

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.602 of 2011

JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

This appeal is filed by appellant/accused aggrieved by the judgment dated 10.05.2011 in S.C.No.186 of 2010 passed by Principal Sessions Judge, Karimnagar, whereby the learned Judge while acquitting the accused for the offence under Section 201 IPC, convicted him for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.1,000/- in default of payment of fine amount, to suffer SI for six months.

2) The prosecution case is thus:

a) The deceased—Anjavva and accused, who was working as A.R Constable were married about 20 years back and they were blessed with a son and three daughters. Since six years, the accused developed illegal intimacy with one Chinthala Laxmi and started harassing the deceased. Having vexed with his attitude, deceased filed a case against the accused at Women PS, Karimnagar under Section 498A IPC. Later accused got transferred to Hyderabad. He used to threaten the deceased over telephone and harass her. Fifteen days prior to the incident, Chinthala Laxmi quarrelled with deceased and her son with regard to share in their property. While so, on 16.09.2009 at about 12.40 hours PW2 telephoned to PW1 who is the brother of deceased and informed that when he returned from the college, he found his mother lying dead on the ground

with a cooler wire tied around her neck and the power supply was switched on. PW4—a neighbouring boy and friend of PW2 informed that on that morning while he was watching TV at the house of deceased, the accused came and sent him away. Thus, they suspected accused.

b) Then, PW1 lodged a complaint with the Karimnagar I Town PS, basing on which, PW18—ASI, registered a case in Crime No.224 of 2009 under Section 174 Cr.P.C as suspicious death and later on, PW19—Inspector of Police altered the Section of law to Sections 302 and 201 IPC and took up investigation.

c) During the course of investigation, IO visited the scene of offence, drafted the scene of offence panchanama in the presence of PWs.12 and 13, drew rough sketch of scene, got the scene of offence photographed by PW5 and conducted inquest over the dead body and sent it for post-mortem examination. PW14—doctor who conducted autopsy over the dead body, opined that cause of death was due to electric shock with Cardio respiratory arrest. After completion of investigation PW19 laid charge sheet.

d) On appearance of the accused, the trial Court framed charges under Sections 302 and 201 IPC against him and conducted trial.

e) During trial, PWs.1 to 19 were examined and Exs.P1 to P10 were marked and MO1 was exhibited on behalf of prosecution. No oral or documentary evidence was let in on behalf of defence.

f) The Trial Court after considering both oral and documentary evidence observed that prosecution proved guilt of the accused beyond all reasonable doubt for the charge under Section 302 IPC and accordingly convicted and sentenced him as stated supra.

Hence the appeal.

3) Heard arguments of Sri P.Prabhakar Reddy, learned counsel for appellant and learned Public Prosecutor for the State (Telangana).

4) The points for determination in this appeal are:

1) Whether the deceased—Anjavva met with homicidal death at her residence on 16.09.2009?

2) If point No.1 is held affirmatively, whether accused is responsible for her death and prosecution could establish his guilt beyond reasonable doubt?

3) Whether conviction and sentence recorded by the Trial Court are legally and factually correct?

5) **POINT No.1:** The oral evidence of PWs.1 to 3, 12, 13 and 14 coupled with Ex.P.2—photographs, Ex.P.4—inquest panchanama and Ex.P.5—P.M report would all cumulatively manifest that the death of Anjavva was a homicidal one but not either accidental or suicidal. Admittedly, Anjavva died at her residence on 16.09.2009 in the morning hours at about 10:30 AM and her death was noticed for the first time by PW.2, who is her son, after he returned home from college at about 12:40pm. As per PW.2, when he opened the gate and entered the house he found the TV and CD players were switched on and running with high

volume. He felt the burning smell of electric wire and when he entered the bedroom he found the water cooler's wire around the neck of his mother touching her cheek and sparks were emanating from the said wire. He noticed the burn injury running down from cheek below the chin. Then he immediately rushed out and picked up a stick and switched off the water cooler and rushed out of home and raised cries and the coolies, who were working in front of his house came and examined his mother and found her dead.

