

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.194 of 2012

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

1) The appellant herein, sole accused in Sessions Case No.119 of 2011 on the file of the I Additional Sessions Judge at Vizianagaram, , who was tried for the offences punishable under Sections 302 and 498-A IPC. Vide judgment, dated 31.12.2011, in S.C.No.119 of 2011, the I Additional Sessions Judge, Vizianagaram, convicted the accused for the offence punishable under Section 498-A IPC and sentenced him to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.1000/-, in default to suffer simple imprisonment for a period of three months, and also convicted for the offence punishable under Section 302 IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/-, in default to suffer simple imprisonment for a period of one year.

2) The gravamen of the charge against the accused is that on 09.04.2011 at Bellanapeta village of Gurla Mandal, he is said to have caused the death of his wife Nasari Ramanamma (hereinafter referred to as "the deceased") by stabbing her with a knife on the neck and head.

3) The facts, as unfolded from the evidence of the prosecution witnesses are as under:

The accused is the husband of the deceased. PWs.1 and 2 are the brothers of the deceased, while PW.3 is the minor son of the deceased. The marriage between the accused and the deceased took place about 17 years prior to the date of incident. After the marriage,

the deceased joined the society of the accused and both of them started living together at Bellanapeta village. Out of wedlock, they blessed with two children. It is said that the accused looked after the deceased well till the birth of the children and thereafter disputes arose between them. The evidence of PW.1 goes to show that the accused got addicted to alcohol; was not caring the children and the deceased properly and was also not looking after the welfare of his family. The accused used to beat the deceased suspecting her fidelity. The deceased used to inform about the harassment caused to her by the accused to her parents. As per the evidence of PW.5, a panchayat was held with regard to harassment caused by the accused towards the deceased, in a drunken state. The accused and deceased attended the said panchayat, wherein the elders advised the accused to look after the deceased well. Thereafter, the deceased went to the house of the accused to lead a conjugal life. About 15 days prior to the date of incident, the deceased left the company of the accused and came to the house of PW.1 along with the children. She stayed there for a period of ten days. Later, she received a phone call from her brother-in-law stating that her presence is required for signing a bill for payment of house tax. On that, she went to the house of the accused along with the children. PW.3, who is the son of the deceased and accused, also went to the house of the accused along with his mother. His evidence is to the effect that on a Saturday about 3.00 p.m., the deceased and the accused together went to the forest for firewood. He was present in the house, as it was a holiday to his school. But, neither of them returned back to the house. He waited in the house till 8.00 p.m.; thereafter proceeded to the house of his junior paternal uncle (PW.4) and informed him about his parents not returning to the house. Hence, PW.4 went in search of the deceased

and the accused. As there was no information about his parents, PW.3 claims to have slept alone in the house. On the next day morning, which was Sunday, PW.1 received a phone call from the brother of the accused that the deceased and accused went to get firewood but did not return. Then PWs.1, 2, Kornana Pydamma (LW.2) and others went to the house of the accused, and found PW.3 in the house of the accused. When questioned as to what happened, he is said to have told them that on the previous day, the accused and deceased went to the forest for firewood but did not return. Then PWs.1 and 2 went to the hill area in search of the accused and deceased. During the search, PW.2 found the dead body of the deceased, near a gedda and informed the same to PW.1. PW.1 and others noticed bleeding injuries on cheeks, neck and head of the deceased. On 10.04.2011 at 12.00 noon, PW.1 went to the police station and presented a report, which was marked as Ex.P.1. Basing on Ex.P1., a case in Crime No.30 of 2011 of Gurla Police Station, came to be registered under Sections 498-A and 302 IPC. Ex.P11 is the first information report, issued by PW.12-the Sub-Inspector of Police. The distance between the scene of offence and the police station is about 7 kms. After receiving the F.I.R., PW.13-the Circle Inspector of Police took up further investigation. He along with PW.12 proceeded to the scene of offence and found the dead body lying in a streamlet (vagu) with injuries on face and head. He prepared an observation report in the presence of PWs.7 and 8. During the said proceedings, he seized M.Os.7 and 8 from the scene of offence and thereafter, recorded the statements of PWs.1 to 3 and others. He, then held inquest over the dead body of the deceased in the presence of PWs.7 to 9. During inquest, he seized M.Os.5 and 6 from the scene of offence. Ex.P4 is the inquest report. He also prepared a rough sketch, which is marked as

