

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMA DEVI

CRIMINAL APPEAL No.60 of 2013

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

The sole accused in Sessions Case No.12 of 2011, on the file of the XIII Additional District & Sessions Judge, Narasaraopet, is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife Banavath Alivelubai on 8.08.2010 at 5.00 p.m. at Nallagonda Thanda. Vide judgment dated 16.5.2012, the learned Sessions Judge convicted the appellant and sentenced him to suffer imprisonment for life and also to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for ten months for the offence punishable under Section 302 IPC . Assailing the same, the present appeal came to be filed.

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

(i) The accused is said to be the husband of the deceased. PW1 and 3 are the brothers of the deceased, while PW2 is the mother of the deceased. PW4 is a relative of the deceased and PW8 is the father of the accused.

(ii) The marriage between the accused and the deceased was performed about six years prior to the date of incident. Both of them lived happily for a period of three years after their marriage. Out of the wed lock, they were blessed with one son and one daughter. Later, the accused got accustomed to liquor and was selling away the gold ornaments of the deceased for his vices. In view of the harassment meted out to the deceased in the hands of the accused, the deceased went to the house of her parents and informed about the same. However, she was convinced and sent back to the house of the accused. This was in the year 2008. Again, the deceased went to her parents house informing them that the accused sold away a ring and a watch. At that point of time, accused and his father (PW8) came to the house of PW2 and took her back stating that if anything happens to her, they would be responsible for the same. Accordingly, the parents of the deceased convinced her and sent her to the house of the accused. In the year 2009, the deceased came to the house of PW2 and told her that her coolie earnings of Rs.400/- to Rs.500/- were taken away by the accused and spent for his bad vices and when she questioned the accused about the same, she was harassed by the accused. Later, the accused, his father, PW7 and PW17, who are residents of the village of the accused, came to the

house of PW2 and took the deceased to the house of the accused. Similar such incident took place in the year 2010 when the accused took away her gold ear studs, by threatening to kill her if she fails to give them to him. At that point of time, PW8 gave an oral undertaking that if anything happens to the deceased in the hands of the accused, they would be held responsible. A day prior to the date of incident, the deceased told her parents and brothers on telephone that the accused threatened to kill her if gold ornaments are not given to him. Thereupon, PW1 and others told her that they would come in a day or two to her. On the date of incident, PW5 who is also a resident of Nallagonda Thanda was informed by the grandmother of the deceased that accused and deceased went to the forest to get fire wood but the deceased did not return home. On hearing people of Nalgonda Thanda talking about the murder of the deceased, he informed about the same to PW6 on telephone. Accordingly, PW6 informed the same to PW3 over telephone who also went to see the dead body. Later, PW5 and PW6 told PW3 over telephone that the deceased was hacked to death by the accused near Patha Sarayee Batti, Brahmalabodu. PW3 in-turn informed the same to PW1 and his relatives. Thereafter, all of them went to the village of the accused at 12.00 mid night and searched for the dead body of the

deceased but could not trace it. Hence, on the next day, they again searched and found the dead body of the deceased at a particular place. They noticed a hack injury on the neck of the deceased and also a bleeding injury near ear. In view of the above, PW1 lodged report before the S.H.O, Ipuru Police Station on 9.8.2010 at 9.00 a.m., basing on which, a case in Crime No.46 of 2010 came to be registered for the offence punishable under section 302 IPC. PW12 is the VRO and PW15 is the Inspector of Police. Immediately on receipt of the information, PW15 proceeded to Ipuru P.S., collected copy of the FIR and took up investigation. He secured the presence of PW9 and proceeded to the scene of offence located at Brahmalabodu, which is at a distance of one kilometre from Nallagonda Thanda. He gave a requisition to the MRO for holding inquest, as the death of the deceased was within seven years of the marriage. After giving requisition, he prepared a panchanama of the scene of offence in the presence of mediators and also seized blood stained and controlled earth, one lungi and one towel at scene under Ex.P4. He also got prepared a rough sketch of the scene of offence, which is placed on record as Ex.P13, apart from getting the scene of offence photographed vide Ex.P14. The Inspector and the mediator noticed that the lower part of the right ear of the deceased was cut and no ear ornament was

