

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.877 of 2013

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

The sole accused in Sessions Case No. 12 of 2013 on the file of the Court of the I Additional Sessions Judge, Adilabad, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Boge Gaddemma by beating her with axe over her neck, head, face and other parts of the body, suspecting her fidelity. Vide judgment dated 3rd June, 2013, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for a period of three months.

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

PWs 2 and 3 are the children of the deceased and accused, while PW1 is the brother of the deceased. PW4 is also the brother of the deceased. PWs 5 and 6 are the neighbours residing near the house of the deceased. The marriage between the deceased and accused took place about (23) years ago. Initially, for a period of

three years, both of them lived at Doragaripalli village, and thereafter, shifted to Chennur, where they started living near the house of PW1. Out of wedlock, the deceased begot three children. It is stated that the accused was in the habit of consuming liquor and in the drunken state, he was assaulting the deceased, alleging that she was freely moving outside. About six months prior to the death of the deceased, the accused is said to have tried to kill the deceased by giving shock, but, she escaped from his hands. At that time, a panchayat was held in the presence of caste elders, where the accused ensured the elders that he would look after the deceased properly. At the time of incident, the deceased, accused and their two sons (PW2 and PW3) were living in the house of the accused. The marriage of the deceased and accused was performed some time ago. On the date of incident, on coming to know that the accused hacked the deceased with an axe, PW1 rushed to the house of the deceased and found injuries caused with an axe, on the left side of the neck, cheek and left shoulder of the deceased. Thereafter, PW1 lodged a report with PW9-the Inspector of Police, Chennur, basing on which a case in Crime No. 101 of 2012 came to be registered under Section 302 IPC. Ex.P7 is the First Information Report.

3. PW9, who took up investigation, visited the scene of offence at Maramma wada of Chennur town and noticed the body of the deceased lying in the house of the accused. In the presence of PW6 and others, he conducted inquest over the body. Ex.P2 is the inquest panchanama. During inquest, he is said to have seized

M.Os. 1 and 2 from the body of the deceased, and also M.Os 3 and 4. He also prepared a rough sketch of the scene, which is placed on record as Ex.P8. After conducting inquest, he sent the body of the deceased for post mortem examination.

4. PW10-the Civil Assistant Surgeon, Government Civil Hospital, Chennur conducted autopsy over the body of the deceased and issued Exhibit P9-the Post Mortem Report. According to him, the cause of death was due to haemorrhage shock due to cranio cerebral injuries.

5. Thereafter, on 29.07.2012, PW9 apprehended the accused, and on interrogation in the presence of PW7, the accused made a concession which led to recovery of M.O.5-axe, said to have been used in the commission of the offence. The same was seized under Ex.P4-confession panchanama.

6. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 50 of 2012 on the file of the Judicial Magistrate of First Class, Chennur. 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 2013 on the file of I Additional Sessions Judge, Adilabad. Basing on the material on record, a charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

7. In support of their case, the prosecution examined PWs. 1 to 10 and got marked Exs.P1 to P10 and M.Os.1 to 5. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced by the accused in support of his defence.

8. Relying on the evidence of PWs 1 to 4, coupled with the recovery of M.O.5, the learned Sessions Judge convicted the accused under Section 302 IPC. Challenging the same, the present appeal came to be filed through legal aid.

9. The learned counsel for the appellant mainly contends that the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime.

10. On the other hand, the learned Public Prosecutor opposed the same, contending that when the evidence of PWs 2 and 3 establish that both the accused and deceased were present in the house before they left the house, and in the absence of any explanation given by the accused as to how the deceased died, the finding of the trial court in connecting the accused with the crime, warrants no interference. In other words, he would contend that the circumstance of the accused and deceased being present in the house at the time of incident, recovery of M.O.5-axe which contains human blood, and the motive for the accused to commit

the offence, viz., suspecting the fidelity of the deceased, are sufficient to establish the guilt of the accused.

11. The point that arises for consideration is whether the accused was responsible for the death of his wife.

12. PW2 is the son of the accused and the deceased. In his evidence, he deposed that on the date of incident, himself, PW3, the accused and deceased were present in the house. In the evening, at about 5'O clock, PW2 left the house and within 15 to 30 minutes, he heard sounds from his house. Though he did not witness the accused killing the deceased, PW3 informed him about the incident.

13. PW2 was subjected to lengthy cross examination. In the cross examination, it was elicited that there were about five or six houses in between their house and the road. It was further elicited that at about 5 p.m., on the date of incident, PW2 left the house and within 15 to 30 minutes, he heard some noise from their house. He admits that he did not witness the accused killing the deceased, but his brother informed him about the same. The suggestion that the accused was not in the house when PW2 left the house, was denied. He further admits that though the accused goes out to attend coolie work, on the date of incident, he did not go for coolie work. He admits that he knows one R.Ankulu, who is their relative, but, denies that the said Ankulu used to come to their house frequently and that there was a talk in the village about illicit intimacy between the deceased and the said Ankulu.

