

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

&

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL APPEAL No.418 of 2013

JUDGMENT: (*per ARR,J*)

This criminal appeal under Section 374 (2) of the Code of Criminal Procedure (for short, CrPC) is filed by the accused questioning the judgment of conviction passed in Sessions Case No.163 of 2006 by the Sessions Judge at Mahabubnagar, on 21-01-2013 wherein the accused-appellant herein was convicted and sentenced to undergo imprisonment for life for the offence under Section 302 of Indian Penal Code (for short, IPC) and to suffer rigorous imprisonment for a period of two years for the offence under Section 201 IPC and the sentence of imprisonment imposed for the offence under Section 201 IPC shall merge in the imprisonment for life.

2. The prosecution case, in brief, is that one Sithamma (hereinafter called the deceased) is the sister of PW1,

K. Ramulu and PW5, K. Janardhan and wife of the accused.

She was married to the accused eight years prior to the date of the incident and at the time of marriage, they had given 55 tolas of silver, $\frac{1}{2}$ tola gold and Rs.15,000 net cash. After their marriage, the accused and deceased led happy conjugal life for some time and out of their wedlock, the deceased was blessed with a male and a female child, but the female child died. Meanwhile, the accused had borrowed an amount of Rs.30,000/- from Mesi setu (PW2) and as such, the accused was insisting to sell the house to clear the debt, but the deceased refused to sell the house, due to which the accused used to quarrel with the deceased and beat her. On the fateful day i.e. 18-06-2012, morning at about 6 am, PW2, Mesi setu informed PW5 that his sister (deceased) died in the house by hanging. On receiving information, PWs.1 and 5 rushed to the house of accused and found their sister in the house with a rope around her neck. On enquiry with the accused, he stated that in the

night, after he slept in the house, the deceased committed suicide. In this regard, PW1 (brother of the deceased) lodged a complaint against the accused expressing suspicion that the accused might have killed his sister over the issue of selling the house. Based on the complaint lodged by PW1, the Police, Jadcherla, registered a case in Cr.No.167 of 2012, under Section 174 CrPC and investigated into the matter. During the course of investigation, PW-11 (SI of Police) visited the scene of offence and recorded the statements of witnesses and seized MO-1, rope under Ex.P-6 in the presence of PWs.6 and 7 and one Boya Shanker. PW-11 also held inquest over the dead body of the deceased in the presence of the same witnesses and sent the dead body of the deceased for postmortem examination. Based on the opinion of the medical officer PW-10, that the deceased died of “asphyxia” due to strangulation leading to cardio respiratory arrest, PW-12 Inspector of Police arrested the accused on 28-06-2012 and on interrogation, the accused

confessed the offence and after completion of investigation, PW-12 laid charge sheet against the accused for the offences under Sections 302 and 201 IPC and the said charge sheet was numbered as PRC No.48 of 2012 by the learned Judicial Magistrate of First Class, Jadcherla. On committal of the said PRC, as the offence under Section 302 IPC is exclusively triable by the Sessions Court, the Court of Sessions numbered the same as SC No.655 of 2012. The learned Sessions Judge examined the accused under Section 228 CrPC and framed two charges for the offences under Section 302 and 201 IPC, read over and explained to the accused, which the accused denied and pleaded not guilty and claimed to be tried.

3. In order to prove the guilt of accused, the prosecution examined PWs.1 to 12 and marked Exs.P1 to P12 apart from marking MO-1. After closure of the prosecution side evidence, the accused was examined under section 313 Cr.P.C in which he denied the incriminating evidence put to

him. None was examined on behalf of the accused. After hearing the arguments on both sides and after perusal of evidence adduced by the prosecution, the learned Sessions Judge, by the impugned judgment convicted and sentenced the accused, as noted above.

