

**THE HONOURABLE SRI JUSTICE G. CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE M.S.K.JAISWAL**

CRIMINAL APPEAL No.566 of 2010

JUDGMENT : (Per Hon'ble Sri Justice G.Chandraiah)

This Criminal appeal under Section 374(2) Cr.P.C is directed aggrieved by the judgment dated 18.12.2009 in S.C.No.401 of 2008 on the file of VI Additional District & Sessions Judge, Fast Track Court, Narsapur, whereby the accused was found guilty and convicted for the offence under Section 302 of Indian Penal Code (for short the 'IPC') and sentenced him to under go Imprisonment for life and to pay a fine of Rs.3000/- and in default to pay the said fine to undergo further simple imprisonment for a period of three months.

2. The brief facts of the case of the prosecution are that appellant/accused and the deceased-Anjali are the husband and wife. The accused used to suspect the fidelity of his wife Anjali and used to treat her cruelly and harass her. While so on the intervening night of 2/3.03.2007 at about 01.00 A.m, the accused made altercation with his wife (deceased) beat her and pressed her throat and brutally round up cell phone charger wire to her neck and dragged tightly till death and thereby murdered his wife by strangulation.

The allegations made in the charge sheet are that the accused himself informed the said fact to his aunt Smt. Moturi Meri (Pw.4) and his mother Smt. Moturi Peddintlu (Lw.8-not examined) and in the meanwhile the neighbours came and the accused admitted the offence before them and they took the accused to the police station and he surrendered before the police.

The Sub-Inspector of Police-M.Subba Rao, picked up the mediators Sri N.V.B. Krishnamurthy (Pw.11) and Sri Kasi Kumar Nehru (L.w.16) and the confessional statement was recorded before the mediators and the accused signed on the confession statement which is registered as a case in Crime No.48 of 2007 under Section 302 IPC. On 03.03.2007 at about 4.00 A.M., he sent the registered F.I.R., to the Magistrate and copies to the higher officials.

The Investigating Officer-P.Venkateswara Rao (Pw.14) received the express FIR and took up investigation. Pw.14 along with the mediators Pw.11 and Lw.16 went to the scene of offence and also took the photographer (Pw.10) and observed the scene in their presence and got prepared scene observation report-Ex.P.21 and prepared rough sketch-Ex.P.28. Pw.14 also conducted inquest over the dead body of the deceased in the presence of Pw.11 and Sri K. Ramakrishna (Pw.12) and Lw.18. During the inquest Pw.14 examined the blood relations of the deceased and recorded their statements.

After inquest the dead body was sent for post-mortem examination and in the meanwhile the Sub-Inspector of Police, kept the accused in survivalance. The medical officer-Pw.13 conducted autopsy over the dead body of the deceased on 03.03.2007 from 4.00 p.m., to 5.00 p.m, and made internal and external observation and found the following injuries :

External Injuries :

A ligature mark is present round the neck, below the thyroid cartilage of above 12" x ½ cm, which is grooved, and Parchment like Reddish brown in colour, small bruises of size 2 cm x 2 cm over the palmer aspect of both hands, Small bruises over neck below both mandibles.

Internal Injuries :

Head and Neck – Skull bones intact, brain tissue congested on section normal and congested.

Neck – Subcutaneous tissue under ligature mark is shiny and souring margins are reddish in colour. Hyoid bone intact. Thyroid cartilage intact.

Chest – Lungs both are congested Pastiches hemorrhage present on section. Heart is normal. On section 60 ML fluid blood present.

Abdomen – Liver appear to be congested under section congested.

*Spleen – Normal under section normal. Both kidneys normal under section normal
Stomach contain partially digested food.*

Urinary bladder empty under section normal.

Uterus, Normal under section empty.

Spine intact. Nobody injuries.

After receipt of R.F.S.L., report, the Medical officer opined that the cause of death is 'Axphyxia 'due to strangulation and the time of death is 18 to 20 hours prior to his examination and he issued Ex.P.24-Preliminary report and Ex.P.25-Final Post mortem report.

