

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1463 of 2011

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

The sole accused in Sessions Case No. 204 of 2008 on the file of the Sessions Judge, Mahila Court, Visakhapatnam, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Lakkaraju Sanyasamma, by throttling her to death with a saree on 22.04.2007 at 2.30 a.m. at his house in A.Kothapalli village. Vide judgment dated 21.11.2011, the learned Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him 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 one year.

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

The accused is the husband of the deceased. PW1 is the father and PW2 is the niece of PW1, while PWs. 3 and 4 are the friends of the deceased and the accused. The marriage between the accused and the deceased took place about 14 years prior to the incident and immediately thereafter, the deceased joined the company of husband, whose house was situated by the side of the

house of PWs 3 and 4. Out of the wedlock, they are blessed with two children, one daughter and a son, aged about 11 years and 9 years respectively. Prior to the marriage, the deceased was working as a driver of road roller for some time and thereafter he gave up the said job. It is stated that the accused got addicted to vices and became a vagabond. After marriage, the deceased used to prepare eatables and sell the same in agency areas and with that amount, she used to eek out their livelihood. After the birth of the children, differences started between them and the accused used to frequently quarrel with the deceased. About 3 months prior to the date of the incident, the accused took the deceased to the fields and forcibly attempted to pour some poison into her mouth. It is stated that some of the poison fell in her mouth, as a result of which she fell down. The villagers shifted the victim to the hospital, where she survived after treatment. It is stated that the accused had intimacy with one lady named Bhavani, who is none other than the daughter of the maternal aunt of the accused. On coming to know about the same, disputes arose between the accused and the deceased. The evidence of PW1 further shows that on one day, the accused attempted to throw the deceased into a well but she was saved by neighbours. Since the house of PW1 was very near to the house of the accused, he came to know about the incident through the neighbours but the victim did not inform about the incident to PW1. It is stated that about two or three days prior to the incident, the accused informed the victim that he was going to Vizag but he went to the house of Bhavani. On coming to

know about the same, the deceased/ victim went to the house of Bhavani and witnessed both of them in the house. When she questioned the same, a quarrel took place between both of them. Thereafter, both of them returned home. Two days thereafter, in the early hours at around 4 a.m., the father of the accused came to the house of PW1 and informed him that the deceased died by committing suicide. Immediately, PW1 went to the house of the accused and saw the body of the deceased hanging with a rope. He proceeded to Devarapalli Police Station and lodged a report with PW11, the Head Constable.

3. Ex.P1 is the report, basing on which, a case in Crime No.15 of 2007 came to be registered under Section 174 Cr.P.C. Ex.P11 is the FIR. PW11 took up the initial investigation, examined PWs.1 to 5 and recorded their statements and also prepared an observation report. Ex.P9 is the observation report and Ex.P13 is the rough sketch of the scene. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW-7, Ex.P14 is the inquest report. Later, the body was sent to the hospital for holding postmortem examination, where PW8, the Deputy Civil Surgeon, Government Hospital, Chodavaram, conducted autopsy over the body of the deceased and issued Ex.P8 – the postmortem report. According to her, the cause of death was due to homicide, due to air obstruction, respiratory failure and outlet of blood circulation to the brain and other organs. Further investigation in this case was taken up by PW10, who after receipt of postmortem report on 15.06.2007, altered the section of law from Section 174 Cr.P.C. to

Section 302 I.P.C. and issued express F.I.R., which was marked as Ex.P12. On receipt of Ex.P12 on 15.06.2007, PW12, the Deputy Superintendent of Police, Chodavaram, visited the scene of offence and verified the investigation done by PW11 and PW.10. On 16.06.2007 at about 08.00 hours, PW.9, the V.R.O., Kothapalli, produced the accused before PW.12 along with a report and the statement of the accused, wherein he is said to have admitted the guilt. Pursuant thereto, the accused was arrested and remanded to judicial custody. After completing the investigation, he filed a charge sheet which was taken on file as P.R.C.No.28 of 2007 on the file of Additional Judicial First Class Magistrate, Chodavaram. After complying with Section 207 Cr.P.C., the case was committed to the Court of Sessions Judge, Mahila Court, Visakhapatnam under Section 209 Cr.P.C., where it came to be numbered as Sessions Case No.204 of 2008.

