

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.166 of 2013

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

Assailing the conviction and sentence imposed in Sessions Case No. 294 of 2012 on the file of the VII Additional Sessions Judge, (Fast Track Court), Visakhapatnam, the present appeal is filed. The sole accused herein was tried for the offence punishable under Section 302 IPC, for causing the death of his wife, Vanthala Laxmi Ganesh by beating her on the head with a stone at 8 a.m. on 28.04.2012 in the forest area between Talabarasingi and Thotamamidi villages. By its judgment dated 29.01.2013, the learned Sessions Judge found the accused guilty of the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.50/- in default to undergo simple imprisonment for a period of fifteen days.

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

The accused is the husband of the deceased. PW1 is the Village Revenue Officer of Vanthada village, while PW2 is the Talayari of the said village, PWs 3, 4 and 5 are related to the deceased. The

marriage between the accused and deceased took place around one year prior to the date of incident. Suspecting the fidelity of the deceased, the accused used to consume alcohol and beat her. It is said that the family members used to convince the deceased to stay with the accused, on the ground that PW3, who is their relative, is staying the same village, and that she would be taken care of her.

3. While matters stood thus, it is stated that on one Friday, in the evening hours, the accused, along with the deceased, were going to Kummarigunta. On 01.05.2012, at about 10 a.m., the accused is said to have confessed before PW2-the village Talayari and other villagers that he murdered his wife. After making the confession/ statement, the accused led them to the scene of offence and showed the body of the deceased. Immediately thereafter, the same was informed to PW9-the Sub Inspector of Police, who went to the scene of offence along with PW2 and noticed an injury on the head of the body. The place where the dead body was traced was about 35 kms. from the village.

4. Thereafter, on the next day morning, i.e., 02.05.2012, at about 8 a.m., PW1 lodged a report with PW9, basing on which a case in Crime No. 15 of 2012 came to be registered under Section 302 IPC. Exhibit P7 is the FIR. Further investigation was taken up by PW10-the Circle Inspector of Police. After receipt of F.I.R., PW10 secured the mediators, proceeded to the scene of offence and prepared an observation report in the presence of PW6. He

also got prepared a rough sketch of the scene of offence and seized blood stained earth and control earth. He also got the scene of offence photographed. Ex.P2 is the observation report, Ex.P9 is the rough sketch and Ex.P10 are the digital photographs. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW6 and others. Exhibit P3 is the inquest report. During inquest, he examined PWs 1 to 4 and recorded their statements. Thereafter, a requisition was sent to the doctor for conducting postmortem examination.

5. PW8-the Civil Assistant Surgeon, Community Health Centre, Paderu came over to the scene of offence and conducted autopsy over the body of the deceased and issued Exhibit P6-the Post Mortem Report. He found that the entire scalp of the deceased being eaten away by maggots and the body was in a stage of putrefaction. However, he opined that the cause of death was due to cardio respiratory arrest secondary to head injury with fracture of skull bones with probable sub dural haemorrhage.

6. On 03.05.2010, on receipt of credible information about the accused, PW10 arrested the accused and recorded his confessional statement, in the presence of PW7. Pursuant to the confession made by the accused, shirt-M.O.3 was seized under Ex.P5.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.17 of 2012 on the file of Judicial First Class Magistrate, Paderu. 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.294 of 2012 on the file of Court of the VII Additional Sessions Judge, (Fast Track Court), Visakhapatnam. Basing on the material available 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.

8. To substantiate their case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P11 and M.Os.1 to 4. 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 on behalf of the accused in support of his defence.

9. Basing on the evidence of PWs 1 to 4, the trial Court convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellant mainly submits that there is absolutely no evidence to connect the accused with the crime. According to him, the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. It is urged that the charge to which the accused was supposed to defend, is totally contrary to the evidence adduced by the prosecution. He further submits that except the

alleged statement made by the accused before registration of the crime, which, according to the prosecution, led to the discovery of the dead body, there is no other evidence on record to connect the accused with the crime. Even though the prosecution are relying upon the alleged seizure of the shirt and blood stained boulder, there is no material to show that the blood found on the shirt and boulder was that of the deceased. Having regard to the same, the learned counsel would contend that the accused is entitled to the benefit of doubt.

