

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.1184 OF 2011

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

1) The sole accused in Sessions Case No.184 of 2008 on the file of the III Additional District and Sessions Judge (FTC), Nellore, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife by name Gunji Venkataramana @ Shakeera (hereinafter referred to as "the deceased") on 12.10.2007 at about 4.00 p.m. in his house situated at Bhagath Singh Colony, Bujabuja Nellore, Nellore City. Vide judgment, dated 11.08.2011, the learned Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.100/-, in default to suffer simple imprisonment for a period of two months.

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

i) Accused is the husband of the deceased. PW.1 is the cousin of the deceased while PW.2 is the mother of the deceased. PWs.3 and 4 are the neighbours. The deceased was given in marriage to the accused about five years prior to the date of incident and it was a second marriage for the accused and deceased. The accused used to ask the deceased and PW.2 to compromise in a case filed

by PW.2 against the friends of the accused. It is further stated that the accused developed suspicion against the deceased and used to beat her. On the date of incident at about 3.00 or 4.00 p.m., while PW.3 was in the house along with her husband, noticed the accused quarrelling with the deceased about phone calls. Thereafter both of them went inside the house and closed the door. After 10 minutes, she heard cries from the house of the accused and also found the accused locking the door and leaving the said place. On suspicion PW.3 went to the house of PW.1 and informed the same. Then PW.3, PW.1 and one Hemalatha (not examined) went to the house of the accused and found the door locked from outside. Then they sent Hemalatha for bringing the keys of the house from the accused, who was standing from a distance, but the accused refused to give the keys. Then PWs.1 and 5 went to the accused and brought the keys from the accused. On opening the door, they found the deceased lying in the bed with injuries on the body. It is said that the reason for the accused to cause the death of the deceased was due to suspicion against her. Immediately, PW.1 lodged a report before PW.9-Sub-Inspector of Police, V Town Police Station, Nellore. Ex.P9 is the report. Basing on the said report, PW.9 registered a case in Crime No.248 of 2007 and issued Ex.P10-the first information report. Further investigation in this matter was taken up by PW.10-the Inspector of Police.

ii) PW.10-the Inspector of Police, Nellore Town (Law & Order), after receipt of the copy of the first information, reached

V Town Police station, recorded the statement of PW.1. He, then visited the scene of offence and found the dead body of the deceased. As it was dark, he could not continue with the investigation and as such posted a guard at the scene of offence. On the next day, he visited the scene along with S.I. and A.S.I. and other staff. In the presence of PW.6 and another he prepared a panchanama of the scene, which is placed on record as Ex.P3. During the scene observation, he seized blood stained towel from the bed of the deceased. He also got prepared a rough sketch of the scene, which is marked as Ex.P11. Apart from that he also got photographed the scene of offence through PW.8. He, then held inquest over the dead body of the deceased in the presence of PW.6. Ex.P4 is the inquest report. During inquest he examined and recorded the statements of PWs.1, 2, relatives of the deceased and other witnesses. Thereafter, he sent the body for postmortem examination.

iii) PW7-the Civil Assistant Surgeon, Government Hospital, Nellore, conducted autopsy over the dead body of the deceased and issued Ex.P7-the postmortem certificate. According to her, the cause of death was “due to shock and hemorrhage due to head injury”.

iv) On 15.10.2007, on reliable information about the presence of the accused, he proceeded to Petrol Bunk, Bujabuja Nellore, where he arrested the accused. On interrogation the accused confessed about the commission of offence. Pursuant to

the said confession, the accused lead them to a vacant site situated on the eastern side of his house and brought a stick. PW.10 seized the said stick (M.O.3) under a panchanama. When PW.10 questioned the accused about the gold chain (M.O.1) which was missing from the body of the deceased, the accused produced the same. After collecting all the material documents, a charge sheet came to be filed before the II Additional Judicial Magistrate of First Class, Nellore, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.184 of 2008.

