

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.223 of 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

The sole accused in Special Sessions Case No. 14 of 2008 on the file of the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupati is the appellant herein. He was tried for the offences punishable under Sections 302, 379 IPC and Section 3(2)(v) of SCs and STs (POA) Act, 1989. Vide judgment dated 14.02.2012, the learned Special Sessions Judge, while acquitting the accused for the offence punishable under Section 379 IPC, convicted him for the offences punishable under Section 302 IPC and Section 3(2)(v) of SCs and STs (POA) Act, 1989 and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of six months.

2. The gravamen of the charge against the accused is that on 25.07.2008 at about 6 p.m., the accused is said to have caused the death of one P.Rukmini near the railway track, West Railway Station, Tirupati, on the ground that she belongs to S.T community.

3. The facts, as culled out from the evidence of the prosecution witnesses are as under:

PW1 is the father, PW7 is the mother, and PW2 is the sister of the deceased, while PW3 is her paternal aunt's husband. PWs 4 and 9 are the relatives of the deceased. PW8 is said to be the friend of PW1. The evidence of PWs 1 and 7, who are the parents of the deceased would show that the accused used to come to the house of the deceased for taking notebooks and also used to call her on telephone. PW7 claims to have enquired her daughter(deceased) about the visits of the accused and the telephone calls made, to which the deceased is said to have stated that she is in love with the accused and wanted to marry him. PW7 in her evidence deposed that she admonished the deceased and asked her to complete her education. Later, the deceased is said to have told PW7 that as the accused came to know that they belong to Erukula community, he stopped talking to her and asked her to keep away from him.

4. The evidence of PW1 and PW7 further discloses that the deceased used to attend college and later, in the evening hours, used to leave the house for tuition. On 25.07.2008, during evening hours, the deceased is said to have left the house for tuition but did not return back. Enquiries made with relatives and friends proved futile. After searching for the deceased in the night, PW7 got a doubt that the accused might have taken away the deceased. On the next day, at about 7 a.m., they went to the house of the

tuition master and enquired about the deceased. He told them that the deceased did not come to the tuition on the previous day. While they were returning back from the house of the tuition master, their younger daughter Keerthi informed them on phone that one female dead body was at the railway track and the name of the deceased was found on the notebooks nearby the dead body. Immediately, PWs 1 and 7 reached the spot and found injuries on the face of the injured. They were not able to identify the dead body. However, with the help of the belongings near the dead body, they identified the body as that of the deceased.

5. Subsequently, PW1 went to the police station and lodged a report before PW17-the Sub Inspector of Police, which came to be registered as Crime No. 39 of 2008 for the offence punishable under Section 302 IPC. Further investigation in this case was taken up by PW18-the Inspector of Police. On 26.07.2008, at about 10 a.m., while he was in his circle office, PW18 received a call from PW17 that an unknown female dead body was lying on the railway track. He immediately proceeded to the scene of offence along with PW17, and in the presence of PW15, conducted inquest over the dead body. At the time of inquest, he recorded the statements of PWs 1 to 4. At 2 p.m., he secured the presence of the Additional Revenue Inspector and prepared a panchanama of the scene. With the assistance of the clues team, he collected blood stained earth and controlled earth from the scene of offence. He also seized one pair of chappals, one hand kerchief, cash of Rs.42/- and one boulder from the scene of offence, apart from two

notebooks relating to the deceased. He then prepared a rough sketch of the scene, which is placed on record as Ex.P15. He examined PWs 5 and 6 and recorded their statements. Thereafter, he is said to have recorded the statement of PW7. Basing on the said statement, he altered the section of law by adding Section 379 IPC and Section 3(2)(v) of SCs and STs (POA) Act, 1989. Ex.P16 is the altered F.I.R. After conducting inquest, the body was sent for post mortem examination.

6. PW14-the Assistant Professor, Department of Forensic Medicine, S.V.Medical College, Tirupati conducted autopsy over the dead body of the deceased and issued Ex.P8-the post mortem report. According to him, the cause of death was due to intracranial haemorrhage as a result of trauma to the head.

