

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE MS. JUSTICE J.UMA DEVI
CRIMINAL APPEAL No.238 of 2013**

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

1. Sole accused in Sessions Case No.241 of 2012 on the file of the I-Additional District and Sessions Judge, Adilabad District was tried for the offence punishable under Section 302 I.P.C., for causing the death of his wife Chella Laxmi by strangulating her with a rope and throttling her with hands, on the intervening night of 19/20.4.2012 at Yapalguda village of Adilabad Mandal. By its judgment dated 15.11.2012, the learned I-Additional District and Sessions Judge convicted the accused for the offence punishable under Section 302 I.P.C and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of six months.

2. The facts of the case as culled out from the prosecution evidence are as under,

The accused is the husband of the deceased. P.W.1 is the mother-in-law of the accused and mother of the deceased. P.W.2 is the brother-in-law of the accused. P.Ws.3 and 4 are the sons of the accused and the deceased. P.W. 5 is the wife of P.W.2. The marriage between the accused and the deceased was performed during their childhood i.e. when the deceased was about 16 years of age. There

were disputes in the family with regard to the accused developing illicit intimacy with another lady. Before the death of the deceased P.W.3 telephoned P.W.1 informing him about the quarrel between the accused and the deceased. On that information, P.W.1, P.W.2 and others went to the house of the accused and discussed about the same with both the accused and the deceased. As it was late in the night, they decided to continue the discussion on the next day. The disputes mainly relate to the accused developing illicit intimacy with another lady. The evidence discloses that after taking meals, the deceased and the accused went to the terrace of the house which is an open slab, to sleep, whereas other family members were sleeping in the house. On the next day at about 6.00 A.M. P.W.1 woke up and as she did not find the deceased, she sent P.W.5 to the terrace of the house where the deceased was sleeping in the night. P.W.5 went to the terrace and found the deceased lying dead with injuries around her throat and neck and the accused was not found on the terrace. It was suspected that the accused might have killed the deceased and fled away as he had illicit intimacy with another woman, which was objected to by the deceased.

3. On 20.04.2012 P.W.3 went to the police station and lodged a report with P.W.15, the then Sub Inspector of Police, Adilabad Rural Police Station, who registered a case in Crime No.62 of 2012 under Section 302 I.P.C. Ex.P13 is the F.I.R. submitted to the Court. P.W.15 examined and recorded the statement of P.W.3 under Ex.P2. Since it

was a grave crime, P.W.15 sent the C.D. file to P.W.18, the then Inspector of Police, Adilabad Rural Circle for further investigation. On receipt of the C.D. file, P.W.18 took up further investigation in this case, visited the scene of offence situated at Yapalguda village, prepared scene of offence panchanama and seized M.O.2-Bangle pieces in the presence of P.Ws.7 and 8. Ex.P15 is the Crime Detail Form. He also prepared rough sketch of the scene of offence, which is Ex.P16. Later, he conducted inquest over the dead body of the deceased in the presence of P.Ws.9, 11 and 12. Ex.P9 is the inquest report. During inquest he examined P.Ws.1, 2, 4 and 5 and got photographed the dead body of the deceased. Thereafter, the dead body was sent to RIMS, Adilabad for post mortem examination.

4. P.W.10, the Assistant Professor, RIMS, Adilabad conducted autopsy over the dead body of the deceased on 20.04.2012 and issued Ex.P8, the Post Mortem Certificate. According to his opinion, the cause of death of the deceased was due to asphyxia as a result of strangulation.

