

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

CRIMINAL APPEAL No.1643 of 2010

JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

This appeal is filed by appellant/accused aggrieved by the judgment dated 22.09.2010 in S.C.No.84 of 2010 passed by the VI Additional District and Sessions Judge (FTC), Krishna at Machilipatnam, whereunder the learned Judge convicted the accused for the offences punishable under Sections 450 and 302 IPC and sentenced him to suffer RI for five years and to pay fine of Rs.1,000/- in default to suffer SI for six months for the first count and also to suffer RI for life and to pay fine of Rs.2,000/- in default to suffer SI for one year for the second count and directed both the sentences to run concurrently.

2) The prosecution case is thus:

a) The accused—Sykam Kanakaiah was a resident of Etimoga village and working as night watchman in Etimoga Agricultural Marketing Yard on daily wage basis; due to disputes he discarded his 1st and 2nd wife; the deceased—Sykam Naga Basavamma after the death of her husband residing in her house at Etimoga village; at that time, accused developed illegal intimacy with her; some time they lived together happily but later accused started harassing the deceased; so, she went to Vijayawada and stayed there and during that period the accused

married another woman by name Pavani—the daughter of Naidu Venkateswaramma of Etimoga village as third wife and residing in his mother-in-law's house; while so, the deceased used to visit Etimoga village for collecting her widow pension; at that time accused used to continue the illegal intimacy with deceased without going to his house to lead marital wife with his third wife—Pavani; therefore, the mother-in-law of accused—Naidu Venkateswaramma picked up quarrel with the deceased who in turn harassed the accused due to sexual jealousy; consequently misunderstandings arose between accused and deceased; accused used to beat deceased frequently and he developed grudge against her and decided to do away with her and waiting for an opportunity to kill her.

b) On 14.08.2009 at about 7.00 PM, on noticing that deceased was going to her house lonely the accused with an intention to kill her on the night, went to market yard, secured one plastic wire and secretly kept the same in his pocket and went to the house of deceased at about 11.00 PM and woke her up; when she raised alarm and questioned as to why he came; he pushed her towards the wall; in that regard, scuffle arose between them; accused tried to strangulate her in her house, but she escaped and ran towards the vacant site of PW9 by raising cries and accused chased her; she fell down on the ground; then the accused strangulated the deceased with a wire (MO5), killed her and left the scene.

c) On the next day i.e. on 15.08.2009, PW4 informed the death of deceased to her parents through telephone; immediately PWs.1 to 3 and LWs.2 and 6 came to Etimoga village and found the deceased lying dead under suspicious circumstances; PW1 lodged Ex.P1—report to the police; on receipt of the same, PW15—SI of Police, Nagayalanka PS registered a case in Cr.No.66 of 2009 under Section 174 Cr.P.C.; inspected the scene of offence; prepared Ex.P13—scene of observation report; seized incriminating material available in the scene of offence in the presence of mediators; got the dead body photographed through PW13; conducted inquest over the dead body of the deceased under Ex.P7—inquest panchanama; recorded the statements of PWs.1 to 4 and sent the dead body for post-mortem examination; PW14—Medical Officer conducted autopsy over the dead body of the deceased and opined that deceased died due to asphyxia, due to strangulation and issued Ex.P11—post-mortem report; basing on which PW15 altered the Section of law from 174 Cr.P.C. to 302 IPC and issued Ex.P13—altered FIR; PW16—C.I of Police, Eluru took up further investigation; seized the MO5—plastic wire and filed charge sheet.

d) On appearance of the accused, the trial Court framed charges under Sections 450 and 302 IPC against the accused and conducted trial.

e) During trial, PWs.1 to 16 were examined, Exs.P1 to P13 were marked and MOs.1 to 5 were exhibited on behalf of prosecution. Ex.D1 was marked on behalf of defence.

f) After completion of trial, the accused was examined under Section 313 Cr.P.C and incriminating circumstances revealed in the prosecution evidence were put to him, to which he denied.

g) The trial Court basing on the evidence on record held deceased met with homicidal death and prosecution has proved the guilt of accused beyond all reasonable doubt and accordingly convicted and sentenced him as stated supra.

