

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SMT JUSTICE T.RAJANI**

CRIMINAL APPEAL No.279 OF 2012

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

The sole accused in Sessions Case No.230 of 2009 on the file of the I Additional Sessions Judge, Nizamabad, is the appellant herein. He was tried for the offences punishable under Sections 302 and 182 IPC, for causing death of his wife by name Rajitha @ Nishitha (hereinafter referred to as "the deceased") on 31.07.2007 at about 9:00 AM, while returning from the Temple, and for giving false information with intent to cause public servant to use his lawful power to cause injury to another person.

2. The learned Sessions Judge, vide judgment, dated 01.03.2012, rendered in the afore-stated Sessions Case, convicted the accused for both offences and sentenced him to suffer "imprisonment for life" and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 302 IPC. Further, he was also sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 182 IPC.

3. The facts disclosed by the evidence of prosecution witnesses are as under:

P.W.1 is mother of the deceased. According to her, the marriage of the deceased was performed with the accused on 21.02.2007. At the time of marriage, they presented one lakh cash to

the accused apart from presenting two tulas of gold and other house hold articles. Both of them lived together for a period of five months. It is stated that during the said period, the accused and the deceased visited her house on three or four occasions and in-laws of the deceased also visited her house on two or three occasions. The deceased informed that the accused was unfit to lead a marital life as he was impotent, for which she advised the deceased to wait for some time. One day prior to the incident, when P.W.1 visited the house of the deceased, the deceased informed that for the last two months she was not having menstrual cycles. When P.W.1 expressed to take her daughter to her home, the in-laws requested P.W.1 to wait for two days and that they themselves would send the deceased. On 31.07.2007 at about 10:30 AM, P.W.8 the Sub-Inspector of Police received information regarding the death of a lady and another person crying with stab injuries on the road near Neerugonda Hanmandloo. Immediately, he rushed to the spot and found the accused with injuries. On enquiry with the injured, he stated that while himself and his wife were returning from the temple on a motorcycle, they were intercepted by three persons, who took him and his wife to some distance from the road into the forest and killed his wife and also caused bleeding injuries to him. He also stated that the ornaments worn by his wife were taken by them. Basing on the information furnished by the accused, P.W.8 went inside the forest and found the deceased dead. Immediately, he telephoned to 108 Ambulance and on its arrival, he shifted the accused to the Government Hospital, Nizamabad. After his recovery, at about 3:30 PM, he examined and recorded his statement. Basing on the same, a case in Crime No.115 of 2007 came to be registered for the

offences punishable under Sections 302 and 379 IPC against unknown offenders. Ex.P.9 is the First Information Report. Further, investigation in this matter was taken up by LW.13-K.Pochaiah, Circle Inspector, who was not examined. According to P.W.8, after the investigation was taken over by LW.13-K.Pochaiah, he visited the scene and prepared the scene of offence panchanama by securing the mediators and seized wrist watch of the accused, broken bangle pieces of the deceased and a motorcycle. He also collected blood stained earth and controlled earth at the scene of offence. He also obtained photographs of the scene with the assistance of P.W.6. Ex.P.3 is the scene of offence and seizure panchanama and Ex.P.4 is the rough sketch of scene of offence. He then conducted inquest over the dead body of the deceased. Ex.P.2 is the inquest panchanama. He then recorded the statements of P.Ws.1 to 3, 5 and LW.4-O.Srinivas. Thereafter, the dead body was sent to postmortem examination.

4. P.W.7, the Civil Assistant Surgeon, Government Hospital, Nizamabad, conducted postmortem examination over the dead body of the deceased and issued Ex.P.8-postmortem examination report. According to him, the cause of death was due to multiple injuries haemoperitoneum leading to Hypovolaemic shock. He also noticed about three stab injuries, one laceration, peeling of skin of upper abdomen and chest and also injury to spleen.

