

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.924 of 2013

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

1) The sole accused in S.C.No.86 of 2013 on the file of the Sessions Judge, Nizamabad, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Savanthi (hereinafter referred to as "the deceased") on 29.07.2012 at 3.15 p.m., by beating her with hands and legs and thereafter throttling her to death. Vide judgment, dated 24.09.2013, the learned Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer 'rigorous imprisonment for life' and to pay fine of Rs.1000/- in default to suffer simple imprisonment for a period of one month.

2) The facts in issue are as under:

i) PW.1 is the father of the deceased, while PW.2 is the younger brother of the deceased. PWs.3 to 5 are the neighbours. The marriage of the deceased and the accused took place two years prior to her death. After marriage, the accused set up his family at Chandrasekhar Colony of Nizamabad Town. Out of wedlock they blessed with a son, who was nine months old, when the deceased died. It is said that PW7, who used to sell vegetables in Chandrasekhar Colony, telephoned to PW.1 at about 4.00 p.m.

on the fateful day and informed them about the death of the deceased. Immediately, PW.1, his wife and other relatives reached the house of the accused and found the dead body of the deceased on the floor. They claimed to have noticed nail marks and scratches around the neck of the deceased. On a suspicion that the accused might have killed the deceased because of the disputes between them more particularly with regard to accused talking on phone with other ladies, he lodged a report with the Police at Nizamabad, basing on which the Sub-Inspector of Police, registered a case in Crime No.181 of 2002, for the offence punishable under Section 302 IPC. Ex.P10 is the first information. On the evening of 29.07.2012, PW.12, who is the Inspector of Police, Nizamabad Town, received a copy of the First Information Report and took up investigation in this matter.

ii) It is to be noted here that on 29.07.2012 itself, the Sub-Inspector of Police, sent a requisition to PW.9, to conduct inquest over the dead body of the deceased. On 30.07.2012, PW.12 proceeded to the scene of offence and in the presence of PW.8, conducted a panchanama of scene, which is marked as Ex.P7. At the time of conducting panchanama, he also prepared a rough sketch of the scene and also seized broken bangles. He examined PWs.1 to 7 and recorded their statements, apart from taking photographs of the scene of offence, with the help of PW.6.

iii) PW.9, who received the requisition for holding of inquest, proceeded to the scene of offence by 8.00 a.m., on 30.07.2012 and conducted inquest over the dead body of the deceased in the

presence of PW.8 and another. Ex.P6 is the inquest panchanama. At the time of conducting inquest panchanama, he noticed scratches around the neck of the deceased. Thereafter, the body was sent for postmortem examination.

iv) PW.11-the Civil Assistant Surgeon, Government Head Quarters Hospital, Nizamabad, conducted post mortem examination over the dead body of the deceased. According to him, the cause of death was “due to Cardio Respiratory failure due to asphyxia”. No ligature marks were found on the neck. He found compression in front portion of neck. Ex.P8 is the post mortem examination report.

v) On 31.07.2012, on reliable information, PW.12 along with staff and mediators proceeded to Chandrasekhar Colony, apprehended the accused and on interrogation he is said to have confessed about the commission of offence. After collecting all the material, PW.12 filed a charge sheet before the Court of Additional Judicial Magistrate of First Class, Nizamabad, which was taken on file as P.R.C.No.65 of 2012. After complying with Section 207 Cr.P.C., the case was committed to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.86 of 2013.

3) On appearance, a charge under Section 302 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P10 and MO.1. 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.

5) After considering the evidence on record, the learned Sessions Judge convicted the accused for the offence referred to above. Challenging the same, the present appeal came to be filed.

6) The main ground urged by the learned counsel for the appellant is that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution are not sufficient to establish the guilt of the accused. According to her, things would have been different had the incident occurred in the night time, but since the incident, as per the prosecution case, occurred at 3.15 p.m. and there is no evidence to show that the accused was present in the house at that time a doubt arises about his involvement in the case. Merely, because there were quarrels between the accused and the deceased, does not lead to an inference that the accused was responsible for the death of the deceased. She would further contend that though PWs.1 and 2 speak about the existence of scratch marks and nail marks around the neck, but the evidence of the doctor is silent on the said aspect. In view of the inconsistency between the oral evidence

and medical evidence, the version of PWs.1 and 2 cannot be taken at its face value. In the absence of any corroboration to the evidence of PWs.1 and 2 and when their version was falsified by the medical evidence, she would submit that the accused is entitled for the benefit of doubt.

7) On the other hand, the learned Public Prosecutor would submit that though there are no eye witnesses to the incident, but as the dead body is found in his house, it is for the accused to explain as to how the incident took place. In the absence of any explanation by the accused, as to how the deceased died, he would submit that a presumption has to be drawn that the accused alone was responsible for the death of the deceased, more so, in view of earlier disputes between the accused and the deceased.