4. Basing on the material available on record, a charge as referred to above, came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

5. In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P14. Out of 12 witnesses examined by the prosecution, PWS.3,4 and 5 did not support the prosecution case and were treated as hostile by the prosecution. After completing the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of the

prosecution witnesses, to which he denied. No oral or documentary evidence was adduced by the accused in support of his defence.

6. Relying on the evidence of PWs1 and 2 coupled with the medical evidence, the trial court convicted the accused and sentenced him to suffer imprisonment for life. Assailing the same, the present appeal came to be filed.

7. The learned counsel for the appellant, Smt. Gayathri Reddy, submits that there is any amount of doubt with regard to the manner in which the deceased died. According to her, the evidence of the doctor does not clearly establish that it was a case of homicide. On the other hand, the defence of the accused that it was a case of suicide, appears to be probable.

8. On the other hand, the learned Public Prosecutor would submit that not only the evidence of the doctor who conducted the post mortem establish that it is a case of homicidal death, but the conduct of the accused in attempting to kill the deceased on two earlier occasions show that it was the accused alone, who was responsible for the death.

9. The point that arises for consideration is whether the accused was responsible for the death of his wife.

10. It is to be noted that there are no direct evidence and the case rests on circumstantial evidence. The circumstances relied

upon by the prosecution are (a) that there was a motive for the accused to kill the deceased in view of the attempts made on two occasions. (b). The illicit relationship between the accused and one Bhavani, which came to the notice of the deceased. (c). The extra judicial confession made by the accused disclosing the commission of the offence and (d). the report of the doctor showing that it was a case of homicidal death.

11. As stated earlier, the motive for the commission of the offence appears to be the illicit relationship, which the accused developed with one Bhavani and the attempt made by the accused to kill the deceased twice earlier. In so far as the attempt made by the accused to kill the deceased earlier, the prosecution pressed into service, the evidence of PW1 who speaks about the two incidents. The 1st incident is stated to have taken place about 3 months prior to the date of death wherein on one day, the accused took the deceased to the fields and forcibly attempted to pour endrine, a poisonous substance into the mouth of the deceased. After consuming a part of the same, the deceased fell down unconscious. The 2nd incident is said to have taken place some time thereafter, wherein the accused tried to push the deceased into the well, but the timely intervention of the neighbours, saved her life. It is to be noted that none of the neighbours were examined to speak about the said incident. PWs.3, 4 and 5, the neighbours, did not support the prosecution case and were treated hostile by the prosecution. Apart from that, PW1 in his earlier statement never disclosed to the investigating officers, about the accused

trying to kill the deceased on two occasions earlier. It would be useful to extract the evidence of PW12, in this regard:

“PW.1 and 2 did not state before H.C. or before me that the accused tried to kill the deceased on 2 occasions”.

12. Coming to the second aspect of the motive, namely the illicit relationship between the accused and one Bhavani, it is to be noted that no evidence has been placed on record to establish that the accused had intimacy with Bhavani, who is none other than his maternal aunt's daughter. The evidence of PW1 does not show that he went to Bhavani's house and saw the accused and Bhavani together and questioned their relationship. It is only the deceased who is stated to have gone to the house of Bhavani and saw the accused in the house of Bhavani. The evidence of PW1 also nowhere indicates that the deceased informed him about the relationship between the accused and Bhavani. Though PW1 in his evidence in chief, deposed about the said relationship, but a perusal of the same, does not indicate that he has either seen both of them together or the information about the said relationship was informed to him by his daughter. Therefore, the said circumstances, in our view is not legally proved. Hence, we hold that the first circumstance in the chain, namely “motive” remained legally un-established.