Ex.P12, and also got photographed the scene of offence and the dead body. Ex.P2 is the bunch of photographs. Thereafter, he sent the body for postmortem examination. PW.10, the Civil Assistant Surgeon, Government Head Quarters Hospital, Vizianagaram, conducted autopsy over the dead body of the deceased on 11.04.2011 at about 11.45 a.m. Ex.P9 is the postmortem examination report. According to him, the cause of death was “due to massive hemorrhage due to ante mortem injuries” and time of death was about 36 to 48 hours prior to postmortem examination. PW.13 tried to apprehend the accused but he was found absconding from the village. On 19.04.2011, while he was present in Gurla police station, PWs.7 and 9 produced the accused along with extra-judicial confession statement of the accused recorded and reduced into writing by PW.7. The same was marked as Ex.P5. He took the accused into custody, interrogated him in the presence of PW.11 and recorded the confessional statement of the accused. Pursuant to the confession made by the accused, the weapon said to have been used in the commission of offence was recovered. The relevant portion of the confessional statement is marked as Ex.P7. After completing the investigation and after collecting all the reports from the concerned, PW.13 filed the charge sheet, before the Court of Judicial First Class Magistrate, Cheepurupalli, who, intturn, committed the case to Sessions Division, under Section 209 Cr.P.C. On committal, the same came to be numbered as S.C.No.119 of 2011.

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

5) In support of its case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P13 and MOs.1 to 10. 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 evidence was adduced on behalf of the accused but a portion of 161 Cr.P.C. statement of PW.4 was marked as Ex.D1.

6) After considering the entire material, including oral and documentary evidence available on record, more particularly the evidence of PWs.1 to 5, the Sessions Judge convicted the accused for the offences under Sections 302 and 498-A IPC. Challenging the same, the present appeal is filed.

7) Smt. G.Shobha, learned counsel appearing for the appellant strenuously contends that there is absolutely no material to connect the accused with the crime and the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. According to her, when the evidence of PW.3 discloses that the accused was brought to the house five days after the death of his mother, the extra judicial confession said to have been made before PWs.7 and 9 and the subsequent arrest and recovery made pursuant to the confession made by the accused are all false and un-believable. She would further submit that as per the evidence of PW.4, he proceeded in search of the accused and the deceased on receipt of information from PW.3 and at 3.00 a.m., found the dead body lying near Gedda. Immediately thereafter, he informed the same to Butchodu (LW.9) and Gompa Tata (LW.10). PW.5 in his evidence states that on receiving the information about the dead body, he informed the same to village Sarpanch, who inturn asked Ramana (brother of the accused) to inform the same to the parents of the deceased, who, inturn, informed the same to PW.1. Such being the position, she would contend that the first

information report, which has been given on the next day, should have contained the fact of tracing the body of the deceased, on the previous night. But, the report only refers to the accused and deceased, leaving the house, which throws any amount of doubt on the case of the prosecution. It is further urged that when the oral evidence shows that the body was traced on the previous night, the inquest report reveals that the dead body was traced on 10.04.2011 at about 9.00 a.m. In view of the above aspects, she would contend that no reliance can be placed on the evidence of any of the prosecution witnesses and the alleged last seen, recovery of body and the extra judicial confession cannot be made a basis to convict the accused.

8) On the other hand, the learned Public Prosecutor would contend that the circumstances relied upon by the prosecution and more particularly, the evidence of PW.3 can be relied upon to convict the accused and as such the finding given by the trial Court warrants no interference.

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

10) In *Rukia Begum vs. State of Karnataka*¹ the Apex Court held as under:

“When a case is based on circumstantial evidence, the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. Circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence.”

¹ AIR 2011 SC 1585

11) In Jagroop Singh v. State of Punjab² the Apex Court held as under:

“When the case of prosecution is based on circumstantial evidence, conviction is permissible only when all links in chain of events are established beyond reasonable doubt and established circumstances are consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence.”

12) From the judgments of the Apex Court, referred to above, it is clear that a duty is cast upon the prosecution to prove the circumstances relied upon and the circumstances relied upon by the prosecution should form chain of events connecting the accused with the crime.

