

THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CRIMINAL APPEAL No.1143 of 2013

JUDGMENT: (per Hon'ble Sri Justice A.V.Sesha Sai)

This Criminal Appeal, filed under Section 374(2) of Code of Criminal Procedure by the Accused in S.C.No.435 of 2011 on the file of I Additional Sessions Judge, Adilabad challenges the judgment dated 4.11.2013 passed in the said Sessions Case.

2. The case of the prosecution, in brief is as follows:

The deceased and the accused (appellant herein) are the wife and husband respectively and out of their wedlock, they begot two children. Accused developed illicit intimacy with one Tirumala, daughter of his paternal uncle and when the accused was questioned about the same, he started harassing the deceased both mentally and physically and she was necked out of the house, which prompted the deceased to go to her parents' house. In the panchayat held in the village, the accused assured that he would stop his illegal contacts and will look after the deceased properly, but the accused did not mend his behaviour and on the intervening night of 26/27.6.2010 when the deceased was in deep sleep, the accused axed over the throat of the deceased and on hearing the hues and cries of the children, neighbours came there and on seeing them, accused fled away from the spot. Subsequently, the deceased was shifted to Government Hospital, Luxettipet and thereafter to MGM Hospital, Warangal, but she succumbed to injuries. P.W.1, father of the deceased lodged a complaint with the police and the police registered Crime No.102/10 and thereafter the matter was committed by the Judicial Magistrate of First Class, Luxettipet to

the Court of Principal District and Sessions Judge and thereafter it was made over to the Court of I Additional Sessions Judge, Adilabad and the case was numbered as S.C.No.435 of 2011.

3. In order to establish its case, prosecution examined P.Ws.1 to 14 and marked Exs.P1 to P10 apart from M.Os.1 to 9 and whereas on behalf of defence, D.W.1 was examined. On the basis of the material available, the learned Additional Sessions Judge framed the following point for consideration:

“Whether the prosecution is able to establish the guilt of the accused for the offence punishable under Section 302 IPC as alleged beyond any reasonable doubt ?

4. The learned I Additional Sessions Judge, by way of the impugned judgment convicted the accused/appellant herein with life imprisonment and also fine of Rs.2,000/- and in default to suffer simple imprisonment for a period of three months.

5. Heard Sri S.Nagender, learned counsel for the appellant and the learned Public Prosecutor for Prosecution and perused the material available on record.

6. It is submitted by the learned counsel for appellant that the learned Sessions Judge grossly erred in convicting the accused/appellant herein as the prosecution utterly failed to prove the guilt of the accused beyond reasonable doubt; that there is no eye witness to the alleged incident and having regard to the contradictions in the evidence of the prosecution witnesses, the learned Sessions Judge should have extended ‘benefit of doubt’ to the appellant herein; that the learned Sessions Judge grossly erred

in relying upon the interested testimony of P.Ws.1 to 3; that the motive was neither attributed nor established by the prosecution, as such, the appellant herein is entitled for exoneration.

7. On the contrary, it is contended by the learned Public Prosecutor that absolutely there are no contradictions in the evidence of prosecution witnesses; that the oral and documentary evidence adduced on behalf of prosecution would clinchingly demonstrate the guilt of the accused beyond reasonable doubt; that having regard to the cogent, convincing and valid reasons assigned by the learned Additional Sessions Judge in the impugned judgment, the questioned order warrants no interference of this court under Section 374(2) of Cr.P.C.

8. In the light of the above contentions and the material available on record, the following issue emerges for consideration of this Court under sub-section (2) of Section 374 of Cr.P.C:

“Whether the judgment rendered by the learned Additional Sessions Judge is sustainable and tenable in the facts and circumstances of the case and whether the prosecution could establish the guilt of the accused beyond reasonable doubt?

9. P.W.1 is the father of the deceased and father-in-law of the accused. According to his oral evidence, the accused was frequently quarrelling with the deceased, which prompted holding panchayats in the presence of L.Ws.8 to 10 of Subbaraopalli. It is further deposed by P.W.1 that the accused attended the panchayat and gave assurance to the panchayatdars that he would lookafter the deceased and took away her along with him.

10. P.W.1, admittedly is not an eyewitness and he received information of death of the deceased during the intervening night of 26/27.6.2010 and he

also denied the allegation that he along his wife and son foisted a false case against the accused. He also stated about shifting of deceased from Government Hospital, Luxettipet to Karimnagar and thereafter to MGM Hospital, Warangal and the death of the deceased during the transit at Hasanparthy.

11. P.W.2 is no other than the brother of the deceased and he also in categorical terms stated that the accused was quarreling with the deceased as he was having illegal intimacy with another woman. He also spoke about the panchayat held in the presence of L.Ws.8 to 10 and he also spoke about shifting of deceased from Luxettipet Government Hospital to Karimnagar and thereafter to MGM Hospital, Warangal and the death of the deceased in transit at Hasanparthy.

