

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

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HON' BLE SMT JUSTICE T. RAJANI

CrI.A. No. 1022 of 2011

JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This Criminal Appeal is preferred against the judgment dated 19.04.2011 delivered in S.C.No. 217 of 2010 by I Additional Sessions Judge, Rajahmundry, East Godavari District, whereby the appellant - accused was found guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced to undergo imprisonment for life and pay fine of Rs.5000/-, in default, to suffer Simple Imprisonment for six months.

The brief case of the prosecution is that PW1, who is resident of Sirampuram of Rajanagaram Mandal, married one Chandra and begot two sons. The first son, Rajesh is aged 13 years and the second son, Teja is aged 11 years. The wife of PW1 passed away about 7 years ago due to ill-health. After her demise, her elder son - Rajesh started living with his maternal grandparents at Velugubanda and the younger son - Teja was residing with his father – PW1. The accused - Buli Kasulu, originally, resident of Garagapadu of Chagallu Mandal, married one Venkat Rao through whom she begot a daughter by name Durga. Subsequently, there were some misunderstandings between the accused and her husband,

therefore, she abandoned him, who, afterwards died. After the death of her husband, the accused came has been staying with her sister – Nookaratnam at Sirampuram. PW1 used to visit the house of the sister of the accused and developed intimacy with the accused. Six months prior to the incident, there was a mutual understanding between PW1 and the accused wherein PW1 agreed to give Rs.50,000/- to the accused for maintenance and performing her daughter's marriage and the accused has to look after Teja and live with PW1. Accordingly, the accused and PW1 were living in the house of PW1 as his mistress and her daughter Durga was also staying in the same house. The accused, very often used to complain to PW1 that his younger son - Teja was not paying heed to her words and retorting her. The accused also used to express her grievance that Teja was lying by the side of PW1 during night time, as such, PW1 was not coming to her bed, thus, Teja became a hurdle and causing discomfort to her and she would kill him. About two months prior to the incident, the accused sent her daughter Durga to her parents' place. On 07.09.2009, PW1 went to his fields at Somavaram, Kirlampudi Mandal. Before PW1 left for the fields, the accused asked for his permission to go to Garagapadu to see her daughter Durga who was not doing well. Then, PW1 asked the accused to wait till he returns from Somavaram since Teja

would be alone at home. From 07.09.2009, the deceased – Teja and the accused were staying in the house. On the mid-night of 12/ 13.09.2009 at 01:00 a.m., PWs.4 and 5 heard cries from the house of PW1, went there and found Teja lying on the floor with contusion on his neck. When they raised cries, PW3 –Adimulam Arjamma also came there and saw Teja dead. PW3 informed the matter over phone to Teja's father - PW1, who came home at about 04:00 a.m. from the fields. When PW1 questioned the accused as to how the Teja died, she confessed that she killed him by strangulating his neck with a nylon rope as the deceased did not pay any heed to her words and retorted her and became a hurdle between her and PW1. Thereafter, the accused escaped from the scene of offence. PW1 presented Ex.P1 –report to the Station House Officer, Rajanagaram Police Station, who registered an FIR – Ex.P9 on 13.09.2009 at 09:00 a.m. and furnished copies to PW11 - Inspector of Police, who secured the presence of PW8. LW13 observed the scene of offence in their presence on 13.09.2009 and got drafted mediators report - Ex.P4. He conducted inquest over the dead body of the deceased in the presence of PW8 and other inquestdars, prepared Ex.P10 - rough sketch of the scene of offence, got photographed the dead body of the deceased and sent the same for postmortem examination. He examined 7 witnesses.

Further investigation was conducted by PW12, who examined LWs.9 and 10 and recorded their statements. On receipt of telephonic information from PW1 about the presence of the accused, PW12 secured the presence of mediators and proceeded to Kotilingala Revu of Rajahmundry along with a woman P.C. and other constables and apprehended the accused. The accused confessed about the commission of offence and was arrested. A white bag – M.O.6. consisting of Saree and MO4 - a small piece of nylon rope were seized under cover of mediators report. PW12 proceeded to Sreerampuram along with the mediators. The accused entered the kitchen and showed a knife – M.O.2 with which she cut the rope. She went to the eastern side wall of the kitchen and showed the rope with which she strangled the deceased. PW12 seized the material objects covered under Ex.P7 – panchanama in the presence of the mediators. Next day, the accused was remanded to judicial custody. Dr.Ch.Anand Kumar, who conducted autopsy over the dead body of the deceased, opined that the cause for the death of the deceased is due to ante-mortem asphyxia due to ligature mark on the neck and there is possibility of homicide in nature and strangulation of neck. Ex.P8 is the Postmortem report. On 19.09.2009, PW12 prepared requisition along with letter of advice, forwarded the material objects to FSL Hyderabad and

on receipt of FSL and Postmortem reports, filed charge sheet against the accused.

