

**THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO**

CRIMINAL APPEAL No.38 OF 2014

JUDGMENT: (*Per Hon'ble Dr. Justice Shameem Akther*)

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.') questioning the judgment, dated 29.10.2013, passed in Sessions Case No.79 of 2012 by the learned IV Additional District and Sessions Judge, Visakhapatnam (for brevity, 'the trial Court'), whereby the trial Court convicted the appellant/accused of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.'). in terms of Section 235(2) Cr.P.C. and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/- (Rupees one thousand only), in default, to suffer simple imprisonment for three (3) months by giving set off of the remand period already undergone by him.

2. Heard the submissions of Smt. M.Padmalatha Yadav, learned Legal Aid counsel appearing on behalf of the appellant/accused, the learned Public Prosecutor (Andhra Pradesh) representing the respondent/State and perused the record.

3. Learned counsel for the appellant/accused would contend that accused is an innocent person; that P.Ws.1, 5, 6 and other witnesses are interested witnesses and they falsely implicated the accused in this case for the offence punishable under Section 302 I.P.C.; that the accused was not at all present in his house on the

date of incident; that the accused is not responsible for the death of his wife; that there is no consistency in the prosecution witnesses; that though the offence took place on the intervening night of 22/23.08.2011, a report was lodged to the police on 24.08.2011 and there is a delay; that only a strong suspicion arose that the accused caused the death of his wife or not; that the trial Court erroneously convicted and sentenced the accused of the offence punishable under Section 302 I.P.C. and ultimately, prayed to set aside the conviction and sentence recorded against the accused for the offence punishable under Section 302 I.P.C.

4. On the other hand, learned Public Prosecutor appearing for the respondent would contend that the deceased Pangi Chinnammi and the accused are having two children and they were residing together at Veeramamidi Veedhi, S. Boddaputt Village; that the accused suspected the fidelity of the deceased Pangi Chinnammi and caused her death; that before her death, there were also quarrels in that regard between the deceased Pangi Chinnammi and the accused on several occasions; that the prosecution proved the guilt of the accused beyond all reasonable doubt; that the delay in issue of F.I.R. is not fatal to the case of the prosecution and ultimately, prayed to confirm the conviction and sentence recorded against the accused for the offence punishable under Section 302 I.P.C., and dismiss the appeal.

5. In view of the submissions by the learned counsel on either side, the points that arise for determination are:

“1. Whether the death of deceased Pangi Chinnammi is homicidal?”

- 2. Whether the accused hacked the deceased Pangi Chinnammi with M.O.1 – axe on the intervening night of 22/23.08.2011 in their house at Veeramamidi Veedhi, S. Boddaputt Village?**
- 3. Whether the prosecution failed to prove the guilt of the accused for the offence punishable under Section 302 I.P.C. beyond all reasonable doubt? and**
- 4. Whether the conviction and sentence recorded against the accused for the offence punishable under Section 302 I.P.C. is liable to be set aside?”**

6. Case of the prosecution, as delineated by the prosecution witnesses, is stated as follows:

(a) The accused is a resident of S. Boddaputt Village of Iradapalli Panchayat, Paderu Mandal. The deceased Pangi Chinnammi is his wife. Marriage between the deceased Pangi Chinnammi and the accused was celebrated eight years prior to the incident and they were blessed with two female children. Later, two years prior to the date of incident, the accused started harassing the deceased Pangi Chinnammi and suspecting her fidelity. At one point of time, he necked her out from the house. Father of the deceased Pangi Chinnammi – Balanna placed the same before the elders and gave his own amount of Rs.5,000/- and another amount of Rs.5,000/- taking from their relatives, to the accused. The brother-in-law of the accused, who was working as a mason, did masonry work for laying basement for the house of accused, which worth Rs.10,000/-. The deceased Pangi Chinnammi, asked the accused to return the amounts to her father and her relatives for which, the accused grew wild. On 22.08.2011 night, while the deceased Pangi Chinnammi was sleeping in their house, the accused hacked with an axe on her head and face. On hearing the cries, L.W.2 – Pangi Raja Rao (P.W.2) rushed to the spot and witnessed the deceased Pangi

Chinnammi lying in the room with injuries in a pool of blood. He also found the accused near the deceased Pangi Chinnammi holding an axe. L.W.2 – Raja Rao (P.W.2) sent a word to the parents of the deceased Pangi Chinnammi on 24.08.2011.