13. Coming to the extra judicial confession made before the V.R.O., it is to be noticed that the evidence of PW9 shows that on one day, in between 11 and 12 p.m., in his presence and in the

presence of other persons, the accused confessed about the commission of the offence. In his evidence, PW9 deposed that he was the second signatory to the confessional statement of the accused. The accused confessed stating that he killed his wife and will show as to how he killed his wife, if he is taken to his house. His evidence also shows that at about 11 a.m., the Inspector of Police in the presence of PW9 and another mediator, prepared an observation report. From the evidence of this witness, it is clear that the accused is said to have made a confession between 10 and 11 a.m., by which time Inspector of Police was present with PW-9. Further, his evidence does not show as to where he was present when the accused confessed about the commission of the offence. Apart from that, his evidence also shows that two persons were present when the said confession was made. There is no evidence on record to show that the accused was known to him. Therefore, a doubt arises as to whether the accused would have gone and made the confession admitting his guilt before a stranger and secondly whether he would have made a confession when more than one person was present. Apart from all these things, his evidence also shows that at the time when the accused went to PW9 to make a confession, the Inspector of Police was also present with PW9, preparing the scene observation report. Hence, even assuming that the said confession was made, it cannot be stated to be made voluntarily. In the fact situation, we feel that it would not be safe to rely on the extra judicial confession.

14. Coming to the incident, on the date of the incident at about 4 a.m., the father of the accused informed PW1 about the death of the deceased in the house of the accused. The information from the father of the accused was that the deceased committed suicide. Immediately thereafter, PW1 went to the house of the deceased and suspecting some foul play, got registered a crime. The evidence of the witnesses does not show any suspicion against the accused. On the other hand, all of them in one voice say that the deceased committed suicide. Be that as it may, the evidence of PW8 also is not consistent with regard to the cause of the death. She is not sure that whether it was a case of suicide or homicide. Though in chief evidence, she deposed that it is a case of homicide due to air obstruction, respiratory failure and outlet of blood circulation to the brain, but in the cross examination, she admits that the features of homicide and suicide are one and the same. If that is so, it is strange as to how she has stated that it is a case of homicide in her chief examination. No distinctive features are mentioned in her evidence as to circumstances which made her to say that it is a case of homicide. Further in her cross examination, she admits that there are no signs of resistance over the body of the deceased. If really it was a case of strangulation, definitely there would have been some signs of resistance, causing aberration and bruises on the body of the deceased.

15. HMV Cox Medical Jurisprudence and Toxicology while dealing with the symptoms, found in the case of hanging and more

particularly with regard to the ligature marks around the neck and the fracture of hyoid bone states as under:

“Some controversy in the literature exists as to the frequency of the injuries to the hyoid bone and thyroid cartilage in hanging. It is the general consensus of opinion that such laryngeal and hyoid damage are the exception rather than the rule and usually limited to older persons who have a calcified hyoid bone which may easily crack. Also, the length of drop and the subsequent jerk may be related to the frequency of fracture, but one can safely say that the proportion of such cases is much smaller than in manual strangulation”.

16. HMV Cox in his VII edition at page 359 while dealing with the case of homicide further observed as under:

“As the rope usually passes above the larynx, there is less often damage to the laryngeal structures seen in hanging. The hyoid bone is rarely fractured (in about 20% of victims, especially older persons with calcified hyoid) and there is almost never any damage to the thyroid cartilage or other parts of the larynx.

The mechanism in hanging is either sudden carotid reflex causing heart stoppage, constriction of the great vessels and arteries causing cerebral anoxia, or asphyxia due to the base of the tongue being pressed upwards against the pharynx, thus blocking the airway at a higher level than in strangulation. Of course, there may be combinations of these features, though it is much less common for carotid pressure to supervene at a later stage in hanging. This is because of the more constant, fixed position of the pressure, compared with the shifting fingers in manual strangulation.

17. Since the evidence of the doctor does not give any clear indication as to cause of death, we are forced to look into the said text book, to find out as to whether it was a case of suicide or death due to strangulation. The observations made in the text book would show that blocking of air way would be at a higher level in

case of hanging, than in strangulation. The said view is supported by the observations made by the post mortem doctor stating that there was air way obstruction and respiratory failure, which suggests that it could be a case of suicide as well.

18. Hence, we feel that it is a fit case where benefit of doubt can be given.

19. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 21.11.2011 in Sessions Case No.204 of 2008, on the file of the Sessions Court, Mahila Court, Visakhapatnam, for the offence punishable under Section 302 IPC is set aside and he is acquitted for the said offence. Consequently, the appellant/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

04.07.2018

msb