

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.950 of 2011

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

1) The sole accused in S.C.No.28 of 2011, on the file of III Additional Sessions Judge (FTC), Khammam, preferred the present appeal against the conviction awarded by the Court below for an offence punishable under Section 302 of IPC.

2) The gravamen of the charge against accused is that on the intervening night of 21/22.08.2010 at Bharanipadu of Chandrugonda Mandal, the accused caused death of his wife Kolikapovu Nagamani, by strangulating her neck with her saree. Thereafter, the accused is alleged to have caused disappearance of the evidence by hanging the deceased to a wooden beam, through another saree and created a scene as if the deceased committed suicide. The accused was sentenced to undergo 'Imprisonment for life' for an offence punishable under Section 302 IPC an.

3) The case of the prosecution as culled out from the evidence of the prosecution witnesses is as under:

PW3 is the daughter of the deceased, PW1 is the elder sister of the deceased, while PW2 is the father of the deceased and PW4 is the village elder and neighbour of the deceased.

The deceased along with her husband was staying in Barnipadu Village. The parents of the deceased belonged to Thippanapalli village. The marriage between the accused and the deceased took place about ten years prior to the date of the incident and out of wedlock, they were blessed with two children, who are PW3 and a boy by name Srinath. The evidence on record discloses that the accused was accustomed to bad vices and in the state of intoxication used to beat the deceased, demanding her to money. On one occasion, when the said fact came to the knowledge of the parents of the deceased, they went to the house of the accused and advised him not to beat the deceased. Pursuant thereto, both of them lived happily for some time. Again the accused started beating the deceased demanding money for his vices like drinking. The same was being informed by the deceased to PWs.1 and 2. On the date of incident, the deceased, accused and PW3 saw a movie in their T.V. upto 10.00 p.m. Thereafter, the accused started beating the deceased asking her to give money for his bad vices. On the fateful day, the accused fought with the deceased for money and beat her very badly. It is stated that PW3 and her brother saw the incident of beating, but however, they went to bed. On the next day morning, when the children woke up, they found the deceased lying on the cot. When PW3 went near her, she found the deceased dead. Immediately, herself and her brother started raising cries, which attracted the attention of the villagers. Within few hours, the maternal aunt and grand father of the children i.e., PWs.1 and 2 came to their house. On questioning, PW3 narrated as to what happened on the previous night. On 22.08.2010, PW10 the ASI of police at Vemsoor, received the intimation of the

incident; about the death of the deceased and also about the accused absconding from the village. On receipt of the same, he along with the staff proceeded to the scene of offence. PW1, who is the brother of the deceased, gave a written report which was sent through PC-1925 to the concerned police station for registration of crime. Pursuant thereto, a case in Crime No.61 of 2010 came to be registered against the accused. Ex.P10 is the FIR. PW12 the CI of police took up further investigation. On receipt of FIR, he proceeded to the scene of offence, secured the presence of witnesses and conducted an observation report of scene of offence in the presence of PW9 and LW17 under Ex.P8. During the said process, he seized MO.2 at the scene. He examined PWs.1 to 5 and recorded their statements. Thereafter, he got the dead body of the deceased photographed through PW5. He then conducted inquest over the dead body of the deceased in the presence of PW9 and LW17. Ex.P9 is the inquest report. Later, the body was sent for post mortem examination. PW11 the Assistant Civil Surgeon at Community Health Centre, Sathupally, conducted autopsy on the dead body and issued Ex.P11 – Post Mortem Examination certificate. According to him, the cause of death of the deceased was due to Cardio-respiratory failure due to venous congestion and Asphyxia, caused by hanging. The doctor also found fracture at the right horn of the hyoid bone. The accused was arrested on 23.08.2010 and Ex.P6 is the confession of the accused recorded in the presence of PW12. After completing the investigation, he filed charge sheet, which was taken on file as PRC No.51 of 2010. After complying with the requirements of Section 207 of Cr.P.C., and as the offences alleged are triable by the Court of Sessions, the case came

to be committed to the Court of Sessions, wherein it was numbered as S.C.No.28 of 2011 on the file of III Additional Sessions Judge, Khammam. A charge for the offences punishable under Sections 302 and 201 of IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P11 and M.Os.1 to 3. After the closure of prosecution evidence, the accused was examined under Section 313 of 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 in support of his defence.

