

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE MS. JUSTICE J.UMA DEVI
CRIMINAL APPEAL No.1459 of 2011**

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

1. A1 and A2 in Sessions Case No.66 of 2010 on the file of the II-Additional District and Sessions Judge (Fast Track Court), Parvathipuram, Vizianagaram District were tried for the offences punishable under Sections 449 and 302 I.P.C. By its judgment dated 16.06.2011, the learned Additional District and Sessions Judge, while acquitting A-1 and A-2 for the offence punishable under Section 449 I.P.C. and Accused No.1 for the offence punishable under Section 302 I.P.C., convicted A2 alone for the offence punishable under Section 302 I.P.C. and sentenced her to undergo imprisonment for life and to pay a fine of Rs.500/- in default to suffer simple imprisonment for a period of six months.

2. The substance of charge against A-1 and A-2 is that on the intervening night of 15/16.01.2009 at about 6.00 A.M. at Golla Veedhi, Arikthota village, Ramabhadrapuram Mandal, Vizianagaram District, the accused trespassed into the house of one Goggi Sankara Rao (hereinafter referred to as "the deceased"), who was none other than the husband of A-2, and stabbed him with a crow bar and axe, causing his death.

3. The brief facts as culled from the evidence of prosecution witnesses are as follows,

PWs.1, 2 and 3 are residents of Arikathota village of Ramabhadrapuram Mandal. P.W.1 is the step-brother of P.W.2. The deceased was the younger brother of P.W.1. A-2 happened to be the wife of the deceased. The house of A-1 is situated opposite to the house of P.W.1. The deceased and P.W.1 were residing in side by side houses. The deceased married one Simhachalam, a resident of Karada, as his first wife and subsequently because of the disputes both of them started living separately by taking a customary divorce before the elders. Thereafter, the deceased is said to have married A-2 as his second wife about two months prior to the date of incident. The deceased and A-2 lived happily only for a period of 10 to 20 days and thereafter disputes arose between them on account of alleged illicit intimacy between A1 and A-2. This was brought to the notice of P.W.1 who called both the deceased and A2 and chastised them, but they told him not to interfere with their family affairs.

4. It is said that on 15.01.2009 at about 9.00 A.M. P.W.3 claims to have seen A-1 and the deceased coming to her Belt-shop and purchasing one quarter bottle of brandy, for which A-1 is said to have paid Rs.60/- and left the place. Again on the same day in the evening, at about 6.00 P.M., A-1 and the deceased came to the shop of P.W.3 and purchased one quarter bottle of brandy. P.W.3 advised them not to consume further alcohol since they had already taken

more than sufficient alcohol, to which they replied that since it was a festival day, they are consuming more. So saying they left the place.

5. On 16.01.2009 at about 5.00 A.M., on coming to know about the death of the deceased, P.W.4-Village Revenue Officer, Arikathota village reached the scene of offence and found the dead body of the deceased in a pool of blood. He also found M.O.1-Crow bar and M.O.2-Axe by the side of the dead body. P.W.4 went and lodged a report with Ramabhadrapuram Police Station. Basing on the said report-Ex.P1, P.W.7-the then Station House Officer, Ramabhadrapuram Police Station registered a case in Crime No.6 of 2009 for the offence punishable under Section 302 read with Section 34 I.P.C. Ex.P11 is the F.I.R. submitted to the Court. P.W.8-Inspector of Police took up investigation, rushed to the scene of offence and in the presence of P.W.4, prepared an observation report-Ex.P2 and seized M.Os.1 and 2 crow bar and axe respectively under Ex.P2. Thereafter, he conducted inquest over the dead body of the deceased in the presence of panchayatdars. Ex.P3 is the inquest report. Thereafter, the dead body was sent to Community Health Centre, Salur for post mortem examination.

6. P.W.6-Civil Assistant Surgeon, Saluru conducted autopsy over the dead body of the deceased on 17.01.2009 and issued Ex.P10 the Post Mortem Certificate. According to him, the cause of death of the deceased was due to external and internal bleeding injuries which led to cardio respiratory arrest.

7. P.W.8, the Inspector of Police, continued with the investigation. On 17.01.2009 at about 5.15 P.M., P.W.4 came to the Police Station along with A-1 and A-2 and handed over the extra judicial confessional statements made by the accused before him. P.W.8 arrested both the accused and recorded their confessional statements-Ex.P4 and seized wearing apparels of A-2 under Ex.P5. He also interrogated A-1, pursuant to which, P.W.8 and his staff and also mediators went to the house of A-1, where he took out the wearing apparels of A-1 from the roof of the house, which were seized under ExP6-Mediators report. After completing the investigation and after collecting all the necessary documents, he laid a charge sheet on 26.05.2009, which was taken on file as P.R.C.No.13 of 2009 on the file of the Judicial Magistrate of First Class, Saluru. After furnishing copies of documents to the accused as required under Section 207 of Cr.P.C., the case was committed to the Court of Sessions for trial. On committal, the case came to the registered as S.C.No.66 of 2010 on the file of the II-Additional District and Sessions Judge (Fast Track Court), Parvathipuram. Charges under Sections 449 and 302 I.P.C. were framed against the accused, read over and explained to them, to which they denied and claimed to be tried. The prosecution examined P.Ws.1 to 8 and got marked Exs.P1 to P14 and M.Os.1 to 10. After the closure of evidence, A-1 and A-2 were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they