7. After altering the section of law, PW18 handed over the investigation to PW19-the Additional Superintendent of Police, Tirupati. As per his evidence, he proceeded to the scene of offence, verified the investigation done by PW18 and recorded the statements of PWs 1 to 12. On 26.07.2008 at 7 p.m., he proceeded to Kapila Theertham junction along with PW16 and arrested the accused. The accused is said to have made a confession, basing on which a gold chain was said to have been recovered from the pocket of the accused. In pursuance of the confession, PW19, along with the mediators, proceeded to Dormitory No.I of R.P.F. Training Centre and seized blood stained T-shirt, a pant with blood

stains and the identity card of the accused. M.O.s 7 and 8 are the shirt and pants.

8. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.62 of 2008 on the file of III Additional Judicial First Class Magistrate, Tirupati. Complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as Special S.C.No. 14 of 2008 on the file of Court of the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupati. Basing on the material on record, charges for the offences punishable under Sections 302, 379 IPC and Section 3(2)(v) of SCs and STs (POA) Act, 1989 came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

9. To substantiate its case, the prosecution examined PWs.1 to 19 and got marked Exs.P1 to P21 and M.Os.1 to 9. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the accused in support of his defence. Out of the 19 witnesses examined by the prosecution, PWs 10, 11 and 12 did not support the prosecution case and were declared hostile by the prosecution.

10. Relying upon the evidence of PWs 7, 8 and 9, coupled with the evidence of PW18-the investigating officer, the trial court came to the conclusion that the accused is responsible for the death of the deceased, and as such convicted the accused for the offences punishable under Sections 302 IPC and Section 3(2)(v) of SCs and STs (POA) Act, 1989 and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

11. The learned counsel for the appellant would submit that the circumstances relied upon by the prosecution are not proved, and even if proved, do not form a chain of events connecting the accused with the crime. According to him, the evidence of PWs 7, 8 and 9, who were examined to prove motive and last seen, is clouded with suspicion, and the same cannot be relied upon.

12. On the other hand, the Public Prosecutor would contend that the three circumstances relied upon by the prosecution, viz., motive, last seen and recovery of blood stained clothes, are proved beyond reasonable doubt, and these circumstances are sufficient to establish the guilt of the accused.

13. The point for consideration is: whether the accused is responsible for the death of the deceased.

14. As seen from the record, there are no eye witnesses to the incident and the case rests on circumstantial evidence. It is to be seen whether the circumstances relied upon by the prosecution, viz., motive, last seen and the recovery of the blood stained

clothes from the dormitory, are proved beyond reasonable doubt. Insofar as the motive is concerned, the prosecution mainly relied upon the evidence of PW7. According to him, the accused and deceased were good friends, and were in love with each other. Realising that the deceased belongs to Scheduled Tribe community, the accused is said to have refused to marry her and asked her to keep herself away from him. This is said to be one of the reasons for the accused to commit murder of the deceased. As stated earlier, the evidence of PW7 is pressed into service by the prosecution to prove the said motive. It would be useful to refer to the evidence of PW7, which is as under:

“P.W.1 is my husband and deceased Rukmini is eldest daughter among four daughters. The said Rukmini died about 2 or 3 years back. I know accused as he used to come to our house to talk with Rukmini and take the Note books and he also telephoned to Rukmini now and then. I have also asked my daughter about the visit of accused and telephones, where Rukmini told me that she is in love with accused and she wanted to marry him. Then I admonished my daughter Rukmini and asked her to complete her education. Some days later, the said Rukmini told me that accused came to know that we are the “Erukula” community and stopped talking with her as the accused belongs to Kamma community and asked her to keep away from him. And refused to marry and asked her to marry whomsoever she likes.”

15. PW7 was cross-examined at length. In the cross-examination, she admits that she did not inform PW1 on the night of 26.07.2008 about her suspicion on the accused for missing of the deceased. But, in the morning hours, while herself and PW1 went to the spot and saw the dead body of the deceased, she informed her suspicion against the accused, for the death of the deceased. It would be useful to extract the exact words spoken to by the witness, which are as under:

“I did not inform to P.W.1 about my suspicion on accused for missing of Rukmini on that night but in the morning hours when myself and P.W.1 went to the spot and see the dead body of my daughter Rukmini, I informed my suspicion for the death of Rukmini.”

