

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.191 of 2014

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

1) Accused No.1 in S.C.No.383 of 2012 on the file of the Metropolitan Sessions Judge, Hyderabad, is the appellant herein. She along with two others, were tried for the offence punishable under Sections 302 and 201 read with 34 IPC. Vide judgment dated 27.01.2014, after a full pledged trial, the learned Sessions Judge, while acquitting accused Nos.2 and 3 for the above charges, convicted and sentenced the appellant/ accused No.1 as under:

U/ s. 302 IPC	To suffer imprisonment for life and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for six months.
U/ s. 201 IPC	To suffer rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a period of three months

Both the sentences were directed to run concurrently.

2) The case of the prosecution is as under:

i) The deceased is said to be the second wife of PW.4, who was a Corporator of MCH, Kanchanbagh, Hyderabad. PW.4 is said to have married the deceased about four or five years prior to date of incident, who was a divorcee having son (PW1) through her first husband. The appellant/ accused No.1 is the first wife of PW.4.

Accused Nos.2 and 3 are the brother and sister-in-law of accused No.1. The deceased and PW.1 were living separately in a different locality, whereas accused No.1 and PW.4 along with two daughters were staying in the third floor of the building in a different locality. In the said building PW.4 is having his office in second floor while the 1st and ground floors were let out to a school. It is said that PW.4 and the deceased were constructing a house in a plot owned by the sister of the deceased. In that connection on 21.09.2011 at about 8.00 a.m., the deceased and PW.1 went to the construction site and as there was nobody there, both of them went to the house of PW.4. PW.1 was waiting near the gate and the deceased went inside the building. Few minutes later, PW.1 called the deceased on his cell phone and enquired about her. She informed him that though she knocked the door in the second floor, there is no response and that she is going to third floor where PW.4 and the appellant are residing. Once again PW.1 rang up the deceased, who responded saying that in the third floor also there was no response and that she will come back only after talking to PW.4. Meanwhile, accused Nos.2 and 3 went inside the building. After few minutes, PW.1 is said to have rang up the deceased and it is found the cell phone of the deceased in switched off mode, about 10 or 15 minutes thereafter accused Nos.2 and 3 came down and left the place in a hurried manner. On seeing the situation, PW.1 went to the third floor of the house and knocked the door, but there was no response. He came down to the second floor and found PW.4 in his office. Immediately he

enquired about the deceased who informed him that she came about an hour back to the building. On that, PW.1 and PW.4 went to the third floor and knocked the door and only after 10 minutes the appellant opened the door. PW.4 enquired about the delay and on that appellant said that she was sleeping. PW.4 asked about the deceased, searched for her in the hall and the room. As PW.1 was trying to enter into another room, the appellant objected to it, stating that he is not observing gosha and parda. PW.4 sent PW.1 out. Thereafter, it is said that PW.4 found the deceased rapped in a blanket and pushed underneath the cot. He also found a blanket soaked with blood in the bathroom. He came down and informed PW.1 about the death of the deceased. On that PW.1 went upstairs and found the body with injuries.

ii) It is said that both PW.4 and PW.1 went to Kanchanbagh Police Station, Hyderabad at 10.30 a.m., and lodged Ex.P1 report, basing on which, PW.14-the Sub-Inspector of Police registered a case in Crime No.148 of 2011 and issued Ex.P40 the first information report and then informed PW.13-the Inspector of Police about registration of the crime. On receipt of the said information, PW.13 visited the scene of offence and also summoned clues team and dog squad. He got photographed the scene of offence. He observed the scene of offence in the presence of PWs.6 and 7 and seized Mbs.1 to 3 and 6 to 16. Ex.P12 is the scene of offence panchanama. He also prepared a rough sketch, which is placed on record as Ex.P13. He, then held inquest over the dead body of the deceased in the presence of

PWs.6 and 7. Ex.P14 is the inquest report. Thereafter he sent the dead body to Osmania General Hospital, Hyderabad, for postmortem examination.

iii) PW8-the Assistant Professor, Osmania General Hospital, Hyderabad, conducted autopsy over the dead body of the deceased and issued Ex.P16-postmortem examination certificate. According to her, the cause of death was due to cut injury on throat.

iv) On 22.09.2011 PW.13 arrested all the accused. On interrogation, they confessed about the commission of offence. The confessional statements of the accused were recorded in the presence of PWs.10 and 11. During the investigation all the three accused were sent for medical examination and PW.15-the Casualty Medical Officer, Appollo Hospital, Hyderguda, Hyderabad, found some nail marks on the fore arms of the appellant and issued Ex.P42 certificate. Accused Nos.2 and 3 were also examined and Ex.P.43 was issued indicating no injuries on their person. After collecting all the material, PW.12 filed a charge sheet before the Court of the VII Additional Chief Metropolitan Magistrate, Hyderabad, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.383 of 2012.

