

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.4 of 2013

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

The sole accused in S.C.No.70 of 2012, on the file of the VI Additional Metropolitan Sessions Judge, Secunderabad, is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Smt. Padma on 30.03.2011, at about 08.30 p.m., in the house situated in Nandini Apartments, Kamsari Bazar, Nethajinagar, New Bowenpally, Secunderabad. Vide judgment dated 31.10.2012, the learned Sessions Judge convicted the accused for an offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment and pay fine of Rs.5,000/- in default to undergo simple imprisonment for a period of one month. MOs. were directed to be destroyed after the appeal time.

2. It is to be noted that there appears to be a typographical mistake in the date of incident in the evidence of PW3 recorded, which was mentioned as 21.02.2011, instead of 30.03.2011.

3. The facts as unveiled from the evidence of the prosecution witnesses are as under:

(i) PW1 is the brother of the deceased and uncle of PW2. PW3 is the close associate of PW2. After the death of the husband of the deceased, she is said to have married the accused. Out of wedlock with the first husband, she was blessed with two children. PW2 is the

elder son of the deceased through first husband and the younger is one Pradeep Kumar(not examined).

(ii) It is stated that prior to the death, the accused, deceased and his two brothers used to live together. On the date of incident, PW2 was with his grand mother at Medak. The evidence of PW3 would show that, a week prior to the incident, himself along with one Appu (fiancée of PW3) went to the house of the accused as they are regular visitors to the house and were known to PW2 and the accused. On that day, in the absence of the deceased, PW3 and his fiancée were present in the house. On seeing them, the accused cautioned them not to come to his house furthermore. On 30.03.2011 (typographical error as 21.02.2011), which was the birthday of PW3, the accused enquired him as to whether there was any party. Thereafter, PW3 bought MC liquor full bottle and offered it to the accused. When PW3 was about to leave, as the accused had already consumed liquor, he stopped him from going and made to sit. PW3 consumed some more liquor along with the accused. At that time, the wife of the accused, who is the deceased, was also present. It is stated that the accused compelled his wife to drink liquor, inspite of her repeated requests to leave her. Thereafter, the accused cautioned PW3 not to come again to his house and also abused him. At that time, the deceased interfered and insisted the accused to leave him, stating that PW3 will not come again. Then the accused scolded the deceased stating as to why she is interfering and also to whether there is any illicit contact between her and PW3. Saying so, the accused is said to have given a fist blow on the chest of the

deceased, pursuant to which, she fell down. In the meantime, neighbours gathered and PW3 left the place. According to him, the incident referred to above is said to have happened about 07.20 p.m. From the house of the accused, PW3 claims to have proceeded to the house of his friend and while watching a cricket match on TV, received a phone call from the neighbours of the accused informing him that the wife of the accused died. The information about the death was received by PW1 through a telephone call from unknown persons stating that his sister-in-law was lying dead in the house. Immediately, he rushed to her house and found the deceased sister-in-law, in an unconscious state of mind. He noticed the accused standing nearby her sister-in-law. He then made a call to the ambulance and her sister-in-law was shifted to Gandhi hospital, wherein she was declared, as brought death. On the same day, PW1 proceeded to the police station and lodged a report with PW11, the SI of Police, which came to be registered as Crime No.122 of 2011 for an offence punishable under Section 302 IPC of Bowenpally Police Station. Ex.P9 is the FIR. Thereafter, PW11 reached the scene of offence at New Bowenpally, wherein he found a female dead body. He summoned PW8, prepared a panchanama of the scene, which is placed on record as Ex.P5. During the said proceedings MOs.1 to 15 came to be seized. Thereafter, he got prepared a rough sketch of the scene, which is marked as Ex.P6 and then conducted inquest over the body of the deceased in the presence of PW10. Ex.P8 is the inquest report. After completing the inquest proceedings, he sent the body for post mortem examination. PW6, the Professor and HOD

of the Department of Forensic Medicine, Gandhi Medical College/ hospital, Secunderabad, conducted autopsy over the body and issued Ex.P4 the post mortem certificate. According to him, the cause of death was due to multiple injuries. On 05.04.2011, the accused was apprehended and produced before PW11. In the presence of PW9, the accused admitted his guilt before PW11, which lead to discovery of MO15. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.27 of 2011 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad. On committal to the Court of Sessions Judge, Secunderabad, the same came to be numbered as S.C.No.70 of 2012.

(iii) On appearance, a charge under Section 302 IPC was framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

(iv) In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P-1 to P-10 and M.Os.1 to 15. Out of 11 witnesses examined by the prosecution, PW9 did not support the prosecution case and was treated hostile.

(v) After the closure of prosecution 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. However, no oral or documentary evidence is adduced on behalf of the defence.

(vi) Relying upon the evidence of PW3, coupled with the evidence of PW7, and the evidence of post mortem doctor, the trial

Court convicted the accused. Challenging the same, the present appeal came to be filed through legal aid counsel.

