

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL NO.1185 OF 2012

J U D G M E N T
(per Hon'ble Sri Justice Sanjay Kumar)

Kumari Swapna, aged 19 years (D1), and her mother, Police Anasuya, aged 40 years (D2), were attacked at their house at New Premnagar, Mahabubnagar Town, at about 7.00 PM on 07.12.2007. Kumari Swapna (D1) died on the spot, while her mother, Police Anasuya (D2), succumbed to her injuries five days later on the intervening night of 12/13.12.2007 at 00.05 hours at the District Hospital, Mahabubnagar.

Police Sathya Narayana, the husband of Police Anasuya (D2), was charged with their murders in Sessions Case No.351 of 2008 on the file of the IV Additional District and Sessions Court (FTC), Mahabubnagar, and by judgment dated 19.01.2010 passed therein, the Sessions Court held him guilty under Section 302 IPC and sentenced him to undergo imprisonment for life apart from payment of a fine of Rs.10,000/-, in default of which he was to suffer simple imprisonment for three months. Aggrieved by the conviction and sentence visited upon him, the accused is in appeal under Section 374(2) CrPC.

By conditional order dated 27.12.2016, this Court released the appellant/accused on bail.

The prosecution's case was that on 07.12.2007 at 10.30 PM, P.W.1, son of the accused and D2, came to the II Town Police Station at Mahabubnagar to make a complaint, whereupon the Sub-Inspector of Police (P.W.13) recorded his statement and registered Crime No.177 of 2007 under Sections 302 and 307 IPC.

Ex.P12 is the recorded complaint and Ex.P13 is the FIR. P.W.13 then visited the scene of the offence and posted two guards there as it was late at night. On 08.12.2007, he returned to the scene along with his staff and conducted the scene of the offence panchanama in the presence of P.W.8 and Vishnuvardhan Reddy (L.W.12). He also drew up a rough sketch of the scene and got it photographed. He seized dry blood stains from the scene and proceeded to the Government Hospital at Mahabubnagar. There, he recorded the statements of P.W.2, P.W.3, K.Mallamma (L.W.4), the mother of D2, and P.W.4. He also conducted an inquest over the body of D1. Ex.P14 is the inquest panchanama. He then got the body photographed by Niranjan Kumar (L.W.9). Ex.P15 is the set of 11 photographs along with negatives. He examined P.W.5 and Rangaiah (L.W.7) and recorded their statements. P.W.13 received intimation that D2 had succumbed to her injuries on 13.12.2007. He then visited the hospital, secured the presence of P.W.7 and K.Srinivasulu (L.W.16) and conducted an inquest over her body in their presence. During the inquest, he seized the blood-stained clothes of both the deceased - M.Os.2 to 6. Niranjan Kumar (L.W.9) photographed the body and it was then sent for autopsy. On the next day, he examined Ashok (L.W.8), Niranjan Kumar (L.W.9) and P.W.9. He then handed over the case file to the Circle Inspector of Police, Mahabubnagar (P.W.14) for further investigation.

Thereupon, P.W.14 verified the investigation done and found it to be on correct lines. On 08.12.2008, upon receipt of information, he apprehended the accused at the canteen of SVS Hospital, Yenugonda. In the presence of Pittala Yadaiah (L.W.17) and Yeruva Anand (L.W.18), he recorded the confessional statement of the accused. The accused offered to show them the place where he had concealed the weapon that was used for commission of the offence

and he led them to a place located at New Premnagar locality, beyond the compound wall of Sri Laxmi Cotton Mill, which was surrounded by thorny bushes. He went into the bushes and brought out a blood-stained pestle (M.O.1). It was seized under cover of panchanama (Ex.P17). He was brought back to the Police Station at about 8.00 PM and arrested. He was produced before the Court on the next day. On receipt of the FSL and PME reports, P.W.14 laid the charge-sheet.

Upon committal, the Sessions Court framed the following charges against the accused.

