

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.117 of 2012

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

1) The sole accused in Sessions Case No.166 of 2011 on the file of the Principal Sessions Judge, Ongole, is the appellant herein. He was tried for an offence punishable under Sections 450, 302, 376 read with 511 IPC. Vide judgment dated 25.08.2011, the learned Sessions Judge, while acquitting the accused for the offence under Section 376 read with 511 IPC, convicted the accused for the offence punishable under Section 450 IPC and sentenced him to suffer rigorous imprisonment for a period of ten years and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for one month. He was further convicted for the offence punishable under Section 302 IPC and sentenced to suffer "imprisonment for life" and to pay a fine of Rs.500/- in default to suffer simple imprisonment for two months. Both the sentences were directed to be run concurrently.

2) The gravamen of the charge against the accused is that on 20.10.2010, the accused criminally trespassed into the house of one Lella Krishna, committed rape on his wife Lella Rukmini and also caused her death by beating her with an axe indiscriminately.

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

All the material witnesses are residents of Timmasamudram village. Lella Rukmini (hereinafter referred to as “the deceased”) is the wife of PW.1. Her marriage with PW.1 took place 14 years prior to the date of incident and out of wedlock they were blessed with two children. Their first son is aged about 10 years and the second son is aged about 7 years at the time of incident. As on the date of incident, both the children are studying at Chilakaluripeta by staying in their relative house. The house of the accused is very nearby to the house of the deceased. In between the house of PW.1 and the house of accused, there was a vacant land to an extent of Ac.1.00. On the date of incident, PW.1 and one Nagaraju, who is the owner of the tractor, went to Ongole to purchase tractor spare parts. They left the village at about 11.00 a.m. At about 5.30 p.m., the said Nagaraju received a phone call from P.Chanti (not examined) stating that the wife of PW.1 is lying in a pool of blood. Immediately, PW.1 and Nagaraju started on motor cycle and reached the house of PW.1 at 7.30 p.m., where they found the deceased lying in a pool of blood and her saree lifted upto her thighs. Immediately, he got drafted a report and lodged the same before PW.12. Ex.P1 is the report. Basing on the said report, PW.12-the Sub-Inspector of Police, registered a case in Crime No.42 of 2010. Ex.P9 is the first information report. Subsequent investigation in this case was taken over by PW.13-the Inspector of Police.

PW.13-the Inspector of Police, after receipt of the copy of the first information, gave instructions to PW.12 to safeguard the

dead body at the scene of offence. He visited the scene of offence situated in the kitchen room of the house of the deceased and in the presence of PW.7 prepared an observation report of the scene and got photographed the scene through PW.10. From the scene of offence, PW.13 seized blood stained plastic tin containing slat, match box, blood stained steel plate, blood stained steel vessel and two pieces of blood stained gauze cloth under Ex.P2. Thereafter, he prepared a rough sketch of the scene which is marked as Ex.P10. He then held inquest over the dead body of the deceased in the presence of PW.7. During inquest he examined PWs.1 to 6 and others and recorded their statement. Ex.P3 is the inquest report. Thereafter, he sent the body for postmortem examination.

PW9-the Civil Assistant Surgeon, Government Hospital, Chirala, conducted autopsy over the dead body of the deceased and issued Ex.P7-the postmortem certificate. According to him, the cause of death was due to head injury, due to sharp and heavy weight object. After conducting postmortem examination, PW.11 handed over the apparels of the deceased to the investigating officer, which were marked as MOs.8 to 10.

On 31.10.2010, on receiving information about the presence of the accused at Vetapalem Railway Station, PW.13 proceeded to Vetapalem Railway Station along with PW.8 and his staff and found the accused near foot over bridge on platform No.1. He apprehended the accused and on interrogation, he is said to have

admitted the commission of offence. Pursuant to the said confession, the accused lead them to Thimmasamudram village, took out the axe from the waterweed which was situated in front of the house of the deceased and produced them. PW.13 seized the said axe. Afterwards, the accused lead them to his house and produced a banian, which were seized under a mediators report. After collecting all the material, a charge sheet came to be filed before the III Additional Judicial magistrate of First Class, Ongole, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.166 of 2011.

