

THE HON' BLE SRI JUSTICE A. V. SSHA SAI

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No. 151 of 2013

JUDGMENT: (per Hon' ble Sri Justice Gudiseva Shyam Prasad)

This Criminal Appeal is arising out of the judgment dated 19.12.2012 in Sessions Case No.231 of 2012 on the file of the VII Additional Sessions Judge, Kakinada.

2. According to prosecution the accused has killed his wife having suspected her fidelity, that she had developed illicit intimacy with one Sangadi Venkatarao. The marriage of the accused was performed with the deceased about 28 years ago. They were blessed with two sons out of their wedlock. The accused was a rickshaw puller by profession. His wife Gajji Satyaveni (deceased) works in Surya Wine Shop as a cooli. One Sangadi Venkat Rao works as a Clerk in the same shop. The accused and deceased used to reside in a rented house in Door no. 39-4-6 at Vivekananda Street, Gollabhama Doddi, Kakinada. The marriage of the elder son was performed by the deceased and he is residing at Hyderabad. The younger son is residing with them. So the accused, deceased and their younger son lived in the same house. The deceased Satyaveni developed illicit intimacy with Sangadi Venkat Rao who was working as Clerk in the same Surya Wine shop where she was working as Cooli. Sangadi Venkata Rao used to visit the rented portion of the deceased frequently and stayed with her during night times. The accused had quarrelled with his wife about her relationship with Sangadi Venkata Rao. He warned the deceased not to allow Sangadi Venkata Rao to come to her house and discard her

illegal relationship with him. The deceased did not change her attitude and allowed the said Sangadi Venkata Rao to come to her house. As the deceased did not change her attitude towards her paramour and continued her relationship with him, the accused grew wild against her and determined to get rid of her and waited for an opportunity. On 23.10.2011 at about 10.00 pm, the accused went to his house, and noticed Sangadi Venkata Rao with his wife in his house. The accused grew wild and threatened her that he would see her end. On the very next day, i.e., on 24.10.2011 at about 5.00 am, the accused returned home and quarrelled with his wife, and had taken wooden handle of a cheval available in the room and beat her on the backside of her head. She received severe multiple bleeding head injury on the back side of Head. Later he fastened a rexine rope around her neck and pulled it forcibly till her death. On hearing the cries of the deceased, the mother of the deceased who is residing in the side portion of the house rushed to the spot and witnessed the accused killing her daughter. On seeing the mother of the deceased, the accused fled away from the scene of offence leaving the weapon at the scene. On the strength of the report given by the mother of the deceased, the police registered a case in Crime No.100 of 2011 under Section 302 IPC. The Inspector of Police filed charge sheet before the learned Magistrate.

3. The case was committed to the Court of Session by the IV Additional Judicial First Class Magistrate, Kakinada. The case was numbered as S.C.No.231 of 2012. On appearance of the accused, he was examined under Section 241 Cr.P.C. for which he pleaded not

guilty. Charge has been framed against him under Section 302 I.P.C. for which he pleaded not guilty and claimed to be tried.

4. Prosecution has examined PWs.1 to 11 and got marked Exs.P1 to P14 and MOs. 1 to 9.

5. On closure of evidence of the prosecution, the accused was examined under Section 313 Cr.P.C. He denied the incriminating material appearing against him. The trial Court, on consideration of the oral and documentary evidence available on record, convicted the accused for the offence under Section 302 I.P.C., and sentenced him to suffer imprisonment for life and to pay fine of ₹ 200; in default of payment of fine, to suffer simple imprisonment for one month for the offence under section 302 IPC. Aggrieved by the conviction and sentence recorded by the trial Court, the accused preferred this criminal appeal.

6. Heard the arguments of Ms. C. Vasundhara Reddy, learned counsel for the appellant-accused; and the learned Public Prosecutor, representing the respondent-State.

7. Learned counsel for the appellant mainly submitted that the entire case of the prosecution is based on the oral testimony of PWs.1, 4 and 5, who are all interested witnesses as they are related to the deceased. PW.1 is the mother of the deceased. She was not present at the time of the incident. It is further submitted that PW.1 stated in her chief examination that she was alone present at the time of the incident, and none others were present there at the scene of offence. Whereas, in her cross examination, she stated that

after hearing the cries, by the time she went to the scene of offence there were about 20 to 30 persons coming there to see her daughter and going. She denied the suggestion that by the time she went there, except herself and the deceased, nobody was there. It is argued that there is inconsistency in her statement with regard to her presence at the time of the incident.

