

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.270 of 2013

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

1) The sole accused in Sessions Case No.414 of 2012 on the file of the Principal Sessions Judge, Medak at Sangareddy, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Md. Fareeda (hereinafter referred to as "the deceased") by beating her with his helmet and when she fell down on the ground, he threw a granite stone on her head. By its judgment, dated 08.03.2013, the learned Sessions Judge, convicted him for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.10,000/- in default to suffer rigorous imprisonment for a period of four months.

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

i) Accused is said to be the husband of the deceased. PW.1 is the father of the deceased while PW.2 is the mother and PW.3 is the sister of the deceased. The marriage between the accused and deceased took place about 11 years back. At the time of marriage, they gave cash of Rs.50,000/- towards dowry. Both of them lived happily for some time and out of wedlock they were blessed with

two children. It is said that since 5 or 6 years, the accused has been harassing the deceased by suspecting her whenever she talks to a stranger. It is said that PW.1 used to console the deceased and send her back. Though PW.1 tried to conciliate the dispute between them, the accused did not stop the harassment and the accused used to beat and scold the deceased. Accordingly, a report came to be lodged before Shankarapally Police Station. On three or four occasions both the parties were counseled. Just prior to the date of incident, the accused took the deceased saying that he will look after the deceased. The evidence of PW.10 would reveal that on 06.06.2012, the deceased came to the police and reported that her husband is suspecting her fidelity and asked PW.10-the Sub-Inspector of Police to talk to him. The accused assured that he will take care of the deceased well, as such both of them left. Again the deceased came to the police station on 10.07.2012. PW.10 advised her to go to woman police station and get a case registered against her husband. Then she informed that since PW.10 gave counseling earlier, requested him to counsel the accused. As such, he called the accused on that day and advised him to look after the deceased well. He warned him that if he does not look after the deceased well, he would file a case against him. Then both of them left. This was on 10.07.2011 at 10.30 a.m. Within one and half hour thereafter ie., by 1.00 p.m., the accused came to the police station and confessed before PW.11-the Inspector of Police that on that day at about 12.00 noon he stopped his motor cycle within the limits of Nagulapally Maktha

forest area and while talking, he beat the deceased with a helmet on her face due to which she fell down. He took a granite stone and beat on her head. As a result of which the deceased died. The said confession made by the accused came to be registered as a case in Crime No.148 of 2012 for an offence punishable under Section 302 IPC. Ex.P9 is the first information report. He also seized the motor cycle from the accused which is marked as M.O.8. At the instance of the accused, all of them went to the scene of offence, where the accused pointed out the dead body of the deceased. In the presence of PW.8, the Inspector of Police (PW.11) conducted scene of offence panchanama and seized M.Os.1 to 4. He recorded the statements of PWs.1 to 3, and then conducted inquest over the dead body of the deceased in the presence of PW.8. Ex.P3 is the inquest report. Thereafter, he sent the dead body for postmortem examination.

ii) PW.9-the Civil Assistant Surgeon, Government Hospital, Sangareddy, conducted autopsy over the dead body of the deceased and issued Ex.P7-the postmortem certificate. According to him, the cause of death was “due to laceration of right frontal bone of lobe of brain due to head injury”.

iii) After completing the investigation, and after collecting all the material, PW.11 filed a charge sheet before the Court of Additional Judicial Magistrate of First Class, Sangareddy, who inturn committed the case to the Sessions Division under Section

209 of Cr.P.C., wherein it came to be numbered as S.C.No.414 of 2012.

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 11 and got marked Exs.P1 to P12 and MOs.1 to 8. 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. Neither oral nor documentary evidence was adduced on behalf of the accused.

5) Out of 11 witnesses examined by the prosecution, PWs.4 and 5 did not support the prosecution case and were treated hostile by the prosecution. Basing on the circumstances relied upon by the prosecution namely, motive, last seen and the discovery of the body at the instance of the accused within 2 ½ hours from the time of leaving the police station, the trial Court convicted the accused. Assailing the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution, do not form a chain of events connecting the accused with the crime. He would further submit that except last seen there is no other circumstance to connect the

accused with the crime. Since the confession made by the accused before the police which lead to registration of crime is not admissible in evidence, he would submit that the sole circumstance of accused being last seen in the company of the deceased cannot be made the basis to convict the accused.

