

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
&
THE HON'BLE Ms JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.128 of 2014

JUDGMENT: (Per Hon'ble Ms Justice J.Uma Devi)

Assailing the judgment (dated 19.11.2013) in Sessions Case No.212 of 2013, on the file of the VII Additional District and Sessions Judge, Nizamabad at Bodhan, convicting the appellant/accused-Goonapally Nadipi Gangaram, for the offence punishable under Section 302 IPC and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for two months, the present appeal is filed by him.

2. The prosecution has made allegations against the appellant that he killed his daughter, by name, Mamatha (hereinafter referred to as "the deceased"), aged about 9 months, on 28.03.2013, by throttling her neck. Regarding the death of the deceased, a complaint was lodged by her mother-PW 1 with the police of Birkur PS on 28.03.2013 at 9.30 a.m, alleging that her husband-Nadipi Gangaram (the appellant herein) used to hate her daughter Mamatha and that prior to the incident, twice he assaulted her daughter Mamatha, but she could somehow saved herself and her daughter from the clutches of her husband with the help of her neighbours.

3. The allegations made in her complaint, dated 28.03.2013 at 9.30 a.m, are that on 28.03.2013 at 7 a.m she went to nearby public tap for fetching water and during that time, her two sons and daughter Mamatha were present in the house. When she went near to the public tap for fetching water, her husband, who developed hatredness towards her daughter, squeezed her daughter's neck and caused her death.

4. Based on her aforesaid complaint, the Sub-Inspector of Police, Birkur P.S registered a case against the accused under Section 302 IPC in Cr.No.46 of 2013 and issued express FIR and gave intimation about the crime to the Inspector of Police-PW 8 over phone. PW 8 who took up investigation on getting the intimation about the crime, rushed to Durki village where the scene of offence situated and there recorded the statements of the *de facto* complainant-Smt.Goopanpally Sayavva, the mother of the deceased, the brother of the deceased-Goopanpally Balraj, aged about 11 years, Goopanpally Ravi and Smt.Goopanpally Savitha and got photographed the scene of offence, dead body of the deceased and conducted a Panchanama at the scene of offence in the presence of PW 6-Jangam Shivappa and one Totawar Ravi incorporating the physical features. He also held inquest over the dead body of the deceased in the presence of PW 6 and another and sent the dead body to the Government Area Hospital, Banswada for the purpose of conducting postmortem examination. The Medical Officer at Government Area Hospital, whom the prosecution examined as PW 9, issued the postmortem examination report, opining that the deceased died due to "*cardio respiratory arrest due to throttling*". PW 8-the Inspector of Police arrested the accused on 29.03.2013 at 6 p.m near Durki cross road and recorded his confessional statement in the presence of PW 7-Kulakarni Laxmikanth Rao. The charge sheet was laid against the accused by the Inspector of Police (PW 8) under Section 302 IPC, and that the Magistrate, Banswada took cognizance of the offence under Section 302 IPC as against him based on the evidence collected during course of investigation.

5. After completion of the required formalities, the case was committed to the Court of Sessions by the Magistrate of Banswada. The Principal District and Sessions Judge, upon assigning the number to the case

as Sessions Case No.212 of 2013, made over it to the Court of the VII Additional Sessions Judge, Bodhan for its disposal, as per law.

6. After appearance of the accused, the trial court framed a charge punishable under Section 302 IPC against him and read over and explained the same in Telugu, for which, he pleaded not guilty and claim to be tried.

7. In order to establish the guilt of the accused, the prosecution examined nine (9) witnesses and various documents, viz., complaint, inquest report, postmortem report, crime detailed form, and arrest panchanama were marked. PWs 1 and 2 were the mother and elder brother of the deceased, who saw the deceased in her house with the accused soon before her death. PWs 3 and 4 were the circumstantial witnesses, who spoke about the previous attack made by the accused to kill her. Others were the witnesses for the inquest and postmortem examination, and for the confession of the accused etc. PW 8 was the Inspector of Police who conducted investigation.

8. The learned Sessions Judge, on appreciation of the evidence given by the witnesses and the material documents available in the case record believed the prosecution case and came to the conclusion that the prosecution could prove the guilt of the accused for the offence punishable under Section 302 IPC, accordingly, convicted him and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.500/- in default to suffer simple imprisonment for two months.

