

HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No. 580 OF 2013

JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') questioning the judgment dated 27.02.2013, passed by the learned III Additional Sessions Judge (Fast Track Court), Ranga Reddy District (for brevity, 'the trial Court') in Sessions Case No.360 of 2011, whereby the trial Court convicted the appellant-accused under Section 235(2) Cr.P.C. of the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (for brevity, 'I.P.C.') and sentenced him to undergo imprisonment for life and also to pay fine of Rs.500/- (Rupees five hundred only), in default, to undergo simple imprisonment for six months for the offence under Section 302 I.P.C. and also sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.100/- (Rupees one hundred only), in default, to undergo simple imprisonment for three months. The trial Court directed that both the sentences shall run concurrently.

2. Heard Sri S.Nagender, the learned counsel appearing for the appellant-accused, and the learned Additional Public Prosecutor appearing for the respondent-State.

3. The case of the prosecution is as follows:

The deceased in this case, i.e., Aswini aged 4 years, is the daughter of the accused. P.W.1-R.Nagamani is the wife of accused and mother of the deceased girl. The marriage between the accused and P.W.1 was performed 12 years prior to the subject incident and they begot two female children, viz., Nandini and Aswini, aged 6 and 4 years, respectively. The accused used to harass his wife-P.W.1 as well as his daughters, mentally and physically and threatened to kill them and he would perform second marriage for begetting male children. On 28.04.2011, P.W.1-wife of the accused left the younger daughter Aswini (deceased) with her husband to attend her duty, the accused throttled his daughter-Aswini to death, took the dead body on TVS Moped and threw the dead body at Mamidipally-Shamshabad road outskirts of Shamshabad village. On the same day at about 5-00 p.m., the accused went to his wife and informed that their younger daughter-Aswini was missing. Thereafter, on the same day at about 8-30 p.m., the accused lodged a report to the police stating that their younger daughter-Aswini (deceased) was playing in front of their house on that day around 2-00 p.m. and did not turn up so far and they searched for her in surrounding areas, but could not trace her. Basing on the said report, the police initially registered a case in Crime No.249 of 2011 under the head 'girl missing' and conducted investigation. After completion of entire investigation, the police altered section of law to Sections 302 and 201 I.P.C. and filed charge sheet before the Magistrate concerned against the accused.

4. The learned VIII Metropolitan Magistrate, Cyberabad at Rajendra Nagar, took cognizance of the offences punishable under Sections 302 and 201 I.P.C., registered the charge sheet as P.R.C. No.85 of 2011 for the said offences and committed the case to the Principal Sessions Court, Ranga Reddy District, as the case is exclusively triable by the Court of Session, where it was registered as Sessions Case No.360 of 2011 and the same was made over to the Court of III Additional Sessions Judge (Fast Track Court), Ranga Reddy District (trial Court). On appearance of the appellant before the trial Court, charges for the offences punishable under Sections 302 and 201 I.P.C. were framed against him, read over and explained to him in his language. When questioned, the accused pleaded not guilty and claimed to be tried. During trial, the prosecution examined P.Ws.1 to 6 and marked Exs.P.1 to P.12 and M.O.1. After closure of evidence of the prosecution witnesses, the appellant-accused was examined under Section 313 Cr.P.C. explaining him the incriminating material appearing against him in the evidence of prosecution witnesses. For which, he pleaded not guilty. The appellant-accused did not examine any witnesses or exhibit any document to defend him before the trial Court.

5. The trial Court, after perusal of the entire evidence on record and after hearing both sides, found the appellant-accused guilty of the charges under Sections 302 and 201 I.P.C. and accordingly convicted and sentenced the accused as stated in the first paragraph. Questioning the said conviction and sentence imposed, the accused preferred the present appeal.

6. Learned counsel for the appellant-accused would submit that the findings of the trial Court are against the facts and the law of the case; the trial Court had not formulated questions for consideration; the case of the prosecution is based on circumstantial evidence; the trial Court ought not have considered the evidence of P.Ws.1 to 6; the guilt of the accused is not proved beyond all reasonable doubt; M.O.1-TVS moped was not used in commission of the offence; the accused did not confess the commission of the offence; there are discrepancies and contradictions in the evidence of the prosecution witnesses; the trial Court ought not have considered the evidence of P.W.1-wife of the accused; and ultimately, prayed to set aside the conviction and sentence recorded against the accused by the trial Court for the offences under Sections 302 and 201 I.P.C.