Hence the appeal.

3) Heard arguments of Smt.A.Gayathri Reddy, learned counsel for appellant and learned Public Prosecutor for the State (Andhra Pradesh).

4 a) Severely castigating the conviction recorded by the trial Court, learned counsel for appellant argued that the case was foisted purely on suspicion against the accused as he happened to cohabit with the deceased for some time and except few suspicious circumstances, there was no direct evidence to hold the accused guilty of murdering the deceased. When a case is based on suspicious circumstances, she argued, it is trite law that the prosecution must establish all the suspicious circumstances which are like individual links in a chain and those circumstances must form into a complete chain indicating the guilt of the accused but not his innocence. However, in the instant case, the prosecution miserably failed to prove certain vital links in the chain such as the motive for the accused to kill the deceased and it also failed to prove that the accused was last seen in the company of the deceased.

Sans these vital links, the chain remained incomplete and thereby benefit of doubt ought to be extended to accused. However, the trial Court gave a total go-by to this golden rule and therefore, the conviction and sentence are not legally sustainable. Following precedents are cited on appreciation of evidence in a case based on suspicious circumstances:

1) Sangili alias Sanganathan vs. State of Tamil Nadu rep. by Inspector of Police¹

2) Bale Venkatappa S/o. Bale Chinna Ganganna vs. State of A.P. Represented by its Public Prosecutor, High Court of A.P., Hyderabad²

b) Nextly, she argued that the prosecution failed to connect MO5—rope to the offence as the post-mortem doctor has not confirmed that strangulation would be caused with MO5. She thus prayed to allow the appeal.

5a) Per contra, while supporting the judgment of the trial Court, learned Public Prosecutor would argue that prosecution has established all the suspicious circumstances without there being any missing links in the chain and considering the same, the trial Court rightly convicted the accused and therefore, there are no merits in the appeal.

b) Regarding motive, he argued, the accused discarded his earlier two wives and developed sexual relationship with the deceased and lead conjugal life for some time with her and when she shifted to Vijayawada due to harassment, he married another lady of Etimoga village but

¹ (2014) 10 SCC 264

² 2012(3) ALT (Crl) 158

continued his conjugal relation with the deceased by going to Vijayawada frequently and also when the deceased used to come to Etimoga for receiving widow pension and in that course, disputes arose between his mother-in-law and deceased as she felt that due to deceased, the marital life of her daughter was jeopardised. At the same time, deceased also developed sexual jealousy against the accused for his marrying another girl and leading conjugal life with her as well as with the deceased and thereby, she started questioning his acts and activities. Hence, ultimately the accused decided to do away with the deceased as she was constantly troubling him by questioning his conjugal life with his third wife. Learned P.P argued that all these facts were cogently established by the prosecution through the evidence which is on record. Further, except the accused none others in the village had any enmity with the deceased to kill her and therefore, the motive of the accused to kill the deceased was perfectly established.

c) Nextly, he argued that prosecution also proved last seen theory through PW5 who saw the accused and deceased before the death of deceased. He thus prayed to dismiss the appeal.

6) The points for determination in this appeal are:

- i) *Whether the prosecution established the guilt of accused beyond all reasonable doubt?*
- ii) *Whether the judgment of Trial Court is factually and legally sustainable?*