4) On appearance, charges under Sections 302, 450, 376 read with 511 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) To substantiate its case, the prosecution examined PWs.1 to 6 and got marked Exs.P1 to P13 and MOs.1 to 10. 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 evidence was adduced on behalf of the accused but the relevant portion in 161 Cr.P.C. statement of PW.4 was marked as Ex.D1.

6) Basing on the evidence of PWs.2 to 6, the trial Court convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

7) Learned counsel for the appellant mainly submits that there are no eye 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 to connect the accused with the crime. It is his plea that the prosecution relies on the evidence of PWs.3 and 5 which do not in any way show that the accused went into the house of the deceased. He further submits that the case of prosecution as set out in the charge sheet is totally different from what the witnesses have stated before the Court, as such the Court ought to have thrown out the entire case as false.

8) On the other hand, the learned Public Prosecutor would contend that though it was a case based on circumstantial evidence, but the prosecution was able to prove the circumstances relied upon by them to connect the accused with the crime. It is his case that the evidence of PW.3 is sufficient to convict the accused, having regard to his conduct in running away from the scene, when PW.3 asked him not to move from the place on suspicion. He took us through the evidence of PWs.2 to 6 to show the involvement of the accused in the commission of offence.

9) In order to appreciate the rival contentions made, it would be useful to refer to the evidence of PWs.2 to 6.

10) As per the charge sheet, the case of the prosecution is that on 20.10.2010 morning PW.1, the husband of the deceased went to Ongole on work. The accused used to visit the house of the deceased, and noticed the deceased moving alone at her house. In the evening at about 5.00 p.m., the accused went to the house of the deceased by crossing the wet land around the house of the deceased which was seen by PWs.2 and 3. It is said that the deceased assigned the work of cutting fire wood with axe and went to the bazaar for purchasing things, got back at 5.30 p.m., went inside the house and attended the work. Taking advantage of her loneliness, the accused, stopped the work of cutting firewood, went inside the kitchen with axe, expressed his desire, embraced her and made his efforts to have sex with the deceased. Though the deceased is not mentally matured up to her age, she could grasp the intention of the accused and resisted him. It is said that the deceased threatened him about disclosing the assault to her husband and others. In anticipation of dire consequences, the accused assaulted the deceased and beat her with the axe indiscriminately so as to prevent the deceased from revealing the sexual assault to others. This is the version which the prosecution has set out in the charge sheet.

11) From the above, it is clear that the motive for the commission of offence appears to be that the accused, tried to misbehave with her and with a view to prevent the deceased from informing his sexual assault to PW.1 and others, he said to have caused the death of the deceased.

12) As seen from the record, there is no evidence to prove the motive. There is no evidence on record through the doctor to show the existence of any sexual assault on the body of the deceased. Apart from that the charge for the offence punishable under Section 376 read with 511 IPC was found to be false. Therefore, the motive set up by the prosecution stands unproved.

13) As stated earlier, the entire case rests on the circumstantial evidence. There are no eye witnesses to the incident. When once the motive is un-proved, the foundation for the prosecution case gets weakened, more so in a case, which arises out of circumstantial evidence. In order to prove the guilt of the accused and connect him with the crime, the prosecution placed reliance on the evidence of PWs.2 to 6.

14) PW.2 in his evidence deposed that on the date of incident, while tethering his she buffaloes at his house, he saw the accused coming from the fields to the house of the deceased and was proceeding towards the road on the southern side of the house of the deceased. One hour later, he came to know that the deceased was murdered and her dead body was lying in a pool of blood. This evidence of PW.2 is to the effect that he has seen the accused nearby the house of the deceased. In the cross-examination, it is elicited that the house of the deceased is surrounded by fields on all sides and the panchayat office was also situated behind the house of PW.2. He further admits that he did not go to the house of the deceased to see the dead body. He

further admits that on the date of occurrence, he did not tell to anyone that he saw the accused near the house of the deceased. It would be relevant to extract the same in the words spoken to by him.

