

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CRIMINAL APPEAL No.142 OF 2013

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

The sole accused in Sessions Case No.388 of 2010 on the file of I Additional District and Sessions Judge, Mahabubnagar, is the appellant herein. He was tried for an offence punishable under Section 302 I.P.C., for causing the death of his wife, by name Devibai, on 18.07.2009 at 11:00 PM at Thettekunta Thanda of Buranpur Village, by strangulating her with a rope. Vide judgment, dated 30.01.2013, the learned Sessions Judge, convicted the appellant-accused for the offence punishable under Section 302 I.P.C. and sentenced him to suffer imprisonment for life and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month. Challenging the same, the present appeal came to be filed.

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

PW.1 is the father of the deceased, PW.2 is the daughter of the deceased, while PW.3 is another son-in-law of PW.1. PW.1 is also the senior paternal uncle of PWs.4 and 6 and maternal uncle of PW.7.

PW.1 has three daughters and one son. The deceased who was his last daughter, was given in marriage to the accused. Out of wedlock, the deceased and the accused were blessed with one daughter and two sons. It is stated that after the marriage, the accused was in the habit of moving with other ladies and also eloped with others. Fifteen days prior to the date of incident, the deceased is said to have gone to the house of PW.1 and informed him about the accused beating her. PW.1 advised her to stay in his house, but she went to her house. On the date of incident, the brother of the accused informed PW.1 over telephone that the deceased died. Then PW.1 and others went to the house of the accused and observed the dead body of the deceased and also a ligature mark around the neck of the deceased. It was stated that the death was due to strangulation. Thereafter, PW.1 lodged a report with PW.11, the Sub-Inspector of Police, Bomraspet Police Station, basing on which, a case in Crime No.62 of 2009 came to be registered for the offence punishable under Section 302 I.P.C. Ex.P9 is the F.I.R. Thereafter, PW.12, the Circle Inspector of Police, Narayanpet, took up further investigation in the matter. On receipt of the copy of the F.I.R., he visited the scene of offence and in the presence of PW.7, got the panchanama of the scene prepared. He also got the scene of offence photographed. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW.7. During inquest he examined PWs.2 to 5. Ex.P5 is the

inquest report. After completing inquest, he sent the dead body of the deceased for post-mortem examination. PW.10, the Civil Assistant Surgeon, Government Hospital, Kodangal, conducted autopsy over the dead body of the deceased and opined that the cause of death to the best of his knowledge was due to fracture of left carina of hyoid bone by strangulation. Ex.P8 is the post-mortem examination report. Thereafter, further investigation in this matter was taken up by PW.13, the Inspector of Police, Kodangal. On 22.07.2009, he arrested the accused and recorded his confessional statement in the presence of PWs.8 and 9. The said confession of the accused led to recovery of rope, which was used in the commission of the offence. The same was seized under Ex.P10 the admissible portion of confession – cum – recovery panchanama of the accused. MO.1 is the cotton rope said to be seized basing on the confession made by the accused.

3. After obtaining necessary documents and examining the witnesses, a charge sheet came to be filed before the Court of Judicial Magistrate of First Class, Kodangal, which was taken on file as P.R.C.No.44 of 2009. On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under

Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.388 of 2010.

4. On consideration of material placed on record, the charge as stated above came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

5. To substantiate their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P10 and M.O.1. Out of the 13 witnesses examined, PWs.2, 8 and 9 did not support the prosecution case and were treated hostile by the prosecution.

6. After the 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, to which he denied, but, however, did not place on record any defence evidence.

7. Basing on the evidence of PWs.1 and 3 to 6, the learned Sessions Judge, vide the judgment under challenge, convicted the accused for the charge under Section 302 I.P.C. and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

8. Learned counsel for the appellant would submit that since PW.2, the daughter of the deceased, who was present in the house at the time of incident, did not support the prosecution case, there is any amount of doubt with regard to the presence and participation of accused in the commission of the offence. He would further contend that discrepancy in the evidence of PWs.1 and 3 with regard to their source of information also creates some doubt in the prosecution case. He would further submit that the accused took the plea of suicide from the beginning, which fact was also mentioned in his statement recorded under Section 313 Cr.P.C. He would further contend that the deceased was of unsound mind stands established through the evidence of PWs.1 and 3 and their evidence also supports that plea taken by the accused in Section 313 Cr.P.C. examination that on the date of incident, the accused and the deceased went to Darga, as the deceased was of unsound mind. The Doctor, who conducted post-mortem examination, was also subjected to examination by the Court by asking four questions. Out of the four questions put to him, the Doctor gave two answers in favour of the accused and two answers in favour of the prosecution. He further submits that since the evidence of Doctor itself throws any amount of doubt as to whether it is a case of suicide or strangulation, the plea taken by the accused has to be accepted, more so when there is no evidence to show that the accused has caused the death of the deceased.

