

HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR  
&  
HONOURABLE MS. JUSTICE J. UMA DEVI

CrI.A. No. 80 of 2014

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

The sole accused in S.C.No. 86 of 2013 on the file of the Court of VI Additional District and Sessions Judge, Godavarikhani, is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing death of one Nimmala Ravi on the intervening night of 29/ 30-3-2012 at Tadicherla village by beating him with a stick under the influence of intoxication. Vide judgment dated 20.11.2013, the learned Sessions Judge convicted the accused for the charged offence and sentenced him to undergo imprisonment for life and also to pay fine of Rs.500/-, in default, to undergo simple imprisonment for three months.

The facts in issue as culled out from the evidence are as under:

PW1 is the wife of the deceased –Nimmala Ravi. PW2 is the elder sister of PW1. PWs. 3 to 6 are the residents of Tadicherla village. On the date of the incident at about 05:00 p.m., the deceased left the village to collect his wages, but did not return home. On the next day morning, PW1 informed PW2, about non-returning of the deceased to the house. When both of them started searching for the deceased, PW7 informed them that the accused killed the

deceased and his dead body is lying in the land of the accused. Then, PWs.1 and 2 went there and found the dead body of the husband of PW1 with injuries on his face and on the back side abdomen. Thereafter, both of them went to police station and lodged a report, basing on which, PW16 – Sub-Inspector, Koyyur Police Station, registered a case in Crime No. 23 of 2012, against the accused for an offence punishable under Section 302 IPC. Thereafter, PW17 – Circle Inspector of Police, Manthani, after receipt of express F.I.R., took up investigation and immediately proceeded to the scene of offence along with PW16, prepared a Crime Detail Form in the presence of PWs.10 and 11. During the observation of scene of offence, PW17 seized M.Os.3 and 4 apart from M.Os.8 and 9 which are blood-stained earth and control earth. He examined PWs.1, 2, 4 to 7 and 15 and got photographed the scene of offence and the dead body through PW13. Thereafter, he conducted inquest over the dead body of the deceased during which he seized M.Os.1 and 2. After inquest, he sent the dead body for post-mortem examination, to Government Hospital, Manthani, where PW12 conducted post-mortem examination and noticed nine external and internal ante mortem injuries on the body and opined that the cause of death was due to head injury. Ex.P6 is the post-mortem report. On 31.03.2012, PW17 arrested the accused in Tadicherla village, and seized M.O.6 - blood-stained T-shirt of the accused and M.O.7. - stick from

the house of the accused. He also seized a lungi worn by the accused at the time of arrest which is placed on record as M.O.5 and sent M.Os.1 to 7 to R.F.S.L., Karimnagar with a letter of advice, through the S.D.P.O, Godavarikhani. Ex.P13 is the letter addressed to the Deputy Superintendent of Police, Godavarikhani. Ex.P14 is the letter forwarding M.Os.1 to 9 to the Assistant Director, R.F.S.L., Karimnagar. Thereafter, he sent viscera of the deceased, which was preserved by the Medical Officer, during the post-mortem examination to FSL. Ex.P16 is the FSL report regarding M.Os.1 to 9. Ex.P17 is the FSL report of viscera of the deceased. After collecting all the necessary documents, he filed charge sheet which was taken on file by the Judicial Magistrate of First Class, Manthani as P.R.C.No. 35 of 2012 for the offence under Section 302 IPC. Thereafter, as contemplated under Section 207 Cr.P.C., copies of the documents were furnished and as the case is triable by Court of Sessions, the same was committed to Sessions Court. On appearance of the accused, charge under Section 302 IPC came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs. 1 to 17 and got marked Exs.P1 to P17. No oral or documentary evidence was adduced on behalf of the accused in support of his defence.

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. Based on the circumstances relied upon by the prosecution, the learned Sessions Judge convicted the accused as referred to above. Challenging the said conviction and sentence, the present appeal is filed.

The learned counsel for the appellant mainly contends that there are no eye-witnesses to the incident and the circumstances relied upon by the prosecution did not form a chain of events to connect the accused with the crime. Insofar as the evidence of PWs.4 and 6 is concerned, he would contend that their evidence is contrary and that cannot be made basis to convict the accused. He would further contend that there is no material to show that the blood-stains that were seized from the dress of the accused and the material, does not show that M.Os.1 and 2 – shirt and lungi belong to the deceased.

On the other hand, the learned Public Prosecutor would contend that there is enough material on record to connect the accused with the crime. The evidence of PWs.4 and 6 coupled with the cause of death and the matching of blood on M.Os.3, 5 and 6 would be sufficient to base a conviction.

It is to be noted that there are no eye-witnesses to the incident and the case rests on circumstantial evidence. In

case of circumstantial evidence, the burden is on the prosecution to prove each of the circumstance relied upon and the circumstances so proved should lead to an inference of guilt.

The Apex Court consistently held that in a case which rests on circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) 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

(4) 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. (See *Gambhir v. State of Maharashtra*<sup>1</sup>)

Keeping in view the broad principles of law, we shall now deal with the evidence on record and the circumstances relied upon by the prosecution to establish the involvement of the accused in the cause of the death of the deceased.