found to her right ear lower part. The left side ear gold ornament was present. During the scene of offence panchanama they seized MO.7-gold ear stud and MO.8-silver anklet. Thereafter, MRO conducted inquest over the dead body. Ex.P5 is the inquest report. During the inquest, PW15 examined PWs 1 to 7 and PW13. Thereafter, they proceeded to Nallagonda thanda and examined PW8 and others. After completing the inquest proceedings, he forwarded the dead body for postmortem examination. PW10, who is the Medical Officer at Government Hospital, Vinukonda, conducted autopsy over the dead body of the deceased and issued Ex.P6 postmortem certificate. According to him, the cause of death was due to shock and hemorrhage. On 23.8.2010, on receipt of credible information about the presence of the accused, he secured the mediators, PW12 and another and along with his staff, proceeded to Muppalla village. While the accused was trying to escape after seeing the search party, he was apprehended. When questioned, the accused disclosed his identity and confessed about the commission of offence in the presence of mediators, under Ex.P7. Pursuant to the confession made, MO.6-ear stud belonging to the deceased was seized. The said MO.6 was seized under the cover of Ex.P8. PW15 in his evidence states that MO.6 contains identification slip signed by PW9. Then the accused led the

police party to the scene of offence nearby pathway and picked up MO.5 axe from thorny bushes and handed over the same to PW15. Thereafter, the accused led the police and mediators to his house at Nallagonda thanda and picked up MO.9-lungi and MO.10-full hand shirt, which were kept in a box behind his house. Thereafter, the accused was arrested and sent for judicial remand. After receiving the FSL report Ex.P15 and after collecting all the necessary material, a charge-sheet came to be filed, which was taken on file as P.R.C. 46 of 2010 on the file of the Judicial Magistrate of First Class, Vinukonda.

(iii) 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.12 of 2011 on the file of the XIII Additional District & Sessions Judge, Narasaraopet. Basing on the material on record, a charge for the offence punishable under section 302 IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

(iv) To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P18 and M.Os. 1 to 14. Out of the 17 witnesses examined by the prosecution, PW7 and PW13 did not support the prosecution case and turned hostile.

(v) 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. In order to prove his innocence, the accused examined DWs.1 to 3 to show that he has no relationship with the deceased.

(vi) Basing on the circumstances relied upon by the prosecution, more particularly, the motive; the deceased last seen in the company of the accused when they went to the forest together to collect fire wood and the recovery of MOs. 6 and 7-gold ear studs, MO.8- silver anklets and MO.5-axe, the trial court convicted the accused. Assailing the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that the circumstances relied upon by the prosecution do not form chain of events to connect the accused with the crime. She would further contend that except pointing out some disputes between the accused and the deceased, no other circumstances have been established to prove that the accused killed the deceased. There is no evidence to say that the accused and deceased together left the house. In view of the evidence of PW9, which is contrary to the evidence of PW12, the recovery of Mbs.6 to 8 pursuant to the confession made by the accused is false. It is further urged by the

learned counsel for the appellant that when PWs 1 and 2 in their evidence deposed about the axe being present by the side of the dead body, recovery of the same at the instance of accused from the scene of offence cannot be believed.

4. However, learned Public Prosecutor opposes the same. According to him, the evidence of PW5 clearly shows that the accused and deceased together left to the forest and the non-explanation of the accused with regard to disappearance of the deceased from his company is sufficient to convict the accused.

5. The point that arises for consideration is:

“Whether the circumstances relied upon by the prosecution prove the guilt of the accused and if so, whether he is punishable under section 302 IPC?”

6. As seen from the record, there are no eye witnesses to the incident and the case is based on circumstantial evidence. The circumstances relied upon by the prosecution mainly are motive; the deceased being last seen in the company of accused when they went to collect fire wood and the recovery of MOs 5 to 8.

7. In order to prove that there are some disputes between the accused and deceased, the prosecution examined PWs 1 to 3. PW1 is the brother of the deceased, PW2 is the mother of the deceased, PW3 is another brother of the deceased. Apart

from that, prosecution also examined an elder who mediated the disputes between the accused and the deceased as PW6.

8. PW1 in his evidence deposed that the marriage between the accused and deceased took place about six years prior to the incident and out of the wed-lock, they were blessed with a son and daughter. It is stated that for the purpose of his vices, the accused used to dispose off the gold ornaments of the deceased and used to harass her. When the deceased came to the house of PW1 in the year 2008, the accused and his father came to the house of the deceased and took her back stating that they would not harass the deceased. In the year 2009, deceased again came to the house of PWs 1 and 2 and told them that her coolie earning of Rs.400/- to 500/- was taken and spent by the accused for his bad vices. It is stated that when she questioned the accused about the same, she was harassed by the accused. At that point of time, the accused, his father(PW8) and the elders PW7 and PW13 (hostile) as he did not support the prosecution case, came to the house of PW2 and took the deceased to the house of the accused. In the month of June, 2010, the accused again took away gold ear studs by threatening that if she fails to give, he would kill her. At that time also, the elders mediated and took the deceased stating that if anything happens, they would take the responsibility. A day prior to the incident, the