16. If the evidence of PW7 is tested with the evidence of PW1, it would show that on the date of incident, i.e., 25.07.2008, the deceased left the house for tuition as usual at about 6 p.m., but did not return back. They searched for her, and every effort made went in vain. On the next day morning, PW1 and PW7 went to the house of the tuition master, who informed them that the deceased never came for the tuition on the previous day. While both of them were returning from the tuition master's house, PW2 telephoned to them, stating that a dead body was lying near the railway track. Immediately, PWs 1 and 7 proceeded to the spot and found the dead body of the deceased with injuries. Thereafter, PW1 is said to have lodged a report. In the cross-

examination, PW1 admits that himself and his wife went to the spot and identified the dead body as that of their daughter. By the time they reached the spot, many persons gathered there. He further admits that he alone went to the police station and lodged a report, and his wife stayed at the spot. After giving the report, he came back to the spot where police examined him and recorded his statement. He further admits that the police also examined and recorded the statement of his wife at the spot, along with him.

17. From the evidence of PW1, it is clear that though himself and his wife-PW7 searched for the deceased on the previous night and also on the next day morning, his wife never disclosed to him about her daughter's friendship with the accused and her suspicion on the accused. Further, if really PW7 had disclosed about the relationship between the accused and the deceased to PW1 on the next day morning, definitely, as admitted by her in the cross-examination, the same would have found place not only in the evidence of PW1, but also in the first information report which was lodged by PW1. Even during inquest, PWs 1 to 4 never disclosed about the existence of any friendship between the accused and deceased, or any motive for the accused to cause the death of the deceased. In the inquest report, a vague suspicion was entertained against some person due to some love or friendship.

18. Therefore, we are of the view that the motive, which is now sought to be projected by the prosecution, through the evidence of PW7, appears to have been introduced at a belated stage. At this

stage, it is also to be noted that PW7 never came forward with any explanation in not referring to the motive at the earliest point of time. Apart from that, it is also to be noticed that PW1, in his cross-examination, admitted that himself and his wife-PW7 were examined at the same time at the spot; that means, in the morning of that day on which the dead body was traced. The statement of PW7, which was recorded by the police at the scene, has not seen the light of the day. On the other hand, PW19 claims to have recorded the statement of PW7 sometime after the inquest, and during that time, this theory has been projected to establish motive.

19. For the aforesaid reasons, we feel that the theory of motive set up by the prosecution cannot be accepted.

20. The next circumstance relied upon by the prosecution is the accused being last seen in the company of the deceased. The evidence of PWs 8 and 9 is pressed into service to prove the same. PW8, in his evidence, deposed that in the year 2008, on one day, he saw the accused and deceased talking together and when he asked the deceased about the accused, she is said to have told him that the accused is her classmate. Then PW8 went away on his work. He further states that on 25.07.2008, in the evening hours, while himself and his friend Surendra Babu were proceeding through a road running from Padmavathi University towards Tirupati to Chittoor road, they saw the deceased getting down from an auto and the accused was present near the place where

the deceased was getting down from the auto. Thereafter, both of them proceeded towards West Railway Station, Tirupati. At that time, his friend Surendra Babu asked PW8 about the identity of the deceased, and PW8 stated that she is the daughter of PW1. PW8 thought that the accused and deceased were talking and as such he went away on his own work. On the next day, he came to know that the dead body of the deceased was lying on the railway track, and as such, himself and Surendra Babu reached the spot and identified the body of the deceased. They also enquired with the parents of the deceased, who told them that the deceased and accused loved each other and later, the accused refused to marry the deceased.

21. PW8 was subjected to lengthy cross-examination. Though he claims, in the chief examination, that he knows the parents of the deceased but, in the cross-examination, he admits that he does not know the names of the parents of the deceased. In the cross-examination, he admits that he is the President of S.T. Sangham and that PW1 belongs to Erukula community, which is also a Scheduled Tribe community. He further admits in the cross-examination that PW1 used to attend their Sangham, and as such, he knew him. He further admits that during the said period, he used to run a provision shop at Leela Mahal, which is at a distance of 4 k.m. from the place where he saw the accused and deceased together. He states that on that day, himself and Surendra Babu were proceeding through the said road to meet a student by name Suneetha, for payment of fees to her, for her education. At the

same time, he also states that on that day, himself and Surendra Babu went to Padmavathi Mahila University on some work and that Suneetha was studying Intermediate in the University Junior College. He admits that he has not paid fees to the said Suneetha on that day. He further admits that he did not state before the police that on one day, while he was going towards S.C. Hostel, he saw the accused and deceased talking and when enquired, the deceased informing them that the accused was her classmate. PW19-the investigating officer, in his evidence, admits the omission in the earlier statement of PW8, namely, about PW8 not stating about himself and Surendra Babu going to the spot and enquiring the parents of the deceased, who told them about the love affair between the accused and deceased; the accused refusing to marry the deceased, and also suspecting the accused as the culprit.