9. It was argued by the learned counsel for the appellant that the allegation of causing death of the deceased by the accused has not been proved by the prosecution. The entire case of the prosecution is based on circumstantial evidence, and that the circumstantial evidence through which the prosecution intends to establish that the accused is the culprit does not clinchingly establish that the accused is the culprit. The involvement of the

accused in the commission of the crime has not been proved by the prosecution by adducing evidence of reliable nature.

10. The learned Public Prosecutor while answering to the aforementioned contentions of the learned counsel for the appellant states that the accused does not like giving birth of a girl child by his wife, since from the date of her birth he developed some sort of dislike towards her and many times made the attempts to kill her, but somehow she was saved from his clutches by her mother with the help of the neighbours. On the date of the incident, when her mother (the complainant), the complainant, left the house to fetch water, the accused who was waiting for an opportunity to eliminate the deceased, killed her by throttling her neck. The nail marks were seen on the neck of the deceased by the mother who rushed to the house immediately after the incident. The immediate absconding of the accused from the scene of offence also was one of the incriminating circumstances which would prove that he was not an innocent person as claimed by him.

11. The medical evidence brought on record by the prosecution through PW 9-Dr.Kuldeep establishes the fact that the death of the deceased occurred "*due to cardio respiratory arrest due to throttling*". The learned trial Judge on close scrutiny of the evidence of the witnesses examined by the prosecution has found that there is substantial evidence on record to believe that the accused killed his daughter Mamatha, aged about 9 months on account of dislike developed towards her.

12. The judgment rendered by the VII Additional District and Sessions Judge, Nizamabad at Bodhan, through which, the accused is found guilty for the offence punishable under Section 302 IPC and sentenced to suffer rigorous imprisonment for life and the evidence on record is perused by us.

13. The allegation of the prosecution is that the accused who was the father of the deceased child, did not like giving birth of a girl child by his wife and since from the date of her birth, he developed hatredness towards her and was waiting for a chance to eliminate her. The mother of the deceased Smt.Goopanpally Sayavva, in the complaint given by her to the police on 28.03.2013, mentioned that her marriage with the accused was performed about 12 years ago and that she was blessed with two sons, by name, Balaraj and Narender, and a daughter, by name, Mamatha, and ever since from the date of birth of her daughter, her husband (the accused herein), who did not like her, assaulted her with an intention to kill her, but somehow, she could saved her with the help of her neighbours. On 28.03.2013 in the morning at 7 a.m she went to near the public tap to fetch water and at that time, her two sons and daughter were present in the house. Taking undue advantage of her absence in the house, her husband sent her sons of the house assigning them some work and killed her daughter by throttling her neck. On hearing the cries of her daughter, her elder son Balaraj who went out to bring water for clearing of utensils came and saw her daughter and a Bontha (M.O.1) covered over her. Immediately, her elder son came to her and informed about the same to her and that she rushed to the house immediately and saw scratch marks on the neck her daughter and bleeding from her mouth and injury on the backside of her daughter and found her lying dead.

14. During course of examination, PW 1 deposed about the facts which she mentioned in her complaint (Ex.P1) and about lodging of a complaint against her husband before the police. The brother of the deceased Balaraj, whom the prosecution examined as PW 2, was a child witness. He was aged about 12 years by the date of his examination. During course of his

examination, he deposed that when his mother went out of the house on the date of the incident, his brother (the accused herein), asked him to clean utensils. While he was doing that work by bringing water from outside, his father was sitting near the deceased sister. Meanwhile, he heard the cries of his deceased sister when he went near her, her body was covered with M.O.1-Bontha and that he saw bleeding from her mouth. Immediately, he went to his mother and informed the same to her, and that his mother came there and saw the dead body of his sister.

15. G.Ravi, whom the prosecution examined as PW 3, was related to the accused. He was the person who saw the accused and PW 1 quarrelling with each other after the birth of the deceased as the accused did not like the girl child. As per his version, about one week prior to the incident, the accused beat PW 1 and the deceased daughter and pushed them into a wooden woven and in that incident the Pallu of the Saree of PW 1 was burnt and the deceased sustained burn injury to her leg. Evidence of PW 3 thus could be relevant so far as the previous attempt made by the accused to kill the deceased.

16. PW 4-Savitha, the co-sister of PW 1 spoke about the information given to her and to PW 1 by PW 2 as to the killing of the deceased by the accused. The evidence of PWs 3 and 4 was of hearsay.

