

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

CrI.A. No. 1585 of 2010

JUDGMENT:- (Per Hon' ble Sri Justice Suresh Kumar Kait)

This Criminal Appeal is preferred against the judgment dated 14.07.2010 delivered in S.C.No.196 of 2009 by the Sessions Judge, Mahila Court, Vijayawada whereby the appellant - accused was found guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.1000/ -.

The brief case of the prosecution is that PW1 is the brother of the deceased –Kaparthi Bujji. The marriage of the deceased with the accused was performed 20 years ago and they were blessed with two children. PW1 was residing in a room behind his sister's house. He was regularly taking food in the house of the deceased, however sleeping in his room. His brother-in-law i.e. the appellant was doing painting work. The accused used to consume liquor daily and whenever he was in drunken state, he used to abuse and beat the deceased and if any time, PW1 used to intervene, he would scold him. While so, on 11.02.2009 at about 06:30 p.m. the accused, the deceased and their children went for Tirunallu at Gunadala and returned home at about 08:30 p.m. When PW1 went to

their house for taking meals, the appellant, in a drunken condition, demanded from his wife to give “spandana” amount and also threatened her that if she failed to give the amount, he would kill her, and by saying so, he picked up quarrel and beat her. As it was routine, PW1 after meals went away to his room. On the next day morning, on the information of house owner, PW1 went and found his sister in pool of blood with injuries over left side of ear and cheeks and cloth was gagged in mouth, and he shifted her to hospital. She was shifted to G.G.H. on 12.02.2009 where LW19 recorded statement of PW1. F.I.R. was registered and investigation commenced and deceased died on 02.03.2009. After completion of investigation, charge sheet was filed. I Additional Chief Metropolitan Magistrate, Vijayawada took the charge sheet on file as P.R.C. No. 20 of 2009 and committed the case to the Court of Metropolitan Court of Sessions. The trial Court framed charge against the appellant under Section 302 IPC and the same was read over and explained to him in Telugu for which he pleaded not guilty and claimed to be tried.

To substantiate the case of the prosecution, it examined PWs. 1 to 13 and got marked Exs. P1 to P13 and M.Os. 1 and 2.

After closure of the prosecution evidence, the appellant –accused was examined under Section 313 Cr.P.C. wherein he

pleaded not guilty and denied the incriminating evidence led against him. However, no defence witnesses were examined nor got marked any documents on behalf of the accused.

PW1 – G. Durga Rao is the brother of the deceased and brother-in-law of the accused. PW2 is the house owner of the deceased. On the next day morning, on being informed by PW2, PW1 went and found his sister in a pool of blood and shifted her to the hospital. She survived for 20 days and thereafter succumbed to injuries.

The learned counsel for the appellant-accused submits that as deposed by PW1, the appellant and the deceased used to quarrel daily after the appellant consumed liquor. On the date of the incident, as usual PW1 took meals in the house of the deceased at 09:00 p.m. and left the home. Thereafter, PW1 was not aware what had happened to the deceased, however he came to know at about 06:00 or 07:00 a.m. on the next day from PW2, owner of the house, that something had happened to her sister. Accordingly, he reached the scene of offence and found his sister in pool of blood and her mouth was gagged. Accordingly, she was shifted to hospital where she remained for 20 days, however, succumbed to injuries.

The learned counsel for the appellant further submits that as per the prosecution case, PW1 left his room at 09:00 p.m., and thereafter, the appellant stated in the statement

recorded under Section 313 Cr.P.C. that he left at 11 p.m. for Hyderabad by Machilipatnam – Narsapur Express and if it is believed that the appellant caused injuries to her before 11:00 p.m., in such event, plenty of blood would certainly ooze out and there was no possibility for survival of the deceased in case of serious injuries. Hence, some other person must have caused injuries to the deceased early in the morning before PW1 went there which is evident from the statement recorded under Section 313 Cr.P.C. wherein he took the plea of *alibi* that he left the house at 11:00 p.m. and boarded the train and reached Hyderabad.

She further submits that the appellant is falsely implicated in the present case. None of the witnesses had seen the offence taking place and the present case is based upon circumstantial evidence and the prosecution has failed to establish that appellant committed the crime.