5. Further investigation in this case was taken up by P.W.16, the in-charge Inspector of Police, Adilabad Rural Circle. According to him, on 24.04.2012 at about 11.00 A.M. he arrested the accused at his house at Yapalguda village, secured the presence of P.Ws.13 and 14 and recorded the confessional statement of the accused under Ex.P14. Pursuant to the said confession, he seized M.O.1-Nylon saree from the house of the accused under cover of Ex.P14-

confession and recovery Panchanama. After completing the entire investigation and collecting all the necessary documents, P.W.17, the then Inspector of Police, Adilabad Rural Police Station laid a charge sheet against the accused, which was taken on file as P.R.C.No.10 of 2012 on the file of the Judicial Magistrate of First Class, Adilabad. On appearance of the accused copies of documents were furnished to the accused as required under Section 207 of Cr.P.C. and the case was committed to the Court of Sessions, Adilabad for trial. On committal, the case came to be registered as S.C.No.241 of 2012 on the file of the I-Additional District and Sessions Judge, Adilabad. A charge under Section 302 I.P.C. was framed against the accused, read over and explained to him, to which he denied and claimed to be tried. The prosecution examined P.Ws.1 to 18 and got marked Exs.P1 to P16 and M.Os.1 and 2. After closure of prosecution 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. No oral or documentary evidence is adduced on behalf of the accused in support of his defence.

6. Out of 18 witnesses examined by the prosecution, P.Ws.3, 4, 7, 8, 9, 11, 13 and 14 did not support the case of the prosecution and were treated as hostile by the prosecution. Basing on the evidence of P.Ws.1, 2 and 5 and as there is no explanation forthcoming from the accused as to how the deceased died, the learned I-Additional

District and Sessions Judge convicted the accused for the offence punishable under Sections 302 I.P.C. and sentenced him as stated supra. Challenging the said conviction and sentence, the present Criminal Appeal came to be filed by the accused under Section 374 (2) Cr.P.C.

7. Learned counsel appearing for the appellant would submit that there are no eyewitnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. According to him, there are a number of inmates in the house of the accused and as such fixing the responsibility solely on the accused for causing the death of the deceased cannot be accepted in the absence of any evidence. He pleads that the stair case to the terrace of the house of the accused has a separate entrance, which is not guarded by any wall and as such the possibility of a stranger coming on to the terrace and causing the death of the deceased in the absence of the accused on the early morning of the incident cannot be ruled out.

8. Learned Public Prosecutor would contend that the evidence of P.W.5 would show that there was no scope for a third person to make an entry into the house of the deceased and go on to the terrace and as such the burden lies on the accused to explain as to how the deceased died in view of Section 106 of the Evidence Act.

9. The point that arises for consideration is,

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

10. It is to be noted here that there are no eyewitnesses to the incident and the case entirely rests on circumstantial evidence. The following three circumstances are relied upon by the prosecution to connect the accused with the commission of offence.

11. The first and main circumstance relied upon by the prosecution is the evidence of P.Ws.1, 2 and 5 who deposed about the accused and the deceased together going on to the terrace of their house to sleep after having meals in the night and thereafter on the next day morning only the dead body of the deceased was found on the terrace and that the accused was found absconding from the house. The second circumstance is the motive for the accused to cause the death of the deceased as she objected to his having illicit intimacy with another lady. The third and last circumstance is that the accused evaded the process of law i.e., absconding from the village after the incident. The question is, therefore, whether these three circumstances are proved and if proved, whether they are sufficient to connect the accused with the commission of offence.

12. Before proceeding further, it is to be noted that P.Ws.3 and 4 who are sons of the accused and the deceased did not support the case of the prosecution and they have resiled from their earlier statements recorded by the police. There lies the evidence of P.Ws.1, 2 and 5 which is required to be considered now.

13. P.W.1 is none other than the mother of the deceased. In her evidence she deposed that a day prior to the date of incident they received a phone call from P.W.3 informing about the quarrel between the accused and the deceased and accordingly she, P.Ws.2 and 5 went to the house of the accused and had a discussion with the accused and the deceased. As it was late in the night, they slept in the house of the accused in order to continue their discussion on the next day morning. The evidence of P.W.1 further shows that after having dinner, the accused and the deceased together went on to the terrace of the house for sleeping. On the next day morning at about 6.00 A.M. P.W.1 woke up, but the deceased could not get up and accordingly she sent P.W.5 to the terrace to wake up the deceased and when P.W.5 went on to the terrace, she noticed the dead body of the deceased with injuries on her throat and neck. She also noticed that the accused was not present on the terrace. Thereafter, the law was set into motion by lodging a report by P.W.3. This evidence of P.W.1 is corroborated by the evidence of P.Ws.2 and 5.

