

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1292 of 2011

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

A1 and A2 in Sessions Case No. 596 of 2010 on the file of the Principal District and Sessions Judge, Anantapur, are the appellants herein. They were tried on two charges. The first charge was against A1 under Section 302 IPC for causing the death of one Lakshmi on the intervening night of 07.09.2010 and 08.09.2010 in their house in Bollanaguddam village. The second charge was against A1 and A2 under Section 201 read with 34 IPC for causing disappearance of the evidence. Vide judgment dated 03.10.2011, the learned Sessions Judge found A1 guilty of the charges under Section 302 read with 201 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.300/- in default to undergo simple imprisonment for a period of one year. A1 and A2 were also found guilty for the charges under Section 201 read with 34 IPC and were sentenced to undergo simple imprisonment for five years and to pay fine of Rs.100/- each in default to suffer simple imprisonment for six months each. Both the sentences against A1 were directed to run concurrently.

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

PW1 is the mother of the deceased, PW2 is the brother-in-law of PW1, PW6 is the husband of the deceased and younger brother of A2, and A1 is the son of A2. The accused used to reside along with PW6 and the deceased at Bollanaguddam village of Bommanahal Mandal. About (15) years prior to the date of incident, PW6 married one Nagamma. Later on, disputes arose between them, which led to both of them parting ways within one year after the marriage. Since then, PW6 has been residing along with the accused. About three years prior to the date of incident, PW6 married the deceased by name Lakshmi. About a month prior to the date of incident, the deceased came to the house of PW1 and three days prior to the date of incident, she, along with PW6, returned back to their village. Four days after the Nagulachavithi festival, PW6 telephoned to PW1 and informed that the deceased died due to house collapse. She, along with her husband and others went to the village of PW6 and found the deceased in the bathroom of the house in sitting position with head injuries. When they reached their house, PW6 was present, but the accused were not present.

3. Basing on the information furnished by PW6, PW1 lodged a report in Bommanahal Police Station, before PW12-the Sub Inspector of Police, which is placed on record as Ex.P1. The same came to be registered as Crime No. 39 of 2010 under Section 174 Cr.P.C. Ex.P2 is the original First Information Report. Later, a requisition was sent to the Executive Magistrate for holding inquest over the dead body of the deceased, to know the primary cause of

death. Ex.P7 is the said requisition. Thereafter, PW12 proceeded to the scene of offence, which is the house of the deceased, and in the presence of PWs 1 and 2 and others, examined the scene. Thereafter, he conducted inquest over the dead body in the presence of PWs 8 and 9. Ex.P6 is the inquest report. After conducting the inquest, the body was sent for post mortem examination.

4. PW10-the Senior Public Health Officer, Community Health and Nutrition Centre, Rayadurg conducted autopsy over the dead body of the deceased and issued Exhibit P8-the Post Mortem Report. According to him, the cause of death was due to head injury.

5. On 28.09.2010, while PW13-the Circle Inspector of Police was in Bommanahal police station, PW3 came to the police station along with A1 and A2 and presented the extra judicial confession of the accused, which was reduced to writing. Ex.P2 is said to be the extra judicial confession made by the accused before PW3. Basing on the same, PW13 arrested the accused and directed PW12 to alter the section of law from 174 to 302 and 201 read with 34 IPC. Ex.P13 is the altered F.I.R. PW13 proceeded with the investigation and went through the investigation done by PW12. His evidence discloses that on interrogation, the accused confessed about the commission of the offence, and their confession led to recovery of a cart peg and a crowbar, alleged to have been used in the commission of the offence. M.Os 1 and 2 are the two weapons

recovered under Ex.P11. The evidence of PW13 would show that on the same day, he visited the scene of offence, i.e., the house of the accused at 6 p.m., and prepared a rough sketch. Ex.P14 is the rough sketch and Ex.P10 is the observation-cum-seizure mahazar. After collecting all the necessary documents, a charge sheet came to be filed, which was taken on file as PRC No. 31 of 2010 on the file of the Judicial Magistrate of First Class, Rayadurg. On appearance, copies of the documents were furnished and after satisfying the requirements of Section 207 of Cr.P.C., and since the case is triable by the Court of Sessions, the same was committed to the Court of Sessions, where it came to be numbered as S.C.No. 596 of 2010 on the file of the Court of the Sessions Division of Anantapur at Anantapur. Basing on the material on record, charges for the offences punishable under Sections 302 and 201 read with 34 of IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

6. In support of its case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P14 and M.Os.1 and 2. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

7. Though there are no eye witnesses to the incident, having regard to the extra judicial confession made by the accused before

PW3 and the motive for the accused to commit the crime, the learned Sessions Judge convicted the accused under Sections 302 and 201 read with 34 IPC. Challenging the same, the present appeal came to be filed.

8. The learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events connecting the accused with the crime. According to him, there is sufficient material on record to show that it was a case of accidental death. He took us through the First Information Report, inquest, the evidence of PWs 8 and 9, coupled with the evidence of PWs 1 and 4, to show that it was a case of accidental death.