12. P.W.3 stated that his house is situated nearby the house of the accused and he spoke about the cut injury on the neck of the deceased and shifting of deceased in Ambulance to Luxettipet and thereafter to Karimnagar and subsequently to MGM hospital and the death of the deceased during transit. According to P.W.3, on the date of incident, on hearing the cries, he came out of the house and the parents of the accused came out of house and he found the deceased with cut injury on her neck with an axe. He also spoke about the quarrels of the accused with the deceased in drunken state. P.W.3 is also not an eyewitness. P.W.6., one of the panchayatdars along with L.Ws.9 and 10 spoke about panchayat for which the accused attended. He also stated that they advised the accused to look after his wife and children affectionately. P.W.10 is the Village Servant, who stated that the police brought the accused and at the request of the police, panch witnesses including P.W.10 enquired with the accused

and the accused confessed in their presence that he killed his wife by hacking with an axe on her neck.

13. P.W.13 is a Medical Officer, who conducted autopsy on the dead body and who issued Ex.P8-Postmortem report. He categorically stated that the injuries found on the dead body are possible with M.O.4-Axe.

14. On behalf of the accused/appellant herein, mother of the accused was examined as D.W.1. She stated that on the date of the incident, the accused was with her younger brother at Tiryani and was engaged in thatching work. According to her, she and her husband were sleeping in their house and on hearing the cries, they woke up and the deceased was shifted to Luxettipet when she was alive.

15. Admittedly, in the present case, there is no eyewitness for the alleged offence. Now the question is whether the prosecution could prove its case by successfully connecting all the chains in the evidence let in by them.

16. It is very much evident from a perusal of the evidence of P.Ws.1 and 2 that they came to know about the death of the accused on the intervening night of 26/27.6.2010. They categorically spoke about the previous quarrels and the resultant panchayats held in the presence of village elders for resolving the issues.

17. Obviously, in the instant case, as per the evidence of the prosecution, the problem cropped up because of the illicit intimacy of the accused. According to the prosecution, since the deceased pointed out the said attitude of the accused, he started harassing the deceased. In fact, the learned Sessions Judge considered elaborately with regard to the enmity of the accused with the deceased and motive to commit murder and the last

seen theory and seizure of M.O.4-Axe in pursuance of confession and medical evidence available. Obviously, the instant case is the case of homicide. Though D.W.1, mother of the accused stated that the accused was not present in the house on the date of offence and he was with the younger brother of D.W.1 at Tiryani, the said younger brother of D.W.1 was not examined on behalf of the accused. The learned Sessions Judge also took into consideration the oral evidence of the Doctor, who was examined as P.W.13 and Ex.P8 Postmortem report. As stated supra, P.W.13 categorically stated about the possibility of infliction of injuries with M.O.4-Axe. The learned Sessions Judge, by relying upon the oral evidence of P.Ws.1 to 3, 6 and 7 that the accused took back the deceased to his house on the advice of the panchayatdars and also taking into consideration the last seen theory and the possibility of the accused living in the company of the deceased before death, believed the version of the prosecution. Therefore, this Court does not find any error in the said finding.

18. The learned Public Prosecutor submits that the scientific evidence is available in this case. Placing reliance on the FSL report and the recovered material objects, the learned Public Prosecutor submits that the material objects M.Os.1 to 9 were seized under cover of panchanama. Placing reliance on the testimony of P.W.10, the panch witness for the scene of offence, it is submitted that M.O.4 – axe was seized at the instance of the accused in the presence of P.W.10. The allegation of the prosecution is that the accused has committed the murder of the deceased by using the material object – M.O.4. The material object – M.O.4 has been forwarded to FSL.

19. P.W.9 is the panch for inquest and, in his presence, inquest panchanama was conducted and the material objects i.e., M.O.1 – blood stained blouse, M.O.2 – blood stained braw and M.O.3 – red and ash colour saree were seized under inquest panchanama – Ex.P4.

20. M.O.4 – axe corresponds to item No.9 of the FSL report – Ex.P10. A perusal of the FSL report clearly reveals that the blood group of blood stains on item Nos.3, 4 and 6 to 9 is of 'B' blood group. Item No.3 – a red and violet colour mattress with dark brown colour stains corresponds to M.O.7. Item No.4 – a snuff and white navar pieces corresponds to M.O.8 and Item No.5 – violet colour bangle pieces corresponds to M.O.9. These material objects belonged to the deceased. The blood on these items and the blood on the axe is of 'B' blood group. Therefore, it is obvious that the axe was used in the commission of offence and it was seized at the instance of the accused in pursuance of his confessional statement under Section 27 of Indian Evidence Act. Thus, there is ample scientific evidence to connect the accused with the crime.

21. The learned Sessions Judge also took into consideration the evidence of P.W.10 and the confession of the accused with regard to discovery, recovery and seizure of M.O.4. The learned Judge also found that there is no possibility of any other person to commit the offence other than the accused and also took note of the fact that during 313 examination, the accused did not make any whisper with regard to indulgence of any third person in the commission of offence, except bare denial of commission of offence. After meticulously, elaborately and thoroughly considering the entire oral and documentary evidence available on record, the learned Sessions Judge convicted the accused for the offence punishable under

Section 302 IPC and this Court, having regard to the above observations and findings recorded by the learned Sessions Judge, is not inclined to disturb the said well articulated judgment.

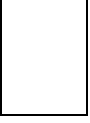
22. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 04.11.2013, in S.C.No.No.435 of 2011 on the file of I Additional Sessions Judge, Adilabad.

A.V.SESHA SAI, J

Date: 24.11.2018
DA/v v

G.SHYAM PRASAD, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD



24.11.2018