

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL Nos.348 & 368 OF 2013

COMMON JUDGMENT: (*Per* Hon'ble Sri Justice C. Praveen Kumar)

1) Accused Nos.1 and 2 in Sessions Case No.466 of 2012, on the file of IV Additional District and Sessions Judge (Fast Track Court) at Karimnagar, filed these two Criminal Appeals, separately. A1 was tried for the offences punishable under Sections 302 and 201 of IPC, while A2 was tried for the offences punishable under Section 302 and 201 R/w.109 of IPC. *Vide* its judgment dated 25.03.2013, the learned Sessions Judge convicted both the accused for the aforesaid offences and, sentenced A1 to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 302 I.P.C. and further sentenced her to suffer three years rigorous imprisonment and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 201 of I.P.C. A2 was sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 302 R/w.109 of I.P.C. He was further sentenced him to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for 15 days for the offence

punishable under Section 201 R/w.109 of I.P.C. respectively. Both the sentences were directed to run consecutively in the sequences stated above.

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

Chennaveni Ramesh (hereinafter referred to as 'the deceased') is the husband of A1, son of PWs.1 and 2 and brother of PW3. The deceased married A1 about three years prior to his death. Both of them lived together for one year and, thereafter, the deceased went to Saudi Arabia in search of his livelihood. He is said to have returned to India 5 or 6 months prior to his death. The deceased also made arrangements to go to abroad again. PW1, A1 and the deceased were living in the said house. At the time of the incident, A1 was carrying 4th month pregnancy. It is said that on the intervening night of 08/09.09.2011, A1, with the active assistance of A2, mixed 4 sleeping pills in the milk and when the deceased consumed the same, fell asleep. At that time the accused killed the deceased by smothering him with a pillow and also strangulated him deceased with an electric wire.

It is said that on 09.09.2011 at about 06:30 A.M. PW1 left the house and went to secure labour. His neighbour Suman (not examined) informed PW1 that his son Chennaveni Ramesh died. Subsequently, he went to the house and saw his son lying dead on the bed. When questioned A1 as to what happened, she replied that he slept in the night as usual, and she does not know how the

deceased died. PWs.1, 2 and 3 who were in the house along with Naresh noticed one end of the electric wire was tied around his neck and other end was connected to the power plug. It was suspected that A1 was responsible for his death. But, however, in the report which was given on 09.09.2011, no suspicion was entertained against A1 and as such the case was registered under Section 174 of Cr.P.C. On 09.09.2011, A1 lodged the written report, Ex.P7, basing on which a case in Crime No.72 of 2011 of Boinpalli Police Station, Karimnagar District came to be registered by PW12, initially for the offence under Section 174 Cr.P.C. PW12, the Head Constable of Boinpally Police Station, visited the scene of offence, examined the dead body and held inquest over the dead body of deceased in the presence of PW8 and Janga Sathyam between 09:30 A.M. and 11:30 A.M. Ex.P2 is the inquest report. During the inquest, PW12 recorded the statements of A1, PWs.1, 2, 3 and 5 and Md. Moinuddin (LW4) and sent the dead body for post mortem examination. After sending the body, PW12 prepared the Crime Details Form, Ex.P3, which includes scene of offence panchanama and also the rough sketch of the scene. Later, he handed over the investigation to the Sub-Inspector of Police (PW13).

PW9, Dr.P.Harshavardhan, Civil Assistant Surgeon, Area Hospital, Srcilla, conducted autopsy over the dead body of the deceased on 09.09.2011 at 12:30 P.M. and issued Ex.P4 the post mortem report. According to him, the cause of death was asphyxia

due to smothering, which must have occurred 4 to 8 hours prior to his examination.

The evidence on record would further reveal that Ex.P4 report was given to the Police on 09.02.2012 *i.e.*, nearly 5 months after the incident. It is also to be noted here that PW9 conducted post mortem examination between 01:00 P.M. and 02:00 P.M., on 09.09.2011, and opined that the death might have occurred 4 to 8 hours prior to his examination, which would mean that the death was in the early hours. Thereafter, PW13 took up further investigation from PW12, proceeded to the scene of offence, secured the presence PWs.1 to 3 and is said to have examined them. However, he did not furnish the statements of the witnesses *i.e.*, PWs.1 to 3, recorded by him, to the Court. However, he handed over further investigation to one Srilatha (LW22), Sub-Inspector of Police, Boinpally. After obtaining the post mortem report, Section of law was altered in the month of February, 2012. Thereafter, PW14, Circle Inspector of Police, Vemulawada Rural, took up further investigation on 17.02.2012, apprehended A1 at Ananthapalli village in the presence of PW10, interrogated A1 and recorded her statement. Ex.P5 is the statement of A1. In the said confession, she admitted her illegal intimacy with A2; the phone conversation which they used to have regularly and, on the instigation of A2, she is alleged to have killed the deceased. Pursuant to her confession, she produced 6 tablets, one pillow, one electrical wire of 4 meters length and one small electric wire from her bedroom, which are seized under Ex.P5 and marked as MOs.1

to 4. On 18.02.2012 at about 09:30 A.M., he arrested A2 in the presence of PW11 and, on interrogation, he is alleged to have confessed about the commission of the offence along with A1. Ex.P6 is his statement. On 07.03.2012, PW14 addressed a letter to the Superintendent of Police, Karimnagar to secure the call data of A1 and A2 and also addressed a letter to JFCM, Srcilla for recording the 164 Cr.P.C. statements of the witnesses *i.e.*, PWs.1 to 4. After completing the investigation and after collecting all the material papers, he filed a charge sheet before the Court of the Judicial Magistrate of First Class, Vemulawada, which was taken on file as PRC No.28 of 2012 and on committal the same came to be numbered as S.C.No.466 of 2012.

3) Basing on the material available on record, charges referred to above were framed against the accused, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P12 and M.Os.1 to 4.

5) After closure of the prosecution 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. But, however, they got marked Exs.D1 to D7, which are the relevant portions in 161 Cr.P.C. statements of PWs.1, 2 and 3, respectively.

6) Basing on the circumstances relied upon by the prosecution, namely the call data, non explanation of the dead body lying on the cot, and also the circumstances under which the incident took place, coupled with the evidence of PWs.1 to 3, the trial Court convicted A1 and A2, in the manner referred to above. Assailing the same, these two Appeals are filed by A1 and A2 separately.

7) Sri V. Ravi Kiran Rao and Sri D. Purnachandra Reddy, learned counsel for the appellants in both the appeals, mainly submit that there is absolutely no evidence on record to connect the accused with the crime. According to them, the circumstances relied upon by the prosecution do not form chain of events to connect the accused with the crime. Learned counsel could further submit that the prosecution failed to establish any motive for A1 to commit murder of the deceased, who is her husband. Learned counsel submits that, even if the evidence of PWs.1 to 3 is considered, the telephone calls between A1 and A2 do not, in any way, establish any instigation by A2 to kill the deceased. According to him, in a case of circumstantial evidence, motive places a crucial role and in the absence of the same, the entire fabric of the prosecution gets collapsed. Learned counsel further submits that though the dead body is found with electrical wire tied around his neck, the cause of death as per the post mortem examination report of PW9 was not due to strangulation with electrical wire but, due to asphyxia due to smothering. Learned counsel would submit that the evidence of PW1 indicates that the door of the room in which A1 and the deceased lived, is not having a bolt from inside, such being

the position, the possibility of A1 committing the offence cannot be accepted more so when there are more than 4 persons living in the house. Learned counsel would further submit that, if really, A1 had any intention to cause the death of the deceased, she would not have participated in the sexual intercourse with the deceased on the fateful night and that her conduct in the morning could have been different. Learned counsel further submits that if Ex.P4 the post mortem report is taken into consideration, it would reveal that the death might have occurred 4 to 8 hours prior to completion of the post mortem examination. If 8 hours prior to 02:00 p.m. is taken into consideration, the death might have taken place at about 06:00 A.M. in the morning, by which time the evidence on record shows that everybody in the family woke up and were attending to their normal duties. Therefore, the learned counsel pleads that the manner in which the prosecution put forth their case cannot be accepted. He further submits that in the F.I.R. and also in the inquest report it was mentioned that the death was due to suicide but after receipt of the post-mortem examination report in the month of February, 2012, the entire version of the prosecution got changed and the theory of homicide was introduced for the first time. If really, it was a case of homicide, nothing prevented PWs.1 to 3 to lodge a report, expressing suspicion over A1 and A2 for the death of the deceased. Insofar as the call data is concerned, he would submit that the learned Sessions Judge erred in relying upon the same, since the details of the call data were not marked. Even otherwise, learned

counsel would submit that the evidence of the Investigating Officer, PW14, would show that the two SIM cards of cell phones being used by A1 and A2 were not in their names and the Investigating Officer failed to secure any details with regard to the name of the holders of the two cell phones. Learned counsel further submits that the evidence of the Investigating Officer, would show that he did not take action against the service providers for not furnishing the address proof and photos of the two SIM card holders. In fact, PW14 admitted that he did not examine the service providers. Such being the position, learned counsel would submit that the call data so secured cannot be made the basis to show that there was conversation between A1 and A2. Apart from this, learned counsel would submit that seizure MOs. 1 to 4 from A1, 6 months after the date of the incident, more so, from her bedroom, appears to be highly artificial.

8) On the other hand, learned Public Prosecutor (T.S), appearing for the respondent-State, opposed the submissions of the appellants' counsel contending that the case is based on the circumstantial evidence. With regard to the 2nd circumstance relied upon by the prosecution to connect the accused with the crime, he took us through the evidence of the witnesses and, more particularly, the findings given by the Sessions Judge with regard to the call data to show that both the accused were in constant touch with each other and, hence, pleaded that they are responsible for the death of the deceased. Learned Public Prosecutor further contends that in the absence of any explanation

given by A1, to say as to how the deceased died, when both of them were in the bedroom, on that night, is sufficient to invoke Section 106 of the Indian Evidence Act, to connect A1 with the crime.

9) The point that arises for consideration is whether the accused are responsible for the death of the deceased.

10) It is not in dispute that there are no eye witnesses to the incident and the case rests on circumstantial evidence. The prosecution tried to rely upon the following circumstances namely;

1) motive for the accused No.1 to commit the murder of the deceased, (2) non-explanation of the accused with regard to the presence of dead body of the deceased, in the room where she slept on that night with the deceased and the manner in which the death was caused, which rules out the possibility of the suicide as pleaded and (3) the call data relating to the phone numbers of accused Nos.1 and 2 collected by the police during the course of investigation which establish that accused Nos.1 and 2 are in constant touch with each other.

11) Insofar as the first circumstance namely motive is concerned, the case of the prosecution is that accused No.1 developed intimacy with accused No.2 and after the return of the deceased from abroad, both of them hatched a plan to eliminate him from their life. The prosecution mainly relied upon the evidence of PWs.1 to 4 to establish the conversation between accused Nos.1 and 2 and also about the quarrel between accused No.1 and the

deceased about the said issue. But none of the witnesses speak about they seeing accused Nos.1 and 2 together. At this stage, it is to be noted here that the incident in question is said to have taken place on the intervening night of 08/09.09.2011. The first information report was given immediately by accused No.1 herself, pursuant to which a case was registered under Section 174 Cr.P.C. In the first report it was mentioned that the deceased was suffering with chest pain for three years and he is taking treatment with a RMP doctor. It is her case that at the time of incident she was four months pregnant. It is said that about a month prior to the incident she provided treatment to the deceased at Surya Hospital, Karimnagar, where the doctors took X-ray, ECG and given medicines which are being used by the deceased. On 09.09.2011 morning at about 6.00 hours, she woke up and observed that her husband was sleeping. She attended to nature's calls and also started doing domestic works. At about 8.10 a.m., her mother-in-law received a phone call from her son-in-law that the cash asked by her son was procured, on that her mother-in-law went to bedroom to wake up her son, but there was no noise and found a current wire tied around the neck of the deceased, which was connected to a socket. Immediately her mother-in-law removed wires and found her son dead. According to the first information, due to severe chest pain her husband committed suicide and died. Hence, requested to take action. Basing on the information given by accused No.1, a case in Crime No.72 of 2011 came to be registered under Section 174 Cr.P.C. Immediately, thereafter

PW.12 held inquest over the dead body of the deceased in the presence of PW.8 and another. During inquest all the family members of the deceased, who are now examined as PWs.1 to 4, were also examined. None of them expressed any suspicion against the accused even at the time of inquest. On the other hand, the version of all of them was that due to chest pain the deceased vexed with his life and committed suicide. At that stage there was no reference to any illicit intimacy between accused Nos.1 and 2 or any motive for accused No.1 to kill the deceased.

12) The evidence of PWs.1 to 3 show that the marriage between the deceased and accused No.1 took place three years prior to the incident and subsequent thereto the deceased left to Saudi Arabia for employment. Two years thereafter he returned to India and five or six months thereafter he died. It is also an admitted fact that at the time of incident PWs.1 to 3 and one Naresh were living along with the deceased and accused No.1 in the house. In the cross-examination, PW.1 stated that accused No.1 was staying in the house of PW.1 for five days after the incident and thereafter she went to her parents house and came back to the house of PW.1 for the 9th day ceremony.

13) Similarly the prosecution pressed into service the evidence of PW.6, to show that accused Nos.1 and 2 had illicit relationship and the same was the reason for killing the deceased. It would be useful to refer to the evidence in chief of PW.6, which is as under:

“The deceased is my son by courtesy. I know the accused. Ramesh married A1 about 4 years back. Two years thereafter he went to Saudi Arabia for employment. I and A1 were going together to agricultural field for work. There A1 was talking through her cell phone frequently disturbing the work. I objected and asked she said that it was from her near relatives. I informed it to my son Ramesh. So the couple quarreled A1 and A2 murdered Ramesh. But they tried to show it as suicide with live electric wire.”

14) From the evidence in chief of PW.6, it is clear that accused No.1 was talking through cell phone frequently disturbing the work. But her evidence does not anywhere say that she was talking with accused No.2. Apart from that it is also to be noted that PW.6 admitted in her cross-examination that she was examined by the police five or six months after the incident and she further admits that she did not inform the police about the phone conversation and her objection. From the above, we feel that the prosecution failed to establish that there was motive for accused No.1 to kill the deceased.

15) On the other hand, the evidence on record shows that both the accused No.1 and deceased were happy in the house and the evidence of postmortem doctor indicate that even on that night, both the couple had sexual intercourse. That being the position, we feel that the prosecution was not able to establish beyond reasonable doubt about any motive, which is one of the main ingredients in a case arising out of circumstantial evidence.

16) The next circumstance relied upon by the prosecution is the non-explanation of the accused No.1 to the presence of dead body of the deceased in the room, with whom she slept on that night. It is not in dispute that accused No.1 and deceased slept in that room on that night. It is also not in dispute that four people were residing in the house at the time of incident. PW.1 in his cross-examination admits as under:

“My personal belongings are in the room of A1. Room where the couple stay does not have bolt from inside but has it from otherside.”

17) From this it is clear that the room where accused No.1 and deceased are alleged to have been slept on that night has no bolt from inside. Such being the position it is very difficult to imagine that accused No.1 would have taken the extreme step of killing the deceased without the door having a lock from inside. If really the death was due to electric shock, the deceased would have raised hue and cry. Therefore, the said theory is now given a go bye and the prosecution is now trying to project the death was due to smothering and in support of the same they claimed to have seized pillow and tablets, six months later. It is the version of the prosecution that accused No.1 administered sleeping pills in the milk, made the deceased consumed the same and thereafter throttled him, which was not the case of the witnesses at any point of time. In fact all the four witnesses, who entered the room after the incident, never noticed any sleeping pills or a small electric wire in the room, which the police claimed to have recovered five

months later so as to connect the accused No.1 with the incident. We are not inclined to accept the said theory for more than one reason. Firstly, the cause of death as per the postmortem certificate was due to smothering, which was done after giving sleeping pills mixed in milk. As stated earlier the prosecution tried to connect it by showing recovery of some sleeping tablets in the room after six months which was never noticed by PWs.1 to 4 when they went inside the room immediately or even when the panchanama of the scene was conducted. Secondly, the earliest version was that the death was due to electrocution. That version is given a go by. Thirdly, there were number of other inmates in the house and since the door remained un-locked from inside, it cannot be said with certainty that it was accused No.1 alone is responsible for the death of the deceased, more so in view of her conduct on the next day morning PWs.1 to 4 in one voice say that at 6.00 a.m., accused No.1 woke up, attended calls of nature and thereafter started doing domestic work. Only at 8.15 a.m., her mother-in-law went inside the room and then realized the death of the deceased. At

18) Further, PW.9 is said to have conducted postmortem examination on 09.09.2011 at 1.00 p.m. According to him, the death must have occurred about four to eight hours prior to postmortem examination. If the period of eight hours is taken into account, the death would have been occurred at 6.00 a.m., by which time even PWs.1 to 3 and accused No.1 were awake and

were attending to their duties. Infact, the evidence of PW.1 is that he left the house at 6.00 a.m.

19) It is also to be noted here that PW.1 in his evidence deposed that at about 6.30 a.m., he was informed by one Suman, a neighbour about the death of the deceased. Immediately he came back and saw the dead body of the deceased with an electric wire around the neck. Strangely, the evidence of PW.2 shows that at 8.30 a.m., her son-in-law informed over phone that her son was going Saudi and is getting money, as such PW.2 went to woke up her son but found the deceased lying dead. She claims to have noticed electric wire around the neck. This according to PW.2 is said to have happened at 8.30 a.m. PW.1, who was the father of the deceased, was aware about the death of the deceased at 6.30 a.m., and he claims to have reached the house immediately thereafter. Such being the position, it is strange as to how PW.2 came to know about the death only when she entered into the room at 8.30 a.m., or so. Further PW.1 never spoke about electric wire when he entered the room. All these circumstances throw some doubt, with regard to culpability of accused No.1 in the commission of offence.

20) The third circumstance relied upon by the prosecution is the call data which they claimed to have collected during the course of investigation. The said call data was made the basis to hold against accused Nos.1 and 2 guilty of the said charge. But it is to be noted here that the said call data was not marked. The reason

given by the trial Court was that instead of marking call data, they marked Ex.P10, the copy of the attendance register. If really such a mistake had occurred in marking the call data, the trial Court ought to have taken some earlier steps in getting call data marked. But such a measure was never undertaken by the trial Court. Even assuming that the call data which is filed along with the alteration memo can be considered, but the evidence of PW.14, the investigating officer, falsifies the existence of conversation was between accused Nos.1 and 2. We intend to extract the relevant portion in the cross-examination of PW.14, which is as under:

“We can know IMEI (International Mobile Equipment Identity) during investigation. Cell phone companies have to take photos address proof etc., to issue SIM card but some companies are not following this procedure. Two cell phones used by A1 and A2 were found not in their name. I did not secure these name holders. They were not traced. I did not take action against service providers for issue two SIMs without address proof and photo.”

21) From the evidence of PW.14, it is very clear that the two cell phones which are said to have been used by accused Nos.1 and 2 are not in their names and even the two SIM cards do not contain any address proof and photos.

22) Identical situation came up for consideration before the Apex Court in *Babuighai Bhimabhai Bokhiria and another v. State of Gujarat and others*¹ where the call records were marked but the contents of the conversation was not forthcoming. Under those circumstances the Apex Court held as under:

¹ (2014) 5 SCC 568

“The other evidence sought to be relied for summoning the appellant is the alleged conversation between the appellant and the accused on and immediately after the day of the occurrence. But, nothing has come during the course of trial regarding the content of the conversation and from call records alone, the appellant’s complicity in the crime does not surface at all.”

23) In the instant case neither the call data nor the conversation between accused Nos.1 and 2 was marked. It may be true that PWs.1 and 2 in their evidence referred to accused No.1 talking with accused No.2 on the previous night, but the said version was not spoken to by any of the witnesses at the earliest point of time or during the inquest. Only after receipt of the postmortem certificate, which was six months later, witnesses have come forward with the said version. Even if the said version is accepted, which in our view is not established, still the same cannot be made the basis, as the contents of the conversation was not spoken to by any of the witnesses. In view of the judgment referred to above, we feel that the said circumstance remained un-proved to connect the accused with the crime.

24) For the aforesaid reasons, the prosecution failed to establish the guilt of the appellants/ accused Nos.1 and 2 beyond reasonable doubt.

25) Accordingly, both the Criminal Appeals are allowed. The conviction and sentence recorded against accused Nos.1 and 2 in S.C.No. 466 of 2012 on the file of the IV Additional District and Sessions Judge (Fast Track Court), Karimnagar, are set aside.

Consequently, accused Nos.1 and 2 shall be set at liberty forthwith, if not required in any other case.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

20.03.2018
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