13) Since the case on hand is based on circumstantial evidence, we shall now peruse the evidence to find out as to whether the circumstances relied upon by the prosecution form a chain so as to connect the accused with the crime.

14) Before proceeding further, it would be useful to refer to the evidence of PW.3, a child witness. In his evidence, PW.3 deposed that the accused was not looking after the deceased well and also their welfare. He further deposed that the accused used to beat the deceased in a drunken state. According to him, his father did not give any money to his mother to maintain the family and his mother used to maintain them by attending the coolie work. It is his evidence that about 15 days prior to the death of his mother, she took PW.3 and others to the house of his maternal grandfather due to disputes between her and the accused. They stayed there for a period of ten days. On one day, the brother of the accused (LW4) informed the deceased over

² AIR 2012 SC 2600

phone that house tax receipt was issued and she has to sign some papers. On that, the deceased returned to the house of the accused along with PW.3 and others. About 5 days thereafter on a Saturday at about 3.00 p.m., the accused and deceased together went to the forest, to get firewood. At that time, PW.3 was present in the house, as it was holiday to his school. As the accused and deceased did not return home, he waited till 8.00 p.m., went to the house of his junior paternal uncle and informed him about the same. On receiving the said information, Nasari Ramana (LW4) went in search of the deceased and accused. As there was no information, PW.3 slept. On the next day morning, PWs.1 and 2 came to the house and enquired about the accused and deceased. In the cross-examination, it has been elicited that about 5 days after the death of the deceased, the police brought the accused to the house. It would be useful to extract the same in the words spoken to by PW.3, which is as under:

“I stayed Bellanapeta for a period of ten days after death of my mother. Five days after the death of my mother, police brought my father to our house.”

15) That being the evidence on record, it has to be seen whether the circumstances relied upon by the prosecution to connect the accused with the crime stand established.

16) The first circumstance relied upon by the prosecution is extra judicial confession made by the accused before PW.7. In his evidence, PW.7 categorically deposed that on 19.04.2011 at about 11.00 a.m., while himself and PW.9-Vice President were present at Rama Mandir in Kella Village, the accused came there and confessed about killing his wife and requested them to surrender him before the police. The detailed confession of the accused, more particularly with regard to

manner in which he killed the deceased, was reduced into writing and the signature of the accused was also taken. Ex.P5 is the said confession. Thereafter, PWs.7 and 9 took the accused to the police station and produced him before PW.13, the Inspector of Police.

17) The evidence on record, more particularly the evidence of PW.3, which has been referred to above, clearly shows that five days after the death of his mother (which would be on the intervening night of 9th or 10th April) the police brought the accused to the house of the accused. In view of the said admission of PW.3, a doubt arises as to how the accused would have made an extra judicial confession before PW.7 on 19.04.2011. As narrated earlier, the incident was on the intervening night of 9th or 10th April, 2011. PW.3 in his evidence admits that the accused was brought by police to the house of the accused within five days after the death of his mother, which means that the accused was in the custody of police within 5 days of the incident.

18) Further, it is not the case of the prosecution that, on suspicion, the accused was detained and later left off. Hence, the extra judicial confession made before PW.7 on 19.04.2011, reducing the confession into writing vide Ex.P5, the same containing the signature of accused, and they producing the accused before the police appear to be suspicious. Therefore, the arrest of the accused, by the police, the confession, recorded from him, and the confession leading to recovery are also doubtful. It is further brought to the notice of the court that the knife, which was said to have been recovered from the accused, contains blood, which is not of human origin.

19) At this stage, it is also to be noticed that there is any amount of doubt with regard to tracing of the dead body. PW.4 in his

evidence categorically states that immediately after receiving the information from PW.3, about the accused and deceased not returning to the house, though it was late in the night, he along with others proceeded towards the hill area and claims to have seen the dead body at 3.00 a.m. Immediately, he informed PW.5 about tracing the dead body, who, in turn, asked Ramana (LW4-brother of the accused) to inform the same to the parents of the deceased apart from informing the same to the Sarpanch of the village. Therefore, the brother of the accused, who was informed by PW.5, was aware about tracing of the dead body by 3.00 a.m., on the intervening night of 9th or 10th April.

