

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1259 of 2011

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

The present appeal came to be filed under Section 374(2) Cr.P.C. challenging the sentence and conviction passed in Sessions Case No. 277 of 2010 on the file of the Court of the IX Additional Sessions Judge at Kamareddy, wherein and whereunder, the learned Additional Sessions Judge, vide judgment dated 05.07.2011, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for a period of six months, and for the offence punishable under Section 376 read with 511 IPC, to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a period of six months. Both the sentences were directed to run concurrently.

2. The substance of the charge against the accused is that on 05.10.2008 at about 4.45 p.m., the accused caused the death of Kum. Bollu Ashwini, who was aged about 15 years, by hitting her with a boulder and then strangulating her to death. It is further

stated that on the same day, at the same time, he attempted to commit rape on her.

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

PW1 is the brother of the deceased while PW3 is the sister of the deceased. PW4 and PW5 are the parents of the deceased. PW2 is the neighbour of the deceased. About a month prior to the date of incident, when PW4 went to attend calls of nature to Ramaswamy Gutta, the accused, who was hiding in the bushes, tried to assault her by pulling her by her hand. At that time, her husband-PW5 came to the said place, noticed the accused pulling her hand and as such, caught hold of him and beat him. But, the accused let himself free and his shirt was torn in the hands of the husband of PW4. Later, the wife of the accused quarreled with the husband of PW4 and abused him in filthy language with reference to the said incident. However, it is stated that they did not inform about the said incident to any one. This incident is said to be the motive for the incident in question.

4. On the date of incident, i.e., 05.10.2008, at 6 p.m., the deceased left the house to attend calls of nature at Ramaswamy Gutta, but did not return. PW3 went in search of the deceased and heard some noise at the place where they normally go to attend calls of nature. She returned back and informed the same to PW1. As such, PW1 and PW3 again went to the said Gutta in search of their sister (deceased). They again heard some noise, which made

them inform to PW4, who called the neighbours. Then, all of them went to Ramaswamy Gutta and found the deceased in the bushes with a rope around her neck and an injury on her head. Immediately, they called an ambulance and shifted her to Government Hospital, Kamareddy. However, on the way to the hospital, the injured/ deceased died. The brother of PW1 by name Parandhamulu (not examined), lodged a report before PW11-the Circle Inspector of Police, basing on which a case in Crime No. 97 of 2008 came to be registered under Section 302 IPC. Ex.P10 is the First Information Report.

5. After registering the crime, PW11 proceeded to the Police Station, Lingampet and recorded the statement of PW1. On the next day, i.e., 06.10.2008, he proceeded to Government Hospital, Kamareddy along with the Sub Inspector of Police, recorded the statements of PWs 1 to 6 and got the dead body photographed through PW9. He then conducted inquest over the dead body of the deceased in the presence of PW7. Ex.P3 is the inquest report. He also noticed injuries on the body of the deceased. He then held panchanama for the seizure of the clothes of the deceased in the presence of PW7. Ex.P4 is the said panchanama. M.Os 1 to 3 are the clothes of the deceased. Thereafter, he sent the dead body for post mortem examination.

6. PW10-the Civil Assistant Surgeon, Area Hospital, Kamareddy conducted autopsy over the body of the deceased and issued Exhibit P9-the Post Mortem Report, basing on the report of the

FSL, which is placed on record as Ex.P8. According to him, the cause of death was due to head injury and asphyxia.

7. PW11-the Circle Inspector of Police, in continuance of his investigation, proceeded to the scene of offence, i.e., Ramaswamy Gutta, conducted a panchanama of the scene in the presence of PW8 and also drew a rough sketch, which are placed on record as Ex.P5 and Ex.P6 respectively. At the scene of offence, he seized M.O.6-rope, M.O.5-one pair of ladies chappal, M.O.8-green colour plastic glass and M.O.9-blood stained and controlled earth. On 22.10.2008, he apprehended the accused on suspicion expressed by the parents of the deceased and interrogated him, wherein he is alleged to have confessed about the commission of the offence, which was recorded in the presence of PW9 and others. At the instance of the accused, he seized M.O.7-cell phone and M.O.5-stone in the presence of the panchas, under Ex.P7.

8. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 19 of 2009 on the file of the Judicial First Class Magistrate, Yallareddy. After 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 S.C.No. 277 of 2010 on the file of Court of the IX Additional Sessions Judge, Kamareddy. Basing on the material on record, a charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

9. In support of their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P11 and M.Os.1 to 10. 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 by the accused in support of his defence.

10. Relying on the evidence of PWs 1 to 5, coupled with the medical evidence, the learned Sessions Judge convicted the accused under Sections 302 and 376 read with 511 IPC. Challenging the same, the present appeal came to be filed.

11. The learned counsel for the appellant mainly submits that there is absolutely no evidence on record to connect the accused with the crime. She further contends that the circumstances relied upon by the prosecution do not, in any way, form a chain of events connecting the accused with the crime. According to her, the alleged motive, which is now sought to be spoken to by the witnesses, was never mentioned in the 161 Cr.P.C. statements recorded by the police during the course of investigation. It is pleaded that even the medical evidence, more particularly, the FSL report, does not, in any way, indicate any material to show that he committed the offence.

12. On the other hand, the learned Public Prosecutor opposed the same, contending that it is a case where a minor girl aged about (15) years, was raped and murdered, keeping in view the

earlier incident which occurred about three to six months prior to the incident in question. He further submits that though there are no direct witnesses, the parents of the deceased expressed suspicion against the accused, and his confession coupled with the recovery, amply establishes the guilt of the accused.

13. The point that arises for consideration is whether the accused was responsible for the offence alleged.

14. In order to appreciate the rival arguments on both sides, it would be useful to refer to the evidence of PW4. The evidence of PW4 is in the following terms:

“About one month prior to the offence I went to attend to calls of nature to the same Ramaswamy gutta after closing my hotel and at that time the accused who was hiding in the nearby the bushes and tried to assault me by pulling me by my hand and at that time my husband who came to the said place to pass urine, saw the accused pulling my hand and hence he caught hold of the accused and beat him, but the accused fled from the said place when his shirt got torn in the hands of my husband. Later the wife of the accused quarreled with my husband and abused him in filthy language, but we did not inform about the said incident to any one to save or prestige as two of my daughters are married and living with their husbands.”

However, in the cross-examination, PW4 admits that she only told the police about the accused pulling her hand and her husband

hitting him and tearing his shirt. She further states that the said incident took place six months prior to the present incident. She further admits that she did not tell the police that the wife of the accused picked up a quarrel with her husband and abused him for beating her husband. She denies stating before the police that while her daughter was returning home, one Santhosh and one Hanumanthu accosted her and misbehaved with her and as such, they were called and chided, and that they suspected the said two persons responsible for the incident. She further admits that she did not tell the police that the accused killed her daughter and showed her the piece of boulder with which he killed her.

15. From the evidence of this witness, it is clear that her evidence in chief is inconsistent with the cross-examination. With regard to the motive, while in chief, she speaks to the effect that the incident in question occurred because of an incident which took place some months earlier, wherein the accused is said to have pulled her hand, leading to assault by her husband, but the cross-examination of this witness would reveal that she failed to mention the said fact to the police during the course of investigation. The cross-examination of PW4 shows that in her earlier statement, she expressed suspicion against Santhosh and Hanumanthu. If really PW4 was informed about seeing the accused running away from the scene of offence, she would not have referred to any suspicion against Santhosh and Hanumanthu. The fact that PW4 was informed about the accused running away from the scene of offence was never mentioned in her evidence.

16. Coming to the evidence of PW5, he, in his evidence, deposed that about a month prior to the offence, his wife-PW4 went to Ramaswamy Gutta to attend calls of nature, and at that time, the accused tried to outrage her modesty by pulling her hand, and as such, she raised hue and cry. He is said to have gone to the said place to beat the accused. He admits that he did not give any police report about the said incident.

17. In the cross-examination, PW5 admits that he has not stated before the police about he beating the accused, when he misbehaved with his wife. He tried to give an explanation, stating that since the village elders advised him not to state to the police about the said incident, but he did not state to the police about the same. He further admits that he did not state to the police that three months prior to the incident, while the deceased was returning from school, one Santhosh and one Hanumanthu accosted her and teased her, and that they were chided.

