

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.1150 of 2012

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

The sole accused in Sessions Case No. 88 of 2011 on the file of the Court of the Judge, Family Court-cum-Additional Sessions Judge, Vizianagaram is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name, Dhammi Lakshmi on 31st January, 2011 between 12 noon to 18.00 hours at Mulapadu village of Kondalingalavalasa Panchayat of Mentada Mandal, Vizianagaram district. By its judgment dated 30.04.2012, the learned Sessions Judge convicted the accused for the said offence and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.500/- in default to undergo simple imprisonment for a period of two months.

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

The accused is the husband of the deceased, while PW2 is the father of the deceased. PWs 3, 4 and 5 are residents of Mulapadu village, while PW1 and PW8 are the Village Revenue Officers of Chinthadavalasa and Lothugedda villages respectively. About one

year prior to the date of incident, PW2 performed the marriage of the deceased with the accused. He was also living in the same village where the accused and deceased were living, and one street intervenes between his house and the house of the accused. It is stated that the accused used to beat the deceased in a drunken condition, as he was addicted to alcohol, and the same was informed to him by the deceased. PW2 further deposed that he used to request the accused not to harass the deceased in drunken condition, but, there was no change in the attitude of the accused. His evidence is to the effect that the accused used to harass the deceased only while he was in an inebriated condition.

3. On the date of incident, i.e., on 30th January, 2011, the deceased went to the house of PW2 at 12 noon and requested him to provide 2 kg. of rice for cooking. After collecting 2 kg. of rice, she left to her house. On the same day evening, at about 6 p.m., PW2 and one Jayamma went to the house of the deceased and found her lying dead, on the pial of the house. The cooking vessels and other utensils in the house were found scattered. They also noticed a bleeding injury on the back of the deceased. They guarded the dead body on that night and on the next day morning, at about 6 a.m., PW2 and his son approached PW1 while he was in Panchayat office and informed him about the incident. PW1-the Village Revenue Officer recorded the statement of PW2, obtained an endorsement of PW2 on the said statement and visited the house of the accused. Thereafter, PW2 and PW1 went to the

police station and lodged a report before PW11-the Head Constable of Andra Police Station. Ex.P1 is the report given by PW2.

4. Basing on Ex.P1, a case in Crime No. 7 of 2011 came to be registered under Section 302 IPC. Exhibit P13 is the FIR. Immediately thereafter, PW11 intimated about the incident to PW12-the Circle Inspector of Police. Further investigation in this case was taken up by PW12. On receiving a copy of the express F.I.R., PW12, along with his staff proceeded to Mulapadu village and prepared a panchanama of the scene of offence in the presence of PW7. EX.P6 is the scene of offence observation report. At that time, he seized blood stained earth, controlled earth and one vessel (M.Os 2 to 4) from the scene of offence. He also got the scene of offence photographed through PW6. He examined PWs, 1, 2 and 6 and recorded their statements. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PWs 7 and 10. Exhibit P7 is the inquest report. After completing the inquest proceedings, the dead body was sent for postmortem examination.

5. PW9-the Civil Assistant Surgeon, Community Health Centre, Gajapathinagaram conducted autopsy over the body of the deceased and issued Exhibit P11-the Post Mortem Report. According to him, the cause of death was due to cardio respiratory arrest due to injury to vital organs.

6. While things stood thus, on 04.02.2011, the accused is said to have gone to PW1 and confessed about the commission of the

offence. At that time, the Village Revenue Officer of a different village, who is examined as PW8, was said to be present in the Panchayat office. The extra judicial confession made by the accused was reduced into writing and placed on record as Ex.P2. After recording the said statement, PW1 and PW8 took the accused to the police station at 5.45 p.m. to hand him over to PW12 along with a covering letter-Ex.P5. On receiving the said intimation, PW12 proceeded towards the police station and arrested the accused. On interrogation, the accused is said to have confessed about the commission of the offence. In the confessional statement, the accused also disclosed about the weapon used in the commission of the offence. On 05.02.2011, at about 7 a.m., PW12, along with his staff and PWs 1 and 8 proceeded towards a stream in Mulapadu village, from where they are said to have recovered one iron rod. M.O.1 is the iron rod.

7. After examining all the witnesses and collecting all the documents, PW12 filed the charge sheet, which was taken on file as PRC No.2 of 2011 on the file of Judicial First Class Magistrate, Gajapathrinagaram. 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. 88 of 2011 on the file of Court of the Judge, Family Court-cum-Additional Sessions Judge at Vizianagaram. Basing on the material on record, a charge for the offence punishable under Section 302 IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

8. To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P16 and M.O.1 to 9. 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 on behalf of the accused in support of his defence.