9. On the other hand, the learned Public Prosecutor would contend that the presence of the accused in the house stands established through the evidence of PWs.1 and 2 and once the presence of the accused stands established, it is the duty of the accused to establish that he was not present in the house at the time of incident. He would further contend that the plea of suicide taken by the accused is not supported by the Doctor, who conducted post-mortem examination. Hence, the findings recorded by the Sessions Court warrants no interference.

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

11. The assertion made in Section 313 Cr.P.C. statement shows that the deceased was of unsound mind. Apart from that, the evidence of PWs.1 and 3 supports the plea taken by the accused in his examination under Section 313 Cr.P.C. with regard to the accused taking the deceased to Darga on the date of incident and then returning back to the house. It will be appropriate to examine the evidence of PWs.1 to 4 in this regard.

12. PW.1, in his evidence in chief, states that about 15 days prior to the date of incident, the deceased came to him and stated that the accused beat her. Then, he advised her to stay in his house, as the accused was in the habit of beating her.

Since the deceased was very much interested in her children and family, she went to the accused. On the date of incident, the brother of the accused is said to have informed him over telephone about the death of the deceased. In the cross-examination various suggestions were given to him, but the same were denied. The suggestion that there were no disputes between the accused and the deceased, was denied. The suggestion that he did not state to the police about the accused moving with other women was denied. But, however, he admits that prior to the incident, the accused took the deceased to a Darga and brought her back to the house on the same day. He also admits that the deceased was taken to Darga, as she was of unsound mind. He further admits that after giving report to the police, he went to the Village to see the deceased. The suggestion that deceased committed suicide because of unsound mind, was denied.

13. From the evidence of PW.1 it is clear that the deceased was of unsound mind and on the date of incident, accused took her to Darga, as she was of unsound mind. However, there appears to be some discrepancy with regard to the manner in which the report was given. In chief examination, he states that on coming to know about the death of the deceased, he went to the house of the deceased and then lodged the report. But, in the cross-examination he admits

that he lodged the report first, then came to the house of the deceased and saw the dead body of the deceased.

14. Coming to the evidence of PW.2, who is the daughter of the accused and the deceased, she deposed that on the date of incident, herself, her mother and other family members were sleeping in the house. During night time, on hearing some noise, she woke up and observed that her mother hanged herself with a rope. By seeing the same, she intimated the same to her father. She further states that her mother was of unsound mind and in view of the same, she committed suicide. At that stage, she was declared as hostile and she was subjected to cross-examination by the prosecution. Various suggestions given by the Public Prosecutor were denied. In the cross-examination on behalf of the accused, she admits that her parents were living in cordial terms and that the accused never beat her mother nor he sent her to the house of PW.1, at any time. She admits that since her mother was of unsound mind, she committed suicide with the help of a petty-coat.

15. PW.3, who is the another son-in-law of PW.1, deposed that four or five months prior to the death of the deceased, the terms between the accused and the deceased were unwell. The accused used to send the deceased to her parents house. It is stated that on two or three occasions, they convinced the deceased and sent her back to the accused. On the next day

of the incident, while he was in his house, PW.1 came and informed him that the accused killed the deceased and implemented his threatens towards the deceased. Thereafter, all of them went to the house of the accused and observed the dead body of the deceased. In the cross-examination, he admits that after marriage, the accused and the deceased lived cordially for several years. He admits that ten years after the first marriage of the accused, he again married another woman and after staying with her for two years, he sent her away. He further admits that the accused was treating his children affectionately. He further admits that the accused performed the marriage of PW.2. He further admits that the deceased was of unsound mind and the accused took her to the Darga on the date of incident. He also stated that he never stated to the police that he went to the house of the accused and saw the dead body of the deceased on the date of incident. To a suggestion that the accused was not responsible for the incident, was denied.

16. Similar is the version of PW.4. However, this witness denies the fact that the deceased was of unsound mind and that the accused took her to the Darga. However, he admits that since the accused used to quarrel with the deceased, he brought her to the house of PW.1. He states that he did not inform the police that they informed the accused that in case he is intending to have another marriage, they are ready to

perform the same. To a suggestion that the deceased hanged herself, as she was of unsound mind, was denied. He further denies the suggestion that the daughter of the deceased informed him about the accused killing the deceased.

