

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.189 of 2012

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

A1 and A2 in Sessions Case No. 187 of 2010 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Markapur, were tried on two charges. The first charge was under Section 302 IPC and the second charge was under Section 201 IPC. Vide judgment dated 03.02.2012, the learned Additional Sessions Judge, while acquitting A1 of both the charges, convicted A2 for the offence punishable under Section 302 IPC and sentenced her to suffer imprisonment for life and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of two months. She was further convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment for three years and a fine of Rs.500/- in default to undergo simple imprisonment for a period of one month. Both the sentences were directed to run concurrently.

2. The gravamen of the charge against the accused is that on the intervening night of 21.05.2006 and 22.05.2016, the accused caused the death of Bommathoti Hanumantha Rao, by throttling him to death, in his house situated in Sankarapuram Village.

3. The facts, as disclosed from the evidence of the prosecution witnesses, are as under:

A2, who is the appellant herein, is the wife of the deceased, while A1 is her paramour. PW1 and PW2 are the brothers of the deceased, while PW3 is his mother. PW4 is the son of A2 and the deceased, while PW5 is the brother-in-law of PWs 1 and 2. PW6 is the son of PW1. PW7 is also related to the family of PW1 and the deceased.

4. On 22nd May, 2006, PW1 had been to Boddavaripalem, which is his in-laws place, to attend private electrical works. As he could not complete the work on that day, he stayed back in the said village. On the next day, at about 6.30 a.m., A2 telephoned to him, stating that her husband-the deceased herein took cheap liquor, mixed it with poison and thums up, and died on the night of 22.05.2006 in his house. The said information about the death of the deceased was furnished by A2 to PWs 2 and 3 as well. On receiving the said information, all of them rushed to the house of the deceased and noticed rat poison and bottles of whisky by the side of the dead body. Thereafter, rituals were performed and the dead body was cremated on the same day at 12 noon. After the cremation, a rumour spread in the village that A2, who was having illicit intimacy with A1, conspired with him and caused the death of the deceased.

5. PW4, who is the son of the deceased, states that on the date of incident, he was sleeping in the verandah of the house, along

with his mother A2. At about 4 a.m., his mother woke him up and informed him about the death of the deceased. Thereafter, she is said to have gone to the house of PW1 to inform about the death of the deceased. PW4 is said to have rushed towards the dead body of his father and found rat poison, coke bottle with little bit quantity and cut injuries on his father's left hand with closed grip, having an ear stud of his mother. PW4, in his evidence states that as the deceased suspected illicit intimacy between A1 and A2, he did not allow A2 to go out of the house, for that reason, the accused might have killed the deceased. He further states that A1 used to visit their house frequently, in the absence of his father and spend time in the house. The evidence of PW4 further shows that A2 used to threaten him not to disclose the visit of A1 to the deceased.

6. PW1, in his evidence, deposed that after the dead body of the deceased was buried, he was informed by the villagers about swelling of the testicles of the deceased and marks of violence on his neck, apart from blood oozing from the nostrils and testicles. In view of the suspicion expressed by the villagers and also by the colony people, PW1 approached the Gram Panchayat Secretary; prepared a report with his help and then approached the concerned Station House Officer. On 25.05.2006, PW1 lodged a report, suspecting the death of the deceased, whose body was buried at Sankarapuram burial ground. Ex.P1 is the report submitted by PW1. PW13-Station House Officer, Mundlamuru

Police Station registered the same as Crime No. 28 of 2007 and issued Ex.P11-F.I.R.

7. PW13 proceeded with the investigation of this case and prepared a scene of offence observation report in the presence of PW11 and also a rough sketch of the scene, which is marked as Ex.P13. He also got the scene of offence photographed with the help of PW8. At the scene of offence, he examined PWs 1 to 8 and recorded their statements. In view of the suspicion over the death of the deceased, PW13 gave a requisition to PW14 for exhuming the dead body of the deceased for holding inquest. Accordingly, he proceeded to the burial ground of Sankarapuram along with the Mandal Revenue Officer, Mundlamuru and Medical Officer, Community Health Centre, Darsi and conducted inquest over the dead body. Ex.P5 is the inquest report. Thereafter, he handed over the body to the medical officer for post mortem examination. Though the medical officer who conducted post mortem, was not examined, PW16 was examined to identify the signature of the medical officer on Ex.P17-the post mortem certificate. The material objects seized by the medical officer during post mortem examination were forwarded to R.F.S.L., Guntur for analysis and to find out the cause of death.