3) On appearance, charges under Sections 302 and 201 read with 34 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P44 and MOs.1 to 18. 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. On behalf of the accused, DWs.1 to 4 were examined and Exs.D1 to D4 were marked.

5) Placing reliance on the evidence of the prosecution, the learned Sessions Judge while acquitting accused Nos.2 and 3 of all the charges, convicted the appellant for the offences referred to above. Challenging the same, the present appeal came to be filed.

6) The main ground urged by the learned counsel for the appellant is that there are no direct witnesses to the incident and the circumstances relied upon by the prosecution are not proved and even if proved do not form a chain of events to connect the appellant with the crime. He would further submit that there is any amount of doubt with regard to the presence of PW.1 along with the deceased at that time of the incident. He submits that failure of the prosecution to seize the cell phone of PW.1 and the call data, throws any amount of doubt about his presence at the house of PW.4 on that day. He submits that the place where the incident took place housed a school in the ground and first floor, definitely the presence of third person in the said premises cannot be ruled out. In the absence of any motive being proved, the chain

in circumstances is not complete, as motive is the main ingredient in establishing the case. He further submits that since accused Nos.2 and 3 are acquitted, the trial Court ought to have extended the same benefit to accused No.1.

7) On the other hand, the learned Public Prosecutor would contend that though there are no eye witnesses to the incident, but the circumstances relied upon are sufficient to connect the appellant with the crime. According to him, the evidence of PW.4 would amply establish that the accused was present in the house and she opened the door 10 minutes after it was knocked. In the absence of any explanation being given by the appellant as to how the dead body of the deceased was present in the house, the only inference that could be drawn is that the appellant is responsible for the incident. He further submits that no explanation is forthcoming from the appellant even in her 313 Cr.P.C., examination, except a bare denial. After 313 Cr.P.C., examination the appellant came forward with a defence and examined DWs.1 to 4 but the same cannot be accepted as it is a belated one and a new story.

8) The point that arises for consideration is whether the circumstances relied upon by the prosecution are sufficient to establish the guilt of the accused.

9) It is true that there are no eye witnesses to the incident and the case rests on circumstantial evidence. 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*¹)

10) The main circumstances relied upon by the prosecution to establish the guilt of the appellant is that i) there was a motive for the appellant to kill the deceased as there were frequent quarrels between the appellant and PW.4 on coming to know about his relationship with the deceased; (ii) the deceased and PW.1 coming to the building where PW.4 and the accused stayed and the deceased going to upstairs to meet PW.4, who stayed in third floor along with accused, (iii) PW.1 talking with the deceased on his cell

¹ (1982) 2 SCC 351

phone by staying outside the complex; and (iv) accused Nos.2 and 3 entering the building and leaving the same in a hurried manner.

11) PW.1, in his evidence deposed that he along with PW.4 went to third floor, which was bolted from inside. PW.4 knocked the door and after 10 minutes the appellant opened the door. When PW.4 questioned the accused about the deceased, she replied that she does not know anything and she was sleeping. When PW.1, was about to enter into a room, the appellant did not allow him to go on to that room, as he was not observing gosha and parda. When PW.4 searched the house he found the dead body with cut injury on the neck and rapped in a blanket.

12) As stated earlier, the main plank of attack of the learned counsel for the appellant appears to be that in a case of this nature, the prosecution neither proved motive nor last seen together so as to connect the appellant with the crime. Merely because the appellant could not explain as to how the dead body was in her house, an inference cannot be drawn that she was responsible for the incident. He now tried to contend that it must have been either PW.4 or some other person, responsible for the incident and also concealing the body in the house. Insofar as the presence of PW.1 is concerned, he would contend that non-seizure of call data is sufficient to throw a doubt about his presence outside the house and also the conversation which he is said to have entered with the deceased prior to her death.

