

HON'BLE SRI JUSTICE G. SHYAM PRASAD
&
HON'BLE SRI JUSTICE M. VENKATA RAMANA

CRIMINAL APPEAL No.160 of 2014

JUDGMENT: (per the Hon'ble Sri Justice MVR,J)

01. This Appeal is directed against the Judgment of the learned Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-Additional District & Sessions Judge, Vizianagaram, in S.C.No.68 of 2013, dated 16.12.2013.

02. The Charge against the Appellant is one under Section 302 IPC on the allegation that he committed murder of his wife on 10.10.2012 at about 09.00 pm in their house.

03. The case of the prosecution is to the effect that on that day, the deceased—Smt Kanakam, attended her work in a jute mill leaving home at 06.00 am and returned at 04.00 p.m., though she was expected to return in the afternoon. It is the further case of the prosecution that the Appellant was then suspecting the fidelity of his wife and questioned her for returning home late. It is further the case of the prosecution that when the deceased was attending on her phone calls at dinner time, standing away from the Appellant, he questioned

her in that respect and thereupon, when she answered impertinently, the Appellant could not bear, ensuing a quarrel in between them. In that quarrel, according to the case of the prosecution, the appellant took out a stick from the pile of firewood in the house and beat the deceased indiscriminately, resulting in her death instantaneously, particularly on account of head injury.

04. The prosecution case further is that the appellant approached PW.1-G.Rama Simhadri Naidu, who was then V.R.O of Jami Village, when he was in the house of PW.2-Smt. Allu Padma, and informed him of the incident, on which, he was taken to Police Station at Jami along with the stick alleged to have been used in the alleged incident.

05. On the strength of the report in Ex.P.1 presented by PW.1, a case was registered in Jami Police Station at about 11.30 pm on 10.10.2012 and investigation ensued thereon by the Inspector of Police, S. Kota (PW.15). The dead body was subjected to autopsy in Community Health Centre, S. Kota and it was conducted by PW.11-Dr. K. Syamala and homicidal nature of the death was confirmed.

06. With reference the Charge framed against the Appellant, the trial went on in the aforestated Court of learned Sessions Judge, Vizianagaram, where the prosecution in all examined Pws. 1 to 15, while relying on Exs. P.1 to P.10 as well as Mos. 1 to 9. In his examination under Section 313 Cr.P.C., the version of the Appellant was denial of all the incriminating circumstances appearing against him. He further stated that he himself had surrendered before the Police, after observing that the dead body of his wife was lying in the house on the date of incident at about 8.00 pm when he returned home from his cycle shop. His version was also that when he informed his neighbours through PW.4—Meesapu Sanyasirao of the same, he asked him to inform in police station. He also stated that he was beaten by the Police and his confession was extracted. He denied that he handed over MO.1-Stick alleged to have been used in the commission of the alleged incident.

07. Considering such material and evidence on record, the learned Sessions Judge held that the evidence adduced by the prosecution from Pws. 1 to 8 is reliable and the defence could not in any manner make out circumstances to disbelieve their

version. Thus, relying on the testimony of the witnesses, so examined at the trial, learned Sessions Judge had chosen to record a conviction, recording the guilt of the accused under Section 302 IPC and, consequently, sentenced him to suffer imprisonment for life as well as fine of Rs.1,000/-, in default, Simple Imprisonment for Two Months.

08. Heard Sri T.S. Rayulu, learned counsel for the Appellant. He (Appointed on Legal Aid) has taken us through the depositions of all the material witnesses examined at the trial, and contended that the evidence let in by the prosecution is totally untrustworthy. It is his further contention that the Appellant has retracted from the extra judicial confession attributed to him, basing on which, Ex.P.1-Report was given by PW.1, V.R.O, Jami, to the Police. Assailing the testimony of Pws. 1 and 2, on the ground that they are riddled with infirmities and pointing out discrepant nature when considered with the testimony of Pws. 5 to 8, it is further contended by the learned counsel that the prosecution miserably failed to make out the alleged Charge against the Appellant.

09. Learned Assistant Public Prosecutor, representing learned Public Prosecutor in this Appeal, attempted to support the reasons assigned by the learned Sessions Judge, recorded in the judgment under appeal and to the effect that the testimony of Pws. 1 to 8 is reliable and the medical evidence from PW.11 and Ex.P.6—P.M.Report clearly pointed the homicidal nature of the death. It is also contended by the learned Assistant Public Prosecutor that there is no explanation from the accused how the deceased was found in fatal condition at the time of alleged incident. Thus, it is contended that there is no necessity to disturb any finding recorded by the learned Sessions Judge and thus sought to confirm the conviction and sentence imposed on the Appellant.

10. Now the following points arise for determination:

- i) Whether the evidence adduced by the prosecution at the trial is sufficient to bring home a Charge under Section 302 IPC against the Appellant?***

ii) What shall be the consequences of findings on Point No.1, vis a vis, the prosecution as well as the Appellant ?

11. **POINT NO.1:** The entire story of the prosecution is based on the alleged extra judicial confession attributed to the Appellant made to Pw.1 in the presence of Pw.2, in the house of PW.2 at Jami village. The Appellant has retracted from this alleged confession completely stating that it was extracted by the police when he went to the Police Station on the advice of Pw.5, when he saw the dead body of his wife after returning from the shop at about 8.00 pm on 10.10.2012.

