

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.7 of 2014

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

1) The sole accused in Sessions Case No.78 of 2012, on the file of the V Additional District and Sessions Judge (FTC), Ranga Reddy District, at L.B. Nagar, is the appellant herein. He was tried for an offence punishable under Sections 498-A and 302 IPC. Vide judgment dated 18.11.2013, the learned Sessions Judge convicted the accused for the offences punishable under Sections 498-A and 302 IPC and sentenced him to undergo rigorous imprisonment for a period of three (03) years and to pay fine of Rs.100/- in default to undergo simple imprisonment for one (01) month for the offence punishable under Section 498-A IPC and to suffer imprisonment for life and to pay fine of Rs.100/-, in default to undergo simple imprisonment for one (01) month for the offence punishable under Section 302 IPC.

2) The gravaman of the charges against the accused is that on 11.04.2011, at about 8.30 P.M., in his house situated at H.No.7-90, Sri Ram Colony, Jalpally Village, Saroornagar Mandal, Ranga Reddy District, the accused is said to have caused the death of his wife by name Tirupatamma (hereinafter referred to as "the deceased") by hitting her head with an axe.

3) The facts as culled out from the evidence is as under:

i) Accused is the husband of the deceased, while PWs.1 and 2 are the married daughters, PW.3 is the son of the deceased and accused. P.Ws.1 & 2 were residing separately in the same village. The accused was addicted to bad vices and used to come home in a drunken state and harass the deceased physically and mentally. PW.1 stated that on the next day of incident she sent her daughter to her parents house to bring Jaju to paste it to her walls. Her daughter returned and stated that something happened to her mother. Immediately she rushed to her parents house and found injuries on the head of her mother and she was lying in a pool of blood. She informed the same to PWs.2 and 3. She did not find her father (accused) in the house. On suspicion she lodged a complaint. Ex.P1 is the complaint. Basing on the said report PW.14 registered a case in Crime No.145 of 2011 and issued the first information report, which is placed on record as Ex.P9. PW.10 conducted the scene of offence Panchanama and also prepared a rough sketch in the presence of PW.5 and another. Ex.P6 is the rough sketch. During the course of Panchanama, PW.10 recorded the statements of PWs.1 to 4, 6 and 7 and others.

ii) PW.10 also conducted inquest over the dead body of the deceased in the presence of PW.5 and another. Ex.P3 is the inquest Panchanama. Later, he forwarded the dead body to Osmania Medical College, Hyderabad, for post mortem examination.

iii) PW.9-the Assistant Professor in the Department of Forensic Medicine, Osmania Medical College, Hyderabad, conducted autopsy over the dead body of the deceased and issued Ex.P5 the postmortem certificate. According to doctor, the cause of death was “due to multiple chop wounds on head and neck.”

iv) On 19.04.2011 on credible information, PW.10 arrested the accused at Sriram Colony, Jellapally. On interrogation the accused voluntarily confessed about the commission of offence. The confessional statement of the accused was recorded in the presence of PW.8 and another. Pursuant to the said confession, the accused lead the police to his house and produced M.O.1 axe. Thereafter, the accused was remanded to judicial custody.

v) After collecting all the necessary documents, PW.11 filed a charge sheet before the Court of XIV Metropolitan Magistrate, Cyberabad at L.B.Nagar, which was taken on file as P.R.C.No.23 of 2011. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 Cr.P.C., which came to be numbered as S.C.No.78 of 2012.

4) Basing on the material on record, charges for the offences punishable under sections 498-A and 302 IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

5) To substantiate its case, the prosecution examined P.Ws.1 to 14 and got marked Exs.P-1 to P-9 and MOs. 1 to 5. 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. No oral or documentary evidence was adduced on his behalf, in support of his defence.

6) Relying on oral and documentary evidence placed on record, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present criminal appeal came to be filed through Legal Aid.

7) Learned counsel for the appellant mainly submits that there is absolutely no legal evidence on record to connect the accused with the crime. According to her, there is no material on record to show that the accused was present in the house on that night. Though P.W.12 was examined by the prosecution to prove that the accused was present in the house, but the answers given by him in the cross-examination, demonstrate that what he has stated in chief-examination is false and that he never enquired as to whether the accused was there in the house on that night. Insofar as the evidence of P.W.1 is concerned, she would contend that her evidence is silent on the time. She does not say as to when she entered the house and when she saw the deceased with injuries. She further contended that the evidence adduced by the prosecution is not sufficient to base a conviction.

8) On the other hand, learned Public Prosecutor would contend that having regard to the past conduct and as the accused failed to

give any explanation as to how the deceased died, an inference has to be drawn against the accused.

9) As seen from the record, there are no eye-witnesses to the incident and the case rests on circumstantial evidence. In order to connect the accused with the crime, the prosecution should establish each of the circumstances relied upon and the circumstances so established should form a chain of events connecting the accused with the crime.

