

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.228 of 2014

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

1) The sole accused in Sessions Case No.220 of 2013 on the file of the I Additional Sessions Judge, Adilabad, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Mekala Mallika (hereinafter referred to as "the deceased") by hacking him with an axe. By its judgment, dated 08.01.2014, the learned Sessions Judge, convicted him for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for a period of three months.

2) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) PW.1 is the mother and PW.2 is the father of the deceased. PW.3 is the son-in-law of PWs.1 and 2. PW.4 is the younger brother of the accused while PWs.8 and 9 are children of the accused and the deceased. The marriage between the accused and the deceased took place about 12 years prior to

the date of incident and out of wedlock they were blessed with two sons. Both of them lived happily for few years and later disputes arose between them. It is said that because of the disputes a report was given to Devapur Police Station, which lead to police admonishing the accused. Pursuant to which the accused promised to look after the deceased properly. PW.2, who is the husband of PW.1, working in Sngareni Collieries, retired from service. The accused was demanding the retirement benefits of PW.2. On the date of incident PW.3 is said to have informed PW.1 that the deceased was found near Pochammagutta and that the accused axed the deceased to death. PW.1 along with others went to the place and found the deceased with severe injuries on the body. Later on, PW.1 lodged a report before PW.12- the Sub-Inspector of Police, Devapur, basing on which, PW.12 registered a case in Crime No.7 of 2013 for the offence punishable under Section 302 IPC and issued Ex.P13-the first information report.

ii) PW.12 proceeded to the scene of offence, examined PWs.1 to 5 and recorded their statements. As it was night time, PW.12 deputed one Home guard and a village servant as security at the place. Next day morning, PW.12 conducted inquest over the dead body of the deceased in the presence of PW.10 and others. Ex.P7 is the inquest report. In the

presence of PW.10, PW.12 conducted scene of offence panchanama and also prepared a rough sketch. Ex.P8 is the Crime Details Form. During the course of panchanama he seized Mos.1 to 6. Thereafter, PW.12 sent the dead body for postmortem examination.

ii) Dr. Neelima, who was working as Civil Assistant Surgeon, Government Hospital, Bellampalli, conducted autopsy over the dead body of the deceased and issued Ex.P16-the postmortem certificate. According to her, the cause of death was “due to hemorrhage and shock as a result of injury to neck and injury to chest”.

iii) PW.13, the Inspector of Police, who took up investigation in this case from PW.12, verified the investigation done by him. He re-examined PWs.1 to 5 and 10. On 09.03.2013 he recorded the statements of PWs.8 and 9. On 11.03.2013 on receiving information the accused came to police station, Devapur and surrendered himself. On interrogation the accused is said to have confessed about the commission of offence. The admissible portion of confessional statement is placed on record as Ex.P11. After completing the investigation, and after collecting all the material, PW.13 filed a charge sheet before the Court of II Additional Judicial Magistrate of First Class, Mancheri, who in turn committed

the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.220 of 2013.

3) On appearance, a charge under Section 302 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 13 and got marked Exs.P1 to P20 and MOs.1 to 12. After the closure of 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. Neither oral nor documentary evidence was adduced on behalf of the accused. Basing on the evidence available, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

5) Learned counsel for the appellant mainly submits that there are no direct witnesses to the incident and the case rests on the circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime.

6) On the other hand, learned Public Prosecutor would contend that the evidence on record amply establish the involvement of the accused in the commission of offence.

7) The point that arises for consideration is whether the accused is responsible for causing the death of the deceased.

8) As seen from the record, there are no eye witnesses to the incident and the case rests on the circumstantial evidence. In order to establish the guilt of the accused in a case based on circumstantial evidence, the prosecution has to prove all the circumstances relied upon by them to form a chain of events connecting the accused with the crime.

9) In *Rukia Begum vs. State of Karnataka*¹ the Apex Court held as under:

“When a case is based on circumstantial evidence, the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. Circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence.”

10) In *Jagroop Singh v. State of Punjab*² the Apex Court held as under:

¹ AIR 2011 SC 1585

“When the case of prosecution is based on circumstantial evidence, conviction is permissible only when all links in chain of events are established beyond reasonable doubt and established circumstances are consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence.”

11) From the judgments of the Apex Court, referred to above, it is clear that a duty is cast upon the prosecution to prove the circumstances relied upon and the circumstances relied upon by the prosecution shall form a chain of events connecting the accused with the crime.

12) Keeping the ratio laid down in the judgments referred to above, it is to be seen whether the prosecution was able to prove each of the circumstances relied upon by them to connect the accused with the crime.

13) The trial Court mainly relied upon the circumstances namely enmity, motive, last seen theory and absconding of the accused in the village, seizure of M.O.10 at the instance of accused and the medical reports issued by the doctor. It is to be noted here that though there is no dispute that the accused and deceased were living together, the body of the deceased was found near Pochammagutta, which was at a distance of 6 kms. from the house of the deceased and accused. The fact that the body is at a distance of 6 kms., is evident from the evidence of the investigating officer. This

² AIR 2012 SC 2600

circumstance in our view goes a long way in deciding the issues in this case.