Charge under Section 302 IPC was framed against the appellant, read over and explained to her in Telugu and she denied it and claimed to be tried.

To substantiate the case of the prosecution, it examined PWs.1 to 12 and got marked Exs.P1 to P12 and M.Os.1 to 9.

After closure of the prosecution evidence, the appellant – accused was examined under Section 313 Cr.P.C. wherein she pleaded not guilty and denied the incriminating evidence led against her by the prosecution.

When the accused was asked to enter upon her defence, initially she stated that she would examine witnesses in her defence, but ultimately she did not examine any witness. The trial Court, based on the evidence adduced by the prosecution witnesses, convicted and sentenced the appellant for the charged offence.

The learned counsel for the appellant submits that there is no eye-witness in the present case. The case entirely rests on the circumstantial evidence. The chain of evidence is not complete, therefore, the trial Court wrongly convicted the appellant. He has further argued that the prosecution, in order to attribute motive to the accused to kill the deceased, tried to develop a theory that there were differences between

the deceased and the daughter of the accused and the deceased did not pay any heed to the words of the accused and became an obstacle between the accused and PW1 to lead their conjugal life. Whereas, PW2 admitted that he has no personal knowledge as to what happened between the accused and PW1 inside the house. PW6 is an interested witness, who is the mother of PW1 and PWs.4 and 5 turned hostile to the prosecution case. Therefore, the prosecution has failed to prove that the accused had motive to kill the deceased, however the learned trial Court has ignored the said fact and convicted the accused.

The learned counsel has further contended that PWs.4 and 5, who are the independent witnesses, turned hostile to the prosecution case and they did not speak anything as to what happened inside the house of the accused and did not say anything about the extra judicial confession made by the accused to PW1. Even PW3 did not say that she witnessed as to what happened inside the house, and therefore, there is no iota of evidence to connect the accused with the offence. Somebody might have killed the deceased in the absence of the accused, and PW2, who is the brother-in-law of PW1, got prepared a false report implicating the accused. The learned trial Court has also ignored the aforesaid fact while convicting the appellant.

We have heard the learned counsel for both the parties and perused the material placed on record.

PWs.1 to 6 have specifically deposed that after the death of the husband of the accused, she was staying with her sister at Sreerampuram where PW1 developed intimacy with the accused. There was a mutual agreement between PW1 and the accused that he would pay Rs.50,000/- to her daughter towards maintenance and perform her marriage, and in turn, the accused has to look after PW1 and his younger son - Teja properly. Accordingly, PW1 and the accused started living together along with Teja and Durga, the daughter of the accused. According to the evidence of these witnesses, the status of the accused was a concubine or a mistress. The accused also admitted about these events and her living with PW1, but she claimed in her statement recorded under Section 313 Cr.P.C. examination that PW1 married her in Sreerampuram in the house of the younger sister of her sister's mother-in-law. In order to appreciate the stand taken by the accused in her examination under Section 313 Cr.PC., the suggestion put to PW1 on behalf of the accused during cross-examination is extracted hereunder:

“...It is not true to suggest that my brother-in-law and father-in-law raised serious objection for my keeping the accused as a concubine”.

It is clear from the aforesaid suggestion that the accused also admitted that she started living with PW1 as a concubine but not as a wife. PW1 voluntarily stated that his brother-in-law and father-in-law never objected to keeping the accused as his kept-mistress. PWs.1 to 6 categorically testified in their evidence that about 15 days prior to 07.09.2009, as there were petty quarrels between the deceased and the daughter of the accused, the accused sent her daughter - Durga to her parents' house at Garagapadu.