FIRSTLY:-

That you, on or about the 7th day of December, 2007 evening at 7.00 p.m., in your house at Premnagar Colony, Mahabubnagar, did commit murder by intentionally causing the death of your daughter by name Kumary Swapna, D/o Anasuya, Age: 19 years, Caste: Padmashali, Occu: Coolie, R/o New Premnagar, Mahabubnagar Town by beating with pestle on her head several times and that you thereby committed an offence punishable U/S 302 of the Indian Penal Code and within my cognizance.

SECONDLY:-

That you during the course of the same transaction, at the same time and place mentioned supra in Charge No.1, did commit murder by intentionally causing the death of your wife by name Police Anasuya, W/o Sathya Narayana, Age: 40 years, Caste: Padmashali, Occu: Coolie, R/o H.No.7-1-25, New Premnagar, Mahabubnagar Town by beating with the same pestle on her head and that you thereby committed an offence punishable U/S 302 of the Indian Penal Code and within my cognizance.'

The accused however claimed ignorance and asked to be tried. Thereupon, the prosecution examined P.Ws.1 to 14 and marked Exs.P1 to P18 in evidence. M.O.s 1 to 6 were also marked. The

defence did not lead any oral evidence but marked in evidence Ex.D1, a portion of the statement of P.W.3 under Section 161 CrPC.

Salient points emerging from the oral and documentary evidence may now be noted:

P.W.1, the son of the accused and D2, turned hostile. While admitting that he, his sister-D1 and his mother-D2 lived together at their house at Premnagar, he stated that on the fateful day by the time he returned home from tuition, he found his mother and sister dead with injuries in the kitchen. He did not know as to how the injuries were caused or by whom and he did not suspect any one for the death of his mother and sister. He further stated that he did not know who drafted the complaint but admitted that the police obtained his signature therein. He went on to state that the police enquired with him and he stated to them that he did not know about the incident. He was declared hostile at this stage and cross-examined by the prosecution, but denied stating to the police as in Ex.P2, a portion of his statement under Section 161 CrPC.

P.W.2, the elder sister of D2, stated that the accused was the husband of D2. Her house was in a different street from that of D2 but it would take only about 5 to 10 minutes to get there by walk. She further stated that in her sister's house, D1, D2, P.W.1 and the accused lived together. According to her, D2 fell in love with the accused and married him about 15 to 18 years back. Earlier, she was married to one Narsimhulu, through whom she had a daughter, Swapna (D1). Her sister started working in the cotton mill in Mahabubnagar after the birth of her daughter and fell in love with the accused, who was a weaver there. She started living with him at Mahabubnagar and had a son through him (P.W.1). According to her, whenever they called D2 for any occasion, the accused did not send

her. As her sister was happy with him, they also did not insist upon her coming to their house on any occasion. In the panchayat, they tried to convince and advise her to go to her first husband, but she did not heed their advice and continued to live with the accused. On the fateful day at about 7.30 or 8.00 PM, P.W.1 came crying to them and informed them that his father had murdered his mother and sister by using a pestle. She said that she immediately went to the scene and found D1 dead and D2 still alive with grievous injuries and blood was flowing. The bodies were inside her sister's house. She identified M.O.1 as the pestle. People around there telephoned to a hospital ambulance and they shifted her sister and her daughter to a hospital in the said vehicle. Her sister died three days after the incident while undergoing treatment in the hospital. She went on to state that at one time, her daughter and son-in-law came to see the dead body of the mother-in-law of her other sister, as was the custom, and at that time D2 also came to see the body. There was a discussion about performing the marriage of Swapna (D1) and D2 informed her son-in-law that as she had no money for dowry, she would give two rooms to her daughter out of the four rooms of her house and asked him to look for an alliance for Swapna. P.W.2 claimed at this stage that she herself had brought up Swapna. Within twenty days to one month after that, the deaths occurred. The accused used to quarrel with her sister often in spite of her advice and hence, they were not going to their house. Whenever she chastised the accused not to beat her sister and quarrel with her as she came home tired after working in the cotton mill, the accused promised that he would not quarrel in future. Her sister used to run to the Police Station very often whenever the accused used to chase her with a stick to beat her in a drunken state. She stated that she

