

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

AND

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.763 of 2013

JUDGMENT

(Per Dr.Justice Shameem Akther)

This Criminal Appeal is filed aggrieved by the conviction and sentence imposed on the appellant/accused for the offence punishable under Section 302 IPC, to suffer imprisonment for life and to pay a fine of Rs.200/- in default to suffer simple imprisonment for a period of six months, *vide* judgment dated 10.06.2013 in S.C.No.171 of 2012 on the file of the I Additional Sessions Judge at Vizianagaram.

2. The case of the prosecution is that Ganjeti Suramma @ Peda Suramma (hereinafter referred to, as 'the deceased) is wife of accused. The accused used to suspect her fidelity and abuse her in a drunken state. On 26/27.07.2012, the accused went to kirana shop of P.W.10-Ummidisetti Satyanarayana, purchased a quarter bottle of cheap liquor, consumed the same, returned home at about 9:00 p.m., picked up a quarrel with the deceased, abused and beat her. P.W.1-Ganjeti Appanna, who is their son, noticed the same, but did not take it seriously, as it was a regular torture made to his mother by the accused. He went to the house of P.W.3-Rallapalli Pydithallamma @ Pydamma to study and slept there. After sometime, the accused picked up an axe, hacked the deceased

in the front room of his house, as a result she succumbed to the injuries instantaneously. The neighbours heard the hue and cry of the deceased, but did not give importance to it as they used to hear such kind of noises and it was an every day affair. P.Ws.4 and 5 Boddu Narasimhulu and Kadiyam Ramanamma saw the accused coming out of his house with an axe, closing the doors and going away. On the next day morning i.e. on 27.07.2012 early hours, P.W.1 went to his house, opened the door and found his mother in a pool of blood. He did not find his father. He raised cries and all the neighbours gathered. On a report given by P.W.1-Ganjeti Appanna, a case in Crime No.42 of 2012 of Andhra Police Station for the offences punishable under Sections 302 and 498-A IPC was registered by P.W.12-V.Apparao, Head Constable, against the accused. P.W.13-Inspector of Police, Gajapathinagaram circle investigated into the case, visited the scene of offence, observed the scene and arrested the accused, and after completion of investigation, L.W.21-M.Srinivasa Rao, Inspector of police, Gajapathinagaram circle filed charge sheet against the accused.

3. The learned Magistrate took cognizance of the case for the offences punishable under Sections 498-A and 302 IPC and assigned PRC No.14 of 2012, and after complying with the requirements under Section 209 Cr.P.C., committed the matter to the Court of Session. The Court of Session

numbered the case and made over the same to the Additional Sessions Judge at Vizianagaram.

4. The trial Court had framed the charges under Sections 302 and 498-A IPC against the accused. The charges were read over and explained to the accused and the accused pleaded not guilty and claimed to be tried.

5. During trial, P.Ws.1 to 13 were examined and Exs.P1 to P14 were got marked on behalf of the prosecution besides M.Os.1 to 11.

6. After closure of prosecution side evidence, the accused was examined under Section 313 Cr.P.C. The accused denied the incriminating circumstances appearing against him in the evidence of prosecution witnesses and reported no defence evidence. The trial Court after appreciation of evidence on record, found the accused guilty of the offence punishable under Section 302 IPC, accordingly convicted and sentenced him as indicated above, acquitting him of the offence punishable under Section 498-A IPC. Challenging the conviction and sentence, this appeal is filed by the appellant/accused.

7. The learned counsel for the appellant submits that there are no direct witnesses to the alleged offence. The prosecution failed to prove the guilt of the accused for the offence punishable under Section 302 IPC. There is also no

evidence on record to establish that the accused suspected the fidelity of his deceased wife. The accused and the deceased were living happily. There is neither intention nor necessity to the accused to cause the death of the deceased. The evidence adduced has not proved the guilt of the accused beyond reasonable doubt, and ultimately, prayed to allow the appeal and acquit the accused of the offence under Section 302 IPC.

8. The learned Additional Public Prosecutor would contend that there is specific evidence of P.Ws.1 to 3 with regard to the accused quarrelling with the deceased and doing away with the life of the deceased. P.Ws.4 and 5 saw the accused on that night leaving his house, holding the axe. The postmortem report, inquest report and scene of offence panchanama clearly establish the homicidal nature of death of the deceased. P.Ws.1, 4 and 5 categorically deposed about the presence of the accused on the intervening night of 26/27.07.2012 at his house. The trial Court had rightly appreciated the oral, medical and documentary evidence on record and convicted and sentenced the accused of the offence under Section 302 IPC. There is no infirmity in the order under challenge. There are no circumstances to take a different view and ultimately, prayed to dismiss the appeal.

9. In view of the submissions made by both sides, the points that arise for determination are as follows:-

1. Whether the death of the deceased-Ganjeti Suramma is homicidal death?
2. Whether the accused has caused the death of the deceased on the intervening night of 26/27.07.2012 at his house situated at Gudem village?
3. Whether the prosecution proved the guilt of the accused of the offence under Section 302 IPC?
4. Whether the conviction and sentence recorded against the accused under Section 302 IPC is liable to be set aside?

POINT No.1:

10. P.W.7 is one of the inquest mediators, who was present at the time of conducting inquest over the dead body of the deceased by P.W.13-investigating officer. P.W.13 also deposed about the conducting of inquest over the dead body of the deceased. P.W.7 deposed that he was present at the time of inquest over the dead body of the deceased on 27.07.2012 at 12.30 P.M. Ex.P6 is the inquest report. In column No.XV of Ex.P6-inquest report, the inquest panchayatdars opined that on the fateful day, a quarrel took place between the deceased and the accused, and that the accused hacked the deceased with an axe, as a result of which, she sustained injuries and succumbed to the same. The evidence of P.W.7 remained unchallenged. He withstood the test of cross-examination. The objective findings of the mediators present at the time of conducting inquest are admissible to know the apparent

cause of death of the deceased. P.W.11 is the Civil Assistant Surgeon, Community Health Centre, Gajapathinagaram, who conducted autopsy over the dead body of the deceased. He observed the following external injuries over the dead body of the deceased.

- 1) one laceration of size 2 x ½ x 1 cm on posterior neck below the skull.
- 2) one laceration injury of size 1 x ½ x ½ cm on right jaw below the right ear.
- 3) Abrasion injury of size 3 x 1 cm on left chin
- 4) contusion of size 3 x 2 cm on left chest and
- 5) a laceration of size 3 x ½ x ½ cm on the right wrist.

P.W.11 issued Ex.P10-postmortem examination report. He deposed that all the above injuries are ante-mortem in nature and they are possible with the short edged weapon like an axe or knife. Nothing has been elicited in his cross-examination to discard his testimony. Therefore, from the evidence of P.Ws.7, 13 and 11 and from the recitals in Exs.P6 and P10, the homicidal nature of the death of the deceased is established.

POINT Nos.2 to 4:-

11. The case of the prosecution is that the accused is the husband of the deceased. He used to suspect her fidelity and abuse her. He was in the habit of drinking. On the night of the fateful day, the accused purchased the quarter bottle of cheap liquor from the shop of P.W.10, consumed the same,

returned to the house at about 9 p.m., picked up a quarrel with the deceased, abused and beat her. P.W.1, who is their son, had noticed the same but did not take it seriously, as it was a routine torture by the accused, and he went to the house of P.W.3 and slept there. In the early hours, when P.W.1 went to his house and opened the door, he found the deceased in a pool of blood. He did not find his father, the accused. On his cries, P.Ws.4 and 5 came to the spot and saw the deceased in a pool of blood. Admittedly, there are no eye witnesses to the incident of the accused causing death of the deceased. The entire case of prosecution rests on circumstantial evidence. When the case rests on solely circumstantial evidence, the following ingredients are to be satisfied by the prosecution in order to find a person guilty of the offence, as held in ***Sharad Birdhichand Sarda v. State of Maharashtra***¹.

"When a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
 - (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
 - (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else;
- and

¹ (1984) 4 SCC 116 = AIR 1984 SC 1622

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

12. P.W.1-Ganjetti Appanna is the son of the deceased and the accused. He deposed in his evidence that he was studying 1st year Intermediate on the date of offence; that P.W.2 is his elder sister, who is married and is living at a different place. He deposed that he knows all the witnesses in this case; that his father murdered his mother by hacking her with an axe; that his father and mother used to wash clothes; that his father used to harass his mother everyday by suspecting her character and used to beat her and threaten her with dire consequences, and that he observed the same from his childhood. He further deposed that on 26.07.2012 at 6.00 pm, he went to Gajapathinagaram to a mobile shop for repair of his mobile phone and returned home at 9.00 pm, and he observed his father threatening his mother stating that he would see her end. P.W.1 felt it as routine and went to the house of P.W.3-Pydithallamma to study, and slept there; that on the next day morning i.e., on 27.07.2012 at 6.00 am, when he returned to his house, he observed that the doors were not locked, and when he opened the doors and went inside, he found his mother dead lying on the floor in the pool of blood. He found injuries on the right side cheek near the right ear,

back side of head, on the right hand of wrist, etc.; he raised hue and cry, and on that, neighbours P.W.4, P.W.5 and L.W.4-Boddu Appalaramu gathered and informed him that they heard hue and cry of his mother and they felt that it was a routine situation. Though P.W.1 was cross-examined at length, he withstood the test of cross-examination, and nothing has been elicited to discredit the testimony of P.W.1.

13. P.W.2-Kuppili Ramakrishna, who is the daughter of the accused and the deceased, deposed about the harassment caused to the deceased by the accused by suspecting her character. She did not depose anything about the incident. There is specific evidence of P.Ws.1 and 2, who are children of the deceased and the accused, that the accused used to suspect character of the deceased, and used to torture the deceased.

14. P.W.3-Rallapalli Pydithallamma, who is neighbour of the accused and the deceased, deposed that on the previous day i.e., on 26.07.2012 at 9 p.m. P.W.1 came to her house to study and slept there; on the next day morning at about 6 a.m., she went to the house of the deceased on hearing cries of P.W.1 and saw the deceased in a pool of blood. She also deposed that P.Ws.4, 5 and L.W.4 were present by the time she went there. She also deposed about the quarrels between the accused and the deceased.

15. P.W.4-Boddu Narasimhulu deposed in his evidence that the accused was beating the deceased by suspecting her character; that about eight months prior to his giving evidence, accused went to his house in a drunken state and beat the deceased; that P.W.1 left the house at that point of time to the house of P.W.3; and that he heard the hue and cry of the deceased in the mid night and thereafter, he saw the accused walking with axe in his hand and he observed the same in the illumination of street light.

16. P.W.5-Kadiyam Ramanamma deposed that the accused used to go to his house in a drunken state and beat the deceased by suspecting her character. She also stated that P.W.1 used to study and sleep in the house of P.W.3. She also deposed that eight months prior to her giving evidence, on one day at 9.00 p.m., the accused went to his house in a drunken state and beat the deceased by suspecting her fidelity. She further deposed that in the mid night, she heard hue and cry made by the deceased, but she did not respond to that believing that it was a routine one; after some time, she observed the accused walking holding an axe, and that she saw the same with the help of street light.

17. P.W.9-Seetharam, who is a neighbour of the accused, deposed that the accused used to quarrel with his wife by suspecting her character; he advised the accused not to do so.

P.W.10-Mummudusettu Satyanarayana deposed that on

26.07.2012 accused went to his shop and purchased a liquor bottle.

18. P.W.12-Head constable deposed about the registration of Ex.P11-FIR on receipt of Ex.P1 report from P.W.1. P.W.13-Inspector of Police deposed about the investigation conducted in the present case. His evidence reveals that he visited the scene of occurrence, observed it, got it photographed and prepared Ex.P12 rough sketch of the scene and also Ex.P5-scene observation report. He also sent the dead body to the Government Hospital, Gajapathinagaram for autopsy, recorded the statements of the witnesses, seized material objects, effected arrest of the accused and on receipt of Ex.P10-postmortem examination report, Ex.P14-RFSL report and after completion of investigation laid the charge sheet.

19. Admittedly, there are no direct witnesses to the incident proper. The evidence of P.W.1 reveals that he saw the accused and the deceased, who are his parents together in their house at about 9.00 p.m. on the previous day night. On the next day morning, when he returned to the house, he found the deceased in a pool of blood and the accused was absconding from the house. P.W.1 is the son of the accused. He has no grouse or enmity with the accused to give false evidence against him. It is the consistent evidence of all the material prosecution witnesses that the accused was in the habit of harassing the deceased coming in a drunken state,

suspecting the fidelity of the deceased. On the fateful night also, the accused purchased a liquor bottle from the shop of P.W.10, and went to his house in a drunken state, picked up a quarrel with the deceased, abused and beat her. As per the evidence of P.W.1, the deceased was last seen together in a company of the accused and thereafter she was found dead. There is specific evidence of P.W.1 that the accused threatened to cause death of the deceased on that night, but he took it as routine one and left the house.

20. P.Ws.4 and 5 are immediate neighbours of the deceased. There is no dispute with regard to situation of their houses by the side of house of the accused. They clearly and categorically stated in their evidence that in the night, they heard galata and quarrel that went on in between the accused and the deceased. They thought that it was a routine one. They also stated that after some time, they found the accused coming out of his house holding an axe. Their evidence is also clear that they witnessed the same with the help of street light which was burning at that time. Both of them reiterated the same in cross-examination. There is no grudge or any other reason for P.Ws.4 and 5 to depose falsely against the accused. Under Ex.P1-report dated 27.07.2018 lodged by P.W.1, there is specific mention with regard to the accused coming to his house in a drunken state, insulting and abusing the deceased. P.W.1 also mentioned that his father caused

death of his mother suspecting her fidelity and escaped from the scene of offence. There is also specific evidence of P.Ws.1 and 2, children of the deceased and the accused, and P.Ws.3 to 5, neighbours, that the accused was not found in the morning on that day.

21. When the accused was examined under Section 313 Cr.P.C. with regard to the incriminating evidence, he simply stated that he was falsely implicated in this case. The accused did not choose to lead evidence to rebut the evidence on record or he did not prove that he was not in his house on the intervening night of 26/27.07.2012. As per Section 106 of the Indian Evidence Act, 1872, the appellant is required to explain the facts within his knowledge. Section 106 of the Act reads thus:

“Burden of proving fact especially within knowledge:

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

In *State of M.P. v. Ratan Lal*², the Hon'ble Supreme Court held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent with his innocence, the absence of such explanation itself is an additional link which completes the chain. Similar are the circumstances in the case on hand. The answers given by the appellant i.e. false and do not know, will go to a long way in completing the chain of circumstances in establishing his guilt.

22. There is also specific evidence of P.W.8, who is a panch witness for confession of the accused and seizure of M.O.9-axe. As per his evidence, the accused took him and police them to bushes situated at Chintalavalasa gutta, brought one axe from the bushes and handed over the same to police. The same is recovered by police under Ex.P8-pahchanama. As per Ex.P14-F.S.L. report, human blood was detected on M.O.9-axe. These are also incriminating circumstances against the accused to connect him to the alleged offence.

23. There is no delay in lodging the FIR with the police by P.W.1. The accused simply stated that he was falsely implicated in this case. It is not the case of the accused that somebody had trespassed into the house and caused the death of his wife. There is no reason for any other person to cause the death of the deceased. If the accused is an

² AIR 1994 SC 458

innocent person, he would not have absconded. Further, there is no reason at all for the accused to leave his wife alone in his house and go out. Neither there was any urgency nor any reason for the accused to leave the house on that day. As per the postmortem report and other oral and documentary evidence, the subject death was caused by hacking with M.O.9-axe and the injuries found on the body of the deceased are sufficient to cause death. The accused had motive to do away with the life of the deceased, as he was suspecting her fidelity. There is consistency in the evidence of all the witnesses. All the prosecution witnesses are truthful witnesses. No different view is possible with regard to the innocence or otherwise. The only one view is possible, that the accused had caused the death of the deceased intentionally by suspecting her fidelity.

24. The circumstances placed on record taken cumulatively, form a chain that there is no escape from the conclusion that, in all human probability, the death of the deceased was caused by the accused and none else. The circumstantial evidence is amply clear to sustain the conviction and incapable of explanation of any other hypothesis that of not guilty of the accused. The evidence adduced by the prosecution is consistent and unerringly points towards the guilt of the accused and it is not inconsistent with his innocence. The prosecution proved guilt of the accused of the

offence punishable under Section 302 IPC beyond reasonable doubt. All contentions raised on behalf of the accused are rejected. The trial Court, while dealing with the matter, had dealt all the contentions and rightly found the accused guilty of the offence punishable under Section 302 IPC. There is no infirmity. So, the conviction and sentence imposed on the accused for the offence under Section 302 IPC is liable to be confirmed, and the appeal preferred is liable to be dismissed.

25. In the result, the Criminal Appeal is dismissed, confirming the judgment, dated 10.06.2013, passed in S.C.No.171 of 2012 by the I Additional Sessions Judge, Vizianagaram.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

CHALLA KODANDA RAM, J

DR. SHAMEEM AKTHER, J

Date: 27.10.2018
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