10) In *Rukia Begum vs. State of Karnataka*<sup>1</sup> 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.”*

11) In *Jagroop Singh v. State of Punjab*<sup>2</sup> the Apex Court held as under:

*“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.”*

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<sup>1</sup> AIR 2011 SC 1585

<sup>2</sup> AIR 2012 SC 2600

12) In *Gambhir v. State of Maharashtra*<sup>3</sup> the Apex Court 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.”

13) 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.

14) 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.

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<sup>3</sup> (1982) 2 SCC 351

15) It is no doubt true that the dead body of the deceased was found in the house of the accused. It is also true that prior to the incident, the accused and the deceased were living together. The question is, whether the accused was in the house on the intervening night of 11/ 12.04.2011.

16) P.Ws.1 & 2 are the daughters and P.W.3 is the son of the accused and the deceased. P.W.1 in her evidence deposed that she was staying separately from her parents at a nearby house. P.W.1's brother, i.e., P.W.3, left the house, unable to bear the torture from the accused. Her mother was bearing all the harassment in the hands of the accused and she continued to live with the accused. On the date of the incident, P.W.1 sent her elder daughter Svamma to her parents' house to get 'jaju' (red colour earth) to paste it on the walls of the house. She returned back and informed P.W.1 that something happened to the deceased. Immediately P.W.1 went to the house of her parents and found the deceased in a pool of blood with an injury on her head. She informed P.W.2 and P.W.3 and also the neighbours. She also informed the police and lodged a report. P.W.1 was not cross-examined immediately after chief examination. Later, on an application came to be filed to recall P.W.1, which was allowed on 11.12.2013. The cross-examination of P.W.1 came to be done nearly 2 to 3 months after chief. In the cross-examination, P.W.1 admits that she does not know what happened and also as to how the incident took place. According to her on the next day morning, she came to know about the incident when she sent her daughter

to her parents' house. Her version is to the effect that the police came to the scene at 11.00 a.m. and examined her. At the scene of offence, the weapon used i.e., axe was seized on the same day. The suggestion in view of the disputes between the accused and the deceased she is deposing false against the accused, and that the accused is not responsible for the offence, was denied by her.

17) P.W.2 is another daughter of the deceased and the accused. She is not an eyewitness to the incident which occurred on 11.04.2011. She was also subjected to cross-examination, but however, she admits that she does not know what actually transpired between her father and mother prior to the offence. She states that after performing the funeral of her mother in Yapatla Village, Peddavura Mandal near Kollapur, they stayed there. To a suggestion that there were neither disputes nor quarrels between her father and mother, was denied. To a suggestion that in view of the disputes and differences she is deposing false was denied.

18) P.W.3 is the son of the accused and the deceased. He was also not present in the house on that day at the time of the incident. He was living separately from the accused and the deceased, as he was unable to bear the torture in the hands of the accused. He was examined in chief on 28.11.2012, but was deferred and the same done after an application for recall was allowed on 11.02.2013. P.W.1 is said to have informed P.W.3 about the death of their mother. On receipt of the information,

P.W.3 came to the scene of offence and saw the dead body of her mother. He also deposed about police examining and recording his statement. To a suggestion that due to suspicion, he gave statement against his father to the police was denied. He further admits that after performing funeral of his mother at Kotta Yapatla Village, P.W.3 along with P.Ws.1 & 2 stayed for one month in that village and after the offence, the house at Jalpalli Village has been in their custody. To a suggestion that because of the difference and disputes with his father, he is deposing false was denied.

19) From the evidence of these three witnesses, it is clear that none of them have seen the incident and they deposed only about the quarrels that took place between their father and mother in the past. Their evidence also show that on receipt of the information about the death of their mother, P.Ws.2 & 3 came to their house, while P.W.1 speak about the receipt of information from her elder daughter Svamma, who was sent to her grandparents' house to collect 'jaju' (red colour earth). It is also to be noted here that the daughter of P.W.1, who went to the house of her grandparents for collecting 'jaju', informed to P.W.1 about the injuries on the deceased, which she noticed. The evidence of these three witnesses may not be of any use to prosecute the accused under Section 498-A IPC, since their evidence does not indicate any specific incident of accused beating the deceased for want of property or for any money or otherwise.

20) Coming to the evidence of P.W.4, he is said to be a resident of Sri Ram Colony, Jalpalli Village, Saroornagar Mandal, Panga Reddy District, and claims to know P.Ws.1 to 3 and the accused. He is said to be the immediate neighbour of the accused. According to him, the accused is habituated to quarrel with his wife and also used to consume liquor. In his evidence, he deposed about the incident which occurred one year prior to the date of the offence, wherein on that date the accused tried to kill his wife and to save herself, the deceased came to the house of P.W.4. The accused is said to have followed her and broke open the door of the house of P.W.4 by throwing a granite stone. On the date of incident, he noticed PW.1 weeping at the house and when enquired she seems to have been replied that her father killed her mother. P.W.4 was cross-examined at length. In the cross-examination, he admits that he cannot say the date or month as to when the accused broke open the door of his house and tried to beat the deceased. He admits that he never gave any report to the police about the incident. He further admits that after the death of the deceased, P.W.3 was living alone in the house of the accused. To a suggestion that he does not know anything about the facts of the case nor as to how the deceased died and that in order to support P.Ws.1 to 3, he came to Court was denied by him. To a suggestion that the deceased never took shelter in his house and that the accused had not broke open the door of his house with granite stone was denied. He further admits that PW.4 reached the

house of deceased between 7.00 a.m. and 8.00 a.m., by which time the police were there, who recorded his statement.

