

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE MS.JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.15 of 2013

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

1) The sole accused in Sessions Case No.115 of 2011 on the file of the I Additional Sessions Judge at Srikakulam, is the appellant herein. He was tried for an offence punishable under Sections 302 IPC for causing the death of one Smt. Cheekati Lakshmi on 27.11.2010 and also for offence under Section 498-A IPC. Vide its judgment, dated 03.09.2012, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer "Life imprisonment" and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month. However, he was acquitted for the offence punishable under Section 498-A IPC.

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

The deceased is none other than the sister of P.W.1. P.W.2 is the mother of P.W.1 while P.W.3 is the sister by courtesy and P.W.4 is maternal uncle by courtesy to P.W.1. The deceased-Lakshmi and accused loved each other, eloped and later married. Out of their wedlock, they were blessed with one daughter. Subsequently, disputes arose between them with regard to payment of dowry. A panchayat was held before the elders, wherein the accused is alleged to have

demanded Rs.30,000/-, which was paid. Later the accused and deceased shifted themselves to Chennai in search of employment. As the junior paternal uncle of the accused died, the accused and deceased-Lakshmi came to attend the ceremony and thereafter continued to live in the village without going back to Chennai. On 27.11.2010 in the morning, the accused and the deceased left the house to get fire-sticks, leaving their daughter with P.W.2, but they did not return home till evening. P.W.8 is said to have informed P.Ws.1 and 2 that at 11.30 a.m., while he was waiting at Pusapatirega, he stopped a Tata Ace vehicle, in which the accused was found traveling. The accused is said to have asked PW.8 as to where he was going, then P.W.8 told him that he was going to Nathavalasa and when P.W.8 asked the accused as to where he is going, he told him that he was going to Vizianagaram. When the vehicle was stopped at Nathavalasa, P.W.8 told the accused that in order to go to Vizianagaram one has to get adown at Nathavalasa, but the accused is said to have told him that he will get down at next stop. On the next day morning, the accused made a phone call to his sister Kari Latchemma(P.W.11) and informed her that he killed the daughter of P.W.2 in the casurina tope of Mylapalli Guruvulu(P.W.4). Then she informed the same to Cheekati Narasimhulu (P.W.10), inturn he asked the phone number of the accused and telephoned to him. The accused is said to have told him that he killed the deceased. Then the said Narasimhlulu informed to P.Ws.1 and 2 about the same. Thereafter, he along with the villagers went to the

said tope and found the deceased hanging, with both her hands tied from back side. They also noticed head injuries on the left side of the head and on the forehead of the deceased. The said casurina tope belongs to one Mylapalli Guruvulu. Immediately, thereafter i.e., on 28.11.2010 P.W.1 went to the police station and lodged a report with P.W.16-Head Constable, J.R.Puram Police Station, which came to be registered as Crime No.176 of 2010 under Section 302 IPC. Ex.P-15 is the FIR registered at about 10.00 a.m. P.W.17 the Inspector of Police received the information from J.R.Puram Police Station about the registration of the crime; went to the police station, took a copy of the FIR, and proceeded to the scene of offence along with the Head Constable. He reached the scene of offence at 11.00 a.m., along with the mediators i.e., P.W.13 and another. He prepared a panchanama and rough sketch of the scene. Ex.P-16 is the rough sketch of the scene and Ex.P-7 is the scene observation report. During the said proceedings, he seized a stone, which contain blood stains apart from a pair of chappals, which are marked as M.O.5. He also seized a yellow colour langa, which is marked as M.O.6. During the said proceedings, he examined P.Ws.1,2,5,6,8 and 9 and recorded their statements. Thereafter he conducted inquest over the dead body in the presence of P.Ws.13 and 7. Ex.P-3 is the inquest report. After completing the inquest proceedings, he sent the dead body for post-mortem examination. P.W.14 the Assistant Professor in RIMS Hospital, Srikakulam, conducted autopsy over the dead body of the deceased

and issued Ex.P-12-the Post-Mortem report. According to him, the cause of death was due to complications arising out of the multiple external and internal injuries. The time of death was about 48 hours prior to the time of examination. PW.13, who was V.R.O., J.R.Puram, stated that on 30.11.2010 while himself and one Mylapalli Jaggulu, who is the husband of the Sarpanch and also ration shop dealer, were present in the panchayat office, the accused approached them and confessed about the commission of the offence. The said statement was reduced into writing and signed by the accused. Ex.P-8 is the confessional statement given by the accused. Thereafter P.Ws.8 and 13 took the accused to the police station of Rangasthalam and handed over him to C.I. of Police. It is said that the C.I. of Police also recorded the confessional statement of the accused in the presence of the mediators. Pursuant to the confession made, the axe which is alleged to have been used in the commission of the offence was recovered under Ex.P-17. He also seized cellphone of the accused. Thereafter, the accused was arrested and was brought to the police station. After collecting the FSL reports, police filed a charge-sheet, which was taken on file as P.R.C.No.15 of 2011 by the Judicial Magistrate of I Class, Srikakulam, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.115 of 2011.