8. On 30.05.2006, PW14 examined PWs 9 and 10 and recorded their statements. On the same day, at about 2 p.m., while he was in his office, PW11 came to his office along with A1 and handed over him along with his confession statement and the report

prepared by him. Basing on the same, he arrested the accused and interrogated him in the presence of PW11 and another. During interrogation, A1 is alleged to have admitted his guilt in the commission of the offence. Accordingly, the section of law was altered to 302 IPC. Thereafter, they proceeded to the house of A2 and took her into custody while she was in her house. On interrogation in the presence of PW11, she confessed her guilt. Pursuant to the confession made, they seized rat poison packet, sleeping pills, empty brandy bottle and thumbs up bottle, which are marked as M.O.s 1 to 4. On receipt of the R.F.S.L report and the post mortem certificate, PW14 filed the charge sheet, which was taken on file as PRC No. 15 of 2008 on the file of the Judicial Magistrate of First Class, Darsi. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 187 of 2010 on the file of the VI Additional District and Sessions Judge, Fast Track Court, Markapur. Basing on the material on record, a charge for the offence punishable under Section 302 IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

9. In support of its case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P18 and M.Os.1 to 4. 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. The accused examined DW1 and got marked Exs. D1 and D2 in support of their defence.

10. Relying on the evidence of PWs 1 to 7, coupled with the post mortem certificate and R.F.S.L report, the learned Sessions Judge, while acquitting A1, convicted A2 under Sections 302 and 201 IPC and sentenced her to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

11. Sri N.Pavi Prasad, 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 to connect the accused with the crime. According to him, the only circumstance which the prosecution tried to prove, was the presence of A2 in the house at the time of incident, through the evidence of PW4. But, according to him, the version of PW4, which is a complete improvement from what he has stated in his earlier statement, does not inspire confidence to base a conviction. The learned counsel further submits that the defence of A2, right from the beginning, was that she was not present in the house on the date of incident, which is probabalized not only through the evidence of the prosecution witnesses but also through the evidence of DW1. He further submits that having disbelieved the evidence of PW4 to a major extent, and also the evidence of PWs 9 and 10, the trial court erred in convicting A2, more so, when PWs 2 and 3 were declared hostile by the prosecution. In other words, he would submit that the circumstances relied upon by the

prosecution are not proved and though proved, do not form a chain of events connecting the accused with the crime.

12. On the other hand, the learned Public Prosecutor opposed the same, contending that the evidence of PW4 establishes the presence of A2 in the house on the date of incident, and in the absence of any plausible explanation given by A2 as to the cause of death, pleads that it is a fit case where the appellant should be convicted for the offence punishable under Section 302 IPC.

13. The point that arises for consideration is whether the appellant-A2 is responsible for the death of the deceased?

14. As stated earlier, PW4 is none other than the son of the appellant and deceased. His evidence assumes significance, as he claims to be present in the house on the date of the incident, along with his mother. We will deal with the evidence of PW4 a little later, but, before that, it would be appropriate to refer to the other evidence on record to find out as to whether the same is of any help to establish the culpability of A2 in the crime.

15. PW1 is the brother of the deceased. In his evidence, he deposed that on 22.05.2006, he went to Boddavaripalem to attend to some private electrical works, and as the work could not be completed, he stayed in the said village on that night. On the next day, at about 6.30 a.m., A2 telephoned to him, stating that the deceased consumed cheap liquor, mixed with poison and thums up, and died on that night. The said information was also furnished by A2 to PW2 and others. On receipt of the information, PW1 is said

to have reached the house at 8.30 a.m., by which time all other villagers and relatives of PW1 were present. When enquired as to how the deceased died, A2 reiterated the information furnished to him on phone. Since they did not suspect the cause of death and as they believed the version of A2, they completed the rituals and buried the dead body at 12.30 noon on the same day. The fact of burying the dead body on that day, at about 12.30 noon, on the basis of the information furnished by A2, stands established through the evidence of PWs 2, 3, 4 and others. After burying the body of the deceased, there was a rumour in the village as to the cause of death of the deceased. In view of the suspicion expressed by the villagers and also by the colony people, the dead body was subsequently exhumed, followed by inquest and post mortem.