The suggestion that Ankulu used to come to their house when their father went to work, was also denied.

14. PW3 is the younger son of the deceased and accused, and he was studying V Class at the time of incident. He deposed that at the time of death of the deceased, himself, his brother (PW2) and the accused were in the house. At that time, his father (accused) asked him to go out of the house, and accordingly, he went out and started playing near the school. While he was at the school, he found the accused putting the thatched gate to their house and moving fast, and on seeing the accused, PW3 rushed into their house and found the deceased on the ground with axe injuries on her neck and other parts. He suspects that his father has hacked the deceased.

15. PW3 was also cross examined at length. In his cross examination, PW3 admits that at the time of incident, he was playing hide and seek, and in the course of that play, he went inside the bathroom to hide, and within five minutes, his friends traced him out. He further admits that while they were playing, the movement of the persons on the road was not visible. He heard the sound of closing the thatched gate, when he hid himself in the bathroom of their school. Within fifteen minutes, he is said to have returned back home and noticed his mother lying with injuries. He admits that he did not witness the actual incident, and further adds that by the time he reached home, the accused left the house.

16. PW4 is not a eye witness to the incident. He is none other than the brother of the deceased. On receipt of information from the villagers about the death of the deceased, he went to the house of the accused and found the dead body of the deceased with bleeding cut injuries on her heck, throat and head. According to him, the entire neck portion of the deceased was cut. He further states that prior to the incident, the accused also gave current shock to the deceased, but she survived, which led to a Panchayat, wherein the accused admitted his guilt and assured the caste elders that he would look after the deceased properly.

17. During the cross-examination of PW4, it was elicited that a Panchayat was held in the presence of the caste elders, viz., Marthaiiah, Sudhakar and others. The suggestion that there was illicit intimacy between the deceased and R.Ankulu, was denied. In the cross examination, PW4 admits that a false allegation was made by the accused. He further admits that when there was such an allegation between the deceased and Ankulu, the deceased stopped working with him.

18. PW5 is a neighbour. In his evidence, he deposed that on 27.12.2012, while he was returning back from the place of work and when he reached Bethalagude of Chennur, saw the accused running. When asked as to what happened, the accused is said to have replied that his brother met with an accident. While he was proceeding to his house, he reached the house of the accused. He heard the cries of the deceased and also found her in a pool of

blood. After seeing the same, he informed the same to PW1. In the cross examination, it was elicited that he has stated before the police that the accused was found running when he saw him. But, however, admits that he did not mention before the police about the parts of the body of the deceased where injuries are found and also did not inform about the incident to anybody.

19. It is true that there are no eye witnesses to the incident and the case rests on circumstantial evidence. The prosecution mainly relied upon four circumstances, viz.,

- (1) accused and deceased being last seen in the company of the deceased, i.e., about (15) to (30) minutes prior to the incident;
- (2) PW5 seeing the accused running, and when questioned, giving a false explanation;
- (3) The accused absconding from the village for a period of two days, i.e, till his arrest; and
- (4) The accused suspecting the fidelity of the deceased.

20. The learned counsel for the appellant mainly submits that the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime.

21. On the other hand, the learned Public Prosecutor opposed the same, contending that when the evidence of PWs 2 and 3 establish the presence of accused and deceased in the house before they left the house, and in the absence of any explanation given by the accused as to how the deceased died, the finding of the trial court connecting the accused with the crime, warrants no

interference. In other words, he would contend that the circumstance of the accused and deceased being present in the house at the time of incident, recovery of M.O.5-axe, which contains human blood, at the instance of the accused, and the motive for the accused to commit the offence, viz., suspecting the fidelity of the deceased, are sufficient to establish the guilt of the accused.

22. As stated earlier, PWs 2, 3 and 5 are the three witnesses who were examined by the prosecution to establish the guilt of the accused. PW2, in his evidence, categorically deposed about the incident which took place about six months prior to the date of incident when the accused gave current shock to the deceased. He also deposed that in respect of the same, a Panchayat was held, wherein the accused agreed to look after the deceased well. On the date of incident, at about 5 p.m., PW2 left the house, and at the time of leaving the house, his father (accused), his brother(PW3) and his mother (deceased) were present in the house. About fifteen minutes after he leaving the house, the incident in question is said to have occurred. In the cross examination, he states that about (15) to (30) minutes after he left the house, he heard sounds from his house. But, he admits that he did not witness the incident and the same was informed to him by his brother. Though PW2, in his evidence, speaks about hearing cries fifteen minutes after leaving the house, in the cross examination, he states that he was at a distance of one furlong and again states that the distance between the road and their house is

almost equal to the distance between the court complex and the main road, and again, states that the distance may be equal to the distance between the court hall to the main road running in front of the court building. Thereafter, he again states that there are about five to six houses in between the road and their house. When the incident is said to have taken place at about 5 p.m., whether PW2 could have heard the sound from his house? Though, in the chief examination, he states that fifteen minutes after he left the house, the incident occurred, but, in the cross examination, he states that about fifteen to thirty minutes after he left the house, he heard the sound and he never gave any explanation as to where he was for that fifteen or thirty minutes. He further admits that he did not witness the incident, but his brother is said to have informed him about the incident.