deceased is said to have telephoned to PW1 stating that the accused is going to kill her if her gold ornaments are not given to him. However, PW1 consoled her stating that they would come there in a day or two. This evidence of PW1 gets corroboration from the evidence of PW2, who is the mother of the deceased. Similarly, PW3 who is the brother-in-law of the accused also spoke about the accused selling away the gold ornaments of the deceased for his vices, beating and sending the deceased to their house. His evidence shows that they pacified the deceased and sent her back on a promise made by the accused and his father that they would take care of her. Similarly PW6 who is a resident of Malapadu Thanda deposed about the marriage between the accused and the deceased. He deposed that both of them were living together for a period of three years and also about the accused selling away the gold ornaments of the deceased for his bad vices. PWs7 and 13, the mediators did not support the prosecution case.

9. From the cross-examination of PW1 coupled with the evidence of PW15, it is clear that PW1 in his earlier statement did not speak about the threat given by the accused to the deceased wherein he is alleged to have told to the deceased that if her gold ear studs are not given, he would kill her and also the sum of Rs.400/- or Rs.500/- taken

by the accused from the deceased for his bad vices. PW2, who is the mother of the deceased, did not state in her earlier statements about the accused selling away the ring and watch and also failure to provide proper food to the family members of the deceased. From the evidence of PWs. 1 to 4, who were cross-examined at length, we feel that nothing incriminating has been elicited to show that there are disputes between the accused and the deceased. At this stage, we intend to point-out that the prosecution examined PWs. 16 and 17 to show that the accused is the husband of the deceased, in view of the plea taken by him in the cross-examination of witnesses that there was no relationship between him with the deceased. The prosecution sought to prove the relationship between the accused and the deceased basing on the evidence of Tahsildar of Ipuru Mandal, who in his evidence deposed about the accused handing over Ex.P16 Ration Card to the Ration Shop Dealer of Vudicherla village stating that his wife died and hence he does not want it. The Tahsildar also refers to surrendering of Ex.P17 Election Identity Card. However, in the cross-examination, PW16 admits that he has no knowledge of Ex.P16. He further submits that he has not personally enquired into the details of Ex.P16. He further admits that he has not signed Ex.P17.

However, the suggestion that Ex.P16 was created, was denied by him.

10. The accused examined DWs 1 to 3 to prove that there was no relationship between him and the deceased. All these three witnesses who are residents of Nallagonda Thanda of Ipuru mandal, are either related to the accused or closely associated to the accused. DWs1 to 3, in one voice, deposed that there was no relationship between the accused and the deceased. These witnesses go to the extent of stating that the accused is unmarried and even the deceased was unmarried. It is further said by these witnesses that the deceased never stayed in their village and that due to political disputes and at the instance of Sarpanch, the accused was implicated. It is very difficult to believe the evidence of DWs 1 to 3, when the elders of the village, more particularly PW4 and PW6, speak about the disputes and the relationship between the accused and the deceased.

11. Hence, from the evidence of witnesses referred to above, it is clear that the deceased was complaining about the bad vices of the accused from the year 2008 onwards and mediations were going on. On the basis of assurances given by the elders, she used to join the accused. From the above, it is clear that the prosecution was able to successfully prove the first circumstance i.e., motive.

12. The second circumstance relied upon by the prosecution relates to the theory of deceased being last seen in the company of the accused. They pressed into service, the evidence of PW5 to prove the same. PW5, in his evidence deposed as under:

“The marriage of Alivelubai and the accused took place about 6 years back and they have lived happily for some time and later the accused used to beat her and then she used to go to her parents house and coming on mediation. The accused and Alivelubai have gone for fire wood. The grand mother of the accused namely Mothibai told me that Alivelubai was not returned to the house. Thereafter, our thanda people talked that Alivelubai was murdered. I went and saw the dead body of the deceased Alivelubai on the next day morning and there was hack injury at her neck and also injury at her ear.”

13. In the cross-examination, PW5 admits that the grandmother of the accused told him that the accused and deceased went together and the deceased did not return. He further states that accused informed his father about he killing his wife, which was heard by the son of PW5, who in turn told to PW5. Relying upon the admissions of PW5 in the cross-examination, learned Public Prosecutor would contend that the said circumstance is sufficient to show that the accused and deceased left the village together and that the accused is responsible for the death which gets corroboration from the extra judicial confession made by the accused on telephone to his father.