The investigation officer went again to the police station and interrogated the accused in the presence of mediators Pw.11 and Lw.16 and accused made confession before them and lead them to his house and produced the L.G. Cell phone charger wire (M.O.1) which was seized under the cover of panchanama and sent him to judicial remand. Pw.14 also sent the viscera to the R.F.S.L., Vijayawada, and on receipt of R.F.S.L, report-Ex.P.26, and preliminary and final post mortem certificates-Exs.P.24 & P.25, and after completion of the investigation, filed charge sheet.

The Judicial First Class Magistrate, Narsapur, took cognizance of the offence and after following the procedure contemplated under Section 209 Cr.P.C., committed the case to the Court of Sessions.

After apprehension and after consideration, a charge is framed under Section 302 of IPC. The charge contents were read over and explained to the accused in Telugu, who abjured the guilt and claimed to be tried.

In the instant case, on behalf of the prosecution PWs.1 to 14 were examined. Pw.1 is father of the deceased, Pw.2 is mother of the deceased, Pw.3 is brother of the deceased, Pws.4 and 5 are the relative and neighbour of the accused respectively. Pws.6 and 7 are elders of the village. Pw.8 is the younger brother of the deceased, Pw.9 is the auto driver, Pw.10 is the photographer, Pw.11 is Retired Village Revenue Officer, who is a panch witness to the extra judicial confession, Pw.12 is the Village surpanch who is a panch witness for inquest, Pw.13 is the Doctor who conducted autopsy, Pw.14 is the C.I of Police, who is the investigating officer in this case.

Exs.P.1 to P.4 are the Statements recorded under Section 161 Cr.P.C., of Pws.1 to 3 by the C.I of Police, Narsapur, Ex.P.5 is the Statement under Section 164 Cr.P.C, of Pw.4 recorded by the Principal Junior Civil Judge, Narsapur, Ex.P.6 & P.7 are the statements recorded under Section 161 Cr.P.C., of Pws.5 & 6, by the C.I of Police, Narsapur, Ex.P.8 is the statement of Pw.6 recorded under Section 164 Cr.P.C, by the Principal Junior Civil Judge, Narsapur, Ex.P.9 is the statement recorded under Section 161 Cr.P.C., of Pw.7 by the C.I of Police, Narsapur, Ex.P.10 is the statement of Pw.7 recorded under Section 164 Cr.P.C, by the Principal Junior Civil Judge, Narsapur, Ex.P.11 is the statement recorded under Section 161 Cr.P.C, of Pw.8 by C.I of Police, Narsapur, Ex.P.12 is the statement recorded under Section 161 Cr.P.C., of Pw.9 by C.I. of Police, Narsapur, Exs.P.13 to P.20 are the photographs along with corresponding negatives of the deceased. Ex.P.21 is the Scene Observation report, Ex.P.22 is Inquest report, Ex.P.23 is Mediators report of the Seizure of M.O.1, Ex.P.24 is Post Mortem certificate of preliminary report, Ex.P.25 is the Post Mortem certificate of final report, Ex.P.26 is R.F.S.L. report, Ex.P.27 is the FIR in Crime No.48/2007 and Ex.P.28 is the Rough sketch.

No documents are marked on behalf of the accused. M.O.1 is the L.G. Cell Phone charger. After closure of the prosecution evidence the accused was examined under Section 313 Cr.P.C., and the plea of the accused is that the deceased died due to heart attack and denied the prosecution evidence. No defence witnesses were examined.

The trial court has framed the following point for consideration :

“Whether the accused did any act with intention to cause death of his wife or with the knowledge that he is likely such act to cause death of his wife.”

The trial court on considering the evidence on record came to the conclusion that the prosecution has proved the guilt of the accused beyond reasonable doubt and therefore held that the accused is responsible for the death of his wife and accordingly, found him guilty for the offence under Section 302 IPC and convicted and sentenced him as stated above.

The learned counsel for the appellant submits that this is a case of circumstantial evidence and that the crime is registered on the basis of the statement made by the accused which is recorded by the Sub-Inspector of Police, who was not examined. The appellant denied the charge levelled against him but he made a confessional statement to the police by way of a complaint, which is not admissible in the court of law; that there is a delay of 12 hours between registering of the crime and intimating the same to the Court and that there is no explanation on the part of the prosecution for such delay. That Pw.14 who is the investigating officer after visiting the scene of offence has registered the crime as stated in his examination and that he recorded the statement of the accused but the same is not on record. Therefore, it is the case of suppression of the record.

In support of her contention, she relied upon ***Aghnoo Nagesia Vs***

***State of Bihar*^[1], *Ravula Sarangam Vs State of Andhra Pradesh*^[2],
Rajeevan and another Vs State of Kerala^[3], *State of Madhya Pradesh*
Vs Shambu Dayal Nagar^[4], *Dandu Lakshmi Reddy Vs State of Andhra*
Pradesh^[5].**

On the other hand the learned Public Prosecutor supported the impugned order and submits that during the course of investigation, Pws.4, 6 and 7 were examined. Pw.4 is a relative of the accused, Pws.6 and 7 are the elders of the village, whose statements were recorded under Section 164 Cr.P.C. which are marked as Ex.P.6, Ex.P.8 and P.10. Though all the witnesses turned hostile, but for the purpose of contradictions, their statements can be relied upon. In support of his contention he relied on

***Dharam Deo Yadav Vs State of Uttar Pradesh*^[6].** He further submits that the trial Court basing on the evidence available on record and after giving ample opportunity, had come to the conclusion that the accused is responsible for the death of the deceased and therefore, found guilty and convicted him. He also submits that the accused though pleaded not guilty under Section 313 Cr.P.C., examination, he stated that the deceased died due to heart-attack which is disproved by the prosecution by adducing appropriate evidence, by examining the doctor who conducted autopsy whereby it is proved that the cause of the death of the deceased is due to injury sustained by her and therefore the appeal is liable to be dismissed.

Now, the points that arise for consideration is :

1. Whether the ground that is taken by the appellant in the instant case is legally sustainable ?
2. Whether the Court below has committed error in coming to the

conclusion that the appellant is found guilty for the offence ?

3. Whether the prosecution has proved the guilt of the accused beyond all reasonable doubt ?

Points :

The prosecution mostly relied on the evidence of panch witness who is examined as Pw.11 and also relied upon the medical evidence and also the evidence of investigating officer, who was examined as Pw.14.

The parents of the deceased were examined as Pws.1 and 2 but they turned hostile. But in the deposition they stated that the death of the deceased was due to heart attack and that someone informed them about the death of the deceased and they went to the house of the accused and the neighbours of the accused told them that the deceased died due to heart attack. Pw.3 also deposed to the same effect.

The neighbours of the accused and the alleged witnesses who are examined by the prosecution to say that immediately after the incident, the accused informed them that he killed the deceased and that one of them heard cries from the house of the accused and saw the accused coming out of the house after committing the offence. The said neighbours who are Pws.4 to 9 turned hostile and they did not support the case of the prosecution. Among Pws.4 to 9, Pw.4, Pw.6 and Pw.7 gave their statement under Section 164 Cr.P.C., before the Magistrate which are marked as Exs.P.5, P.8 and P.10 respectively. Pws.4, 6 and 7 deposed in their evidence in the cross examination that they gave evidence before the Magistrate and they signed on the statements. But in the cross examination by the learned counsel for the accused, they stated that at the instance of the police, they stated the same before the Magistrate. As per Section 161 Cr.P.C., statements of Pws.6 and 7 which are marked as Exs.P.7 and P.9 respectively, the brother of the accused (not examined) informed them that

the accused killed his wife who is the deceased. As per Section 161 Cr.P.C., statement of Pw.4 which is marked as Ex.P.4 at the time of incident, he heard cries from the house of the accused and he came out of the house at which time, the accused is coming out of his house and stated that he killed his wife. The other witnesses examined as Pws.5, 8 and 9 who are also alleged neighbours of the accused deposed that they do not know anything about the case and they do not know how the deceased died. Therefore, in the present case all the witnesses examined by the prosecution turned hostile. Therefore, the case is based only on the circumstantial evidence and the statement made by the accused under 313 Cr.P.C., before the Court and also the panch witnesses with regard to the scene observation report, rough sketch Ex.P.28 and also the evidence of Pws.11, 12 and 14 and the post mortem report issued by Pw.13-doctor who conducted autopsy on the dead body and issued Ex.P.24 and 25 and RFSL report Ex.P.26.

The learned counsel for the appellant vehemently contended that the present case is based only on circumstantial evidence and the prosecution has utterly failed to prove the guilt and the trial Court came to the conclusion by not considering the evidence properly. It is also contended that there is delay of 12 hours on the part of the police in dispatching the FIR from the time of registration and informing to the Magistrate and that the delay is not properly explained. Therefore, it is fatal to the case. She also contended that there is suppression of fact that after the crime is registered by the S.I. of Police, who was not examined and when Pw.14 went to the scene of offence and returned back and recorded the statement of the accused which is not made part of the record is also suppression and therefore, there is every possibility of entertaining a doubt as to whether the accused is

responsible for the death of his wife or the benefit of doubt should go to the accused.

On the aspect of delay, she relied upon a judgment reported in **Gogu Narsamma Vs State of Andhra Pradesh**,^[7] and in **Rajeevans'** case (*supra*). No doubt in a criminal case certainly the delay will be fatal to the case but the circumstances will be different from case to case. In a case where the number of accused are there, and in that process, when the delay is caused, and when the explanation is not given for the delay, definitely it leads to entertaining a doubt by the Court. The said doubt shall have to go as a benefit to the accused. While dealing with the aspect of delay, the Apex Court had an occasion to observe in **Dilawar Singh Vs State of Haryana**,^[8] in Para 22 which is held as under :

“Whether the delay is so long as to draw a cloud of suspicion on the prosecution case will depend upon variety of factors, which will vary from case to case. As pointed out by the learned courts, from the very beginning the condition of injured Narinder Singh was very serious and he was struggling for existence and his father Pw.6 and uncle Hakam Singh were concerned about the welfare of the injured. While so, they could not have thought of approaching the police first and informing them about the incident and the assailants. Where delay in lodging complaint and registration of FIR has been satisfactorily explained, the delay by itself is no ground for disbelieving the prosecution evidence particularly when it had been accepted both by the Sessions Court and the High Court.”

In the instant case the incident took place at about 01.00 A.M., and after noticing the same by Pws.1 to 9 all of them went to the police station along with the accused who reported the matter to the police at about 4.00 a.m., and after registering the crime the C.I. of Police, along with the S.I. of Police, visited the scene of offence and conducted the panchanama, recorded the statements of witnesses and thereafter it is communicated to

the local Magistrate, and in that process the delay is caused. But in considering the cases of this nature, delay is one of the circumstances. It cannot be a main factor to adjudicate the matter. The allegations made against the accused is proved or not proved, it depends upon the facts and circumstances of the case, as held by the Apex court referred to supra.

Coming to the aspect of suppression of record, learned counsel for the appellant contended that as per the evidence of Pw.14 who is the investigating officer who stated to have visited the scene of offence and returned to the police station, recorded the statement of the accused and that statement is not made part of the record and therefore, prima-facie it is suppression of fact. Any statement made by the accused to the police officer under Section 161 Cr.P.C., is not at all useful for taking into consideration and for imposing punishment on the accused. Therefore, the said suppression will definitely affect the proceedings.

In support of her contention she relied upon ***State of Madhya Pradesh Vs Shambu Dayal Nagar (supra)***, and ***Dandu Lakshmi Reddy's case (supra) (Para 16 & 17)***. A perusal of the said judgment reveals that the facts and circumstances had no bearing to the facts and circumstances of this case. In this case the whole case is based on the circumstantial evidence and the evidence of panch witnesses, evidence of the doctor and also recovery of M.O.1.

Learned Public Prosecutor in support of his contention relied upon ***Dharam Deo Yadav Vs State of U.P.(supra)*** to say that though the accused denied the charge levelled against him, but the court below had considered the over all circumstances and came to the conclusion that the prosecution has proved the guilt of the accused beyond reasonable doubt.

