

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.668 of 2011

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

1) The sole accused in Sessions Case No.717 of 2010 on the file of the XIII Additional District and Sessions Judge, Narasaraopet, is the appellant herein. He was charged for the offences punishable under Sections 302 and 201 IPC. By its judgment dated 12.05.2011, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" and to pay fine of Rs.1,000/- in default simple imprisonment for a period of five months for the offence punishable under Section 302 IPC and further sentenced to suffer simple imprisonment for three years and to pay fine of Rs.600/- in default to undergo simple imprisonment for a period of three months for the offence punishable under Section 201 IPC.

2) The substance of the charge against the accused is that on 21.03.2010 at about 7.45 p.m., at the cotton field situated near the Ruth Dikeman Colony, Chilakaluripet, is alleged to have murdered his wife by name Telapala Venkateswaramma (hereinafter referred to as "the deceased") by strangulating her. Thereafter, caused disappearance of the evidence by throwing the cloths of the deceased at the burial ground.

3) The facts in issue are as under:

i) PW.1 is the father of the deceased while accused is the husband of the deceased. The marriage between the accused and the deceased was performed about 7 or 8 years prior to the date of incident. PW.2 is the wife of PW.1. PW.4 is the sister of deceased and daughter of PWs.1 and 2. PW.5 was the person, who witnessed the incident. The case of the prosecution discloses that on the date of incident, the accused went to the house of PW.1 in drunken state and raised a galata with the neighbours, which was objected to by the deceased. Then the accused took the deceased stating that they were going to Gudivada village. PW.5 claims to be witnessed the incident. According to him, at about 9.30 p.m. while he was proceeding to attend calls of nature at Cotton field, he heard the cries and saw the accused killing his wife by pressing her throat. He tried to separate the accused and to rescue the deceased, but the accused threatened him stating that it was the second murder committed by him and if he interferes, he would kill him. However, he did not inform anybody about the incident. On the next day morning, PW.3 informed PW.1 on telephone about the talk in the village with regard to the death of the deceased and body lying in the fields. Immediately, PW.1 reached the house of the accused at Chilakaluripet and found the dead body of the deceased on the southern side field of the colony. He gave a report on 22.03.2010, which was marked as Ex.P1. Basing on the report, PW.11-the Sub-inspector of police registered a case in crime No.50 of 2010 under Section 174 Cr.P.C., issued Ex.P9-the first information report and dispatched the same to all the

concerned. As it was late night, he posted a guard at the scene of offence. On the next day ie. On 23.03.2010 he secured the presence of PWs.6 and 7 and prepared a scene of offence panchanama, which was marked as Ex.P3. At the time of conducting the scene observation, he seized Mos.1 to 5 under Ex.P3. He also got photographed the scene of offence and dead body of the deceased, which are placed on record as Ex.P11. He then conducted inquest over the dead body of the deceased in the presence of PWs.6 and 7. Ex.P2 is the inquest report. During inquest, he examined PWs.1 and 2 and other blood relations. Thereafter, he sent the body to Government Hospital, Chilakaluripet for postmortem examination. PW.9-the Civil Assistant Surgeon, Government Hospital, Chilakaluripeta, conducted autopsy over the dead body of the deceased and issued Ex.P5-the postmortem examination report. According to him, the cause of death was “due to asphyxia caused by throttling.” After receiving the postmortem examination report, PW.11 altered the section of law from 174 Cr.P.C. to Section 302 IPC and issued Ex.P12-the first information report.

ii) The evidence on record discloses that on 31.03.2010 at about 10.00 pm the accused went to the office of PW.8, who is the V.R.O. of Chilakaluripeta, and confessed about the commission of offence on 21.03.2010 between 7.00 or 8.00 p.m. PW.8 advised the accused to go to police station, but the accused stated that if he goes to police directly, they may beat him. The said statement of accused was reduced into writing and signed by the accused.

The same was placed on record as Ex.P4. After recording the statement of accused, PW.8 took the accused to the police and handed him over to PW.12 along with Ex.P4. PW.12-the Inspector of Police, examined PW.8 and also recorded the confession of the accused in the presence of PW.10. Pursuant thereto, the accused lead them to the graveyard, from where Mbs.1 to 6 were recovered. On the next day, PW.1 identified Mbs.1 to 5 as that of the deceased. After completing the investigation, PW.12 filed a charge sheet before the Court of Additional Judicial First Class Magistrate, Chilakaluripeta, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.717 of 2010.