a) PW.1—the maternal uncle of PW.2 deposed that on being informed by PW.2 about the death of his sister, he rushed to their house and found the dead body of his sister with electric wire of air cooler around her neck and an injury on her cheek.

b) PW.3, who is the sister of PW.2 and daughter of the deceased also deposed in similar lines stating that on the date of incident, PW.1, who is her maternal uncle came to the school and brought her to the home where she found her mother died with burn injuries on her cheek and lower chin and an electric wire tied around her neck.

c) PW.13—one of the inquest witnesses stated that she noticed injuries on the cheek and neck and a wire was fastened around the neck of the dead body.

d) Added to above oral evidence, Ex.P.2—photos would also depict that the cooler wire was touching her body and she fell on the floor in a supine position.

e) PW.14, who conducted post-mortem on the dead body on 17.09.2009 and issued Ex.P5—post-mortem certificate deposed that he found the external injuries on the dead body such as electric burn mark contusion over left cheek from below left ear lobe upto the lateral side of thyroid cartilage and the width of the injury is ½ inch X depressed. The Doctor opined that the cause of death was due to electric burn with cardio respiratory arrest.

f) The above evidence which stood unshattered, would manifest that the mode of death was due to electrocution through the wire of the water cooler. Coming to the reason for death, it is nobody's case that the death was suicide and such a suggestion was not given to prosecution witnesses either. The deceased, who was a mother of four grownup children of whom three are daughters and whose marital relation was strained because of her husband developing illicit intimacy with one Chinthala Laxmi, was highly unlikely to commit suicide leaving her children forlorn to the mercy of uncared father. Therefore, the death by suicide can be safely ruled out. We can also exclude accidental death as the evidence of afore-stated witnesses depict that the live wire was found round the neck of deceased and such a posture is unlikely in case of an accidental death. Therefore, the obvious conclusion is that the death was a homicidal one. Whoever caused her death gave a shabby projection as if it were a suicidal death. Therefore, it has now to be seen in the point infra, whether the accused was responsible for the murder of the

deceased and whether the prosecution could establish his guilt beyond reasonable doubt.

6) **POINT No.2:** It is a case based on circumstantial evidence. The cardinal principle is that the prosecution must establish all the suspicious circumstances by cogent evidence which form into a complete chain unerringly pointing out the guilt of the accused not leaving room for his innocence. The prosecution projected the following suspicious circumstances to establish the guilt:

- i) Motive for accused to kill the deceased;
- ii) On the date of incident, the accused made phone calls to his son ensuring that he was at college;
- iii) Just before incident, he was found at his house by PW.4;
- iv) After incident he was seen hurriedly going away by PW.6;
- v) The accused was absent at the Grey Hounds Unit Hospital, Hyderabad, on the date of incident;
- vi) Extra judicial confession.

7) The motive is concerned, the testimony of PWs.1 to 3 amply establish the strained relations between the accused and deceased and his harassing the deceased.

a) PW.1 is the elder brother of the deceased. He testified that his sister was given in marriage to accused about 20 years ago and they begot a son and three daughters; the accused was working as A.R

constable; after marriage both the couple lived amicably for 12 years and thereafter the accused developed illegal intimacy with one Ch.Laxmi and started harassing the deceased and threatened her to death; his sister gave complaint against the accused in Mahila PS Karimnagar, which was later ended in compromise in the Court; even after the disposal of the said case, there was no change in the attitude of the accused; earlier he was working in Karimnagar and later he got transferred to Hyderabad. He was visiting his sister's house once in 10 or 20 days and at that time he used to beat and abuse her; Ch.Laxmi was a neighbour to his sister in Karimnagar and his sister used to observe her husband and said Laxmi exchanging signs and whenever the deceased tried to persuade accused not to do so, he used to beat her and abuse her; about one week prior to the death of his sister, said Laxmi visited the house of his sister and claimed that the accused kept him as mistress and she would get equal right in the property and quarrelled and beat his sister and PW.2 and later gave a complaint against his sister and PW.2 and thereby the police arrested his sister and PW.2 and later they were released on bail. When his sister informed this fact to accused, he heckled her. In the cross-examination he stated that his sister lodged police report against accused and the same was compromised in the Court two months prior to her death and accused was working at Hyderabad at that time. He also stated that his sister and her children were not visiting the accused at Hyderabad. He denied the suggestion that his sister unnecessarily suspected the accused of having illicit intimacy with Ch.Laxmi.