13) Coming to the motive aspect, PW.4 is none other than the husband of the deceased. Prior to he becoming a Corporator, worked as a X-ray Technician in Owaisi Hospital, Hyderabad. The deceased was working as a nurse in the said hospital. About four or five years prior to the date of incident, he married the deceased, who was a divorcee and had a son (PW1) through her first husband. After the marriage, the deceased was staying in her house at Mohammad Nagar, Shahin Nagar, Bandlaguda area, along with her son (PW1) and PW.4 used to reside with accused No.1 along with her children in Hafeez Baba Nagar. In his evidence he states that he used to go and meet the deceased now and then in the morning hours. His evidence is also to the effect that one or one and half year of his marriage with the deceased, the appellant used to quarrel with him on coming to know about his relationship with the deceased. In the cross-examination of PW.4, it was elicited that after marriage he kept the deceased along with step son separately and used to maintain them. To a suggestion that he never married the deceased was denied by him. He admits that the deceased came to his house only once and that he used to go there during morning hours and was maintaining her and PW.1. In the cross-examination it was specifically elicited that after the marriage with the deceased, she came to the house of PW.4 once or twice. On the date of incident, the deceased did not telephone to him informing about her visit to his house. It is further stated that when he enquired PW.1 as to why they came to the house, he told that they came for payment of labour expenses in connection

with construction of house belonging to the elder sister of the deceased, as he has sent labour for the said construction.

14) The evidence of PW.4 gets corroboration from the evidence of PW.1 with regard to relationship between the deceased and PW.4. PW.1 in his evidence categorically states that the deceased, who is his mother was married to one Abdul Aziz Al Samani. While he was 3 or 4 years old, his father divorced his mother. Thereafter his mother married PW.4 about three years prior to her death. In his evidence he speaks about the relationship between the deceased and PW.4 and PW.4 maintaining them by giving money to the deceased.

15) A conjoint reading of evidence of both the witnesses could prove that PW.4 had two wives and he was living with the appellant and he was maintaining the deceased and PW.1, who are living separately. The evidence of PW.4 also shows that there were quarrels between him and the appellant when she came to know his relationship with the deceased. So there was sufficient motive for the accused to eliminate the deceased.

16) PW.1 in his evidence further deposed about himself and deceased coming to the building where the appellant and PW.4 lived. His evidence shows that the said building consists of three floors. The ground and first floor were given on rent to a school while the second floor consists of the office of PW.4 and residence in the third floor. On the date of incident while he was standing in front of the gate of the house, the deceased went upstairs to talk

with PW.4. After five minutes, he called her through his cell phone and enquired about her. She told him that she knocked the door, but nobody opened the door in the second floor. She further told to him that she will go to 3rd floor as PW.4 was not available in the office in the second floor. After five minutes, again he made a call to his mother, she told him that though she knocked the door, nobody opened the door in the third floor and she further stated that she will return back, after talking with PW.4. After some time he noticed accused Nos.2 and 3, going to the third floor. He again made a call to his mother, but her phone was switched off. About 10 or 15 minutes thereafter, accused Nos.2 and 3 came down and proceeded in a hurried manner. Sensing some mischief, as accused No.2 and his brother previously beat his mother, he went to the third floor and knocked the door, but nobody opened the door. Then he came down to second floor and found PW.4 in his office. He enquired about his mother who told him that his mother came there about one hour back. Then PW.1 and PW.4 went to the third floor and knocked the door. After 10 minutes, the appellant is said to have opened the door. When enquired she is said to have stated that she was sleeping. PW.4 asked about the deceased. At that point of time PW.1 searched for the deceased and when he was about to enter into a room he was prevented by the appellants as he was not observing gosha and parda. PW.4 asked him to go down. After some time he came and informed, that his mother was found dead in third floor. Immediately, PWs.1 and 4 rushed to the third floor and found the appellant standing. When he

questioned as to how the deceased died, there was no response from the appellant. He noticed the body rapped in a blanket and the neck was cut apart. Later, PW.1 lodged a report, basing on which the law was set into motion.