14. Coming to the extra judicial confession made by the accused on telephone to his father, it is to be noted that the father of the accused, who was examined as PW8, did not support the prosecution case and he was treated hostile. Apart from that, this conversation between the father and son was alleged to have been heard by one Krishna who in-turn informed the same to PW5, but the said Krishna was not examined. Therefore, the source of information to PW5 was not established. Further, the grandmother of the accused, who is said to have informed PW5 about deceased not coming home till late in the night and also about the accused and deceased going together, was not examined. No explanation is forthcoming from the prosecution as to why the grandmother of the accused was not examined. Therefore, the information which was received by PW5 is only hear-say and the same cannot be accepted. Except the evidence of PW5, there is no other material to show that the accused and deceased together went to collect firewood. Further, the evidence of PW5 only shows that the villagers were talking about the death of the deceased pursuant to which, he went and saw the body. The evidence of PW6 would show that after PW5 visited the scene of offence and noticing the dead body, he informed PW6 about the murder and asked PW6 to inform PW3 and others. The information which was received

by PW3 was passed on to PW1. Thereafter, all of them proceeded to the village of the accused to see the dead body and also to find out the cause of the death. It is to be noted here that PW5 informed PW6 about the murder and PW6 is said to have informed PW3 about the death of the deceased and also the place where the dead body was found. In his evidence PW3 states that PW6 told him on telephone that the deceased was hacked to death by the accused near Patha Sarayee Batti, Brahmalabodu. If really the said information was furnished by PW6 to PW3, who in-turn furnished the same to PW1, their evidence that after reaching the village of the accused they searched for the dead body at 12.00 midnight and that they could not trace the body at the place mentioned by PW6, appears to be quite strange. However, on the next day again they searched for the body and found the body at the place mentioned by PW6. When PW6 was so specific with regard to the place where the dead body was present, the question of searching for the body twice would not arise. From this, it appears that at that point of time even PW6 was not having a definite information about the place where the dead body is, because of which, PWs 1 and 2 were made to search for the dead body after reaching the village of the accused. This all, is the evidence produced by the prosecution to prove the theory of deceased being last seen with the

accused. In fact, there is no legally admissible evidence to show that the accused and deceased were seen together while they were proceeding to collect firewood. As stated earlier, PW5 whose evidence was pressed into service to speak to the theory of last seen, is only hear-say and the grandmother of the deceased being not examined, we hold that the prosecution failed to prove the theory of accused and deceased being last seen together.

15. The 3rd and last circumstance relied upon by the prosecution is the recovery of gold and silver anklets i.e., recovery of MOs.6 and 7-gold ear studs and MO.5-axe, pursuant to the disclosure statement made by the accused, after his arrest. In order to test the veracity of the recovery made, it would be useful to refer to the evidence of PWs 9, 12 and 15. PW9 is the mediator for the inquest. In his evidence, he states that on 9.8.2010. The scene of offence, which is located at Brahmaboddu, was observed and he drafted Ex.P4, Scene observation report. According to him, the Sub-Inspector of Police and others were also present at the scene of offence and the Police have observed the scene of offence. They have seized MO.6 and 7-ear studs and MO8-Silver Anklets. In his chief-examination, he also claims to have present when inquest was conducted on the deceased at Government hospital. However, in the cross-examination, he

states that he wrote Ex.P4 and Ex.P5 as per the dictation of the Police and that he has no idea about the survey number of Brahmaboddu. From the evidence in chief of this witness, it is clear that on 9.8.2010, MOs.6 and 7-ear studs and MO.8-Silver Anklets were seized from the scene of offence. However, PW15, the Investigating Officer, in his evidence in chief, states as under:

“I have observed the scene of offence in the presence of mediators and prepared Ex.P4 scene observation report. I have collected blood stained and controlled earth and one Lungi and one Towel and seized them under the cover of Ex.P4. MO.11 is blood stained earth and MO.12 is the controlled earth. MO.13 is the Lungi and MO.14 is the Towel. I have prepared Ex.P.13 is the rough sketch of the scene of offence. I got photographed the scene of offence and of the dead body of the deceased and they are two in number in Ex.P14. The lower part of the right ear of the deceased was cut injury and no ear ornament found at her right ear lower part. The left side lower part of ear gold ornament found and it was seized which is MO.7 and also seized MO.8 silver anklet at the time of inquest held over the dead body of the deceased at the Government Hospital, Vinukonda.”