denied, but, however did not adduce any defence evidence. Basing on the evidence of P.Ws.1 to 4 coupled with Ex.P4-extra-judicial confession made before P.W.4, the learned II-Additional Sessions Judge convicted Accused No.2 alone for the offence punishable under Section 302 I.P.C. and acquitted A1 of both the charges. Challenging the said conviction and sentence, the present Criminal Appeal came to be filed by A2.

8. Learned counsel for the appellant/ A2 would submit that there is no evidence to connect the appellant with the commission of offence and the circumstance that the deceased was last seen in the company of A1 cannot be linked to the appellant. He further submits that the extra-judicial confession alleged to have been made by the accused is suspicious and cannot be relied upon to base conviction.

9. Learned Public Prosecutor mainly submits that the circumstances relied upon by the prosecution more particularly the accused being last seen in the company of deceased, motive for the accused to commit the crime coupled with the extra-judicial confession made before P.W.4 are sufficient to establish the case of the prosecution beyond all reasonable doubt.

10. The point that arises for consideration is,

Whether the appellant-A2 was responsible for the death of the deceased?

11. As seen from the record, there are no eyewitnesses to the incident and the entire case rests on circumstantial evidence. The circumstances which are sought to be relied upon by the prosecution are as under:

(i). Motive for the accused to commit the crime.

(ii) Accused No.2 being last seen by P.W.3 on the date of incident.

(iii) The extra-judicial confession alleged to have made by both the accused before P.W.4-Village Revenue Officer and the recovery of wearing apparels of the accused.

12. As stated earlier, Accused No.1 was acquitted of both the charges. The evidence of P.W.3 shows that on 15.01.2009 at about 9.00 A.M. both A-1 and deceased came to her Belt-shop, purchased one quarter bottle of brandy by paying Rs.60/- and left the place. Again in the evening at about 6.00 P.M., A-1 and deceased came to her shop and purchased one quarter bottle of brandy. At that time she claims to have advised them not to consume any further since they have already consumed a lot. From the evidence of P.W.3, it is clear that it was A-1 and the deceased who came to her shop on the fateful day of incident at about 9.00 A.M. and 6.00 P.M. As stated earlier, A-1 was acquitted of both the charges. Therefore, the evidence of P.W.3, which is pressed into service to connect the appellant-A2 with the crime, is of no use to show the involvement of A-2 in the commission of offence.

13. The second circumstance, which is relied upon by the prosecution is the extra-judicial confession made by the accused before P.W.4. It would be useful to extract the evidence of P.W.4 in the words spoken to by him, to the extent of both the accused making extra-judicial confession before him, which is as under:

“On the next day of the inquest at about 3.00 P.M., while I was in my house A-1 came to me and confessed his guilt and on hearing the same I sent a message to one P.Bhanoji Rao, panchayat Secretary of the same village i.e., Arkathota village, who in turn reached my house and enquired A-1 and thereafter we asked A-1 to bring A-2 also and accordingly A-1 went into the village and brought A-2 since A-1 confessed his guilt stating that he committed the offence at the instigation of A-2. The said confessional statement of A-1 is reduced into writing by the Panchayat Secretary B.Bhanoji Rao. At the end of his statement, we have obtained the thumb impression of A-1. Later on questioning, A-2 has also confessed her guilt which was reduced into writing in the same confessional statement of A-1 and at the fag-end of her confessional statement we have obtained the thumb impression of A-2. Myself and the scribe i.e., P.Bhanoji Rao, Panchayat Secretary scribed our respective signatures on extra-judicial confession. Witness identified his signature and that of scribe and accordingly the extra-judicial confession is marked as Ex.P.4. Thereafter, immediately after drafting Ex.P4 myself and the above named Panchayat Secretary went to the Police Station and surrendered A-1 and A-2 along with Ex.P4 statements of A-1 and A-2. Then, the police questioned A-1 and A-2 on which they confessed their guilt as spoken before us.”