17) PW.1 was cross-examined at length on many aspects. It has come on record that he failed to mention certain aspects in his earlier statement namely as to himself and his mother visiting the construction site, calling the deceased on telephone after five minutes, the deceased informing that she knocked the door of the second floor but nobody opened it and that she went to third floor as PW.4 was not in his office. He called his mother again after five minutes, to which she told to him that she knocked the door but nobody opened the third floor as well but his version in 161 Cr.P.C. statement is consistent to the effect that his mother told him that she will only come after discussion with PW.4. He also failed to mention that “he went to the third floor of the said house and knocked the door, but nobody opened the door” and that “he searched for his mother in the hall and another room, then accused No.1 was standing in front of another room and not allowed him to go into that room. Accused No.1 asked him as to why he is entering into the room without observing Gosha and Parda” and that “after some time PW.4 came to him and informed that his mother was found dead in the third floor” and that “he opened the blanket and found that neck of his mother was cut and also some injuries on her body. Though there are number of omissions in the evidence of PW.1 but there are certain aspects namely he going inside the

room; seeing the dead body of his mother with blood stains and when he dragged his mother out and found her throat being cut. Relying upon the said omissions in the evidence of PW.1 coupled with the failure of the prosecution to seize the call data, learned counsel for the appellant would contend that there is any amount of doubt with regard to presence of PW.1 outside the house. But if the same is tested with Ex.P1 which was given immediately after the accident, it would clearly indicate that on the date of incident at about 8.00 a.m., he along with his mother left the house to G-Block, Hafeez Baba Nagar, where PW.4 took up construction of the house, on the plot belonging to his aunty. As no person was found there, they came to the house of PW.4 at 8.15 a.m. PW.1 stood in front of the house while his mother went to second floor. The first information report clearly discloses the calls made by him and the answers given by his mother (deceased). Some time later, he found the phone of his mother switched off and as such he went to upstairs and knocked the door, but there was no response. Then he came to second floor and enquired with PW.4, who informed him that his mother came there one hour back. Then, he along with PW.4 went upstairs and knocked the door, but no body opened the door. After 10 minutes, accused No.1 opened the door and when PW.4 asked her as to why she took such along time, she replied that she was sleeping and she does not know anything. Though the first information report does not speak about accused No.1 preventing PW.1 from going inside the house as he was not observing Parda and Gosha, but it categorically states about PW.4

asking him to stay outside. When PW.4 came down and informed him about body of the deceased in the house, he rushed to the third floor and found accused No.1 outside. When he asked her there was no reply. He went inside the house and found the dead body of his mother.

18) The omissions which are referred to above are definitely improvements which the witness made in the Court but his evidence is consistent to extent of averments made in the first information report. Therefore, the argument that PW.1 was not seen in the company of the deceased prior to the incident cannot be accepted in view of the above findings.

19) Even assuming that the call data was not seized, in our view the same does not tilt the case. Even if it was seized the same will not establish that PW.1 was present outside the house on that day or that he came along with the deceased on that day. At the most it can establish the conversation between PW.1 and the deceased on that day. Hence, we are of the view that the said circumstance may not be of much relevant in view of the evidence of PW.4, who corroborates the evidence of PW.1 in all respects.

20) Further, the fact that the dead body was in the house situated in third floor is not in dispute. The evidence on record amply established that the appellant was present in the house at the time of the incident and she opened the door 10 minutes after it was knocked. An explanation is sought to be given by way of suggestions that she was sleeping and she was not aware about the

incident. If really she was sleeping and when door was bolted from inside, it is strange as to how the dead body was inside the house. The said version is not found in her 313 Cr.P.C., examination nor it was suggested to PW.1 or PW.4 or to any other witness that it was PW.4 or accused No.2 or accused No.3 or any other third person responsible for the incident. Except denying the incident, she has not come forward with any specific plea even in her 313 Cr.P.C., examination. After completion of 313 Cr.P.C., examination, she examined DWs. 1 to 4 to show that she was not present in the house at the time of the incident, but the said plea was never suggested to any of the witness nor such a plea taken in her 313 Cr.P.C., examination. Obviously it is an after thought, invented for this case. If really she was not there in the house and she was not aware as to how the dead body came to the house, nothing prevented her from establishing the same by giving suggestions to all the witnesses or by stating the said fact atleast in 313 Cr.P.C., examination.

21) One other circumstance which establishes the presence of accused No.1 in the house, is the evidence of the doctor, who was examined as PW.15. In his evidence, PW.15 states that on 23.09.2011, he received a requisition from the police to examine accused Nos.1 to 3. On examination of accused No.1, he found nail or defence marks on both fore arms and hands. When he asked the said person, she stated that the marks are due to nails and defense marks. He issued Ex.P42 certificate. Ofcourse, the age of the marks were not given but she was arrested on the very next day of

the incident and then sent to the hospital on the second day. There cannot be any scope for the accused sustaining the injuries in any other transaction or occurrence. It is not her case that she sustained injuries elsewhere. All these circumstances amply establish that she was present in the house on the date of the incident, more so in the absence of any explanation given by her as to how the dead body with cut, rapped in a bed sheet and present in her house. Hence a strong presumption would arise that she was responsible for the incident.