4. Heard learned counsel for the appellant accused and the learned public prosecutor for the State.

5. The trial Court framed an issue as to whether the death of the deceased was homicidal and if so, whether the prosecution could able to establish the involvement of the accused in the homicidal death of the deceased and prove the guilt of the accused beyond all reasonable doubt or it was a suicidal death. In the light of the evidence led the trial Court came to the conclusion that the death of the deceased is homicidal.

6. Now the point for consideration in this appeal is whether the conviction and sentence recorded by the trial

court in the light of the evidence adduced is sustainable in law ?

7. Before scrutinizing the evidence adduced by the prosecution, to bring home the guilt of the accused beyond all reasonable doubt, it is worthwhile to note what the witnesses have deposed in their examination-in-chief and cross examination to support the case of the prosecution.

Out of 12 prosecution witnesses, PWs 1 and 5 are the brothers of the deceased, PW2 is Masi setu who lent money to the accused, PWs.3 and 4 are circumstantial witnesses, PWs.6 and 7 are mediators for the scene of offence and inquest panchanama, PWs.8 and 9 are the mediators for confession of the accused, PW10 is the medical officer who held autopsy over the dead body of the deceased, PWs11 and 12 are investigating officers in the case. Ex.P1 is complaint lodged by PW1, brother of the deceased. Exs.P2 to P4 are 161 Cr.P.C statements of PWs.2 to 4. Ex.P5 is the inquest report. Ex.P6 is crime details form, Ex.P7 and P8 are the

signatures of PWs.8 and 9 on the confession and recovery panchanama. Ex.P-9 is the postmortem report, Ex.P-10 is copy of the FIR, Ex.P-11 is alteration memo of section of law, Ex. P-12 is confession and recovery panchanama & MO-1 is a rope.

8. Coming to the evidence of brothers of the deceased examined as PWs.1 and 5, they deposed that the accused killed the deceased in connection with house dispute as he wanted to sell away the house, which the deceased has been opposing. It has come in their evidence that on receiving information from PW-2, PW1 rushed to the house of accused and found the dead body lying in the house with ligature mark around the neck and when he questioned the accused as to cause of the death of the deceased, the accused told them that he killed his sister in connection with house dispute as he intended to sell the house, which the deceased refused. The evidence of PW5, another brother of the deceased is also on the same lines as that of PW1. A reading of the evidence of

PWs.1 and 5 goes to show that the accused killed the deceased due to dispute in connection with the sale of house. It is to be seen that PWs.2 to 4 who are circumstantial witnesses turned hostile and did not support the case of the prosecution. PWs.6 and 7 who are mediators for the scene of offence and inquest panchanama and PWs.8 and 9 mediators for the alleged confession of the accused that he has committed the offence turned hostile and did not support the case of the prosecution. The other witnesses are official witnesses. PW-10 is Doctor, and she conducted autopsy over the dead body of the deceased and as per her opinion, the deceased died due to “asphyxia” due to strangulation. PWs.11 & 12 are investigating officers. This evidence is brought on record by the prosecution to connect the accused with the crime.

9. Learned counsel for the appellant contended that the trial Court ought not to have convicted and sentenced the accused only based on circumstantial evidence and there is no direct evidence to establish the case of the prosecution. It is

also contended that the evidence of brothers of the deceased examined as PWs.1 and 5 being interested witnesses, their evidence cannot be relied and the trial Court ought not to have convicted the accused for the offence under Section 302 IPC solely based on their evidence. It is also contended that the crucial witnesses PWs.2 to 4 and PWs8 and 9 turned hostile and did not support the case of the prosecution. On the other hand, learned Public Prosecutor made submissions in support of the impugned judgment of the trial Court and submitted that though it is a case of circumstantial evidence, in the light of evidence of PWs.1 & 5, coupled with the evidence of PW-10 medical officer, and Ex.B-9 post-mortem report, their evidence is sufficient to connect the accused with the offence committed by him.

