

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL NO.198 of 2011

J U D G M E N T

(Per Sri Justice Sanjay Kumar)

By judgment dated 31.12.2010, the learned VI Additional Sessions Judge, (III FTC), Warangal at Mahabubabad, convicted the sole accused in S.C.No.518 of 2010 under Section 302 IPC and sentenced him to undergo imprisonment for life apart from paying a fine of Rs.100/-, in default of which he was to suffer simple imprisonment for one month. Aggrieved thereby, the accused is in appeal under Section 374(2) CrPC.

The case of the prosecution was that the accused committed the murder of his wife Banoth Bhadri @ Bhadramma at about 22.30 hours on 29.05.2010 at Gundrathimadugu Village, by strangulation. The accused denied the charge and claimed to be tried.

Upon committal, the prosecution examined P.Ws.1 to 15 before the Sessions Court and marked in evidence nine exhibits. No oral evidence was let in by the accused, but he marked in evidence Ex.D1, a portion of the Section 161 CrPC statement of P.W.10.

P.W.1 is the elder brother of the deceased. He stated that the deceased married the accused about 15 years back and that they were blessed with three sons and two daughters. The eldest daughter – P.W.4, was given in marriage to P.W.6. He stated that his sister died about five months back, but six months prior to her death, the accused cut her throat leading to registration of a case, whereupon he was detained in prison. However, after he was released from jail, he approached them and stated that he would look after the deceased

and upon that assurance, they sent the deceased with him. The accused and the deceased went to Gundrathimadugu Village, where the accused started working as a farm servant under P.W.9. Fifteen days later, the accused again beat the deceased and she informed P.W.1 and others of the same. P.W.1 stated that he, his brother, P.W.2, and his brother-in-law, P.W.3, went to the house of the accused at Gundrathimadugu Village and raised a dispute before P.Ws.9 and 10 and they all advised the accused to live amicably with the deceased. They then left her with the accused. However, within seven days of the panchayat, P.W.6 telephoned them during the night time and informed them that the accused had killed the deceased by throttling her. P.W.6 informed him that the accused went to the house of P.W.8 and told him that he had killed his wife and the same was informed by P.W.8 to P.W.6 who, in turn, telephoned them. They then went to the village and noticed the body of the deceased with contusions and ligature marks around the neck. P.W.1 then gave Ex.P.1 complaint to the police.

In his cross-examination, P.W.1 stated that he got Ex.P1 drafted near Kuravi Police Station. He denied the suggestion that the conduct of the deceased was not satisfactory and that they advised her to change her attitude and live amicably with her husband. He also denied the suggestion that the deceased left her children in the house of the accused and went away to Hyderabad when he was in judicial custody in relation to Crime No.149 of 2009 on the file of Thorrur Police Station. He denied the suggestion that the deceased had illicit contact with one Yadagiri, a mason at Hyderabad. He said that it was not true to suggest that Yadagiri came to Gundrathimadugu Village and forced the deceased to go to

Hyderabad along with him. He denied the suggestion that Yadagiri had killed the deceased and that they had implicated the accused. He stated that by the time they reached the house of the accused to see the body of the deceased, the accused was not present there and his whereabouts were not known. He denied the suggestion that by the time they reached the police station, the accused was already in the police station. Finally, he stated that it was not true to suggest that the accused was not responsible for the death of the deceased.

P.W.2 is also a brother of the deceased. His evidence was on the same lines as that of P.W.1. However, in his cross-examination, he stated that by the time they reached the house of the accused after coming to know about the incident, the accused was present in the house. A suggestion was put to him that the character and conduct of the deceased was not good and that the accused had suggested her to change her behaviour and at that time, she fell down and sustained an injury on her neck, but he denied the same. He also denied the suggestion that Yadagiri had killed the deceased and not the accused.

P.W.3 is the brother-in-law of the deceased. He affirmed what was stated by the brothers of the deceased in all respects. In his cross-examination, he stated that by the time they reached the house of the accused at Gundrathimadugu Village on the fateful day, the police had already taken away the accused. He denied the suggestion that the deceased had illegal contact with Yadagiri and that the deceased had a bad character. He denied the suggestion that Yadagiri had killed the deceased.

P.W.4 is the eldest daughter of the deceased. She repeated the version put forth by P.Ws.1 to 3. She stated that P.W.8 informed

them during the night hours that her father, the accused, had come to him and told him that he had killed her mother and thereupon, her husband, P.W.6, her husband's elder brother, Gugulothu Ramesh (L.W.8), and she went to the house of the accused and found the body of the deceased. She stated that the accused was not there at that time. In her cross-examination, she denied the suggestion that the police had taken the accused from his house in her presence. She denied the suggestion that the deceased had fallen down and sustained an injury on her neck and that they had foisted a case. She also denied the suggestion that the deceased had illegal contact with a mason, by name Yadagiri. She stated that it was not true to suggest that Yadagiri had killed her mother. She denied that during that night the accused came to her house and took them to his house stating that Yadagiri had killed the deceased.

P.W.5 is the Civil Assistant Surgeon, Area Hospital, Mahabubabad, who conducted the post-mortem examination of the body of the deceased. He spoke of the external injuries found on the body, viz.:

1. A ligature contusion mark about 1 cm wide was found around and middle of the neck with two ends of the ligature are crossed over back of the neck.
2. Another ligature contusion was found on right side of the neck below the mandible extending from in front of the neck to right matorid process.
3. Neck muscles are congested and echymosion are found under the 1st ligature mark wind pipe was compressed.

He certified that these injuries were ante-mortem in nature and that the cause of death, to the best of his knowledge, was asphyxia due to strangulation. He confirmed that Ex.P2 was his post-mortem examination certificate.

P.W.6 is the son-in-law of the accused and the deceased. While reiterating the version put forth by the other family members, he stated that P.W.8 came to his house on the fateful day and told him that the accused had come to him and informed him that he had killed his wife and requested him to inform the same to them and their relations. He further stated that thereupon, he, his wife, P.W.4, and his elder brother, Gugulothu Ramesh (L.W.8), went to the house of the accused and found the body of the deceased with contusions around the neck. He stated that the accused was not present at the house at that time. In his cross-examination, he denied the suggestion that by 10.00 A.M. the next day, the police had taken the accused to the police station.

P.W.7 is the minor daughter of the accused and the deceased. She was aged seven years at the time of her examination in Court. Having satisfied itself as to her competence to give evidence, the Sessions Court permitted her to be examined. She stated that on the fateful night, she was sleeping but woke up when she heard some noise and saw her father tying a rope around her mother's neck. Thereupon, her father asked her to sleep. In her cross-examination, she stated that she had come to Court with her aunt but she had not been informed the reason as to why she was brought. She further stated that on the fateful day, she, her mother and her younger brother were also present and that her mother had cooked chicken. She denied the suggestion that her mother and another person, by name Yadagiri, drank alcohol on that day. She stated that she did not know as to who killed her mother till her sister came to the house and raised a hue and cry. She admitted that she was deposing before the Court on the advice of her maternal uncles.

P.W.8, a resident of Gundrathimadugu Village, stated that he knew the accused and the deceased. He stated that the accused worked as a farm servant under P.W.9. He further stated that about five to six months prior to his deposition, during the night, while he was sleeping in his house, the accused came there and woke him up and stated that his wife was not feeling well but again stated that he had killed her. P.W.8 asked him as to why he had come to him and on that the accused told him to inform the same to his daughter residing in Peddathanda and that his daughter's name was Sumalatha (P.W.4). P.W.8 stated that he then went to P.W.4's house and informed the same to them. He stated that thereupon they all went to the house of the accused and noticed the body of the deceased with ligature marks on the neck. In his cross-examination, he stated that he did not know the family affairs of the accused and the deceased but denied the suggestion that the accused had not informed him that he had killed the deceased. He also denied the suggestion that the accused came to his house and informed him that one Yadagiri had killed his wife. He further stated that he did not know whether the police arrested the accused on the same night. He said that it was not true to suggest that he had not gone to the house of the son-in-law of the accused and had not brought the daughter and the son-in-law of the accused.

P.W.9, a resident of Gundrathimadugu Village, stated that he knew the accused and his wife. He further stated that the accused worked under him as a farm servant and that they resided in a house provided by him. He confirmed that about five or six months back, the deceased went to her parents' house stating that her husband had beaten her and thereupon, the wife of the accused and her

brothers came to him and they mediated the dispute and advised them to live amicably. He further stated that when he was at Hyderabad, somebody telephoned and informed him that the accused had killed his wife. In his cross-examination, he stated that after the brothers of the deceased came to him for mediation, he came to know all the family affairs of the accused and the deceased. He admitted that P.W.10 was his brother-in-law and denied the suggestion that he and P.W.10 did not act as elders in the mediation to settle the dispute between the accused and the deceased. He concluded by stating that he did not know the cause of death of the deceased but he came to know that the accused had killed her.

P.W.10 stated that he knew the accused and the deceased and that the deceased had died about six months back. He confirmed that there were differences between the accused and the deceased and that one week prior to the death of the deceased, he and P.W.9 mediated the disputes between them at the instance of the brothers of the deceased and advised the accused and the deceased to live amicably. He further stated that within seven days thereafter, the deceased died and that the accused had killed her. In his cross-examination, he was confronted with his statement under Section 161 CrPC, which was marked as Ex.D.1, and he confirmed that he had not stated to the police as in Ex.D.1. He denied the suggestion that he and P.W.9 never held a panchayat to settle the dispute between the accused and the deceased.

P.W.11 is an inquest witness. He affirmed that he signed in the inquest report (Ex.P3) and that the inquest was conducted at the house of P.W.9. In his cross-examination, he admitted that the deceased was his maternal aunt by courtesy and that he had gone to

the house of P.W.9 at 8.00 A.M. upon being informed by his uncle that she had died. He further stated that he did not know whether the police arrested the accused by the time he reached the scene. He also confirmed that he did not know the contents of Ex.P3-inquest report, as he was illiterate but admitted that the police obtained his signature therein.

P.W.12 was the then Village Revenue Officer of Nellella Village. He stated that the Inspector of Police, Kuravi, P.W.14, called him to the Central Railway Gate, Mahabubabad, on 04.06.2010 at about 10.00 A.M., and the accused was present there at that time. The Inspector asked him to enquire with the accused and thereupon, he and Banoth Kasim (L.W.20) enquired with the accused and he informed them that he had killed his wife by placing a rope around her neck. He stated that Ex.P4 was the confessional panchanama recorded at that time, wherein he affixed his signature. The accused then led them to Gundrathimadugu Village and to the house of P.W.9, where he produced a rope (M.O.1) from the cattle-shed. A seizure panchanama, Ex.P5, was prepared by P.W.14 and he along with Banoth Kasim (L.W.20) signed the same. In his cross-examination, he denied the suggestion that the accused had not produced M.O.1 rope and that he had not confessed to the commission of the offence. He also denied the suggestion that P.W.14 called them to the police station and obtained their signatures there.

P.W.13 is a photographer at Gundrathimadugu Village and spoke of the Kuravi Police asking him to take photographs at the scene of the offence. He confirmed that Ex.P6 were the photographs, six in number, and Ex.P.7 was the C.D. given by him.

The Circle Inspector of Police at Kuravi Police Station, P.W.14, was the investigating officer. He stated that at about 6.30 A.M. on 30.05.2010, the Sub-Inspector of Police, Kuravi (P.W.15) received a report from P.W.1 and registered a case in Crime No.46 of 2010 under Section 302 IPC and informed him of the same. He stated that he immediately rushed to Kuravi Police Station and received the case diary file. He then examined P.W.1 who was present in the police station and recorded his statement. He, along with P.W.15 and P.W.1, visited the scene of offence where he examined P.W.2, Dharavath Sakru (L.W.3), P.W.3, Bhukya Thari (L.W.5), P.W.4, P.W.6, Gugulothu Ramesh (L.W.8), P.W.8, P.W.13 and P.W.7 and recorded their statements. He secured panch witnesses by name, Banoth Venkanna (L.W.14), P.W.1 and Bhukya Puri (L.W.16) and in their presence, he held an inquest over the body of the deceased. He prepared the Crime Detail Form (Ex.P8) in the presence of mediators by name Gugulothu Isnu (L.W.17) and Macha Srinivas (L.W.18) and then sent the body of the deceased for autopsy to the Government Area Hospital, Mahabubabad. On 04.06.2010 at about 10.00 A.M., he proceeded to Central Railway Gate, Mahabubabad, where he noticed the accused and secured mediators, namely, P.W.12 and Banoth Kasim (L.W.20), and in their presence, he prepared a confessional panchanama (Ex.P4) and obtained the signatures of the mediators. The accused then led them to the house of P.W.9, where he resided, and brought out a rope (M.O.1) from the cattle-shed. He seized the same under the cover of seizure panchanama (Ex.P5). He further stated that he brought the accused to the police station and after completing the formalities, sent him to Court for judicial remand. He also got photographs taken of the scene through a

photographer, P.W.13. On 06.06.2010, he examined P.Ws.9 and 10 at Gundrathimadugu Village and recorded their statements and after obtaining the post-mortem examination certificate (Ex.P2), he laid the charge sheet. In his cross-examination, he denied the suggestion that he caught hold of the accused at the house during the night the offence took place and took him to the police station. He also denied the suggestion that he had not apprehended the accused on 04.06.2010 at the Central Railway gate, Mahabubabad. He denied the suggestion that he had prepared the confessional statement of the accused at the police station and that he had not seized M.O.1 from the scene when the accused produced the same. He denied the suggestion that he had planted P.W.8 to prove the case and that he had also planted M.O.1. He denied the suggestion that he implicated the accused in the case at the instance of P.Ws.9 and 10.

P.W.15 was the Sub-Inspector of Police, Kuravi Police Station, at the relevant time. He stated that on 30.05.2010, he received a report from P.W.1 and registered a case in Crime No.46 of 2010 under Section 302 IPC and issued an Express FIR (Ex.P9). After registration of the case, he stated that he informed the same to the Inspector of Police, Kuravi (P.W.15), who came to the police station and took up the CD file. In his cross-examination, he denied the suggestion that they had drafted Ex.P.1 report and volunteered that P.W.1 got drafted the said report outside the police station and presented it before him. He denied the suggestion that they arrested the accused in his house during the night of 29.05.2010.

In his examination under Section 313 (1) CrPC, the accused denied everything and stated that he was arrested on the same night at his house and that he did not confess to the offence. He further

stated that he did not handover the rope (M.O.1) to the police and that he did not know as to how his wife died.

Upon consideration of the oral and documentary evidence, the Sessions Court opined that the prosecution had established that the accused had intentionally killed his wife and that his guilt was made out beyond reasonable doubt. In consequence, he was convicted and sentenced to life imprisonment.

The material on record reflects that there was no reliable eye-witness to the offence. The child witness (P.W.7) admitted that she had been tutored by her maternal uncles and therefore, her statement that she woke up on the fateful night and witnessed her father tying a rope around her mother's neck cannot be relied upon. Significantly, recovery of M.O.1 rope is of no significance or relevance as it was even not put to P.W.5, the doctor who conducted the post-mortem examination as to whether it could have caused the injuries found on the neck of the deceased. It is however indisputable that the deceased met with a homicidal death as is clear from the medical evidence. The post-mortem certificate (Ex.P2) recorded that the cause of death of the deceased was asphyxia due to strangulation. Though a feeble suggestion was put to some of the witnesses that the deceased fell down and sustained injuries on the neck, the autopsy conducted by P.W.5 over the body of the deceased puts it beyond doubt that the cause of death was strangulation.

The oral evidence of the family members was consistent and irreproachable in all major respects, except for the presence of the accused at the scene of the offence. Even the eldest daughter of the accused and the deceased, P.W.4, confirmed that her father had attacked her mother earlier whereupon a criminal case was registered

and he was detained in jail. She also confirmed that upon release from custody on bail, he met her uncles, P.Ws.1 to 3, and stated that he would look after the deceased well and thereupon, she was sent with him to Gundrathimadugu Village.