did not know why they quarreled between themselves. She further stated that the accused did not want Swapna to get married but she did not know why. In her cross-examination, P.W.2 stated that she herself did not hear it when D2 stated to her daughter and son-in-law about looking for an alliance for Swapna and about giving two rooms to her as dowry. She further stated that she did not participate in the marriage of her sister and the accused and she did not know where they married. She had seen them after their marriage and in spite of their advice the accused did not leave her sister. She said that her sister became a permanent employee of the cotton mill and then retired and that her daughter, D1, also got a job in the cotton mill. She said that with that money and a loan, her sister constructed a house but she did not know how much money her sister got from the cotton mill. She claimed ignorance of when a job would become permanent and whether a person who retired would not be taken back in service. She stated that she did not know her sister's salary or income and admitted that the relationship between their family and her sister's family was not good as the accused did not send her to their house for functions. She denied the suggestion that her sister's son did not inform her about the incident. She stated that by the time she went to see the dead body, there were 10 or 20 people but she could not state their names and nobody came inside. The bodies were stated to be in the fourth room and the pestle was by the side of the dead body of Swapna (D1) in that room. After the police arrived, they telephoned and an ambulance came and the bodies were taken to the hospital. Swapna was already dead but her sister was still alive. She denied the suggestion that the accused had the house constructed and not her sister. She said that she did not sign when her sister purchased the said plot but it was her sister who had

purchased it for a house. She also did not know from whom she had purchased it. She said that her sister used to get Rs.3,000/- to Rs.4,000/- per month, and denied the suggestion that the accused, out of love and affection, purchased the same in her sister's name.

P.W.3, the elder sister of D2 and P.W.2, stated that there were disputes in between the deceased and the accused. She said that D2 used to inform her of the same whenever they met in the bazaar. She admitted that she never went to D2's house and D2 never came to her house but when they were attending to her mother-in-law's death ceremony, P.W.1 came running and informed them about the incident. They immediately ran to D2's house but by that time, her sister's daughter was already dead but her sister was alive. Meanwhile, an ambulance came and they shifted her to the hospital for treatment. She did not know who telephoned for the ambulance. She said that her sister married a member of their community through whom she had a daughter, D1. Her sister started working in the cotton mill at Mahabubnagar and the accused was also working there. They fell in love and got married. She said that she came to know that the deceased were beaten with a pestle but she did not know for what and why. P.W.1 came running and informed them and she went and found a pestle lying by the side of the bodies. Her sister's daughter was aged about 18 years and was also working in the cotton mill. Her sister was residing in her own house, which was constructed by her, and she was thinking of getting her daughter married and was searching for an alliance. In that connection, the accused used to quarrel with her sister. Her sister remained in the hospital for 4 or 5 days and then died. At this stage, P.W.3 was declared hostile and cross-examined by the prosecution. Thereupon, she admitted that her sister's house had four rooms and that she

wanted to sell two rooms so as to perform the marriage of D1. She however said that she did not know whether the accused murdered her sister and her daughter for money or anything else. In her cross-examination by the defence, she said that it takes about 10 minutes to go from her house to the house of her deceased sister. On the fateful day, she said that she was in the house of her mother-in-law which was situated in the same street as her sister's house. She stated that her deceased sister was working as a coolie in the cotton mill and that after the deceased married the accused against their advice and left her first husband, they did not visit their house and in turn, the deceased and the accused did not visit their house. She also admitted that as they were living separately, they did not know about her sister's family affairs. She also admitted that she did not witness the accused and the deceased quarreling nor heard when they quarreled but her sister used to tell her. She said that she did not know from whom her deceased sister purchased the plot and from which bank she obtained the loan. Her sister's job was permanent and when she retired, she got some amount and with that, she constructed the house. Even after retirement, her sister was working in the cotton mill prior to her death on coolie basis. Depending on the work, daily wages ranging from Rs.80/- to Rs.120/- were paid at that time. She denied the suggestion that the accused got the house constructed in her sister's name out of love and affection. She denied the suggestion that she had stated before the police that, on coming to know on 07.12.2007 around 7.30 PM while she was at home that the accused attacked D1 and D2 with a pestle and that D1 died immediately and D2 was shifted to the hospital at Mahabubnagar for treatment, she went to the hospital. She confirmed that what was stated in Ex.D1, a portion of her Section 161 CrPC statement, was

true. She stated that she did not know when and where her sister had married the accused as she had done so against her advice. She also stated that there was no cordial relationship between them, and volunteered that the accused did not allow her to speak with anyone.

