

**THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

CRIMINAL APPEAL NO.817 OF 2013

JUDGMENT: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Mr.Daravath Babu Nayak, the accused-appellant, has challenged the legality of the judgment, dated 28.08.2013, passed by the Sessions Judge, Nizamabad, whereby the learned Sessions Judge has convicted the accused-appellant for the offence punishable under Section 302 of Indian Penal Code (IPC), and sentenced him to life imprisonment, and imposed a fine of Rs.1,000/-, and directed to undergo simple imprisonment for one month in default thereof.

Briefly stated, on 05.05.2012, Mr.Rathod Doma Nayak (P.W.1) filed a Telugu written report before the Kotagiri Police Station, wherein he alleged that he was blessed with 6 daughters and a son. About fifteen years back, his 3rd daughter, Sony Bai, was married to Daravath Babu Nayak. After marriage, they were blessed with two sons, and a daughter. They continued their marital life for a period of twelve years. Subsequently, his son-in-law started suspecting his daughter's character. He usually harassed her mentally and physically, as she was moving closely with her brother-in-law, Gangya Nayak, the younger brother of her husband. In these circumstances, his daughter filed a case in Kotagiri Police Station against her husband, and his family members, which is still pending before the Judicial First Class Magistrate, Bodhan for trial. Since then, his daughter and her

husband are living separately. After one year, his son-in-law came to his house, and pleaded with his daughter that, now onwards he will look after her well, and he is willing to take her back to the matrimonial home. On this plea, he approached the village elders i.e. Sri Mohammad, Sajja Nayak, Mahaboob Sab, Khareem Sab and held a panchayat before them. Before the village elders, he sent his daughter and her children along with his son-in-law. But even then, the attitude of his son-in-law did not change; it continued the same. Unable to endure the tortures inflicted by his son-in-law, his daughter turned-up a Suleman Farm Village i.e. his house, with her daughter, Mounika, after leaving her two sons with her husband. Since then, his son-in-law used to visit his house, and tried to force his daughter to compromise the case, which was filed against him. On 04.05.2012, at about 10:00 p.m., as usual, his daughter, along with his grand-daughter, slept on the terrace, whereas his wife, and children slept inside the house. In the intervening night, at about 00:30 hours, on hearing some noise from the terrace, while he was going up to the terrace, he saw his son-in-law, and an un-known person running away from the terrace. He found his daughter dead, and lying in a pool of blood. He noticed a deep injury on her temple, which was caused, by a hasty blow with a stone. He further claimed that his son-in-law, with the help of an un-known person, brutally killed his daughter, and fled away from the scene.

On the basis of this complaint, a formal F.I.R. namely F.I.R.No.40/2012 of Kotagiri Police Station was registered for the offence under Section 302 of I.P.C. And the investigation commenced. On 09.05.2012, B.Shankaraiah (P.W.12) apprehended

the accused. Subsequently, charge-sheet was filed for the offence under Section 302 of I.P.C.

In order to substantiate its case, the prosecution examined twelve witnesses, exhibited fifteen documents, and submitted eight material objects before the learned Trial Judge. In turn, defence examined a single witness, but did not submit any documents.

After appreciating the evidence, as aforementioned, the learned Trial Court convicted and sentenced the accused for the abovementioned offence. Hence, the appeal before this Court.

Ms. A.Gayathri Reddy, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, due to an animosity that existed between the appellant and his wife, he has been falsely implicated in this case. The falsity of the case is apparent from the fact that although Rathod Doma Nayak (P.W.1), claimed in the F.I.R., that his son-in-law was accompanied by an unknown person, yet no other person has been traced out by the police.

Secondly, Rathod Doma Nayak (P.W.1) is an old man, whose vision was impaired. Thus, he would not be able to see properly. But in order to implicate the appellant – accused, he has created a false story. According to the said witness, when he saw his son-in-law, his son-in-law was only in underwear. Yet, the police has recovered a blood stained shirt from the accused-appellant. Therefore, the falsity of this witness is writ larged. Hence, it is a classic case of false implication of a person in order to wreck personal vengeance.