b) PW.2, who is the son of deceased deposed that his father was working as A.R Constable; himself, his mother and his sisters were residing in Kothirampur; his father developed illicit relationship with Ch.Laxmi, a married woman, who was residing behind their house and in that context his father used to quarrel with his mother and whenever himself and his sister questioned their father about his illegal intimacy, he used to beat them also; his mother had intimated PW1 about the illicit intimacy of his father, while he was studying 10th standard, his mother gave a police complaint against his father and thereafter, his father got transferred to Hyderabad and he used to visit them once in a month or 45 days and whenever he visited them there used to be quarrels with regard to his illicit intimacy; 15 or 20 days prior to the death of his mother, Ch.Laxmi came to their house and quarrelled with them stating that his father kept her as mistress and she would get equal right in their properties and later she gave complaint to the police as if they assaulted her and he tried to rape her and they were arrested by the police and later released on bail. In the cross-examination he stuck to his stand stating that several caste panchayats were held regarding the illicit intimacy of his father with Ch.Laxmi; once a panchayat was held at Kothirampur where Ch.Laxmi's husband and parents were called by the elders. He further stated that when he informed accused by phone about the complaint given by Ch.Laxmi against him and his mother and expressed his anxiety that if he were arrested, his future would be spoiled, instead of consoling them, the accused stated as if Ch.Laxmi was a good woman and she would not speak falsehood.

c) PW.3—the daughter of deceased also deposed in tune with PWs.1 and 2.

d) A close scrutiny of the evidence of PWs.1 to 3 would disclose that they in one voice stated that the accused developed illicit intimacy with Ch.Laxmi, a married woman who was residing behind their house and whenever the deceased and her children questioned his attitude, he used to beat them. Their evidence would further show that the accused got himself transferred to Grey Hounds Division of Police Department and staying at Hyderabad to avoid the deceased and her children and he never permitted them to visit Hyderabad and on the other hand, he used to visit them once in a blue moon and even at that time also he used to beat and abuse the deceased and her children when they questioned his attitude. Their evidence would also show that the said Laxmi had the audacity to went upon them claiming that she was kept mistress of the accused and hence she has a share in their properties and she lodged a complaint against the deceased and PW.2 as if they assaulted and molested her. When PW.2 informed about this incident to accused by phone, instead of consoling them, the accused supported Ch.Laxmi and blamed the deceased and her children for the incident. Though the accused denied their evidence as false, their testimony would unerringly show how the accused harassed deceased and her children. Their evidence would project that the deceased once gave police report against the accused and later the matter was compromised. A number of Panchayats were held before the caste elders but they yielded no fruitful results since the

accused did not mend his ways. Therefore, the motive for accused to kill the deceased is well founded as otherwise he cannot subjugate her from questioning his attitude.

8) The second link in the chain of suspicious circumstances is that on the date of incident the accused made phone calls to PW2 to ensure that he was in the college and not at home. As per prosecution, the accused having determined to kill the deceased hatched a plan. Accordingly, he got himself admitted in Grey Hounds Unit Hospital on 14.09.2009 to create an *alibi* for himself. As a part of his plan, on 16.09.2009 early in the morning he made phone calls to his son to ascertain that he was going to college on that day. After confirming that PW2 would be away from home, the accused sneaked from the hospital and proceeded to Karimnagar on his newly purchased Hero Honda Passion Pro Motor Cycle bearing T/R No.AP 28 DC 9506 and reached Karimnagar at about 10.00 AM and again ascertained about the presence of his son in the college. It is the further case of the prosecution that when he went to his house hoping that his wife would be alone to execute his plan, he found PW4—a neighbouring boy who is a friend of his children, watching TV at his house. The accused on enquiry from PW4 came to know that his wife was taking bath. He scolded PW4 and sent him away. After the deceased came out, the accused had an altercation with her. He gave fist blows in her stomach on which she fell down and became semi conscious. The accused tied the cooler wire around her neck and switched on the power supply and thus murdered her by electrocution.

