

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE DR. SHAMEEM AKTHER

CRIMINAL APPEAL No.1220 of 2014

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal is filed by the appellant-accused, aggrieved by the conviction recorded on 15.10.2014 in S.C.No.347 of 2014, on the file of II Additional Sessions Judge, Karimnagar at Jagtial, wherein the learned Sessions Judge found the appellant-accused guilty of the offence under Section 302 I.P.C and sentenced him to undergo imprisonment for life and also to pay fine of Rs.5,000/-, and in default of payment of fine, to suffer simple imprisonment for a period of one month.

2. Heard Sri A.Nava Mohan Rao, learned counsel for the appellant-accused and Smt. J .Sridevi, learned Additional Public Prosecutor for the State and perused the record.

3. Learned counsel for the appellant-accused would contend that the findings recorded by the learned trial Judge are contrary to law and facts of the case. The learned trial Judge ought not to have relied on the evidence of P.W4-son of the appellant-accused and deceased herein. He is a tutored witness and there are material omissions and commissions in the evidence of PW.4. Though the neighbors were examined, none of them have supported the case of the prosecution and turned hostile. There is no reference in Ex.P.1-report and Ex.P.13-inquest panchanama with regard to PW.4 seeing the alleged commission of offence. Therefore, the evidence of P.W.4 is not reliable and trustworthy,

more-so, when there is no other evidence on record to prove the guilt of the appellant-accused beyond a reasonable doubt. The trial Court ought to have acquitted the appellant-accused, and ultimately prayed to allow the appeal by setting aside the conviction and sentence recorded against the appellant-accused for the offence punishable under Section 302 I.P.C.

4. Smt. J.Sridevi, learned Additional Public Prosecutor for the State, would contend that PW.4, who is the son of the appellant-accused and the deceased herein, is a material witness in this case and there is consistency in the evidence of PW.4 though he was cross-examined at length. There is reference of P.W.4 in Ex.P.13-inquest panchanama and Ex.P.1-report. There is no reason for PW.4 to depose falsely against his own father (appellant-accused. The evidence of PW.4 is truthful and trustworthy and there are no material omissions and contradictions in his evidence. There is reference of M.O.6 (wooden pestle) in Ex.P.1-report, which is used in the commission of offence by the appellant-accused. The presence of PW.4 in the house, when the alleged offence was committed is not in dispute. PW.1 and PW.3, who are the brothers of the deceased herein, supported the prosecution case and no infirmities are found in their evidence. PW.2, PW.7 and PW.8 are the residents of Mythapur and they are very close to appellant-accused and the accused won-over them. The trial Court had rightly appreciated all the facts and circumstances to bring home the guilt of appellant-accused beyond all reasonable doubt and convicted the appellant-accused. There is nothing on record to take a different view than that of the trial Court and ultimately prayed to sustain the impugned judgment and dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are:

- 1. Whether the appellant-accused caused the death of his wife on the night of 24.08.2009 in his house at Budige Jangala Colony, Maithapur village of Raikal Mandal?**
- 2. Whether P.W.4, the son of the appellant-accused and the deceased herein, is a truthful witness and his evidence is reliable?**
- 3. Whether the prosecution proved the guilt of the appellant-accused of the offence under Section 302 I.P.C beyond all reasonable doubt? and**
- 4. Whether the conviction and sentence recorded against the appellant-accused is liable to be set aside?**

6. The prosecution case in a nutshell is that the appellant-accused and the deceased herein married about 12 years back and were blessed with one son (PW.4) and one daughter. The marital relationship between the appellant-accused and the deceased herein was not cordial as the appellant-accused and his parents harassed the deceased herein to bring additional dowry, despite the panchayaths held by the caste elders to resolve the disputes. Therefore, the deceased herein was constrained to file a complaint against the appellant-accused at Gollapally Police Station for the offences under Section 498-A I.P.C and Sections 3 and 4 of Dowry Prohibition Act vide Cr.No.90 of 2008. The deceased herein also filed a private complaint against the appellant-accused before the Court at Karimnagar. Thereafter, due to intervention of caste elders, the matter was compromised and the deceased herein joined the company of appellant-accused to lead the marital life at Mythapur. However, the appellant-accused again harassed the

deceased herein to bring an amount of Rs.1,00,000/- from her parents to meet the expenses of the case filed by her against him, stating that the appellant-accused borrowed the said amount from his maternal uncles (PWs.9 and 10). When the deceased herein did not oblige and refused to get the said money from her parents, the appellant-accused developed grudge and decided to kill her.