P.W.4, the son of P.W.2, stated that on the fateful day, he was in the house of P.W.3 attending to the death ceremony of P.W.3's mother-in-law along with others. P.W.1, who was with them till then left stating that he would go to his house. Within one hour he returned and informed them that his father beat his sister Swapna and his mother. They immediately went there and found Swapna dead and his aunt struggling for breath. They telephoned for an ambulance and after its arrival, they shifted them to the hospital. The doctor declared D1 dead and kept D2 in the ICU. Four days later she also died. He said that he could recognize the pestle if it was shown to him and identified M.O.1 as the pestle. He said that there were frequent quarrels between the deceased (D2) and the accused and the deceased (D2) wanted to give two rooms as dowry to Swapna (D1) and in this connection the accused had beaten D1 and D2 with the pestle. He said that his aunt constructed a house on her own with the money she got under Mahalaxmi Saving Scheme and by obtaining a loan. He said that the accused murdered D1 and D2 for possession of the said house. In his cross-examination, P.W.4 stated that P.W.1 was with them since 6.30 PM or so and by 7.30 PM or so he came running and informed them about the incident. Thereupon, he rushed to the scene first and later P.W.2, P.W.3 and others came. It took about five minutes to go to the house of the deceased. P.W.1 informed him that the deceased (D2) got the said house under Mahalaxmi Saving Scheme. He did not know whether the Mahalaxmi amount of Rs.20,000/- was recently paid and P.W.1 took the

amount. He said that he did not know whether any death ceremony would be performed only during the day time and not in the evening. He denied the suggestion that P.W.1 did not inform him of the incident and that they did not go and witness the scene. He denied the suggestion that he did not know from whom his deceased aunt obtained the loan and how she constructed the house. He admitted that his deceased aunt never attended functions in their house as she married against the wishes of the elders, but except marrying the accused, his deceased aunt listened to his parents and elders. By the time he went there, the dead body of D1, injured D2 and the pestle were lying in the kitchen. He denied the suggestion that he did not see the body of D1 and his injured aunt nor did he visit the scene but at the instance of elders, he was deposing against the accused. He said that by 7.30 or 8.00 PM, he went to the scene and after he, P.W.1 and P.W.3 went there, others came. Around 10 or 20 members, who were neighbours, also came there and after seeing they went away but he could not say their names.

P.W.5, a neighbour, turned hostile and did not support the prosecution's case that he had stated before the police as in Ex.P3, a portion of his statement under Section 161 CrPC, that the accused beat D1 and D2 with a pestle due to which they died.

P.W.6 was a witness to the inquest proceedings and was the brother of D2. He identified his signature on Ex.P4 inquest report. At that stage, he was declared hostile and in the course of his cross-examination by the prosecution, he admitted that the inquest report recorded that his sister wanted to give two rooms out of the four rooms in her house to D1, for which the accused opposed. In his cross-examination by the defence, he stated that his sister had married against their wish and he did not know as to when exactly

she married the accused. He also admitted that there were no contacts between his sister and themselves as they never went to her house and she never came to theirs.

P.W.7, the niece of D2, stated that she was a witness to Ex.P5 inquest report. She identified Ex.P5 as the inquest report which was also attested by K.Srinivasulu (L.W.16). In her cross-examination, she denied the suggestion that they were not on talking terms with D1 and D2.

P.W.8 was a witness to the scene of the offence panchanama and the rough sketch. He confirmed that there were four rooms in the house and the bodies were lying in the last room. He identified Ex.P6 as the scene of the offence panchanama.

