

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE MS. JUSTICE J.UMA DEVI**

CRIMINAL APPEAL No.103 of 2013

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

1. The sole accused in Sessions Case No. 235 of 2010 on the file of V-Additional District and Sessions Judge, Tirupati, is the appellant herein. He was tried for the offence punishable under Section 302 I.P.C for causing the death of Smt. T. Nirmala on 01.11.2009 at about 9.00 P.M. at Kuppam Badur tank bund, Kuppam Badur village, R.C. Puram Mandal. By its judgment dated 15.12.2012, the learned Additional District and Sessions Judge convicted the accused for the offence punishable under Section 302 I.P.C and sentenced him to suffer imprisonment for life and to pay a fine of Rs.100/- in default to suffer rigorous imprisonment for a period of one month. Challenging the same, the present appeal came to be filed by the accused through legal aid.

2. The brief facts of the case, as seen from the evidence of prosecution witnesses, are as follows,

P.W.1, P.W.6 and another are brothers and the deceased Nirmala is their sister and wife of the accused. The accused is a resident of Saparlu of Ramachandrapuram Mandal. He married the deceased about 15 years prior to the incident and a daughter and son (P.W.13) were born to them. It is stated that the accused used to beat his wife in a drunken condition for the sake of money, to purchase

liquor. She used to complain about the same to P.W.1 who held mediations in which the accused was advised to live properly with his wife, but the accused did not mend his attitude. On 2.11.2009 at about 7.00 A.M. P.W.2 informed P.W.1 over telephone that the deceased was beaten to death and her dead body was thrown away in Bahadur Cheruvu by somebody. Immediately P.W.1, his brother Pratap Reddy and other villagers went to Bahadur Cheruvu and found the dead body of their sister with stab injury on the right side of her neck. It is stated that P.W.1 enquired with P.W.13, the son of the deceased and the accused about the incident, to which P.W.13 claims to have informed them that on the previous night the accused demanded money from the deceased for liquor, which was refused by the deceased. Then the accused beat her and that when the deceased was going towards Bahadur village to inform the incident to P.W.1, the accused followed the deceased with a knife. P.W.13 further informed to P.W.1 that when he followed the accused, the accused sent him away, as such he slept in the house. Thereafter, P.W.1 went to the police station, R.C. Puram and lodged a report with P.W.14, the then Assistant Sub Inspector of Police, R.C. Puram Police Station, which came to be registered as a case in Crime No.74 of 2009 for the offence punishable under Section 302 I.P.C. Ex.P14 is the F.I.R. submitted to the Court. Further investigation was taken up by P.W.16-Inspector of Police. On receipt of intimation about the registration of the crime, P.W.16 along with the staff proceeded to the scene of offence and found the dead body of the deceased near

tank bund with bleeding injuries and got prepared rough sketch of the scene of offence. Ex.P16 is the said sketch. He also seized blood stained earth and control earth under scene of observation mahazarnama which is marked as Ex.P17. Thereafter, he conducted inquest over the dead body of the deceased in the presence of panchayatdars under Ex.P6. During inquest, he examined P.W.1 to 3 and P.W.13 and recorded their statements. After completion of inquest, the dead body of the deceased was sent to Government Hospital, Puttur for post mortem examination.

3. P.W.12, the Civil Assistant Surgeon, Community Health Centre, Puttur, conducted autopsy over the dead body of the deceased on 02.11.2009 and issued Post Mortem Certificate. Ex.P9 is the said post mortem certificate. According to him, the cause of death was due to injury to vital organs i.e., lungs major vessels leading to hypovolenic shock.

4. P.W.16, the then Inspector of Police, Nagari circle continued with the investigation. It is stated that on 02.11.2009 he visited T.V.Saparla village, examined P.Ws.4 and 5 and recorded their statements and from there he proceeded to Government Hospital, Puttur and secured blood stained clothes of the deceased which are marked as M.Os.2 to 5.

5. P.W.17, the then Inspector of Police, Puttur circle, took up further investigation from P.W.16 and examined P.Ws.6 to 8 and

recorded their statements. It is stated that on 09.11.2009, on receipt of credible information about the accused, he proceeded to Mittakandriga bus stop at 8.50 A.M. and in the presence of P.W.11, he apprehended the accused and on interrogation in the presence of mediators, the accused is said to have admitted the offence. Pursuant to the confession, he seized 'Surikathi', which was hidden under a boulder in T.T.Kandriga village. Ex.P7 is the relevant portion with regard to confession in respect of the seizure of crime weapon. M.O.1 is Surikathi, which contained blood stains. After completion of investigation and after collecting Regional Forensic Science Laboratory's report and Post Mortem Certificate, he laid the charge sheet against the accused under Section 302 I.P.C., which was taken on file as P.R.C.No.12 of 2010 on the file of the Additional Judicial Magistrate of First Class, Puttur. After furnishing copies of documents to the accused as required under Section 207 of Cr.P.C., the matter was committed to the Court of Sessions. On committal the case came to be numbered as S.C.No.235 of 2010 on the file of the V-Additional District and Sessions Judge, Tirupathi. A charge under section under Section 302 I.P.C. was framed, read over and explained to the accused in Telugu, to which he denied and claimed to be tried. In order to prove its case, the prosecution examined P.Ws.1 to 17 and got marked Exs.P1 to P17 and M.Os.1 to 9. Out of 17 witnesses examined by the prosecution, P.Ws.3, 4, 5, 9 and 13 did not support the prosecution case and were treated as hostile by the prosecution. After closure of the 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 but did not adduce any defence evidence.

6. Basing on the evidence of P.Ws.6, 7 and 8, the learned V-Additional Sessions Judge convicted the accused for the offence punishable under Section 302 I.P.C. Challenging the said conviction and sentence, the present Criminal Appeal came to be filed by the appellant-accused through legal aid.

7. Learned Counsel appearing for the appellant-accused would submit that there are no direct witnesses to connect the accused with the commission of offence and the entire case is based only on circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events so as to point out the guilt of the accused. Even if the evidence of P.Ws.7 and 8 is believed, that the accused was last seen in the company of the deceased, still that by itself is not sufficient to connect the accused with the commission of offence, since the dead body was found 12 hours after the incident. He would further contend that as the prosecution is not able to prove the origin of blood stains on the clothes of the deceased, alleged to have been seized by the prosecution, and so also the origin of blood stains on the knife, M.O.1, alleged to have been seized by the prosecution at the instance

of the accused and thus the blood group was not tallied, the accused may be given benefit of doubt.

8. On the other hand, the learned Public Prosecutor would contend that though there are no eyewitnesses to the incident, the evidence of P.Ws.6, 7 and 8 coupled with the evidence of P.Ws.1 and 2 and recovery of M.O.1-knife from the accused would amply establish his involvement in the commission of the offence.

9. The point that arises for consideration is,

Whether the appellant-accused was responsible for the death of the deceased?

10. It is not in dispute that there are no eyewitnesses to the incident and the case rests on the circumstantial evidence.

11. In the present case, the circumstances relied upon by the prosecution are the deceased being last seen in the company of the accused and recovery of M.O.1-knife pursuant to the confession made by the accused.

12. The evidence of P.Ws.1 and 2 shows that on 02.11.2009 at about 7.00 A.M., P.W.2 informed P.W.1 through telephone that the deceased, who is his sister, was beaten to death and her body was thrown in Bahadur cheruvu by somebody. The source of the said information for P.W.2 was P.W.13, who is the son of the deceased and the accused. It is in the evidence of P.Ws.1 and 2 that on the next day of incident at about 7.00 A.M., after seeing the dead body of

the deceased, they enquired P.W.13 about the incident, who informed them that on the previous night there was a quarrel between the accused and the deceased for money and that after the quarrel when the deceased was proceeding to Bahadur cheruvu to inform P.W.1 about the quarrel, the accused followed the deceased in order to kill her with a knife and P.W.13 also followed the accused. Then the accused asked P.W.13 to go back to his house and accordingly P.W.13 returned to his house. However, P.W.13, who is said to have informed P.Ws.1 and 2 about the manner in which the incident had happened, did not support the prosecution case and he was treated as hostile by the prosecution. According to P.W.1, on 02.11.2009 at about 7.00 A.M., P.W.2 telephoned to him stating that the deceased was beaten to death and later the dead body was left on Bahadur cheruvu by somebody. P.W.2 failed to mention the name of the person who caused the death of the deceased. Therefore, we hold that there is any amount of doubt with regard to the information received by P.W.1 about the death of the deceased from the family members of the deceased.

13. The second circumstance which is pressed into service by the prosecution is the accused being last seen in the company of the deceased by P.Ws.7, 8 and 9. However, P.W.9 did not support the case of the prosecution and he was treated hostile by the prosecution. Insofar as the evidence of P.W.7 is concerned, he deposed that on 01.11.2009 at about 8.30 P.M. when himself and one