5. Basing on the statement of PW.5, L.W.13 suspected the accused. Accordingly, the accused was interrogated in the presence of mediators and he is said to have confessed about the commission of offences. The accused lead the mediators and police to the scene

of offence, where M.Os.7 to 10 were recovered. The seized objects M.Os.1, 6 to 10 along with other objects were sent to Forensic Science Laboratory for examination. After obtaining necessary documents and examining the witnesses, L.W.13 is said to have filed charge sheet before the Court of Additional Judicial Magistrate of First Class, Nizamabad, which was taken on file as P.R.C.No.90 of 2009. Later, the case was committed to the Court of Sessions under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.230 of 2009.

6. On consideration of material placed on record, charges under Sections 302 and 182 IPC were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

7. To substantiate the case, the prosecution examined PWs.1 to 8 and got marked Exs.P1 to P11, besides MOs.1 to 13.

8. After closure of the prosecution 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 evidence, either oral or documentary, was adduced on behalf of the accused.

9. Basing on the evidence of P.Ws.1, 4 and 8 coupled with recovery of gold ornaments at the instance of the accused, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

10. Learned counsel for the appellant-accused mainly submits that there are no direct witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events to

connect the accused with the crime. According to her, the only circumstance, basing on which the conviction was given, is recovery of some gold ornaments at the instance of the accused. In the absence of any proof that the said gold ornaments belong to the deceased, pleads that the same cannot be made a basis to convict the accused.

11. On the other hand, learned Additional Public Prosecutor opposed the same and contended that there is material on record to show that the accused caused the death of the deceased for the reason that the deceased used to inform P.W.1 that the accused was impotent and unfit for marital life. According to him, the involvement of the accused in the commission of offence gets support from the recovery of ornaments. Since, no explanation is forthcoming from the accused as to how he came into possession of the gold ornaments, it cannot be said that he is innocent of the offences.

12. The point that arises for consideration is whether the circumstances relied upon by the prosecution establish the guilt of the accused for commission of the offences.

13. It is not in dispute that there are no eyewitnesses to the incident. The entire case rests on the circumstantial evidence. Before we proceed to deal with the same, it is to be noted that two versions are projected from the evidence of prosecution witnesses. The first version, which is reflected in First Information Report is that on 31.07.2007 at about 10:30 AM, he received information with regard to death of a lady and another person with stab injuries raising cries near Neerugonda Hanmandloo temple. He rushed to the spot and

found the accused with injuries on his body. The accused is said to have disclosed to PW.8 that while himself and the deceased were returning from the temple on a motorcycle, they were intercepted by three persons and the said persons took them into the forest and killed his wife and caused bleeding injuries to him. He also informed that the ornaments worn by the deceased were taken away by them. Basing on the information furnished by the accused, P.W.8 telephoned to 108 Ambulance and on its arrival, the accused was shifted to Government Hospital, Nizamabad. After his recovery, at about 3:30 PM, PW.8 examined the accused and recorded his statement.

14. From the above, it is clear that on 31.07.2007, three persons intercepted the accused and the deceased while returning from the temple, caused death of the deceased and also injuries to the accused and later took away the gold ornaments from the body of the deceased. The family members, who received information from the accused, rushed to the place, where the dead body was lying, and found pusthela thadu, patta golusulu, mukku pullalu and ear studs missing from the body of the deceased. Initially, they suspected the attack by the some third parties since the ornaments were also missing from the body. But, on seeing some of the ornaments on the body of the deceased, they suspected the accused. The said fact of rushing to scene of offence on receiving information was spoken to by P.W.1 and P.W.2. However, P.W.2 was declared as hostile by the prosecution, when in his evidence he deposed that when he visited the hospital he found no serious injuries on the accused. The Investigating Officer-L.W.13 was not examined and he did not point

