

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.1012 of 2012

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

1. The sole accused in Sessions Case No. 422 of 2011 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Mahabubnagar is the appellant herein. He was tried under Sections 302 and 379 IPC for causing the death of one, Aleti Kistamma. By its judgment dated 30.12.2012, the Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life'. He was also convicted for an offence punishable under Section 379 IPC and was sentenced to suffer imprisonment for three years. Both sentences were directed to run concurrently.

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

PWs 1 and 2 are the sons of the deceased, while the accused is the brother-in-law of the deceased, as PW1 married the sister of the accused. Apart from that, the accused is also the son of the maternal uncle of PWs 1 and 2. On 29.03.2010, PW3 got up from the bed and was cleaning the front yard of the house. At that time, she noticed that the accused standing by the side of the bed

of deceased. When PW3 questioned the accused as to why he was at the deceased during early hours, the accused replied that despite calling the deceased, she is not getting up from the bed nor she is responding to his call. PW3 also came towards the bed of the deceased and found that there was no response from the deceased. Then, she went into the house, brought a cell phone and used the torch light of the cell phone to see the face of the deceased. She noticed bleeding from the mouth and nostrils of the deceased. Immediately, she telephoned to 108 ambulance and raised cries. On hearing the cries of PW3, PW4 and other villagers gathered at the house of the deceased. On seeing them, the accused is said to have left the place. PW3 and others also noticed that the gold chain was missing from the neck of the deceased.

3. PW2 is the son of the deceased. In her evidence, PW2 deposed that he noticed a bleeding injury on the left temple region of the deceased and due to her serious condition, they shifted her to Kalwakurthy Hospital in the ambulance, and within few minutes after she was brought to the hospital, she died.

4. On receipt of information about the incident and also the condition of the deceased PW1, who is the younger brother of PW2, he rushed to Kalwakurthy Hospital. After receiving the information as to how the deceased died, he lodged a report with PW9, the Inspector of Police. Exhibit P1 is the report. Basing on the said report, a case in Crime No. 25 of 2010 came to be registered under Sections 302 and 379 IPC. Exhibit P6 is the FIR. On receiving the

F.I.R., PW9-the Inspector of Police recorded the statement of PW1 and handed over the file to L.W.15-Venkateshwarlu, Circle Inspector of Police. L.W.15 visited the scene of offence and prepared a panchanama of the scene in the presence of PWs7 and 8, drew a rough sketch of the scene. He then conducted inquest over the dead body of the deceased in the presence of PWs 2 to 4. Exhibit P3 is the inquest report. Thereafter, he sent the dead body for postmortem examination.

5. PW10, the Civil Assistant Surgeon, District Headquarters Hospital, Mahabubnagar conducted autopsy on the body of the deceased and issued Exhibit P7, the Post Mortem Report. According to her, the cause of death was due to head injury.

6. Further investigation was taken up by PW11-the Circle Inspector of Police, Kalwakurthy. According to him, on 17.01.2011 at 07.00 hours, on credible information, he proceeded to APSRTC Bus Stand, Kalwakurthy and apprehended the accused. When questioned, the accused is said to have admitted the offence. Then, he secured the presence of PW8 and on questioning by PW8 and another, the accused confessed about the offence and led them to his house situated in Gudur village from where he produced the gold chain "Murkula Danda". The said chain is marked as M.O.1. Ex.P9 is the Recovery Panchanama prepared by PW11 in the presence of PW8.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.40 of 2011 on the file

of Judicial First Class Magistrate, Kalwakurthy. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.422 of 2011 on the file of Family Court-cum-Additional District and Sessions Judge, Mahabubnagar. Basing on the material on record, a charge for the offences punishable under Sections 302 and 379 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

8. To substantiate their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P9 and M.O.1 to 4. 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 behalf by the accused in support of his defence.

9. As the evidence of the prosecution established a chain of circumstances, connecting the accused with the offence alleged, the Court below convicted the accused. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellant mainly submits that there is absolutely no material to connect the accused with the crime. According to him, even if the evidence of PW3 is to be believed to be true, it cannot be said that the accused was responsible for the death of the deceased. He further states that only on strong suspicion, the appellant has been implicated in the

case. He took us through the evidence of the witnesses to show that the evidence on record does not point out the guilt of the accused.

11. On the other hand, the Public Prosecutor would contend that in the absence of any explanation from the accused as to why he was present near the bed of the deceased in the early hours, an inference has to be drawn that the accused alone has committed the offence. He also places reliance on the recovery made pursuant to the confession of the accused and pleads that in the absence of any explanation as to why M.O.1 was with the accused, the finding of the Sessions Court warrants no interference.