It is the testimony of the PW1 that there were little quarrels between the daughter of the accused and his son Teja. Now and then, the accused used to inform him about such quarrels and tell that both of them are small children and petty quarrels are common and she should never mind such quarrels. 15 days prior to 07.09.2009, the accused sent her daughter - Durga to her grand-mother's house, at Garagapadu since Teja, the son of PW1 and Durga were quarrelling frequently. It is his further testimony that he used to sleep with Teja during night time. One day, the accused picked up quarrel with him on the ground that he was not sleeping with her during night times. It is also his specific evidence that while he was leaving for Somavaram to his agricultural lands, the accused requested him to permit her to go to Garagapadu to see her daughter as she was feeling

unwell. He asked her to stay at home since the deceased – Teja would be alone. However, she can go to Garagapadu after he came back from the fields. PW1 was queried on behalf of the accused whether he got mentioned in Ex.P1 about this motive and he answered in the affirmative.

Ex.P1 discloses that the accused used to make complaints against the deceased that he is not paying any heed to her words and she also picked up quarrels with PW1 that he was not sleeping with her during nights but sleeping with his son and PW1 appeased the accused that after his son, Teja slept he would come to her. In the last page of Ex.P1, he clearly mentioned that the accused confessed before him that the deceased was not paying heed to her words and he became an obstacle between her and PW1 and due to Teja only PW1 did not send her to Garagapadu to see her daughter and these events prompted her to kill the deceased.

It is pertinent to mention here that a suggestion put to PW2 is also important in this case which is extracted as under:

“It is not true to suggest that myself and my family members raised a dispute before the elders on the ground that the accused was not treating the deceased - Teja properly”.

The aforesaid suggestion establishes that there was a controversy about the treatment of the deceased by the accused. It is the testimony of PW3 that there was a quarrel between PW1 and the accused with regard to the daughter of

the accused. Therefore, her daughter was sent to the house of the parents of the accused. Afterwards, the accused, PW1 and Teja were living together in the house of PW1. In cross-examination, PW3 admitted that he does not know about the quarrel between the children personally but he heard that there was a quarrel between the daughter of the accused and the deceased.

The evidence of PW6 would disclose that there were quarrels between the accused and PW1 since the deceased and the daughter of the accused were quarrelling with each other and the daughter of the accused was sent to her parents' place due to the disputes. PW6 also testified that when she questioned PW1 about the quarrels between them, he told her that the accused demanded him to send Teja from the house since she had already sent her daughter to her parents' house.

It is elicited from PW11, the investigating officer, that PW3 and other witnesses stated that PW1 used to furnish information to them that his son was not paying heed to the words of the accused and these witnesses have got personal knowledge about the disputes. Thus, the aforesaid evidence would clearly establish that there were petty quarrels between the deceased and the daughter of the accused thereby the accused sent her daughter to her parents' place

and the deceased also used to sleep with his father - PW1, thereby, the accused was deprived of her conjugal happiness. It is also the evidence on record that the accused bore grudge since PW1 did not allow her to go to her ailing daughter and asked her to be with the deceased till his arrival from Somavaram.

Ex.P10 – rough sketch would show that the houses of PWs.4 and 5 are located on either side of the house of PW1. The testimony of PW4 – M. Parvathi is that the incident took place about one year three months back at 01:00 a.m. in the mid-night when the accused came and woke her up stating that thieves came to her house. When PW4 questioned about Teja, the accused replied that Teja was not talking to her and PW5. All of them came to the house of PW1 and observed that Teja was lying on the ground with an injury around his neck. On receipt of phone message, PW1 came to his house and cried that the accused killed his son.

The evidence of PW3 is that at about 1 year 3 months ago at 01:00 or 02:00 a.m. in the mid-night, she heard cries from the house of PW1. PW5 came and woke up his father-in-law and informed that the condition of Teja was serious. Afterwards, she telephoned to PW1, and immediately went to the house of PW1 and found the deceased boy Teja lying on

the floor with a rope injury around his neck and PW1 reached the scene of offence at about 04:00 a.m.

The testimony of PW1 is that on 12/ 13.09.2009, at 04:00 a.m., his sister-in-law – PW3 telephoned him stating that the condition of Teja was serious and asked him to come immediately. By the time he came to his house at 05:00 a.m. and saw his son - Teja was found dead lying on the floor with injuries around his neck and the accused was also present there. When he questioned her as to what happened, initially she stated that she did not know how his son died, and later, when himself and his brother-in-law persistently asked her about the cause of death, she stated that somebody came and caused injuries to his son. Initially, PW1 – father of the deceased, who presented a report to the police, also did not incline to support the case of the prosecution about the extra judicial confession made by the accused. Therefore, he was also declared hostile.