12. At this juncture itself, it should be stated that when the prosecution is totally relying on the alleged extra judicial confession of the Appellant, it should have been brought on record. In as much as its case is that it was the version of the Appellant presented prior to the registration of the FIR to the police, at the house of Pw.2 in the presence of PW.1, possibility of applying bar under Section 162 Cr.P.C., to hold it inadmissible, could not have arisen. Yet, care was not taken in the course of trial to bring this statement on record

through either Pw.1 or Pw.2. The gist of the contents of this alleged confession finds place as part of Ex.P.1-Complaint presented by PW.1 to the Police. Therefore, when the alleged extra judicial confession itself is not on record, when it is the foundation and basis of the prosecution version, edifice sought to be built thereon either during the course of investigation or at the trial by the prosecution cannot stand. Virtually, the foundation is lost and consequently, the structure has to crumble. Thus, it is a circumstance to affect the version of the prosecution fatally. Learned Sessions Judge apparently did not take into consideration this aspect and was carried away by the nature of the evidence brought out at the trial by the prosecution.

13. Even, consideration of the evidence of PWs. 1 and 2, cannot give rise any impression that it is trustworthy. As rightly pointed out by the learned counsel for the Appellant, necessity of PW.1, who happens to be the V.R.O, who is resident of Alugubilli village and then working as V.R.O, Jami, being available in the house of Pw.2, who was the then Ex-Sarpanch at the time when the Appellant had allegedly met him at about 9.00 or 10.00 p.m., It is a matter of grave

doubt and it has not been explained properly. Added to it, when Pw.1 claimed that he had recorded the statement so called of the Appellant, it did not reflect that it stood in actual words spoken to by the Appellant. Necessity of Appellant approaching Pws. 1 and 2 for the above purpose itself is not satisfactorily brought out from the depositions of both these witnesses. Therefore, reliance placed on the testimony of Pws. 1 and 2 in this context by the learned Sessions Judge is not proper.

14. Even otherwise, the reason that prevailed upon PW.1 to meet Pw.2, according to the case of the prosecution, is to discuss certain affairs relating to issuance of pattadar passbook. When she never had any concern with the affairs of the Revenue Department in that village or with reference to issuance of pattadar passbook, it is not explained by the prosecution why and how Pw.1 had chosen to meet her. Learned counsel for the Appellant has also brought to the notice of this Court that the husband of Pw.2 is a Senior Advocate at S. Kota and the evidence of PW.1 also makes out his presence in that house at the time of alleged recording of extra judicial confession of the Appellant.

15. Pw.3 is the mother of the deceased. She stated that the husband of PW.2 was their Advocate and their Legal Consultant in earlier cases. It is a proved fact in this case that the deceased had initiated criminal proceedings against the Appellant for an offence under Section 498-A IPC. The Appellant was also convicted and sentenced in the above case for about six months. Further, it transpires from the evidence on record in this case that after his release from the prison after serving out sentence, the deceased and the Appellant lived together happily for about a month without any instances of discardance. This circumstance should also be taken into consideration in evaluating the case of the prosecution.

16. Another *important* circumstance appearing from the evidence brought out by the prosecution is through Pws. 6 to 8. It is to the effect that when these witnesses were seen by the Appellant in the village, on the road, he informed them that he killed his wife and that, at that time he was carrying Mo.1-Stick. It is also the version of PW.6 at the trial that he inturn informed PW.5 at 9.00 or 09.30 p.m, on that day. The testimony of PW.8 also reflects that there were many villagers

at the time when the Appellant was informing Pws. 6 and 7 as to what happened, near his house. It is hard to believe such version of the prosecution, in as much as it is beyond the human conduct and artificiality lies in this version. In as much as it cannot be expected that the Appellant would have gone to the extent of informing every villager that he murdered his wife while carrying the alleged weapon used in the commission of offence.

17. When the evidence so let in by the prosecution from the material witnesses at the trial, is found to be riddled with all these infirmities and particularly bearing in mind the effect of want of alleged extra judicial confession stated to have been recorded by Pw.1 on record. The only inference to be drawn in these circumstances is that the prosecution miserably failed to bring home the Charge against the Appellant and beyond reasonable doubt. Falsity in the case set up by the prosecution stood exposed on account of all the above circumstances, which presented an unrealistic account.

18. In the judgment of the trial Court, there is elaborate reference to the depositions of the witnesses examined at the

trial. Ultimately, the findings stood recorded only in para Nos. 39 and 41. Learned Sessions Judge was impressed on account of the dead body of the deceased available at their house with a head injury. But, it cannot be a circumstance by itself of recklessness.

19. Even otherwise, when the evidence is completely depending upon the circumstances without any direct eye witnesses on record, attempt appears to have had been made during the course of investigation to bring out such material as if to link all circumstances together to make out a complete chain. It is not the expected nature of the investigation to say the least.

20. Therefore, finding the material on record of such nature being wholly unreliable, we are of the view that the judgment of the learned Sessions Judge cannot stand. Consequently, an order of acquittal has to be recorded in favour of the Appellant holding the accused not guilty of the Charge under Section 302 IPC.

21. Therefore, the Judgment of the learned Sessions Judge has to be differed, for the above reasons.

22. In the result, this Criminal Appeal is allowed. Consequently, the judgment of the learned Special Judge for Trial of Cases under SCs & STs (POA) Act-cum Additional District & Sessions Judge, Vizianagaram, in S.C.No.68 of 2013, dt. 16.12.2013 is set aside. As a result, the accused is found not guilty of the charge under Section 302 IPC and the conviction and sentence imposed against the Appellant is set aside. The accused shall be set at liberty forthwith if he is not required in any other crime or case.

We deeply appreciate the efforts made by the learned Counsel for the Appellant/Legal Aid—Sri T.S. Rayalu and learned Assistant Public Prosecutor, representing the Public Prosecutor of the State, for their valuable assistance, in this matter.

As a sequel, miscellaneous petitions, if any pending in these cases, shall stand closed.

G. SHYAM PRASAD,J

M. VENKATA RAMANA,J

Dt.31.08.2019
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DT. 31-08-2019

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