18. Therefore, the evidence of this witness also shows that he did not speak in his earlier statements about the accused trying to misbehave with his wife. It is also to be noted that both these witnesses, viz., PW4 and PW5 categorically stated in their earlier statements, which are placed on record as Ex.D1 and D2 that they expressed suspicion against Santhosh and Hanumanthu, as the persons responsible for the incident, as about three months prior to the incident, they were chided for teasing the deceased while she was returning from school,. The said version stated by them

earlier is now given a go-by. In fact, PW3 also states that she never stated that the accused was responsible for the incident.

19. Coming to the incident proper, according to the evidence of PW1, the deceased is said to have left the residence on 05.10.2008 to attend calls of nature at Ramaswamy Gutta and failed to return till evening. Thereafter, herself and PW3 went to the said place and heard some noise, informed the same to PW5, who, in turn, informed the same to the neighbours. Thereafter, all of them went to Ramaswamy Gutta and found the deceased in the bushes with a rope around her neck and an injury on her head. The said version is also spoken to by PW2 and PW3. But, however, PW4, in his evidence, improves the version by saying that on the date of incident, while she was sitting in front of her house attending to some work, noticed that the deceased not returning home till late hours. As such, she sent PW3 to bring the deceased back, but, PW3 returned, stating that she did not find the deceased. Thereafter, PW1, along with PW3 again went in search of the deceased and returned back. PW1 informed that they heard some noise and saw the deceased in the bushes with a rope around her neck, while the accused was running away from the said place. As such, all the villagers went to Ramaswamy Gutta and brought the deceased from the place of incident. It is to be noted here that the source of information for PW4 to speak about the accused running away from the scene of offence, was PW1. But, PW1, who is the son of PW5, never spoke about seeing the accused running away from the scene of offence.

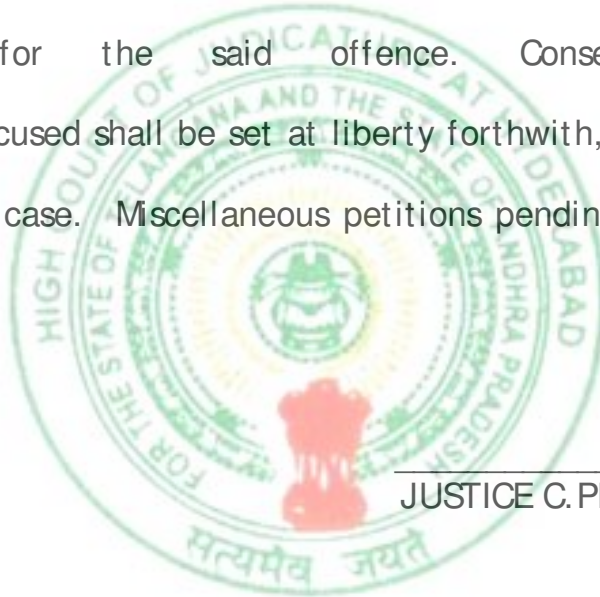
20. Coming to the evidence of PW5, he deposed that on the date of incident, he went to the bus stand to send off his second daughter and returned home at 6.30 p.m. At that time, he found his wife crying, saying that their daughter was killed. By that time, the deceased was already shifted to hospital in the ambulance, and on the way, she died. Thereafter, the village servant and other villagers brought the ropes from Ramaswamy Gutta and showed them, stating that they were used for killing the deceased.

21. From the evidence of PW5, it is clear that he only speaks about the information which was furnished to him by PW4 with regard to the death of the deceased. But, in the earlier statement, which was recorded by the police, he expressed suspicion against Santhosh and Hanumanthu. If really the accused was the person responsible for the incident, as spoken to by him in the court, nothing prevented PW5 to refer to the name of the accused during the investigation.

22. Therefore, both the witnesses, i.e., PW4 and PW5 would not have expressed suspicion on Santhosh and Hanumanthu as the persons responsible for the death of the deceased. It is not their case that the accused committed the offence along with the said Santhosh and Hanumanthu. Apart from the above, it is to be noted that the deceased is said to have left the house at 6 p.m. to attend calls of nature. The charge states as if the deceased left the house at 4.45 p.m.

23. Having regard to the circumstances referred to, and in the absence of any evidence remotely connecting the accused with the crime, we feel that the conviction and sentence of the accused is liable to be set aside.

24. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 05.07.2011 in Sessions Case No.277 of 2010 on the file of the IX Additional Sessions Judge, Kamareddy, for the offence punishable under Section 302 I.P.C., is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case. Miscellaneous petitions pending, if any, stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

20.06.2018
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