Thirdly, according to Rathod Doma Nayak (P.W.1), the deceased was sleeping with her daughter on the terrace. Yet, the daughter has not been produced as a witness. Hence, the prosecution has withheld a material witness. Thus, an adverse inference should be drawn. Yet, the learned trial Judge has failed to draw the adverse inference against the prosecution. Hence, a grave error has been committed by the learned trial Court.

Fourthly, according to the prosecution case, the deceased was allegedly hit with a heavy stone, at the dead of night. But, there is nothing to suggest that there was a source of light available at the scene of the crime. Therefore, neither Rathod Doma Nayak (P.W.1), nor Kum.Jadav Lalitha (P.W.2) would have been in a position to identify the culprit.

Fifthly, even the stone recovered by the police does not show the existence of the blood group of the deceased. Thus, there is no corroborative evidence to the testimony of Rathod Doma Nayak (P.W.1) and Kum.Jadav Lalitha (P.W.2). Since they are inimical witness, their testimonies could not be relied upon to convict the appellant.

Sixthly, there is no evidence that “ a panchayat” had taken place in order to settle the disputes between the husband and wife. Thus, the testimony of P.W.1, is uncorroborated.

Seventhly, the accused had examined Gurrapu Anjaiah (D.W.1), who had clearly stated that on the fateful day, the appellant – accused was working in his firm. Therefore, the appellant had succeeded in proving the plea of alibi. Yet, the learned trial Court has rejected the said plea without any rhyme or

reason. Hence, the impugned judgment deserves to be set aside; the appellant – accused deserves to be acquitted for the alleged offence.

Lastly, this is a case of single injury on the head, that too, with a stone. Therefore, the conviction of the appellant should be altered from one under Section 302 IPC to Section 304 Part-II IPC.

On the other hand, Ms. Sridevi Juvvadi, the learned Additional Public Prosecutor, has raised the following contentions:-

Firstly, it is not a case of false implication. Since there was constant conflict, as reflected in the pending litigation, between the husband and wife, since the appellant suspected that his wife is having an extramarital life with his own younger brother, since there were attempts to reconcile the couple, the attempts which had failed, the appellant – accused had strong motive to get rid of his wife.

Secondly, the testimony of Rathod Doma Nayak (P.W.1) is corroborated by the testimony of Kum.Jadav Lalitha (P.W.2). Both of them happened to be eyewitnesses who saw the appellant running away from the scene of offence after they had heard noise at the dead of the night.

Thirdly, Barmavath Sajja Nayak (P.W.3) and Shaik Mahiboob (P.W.4) clearly state that the appellant – accused had threatened his wife in front of them that he would get rid of her, and there was a village panchayat called in order to settle the dispute between the parties.

Fourthly, the stone used for causing the injury on the head of the deceased was recovered by the police in the presence of

Shaik Ahmed (P.W.7) and he has confirmed the recovery of the stone. According to the FSL report (Ex.P.14) 'B'- group blood was discovered on the stone. Furthermore, Dr.Shivadas (P.W.11) has testified to the homicidal nature of death. His testimony is further corroborated by P.M.E. Report (Ex.P.11).

Fourthly, although the appellant – accused had produced Gurrapu Anjaiah (D.W.1) in order to establish his plea of alibi, the said plea has fallen flat on its face. According to D.W.1 on the morning of 06.05.2012 the appellant came and informed him that his wife died last night. Yet, when this witness was asked whether the accused gave any other information on 05.05.2012 with regard to the death of his wife, he answered in the negative. According to the learned counsel, the distance between two villages, where the wife lives and the accused work is quite a distance. If the plea of alibi were to be believed, the accused could not be aware of his wife's death. According to the learned Additional Public Prosecutor, the trial Court was justified in rejecting the plea of alibi as pleaded by the defence.

Lastly, although a single injury may have been caused, but nonetheless, it was a pre-planned murder, where at the dead of the night, the accused carried a heavy stone and caused injury on the head of the deceased. Therefore, he had both intention and knowledge of his act. Hence the case is squarely covered by the definition of 'murder' given in Section 300 of I.P.C. Therefore, the learned Additional Public Prosecutor supported the impugned judgment.

