

THE HON' BLE SRI JUSTICE A. V. SESA SAI
AND
THE HON' BLE SRI JUSTICE G. SHYAM PRASAD

CRIMINAL APPEAL No.1105 of 2013

JUDGMENT: (*Per Hon'ble Sri Justice A. V. Sesa Sai*)

The sole accused in Sessions Case No.427 of 2012 on the file of XIII Additional Sessions Judge, Narasaraopet, Guntur District, is the appellant in the present Criminal Appeal preferred under Section 374 (2) of Code of Criminal Procedure (Cr.P.C). In this appeal, challenge is to the judgment dated 11.06.2013 rendered by the said Court. By way of the said judgment, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment and also fine of Rs.500/- and in default to suffer simple imprisonment for a period of three months. The learned Judge also convicted the accused for the offence punishable under Section 309 of IPC and sentenced him to undergo simple imprisonment for a period of six months.

2. The case of the prosecution, in brief, is as follows:

The accused/ appellant is the husband of the deceased and out of their wedlock, they begot two children viz., P.Saraswathi and P.Nagaraju. They were residing at Narakoduru and their family avocation being cultivation. They shifted to Narasaraopet during the childhood of their children and started running a mobile laundry in a push cart and residing in a rented accommodation near the house of P.W.2, who is the elder sister of the deceased. The accused along with his family members adopted Christianity and attending Hosanna Mandir. The accused and his wife (deceased) were doing service to God at various places in Gorantla, Turlapadu and Vinukonda. In the said

process, the accused and the deceased along with their daughter, P.W.1, went to Vinukonda and when they were at Vinukonda, the accused had asked the deceased to stop service to God, for which the deceased did not agree and, as a result of that, quarrel took place between them and the accused left Vinukonda without informing his family members. On 09.01.2012, the accused, his son Patnaraju (L.W.2), P.W.2 and one Srinivas Rao @ Shadric - P.W.4 went to Vinukonda Church and convinced the deceased to leave the service of God. On the request of P.W.4, they left Vinukonda and went to Narasaraopet, except L.W.2 who went to Gorantla. At about 9.00 P.M., P.Ws.1 and 2 and L.W.4 – Venkaiah slept in the front yard of the house of P.W.2, whereas the accused and the deceased slept inside the house. At about 11.30 P.M., P.W.2 woke up to answer nature call and then slept on a cot and few minutes thereafter, the deceased came out of the house with a cut injury on her throat and fell on P.W.1. Then the accused also came out with similar injury and fell on the deceased and P.W.1. The razor blade in the hands of the accused caused injury on the right palm of P.W.1 and injury on the left palm of P.W.2. After noticing the same, P.W.1 went into unconscious state and woke up after some time. They were under the impression that the accused and the deceased died. Despite the information given, no neighbours turned up. The accused survived.

Thereafter, police registered Crime No.8 of 2012 on the file of Narasaraopet-II Town Police Station. After investigation, the police filed the charge sheet and thereafter the matter was committed by the Judicial Magistrate of First Class, Narasaraopet, to the Court of Principal District and Sessions Judge and subsequently it was made over to the Court of XIII Additional District and Sessions Judge, Narasaraopet and the case was numbered as S.C.No.427 of 2012.

3. The learned Sessions Judge framed the following charges:

“Firstly:

That you-Accused on 09.1.2012 at about 11-30 P.M., at Chakiralamitta, Burampet, Narasaraopet within the limits of Narasaraopet II Town Police Station committed murder, and intentionally causing the death of your wife-Podili Kasamma @ Dayarani, by cutting her throat with razor blade (Topaz) and caused her death, and that you thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance;

Secondly:-

That you-Accused at the same date, time and place as mentioned in charge No.1 supra, attempted to commit suicide by cutting your throat, and that you thereby committed an offence punishable under Section 309 of the Indian Penal Code and within my cognizance.”

4. During the course of trial, the prosecution examined P.Ws.1 to 12 and marked Exs.P1 to P12 apart from M.Os.1 to 4 in order to substantiate its case. No evidence was adduced on behalf of the accused. The learned Sessions Judge framed the following point for consideration:

“Whether the deceased – Podili Kasamma @ Dayarani met homicidal death in the intervening night between 9/10.01.2012 at the house of P.W.2 – Kasamma in Narasaraopet ?”

5. The learned Sessions Judge, by way of the impugned judgment, convicted the accused/appellant herein in the manner indicated in paragraph ‘1’. This Criminal Appeal challenges the validity of the legal sustainability of the said judgment.

6. Heard Sri S. Nagender, learned counsel for the appellant, and the learned Additional Public Prosecutor for prosecution and perused the material available on record.

7. It is contended by the learned counsel for appellant that the learned Sessions Judge grossly erred in convicting the accused/ appellant in the absence of existence of necessary ingredients of Sections 302 and 309 of IPC; that there is no eye witness for the alleged offence; that the Court below erred in properly considering the evidence available on record, which resulted in miscarriage of justice; that in view of the evidence of P.Ws.2 and 3 that the deceased and the accused were living happily, the learned Sessions Judge ought to have extended 'benefit of doubt' to the appellant; that no proper motive was established by the prosecution to resort to extreme action; and that there are so many contradictions in the evidence of the prosecution, as such, the appellant herein is entitled for exoneration.