On the other hand, the learned Public Prosecutor appearing on behalf of the respondent – State submits that PW1, being the brother-in-law of the appellant and brother of the deceased, is a natural witness. He used to come to their residence daily for meal and on the date of the incident, he took food at 09:00 p.m. and left that place, however, the next day, he received information between 06:00 and 07:00 a.m. from PW2, owner of the house, where the appellant and

the deceased were staying. PWs.1 and 2 have deposed the fact that the appellant is a habitual drunkard, and after consuming alcohol, he used to quarrel with the deceased. On the date of the incident, the appellant, in a drunken state, quarrelled with the deceased and beat her with knife and left the place. He further submits that the appellant in his statement recorded under Section 313 Cr.P.C. had taken the vague plea that he left the place of occurrence at 11:00 p.m. by Machilipatnam –Narsapur Express train to go to Hyderabad, however, in the cross-examination, no suggestion was given to any of the witnesses on this plea. The appellant is the husband of the deceased. The incident took place in the night in their residential house. He was supposed to be in the house. He was the best person to know what happened to his wife, but he failed to explain the same. Therefore, the present appeal is liable to be dismissed.

We have heard the learned counsel for both the parties and perused the material placed on record.

PW1, the brother of the deceased, deposed that the marriage of the appellant and the deceased was performed approximately about 20 years ago and they were blessed with a daughter and a son. His father died during his childhood. His mother was residing with his elder brother in Hyderabad. The appellant and the deceased were residing near Budameru

Katta (bank). He deposed that he was residing in a portion situated at the backside of their house. PW2 is the owner of their houses and PW3 who is her daughter was present in the house of PW2. At the time of the incident, PW1 was staying in his room taken on rent from one year prior to the incident. He has been taking meals in the house of his elder sister i.e. the deceased and the appellant. His sister was a servant-maid and they lived amicably for sometime, but later, the appellant used to come in a drunken condition and demand money from her by abusing and beating her. Whenever he intervened, the appellant also beat him.

The statement of PW1 was recorded on 29.03.2010 and the incident had taken place one year prior to that date. He deposed that one year ago at the time of Marymatha festival, his sister, the appellant and their children went to Tirunallu and returned home. On that day, his sister received "spandana amount". The appellant picked up quarrel and insisted her on giving money, but when she refused to give the money, the appellant threatened to kill if she did not give the amount. By that time, PW1 went to their house for dinner as usual, took meals and went to his room. PW1 further deposed that on that day, the appellant was fully in a drunken state. He returned to his home at about 09.00 p.m. after taking dinner. At about 06:00 or 07:00 a.m. PW2 – K. Rangamma,

owner of the house, woke him up and informed that his sister was found in injured condition. Immediately, PW1 rushed to the place and found her sister in a pool of blood and a cloth was stuffed in her mouth. She sustained bleeding cut-wound on left side of her ear and even her part of left ear was hanging and there was blood on the cot and on the walls. He telephoned to 108 Ambulance and shifter her to hospital. PW1 further deposed that the deceased was hospitalized for 20 days during which she remained unconscious.

It is not in dispute that the statement of PW1 was recorded after a year of commission of offence. Minor discrepancies are obvious. As stated by the learned counsel for the appellant that he failed to disclose that the amount of Rs.12,000/- received by the deceased was either in cash or in cheque. However, PW1 deposed that on the date of the incident, the appellant was in drunken state abusing his sister and there was a galata on that day. This fact was found from the statement of PW2, who is the owner of the house staying in adjacent portion of the house. She also heard the quarrel between the two, and thereafter, she did not know what had happened, but when the children of the deceased informed her she came to know that Kaparathi Bujji died.

PW3, who is the daughter of PW2, has supported the evidence of PW2.