9. On the other hand, the learned Public Prosecutor opposed the same, contending that if really it was a case of accidental death, the conduct of the accused, who were present in the house, would have been different. According to him, after causing the death of the deceased, the metal pole came to be placed on the head of the deceased to show as if it was an accidental death. Hence, pleads that the judgment of the Sessions Court requires no interference.

10. The point for consideration is whether the accused are responsible for the offences alleged against them.

11. The material on record would show that there are no eye witnesses to the incident, and the case rests on circumstantial evidence. The question is whether the circumstances relied upon

by the prosecution do form a chain of events to connect the accused with the crime.

12. In order to appreciate the rival arguments, it would be appropriate to refer to the evidence of PWs 1, 4, 8 and 9 coupled with the version in Exs. P1, the report given by PW1 and P6-the inquest report. The law was set into motion by PW1, who lodged the First Information Report. Admittedly, PW1, who is the mother of the deceased, was living elsewhere in a different village. Basing on the information furnished by PW6, she, along with the other villagers, went to the scene of offence, i.e., the house of the deceased, where she was informed that the bathroom wall collapsed, leading to the metal iron rod falling over the head of the deceased, causing her death. Basing on the information which was furnished to her, PW1 lodged the First Information Report before PW12-the investigating officer. In the First Information Report, which was given at about 10.30 a.m., on 08.09.2010, it was mentioned that since the date of marriage, her daughter (deceased) and son-in-law lived happily and about five days back, both of them came back to Bollanaguddam village, from their house. On 08.09.2010, at about 7 a.m., PW1 was informed through telephonic message that their daughter died, as the metal rod in the roof of the house fell on her. Basing on the said information furnished by PW1, a criminal case came to be registered for an offence punishable under Section 174 Cr.P.C. Immediately thereafter, inquest came to be conducted.

13. PWs 8 and 9 are the two witnesses who were examined to speak to the inquest proceedings. In his evidence, PW8 states that on 08.09.2010, at about 10.30 a.m., he was summoned by the Sub Inspector of Police to attend the inquest proceedings on the dead body of the deceased at the house of the deceased in Bollanaguddam village. According to him, inquest was held in the presence of the Deputy Tahsildar and blood relatives, and they noticed a head injury to the deceased. All of them opined that the deceased met with an accidental death. PW8 also deposed that the Deputy Tahsildar seized the clothes of the deceased in their presence, and that Ex.P6 is the inquest report.

14. It is to be noted here that PW8 was never treated hostile, as he did not resile from his earlier statement before the police during 161 Cr.P.C examination.

15. The other witness who was examined to speak to the inquest proceedings is PW9-the INcharge Tahsildar, Bommanahal, who was also working as Deputy Tahsildar during the relevant period. According to him, on 08.09.2010, the Sub Inspector, Bommanahal gave a requisition to the Tahsildar to conduct inquest over the dead body of the deceased. Ex.P7 is the said requisition. On the instructions of the Tahsildar, PW9 went to Bollanaguddam village and conducted inquest over the dead body of the deceased in the presence of PW8. During inquest, the clothes of the deceased were seized and on the basis of the material available and the statements of the witnesses, PW9 and others opined that Lakshmi

died due to falling of an angular on her head in the bathroom of the house. Since the witness never resiled from the earlier statement, he was not declared hostile. But, however, strangely, a different version is sought to be projected in the inquest, stating as if the deceased was done to death by both the accused on the intervening night of 07.09.2010 and 08.09.2010.

16. It is a well established principle of law that inquest report is not a substantial piece of evidence, and the same can only be used to know the cause of death. But, in a case of this nature, since the case rests on circumstantial evidence, and as the prosecution has mainly relied upon the circumstance with regard to the cause of death of the deceased in the house of the accused, we feel that it would be appropriate to give importance to the inquest report. As observed by us earlier, PWs 8 and 9 are the two witnesses who were examined by the prosecution to speak to the inquest report. They categorically state that the cause of death was due to fall of an angular, and not because of A1 and A2 causing the death.

17. At this stage, it is to be noted that even PW1, in the First Information Report, categorically states that the death of the deceased was due to collapse of the wall, leading to an angular falling on her head. However, in the cross-examination, she tries to give a complete go-by to what she has stated in the First Information Report, stating that PW6 gave false information to her, and goes back even on the contents of the First Information Report.

18. Be that as it may, the other evidence which is sought to be pressed into service by the prosecution is the evidence of PW4, who claims to have heard some cries on the intervening night of 07.09.2010 and 08.09.2010 at 9.30 p.m., and on the next day morning, he enquiring with A2 as to what happened. He also claims to have gone inside the house on the next day morning and saw collapse of the wall of the kitchen and also the angular lying on the head of the deceased. It would be useful to extract the evidence of PW4, which is as under:

“The deceased Lakshmi died 8 to 9 months back. On that day, I was present in the house during afternoon. On the previous night at about 9.30 PM, I saw the deceased in front of her house enquired whether she had dinner. By giving answer to me, she went away and I slept in my house. During midnight, we heard some sounds and came out of the house. I saw A1 coming out of their house. I asked him what was the sound heard by us from the side of their house. He gave some evasive reply stating that nothing was there significant. He again went inside his house and I went to bed.

