

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE Mrs. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1222 of 2011

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

The sole accused in S.C.No.85 of 2011 on the file of the First Additional Sessions Judge, Kadapa, is the appellant herein. He was tried on the following three charges:

(i) First charge was for the offence punishable under Section 302 IPC for causing death of his wife by name Suram Jyothi on 29.08.2010 at about 05.30 a.m., at Mruthunjayakunta, Kadapa.

(ii) Second charge was for the offence punishable under Section 419 IPC for being in possession of two passports bearing Nos.A0358540 and F6065589, which was found to be fake.

(iii) Third charge was for the offence punishable under Section 12(b) of Passport Act.

Vide its judgment dated 20.09.2011, learned Sessions Judge acquitted the accused for the offences punishable under Section 419 IPC and under Section 12(b) of Indian Passport Act but however convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life.

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

(i) The accused who is the husband of the deceased used to live along with his wife in a portion of the house in which PWs.1,2 and 3 also resided. PW4 is the father of the deceased, while PW5 is the relative of the accused and the deceased. PW6 is the neighbour of the accused and the deceased. PW7 is the daughter of the accused and the deceased while PW8 is the elder sister of the deceased.

(ii) The marriage between the accused and the deceased took place about six years prior to the date of incident. After marriage, the accused along with his parents, brothers and sister-in-law started residing at Kadapa and subsequent to the marriage, the deceased joined their family. When the deceased was pregnant, the accused left for Kuwait. After staying there for five months, he returned home. Two months thereafter, the accused again left for Kuwait and stayed there for four to five years. The deceased, who was staying at her in-laws' house, used to visit her parents' house frequently. The mother-in-law of the deceased was instigating the accused stating his wife developed illicit intimacy with others which led to harassment in the hands of the accused, after his arrival from Kuwait. It is stated that on one occasion, he even necked out the deceased from the house. On receiving information about the harassment towards the deceased, PW4 the father of the deceased, asked the

deceased to come over to his house. Within five days thereafter the accused left for Kuwait. It is stated that the deceased met the Superintendent of Police, Kadapa and gave a petition which was referred to Rayachoty Police Station. The S.I. of police, Rayachoty, spoke to the family members of the accused and also with the accused on phone, who assured to return back within two months and take back his wife. Though he returned from Kuwait, he did not take his wife to his home and when the family of the deceased approached police, the accused demanded Rs.1 lakh and 15 tulas of gold as additional dowry to take back his wife and daughter along with him. It is stated that the accused also executed an assurance letter to that effect. PW4 handed over 15 tulas of gold and promised to pay the money later. Believing the representation of the accused, on 26.08.2010, the family members of the deceased left her in a house which was taken on rent to avoid conflict between the deceased and her mother-in-law. On 27.08.2010, the parents of the deceased left the house, leaving their younger daughter (PW8) at the house of the deceased. On 28.08.2010, PW8 returned home and informed her parents that the accused is not looking after the deceased properly and that he is not coming home daily. She advised PW4 to bring the deceased to their home. Accordingly, on 29.08.2010, when PW4 and his wife were getting ready to get back their daughter/deceased, received information about the accused killing the deceased, by cutting her throat. The material on record further shows that on the date of incident at about 5 or

5.30 a.m., PWs.1 and 2 heard the shouting of quarrel from the portion of accused and deceased. On hearing the sound, both of them went to the house of accused and saw the deceased with a cut injury on the neck. When PW1 questioned the accused as to what happened, he is said to have replied that it was his fate.

(iii) PW7, who is the daughter of the deceased, informed PW1 and others that the accused cut the throat of the deceased in her presence. On the same day, at about 07.00 a.m., PW1 went to the Chinnachowk Police Station and lodged a report before PW12 the SI of Police, basing on which, a case in Crime No.143 of 2010, came to be registered for the offence punishable under Section 302 IPC and issued Ex.P10 the FIR. Further investigation in the case was taken up by PW13, the CI of Police, Chinnachowk Police Station. According to him, on 29.08.2010, at about 08.30 a.m., while he was present in Chinnachowk Police Station, PW12 handed over a copy of the express FIR to him. On receipt of the same, PW13 left the police station along with the informant and visited the scene of offence, which is situated in a house bearing D.No.42/885-1, Mruthunjaykunta of Chinnachowk Police Station. He found the body of the deceased lying in a pool of blood. He examined PWs.1 to 3 and got recorded their statements and prepared a panchanama at the scene of offence. Ex.P9 is the said panchanama. Thereafter, he conducted inquest over the body of the deceased in the presence of mediators. Ex.P4 is the inquest report. During inquest, he found a cut injury on the throat of the deceased. He also noticed one