3) Basing on the material available on record, charges under Sections 302 and 498-A IPC were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P20 and MOs.1 to 6. 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 evidence was adduced except marking Ex.D-1.

5) Basing on the following circumstances, the accused last seen in the company of the deceased; the accused was seen alone within two hours after leaving the house, accused making a phone call to his sister disclosing the commission of the offence; extra judicial confession made before P.W.10-the V.R.O., and the recovery of blood-stained axe, the trial court convicted the accused. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. He further submits that the accused never made any extra judicial confession before P.W.10 and the same is brought into existence only to implead him in the crime. It is further said that the said extra judicial confession is created while the accused is in custody. He further submits that the

version setup by P.W.8 that he has seen the accused going alone is incorrect and false. Even in respect of recovery made, he would submit that the blood said to have been found on axe is not of human blood and even otherwise the case of the prosecution is that the cause of death was due to beating the deceased with a hard and blunt object. Therefore, even if the recovery of axe is believed, the same would not in anyway connect the accused with the commission of the offence.

7) On the other hand, the learned Public Prosecutor would contend that though there are no direct witnesses to the incident, but the circumstances relied upon by the prosecution do form a chain of events connecting the accused with the crime and as such the judgment under challenge warrants no interference.

8) The point for consideration is "Whether the circumstances relied upon by the prosecution, form a chain of events connecting the accused with the crime?"

9) The first circumstance relied upon by the prosecution is take accused and the deceased leaving the house at 9.00 a.m. P.W.1, who is the brother of the deceased, in his evidence deposed as under:-

"The deceased Lakshmi is my younger sister. The deceased Lakshmi and accused loved each other. The accused eloped to my sister and later married. A daughter was born to them. The disputes arose between them with regard to the dowry payment. We raised dispute before the elders they asked me Rs.30,000/- and we gave the

same accused. Later they shifted to Madras. Later the junior paternal uncle of the accuse (China Karrodu) died. Lakshmi and accused came to attend the function. Again they lived in our village. Accused and the deceased Lakshmi left to get firesticks by leaving a daughter with my mother. They also went along with by handling a cutting knife and also axe. Till 6.00 p.m., they did not return bank."

10) Though P.W.1 was subjected to cross-examination, nothing useful came to be elicited to show that the accused and the deceased never left the house in the morning. In fact, no suggestion was put to this witness denying the fact of accused and the deceased leaving the house.

11) Coming to the evidence of P.W.2, who is the mother of the deceased, she deposed as under:-

"On that date, the accused and my daughter left the house to fetch fire sticks and kept their daughter with me to look after. On that evening they did not return back, Jaggulu (L.W.10) on that night when he was going to Vizianagaram he met accused, who told that he was also going to Vizianagaram and asked the accused but he did not get down the vehicle, he stated that he will get down the vehicle on the next stop and accused alone was present and my daughter was not present with him. On the next day morning we came to know about the deceased Lakshmi and accused made a phone call to Narasimhulu (L.W.7) that he has killed my daughter at the casurina tope. Narasimha Murthy (L.W.7) did not inform directly and we came to know about the same through villagers. L.W.6 Jaggulu informed about the phone message received to Cheekati Narasimhulu (L.W.7). We went to the scene of offence, which is casurina tope. We found both the hands are tied from back side of the Lakshmi and in hanging

position. We noticed two head injuries, one on the top of the head and one on the back side of the head. I was examined by police."

12) Though P.W.2 was cross-examined at length, but it was not even suggested to the witness, that the accused and deceased never left the house together.

13) P.W.4, who is a resident of the same village and who knows the accused and deceased, deposed about the demand for dowry made by the accused, which was placed before the elders including himself. In the said panchayat, they advised the parents of the deceased to give Rs.30,000/-, to the accused, as such they paid the same. According to him, on the date of incident the deceased and the accused started from the house at 9.00 a.m., to fetch fire sticks and did not return back till 4.00 p.m., which was informed to him by the mother of the deceased.