16. A reading of the evidence of PW15, the Investigating Officer, which has been extracted above, shows as if MO.7-gold ear stud and MO.8-silver anklet were seized at the time of inquest over the dead body of the deceased at Government Hospital, Vinukonda. But however, in so far as MO.6-ear stud and MO.5-Axe are concerned, PW15 states as under:

“On 23.8.2010, on credible information at about 9.00 a.m. as to the presence of the accused, I have secured

the mediators, who are P.W.12 and L.W.20 P.Madan Mohan and the SI of IPURU and staff proceeded to Muppala village Ganga Bodu and found the accused there, and he was trying to escape from there on seeing our party and immediately he was caught by our party and on questioning the accused disclosed his identity and he voluntarily confessed about the commission of offence in this case in the presence of mediators and it was reduced into writing and in pursuance of Ex.P7 the statement of the Accused, he led us to Rangapuram Thanda of Agnigundala Panchayathi, near a bridge of NSP Canal and there the accused went to a Regu Chettu and picked up M.O.6 the ear stud kept in a paper packed and kept under the earthen part and stated by him that this M.O.6 is the ear stud of the deceased and handed over to me and then it was seized by me in the presence of the mediators under cover of Ex.P.8 Panchanama and it was signed by the mediators. M.O.6 was with identification slip signed by the mediators who are P.W.9 and L.W.20-P.Madanmohan. Then the accused led us to the scene of offence near by pathway and he picked up M.O.5 (axe) from the thorny bushes and handed over the same to me under Ex.P9 in the presence of mediators and it is used to murder the deceased.”

17. In so far as the recovery of MOs.5 and 6, the evidence of PW15 shows that on 23.8.2010, that is nearly 15 days after the incident, they arrested the accused at Muppalla village Ganga Bodu and in pursuance to the confession made, he took them to Rangapuram Thanda of Agnigundala Panchayathi and there the accused went and picked up MO.6-ear stud which was kept in a paper packed underneath an earthen part. Further, he is said to have led them to the scene of offence nearby

pathway and picked up MO.5-axe from thorny bushes and handed over the same to PW15 under Ex.P9.

18. From the above, it appears that MO.5-axe and MO.6-ear stud were recovered after the arrest of the accused on 23.8.2010. But the evidence of PW9 who acted as mediator for the scene of offence and inquest shows as if MO.6 was recovered on 9.8.2010 itself. The evidence of PW9 reads thus:

“On 9.8.2010 the scene of offence was observed which is located Brahmala-Bodu and it is also called Mutukula-Bodu and I have drafted Ex.P.4 Scene observation report and I have signed on t. L.W.18-Badde Naik and L.W.21-Govindu Naik were also present at the time of observation of scene of offence. SI and Police stood at the scene of offence and the Police have observed the scene of offence. The Police have seized the Ear-studs (Mos.6 and 7), Silver Anklets (MO.8).”

19. Further, PW15 in his evidence states as if MO.5-axe was recovered on 23.8.2010 from thorny bushes near by a path way. But the evidence of PWs 1 and 2 reveals that after receiving the information they reached the forest area and noticed MO.5-axe present by the side of the body. This fact was spoken to by all the family members of PWs 1 2 and 6. Therefore, the recovery of MO.6-ear stud as belonging to the deceased and MO.5-axe alleged to have been used in the commission of the offence, pursuant to the confession made by the accused, cannot be accepted.

19. One other circumstance, which throws any amount of doubt with regard to recovery of MO.6 is, the evidence of P.W.15-the Investigating Officer himself. In his evidence in chief, P.W.15 admits that when MO.6 was recovered on the basis of a confession made, it already had a slip containing the signature of P.W.9-the mediator. But, there is no explanation from the prosecution as to how MO.6, which was said to have been recovered pursuant to the confession made by the accused after his arrest on 23.08.2010, contains a slip with the signature of P.W.9-the mediator for scene of offence and inquest. This circumstance also throws doubt on the recovery of MO.6, which is one of the main circumstances, relied upon by the prosecution.

20. From the above it is clear that though the prosecution was able to prove existence of some differences between the accused and the deceased but that by itself cannot be a ground to connect the accused with the death of the deceased since the other two circumstances relied upon by the prosecution namely the accused being last seen with the deceased and the recovery of ornaments of the deceased from the accused being not established.

21. Hence, we hold that the chain of circumstances which are required to be proved to connect the accused with the crime are not proved.

22. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in the judgment, dated 16.5.2012, in Sessions Case No.12 of 2011, on the file of the XIII Addl. District & Sessions Judge, Narasaraopet, Guntur District 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 he is not required in any other case or crime.



JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

Date: 19.02.2018

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