SUPREME COURT OF INDIA

Vasa Chandrasekhar Rao

Versus

Ponna Satyanarayana

State of Andhra Pradesh

Versus

Ponna Satyanarayana

(G.B. Pattanaik and S.N. Variava, JJ.)

Criminal Appeal Nos. 383-384 of 1994 & Criminal Appeal No. 385-386 of 1994.

05.05.2000

JUDGMENT

G.B. Pattanaik, J. - (sic) passed by the High Court of Andhra Pradesh. The accused-respondent stood charged and was tried by the Sessions Judge, Eluru for the offence under Section 302 IPC, on the allegation that he committed the murder of his daughter Suneetha and his wife Padmavati. The learned Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer imprisonment for life. On appeal being carried, the High Court by the impugned judgment acquitted the accused of the charge under Section 302 IPC and instead convicted him under Section 498A IPC and for such conviction, sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1000/-, in default to suffer R.I. for three months. It is the order of acquittal recorded by the High Court of the charge under Section 302 which is being assailed by the State as well as by the father of the deceased Padmavati.

2. The prosecution case in nutshell is that the accused had married the deceased Padmavati in June, 1985 and out of the wed-lock, a daughter deceased Suneetha was born. Initially the accused was staying with his parents but later on, shifted his family to Palakol and was earning his livelihood by doing tailoring work. On account of financial stringency, which the accused was facing, often he was harassing the deceased Padmavati and forcing her to get money from her parents. The accused was also suspecting the character of the deceased. While both of them were at Palakol, the mother of the deceased PW24 had come to look her daughter and when she reached the house of her daughter, she found that accused was torturing his wife Padmavati. Mother PW24, therefore, brought her daughter to her own house where Padmavati gave birth to a female child Suneetha. The father of the deceased Padmavati PW19 made several efforts for the return of Padmavati to her matrimonial home but it never succeeded. Finally on 11.1.1991 PWs 9 and 21 took the deceased Padmavati and her daughter to the house of the accused and left her there, while the parents of the accused PWs 1 and 2 were also present. After leaving Padmavati with the accused, both PWs 9 and 21 left for their respective house at about 3 p.m. and at 6 p.m. PW 21 received a telephone message from PW1 that the accused has murdered the deceased Padmavati and Suneetha inside the house. PW21, therefore, rushed to the place of occurrence, after picking up PW9 on the way and found the

dead bodies of the deceased. A knife M.O.4 was also lying near the dead bodies of the deceased. At that point of time PW1 also informed that the accused has murdered the two deceased persons. PW1 also gave a report at the Police Station that the accused has murdered his wife and daughter and it is further case of the prosecution that the accused himself made a confession that he murdered the two deceased persons. On the basis of the First Information Report Exh. P-5, the police registered a case and took up investigation. The accused was arrested and there were some seizure of blood-stained clothes Exh. P34. The knife M.O.4 was also seized. The dead bodies were sent for post-mortem examination and ultimately, on completion of investigation, charge-sheet was filed by the Investigating Officer PW25. On the basis of the evidence of the doctors PWs 5 and 6, who had conducted the post-mortem examination over the dead bodies of the deceased persons and the post-mortem reports Exh.P15 and P16, it has been held that the deceased had died on account of injuries received by them and the injuries were ante-mortem in nature and death is homicidal. This conclusion of the learned Sessions Judge on the basis of materials already indicated was never assailed in appeal. Though the prosecution examined a large number of witnesses, including the parents of the deceased PWs 1 and 2 who are supposed to be eye-witnesses to the occurrence, but PWs 1, 2, 3, 10, 11, 13, 14 and 23 did not support the prosecution case during trial and, therefore, they were cross-examined by the Public Prosecutor. Since the eye-witnesses PWs 1 and 2 did not support the prosecution case during trial, the learned Sessions Judge, relying upon the circumstantial evidence, convicted the accused of the charge under Section 302 IPC. The circumstances relied upon by the learned Sessions Judge are :

(a) The accused was suspecting the character of the deceased and was often beating the deceased.

(b) On the date of occurrence PWs 9 and 21 left the deceased Padmavati and her daughter with the accused in his house at 11 a.m. and left that place at 3 p.m.

(c) At about 6 p.m., a telephone call was received from PW1, the father of the accused by PW21, intimating him that the accused has killed his wife and daughter.

(d) On reaching the place of occurrence PW21 saw the dead bodies of the deceased persons as well as the knife lying nearby stained with blood.

(e) Evidence of the doctors, who conducted the autopsy over the dead bodies of the deceased indicate that both the deceased persons have several stab injuries on their persons and death was on account of the said stab injuries.

(f) The evidence of PW22 was to the effect that he saw the accused coming out of his house, wearing blood-stained clothes and on being asked, the accused confessed that he has murdered his wife and daughter.

3. On these circumstances proved by the prosecution, the learned Sessions Judge came to hold that the charge of murder under Section 302 has been proved beyond reasonable doubt and accordingly convicted the accused of the said charge and sentenced him to undergo imprisonment for life.