4. Sri M.Chalapathi Rao, learned counsel for the appellant would submit that there are number of circumstances to indicate that the incident did not happen in the manner spoken to by the prosecution. According to him, as per the charge sheet, the accused beat the deceased due to which she fell down and thereafter he pressed her neck, causing her death, which is not supported either by oral evidence or the medical evidence. Since the doctor opined that the cause of death was due to multiple injuries, definitely it is not a case of death due to pressing of neck by strangulation. Apart from that, the learned counsel for the appellant would submit that there are no eye witnesses to the incident. Even the evidence of PW3 who is an eye witness to the incident, cannot be acted upon, since he was shown as an accused in the FIR. Taking into consideration the articles that were seized from the scene of offence, he would submit that at the time of incident, number of other persons were also present and it cannot be said that the accused alone was responsible for the death, though the body was found in the house of the accused.

5. On the other hand, learned public prosecutor would contend that the evidence of PW3 gets corroborated from the medical evidence and also from the evidence of PW7. It is his case that burden is on the accused to explain as to how the deceased died, since the body was found in his house and he was also present in the house at the time of incident. He would further submit that the fact

that he is absconding from the scene throws any amount of suspicion on the complexity of the accused in the commission of offence.

6. The point that arises for consideration is whether the accused is liable or responsible for the death of the deceased?

7. As seen from the record, the accused is said to be the second husband of the deceased. Her first husband died and through him, she begot two sons, one of whom was examined as PW2. PW3 is the close associate of PW2 and his evidence shows that he used to visit the house of the accused regularly. The evidence of PW3 also shows that a week prior to the incident, he along with his fiancée visited the house of the accused and the deceased. In the absence of the wife of the accused, when PW3 and his fiancée were present in the house, the accused came there and cautioned them not to come to his house any more.

8. The evidence of PW3 indicates that on 30.03.2011, which was said to be his birthday, the accused enquired him as to whether any party was arranged. In view of the request made, PW3 brought a MC liquor full bottle and offered the same to the accused. When he was about to leave, the accused stopped him and offered him some liquor. At that time, the wife of the accused, who was also present there was compelled to consume some liquor mixed with thumsup. Thereafter, the accused cautioned PW3 not to come to his house for which the deceased-wife requested the accused not to abuse him and leave him. Pursuant to which, the accused scolded his wife stating as to why she was interfering and also as to whether there was any illicit relation

between her and PW3. Saying so, he gave a fist blow on her chest, pursuant to which, she fell down. Thereafter, PW3 left the place at about 07.20 p.m. This is the version of PW3 - the sole witness who was examined by the prosecution to speak about the incident. The evidence of PW1 would show that on receipt of telephonic information from an unknown person, about the deceased lying dead in the house of the accused, PW1 proceeded to the said house and found the deceased lying there and the accused standing beside the body of the deceased. In his evidence, PW1 suspects that the accused as the person, who is responsible for the death of his sister-in-law, and accordingly on the same day, at about 11.30 p.m., he claims to have lodged a report, Ex.P1 before PW11 the Inspector of Police. In the said report, PW1 states that his elder brother by name Narsimulu died about 12 years back and after his death, her sister-in-law namely Padma was residing at Bowenpally along with her two sons namely Pramod and Pradeep. Subsequently, she married a person namely Khanna and used to live separately in a rented house along with him and her two sons. Now and then, he claims to be visiting the house of the deceased. It is stated that pursuant to the marriage, the accused used to drink and suspect the fidelity of the deceased and harass her. Several times, PW1 tried to stop the accused in that regard. On 30.03.2011 at about 10.30 p.m., the neighbours informed PW1 on phone that his sister-in-law was lying dead and as such he went there and found the body on bed without any movement and thereafter made a call to 108 Ambulance, who declared her sister-in-law as brought dead. He also claims to have noticed some injuries on

the neck. He further states in the report that the accused stood nearby the dead body. According to the report, it is to be noticed that the accused murdered the deceased and laid her on the bed. As per the FIR, the accused and his friend used to frequently visit her house namely Sai Yadav and another friend, whom PW1 suspect to be responsible for the death of the deceased. From the FIR which was given by PW1, it is clear that he suspected three persons. Out of three persons, he not only suspected the accused, but he also suspected PW3 and his friend as persons responsible for the death of the deceased.

9. To prove the case, prosecution pressed into service the evidence of PW3, who was shown as a suspect in the FIR. In his evidence PW3 states as under:

“..When I was about to leave as accused was already had liquor I too stopped from going then I sat and I had some little liquor, the wife of accused Padma also present. The witness adds forcibly accused gave liquor to his wife in spite of her repeated requests not to, the liquor was offered by mixing thumsup. Thereafter, accused cautioned me not to come next time and also abused me at that time the wife of accused interfere and stated leave him there afterwards he won't come and to leave my collar which was caught hold by accused. Then, accused scolded the Padma why you are interfering what illicit contact between me and his wife so saying accused gave a fist blow on the chest of Padma then the said Padma fell down in the meantime neighbours gathered thereafter I left the place and it was about 07.20 p.m.