16. With regard to the injuries on the body of the deceased and the illicit intimacy between A1 and A2, PW1, in his cross-examination, deposed as follows:

“I was not told by A2 on phone about the details of death such as taking of cheap liquor with poison. It is true I did not tell to the police about the illegal intimacy in between A1 and A2 and nothing was stated by me before the police. It is true I did not tell to the police about swelling of testicles of deceased, markings on his throat and oozing of blood at testicles and nose. It is not true to say that I did not tell to the police about furnishing of the above referred details of injuries by to me by our colony

people. It is true in Ex.P1 report the above referred details are not mentioned.”

17. PW5, who is the brother-in-law of A1 by courtesy, in his evidence, states that A1 and A2 were having illicit intimacy since last ten years. He, in his evidence, deposed that on examination of the dead body at the house of the deceased, noticed swelling of testicles and contusion on the neck of the deceased. When he questioned A2 about the same, she pleaded ignorance. However, he states that he never informed about the same to anybody, but allowed the formalities to be completed at 12 noon. Thereafter, he, along with the villagers, expressed doubt about the death of the deceased, and suspected the involvement of A1 and A2 in the death of the deceased. Accordingly, a report came to be lodged on 24.05.2006 by PW1, on the instructions of PW5. Thereafter, the dead body was exhumed, leading to inquest, post mortem and arrest of the accused.

18. Insofar as the alleged illicit intimacy between A1 and A2 is concerned, the prosecution mainly relied upon the evidence of PWs 1 and 5. But, in his cross-examination, PW5 admits that he did not tell to the police about the illicit intimacy between A1 and A2. So does PW1 in his cross-examination, which was referred to earlier. The suggestion that he (PW5) did not tell the police about the doubts raised by him and other villagers with regard to the death of the deceased, was denied by him. He further admits that PW1 was also very close to him. PW14, in his evidence, also states that

PW5 did not tell him about the suspicion of the villagers on A1 and A2 in the death of the deceased.

19. From the evidence of PWs 1 and 5, it is clear that the alleged illicit intimacy between A1 and A2 was not spoken to by them in their earlier statement recorded by the police during the course of the investigation, and for the first time, spoke about the same in their evidence. The evidence of PW5 further shows that he did not inform the police about the suspicion entertained by the villagers with regard to the cause of death of the deceased. Though PWs 2 and 3, in their evidence, deposed about the information furnished by A2 at 8 a.m., and they coming over to the scene of offence and enquiring A2 about the cause of death, none of them spoke about any illicit relationship between A1 and A2, nor did they suspect the involvement of A2 in the commission of the offence. Without any suspicion, they allowed the rituals to be performed. But, in the later part of their evidence, they did not toe in line with the prosecution, and as such, were declared hostile by the prosecution.

20. The evidence of PW6 also shows that on 23.05.2006, he was informed by A2 about the death of the deceased, pursuant to which he, along with his younger brother, Raghuram visited the house of the deceased and noticed the deceased lying on the floor. They tried to move him, but, there was no response. After touching his body, they confirmed that he was dead. They also noticed a cheap liquor bottle with liquor, empty rat poison and

empty thumbs up bottle. Believing the version given by A2, they allowed the dead body to be cremated.

21. In the cross-examination, he admits that on the date of cremation, police visited their village in relation to some other case, but, they did not enquire him. He further admits that since they did not suspect the involvement of the accused, the same was not informed to the police. Apart from that, his evidence shows that all their colony people attended chinna karma at the burial ground, but, no one expressed any suspicion over the death of the deceased. It was not specifically told by any of the colony people regarding the involvement of A1 and A2 in the commission of the offence. His evidence shows that three days later, i.e., on 25.05.2006, they thought of giving a report through the Panchayat Secretary, as they had some doubt with regard to the cause of death of the deceased. He further admits that in his earlier statement, he never told the Inspector of Police about noticing liquor bottle, thumbs up bottle and rat poison packet by the side of the dead body.