11. On the other hand, the Public Prosecutor would contend that the statement made by the accused in the village before PWs 1 to 4, which lead to the discovery of the dead body, is sufficient to base the conviction. He would submit that the said statement can be treated as an extra judicial confession, though no crime was registered by then. He would further contend that the circumstance of accused being last seen in the company of the deceased, coupled with the recovery, is sufficient to connect the accused with the crime. In view of the above, he would submit that the circumstances relied upon by the prosecution do form a chain of events connecting the accused with the crime.

12. The point for consideration is: whether the circumstances relied upon by the prosecution form a chain of events connecting the accused with the crime.

13. Admittedly, in the instant case, there are no eye witnesses to the incident and the only circumstance is the information given

by the accused about he leaving the village on 28.04.2012 and thereafter, making a statement on 01.05.2012 disclosing the commission of the offence. In order to appreciate the same, it would be useful to refer to the evidence of PWs 1 to 4. PW2 is the village Talayari, who, in his evidence, deposed that on 01.05.2012, at about 10 a.m., the accused confessed before him and the villagers that he murdered the deceased and thereafter, led them to the scene and showed the body of the deceased. Thereafter, all of them came back to the village. PW2 claims to have informed the same to PW1, who, again, went to the scene of offence along with others, and by that time, the dead body was in putrefied condition. In the cross-examination, PW2 admits that by 10 a.m. on 01.05.2012, the accused was in drunken condition. However, the suggestion that they never went to the scene of offence on receiving information, was denied by him. He also admits that he has not observed injuries on the body of the deceased, but observed only one head injury.

14. Coming to the evidence of PW1, who is the Village Revenue Officer of Vanthada village, according to him, PW2 informed him about the confession made by the accused to village elders and also before him. It is his evidence that he came to know about the same on 01.05.2012 at about 11 a.m., and on that, he went to the scene of offence, observed the body of the deceased and found it to be in a swelling condition. He also noticed injuries on the head of the deceased. He further admits in his evidence that the scene

of offence where the dead body was found is an interior area situated at a distance of 35 kms. from the village.

15. From the evidence of these two witnesses, it is clear that on 01.05.2012, at about 10 a.m., the accused is said to have confessed or disclosed about the commission of the offence before PW2 and the villagers. Thereafter, PW2, along with others, went to the scene of offence and noticed the dead body lying in a putrefied condition. But, however, no steps were taken either in informing the police or take the accused into custody. They returned back to the village and informed PW1, who is the Village Revenue Officer of the said village about the incident.

16. But, if the evidence of PW1 is seen, it appears that by 11 a.m. on 01.05.2012, he was aware about the alleged statement/ confession made by the accused before PW2 and the villagers. The source of information, according to PW1, was only PW2. But, PW2 never states in his evidence that he informed PW1 about the said statement at 11 a.m. On the other hand, his evidence is to the effect that he went to the scene of offence, which was at a distance of 35 kms. from the village, and after returning back to the village after seeing the dead body, informed PW1 about the confession. Therefore, a doubt arises as to when such a confession was made. Since the entire case revolves around the alleged statement made by the accused, this circumstance assumes lot of significance. In view of the discrepancy in the evidence of PW1 and PW2, referred to above, a doubt arises in the

mind of the Court as to whether really the accused made such a confession in the village and whether the accused lead to the place where the body was found.

17. Coming to the evidence of PW3, who happens to be a relative of the deceased, in his evidence, he deposed that on one Friday in the evening hours, they came to know that the deceased and accused went to Kummarigunta village, and four days thereafter, the accused called all the villagers and confessed his guilt stating that he killed the deceased. Thereafter, all of them went to Kummarigunta and noticed the body of the deceased. In the cross-examination, he admits that the accused did not confess before him about the commission of the offence and he confessed the same only before the villagers. He further admits that he has no personal knowledge about the confession of the accused regarding the murder of the deceased. It would be useful to refer to the relevant portion in the cross-examination, which reads as follows:

“Accused did not confess before me about the occurrence but he confessed before the villagers. I have no personal knowledge about confession of accused about the murder of deceased.”

18. From the evidence of PW3, it is clear that the accused left the village along with the deceased on Friday in the evening hours and four days thereafter, he is alleged to have made his confession. If the evidence of PW3 is tested with that of PWs 1 and

2, it reveals that the confession was on 01.05.2012 and if four days is calculated from the date of the said confession, the date of incident would be sometime on 28.04.2012, which is not the case of prosecution. However, PW3 admits, in his cross-examination that the accused never made such a confession before him and that he has no personal knowledge about the same. That being the position, the evidence of PW3 cannot be relied upon to show that a confession was made by the accused before him and no villager was examined to prove the statement of the accused before the villagers.

19. The only other evidence which remains to be considered insofar as the confession and the alleged recovery, is the evidence of PW4. PW4 is none other than the son of PW3. According to him, he was told by the accused that he and the deceased were going to Kummarigunta on 28.04.2012 in the evening hours, and on 01.05.2012, the accused came to them along with his villagers and confessed that he murdered the deceased in a forest situated at 5 kms. from Talavarisingi village. Thereafter, all of them went and saw the dead body. If the evidence of PW4 is tested with the evidence of PWs 1 and 2, it is clear that the accused left along with the deceased on 28.04.2012 in the evening hours and on 01.05.2012, a confession was made by him about disclosing the commission of offence

20. But, the charge is otherwise. As per the prosecution, the accused is said to have killed the deceased on 28.04.2012 at 8 a.m.

Further, none of the witnesses speak about seeing the accused and deceased going together into the forest. Everything is based on the information said to have been furnished by the accused. Therefore, the charge which the accused was supposed to defend, was about the accused killed the deceased along with the deceased. But the evidence of PWs 3 and 4 is to the effect that the accused left the village in the evening of 28.04.2012.

21. At this stage, it would be useful to refer to the evidence of the post mortem doctor, who, in his certificate, Ex.P6, states that the death of the deceased was about 72 hours prior to autopsy. It would be useful to refer to the relevant portion in the said certificate, which is as follows:

“Committed fractures of both right and left frontal, partial and temporal bones seen with liquifaction of brain seen. The entire scalp is eaten by maggots. Abdominal wall, stomach and intestines are eaten away by maggots. The body is in stage of putrefaction.

Antemortem in nature.

Age of wound – 72 hours before autopsy.”

22. From the findings given by the post mortem doctor, it is clear that the death of the deceased was 72 hours before autopsy. As seen from the certificate, the post mortem was conducted on 02.05.2012 at 3.30 p.m. If the period of 72 hours is taken from 02.05.2012, the death would have occurred on 29.04.2012, but not on 28.04.2012. Since the charge specifically states that the

accused committed the murder of the deceased on 28.04.2012 at 8 a.m., we feel that it appears to be a case where, after tracing the dead body at a distance of 35 kms. from the village, the prosecution tried to set up these witnesses, which led to so many discrepancies in their evidence.

23. Coming to the recovery made pursuant to the confession made, though M.O.4-blood stained boulder and M.O.3-shirt of the accused were recovered, the blood stains found on the M.O.4-boulder does not, in any way, indicate that it is the blood of the deceased, since there is no evidence to show the blood group of the deceased. Therefore, the alleged recovery of the weapon used in the commission of the offence, pursuant to the confession made, loses its significance.

24. Coming to the theory of last seen, it is clear that none of the witnesses had seen the accused and deceased going together into Kummarigunta area, and the evidence of PWs 3 and 4 is only based on the information furnished by the accused. Therefore, the existence of such circumstance, viz., accused being last seen in the company of the accused, would not arise in this case.

25. Having regard to the above, we are of the view that the circumstances relied upon by the prosecution are not proved beyond reasonable doubt, so as to connect the accused with the crime.

26. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 29.01.2013 in Sessions Case No.294 of 2012 on the file of the VII Additional Sessions Judge, (Fast Track Court), Visakhapatnam, 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. Miscellaneous applications pending, if any, stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

05.02.2018
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