A.Chengalraya Reddy were going on a motor cycle to Sapparlu village to go to the house of his junior paternal uncle, they found the accused near the brandy shop of one Papulamma at Thatimakula Kandriga. They have also claimed to have noticed blood stains on the shirt of the accused. When they questioned the accused about the blood stains on his shirt, he is alleged to have stated that he had cut a Pig and came there to buy liquor. P.W.7 also found the accused in a disturbed mood. P.W.7 further stated that thereafter he proceeded to the house of his junior paternal uncle and slept over there on that night. On the next day at about 7.30 A.M., he came to know that the deceased was killed and thrown in Bahadur cheruvu, where there was no water. From the evidence of P.W.7, it is clear that he is not a resident of Sapparlu village and the purpose of his visit to the said village was only to go to the house of his junior paternal uncle. No purpose or explanation is given as to why he was coming to the house of his junior paternal uncle. Be that as it may, it is also to be noted here that P.W.7 never saw the accused in the company of the deceased on the previous night of the incident. He was all alone at the brandy shop. At this stage, the learned Public Prosecutor would contend that the evidence of P.W.7 is relevant to prove the fact of he witnessing blood stains on the shirt of the accused. We will discuss the said plea while dealing with the third circumstance relied upon by the prosecution. Therefore, the evidence of P.W.7, insofar as this circumstance, i.e., seeing the

accused at the brandy shop on the previous day night of the incident is not of any use to the prosecution.

14. There remains the evidence of P.W.8 to show the accused being last seen in the company of the deceased. According to the evidence of P.W.8, on 01.11.2009 at about 8.00 P.M. P.W.2, who is the son of one Kesavulu Reddy, called him to go to T.T.Kandriga and as such both of them went to T.T.Kandriga on a scooter. It is his evidence that one Manohar, son of Mangamma of Saparlu village owed money to him and hence while they were going to Saparlu village, noticed in the light of their scooter, the accused and the deceased quarreling with each other on Badur cheruvu bund. They stopped the scooter and when they questioned the accused as to why they were quarrelling, the accused and the deceased asked them to go away as it was their family affair. Again this witness states that the accused alone told them to go away as it was their family affair. Thereafter, they left the place and went to Saparlu. P.W.8 further deposed that since the said Manohar was not available in the village, they slept in Saparlu only. On the next day morning at about 7.00 A.M., they learnt from the villagers that the accused killed the deceased. It is clear from the chief-examination of P.W.8 that on 01.11.2009 at about 8.00 P.M. himself and P.W.2 went to Saparlu to collect money due from him. In the cross-examination, it has been elicited from P.W.8 that one Kesavalu Reddy, father of P.W.2, and the father of the deceased are cousin brothers and that he

got acquaintance with P.W.2 since his childhood. He further admits that except demanding money from the said Manohar, he had no other work at Saparlu village. If the evidence of P.W.8 in chief-examination is tested with the admission made by him in the cross-examination, it appears that one Manohar owed some money to P.W.8 and because of the same he went to Saparlu village. P.W.8 admits that since Manohar was not available in the village, he slept in the said village. No effort was made by the prosecution to examine the said Manohar to prove that he was due some money to P.W.8. In fact, there is no evidence on record to show as to whether any person, by name Manohar exist in the village. Though P.W.8 was not a resident of Saparlu village, he slept in the said village on the previous day of incident. In fact, there is no necessity for P.W.8 to sleep in the said village, as the distance between his village and Kothakandriga is about 6 or 7 K.Ms. and it takes only 15 minutes to reach Kothakandriga from his village. He could have as well returned back to his village. His evidence is silent as to where he slept in Saparlu village. That being the position, there arises any amount of doubt, as to whether P.W.8 went to Saparla village on the previous night of the incident.

15. The last circumstance, relied upon by the prosecution is the recovery of MO.1-knife from the possession of the accused, pursuant to his arrest. The evidence of P.W.17, the Inspector of Police goes to show that pursuant to the confession of the accused, he recovered

Surikathi, alleged to have been used in the commission of offence. On 16.11.2009, he sent the material objects and M.O.1 to R.F.S.L. for examination. P.W.15, the Assistant Director, R.F.S.L., Tirupathi, in his evidence, deposed that blood is detected on item Nos.1, 2, 3, 4 and 6, which are the clothes seized from the body of the deceased, control earth and blood stained earth and knife; the origin of blood stains on items 1, 2 and 3 is of human and that the origin of blood stains on item No.4 i.e., blood stained soil and 6 i.e., M.O.1-knife could not be determined. Insofar as item Nos.1, 2 and 3, which are the clothes seized from the body of the deceased, he states that blood group of blood stains could not be determined. There is no positive evidence to show that the blood stains on M.O.1-knife and on the clothes of the deceased and the accused are that of the deceased. Further, the mediator, who was examined by the prosecution, to prove the alleged recovery of the material objects, did not support the case of the prosecution and he was treated as hostile by the prosecution.

16. Having regard to the above, we hold that there is any amount of doubt with regard to the confession made by the accused and the confession leading to recovery. Hence, the circumstances relied upon by the prosecution are not proved to connect the appellant-accused with the crime.

17. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant-accused in the

judgment dated 15.12.2012 in Sessions Case No.235 of 2010 on the file of the V-Additional District and Sessions Judge, Tirupathi, Chittoor District, for the offence punishable under Section 302 of I.P.C is set aside 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 or crime. The fine amount, if any paid by the appellant-accused shall be refunded to him.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

06.02.2018
KR/Gsn.