“On the date of occurrence, I did not tell to any one that I saw the accused near the house of the deceased.”

15) From the evidence of PW.2, it is clear that though his evidence relates to seeing the accused nearby the house of the deceased, but he failed to inform about the same to anyone on the date of incident. If really he was present and saw the accused nearby the house of the deceased, nothing prevented him to disclose the said fact. His non-information about the said fact to other on the date of incident throws some suspicion over he witnessing the accused near by the house of the deceased.

16) PW.3 is the crucial witness. In her evidence she deposed that she was working as an anganwadi teacher and knows the deceased, accused and PWs.1 and 2. According to her, the house of the deceased is at a distance of 75 yards from her house. On the date of occurrence, she saw the deceased while she was going to her house from the bazaar with some kirana articles. 10 minutes prior to it, she saw the accused going to the house of the deceased from the nearby fields. About 15 to 20 minutes after the deceased went to her house, the accused came from the side of the house of the deceased to the house of PW.3, while she was collecting ropes from cattle shed. The accused asked her son to come with him to the house of the deceased stating that the

deceased is going to give curry to him. Then, the son of PW.3 accompanied the accused and both of them started proceeding to the house of the deceased. Within two or three minutes thereafter, the accused came running towards her house by shouting aloud as "Raktham, Raktham". When she enquired as to what happened, the accused is said to have stated to PW.3 that he noticed the deceased vomiting blood. She asked the accused to inform PW.5, who is the maternal uncle of PW.1. At that time PW.4, who was going by the side of the house of PW.3 heard the conversation between PW.3 and the accused. PW.3 contacted her husband, who was at the milk collecting point on phone and asked him to bring a doctor, as the deceased was vomiting blood. Thereafter, herself and PW.4 went to the house of the deceased. By standing outside the house, she said to have called the deceased by her name twice but there was no response. Then PW.4 entered into the house and after awhile came out and told her that the deceased was dead, with cloths up to her thighs and body in a pool of blood. Meanwhile, the accused came there with PW.5 and the R.M.P. doctor. Both of them entered into the house and after some time informed about the death of the deceased.

17) The evidence of PW.3 is to the effect that she questioned the accused on suspicion that he did something to the deceased as he alone went to the house of the deceased and asked him not to move from that place. At that point of time when PW.3 started questioning the accused, the accused left the place. She further states that after the deceased went to the house from the

bazaar, no one went to her house and there was an opportunity for the accused to meet her during that time. She further states that there is no other way to go to the house of the deceased except the way which is in the front.

18) PW.3 was subjected to lengthy cross-examination, but however no material has been elicited to show that the accused had any motive to kill the deceased. As seen from the evidence in chief of PW.3, it is clear that she saw the deceased while she was going to her house from Bazar. About 10 minutes prior to that she saw the accused going to the house of the deceased from nearby the fields and 15 to 20 minutes thereafter, the accused came out from the side of the house of the deceased, while she was collecting ropes from the cattle shed. In the earlier statement recorded by the police during investigation, PW.3 failed to mention certain material facts which she has mentioned before the Court for the first time.

19) PW.13-the investigating officer in his cross-examination states as under:

“PW.3 did not state before me that the house of the deceased is at a distance of 75 yards from her house and is visible from her house. PW.3 did not state that she saw the accused 10 minutes before the deceased reached her house but she stated that she saw the accused some time before the deceased reached her house. She did not also state that the accused came out of the house of the deceased after 10 to 15 minutes after the arrival of the deceased at her house. PW.3 did not state before me that the accused came running towards her house by raising

cries. PW.3 did not state before me the name of PW.4 or anything regarding PW.4. She did not also state that she went near the house of the deceased and called the deceased by her name as Rukmini, Rukmini.”

20) From the evidence of PW.13, it is clear that PW.3 did not state that she saw the accused 10 minutes before the deceased reached her house but she stated that she saw the accused some time before the deceased reached to her house. She also did not state the accused came out of the house of the deceased after 10 minutes after the arrival of the deceased. She also did not state that the accused came running towards her house by rising cries. It is also elicited from PW.3, she did not state before the investigating officer the name of PW.4 or anything regarding PW.4.