In the present case the following circumstances are borne out from

the record.

1. The deceased is the wife of the accused.
2. The death took place in the house of the accused where the accused and deceased were staying.
3. The death took place at mid night at about 1.00 a.m.
4. The accused along with his mother, father and other neighbours and villagers went to the police station at about 4.00 a.m., and informed the same to the police, basing on which a crime is registered against the accused.

In the cross examination of all the panch witnesses to the scene of offence, i.e., observation report, inquest report, no contradictions are made out by the defence. The medical officer who conducted autopsy over the dead body of the deceased on 03.03.2007 and found the internal and external injuries and opined that the cause of death is Axphyxia due to strangulation and the time of death is about 18 to 20 hours prior to his examination.

Pw.11 who is a panch witness categorically deposed that he observed blood stained ligature marks over the neck of the deceased and also as seen from the photographs Exs.P.14, P.16, P.19 and P.20 which are clearly visible even to a naked eye that there is ligature mark with blood stains over the neck. The medical officer also supported the case of the prosecution as the deceased died due to strangulation. The evidence of Pw.13 is unchallenged since he is not cross examined. The evidence of Pw.11 is also supported by the medical evidence that the deceased died due to strangulation and the deceased was having ligature mark over the neck as observed by the medical officer in Ex.P.14 post mortem certificate.

The accused in examination under Section 313 Cr.P.C., stated and

also as deposed by Pws.1 to 9 that the deceased died due to heart attack but this is negated by the evidence of the medical officer who observed that the heart of the deceased is normal and whose evidence is not challenged. M.O.1 is seized by the investigating officer in the presence of Pw.11 and another which is alleged to have been used by the accused for committing the offence. No suggestion was made to the Doctor Pw.13 that there is no possibility of causing death by using M.O.1. Therefore, the Court below has rightly come to the conclusion that the accused used M.O.1 for strangulation and caused the death of deceased. When the offence took place there is no other person in the house, it is for the accused to explain how the ligature marks are found over the neck of the deceased, when it is alleged that the deceased died due to heart attack. The accused has not given any explanation how the ligature marks were found on the neck of the deceased.

The accused and the deceased were in marriage hardly for a period of three years. Few days prior to the incident, the accused-husband is said to have seen the deceased-wife in an objectionable position with a neighbouring resident. The accused-husband had been questioning the deceased as to why she has done like that for which the deceased used to retort by saying that she will do whatever she likes. This attitude of the deceased wife is alleged to have infuriated the accused-husband and he was planning to physically liquidate the deceased-wife, which constitutes motive.

When the matter stood thus, on the night of 02.03.2007 the accused and the deceased are said to have returned home and had dinner and went to sleep. Once again the accused is said to have questioned the deceased-wife about her conduct for which similar reply was given by her. The

accused has throttled the neck of the deceased with the help of a wire which is used for charging a cell phone. The accused has strangled the deceased dragged her up to the door. The deceased died on the spot. Immediately the accused came out of the room and informed his own mother (Lw.8) about his act for which Lw.8 is said to have chided the accused for his act. The neighbours also gathered and in their presence also the accused-husband is alleged to have confessed that he killed the wife for the reasons stated supra. Immediately they all went to the police station at about 4.00 a.m. and the statement of the accused was recorded by S.I of Police-Mr.Subba Rao, and on that basis crime was registered, investigation was taken up by Pw.14- P.Venkateswara Rao in the early hours and completed the investigation in the matter.

It is one of those unfortunate cases where the entire battery of prosecution witnesses turned hostile and refused to support the case of the prosecution and have resiled from their previous statements whether it be recorded by the Police under Section 161 Cr.P.C., or by the jurisdictional Magistrate under Section 164 Cr.P.C. The mother, father and brother of the deceased, as also the relations of the accused have categorically asserted that though the deceased died but the cause of death of the deceased was natural namely she died due to heart attack. The accused when examined under Section 313 Cr.P.C., asserted that the death of the deceased-wife was natural as a result of heart attack but not due to any alleged act of his. Therefore, the mute point is firstly as to whether the deceased died due to natural cause namely the heart attack or whether it was a homicidal death as alleged by the prosecution.