17. The death of the deceased, according to the prosecution case, as found from the contents of Ex.P6-FIR, took place in the morning hours of 28.03.2013 around 7 a.m when the complainant (PW 1) went to nearby public tap to fetch water. During that time, the accused was along with his children including the girl child whom he did not like. The information about the death of the deceased was given in the police station at 9.30 a.m, which was situated at a distance of 10 kilometers to the scene of offence. The

investigation of the case was taken up by PW 8-the inspector of police on the same day, soon after he was given intimation about the offence by the Sub-Inspector of Police, who registered the case based on the complaint given by PW 1. PW 8, who visited the scene of offence, prepared the crime detailed form-Ex.P2. The scene of offence as found from the contents of Ex.P2 crime detailed form was at the house of the accused during which time he was very much available there as noticed from the contents of the depositions of PWs.1 and 2. One of the Panchayatdars to Ex.P2 was examined as PW 6 and he was the Panchayatdar for the inquest also. The crime detailed form/Ex.P2 was prepared by the Inspector of Police on 28.03.2013 at 10.10 a.m. On the same day inquest was held over the dead body of the deceased by the Inspector of Police in between 10.45 a.m to 12.45 p.m. It was opined by the Panchayatdars to the inquest that the deceased was throttled to death by her own father, as per the information given to them before the police by her mother and brother. They also noticed the injuries over the deceased body and the particulars of them were mentioned in Column No.7 of the inquest report. The dead body of the deceased was sent to the Government Area Hospital, Banswada, and that the Doctor, who held autopsy over it opined that the death of the deceased occurred due to "*cardio respiratory arrest due to throttling*". The Doctor was examined as PW 9. PW 9 noticed multiple bruise marks over the neck and found fracture on the left side of hyoid bone of the deceased. The time of death of the deceased, as per the opinion given by PW 9, was 2 to 8 hours prior to the examination of her dead body by him.

18. The above information as culled out from the evidence of the witnesses indicates that the offence in the police station was reported without any delay, and investigation was also taken up immediately by PW 8-the

Inspector of Police, who received information about the incident through Sub-Inspector of Police, to whom the offence was reported by the complainant.

19. It is clear on examination of entire evidence of the prosecution that there is no direct evidence as to the accused killing his daughter aged about 9 months. PWs 1 and 2 are the mother and elder brother of the deceased Mamatha. They have seen the deceased lying dead soon after her death. They were with the deceased just prior to her death. As per their version, the deceased was with her father just prior to her death. It is as per the evidence of PW 1, when left the house to fetch water from the nearby public tap in the morning hours, her two sons, the deceased daughter and their father (appellant herein) were present in the house. Her case, as mentioned in Ex.P1, is that the accused was against to giving birth of a girl child, since from the date of birth of the deceased, he developed dislike towards her and many a times he made attempt to eliminate her. PW 3, the paternal uncle of the accused deposed about the previous attempt made by the accused to kill the deceased. As per his version, the accused pushed PW.1. The above evidence of PW 3 corroborates the testimony of PW 1 in so far as the assault made by the accused to kill the deceased and that he pushed her in a wooden woven so as to eliminate her due to hatred he developed against her.

20. The accused, against whom a grave allegation of causing the death of his own daughter was made, did not choose to examine anybody in proof of the plea of defence he raised contending that he was not present in the house at the time of the death of the deceased took place. When he was questioned during course of examination under Section 313 Cr.P.C by putting the evidence of all the prosecution witnesses, he only stated that he is no

way concerned with the death of the deceased and he does not know anything about the case.

21. It can safely be held based on the evidence of the prosecution witnesses that the offence took place in the house of the accused, and that he was present in his house when the offence took place. The factum of death of the deceased was well within the knowledge of the accused, therefore, the burden of proving of such fact was upon him as per Section 106 of the Indian Evidence Act.

22. When an offence like murder is committed in the house, the initial burden to establish the case undoubtedly is upon the prosecution. The prosecution, by examining PWs 1 and 2 and the Panch witness for the crime detail form, has clearly proved that the offence took place within the house of the accused and the accused was present in his house with the deceased at that time.

23. In *Kukkala Govinda Raju S/o Sathi Raju vs. The State of A.P. rep. by its Public Prosecutor*¹ a Division Bench of this court held that,

“42. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would

¹ 2010(1) ALD (Crl.) 939

undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as it is required in other cases of circumstantial evidence.