8. Learned Public Prosecutor submitted that the evidence of PW.1 is trust worthy being a natural witness as she heard the cries of the deceased and immediately rushed to the scene of offence and saw the accused killing the deceased by sitting on her chest and strangulating her.

9. In fact the testimony of PW.1 shows that she heard the cries of the deceased, that she was being killed, and then she rushed to the house of the deceased and noticed the deceased on the cot, while the accused is sitting on her chest and tying a 'hand bag belt' to her neck and strangulating her. Whereas the testimony in her cross examination reveals that by the time she went there after hearing the cries, there are about 20 to 30 persons coming and going. This statement raises any amount of doubt about her witnessing the incident alone. If there are other witnesses who are neighbours, why the prosecution has not examined them about witnessing the incident. Except PW.1 none of the witnesses have seen the accused killing the deceased, though some of them stated that that they heard cries of PW.1 being neighbors.

10. The prosecution in all has examined 10 witnesses in this case. PW.1 is the mother of the deceased. She lodged a complaint Exhibit P1 informing the police about the incident of accused killing the deceased. The alleged incident occurred at 5 AM. The complaint was lodged at about 9 AM. There was delay of about 5 hours in lodging the complaint. The delay has not been explained by the prosecution. The place of occurrence is at a distance of 2 km from the police station. The prosecution has not explained the delay of about 5 hours in lodging the complaint. There is every possibility of false implication as the delay has not been properly explained. In a case of murder, the delay of 4 to 5 hours in lodging complaint to the police station which is situated at a distance of 2 km from the scene of offence is fatal to the case of prosecution. In Column 8 of FIR, the reasons for delay in reporting by the complainant is stated as there is "no delay" in lodging the complaint. Moreover, PW.1 is no other than the mother of the deceased, and she is an interested witness.

11. PW.2 is the son of PW.1. The deceased is his 2nd elder sister. They are residing in the side portion of PW.1 in the same house. He was informed about the accused killing his sister at 5:45 AM on the fateful day. He saw his deceased sister with injuries in a pool of blood. His testimony further reveals that by the time he went there neighbours were present there. It was suggested to the witness that as they have compromised with Sangadi Venkata Rao after receiving money and when the accused has objected receiving money, they have filed a false case against him. This suggestion of the accused raises any amount of doubt with regard to the version of the prosecution. The accused has also stated in his 313 examination that PW.1 and others have compromised with the above said person by taking money, and he did not accept money he was falsely implicated in this case. This clearly indicates that there is a cloud

cast on the version of the prosecution with regard to the involvement of the accused in the commission of the offence. If this suggestion is taken into consideration as true it raises any amount of doubt with regard to the delay in lodging the First information report. No doubt the suggestion was denied by PW.2, but however that benefit of doubt goes to the accused.

13. PW.3 is another son of PW.1. He has also deposed on the similar lines as that of PW2.

14. PW.4 is the neighbour of the deceased and accused. He heard cries of PW.1 and came out and saw the dead body of the deceased in a pool of blood having injury on the back of her head. In her cross examination, PW.4 stated that she went to the house of the deceased at 5:30 AM and PW.1 was weeping and 4 persons were present there. There is a contradiction in her evidence which is marked as Ex.D1. This witness has denied stating in her statement under Section 161 Cr.P.C about the illicit intimacy between the deceased and Sangadi Venkata Rao. This fact clearly shows that the prosecution has tried to rope in the accused and that is why there is a contradiction in the statement under Section 161 Cr.P.C. of this witness marked as Ex.D1.

15. It is also pertinent to note that the time of the death has to be taken into consideration to connect the accused with the crime. The presence of the accused at the time of incident is also relevant to prove the commission of the offence. As per the evidence of the Medical officer (PW.8), he conducted post-mortem on the dead body of the deceased and found the following injuries.