7) **POINT Nos.1 and 2:** We have perused the record. Shorn of the trivial particulars, the prosecution case is that both the accused and deceased were residents of Etimoga village of Nagayalanka Mandal, Krishna District; accused was working as night Watchman in Etimoga Agricultural Market yard, while the deceased was a widow residing lonely in the house constructed by her husband; he discarded his earlier two wives and developed illicit intimacy with the deceased as she was residing lonely after sending her children to her father at Sorlagondi; both of them were living together in Etimoga village to the knowledge of the co-villagers and the parents and brothers of deceased; while-so, the accused in an inebriated condition used to beat the deceased and unable to bear his harassment, the deceased went to Vijayawada to eke out her livelihood; however, the accused continued his illicit intimacy with her by going on and often to Vijayawada and also when she used to come to Etimoga village every month for collecting widow pension; during the time when the deceased shifted to Vijayawada, the accused married for third time a girl named Pavani D/o. Naidu Venkateswaramma of Etimoga village and living with his wife in the house of his mother-in-law.

a) While so, the deceased went to Sorlagondi village to attend the marriage of her daughter and returned to Etimoga village and residing in her own house; the accused continued his illicit intimacy with the deceased and stopped going to his third wife to lead marital life with her; chagrined with his attitude, his mother-in-law quarrelled with the deceased and warned her not to continue her illicit intimacy with the

accused; the deceased out of sexual jealousy, started harassing the accused for his having third wife and thereby, misunderstandings arose between the accused and deceased and in that context the accused beat the deceased on several times and ultimately he decided to kill her and waiting for an opportunity and watching her movements.

b) On 14.08.2009 at about 7:00pm, accused having noticed the deceased going to her house lonely after having a talk with PW.5, wanted to kill the deceased on that night and for this purpose he secured MO5—plastic wire from the market yard and went to the house of deceased at about 11:00pm, trespassed into her house and woke her up; the deceased questioned him for his arrival, she pushed him and accused also pushed her towards the wall and there was a scuffle between them and when he tried to strangle her, the deceased escaped and ran towards the vacant site of PW.9 by raising cries; the accused chased her and in that course, the deceased fell down on the ground in the vacant site of PW.9 and thereupon the accused strangled the deceased with MO5—wire to death and skulked away.

8) There is no demur that the case is based on circumstantial evidence. A case of this nature is like an electronic circuit which is composed of individual electronic components such as resistors, transistors, capacitors, inductors and diodes connected by conductive wires through which electric current and data flows from one place to another. Even if one component is missed, the flow of electric current and the data will be stopped. Thus, in a case based on circumstantial

evidence, trial is a journey from vague conjectures to sure conclusions. All the suspicious circumstances have to be cogently established by the prosecution and such established circumstances should unerringly point out the hypothesis of the guilt of the accused but not his innocence. Missing of any link will break the chain, thereby the accused would deserve benefit of doubt.

1. Kaliram vs. State of Himachal Pradesh³

2. Sharad Birdhichand Sarda vs. State of Maharashtra⁴

3. Sujit Biswas vs. State of Assam⁵

9) In the instant case as rightly indicated by the trial Court, the prosecution has come up with the following suspicious circumstances to infer the guilt of the accused and produced evidence in that direction:

- (i) That the deceased met with homicidal death in the vacant space in front of the house of PW.9 at Etimoga.
- (ii) That the deceased and accused were in illicit relationship for some time at Etimoga and due to his harassment and beating, the deceased shifted to Vijayawada
- (iii) That during the period the deceased shifted to Vijayawada, the accused married the daughter of Naidu Venkateswaramma and leading marital life in his in-laws' house.

³ AIR 1973 SC 2773

⁴ AIR 1984 SC 1622

⁵ (2013) 12 SCC 406

- (iv) That the accused continued his illicit intimacy with deceased by frequenting to Vijayawada and also during her visit to Etimoga for receiving her widow pension.
- (v) That after attending the marriage of her daughter at Sorlagondi, the deceased returned to Etimoga and residing in her house, during which time, the accused was living with her ignoring his third wife and thereby his mother-in-law picked up quarrel with deceased for jeopardising her daughter's marital life; the deceased too felt sexual jealousy against the accused and questioned his attitude and thereby accused beat the deceased 10 days prior to the incident, which she complained to PW.4 at first and later to PWs.1 to 3 and ultimately the accused decided to kill her and executed his plan in action.