22. PW7, who is also a neighbour, came to the scene of offence on the receipt of information from A2 and enquired A2 as to the reason for the death of the deceased. According to him, he was informed that the deceased committed suicide by taking poison by mixing it with cheap liquor and thumbs up. His evidence in chief shows that he noticed two bottles of cheap liquor, thumbs up bottle

half in quantity and two half empty rat poison packets. Without expressing any doubt, the dead body was allowed to be cremated.

23. PW7 denied the suggestions given, but admits that he did not inform the police about the existence of rat poison packets, whisky bottle and soft drink bottle by the side of the body of the deceased. The said fact also came to be elicited through the evidence of PW14, wherein he admits that PW7 never informed him about the existence of rat poison, whisky bottle and thums up bottle by the side of the body of the deceased.

24. From the evidence of these witnesses, it is clear that none of them have really seen A2 in the house on the date of incident. Their evidence is only to the effect that on the next day of the incident, i.e., on 23.05.2006, A2 herself informed them about the death of the deceased, pursuant to which, all of them came to the house of A2, noticed the dead body of the deceased, and allowed the rituals to be performed. The evidence in chief of all these witnesses further show that they noticed some rat poison, whisky bottle and soft drink bottle by the side of the dead body. It is also to be noticed here that no intimation was given about the death of the deceased to the police, though it was an unnatural death. Three days later, a report is said to have been given to the Panchayat Secretary, who was examined as PW11, expressing suspicion over the death of the deceased. His lodging of report with the police led to exhumation of the dead body, inquest and post mortem on 27.05.2006. Till such time, there was no

suspicion, and none of the witnesses were said to have been examined by the police till then. As stated earlier, even the witnesses who were examined after registration of the crime never spoke about the presence of liquor bottle, rat poison etc., by the side of the body of the deceased. But, one thing that is to be noticed here is that it was suggested to PW1 that A2 was not present in the house at that night and that she had been to Vulavapadu to sell mangoes for her business, and as it was late, she stayed back in the house of DW1. The said version was sought to be established by examining DW1, who is the younger sister of A2. We will deal with the evidence of DW1, if required, at a later point of time.

25. The only other evidence which the prosecution mainly relied upon, to show the involvement of A2, is the evidence of PW4, who is the son of the accused and the deceased. In the evidence in chief, he deposed that on the date of incident, he woke up at 00.30 hours to have water. According to him, he was always sleeping inside the house along with his father, but, on that night, he slept in the outer room along with his mother. When he woke up for water and tried to go inside the house, his mother told him that water was kept near their cot and asked him to take the water. PW4 is said to have taken the water and slept along with this mother. At about 4 a.m., A2 woke PW4 and informed him about the death of his father and then, went to the house of PW1 to inform him about the death of his father. Then, PW4 rushed to his father and found rat poison, coke bottle with little bit quantity

and cut injuries on his father's left hand with closed grip having an ear stud of his mother. Apart from that, he further states that on the date of incident, A1 came to their house, gave tables to A2 and went away. His evidence is to the effect that he was threatened by his mother not to disclose about the visit of A1 to their house and handing over the tables. He submits that as the deceased was suspecting illicit intimacy between A1 and A2, the deceased did not allow A2 to go out of the house and meet A1. As such, the accused must have committed the offence. He further deposed that about three days prior to giving evidence, he went to PW1's house and came to court from PW1's house to give evidence. He admits that he is staying in a hostel at Boddikurapadu, and that one, Chandra Mohan, who is his uncle, takes care of him. His evidence is to the effect that police visited their house on the date of his father's death at 9 a.m., and made enquiries. He further admits that one week after the death of his father, he was examined by the police. He further submits that he was examined by the police at the house of one Ramanjaneyulu during afternoon. He also states that during his examination, the wife of PW1, PW3 and relatives were present with him, and that he alone was examined on that day. The suggestion that he did not tell the police about waking up during midnight for water and rejection of permission by A2 to go into the house on the night of occurrence, was denied by him. The suggestion that he noticed the injuries on the left hand of his father and found the ear stud of his mother in

the hand of his father, was denied by him. He also denied the suggestion that he was beaten by A2.