7. On 24.08.2009, in the night, when the deceased herein and children were asleep in their house, the appellant-accused picked up a quarrel with the deceased herein and gave merciless blows on her face with a wooden pestle (MO.6) with an intention to kill her. Due to such blows, the deceased herein died instantaneously. Thereafter, the appellant-accused left his house by bicycle. The appellant-accused while fleeing from the scene, informed about committing murder of his wife (deceased herein) to one Puranapu Laxmanna-PW.2.

8. Thereafter, PW.2 informed the incident to the husband of village Sarpanch. PW.2 after enquiring about the incident made a phone call and informed to PW.1-brother of the deceased herein. Immediately, PW.1 along with his parents, his brother (PW.3) and other villagers of Gunjapadugu, came to Mythapur i.e., to the house of the appellant-accused. Having found the dead body of the deceased herein, PW.1 gave a report in Raikal Police Station and basing on which the police registered a case in Cr.No.142 of 2009 under Section 302 r/w 149 I.P.C against the appellant-accused. On receipt of express FIR, PW.19-the Circle Inspector of Police, took up investigation and conducted the scene of offence observation and inquest over the dead-body of the deceased herein

in the presence of the mediators. The medical officer (PW.17) conducted post-mortem examination over the dead body of the deceased herein.

9. The appellant-accused was apprehended by the police at his house on 30.08.2009. During interrogation, the appellant-accused voluntarily confessed his guilt in the presence of mediators and at the instance of appellant-accused the police recovered the crime weapon-MO.6 (blood stained wooden pestle) under cover of panchanama. Thereafter, the accused was sent to judicial custody. The charge sheet was filed against the appellant-accused for the offence under Section 302 I.P.C.

10. The prosecution examined PWs.1 to 19 and got marked Exs.P.1 to P.19 besides six material objects MOs.1 to 6.

11. On closure of prosecution evidence, when the accused was confronted with the incriminating material appearing against him and was examined under Section 313 of Cr.P.C, he denied the same and reported no evidence on his behalf.

POINTS:

12. The evidence on record discloses that PW.1 and P.W.3, the two brothers of the deceased herein were consistent in their evidence about they receiving information from the husband of village Sarpanch (PW.11). They along with family members after coming down to Mythapur village, at the house of the appellant-accused, noticed the dead body of their sister-deceased herein with injuries on her face and made enquiries with PW.7 and PW.8. PWs.1 and 3 have also deposed that their nephew PW.4 informed

them that night, having awoken up from the sleep, upon hearing the shouts, noticing the dead body of his mother (deceased herein) in the cot and also noticed that his father (appellant-accused) going away from the house by bicycle. No infirmities were found in the evidence of PWs.1 and 3 and so also in the evidence of PW.4. During their cross-examination they spoke about borrowing of loans by the accused from his maternal uncles, holding of panchayaths and the Court cases. Though, an attempt is made by the appellant-accused to impress that they were inimically disposed against him, the appellant-accused could not elicit any reason or justifiable cause to discard the testimony of PWs.1 and 3.

13. There is no direct eyewitness to the incident and the entire case rests upon the circumstantial evidence. The death of the deceased herein took place in the bedroom of the house of the appellant-accused, where the appellant-accused, his wife (deceased herein), son and daughter were living. The factum of death was noticed by PW.4 when he woke up on hearing the shouts. The evidence of PW.4 is pivotal. On the date of his examination, PW.4 was aged about 14 years. PW.4 categorically stated that his paternal grandparents and his father (appellant-accused) used to harass his mother (deceased herein) for additional dowry and on that his mother (deceased herein) made a complaint with the police and filed a private case. PW.4 also stated that elders compromised the matter and his father (appellant-accused), on the advice of elders, permitted his mother (deceased herein) to join his company. PW.4 also stated about the appellant-accused borrowing an amount of Rs.1,00,000/- from his maternal uncles and the

pressure of maternal uncles to repay the amount and his father (appellant-accused) insisting his mother (deceased herein) to get that amount from her parents and in that connection his father (appellant-accused) abusing and beating his mother (deceased herein) every day. He also stated that on the day of the incident his father (appellant-accused) came in an intoxicated condition at about 10 or 11 PM and that upon hearing the shouts, he woke up from sleep and saw his mother (deceased herein) with injuries on her face and he came out of the room and saw his father (appellant-accused) going away by bicycle in speed and that he made shouts, and upon hearing the shouts, several persons gathered.