(b) The Sub-Inspector of Police, Paderu (P.W.9) registered a case in Crime No.75 of 2011 for the offence punishable under Section 302 I.P.C. P.W.10 – Inspector of Police, Paderu Circle took up the investigation, visited the scene of offence, drafted scene observation report and seized blood stained axe. P.W.2 – Raja Rao surrendered the accused before P.W.7 – Lakke Bala Marji, Village Revenue Officer, Iradapalli, who in turn, produced him before P.W.10 – Circle Inspector, who arrested the accused and sent him to judicial remand. After receipt of relevant documents and completion of investigation, P.W.10 laid charge sheet.

7. The trial Court framed the following charge against the accused:

“That you on or about 22.08.2011 in the mid night at your house at Veesamamidi Veedhi, S.Boddaputt Village, Iradapalli Paderu Mandal, did commit murder by intentionally or knowingly causing the death of your wife Pangi Chinnammi, by hacking her head and face with an Axe and that you thereby committed an offence punishable under Section 302 of IPC and within my cognizance.

And I hereby direct that you be tried on the above said charges.”

8. When the above charge was read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

9. To substantiate the charge, the prosecution examined P.Ws.1 to 10 and got marked Exs.P-1 to P-11 besides case properties-M.Os.1 to 5.

10. After closure of the 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 prosecution witnesses. He denied the same. No oral or documentary evidence was adduced on behalf of the accused.

11. The trial Court, after considering the evidence available on record, came to a conclusion that the prosecution is able to establish the guilt of the accused beyond all reasonable doubt and accordingly, found him guilty of the offence punishable under Section 302 I.P.C. and convicted him under Section 235(2) Cr.P.C. and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for a period of three months. Challenging the same, the accused filed the present appeal.

12. **POINT Nos.1 to 4:-**

The specific case of the prosecution is that the accused had suspected the fidelity of the deceased Pangi Chinnammi. There were quarrels among them. On the intervening night of 22/23.08.2011, the accused hacked the deceased Pangi Chinnammi to death with M.O.1 – axe. To prove the guilt of the accused, the prosecution examined P.Ws.1 to 10 and got marked Exs.P-1 to P-11. There is no oral or documentary evidence on behalf of the accused. When the accused was examined under Section 313 Cr.P.C., he simply denied the accusation and pleaded innocence.

13. There is specific evidence of P.W.1 – father of the deceased Pangi Chinnammi. He deposed that there were quarrels between the accused and the deceased Pangi Chinnammi. The accused used to suspect the fidelity of the deceased Pangi Chinnammi. Having come to know about the death of the deceased Pangi Chinnammi, he went to their village and found the dead body of the deceased Pangi Chinnammi with injuries on the neck and face. Then, he went to Paderu Police Station and lodged a report with the police under Ex.P-1. He also deposed that his statement was recorded by police.

14. Admittedly, P.W.1 – father of the deceased Pangi Chinnammi is not a direct witness to the alleged offence. He is only a circumstantial witness. He deposed with regard to the quarrels in between the deceased Pangi Chinnammi and the accused and also the accused suspecting the fidelity of the deceased Pangi Chinnammi.