Finishing his wicked plan, the accused fled away on his motor cycle. On the way PW6 found the accused hurriedly going. When questioned, the accused sternly replied him to mind his own work and went away to the hospital. Later, when PWs.8 to 10 who are the doctor and hospital staff enquired him about his absence in the hospital, he replied that he came to know about the death of his wife and sought their permission to leave the hospital and came out and absconded.

a) We will find in the evidence of PW2 that on 16.09.2009 about 6.30 or 7.00 AM, the accused telephoned to him and enquired whether all his children were going to the college and PW2 affirmed. Then the accused enquired him about the timings of his college. Thereafter, when PW2 was at his college, the accused again telephoned him at about 10.20 or 10.30 AM and enquired whether he was at college or not and PW2 replied that he was in the college. It is true that the IO has not secured call data particulars from the concerned authorities to establish that the accused made phone calls to PW2 on the date of incident. However, on that count alone, the evidence of PW2 which is otherwise trustworthy, cannot be discarded. It is pertinent to note that except giving a suggestion that prosecution story is false, no specific question was put to PW2 in the cross-examination stating that the accused did not make phone calls to him on the date of incident. Hence the evidence of PW2 stood remained unrebutted. Added to it, in Ex.P1—report, which was lodged within short time after the incident, the accused making phone calls to PW2 was

specifically mentioned. Thus, the veracity of PW2's statement can be accepted.

9) The third and vital link is PW4 saw the accused came to his house just before the incident. PW4 was 9 years old boy on the date of incident and he was the friend of children of accused. He deposed he was a resident of Bhavaninagar, Kothirampur and studying 5th standard; he knew deceased—Anjavva and her husband—Ramakrishna who was present in the Court and also their son and daughter viz. Swamy and Sharada (PWs.2 and 3) who were residing near to his house; he used to visit their house now and then to watch TV; the death of Anjavva occurred about five months ago by which time he was studying 4th class; on that day, at 9.00 AM he was watching TV in the house of Anjavva; at that time the accused came to the house and asked him to leave and accordingly he left their house; Anjavva was found dead on that evening and when examined by Police officer, he gave the statement. In the cross-examination he stated that there was TV in his house also; on that day he did not go to school since he was suffering with fever; there were two houses between his house and the house of Anjavva; his caste and the caste of Anjavva were different; PW2 was his friend. He denied the suggestion that he was speaking falsehood at the instance of PW2 who was his friend.

a) Needless to emphasise, the evidence of PW4, if found true, will point out a strong accusing finger towards the accused. It is vehemently argued that PW4 is a planted witness inasmuch as the possibility of his

presence at the house of deceased at the relevant time is quite unbelievable on his own narration. When he was suffering with fever and did not go to school, he cannot be expected to visit the house of deceased that too, when there was TV in his house also. Therefore, his evidence cannot be believed. Meeting his argument, learned Public Prosecutor would submit that it is not uncommon that the children avoid going school even for a little fever and parents too, do not mind. The same children, however, will not stop playing unless their ill-health did not permit them. Such being the child psychology, he would argue, it is not strange if, PW4 in spite of absenting from school, went to watch TV at the house of deceased.