It is not in dispute that the prosecution case against the accused rests purely on circumstantial evidence. The accused was aware of the fact that the deceased died in the house while she was very much present in that house. Therefore, the burden lies on her to give explanation for the circumstances under which Teja died. Accordingly, she has

come with an explanation that thieves entered the house and killed the deceased.

PW1, in his cross-examination, admitted that he did not suspect anyone for the death of his son except the accused and there was no scope for the outsiders to come and kill his son. PW5, in his cross-examination, admitted that the thieves did not enter the house of PW1 and there were no traces at the house of PW1 and that the accused did not sustain any injuries. PW6 denied the suggestion that there was a menace of thieves in Sreerampuram village during that time. A specific question was put to PW11 – investigating officer whether there was any access to other persons to enter the house of PW1 and he answered that there was no possibility to enter the house of PW1, kill the deceased and go away from the house without being noticed by the accused and other persons. If Ex.P10 – rough sketch is carefully perused, there are houses on either side of the house of PW1 adjoining each other and there is no access to gain entry from backside of his house. Therefore, the investigating officer has rightly ruled out the possibility of access to third parties to the house of PW1.

The other strong circumstance is that there are no injuries to the accused. If really the thieves entered the house and killed the deceased - Teja, she must have resisted

the same or at least would have raised cries and the people would have come immediately. Besides this fact, if really thieves entered the house, they would have taken away some valuables kept in the house, but there is no report of missing of any articles.

It is pertinent to note that the accused did not stick to her defence which is put to the prosecution witnesses. In her statement recorded under Section 313 Cr.P.C. the accused stated that there was no provision of latrine and bathroom in the house. She went out for latrine to a tank bund while closing the doors to some extent. When she returned, she found the doors completely kept open. On suspicion, she tried to wake up the deceased but he was not talking. Then, she woke up PWs.4 and 5 and informed that the deceased was not talking, and out of fear, she asked them to call his father. By making the aforesaid statement she intended to express her ignorance as to what had happened in her absence and changed her theory by mentioning that thieves entered the house and killed the deceased.

Regarding the extra judicial confession, in cross-examination, PW1 admitted that he stated to the police that when he questioned the accused she informed him that she herself killed the deceased by strangulation by putting a nylon rope around his neck since he became an obstacle between

her and PW1. He further stated that he got mentioned this fact in Ex.P1 besides the fact that the deceased was picking up quarrel with her daughter, Durga and PW1 did not send the accused to Garagapadu and asked her to live with Teja in spite of her request to go to Garagapadu to see her ailing daughter.

PW3, in her chief-examination itself testified that when PW1 questioned the accused as to why she committed murder the accused confessed that she killed the deceased – Teja by putting nylon rope around his neck since he became an obstacle between her and PW1.

PW4, in cross-examination stated that she came to know through the relatives of PW1 that the accused confessed before PW1 that she killed the deceased by putting nylon rope around his neck. This evidence of PW1 is not challenged in the cross-examination on behalf of the accused. PW5 also in his cross-examination stated that PW1, on receipt of telephonic message, came to the house at about 04:00 a.m. When he questioned the accused as to the cause of death of Teja, she confessed that she killed Teja since he became an obstacle between her and PW1. This statement of PW5 is also not challenged in cross-examination on behalf of the accused.

The testimony of PW6 is that on receipt of telephonic message, PW1 came to the house, and after his arrival, PW1

questioned the accused as to what injustice Teja did to her. She replied that she killed the deceased since he became an obstacle for conjugal life between her and PW1 and immediately ran away from the house.

In view of the clinching evidence of the prosecution witnesses, we find no illegality or perversity in the findings recorded by the trial Court. The judgment under appeal is perfectly justified and does not warrant any interference by this Court. The arguments raised on behalf of the appellant do not shatter the credibility of the prosecution case.

Hence, the Criminal Appeal is devoid of merit and the same is accordingly dismissed.

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

19.04.2018

SURESH KUMAR KAIT, J

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T. RAJANI, J