It is true that in the F.I.R. lodged by Rathod Doma Nayak (P.W.1), he had claimed that the accused accompanied by unknown person, but in his testimony before the Court as P.W.1 he clearly states that *"I was sleeping in the ground floor of our house. My daughter and my grand-daughter were sleeping on terrace (roof of our house) I heard a sound around 12 in the mid night. I cried "Evaru Evaru". Then I found the accused running away from my house. Then I went to terrace and saw my daughter. She was found in a pool of blood with head injury. There was a big stone (banda rayi) by her side. I took my grand-daughter. Thereafter people gathered there. I lodged a report with police."* Even in his cross-examination, he states that *"On that night I slept at 9 p.m. and got up at 10 p.m. I was sitting in tin sheets verandah. Immediately on hearing the sound I went up. Accused jumped and was running away. There was light in that night I saw the accused running away. There was light inside and outside of our house. I saw the accused in light."* Witness stated that he had seen the light present in verandah and again says that he saw the accused in the light available in front of his house. He further stated in the cross-examination that *"there is only one way to go to roof of our house."* Witness says that the accused had caused his daughter's death, and ran away in front of him. Immediately he got down from the roof; after one hour, he lodged report (Ex.P.1) with the police.

Kum. Jadvla Lalitha (P.W.2) informs the Court that the deceased was her maternal aunt. She knows the accused as the accused happened to be the husband of her aunt. She further states in the Court that *"On that night there was a sound on the roof of the house. So P.W.1 went there and saw the same. At that*

time myself, P.W.1 and L.W.2 Rukmini Bai were sleeping in the ground floor of the house. At that time my aunt Sonibai was sleeping on the roof of our house along with her daughter. We have also seen the accused getting down from the staircase of our house, and running away. The date of incident is on 04.05.2012 at 12.30 in the mid night. When we went there we saw Sonibai. There was an injury to her left eye and left side of eye, blood was oozing. We also found a big stone near our aunt, Sonibai.”

In her cross-examination, she states that it takes four hours to reach Sulemanfarm village from Nandiwada, where the accused was residing. She also states to the Court that *“I also heard sound on that night. I heard the sound of running away. Firstly P.W.1 went towards the sound. Immediately myself and L.W.2 Rukmini Bai followed P.W.1. P.W.1 firstly moved towards the road. I followed P.W.1 immediately. Immediately within 5 minutes I went to the roof of the house. I saw my aunt with head injury.”* She denied the suggestion that the accused never visited the house of her aunt. She further denied the suggestion that the accused did not visit Sulemanfarm village at the time of the incident.

Thus, both these witnesses have graphically described the incident and both the witnesses saw the accused running away from the house, in the light that was available within and outside the house.

Animosity is a double edged sword which can motivate the complainant to falsely implicate the accused. But simultaneously, it can also provide the motive for the accused to commit the alleged crime. Although the existence of the motive is not very material in

a case of direct evidence, but as a contention has been raised by the learned Counsel for the appellant with regard to the non-existence of the motive, the question before this Court is whether a motive can be discerned from the circumstances of the case or not?

Rathod Doma Naik, (P.W-1), Jadav Lalita, (P.W-2), Burmawat Satya Naik, (P.W-3), Shaik Mahaboob, (P.W-4) have consistently stated that there were not only differences between the accused-appellant and his wife, but also his wife had filed a criminal case under Section 498-A IPC against the appellant. Moreover, the accused had not only threatened the wife, but had also pleaded with her to compromise in the said criminal case. Furthermore, according to the testimony of Rathod Doma Naik (P.W-1), the appellant had suspected that his wife was having an illicit affair with his own younger brother, Ganga Naik. Therefore he had started doubting her chastity and her fidelity. Further, since Rathod Doma Naik (P.W-1) and Jadav Lalitha (P.W-2) have described the incident in detail, and their testimonies are further supported by other witnesses; it is apparent that the appellant had a motive for getting-rid of his wife. Thus the existence of the motive can well be gathered from the facts and circumstances of the case.