P.W.9, a Civil Assistant Surgeon in the District Headquarters Hospital at Mahabubnagar, stated that she examined D2 on 07.12.2007 at 10.15 PM and found the following injuries:

1. Cut lacerated wound over frontal bone.
2. Right injury over parietal region size 10 x 2 x 1 c.m.
3. Injury over parietal region size 6 x 2 x 1 c.m. inside.

She further stated that she treated her immediately after she was brought to the hospital and identified Ex.P7 as the attested case record. She said that the injuries might have been caused by use of a sharp weapon like axe. In her cross-examination, she admitted that if a person fell from a height, injury No.1 to the head is possible. She further stated that there was no possibility for survival even if the injured person took treatment in a super specialty hospital. She said that she mentioned in the case sheet that the injuries were caused by an axe as the same was stated by the mother of the victim.

P.W.10 is the husband of D2's niece. He said that he never went to their house and she never came to their house. He identified

his signatures in the confession panchanama and recovery panchanama (Exs.P8 and P9), but stated that the police obtained his signatures on white papers and he did not know what was written in them. He further stated that no one was present in the Police Station and he did not see the accused in the Police Station at that time. At this stage, he was declared hostile and cross-examined by the prosecution. Thereupon, he denied the suggestion that the accused confessed to the offence and basing on his confession, a pestle was recovered under the confession and recovery panchanamas and upon knowing the same he signed the documents but was deposing falsely to help the accused.

P.W.11, a Civil Assistant Surgeon at the District Headquarters Hospital at Mahabubnagar, conducted the autopsy over the body of D1. He detailed the 6 external injuries and 3 internal injuries found by him. He identified Ex.P10 as the post-mortem examination report and opined that the cause of death was due to severe brain injury and injury to vital organs apart from shock. He said that the injuries were possible with a hard stick or a hard solid object or an iron rod.

P.W.12, another Civil Assistant Surgeon at the District Headquarters Hospital, Mahabubnagar, stated that he conducted autopsy over the body of D2. He spoke of two external injuries found by him and opined that the cause of death was a head injury. He identified Ex.P11 as his post-mortem examination report.

P.W.13, the Investigating Officer, spoke of the various steps taken by him. In his cross-examination, he denied the suggestion that P.W.1 did not come to the Police Station to lodge a complaint or give a statement about the incident. He said that he did not know the means of transportation of the deceased and the injured to the hospital. He further stated that they did not receive any intimation

from the hospital about the deceased before receiving the complaint from P.W.1. He denied the suggestion that the relatives of the deceased were not on cordial terms with the accused and hence, a false case was registered against him.

In his cross-examination, the Circle Inspector of Police, P.W.14, denied the suggestion that the accused never confessed to the offence. He also denied the suggestion that though a pestle was seized at the cotton mill under cover of panchanama it was planted for the purpose of the case.

On the strength of this oral and documentary evidence, the Sessions Court opined that the evidence of the witnesses, who were related to D2, clearly proved that there were quarrels between D2 and the accused in connection with the marriage of D1 as D2 intended to give two rooms to D1 towards dowry. On this basis, the Sessions Court convicted and sentenced the accused.

Ms.Naseeb Afshan, learned counsel for the appellant/accused, would point out that there were no eyewitnesses to the incident and the case rested solely upon circumstantial evidence. She would contend that the ingredients necessary for a conviction on circumstantial evidence were not present and therefore, the conviction visited upon the appellant/accused is unsustainable.

Perusal of the evidence reflects that the family members of D2 stated in clear terms that there were no amicable terms after D2 married the accused against their advice. Contradictions galore are evident in their depositions on this aspect. They claimed, on the one hand, that they did not even know the family affairs of D2 and she did not know anything of theirs, as there were no visiting terms between them, but on the other hand, they spoke of D2 visiting the house of P.W.3 when her mother-in-law passed away. P.W.3 also