The trial Court on analysis of the evidence held that the prosecution could establish all the suspicious circumstances without there being any missing links. Therefore, the judgment of the trial Court needs to be scrutinised with reference to the evidence on record.

10) **Circumstance No.1**: The evidence of PW.14 accredits the death of deceased as a homicidal one. PW.14 conducted post-mortem on deceased and issued Ex.P.11—P.M report, wherein he found no external injuries but observed the following internal injuries:

“Heart is empty; parenchyma organs are decomposed and liquefied, full of foul smelling gas; throat muscles are congested; Hyoid bone is broken at greater horns; thyroid cartilage is congested, dark bluish in colour.”

He opined that the cause of death of deceased was due to asphyxia, due to strangulation. In the cross-examination he stated that it was not possible to give opinion as to with which (object) strangulation was caused and so he did not mention that aspect in his report. It is pertinent to note that no cross-examination was made to elicit that it was not a case of either strangulation or other form of homicidal death. Strangulation could be caused with a rope or a wire or some other object and therefore, the doctor expressed his inability to give opinion on that aspect but he was firm on the point that the death was due to asphyxia, due to strangulation and this part of his evidence was not shattered. Therefore, it must be held that the prosecution could establish the homicidal death of deceased and so rightly held by the trial Court.

11) **Circumstances 2 to 5:** These circumstances are intertwined and therefore, can be determined together. The prosecution mainly relied on the evidence of PWs.1 to 11 to establish the illicit relationship between the accused and deceased at Etimoga village; later her shifting to Vijayawada due to his harassment and his marrying for third time the daughter of Naidu Venkateswaramma; in the meanwhile, the deceased returning to Etimoga village after attending the marriage of her daughter at Sorlagondi; accused continuing his illicit intimacy with her even during her stay at Vijayawada and also during her visits to Etimoga and the quarrel between the deceased and Venkateswaramma on one hand and the accused and deceased on the other. By their evidence, the

prosecution wanted to establish that the accused had strong motive to kill her.

a) PWs.1 to 3 are the father and brothers of deceased respectively. A close scrutiny of their evidence would depict the facts that the deceased after the death of her husband used to live in the house constructed by her husband at Etimoga village by sending her children to her father at Sorlagondi; the gradual sprouting of illicit relation between the deceased and accused who already discarded his two earlier wives; the accused and deceased living together in Etimoga village to the knowledge of one and all including PWs.1 to 3. Their evidence would further show that the deceased and accused lived together for five years but due to harassment of the accused, she left Etimoga and went to Vijayawada to eke-out her livelihood. However, the accused continued his illegal intimacy with her by frequenting to Vijayawada and also at Etimoga when the deceased was visiting there for collecting widow pension. These facts deposed by PWs.1 to 3 were not denounced by the accused in the cross-examination. On the other hand, it was suggested to PW.1 that the accused never harassed the deceased and he looked after her well which was denied. Therefore, their evidence touching these facts stood unchallenged.

b) We will find in the evidence of PW.1 some more lethal facts which were also not challenged. PW.1 deposed that after the marriage of her daughter at Sorlagondi, the deceased went to Etimoga village and 10 days thereafter the accused beat her; the deceased came to PWs.1 to 3 and told about the said fact and he consoled her by stating that he would

come to Etimoga village with the elders for settling the disputes with the accused; four days prior to the death of the deceased, Naidu Venkateswaramma went to the house of deceased and quarrelled with her and 2 or 3 days after the said quarrel, the accused killed his daughter. It should be noted that there is no denial suggestion against these facts except against the fact relating to the accused killing the deceased. The accused gave a suggestion that out of suspicion by listening to the version of others, they filed a false case against him. Be that as it may, the evidence of PWs.1 to 3, though happens to be that of close relations, can be safely accepted in respect of the facts touching the illegal intimacy between the accused and deceased which was existed when they were at Etimoga and continued even after the deceased shifted to Vijayawada and again after her returning to Etimoga and also the fact touching the disputes between Venkateswaramma and the deceased on one hand and the accused and deceased on the other. The evidence of PWs.1 to 3 gets corroboration from other independent witnesses also.