4) On appearance, charges under Sections 302 and 201 IPC were framed, read over and explained to the accused. The plea of the accused is one of total denial.

5) To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P14 and MOs.1 to 13. 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 his behalf, in support of his defence.

6) After considering the oral and documentary evidence on record, the Sessions Judge convicted the accused for the

offences to which he was charged. Challenging the same, the present appeal is filed.

7) Learned counsel for the appellant mainly submits that the material available on record is not sufficient to convict the accused for the offence punishable under Section 302 IPC. According to him, no reliance can be placed on the evidence of PW.5, who claimed to have seen the incident, for the reason that he did not inform about the incident to anybody for a period of five days. Insofar as the extra judicial confession made before PW.8, he would submit that it is very difficult for a common man like the accused, to know as to who the V.R.O. is, in Chilakaluripet which is a big town, and then go to his office and confess about the commission of offence, more so when the accused is already an accused in another crime.

8) On the other hand, the learned Public Prosecutor opposed the same. According to him, even if the extra judicial confession is excluded from consideration and even if the evidence of PW.5 is not believed, still the burden is on the accused to explain as to what happened to the deceased. It is urged that when both the accused and deceased left the house in the evening of 21.03.2010 and thereafter when the whereabouts of his wife are not known, the accused should explained as to what happened to the deceased. He further submits that since the accused was last seen in the company of deceased and in the absence of any explanation given by the accused, as to what happened to the

deceased, the said circumstance alone is sufficient to convict the accused. Insofar the explanation given by the accused in his examination under Section 313 Cr.P.C. before the Court that he was not aware how his wife died and that both of them were living separately cannot be accepted in view of un-impeached evidence of PWs.1 and 2.

9) The point for consideration is whether the accused is responsible for the death of the deceased.

10) The facts in issue show that on 21.08.2010 at about 7.00 p.m., the accused and the deceased left the house of PW.1 to Gudivada village and on the next day afternoon it was informed to PW.1, about the body of the deceased lying in the fields near the house of PW.1. The prosecution pressed into the service the evidence of PW.5, who claimed to have witnessed the incident and also the extra judicial confession made before PW.8, which was reduced into writing and signed by the accused. Apart from that, the other circumstance which is relied upon is the recovery of cloths of deceased at the instance of the accused.

11) Coming to the evidence of PW.5, who is examined as an eye witness to the incident, in his evidence he deposed that in the night at about 8.30 p.m. while he was going to attend calls of nature in cotton fields, he heard cries. He went towards the field and saw the accused pressing the throat of the deceased. He claims to have been interfered but the accused threatened him with dire consequences. In the cross-examination, he admits that

there is a path way through the cotton field from colony to bazaar and that the residents of the village do not use this pathway during night time. The villagers use the cement road from cinema theatre and bazaar though it is a long distance. It was further elicited from him that colony people go to sleep by 8.00 and 9.00 p.m. The toilets were constructed by the A.M.G. in the colony. He further admits that there is a toilet in his house which is used to only for bath and for toilet purpose they can go outside. He further admits that their colony people go to attend calls of nature by the side of the cement road. It was further elicited from him that the deceased called him as brother and PW.1 used to call him as Babayee, by courtesy. He further admits that he has informed about the incident to the police after five days and during the said period, the same was not informed to anybody. His evidence further discloses that the police came to his colony, on 24.03.2010 to enquire about the person, who is responsible for the death. But only on 26.03.2010, he went to the police and narrated the incident.

12) From the evidence of PW.5, it is clear that though the deceased calls him as brother and PW.1 calls his as Babai (uncle) and even though PW.1 and deceased were so close to him, he never informed about the incident to anybody for a period of five days. It is very difficult to believe that a person, who is so close to the deceased and PW.1, would have kept quiet for nearly five days, without informing anybody about the incident. The reason given by him is alleged threat given by the accused when he

intervened while the accused was throttling the deceased. If that is so, then on 24.03.2010, when the police visited the village to enquire about the person, who is responsible for the death of the deceased, he could have informed the police about the incident, but he failed to do so. For the reasons best known, he is said to have informed to the police on 26.03.2010. No explanation is given by him as to what made him to go to the police station on 26.03.2010, having failed to inform the police when they came to the village on 24.03.2010. His conduct throws any amount of doubt on he witnessing the incident. Hence, the presence of PW.5 at the scene and witnessing the incident in question appears to be doubtful.