14. PW.4 was subjected to lengthy cross-examination. He gave the details of his arriving at the Court to depose in this case. He also gave the details of other persons coming to the Court on that day. He also stated in his evidence that after the death of his mother (deceased herein) he along with his sister are staying with maternal grandparents. PW.4 gave the details of the litigation in between his mother (deceased herein) and father (appellant-accused). He stated that he did not witness the borrowing made by his father (appellant-accused). However, he stated that the money lenders namely, Phirangi and Gangaram were demanding his father (appellant-accused) to return the money borrowed from them. Further, he gave the details of how he woke up on that night. He also denied that he deposed falsely against his father (appellant-accused) under the influence of his maternal grandparents etc. In Ex.P.1-report there is specific mention of PW.1 enquiring with PW.4 and their neighbours before lodging a

report with the police. There are no material omissions and contradictions in Ex.P.1-report. There is no reason for PW.4 to falsely implicate his father (appellant-accused) or to depose basing on the surmises or imaginations or to depose under the influence of his maternal grandparents. There are no material omissions and contradictions in the evidence of PW.4. PW.4 is a natural witness. His presence on 24.08.2009 at the house at the time of commission of subject offence is not denied. PW.4 specifically stated the presence of his father (appellant-accused) at the house in the night in between 10-00 pm and 11-00 pm on the ill-fated day. PW.4 has no adverse interest against his father (appellant-accused) to falsely implicate his father after the death of his mother (deceased herein). PW.4 deposed before the trial Court that he was aware of the consequences of his evidence before the Court. Nothing was elicited in the cross-examination to discard the testimony of PW.4. Therefore, it can be safely concluded that PW.4 is a truthful and reliable witness.

15. The maternal uncles of the appellant-accused were examined as PWs.9 and 10 and according to the prosecution the appellant-accused borrowed amount from these two witnesses, in order to meet the Court case and the panchayath expenses. However, they did not support the prosecution case and they were treated as hostile. It appears that these witnesses were won-over by the appellant-accused.

16. PW.11 is the husband of village Sarpanch. The prosecution version is that PW.2 after hearing the appellant-accused about he committing the murder of his wife (deceased herein) informed to

PW.11, and PW.11 after making verification of the same, informed the same to PW.1-defacto-complainant. PW.11 is the native of Mythapur village, the village of accused, and the prosecution treated PW.11 as hostile. It appears that PW.11 is also won-over by the appellant-accused.

17. PW.12 is the photographer and Exs.P.8 to P.11 are the photographs which he took at the instance of the police. The photographs depict multiple bleeding injuries on the face. The appellant-accused did not challenge the contents of Exs.P.8 to P.11 photographs.

18. PW.17 is the Doctor who conducted post-mortem examination over the dead body of the deceased herein. Ex.P.16 is the post-mortem examination report issued by him opining that the death occurred in between 10-00 P.M to 12-00 midnight hours of the intervening night of 24/25-08.2009 and the injuries which he found on the dead body must have caused with a blunt object. The appellant-accused did not challenge the evidence of PW.17.

19. The evidence of PW.11-the husband of village Sarpanch as well as the evidence of PW.12-Photographer and Ex.P.8 to 11 coupled with the evidence of PWs.1, 3 and 4 and also evidence of PW.19-Circle Inspector of Police and Ex.P.13-Inquest Panchanama disclose that the subject death was caused within the house of the appellant-accused situated at Budige Jangala Colony, Maithapur village of Raikal Mandal. Furthermore, the evidence of PW.17-Doctor and Ex.P.16-post-mortem examination report are not challenged, wherein the PW.17-Doctor found the following ante-mortem injuries:

1. *Lacerated injury measuring 6 inches x ½ inch x ½ inch extending right eye brow to left eye brow.*
2. *A depressed fracture of frontal bone was noticed extending from right to left temporal region with exposure of the brain.*
3. *Depressed fracture of nasal bones.*
4. *Depressed fracture of right maxilla and right zygomatic bone.*

20. DW.17-Doctor clearly stated that the cause of death was due to intra cerebral hemorrhage, due to head injury i.e., injury No.2.

21. There is also evidence of PW.17-Doctor that the injuries were possible with an object having hard surface i.e., stick, rod etc. PW.19-Circle Inspector of Police, in his cross-examination deposed that MO.6 is the wooden pestle with which the appellant-accused murdered the deceased herein and MO.6 (blood stained wooden pestle) was recovered at the instance of the appellant-accused and in the presence of two mediators. Therefore, the contention that MO.6 is planted for the purpose of this case is unsustainable. The ante-mortem injuries found on the dead-body of the deceased herein were possible with MO.6 (wooden pestle). Therefore, it can be safely concluded that the place of offence is situated at the house of appellant-accused and the subject offence is committed on the intervening night of 24/25.08.2009 at the house of the accused.

22. The plea of the appellant-accused before the trial Court was that on 24.08.2009 since 8-00 PM he was along with PWs.2, 7 and 8 near the Ganesh pandal and he along with PWs.2, 7 and 8 rushed towards his house on hearing the dogs barking in front of his house and he noticed that the main door was open and when

entered inside of the house, he noticed the dead body of his wife (deceased herein) on one cot and their daughter and son found sleeping on another cot. Thus, the appellant-accused took a plea of alibi. However, PWs.2, 7 and 8 did not support the case of prosecution and they were treated as hostile by the prosecution. It was the case of the prosecution before the trial Court that PWs.2, 7 and 8 are the residents of Mythapur and they are very close to appellant-accused and the appellant-accused won-over them. If really the appellant-accused was with PWs.2, 7 and 8, they all together would have gone to the house of the appellant-accused upon hearing the sounds of barking dogs and noticed the dead body of the deceased herein. What prompted the appellant-accused to keep quiet on that night and allowing others to inform about the murder of his wife (deceased herein) to the husband of the village Sarpanch. The reaction of any husband would not be that of appellant-accused when someone murder's his wife, more-so, when it is not possible to gain entry inside the house.

23. There is ample evidence on record that the appellant-accused immediately after commission of the offence absconded and he was arrested on 30.08.2009 and pursuant to his confession made, MO.6 (blood stained wooden pestle) was recovered. There is no evidence that the appellant-accused participated in the death ceremonies of his wife (deceased herein). The evidence on record clearly establishes that the appellant-accused had absconded as contended by the prosecution.

24. It is relevant to state that when the appellant-accused was examined under Section 313 Cr.P.C, he simply denied the

incriminating evidence appearing against him. Though, he contended that he was not in the house at the time of commission of alleged offence and he was at Ganesh pandal, he did not choose to lead any evidence to substantiate the same. Furthermore, there is no explanation from the appellant-accused as to how somebody gained entry into the house and cause death of his wife. It is apt to refer to the decision of the Hon'ble Supreme Court in **SHARAD BIRDHICHAND SARDA v. STATE OF MAHARASHTRA**¹ wherein it was held as follows:

"When a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

¹ AIR 1984 SC 1622

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

11. The conditions required to prove the guilty of the accused based on circumstantial evidence are also enunciated in the following cases:

"1. Hanumant Govind Nargundkar Vs. State of M.P.².

2. C.Chenga Reddy Vs. State of A.P.³"

25. The evidence of PWs.1 and 3-brothers of deceased herein and the evidence of PW.4-son of the appellant-accused and the deceased herein, is corroborative and cannot be doubted. PW.17 is the Doctor, who conducted post-mortem examination over the dead body of the deceased herein, issued Ex.P.16-post-mortem

² AIR 1952 SC 3442

³ (1996) 10 SCC 193

examination report and opined that ante-mortem injuries which he found over the dead body must have been caused with a blunt object. PW.19- Circle Inspector of Police, took up investigation and conducted the scene of offence observation and inquest over the dead body of the deceased herein in the presence of the mediators. PW.19 recovered MO.6 (blood stained wooden pestle), used for the commission of murder, pursuant to the confession made by the appellant/accused. Ex.P19-confession-cum-seizure panchanama demonstrates the same. From the evidence on record, it is clear that the appellant-accused was not happy with the deceased herein for not bringing an amount of Rs.1,00,000/- from her parents and there were marital disputes among the deceased and accused and so the accused developed grudge against the deceased herein. There was clear intention on the part of the accused to eliminate the deceased. With that intention he caused injuries with MO.6-wooden pestle and caused the subject death. The evidence on record is consistent with the guilty of the appellant-accused. There is no explainable any other hypothesis except that the appellant-accused is guilty of causing the death of his wife (deceased herein). Further, the evidence excludes any remote possibility of causing the subject death by any other person, than the appellant-accused. PW.4 had seen the appellant-accused on that night around 10-00/11-00 P.M, when he heard noise, he got up and saw the appellant-accused leaving the house by bicycle and he also found his mother (deceased herein) lying on the cot in the pool of blood, with multiple injuries. It falsifies the defense set up by the appellant-accused. The other evidence brought on record in the course of investigation establishes the chain of events so

complete to exclude with the innocence of the appellant-accused. The prosecution clearly established the circumstances and the chain of events that led to the commission of murder of deceased herein by the appellant-accused on the intervening night of 24/25.08.2009 and made out a charge against the appellant-accused under Section 302 I.P.C beyond all reasonable doubt. The trial Court had rightly appreciated all the facts and circumstances and evidence on record and rightly convicted the appellant-accused. There is nothing on record to take a different view than that of the trial Court.

26. In the result, the Criminal Appeal is dismissed, confirming the judgment dated 15.10.2014 passed in S.C.No.347 of 2014, on the file of II Additional Sessions Judge, Karimnagar.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

Date: 25.07.2019
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