12) PW.4 who is the husband of the Sarpanch of Etimoga village, deposed that he know the deceased and accused, the deceased was living in the house got constructed by her husband and after the death of her husband, the deceased and accused lived together. Most importantly, he revealed that on one or two occasions, the deceased came to him and told that accused was abusing her and beating her and he advised her to inform the same to her parents and the said incident took place about 10 days prior to her death. He further stated that on 14.08.2009 at about

6:00pm he saw the deceased when she came to the water tap and on the next day evening at about 7:00pm, PW.11 came to him and informed that the deceased found dead lying in the land of PW.9. He went and saw the dead body and opined the deceased died about one day prior. Later he informed her death to her parents at about 9:30 or 10:00pm and on the next day her parents and brothers and elders of Sorlagondi came to Etimoga village and saw the dead body and gave report to the police. In the cross-examination he denied the suggestion that he do not know personally about the relationship between the accused and deceased; the deceased did not come to him and complained against the accused. He admitted that after the deceased left for Vijayawada, the accused married another woman and living with her at Etimoga village; the deceased came to Etimoga village one month 15 days prior to her death; after coming from Sorlagondi village to Etimoga village, the deceased was not living with the accused.

a) PW.5 is a neighbour of deceased and she deposed that the deceased used to reveal her about her pains and pleasures. She stated that after the death of her husband, the deceased and accused married and started living together; the deceased died about one year prior to her evidence; on 14th day, she saw the deceased alive at about 8:00am, when she went to Kirana shop, again she stated that she saw the deceased in the evening on the 14th day; at that time on seeing the accused, the deceased went to her house and this witness went away to her house; on the second day evening, as the villagers were looking at dead body, she also went

and saw and identified it as that of the deceased. She further deposed that the accused married another woman and since then maintained distance from the deceased; during her lifetime the deceased came to her house on one night for taking shelter and at that time, she stated that out of fear she came to her house but she did not tell the reason for her fear. The accused did not choose to cross-examine this witness.

b) PWs.6 to 10 are the neighbours of the deceased. Except PW.9, others did not support the prosecution case and they were declared hostile and cross-examined by the learned Public Prosecutor. It must be noted that they were not cross-examined by the accused.

c) When the evidence of PWs.4 to 10 is sifted, PW.4 is the husband of Sarpanch and thus a well-known person in the village. He categorically stated that the deceased and accused used to live together in their village and the deceased came to him and reported on one or two occasions that the accused was abusing and beating her and on that he advised her to inform to her parents. The said incident was occurred 10 days prior to her death. Except suggesting that the deceased did not come and complain, nothing specific was elicited to establish what was deposed by PW.4 is a falsehood. We find no reason for PW.4 to speak ill of accused. His evidence corroborates PW.1, who stated that 10 days prior to the incident, his daughter came and stated to him and PWs.2 and 3 that accused beat her. He told that he would come to Etimoga village with elders for settling the disputes with accused. Evidence of PW.4 gets corroboration from PW.5 who stated that one night, deceased came to her

house and sought for shelter out of fear. She did not reveal the reason but it can be inferred that it is only out of fear of accused, who used to beat her in a drunken condition, she sought for shelter.