13) There are other circumstances relied upon by the prosecution to prove the guilt of the accused. The first circumstance is the theory of accused being last seen in the company of the deceased. PWs.1 to 4 speak about the accused coming to their house on 21.03.2010 at about 7.00 p.m., having a quarrel with their neighbor and when the deceased objected for the same, he took her along with him saying that they are going to Gudivada. The case of the prosecution is that the death occurred between 7.00 or 8.00 p.m. When the accused has taken the deceased along with him on the previous night and when she has not accompanied him to Gudivada on that night, definitely the conduct of the accused would have been otherwise. He would have enquired from PW.1 and PW.2 about the deceased. In fact, learned counsel for the appellant tried to rely upon the confession

made by the accused before the police stating that on the night the deceased went away saying that she is going back to her parents house. But that is not the suggestion given to any of the witnesses. It is not even the case of the accused even while examined under Section 313 Cr.P.C. that the deceased left him when they reached theatre in Chilakaluripeta. Definitely the conduct of the accused in not explaining, as to when and how the deceased parted from him throws any amount of suspicion. The doctor, who conducted autopsy over the dead body of the deceased states that the death of the deceased was about 24 to 36 hours prior to postmortem examination. The case of prosecution is she left the house at 7.45 p.m. and the death was at the intervening night between 21st and 22nd. Since the death was about 24 to 36 ours, the time of death correlates with the case of the prosecution.

14) The next circumstance relied upon by the prosecution is alleged extra judicial confession made by the accused before PW.8-V.R.O., Chilakaluripet. According to PW.8, on 31.03.2010 at about 10.00 a.m. while PW.8 was in the office, the accused came and confessed about the commission of offence. The same was reduced into writing and the thumb impression of the accused was taken on the said statement. Though a suggestion was given stating that the police have forcibly taken the signature on the said statement, but the accused has never disputed the same on Ex.P4. Though PW.8 was cross-examined at length, nothing useful was elicited to discredit the said extra judicial confession made before

PW.8. In fact, no enmity was suggested to PW.8 to speak falsehood against the accused. The said evidence of PW.8 gets corroboration from the evidence of investigating officer, who speaks about PW8 bringing the accused to the police station along with Ex.P4. The same formed part of the record at the earliest point of time.

15) The third circumstance relied upon by the prosecution is recovery of article belonging to the deceased, at the instance of the accused. The evidence of the investigating officer also discloses that on 31.03.2010, the accused was produced before the police by PW.8 and a confession came to be recorded, which lead to discovery of MOs.1 to 6, from the grave yard. The said recovery came to be effected in the presence of PW.10. On 01.04.2010 at about 10.00 a.m., PW.1, who is the father of the deceased, identified MOs.1 to 6 as that of the deceased. Though counsel for the appellant tried to contend that these are all planted by the prosecution but the said suggestion remained as a suggestion and no contra evidence has been adduced or any answer is elicited to disprove the same.

16) In *Kadamanian @ Manikandan v. State rep. by Inspector of Police*¹ a similar argument was advanced before the Apex Court stating that extra judicial confession cannot be relied upon. After referring to the earlier judgments of the Apex Court, the Apex Court held as under:

¹ (2016) 9 SCC 325

“15. Having given our thoughtful consideration on the above contention, we are of the view that the judgment relied upon by the learned counsel is wholly inapplicable in the facts and circumstances of this case for two distinguishing features in the present case, namely, that the extra-judicial confession in the instant case was made to the Village Administrative Officer, R.V.Alagurajan, PW.12, who was totally unbiased and unconnected with the controversy in hand. He could also not be stated to be inimical to the appellant. He is not shown to have any relationship with either the complainant or the accused. Moreover, insofar as the extra judicial confession made in the judgment.”