26. But, PW14, in his evidence, states that the evidence of PW4 is silent on many aspects. In order to appreciate the same, it would be useful to refer to the relevant portion of the evidence of PW14, which reads as follows:

“PW4 had not stated before me that he woke up during midnight on the night of death of deceased to attend to nature of calls and his prevention by his mother A2 from entering into the house to take water on the pretext that water tumbler is available underneath the cot, and about the illicit intimacy in between A1 and A2 visit of A1 to his house on that day in the afternoon for giving tablets and death of deceased in the hands of A1 and A2. He did not even state before me that his mother threatened and beat him if he reveals the affair in between A1 and A2 and about giving of tablets by A1 to A2 on that date. He did not state before me about noticing of ear studs in the hands of deceased said to have been closed by the time of his death and about A1's frequent visits to his house and spending of time by him with A2 in the absence of deceased. He did not even state before me about noticing of M.Os 1 to 4 by him beside the dead body.”

27. From the evidence of PW4 vis-à-vis the evidence of PW14-the investigating officer, it is clear that the evidence of PW4 in court is

a complete improvement of what he has stated in his earlier statement. It is not only an improvement from what he has stated in the earlier statement, but it appears to be a very exaggerated one. He goes to the extent of saying that the ear studs of his mother were in the hands of the deceased when he went and saw him. But, the same does not find place, not only in his earlier statement, but, also in the evidence of other witnesses. There is also no evidence on record to show that either the ear lobe of A2 was cut or that the jewellery of A2 was missing. In fact, none of the witnesses who were present at the spot at that time, spoke about this fact. It is also to be noted here that PW1, who claims to be the first person to enter the house and who is said to have seen M.Os 1 to 4 by the side of the dead body, did not mention about the same in his evidence. If really, the fist was closed with a piece of ear lobe and jewellery, none would have missed to notice it, or at least the injury to the ear of A2.

28. The evidence of PW4 with regard to A1 visiting the house of the deceased on that day and handing over tablets, suspecting mixing of the same in the whisky to be consumed by the deceased on that night, is also an improvement. Hence, we feel that the evidence of PW4 has to be viewed the suspicion, and the same cannot be accepted, in the absence of any corroboration to his evidence.

29. The evidence of PWs 1, 5 and 7 to the effect that the death of the deceased was due to administration of poison, is not

supported by the post mortem certificate. The doctor who conducted post mortem, in his evidence, categorically states that the cause of death was due to throttling or smothering. Even the doctor was not sure as to how the deceased died, viz., as to whether it was a cause of throttling or smothering. No conclusive evidence was placed by the prosecution to establish the same. Merely because PW4, in his earlier statement, spoke about the presence of A2 in the house at that time, does not lead to an irresistible conclusion that it was she alone who was responsible for the death of the deceased, in the manner suggested by the prosecution. In fact, the learned Sessions Judge, while holding that the evidence of PW4 is far from reality, still believed his evidence with regard to the presence of A2 and convicted the accused. But, as observed by us earlier, when the evidence of PW4 is to be viewed with suspicion, it may not be safe to rely upon his evidence to show the presence of A2 in the house on the night of the incident and connect her with the crime, when the cause of death, as projected by the prosecution is different from what has been stated by the doctor who conducted post mortem.

30. Further, the Apex Court in a judgment reported in, *ANJAN KUMAR SARMA AND OTHERS v. STATE OF ASSAM*¹, allowed the appeal, holding that mere absence of satisfactory explanation by the accused in the circumstances of last seen together, by itself, is not sufficient to base a conviction.

¹2017 (2) ALD (CrI.) 373 (SC)

31. Since the case on hand is based on a solitary circumstance of A2 being present in the house, along with others, on the date of incident, and as the said circumstance is also not cogently and conclusively established by the prosecution, we feel that it is a fit case where benefit of doubt can be extended to A2.

32. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 03.02.2012 in Sessions Case No. 187 OF 2010, on the file of the VI Additional District and Sessions Judge, (Fast Track Court), Markapur, for the offence punishable under Section 302 IPC is set aside and she is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case. Miscellaneous applications pending, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

10.07.2018
DMG