d) It may be noted that though PWs.6, 7, 8 and 10 did not support prosecution case, still their evidence supports prosecution case to some extent. PW.7 stated that after the death of her husband, the deceased and accused started living together and at the beginning they lived amicably but subsequently disputes arose between them. Whereas PW.8 deposed that his house is situated on the backside of the house of deceased; the deceased died about one year back, the accused was seen at the house of deceased now and then. PW.10 deposed that he knows both deceased and accused; the house of deceased is situated beside his house; after the death of her husband, the deceased was living with accused; there were frequent quarrels between accused and deceased. It may be noted that the aforesaid witnesses were examined to speak in terms of their 161 Cr.P.C statements to the effect that they heard some cries from the house of deceased on the night of incident which they did not depose. Nevertheless, their evidence supports the prosecution case and renders corroboration to PW.5 to the extent that the accused and deceased used to live together in Etimoga and there were some frequent quarrels between them. As stated supra, the deceased sought for the shelter from PW.5 on one night obviously due to fear of accused causing danger to her. The evidence of PWs.4, 5 and 11 would reveal, they saw the deceased alive one day prior to her death but on the next day evening she was found

lying dead in the vacant land of PW.9. PW.5 stated that on the evening of the incident, on seeing the accused, the deceased went away. All these facts cumulatively would give an irresistible inference of doubt against the accused. It must be noted that it is nobody's case that the deceased had enemies in the village to make an attempt on her life. For this reason also, the accusing finger points towards accused alone.

e) Then we have the evidence of PWs.12 and 16 on the aspect of confession made by the accused and his producing MO5—plastic rope which is admissible under Section 27 of Indian Evidence Act. The trial Court on an elaborate discussion of the evidence of PWs.12 and 16, concluded that their evidence was intrinsic and believable for recovery of MO5 on the revelation of the accused and we find no reason to come to a different conclusion. The recovery of MO5 and death of deceased due to strangulation speaks volumes of the complicity of the accused in the offence. It is true, PW.14 admitted that it was not possible to give opinion as to with which object the strangulation was caused and hence he did not mention about the object in the P.M report. However, by that count alone MO5 and the revelation of accused connecting to the MO5 cannot be discarded. It is a common knowledge that strangulation could be possible with MO5 also.

13) Then motive is concerned, the evidence on record as well as the admission of the accused would spell out that after the deceased left for Vijayawada, the accused while continuing his illicit intimacy with her, had a third marriage with the daughter of Venkateswaramma. He even

continued his illicit intimacy with the deceased when she used to visit Etimoga village to receive her pension. On account of this, naturally disputes cropped up because Venkateswaramma felt, because of deceased the marital life of her daughter was jeopardised and thereby, she started quarrelling with the deceased. PW.1 deposed that deceased informed him that four days prior to her death, Venkateswaramma came to her and quarrelled with her. While-so, the deceased also raised disputed with the accused for maintaining multi relations with her as well as his third wife. Therefore, the accused was in impasse as to whether to continue his relationship with deceased or with his third wife. Facts and evidence confirm, he thought it fit to eliminate the deceased who was a lonely lady in the village without any support. So the motive is well established. Hence, the argument of the appellant that the prosecution failed to prove the motive cannot be accepted.

14) The further argument of the appellant is that the prosecution failed to prove the last seen theory. This argument holds no water, for, PW.5 has categorically stated that on the evening of the incident she saw the deceased when she went to Kirana shop and on seeing the accused, the deceased went away to her house. So the deceased was very much present in the village and also nearer to the deceased. The incident was occurred on that night. Therefore, it cannot be said that the prosecution could not establish the last seen theory. The cited decisions are of no avail to the appellant.

15) On a conspectus of the evidence on record, the prosecution could establish all the suspicious circumstances through cogent and convincing evidence which formed into a complete chain and unerringly pointed out the guilt of the accused alone, as it was observed, no other person had any necessity to kill the deceased. The trial Court, it must be said, with clinical precession has analysed and appreciated the evidence and arrived at a correct conclusion on the guilt of the accused. Accordingly, we find no merits in the appeal.

16) In the result, this Criminal Appeal is dismissed by confirming the conviction and sentence passed by the trial Court in SC No.84 of 2010.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 11.09.2017

Murthy/scs