

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE Mrs. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1301 of 2011

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

The sole accused in Spl.S.C.No.5 of 2009 on the file of the Special Sessions Judge – cum - IV Additional District and Sessions Judge, Chittoor at Tirupati is the appellant herein. He was tried for the offences punishable under Section 302 IPC and Section 3(2)(v) of SC and ST (Prevention of Atrocities) ACT, 1989. Vide judgment dated 18.07.2011, the learned Sessions Judge convicted the accused for the offence punishable under Section 3(2)(v) of SC and ST (Prevention of Atrocities) ACT, 1989 and sentenced him to suffer imprisonment for life. In view of the above, no separate conviction under Section 302 IPC was awarded.

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

(i) PW1 and PW2 are brothers of the deceased.

(ii) The marriage between the deceased and one Venkataiah was performed about fifteen years prior to the incident. Out of wedlock they were blessed with two children. The said Venkataiah died about two years prior to the death of the deceased. After the death of said Venkataiah, the accused took the deceased Sumathy and lived with her at Guragaripalle, which is also called as

Brahmana Kaluva. Sometime thereafter, the children of the deceased started visiting the house of the accused and then the children and her mother Sumathy were frequently visiting the house of PW1. While things stood thus, the daughter of the deceased attained puberty and since then the deceased started living at the house of PW1. The accused used to visit the house of the deceased now and then, but PWs.1 and 2 admonished him for visiting the house of Sumathy. While so, on 08.07.2008, in the early hours, at about 03.00 a.m., on hearing the cries of said Sumathy, PWs.1, 2 and his son PW3 woke up and went towards an open space which was at a distance of ten yards from the house. They found the deceased with cut injury on the throat and they also saw the accused running away from the scene. They tried to catch hold of the person who was running away, but in vain. On hearing their cries, the villagers gathered there and thereafter a report came to be lodged before PW12 the SI of Police, pursuant to which, a case in Crime No. 113 of 2008 came to be registered for the offence punishable under Sections 3(ii)(v) of SC & ST (POA) Act. Ex.P7 is the FIR. Further investigation in this case was taken up by PW13 the then Additional S.P., Tirupati. On receipt of a copy of FIR from PW13, he visited the scene of offence, observed the scene and also prepared a rough sketch of the scene, which is placed on record as Ex. P8. He then conducted inquest over the body in the presence of PW9. Ex.P4 is the inquest report. The inquest panchayatdars opined that the deceased was having extra-marital relationship with the accused and the deceased refused to continue the relationship

with the accused since her daughter, who attained puberty, was staying with her. Subsequently, the body was sent for post mortem examination. PW8, who worked as Assistant Professor in the Department of Forensic Medicine in S.V.Medical College, Tirupati, conducted autopsy over the dead body and issued Ex.P3 the post mortem certificate. According to him, the cause of death was due to cut throat injuries. Further investigation in the case was taken up by PW14, who is said to have arrested the accused on 06.02.2009 at 03.30 p.m. in the presence of PWs.10 and 11. It is stated that on the date of incident, the accused was staying in front of the temple and pursuant to the information received, PW14 proceeded to the said place and arrested the accused. On interrogation, the accused is said to have confessed about the commission of offence, pursuant to which, the knife which was used in the commission of offence was recovered from the mango garden. MO1 is the said knife. After collecting all the necessary documents, a charge sheet came to be filed which was taken on file as PRC No. 15 of 2009, on the file of III Additional Judicial Magistrate of First Class, Tirupathi.

(iii) On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal, the IV Additional District and Sessions Judge, Chittoor at Tirupathi, numbered the case as Spl.S.C.No.5 of 2009. On the basis of the material on record, charges under Section 302 IPC and Section 3(2)(v) of SC and ST (Prevention of Atrocities) ACT, 1989, came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

(iv) In support of his case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P13 and MO.1.

(v) 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 came to be adduced on behalf of the defence.

(vi) Relying upon the evidence of PWs. 1 to 3, the learned Sessions Judge convicted the accused and sentenced him to suffer imprisonment for life for the offence punishable under Section 3(2)(v) of SC and ST (Prevention of Atrocities) ACT, 1989. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that there are no eye witness to the incident and the circumstances relied upon by the prosecution do not show that the accused was responsible for the death of the deceased. He further submits that the dead body of the deceased was found in an open land at about 03.30 a.m. and in the absence of any eye witness, who came there on hearing cries could not have seen the accused killing the deceased, or seeing him running away from the scene of offence. The plea of the counsel appears to be that the incident in question happened when she went to answer the calls of nature. Hence pleads that it is impossible to believe that the accused would have come there anticipating the deceased, going to attend nature's call at that time.

