

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.684 OF 2011

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

1) The sole accused in Sessions Case No.616 of 2009 on the file of the Additional Sessions Judge, Hindupur, is the appellant herein. He was tried for the offences punishable under Sections 302 and 201 IPC. By its judgment dated 06.08.2010, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" for the offence punishable under Section 302 IPC and to suffer rigorous imprisonment for two (02) years for the offence punishable under Section 201 IPC.

2) The case of the prosecution as unveiled from the evidence of the prosecution witnesses as under:

i) D.1 who is the mother of D.2 and concubine of the accused, was closely related to PW.1. Originally, the marriage of D.1 was performed with one Pandu of Chowdasamudram Village. Two months after the marriage, she discarded her husband and started staying in the village, along with her mother. Both of them were staying in Harijanawada of Cheekatimanipalli Vilalge. About four years prior to the date of incident, the mother of D.1 died. Thereafter, D.1 and D2 started living together. The accused developed intimacy with D.1 and started residing in the house of D1 along with D.1 and D2. D.1 and accused were residing happily

together for some days. Disputes arose between D.1 and accused, when he started suspecting the fidelity of D.1. In this connection, PW.1 is said to have chastised D.1 and accused. Panchayats were convened on number of occasions, wherein both of them were chastised, but there were no change in their attitude.

ii) On the date of incident at about 10.00 p.m. PW.2 and his wife, heard the cries of D.1 from the house, but they did not bother much as such cries were common. Thereafter, the deceased and accused were not seen in the village. The evidence of PW.2 discloses that on the date of incident at about 9.00 a.m. he noticed the accused entering the house with a water melon. Thereafter, he heard the cries of deceased at about 10.00 p.m. On an impression that it was a usual galata in the house of the deceased, he did not bother to intervene. The evidence of PW.6 would show that, on the date of incident, at about 11.00 p.m. when he went to attend calls of nature in the nearby fields, he noticed the accused hurriedly proceeding from the house of the deceased towards Daba Hotel. He called the accused as to where he was proceeding, but the accused failed to give any reply and went away. He noticed the house of the accused locked from outside.

iii) It is also to be noted here that all the witnesses ie. PWs.2 to 5 stated that on the next day morning they found the house of the accused locked from outside. They were under the impression that all the inmates, left the village on the previous night after the

quarrel. However, few days later they found foul smell coming out from the house. Having smelt the same, PWs.1 and 2 and others broke open the lock and found sand in one corner of the house of the deceased. On verification they found the dead bodies of Parvathi and her daughter in the sand. Both the bodies were decomposed and there was a head injury on the person of D.1. As the accused was absconding from the village since then, PW.1 lodged a report with PW.15, which lead to registration of a case in Crime No.6 of 2009 for the offences punishable under Sections 302 and 201 IPC. Ex.P12 is the first information report. Immediately, thereafter, on the instructions of Inspector, PW.15 proceeded to the scene of offence, conducted inquest over the dead body of D.2 in the presence of Desai Prabhakar Reddy and Kanamala Balaraju (LWS.23 and 24). Ex.P3 is the inquest report of D.2. During inquest, he seized the wearing apparels of D.2.

iv) The rest of the investigation was taken over by C.I. of Police, who was examined as PW.16. In his evidence, PW.16 deposed that on 26.02.2009 at about 7.00 a.m., he conducted inquest over the dead body of D.1 in the presence of PW.8 and others. Ex.P2 is the inquest report of D.1. He noticed an injury on the head and a crush injury on the skull. During inquest, he seized wearing apparels of D.1 and also seized rolled gold ear studs and gold nose stud. During inquest, he examined PWs.1,2,3 and others. After inquest, he prepared a rough sketch of the scene of offence and also an observation report of the scene of offence, which were

marked as Exs.P13 and P14. Thereafter, both the bodies were sent to Government Hospital, Kadiri, for postmortem examination.

v) On 25.02.2009, PW.13-the Civil Assistant Surgeon at Government Hospital, Kadiri, conducted autopsy over the dead body of D.1 and issued Ex.P7-the postmortem examination report on 25.02.2009. PW.14- the Deputy Civil Surgeon at Government Hospital, Kadiri, conducted autopsy over the dead body of D.2 and issued Ex.P10- the postmortem examination report. Both the doctors opined that the dead bodies were in a highly decomposed state and noticed an injury on the head. The cause of death was held to be due to injury on the head.

vi) On 26.02.2009 at about 2.30 p.m., PW.16 arrested the accused at Mulkacheruvu. The accused is said to have confessed about his involvement in the commission offence, and lead the mediators to his house in Harizanawada, from where he produced M.O.4-pestle, M.O.5 blood stained shirt and M.O.6-blood stained cotton pancha. Ex.P6 is the Seizure panchanama. After collecting all the reports and after completing the investigation, PW.16 filed the charge sheet, which was taken on file as P.R.C.No.57 of 2009 on the file of the Additional Judicial Magistrate of First Class, Kadiri, which on committal came to be numbered as S.C.No.616 of 2009.

3) On appearance, charges under Sections 302 and 201 IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) In support of their case, the prosecution examined PWs. 1 to 16 and got marked Exs.P1 to P13 and M.Os.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 by the accused in support of his defence.