"1. Antemortem External injuries. 1. A bone deep reddish laceration of 6.5 x 1.5 c.m. size present on

back of head right occipital region, obliquely, 3 c.m. below the external occipital protuberance 3 c.ms below the external occipital protruberence. One end is situated 10 cms below the external occipital protruberence and another end is 7 cms from left ear on the back. Edges red, blood clots present in the wound. 2. A bone deep reddish laceration of 2.5 x 0.5 cm size present on back of head, 2.5 cms below the external injury No.1. 3. A reddish contusion of 4 x 3.5 cms present on back of neck corresponding to C.1 to C3 vertebra. 4. A reddish contusion of 6 x 3.5 cms present on back of left mid fore arm. 5. A reddish contusion of 3 x 3.5 cms present on right breast. ”

16. He opined that the death was due to cranio cerebral injury associated with fracture dislocation of C1-C2 verterbrage due to hitting with medium to heavy, hard and blunt object. He issued Ex.P10, post-mortem certificate. He also stated that the injuries are possible by material objects like MO.7 and MO.8. MO-7 is a hand bag belt, and MO-8 is a wooden stick. The testimony of PW.1 reveals that she noticed the injury on the back of the head of the deceased and blood was oozing. She did not state that she saw the accused beating the deceased with the said stick (MO-8) which raises a doubt about her presence, when the accused had beat the deceased on her head. The testimony of PW.1 clearly reveals that she was not present when the accused alleged to have beaten the deceased on her head with a wooden stick. According to the testimony of the Medical Officer (PW.8), the cause of death was possible by material objects like MO-8 which is stick and MO-7 which is a leather belt which was tied around the neck of the deceased. But the presence of the accused at the scene of offence becomes doubtful as she did not witness the accused beating with the stick i.e. MO-8 on the back of head. The time

of the death was within 24 hours prior to post-mortem examination. The post-mortem examination was conducted at 3:30 PM on 24/10/2011. The death occurred less than 24 hours prior to post-mortem examination, i.e before 3:30 PM on 23/10/2011. In fact the incident is said to have occurred at 5 AM on 24/10/2011, and post-mortem examination was conducted at 3:30 PM on the same day i.e 8 to 10 hours, after the death. The margin given by the medical officer in the post-mortem examination is 24 hours. If the death might have occurred within 12 hours they should have clearly stated that it was 12 hours. Since the post-mortem report says that the death occurred less than 24 hours prior to the post-mortem examination, a doubt arises with regard to the time of death. The delay in lodging First information report, coupled with the time of death, and the inconsistencies in the evidence of the eyewitnesses, would raise any amount of doubt with regard to the alleged involvement of the accused in the commission of the offence. The case of the appellant that he was not at home on that night after the quarrel that ensued between the deceased and Sangadi Venkata Rao and he returned home only early in the morning assumes importance with regard to the time of death of the deceased.

17. Learned counsel for the appellant submits that since the quarrel ensued between the deceased and the said Sangadi Venkata Rao, murder might have taken place at that time itself and only in the morning hours it was brought to light. Learned counsel placed reliance on Section 313 Cr.P.C. examination of the accused and submitted that the accused stated in his Section 313 Cr.P.C. examination that Sangadi Venkata Rao, paramour of the deceased had offered some money to his mother-in-law and brother-in-law and they

accepted the same, and when offered money to the accused, he did not accept the money, therefore, he was falsely implicated in the offence.

18. In fact there was a dispute between the accused, deceased and Sangadi Venkat Rao during the previous night and thereafter, the accused had gone out. As the accused was not at home, and returned only early in the morning, involvement of the accused in the commission of the offence becomes doubtful in the light of time of death as per postmortem examination and delay in lodging FIR. The cross-examination of PW.1 in respect of presence of the accused at the time of the incident also raises any amount of doubt. She voluntarily stated in her cross-examination that her son-in-law/accused was going away and it was dark at that time. She further stated that the doors of the house of the deceased were not open but they were closed when she went there, that she went inside by opening the doors. This statement would create any amount of doubt about her presence and witnessing the incident, as, by the time she went there, the accused was going away and it was also dark at that time. Therefore, there was no possibility for PW.1 to witness the occurrence of the alleged incident i.e. accused sitting on the chest of the deceased and strangulating her. The version of the prosecution appears to be highly improbable. PW.1 being the mother of the deceased, she is naturally an interested witness. Her testimony does not inspire confidence to believe her version about witnessing the incident of killing the deceased. She stated that the deceased closed the doors from inside and by the time she went

there, and she opened the doors and went inside. It shows that the deceased was alone in the room. This statement clearly raises any amount of doubt of her witnessing the incident. Therefore, it is not safe to rely on the sole testimony of PW.1 to convict the accused in this case. She did not speak about the accused beating the deceased with the M.O 8. If really she had witnessed the incident she would have stated that she had seen the accused beating on the head of deceased with MO 8.