PW4, who is co-brother of the appellant and residing opposite to the house of accused at a distance of ½ km, deposed that usually the appellant and his wife were living happily, but if the appellant consumed liquor, he would quarrel with his wife. The appellant was in the habit of consuming liquor daily. PW1 was residing at the rear side portion of the appellant's house. At that time, he was single and taking food in the house of the appellant. He further deposed that the appellant and his family members went to Marymata Tirunallu. Prior to that he picked up quarrel regarding "spandana amount" of approximately Rs.12,000/- as it is their usual practice to quarrel for the amount. They went to Tirunallu and returned home. On the next day, on hearing cries of PW2, they went there and found the deceased – Bujji sustained injury and was in a pool of blood and a cloth was gagged in her mouth. When PW1 called 108 Ambulance and she was shifted to hospital.

In cross-examination, PW4 denied the suggestion that he did not know anything about the disputes taken place between the appellant and the deceased on 11.02.2009. However, he deposed that the appellant and the deceased picked up quarrel on the road as such he came to know about their quarrel.

PW5 is the sister of the deceased and wife of PW4. She deposed on the same lines as deposed by PW4 and even in the cross-examination, nothing could be elicited by the learned counsel for the defence which would help the appellant in the present case.

PW6 is a mediator, who was present at the time of observation of the scene of offence by the police. He along with the police examined the same in a house bearing No. 44-15-90 in Gunadala, Lenin Nagar, Vijayawada. They found blood on the T.V., table, muffler and the knife. He further deposed that knife and muffler were seized by the police in his presence. In the Court, he identified muffler and knife – M.Os.1 and 2. He also deposed that one Dharma Rao drafted the observation report of the scene of offence – Ex.P2 and PW6 signed on it. In cross-examination, nothing could be made out to help the appellant.

PW7 deposed that he was mediator for inquest. Ex.P3 is the inquest report. PW8 is the subscriber of the inquest report.

PW9 is the doctor who conducted post-mortem examination over the dead body of the deceased and found the following injuries:

- 1) A healing cut injury of 2 cm x 1 cm x 0.5 cm present over lower part of left ear pinna;
- 2) A healing cut injury of 2 cm x 0.1 cm x bone deep over just front to the left ear;

- 3) A healing cut injury of size 1.5 cm x 0.1 cm x bone deep present over 3 cms front to left ear;
- 4) Fracture left zygoma and greater sphenoid bones associated with oedema of brain present

The above injuries were ante-mortem in nature.

Accordingly, PW9 prepared post-mortem report – Ex.P4 wherein he opined that death caused due to complication of head injury. In the cross-examination, he denied a suggestion that oedema was not due to injury sustained by the deceased, however he added that it may be caused when she was beat with heavy sharp-edged weapon, thus, the injury could not have sustained by the said weapon.

PW10, staff nurse, who attended the deceased in the hospital, deposed that the deceased remained in the hospital, but never regained consciousness and died after 20 days.

PW11, woman Head Constable, who was posted at O.P. P.P.S Government Hospital, Vijayawada, recorded the statement of PW1. Ex.P5 is the hospital intimation received by PW11.

PW12, the then Investigation Officer of the case, registered F.I.R. He deposed that on 12.02.2009 at about 10:00 hours, he received statement of G. Durga Rao (PW1) from G.G.H., Vijayawada, O.P.P.S and registered a case in Cr.No. 65 of 2009 for the offences punishable under Sections 498-A and 307 IPC and issued F.I.R. – Ex.P6. As the deceased was injured and unconscious condition, the statement of PW1,

the brother of the deceased, was recorded. Thereafter, he visited the scene of offence; he secured the presence of PWs.6 and 10; observed the scene of offence; prepared Ex.P2 – observation report of the scene of offence; rough sketch – Ex.P7 and got photographed the scene of offence. Ex.P8 is the bunch of four photos. As they were taken by digital camera, there are no negatives.

PW12 further deposed that he seized blood-stained knife and green and orange coloured scarf and also controlled and blood stained earth from various parts of the scene of offence. M.O.1 is the scarf and M.O.2 is blood-stained knife which were seized in the presence of mediators. Thereafter, he forwarded M.Os. to F.S.L. under letter of advice – Ex.P9 along with covering letter. He examined PWs.2 to 3 and recorded their statements. On 15.02.2009, he arrested the appellant at B.S.N.L., Chuttugunta Centre, Vijayawada. As the appellant was suffering from stomach pain, he sent him to G.G.H., Vijayawada for treatment. After discharge, the appellant was remanded to judicial custody. On 17.02.2009, he examined LW15 – Dr. Madhu Kiran Reddy and recorded his statement. On 01.03.2009 also he recorded the statements of LW16 – Dr. K.V.V.Satyanarayana Murthy and PW10. He further deposed that on 02.03.2009, at 04:00 p.m., he received death intimation of the deceased and altered Section of law from

307 IPC to 302 IPC. He received Ex.P10 - death intimation and Ex.P11 is the altered Memo filed by him and Ex.P12 is the altered F.I.R.