The testimony of Rathod Doma Naik (P.W-1) and Jadav Lalitha (P.W- 2) is further corroborated by the scene of offence and panchanama (Ex.P-3). According to the said panchanama (Ex.P-3) *"ön the right side of the head there was clotting of the blood, and the two pillows which were underneath her head were also stained with blood. At a distance of three feet from the dead body of the*

deceased there is stone and which is having blood stains. The blood stained portion of the stone is about 12 inches in length and 10 inches in width". Both the stones and the blood stained pillows were further sent to the FSL for its report. Shaik Ahmed (P.W-7), has proven in the contents of panchanama (Ex.P-3).

Moreover, the homicidal nature of the death was established by Dr. Shivdas (PW-11). The witness states in his examination in-chief that he knows Dr. Ramchand, who carried out the post-mortem examination as he has worked under Dr. Ramchand as his colleague. Thus, he can easily identify Dr. Ram Chand's handwriting and signature. He further informs the court that, since Dr. Ramchand is suffering from Paralysis, it is he who has come before the Court. Looking at the Post-Mortem Examination Report (Ex.P-11), he has identified the hand-writing and signature of Dr. Ramchand. Relying on the said Report (Ex.P-11), he further informs the Court that the deceased had suffered from a head injury on the temporal region. *The cause of death "was due to the above injury i.e., head injury".*

Considering the consistent evidence produced by the prosecution, the prosecution has succeeded in establishing his case beyond a shadow of doubt. Thus, the learned counsel for the appellant is unjustified in claiming that the appellant has been falsely implicated in the present case.

Of course, the learned counsel for the appellant pleads that the incident had happened at the dead of the night, and there was no source of light available, therefore, it is difficult for Rathod Doma Naik (P.W-1) and and Jadav Lalitha (P.W- 2) identify the

appellant. However, her plea is belied by the testimony of Rathod Doma Naik (P.W-1). For, the witness clearly states, that too in his cross-examination that *"there was light in that night. I saw the accused running away. There was light inside and outside our house. I saw the accused in light. The witness is stated that has seen the light present in warandah and again says that he saw the accused in the light available in front of his house."* Thus there was not only source of light available in the warandah, but also sufficient light for the witnesses to identify the accused-appellant in the said light.

Merely because there are minor contradictions in the testimony of Rathod Doma Naik (PW-1), it would still not belie the testworthiness as a witness. He has claimed that when he saw the appellant running away from the scene of the crime, the appellant was only in his underwear. But according to the prosecution, they had recovered a blood stained shirt on the basis of the statement made by the appellant. But the existence of the blood stained shirt does not dilute the varacity of the testimony of this witness. For the witness has described the incident as perceived by him. There is certainly a kernel of truth in his testimony, as his testimony has been supported not only by the other witnesses, such as Jadav Lalitha (P.W- 2), Burmavat Sajja Nayak (P.W-3), Shaik Shaik Mahaboob (PW-4), Shaik Ahmed (PW-7) and Dr. Shiv Das (PW-11), but also by the documentary evidence, such as the scene of offence panchanama (Ex.P-3), Post-Mortem Report (Ex.P-11) and the FSL Report (Ex.P-14).

Similarly, the testimony of Jadav Lalita (PW-2), is equally corroborated by testimonies of the witnesses mentioned herein above, and by the documentary evidence mentioned above. Thus, both these witnesses are not just eye-witnesses, but most importantly are witnesses of his sterling worth.

The learned counsel for the appellant has also pleaded that the 10 year old child sleeping with the deceased has not been examined as a witness. Hence, the prosecution has withheld a material witness. Therefore, adverse inference should be drawn against the prosecution. But it is a settled principle of criminal jurisprudence, that it is not the quantity of witnesses produced by the prosecution, but the quality of witness which is material to a case. Considering the fact that the child lying besides the deceased was merely 10 year old child, considering the fact that Jadav Lalita (PW-2) was a girl studying in 1st year intermediate, considering the fact that she has clearly claimed that she saw the appellant running away from the scene of the crime, the prosecution was justified in producing a witness of a much more mature age than a child witness. Therefore, no adverse inference can be drawn against the prosecution for not having examined the ten year old child who was sleeping besides his mother.