8. On the contrary, it is submitted by the Additional Public Prosecutor that there is neither error nor infirmity in the impugned judgment and in the absence of the same, the impugned judgment does not warrant interference of this Court under Section 374 (2) of Cr.P.C; that after thorough verification of the entire material available on record, the learned Sessions Judge convicted the accused; that the oral evidence of the prosecution is consistent and there are no contradictions; that the oral evidence coupled with the medical evidence clearly establishes the guilt of the accused, as such, the impugned judgment cannot be faulted; and that in view of presumption available under Section 106 of the Indian Evidence Act, the learned Sessions Judge is perfectly justified in convicting the accused/ appellant.

9. In the above background, now the issue that emerges for consideration of this Court is:

“Whether the judgment rendered by the learned Sessions Judge, which is impugned in the present appeal, is sustainable and tenable and whether the prosecution could establish the guilt of the accused beyond all reasonable doubt?”

10. Admittedly, in the present case, there is no eye witness and the case of the prosecution rests entirely on circumstantial evidence and medical evidence. Therefore, utmost care needs to be taken while assessing and analyzing the evidence on record to arrive at the just conclusion.

11. According to P.Ws.1 and 2, who are the daughter and elder sister of the deceased, respectively, when they slept in the front yard of the house of P.W.2, they saw the deceased and the accused coming out of the house with cut injuries on their throats. They deposed that the deceased had fallen on P.W.1 and the accused had fallen on the deceased and P.W.1. They also deposed that P.W.1 sustained injury on her right palm. According to P.W.3, who is the younger sister of the deceased, she witnessed the deceased with injury at the throat region. It is also a fact that P.Ws.1 to 3 with one voice deposed that the deceased and the accused were living amicably and happily. During the course of cross-examination, P.W.1 stated that her mother used to render service in the Church by offering prayers and it was not relished by the accused and hence, there were quarrels between the accused and the deceased, as such, the accused cut the throat of her mother, and due to it, her mother died and with the same blade, the accused also cut his throat. Even according to P.W.4, he was requested by the

accused to convince his wife not to go to Church at Vinukonda and accordingly, he along with his children and P.W.2 went to Vinukonda Church and convinced the deceased. The fact remains that there is no eye witness to the alleged incident. Even according to P.Ws.1 and 2, they saw the accused and the deceased only after they came out with cut injuries on their throat. It is not their version that there was altercation prior to the incident. On the other hand, both P.Ws.1 and 2 and also P.W.3 also categorically stated that the deceased and the accused were living happily. P.W.1 also stated that till her mother fell on her, she did not know how the incident took place. P.W.5 stated that he received information from P.W.2 about the incident at about 11.30 P.M. During the course of cross-examination, P.W.5 stated that he did not go to the place of offence and did not see the accused and his wife. It is also significant to note that the alleged incident took place at about 11.30 P.M and admittedly P.W.1 reported the same to the police on the next day at about 10.00 A.M. There is abnormally delay i.e., about 10 hours in lodging the complaint with the police and there is no explanation forthcoming for the said abnormal delay in approaching the police.

12. It is also pertinent to note that immediately after the incident, P.W.2 went to the house of P.W.5 and informed him about the incident and, in turn, P.W.5 had informed L.W.11 - Podili Venkateswarlu and on that, L.W.11 informed that he will look into the matter on the next day morning and on that, P.W.5 went back to his house. The testimony of P.W.5 reveals that though he went and informed L.W.11 about the incident, L.W.11 did not make any attempt to inform the police nor took the accused and the deceased to a Hospital. The version of P.W.5 appears to be highly artificial and not natural. Moreover, the delay of 10

hours has not been explained by the prosecution properly. Therefore, there is any amount of doubt with regard to the version of the prosecution as to how the deceased and the accused sustained cut injuries.

13. The circumstances of this case would show that the deceased as well as the accused were both unconscious after the incident. Except the fact that the accused was holding a blade in his hand, there is no explanation offered either by the accused or prosecution as to how the incident happened and as to how the accused received injury to his throat. The only explanation offered by the prosecution is that as the accused did not like his wife to go and serve in the Church, he only committed this offence of killing his wife and also tried to commit suicide by cutting his throat. This version does not appear to be probable for the reason that merely because his wife was going against his wish and attending the Church services, the accused would go to the extent of killing his wife and committing suicide by emotion. This version is falsified by the testimony of the witnesses P.Ws. 1 to 3, who have clearly stated that there were no disputes between the accused and his wife and they were living amicably. Therefore, there is any amount of doubt with regard to motive for the accused to commit this offence. The circumstances in this case are very peculiar, as neither the prosecution has taken any care nor the defence has come out with true version. In view of these facts and circumstances, the accused is entitled for benefit of doubt.

14. In the result, the Criminal Appeal is allowed, setting aside the conviction and sentence recorded by XIII Additional District and Sessions Judge at Narasaraopet, vide Judgment, dated 11.06.2013, in Sessions Case No.427 of 2012, against the appellant/accused for the offences

punishable under Sections 302 and 309 I.P.C and, accordingly, he is acquitted of the charges. The fine amount, if any, paid by the appellant/accused shall be refunded to him. The appellant/accused shall be released forthwith, if he is not required in any other crime.

A. V. SESA SAI, J

G. SHYAM PRASAD, J

24.11.2018
v v

