

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL APPEAL No.591 of 2013

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

1. The sole accused in Sessions case No.242 of 2012 on the file of the I Additional Sessions Judge at Nizamabad is the appellant herein. She was tried for an offence punishable under section 302 IPC, for causing the death of her husband Balraj on 31.8.2011 at 6.00 p.m. in their house at Amrad village. *Vide* judgment dated 6.3.2013, the learned I Additional Sessions Judge, Nizamabad convicted the accused under section 302 IPC and sentenced her to suffer imprisonment for life and to pay fine of Rs.100/-, in default, to suffer simple imprisonment for one week.
2. The facts as culled out by the evidence of prosecution witnesses are as under:

Accused is the wife of the deceased. PW1 is the sister of the deceased, while PW2 is the resident of same area. Deceased is the uncle of PW4, while PWs 5 and 6 are also residents of the same village. The deceased was an agriculturist and the accused was a beedi labourer. It has come on record that the accused was a leader in DWACRA group and that she was not happy with the deceased. On the date of incident i.e., on 31.8.2011, PW2 reached the house of the accused while going to get vegetables from the market. The accused informed PW2 that the deceased died. On suspicion, she

went inside the house of the deceased and found the deceased dead. She also noticed injuries on face and head, apart from losing teeth. Due to fear, PW2 sent information to PWs 1 and 3. At about 3.00 p.m., while PW3 who is a village servant was going to the office, received information from PW2 stating that something happened in the house of the deceased and hence, went to the house of the deceased. On reaching the house of the deceased, he found dead body of the deceased with injuries on right side of his face. He also noticed accused in the house. When enquired as to what happened, the accused stated that she beat the deceased at about 100 a.m. When he enquired about the weapon used, she did not show the weapon and did not also disclose the nature of weapon used. He informed to the VRO and the Police about the incident over telephone.

PW1, the sister of the deceased also rushed to the house of the deceased, but did not enquire anything from the accused. She noticed injuries on the head and face of the deceased. Deceased is the junior paternal uncle of PW4, who, in his evidence states that on the date of incident, she came to know from PW3 about the death of the deceased. Immediately, she along with her mother-in-law PW1 went to the house of the deceased and found dead body in the house. Her evidence is to the effect that when she enquired as to how the deceased died, the accused said that she does not know as to what happened. According to her, deceased was beaten with a pestle and that pestle was found in the house. Evidence of PW8,

Circle Inspector, shows that after receiving a copy of FIR which is placed on record as Ex.P8, he took up investigation from one K.Nagendra. In his evidence, he deposed that he visited the scene of offence, examined and recorded statement of PW1. As it was late in the night, he did not conduct further investigation and resumed the investigation on the next day at 6.00 a.m. In the presence of PW6, he conducted panchanama of the scene of offence, which is placed on record as Ex.P2. He also prepared a rough sketch of the scene, which was marked as Ex.P3. Thereafter, he conducted inquest over the dead body, which was marked as Ex.P4. During inquest, he examined and recorded the statements of PWs 2 and 3 and sent the dead body for post-mortem examination. PW9, the Civil Assistant Surgeon, in GH Hospital, Nizamabad, conducted autopsy over the dead body and issued Ex.P10 the post-mortem report, opining that the death was due to cardio respiratory failure due to injury to vital organs like brain with multiple anterior fracture skull bone. PW8 who continued with the investigation, effected arrest of the accused and pursuant to the confession made, discovered MO 9, pestle under a cover of panchanama. The said pestle was recovered from a place called Tammalla Devanna Podalu, which is evident from the evidence of PW7, the VRO, who acted as panch for the confessions recovery.

3. After collecting all necessary documents, PW8 filed charge sheet which was taken on file as 51 of 2012 on the file of the Court of II Additional Judicial Magistrate of First Class, Nizamabad. On appearance of the accused, copies of the documents were furnished

as required Under Section 207 Cr.P.C. Since the case is triable by the Court of Sessions, the same is committed Under Section 209 Cr.P.C to the Court of Sessions, Nizamabad. Basing on the material available on record, charge Under Section 302 IPC was framed, read over and explained to the accused, to which, she pleaded not guilty and claimed to be tried.

4. In support of its case, the prosecution examined PWs 1 to 9 and marked Exs.P1 to P10 and MOs 1 to 11. After completion of the prosecution evidence, the incriminating material appearing against the accused was put to her at the time of her examination Under Section 313 Cr.P.C. to which, she denied. Relying upon the following circumstances namely, the accused and the deceased living together in the same house, that deceased being beaten with a pestle and the accused was alone present in the house at the time of death and basing on the information furnished by the accused to PW2, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

5. Sri V.Raghu, the legal aid counsel would contend that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events connecting the accused with the crime. He would further contend that there is absolutely no evidence on record to show that the accused was present in the house at about 10.00 a.m. on the date of incident. In so far as the extra judicial confession made before PW3 and PW5, counsel would contend that the same are not consistent with each

other. It is further pleaded that the recovery of weapon used in the commission of offence, cannot be believed as the recovery made after the arrest from a place called Tammalla Devanna Podalu, run contrary to the evidence of PW4. Having regard to all the circumstances above, it is urged that there is no positive evidence connecting the accused with the crime.

6. On the other hand, learned Public Prosecutor opposed the same contending that when the presence of accused in the house is established, no further evidence is required to establish the guilt of the accused, in the absence of any explanation given by the accused with regard to the presence of the dead body in the house. He would further contend that in view of Section 106 of the Indian Evidence Act, it is to be presumed that accused alone was responsible for the death of the deceased.