19. It is pertinent to note that in the compliant lodged by PW.1, she has stated that on hearing the cries of the deceased, neighbours came to the scene of offence. But, her evidence is otherwise. Her testimony to the effect that she alone heard the cries of the deceased and went to the scene of offence and thereafter, the neighbours came there creates any amount of doubt. Even in the light of her statement in the cross examination that about 20 persons came there to the scene of offence by the time she went there falsifies her testimony that she witnessed the incident. She might be a planted witness.

20. The testimony of PWs.4 and 5 on which the prosecution has placed reliance also does not inspire any confidence for the reason that they did not state anything about seeing the accused going away, but they simply stated that they heard cries of PW.1 and went there. If really they heard the cries of PW.1, they also would have heard the cries of the deceased, when she was beaten and strangled, and might have seen the accused at the scene of

offence. Since PWs.4 and 5 did not state anything about hearing cries of the deceased and not stated anything about the presence of the accused nearby as they have gone to the scene of offence as soon as they heard the cries, it would raise any amount of doubt about their presence at the scene of offence immediately after the incident. Therefore, the testimony of PWs.4 and 5 is also not reliable as it is not corroborating the testimony of PW.1. The prosecution version that the accused due to illicit intimacy between the deceased and Sangadi Venkata Rao had killed his wife on the fateful day is not proved by any cogent evidence by the prosecution, as the testimony of PWs.4 and 5 does not inspire any confidence.

21. PW.6 is a photographer having a studio. He took photographs of the dead body of the deceased which are Exs.P2 to P6 and has also made a CD.

22. PW.7 is VRO of Kakinada rural mandal. According to his testimony, the police seized material objects MOs.2 to 7, admittedly MO 8 in the presence of punch witnesses from the scene of offence.

23. PW.8 is the medical officer who conducted autopsy of the dead body of the deceased and opined the cause of death was due to hitting with medium to heavy, hard blunt object. He has also stated that the injuries are possible with MOs. 7 and 8. He has clearly stated that the ligature mark is not possible on one side on committing suicide.

24. PWs.9 and 10 are the investigation officers in this case. The important admission of the investigation officer PW.10 in his cross-

examination is that his investigation reveals that the deceased got illegal intimacy with Sangadi Venkat Rao, which is the motive for the offence. But as per statement of PW.1 and other witnesses, he came to the house of deceased on that night. PW.10 clearly stated in his cross-examination that he did not examine Sangadi Venkat Rao as he was absconding. Absconding of Sangadi Venkat Rao rises any amount of doubt in this case.

25. The prosecution has miserably failed to bring home the guilt of the accused beyond reasonable doubt for the offence punishable under Section 302 I.P.C. and, therefore, the accused is entitled for benefit of doubt in this case. It is also revealed from his cross-examination that the RFSL authorities did not determine group of the blood but gave opinion that it was human blood. The scientific investigation does not disclose that the blood group could not be detected but the blood is that of human origin. Therefore it clearly shows that the scientific investigation is not of any help to the case of prosecution. MO.9 is the 'nikker' relating to the accused, and it does not contain any bloodstains. If really the accused has participated in the commission of the offence at least there must be some strains of blood on his clothes. MO.9 rules out that there are no bloodstains on the 'nikker' of the accused, as per Ex.P.14 FSL report. In view of the foregoing reasons the prosecution has miserably failed to bring home the guilt of the accused beyond reasonable doubt. Therefore the accused is entitled for benefit of doubt in this case.

26. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 19.12.2012, in Sessions Case No.231 of 2012 on the file of the VII Additional Sessions Judge, Kakinada, for the offence punishable under Section 302 I.P.C. is set aside. The accused shall be set at liberty forthwith, if he is not required in any other case. Miscellaneous petitions pending, if any, shall stand closed.

A. V. SESA SAI, J

GUDISEVA SHYAM
PRASAD, J

Date: 17.03.2018
Lkv/ksm



THE HON' BLE SRI JUSTICE A. V. SESA SAI

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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