9. Basing on the extra judicial confession made by the accused, and the recovery of the weapon used in the commission of the offence pursuant to the confession made, the trial court convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed through legal aid.

10. The learned counsel for the appellant mainly submits that except the extra judicial confession made by the accused before PW1 and PW8, there is no other material connecting the accused with the incident in question. In the absence of any material to show that the accused was present in the house or seen going into the house with a weapon (iron rod), he would submit that the conviction of the accused based on the extra judicial confession alone, cannot be accepted. He further submits that there is any amount of doubt with regard to the recovery of M.O1 at the instance of the accused, since the identification slip which was pasted on M.O.1 at the time of the alleged seizure, is not found, though it was marked in the court. Further, it is contended that

the blood stains on the weapon used for the commission of the offence are not of human origin.

11. Having regard to the above, and since the persons before whom the accused is said to have made the extra judicial confession are strangers, the learned counsel would contend that it is improbable to believe that the accused would have made such a confession before the strangers.

12. On the other hand, the learned Public Prosecutor would contend that the evidence on record, more particularly, the extra judicial confession made by the accused before the Village Revenue Officers can be made the basis to convict the accused, as there are no reasons to disbelieve the said confession. In view of the earlier instances and the behaviour of the accused, he would contend that there is every reason for the accused to cause the death of the deceased.

13. The point for consideration is: whether the accused is responsible for the death of the deceased.

14. As seen from the record, there are no eye witnesses to the incident and the entire case rests on circumstantial evidence. It is to be seen whether the circumstances relied upon by the prosecution form a chain of events connecting the accused with the crime. In order to appreciate the same, it would be useful to refer to the evidence of few of the witnesses who were examined by the prosecution to prove their case.

15. PW2 is the father of the deceased. According to him, the marriage of the deceased with the accused took place about a year prior to the date of incident, and it was a second marriage for the accused. His evidence is to the effect that the accused used to beat the deceased in drunken state, as he was addicted to alcohol, and the said harassment of the accused was informed to him by the deceased. In his evidence, PW2 deposed that he made a request to the accused to look after his daughter(deceased) well, but, the accused did not heed to his request. PW2, in his evidence, categorically states that the accused used to harass the deceased only while he was in an inebriated condition. On the date of incident, at about 12 noon, the deceased came to the house of PW2 and collected 2 kg. of rice and then left to her house. In the evening, when PW2, along with his daughter, went to the house of the accused, he found the dead body of the deceased on the pial. In the cross-examination, he admits that he has not witnessed the incident and that he suspected the accused as the person who might have killed the deceased. He further admits that on the date of incident, he casually went to the house of the deceased in the evening. He further submits that he never raised any dispute before the caste elders or village elders nor lodged any report with the police complaining about the harassment caused by the accused to his daughter from the date of marriage. He further admits in the cross-examination that two days after the inquest, the police took the accused into custody in their village. It would

be useful to refer to this portion of his admission, which is as under:

“Two days after the inquest the police took the custody of the accused in our village.”

16. From the admissions made by PW2, it is clear that the deceased used to inform him about the harassment of the accused while he was in drunken condition. At the same time, it is also to be noted that he admits in the cross-examination that he has not witnessed to the incident and he went to the house of the deceased at 6 p.m., in a casual manner. The important admission made by PW2 is with regard to the time as to when the police had taken the accused into custody. PW1 is the Village Revenue Officer to whom PW2 informed about the incident on the next day morning, i.e., 01.02.2011, and pursuant thereto, all of them went to the police station and lodged a report. He also states about the extra judicial confession made by the accused on 04.02.2011, which will be discussed later.

17. PW3 was examined to speak to the fact of the accused carrying the iron rod. In his evidence, he deposed as under:

“The deceased died about one year back. The accused is the husband of the deceased. The accused married the deceased about one year back prior to the incident. The accused used to dispute with the deceased in a drunken state and used to beat the deceased daily, under the influence of toddy. I do not know the reason for his beatings. On Monday (date of incident) while I

was working in my field I noticed that the accused is going with a iron rod on his hands toward fields. On the same day evening I heard the cries from the house of the accused, on that I went to the house of the accused. Father, brighter and elder sister of the deceased are present there, the dead body of the deceased was lying on the pial of the house of the deceased and I noticed she sustained bleeding injury on her back. PW2 informed me that the accused murdered his wife. Police came thereon the next day. Police examined me and recorded my statement.”