b) We find force in the submission of Public Prosecutor. The defence has not extracted the intensity of fever of PW4 to confirm that he cannot move out. Hence, as argued by the prosecutor, PW4, in spite of his fever might be moving out in a playful mood common to the children. Since he was the friend of PWs.2 and 3, there was nothing strange if he went to their house to watch TV on the morning of the incident. There was no identity issue for the boy with the accused since he was known to him and the accused too did not cross-examine him on the identity aspect either. The only shortcoming in the evidence of PW4 was that he stated as if the death of Anjavva occurred about five months prior to his evidence but in fact, her death was occurred about one year ago. Such a minor discrepancy cannot be taken for count. It is pertinent to note that in Ex.P1—report PW1 clearly mentioned that PW4 saw the accused while

he was watching TV at their house. After incident, PW2 was the first person to saw the dead body at 12.40 PM after return from college. He informed to PW1 about the incident and later he and others came and saw the dead body and thereafter, PW1 and PW2 went to police station and gave report at 5.00 PM. Therefore the FIR can be said to be registered at the earliest point of time after the incident. It is difficult to presume that within such short time PWs.1 and 2 planted PW4 as an eye-witness by mentioning him in Ex.P1. Therefore, the testimony of PW4 can be accepted to hold that he saw the accused coming to his house short time prior to the incident. It should be noted that the evidence of PW4 gets corroboration from the testimony of PWs.8 to 10 of Grey Hounds Unit Hospital, Hyderabad, which we will discuss infra.

10) The next link is about PWs.8 to 10 deposing that accused was absent from the hospital on the morning of 16.09.2009. PW8 who is the Unit Medical Officer of Grey Hounds Unit Hospital, Hyderabad deposed that accused was Junior Commando attached to MT department as driver and he came to their hospital on 14.09.2009 on being referred to him by his college, K.V.Indivar Reddy with a complaint of low back-ache. During examination the accused complained fever and loose motions and so, he kept him and asked him to stay in the hospital for one day for observation and told that he would examine him on the next day. On 14.09.2009 he prescribed medicines to the accused and advised that he should be kept in the hospital for observation. (He produced Ex.P3—hospital register. Ex.P3-A is the entry at Sl.No.40 dated 14.09.2009

showing the name of the accused). PW8 further deposed that on 15.09.2009 he again examined the accused at the hospital and advised him to report back to duty, but the accused returned to hospital at about 4.30 PM saying that he was still weak and unable to perform his duties. Hence, he instructed PW9—Male Nursing Orderly to keep the accused in the hospital on observation. (Ex.P3-B is the entry at Sl.No.27 dated 15.09.2009 showing the name of accused). PW8 further deposed that on 16.09.2009 he went to the hospital but could not find the accused. However, at about 2.45—3.00 PM he saw the accused and scolded him as to why he was not there in the hospital since the morning and asked him to go and report to the duty. The accused told him that his wife died in the morning due to current shock at Karimnagar. On that he advised the accused to go to back duty and report before the concerned officer and then go to Karimnagar. After some time, he received a call from MTO enquiring about the accused as he was suspected to be involved in the murder of his wife. PWs.9 to 11 corroborated the testimony of PW8. It should be noted that PWs.8 to 11 belong to same department and they have no enmity with accused to speak falsehood. Their evidence clinchingly show that the accused was absent from the hospital at the relevant time of incident. Thus, the evidence of PW4 on one hand and that of PWs.8 to 11 on the other, disproves the *alibi* plea of the accused. The accused did not produce any independent evidence to substantiate his plea though burden rests on him. As observed by the trial Court, the distance between Hyderabad and Karimnagar is 165 KMs. and therefore, it is not impossible for the accused to go on MO1—motor cycle to

Karimnagar and return by afternoon. Thus, in any angle the plea of alibi is unsustainable.

11) The next link is that PW6 claims to have seen accused hurriedly going away after the incident. He deposed that his house is about 1/4th KM away from the house of accused in Kothi Rampur; on the date of incident between 10.30 and 11.00 AM, while he was returning from his house, on the way he saw the accused leaving from his house on a motor cycle; when he questioned the accused as to why he was leaving, the accused sternly replied he need not mind about it and went away. In the cross-examination he stated that on knowing about death of Anjavva he went to their house at about 12.00 noon and remained there whole day and informed the police and others present there that he saw the accused in the morning leaving his house in a motorcycle hurriedly and about his enquiring him. He further stated he was not examined by the police after incident. The trial Court believed the version of PW6 observing that there was no enmity between PW6 and accused to speak falsehood.

a) Learned counsel for appellant vehemently argued that as per the admission of PW6, he informed police on the same day about his witnessing the accused and later he was not examined by the police and that his statement was not recorded. However, the IO (PW19) claimed as if he examined and recorded the statement of PW6 on 26.09.2009. In view of inconsistency between the evidence of PW6 and PW19, it must be held that PW6 was planted by the police.

b) We find force in the above argument. If really PW6 saw the accused and informed to the police, PW1 and others who gathered at the scene, certainly this crucial fact must not have been omitted to be mentioned in Ex.P1 by PWs.1 and 2 as they did in case of PW4. Though FIR is not an encyclopaedia to mention every detail relating to offence, however, in the factual background relating to this case, non-mentioning about PW6 in FIR creates a doubt about his veracity. Moreover, PW6 is related to PW1. Therefore, it appears, he was pressed into service by the police. Above all, he claims that he was not examined by the police subsequent to the incident but, in contrast, PW19 claims that he examined PW6 on 26.09.2009. For all these reasons, it is not safe to rely on the testimony of PW6.

12) The next link is the extra-judicial confession said to be made by accused before PW7. Learned counsel for appellant strenuously argued that the extra-judicial confession is a make believable story. PW7 was not holding any important post and there was no close affinity between him and accused to make confession and seek for his help. On the other hand, PW7 is closely related to PW1 and he is the co-brother of PW1's elder brother—Sathaiah. In that view, the question of accused seeking his help does not arise. He placed reliance on *Majenderan Langeswaran vs. State (NCT of Delhi)*¹ to argue that generally the accused will not make extra-judicial confession before the persons who are inimical towards him.

¹ (2013) 7 SCC 192

a) We find force in the above argument. An extra-judicial confession is, by its very nature, a weak piece of evidence though relevant. The prosecution in order to believe the hypothesis of extra-judicial confession, must be able to establish that there was a strong and cogent reason for the accused to confess before a particular person. In the instant case, that fact is soaringly missing. PW7 is closely related to family of PW1 and he has no close affinity with the accused. Further, PW7 was not holding any high office in the village. In that view, there was no special reason for accused to confess before PW7 particularly when he is closely related to PW1. In the cited decision also similar view was expressed.

13) On a conspectus of facts and evidence, it must be held, the prosecution could able to establish that there were severe disputes between accused and deceased and their relationship was ruined due to accused developing illicit intimacy with Ch.Laxmi and because of illegal affairs, he had motive to kill her. The prosecution further established that on the date of incident the accused was very much present at the scene of offence during the relevant time and correspondingly he was absent in the Grey Hounds Unit Hospital which belies his *alibi* plea. The accused could not satisfactorily explain for his presence at the scene. All these circumstances would unerringly point out the guilt of the accused.

14) In *Moniruddin Ahmed @ Lalu Dealer and others vs. State of West Bengal*² cited by Public Prosecutor, the Apex Court observed as follows on *alibi* plea.

² (2010) 12 SCC 238

“Para-8:It is basic law that prosecution is to prove that the accused was present at the scene and had participated in the crime. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. However, once the prosecution succeeds in discharging its burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with certainty so as to exclude the possibility of his presence at the place of occurrence. It is also settled that when the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened.....”

In the instant case, the accused miserably failed to establish the plea of *alibi* and thus he was guilty of the offence.

15) **POINT No.3:** In the result, the conviction and sentence recorded by the trial Court are factually and legally sustainable and as a sequel, the Criminal Appeal is dismissed by confirming the judgment of the trial Court.

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date:16.02.2018
Scs/Murthy