3) On appearance, charge under Section 302 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P12 and MOs.1 to 3. 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. Neither oral nor documentary evidence was adduced on behalf of the accused.

5) Relying upon the evidence of PWs.3 to 5 the learned Sessions Judge, convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the case rests on

the circumstantial evidence. According to her, the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. According to her, the theory of last seen itself is doubtful and even if it is to be accepted the same does not lead to a conviction, since the prosecution failed to establish motive and the time of death. It is further pleaded that the arrest and seizure of weapon used in the commission of offence is also doubtful, in view of the evidence of PW.2.

7) On the other hand, the learned Public Prosecutor would contend that the evidence on record amply establish the involvement of the accused in the commission of the offence. He pleads that the evidence of PWs.3 to 5 show that about 10 minutes before the actual incident, both of them were seen together; went into the house and later PW.3 heard loud noise from the house of the deceased. She noticed the accused locking the door and leaving the house. That being the issue, the only circumstance of last seen is sufficient to connect the accused with the crime even if other two circumstances are not accepted.

8) The point that arises for consideration is whether the circumstances relied upon by the prosecution are sufficient to connect the accused with the crime.

9) In order to appreciate the same, it would be necessary to refer the evidence of PWs.3 to 5. PW.3, who is the neighbour of the deceased, in her evidence deposed that on the date of incident she noticed the accused quarrelling with the deceased about the

phone calls, then both went inside the house and closed the door. About 10 minutes thereafter, she found the accused alone coming out and locking the door. Suspecting some foul play she went to the house of PW.1 and informed the same. Then herself, PW.1 and one Hemalatha went to the house of the deceased, but the same was locked. Then they sent Hemalatha to get the keys of the house from the accused, who was standing at a distance but the accused refused to give keys. Thereafter, PWs.1, 4 and 5 went to the accused and brought the keys. On opening the door, they noticed the deceased lying in a pool of blood. We found that nothing incriminating came to be elicited in the cross-examination. All the suggestions which were given with regard to her presence at the scene of offence were denied. To a suggestion that the accused and deceased never quarreled with each other on the date of incident was denied. The suggestions that they never sent Hemalatha for bringing keys from the accused; they never opened the house and they did not notice any injuries on the body of the deceased were also denied.

10) From the above, it is clear that the evidence of PW.3 remained un-impeached though she was subjected to lengthy cross-examination. The said evidence of PW.3 gets corroboration from the evidence of PW.4 also. PW.4 in her evidence states that on the date of incident at about 4.00 p.m. while she was at the house of PW.5, PW.1, Hemalatha and herself are chit chatting with each other. At that time PW.3 came and informed about the accused beating the deceased, locking the door and leaving the house.

Immediately they rushed to the house of the deceased and found the door locked. Then they sent Hemalatha for bringing keys from the accused, but the accused refused to hand over the same. Thereafter, PW.1 and PW.5 approached the accused and demanded him to hand over the keys, but he refused to give the same. Then they forcibly took the keys from the accused and opened the door. On entering the house they found the deceased with injuries lying on the bed. Though PW.4 was cross-examined at length, nothing incriminating came to be elicited to show that PW.4 was speaking falsehood. To a suggestion that PW.3 never informed about the accused beating the deceased due to suspicion was denied. It was also suggested to PW.4 that on the date of incident PW.3 never came to them and did not inform anything. All the suggestions which were given to the witness remained as suggestions.

11) Coming to the evidence of PW.5, her evidence corroborates the evidence of PWs.3 and 4 in all respects. In her evidence she deposed that they sent Hemalatha for bringing the keys from accused, but the accused refused to give the keys. Then they went to the accused, took the keys forcibly, opened the door and found the deceased in the house with bleeding injuries.

