

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

SMT. JUSTICE T.RAJANI

CRIMINAL APPEAL Nos.351 AND 581 OF 2013

COMMON JUDGMENT: (per Hon'ble MSR,J)

These two criminal appeals arise out of judgment dated 06.03.2013 on the file of I Additional Sessions Judge, Khammam in S.C.No.502 of 2012.

2. The appellant in CrI.A.No.581 of 2013 is Accused No.1 and appellant in CrI.A.No.351 of 2013 is Accused No.2.

3. The deceased is the husband of A1.

4. The case of the prosecution is that both accused Nos.1 and 2 on 04.07.2012 in furtherance of their common intention caused the death of the deceased by throttling after tying his legs with saree while he was sleeping in a drunken state and that they had committed murder by intentionally causing the death of the deceased rendering themselves liable for punishment under Section 302 r/w 34 of Indian Penal Code. There is also a charge under Section 201 r/w 34 IPC on the allegation that they had left the village after commission of the offence with an intention of screening the said offence.

5. A complaint – Ex.P1 was lodged by the sister of the deceased, who is examined as P.W.1, wherein she stated that there was a quarrel between the deceased and the accused No.1, that they had gone to the house of the elder brother of the deceased, that he pacified them and sent them home, but on the next morning on 05.07.2012 at about 07.30 a.m., the complainant went to the house of the deceased, saw him sleeping on the cot covered by bedsheet and when she removed it, she found him dead with contusion marks on his left neck and froth oozing from his mouth.

6. On this complaint, Ex.P8 – FIR was registered by P.W.14 at 10.30 a.m.

7. He recorded the statements of P.Ws.1 to 5, L.Ws. 2 and 5 and prepared the Crime Detail Form in the presence of P.W.8 and L.W.11. He also got the scene of the offence photograph through P.W.7. He got conducted inquest over the dead body of the deceased in the presence of P.Ws.9 and 10.

8. The body of the deceased was sent to Kunavaram Hospital for post-mortem examination. Post-mortem examination was conducted by P.W.12, who gave Ex.P7 report, stating that there was a bruise on the anterior part of the neck on left lateral to the trachea (wind pipe) and there was a pressure abrasion over anterior aspect of ankle joint of the right leg.

He opined that death occurred due to asphyxiation of the deceased by applying forcible pressure on the neck region causing hypoxia followed by cardiac arrest.

9. On 12.07.2012, the accused were apprehended by PW13 who claimed that they had given an extra judicial confession to him. On information given to PW15, he arrested the accused and then filed the charge sheet for offences under S.302, 201 IPC r/w 34 IPC.

10. The Committal Court took cognizance and committed in PRC No.72/2012. Thereafter the case was numbered as SC No.502/2012 and made over to the I Additional Sessions Judge, Khammam.

11. The prosecution examined P.Ws.1 to 15 and marked Exs.1 to 9, apart from material objects M.O.1 and M.O.2. The incriminating circumstances in the evidence of the prosecution witnesses was put to the accused under Section 313 Cr.P.C.

THE JUDGEMENT OF THE TRIAL COURT

12. The trial court after considering the evidence on record came to the conclusion that the death of the deceased was unnatural and he was killed by the accused. It relied on the “last seen together” theory to convict accused No.1 on the

ground that she and the deceased alone were present at the house and in the morning hours, the deceased was found dead and accused No.1 was absconding.

13. It also took note of the fact that deceased suspected the character of accused No.1 and there was frequent quarrels occurring between the accused No.1 and the deceased on account of his suspicion, and opined that accused no.1, along with accused No.2, a Mastri, who distributed wage amounts to Coolies including accused No.1, and who was also closely related, had planned to do away with the deceased to stop the harassment of accused No.1 by the deceased.

14. It also placed reliance on an extra judicial confession spoken to by P.W.13 – a local Telugu Desam Party leader and found it probable as in its opinion he operated as a bridge between the general public and police and it was possible for his services to be utilized by people to protect them from torture by police.

15. It therefore convicted accused Nos.1 and 2 to undergo life imprisonment and pay fine of Rs.5,000/- each, in default to suffer simple imprisonment for a period of six months for the offence under Section 302 r/w 34 IPC and also to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment

for a period of three months for the offence under Section 201 r/w 34 IPC and directed that both sentences shall run concurrently.

CONTENTIONS OF COUNSEL FOR APPELLANTS

16. The counsel for the accused No.1 contended that there is no eye witness to the incident causing the death of the deceased; that the accused No.1 had an alibi in the sense that she had stayed with P.W.2 – her mother-in-law on the intervening night of 04.07.2012 and 05.07.2012 and she was falsely implicated by the family members of the deceased. The counsel for the appellant/accused No.1 further contended that the extra judicial confession spoken to by P.W.13 cannot be believed and the accused is entitled to benefit of doubt.

17. As regards accused No.2, the counsel for the appellant/accused No.2 contended that there is no evidence pointing to the presence of accused No.2 in the house of the deceased and the accused No.1 on the intervening night of 04.07.2012 and 05.07.2012; that the extra judicial confession which is spoken to by P.W.13 cannot be believed; and the accused No.2 is entitled to benefit of doubt, since, there is nothing to link the accused No.2 to the death of the deceased in the manner suggested by the prosecution.