12. As seen from the record, there are no eye witnesses to the incident, and the case mainly rests on the evidence of PWs 1 to 3. PW3 is the neighbour of the deceased. In her evidence, she deposed that on 29.03.2010 at 5.30 A.M., while she was cleaning the front yard, she noticed the accused standing near the bed of the deceased. When she asked, as to why he is standing near the bed of the deceased, the accused is said to have replied that in spite of calling the deceased, he is not getting any response from her. PW3 proceeded towards the bed and thereafter, with the help of a torch, saw the face of the deceased and noticed blood oozing from her mouth and nostrils. Immediately, she raised cries and also telephoned to 108 ambulance. She also deposed that the gold chain, which was in the neck of the deceased, was missing. As the villagers started gathering at the house of the deceased, the

accused is said to have ran away. In the cross-examination, PW3 admits that the accused used to visit the house of the deceased very frequently, and thus, she knows the accused. It was further admitted in the cross-examination that there is no wall separating her house from the house of PW1. It was further elicited in the cross-examination of PW3 that the wife of PW1 did not come near to the bed of the deceased. She further admits that she did not see the accused taking M.O.1 from the neck of the deceased.

13. From the admissions made by PW3 in her cross-examination, it is clear that the accused used to frequently visit the house of the deceased and thus, she knows the accused. Therefore, the presence of the accused in the house of the deceased at that time cannot be said to be unusual or strange. The counsel appearing for the appellant would submit that the conduct of the wife of PW1 raises some suspicion as to the manner in which the incident took place, or as to the culpability of the accused in the commission of the offence. It is his case that when the deceased was living along with PW1, it is very strange to believe that the wife of PW1 did not even come to see the deceased and call others, having found that the deceased was killed by somebody. In view of the above, a doubt arises as to whether really the accused can be fastened with the liability of killing the deceased when the evidence of PW3 is not so clinching to connect the accused with the crime. The next circumstance relied upon by the prosecution is the recovery of M.O.1 (gold chain) from the house of the accused.

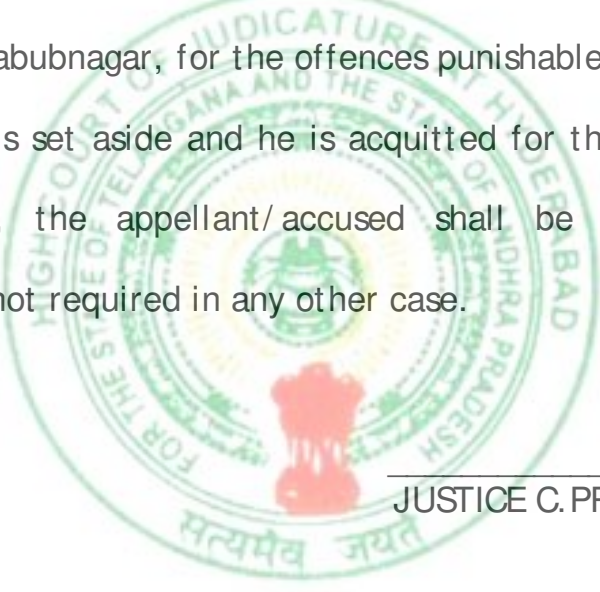
14. PWs 8 and 11 are the two witnesses who are examined to speak to the said recovery. PW8, in his evidence deposes to the confession made by the accused and also the recovery of M.O.1. from the house of the accused in Gudur village. Insofar as recovery of M.O.1 is concerned, the evidence of PW11 (investigating officer) assumes some importance, to falsify the said recovery. In his evidence, PW11 deposed that on 17.01.2011, at 07.00 hours, on credible information, he, along with his staff, proceeded to APSRTC Bus Stand, Kalwakurthy and apprehended the accused. After the apprehension of the accused, they secured the mediators and thereafter, PW8 questioned the accused about the offence, and then, the accused is said to have confessed to the commission of the offence and led them to his house, where M.O.1 was recovered.

15. From the evidence of PW11, it is clear that the confession was made pursuant to the questioning of PW8, i.e., when the accused was in police custody. Therefore, no importance can be given to the recovery made pursuant to the said confession. Even otherwise, it is to be noticed that though PW1, in his chief evidence, stated that M.O.1 belongs to his mother, PW2, who is another brother of PW1, in his chief evidence, stated that M.O.1 is not the danda or necklace of his mother. The relevant portion in the evidence of PW2 is as under:

“M.O.1 is not Gold Nalukula Danda of my mother Kistamma.”

16. In view of the discrepancies in the evidence of the family members of the deceased and having regard to the evidence of PW11, referred to above, we are not inclined to believe the recovery of M.O.1 alleged to have been made pursuant to the confession, as legal and valid.

17. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 30.12.2011 in Sessions Case No.422 of 2011, on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Mahabubnagar, for the offences punishable under Sections 302 and 379 is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

17.11.2017
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