21) From the above, it is clear that there is no positive evidence to show that she saw the accused entering the house of the deceased. At the most it can be said that she must have seen the accused nearby the house of the deceased or moving towards the house of the deceased. Apart from that she did not state in her earlier statement about the accused going out of the house of the deceased, 10 or 15 minutes after arrival of the deceased. Therefore, a doubt arises as to whether really the accused entered the house of the deceased and also as to whether he came out of the house of the deceased after arrival of the deceased from the market. Further their conversation was said to have been heard by PW.4 but she failed to mention about PW.4 listening to their conversation or anything regarding PW.4 in her earlier statement.

22) PW.6, who is also a resident of Timmasamudram Village, was examined to show that PW.4 was telling PW.3 that blood was oozing from the deceased and she was not be able to see the deceased. He also stated that PW.3 was questioning the accused stating that he must have killed the deceased. At that juncture, he left that place and proceeded to his clinic. But however, in the cross-examination he admits that he did not state before the police about PW.3 questioning the accused stating that he must have killed the deceased. Therefore, the version of PW.3 that she questioned the accused and asked him to stay at the scene, in view of the suspicion against him, though spoken to by PW.3 in the presence of PW.4 and 6, but the said fact was not mentioned by PW.6 in his earlier statement nor PW.3 spoke about the presence of PW.4 in her earlier statement. Therefore, we feel that the circumstance of accused coming out of the house of the deceased, which is spoken to by PW.3 for the first time in the Court, cannot be made the basis. Hence, the circumstance relied upon by the prosecution through the evidence of PW.3 stands unproved.

23) Apart from that it is also to be noted here that there is no evidence on record to show that the accused had any motive to kill the deceased. PW.1 also did not depose about any motive for the accused to kill the deceased. As stated earlier, the motive for the commission of offence was only with a view to prevent the deceased from disclosing to PW.1 and others with regard to alleged

sexual assault made by the accused. But the said charge remained un-proved, leading to acquittal by the trial Court.

24) It is also to be noted here that in the charge sheet the prosecution has come forward stating that the accused used to go to the house of the deceased and on that day the deceased asked him to cut some firewood with an axe. But there is no evidence to that effect and no witness has seen the accused entering the house of the deceased with a weapon, more particularly, the Axe, which is said to have been used in the commission of offence. In the absence of any material to show that the accused entered the house of the deceased and that he left the house of the deceased, we feel that the said circumstance cannot be relied upon to connect the accused with the crime. It is also to be noted that if really the accused has committed the offence as alleged, definitely he could not have gone to the house of PW.3 and asked her son to accompany him to the house of the deceased again for fetching curry. Though the prosecution tried to rely upon the circumstance of accused disclosing to PW.3 with regard to deceased vomiting blood but even if the said version is accepted, definitely it does not in any way inculcate the accused with the crime. If the evidence of PW.3 is seen closely it shows that even two or three minutes after the accused went to the house of the deceased along with her son, he came back running towards her house shouting aloud "raktham, raktham". At the earliest point of time, PW.3 did not state that when she questioned as to what happened, the accused disclosed that the deceased was vomiting blood.

Admittedly there was an injury on the head and the blood was spread all over the floor. Therefore, he being a young man of 25 years has imagined the situation in a different way. Apart from this, it is also to be noted that immediately after the arrest of the accused, the police recovered the axe from the waterweeds at the instance of the accused. If really the said recovery is correct, the weapon do not contain any bloodstains.

25) For the foregoing discussion, we feel that the circumstances relied upon by the prosecution connecting the accused with the crime remain un-proved. Hence, the accused stands acquitted.

26) In the result, the Criminal appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 25.08.2011 in S.C.No.166 of 2011 on the file of the Principal Sessions Judge, Ongole, for the offences punishable under Sections 302 and 450 IPC are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime. The order passed with regard to MOs.1 to 10 shall stand confirmed. The fine amount, if any, paid by the accused shall be refunded to him.

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

JUSTICE C.PRAVEEN KUMAR

JUSTICE N. BALAYOGI

02.04.2018
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