7) On the other hand, the learned Public Prosecutor would contend that it is not a case where the prosecution is relying only upon last seen. According to him there are two more circumstances which clinchingly establish the involvement of the accused in the commission of offence namely the motive and the recovery of the dead body of the deceased at the instance of the accused.

8) The point that arises for consideration is whether the accused is responsible for the death of the deceased, if so, whether he is liable for punishment under Section 302 IPC.

9) Admittedly, the deceased is none other than the wife of the accused. The evidence of PWs.1 to 3 categorically show disputes between the accused and the deceased. As stated earlier, PW.1 in his evidence deposed that the marriage between the accused and the deceased took place about 11 years back and both of them lived happily for some time. Out of wedlock, they blessed with two children. However since 5 or 6 years, the accused was harassing the deceased by suspecting her fidelity. The deceased used to inform the same to her parents but they used to console her and send her to the accused. Counseling was done to both on

number of occasions. PW.10 played a crucial role in counseling both the parties. However, the material on record shows that the harassment in the hands of accused lead to lodging of a report before Shankarapally Police station, which was later closed due to compromise arrived at between the parties. Though PW.1 was cross-examined at length, nothing useful came to be elicited to discard his evidence with regard to harassment made by the accused. It has been elicited in the cross-examination that a report of harassment was given about one month prior to the death of the deceased. It is said that since then the deceased was residing with PW.1 except on the day when the accused took her along with him. It has been elicited in the cross-examination that on the first occasion of counseling, the deceased went along with the accused. On the second occasion she came along with them, on third occasion the deceased went along with the accused and on the fourth occasion the incident in question took place.

10) Coming to the evidence of PW.2, her version toes in line what PW.1 has been stated in his chief examination. She also refers to the harassment made by the accused, counseling that took place before PW.10 and lodging of a report before Shankarapalli Police. Similarly, PW.3, who is the sister of the deceased, also speaks about the marriage between the accused and deceased, disputes between them, accused suspecting the fidelity of the deceased and also about the accused beating her when she talked with others. Apart from all these facts, she also refers to lodging of a report before Shankarapally Police Station,

wherein the police counseled to the accused. She further states that the accused assured the police that he will look after the deceased well and take her back. However, there was no change in the attitude and he used to beat the deceased. Her evidence is also to the effect that though PW.10-the Sub-Inspector of Police, counseled the accused but on the way he killed the deceased, by beating her with a helmet and stone. In the cross-examination it has been elicited that the deceased used to inform them about the harassment through phone and also personally, however she admits that no case was registered by Shankarapally police, as there was a compromise.

11) From the evidence of these three witnesses, it is clear that there were differences between the accused and the deceased and the deceased was staying away from the accused. She was accompanied the accused on the days when there was counseling. The record also discloses that even on the date of incident, she went along with the accused to PW.10, requesting him to advise the accused as he moulded his behaviour for some time on earlier occasions. Keeping the motive in the background, we shall now proceed to see as whether there is any other material to connect the accused with the crime.

12) One of the circumstances relied upon by the prosecution is the accused being last seen in the company of the deceased. The fact that both of them went to the police station at 8.30 a.m., and then left the police station at 10.30 a.m. on the

date of incident is not in dispute. Even the counsel for the appellant did not dispute the said fact. His argument appears that this circumstance alone is not sufficient to convict the accused. There is no dispute with regard to the proposition laid by the Apex Court in *Kanhaiya Lal v. State of Rajasthan*¹ to show that the last seen together does not by itself necessarily lead to an inference that it was the accused who killed the deceased. But in the instant case, it is to be noted that the accused and deceased together left the police station at about 10.30 a.m. and by 1.00 p.m. the accused returned to the police station and confessed about the commission of offence which lead to registration of a crime. Confession made to the police disclosing the commission of offence inculcating himself is not admissible in evidence, but the said confession leading to discovery of dead body of the deceased at the instance of the accused is admissible under Section 27 of the Evidence Act.