spoke of the lack of contact between her and D2 but claimed that D2 confided in her when she met her in the market about the accused quarreling with her. P.W.1, on the one hand, stated that the relations were not cordial between her and D2's family but, on the other, she claimed that she advised the accused not to quarrel with D2. P.W.3 also admitted that she herself did not hear D2 speaking to her daughter and son-in-law about an alliance for D1 or about her promise to give two rooms as dowry. This aspect of the matter gains significance as it forms the motive for the accused to commit the murders, as per the prosecution. No evidence was however produced in proof of the house being owned by D2 or having been constructed by her. Though reference was made to the amount secured by D2 upon her retirement from the cotton mill and taking the benefit of Mahalaxmi Saving Scheme, no documents were produced in support thereof. The plot was also said to have been purchased by D2 but neither the sale deed nor the source of the sale consideration was put in evidence. In the absence of these details, it cannot be inferred that the plot and house in question belonged to D2 and that she had constructed the said house from her retirement funds and by using Mahalaxmi Saving Scheme. The motive attributed by the prosecution to the accused is therefore not established.

The most significant aspect which demolishes the case of the prosecution is the recovery of the weapon, *viz.*, M.O.1 pestle. All the witnesses who went to the scene of the offence claimed to have seen this pestle lying beside the body of D1. Graphic details were given by some of them of how it was blood-stained. Despite the same, the prosecution strangely came up with the story that the said pestle was recovered on the basis of the confession made by the accused. Significantly, the recovery panch, P.W.10, turned hostile. He was

none other than the husband of D2's niece. In its anxiety to build up a case against the accused, the prosecution seems to have lost sight of the fact that the presence of the pestle at the scene of the offence was already noted by the witnesses, who came upon the scene of the offence immediately after the incident, and tried to project it as a recovery under Section 27 of the Indian Evidence of 1872. This clearly demonstrates the manipulation of the case by the prosecution so as to indict the accused.

Further, P.W.1, the son of the accused and D2, was stated to have given Ex.P12 complaint, whereupon the process of criminal law was set in motion. Be it noted that this statement was said to have been given by him on 07.12.2007 at about 10.30 PM. Having seen the dead body of his step-sister, with whom he lived in the same house, and his grievously injured mother, this boy of a tender age of 17 years would definitely have been traumatized. It is rather difficult to believe that when the other family members of D2 gathered at her house, they would have sent this young boy to the Police Station to give a statement alone. The intricate details, which are said to have been narrated by P.W.1 at that late hour and in the traumatized state that he would have been in, dilute the prosecution's claim that he came to the Police Station and made the statement recorded therein.

Notably, in ***RATNESH KUMAR PANDEY V/s. STATE OF UTTAR PRADESH***¹, a case built on circumstantial evidence, the Supreme Court observed that the chain of circumstances proved must lead to the only hypothesis that the accused was guilty. Earlier, in ***SAHADEVAN V/s. STATE OF TAMIL NADU***², a case resting solely on circumstantial evidence, the Supreme Court pointed out that the

¹ 2015 AIR SCW 1105

² (2012) 6 SCC 403

onus lies upon the prosecution to prove a complete chain of events which points towards the guilt of the accused. Again, in **MADHU V/s. STATE OF KERALA**³, the Supreme Court pointed out that circumstantial evidence would have to be evaluated with care and caution and only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. It was further observed that in a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion and in the absence of such convincing circumstantial evidence, an accused would be entitled to the benefit of doubt.

Thus, in the absence of an unbroken chain of events pointing unerringly towards the guilt of the accused and none else, the prosecution cannot claim to have proved the case against him on the strength of circumstantial evidence. However, but for the fact of proving that D1 and D2 met with homicidal deaths, the prosecution did not adduce clinching evidence to link the accused to their homicidal deaths to the exclusion of any other.

The judgment of the Sessions Court holding to the contrary therefore cannot be sustained and is accordingly set aside.

The appeal is allowed acquitting the appellant/accused of the charge under Section 302 IPC. As the appellant/accused has already been enlarged on bail, he shall forthwith report before the Superintendent of Prisons, Central Prison, Cherlapally, Ranga Reddy District, for completion of necessary formalities consequent upon his acquittal. The bail bonds furnished at the time of his securing bail

³ (2012) 2 SCC 399

shall stand discharged. Fine amount paid by him, if any, shall be refunded.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

16th FEBRUARY, 2018

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