14. Though all these three witnesses were cross-examined at length, nothing useful was elicited to discredit their testimony with regard to their being present in the house of the accused on the date of incident and also their witnessing the accused and the deceased going together on to the terrace after having meals. It is to be noted here that the place where the accused and the deceased were

sleeping is an open terrace and the staircase to the terrace was from outside the house abutting the main road, leaving thereby accessible to every one. Though P.W.5 in her chief-examination states that there was no scope for any third person entering into the house, P.W.1 in her cross-examination gives a different version. It would be useful to extract the relevant portion from the cross-examination of P.W.1, which is as under:

“It is true I did not mention the above fact in my 161 Cr.P.C. statement recorded by the police (omission). It is not true to suggest that I did not mention in the statement recorded by police that there was no scope for any other person to enter on to the terrace of the accused where himself and the deceased were sleeping. It is true the houses on either side of the house of accused are immediately adjoining as shown in the photographs Ex.P4. It is true there is no compound wall to the house of the accused and the stair case to the house of accused is from outside of the house, it is abutting the road and there is no gate or door to that stair case and the main road of Yapalguda is immediately abutting the stair case of the house of the accused.”

15. From the admissions made by P.W.1 it is clear that there were houses on either side of the house of the accused and there was no compound wall to the house of accused and the staircase to the terrace was from outside the house abutting the road and that there was no gate or door to that staircase. It is also there in the evidence that the main road of Yapalguda immediately abuts the stair case of the house of the accused. Having admitted that the staircase of the house of the accused was not guarded by any gate or door thereby it is accessible to all, P.W.1 however denies the possibility of any

person entering into the house. Similarly, though P.W.2 toed in line with P.W.1 in his chief-examination, but in his cross-examination, he states as under:

“It is true I did not mention in my statement recorded by police that there is no scope for any third person to enter on to the staircase and terrace of the house of accused and deceased. It is true there is no compound wall and gate to the house of accused and there is no gate or door to the stair case of that house. Witness adds there is a distance of 10 feet between the road and staircase of house of accused. It is true after crossing the road there are no houses and there is a rivulet.”

16. From the answers elicited in the evidence of P.W2 it is clear that there is a distance of 10 feet between the road and staircase of the house of the accused and after crossing the road there are no houses except a rivulet. So from the above, it can be said that the staircase through which the accused and the deceased are said to have climbed on to the terrace is outside the house abutting the road without any protection and after the road there was an open space. Therefore, a close reading of the evidence of P.Ws.1 and 2 would make it clear that the place where the incident is said to have taken place i.e., terrace was accessible to one and all and as such the possibility of a third person entering on to the terrace cannot be ruled out.

17. As seen from the facts and the evidence on record, the fact that the accused and the deceased went together to sleep on the terrace of the house is established from the evidence of P.Ws.1, 2 and 5. Admittedly, there were about six persons in the house, out of

whom three persons came to the house of the accused to settle the dispute between the accused and the deceased with regard to the accused having illicit intimacy with another woman. But, the admission of P.W.5 in her cross-examination shows that brothers of the accused were also residing in the same village, but they did not inform to them about the accused having illicit intimacy with another woman, so also they did not inform about the issue to the caste elders of that village. Normally when the family members intended to settle any dispute among them, they would have involved the brothers of the accused to settle the issue if not the elders in the village. Further if really the dispute had existed between the accused and the deceased, definitely the deceased would not have accompanied the accused to the terrace of the house to sleep along with the accused.