7. On the other hand, learned Additional Public Prosecutor would submit that there is ample evidence on record to prove the guilt of the accused for the offences punishable under Sections 302 and 201 I.P.C.; the accused is responsible for death of his daughter-Aswini; the trial Court had rightly convicted and sentenced the appellant; and ultimately, prayed to dismiss the appeal.

8. In view of the contentions putforth by both sides, the following points arise for determination:

- (1) Whether the accused caused death of his daughter-Aswini, aged 4 years?

(2) Whether the accused caused disappearance of the dead body of the deceased by keeping it in a ditch at Mamidapally-Shamshabad route with an intention to screen the evidence of offence and to escape from legal punishment?

(3) Whether the conviction and sentence recorded by the trial Court against the appellant for the offences punishable under Sections 302 and 201 I.P.C. are sustainable?

POINTS:

9. The case of the prosecution is that on 28.04.2011, the accused caused death of his daughter-Aswini by throttling and threw the dead body in a ditch situated in Mamidapally village, Shamshabad Mandal. Before commission of the offence, the accused threatened to kill his wife and his two daughters, so that he can marry again and beget male children.

10. The evidence of P.W.1-R.Nagamani, who is wife of the accused and mother of the deceased-Aswini, reveals that she was residing in Maduban colony, Hyderabad; she migrated 12 years back from Sadam; the accused married her 12 years back; they begot two daughters, viz., Nandini and Aswini; her younger daughter-Aswini died 1½ years prior to her deposition; and her elder daughter-Nandini is residing with her sister-in-law. P.W.1 used to work in a company from 9-00 a.m. to 6-00 p.m. The evidence of P.W.1 further reveals that she returned to lunch at 12-00 noon on the date of incident and dropped her younger daughter-Aswini at their house and she returned to work at 1-00 p.m., the accused was present in the house

at the time of dropping the deceased-Aswini at the house, and at about 5-00 p.m., the accused came to her work place and informed her that their younger daughter-Aswini was not traced; thereafter, both of them searched for their daughter, but did not find her; and they proceeded to police station and lodged a report; after arrival of relations, they suspected the hand of the accused in the subject death; and she along with their relatives handed over the accused to police. There is also the evidence of P.W.1 that the accused confessed the killing of their younger daughter-Aswini and kept the dead body in a gunny bag and threw the same in a pit near culvert at Shamshabad, by taking the same by motorcycle; thereafter the accused led them and police to the place where the accused kept the dead body. There is also the evidence of P.W.1 that the accused was threatening to kill her and her daughters, so that he can remarry and beget male children; due to the attitude of the accused, she kept her elder daughter-Nandini with her sister-in-law. In the cross-examination, nothing was elicited except putting few suggestions, which she denied.

11. The evidence of P.W.2-U.Haribabu reveals that he is neighbour of the accused family; the incident took place one year prior to his deposition; on the date of incident, he returned from work at 6-00 p.m., then his wife, his daughter, the accused and P.W.1 were searching for the deceased; the accused confessed before the police that he threw the dead body of his child in a Mori (canal-ditch) at Shamshabad; and thereafter, he along with the police and others proceeded to the Mori and found the dead body in the Mori; the dead

body decomposed. There is also the evidence of P.W.2 that the accused used to consume alcohol, make galata everyday in his house and threaten to kill his wife and children. In the cross-examination, P.W.2 denied that he deposed false.

12. The evidence of P.W.3-Prem Kumar reveals that on 03.04.2011 during noon time, the police called him; the accused was in police custody; on interrogation, the accused confessed that he killed his younger daughter and led them to the spot, where the dead body was thrown; he along with one Bheemaiah (L.W.9) and police proceeded to a culvert, situated in between Mamidipally village and Shamshabad and found the dead body of a girl child aged about 5 years, which was in decomposed state; the police conducted panchanama; the deceased girl was wearing blue colour drawer and blue colour shirt; the accused also led them to his house, where there was a moped by which the dead body of the deceased girl child was taken to that spot; the police recovered the said moped under a cover of panchanama Ex.P.5. Ex.P1 is admissible portion of confession of the accused, Ex.P.2 is the scene of offence panchanama, Ex.P.3 is the rough sketch of the scene of offence and Ex.P.4 is the inquest report; and the moped seized was marked as M.O.1; and the photographs taken were marked as Ex.P.6. In the cross-examination also, this witness reiterated what he deposed in the chief examination.