10. From the evidence of PW3, it is clear that the accused cautioned PW3 not to come to his house anymore and when he tried to hold his collar, the deceased interfered and asked the accused not

to abuse him. At that point of time, he questioned the deceased about her relation with PW3 and gave a fist blow on the chest of the deceased. Thereafter, PW3 is said to have left the place. However, in the cross-examination of PW3, he admits that he knows PW1 since 18 years and he used to visit the house of the deceased once a day and the deceased used to treat him as his own son. He also admits that he used to visit the house of the accused along with her girl friend and said Pramod also knew about frequent visit of PW3 to the house, along with his girl friend. PW3 further admits that he saw the accused beating the deceased without any reason. PW3 admits that he smokes only gold flake king and consume only rum, whereas the accused consumes all brands. On the date of incident, PW3 along with his friend Yuvraj went to the house of the deceased at 07.00 p.m. He admits that his friend smokes gold flake king only. He admits that on the date of incident the accused, deceased and his friend Yuvraj only were present in the house. PW3 admits that after the accused gave a blow on the chest, the deceased fell down and then immediately she got up. He admits that the deceased drank three glasses of liquor mixed with thumsup. From the answers elicited in the cross examination by PW3, it is clear that three persons were present in the house at the time of incident and the deceased got on her own after falling down on receiving a fist blow from the accused. No evidence is available on record as to what happened after the deceased got up. In the chief examination, PW3 only refers to he leaving the place at 07.20 p.m., and there is no reference to said Yuvraj leaving the house along with PW3.

11. The investigating officer PW11, in his evidence admits as under:

“...Except the statement of PW3 that accused beat the deceased after which deceased was fully conscious state, there is no other eye witness. It is not true to suggest that PW3 is also responsible for the death of deceased and that I did not investigate the case thoroughly and that I falsely implicated the accused”.

12. Therefore, from the above, it is clear that though PW1 deposed that the accused was responsible for the death, he however mentions the names of three persons as suspects in the FIR. As stated above, one of the suspect was pressed into service, as a witness to the incident. At this stage, it would be necessary to refer to the scene of offence panchanama, the contents of which are spoken to by PW8. In his evidence, PW8 deposed that on 30.03.2011 at about 1230 hours, he was called to the Nandini apartments where incident took place. The panchanama of the scene came to be prepared under Ex.P5. In pursuance to Ex.P5, police seized MOs.1 to 15 i.e., MC Dowel Rum empty bottle, MC Rum half bottle, empty disposal glasses, empty thumsup bottle containing some brown colour liquid, empty water sachets, cigarette butts used, 4 gold flake butts of king size, charms cigarette butts used-2, 2 beedi butts used, red colour bangle pieces, spectacles, hair, one artificial bangle, blood stained biscuit colour pyzama, blood stained upper garment in light green and bra. A perusal of the evidence of PW8, coupled with panchanama would show not only the used cigar butts were found at the scene, there were also four charms cigarette butts and two used beedi butts. Hence it is clear that not only PW3 and one Yadav, who consume gold flake were there at the house, but some other persons were also

present, who consumed charms cigarette butts and also beedi butts. There is no explanation from the prosecution as to how different types of cigarettes and beedi buds came to be present at the scene of offence, when only three persons were present at the scene, out of whom, only two i.e., PW3 and Yadav had puffed the gold flake king cigars.

13. Learned Public Prosecutor strenuously argues that in a case of this nature where the dead body of the wife of the accused is found nearby the accused, burden is on him to explain as to how the deceased died. There should have been some explanation from the accused as to how the body of the deceased came into his house. In the instant case, admittedly, there were three persons in the house at the time of incident and a suspicion was entertained against all three persons, in the FIR. The evidence of PW3 is to the effect that he left the house at 07.20 p.m. There is no reference to said Yadav, leaving the house along with PW3. It may be true that the accused did not explain all these circumstances in his examination under Section 313 of Cr.P.C., but that by itself cannot be a ground to accept the version of PW3 in toto, when his evidence is clouded with some suspicion. Another circumstance which is also to be noted is that after the assault by the accused on the deceased, she got up and left. What happened thereafter is not known. If that is so, there is no evidence on record as to how the deceased died. Even after the deceased got up, three persons and some other appears to have been present in the house, having regard to the material seized from the scene.

14. In these facts, the culpability cannot be fixed on the accused, merely because the dead body was in the house of the accused.

15. Accordingly, we feel that the circumstances relied upon by the prosecution are not established beyond reasonable doubt and hence conviction of the accused needs to be set aside by extending the benefit of doubt.

16. Accordingly, in the result, the Criminal Appeal is allowed. The conviction and sentence awarded against the appellant/accused by name K.Kanna @ Ramachandran, in the judgment dated 31.10.2012, in Sessions Case No.70 of 2012, on the file of the Special Judge for Trial of Offences under SCs and STs (POA) Act – cum - VI Additional Metropolitan Sessions Judge, Secunderabad, for an offence punishable under Section 302 of I.P.C., 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.

17. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

N. BALAYOGI, J

28.12.2017
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