18. P.Ws.3 and 4, who are the sons of the deceased and accused, would be the best persons to speak about the affairs at home, but they did not support the case of the prosecution. Their version in chief-examination as to the cause of incident is something different. Since they were declared hostile, it would not be necessary to go into the said aspect. Hence, we feel that though the circumstance of motive was spoken to by P.Ws.1, 2 and 5, but the admission in the cross-examination of P.W.5 that the brothers of the accused were not informed of the dispute and they were not called to the meeting to

settle the said dispute appears to be strange and more over the said motive has not been clinchingly established by the prosecution.

19. Insofar as other circumstance viz., finding of the dead body deceased on the terrace of the house of the accused is concerned, the evidence on record more particularly the admissions of P.Ws.1 and 2 would show that the staircase was outside the house of the accused which was unguarded by any gate or wall and is accessible to one and all. In fact, the evidence on record show that there is a road abutting the staircase and after the road, there is rivulet leaving thereby it is accessible to one and all. Hence, the possibility of any person entering into the terrace of the house of the accused cannot be doubted. Therefore, the argument of the learned Public Prosecutor that the burden lies on the accused to explain as to how the deceased died in view of Section 106 of the Evidence Act cannot be accepted.

20. The third circumstance which is sought to be relied upon by the prosecution is that the accused absconded from the village immediately after the incident. In *Matru V. State of U.P.*¹ the Apex Court observed as under:

“...mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of

¹ (1971) 2 SCC 75

absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case.”

The Apex Court further held,

“normally the Courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused.”

21. In *Sujit Biswas V. State of Assam*² the Apex Court, while dealing with the situation where the accused absconded after commission of offence, held as under:

“23. Thus, in a case of this nature, the mere abscondence of an accused does not lead to a firm conclusion of his guilty mind. An innocent man may also abscond in order to evade arrest, as in light of such a situation, such an action may be part of the natural conduct of the accused. Abscondence is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction.”

The Apex Court further held that an adverse inference can be drawn against the accused only if the incriminating material stands fully

² (2013) 12 Supreme Court Cases 406

established and the accused is not able to furnish any explanation for the same.

22. Similarly, in *Prem Thakur V. State of Punjab*³, the Apex Court while dealing with the theory of accused absconding after commission of offence in a case of circumstantial evidence, held as under:

“ 7. The circumstance that the appellant was last seen in the company of the deceased can be accepted as proved but no inference can arise there from that the appellant had committed their murder. The appellant was working with the deceased and others and there was nothing unnatural in the appellant being in the company of his companions on the evening before the murders were committed.”

“ 8. Insofar as the allegation that the accused had absconded is concerned, it is not easy to rely upon that circumstance as leading to the conclusion that he had made himself scarce in order to conceal his presence. The story of the prosecution that he was arrested in Punjab itself has been disbelieved by the High Court according to which, the appellant was brought from Nepal by the team of Investigating Officers. The appellant belongs to Nepal and if he was found in Nepal going about openly, it is difficult to accept the charge that he had absconded to Nepal.”

23. From the judgments of the Apex Court referred to above, it is clear that abscondence of accused has to be treated as one of the weak circumstance and it would scarcely be held as a determining link in completing the chain of circumstantial evidence. The act of absconding is no doubt relevant piece of evidence to be considered

³ (1982) 3 Supreme Court Cases 462

along with other evidence. Therefore, the circumstance namely with regard to the accused absconding from the village after commission of incident may not be a circumstance by itself to connect the accused with the commission of offence in view of judgments of the Apex Court referred to above, more so when the other circumstances do not conclusively establish the chain of events to connect the accused with the crime.

24. Having regard to the above discussion, we feel that the evidence adduced by the prosecution does not establish the guilt of the accused.

25. In the result, the Criminal Appeal is allowed. The conviction and sentence awarded against the appellant-accused in the judgment dated 15.11.2012 in Sessions Case No.241 of 2012 on the file of the I-Additional District and Sessions Judge, Adilabad District, for the offence punishable under Section 302 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

22.02.2018
Gsn.