out the involvement of accused in the commission of offence, but he recorded the statements of P.W.5 and O.Srinivas (L.W.4) and basing on their statements, he suspected the involvement of the accused. But, strangely, the Inspector, who recorded statements of P.W.5 and O.Srinivas (L.W.4) was not examined by the prosecution, to establish the fact which made him to suspect the accused. Similarly, the evidence on record does not anywhere indicate P.Ws.1 and 2 expressing suspicion against the accused. In the cross-examination, P.W.8, who was made to speak about the investigation done by L.W.13, stated that the statements of P.W.5 and O.Srinivas (L.W.4) do not point out the involvement of the accused. Therefore, the version of P.W.8, in-chief, that basing on the statements of P.W.5 and O.Srinivas (L.W.4), he suspected the role of the accused, who is said to have committed the offences, has to be viewed with suspicion. Apart from that, P.W.5-Baddam Kishan in his evidence states that on 31.07.2007 at about 9:00 AM, while he was going to Nerigonda Hanmandloo temple, he observed a motorcycle bearing No.AP-25-N-2575 parked on the road side, half kilometre away from the temple. On return journey also he saw the vehicle parked at the same place. On seeing the motorcycle, he was under the impression that persons might have visited the place for picnic purpose. In the evening at about 4:00 PM, he came to know that a woman was killed at that place where the said vehicle was parked. But, strangely, there is no evidence on record to show that the vehicle, which was parked, was that of the accused. The plea of the accused right from the beginning and which was spoken to by P.W.8 is that some un-known persons intercepted the accused and the deceased while they were returning from the Temple, took them into forest and thereafter, killed the

deceased. In the absence of any evidence with regard to ownership of motorcycle, it cannot be treated as circumstance to connect the accused with the said offences.

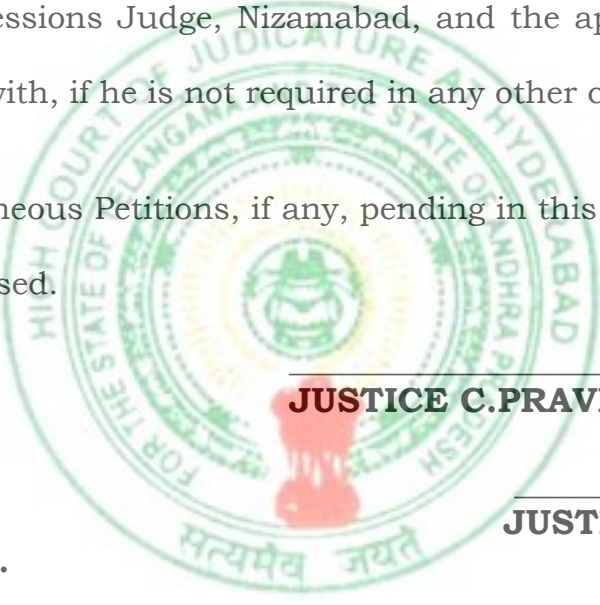
15. From the above discussion, it is clear that two versions are coming out from the evidence of prosecution. Three persons intercepted, caused injuries to the accused while returning from the temple and caused death of the deceased. The second version is that the accused himself was responsible for the death of the deceased in view of complaint made by the deceased to P.W.1 about impotency of the accused. But, the fact remains that the accused was found at the scene of offence lying with injuries and he was sent to the hospital in 108 Ambulance. Moreover, no medical reports are placed to show the nature of injuries on body of the deceased i.e., simple or grievous injuries. But, the fact remains that the accused was shifted to hospital and after his recovery at about 3:30 PM, his statement was recorded. The prosecution failed to prove that the injuries found on the deceased were self-inflicted and that he created a story that three persons intercepted them, caused injuries to him and death of deceased. It is also further evident from record that pursuant to confession made by the accused, the gold articles were recovered near Nerigonda Hanmandloo Temple. The two gold ornaments recovered at the instance of the accused were placed on record as M.Os.7 and 8. But, there is no evidence on record to show that these two ornaments belong to the deceased. P.W.1, who is mother of the deceased, did not state in her evidence that these ornaments belong to deceased. Therefore, the prosecution failed to establish that the

ornaments, which were recovered at the instance of the accused, belong to the deceased.

16. Hence, for the aforementioned reasons, we hold that the circumstances relied on by the prosecution to connect the accused with the commission of offences are not legally proved. As such, we feel the appellant-accused is entitled for the acquittal.

17. Accordingly, the appeal is allowed setting aside the judgment, dated 01.03.2012, in Sessions Case No.230 of 2009 on the file of the I Additional Sessions Judge, Nizamabad, and the appellant shall be released forthwith, if he is not required in any other case.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE T. RAJANI

July 17, 2018.
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**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
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Date:17.07.2018