

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1297 of 2011

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

The sole accused in Sessions Case No. 234 of 2010 on the file of the Court of the III Additional Sessions Judge (FTC), Khammam, is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of his wife Jannalagadda Uppamma in the early hours on 08.10.2009 at Vallapuram Village of Mudigonda Mandal. Vide judgment dated 17.06.2011, the learned Additional Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of six months.

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

PW1 is the father and PW2 is the brother of the deceased. PW3 is a resident of Vallapuram village. PW4 is the photographer who took the photographs of the deceased, while PWs 5 to 10 are independent witnesses. The marriage of the deceased with the accused took place about eighteen years prior to the date of

incident. Out of wedlock, they were blessed with three children, and among the said children, the elder daughter is married. It is stated that the accused used to look after his wife well, till the date of marriage of his daughter, and later, he started suspecting her chastity. On account of suspicion, the accused used to harass the deceased by beating her and quarrelling with her. The said ill-treatment of the accused was informed to PW1 by the deceased. About fifteen days prior to the date of incident, the accused beat the deceased and drove her out of the house. As such, she came to the house of PW1 at Ponnekalli and started staying there. PW1 kept his daughter in his house with a hope that he would settle the disputes with the accused by talking to him. At that time, the micro finance (weekly paying finance) persons came to the house of PW1 and insisted the deceased to pay the loan amount. Accordingly, PW1 sent the deceased along with his son-PW2 to the house of the accused, as the deceased informed him that she can adjust the amount from known sources at Vallapuram. PW2 accompanied the deceased to the house of the accused, stayed there for that night and returned back around 1 p.m. on the next day. A day thereafter, i.e., on the next day morning, the villagers of Vallapuram village informed PW1 that the deceased was done to death by her husband by beating her with a crowbar. Immediately, PW1 rushed to the house of the accused and found the deceased with injuries on her body. At about 10 a.m., on 08.10.2009, PW9- the Sub Inspector of Police received a report from PW1, basing on

which a case in Crime No. 203 of 2009 came to be registered under Section 302 IPC. Ex.P12 is the First Information Report.

3. Further investigation in this matter was taken up by PW10- the Circle Inspector of Police, Khammam Rural. After receiving a copy of the F.I.R. from PW9, PW10 rushed to the scene of offence at Vallapuram village and noticed the body of the deceased lying in front of the house of the accused. In the presence of PW9 and others, he conducted a panchanama of the scene and then, inquest. Ex.P7 is the Crime Details Form containing the rough sketch of the scene, while Ex.P8 is the inquest report. During inquest, he is said to have seized M.Os. 1, 5 and 6 and also M.Os 2 and 4 from the body of the deceased. The said proceedings were conducted in the presence of PWs 5, 6 and 7. PW5 was the panch for inquest, whereas PWs 6 and 7 were panchas for recovery of M.Os 5, 6 and 7. The material objects which were seized at the time of investigation were sent to RFSL for opinion. The FSL report is placed on record as Ex.P14. After conducting inquest, he sent the body of the deceased for post mortem examination.

4. PW8-the Civil Assistant Surgeon, Office of the Director of Insurance Medical Services, Hyderabad conducted autopsy over the body of the deceased and issued Exhibit P11-the Post Mortem Report. According to her, the cause of death was due to shock and haemorrhage due to cranio cerebral injury.

5. Thereafter, on 14.10.2009, PW10 apprehended the accused at his house in Vallapuram. The confession of the accused on

interrogation in the presence of PWs 6 and 7, led to recovery of M.O.7-blood stained shirt, said to have been worn at the time of commission of the offence. The same was seized under Ex.P13-confession-cum-seizure panchanama.

6. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 7 of 2010 on the file of the II Additional Judicial Magistrate of First Class. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 234 of 2010 on the file of III Additional Sessions Judge (FTC), Khammam. Basing on the material on record, a charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

7. In support of their case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P14 and M.Os.1 to 7. After the closure of 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 was adduced by the accused in support of his defence. Out of the ten witnesses examined, PWs 3, 6 and 7 did not support the prosecution case and were treated hostile by the prosecution.

8. Relying on the evidence of PWs 1 to 3, coupled with the recovery of M.O.7, the learned Sessions Judge convicted the

accused under Section 302 IPC. Challenging the same, the present appeal came to be filed through legal aid.

9. The learned counsel for the appellant, Smt. Satya Manjula mainly contends that there is absolutely no evidence on record to show that the accused was present in the house at the time of incident. It is urged that merely because he used to suspect the fidelity of the deceased and beat her, does not by itself mean that he was responsible for the incident in question. She further submits that though the prosecution tried to prove the presence of the accused through the evidence of PW3, a reading of the evidence of PW3 does not inspire confidence to connect the accused with the commission of the offence.

10. On the other hand, the learned Public Prosecutor opposed the same, contending that though PW3 turned hostile at a later point of time and did not support the prosecution during his cross-examination, the evidence of PWs 1 and 2, coupled with the recovery of M.O.7-the shirt used by the accused at the time of incident which contains the blood of the deceased, establish that the accused alone was responsible for the incident.

11. The point that arises for consideration is whether the accused was responsible for the death of his wife.

12. Admittedly, the body of the deceased was found in the house of the accused. The fact that it was a homicidal death has been established through the evidence of PW8-the doctor who opined that the cause of death was due to haemorrhage due to cranio

cerebral injury. The question that now arises is whether it was the accused who was responsible for her death.

13. PW1 is the father of the deceased. In his evidence, he deposed that the marriage between the accused and deceased took place about eighteen years prior to the date of incident, and out of wedlock, they were blessed with three children. The harassment of the accused commenced after the marriage of the eldest daughter of the accused and deceased. It is stated that suspecting the chastity of the deceased, the accused used to beat her, and about fifteen days prior to the date of incident, the accused drove her out of the house. As such, the deceased came to the house of PW1 at Ponnekalli village and started staying there. While she was staying with PW1, the micro finance (weekly paying finance) persons came to the house of PW1 and insisted the deceased to pay the loan amount. Since the deceased expressed her consent to raise money if she goes over to Vallapuram village, PW1 sent the deceased along with PW2 to the house of the accused. PW2 is said to have dropped the deceased at her house and stayed in their house on that night and on the next day, at about 1 p.m., he left the house. The fact that the micro finance persons came to the village of PW1 and that the deceased was residing with him at that time, and that the said persons demanded the deceased to pay the loan amount, was elicited even in the cross-examination of PW1. However, PW1 did not state before the police that PW2 gave a sum of Rs.2,000/- to the financiers after he left along with the deceased to Vallapuram village. Though in the cross-examination,

it was elicited that the accused also came with the micro finance persons and took the deceased to his village, but the same is absent not only in the chief evidence of PW1, but also in the evidence of PW2. The suggestions given to PW1 with regard to the manner in which he received the information about the death of the deceased and also lodging the report on the next day, were denied.

14. Coming to the evidence of PW2, his evidence is to the effect that his brother-in-law-the accused used to treat the deceased very nicely till one year prior to the incident. After the marriage of their elder daughter, the accused started harassing the deceased, suspecting her character. The accused drove the deceased out of the house about fifteen days prior to the incident. The said fact of harassment was informed by the accused to them. While the deceased was staying in the house of PW1, the weekly finance persons came to the house of PW1 and insisted PW1 to pay the amounts. Accordingly, PW1 sent the deceased along with PW2 to the house of the accused, as she expressed adjustment of the amount from known sources at Vallapuram. PW2 stayed in the house of the accused on that night and on the next day afternoon, at about 1 p.m., he went to Khammam, as he had some work there. It is stated that the accused and deceased were present in the house and their children went to the neighbouring house. On the next day morning, at 5.30 a.m., one Sangamma informed PW2 on phone that the deceased was killed by the accused by a crowbar. Thereafter, the law was set into motion.

15. The evidence of these two witnesses would show that about fifteen days prior to the date of incident, the deceased was driven out of the house of the accused and was staying in the house of PW1. When micro finance persons came to the house of PW1 and insisted the deceased to clear the dues, she was sent to the house of the accused along with PW2. PW2 stayed in the house of the accused for the night, and on the next day afternoon, left the house. At the time of leaving the house of the accused on 7th October, 2009, the accused and deceased were present in the house. On the next day morning, he received a phone call from Sangamma informing the death of the deceased. But, it is to be noted here that Sangamma, who is said to have informed PWs 1 and 2 about the death of the deceased, was not examined, though cited as a witness in the charge sheet.

16. Coming to the incident proper, the prosecution mainly relied upon the evidence of PW3, who, in his evidence in chief, deposed about beating by the accused and also his presence in the house on the night of the incident. It would be useful to refer to his evidence, which is as follows:

“I have witnessed beating of the accused his wife Uppalamma several times and we used to hear the galata in the house of the accused from our house itself. Deceased Uppalamma only used to maintain their family by doing coolie work. One month prior to the death of Uppalamma the accused beat her very badly and driven her out of the house. Earlier accused and

his wife Uppalamma borrowed money from viral podupu group and celebrated the marriage of their daughter. When Uppalamma went to her parent's house as above when accused beat her, the above said varala podupu group people went to the parent's house of Uppalamma and insisted for repayment of their loan. So again the said Uppalamma came along with her younger brother to her village in order to paid the said loan. PW2 stayed for the said night in his sister's house i.e., the accused house and in the next day morning he went back to his village. Then in the next day early morning I heard the cries of deceased Uppalamma from her house shouting loudly calling for help from her father-in-law then I rushed their house and I found deceased Uppalamma was lying on the floor with bleeding injuries and accused on her side with crow bar-MO1. On seeing me the accused thrown away crow bar –MO1 from his hand and ran away out of the house. I also noticed that the deceased Uppalamma died on the spot due to the injuries in the pool of blood. Then father-in-law of deceased-LW7 namely Bondaiah, LW6-Nagulu also came there and noticed the same. Then police examined me.”

However, in the cross-examination, PW3 went back on his earlier version. He denies the quarrel between the accused and deceased when the deceased returned to the house of the accused for payment of the money. According to him, on the date of incident, he was suffering with fever and whatever he deposed in chief, was not within his control. He further deposed that he did not go to

the scene of offence at all and did not witness anything. In further re-examination, he says that on coming to the court, himself, daughter and son-in-law of the accused talked with each other. However, he states that due to the influence of the daughter and son-in-law of the accused, he gave false evidence by going back on his earlier version in this case.

17. From the answers given by this witness in the cross-examination, coupled with the version given by him in re-examination, we feel that the evidence of PW3 cannot be believed. At best, he can be placed under the category of unreliable witness, since he gave a go-by to what he stated in the chief examination, more particularly, with regard to the quarrel which took place between the accused and deceased when the micro finance persons came to the house of the accused, and also with regard to the presence of the accused in the house on the night of the incident. In fact, he goes to the extent of saying that he has not witnessed anything and that he never visited the scene of offence. When once the evidence of PW3 becomes doubtful, there is no other evidence to show that the accused was present in the house at the time of the incident.

18. Coming to the recovery of M.O.7-the shirt of the accused which contains human blood, the mediators who were examined to speak to the said recovery, did not support the prosecution case. Therefore, the alleged recovery made pursuant to the confession made by the accused that he was wearing that shirt at the time of

the incident, cannot be accepted. Though the learned Public Prosecutor tried to contend that the defence taken by the accused that he was not present in the house at the relevant point of time and that he was away, being false, cannot inculcate him in the commission of the offence. As held by the Apex Court, the prosecution should first try to prove the involvement of the accused in the crime beyond reasonable doubt. The weaknesses in the defence of the accused, if any, cannot be taken to connect him with the crime. In the instant case, the prosecution failed to prove the presence of the accused in the house at the time of the incident and his involvement in the commission of the offence. Merely because the dead body was found in the house and that a crowbar used in the commission of the offence was present in the scene of offence, it does not by itself establish that the accused alone was responsible for the incident. Hence, we feel that the prosecution has failed to prove the presence of the accused in the house at the time of incident, and in the absence of the charge for homicide, benefit of doubt can be extended to the accused.

19. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 17.06.2011 in Sessions Case No.234 of 2010, on the file of the III Additional Sessions Judge (FTC), Khammam for the offence punishable under Section 302 IPC 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. Miscellaneous petitions pending, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

26.06.2018
DMG

