

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.1298 of 2011

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

1) The sole accused in Sessions Case No.180 of 2011 on the file of the VI Additional District and Sessions Judge (FTC), Markapur, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Gosi Nagamani (hereinafter referred to as "the deceased") on 10.12.2010 at 2.00 p.m. by hitting her with a boulder. By its judgment, dated 23.09.2011, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" and to pay fine of Rs.1000/- in default to suffer simple imprisonment for a period of four months for the offence punishable under Section 302 IPC.

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

i) PW.1 is the father of the deceased. PW.2 is the mother of the deceased. PW.3 is the son of PW.1. PWs.4 and 5 are brothers of the deceased. Deceased is the wife of the accused. The evidence of PWs.1 to 4 would show that the marriage of the accused and deceased was performed about ten years prior to the date of incident. The accused was suspecting the fidelity of the

deceased after she gave birth to two children and accordingly he used to harass her several times, which was brought to the notice of PW.1. PW.1 tried to reconcile and advised the accused not to suspect the deceased. It is said that the accused suspected illicit intimacy between the deceased and PW.11, who is a tractor driver and residing in Shivaji Nagar at Darsi. It is also said that on several occasions, the accused threatened to kill the deceased, but PW.1 admonished the accused for such utterance. On many occasions the deceased came to PW.1 and refused to join the accused but on his advise she continued to live with the accused.

ii) On the date of incident, PW.10 came to the house of PW.1 and enquired about the availability of a man for watching his fields. At that time, the accused was in the house along with his wife. Accused agreed for the terms and conditions and promised to report to work on the next day. He did not insist for fixation of salary. The evidence of PW.1 further shows that on the date of incident at about 2.00 p.m., the accused took the deceased along with him to the fields for getting grass to the cattle.

iii) The evidence of PW.6 shows that on that day at about 2.00 p.m. while he was grazing sheep and goats in the Jam oil fields, near a Church, he heard some shouts from the redgram field, but did not rush towards that field apprehending that his sheep may trespass into the lands of others. By diverting his sheep from the garden and having kept them in order, PW.6 went towards redgram field and saw the daughter of PW.1 with severe

injuries in an unconscious state. Being afraid of the situation, he came out of the field and noticed the children of the owner of redgram field on the road and informed them about noticing a woman with injuries in an unconscious condition in the field. PW.6 along with PWs.7 and 8 proceeded towards the place and noticed a woman, in an unconscious state. It was about 3.00 p.m. by then.

iv) Later PW.1 was also informed by PW.6 about the body of the deceased in the field. Thereafter at about 5.30 p.m. PW.1 proceeded to the police station and lodged a report against the accused. Basing on which, PW.16-the Sub-Inspector of Police, registered a case in Crime No.154 of 2010. Ex.P10 is the first information report. Later, PW.17-the Inspector of police took up further investigation. He visited the scene of offence and noticed the body of the deceased lying in the field. As it was late night, he posted a guard to preserve the scene of offence. He drafted a sketch of the scene of offence in the presence of PW.13 and got photographed the scene of offence through PW.14. Ex.P11 is the sketch. He then conducted inquest over the dead body of the deceased in the presence of PW.13 and others. During inquest, he examined PWs.2 to 7, 9 and 10. After inquest, the body was forwarded to the Government Hospital, Darsi.

v) PW.15-the Medical Officer, Community Health Centre, Darsi, conducted autopsy over the dead body between 1.00 p.m. and 3.00 p.m. on 11.12.2010 and issued Ex.P9-the postmortem

certificate. According to him, the cause of death was “due to hypovolumic shock due to hemorrhage due to injury to vital organs ie. Brain”.

vi) On 19.12.2010 at 6.30 a.m., on information about the presence of the accused at Anjaneya Swamy Temple, Rajampalli, PW.17 proceeded to the said place along with PWs.12 and 13 and arrested the accused. On interrogation, the accused confessed about the commission of offence. He recorded the confessional statement of the accused in the presence of PWs.12 and 13. After collecting all the material, PW.17 filed a charge sheet before the Court of Judicial Magistrate of First Class, Darsi, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.180 of 2011.

3) On appearance, a charge under Section 302 IPC was framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P12 and MOs.1 to 6. 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) After considering the oral and documentary evidence on record, the Sessions Judge convicted the accused under Section 302 IPC. Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that there are no direct witnesses to the incident and the case rests on circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime.

7) On the other hand, learned Public Prosecutor would submit that though there are no direct witnesses but the fact that the accused was seen in the company of the deceased just prior to the incident is sufficient to convict him with the offence. In the absence of any explanation from the accused as to how the deceased died, the circumstance of last seen coupled with motive, is sufficient to convict the accused.

8) The question that falls for consideration is whether the accused is guilty for committing the murder of his wife.