12) From the evidence of these three witnesses, it is clear that on the date of incident at about 3.45 or 4.00 p.m., PW.3 saw the deceased and accused quarrelling with each other for phone calls received by her and thereafter they went inside. She also heard cries while both of them were in the house. About 10

minutes later the accused alone came out, locked the door and moved away from his house. Suspecting some foul play, PW.3 informed PWs.1, 4 and 5 about the same. All of them came to the house of the accused and found the house locked from outside. As the accused was standing at a little distance, they sent Hemalatha to get the keys from the accused. When he refused to give the keys of his house, PWs.1 and 5 went to the accused, forcibly took the keys, opened the door and noticed the dead body of the deceased with injuries.

13) As stated earlier, though all these three witnesses were cross-examined, nothing useful came to be elicited to discredit their evidence. All the suggestions given to these three witnesses were denied.

14) At this stage the learned counsel for the appellant would contend that in a case of circumstantial evidence, motive plays a crucial role and in the absence of any motive, the circumstance of last seen alone is not sufficient to convict the accused. We afraid to accept the same.

15) A perusal of the evidence of PW.2 would show that prior to the incident there were disputes between the accused and the deceased, since the accused was insisting the deceased and her mother to compromise in a case filed by PW.2 against his friends. On the other hand, the accused was also suspecting the fidelity of the deceased and used to beat her. This could be reason for the accused to kill the deceased. Therefore, the argument of the

learned counsel for the appellant that there was no motive cannot be accepted.

16) One other argument which was advanced before this Court was with regard to time of death. Learned counsel for the appellant would submit that the time of death as per the charge sheet was 3.00 or 4.00 p.m. and the doctor, who conducted the postmortem examination on 13.10.2007 at 12.30 p.m., deposed that the death would have been 24 to 36 hours prior to postmortem examination. If we calculate the time with the actual time of incident we noticed not much of variance with regard to time of incident. The variation in the time is only an hour or less. The time given by the doctor being only approximate and as no doctor could say the exact time as to when the deceased died to death, this circumstance in our view does not in any way help to the accused to throw out the entire prosecution case. Further, the accused failed to explain as to how the dead body of his wife is in his house. It is not his case that a third person entered the house and killed the deceased. It is also not his case that there was another person in the house at the time of incident.

17) In *State of Rajasthan v. Thakur Singh*¹ the Apex Court dealt with some what identical situation. It was a case where the dead body was found in the room occupied by her and the accused and there was no evidence that anybody entered their room and caused her death. The cause of death of his wife known only to accused, yet he failed to explain the same. After referring

¹ (2014) CrI.L.J. 4047

to Section 106 of the Evidence Act and relying on the judgments of the Apex Court in *Shambhu Nath Mehra v. State of Ajmer*², *Ganeshlal v. State of Maharashtra*³, *Dhyaneshwar v. State of Maharashtra*⁴, *Gian Chand v. State of Haryana*⁵ the Apex Court in Para Nos.22, 23 and 24 held as under:

“22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence.

² 1956 SCR 199

³ (1992) 3 CC 106

⁴ (2007) 10 SCC 445

⁵ (2013) 14 SCC 420

All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.”

18) It is well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then as held by the Apex Court it is a strong circumstance pointing to his guilt.

19) Having regard to the above, we feel that the circumstances relied upon by the prosecution established the link connecting the accused with the crime.

20) In the result, the Criminal appeal is dismissed, confirming the conviction and sentence recorded against the appellant/accused in the judgment, dated 11.08.2011 in S.C.No.184 of 2008 on the file of the III Additional District and Sessions Judge (FTC), Nellore, for the offence punishable under Section 302 IPC.

21) Consequently, miscellaneous petitions, if any, pending shall stand closed.

22) This Court, vide its order dated 30.11.2016 in CrI.A.M.P.No.1999 of 2016 directed release of the appellant/accused on bail on the terms and conditions mentioned therein. In view of dismissal of the Criminal Appeal, the bail bonds of the appellant/accused shall stand cancelled and the Magistrate

concerned shall take immediate steps to apprehend the accused by issuing N.B.W. to serve the sentence of imprisonment. Registry is directed to communicate a copy of this Judgment to the Magistrate concerned forthwith.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

18.06.2018
gkv