Terrycotton saree, jacket and inner garments of the deceased which were seized under MOs.1 to 4. MOs.5 to 7 are ornaments of the deceased seized at the scene of offence. PW13 also prepared a rough sketch, which is placed on record as Ex.P11. After completing inquest, he sent the body for post mortem examination. PW10 the Professor of Forensic Science Laboratory, RIMS hospital, Kadapa, conducted autopsy over the body of the deceased and issued Ex.P5 the post mortem certificate. According to him, the death was due to shock and hemorrhage due to cut throat wound and the death must have occurred twelve hours prior to the post mortem examination. He examined PWs.6, 7 and 8 and recorded their statements. On 06.09.2010, at about 11.00 a.m., he along with his mediators proceeded to Anjaneyaswamy Temple situated near railway gate on Kadapa Rayachoty and arrested the accused. On interrogation, he confessed about the offence and voluntarily produced two passports, which were ultimately found to be fake. It is stated that with those fake passports, he made trips to Kuwait twice. Thereafter, PW13 also found healing cut injuries on the forehead and another cut injury on the left shoulder of the accused. Basing on the confession made by the accused, blood stained clothes and blood stained knife measuring 9 $\frac{3}{4}$ inches length having black colour handle of 4 $\frac{1}{2}$ inches used in the commission of offence was seized. Ex.P9 is the mahazar. After collecting FSL report, PW13 filed a charge sheet which was taken on file as

PRC No.6 of 2011 on the file of the II Additional Judicial Magistrate of First Class, Kadapa.

(iv) On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal, the First Additional Sessions Judge, Kadapa, numbered the case as S.C.No.85 of 2011. On the basis of the material on record, a charge under Section 302 of IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P13 and MOs.1 to 10.

(vi) 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. He stated that he was not present in the house on the previous night; that he came to Kadapa from Hyderabad on the next day morning and noticed his wife lying with cut injuries and his daughter crying by her side. In support of his plea, he examined DW1 and got marked Exs.D1 and D2.

(vii) Relying upon the evidence of PWs. 1, 4 and 7, the learned Sessions Judge, while rejecting the plea of *alibi*, convicted the accused and sentenced him to suffer imprisonment for life for

the offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that though the version given by PW4 in the FIR is at variance with the version given by PW1 in her evidence, a doubt arises as to whether really PWs.1 and 2 came to the scene of offence and witnessed the accused killing the deceased. He further submits that even if PWs.1, 2 and 3 came to the scene of offence. On hearing the cries of the deceased, but PW3, does not speak about hearing any cries of the deceased. On the other hand, PW3's version appears to be that on hearing cries of the child, she came to the scene of offence. Hence pleads that all the three witnesses, who came to the scene of offence did not witness the incident. He further states that if really the accused was responsible for the death of the deceased, he would not have informed others about the incident. Ultimately, the plea appears to be that he was not present in the house at that time and that he was not aware as to how the incident took place. In support of his plea, he examined DW1.

4. On the other hand, learned Additional Public Prosecutor would contend that the plea of *alibi* taken by the accused remained as a plea without substantiating the same. If really the accused traveled from Hyderabad to Kadapa on that day, in a private bus i.e., M/s.Deepa Travels, nothing prevented the appellant from producing the ticket or the chart containing the

details of the passengers who traveled in the bus on that night, by summoning the representative of the travels. In the absence of the same, he would contend that examining DW1, who is none other than the close friend of the accused will not establish *alibi*. He would further submit that even the evidence of PW4 coupled with the evidence of PWs.1, 3 and 7 amply establish that it was the accused, who was responsible for the death of the deceased.

5. In order to appreciate the rival submissions, it would be appropriate to refer to the evidence of PWs.4 and 8 to show as to whether there was any motive for the accused to do away with the life of the deceased.

6. It is to be noted here that the dead body was lying in the house of the deceased and PW7 was present at the time of the incident. The evidence of PW4 would show that marriage between the accused and the deceased took place about six years prior to the incident and out of wedlock, they were blessed with one daughter (PW7). After marriage, the accused left for Kuwait, where he stayed for five months and then returned. Two months thereafter, he again left to Kuwait and stayed there for four to five years. The deceased was staying in her in-laws house in Kadapa. The evidence of PW4 further shows that the mother-in-law of the deceased was suspecting the fidelity of the deceased and the same was informed by the mother-in-law to her son-accused. Pursuant thereto, the accused is said to have come over to Kadapa for two months, during which period he is alleged to have

harassed and necked her out of the house. On information about such incident, PW4 asked the deceased to come over to his house and stay with them. Five days thereafter, the accused again left to Kuwait. A report came to be lodged at Rayachoti by the deceased about the attitude of the accused and in-laws, pursuant to which, the SI of police sent for the family members of the accused and also spoke with the accused over phone. It is stated that the accused promised to take back his wife to Kuwait, but he failed to do so. Then PW4 along with others approached the police, pursuant to which, the accused and his relatives were summoned to the police station. In the police station, the accused is said to have demanded cash of Rs.1lakh and 15 tulas of gold as additional dowry to take back his wife and child. PW4 handed over 15 tulas of gold and promised to pay cash later. On 26.08.2010, PW4 and his wife left the deceased, her child and PW8 at the house of the accused at Mruthanjaya Kunta and returned to their house. On 28.08.2010, PW8 returned to her parents' house and informed them about the attitude of the accused in not looking after the deceased. She requested PW4 to bring back her sister. Accordingly, on 29.08.2010, while PW4 and his wife were making preparations to go over to the house of the accused, they received information about the death of the deceased. PW4, was subjected to cross examination at length, but nothing useful came to be elicited to discredit his testimony. But however, the demand of the accused for Rs.1 lakh of cash and 15 tulas of gold were elicited in his cross examination. The

suggestion with regard to implication in the case and also receipt of gold articles were denied by him. It was elicited that PW4 failed to mention about the information furnished by PW7 with regard to the accused cutting the throat of the deceased in her presence.

7. From the evidence of PW4, it is clear that there were disputes between the accused and the deceased and immediately after the marriage, he left for Kuwait and stayed there most of the time, till few days prior to incident. A report came to be lodged before the police, pursuant to which he came down to Hyderabad and promised to look after the deceased subject to payment of Rs.1 lakh and 15 tulas of gold as additional dowry. The evidence of PW4 further shows that the said amount was paid and later the deceased was dropped at the house of the accused on 26.08.2010. With regard to the omission of the incident proper, more particularly, with regard to the information furnished by PW7, we shall deal with it at a later point of time.

8. PW8 is the sister of the deceased, who accompanied the deceased to the house of the accused, deposed about the marriage between the accused and the deceased, accused leaving for Kuwait, within three months after marriage. According to her, the mother of the accused telephoned to the accused and informed about the illicit relationship which the deceased is said to have developed. Her evidence is also to the effect that two months thereafter, the accused came to India and necked out the

deceased from his house. She also deposed about giving of a report to the SI of Police, the communication that took place at Rayachoti Police Station and the demand made by the accused. Her evidence is to the effect that on 28.08.2010, when she returned back to his parents' house, she informed PW4 about the differences between the deceased and the accused and requested her father to bring her back, but by the time the parents of the deceased reached the house of the accused, the deceased died. PW8 was subjected to lengthy cross examination, but nothing came to be elicited to discredit her testimony. It was elicited that ten days prior to the visit of PW8, settlement with the accused took place for taking her sister along with gold and cash of Rs.1 lakh. In the cross-examination, it was also elicited about the accused returning home at 12 midnight. She further admits that she does not know as to who informed over phone about the death of the deceased. It was further stated that by the time they came to the house of the deceased, the gold mangalasutram chain was also missing on her body. The suggestion that she never stayed along with the accused and the deceased and that the accused never harassed the deceased, was denied by her. The evidence of PW8 gets corroboration in all respects from the evidence of PW4, with regard to the attitude of the accused towards the deceased and more particularly after birth of the daughter. The evidence of both the witnesses is inconsistent with regard to the demand of Rs.1 lakh cash and 15 tulas of gold as additional dowry to take back the deceased to her matrimonial

home. It has also come on record that the accused was harassing the deceased by listening to the words of his mother with regard to the alleged illicit intimacy of the deceased with others and on one occasion, he is said to have necked her out of the house. From the above circumstances, it is clear that the accused never lived with the deceased and most of the time, he was staying in Kuwait, and that he was demanding for money. The evidence of PW8 would show that the accused was not coming home except now and then during the period of her stay in the house.

9. From the evidence referred to above, we feel that the prosecution has established that there are differences between the accused and the deceased and he had sufficient motive to do away with the life of the deceased.