13) As seen from the evidence, at about 1.00 p.m., the accused came to the police station, and confessed about the commission of offence, stating that at about 12.00 noon on that day he killed the deceased by beating her with helmet which broke into pieces and when the deceased fell down he hit her head with a granite stone. Basing on the said confession the accused along with police went to the scene of offence, discovered the dead body at the scene at the instance of the accused and the two pieces of helmet apart from stone containing bloodstains seized. It is true

¹ (2014) 4 SCC 715

that there is no evidence to show that blood on the stone was that of the deceased but the dead body of the deceased was present at the scene. The said dead body came to be discovered pursuant to the information given by the accused.

14) Now the question is whether the three circumstances namely motive, last seen and the discovery of the dead body at the instance of the accused are sufficient to base a conviction.

15) The Apex Court in *Charandas Swami v. State of Gujarat and others*², after referring to various judgments of the Apex Court held as under:

“49. As regards the identity of the dead body, the Courts below took note of the evidence of PW57 and PW50. PW50 had informed the local police of Barothi on 4th May, 1998 about the dead body of an unknown person lying at the same spot, later on discovered to be that of Gadadharanandji due to the disclosure made by Accused No. 3. PW57 conducted the post-mortem of the burnt dead body found at Barothi village in Rajasthan. He deposed that the death was homicide. He also deposed about the golden teeth and a key found near the dead body. During the course of investigation, it was revealed that the said key could open the lock put up on the room of the deceased in the Vadtal Temple complex. PW3 corroborated that fact. Further, the identity of the dead body was conclusively established from the DNA testing results of the skin sample of the body which matched with the blood samples of the biological sister of the deceased. Additionally, PW1 also confirmed that he had treated the deceased in 1993 by implanting gold caps on his teeth. That statement was corroborated by the

² AIR 2017 SC 1761

receipts and diary entries of PW1. Indeed, the Appellants have vehemently contended that the said medical records are fabricated because of the discrepancies therein. However, the said discrepancies would not discredit the other evidence regarding the identity of the dead body which has been duly corroborated. This view taken by the High Court, in our opinion, is a possible view. It is certainly not a perverse view. As the identity of the dead body of deceased Gadadharanandji is established, it is a strong circumstance to link it to Accused No.3 who had voluntarily disclosed to the investigating agency about the spot/location where the dead body of the deceased was dumped by him and that being the same place in Barothi village in Rajasthan from where the dead body of an unknown person was recovered earlier by the local police.

16) In *A.N. Vekatesh and Anr. v. State of Karnataka*³ the Apex Court held as under:

“9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct Under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand v. State (Delhi Admn.)*⁴. Even if we hold that the disclosure statement made by the accused-Appellants (Exts. P- 15 and P-16) is not admissible Under Section 27 of the Evidence Act, still it is relevant Under Section 8. The evidence of the

³ (2005) 7 SCC 714

⁴ 1979 SCC (Cri.) 656

investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence Under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible Under Section 8 of the Evidence Act.” (emphasis supplied)

17) In *Kishore Bhadke v. State of Maharashtra*⁵ the Apex Court also dealt with a case of abduction and murder. It was a case where after committing the murder by strangulation in the cattle shed, the dead body was taken away in a gunny bag and then thrown in a valley near Deona Darshan Point. Thereafter, the accused burnt the gunny bag as well as the rope used for strangulation. Pursuant to the arrest, the accused agreed to show the spot including the place where the gunny bag, clothes and documents were burnt and also the place where the dead body was disposed. Pursuant to the said disclosure statement, the police went to the place where the dead body was thrown and recovered the same. It was also a case where the prosecution relied mainly on motive, last seen and the recovery of the dead body. Relying upon the three circumstances, the Apex Court upheld the conviction of the appellate Court and dismissed the appeal.

18) In view of the judgments of the Apex Court referred to above and having regard to the fact that the circumstances mainly motive, last seen and the recovery of the dead body at the

⁵ (2017) 3 SCC 760

instance of the accused within a period of three hours from the time being proved beyond doubt, we feel that the prosecution was successful in proving the chain of events connecting the accused with the crime.

19) Hence, the Criminal Appeal is dismissed. Confirming the conviction and sentence imposed in Sessions Case No.414 of 2012 on the file of the Principal Sessions Judge, Medak at Sangareddy.

20) Consequently, miscellaneous petitions, if any, pending shall stand closed.

07.03.2018
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JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI