

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.133 of 2013

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

1) Accused No.1 in Sessions Case No.319 of 2007 on the file of the III Additional District and Sessions Judge (FTC), Kadapa at Rajampeta, is the appellant herein. He along with his mother were tried for the offences punishable under Sections 302 and 498-A IPC. By its judgment, dated 24.01.2013, the learned Additional Sessions Judge, acquitted accused No.2 of the charge under Section 302 IPC but however convicted accused No.1 for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.20,000/- in default to suffer simple imprisonment for a period of one year. Both the accused were also acquitted for the offence punishable under Section 498-A IPC.

2) The gravaman of the charge against the accused is that on the intervening night of 16/ 17.02.2007 at Brahmanapalli Harijanawada, the accused caused the death of one R.Vasantha Kumari (hereinafter referred to as "the deceased").

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

i) Accused No.1 is the husband, while accused No.2 is the mother-in-law of the deceased. PW.1 is the father, PW.2 is the

mother and PW.3 is the brother of the deceased. PW.4 is the resident of Nakkalapalli Village, who earlier worked as a Sarpanch of the said village. PW.5 is the reporter of Sakshi Newspaper. PW.6 is also resident of Nakkalapalli village, who knows PWs.1 to 5. The evidence on record, as spoken to by the witnesses, show that PW.1 gave his daughter in marriage to accused No.1, about 10 years prior to the incident. At the time of marriage, accused No.1 was working as driver in APSRTC. PW.1 said to have presented Rs.20,000/- cash and two tolas of gold to accused No.1, at the time of marriage. Both the couple lived happily till the deceased went to Kuwait, where she stayed for nearly three years. It is said that out of wedlock they were blessed with one male child and one female child. After her return from Kuwait, she gave birth to a female child. At that time accused No.1 is said to have hacked the right leg of the deceased for not sending VISA to him so as to enable him to visit Kuwait. They advised the deceased to lodge a report, but PW.4 and others prevailed upon her, as accused No.1 was in government service. A panchayat was convened at Nakkalapalli village. Pursuant thereto, they sent the deceased to accused No.1. Both of them lived happily together for some time and later the deceased gave birth to a female child at the house of PW.1. Five or six days after the delivery, accused No.1 came to the house of PW.1 and took the deceased and newly born child to a doctor at Railway Koduru, as the deceased was complaining of pain in her right thumb. However they did not return home till the evening. PW.2 claims to have telephoned to accused No.1, but the

cell phone was switched off. On the next day morning at about 6.00 a.m. PW.2 asked PW.3 to telephone to accused No.1. PW.3 telephoned to the deceased and when the deceased started talking, he gave telephone to PW.2, to whom the deceased is said to have informed that accused No.1 would kill her as he quarreled with her throughout the previous night. Immediately all of them hired a Sumo vehicle and went to the village by 9.00 a.m. When they reached the village, PW.5, who is a resident of Brahmanapalli, informed that he heard the cries of the deceased and witnessed accused Nos.1 and 2 coming out of the house with blood stains. Accordingly, they went to the house of accused No.1 and found the deceased lying dead in the house and the head was separated from the body and the newly born baby was weeping. By that time the police were present at the scene. On 17.02.2007 at about 10.30 a.m., PW.12-the Sub-Inspector of Police, Mannur Police Station, was in the police station, PW.1 came to the police station and complained orally which was reduced into writing. Ex.P.1 is the said report. Basing on the said report, PW.12 registered a case in Crime No.14 of 2007 and issued Ex.P7-the first information report.

ii) At this stage, it is necessary to point out that the Inspector-Ravi Kumar Reddy, who conducted further investigation in this matter died pending trial. No material is brought on record about the investigation done by him. However, it is to be seen that immediately after registering the crime, the Inspector of Police Ravi Kumar Reddy appears to have proceeded to the scene of offence and conducted a panchanama of the scene in the

presence of PW.9 and another. He then, held inquest over the dead body of the deceased in the presence of PW.9 and another and also got photographed the scene of offence. Thereafter, he sent the body to Government Hospital, Rajampet, for postmortem examination.

ii) PW.11-the Civil Assistant Surgeon, Government Hospital, Rajampeta, conducted autopsy over the dead body of the deceased and issued Ex.P6-the postmortem certificate. According to her, the cause of death was “due to hemorrhagic shock due to injuries to the major blood vessels on both sides of the neck”. Thereafter, the Inspector of Police arrested the accused and recorded their confessional statements in the presence of PWs.14 and 15. After collecting all the material, the Inspector of Police filed a charge sheet before the Court of Judicial Magistrate of First Class, Rajampet, 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.319 of 2007.

4) On appearance, charges under Sections 302 and 498-A IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) To substantiate its case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P15 and MO.1. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution

witnesses, to which they denied. DWs.1 and 2 were examined on behalf of the accused and they also got marked Exs.D1 and D2.

6) Out of 16 witnesses examined by the prosecution, PWs.5 and 15 did not support the case of prosecution and they were treated hostile. Though PW.14 was not declared as hostile, but his evidence in chief itself shows that the police did not interrogate the accused in his presence and he never accompanied the police at the time of recovery of hunting sickle. He also says that Exs.P9 and P10 are not drafted in his presence. Placing reliance on the evidence adduced by the prosecution and invoking Section 106 of the Evidence Act, the Sessions Judge convicted accused No.1 for the offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

7) 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 to connect the accused with the crime. According to him, an adverse inference has to be drawn on the failure on the part of the prosecution in collecting the call data of the cell phone belonging to PW.3, to find out as to whether there was any call from them to the deceased. It is also urged that non-seizure of sickle which was found by the side of the body, and showing recovery of the same from a culvert much later obviously shows that the police tried to build up the case from stage to stage. He further submits that the evidence is not clear as to when PWs.1 and 2 and others came to

the house of accused No.1, more so when the charge is of the fact that the death was on the intervening night of 16/ 17.02.2007. He further submits that since there is no evidence as to the presence of the accused in the house at the time of incident and when accused No.2, who is the mother of accused No.1, was acquitted of both the charges, the same benefit ought to have been extended to the appellant/ accused No.1 as well.

8) On the other hand, learned Public Prosecutor would submit that though it is a case arising out of circumstantial evidence, but the prosecution was able to prove the link connecting the accused with the crime. He points out the phone conversation between PW.2 and the deceased and the apprehension expressed by the deceased in the hands of accused No.1. As there was enmity and since there is a motive for the accused to attack the deceased, the prosecution has established the guilt of the appellant in the commission of offence.

9) The point that arises for consideration is whether the accused No.1 is responsible for the death of the deceased, if so, whether he is liable for punishment under Section 302 IPC.

10) In order to appreciate the same, it would be useful to refer to the evidence of PWs.1 to 4. Before going further, it is to be noted that the investigating officer, who conducted investigation after registration of the crime could not be examined as he died. Only the Sub-Inspector of Police, who was acquainted with the signature of the investigating officer, was examined to

prove the signatures on the two panchanamas prepared at the scene of offence and the confession of the accused. Therefore, it can be said that the accused was handicapped in not getting an opportunity to elicit the required information from the investigating officer, who conducted the investigation. The aspect of prejudice if any caused to the accused will be decided later, if necessary.

11) As stated earlier, there are no direct witnesses to the incident and the entire case rests on the circumstantial evidence, which the prosecution tried to establish through the evidence of PWs.1 to 4 and others. PWs.1 and 2 are the parents of the deceased while PW.3 is the brother of the deceased. Insofar as payment of dowry is concerned, PWs.1 and 2 in one voice say that they presented Rs.20,000/- cash and two tolas of gold at the time of marriage.

12) The prosecution mainly tried to connect the accused with the crime by relying upon the phone call which was said to have been made in the morning of 16.02.2007, wherein the deceased is said to have expressed apprehension in the hands of accused No.1. Insofar as other circumstance is concerned, it is to be noted that PW.1 in chief stated that on one early morning his daughter telephoned to PW.2 stating that accused No.1 wanted to kill her. Then immediately, he along with PWs.2 and 3 and others proceeded in Tata Sumo and reached the village of accused No.1 at about morning and found the deceased lying dead in the house of

accused No.1. His evidence further discloses that the police were present in the house by the time they reached the house and none of the neighbours were present in the house. His evidence refers to some quarrel between accused No.1 and the deceased for not sending VISA, enabling the accused No.1 to go to Kuwait.

13) PW.2 in her evidence gave different version with regard to the phone call. According to her, about five or six days prior to the incident, the accused came to the house, took the deceased and the newly born child to a doctor at Railway Koduru, as the deceased was complaining of pain in her thumb, but they did not return till evening. As such she telephoned to accused No.1 but it was switched off. On the next day morning at about 6.00 a.m. she asked her son-PW.3 to telephone to accused No.1. PW.3 telephoned to the deceased and the deceased talked with her, expressed apprehension in the hands of accused No.1 as he quarreled with her through out the previous night. Then, they hired a vehicle and reached the village of accused No.1 by 9.00 a.m. on the next day. Her evidence is not clear as to whether the call was on 16th or 17th. Obviously a perusal of the evidence of PW.2 would show that the conversation with the deceased must have been on 16th and they proceeded to the house of accused No.1 on the next day.

14) As stated earlier, the evidence of PW.1 is silent as to the date, except saying on one early morning. Charge is that the death was on the intervening night of 16/ 17.02.2007. If the

evidence of PWs.1 and 2 coupled with the charge is taken into consideration, it has to be presumed that the conversation on 16th and on the next day ie., on 17th they proceeded to the house of accused No.1. At the same time it is also to be noted here that PW.1 in his evidence deposed as if the call was made by the deceased to him, where as the evidence of PW.2 show that she requested PW.3 to call to accused No.1, pursuant to which he telephoned. At this stage, it would be useful to refer to the evidence of PW.3, who made the telephone call.

15) According to PW.3, the deceased died in the house of accused No.1 on 17.02.2007. On 17.02.2007, he returned from Rajampet to Joropalli Harijanawada in the early hours. His mother requested him to telephone to the deceased as her husband took her to the hospital on the previous day evening and was no information. He telephoned to the deceased, but accused No.1 lifted the phone, thereafter, he gave telephone to the deceased and the deceased informed him about accused No.1 beating her since previous night and requested him to bring her to Joropalli. PW.3 claims to have switched on the speaker and his mother also spoke to the deceased, who informed her about the apprehension in the hands of accused No.1. At that juncture accused No.1 took the telephone from the deceased and replied stating that he would kill the deceased. Thereafter, all of them proceeded in a Tata Sumo vehicle and reached the house of accused No.1 at about 8.30 a.m. If the evidence of PW.3 is tested with the evidence of other witnesses, it appears as if the deceased talked on the morning of

17th with PWs.2 and 3. Though the evidence of PWs.1 and 2 does not anywhere refer to accused No.1 speaking to them, his evidence is total improvement of what PWs.1 and 2 have stated.

16) As stated earlier, PW.3 states that he telephoned to the deceased but accused No.1 picked up the phone and gave it to the deceased, who then complained about beating of accused No.1 and threat to her life. When the deceased was talking with her mother, accused No.1 took the telephone from the deceased and replied that he would kill her. All is happened when the speaker of the phone was in on mode. But the same is not evident in the evidence of PW.2. She never deposed about accused No.1 threatening to kill the deceased or accused No.1 lifting the phone call made by PW.3. On the other hand, the evidence of PW.1 would show that it was the deceased who was telephoned to him, while the evidence of PW.2 is that when PW.3 telephoned, the deceased picked up the phone and talked to her.

17) Apart from that, as stated earlier, the charge is that the death of the deceased and the incident of attack was on the intervening night of 16th or 17th February, 2007, where as the evidence of PW.3 show as if deceased was alive at 6.00 a.m. on 17th February and they spoke to her at that time.

18) It is further to be noted here that the evidence of PW.4 runs contra to the evidence of PW.3. In his evidence, he states that PWs.1 and 2 came to him in the early hours of 17.02.2007 and informed him that the deceased was killed by accused No.1, and

then he along with PWs.1 and 2 went to Brahmanapalli in a Tata Sumo. A reading of the evidence of PW.4 would show that PWs.1 and 2, were aware about the death of the deceased by the morning of 17th, as they went and informed PW.4 about the same. If that is so, the evidence of PW.3 that he telephoned to the deceased on the early hours of 17th February appears to be false. Hence, we feel that there is any amount of discrepancy with regard to the evidence of these witnesses about the deceased telephoning; PWs.1 to 3 talking with her, wherein she complained about accused No.1 beating her and her apprehension of death in the hands of accused No.1. Therefore, the first circumstance relied upon by the prosecution remained un-proved beyond, reasonable doubt.

19) The second circumstance relied upon by the prosecution is that since the incident happened in the house of accused No.1, the burden is on accused No.1 to prove as to how the deceased died. To prove the same, the prosecution mainly pressed into service the evidence of PW.5, who claims to have informed PWs.1 and 2 that he heard the cries of the deceased and saw accused Nos.1 and 2 coming out of the house with blood stains. But the said witness resiled from his earlier statement and did not support the prosecution case. Therefore, the said circumstance remained unproved and cannot be made the basis to connect the accused with the crime. No other evidence has been adduced by the prosecution to prove that the appellant was present in the house at the time of the incident. No neighbour was

examined to show that he was present in the house on the intervening night of 16/ 17th or from 16th to 17th.

20) The third circumstance is the recovery of M.O.1 sickle. It is to be noted here that the evidence of PWs.1 and 2 would show that when they went to the scene of offence, they noticed a sickle by the side of the body. That being the position the question of recovering the sickle much later from a culvert cannot be accepted.

21) It is true that the prosecution was able to establish that there is some quarrel between accused No.1 and the deceased with regard to the deceased not sending VISA to accused No.1 to go to Kuwait, but the said quarrel cannot be a motive, at this point of time, since the deceased also returned from Kuwait and started staying with accused No.1. This in our view, could not be a strong motive for the accused to kill the deceased.

22) Further, as per the prosecution case, accused Nos.1 and 2 are said to have killed the deceased on the intervening night of 16th or 17th February, 2007, but the trial Court acquitted accused No.2 of the said charge. That being the position and in the absence of any evidence that accused No.1 alone was present in the house, the said liability cannot be fastened on accused No.1 alone.

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

“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.”

24) In view of the judgment referred to above and in the absence of any cogent and convincing evidence, we are inclined to acquit the appellant, by extending the benefit of doubt.

25) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused No.1 in the judgment, dated 24.01.2013 in S.C.No.319 of 2007 on the file of the III Additional District and Sessions Judge (FTC), Kadapa at Rajampet, for an offence punishable under Section 302 IPC are set aside. Consequently, the appellant/ accused No.1 shall be set at liberty forthwith, if he is not required in any other case or crime. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

08.03.2018
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¹ AIR 2012 SC 786