23. From the evidence of PW2, it is clear that he returned to the house and saw his mother lying with bleeding injuries, basing on the sound from the house, is far from truth, since his own version varies with regard to the distance where he was standing. Suggestions, though given with regard to illicit intimacy between the deceased and Ankulu, were denied, the fact remains that the deceased left the services of the labour contractor on account of the rumour in the village with regard to the deceased developing illicit intimacy with Ankulu. However, the plea of PW2 is that it was Ankulu who was responsible for the death of the deceased. From the cross examination of PW2, it is evident that the

information about the incident was given to him by his brother, who is none other than PW3.

24. From the evidence of PW3, it is apparent that he could not have seen the person who entered the house or the person who left the house, as the answers elicited in the cross examination of PW3 would indicate that in the course of the game which they were playing, viz., hide and seek, he went inside the bathroom of their house, and within five minutes thereafter, his friends traced him. He further admits that while they were playing, the movement of the persons on the road was not visible to them. It was only elicited that he heard sound of closing of the thatched gate of their house when he hid in the bathroom of the school, and within fifteen minutes thereafter, he returned back to his house.

25. From the evidence of this witness, it is clear that he did not see as to when the accused left the house, and also as to the person who entered or left the house. His version is to the effect that half an hour after he went out to play, the accused left the house. This version of PW3 runs contrary to the evidence of PW2, for the reason that when PW2 left the house, both PW3 and the accused were in the house, and he heard cries within fifteen minutes and returned back home. Whereas, the evidence of PW3 is that half an hour after he went out of the house to play, his father (accused) left the house. If this version is correct, PW2 must have reached the house and seen the accused in the house. But, that is not the case of PW2. None of the witnesses have seen

the actual incident. Therefore, what happened in that half an hour is a matter of dispute.

26. In the absence of any evidence on record to show as to when the accused left the house and having regard to the discrepancies in the evidence of PW2, as to when the accused left the house, a doubt arises whether really it was the accused who was responsible for the incident, more so, in view of the admission of PW3 that before the death of his mother, his parents were living amicably in their house.

27. It is, no doubt, true that the accused was present in the house at the time when PW2 and PW3 were in the house. But, thereafter, PWs 2 and 3 claim to have left the house. Their evidence does not properly show as to when the accused left the house. Therefore, the version of PW2 and PW3 is inconsistent with each other, as to when the accused left the house and also as to when they returned to their house and saw the incident. Merely because an incident occurred six months prior to the incident proper, where the accused gave current shock to the deceased, that by itself, in our view, cannot be made the basis to infer that it was the accused alone who was responsible for the death of the deceased.

28. The only other material which remains on record to connect the accused with the crime is the evidence of PW5. Though PW5 claims to have seen the accused running away and when accosted, he is said to have replied that his brother met with an accident,

but, his admission in the cross examination shows that he noticed the accused walking at speed. This cannot be an unnatural circumstance, for the reason that even according to the evidence of PW2 and PW3, the accused left the house in the evening. Apart from that, PW5 admits that he did not inform anybody about the incident or about the accused. That being the position, his evidence informing the police about the accused, for the first time during the investigation, cannot be given much weight.

29. Though the learned Public Prosecutor tried to connect the accused with the recovery of M.O.5, as seen from the record, the blood stains which were found on M.O.5, though human, do not indicate the blood group, thereby not establishing the crucial link.

30. PW7, who was examined to speak to the alleged confession and recovery, admits that due to lapse of time, he is unable to recollect the exact dimensions, i.e., length and width of M.O.5. He further admits that he does not remember whether the width of M.O.5 was measured and mentioned in Ex.P4. Even assuming that the confession of the accused, leading to recovery of M.O.5, is proved through the evidence of the investigating officer and PW7, but, the same, in our view, is not sufficient to connect the accused with the crime, in the absence of any other evidence showing the involvement of the accused in the crime.

31. For the reasons stated above, we feel that it is a case where benefit of doubt can be extended to the accused, and accordingly, the accused is acquitted of the charge leveled against him.

32. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 03.06.2013, in Sessions Case No.12 of 2013, on the file of the I Additional Sessions Judge, Adilabad 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

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03.11.2018
DMG