4. On the other hand, the learned public prosecutor submits that there are no reasons to disbelieve the evidence of PWs.1 to 3, since the inquest report discloses presence of considerable light at a distance of 15 yards. He submits that there is no motive for these witnesses to speak falsehood against the accused. Hence, he pleads that the evidence of PWs.1 to 5, though do not speak about the actual attack, but definitely the same can be relied upon to connect the accused with the crime.

5. In order to appreciate the above arguments, it would be useful to refer to the evidence of PWs.1 to 5.

PW1 is the brother of the deceased. His evidence is to the effect that the distance between his village and the village of the accused is two kilometers. According to him, the deceased was married to one Veta Venkataiah and out of wedlock they were blessed with two daughters. About two years prior to the incident, the husband of the deceased died. Since then the accused started visiting the house of the deceased now and then. Some time later, the deceased went to the house of the accused and started selling toddy at Kotturu cross roads. It is stated that the daughters of Sumathy were also visiting the house of accused as well as the house of PW1 and were studying in a Municipal High School at Chennareddy Colony, Tirupati. When the elder daughter of Sumathy attained puberty, she came to the house of PW1 where they were provided with a house by PW1, in which they continued to stay. It is stated that the accused started visiting the house of the

deceased. On seeing the same, PW1 and other family members admonished the accused in coming to the house of the deceased. While things stood thus, on one day i.e., on 08.07.2008, at about 03.00 a.m., (early hours), they heard the cries of the deceased from her house. Then PWs.1, 2 and 3 and others woke up and went towards the scene which is at a distance of 10 yards. There they found the deceased with a cut injury on the throat and also claim to have seen the accused running away. These witnesses claim to have chased the accused to a distance, but could not catch him. On hearing the cries of PWs.1 and 2, the villagers gathered there and noticed blood oozing from the injury. Thereafter, the law was set into motion by lodging a report. In the cross examination, PW1 stated that the deceased and accused lived together for six (06) months. He further admits that when the ladies go for latrines, they shall go to the country latrines with other ladies and not alone. To a suggestion that they have not seen the accused running from the spot was denied. The cross examination of PW1 further reveals that they heard cries of the deceased from the house and on hearing the same, they went there, by which time the deceased was on ground with cut injury on the neck. It is also their case that they noticed the accused running away wearing banian and knicker.

PW2 who is brother of PW1, deposed on the same lines as spoken to by PW1 with regard to the marriage of the deceased, death of her husband, the accused visiting the house of the deceased and the deceased going to the house of accused. He further states that the accused used to visit the house of PW2 now and then and

threaten the deceased to commit suicide by cutting his throat. Sometime later, the deceased return back and was started staying in a separate house with her parents and daughters. On one day, they heard the cries of the deceased, woke up, rushed to the spot and found the deceased with bleeding injuries and the accused running away from there. He submits that they belong to 'Madiga' community and the accused belongs to 'Ediga' community. In the cross examination of PW2, it was elicited that the deceased stayed with the accused for a period of four years and the scene of offence is at a distance of 10 yards from the house. He further admits that in their village, the ladies go to country latrine in the early hours of day along with other ladies. He states that on the date of incident, said Sumathy did not go out with other women, while going for country latrine. According to him, after hearing the cries, himself, PW1 and others reached the spot. He further submits that by the side of scene of offence, there are sugarcane and groundnut fields. He further admits that the man who killed the deceased was seen by them, when he was at a distance of 20 yards and that the said person was wearing a banian and khaki drawer. They did not try to chase and catch hold of the accused. From the cross examination, two things are quite apparent. (i) He did not specifically say that it was the accused who killed the deceased and ran away, but only states that the person who killed the deceased was seen running away from a distance of 20 yards and the said person was wearing banian and khaki knicker. Though PW1 in his chief states that they tried to apprehend the accused, but the same was denied in the

cross examination. The second aspect, which assume significance from his cross examination is that on the date of incident, the deceased alone went for country latrine and that she did not go with other women, as done regularly.

PW3, the daughter of the deceased, says that on that day, at about 08.00 a.m., PW2 came to her hostel and informed her about the death of the deceased in the hands of the accused. Thereafter she left home to see the deceased.

PW4 is the resident of the village, who eeks out his livelihood by doing coolie work. It is stated that the accused used to threaten the deceased to kill, if she does not come with him. PW4 is said to have admonished the accused for such threats. According to him, in the early hours of the date of incident, PW1 and his wife raised cries stating that the accused killed the deceased. Then, himself and his wife came out of the house and noticed the deceased with bleeding injuries. His evidence is to the effect that he did not see the accused at the spot, but has seen him while he was running at some distance. In the cross examination, he admits that he did not state before the police about the accused making galata on the previous night. In the cross examination, he further admits that within two or three minutes after the incident, he reached the spot and noticed the accused at a distance of 60 yards and was running towards northern side. According to him, around the scene of offence, there was a jowar crop. To a suggestion that he is deposing false, was denied by him. He also denies that suggestion that the

information about the incident was furnished to him by PW1 and his wife and that he has seen the accused at a distance of 60 yards. From the evidence of PW4, who is an independent witness, it is clear that on hearing cries of PW1 and his wife, he came out of his house within two or three hours and saw the accused running at a distance of 60 yards. His evidence may not be of much help to the prosecution since he saw the accused running at a distance of 60 yards from the scene. Admittedly, it was a dark night and the incident happened at 03.00 a.m. In the absence of any evidence to show that there was light in and around the scene of offence, it would be difficult to believe that PW4 would have identified the person who was running away at a distance of 60 yards as the person who committed offence.