However, in the cross-examination, he admits that PW2 never informed him about the accused killing his wife. He further admits that he does not know as to when the police arrested the accused in this case. He further admits that generally, farmers carry spades, crowbars, iron rods etc., to their fields.

18. A perusal of the evidence of PW3 would show that on the date of incident, while he was working in the field, he noticed the accused going with an iron rod in his hands towards the fields. From this, it cannot be said that the accused went back to his house with the iron rod and that he was present in the house and was responsible for causing injuries to the deceased with the said weapon. His evidence is only to the effect that he saw the accused going towards the fields with an iron rod in his hand.

19. PW4 is also a resident of Mulapadu village, who was eking out his livelihood by doing coolie work. His house is at a distance of hundred yards from the house of the accused. In his evidence, he also deposed about the accused beating the deceased in a drunken

state. He speaks about the earlier marriage of the accused with one Smhachalam and her elopement with another male person. According to him, on the date of incident, when he returned from his field by 6 p.m., he heard cries of PW2 from the house of the accused. When he went to the house of the accused and found the deceased dead. When he asked PW2, he seems to have told him that the accused might have killed the deceased and then ran away. On the next day, police came to the village and examined him. In his cross-examination, he admits that he has not seen the accused beating the deceased, and further states that he was not present in the village when the police came.

20. Though a perusal of the evidence of this witness shows that the accused used to beat the deceased while he was in drunken condition, but, insofar as the incident in question, he deposed that he returned from his field by 6 p.m., and then heard cries; immediately thereafter, he went to the house of the accused and found the deceased dead. He also refers to the presence of PW2 in the house of the accused and PW2 informing him about the possibility of the accused killing the deceased and running away from the house.

21. Similar is the evidence of PW5, who is also a resident of the same village, which is as under:

“Lakshmi is no more now as she died about one year back. One year prior to the incident the accused married the deceased. Earlier marrying the deceased the accused married our maternal aunt's daughter by

name Smhachalam. The accused used to beat Smhachalam in a drunken state, hence she eloped with another male person. The accused used to harass deceased Lakshmi also in a drunken state. He used to beat Lakshmi. Myself and the accused are residing in the same house but in two different portions. PW2 used to question the attitude of the accused. Lakshmi died on Monday. Myself, my wife and the deceased Lakshmi together had been to our respective fields on Monday. Lakshmi returned back to her house before 12 noon. Myself and my wife returned to our house at about 6 or 6.30 p.m. We heard the cries of PW2. It also noticed the dead body of Lakshmi at pial of the house of the accused.”

22. From the evidence of PWs 4 and 5, it is clear that both of them returned to their house at 6 p.m. Both the witnesses in one voice say that on hearing the cries of PW2, they proceeded to the house of the accused and saw the body of the deceased on the pial in the house of the accused. Admittedly, both these witnesses are not eye witnesses to the incident, and neither of them speak about seeing the accused in the house of the deceased on the evening of the day when the incident occurred.

23. On the other hand, the evidence of PW3 shows that at about 12 noon, he saw the accused going towards his fields armed with an iron rod. The evidence adduced by the prosecution does not anywhere show the time as to when he returned from his field and about the presence of the accused in the house between 12 noon to 6 p.m. on the date of incident. All the witnesses only refer to

the information given by PW2, wherein he expressed suspicion against the accused.

24. The next circumstance relied upon by the prosecution is with regard to the alleged extra judicial confession made by the accused before PWs 1 and 8. It would be useful to refer to the said evidence, which reads as under:

“PW1:- On 4-2-2011 at about 4 pm while myself and LW.19 Vishnu Murthy were present at MRO's office, Mentada, the accused came there and disclosed his identity to us and confessed that he murdered his wife on 31-1-2011 with iron rod at 2 pm with iron rod in a drunken state, as she is not co-operating with him. Then I recorded his statement (confessional). Myself and LW.19 signed on the confessional statement of the accused. Then we handed over the accused to the police along with the confessional statement. LW.19 Vishnu murthy recorded the confessional statement of the accused. Ex.P.2 is the extra judicial confessional statement of the accused. After handing over the accused to the police, CI of police interrogated the accused in my presence and LW.19 and the accused confessed about the commission of the murder of his wife and also stated that he would show the weapon which was hidden in the bushes of regi chettu, if they followed him. Ex.P.2 is the relevant portion in the confessional statement of the accused recorded by PW.19 before CI of police.”

“PW8:- On 4-2-2011 myself and PW.1 were in the MRO's office, Mentada at 4 pm, the accused came there and disclosed his identity to us and confessed that he murdered his wife and the police are searching for him, thereby he came before us, to handover him to the police. He also stated that he married the deceased about one year back prior to the incident and he habituated to take alcohol and his wife used to raise dispute with him one month after marriage, thereby he decided to do away her life. He also stated that his brother, his brother's wife, and the deceased together went to their fields in the morning and after completion of their work there they returned back to their respective houses. The deceased went to her parents house in order to secure some rice for cooking. Accordingly she brought some rice from her parents house and while she cooking rice the accused came to the house from forest and disputed with her, under the influence of toddy. While the deceased was cutting brinjal in order to prepare curry the accused took out a iron rod and dealt a blow on her back side with that iron rod.”

25. From the evidence of the above two witnesses, it is clear that the prosecution tried to connect the accused with the commission of the offence basing on the extra judicial confession made by him. It is urged by the learned Public Prosecutor that since both the statements inspire confidence and when these two witnesses have no enmity against the accused, nothing prevents

the court from accepting the said statements. It is to be noted here that the accused was a stranger to PWs 1 and 8, which is evident from the evidence of PW1 himself, wherein he categorically states that on 04.02.2011, at about 4 p.m., while himself and PW8 were present in the Mandal Revenue Office, the accused came there, disclosed his identity and then confessed about the incident. There was no reason for the accused to go and confess about the commission of the offence before strangers.

26. Apart from the above, it is to be noted that the incident in question took place on 31.01.2011, the report was given on 01.02.2011 and the inquest was also conducted on 01.02.2011. The evidence of PW2, referred to above, shows that the police took the accused into custody two days after the inquest. Hence, it is clear that by 3rd February, the accused was in police custody. That being the position, it cannot be said that the alleged extra judicial confession made before PWs 1 and 8 on 04.02.2011 was voluntary and free without any coercion. In fact, it cannot be treated as an extra judicial confession, since the accused was in illegal custody of the police from 03.02.2011 till he was shown to have been arrested. In fact, it has been the case of the accused all-through that the said confession is said to have been made by him, while he was in police custody. It would be useful to extract the relevant portions in the evidence of the witnesses to prove the defence of the accused, which are as under:

“PW1:- It is not true to say that the accused never approached me on 4-2-2011 and he never

gave any extra judicial confessional statement before us and we did not handed over the accused to police on 4-2-2011 along with Ex.P.2 statement.”

PW8:- It is not true to say that the accused never gave any Ex.P.2 statement before us and it is concocted in the police station at the instance of police. It is not true to say that from 1-2-2011 the accused is in police custody. It is not true to say that I am deposing false at the instance of the police.

PW12:- It is not true to say that there is no evidence made out against the accused who committed the offence and as a after thought I prepared the EX.P.2 and P.8 the extra judicial confessional statement and confessional statement of the accused with the assistance of PW.1 and PW.8. I have not taken any steps to preserve the place where the MO.1 was recovered as the said place is not known until the accused disclosed the same.”

27. These suggestions given to PWs 1, 8 and 12 with regard to the accused being taken into custody, get support from the admission made by PW2 in his evidence, wherein he states that the police took the accused into custody two days after the inquest. Apart from that, it is also to be seen that PW8, in his cross-examination, admits as follows:

“After recording my statement on 02.02.2011, the police never recorded my statement.”

This goes contra to the evidence of the investigating officer, wherein he deposed that he recorded the statement of PW8 after he produced the accused in the police station along with Ex.P2-the extra judicial confession statement.

28. Therefore, from the above circumstances, a doubt arises as to whether really the accused was arrested on 04.02.2011 and also as to whether he made the extra judicial confession before PWs 1 and 8 on his free will without any coercion. In fact, it is a confession made while in police custody, which is inadmissible in evidence, except to the extent of Section 27 recovery.

29. The next circumstance relied upon by the prosecution is the recovery of M.O.1-iron rod, pursuant to the confession made by the accused. The said iron rod was said to have been used in the commission of the offence. But, the evidence of the investigating officer and the expert show that the blood found on the iron rod is not that of human origin. Hence, a doubt arises as to the alleged recovery made pursuant to the confession. Even if the said recovery is to be accepted, still, the same cannot be made the basis to convict the accused, in the absence of any evidence establishing the other two circumstances which are relied upon by the prosecution.

30. In view of the above findings, we feel that no reliable evidence was adduced by the prosecution to prove the circumstances relied upon by them, so as to connect the accused with the crime.

31. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 30.04.2012 in Sessions Case No.88 of 2011 on the file of the Judge, Family Court-cum-Additional Sessions Judge at Vizianagaram, 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 MS. J. UMA DEVI

23.01.2018
DMG