10. Coming to the incident proper, learned counsel for the appellant would contend that though in the FIR given by PW1 it was mentioned as if she saw the accused taking the deceased and cutting her throat, the said version is given a go-by in her evidence. The fact that she was staying in the next house and that she came to the scene of offence immediately after hearing the cries cannot be disputed. PW1 in her evidence states that about ten months prior to the date of incident, at about 5 or 05.30 a.m., she heard shoutings of quarrel from the portion of the accused and his wife and on hearing the same she came down from the upstairs. Similarly the neighbours also gathered there.

By the time she came down, she found the neck of the deceased cut down. When she questioned the accused, who was present there, he stated that it is his fate. In her evidence, she deposed that except the accused, deceased and their daughter, no other person was present in the house at that time. Her evidence is to the effect that at about 11.00a.m., the parents of the deceased came to the house of the accused. To a suggestion that due to pressure from the parents' of the deceased and the police she signed on Ex.P1, was denied by her. The suggestion that she did not hear the alleged quarrel and that she did not see the deceased with cut injury was denied. However, she admits that by the time she came to the spot, none of the persons were there and later others came. She also admits that zero watts bulb was burning in the portion of the occurrence. As stated earlier, the evidence of PW1, who gave a report is at variance to what she has mentioned in the Court. But the fact that she was present in her house and on hearing the quarrel between the accused and the deceased, she came and saw the deceased lying with cut injury cannot be disbelieved. Infact, the entire cross examination was with regard to the information furnished to him by PW7 and Ex.P1 – report being given at the behest of the father of the deceased. Therefore, we feel that the evidence of PW1 with regard to she hearing the galata between the accused and the deceased at about 5 or 05.30 a.m., noticing the deceased lying with cut injury and accused standing thereby stands established.

11. PW2, in his evidence deposed that about ten months back at about 5 or 5.30 a.m., on hearing the shoutings of accused and deceased, he along with PW1 came down from the upstairs of the house and saw the body of the deceased with cut injury on her neck. When questioned, the accused is said to have confessed that he cut the neck of the deceased and it is his fate. In the cross-examination, it was elicited that initially the accused was staying alone and later on he brought the deceased and started staying with her. He further deposed that prior to the incident, she did not hear the quarrels. The suggestion that he witnessed the accused cutting the neck of the deceased and when he tried to rescue her, the accused threatened him with dire consequences, was denied. It was clearly elicited in the cross examination that the accused was present in the house at that time. He further admits that accused himself made a telephone call to the police. The suggestion that the accused was not in the house during night time and that by the time the accused returned home in the morning, he noticed the body with cut injury, like us, was denied by PW2.

12. From the evidence of this witness, it is clear that PW2 also heard the quarrel between the accused and the deceased and came down on hearing the same along with his son. He also noticed the body of the deceased with a cut injury. Though he admits that the accused made extra-judicial confession admitting his guilt, but the same is not found in his earlier statement recorded by the police. Even in the absence of the same, the

defence of the accused that he was not present at the scene of offence on the date of incident was also denied by PW2. On the other hand, it was categorically elicited in the evidence of PW2 that the accused was present in the house at that point of time.

13. PW3 is the another neighbour, who in her evidence states that the relatives of the deceased brought her to the accused on Thursday prior to her death. On Sunday early hours at 05.00 a.m., she woke up on hearing cries of the child in the house of the accused and the deceased. Immediately, she went to their portion and noticed the accused coming out of the house, who is said to have confessed about cutting of the throat of his wife. PW3 went inside the house and found the deceased lying in a pool of blood. According to her, by the time she went to the house portion of the accused, PWs.1 and 2 were present there and later the other neighbours gathered at the spot. She further states that when they questioned the accused, he shouted at them and also cut his own hands with a vegetable cutting knife. Later, the police came at about 8 or 9 a.m., and recorded the statement of PW3. She admits in her statement that she failed to mention about coming to the scene of offence on hearing the cries of the child. She also admits that she did not state before the police about the confession made by the accused stating that he cut the throat of the wife of the accused. However, it was elicited from her with regard to the accused returning home on the previous night.

