

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.84 of 2013

J U D G M E N T : [*Per the Hon'ble Sri Justice C.Praveen Kumar*]

The sole accused in S.C.No.276 of 2012 on the file of the Special Sessions Judge for trial of Cases under SCs and STs [POA] Act-cum-Additional Sessions Judge, Khammam, is the appellant. He was tried for the offence punishable under section 302 of I.P.C. vide judgment dated 24/09/2012, the learned Sessions Judge learned Sessions Judge convicted the accused and sentenced him to suffer life imprisonment and to pay fine of Rs.5000/- in default to suffer rigorous imprisonment for six month under Section 302 of I.P.C.

2. The facts in issue are as under:

(i) The deceased Srilatha is no other than the daughter of PW-1. The appellant/accused and PW-1 are brothers. PW-2 is the wife of PW-1. While PW-3 is the wife of the appellant/accused and sister-in-law of PW-1. PW-5 is the father of PW-1 and the appellant/accused. There is no dispute with regard to the relationship between the parties.

(ii) On the date of incident at about 07:00 p.m., the appellant/accused came to the house of PW-5 and Srilatha to a thanda, which was about 2 kilo meter from the house of PW-1. At that time PW-1 was not in the house, as he went out to his field. Even PW-2 was not present in the house, as she went out along with her daughter. It is stated that the appellant/accused took the deceased stating that his wife

is alone in the house. Believing the statement, PW-5 sent the deceased, Srilatha along with the appellant/accused. The evidence further discloses that the appellant/accused took the deceased to the house of his sister-in-law and thereafter brought the dead body to the house of PW-3.

(iii) The case of the prosecution is that at about 03:00 a.m., when PW-1 was in his house, the appellant/accused came and informed that the deceased is not speaking. Then himself and PW-1 along with his father went to the house of the appellant/accused and saw the deceased daughter in front of the house lying dead. When the elders questioned the appellant/accused, he said to have confessed that he killed the deceased by administering poison. On 03/01/2010, PW-11 Sub-Inspector of Police, Enkoor, received a report from PW-1, based on which, a case in Crime No.1 of 2010 was registered for the offence punishable under section 302 of I.P.C. Ex.P-9 is the F.I.R. After registering Crime No.1 of 2010, PW-10 Inspector of Police, took up further investigation. He visited the scene of offence, went to the house of PW-1 and conducted inquest over the dead body of the deceased in the presence of LW-10 Boda Raghu and LW-11 Bhukya Mangamma. Ex.P-4 is the inquest report. During inquest, he examined PW-1 and PW-2 and recorded their statements. He also got photographed the dead body of the deceased. After completing the inquest proceedings, he sent the dead body to the K.G. Hospital, Kothagudem for conduct postmortem examination over the dead body of the deceased Srilatha. The Civil Assistant Surgeon, who conduct postmortem examination issued postmortem report Ex.P-10. After receipt of Forensic Science Laboratory report, he gave a final report, opining that death of the deceased was due to "*organochloro*" insecticide poison. PW-10 Inspector of Police continued with the

investigation, he arrested the appellant/accused and pursuant to the confession proceeded to the scene of offence, and seized one quarter bottle, plastic bottle, one biscuit piece under the cover of confession and recovery panchanama Ex-P6 and Ex.P-8. After collecting the necessary documents, PW-10 Inspector of Police filed a charge sheet which was taken as P.R.C.No. 69 of 2010 on the file of the Court of I-Additional Judicial Magistrate of First Class, Kothagudem in Crime No.1 of 2010 of Enkoor Police Station for the offence punishable under section 302 of I.P.C.

(iv) On appearance of the appellant/accused, charge under section 302 of I.P.C. was framed, read over and explained to the appellant/accused, to which the appellant/accused pleaded not guilty and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P-1 to P-1. No oral evidence was let-in on behalf of the defence but got marked Ex.D-1, the relevant portion in 161 Cr.P.C. statement of PW-3.

(vi) After the closure of prosecution evidence, the appellant/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.

(vii) On appreciation of the oral and documentary evidence place on record, the trial Court found the appellant/accused guilty

and convicted the appellant/accused for the offence punishable under section 302 of I.P.C.

3. Heard the legal aid counsel for the appellant and the learned Public Prosecutor appearing for the respondent/State.

4. The legal-aid counsel for the appellant would contend that there are no eye-witnesses to the incident and the circumstantial evidence relied upon by the prosecution do not form a chain of events to connect the appellant/accused with the offence. She would further submit that there is no record to show that the appellant/accused was responsible for the death of the deceased and that the poison which was said to have been consumed by the deceased, was administered by the appellant/accused. In the absence of any evidence, connecting the appellant/accused with the crime, she would contend that the confession voluntarily made by the appellant/accused cannot be made the basis to convict the appellant/accused. She would further contend that the confession cannot be treated as one made voluntary, as it was given by the appellant/accused under threat and duress.

5. On the other hand, learned Public Prosecutor contends that even if the alleged confession made before elders is ignored, the other evidence on record amply establish the involvement of the appellant/accused in the offence. It is pleaded that in the absence of any explanation by the appellant/accused as to how the

deceased died, the confession can be taken as an additional circumstance to connect the appellant/accused with the crime.