14) P.W.5 in his evidence deposed that the accused is his agnate and knows the deceased; on the date of incident both the accused and deceased went to fetch firewood. At that time he was colouring his fish-net. His evidence shows that the accused took knife along with him while going to fetch firewood. The accused and deceased are said to have told him that they were going to fetch firewood. His evidence is as under:-

"On that day both the accused and deceased went to fetch fire wood. I am colouring to my fish net at that time. Accused carried an Axe and also a cut knife along with him while going to fetch firewood.

They also told me that they are going to fetch firewood when I questioned him where he is going."

15) The suggestions put to the witness are to the effect that he went to fishing on that day and did not go to the scene of offence and did not observe anything, but the same were denied.

16) From the evidence of these witnesses, it is clear that, in one voice all of them spoke about accused and deceased together leaving the house. Though P.Ws.1 and 2 did not state the time of leaving the house, but P.W.4 refers to seeing the accused and deceased together and also about they leaving the house at 9.00 a.m., to fetch firewood. The evidence of these witnesses with regard to accused and deceased leaving the house at 9.00 a.m., remained un-contraverted. Though all the witnesses were cross-examined, it was not even suggested that both of them never left the house. At this stage, it would be useful to refer to the evidence of P.W.6, which is as under:

"On that date I have sold dried fish near Parvathipuram side and returning back and stopped and got down at Kosta Junction. I saw the accused carrying a bag at about 11.30 a.m. I did not talk with him and return back to village and at about 7.00 p.m., when the villagers are telling that the accused and Lakshmi were not found in the village, then I told them that I have seen the accused alone at Kosta junction."

In the cross-examination, he stated as under:

"Kosta junction is a busy locality. There are nearly 10 to 15 Autos present at Kosta Junction. One has to reach our village

in auto, there are no buses. One cannot go by walk. I did not state to police that I went to Kosta on my work. I do not know since how long time the accused was waiting at Kosta junction. I know several persons at Kosta Junction. It is not true to suggest that I did not state to the police that the accused made a phone call to his sister Lachamma, who inturn told to Narsimha Murthy, who inturn told to all. "

From the evidence of this witness, it is clear that on that day he went to Parvathipuram and he noticed the accused at 11.30 a.m., at Kosta junction. The admission in the cross-examination that he failed to mention before the police that he went to Kosta junction on his work may not assume much significance since admittedly he never went to Kosta junction on his work as his evidence is to the effect that he went to the Parvathipuram side to sell dry-fish. Therefore, his evidence does not conclusively establish the fact of the accused being seen alone at 11.30 a.m.

17) The other evidence to speak about the accused being seen alone is P.W.8. In his evidence he states that on the date of incident accused and deceased went from their house, keeping their daughter with P.W.2, for fetching firewood. He was waiting at Pusapatirega for an Auto, as he went there for release of gold pledged by him. At about 11.30 a.m., while he was waiting at Pusapatirega, he stopped the vehicle Tata Ace in which the accused was found traveling. Then the accused asked him that where he was going, to which he told that he was going to Nathavalasa and when P.W.8 asked the accused where he

was going, he told that he is going to Vizianagaram. P.W.8 stopped at Nathavasala and told the accused that in order to go to Vizianagaram he has to get down at Nathavalasa, for which the accused told him that he will get down at next stop and proceeded in the vehicle. In the evening when P.W.8 went to the village, P.W.2 and others were weeping for non-arrival of the deceased. Then he told P.W.2 that he met the accused at Nathavalasa and the deceased was not found along with him. In the cross-examination, it was suggested to P.W.8 that he did not go to Nathavalasa or Pusapatirega and that he went to fishing on that day, which was denied by him. To a suggestion that he did not state before the police that he went to Pusapatirega for releasing the pledged gold ornaments and that while he was waiting for an auto at Pusapatirega junction to go to Nathavalasa a Tata Ace came there, was denied by him. He further stated that he did not state before the police that he boarded the Tata Ace at Kosta Junction as in Ex.D-1. The said suggestions were put to the Investigating Officer, who states that P.W.8 did not state to him as per Ex.D-1. So the version of P.W.8 that he has seen the accused at Kosta junction runs contrary to the earliest version made before the police, wherein he stated that he boarded the vehicle at Pusapatirega. Therefore, the information which was furnished by P.W.8 to P.W.2 and others that he has seen the accused alone at Nathavalasa, cannot be accepted. As per contradiction, he boarded the auto at about 11.30 a.m., at Kosta junction. However, there was no material on record to show as to the

distance between the Kosta junction, Pusapatirega and Nathavalasa. From the above, some suspicion is sought to be created in the mind of the court with regard to P.W.8 seeing the accused at Pusapatirega and the consequent information furnished by him to P.W.2 about seeing the accused alone at 11.30 a.m. But the evidence of P.W.8 falsifies these aspects. Insofar as P.W.6 is concerned though he claims to have seen accused alone at 11.30 a.m., he never disclosed about the said information to the family members of the deceased. He claims to have furnished the said information to the villagers, who did not speak about the disclosure made by P.W.6. Therefore, the evidence of P.Ws.6 and 8 cannot be accepted to show that the accused was seen alone at 11.30 a.m.

