

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRL.A. No.1289 OF 2012

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

The sole accused in S.C.No.228 of 2006 on the file of the Sessions Judge, Mahabubnagar, is the appellant. He was tried for the offences punishable under Sections 302 and 201 of IPC, for causing the death of one Lotti Padma on 28.05.2005 at about 9.00 p.m. at Kallepalli Village, by beating her indiscriminately with a stick and thereafter, the accused is said to have dug a pit in his house and buried the dead body so as to screen the evidence. Vide judgment dated 09.06.2008, the learned Sessions Judge at Mahabubnagar, convicted the accused for the offences punishable under Sections 302 and 201 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for a period of six months for the offence under Section 302 IPC. He is also sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months for the offence under Section 201 IPC. The sentences of imprisonment were directed to run concurrently. The remand period, if any, was directed to be set off against the sentence of imprisonment imposed. Assailing the same, the present appeal came to be filed.

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

One Pentaiah is the brother of the accused. The father of the accused and one Pentaiah acquired one house. The deceased in this case is said to be the second wife of brother of the accused i.e., Pentaiah.

3) The evidence of PW.1 shows that basing on the information he went to the house of the accused along with the Sarpanch of that village and noticed a pit in the house of the deceased. It is his case that the accused killed the deceased and buried her in a pit in his house. PW.1 went to the police Station and lodged a report—Ex.P1 with PW.11. Basing on the said report, a case in Crime No. 116 of 2005 came to be registered for the offences punishable under Sections 302 and 201 of IPC. PW12 the Inspector of Police took up further investigation. On receipt of information, PW12 visited the scene of offence situated at Kallepalli Village, in the house of the accused, and got exhumed the dead body in the presence of the Mandal Revenue Officer PW.9. He examined and recorded the statements of PWs.2, 4, 5, 7 and 8. He requested PW.10, the Civil Assistant Surgeon, Government Hospital, Shadnagar, to conduct autopsy over the dead body of the deceased at the scene. Accordingly, PW.10 conducted autopsy over the dead body at the place of burial and issued Ex.P8—the post mortem certificate. According to him, the cause of death was due to Shock. On 06.06.2005, PW.4 visited the office of PW.12, informed him about the extra judicial confession made by the accused before him. Immediately, the police followed her and apprehended the accused. On interrogation, the

accused confessed about the offence, which lead to seizure of a bamboo stick from his house under the cover of panchanama. Ex.MO.1 is the bamboo stick. After completion of investigation, he filed a charge sheet, which was taken on file as PRC No.73 of 2005 before the Judicial First Class Magistrate, Jadcherla.

4) On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal, the Sessions Judge, Mahabubnagar, numbered the case as S.C.No.228 of 2006.

5) On the basis of the material available on record, charges under Sections 302 and 201 of IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

6) In support of their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P9 and M.O.1.

7) 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 in support of his defence, however, he got marked Ex.D1.

8) Out of 12 witnesses examined by the prosecution, PWs.3, 4, 7 and 8 did not support the prosecution of the case and they were treated as hostile witnesses.

9) On the basis of evidence adduced by the prosecution, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed through the legal aid counsel.

10) Learned counsel for the appellant/ accused mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution does not form a chain of events so as to connect the accused with the crime. According to him, there is no evidence to show that accused alone was living in house at that time of incident.

11) Learned Public Prosecutor however opposed the same. He would submit that though there are no eye witnesses to the incident but the circumstances relied upon by the prosecution do form a chain of event, connecting the accused with the crime.

12) The point that arises for consideration is as to whether who is responsible for death of the deceased?

13) As seen from the record, there are no eye witnesses to the incident, and the case mainly rests on the circumstantial evidence of PWs.1, 2, 5 and 6. PW.1 is a resident of Kallepalli Village. In his evidence, he deposed that he knows the accused and deceased, and that on the complaint given by the Sarpanch to the effect that the accused killed the deceased, he gave a report to the police, which was brought on record as Ex.P1. He further deposed that the accused killed the deceased and buried her in the pit, which was in his house. However, in the cross examination, PW.1 denied

the suggestion that the accused has not killed the deceased, and stated that he was told by the Sarpanch about the murder committed by the accused.

14) PW.2 in his evidence deposed that the police came to their village in connection with the death of the deceased, and that he was examined by the police and his statement was recorded. He further deposed that the dead body was found in a pit in the house of the accused, and the same was unearthed by him and others. In the cross examination, PW.2 stated that he knows the brother of the accused, by name Pentaiah, and that the deceased is the second wife of Pentaiah. The suggestion that there was enmity between the first wife of Pentaiah and the deceased and their families, was denied. The suggestion that there was a quarrel with regard to the partition of properties between the accused and Pentaiah, was also denied.

15) PW.5—the Sarpanch, Kallepalli Village deposed that he knows the accused and the deceased, and that the deceased died. He further deposed that he was called to act as panch to the scene of offence, panchanama and inquest panchanama, and opined that the deceased was killed in her house by her family members.

16) From the above, it is clear that none of the witnesses have deposed about the accused being responsible for the death of the deceased. PW.3, who is the only witness before whom the accused is said to have made the extra-judicial confession, did not

support the prosecution case and was treated hostile by the prosecution.

17) Surprisingly, in this case, the crucial witness, Pentaiah, who is said to be the brother of the accused, and the person who is said to have given information regarding the death of the deceased, was not examined by the prosecution.

18) Having regard to the above facts and circumstances, we feel that the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime.

19) Accordingly, the appeal is allowed. The conviction and sentence awarded against the appellant/accused by name Lotti Bala Masaiah, in the judgment dated 09.06.2008, in Sessions Case No.228 of 2006, on the file of the Sessions Judge, Mahaboobnagar, for an offence punishable under Sections 302 and 201 of I.P.C., is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case.

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

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