21) This evidence of P.W.4 does not conclusively establish that the accused was present in the house. He only deposed about the earlier incident, where the accused tried to kill the deceased. But in his cross-examination, he admits that he cannot say the date or month about the said incident. Further, no report came to be lodged before the police about the said incident and P.Ws.1 to 3 never spoke about the said incident. Therefore, when the evidence of P.W.4 does not get corroboration from the family members with regard to the said incident, a doubt arises as to whether it would be safe to rely upon to show that the accused had a motive to kill the deceased. It is no doubt true that the evidence of P.W.4 indicate that the accused is habituated to quarrel with his wife and that the accused used to consume alcohol, but that circumstance itself may not lead to an inference or conclusion that it was the accused, who killed the deceased, more so, when his evidence is silent as to the presence of the accused in the house on that day. Further, he is said to have gone to the house of the accused on the next day morning between 7.00 a.m. and 8.00 a.m., by which time the police came there. Therefore, his evidence in all cannot be taken as a basis to connect the accused with the crime in the absence of other evidence corroborating the same.

22) P.W.5 is the panch witness for the scene of offence and inquest. P.W.6 is another neighbour, who claims to have seen the incident while the accused was beating his wife and also saw the incident of deceased taking shelter in the house of P.W.4. But in the cross-examination, he admits that he cannot say the date or month or year exactly as to when the incident happened. That being the position, his evidence also cannot be accepted to show that the accused had a grouse to kill the deceased, as he is not in a position to give even the year as to when the incident happened. Even assuming that such an incident occurred, which according to the prosecution evidence is long prior to the present incident, that circumstance, in our view, cannot be taken as a basis to say that it was the accused alone is responsible for the incident.

23) The only other evidence, which remains on record, is the evidence of P.W.12. Strangely, this witness, who also claims to be a resident of Medinapally, Mahaboobnagar, and was residing at Sri Ram Nagar Colony, Jalpally, during the year 2011, was examined to prove the presence of the accused in the house on that night, was examined after recording the evidence of the Investigating Officer, thereby denying an opportunity to the accused to cross-examine the Investigating Officer with regard to the earlier version of this witness, with regard to the presence of the accused in the house of the deceased. Definitely great prejudice is caused to the accused due to examination of P.W.12 after the evidence of Investigating Officer. Even otherwise, it is to be noted here that his evidence is to the effect that on the night of incident, there was power cut in

between 8.00 p.m. and 9.00 p.m. and thereafter, the power was restored. After having dinner, they slept in their home while the accused and deceased slept in their house. On the next day morning, the grand daughter of the accused and deceased came to their home, observed the things in their home and returned back to her house and informed to her mother (P.W.1) and then P.W.1 and the above said girl came back. On hearing the hues and cries, the neighbours including P.W.12 claimed to have gone to the scene of offence and noticed the dead body lying in the pool of blood. If really P.W.12 has visited the house of the accused, on hearing the cries as stated by him, the same should have been reflected in the evidence of P.W.1, who was the first person to visit the house. Her evidence is silent as to the visit of P.W.12 to their house after hearing the cries.

24) Apart from that, in the cross-examination, P.W.12 admits that on the night of the incident, he came home at 7.30 p.m. and after having dinner, slept at 9.30 p.m. without conversing with any person. He further admits that he did not observe as to what was happening in the surroundings. From the above, it is clear that after reaching home at 7.30 p.m., he had his dinner and slept at 9.30 p.m. without conversing with any body nor he enquired or observed the presence of the accused and the deceased in the house. Therefore, his version in chief, that the accused and the deceased also had dinner and then slept in their house cannot be accepted. Hence, viewed from any angle, we feel that no positive evidence was adduced by the prosecution to prove or establish the

presence of the accused in the house on that night. It is no doubt true that there was a death and the dead body was lying in the house of the accused. But the burden to explain as to how the dead body came into his house, lies with the accused, provided the prosecution establish the presence of the accused in the house on that night. A presumption that the accused must have been present in the house on that night cannot be drawn.

25) In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused by name Avula Kurumaiah, in the judgment, dated 18.11.2013, in Sessions Case No.78 of 2012, on the file of the V Additional District and Sessions Judge (Fast Track Court), Panga Reddy District, for the offences punishable under Sections 498-A & 302 I.P.C., 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.

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JUSTICE C.PRAVEEN KUMAR

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JUSTICE J.UMA DEVI

Date: 22<sup>nd</sup> December, 2018

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HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

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CRIMINAL APPEAL No.7 of 2014

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