SUPREME COURT OF INDIA

Vasa Chandrasekhar Rao

Vs.

Ponna Satyanarayana

Crl.A.Nos.383-384 with 385-386 of 1994

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

05.05.2000

JUDGEMENT

PATTANAIK, J.:-

1. These appeals are directed against the judgment of acquittal of the charge under S. 302, IPC 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 S. 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 S. 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 S. 302, IPC and instead convicted him under S. 498-A, 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 S. 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 wedlock, 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 PW. 24 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 PW. 24, therefore brought her daughter to her own house where Padmavati gave birth to a female child Suneetha. The father of the deceased Padmavati PW. 19 made several efforts for the return of Padmavati to her matrimonial home but it never succeeded. Finally on 11-1-1991 P.Ws. 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. P.W. 21 received a telephone message from P.W. 1 that the accused has murdered the deceased Padmavati and Suneetha inside the house. P.W. 21, therefore rushed to the place of occurrence, after picking up PW. 9 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 P.W. 1 also informed that the accused has murdered the two deceased persons. P.W. 1 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 bloodstained 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 P.W. 25. On the basis of the evidence of the doctors PWs. 5 and 6, who had conducted the postmortem examination over the dead bodies of the deceased persons and the postmortem 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 anti-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 S. 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 P.Ws. 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 PW. 1, the father of the accused by P.W. 21, intimating him that the accused has killed his wife and daughter.

(d) On reaching the place of occurrence P.W. 21 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 body 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 PW. 22 was to the effect that he saw the accused coming out of his house, wearing bloodstained 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 S. 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 S. 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 P.Ws. 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 S. 498-A 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 S. 498A has not been assailed before us but the acquittal of the accused under S. 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 by this Court in exercise of powers conferred under Art. 136 of the Constitution.

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, P.Ws. 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 P.W. 1 informed P.W. 21 on telephone that the accused has killed the deceased. P.W. 21 accompanied by P.W. 9, reached the house of the accused and found the deceased lying dead with stab wounds. P.W. 22, 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 P.W. 1 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 P.Ws. 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 S. 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 P.W. 21 that P.W. 1 told him on telephone at 6 p.m. that his son has killed the deceased, could go in as evidence under S. 6 of the Evidence Act. P.W. 1, not having supported the prosecution during trial, the aforesaid statement of P.W. 21 would be in the nature of an hearsay but S. 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 P.W. 1 to P.W. 21 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 P.W. 1 cannot be considered as relevant under S. 6 of the Evidence Act. In this state of affairs, it may not be proper to accept that part of the statement of P.W. 21 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 S. 302, IPC. The impugned judgment of acquittal of the High Court is set aside and the accused-respondent is convicted under S. 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.

8. These appeals are accordingly allowed.

Appeals allowed.