17. From the evidence of all these witnesses, it is clear that on the date of incident, the accused was present in the house and the deceased was of unsound mind. The evidence of all these witnesses further establish that on the date of incident, the accused took the deceased to Darga, as she was of unsound mind and later came back to the house on the same day. The consistent plea of the accused was that it is a case of suicide, which was supported by PW.2, who was treated as hostile. Therefore, ultimately, the question that boils down for consideration is whether it is a case of suicide or homicide? In order to appreciate the same, it would be useful to refer to the evidence of PW.10, the Doctor, who conducted post-mortem examination over the dead body of the deceased. But, one fact, which should also be noted here is that the Doctor, who conducted post-mortem examination, was not shown the rope, which was said to have been used in the commission of offence. In his evidence, the Doctor states as under:

“Chief Examination:-

Presently I am working as Civil Assistant Surgeon at Government hospital, Kodangal, since 01-July-2009.

On 19-07-2009 I received requisition from S.H.O., Bomraspet, to conduct Post Mortem Examination over the dead body of the deceased Devibai W/o Badya Naik, and accordingly I held autopsy and noticed the following injuries.

1. White frothy from mouth. Bleeding from both the nostrils.
2. Round rope markings around the neck 2 to 3 in number, Right to left neck extends.

On internal checking of neck, fracture of greater cornua of hyoid bone was found. The stomach contains of food particles i.e., rice and dal.

The cause of the death of the deceased to the best of my knowledge was due to the fracture of left cornua of hyoid bone by strangulation. The approximate time of death was 12 to 15 hours prior to Post Mortem Examination.

Ex.P-8 is the Post Mortem Examination report issued by me and it bears my signature.”

18. Though the accused did not cross-examine the Doctor on the date of chief examination, the Court examined the Doctor by putting over four questions, which are as under:

“Examination by court

Qn.No.1: In injury No.2, you have mentioned that rope (thread markings) around the neck i.e., 2, 3 in number. Is it possible for the presence of markings in 2, 3 in numbers around the neck, in case of hanging?

Ans: No it is not possible, since in case of hanging only one mark will be available. In this case the markings are around the neck and in case it is

hanging, the presence of marking may not be possible on the posterior aspect of the neck.

Qn.No.2: Whether the fracture of left greater carnia hyoid bone is possible in case of hanging?

Ans: Yes. It may be possible in case of hanging also.

Qn.No.3: Whether it is possible for the presence of bleeding in both the nostrils in case of hanging?

Ans: It is not possible. In case of strangulation the pressure will be more on the both the jugular wheels but in case of hanging it is not that much of pressure. In 99% of hanging cases, tongue will be procreated. In the present case the tongue is normal as mentioned in the report.

Qn.No.4: Whether the presence of white frothy was also possible in case of hanging?

Ans: No it is not possible. Due to ionospheric pressure water may come out from the mouth. It may not be possible in cases of hanging.”

19. Subsequently, after examination by the Court, the Doctor was recalled and in his cross examination he admitted as under:

“If rope used for hanging was in two lines (two rounds), then the markings around the neck will be in two or three numbers in case of hanging. In case of any pressure on the neck, even in hanging cases, the presence of bleeding in both the nostrils is also possible. No bleeding marks were noticed around the neck. No other injuries are noticed on any other parts of the body.”

20. As seen from the above, the post mortem doctor was examined by the Court by putting four questions. To question No.2, i.e., whether the fracture of left greater carnia hyoid bone is possible in case of hanging, the doctor replied that it may be possible in case of hanging also. Similarly, with regard to the presence of bleeding in both the nostrils in case of hanging, the post mortem doctor states that *it is not possible*. He further states that in case of strangulation the pressure will be more on both the jugular veins, but in case of hanging there will not be that much of pressure. He further states that in 99% of hanging cases, tongue will be protruded. In the present case, the tongue is normal as mentioned in the report. But, in the cross examination, he states that in case of any pressure on the neck, even in hanging cases, the presence of bleeding in both the nostrils *is also possible*.

In view of the answers given, the possibility of tongue being normal though rare, cannot be ruled out. The plea of the accused that it was a case of suicide cannot be brushed aside, moreso, when no blood marks were noticed around the neck and no injuries were noticed on the body.

Out of the four questions put by the Court, almost three questions were answered in favour of the accused. Insofar as question No.1, as to the possibility of presence of two lines around the neck, he states that in case of hanging, if a rope is used, there would be only *one line*, but however, in the cross examination, he states that if rope is used, then the marks

around the neck would be *two or three* numbers in case of hanging. Ironically, in this case, rope which was seized was not put to the doctor to show as to whether there would be two lines or one line, in case of suicide with the rope or strangulation with the said rope.

21. As out of the four questions put to the doctor, three were answered in favour of the accused in deciding that it could be a case of suicide as well, we feel that it is a fit case where benefit of doubt can be extended to the accused.

22. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused, in the judgment dated 30.01.2013, in Sessions Case No.388 of 2010, on the file of the I Additional District and Sessions Judge, Mahabubnagar, for the offence punishable under Sections 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.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

February 09, 2018
md/vhb