15. P.W.2 – father of the accused is an important witness in this case. His evidence reveals that the accused is his son. The marriage of the accused was performed 8 years prior to his deposition with the deceased Pangi Chinnammi and they begot two children. Himself and the accused were residing in the same house, but in different rooms. The accused and the deceased Pangi Chinnammi lived happily for sometime. Thereafter, they used to quarrel on various aspects. One year prior to his deposition, on Monday, at about 12.00 mid night, when he was sleeping in his room, he heard the cries of children of the deceased Pangi Chinnammi and the accused. Immediately, he rushed to the

room of the deceased Pangi Chinnammi and the accused and he found the deceased Pangi Chinnammi lying on the ground in a pool of blood. The accused was also found by the side of the deceased Pangi Chinnammi holding an axe, which contained blood stains. He identified the axe in his chief examination before the Court and it was marked as M.O.1. He also deposed about the finding of the injuries on the back side of the head, neck and face of the deceased Pangi Chinnammi. He also stated that he informed the same to P.Ws.3 and 4 and other neighbours. In the cross examination, he reiterated the date of the marriage and other circumstances, which he deposed in his chief examination.

16. P.W.3 is the neighbour who stated that the accused killed his wife about one year prior to his deposition by hacking with an axe. There is also specific evidence of P.W.3 that P.W.2 came to his house on that night and woke him up stating that the deceased Pangi Chinnammi was killed by the accused. So, he immediately rushed to the house of the deceased Pangi Chinnammi and accused, and found the dead body of the deceased Pangi Chinnammi in a pool of blood. He also found the accused in the said room holding an axe and he identified the said axe as M.O.1. He also stated that the accused and the deceased Pangi Chinnammi used to quarrel with each other. He was also subjected to cross examination where he denied that he was deposing false.

17. P.W.4 is another neighbour corroborated the evidence of P.W.3 on all material particulars including identification of M.O.1.

18. P.W.5 is the brother of the deceased Pangi Chinnammi. He is not a direct witness to the alleged offence. He stated that the accused used to suspect the fidelity of the deceased Pangi Chinnammi and harassed her.

19. P.W.6 – cousin of the deceased Pangi Chinnammi corroborated the evidence of P.W.5 with regard to the accused suspecting the fidelity of the deceased Pangi Chinnammi and harassing her.

20. P.W.7 is the Village Revenue Officer (V.R.O.), who is a panch for the scene of offence. According to him, the Inspector of Police, Paderu conducted scene observation panchanama at the house of the accused situated at Veeramamidi Veedhi and he recovered M.O.1 – axe from the scene of offence. Police also recovered M.O.2 – controlled earth and M.O.3 – blood stained earth in his presence. He also deposed about the preparation of Ex.P-2 – scene observation panchanama. There is also the evidence of P.W.7 that on 25.08.2011, the accused was apprehended by the police and the police seized the apparels of the accused i.e., M.O.4 – shirt and M.O.5 – half pant of the accused, which contained blood stains.

21. P.W.8 is the Doctor, who conducted autopsy over the dead body of the deceased Pangi Chinnammi on 25.08.2011 at 1:00 P.M. He found the following injuries:-

***“1. A lacerated injury of 6 x 1 x 6 cm over the right front parietal area of scalp with laceration of right frontal and parietal lobes of brain with fracture of right frontal and parietal bones with clotted blood seen on the wound, dark in colour. Age of the said wound is about 72 hours before autopsy.*”**

2. A lacerated injury of 5 x 1 x 5 cm over left cheek just below left lower eye lid with fracture of left maxilla with clotted blood seen over the injury, dark in colour. Age of the said wound is 72 hours before autopsy.”

According to him, the cause of death is due to cardio respiratory arrest secondary to injury to brain and bleeding from cerebral vessels. He also specifically stated that the above injuries are possible with M.O.1 – axe. In the cross examination, he reiterated the same.

22. P.W.9, who is the then Sub-Inspector of Police, Paderu, deposed about the receipt of Ex.P-1 report from P.W.1 on 24.08.2011 at 18.00 hours and registration of Crime No.75 of 2011 for the offence punishable under Section 302 I.P.C. against the accused and also submission of original F.I.R. to the learned Magistrate concerned and dispatching the copies of F.I.Rs to all concerned.

23. The evidence of P.W.10, who is the then Inspector of Police, is that he conducted investigation in this case. He also deposed about the preparation of scene observation report. Thereafter, he prepared rough sketch of the scene of offence and obtained photographs of the scene of offence and also the dead body of the deceased Pangi Chinnammi. He seized M.Os.2 and 3 i.e., blood stained earth and controlled earth. He also recovered M.O.1 from the scene of offence. He forwarded M.Os.1 to 5 to R.F.S.L., Visakhapatnam. Ex.P-11 is the opinion given by R.F.S.L. After receipt of report from R.F.S.L., and Post Mortem Examination Report, he filed charge sheet.