PW5 is not eye witness to the incident. She is the mother of PWs.1, 2 and the deceased. She only speaks about the accused demanding the deceased to come and join him. Her evidence is to the effect that when the deceased refused to come, accused cut the throat of the deceased at the fields of Subramanyam Reddy and absconded. PW6 is the son of the deceased. Though he spoke about his mother being done to death by the accused, his evidence does not show that he has actually seen the accused. His evidence is to the effect that after the death of his mother, his relatives brought him from the hostel to Vemuru village. PW2 is said to have told him that it was the accused who killed the deceased. PW7 is the resident of Vemuru village and wife of PW3. Her evidence is to the effect that the deceased came to their village and started staying

with her daughter and when the accused offered to take him, she refused. She further deposed that the accused came to the village and asked the deceased three or four times with the same request. PWs.1,2, 7 and others are alleged to have admonished the accused. But, on the date of incident, while they were sleeping, the wife of PW1 came to their house at early hours of 03.00 a.m. and informed about the incident in question. Her evidence is to the effect that when she went to the scene of offence, the accused was running away. Though in the cross examination, she states that she saw the accused running away, but her evidence in chief shows that she came to the scene after the information was furnished to her by PW1 at 03.00 a.m., meaning thereby that her version in cross examination that the accused was seen running away from the scene appears to be doubtful.

6. From the evidence of the witnesses referred to above, it is clear that none of them have seen the actual attack on the deceased. PWs.1 and 2, in their evidence only speak about seeing the accused running away from the scene. It is not in dispute that dead body was found in an open land, which was at a distance of 10 yards from the house. It is not the case of the prosecution that the deceased was assaulted inside the house and that she came running out of the house due to injuries and fell on the ground. On one hand they say that they heard cries at the house and on the other hand they themselves speak about body lying at a distance of 10 yards away from the house. These circumstances, if decided with the answers given by PW2 in the cross examination, namely, that on that day the

deceased alone went to attend the calls of nature, there arises some doubt with regard to the participation of the accused in the incident. It is the evidence of PWs.1 and 2 that everyday all the women in the village go together to country latrine and the evidence of PW2 indicates that on that day she alone went at 03.00 a.m. in the night to attend calls of nature. It would be useful to refer to the said admission of PW2 in the cross examination, which is as under:

“In our villages, lady members go to country latrine in the earlier hours of day along with other ladies. On the date of incident, Sumathy not went with another lady while going for country latrine.”

7. When the accused was not staying with the deceased and was staying in a different village, he could not have anticipated the deceased going out alone to country latrine on that day. It is not the evidence of the witnesses that the deceased has a habit of going out at that time to attend the calls of nature. It is also not the case of the prosecution that the accused was seen around the house on that night. Therefore, we feel that ‘seeing the accused running away from the scene’ is a theory which is sought to be introduced to fix the accused by suspecting him to be the culprit, in view of the disputes. It is well established principle of law that the prosecution has to prove the case beyond reasonable doubt and there is lot of difference between ‘may be true’ and ‘shall be true’.

8. In ***Kailash Gour and others vs. State of Assam***¹ the Apex Court held as under:

¹ AIR 2012 SC 786

“It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between accused ‘may have committed the offence’ and ‘must have committed the offence’ which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognised as a human right which cannot be wished away.”

9. In ***State of U.P. v. Krishna Gopal***² the Apex Court observed as under:

'25. ... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

10. Having regard to the circumstances of the case and the judgments referred to above, we intend to extend the benefit of doubt. Accordingly, the appeal is allowed. The conviction and sentence recorded against the appellant/accused by name Nandi Gangaiah @ Ediga Gangaiah, in the judgment dated 18.07.2011, in Special Sessions Case No.5 of 2009, on the file of the Special Sessions Judge – cum – IV Additional District and Sessions Judge, Chittoor at Tirupati, for the offence punishable under Section 3(2)(v) of S.Cs. and S.Ts. (Prevention of Atrocities) Act, 1989, is set aside

² (1988) 4 SCC 302

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.

C.PRAVEEN KUMAR, J

T.RAJANI, J

21.06.2018
vnb