Though Smt.J.Kusumavathi, learned counsel for the accused, would submit that the record relating to Crime No.149 of 2009 on the file of Thorrur Police Station, relating to the so-called attack by the accused upon the deceased was not made part of the record in the present case, the fact that all the family members consistently spoke of such an attack leading to the registration of a case, consequential detention of the accused, his release on bail and his successful attempt to take back his wife, is adequate. The subsequent mediation between the couple by P.Ws.9 and 10 at the instance of P.Ws.1 to 3 is also convincing. There is no reason as to why these independent witnesses, P.Ws.9 and 10, would support the prosecution or concoct the version of having conducted a mediation if it were not true. In their cross-examination also, nothing was elicited to dilute or discredit their testimony in this regard. The ill-will that the accused harboured towards the deceased is therefore established.

As to the events on the fateful night, it is to be noticed that though P.W.7, the child witness, may have been tutored to some extent, her evidence that her father was present at home on the said night was not disputed in the cross-examination. Not even a suggestion was put to her that he was not present at home on the said night. Even in the normal course of events, the accused would have been at home at that late hour. Significantly, in his examination under Section 313 (1) CrPC, he did not state that he was not present at home but, on the other hand, claimed that he was arrested by the

Sub-Inspector of Police on the fateful night at home itself. His presence at home at the relevant time is also established.

Once the presence of the accused at the scene of the offence on the fateful night stands proved, it is for him to explain as to what else could have happened which led to the homicidal death of the deceased. Section 106 of the Indian Evidence Act, 1872, therefore stands attracted as he, being with the deceased at that late hour, alone had knowledge of those facts. The accused however did not offer any alternate version except for claiming that one Yadagiri, a mason at Hyderabad, killed the deceased. He failed to elaborate on this bald accusation and did not put forth any cogent or believable version as to what other possible sequence of events could have brought about the homicidal death of the deceased.

That apart, the testimony of P.W.8 appears to be unimpeachable and he comes across as a natural and credible witness. There is no insinuation of any animosity between him and the accused whereby he, being an uninvolved third party, would come forward to implicate the accused in the offence. He stated that he knew the accused and the deceased and that on the fateful night, the accused came to his house, woke him up and in the first instance stated that his wife was not feeling well and then stated that he had killed her. This change in the version by the accused is also utmost believable and lends credibility to the testimony of P.W.8, as it indicates the disturbed state of mind of the accused. His request to P.W.8 to inform his daughter of the incident is also natural in the course of human behaviour and is therefore believable.

The only other aspect that requires to be examined is the claim of the accused that he was apprehended by the police on the very

night of the commission of the offence. Reliance in this regard is placed by Smt.J.Kusumavathi, learned counsel, upon the discrepancy in the evidence of P.Ws.1 and 2 as to the presence of the accused at the house when they went there immediately after coming to know of the incident. P.W.1 stated that he was not there whereas P.W.2 stated to the contrary. Other witnesses also gave disparate versions on this aspect. According to the police, he was arrested only on 04.06.2010. However, any discrepancy in this regard does not further the case of the accused as recovery of M.O1 rope, upon his apprehension, is rendered irrelevant for reasons already stated *supra*. Even without the rope, the testimony of the witnesses coupled with the irrefutable presence of the accused at the scene of the offence at the relevant time and the fact that he has no explanation to offer, in terms of Section 106 of the Act of 1872, clearly establishes the guilt of the accused.

In the light of the aforesaid evidence, oral and documentary, the prosecution established, beyond reasonable doubt, that the accused was guilty of the offence. The judgment of the trial Court holding to this effect therefore does not warrant interference on any ground. The conviction and sentence imposed upon the accused are accordingly confirmed.

The appeal is dismissed.

SANJAY KUMAR,J

Dr.SHAMEEM AKTHER,J

16th AUGUST, 2017
PGS