After day break, at about 5.30 AM, A2 came and woke me up and informed that the wife of Govindu died. I went to their house and saw the wife of Govindu inside their bath room in sitting position. One angular was found on her head. A portion of wall of the bath room was found pushed down. I came back to my house. Later, I telephoned to Village Secretary about the incident. We all suspected that A1 and A2 were responsible for the death of the deceased. Police examined me.”

19. Though PW4, in his evidence, states that they suspected A1 and A2 as the persons responsible for the death of the deceased, but, no charge was framed against A2 for causing the death of the

deceased. In fact, there is absolutely no material to show that A2 was present in the house on that day. On the other hand, it has come on record that normally A2 would sleep in the pail in front of the house and some times he sleeps inside. He also admits that A1 also sleeps at the temple and at times, inside the house. From the evidence of this witness, it is clear that when he went into the house of the accused, on receipt of information from A2 on the next day at 5.30 a.m., he noticed a portion of the wall of the bathroom collapsed and an angular on the head of the deceased. From the material on record, which we have referred to earlier, i.e., right from the First Information Report, inquest, evidence of PW1 and evidence of PW4, there is positive evidence to show that there was a collapse of wall in the kitchen and an angular on the head of the deceased. Definitely, one cannot expect the accused to demolish the wall and project the case as if it was a case of accident. If really the accused have resorted to the act of intentionally breaking down the kitchen wall, it would have attracted the attention of the neighbours and they would have questioned as to why they were breaking the wall in the middle of the night.

20. PW6, though declared hostile, in his evidence, deposed that there was falling of mud from the roof of their house and they are attending to repairs as and when necessary. He also stated that he kept a pole on the roof to avert a fall.

21. Having regard to all the circumstances, a doubt arises as to whether it was a case of homicide or a case of accidental death. At this stage, the learned Public Prosecutor would contend that since the presence of A1 in the house stands established, an inference has to be drawn that it was A1 alone who was responsible for the death of the deceased. Even assuming, for the sake of argument, that the death was homicidal, there is no positive evidence to show that A1 alone was in the house at the time of incident. It is, no doubt, true that when PW4 came out of the house, he saw A1 coming out of their house, and when asked him regarding the sound heard by them from the side of their house, he gave some evasive reply. Subsequently, A1 went inside his house and PW4 went to bed.

22. But, the evidence of PW1 would show that apart from A1 and A2, PW6, the deceased and LW13 were living in the house. If really it is a case of homicide, the possibility of PW6 committing the crime, also cannot be ruled out. At this stage, it is urged that there is no evidence to show that PW6 was present in the house at that time. But, there is no evidence to show that he was not present in the house on that night. On the other hand, the evidence of PW1 shows that two days prior to the incident, PW6 took the deceased to his house, and on the next day morning, at 7 a.m., got a call from PW6 informing him about the death of the deceased due to fall of an angular on her head. It is not the case of PW6 that only A1 was present in the house on that night.

23. Having regard to the above, we feel that even assuming it is a case of homicide, the liability cannot be fixed on A1 alone, when the charge shows that A1 and A2 caused disappearance of the evidence.

24. The next circumstance which is relied upon by the prosecution is the extra judicial confession made by the accused before PW3. It is a well established principle of law that extra judicial confession is a weak type of evidence, the contents of which require corroboration in all material aspects. In the instant case, both the accused are alleged to have gone to PW3, who was working as a Senior Assistant in Taluk Office, Bommanahal Taluk, Anantapur District and made an extra judicial confession, disclosing the commission of the offence. In his evidence in chief, PW3 states that the confession statement recorded by him is Ex.P2 and he obtained the signatures of the accused on Ex.P2. But, however, in the cross-examination, he gives a twist to what he has stated in chief examination. He admits that he did not scribe Ex.P2 and that a villager scribed the same. He further admits that soon after recording the confession, he proceeded to the police station, but, he also admits that he does not even know the name of the person who scribed Ex.P2. He further states that some person who came to his office on his own purpose, reduced the statement into writing.

25. In the above circumstances, we feel that it may not be safe to rely on Ex.P2 to connect the accused with the crime, more so,

when the version of PW3 in chief, is to the effect that he himself recorded the confession statement, which was given a go-by in cross, stating that someone reduced the same into writing and he is not the scribe of Ex.P2. Hence, the extra judicial confession, which is sought to be pressed into service by the prosecution to connect the accused with the crime, as one of the links in the chain of circumstances connecting the accused with the crime, cannot be relied upon.

26. For the reasons stated above, we feel that it is a case where benefit of doubt be extended to the accused, and accordingly, both the accused are acquitted of the charges leveled against them.

27. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused in the judgment dated 03.10.2011, in Sessions Case No.596 of 2010, on the file of the Court of Sessions, Anantapur Division, Anantapur, for the offences punishable under Section 302 and 201 read with 34 I.P.C. is set aside and they are acquitted for the said offences. Consequently, the appellants/accused shall be set at liberty forthwith, if not required in any other case. Miscellaneous petitions pending, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

23.07.2018
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