20) Though the brother of the accused (LW4) is aware about such information, he called PW.1 on telephone and informed only about the accused and deceased leaving the house on the previous day night and not returning to the house till late night. Pursuant to the information received, PWs.1 and 2 and others came to the house of the accused and enquired PW.3, who is said to have stated about his parents leaving the house on the previous day to collect fire wood. Basing on the said information, PWs.1 and 2 went in search of the accused and deceased and PW.2 claims to have found the dead body near Gedda.

21) The search and tracing the dead body on the next day is artificial for the reason that as per the evidence of PW.4, the dead body was traced in the hill area at 3.00 a.m., on the previous night. The said information was suppressed in Ex.P1, which was given on the next day. When the body was traced prior to lodging of the report, no reasons are forthcoming as to why it was suppressed.

22) It would be useful to refer to the relevant portion in Ex.P1-report, wherein it was mentioned as under:

“on 10.04.2011 morning at 7.00 a.m. PW.1 received a phone call from the brother-in-law of the deceased, informing him that the deceased and accused did not return to their house.”

23) Hence, there arises any amount of doubt as to when the body was traced.

24) Yet, another anomaly, in the prosecution case, is that, as per the observation report, prepared at the scene of offence, which was brought on record as Ex.P3, on 10.04.2011, Sunday, at 12.15 p.m., the observation report of the scene was drafted in the presence of mediators. In the said observation report, which was prepared on 10.04.2011, the crime number was mentioned as Cr.No.30 of 2011. It was also mentioned in the observation report that the scene of offence is situated at a distance of 7 km., away towards South East of Gurla Police Station and 2 kms., away from Bellanapeta village towards southern side of the village. When the F.I.R., itself came to be registered at 12.00 noon and when the investigating officer proceeded towards the scene of offence only after receiving the copy of F.I.R., it is strange as to how he could be present at the scene of offence and prepare a panchanama by 12.15 p.m., after securing the mediators, more so, when the distance between the police station and scene of offence is 7 kms., with a muddy path way and not having any proper road. Even this circumstance creates some suspicion in the case of the prosecution.

25) The last circumstance, which is sought to be pressed into service, by the prosecution, is the theory of accused being last seen in the company of the deceased, on the previous day. PW.3 is the witness, who speaks about the theory of last seen. Even assuming that both of

them left the house in the afternoon, there was sufficiently long gap between the time when both of them left the house and the body being traced. As per the evidence of PW.3, the deceased and accused left the house on Saturday at 3.00 p.m., and there is no concrete legal evidence to show as to when the body was found in a Gedda (hill area). Even assuming that the accused and deceased were last seen together on the previous day afternoon, that by itself cannot be a ground to convict the accused, in view of the manner in which the prosecution tried to build up its case, from stage to stage, creating suspicion in the mind of the Court.

26) From the above, we hold that the extra judicial confession, recovery of knife and cloths and tracing of the dead body, are not proved by any legal evidence.

27) In *Sahadevan and another v. State of Tamil Nadu*³, while dealing with a case, which was based on extra judicial confession, last seen theory and recovery of kerosene bottle, the Apex Court held as under:

“Where the only circumstantial evidence taken resort to by the prosecution is that the accused and deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

³ AIR 2012 SC 2435

22. The principles which would make an extra-judicial confession, an admissible piece of evidence capable of forming the basis of conviction of an accused are as follow:

(i) The extra judicial confession is a weak evidence by itself. It has to be examined by the Court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) it should inspire confidence.

(iv) An extra judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

28) Basing on the judgments (1 to 3 supra), and, in view of the findings arrived at, we feel that the circumstances relied upon by the prosecution are not proved and failed to establish its case.

29) Further, the evidence on record, more particularly the evidence of PWs.1 to 3 does not anywhere indicate that the accused harassed the deceased for money and property. Harassment, if any, was because of accused suspecting the fidelity of the deceased, which also remained unproved. In the absence of any legal evidence, to that effect, we feel that the ingredients, constituting an offence under Section 498-A IPC, are not made out.

30) For the aforesaid reasons, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in the judgment, dated 31.12.2011 in S.C.No.119 of 2011 on the file of the I Additional Sessions Judge, Vizianagaram, for the offences punishable

under Section 302 and 498-A IPC, are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime. Miscellaneous petitions, if any, pending shall stands closed.

C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

08.11.2017

Note: L.R.Copy to be marked.

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