18) The second circumstance relied upon by the prosecution is with regard to the accused informing his sister on telephone about killing the deceased and the place where the body was kept. P.W.11-Kari Latchamma is the sister of the accused. However, she did not support the prosecution case and as such she was treated as hostile by the prosecution. In the cross-examination by the Public Prosecutor she denies stating to the police about the accused, who is her brother, made a phone call informing about the killing the deceased in the Casurina tope of P.W.4 and also informing P.W.7 about the said phone call. P.W.7 in his evidence denies receiving the information about the death of the deceased over phone. He denies that the sister of the accused by name Lachamma informing him about the phone call and

also about the accused killing the deceased. He was also treated hostile by the prosecution. Insofar as this information is concerned, though P.Ws.1, 2, 4 and others speak about the accused making the telephone call informing P.W.11 about killing the deceased and the recovery of the deadbody pursuant to the said information, but their source of information was P.Ws.7 and 11, who denied the receipt of any phone call from the accused. Hence, this circumstance in our view shall go against the prosecution as the person to whom the said phone call was received are going back and even denying the statement made before the police. Hence, we feel that the second circumstance relied upon by the prosecution with regard to the phone call made by the accused to P.W.11 remained unproved.

19) The third circumstance is the recovery of the deadbody, pursuant to the telephonic information given by P.W.11. It is to be noted here that pursuant to the information given by P.Ws.7 and 11, P.Ws.1, 2, 4, 5 and others proceeded to the casurina tope of P.W.4 where they noticed the deadbody with both hands tied to the back side to a cashew nut tree and the body suspended with a saree and the langa covered over the head of the deceased. On the basis of a report given by P.W.1, the police came there, removed the langa, took photographs and then brought down the body. In the evidence of Investigating Officer, he submits that by the time he went there, the feet of the body were touching the ground. Therefore, basing on the recovery of body pursuant to the information furnished by the

accused, which was on the morning of 28.11.2010, the prosecution tried to contend that even if the said circumstance of accused telephoning is not established, but the fact of recovery of deadbody pursuant to the information given by the accused can be acted upon to establish the guilt of the accused. But the evidence of Investigating Officer shows that by 27th itself they were having information about the death of the deceased. Though they were having information about the death of the deceased they did not go to the scene of offence. It would be useful to extract the relevant portion of the evidence of P.W.17 which is as under:-

"On 27th we have information about the death of the deceased. On 27th night we have not go to the scene of offence, only after receipt of the report and message through S.I. of Police only, I came to know about the offence."

20) The admission made by the Investigating Officer in his evidence that they had information about the death of the deceased on 27th itself and that they did not go to the scene of offence on that night and only after receipt of report and message through S.I. of Police, he came to know about the offence, throws any amount of doubt on the recovery made pursuant to information made by accused on telephone to P.W.11. Further, his admission that he sent a word at 9.00 a.m., to P.W.15-the photographer throws any amount of doubt with regard to discovery of deadbody pursuant to the information furnished by the accused. It falsifies the plea that the deadbody was discovered basing on the telephonic information furnished by the

accused to P.W.11 at 5.30 a.m. on 28.11.2010. The evidence of P.Ws.1, 2 and 4 show that they came to know about the accused killing the deceased on the basis of information furnished by P.W.7 who in turn gave the information to P.W.11, pursuant to a phone call made by the accused. When the information received by P.Ws.7 and 11, as per the evidence of P.Ws.1, 2 and 4 was at 5.30 a.m, the admissions made by the Investigating Officer in his evidence that by night itself they were aware about the death of the deceased, throws any amount of doubt with regard to telephonic message and the villagers coming to know about the dead body only on the basis of telephonic call. As stated earlier the fact of receiving the telephonic call from the accused is not established since both the witnesses did not support the prosecution case. Further, it is to be noticed that the report came to be lodged by P.W.1 at 10.00 a.m., and after registering a crime, P.W.17-Inspector of Police proceeded to the scene along with Head Constable and other constables and reach the scene at 11.00 a.m., but the evidence of photographer shows as if on 28.11.2010 by 9.00 a.m., itself while he was in photo studio, police called him and took him in a Jeep to the scene of offence and by 9.30 a.m., they reached the scene and as per the instructions of the C.I., they took the photographs. So even before registration of a crime at 10.00 a.m., the police got the scene photographed. No explanation is forthcoming from the prosecution as to the lapses in the sequence of events, which throws some doubt on the prosecution case.