17) Insofar as the last seen theory, the same was taken as a corroborating factor to the extra judicial confession. The same is discussed in para No.16 of the judgment referred to above, which reads as under:

“16. The next contention advanced at the hands of the learned counsel for the appellant was, on the third circumstantial evidence taking into consideration, namely, the last seen evidence. For establishing the above circumstance, the prosecution had relied upon two witnesses, Shanmugam – PW6, and Mubarak – PW7. In the statements recorded by the aforesaid two witnesses under Section 161 of the Criminal Procedure Code, they had stated, that they had seen the appellant and the co-accused in the company of the deceased – Jayalakshmi. While recording their statements before the trial Court, Shanmugam – PW6 and Mubarak – PW7 resiled from the version indicated by them, to the investigating officer. It is therefore

apparent, that no last seen evidence, could be substantiated by the prosecution, during the course of the trial of the appellant. We are of the view, that the deposition at the hands of Shanmugam – PW6 and Mubarak – PW7, can be described as a matter of improper handling of the case, inasmuch as, both Shanmugam – PW6 and Mubarak – PW7 had also recorded their statements under Section 164 of the Criminal Procedure Code, affirming, that they had seen the appellant and the co-accused in the company of the deceased – Jayalakshmi. However, since the statement of the two prosecution witnesses recorded under Sections 161 and 164 of the Criminal Procedure Code, was not put to them, after they were declared hostile, and were subjected to cross-examination at the behest of the prosecution, we have no alternative, but to overlook the last seen evidence sought to be projected by the prosecution.”

- 18) With regard to recovery of objects, the Apex Court in Para No.18 of the judgment referred to above held as under:

“18. The next chain in the circumstantial evidence projected at the hands of the prosecution, was the recovery of the nose-pin on 22.1.2008, based on the statement of the appellant, to Inspector Arumugam – PW20. The afore- stated nose-pin has been identified by the members of the family of the deceased, as the one that was actually worn by the deceased, when she went missing. Since the nose-pin was recovered at the instance of the appellant, from a remote place under an electric transformer, no one but the appellant could have been aware of its location. Its recovery was therefore sufficient, along with the other evidence referred to above, to clearly implicate the appellant.

It is also necessary for us to mention, that there is yet another aspect of the matter, which furthers the cause of the prosecution, namely, the statement of M.Abdul Khader – PW8. In this behalf, it would be relevant to mention, that the appellant used to hire a share-autorikshaw, for earning his livelihood. The aforesaid autorikshaw was hired from the garrage of Annamalai – PW9. M.Abdul Khader – PW8 was engaged as an accountant at the garrage of Annamalai – PW9. It was pointed out in the deposition of M.Abdul Khader – PW8, that on a daily basis the share-autorikshaw hired by the accused-appellant and the co-accused used to be returned to the garrage of Annamalai – PW9 between 8.30 p.m to 9.30 p.m.. However, on the date of occurrence, i.e., the relevant date when the alleged crime was committed, the share-autorikshaw was returned on the following day, at 1.30 a.m. The case of the prosecution is, that the autorikshaw was used by the appellant and the co-accused in commission of the crime. It was imperative for the appellant to have expressly indicated the reasons and justification for not returning the autorikshaw to the garrage of Annamalai – PW9 between 8.30 p.m. to 9.30 p.m., on the relevant date. Not having done so, by itself, is a cause of suspicion, specially when there is other material evidence, projected by the prosecution, to demonstrate the involvement of the appellant, in the commission of the crime. We are of the view, that the aforesaid evidence recorded by the prosecution was sufficient, even in the absence of last seen evidence, to return a finding of guilt against the appellant.

19) In similar circumstances, the Apex Court in *Jagroop Singh v. State of Punjab*² held that “all the three circumstances namely last seen, recovery and extra judicial confession if established by the prosecution, complete the chain and there can be no trace of doubt that the circumstances prove the participation of the accused beyond reasonable doubt. Since the case on hand is identical to the two judgments referred to above, we see no reason to differ with the judgment of the trial Court.

20) Accordingly, the Criminal Appeal is dismissed, confirming the conviction and sentence imposed by the trial Court. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

10.11.2017
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² (2012) 11 SCC 768

