

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.1447 OF 2011

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

1) The sole accused in Sessions Case No.197 of 2010 on the file of III Additional District and Sessions Judge (Fast Track Court), Nizamabad, is the appellant herein. He was charged for the offence punishable under Section 302 IPC, for causing death of his son by name Kamboli Balaji, aged about three years on 17.04.2010 at about 2.00 a.m., by strangulating him. By its judgment dated 26.07.2011, the Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.200/- in default simple imprisonment for a period of 15 days for the offence punishable under Section 302 IPC.

2) The case of the prosecution is as under:

i) PW.1 is the wife of the accused and the deceased is their son. PW.1 married one Gangadhar one year prior to the marriage with the accused and thereafter she divorced him and married the accused, about four years prior to the date of incident. Both of them shifted to Nandipet. The accused was working as a supplier in a dhaba situated at Nandipet village. He used to work for two days and remain in the house for four days. There were quarrels between them when PW.1 demanded the accused to go to work.

On the date of incident, at about 4.00 p.m., the accused took away the deceased saying that he wanted to purchase a biscuit packet for her, but did not return back. There was no response from him even to phone call. When PW.7 contacted the accused through her mobile phone, the accused is said to have told her that as PW.1 commented stating that “the son was not born to him, why he should come to the house”. Thereafter, PW.1 and others searched for the accused. On the next day ie. on a Monday at about 6.00 a.m. PW.2, who is the co-sister of PW.1 contacted the accused and asked him to bring the deceased. The accused is said to have told PW.2 that he killed the deceased by pressing the neck with a kerchief near water tank and asked them to go over there and see the dead body. The said fact was informed to PW.1. On receiving the information from PW.2, PWs.1, 2 and neighbours went to the said place and found the dead body of the deceased, who was aged about four years. There were number of scratches on the body, which were said to have been caused by thorny bushes. They also noticed a hand kerchief tied around the neck of the deceased and a chappal and kerchief belonging to the child. It is said that the accused committed the murder of the deceased because of disputes between the accused and PW.1.

ii) According to PW.1, the V.R.O., Nandipet, came to the scene of offence and on her dictation, he prepared a report in telugu, to which she affixed her thumb impression. Ex.P1 is the report given by her. On receiving the information, PW.13-the Inspector of Police, went to the scene of offence and found the

dead body of the deceased at the outskirts of the village. At that place, PW.1 gave a report to him, which came to be forwarded to PW.12. Basing on the report, a case in Crime No.43 of 2010 came to be registered by PW.12-the A.S.I., Bheemgal, and issued F.I.R. Ex.P9 is the first information report. PW.14-the Inspector of Police, Armour, took up further investigation. After the receipt of information about registration of crime, he proceeded to the scene of offence along with PW.13, conducted scene of offence panchanama and also prepared a rough sketch of the scene in the presence of PW.9. Ex.P3 is the scene of offence panchanama and Ex.P4 is the rough sketch. He also got photographed the scene of offence. Ex.P2 are the bunch of photographs. Thereafter, he conducted inquest over the dead body in the presence of PW.9. Ex.P5 is the inquest report. During inquest, he examined PWs.1 to 6 and seized Mbs.2, 3 and 5 to 8. Thereafter, the dead body was sent for postmortem examination. PW.11-the Civil Assistant Surgeon, Government Hospital, Nizamabad, conducted autopsy over the dead body of the deceased and issued Ex.P8-the postmortem examination report. According to him, the cause of death was “due to cardio respiratory arrest due to throttling”. On 30.04.2010, PW.14 arrested the accused near R.T.C. bus stand, Nandipeta and interrogated him. On the basis of confession, which was recorded in the presence of PW.10, the accused lead them to scene of offence and got recovered one toy cell phone and a cap, which came to be seized under Ex.P7. After collecting all the necessary documents, PW.14 filed a charge sheet before the Court

of Judicial First Class Magistrate, Armoor, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.197 of 2010.

3) On appearance, charge under Section 302 IPC was framed, read over and explained to the accused. The plea of the accused is one of total denial.

4) To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P11 and MOs.1 to 8. 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.

5) After considering the oral and documentary evidence on record, the trial Court believed the evidence of PWs.1 to 3 and convicted the accused in the manner referred to above. Challenging the same, the present appeal is 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. It is urged that the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. It is pleaded that as PW.10-the mediator for recovery of toy cell phone belonging to the deceased stated that such an item is available in the market and that he was stock witness to the police, the Sessions Judge should

have thrown out the entire case as false since the link in chain of events is missing.

7) On the other hand, learned Public Prosecutor would contend that even if the recovery of M.O.1 is disbelieved, still the evidence of PWs.1 to 4 and 7 is sufficient to base a conviction.