CONTENTIONS OF LEARNED PUBLIC PROSECUTOR

18. The learned Public Prosecutor, appearing for the respondents, supported the judgment of the trial court and contended that the trial court has given cogent reasons for convicting both the accused. He pointed out that since the accused No.1 and the deceased were husband and wife and were living together in the house where the death of the deceased occurred during the night, and the accused No.1 being the last person seen with the deceased, she has to be held guilty for the offence of murder since there is no rational explanation given by her as to how the death of the deceased occurred. He further contended that the statement in Section 313 Cr.P.C. examination of accused No.1 that she was staying on the intervening night of 04.07.2012 and 05.07.2012 with P.W.2 cannot be accepted, since, no suggestion in cross-examination was given to P.W.2 about the absence of accused No.1 in the house, where the death of the deceased occurred. He also contended that the extra judicial confession ropes in both accused Nos.1 and 2 and the same is believable and was rightly relied upon by the court below for convicting both the accused.

THE CONSIDERATION BY THE COURT

19. We have considered the contentions of both sides.

20. The undisputed facts are that accused No.1 is the wife of the deceased and the death of the deceased occurred in their house on the intervening night of 04.07.2012 and 05.07.2012, probably in the early hours of 05.07.2012.

21. Though the couple had two children, P.Ws.4, 5 and 6 stated that on account of quarrel between accused No.1 and the deceased, the children had not stayed in the house at that time and were with P.W.3.

22. It is not in dispute that the death of the deceased is not a natural death and that it was unnatural since the post-mortem report as well as the evidence of P.W.12 stated that there was bruise on the anterior part of the neck and there was a pressure abrasion over the anterior aspect of the ankle joint of the right leg, and the death occurred due to asphyxiation of the deceased by applying forcible pressure on the neck region causing hypoxia followed by cardiac arrest.

23. On the evening of 04.07.2012, there was a quarrel between accused No.1 and the deceased. This is stated by P.Ws.1, 3, 4, 5 and 6. It is also stated by P.Ws.3, 4 and 5 that the neighbours and others pacified accused No.1 and assured to look into the issue on the next day. However, according to P.W.1, she went to the house of the deceased at 07.30 a.m. and found him dead with injuries on the neck and froth coming from his mouth. P.W.1 categorically stated that

A1 was absent at the time when she went to the house of the deceased. P.Ws.4 to 6 corroborated P.W.1.

24. Though in the Section 313 Cr.P.C. examination the accused No.1 stated that she was the first one who found her husband dead at 07.00a.m., this statement cannot be believed because if it is true, she would be the person who would have informed the neighbours and the police about the death of her husband, and she would also have been present when P.W.1 came to their house.

25. Since there is ample evidence on record to show that accused No.1 and the deceased were in the house on the night of 04.07.2012 and 05.07.2012 as discussed above and nobody else is proved to have entered the house, the burden lies on accused No.1 to explain how the death of the deceased occurred. But there is no evidence adduced by her. In our considered opinion, the "last seen theory" comes into play in the absence of any possibility of any person other than the accused being the author of the crime. So the finding of the trial court holding the accuse no.1 guilty of committing the offence u/s.302 IPC is unexceptionable and is confirmed.

26. As regards the extra judicial confession spoken to by P.W.13, though the trial court relied on it, we are of the opinion that P.W.13 is not a relative of the family of the

deceased and the accused No.1, nor is he a resident of the same village and the story of extra judicial confession one week after the actual incident spoken to by P.W.13, does not appear probable and to this extent, we disagree with the view expressed by the trial court.

27. Coming to accused No.2, though accused No.2 is spoken to as paramour of the accused No.1 by P.Ws.2, 3 and 5, there is no reliable evidence about his presence in the house of the deceased on 04.07.2012/05.07.2012. Though P.W.5 stated in cross-examination that accused No.2 was sleeping in the house of the deceased for some time and on the date of the incident, he saw accused No.2 going into the house of the deceased, we do not accept the said evidence since P.W.5 did not state about it in his chief-examination and he also did not mention the time when he saw accused no.2 go into the house of the deceased. There is no evidence of any other person stating that he saw accused No.2 going into the house of the deceased. In our considered opinion, in the absence of proof beyond reasonable doubt linking accused No.2 to the offence, merely relying on the extra judicial confession of P.W.13, it is not safe to convict accused No.2 of the offence under Section 302 IPC or under Section 201 IPC.

28. We are also of the opinion that conviction of both accused under Section 201 IPC by the trial court is not

warranted since the said provision applies only to third parties who assist the accused in the commission of the crime by helping them to destroy the evidence of the offence and not to the actual perpetrators of the crime.

29. In this view of the matter, we confirm the judgment of the trial court in so far as accused No.1 is concerned and CrI.A.No.581 of 2013 is dismissed.

30. However, the finding of the trial court as regards the guilt of accused No.2 is set aside and CrI.A.No.351 of 2013 is allowed. Accused No.2 shall surrender before the Superintendent, Cherlapalli Central Prison, who shall then set him free by cancelling the bail bonds, if he is not required in connection with any other case.

31. In the result, CrI.A.No.351 of 2013, so far as accused No.2 is concerned, is allowed and CrI.A.No.581 of 2013, so far as accused No.1 is concerned, is dismissed.

32. Miscellaneous petitions pending consideration, if any, in these cases shall stand closed as consequence. There shall be no order as to costs.

M.S.RAMACHANDRA RAO, J

T.RAJANI, J

18.08.2018
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