44. In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.”

24. In the present case also, no explanation is offered by the accused as to the cause of death of his daughter. The accused, whose presence at the scene of offence along with the deceased at the relevant point of time is proved by the prosecution, has failed to state anything during course of his examination under Section 313 Cr.P.C, except denying the offence, only said that he is no way concerned with the death of the deceased.

25. The person, whose death is reported to the police, is none other than the daughter of the accused herein. The evidence of the prosecution susceptibly establishes his presence with the deceased in his house at the relevant point of time. PWs 1 and 2 have seen the accused with the deceased soon before her death and after they return to home they have seen her lying dead and that the accused who was present with her soon before her death was not there in the house. The evidence of PW 1 corroborates with the medical evidence where it is clearly stated that the death of the deceased occurred due to “*cardio respiratory arrest due to throttling*”. As per the crime detail form which is prepared by the police in the presence of PW 8 within 2 to 3 hours after the death of the deceased and

as per the crime detail form, the scene of offence is the house of the accused.

26. The complainant in this case is the wife of the accused. PW 2 is his own son. They do not have any animosity against the accused to implicate him falsely in a murder case. The yet another incriminating circumstance establishing against the accused is that he fled away from the scene of offence immediately after the offence. As per the evidence on record, the accused was arrested by PW 8 on the next day of the death of the deceased i.e., on 29.03.2013 at 6.30 p.m near Durki cross road. If really the accused is innocent, and is no way concerned with the death of the deceased, there may not be any need for him to flee away from his house. The conduct of the accused from fleeing away from his house soon after the death of the deceased itself can be taken an incriminating circumstance through which also an inference of guilt can be drawn against him.

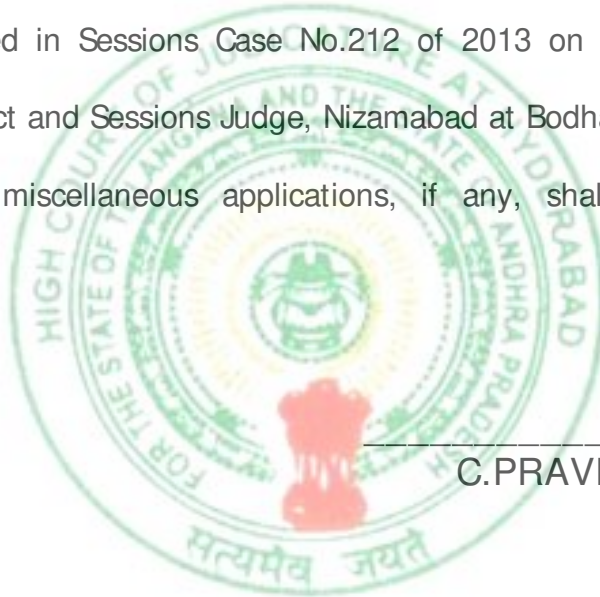
27. In cases where direct evidence is lacking/scarce, burden of proving the case is bestowed on motive and circumstantial evidence. In the present case, the evidence adduced by the prosecution regarding which a detail discussion is made us in above paras clearly proves that the accused has got motive to kill the deceased on account of dislike or hatredness developed towards her. The evidence brought on record by the prosecution by examining PWs 1 to 3 is not only convincing but also trustworthy. Multiple bruise marks over the neck of the deceased and fracture on left side hyoid bone found during course of postmortem examination by the Postmortem Doctor (PW 9) strengthens the version of PW 1 who rushed to the house suspecting something soon after getting information from her son PW 2 that he found bleeding from the mouth of the deceased etc. The circumstantial evidence brought on record by the prosecution, particularly through PWs 1

and 2, whose evidence appears to be trustworthy, and clinchingly establishes his presence with the deceased in his house at the time of the incident.

28. On a close scrutiny of the circumstantial evidence appearing in the case record, which is consistent and cogent, we are of the view that it is only the accused who is responsible for the death of the deceased and he is the perpetrator of the crime. The Court below, in our view, has not committed any error in finding the guilt of the accused for causing death of his own daughter by throttling her neck.

29. In view of the above discussion, we find no merit in the present appeal and the same is hereby dismissed accordingly, confirming the judgment passed in Sessions Case No.212 of 2013 on the file of the VII Additional District and Sessions Judge, Nizamabad at Bodhan.

Pending miscellaneous applications, if any, shall stand closed in consequence.



C.PRAVEEN KUMAR, J

J.UMA DEVI, J

Date: 22.12.2018
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