10. This case is purely based on circumstantial evidence and on last seen together theory. It is to be seen that PW-2 Masi satu seen the deceased died by hanging in the house and he has informed the news to the brother of the deceased PW1,

who in turn informed to another brother PW-5 and both rushed to the house of the deceased and found their sister dead in the house with a rope around her neck. It is to be seen that the accused was present in the house even after the arrival of the brothers of the deceased. PW1 in his examination-in-chief though stated that when they questioned the accused as to how their sister died, to which the accused stated that he killed the deceased for opposing to sell the house, but in the complaint Ex.P-1 complaint lodged with the Police, he stated that the accused told him that on the previous day night after the accused slept, the deceased committed suicide. However, he expressed suspicion that the accused might have killed his sister with rope by strangulation. This contradiction in the evidence of PW1 is discernable. In Ex.P-1, complaint lodged with the Police, PW-1 did not state that accused told him that he killed the deceased, but instead stated that deceased died due to hanging, but when it comes to his evidence, he deposed that

accused told that accused killed deceased. It is to be seen that PW-1 on arriving at the scene of offence, encountered the accused and if really the accused had told him that he killed his sister, there was no reason for PW-1 to state in the complaint that his sister died on account of hanging. PW-2 informant did not support the case of the prosecution. PW-2 deposed that he has not enquired from the accused the cause of death of deceased. Except the self serving evidence of PWs.1 and 5, brothers there is nothing which connects the accused with the offence punishable under Section 302 IPC. Curiously, there are no eye witnesses in the case and it is purely based on circumstantial evidence. The other crucial witness in this case is PW-10 medical officer. It has come in her evidence that the cause of death of deceased was due to strangulation leading to cardio-respiratory arrest. It has come in her cross examination that she did not find any nail injuries on the neck of the deceased nor any injuries on the body of the deceased. It has further come in her evidence

that when a person hangs, the death would be instant basing on the pressure and if a person dragged with ligature, there would be struggle for life, in such cases the deceased tried to remove the ligature, there would be line marks and there would be minor differences for the death of hanging and strangulation by ligature. It has also come in the evidence of PW-10 that fracture of hyoid bone is uncommon in strangulation by ligature and it is very common in cases of hanging. As per post mortem report, Ex.P-9, there is fracture of hyoid bone, which suggests death by hanging. It is also stated by PW-10 that there is no involuntary discharge of faces which is common in strangulation by ligature and not common in hanging. But post mortem report is otherwise.

11. After analyzing the contradictions in the evidence of prosecution witnesses PWs.1 and PW-10 and other oral and documentary evidence as discussed above, we are of the opinion that the trial Court has not properly appreciated the contradictions in the evidence of PW-1 and PW-10. Even the

last seen together theory cannot also be applied in view of the evidence of PW-10 (doctor).

12. In order to connect a persons solely on the basis of circumstantial evidence, parameters are laid down by the Supreme Court, the recent decision being in **RAMBRAKSH @ JALIM vs. STATE OF CHHATTISGARH** (2016 (12) SCC 251),

wherein at para 12 it was observed as follows:-

12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

13. In **BODHRAJ vs. STATE OF J & K** (2002) 8 SCC 45) the Supreme Court at para 31 held as follows:-

'31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible".

14. In JASWANT GIR vs. STATE OF PUNJAB (2005) 12 SCC 438), the Supreme Court observed as follows:-

“.....in the absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of “last seen together” even if version of the prosecution witness in this regard is believed.”

15. In the circumstances prosecution failed to prove that the death of the deceased is homicidal. Hence the charge against the accused for the offences under section 302 and 201 IPC are not made out.

16. Accordingly the conviction and sentence recorded Sessions Judge, Mahabubnagar in SC No.655 of 2012 against the accused-appellant for the offences under Sections 302 and 201 IPC is set aside. The appellant shall be set at liberty forthwith if not required in any other case. In the result, criminal appeal is allowed.

A.RAJASHEKER REDDY, J

A.SHANKAR NARAYANA, J

Dated: 01-05-2018.
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Date: 01-05-2018

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