14) PWs.1 and 2, who are the parents of the deceased deposed in their evidence about the marriage and the demands made by the accused from the retirement benefits of PW.2. Both of them suspected that the accused was responsible for the death of the deceased. But however, in the cross-examination both of them admit that there was no panchayat with regard to demand of additional money by the accused. On the other hand, PW.2 in his cross-examination admits that the accused and deceased were living amicably. He further admits that no report came to be filed with regard to demand of additional dowry.

15) At this stage, it is to be noted that both PWs.1 and 2 in their evidence deposed about PW.3 giving information with regard to lying of a dead body near Pochammagutta, but the evidence of PW.3 is that he never informed about the same. PW.3 in his evidence deposed that on the information furnished by LW.6 that the accused axed the deceased, inturn informed the same to PWs.1 and 2 and thereafter all of them went to the scene of offence. Even PW.3 was not an eye witness to the incident and his information about the death was based on the information given by PW.4. In the cross-examination PW.3 admits that prior to the death of the

deceased there were no disputes between the accused and the deceased.

16) Coming to the evidence of PW.4, he deposed that on the date of incident he came to know from the villagers that the deceased was found dead at Pochammagutta and on such information he went to the scene of offence and witnessed the dead body. He further states that nobody informed him as to who killed the deceased. Therefore, the evidence of PW.3 that PW.3 furnished information even with regard to the person, who killed the deceased, appears to be incorrect. PW.4 was declared hostile by the prosecution.

17) PW.6, who is a community elder, speaks about some dispute between the accused and deceased but however in the cross-examination admits that he never held any panchayat with regard to disputes between the accused and the deceased. On the other hand he deposed that both of them used to live amicably prior to death of the deceased.

18) PW.7, who is resident of that village, only speaks about the information received with regard to death of the deceased and he admits that he does not know how the deceased died.

19) From the evidence of all these witnesses, it is very clear that nobody saw the incident and nobody was aware as

to how the deceased died. On the other hand there is enough material on record, through the admissions made by the independent witnesses that the accused and deceased were living separately and that the relationship between them was quite amicable. But the prosecution mainly relied upon the evidence of PWs.8 and 9 to show that it was the accused who was responsible for the incident. PW.8 was aged about 12 years at the time of giving evidence. After being satisfied with his mental capacity to give evidence, the Court recorded his evidence. In his evidence he deposed that his father used to beat his mother with regard to disputes for demand of additional dowry and on the date of incident he went to School and when he returned for lunch his mother was there at home. His younger brother did not come for lunch as he is provided with lunch at school itself. Later, when he returned home from school in the evening he came to know that his mother died and that his father killed his mother. In the cross-examination it was elicited that when he came for lunch, his mother and father and one of their neighbour Ganga were present. Apart from that in the preliminary question No.2 he says that he was studying 5th class at Mancherial hostel. Basing on the above, it is pleaded by the learned counsel for the appellant that question of PW.8 coming to the house for lunch from Mancherial while staying in hostel would

be correct. Even assuming that he came home for lunch, his evidence in chief which is to the effect that when he came home for lunch which is around 1.00 or 2.00 p.m., his mother was there at home. The answer given in the cross-examination is sought to be canvassed by the Public Prosecutor saying that since the mother and father were present at home when PW.8 came home for lunch, the theory of last seen is proved together. But as seen from his cross-examination along with his mother and father one Ganga was also present and the said Ganga was not examined. If really PW.8 had come home for lunch about 1.00 or 2.00p.m., which is the lunch time of school, the question of deceased being killed between 1.00 or 2.00 p.m., near Pochammagutta, which is at a distance of 6 kms from the house of the accused and deceased is practically impossible. Therefore, we feel that it may not be safe to rely on this witness to say that the accused and deceased were there together in the house at that time, more so since the evidence of the prosecution witnesses would show that the dead body was located at a distance of 6 kms from the Tar of the village and it is no body's case that the deceased and accused traveled together to that place at that time.

20) Coming to the evidence of PW.9, who was also studying second class at the time of giving evidence, deposed

that on the date of incident he went to School and when he returned home from the school in the evening, he came to know about the death of his mother in the hands of his father. The information of the accused killing the deceased in the afternoon, which has been spoken to by both the witnesses, in our view can only be by way of tutoring since the police and the villagers were not aware by then about the accused killing the deceased and even a report was not given to the police by then. PW.9 does not disclose the source of his information.

21) The call details between the accused and PW.4 which are spoken to by the investigating officer may not incriminate the accused with the crime since the person with whom he spoke is none other than his younger brother, who is examined as PW.4 and he did not support the prosecution case.

22) For all the aforesaid reasons, we are of the opinion that the prosecution failed to establish the guilt of the accused beyond all reasonable doubt.

23) In the result the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused for the offence punishable under Section 302 IPC in S.C.No.220 of 2013 on the file of the I Additional Sessions Judge, Adilabad, are *set aside*. Consequently, the appellant/

accused shall be set at liberty forthwith, if he is not required in any other case or crime.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

22.12.2018
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