

THE HON'BLE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.674 of 2013

JUDGMENT: (Per Hon'ble Smt Justice T. Rajani)

This appeal is preferred by the appellant against the judgment of the III Additional Sessions Judge, Warangal in S.C.No.571 of 2011 dated 10.06.2013 convicting and sentencing her to undergo imprisonment for life and pay fine of Rs.1,000/- in default to undergo simple imprisonment for a period of three months for the offence punishable under Section 302 of the Indian Penal Code.

2. The facts, in brief, as can be read from the charge sheet, are as follows:

On 07.01.2011 at 13.30 hours a complaint was lodged by the complainant, stating that, his son, by name Duppati Vijay Kumar, was living with one Mamidala Vijaya, since four years and eking out livelihood by doing coolie work. Now and then his son used to come to him and take money from him. Three days ago it was noticed that his son and Vijaya have quarrelled on the road and from the next day onwards, his son was not found and was missing. On 06.01.2011, in the evening, his elder brother's daughter, by name Shashikala, telephoned to him and informed that Vijaya was roaming alone at Dornakal, but his son was not found with her and questioned whether his son remained at the house. On the next day i.e. on 07.01.2011, he told his younger son, who called Shashikala and she expressed that Vijaya was roaming at vegetable market, Dornakal and saying that Vijay Kumar was dead. His younger son and his son-in-law, together,

went to the condemned railway quarter of his son, situated at Chinthalbasti and found the door of the quarter locked and on observation, it was noticed that the lock was unlocked and then they removed the latch of the door and went inside the quarter and found the burnt dead body of his son, in the kitchen room, which was found to be suspicious.

Based on the said complaint, a case was registered in Cr.No.5 of 2011 under Section 174 of the Criminal Procedure Code and investigated into. The statements of witnesses were recorded, the scene of offence panchanama was conducted and material objects were seized from the scene, inquest was conducted on the dead body of the deceased and later it was sent for post mortem examination to FMD, KMC, Warangal. On the basis of the strong suspicion that Vijaya, who was living with the deceased, committed the offence, she was arrested on 09.01.2011 and she made a confession about committing the offence and her confessional statement was recorded and she was later sent to Court for judicial remand. After concluding the investigation, the charge sheet was laid against for the offence under Section 302 IPC.

On appearance of the accused, the II Additional Judicial Magistrate of First Class, Kazipet took cognizance of the case under Section 302 IPC and after complying with the legal formalities and as the case is exclusively triable by a Court of Sessions, committed the case to the Sessions Division, Warangal District by virtue of orders in PRC.No.8 of 2011. The learned Sessions Judge, in turn, made over the case to the Court of III Additional Sessions Judge, Warangal for trial

and disposal in accordance with law. On appearance of the accused before the Court below, the charges referred to above came to be framed and were read over to the accused, to which the accused pleaded not guilty and claimed to be tried. During trial, in support of its case, the prosecution examined P.Ws.1 to 22 and got marked Exs.P1 to P18 and M.Os.1 and 6. After completion of the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence, when she was examined under Section 313 Cr.P.C., she denied truth in the prosecution evidence and reported no evidence on her behalf.

3. The Court below, after considering the evidence and the material on record, passed the impugned judgment against which the present appeal is preferred on the following grounds:

The Court below failed to appreciate the fact that P.Ws.1 to 5 are kith and kin of the deceased; it ought to have appreciated that P.Ws.8 and 9 turned hostile and that P.Ws.6 and 7, before whom the extra-judicial confession was alleged to have been made, did not voluntarily state about the same, till they were examined by the police on 09.01.2011; it ought to have appreciated that the fact of recovery of M.Os.1 to 5 itself was doubtful; it ought to have appreciated that the admission of P.W.3 with regard to the threat of committing suicide by the deceased and it ought to have observed that P.Ws.20 and 22 never visited the scene of offence nor effected the seizure of M.Os.1 to 6 at the scene of offence but conducted only table investigation. Based on the above, the appellant seeks this Court to set aside the impugned judgment.