5) Basing on the evidence of PWs.3 and 7, coupled with evidence of PW11, the Court below convicted the accused for the offence punishable under Section 302 of IPC, while acquitting him for the offence punishable under Section 201 of IPC. Challenging the said conviction, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that the evidence of PW3, who is a child witness, cannot be relied upon. It is pleaded that the evidence of PW3 is in-consistent with the medical evidence and as such, if the oral evidence of PW3 is excluded from consideration, there is no other evidence available on record connecting the accused with the crime. He submits that the answers given by PW3, in her cross-examination, are inconsistent to the evidence in chief. In

view of the above, it is pleaded that the evidence of PW3 is an outcome of tutoring.

7) Learned public prosecutor would contend that apart from the evidence of PW3, there is the evidence of PW7, before whom the accused is alleged to have confessed about the commission of offence. Immediately after the confession, PW7 took the accused to the police station, gave the statement which was reduced to writing by the C.I of police. He further submits that the evidence of PW3 gets amply corroborated from the evidence of PW11-Doctor, who states that the death was due to strangulation.

8) It is to be noted here that the entire case rests on the evidence of PWs.3, 7 and 11. The evidence of PWs.1 and 2, who are brother-in-law and father-in-law of the accused, would indicate existence of prior disputes between the accused and the deceased. According to them, on more than one occasion, the accused harassed the deceased by beating her for money, to meet his vices. The evidence of PWs.1 and 2 also discloses that there was a compromise, pursuant to which, the accused and deceased lived happily for some time and again the accused started harassing the deceased to get money to fulfill his vices. The incident of demand for money was being informed by the deceased to her brother and father. Though PWs.1 and 2 were cross-examined with regard to alleged harassment but nothing useful was elicited to discredit the same except suggesting falsity to their evidence. Therefore, from the evidence of PWs.1 and 2, it is clear that the deceased was subjected to harassment by the accused even just prior to her death. Though PW3 is a

child witness, her evidence came to be recorded by the Magistrate after putting certain questions and after being satisfied about her mental capacity to give rationale answers to the questions put to her. In her evidence, she deposed about the presence of the accused in the house on the date of incident and on 21.08.2010, PW3, her brother, mother and father watched a movie on T.V. upto 10.00 p.m. and the accused beat her mother very badly on that night. Thereafter, both the children slept. In her chief evidence, PW3 further deposed that on the next day morning, PW3 woke up and found her mother lying on bed. When she went near her, she was found her dead. She also noticed a saree around her neck, which was identified to be that of the deceased. In the cross examination, it has been elicited that on the next day morning her father woke up saying that her mother died and asked PW3 to go and see her. So saying, the father left the house. It was also stated by PW3 that her father removed the saree which was around the neck of the deceased from the roof of thatched house and laid the body on the cot. After that the accused is alleged to have gone out of the house and did not return again.

9) From the evidence of PW3, it is clear that the accused was there in the house on that night and thereafter on the next day morning, he was there till PW3 woke up. After informing PW3 about the death of his wife, the accused is said to have left the house. His whereabouts are not known till 23.08.2010, on which date he made a judicial confession before PW7. This conduct of the accused appears to be quite unnatural.

10) The argument that is sought to be advanced before this Court is that the deceased committed suicide. If really, it was a case of suicide, definitely the conduct of the accused would have been otherwise. He would have been present in the house and informed other relatives about the incident. His absence, which remains un-explained, creates any amount of doubt with regard to defence of suicide taken by the accused. In fact the defence taken by the accused, does not gets corroboration from any quarters. On the other hand, the post mortem report establishes that the death was due to Asphyxia and on internal examination, there was a fracture on right horn of the hyoid bone, which is possible in case of strangulation of the neck.

11) As per the evidence of PW7, who is village elder, on 23.08.2010 at about 8.00 a.m., the accused surrendered before him, requesting him to save his life from the punishment, since he apprehends threat to his life from the relatives of the deceased. In the said statement, he confessed about killing the deceased, when she refused to pay money and thereafter he hanged her body to the roof of his hut with her saree in order to escape punishment. Immediately, thereafter, PW7 took the accused to the police station and gave a report, which was reduced into writing by the CI of police. The said statement of PW7, gets corroboration from the C.I. of police.

12) Though PW7 was cross examined at length, nothing useful was elicited to discredit his version, except denying the statement made. No enmity has been suggested to PW7 to speak falsehood against the accused. Though extra judicial confession is a weak type of evidence,

but if the same inspires confidence in the mind of the Court, the same can be accepted and made the basis for conviction. In the instant case, not only the evidence of PW3, but also the evidence of the doctor and the improbable conduct of the accused lend assurance to the contents of the extra-judicial confession.

13) Having regard to the above circumstances, we see no reason to interfere with the findings of the Court below.

14) Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence dated 06.06.2011, passed in Sessions Case No.28 of 2011 on the file of the III Additional Sessions Judge, Khammam.

15) Consequently, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

30.10.2017
vhb