5) On appreciation of the entire evidence on record, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the entire case rests on the circumstantial evidence. According to him, the circumstances relied upon by the prosecution, namely the accused going into the house at 9.00 p.m. and thereafter leaving the house at about 11.00 p.m. do not form a chain of events to connect the accused with the crime. Basing on the confession statement of the accused and relying upon the judgment of the this Court in *Kandi Venkata Suneel Kumar Reddy v. State of Andhra Pradesh*,¹ learned counsel for the appellant would submit that since the said confession is favourable to the accused, the same can be relied upon, to extend benefit to the accused.

¹ (2010) 1 ALD (CrI.) 699 (A.P.)

7) Before proceeding further, it would be useful to refer to the judgment of this Court in Kandi Venkata Suneel Kumar Reddy's case , wherein this Court held as under:

“16. Therefore, the law may be taken as well settled that if the accused himself is the informant of cognizable offence or gave a confession admissible to a limited extent under Section 27 of Evidence Act or made extra judicial confession before non-police person, statement made in the F.I.R. or extra-judicial confession or confession made to police, can be to the extent it is favourable to accused for any purpose either for consideration of acquittal or for modifying conviction – admitted. “

8) There is no dispute with regard to proposition of law laid down by this Court. Things would have been different had the accused, on seeing his concubine with another person, dealt a blow on her head with pestle and kept quiet. In the instant case, on seeing the accused entering the house, the third person ran away. Thereafter, he brought D.1 into the house and tried to convince her, but in the process there ensued a quarrel. Pursuant to which the accused took a pestle and gave a blow on her head. He did not stop here. D2, who was aged about 4 years, on hearing the cries of D.1, got up. On an apprehension that she would disclose about the incident to others, the accused also gave a blow on her head leading to her death as well. Even if the argument of the learned counsel for the appellant is to be accepted, the said benefit may at the most be extended to cause the death of D1, but not for causing the death of D.2, who was done to death without any provocation or quarrel. Therefore, the judgment relied upon by the learned

counsel for the appellant may not be of much help to the accused, having regard to the facts in issue.

9) As seen from the record, the evidence of PWs.2 to 5 discloses that, on the date of incident at about 10.00 p.m., all of them heard a galata and cries of the deceased from the house of the accused. Thinking that it was usual quarrel, they did not bother to go there. The evidence of PW.3 discloses that on that day at about 9.00 p.m. he saw the accused entering the house with a watermelon. The evidence of PW.6 is to the effect that at about 11.00 p.m. he noticed the accused hurriedly proceeding from the house towards the dhaba hotel. When questioned, the accused is said to have left hurriedly without giving any reply. These two circumstances establish the presence of the accused in the house at the time of the incident. The timing of the incident as stated by the witnesses get support from the evidence of PW-13 and PW-14, who in their evidence opined that the death would have been about 4 to 10 days prior to postmortem examination. Though the timings are at little variance, but the same may not go to the root of the matter. Even if no importance is given to the said aspect or even if there is a minor discrepancy in the timings, no benefit can be extended to the accused on this score alone because of his conduct, which is highly improbable.

10) Learned counsel for the appellant would submit that as the crime was registered on 25.02.2009 itself, it cannot be said that the accused was absconding. At first blush the said argument

appeared to be quite acceptable, but a close analysis of the evidence on record shows that the accused never visited the house from 20.02.2009 to enquire about D.1 and D2. This would not be the normal human conduct, when he is innocent of the offence and when he was living with D1 and D2.

11) It is also to be noted here that all the witnesses in one voice deposed that the house of the accused was locked from outside. The evidence of PW.6 also show that on that day at about 11.00 p.m. he noticed the accused leaving the house and the door was locked from outside. On a belief that all of them must have left the house together, PWs.2, 3 and 4 did not bother much, until foul smell started emanating from the house.

12) Admittedly, the accused was living in the house of the deceased. After 20.02.2009, the whereabouts of the accused were not known. If really, he was innocent and he has nothing to do with the commission of offence, he would have visited the house atleast once to enquire about D1 and D2. The record discloses that he was absconding from the village and long after the date of incident, ie. nearly a week thereafter he was arrested.

13) The learned counsel for the appellant relied upon the judgment of this Court in *Medaveni Sadhanandam v. State of A.P.*², in support of the his plea that when there is no direct evidence to speak about the incident, the entire case has to go. It was a case where the prosecution failed to establish the presence

² (2011) 3 ALT (Gr.) 259 (D.B.) (A.P.)

of the accused with the deceased on the previous night. Hence, benefit of doubt was extended to the accused. Situation on hand is totally different.

14) In the instant case, the accused was found entering the house at 9.00 p.m., leaving the house at 11.00 p.m. and the door was locked from outside, which was broke open after four or five days. Therefore, it cannot be said that there was any missing link in the chain of events, more so, when the dead bodies were found in the house of the deceased and the lock of the house was intact till it was broke open on 4th or 5th day. Coupled with all the above circumstances, the medical evidence also supports the case of the prosecution with regard to the time of death.

15) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/ accused beyond reasonable doubt and the trial Court has rightly convicted the appellant and sentenced him as stated supra.

16) In the result the appeal fails and it is accordingly dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

15.11.2017
gkv