8) In order to appreciate the rival contentions, it would be useful to refer to the evidence adduced by the prosecution.

9) As seen from the record, PWs.3, 4, and 5, who were examined to speak about the incident, did not support the prosecution case and they were treated hostile by the prosecution. Their evidence only establishes that the accused and his wife, who were tenants in the house of PW.3, used to live together and out of wedlock they were blessed with a son.

10) The only other evidence, which has been adduced by the prosecutor to establish the guilt, is the evidence of PWs.1 and 2. PW.1 is the father and PW.2 is the brother of the deceased.

Their evidence show that pursuant to an information received from PW.7 about the death of the deceased in a house situated near to his shop, PW.1 proceeded to the house of the accused along with his family members. Both PWs.1 and 2 deposed that they have noticed nail marks and scratches around the neck of the deceased. In view of the earlier disputes between the accused and deceased and basing on the information furnished by the deceased that the accused was talking with other ladies, the law was set into motion, suspecting the involvement of the accused in the crime. But it is to be noticed here that none of them spoke about the presence of the accused in the house at the time of incident. They did not enquire with the neighbours as to the presence of the accused in the house. In fact, PW.1 in his cross-examination admits that in Ex.P1 he did not specifically mention that the accused caused the death of his daughter. He further did not mention about the nail marks on the neck of the deceased. Even PW.2, who was examined to speak about the involvement of the accused, in his cross-examination admits that he has not stated before the police about noticing broken bangles at the scene and also about his sister telephoning to him earlier. Even PW.7, who sells vegetables in the said area, does not speak about the presence of the accused in the house at that time.

11) From the evidence of these three witnesses, it is very clear that the presence of the accused in the house on that day at that time ie. 3.15 p.m. was not established. Though the accused took a plea that he went on work on that day but did not

conclusively establishes the same. But the burden is on the prosecution to establish that the accused was present in the house at the time of incident and thereafter it shifts on to the accused to show that he was not present in the house. In the absence of same, a doubt arises whether the accused was really present in the house at that time and also about his involvement in the crime.

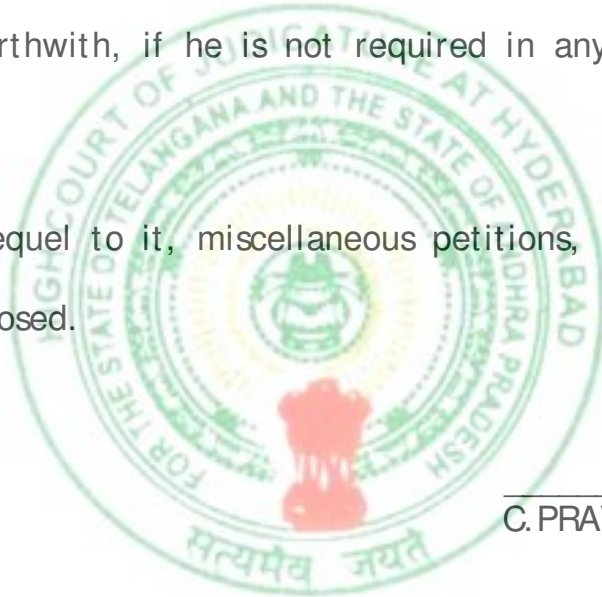
12) The other circumstance which throws doubt on the prosecution case was the cause of death. Though PW.11 in his evidence categorically speaks that in case of throttling by applying fingers, marks of pressure of thumb and finger tips are present on both the sides of neck, but he also did not notice any bruise, abrasion and external injuries except compression of neck.

13) PW.10, the Civil Assistant Surgeon, who is examined to speak about the status of the uterus of the deceased, states that no external injuries were found on the body of the deceased. She further admits that in case of throttling, bruises would be found around the neck. She categorically admits that in the instant case they were not seen. To a question as to why PW.11 mentioned about compression on neck, PW.10 states that it indicates some pressure was used on the neck. Therefore, from the medical evidence it is clear that even the doctors were not sure as to the cause of death. If really the death was due to strangulation as mentioned in the post mortem examination report, some marks of violence/ finger marks/thumb marks/redness or ligature marks should have been present. The argument of the learned Public

Prosecutor that a pillow must have been used to smother, cannot be accepted since the prosecution did not make any effort to seize the said pillow. Even there was no fracture of hyoid bone or cartilage. In view of the above findings, we feel that it is a fit case where benefit of doubt can be extended to the accused.

14) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ Accused in Sessions Case No.86 of 2013 on the file of the Sessions Judge, Nizamabad, are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime.

15) As a sequel to it, miscellaneous petitions, if any, pending shall stand closed.



C. PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

03.11.2018
gkv