6. The point for consideration is :

“ Whether the accused was responsible for the death of the deceased? ”

7. It is no doubt true that there are no eye-witnesses to the incident and the entire case rests on the circumstantial evidence. Therefore, we have to see whether the evidence adduced by the prosecution stands established and whether the same form a chain of events, connecting the accused with the crime.

8. The fact that the appellant/accused, PW-1, PW-2, PW-3 and PW-5 are closely related to each other is not in dispute. All of them are very closely related family members. Keeping this relationship in mind and in the absence of any enmity or motive to speak falsehood, we shall consider the evidence on record. PW-1 in his evidence deposed that on the date of incident at about 07:00 p.m., the appellant/accused came to his house to take the deceased to his house at Ramnagar thanda, as his wife was alone in the house is scared. At that time PW-1 was not present, as he went to the field. Even PW-2 was not present on that day, as she went to the house of her mother-in-law. Believing the statement made by the appellant/accused, PW-5 sent the deceased along with the appellant/accused. Two hours later, the appellant/accused came to the house of PW-1 stating that the deceased became sick and is not able to speak. At this stage, it would be relevant to refer to the

evidence of PW3, who is no other than the wife of the appellant/accused. Her evidence discloses that at about 2:00 clock night her husband brought the dead body and laid the same in front of the house, woke her up and informed that the deceased Sreelatha died while walking. Again her husband went to PW-1 and informed about the death of Sree latha. Thereafter they came to her house at about 2:00 a.m. Her husband was taken to Rangapuram and in the presence of elders he was questioned, pursuant thereto he confessed about the commission of offence. In the cross-examination, PW-3 admits that at first appellant/accused took the deceased to the house of Mamidi, her sister-in-law. Thereafter, he brought the dead body to her house. To a suggestion that her husband never killed the deceased Sreelatha was denied by her. It is to be noted that PW-3 was not declared hostile and in the cross-examination it was elicited that her husband alone is responsible for the death of the deceased. From the evidence of PW-1 and PW-5, it is clear that on the date of incident at about 07:00 p.m. the appellant/accused took the deceased along with him to his house at Ramnagar thanda. The evidence of these witnesses establishes that the deceased was present in the company of the appellant/accused at 07:00 p.m. and within few hours the appellant/accused went to the house of PW-1 and informed about the health condition of the deceased. When PW-1 and others went to the house of the appellant/accused, they noticed the dead body of Sree latha was

lying in front of the house. There was no explanation given by the appellant/accused as to how the deceased died except denying the incriminating material which was put to him in his 313 Cr.P.C. examination. It is no doubt true that it is always not necessary for the appellant/accused to give explanation for the incriminating circumstances appearing against him in the evidence and he can maintain silence, but in the facts situation, the evidence of his own father and mother establish that the appellant/accused took the deceased to his house in the same thanda and failed to explain as to how she died. Though the appellant/accused tried to plead that it was a case of natural death the deceased falling down while walking but Ex.P-10/Forensic Science Laboratories report and Ex.P-11 the postmortem examination report would show that the death of the deceased was due to '*Organochloro*' insecticide poison, which was found in the stomach of the deceased. It was not the case of the accused that the deceased on her own consumed poison. It is also not the case of the appellant/accused that there was any opportunity for the deceased to consume pesticide poison substance after she was taken from the house of PW-1. Though an argument was sought to be advanced stating that the health condition of the deceased was not good even while she was in the house. The deceased could have been died prior to the appellant/accused taking her to his house. As it is not the case of the appellant/accused that he killed the deceased while she was either in sleeping condition and was in unconscious condition. On

the other hand, the evidence of PW-5 shows that the appellant/accused took the deceased along with him, as his wife was alone and was scared. Therefore, we are of the view that this circumstance itself speaks volumes about the involvement of the appellant/accused in the commission of offence, more so, when the dead body was traced in the house of the appellant/accused within no time. With regard to the confession made by the appellant/accused before the elders including his father and his wife, PW-1 and PW-3, in one voice spoke about the appellant/accused disclosing the commission of offence by way of administering poison to the deceased. As per the evidence of PW3 the wife of the appellant/accused, her husband also killed Pavan Kumar, the son of her elder brother, namely Sreenu. As per the confession, he killed the children on the plea that he will get the power of sorcery. Except PW-1 none of the witnesses spoke about any threat made by the accused when he was tied to a poll and beaten, as he confessed in Ex.P5 and Ex.P7 that he administered 'Endosulphan' pesticide poison and forcibly made to drink the deceased Srilatha then he pressed her neck and killed her. Even if the said confession is excluded from consideration but the fact remains that he took the deceased from the house of PW-1 and in the absence of any explanation as to how the deceased died by consuming poison while she was in the custody of the accused, we feel that the judgment dated 24/09/2012 passed by the Special Sessions Judge for trial of Cases under SCs and STs [POA] Act-cum-

Additional Sessions Judge, Khammam, in S.C.No.276 of 2012 convicting the appellant/accused for the offence punishable under section 302 of I.P.C. and sentencing him to undergo life imprisonment and to pay a fine of Rs.5000/- and in default to suffer six months rigorous imprisonment does not call for any interference by this Court.

9. In the result, this Criminal Appeal fails and the same is accordingly dismissed.

10. As a sequel, miscellaneous petitions if any, pending in this Criminal Appeal shall stand closed.



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HONOURABLE MISS. JUSTICE J. UMA DEVI



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