7. In order to appreciate the rival contentions, it is to be noted that in the case on hand, the admitted facts are that the accused is the wife of the deceased; both of them were living in one house and the incident in question took place at about 10 a.m. The question is whether there is any evidence on record to show as to whether the accused was present in the house at about 10 a.m. or prior to 10.00 a.m. in the house. PW1 who is the sister of the deceased in her evidence deposed that on coming to know about the incident, she rushed to the house and found the accused in the house. She did not enquire anything from the accused. Her version is to the effect that due to disputes, the accused killed the deceased. Admittedly,

she is not an eye witness and her evidence is silent as to when the accused killed the deceased. Coming to the evidence of PW2 who is a neighbour and whose house is after 4 to 5 houses away from the house of the accused. On the date of incident while she was going to the vegetable market, she reached the house of the accused. At that point of time, the accused informed her that the deceased died. On suspicion, she went inside the house of the deceased and found the deceased dying dead with injuries on face and head. She informed PW1 and PW3 as to what happened. Thereafter, she did not go into the house of the deceased. PW2, admittedly, is not an eye witness to the incident. Her evidence does not even disclose as to when she reached the house of the deceased. Her evidence is also silent as to how the deceased died. Her evidence does not anywhere indicate any suspicion against the accused, for causing the death of the deceased.

8. PW3 is the Village Servant. According to him, on the date of incident at about 10.00 a.m., the deceased was murdered. When PW2 came to him at about 3.00 p.m. and informed that something happened in the house of the deceased, he went to the house of the deceased and found the dead body with injuries on face. The accused who is the wife of the deceased was present there and when enquired she is alleged to have made an extra judicial confession stating that about 10.00 a.m. she killed the deceased but she neither showed the weapon used or did not disclose the nature of weapon. In the cross-examination, to a suggestion that he did not disclose to

the Police about the alleged extra judicial confession made by the accused to him, was denied by him. A perusal of the evidence of PW3 shows that incident in question is said to have taken place at 10.00 a.m. and they went to the house of the deceased at about 3.00 p.m., by which time they noticed the accused in the house with the dead body of the deceased. His evidence does not anywhere indicate that the accused was present in the house at 10.00 a.m. or prior to that. His evidence would assume importance only with regard to the extra judicial confession said to have been made by the accused disclosing the commission of the offence. But if really such an extra judicial confession was made before PW3, the normal course would have been to reduce the same into writing and along with a covering letter, handed over the same to the Police, along with the accused, which is not done. Therefore, there arises any amount of doubt with regard to the making of an extra judicial confession before PW3, disclosing commission of the offence.

9. Coming to the evidence of PW4, her evidence is to the effect that about 6.00 p.m. she came to know about the death of the deceased. She along with her mother-in-law PW1 went to the house of the deceased and found the dead body of the deceased and the accused present in the house. When enquired, the accused seems to have stated that she does not know anything. They also noticed a pestle in the house. The evidence of PW4 shows that they went to the house of the deceased at about 6.00 p.m. and found the accused near the dead body of the deceased. When enquired, the accused

disclosed that she does not know as to how the deceased died. The evidence of PW4 does not disclose that the incident was at about 10 in the morning and the accused was present in the house at that time.

10. PW5 is a resident of Amrad village. According to him, at about 5.30 p.m., he returned to his house from his field. On hearing some noise from the house of the accused, he went to the house of the accused and found the deceased dead. He found the accused by the side of the dead body of the deceased. When enquired, the accused told him that she beat the deceased with a pestle and caused the death. But the said statement also cannot be taken as an extra judicial confession since he never made any effort to reduce the same into writing and send a report along with a covering letter to the Police, along with the accused.

11. Therefore, the these circumstances referred to above, do not conclusively establish that it was the accused alone who was responsible for the death of the deceased. It may be true that the dead body was found in the house of the accused and deceased. Though the death was about 10.00 a.m., fact remains that there is no evidence on record to show that the accused was present in the house at 10.00 a.m. No effort was made by the prosecution to show that the accused was present in the house at that time. Had the incident occurred in the night time, an inference could have been drawn that the accused alone would have caused death. But here is a case where there is no evidence to show that accused was in the

house at 10 a.m. Further, the accused is a leader of DWACRA group and as such, there is every possibility of she being away from the house. Therefore, we feel that the prosecution failed to establish beyond reasonable doubt that the accused was present in the house at about 10.00 a.m. thereby enabling them to invoke section 106 of the Indian Evidence Act.

12. Coming to the motive aspect, we have scanned the evidence of all the witnesses but none of the witnesses deposed about accused having any motive to do away with the deceased. Further, nothing came to be elicited from the witnesses that the deceased had any enmity with the accused on the ground that she is a leader in DWACRA group and moving actively in the group. It was not even spoken to by any of the witnesses that the deceased was suspecting the fidelity of the accused. In so far as recovery of weapon used in the commission of offence, PW4 in her evidence deposed about the presence of pestle in the house, but PW7 who acted as a panch for the recovery of the weapon deposed that on 5.9.2011 i.e., six days later, the accused was arrested and pursuant to the confession made, the weapon was recovered from a place called Tammalla Devanna Podalu. Therefore, the recovery made is a make believe one, created to connect the accused with the crime.

13. For the aforesaid reasons, we feel that the prosecution failed to prove the chain of events connecting the accused with the crime.

14. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the

judgment, dated 6.3.2013, in Sessions Case No.242 of 2012, on the file of the I Additional Sessions Judge at Nizamabad for the offence punishable under Sections 302 I.P.C., are set aside and she is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if she is not required in any other case or crime.

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

JUSTICE C.PRAVEEN KUMAR

JUSTICE P.KESHAVA RAO

Dated: 30.6.2018

KPM