As already stated none of the material witnesses have supported the case of the prosecution. However, the prosecution relied upon the medical

evidence on record to show that the deceased died an unnatural death but not natural death as contended by the accused and the witnesses examined by the prosecution. The medical evidence clearly proves beyond doubt that the deceased died due to Asphyxia due to strangulation and substantial ligature marks with blood stains were noticed on the neck of the deceased which would have been possible only when sufficient force was applied on her neck either by hands or by an object such as a wire.

We are oblivious to the fact that in a criminal trial, it is not obligatory on the part of the accused to take any specific defence. It is the responsibility of the prosecution to prove its case against the accused. However in certain circumstances, the plea of the accused plays a decisive role in determining the guilt or otherwise of the accused.

It is not in controversy that at the time when the deceased died none other than the accused was in her company. She died in a closed room when she was sleeping with her husband-accused. The consistent stand taken by the prosecution witnesses as well as the accused that the deceased died an natural death is falsified by the medical evidence on record. If the accused takes up a specific plea and if that has been proved to be false, the corollary thereto is drawing an adverse inference against the accused. When there are certain circumstances which compelled the accused to explain and when he offers an explanation which is palpably false and has been proved to be false, an inference of guilt of the accused has to be drawn. In a recent decision of the Supreme Court reported in

State of Karnataka Vs Suvarnamma and another^[9], in Para 10 it was held as under :

“The court dealing with a criminal trial is to perform the task of ascertaining the truth from the material before it. It has to punish the guilty and protect the innocent. Burden of proof is on the prosecution and

the prosecution has to establish its case beyond reasonable doubt. Much weight cannot be given to minor discrepancies which are bound to occur on account of difference in perception, loss of memory and other invariable factors. In the absence of direct evidence, the circumstantial evidence can be the basis of conviction if the circumstances are of conclusive nature and rule out all probabilises the involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused. Though Article 20(3) of the Constitution incorporates the rule against self-incrimination, the scope and the content of the said rule does not require the court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the accused takes a false plea about the facts exclusively known to him, such circumstance is a vital additional circumstance against the accused.”

The above observations of the Apex Court are on all fours to the facts of the present case.

Even at the cost of repetition it may be stated that the death of the deceased is an unnatural death and it is a homicidal. At the time when she died, none other than her husband-accused was with her in a closed room. Immediately after the act was perpetrated the accused conducted himself in a natural way by revealing his acts to his own people who were available near by. Thereafter, they all went to the police station and the accused spilled the beans. Having done so, during the course of trial they all made a u-turn and tried to show that the deceased died due to cardiac arrest which fact is negatived not only by the medical evidence available on record but also an observation of the inquest panchanama and the photographs of the deceased which clearly show that the death was violent death caused due to strangulation.

In view of the above, we have no hesitation in concluding that it is the accused and the accused alone who has perpetrated the crime. The said fact is also borne out from the evidence on record. The prosecution has proved the case against the accused beyond reasonable doubt. The

learned Sessions Judge, has appreciated the material on record in proper perspective.

Having regard to the above discussion, we do not see any reason to interfere with the impugned judgment. Accordingly, the appeal is dismissed and the conviction and sentence imposed by the learned Sessions Judge, is confirmed.

The Miscellaneous petitions pending if any, in this appeal shall stand dismissed.

G. CHANDRAIAH J.

M.S.K.JAISWAL, J.

11th February, 2015

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[\[1\]](#) AIR 1966 SC 119

[\[2\]](#) 1995 (2) APLJ 298 (HC)

[\[3\]](#) (2003) 3 SC 355,

[\[4\]](#) 2007 (1) ALD (CrI) 231,

[\[5\]](#) 1992 (2) ALD (CrI) 648 (SC)

[\[6\]](#) (2014) 5 Supreme Court Cases 509

[\[7\]](#) 2007 (3) ALT 116 (DB) A.P.

[\[8\]](#) (2015) 1 Supreme Court Cases 737

[\[9\]](#) (2015) 1 Supreme Court Cases 323