8) In order to appreciate the rival contentions, it would be appropriate to extract the evidence of the prosecution witnesses. But before proceeding further, it is to be noted that there are no direct eye witnesses to the incident and the case rests on the circumstantial evidence. The evidence of PW.1 would show that on 17.04.2010, the accused left the house along with the child and thereafter did not respond to anyone calls. But however, the evidence of PWs.2 to 4 and 6, show that they were in constant touch with the accused, wherein he disclosed to have committed the offence. In fact there is no explanation from the accused as to what happened to the child, as the evidence on record establish that it was he, who took the child on the previous day at about 4.00 p.m. It would be useful to extract the relevant portion in the evidence of PW.1, which reads as under:

“On Saturday the accused took my son saying that he wanted to purchase a biscuit packet but the accused did not turn up and there was no any response even by phone. Santhosha contacted the accused through her mobile phone and accused told her that I commented that the son was not born through him, and the accused further stated that as to why he should come to the house. Santhosha told me about the said conversation in between her and the accused. I searched for my son even on Sunday also but I could not

succeed. On Monday at about 6.00 a.m. my co-sister Lalitha contacted the accused through her mobile and asked him to bring the child to the house and accused told her that he killed the child by pressing the neck with a kerchief nearby a water tank and asked us to come there and see the dead body. Lalitha informed me about the said fact. Myself, my co-sister, Gangadhar and neighbours went to the said place and found the dead body. The dead body of the child was found with scratches, over the hands said to be caused by thorny bush and with a stone over the face and the kerchief was tied around the neck."

9) Though PW.1, who is the mother of child, was subjected to cross-examination, nothing useful was elicited to discredit her testimony. The suggestions given by the counsel for the accused mainly relate to the issue as to where PW.1 gave a report and the delay in lodging the report. However, a reading of the cross-examination shows that number of circumstances which proved fatal to the case of the accused, came to be elicited through PW.1. The answers which were elicited in the cross-examination established that a report was given by PW.1. She was examined by the police at 8.00 a.m. and also about PW.7 contacting the accused, who in turn told him that since PW.1 told her that the deceased was not born through the accused, he killed the deceased.

10) PW.2, who is the co-sister of PW.1, in her chief examination, she stated as under:

"On Saturday at about 4.00 p.m., the accused took his son Balaji to provide him some biscuits but did not turn up. We tried to contact the accused through mobile phone but

there was no response. Thereafter we asked our neighbor Santhosha to contact the accused through her cell phone and the accused responded and told her that PW.1 told him that her son was not born through him, so why should he come to the house. On Sunday, myself, PW.1 and K.Laxmi searched for the missing boy but could not succeed. On Monday morning at about 6.00 a.m. I contacted the accused through cell phon, he told me that he tied the body to a tree and if we have got courage we can come there and see the child near by a pond. Then myself, PW.1 and our neighbours went to the spot and found the dead body on the ground and his neck tied with a kerchief."

11) She was also subjected to cross-examination, but we feel that nothing material is elicited to show that the case of prosecution is false and un-tenable. Similar is the evidence of PWs.3 and 4, who speak about the incident in question and also about PW.7 contacting the accused in cell phone, wherein the accused informed PW.2 that he killed his son and when they can came to the scene of offence found the boy lying near a tank.

12) PW.7 in his evidence deposed as under:

"On 17.04.2010 at about 4.00 p.m. the accused took his son. At about 9.30 p.m. PW.2 telephoned to the accused through her cell phone but the accused did not respond. Then PWs.1 and 2 came to my house and told that the accused has not responded on phone call made by PW.2 and asked me to call the accused through my cell phone. Then I telephoned t accused and accused told me that his wife (PW1) commented that the son was not born to him, therefore he is taking away the child and then I asked him to come to the house since his family members are searching for the child and the accused switched off the phone. ON the next day ie. Sunday also we searched for

the boy, but could not traceout. On Monday at about 7.00 a.m. PW.2 once again made a phone call to the accused, and the accused informed her that he tied his son to a tree and if we got courage, we can go there and see the boy. Then all the family members and myself went to the spot and found the child lying on the ground and kerchief tied around his neck. Due to family disputes the accused committed murder of his son."

13) From the evidence of these witnesses which remain unimpeached, it is clear that on 17.04.2010 the accused left the house at 4.00 p.m. along with the child, thereafter he did not return. Though PW.1 tried to contact the accused, but there was no response from him. Thereafter, PW.7 contacted the accused, wherein he is said to have informed about the dispute with regard to the paternity of the child and also strangulating the deceased. The said evidence of PWs.1 and 7 gets ample corroboration from the evidence of PWs.2 to 4 about the information furnished by the accused and he leaving the house. Further, the evidence on record discloses that on receipt of the information all of them went towards the tank and noticed the dead body of the deceased. The said evidence of PWs.1 to 4 and 7 gets corroboration from the evidence of PW.10-the V.R.O., with regard to recovery of the body near the water tank.

14) Though the learned counsel for the appellant tried to contend that the third person must have killed the deceased, but there is no reason why a child should killed by a third person. No evidence has been placed on record to show that the relatives of the accused and PW.1 or any other person had any motive or

grouse against them, so as to kill the deceased. On the other hand, the evidence on record is quite clear, with regard to accused taking the deceased at about 4.00 p.m. and thereafter he failed to explain as to how the deceased died, when the said boy was aged about 4 years and was in his custody. The information said to have been furnished by the accused on telephone which remained unimpleached and un-challenged, gets ample corroboration from medical evidence, that the death was due to throttling.

15) Having regard to the evidence available on record, even if the argument of the learned counsel for the appellant with regard to recovery of MOs.1 and 4 as belonging to the child is disbelieved, still there are circumstances forming a chain of events connecting the accused with the crime.

16) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

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