The learned counsel for the appellant has also pleaded that there is no evidence to show that the stone discovered at the scene of the crime had any blood on it and even the blood group has not been identified. The said argument is unacceptable in the light of the FSL report (Ex.P-14). For, according to the FSL report, the stone contained blood group 'B', and the pillow cover contained

human blood. Hence, the argument of the learned counsel is unsustainable.

The testimonies of Barmavat Sajja Naik (P.W-3) and Shaik Mahaboob (P.W-4), belie the contention of the learned counsel for the appellant that there is no evidence produced by the prosecution in order to establish that there was a meeting held in the village panchayat or village elders, in order to resolve the conflict between the appellant and his wife. For, according to both these witnesses, there was a meeting of the elders which was called specifically for resolving the disputes which had erupted between the appellant and his wife. Moreover, according to Rathod Doma Naik, (PW-1), on the advice of the village elders, he had permitted his daughter, Sony Bai, and her children to go back to the matrimonial home. However, after some time, since the daughter continued to be tortured by the appellant, the daughter had come back to her parental home along with his grand-daughter. Thus the plea raised by the learned counsel for the appellant is clearly unsustainable.

The learned counsel for the appellant has also pleaded that despite the plea of alibi raised by the appellant, the same has been disbelieved by the learned trial court without any rhyme or reason. It is true that in order to establish the said plea, the appellant had examined Gurrapu Anjaiah (D.W-1). According to this witness, the accused was working on his farm, as a farm servant since 2011. This witness also states in his examination-in-chief that *“the accused attended the work prior to the day of death of his wife. He came to work at 6 am and left to his house at 7 pm. Accused came*

and informed me in the morning that his wife died and asked me for some money." In his cross-examination, he admits that the accused did not tell him as to how his wife died. The learned trial court posed a question to this witness, namely "*did the accused inform you whether anybody told him that his wife died?*" The witness answered, "*accused informed me only the wife said to have died.*"

According to Rathod Doma Naik (P.W-1), while his daughter lived in his village at Suleman Farm - Thanda, the accused lived in his village Mumbagapet, Lingapet Mandal. Moreover, according to this witness, the last bus that would come to his village would be at 10:00 p.m. at night.

If the plea of alibi were to be accepted by the Court, it would mean that the appellant was in his village when the incident had occurred. Yet, there is no explanation as to how the appellant would have come to know, in his village, that his wife had died in the intervening night of 04.05.2012 and 05.05.2012? Interestingly, Gurrapu Anjaiah, (DW-1) states that the accused told him in the morning that his wife died. Yet, even in his 313 Cr.P.C. examination, the accused does not tell the court, the source of information as to how he came to know that his wife has expired in the night. Due to these gaping holes, the learned trial court was justified in rejecting the defence of alibi, and in convicting the accused on the basis of cogent and convincing evidence produced by the prosecution.

Lastly, the learned counsel has strenuously argued that it is not a case of culpable homicide amounting to murder. But it is a

case of culpable homicide not amounting to murder. According to her, since it is a case of a single injury over the head, since merely a stone has been used to cause the death, the conviction under Section 302 IPC should be altered to a conviction under Section 304 Part-II IPC. However, even this plea is unacceptable for a holistic appreciation of the evidence would clearly reveal that the appellant had entered the house, at the dead of the night, carrying a stone (M.O-1) and hit the wife on the head, a vital part of the body, in order to kill her. Thus, it is a cold blood murder which has been planned and executed. Hence, the plea that it does not fall within the parameters of Section 300 IPC and should not be sentenced under Section 302 IPC is clearly unacceptable.

For the reasons stated above, the conviction and sentence recorded by the learned trial court, by judgment dated 28.08.2013, is hereby confirmed. Since the appeal is devoid of merit, it is, hereby, dismissed.

RAGHVENDRA SINGH CHAUHAN, J

M. SATYANARAYANA MURTHY, J

Date: 04.12.2018

KSP/MRKR