4. On appeal, the High Court, however, came to the conclusion, that the conviction of the charge under Section 302 cannot be sustained and accordingly set aside the same and acquitted the accused of the said charge. The High Court relying upon the evidence of PWs 9, 19, and 24 came to hold that the deceased was being treated by the accused very badly and was being subjected to cruelty and, therefore, the offence under Section 498A must be held to have been established and even

though no charge having been framed on that score, the High Court convicted the accused of the said offence and sentenced him to imprisonment for three years and to pay a fine of Rs. 1000/-, in default to suffer R.I. for three months. The said conviction and sentence of the accused under Section 498A has not been assailed before us but the acquittal of the accused under Section 302 IPC has been assailed before us in these appeals.

5. Mr. G. Prabhakar, learned counsel, appearing for the State of Andhra Pradesh and Mr. Dave, appearing for the father of the deceased contended that the High Court committed serious error in not considering all the incriminating circumstances and on that score the impugned judgment cannot be sustained. According to the learned counsel, the circumstances established by the prosecution complete the entire chain and bring home the charge of murder against the accused and, therefore, the order of acquittal is erroneous ?_ ?

6. The learned counsel appearing for the respondent, on the other hand contended that the evidence on record having been re-appreciated and the High Court having definitely come to the conclusion that the charge of murder has not been established beyond reasonable doubt and having acquitted the accused, the same need not be interfered with this Court in exercise of powers conferred under Article 136 of the Consitution.

7. Since the witnesses to the actual murder did not support the prosecution case during trial, the question for consideration is whether the circumstances would be sufficient to bring home the charge. Where the prosecution wants to prove the guilt of the accused by circumstantial evidence, it is necessary to establish that the circumstances from which a conclusion is drawn, should be fully proved; the circumstances should be conclusive in nature; all the facts so established, should be consistent only with the hypothesis of the guilt and inconsistent with the innocence; and the circumstances should exclude the possibility of guilt of any person other than the accused. In order to justify an inference of guilt, the circumstances from which such an inference is sought to be drawn, must be incompatible with the innocence of the accused. The cumulative effect of the circumstances must be such as to negate the innocence of the accused and to bring home the offence beyond any reasonable doubt. Where accused on being asked, offers no explanation or the explanation offered is found to be false, then that itself forms an additional link in the chain of circumstances to point out the guilt. Bearing in mind the aforesaid principle and on examining the circumstances which can be said to have been established in the case in hand, it appears that on the date of occurrence itself, PWs 9 and 21 left the deceased and her daughter with the accused and came back to their respective houses at about 3 p.m. This establishes that the accused and deceased were together in the house of the accused till 3 p.m. At 6 p.m., the father of the accused PW1 informed PW21 on telephone that the accused has killed the deceased. PW21 accompanied by PW9, reached the house of the accused and found the deceased lying dead with stab wounds. PW22, who is a neighbour of the accused, deposed in Court that on the date of occurrence at 4.30 p.m., he heard some cries from the house of PW1 and when he rushed to the place, he saw the accused coming out of the house with blood-stained clothes and on being questioned, the accused confessed that he himself has murdered his wife and daughter. The parents of the accused PWs 1 and 2, before whom the accused killed the deceased, did not support the prosecution during trial and, therefore, were permitted to be examined by the Public Prosecutor, but notwithstanding the same, the question remains that whether the aforesaid circumstances which must be held to have been established, are sufficient to bring home the charge against the accused person. It is to be noted that when these circumstances were put to the accused through his examination under Section 313 of the Code of Criminal Procedure, the accused merely denied the same and such denial would be an additional link in the chain of circumstances to bring home the charge against the accused. Of the aforesaid

circumstances, the question arises whether the statement of PW21 that PW1 told him on telephone at 6 p.m. that his son has killed the deceased, could go in as evidence under Section 6 of the Evidence Act. PW1, not having supported the prosecution during trial, the aforesaid statement of PW 21 would be in the nature of an hearsay but Section 6 of the Evidence Act is an exception to the aforesaid hearsay rule and admits of certain carefully safeguarded and limited exceptions and makes the statement admissible when such statements are proved to form a part of the *res gestae,* to form a particular statement as a part of the same transaction or with the incident or soon thereafter, so as to make it reasonably certain that the speaker is still under stress of excitement in respect of the transaction in question. In absence of a finding as to whether the information by PW1 to PW21 that accused has killed the deceased, was either of the time of commission of the crime or immediately thereafter, so as to form the same transaction, such utterances by PW1 cannot be considered as relevant under Section 6 of the Evidence Act. In this state of affairs, it may not be proper to accept that part of the statement of PW21 and the said circumstance cannot be held to have been established. But even excluding such circumstance, if all other circumstances enumerated above are taken into consideration, which must be held to have been proved beyond reasonable doubt, the conclusion is irresistible that all these circumstances point towards the guilt of the accused and inconsistent with his innocence. We, therefore, unhesitatingly, come to the conclusion that the High Court committed serious error in acquitting the accused-respondent of the charge under Section 302 IPC. The impugned judgment of acquittal of the High Court is set aside and the accused-respondent is convicted under Section 302 IPC and is sentenced to imprisonment for life. He is directed to surrender forthwith to serve the balance period of sentence and in the event, he does not surrender, steps may be taken for his apprehension to serve the sentence.

These appeals are accordingly allowed.

Order accordingly.