 145 of 2008, by the Special Judge for Trial of Cases under S.Cs. & S.Ts. (POA) Act-cum-Additional District and Sessions Judge, Vizianagaram, for the offence punishable under Section 302 IPC, is set aside.

17) Miscellaneous petitions pending, if any, shall stand closed.

C.PRAVEEN KUMAR,J

KONGARA VIJAYA LAKSHMI,J

Dt:06.11.2017
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