He deposed in the cross-examination that there is difference between knife and the butcher's knife, however, not much was elicited about it from this witness to help the appellant.

PW13, who is the second investigation officer, deposed that he examined PW5, PWs.8 and 9 and recorded their statements. Though he examined PW1 once, he did not record his statement again. He got drafted inquest report – Ex.P3. He sent the dead body for post-mortem examination and received F.S.L. report – Ex.P13 and post-mortem report; and after completion of investigation filed charge sheet. In the cross-examination, nothing could be elicited from him by the counsel for the defence.

The above is the evidence on record.

The point for determination in the appeal is whether the prosecution established the guilt of the accused beyond reasonable doubt?

PW1 has specifically deposed that he was staying with the appellant and the deceased. He used to take food from their house. Whenever the appellant was in a drunken state, he used to quarrel with his sister. On the date of the

incident, on demanding some amount, he threatened that he would kill the deceased if she would not give the money as demanded. He had taken food at 09:00 p.m. and left the place, however, in the morning he received information from PW2 that her sister was no more. He got summoned 108 Ambulance, and then, took her to hospital. She remained in hospital for 20 days and thereafter died.

PW2, owner of the house, also supported PW1 to the extent that the appellant was in the habit of consuming liquor daily. He used to fight with the deceased on demanding money and on the date of the incident, she received "Spandana Amount" and the appellant was insisting her to handover the same. Thereafter, some galata took place wherein he hit the deceased with the knife.

It is an established case that the appellant was present at his house on the date of incident. However, he has taken the plea during examination under Section 313 Cr.P.C. that he left for Hyderabad by train at 11:00 p.m. and made a call the next day at 08:00 a.m. to his wife, but the phone was lifted by someone else and thereafter, he came to know that his wife was injured and admitted in the hospital.

It is not the case of the appellant that immediately after knowing the hospitalization of his wife i.e. the deceased, he reached the hospital to take care of her. However, he was

arrested on 15.02.2009 after four days of the incident. The plea of the alibi taken during the examination of the accused under Section 313 Cr.P.C. that he left his house at 11:00 p.m. by Machilipatnam –Narsapur Express train to go to Hyderabad, is without any evidence. Moreover, none of the witnesses were cross-examined on this issue to prove that the appellant was not present after 11:00 p.m. on the date of the incident and was present somewhere else.

Plea of alibi is relevant under Section 11 of the Indian evidence Act, 1872 and the same is extracted as under:

When facts not otherwise relevant become relevant:-

- 1) If they are inconsistent with any fact in issue or relevant fact;
- 2) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations:-

- a) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

- b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

The appellant, being husband, was present at the scene of offence i.e. his house on the date of the incident, admittedly, till 11:00 p.m. It is nowhere stated except in the examination under Section 313 Cr.P.C. that he left by Machilipatnam - Narsapur train to Hyderabad. Had the appellant was not present at the time of incident at the residence, in the natural course, after receiving information, he would have immediately rushed to the hospital to take care of his wife. He did not do that. Section 103 of the Indian Evidence Act specifically says that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Therefore, in the case on hand, the accused has failed to prove that he was not present on the date of incident.

In view of the clinching evidence of the prosecution witnesses, we find no illegality or perversity in the findings recorded by the trial Court. The judgment under appeal is perfectly justified and does not warrant any interference by this Court. The arguments raised on behalf of the appellant do not shatter the credibility of the prosecution case.

Hence, the Criminal Appeal is devoid of merit and the same is accordingly dismissed.

As a sequel, Miscellaneous Petitions, if any pending,
shall stand disposed of as infructuous.

06.02.2017

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

bcj