14. From the evidence of the witnesses referred to above, it is established that there was a quarrel in the early hours between the accused and the deceased, which made PWs.1 and 2 come down from upstairs and then all of them noticed the deceased lying dead in a pool of blood inside the house and that the accused was standing thereby. This evidence of PWs.1 to 3 gets corroboration to a certain extent from the evidence of PW7 – the minor daughter of the deceased, who was aged about 6 years, at the time of incident. In her evidence, PW7 stated that her father cut the throat of her mother. When questioned as to when and where and at what time the incident took place, she replied stating “10 months back in Kadapa at 09.00 p.m.”. The second question is as to who witnessed the incident, for which, she replied that she has witnessed the incident. To a question as to whether any other person saw the incident, she categorically states ‘no’. She denies the reason for the incident. The child who is aged about six years was subjected to lengthy and grueling cross examination. To a question whether her grand parents have asked her to tell that her father killed her mother, she denied. She further stated that she normally takes food at 09.00 p.m., and go to sleep at 10.00 p.m. and on the date of death of her mother, she woke up at 09.00 a.m. Taking advantage of the answers elicited in the cross examination, learned counsel for the appellant would contend that PW7 could not have seen the incident at all and she cannot be characterized as eye witness to the incident. It is no doubt true that there was some minor

aberrations in the evidence of PW7, which must have occurred due to the manner in which the question was asked. But the fact that she was present in the house cannot be doubted. Though the learned counsel tried to contend that she was in a deep sleep at the time when the alleged incident took place, and that she got up at 09.00 a.m., as admitted by her, the accused in 313 examination, categorically stated that on the date of incident at about 05.55 a.m., he came from Hyderabad and on opening the door, he saw his wife lying dead with cut injury, took his daughter who was at the body, out of the house and informed about the incident to neighbours. This version of the accused with regard to bringing out his daughter does not find place in the evidence of any witness. If really his daughter was sleeping at the time of his return to the house, there is no reason for the accused to bring out his daughter. His conduct, in our view, should have been different. Even assuming that the evidence of PW7 is to be rejected, still we feel that the evidence of PWs.1 to 3 is sufficient to connect the accused with the crime, moreso, as the plea of *alibi* taken by the accused is found to be false. On the other hand, his version in 313 Cr.P.C. shows that PW7 was awake by then, which gets fortified by the evidence of PWs.1 to 3.

15. The plea of the accused appears to be that he was present in Hyderabad on the previous night and returned to Kadapa in the early morning of the date of incident, in the private bus of M/s. Deepa Travels. The plea of the accused is that he came home on

that day morning and as he opened the door, saw the deceased lying in a pool of blood. This version of the accused needs to be tested with the evidence of PW8. PW8 in her evidence deposed that she along with her father went to the house of the deceased on 26.08.2010 and stayed there along with the deceased. While on 27.08.2010, her parents went away to their native place, stayed there on that day and returned to her village on 28.08.2010. During her stay she saw the accused picking up quarrels with the deceased. The said version of PW8 is supported by the evidence of PW4, who stated that he was informed by PW8 about the harassment by the accused, even in those two days. No suggestion was given to PW8 to show that the accused was not present in the house during that time. The only suggestion that was given to PW8 was that she never stayed along with the accused and deceased and that the accused never harassed the deceased, to which PW8 denied. Therefore, the fact that the accused was there in Kadapa during 26th to 28.08.2010 stands established not only through the evidence of PW8, but also from the evidence of PW4. If really the accused was not present in Kadapa and that he traveled from Hyderabad to Kadapa on the previous night of the incident, nothing prevented the accused from producing the tickets or atleast producing the passengers chart or date to establish that he did travel from Hyderabad on that night. No such effort was made.

16. At this stage, learned counsel for the appellant tried to contend that since the accused was in jail right from the date of

his arrest, he could not secure or summon any representative of M/s.Deepa Travels to establish his case. Having summoned DW1, who is his friend to speak about certain facts, in his favour, he could have definitely taken some measures in summoning the officials or the representatives of M/s.Deepa Travels, or atleast the chart of passengers who traveled on that day from the said office. In the absence of the same, we feel that the evidence of DW1 cannot be accepted to show that he was not in Kadapa on 28.08.2010, and that he was in Hyderabad and reached Kadapa on 29.08.2010. Having regard to the above, we feel that the plea of *alibi* taken by the accused cannot be accepted. For the aforesaid reasons, we hold that the prosecution established the guilt of the accused beyond doubt and accordingly the conviction and sentence imposed by the trial Court warrants no interference from this Court.

17. Accordingly, the appeal is dismissed confirming the conviction and sentence dated 20.09.2011, passed in Sessions Case No.85 of 2011, on the file of the I Additional Sessions Judge, Kadapa.

18. Miscellaneous petitions, pending, if any, shall stand closed.

C.PRAVEEN KUMAR, J

T.RAJANI, J

11.07.2018
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