22) In *State of Rajasthan v. Thakur Singh*² the Apex Court dealt with some what identical situation. It was a case where the dead body was found in the room occupied by her and the accused and there was no evidence that anybody entered their room and caused her death. The cause of death of his wife was known only to accused, yet he failed to explain the same. After referring to Section 106 of the Evidence Act and relying on the judgments of the Apex Court in *Shambhu Nath Mehra v. State of Ajmer*³, *Ganeshlal v. State of Maharashtra*⁴, *Dhyaneswar v. State of Maharashtra*⁵, *Gian Chand v. State of Haryana*⁶ the Apex Court in Para Nos.22, 23 and 24 held as under:

“22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are

² (2014) CrI.L.J. 4047

³ 1956 SCR 199

⁴ (1992) 3 CC 106

⁵ (2007) 10 SCC 445

⁶ (2013) 14 SCC 420

virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this."

23) It is well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then as held by the Apex Court it is a strong circumstance pointing out the guilt towards the accused.

24) As observed earlier, in the instant case, the accused No.1 failed to prove as to how the dead body was inside the house. It is not her case that the house was locked from outside and that she was sleeping inside the house. It is also not her case that PW.4 was responsible for the incident; that he killed the deceased and then went back to his office. It was not even suggested to any of the witness that accused Nos.2 and 3, who according to the prosecution are alleged to have gone to third floor are responsible for the incident. In the absence of any explanation and in view of the judgment of the Apex Court referred to above, coupled with the motive and the evidence of PWs.1 and 4, it can be said the prosecution proved all the circumstances, connecting the accused with the crime.

25) At this stage, the learned counsel for the appellant would contend that when accused Nos.2 and 3 are acquitted for the said offence, the same benefit should be extended to the appellant as well. We are afraid the said argument cannot be accepted. If the defence of accused No.1 had been that accused Nos.2 and 3 along with others were also involved in the commission of offence, definitely one could have thought of extending the benefit. On the other hand, the findings given by the trial Court go to show that there is no material on record to show that accused Nos.2 and 3 entered the house of the appellant at the time of the incident. Merely because they went out of the compound in a hurried manner, does not by itself indicate that they also participated in the commission of offence. Hence, we feel that

the findings of the trial Court in convicting the appellant for the offences punishable under Sections 302 and 201 IPC warrants no interference.

26) Learned counsel for the appellant relied upon the following citations:

1. Majenderan Langeswaran v. State (NCT of Delhi) and another⁷
2. Palapatla Srinivasa Reddy v. State of A.P., rep. by its Public Prosecutor, High Court, Hyderabad⁸
3. Darangula Yerramma @ Wadde Laxmi v. State of A.P., rep. by the Public Prosecutor, High Court, Hyderabad⁹
4. Prakash v. State of Karnataka¹⁰
5. Ratan Lal v. State of Rajasthan¹¹
6. Sujit Biswas v. State of Assam¹²
7. Navaneethakrishnan v. State by Inspector of Police¹³

27) The above cases mainly lay down the guidelines as to manner in which the Court has to be dealt with cases arising out of circumstantial evidence. Since the circumstances involved, namely last seen, motive, the recovery of the dead body from the house of the appellant stands proved and in the absence of any explanation by the accused as to how the dead body was present in her house, which is locked from inside, the judgments relied upon by the learned counsel for the appellant may not be of any help to the accused.

⁷ (2013) 7 SCC 192

⁸ (2017) 1 ALT (Gr.) 203 (DB) (AP)

⁹ (2017) 1 ALT (Gr.) 338 (DB) (AP)

¹⁰ (2014) 12 SCC 133

¹¹ (2015) 15 SCC 754

¹² (2013) 12 SCC 406

¹³ (2018) 2 ALT (Gr.) 60 (SC)

28) For the aforesaid reasons, we feel that the circumstances which are relied upon by the prosecution form a chain of events and un-erringly point out towards the guilt of the accused.

29) In the result the appeal fails and it is accordingly dismissed, confirming the conviction and sentence passed in S.C.No.383 of 2012 on the file of the Metropolitan Sessions Judge, Hyderabad.

30) Consequently, miscellaneous petitions, if any, pending shall stand closed.

29.06.2018
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C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J