24. P.W.2, who is the father of the accused, deposed against his son. He deposed that he found his son by the side of the dead body of the deceased Pangi Chinnammi along with M.O.1 – axe. He also stated that on the date of incident, he heard the cries of the children of the accused and the deceased Pangi Chinnammi. Immediately, he went inside the room and found the deceased Pangi Chinnammi lying on the ground in a pool of blood. He also stated specifically about the injuries caused to the deceased Pangi Chinnammi. M.O.1 – axe was sent to F.S.L. for examination. The shirt of the accused was seized and it was marked as M.O.4. The same was also sent to F.S.L. for examination and report. As per Ex.P-11-FSL report, human blood was detected on saree, petti coat, earth, M.O.1 – axe and M.O.4 – shirt. There is no explanation from the side of the accused how he came into contact with the blood. Further, the neighbours – P.Ws.3 and 4 have found the accused on the intervening night of 22/23.08.2011 at his house by the side of the deceased Pangi Chinnammi holding M.O.1 - axe. There is no reason, animosity or grudge for these witnesses to depose false against the accused. P.W.2 – father of the accused, P.Ws.3 and 4 – neighbours of the accused are all truthful witnesses. There is no reason for them to implicate the accused in this case. Their evidence is consistent and coherent. There are no omissions or contradictions in their evidence.

25. Further, there is no reason for P.W.1 to lodge a false report under Ex.P-1. The specific evidence of P.W.1 is that he is residing at a different place. It took time for him to reach the scene of offence. After coming to the scene of offence, he went to the police station and lodged Ex.P-1 report. Merely because Ex.P-1 report

was lodged on 24.08.2011 at 18.00 hours, as deposed by the Sub-Inspector of Police, it is not fatal to the prosecution case, as there is overwhelming evidence of other witnesses. There is no reason for P.W.10 to falsely implicate the accused for an offence of this nature.

26. Under these circumstances, it is apt to refer the decision of the Hon'ble Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra**¹, wherein it was held as hereunder:

"When a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;*
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."*

The evidence and the documents placed on record clearly establish that the deceased Pangi Chinnammi was the wife of the accused and their marriage took place eight years prior to her death. They lived happily for sometime and thereafter, the accused started suspecting her fidelity and quarreled with her on several occasions and ultimately, on the intervening night of 22/23.08.2011, hacked her with M.O.1 – axe and caused her death. The accused intentionally hacked the deceased Pangi Chinnammi. The motive

¹ AIR 1984 SC 1622

for the offence is also established. Merely because there is no direct evidence, the prosecution case cannot be disbelieved when the accused was found by the side of the deceased Pangi Chinnammi holding a blood stained axe – M.O.1. The said axe was also seized during the scene of offence panchanama conducted by P.W.10 – Investigating Officer. The entire evidence placed on record clinchingly establishes that the accused had caused the death of his wife. The cumulative effect of the evidence adduced on behalf of the prosecution establishes only one conclusion i.e., the accused is the person, who caused the death of his wife. There is no reason for any other person to cause the death of the deceased Pangi Chinnammi. The trial Court, while dealing with this aspect, has elaborately discussed the entire evidence. The submissions made on behalf of the accused do not merit consideration. The appeal is devoid of merit and is liable to be dismissed.

27. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 29.10.2013, passed in Sessions Case No.79 of 2012 by the learned IV Additional District and Sessions Judge, Visakhapatnam.

28. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

DR. JUSTICE SHAMEEM AKTHER

JUSTICE M. GANGA RAO

Date: 01.12.2018
AMD

**THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO**



CRIMINAL APPEAL No.38 OF 2014
(Judgment of the Division Bench delivered by
the Hon'ble Dr. Justice Shameem Akther)

Date: 01.12.2018

AMD