13. The evidence of P.W.4-Dr. P.Hari Krishna, Professor of Forensic Medicine, reveals that he conducted autopsy over the dead

body of a baby-R.Aswini aged four years on 01.05.2011 from 11-00 a.m. to 12-00 noon and on examination, he found the following ante-mortem injuries:

- 1) Contusion of 21.5 cms, size over under chin blush red.
- 2) Nail mark abrasion of 0.5 cm over left side of neck 10 cms below mastoid reddish.
- 3) Contusion 2 x 1.5 cm left side of neck 3.5 cm below angle of mandible blush red.
- 4) Abrasion 2.5 x 2 cm over left temple red.
- 5) Abrated contusion of 5 cms size over left side of forehead bluish red.

P.W.5 also found defused contusion of scrap muscle of the neck internally. He opined that the cause of death was due to manual strangulation and the death took place 72 hours prior to autopsy. In the cross-examination, P.W.4 denied that no injuries were found on the dead body of the deceased girl. Ex.P.7 is the postmortem examination report given by P.W.4.

14. The evidence of P.W.5-N.Ranjith Kumar, Sub Inspector of Police, reveals that on 28.04.2011 their Inspector of Police-P.W.6 registered in Crime No.249 of 2011 and entrusted investigation to him; on the same day, he examined the accused, who lodged the report with the police; he also examined L.W.3-Uppada Mani and L.W.4-Tanem Krishna and recorded their statements; he proceeded to the house of P.W.1 and observed it under Ex.P8-panchanama and prepared Ex.P9-rough sketch; when P.W.1 got suspicion against the accused, the police apprehended and interrogated the accused; and

he handed over the Case Diary file to their Inspector of Police (P.W.6).

15. The evidence of P.W.6-C.Uma Maheswar Rao, Inspector of Police, reveals that on 28.04.2011 at about 8-30 p.m., he received a report from the accused marked as Ex.P.10; on that he registered a case in Crime No.249 of 2011 under the head 'girl missing' and submitted Ex.P.11-F.I.R. to the Court concerned and entrusted the investigation to P.W.5-Sub Inspector of Police; on 30.04.2011, P.W.5-Sub Inspector of Police secured the presence of the accused and suspected the accused. On 30.04.2011, P.W.6-Inspector of Police took up investigation, verified the investigation conducted by P.W.5 and found it on correct lines; and thereafter, he secured the presence of P.W.3-Nerella Prem Kumar and L.W.9-Babburi Bheemaiah and also secured the presence of P.W.1-R.Nagamani and P.W.2-U.Hari Babu, examined them and recorded their statements and also recorded confessional statement of the accused in the presence of the said witnesses; in pursuance of the confession of the accused, the accused led them to the place where he threw the dead body of the deceased girl at the road of Mamidipally to Shamshabad at the outskirts of Shamshabad near 8 km stone; he got the scene of offence photographed and conducted panchanama in the presence of the said panchas; he also conducted inquest over the dead body of the deceased girl; and thereafter, he shifted the dead body for autopsy. There is also the evidence of P.W.6 that the accused led them to his residence at Madhuvan colony and showed the moped (M.O.1), used in commission of

offence, which was seized under a cover of seizure panchanama; and thereafter he altered Section of Law from 'girl missing' to Sections 302 and 201 I.P.C., Ex.P.12 is the altered F.I.R. In the cross-examination, P.W.6 reiterated what he has deposed in his chief-examination and denied that the accused was falsely implicated in this case.

16. Admittedly, the entire case of the prosecution is based on circumstantial evidence. The conditions required to prove the guilty of the accused based on circumstantial evidence are enunciated in **Hanumant Govind Nargundkar v. State of M.P.**¹, **Sharad Birdhichand Sarda v. State of Maharashtra**² and **C.Chenga Reddy v. State of A.P.**³. In **Sharad Birdhichand Sarda's** case, the Hon'ble Supreme Court held as hereunder:

"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
- (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.

¹ AIR 1952 SC 3442

² (1984) 4 SCC 116 = AIR 1984 SC 1622

³ (1996) 10 SCC 193

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

17. P.W.1 is the wife of the accused and mother of the deceased girl. Her evidence reveals that the accused used to threaten to kill her as well as her two daughters and wanted to remarry to beget male children. There is specific evidence of P.W.2, who is a neighbour of the accused, about the accused creating galata every day in his house and threatening to kill P.W.1 and her children. There is also evidence of P.W.1 that due to the attitude of the accused, she kept her elder daughter-Nandini with her sister-in-law. There is specific evidence of P.W.1 that she is working in a company, on the date of incident, she returned to her house for lunch and left the house at 1-00 p.m., leaving her deceased daughter-Aswini, 4 years old, in their house in the company of the accused and at about 5-00 p.m., the accused went to her work place and informed her that their younger daughter was not found. There is specific evidence of P.W.1 that when she left her daughter, the accused was present in her house.