4. Heard the counsel for the appellant and the learned Public Prosecutor.

5. The counsel for the appellant contends that the whole case is based on circumstantial evidence and the nexus between the accused and the death of the deceased is not established by the prosecution. The prosecution failed to prove that it must only be the accused, who might have killed the deceased. The recoveries made from the scene of offence do not, in any manner, fix the complicity of the accused in the alleged offence.

6. Learned Public Prosecutor, on the other hand, submits that the confession made by the accused to P.W.15 would suffice to conclude that it was the accused, who killed the deceased. He also relies on the burn injury, which was found on the body of the accused, to draw support to his contention that the said injury would clinchingly point towards the guilt of the accused.

7. With the above arguments in view and based on the material on record, we frame the following points for consideration:

1. Whether there was no access to the scene of offence, to anyone else, except the accused.
2. Whether the evidence of the prosecution would prove the guilt of the accused beyond all reasonable doubt.
3. To what result.

POINT No.1:

8. The evidence of P.W.1, who is the father of the deceased, would show that the deceased came to him on 01.01.2011 and there was a

quarrel between the accused and the deceased on that day, on the road and he does not know the reason for the said quarrel. On the following day, his son was not seen. After three days i.e. on 06.01.2001, his brother's daughter Shashikala informed him on the phone, that the accused was moving alone here and there and his son Vijay Kumar was not to be seen in her company. Then he instructed his second son Shiva Kumar, to search for the deceased. He also sent his son-in-law along with his son, to the Chintal Basti Railway quarters, which are condemned. When both of them searched at the abandoned quarters, they found the dead body of his son with the injuries on his body in the said quarters. This happened on 07.01.2011 in the morning hours. Then he rushed to the police station and gave Ex.P1 report.

10. P.W.2 is the mother of the deceased and the wife of P.W.1. She also corroborates the evidence of P.W.1. Even according to P.W.2, she went to the quarters, which is in dilapidated condition and saw the dead body.

11. P.W.3 is the son of P.Ws.1 and 2 and the brother of the deceased. He also states that the house of the accused is an abandoned railway quarter at Kazipet and he saw the dead body in the kitchen room. P.W.4 also went along with P.W.3, to the house of the accused, which is stated to be an abandoned railway quarter at Kazipet. He also states that the dead body was found in the kitchen room. He is the son-in-law of P.Ws.1 and 2. P.W.5 is the wife of P.W.4. Her evidence is that P.Ws.3 and 4 informed her that her brother Vijay Kumar was lying dead with burn injuries, in an abandoned railway

quarters at Chintalbasti. P.W.10 is the neighbour of the accused and the deceased. They do not speak about the condition of the quarter. P.W.14 is a witness for the scene of offence panchanama, who states that the scene of offence is an abandoned railway quarter. They prepared a panchanama and the rough sketch at the scene of offence. P.W.22 is the investigating officer, who conducted the scene of offence panchanama, but he does not speak about the condition of the quarter.

12. It is now necessary to look into the scene of offence panchanama, to see whether there was any lock and key to the quarter, so as to prevent others from coming inside. Unfortunately, Ex.P5, which is the scene of offence panchanama, does not reflect the total description of the scene of offence. It only shows that the panchas examined the scene of offence and found the dead body and other articles. The rough sketch also does not offer any assistance, in deciding whether there was no access provided to the quarter, apart from the main door. In the report, which is marked as Ex.P1, it is stated that the door was bolted and a lock was kept and that on observation, they found that the lock was hanging to the bolt but it was not locked. Even if we go by the contents of Ex.P1, no explanation comes forth as to why the accused, who has committed the offence, would leave the lock without locking it. Scope is left for a hypothesis that someone might have broke open the lock and entered the house and committed the offence, in the absence of the accused.

13. The failure of the prosecution to prove the condition of the quarter and by virtue of the positive evidence coming forth from the

prosecution witnesses that the scene of offence is an abandoned and dilapidated railway quarter, ample scope is left to conclude that the scene of offence offered access to outsiders also, in which circumstance, the accused cannot be said, with certainty, to be the person who has committed the offence.

The point is answered accordingly.