14. From the evidence of P.W.4, it is clear that immediately after conducting inquest at about 3.00 P.M., while he was in his house, A-1 came to his house and confessed his guilt. On hearing the same he sent a message to the Panchayat Secretary of the village, who reached his house, enquired with A-1 about the incident and then both of them asked A-1 to bring A-2. Accordingly, A-1 is said to

have gone into the village and brought A-2. Thereafter the confession made by both the accused was recorded under Ex.P4. P.W.4 and the Panchayat Secretary went to the Police Station and surrendered A-1 and A-2 and also handed over their Ex.P4-Confessional statements to the Inspector of Police. But, however, in the cross-examination, P.W.4 admits that Ex.P4-extra judicial confession does not reflect that at the first instance A-1 alone approached and confessed his guilt before him on which he sent a message to the Panchayat Secretary, who in turn reached his house and thereafter they both advised A-1 to go into the village and bring A-2 also. He further admits that Ex.P4- extra judicial confession was drafted by the Panchayat Secretary in the police station to the dictation of the concerned police station writer. He also admits that Exs.P5 and P6- seizure report and mediators report were prepared in the police station to the dictation of the Police Station writer, but not at the place of recovery as shown in the said reports. From the evidence of P.W.4-Village Revenue Officer, it is clear that though in the chief examination he deposed about the extra judicial confession being made before him by both the accused, which was reduced into writing under Ex.P4 in his house, but in the cross-examination he admits that it was drafted in the police station to the dictation of the concerned Police Station Writer. That being the position, there is any amount of doubt as to whether there was any extra judicial confession and any such statement was prepared whether it was

true and voluntary. Hence, we feel that no credence can be placed on the said extra judicial confessional statements of the accused.

15. The other circumstance which is relied upon by the prosecution is the motive for the accused to commit the crime. The evidence of P.W.1 goes to show that after marriage, the deceased and A-2 led happy marital life for a period of 10 to 20 days and thereafter A-2 developed illicit intimacy with A-1. Later, disputes arose between them. But the inquest report, which was prepared at 3.00 P.M. and during which all the material witnesses were examined, is silent with regard to A-1 having illicit intimacy with A-2, who was the wife of the deceased and that it does not even reveal that because of the illicit intimacy between A-1 and A-2, they murdered the deceased, with an intention to eliminate him. It would be useful to refer to the relevant admissions in the evidence of P.W.4, who acted as a mediator, which is as under:

“The police conducted inquest over the dead body in the afternoon on the same day at about 3.00 P.M. It is true during inquest the police examined and recorded the statements of P.Ws.1 and 2 as blood relations of the deceased. It is true in Ex.P3 inquest report particularly in column No.15 there is no specific mention that A-1 and A-2 are having illicit intimacy and by virtue of the same A-1 killed the deceased at the instigation of A-2 as stated by him in my chief-examination. It is true as per column No.15 in Ex.P3-inquest report, we the panchayatdars opined that unable to bear the physical and mental harassment subjected to her in the hands of the deceased, his first wife had obtained divorce and that the

deceased used to consume alcohol daily and harassed A-2 his second wife physically and mentally and subjected her to cruelty.”

16. Column No.15 of Ex.P3-Inquest report shows that the panchayatdars opined that unable to bear the physical and mental harassment in the hands of the deceased, his first wife had obtained divorce and that the deceased used to consume alcohol daily and harass A-2, who is his second wife, physically and mentally by subjecting her to cruelty. It was nobody's case that there was illicit intimacy between A-1 and A-2 and on the other hand a different version was mentioned by the witnesses at the earliest point of time which was incorporated in the inquest report.

17. The last circumstance, which is sought to be pressed into service by the prosecution, is that since the dead body of the deceased was found in the house of A-2, it is to be presumed that A-2 was responsible for the death of the deceased. It is no doubt true that the dead body of the deceased was found in the house of A-2, who was the wife of the deceased, but, there is no evidence on record to show that A-2 was in the house on the date of the incident. In normal circumstances, the presence of A-2, who is the wife of deceased, in the house shall be presumed. But, here is a case where there was a strained relationship between A-2 and the deceased and after marriage, both of them lead a happy marital life only for a period of 10 to 20 days. Thereafter, disputes arose between them, which is evident from the evidence of P.Ws.1 and 2. That being the

position, one cannot expect A-2 to be present in the house on the intervening night of 15/16.01.2009 unless there is evidence to that effect. No effort was made by the prosecution to examine the neighbours of the deceased to show the presence of A-2 in the house on the date of the incident. Though there was no positive evidence to establish the presence of A-2 in the house on the date of incident, the learned Sessions Judge relied upon the version of L.W.6-Goggi Appamma, who is the mother of the deceased to prove the presence of A2 in the house on the date of incident. Strangely, the said Goggi Appamma was not examined by the prosecution as she died pending trial. Therefore, her statement, which was recorded during the inquest, cannot be made the basis to show that A-2 was present in the house on the date of incident. It may be true that A-2 failed to prove her alibi, but that by itself does not establish that she was present in the house and killed the deceased along with A-1.

18. Having regard to the above discussion, we feel that the circumstances relied upon by the prosecution are not proved the involvement of the appellant-A2 in the crime.

19. In the result, the Criminal Appeal is allowed. The conviction and sentence awarded against the appellant/Accused No.2 in S.C.No.66 of 2010 by the II-Additional District and Sessions Judge (Fast Track Court), Parvathipuram, vide judgment dated 16.06.2011 for an offence punishable under Section 302 of IPC is set aside and she is acquitted of the said offence. Consequently, the appellant 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 No.2 shall be refunded to her.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

01.02.2018
Gsn.