---

<sup>1</sup> (1982) 2 SCC 351

PW1 is none other than the wife of the deceased. Her evidence is only to the effect that on the date of the incident at about 05:00 p.m., the accused left the village to collect his wages, but did not return home till next day morning and she informed the same to PW2. Then, both of them started searching for the deceased. At that time PW7 is said to have informed PW1 that the accused killed the deceased and his body was lying in the land of the accused. Thereafter, PWs.1 and 2 went to the said place and found the dead body of the deceased. The evidence of PW2 corroborates the evidence of PW1 about she informing PW2 with regard to her husband not returning home, and thereafter, both of them searching for the deceased. She also speaks about PW7 informing PW1 about the accused killing the deceased and his body lying near the house of the accused in the bushes. Pursuant to which, both of them went to the said place, noticed injuries on the dead body and then lodged a report. From the evidence of these two witnesses, it is clear that none of them have seen the incident and information about the incident was given by PW7. Their evidence also discloses that the dead body was found in the land of the accused which was near his house, and after reaching the scene, they found the dead body with injuries in bushes. PW3 did not support the prosecution case and he was declared hostile by the prosecution.

Before dealing with the evidence of other witnesses, we would like to deal with the evidence of PW7 who is said to have informed PW1 about the incident and which prompted PWs.1 and 2 to go to the scene of offence. PW7 in his evidence deposed that, about a year ago, he came to know about the incident in which the deceased was killed by the accused at the house of the accused. He observed the dead body of the deceased with injuries lying at the house of the accused when he went there at 08:30 p.m. From the evidence of PW7, it appears that he came to know about the incident wherein the accused is said to have killed the deceased. Therefore, he cannot claim to be an eye-witness to the incident. He further deposed about seeing the dead body lying at the house of the accused when he went there at 08:30 p.m. but the evidence of PWs.1 and 2 falsifies the said version to the effect that neither of them depose about the dead body being at the house of the accused. While PW1 speaks about the dead body lying in the land of the accused, PW2 deposes about the dead body lying in the bushes. Therefore, this evidence of PW7, in our view, cannot be taken at its face value in view of the discrepancy in the evidence of PWs.1 and 2 vis-a-vis PW7.

With regard to the second circumstance namely the accused and the deceased last seen together prior to the incident, PW4 in his evidence deposed that the accused came to his toddy shop on 29.03.2012 at about 07:30 p.m.

and purchased one bottle of toddy. Thereafter, he went to the house of PW6, where he consumed toddy along with another person. On the next day morning, he came to know that the deceased died and the police came to their village. In the cross-examination, he stated that he does not know the name of the said person who consumed toddy along with other person. Therefore, this evidence of PW4 only shows that on 29.03.2012 at 07:30 P.M. the accused purchased one toddy bottle, went to the house of PW6 and then consumed toddy. There is no reference to the presence of the deceased along with the accused.

PW6 in his evidence deposed that about a year prior to the date of giving evidence, the deceased and the accused came to his house at 06:00 p.m. Both of them consumed toddy which was sold by him. As both of them quarreling with each other, he asked the accused and the deceased to leave his house. Then, both of them left the house. On the next day, he came to know about the deceased lying dead at the house of the accused. This evidence of PW6, in our view, runs contra to the evidence of PW4. While the evidence of PW6 was that both the accused and the deceased left the house after consuming alcohol at his house at about 06:00 p.m., the evidence of PW4 is to the effect that the accused came to his shop at 07:30 p.m., purchased one toddy bottle and went to the house of PW6 where he consumed toddy along with another person. PW6 never deposed about the

accused or any other person coming to his house after 06:00 p.m. Apart from that PW4 does not refer to the presence of the deceased along with the accused at 07:30 p.m. Therefore, we feel that the evidence of PWs.6 and 4 do not corroborate with each other and the evidence of both these witnesses is inconsistent as to the accused and the deceased leaving the house. Even assuming that the accused and the deceased left the house at 07:30 p.m., the dead body was found near the house of the accused on the next day morning at about 08:30 p.m. i.e. only 13 to 14 hours after they were last seen together. There is no evidence on record as to where the deceased was during that period. Therefore, the circumstance of last seen is not established by the prosecution.

The evidence of PW5 shows that the dead body of the deceased with injuries was lying in front of the house of the accused. Therefore, there are varying versions as to the place where the dead body of the deceased was lying. While the evidence of PW7 is to the effect that the dead body was lying at the house of the accused, the information which was passed on by PW7 to PW1 was that the dead body was lying in the land of the accused and the evidence of PW2 is to the effect that the dead body was lying in the bushes near the house of the accused. Therefore, no credence can be given to the evidence of these witnesses with regard to the recovery of the dead-body in the house of the accused. Even

assuming that the dead body was recovered near the house of the accused, since none of them have seen the incident including PW7, it cannot be said that it was the accused who was responsible for the death of the deceased.

The prosecution tried to link the involvement of the deceased with the recovery of M.O.1 – polyester shirt of the deceased and M.Os.5 and 6 – Lungi and shirt of the accused since the blood-group on both the material objects is “B+ve”. It is urged that this circumstance connects the accused with the crime. But strangely PW10, who acted as panch witness for the recovery of M.Os.1 and 2 – shirt and lungi, admits in his cross-examination that M.Os.1 and 2 belong to the accused. Therefore, the fabric of the prosecution case to connect the accused with the crime based on M.Os.1 and 2 gets collapsed.

Having regard to the findings given above, we feel that the prosecution has failed to prove the circumstances relied upon by it to connect the accused with the crime. Hence, the appellant is found not guilty of the offence punishable under Section 302 IPC and accordingly acquitted.

In the result, the Criminal Appeal is allowed setting aside the conviction and sentence imposed on the appellant vide judgment dated 20.11.2013 in S.C.No. 86 of 2013 delivered by the learned VI Additional District and Sessions Judge, Godavarikhani. The accused shall be released from jail forthwith if he is not required in any other case.

As a sequel, Miscellaneous Petitions, if any pending,  
shall stand disposed of as infructuous.

---

C. PRAVEEN KUMAR, J

22.12.2018

---

J. UMA DEVI, J

bcj