21) The fourth circumstance relied upon by the prosecution is extra-judicial confession made before the V.R.O-P.W.13. According to him, on 28.11.2010 when he was present in Kovvada-Matchelesam panchayat office, a constable came and asked him to come to the scene of offence and took him to the scene of offence to act as mediator. He acted as a mediator for the inquest and also as a Panch for the preparation of the scene observation report. This was on 28.11.2010. Thereafter on 30.11.2010 at about 1.00 p.m., while himself P.W.8, who is the husband of the Sarpanch and also ration shop dealer, were present at the panchayat office, the accused came and confessed about the commission of the offence. He drafted the said confession, which was signed by himself, P.W.8 and also by the accused. Ex.P-8 is the confessional statement made by the accused. Thereafter both of them took the accused to the police station and handed over the accused to C.I. They also gave a separate statement to the police, which was reduced into writing. Ex.P-9 is the report given by them. Insofar as the extra judicial confession is concerned, the person in whose presence the extra judicial confession was made viz., Mylapalli Jaggulu S/o. late Ammoru Ramudu was not examined by the prosecution. No explanation is forthcoming as to why the prosecution failed to examine him. Coming to the evidence of P.W.13, it is to be noted that though he is a V.R.O., and independent person, but he acted as a panch for the inquest and the scene observation. Sucha being the position, no necessity for the accused to go and make a statement

before the V.R.O., more so when he had no acquaintance with him. In fact a reading of the evidence of P.W.13 and the confession, would show that after the alleged incident in Srikakulam District, the accused is said to have come all the way to Secunderabad and from Secunderabad he is alleged to have contacted the village Sarpanch on phone, who assured him moral support. If the village Sarpanch has given moral support, definitely he would have made the confession before the Sarpanch but definitely not before the V.R.O. Further when the assurance was given by the Sarpanch that he will care of him, definitely he would have taken the Sarpanch along with him to the V.R.O., while making the said confession. Further, a reading of the confession would show that on the basis of an assurance given by the Sarpanch, he went from Secunderabad to the village; then to the office of V.R.O., and then disclosed about the commission of the offence in the presence of Sarpanch of the village, who assured him to help, but the Sarpanch is not examined. On the other hand, the confession would show that the extra judicial confession came to be made before the husband of the Sarpanch, who is also a ration shop dealer. When the assurance was given by the Sarpanch of the village, he would not have made a confession before the husband of the Sarpanch. In fact nowhere in the confession it is mentioned that even the husband of the Sarpanch assured help to him. Since neither Sarpanch nor the husband of the Sarpanch are examined, and as the

V.R.O., acted as a witness to all the police proceedings, a doubt arises with regard to extra judicial confession made by the accused.

The last circumstance is the recovery of the weapon which was used in the commission of the offence viz., "Axe-M.O.1". The Doctor, who conducted post-mortem examination, deposed that the injuries are anti-mortem in nature, caused by a hard and blunt object, except the ligature mark. According to him, the cause of death was due to complication arising out of the multiple external and internal injuries. When the death was caused by a hard and blunt object and the injuries are due to usage of hard and blunt object, recovery of M.O.1 which is sharp edged weapon, may not be of much relevance to connect the accused with the crime. Further, P.W.17 the Investigating Officer admits that though they affixed identification slip on M.O.1-Axe, but no slip was found on M.O.1-Axe and that there are no special identification marks to identify M.O.1. Insofar as the cut knife is concerned, he did not ascertain as to what happened to the cut knife which was present near the palmyrah head bushes. Therefore, the recovery of M.O.1-Axe is doubtful and even if it is said to be proved, the same does not anyway connect the accused with the crime.

22) Having regard to the circumstances stated above and in the absence of any cogent and convincing evidence, we are inclined to acquit the accused, by extending benefit of doubt.

23) In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 03.09.2012 passed in S.C.No.115 of 2011 on the file of the I Additional Sessions Judge, Srikakulam, for the offence punishable under Section 302 IPC is set aside. Consequently, the 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

Dt:23.02.2018
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