POINT No.2:

14. According to P.W.1, his brother's daughter Shashikala informed him that the accused was moving alone here and there and that his son is not seen along with her, whereas according to P.W.2, the accused was moving alone here and there and telling others that Vijay Kumar was killed. P.W.3 states that his cousin sister, Shashikala, informed P.W.1 that the accused alone was present in that house and his brother was not seen in the house, which is absolutely inconsistent with the prosecution case, as it is the deceased, who was found in the house when they went to the scene of offence. P.W.4 is the son-in-law of P.W.1. According to him also, the information given by Shashikala is the same, as stated by P.W.3. P.W.21 is Shashikala, who was referred to by the above witnesses. It would be beneficial to look at her evidence, at this juncture. According to her evidence, on 06.01.2011, she heard in the market, from one Mallesham and Venkatesham, that the accused has been canvassing about the death of Vijay Kumar in Kazipet and that the accused was in drunken condition. Hence, it can be understood that the information, which was passed on by Shashikala to P.Ws.1 and 2, is based on the information given by Mallesham and Venkatesham. Even according to Shashikala,

the accused was only canvassing about the death of Vijay Kumar and she did not state that the accused confessed that she has killed the deceased. Mallesham referred by P.W.21 is examined as P.W.16. According to him, on 06.01.2011, at about 3 PM, he found that the accused was in drunken condition and P.W.15 told him that the accused was telling that she had killed the deceased and both of them informed the same to Shashikala. Hence, the first hand information seems to have come from P.W.15, who is Venkatesh, referred to by P.Ws.21 and 16. According to P.W.15, at about 8 or 9 AM, he suspected the accused to be in drunken condition and she told him that she killed Vijay Kumar and she was telling to herself that she killed Vijay Kumar. But in his cross examination, the said evidence is pointed out as an omission, thereby, striking at the root of the prosecution case. The information, based on which the witnesses came to believe that it was the accused, who killed the deceased, seems to have come from PW.15, which is not stated by him at the earliest point of time, which is the time of recording his statement. Then it has to be considered as an improvement. So also, the evidence of PW.16 that he was told by PW.15 that the accused was telling that she had killed the deceased, was pointed as an omission in his 161 statement.

15. Now the confession having been dismantled, the other evidence has to be looked into. One clinching aspect, which was argued by the learned Public Prosecutor, as fixing the nexus between the accused and the death of the deceased is the injury found on the body of the accused. The Doctor, who spoke about the injuries on the body of the accused, is examined as P.W.18. According to him, he found a healed

abrasion surrounded by black burn mark at left fore-arm under 1/3rd medial side. The accused explained the above injury in her 313 examination, as having been sustained in an accident. The date of examination of the accused was on 18.01.2011. The age of the said injury is not stated by P.W.18 so as to disbelieve the version of the accused given in her 313 examination. With regard to the burnt items found at the scene of offence, a saree of the accused was also found to be burnt. This is contended to be a connecting factor between the accused and the offence. But that by itself, in our opinion, does not fix the complicity of the accused. When she is admitted to be residing along with the deceased and the incident having occurred in the house where she was residing, it is possible and probable that her clothes could also catch fire when kerosene is sprinkled and fire is set to the body of the deceased.

16. The other incomprehensible aspect, which presents to us, is the ability of the accused to commit the murder of the deceased, who, in all probability, would be stronger than her. In order to assume that the deceased might have been drunk, so as to make it easy for the accused to commit the offence, the post mortem examination report does not reveal that there was any alcohol in the stomach of the deceased. It shows that the stomach was found to be empty. Hence, the post mortem examination also does not render any help to the prosecution, in dispelling the above improbability. When the case is of strangulation, some resistance can be assumed on the part of the victim. Unless there is some proof of the circumstances, under which the accused could have overpowered the said resistance, the case of

the prosecution, that the accused strangled the deceased, cannot be believed. When the law is well settled that, in a case resting on circumstantial evidence, all the circumstances should unerringly point towards the guilt of the accused and manacle the accused inescapably, with all the above lapses, it would not be safe to hold that the accused is guilty.

The point is accordingly answered.

POINT No.3:

In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant-accused in S.C.No.571 of 2011 dated 10.06.2013 on the file of the III Additional Sessions Judge, Warangal are set aside. The appellant-accused is acquitted of the offence under Section 302 IPC and she shall be set at liberty forthwith, if he is not required in any other case.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

T. RAJANI, J

September 27th , 2018

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith.

(B/o) DSK