22. From the evidence of PW8, it is clear that in his earlier statement, he never spoke about seeing the accused and deceased together going towards S.C. Hostel on that particular day. The reasons given by him for going to the said place are inconsistent. On one hand, he says that he has gone there to pay fees to an Intermediate student by name Suneetha, and on the other hand, he says that himself and Surendra Babu went there as they had some work in Padmavathi Mahila University. He further admits that he did not pay any fees to Suneetha on that day. Therefore, the explanation given by PW8 for his presence at the scene of offence on the date of incident, is not convincing. Apart from that, PW8,

in his evidence, discloses that on coming to know about the dead body lying near the railway track, he is said to have gone there immediately. If really he has seen the accused and deceased together on the previous day, he would have definitely disclosed the said fact to PW1 or to the persons who gathered there, more particularly, the relatives of the deceased, who also reached the scene of offence. Hence, the evidence of PW8 throws any amount of doubt about he seeing the accused and deceased together on the previous day evening.

23. The other witness examined by the prosecution to establish the theory of last seen, is PW9. In his evidence, PW9 deposes that he is a resident of Tirupati and is doing flowers business. He also claims to know the deceased and her parents, and also the accused. According to him, about two years ago, on one Monday, in between 2.30 or 3 p.m., he saw the accused and deceased talking together and when he asked the deceased about the accused, she is said to have told him that the accused is her classmate. Further, on 25.07.2008, at about 7 to 7.15 p.m., while he was proceeding from Tirupati to West Railway Station, saw the accused and the deceased sitting together at the signal box of the railway station. Without disturbing them, he claims to have proceeded to attend his own work. His evidence also appears to be very suspicious for the reason that though, in the chief evidence, he claims to be doing flowers business, in his earlier statements which were placed on record as Ex.D1 and D2, he stated that he was doing only coolie work and used to return to his house once in

two or three days. Apart from that, his evidence in chief shows that on coming to know about the incident, he reached the spot, saw the dead body of the deceased, and suspected that the accused as the person responsible for the death of the deceased. When his evidence in chief is to the effect that he knows PW1-the father of the deceased, and also knows that PW1 and others were trying to find out as to who the culprit was, definitely, he would have informed the family members about seeing the accused and deceased together on the previous day at 7 or 7.15 p.m. His evidence is silent on this aspect. No reasons are forthcoming as to why he failed to inform the family members of the deceased about seeing the accused and deceased together on the previous day. Further, if really, PW8 and PW9 saw the accused and deceased together on the previous day, nothing prevented them from informing the same to the police, at least at the time when the inquest was conducted. Therefore, we feel that these two witnesses were really not present at the scene and they have been set up by the prosecution to speak to the said fact.

24. The last circumstance relied upon by the prosecution is the recovery of blood stained clothes from the dormitory. Even assuming that such a recovery was made, there is no evidence on record to show that the blood stains on the clothes of the accused are that of the deceased. Though the group of the blood on the clothes was O+ve, there is no evidence to show that the blood group of the deceased was O+ve. Apart from that, no effort was made by the prosecution to examine any of the other members of

the dormitory to find out as to how and when the accused entered the dormitory and kept the clothes there. We feel that this circumstance is not legally proved, and even if proved, does not, in any way, establish the guilt of the accused in the commission of the offence.

25. For the aforesaid reasons, we feel that the prosecution failed to prove the circumstances relied upon by them to connect the accused with the crime.

26. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 14.02.2012, in Special Sessions Case No.14 of 2008, on the file of the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupati for the offences punishable under Section 302 IPC and Section 3(2)(v) of SCs and STs (POA) Act, 1989 is set aside and he is acquitted for the said offences. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

12.04.2018
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