18. When the accused was examined under Section 313 Cr.P.C. explaining the incriminating evidence appearing against him, he simply denied the same and did not state a single word on his defence. As per the case of prosecution, the subject death was caused on 28.04.2011. As per the evidence of P.W.4-doctor and Ex.P.7-postmortem examination report, the subject death was

caused 72 hours prior to the post-mortem examination. It goes to show that it was caused in the afternoon of 28.04.2011. There is no dispute with regard to the date and time of death. The deceased girl-Aswini was not seen in front of her house or in surroundings of their house in the afternoon/evening of 28.04.2011, or alive thereafter. Moreover, the deceased was only 4 years old girl and there was no possibility to her to travel to 8 kilometres away from her house, where her dead body was found. As per the post-mortem examination, the death is homicidal. There is also evidence of P.W.3, who is an independent person, with regard to the accused confessing the commission of offence and leading to the recovery of the dead body of the deceased girl-Aswini. P.W.2 is a neighbour of the accused and he also deposed that the accused confessed the commission of the offence that led to the recovery of the dead body of the deceased girl. P.W.1 corroborated the evidence of P.Ws.2 and 3. The investigating officers-P.Ws.5 and 6 have also corroborated the evidence of P.Ws.1 to 3. When the daughter of the accused was missing, the accused ought to have searched for her instead of going to P.W.1 and informing the same. The conduct of the accused is unnatural. In view of the evidence of P.Ws.1 and 2, there is clear intention on the part of the accused that he intended to eliminate his wife and two daughters in order to perform second marriage and to beget male child.

19. The accused had not given any explanation and did not rebut the circumstances appearing against him by leading any cogent and convincing evidence. As per Section 106 of the Indian

Evidence Act, 1872, the accused is required to explain the facts within his knowledge. Section 106 of the Evidence Act reads as follows:

"106. Burden of proving fact especially with 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 view of the aforesaid proved circumstances, it is clear that the deceased was last seen in the company of the accused. Then it is for the accused to give a probable and convincing explanation for her missing. But, he failed to do so. In view of the ocular and documentary evidence placed on record, it can safely be concluded that the death of the deceased-Aswini and the place of finding her dead body, were within the exclusive knowledge of the accused. The accused led P.Ws.1, 2, 3 and police personnel to the place where the dead body was lying, and the dead body was recovered. These are all the incriminating circumstances against the accused.

20. In view of the decision of the Hon'ble Supreme Court in **State of M.P. v. Ratan Lal**⁴, in a case where various links have been satisfactorily made out and the accused did not offer any

⁴ AIR 1994 SC 458

explanation consistent with his innocence, the absence of such explanation itself is an additional link which completes the chain.

21. In view of cogent, convincing and un-impeachable evidence on record, there is definite tendency unerringly pointing towards guilt of the accused. The circumstances, if taken cumulatively, form the complete chain that there is no escape from the conclusion that in all human probability the subject death was caused by the accused and none else. The circumstantial evidence is ample clear to sustain the conviction and incapable of explanation of any other hypothesis than that of the guilt of the accused. The evidence placed by the prosecution is consistent with the guilt of the accused and it is inconsistent with his innocence. The prosecution has established that the accused intended to kill P.W.1 and her two daughters to marry again and beget male children, which is clear motive to cause the death of his daughter. So, all the requirements of Section 302 I.P.C. are proved by the prosecution beyond all reasonable doubt. The trial Court analyzed the entire evidence on record in correct prospective. There is no infirmity in the impugned judgment of the trial Court. The findings are based on record and no different view can be substituted.

22. It is also the evidence on record that the accused made an attempt to cause disappearance of the evidence by throwing the dead body of the deceased girl in a ditch. Therefore, the accused is guilty of committing an offence under Section 201 I.P.C. also. The trial Court, while analyzing the entire evidence on record, came to a

correct conclusion and there is no infirmity in the impugned judgment. Therefore, it is not possible to take a different view. The conviction and sentence recorded against the accused for the offences punishable under Sections 302 and 201 I.P.C. are liable to be confirmed. All the defences set up by the accused do fail. The appeal is devoid of merit and is liable to be dismissed. These points are answered accordingly.

23. In the result, the Criminal Appeal is dismissed confirming the impugned judgment dated 27.02.2013, passed in Sessions Case No.360 of 2011, by the learned III Additional Sessions Judge (Fast Track Court), Ranga Reddy District.

24. As a sequel, miscellaneous petitions, if any pending in this appeal, shall also stand dismissed.



P. NAVEEN RAO, J

Dr. SHAMEEM AKTHER, J

Date: 01-05-2018

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