9) To establish motive, the evidence of PWs.1 to 5 and one Muthyalu (PW.11) with whom the deceased was said to have been having illicit intimacy was examined by the prosecution. PWs.1 to 5 in one voice deposed that the accused beat the deceased, as he suspected illicit intimacy between the deceased and PW.11. PW.11, while denying the same, stated that he treats the deceased as his daughter.

10) The evidence of PW.1 discloses that because of suspicion the accused used to harass the deceased and beat her. In his evidence he deposed that on morethan one occasion, the accused proclaimed to kill the deceased. PW.1 is said to have intervened and admonished the accused for his utterances. It is also to be noted here that the deceased is the second wife of the accused and there is age gap of 25 years between the accused and the deceased. PWs.2 to 5 in one voice deposed that the accused used to picked up quarrel with the deceased suspecting her fidelity. Though all these witnesses were cross-examined at length but nothing useful was elicited to discredit their testimony. All the suggestions given to them were remained as suggestions.

11) Coming to the incident proper, the evidence of PW.10 would show that on the date of incident at about 10.00 a.m. he went to the house of PW.1 for engaging a person as a guard to his fields. The accused along with his wife was present in the house of PW.1. It is said that the accused agreed to work in his fields as a watch man and further informed that he will report to work on the next day. The evidence of PW.1 is that on the date of incident at about 2.00 p.m. the accused and deceased together left his house, to collect grass for the cattle. Though PW.1 deposes about other aspects, as informed by PW.6, but the same cannot be looked into since PW.6, in his evidence never deposed those facts which PW.1 is now saying. Therefore, the evidence of PWs.1 to 5 will only be useful to the extent of the accused and deceased being seen

leaving the house on the date of the incident, to collect grass for the cattle.

12) The other evidence which is pressed into service by the prosecution is the evidence of PW.6, who was grazing his sheep in the land which was at a distance of 100 feet from the scene of offence. His evidence is to the effect that at about 2.00 p.m. while he was grazing sheep, he heard shouts from the redgram field, but did not go towards the redgram field on an apprehension that his sheep may trespass into the lands of others. After setting right the sheep, he proceeded towards the said field and found the daughter of PW.1 being unconscious with severe injuries on her face. Being afraid of the situation, he came out of the field and on seeing the children of the owner of the field, informed them about seeing a woman with injuries in the field. He further says that he could not identify her properly and as such did not reveal her identity. Pursuant thereto, PWs.6 to 8 went there and identified the deceased as the daughter of PW.1. Things would have been different had the counsel for the accused left PW.6 without cross-examination, but he put certain questions and elicited answers, which are now proving fatal to the accused. It would be useful to refer to the answers which are elicited through PW.6 in the words spoken to by him, which are as under:

“All the land owners of the lands whose lands are situated in that area use the passage. I do not remember the week of that day. It may be Sunday. Church is in the Jam Oil garden and devotees will attend Church. I noticed accused and deceased together at 2.00 p.m. proceeding towards

redgram field. Accused is ahead of deceased. Accused was seen wearing white shirt, red towel and lungi. I did not observe the colour of lungi. Deceased was seen with red saree. I did not observe the colour of blouse. I did not notice anybody in that passage in between 2.00 and 3.00 p.m. on that day I went for grazing at 10.00 a.m. In between 10.00 and 2.00 I did not notice anybody except accused and deceased. I was not tutored by anybody to depose falsehood. Out of my memory I recollected the occurrence and gave evidence.”

13) From the answers elicited by the learned counsel for the accused, it is clear that PW.6 saw the deceased and accused together at 2.00 p.m., proceeding towards redgram field. He also speaks about the colour of the cloths which were worn by both the accused and deceased. It was further elicited from him that on that day he did not notice anybody in between 10.00 a.m. and 2.00 p.m. except the accused and the deceased. From the above, it is clear that just few minutes prior to the hearing of the cries, the accused and deceased were seen together. Then the burden shifts on the accused to explain as to why and how the deceased died. In 313 Cr.P.C. examination, the accused did not give any explanation. Since the proximity of time between both of them being seen together and hearing of cries by PW.6 being very less, the inference that can be drawn is that it was the accused, who killed the deceased by beating her with a boulder, having regard to the suspicion entertained against the deceased. In view of the answers elicited in the evidence of PW.6 coupled with the evidence of PWs.1 to 5, we have no other option except to confirm the conviction.

14) For the aforesaid discussion, we feel that it is a fit case which warrants no interference in the conviction and sentence awarded by the Sessions Judge.

15) Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence awarded in S.C.No.180 of 2011 on the file of the VI Additional District and Sessions Judge (FTC), Markapur. Consequently, miscellaneous petitions, if any, pending shall stand closed.

27.11.2017
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JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI