

THE HON'BLE SRI JUSTICE G. CHANDRAIAH
and
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
CRIMINAL APPEAL No. 217 of 2010

JUDGMENT: (*per Hon'ble Sri Justice U.Durga Prasad Rao*)

This appeal is preferred by the State aggrieved by the judgment dated 04.09.2003 in S.C.No.82 of 2002 passed by Sessions Judge, Ongole whereby and whereunder the learned Judge acquitted A1 of the charges under Sections 498A, 302 and 201 IPC and A2 of the charge under Section 201 IPC.

2a) The prosecution case is that the deceased—Suragani Rajyalakshmi is the wife of A1 and their marriage took place about 16 years prior to the date of incident on 25.05.2001. PWs.1 and 2 are minor children of the deceased and A1. A1 returned from Dubai in the year 1994 and since then began to suspect the fidelity of deceased and used to beat her and there were frequent quarrels between wife and husband. Some times the deceased used to go to the house of PW5, her brother at Kolalapudi and PW5 and his mother used to send her back to the house of accused after convincing the deceased. While so, 20 days prior to the date of occurrence, A1 again beat the deceased by suspecting her fidelity and she went to the house of PW5. Subsequently A1 went to Kolalapudi and brought the deceased back to home situated at Perala within the limit

of Chirala II Town police station in Prakasam District. However, A1 did not stop suspecting the fidelity of his wife and so decided to kill her.

b) The further case of the prosecution is that on 25.05.2001 at about 10 AM, A1 sent PWs.1 and 2 to the house of his mother—PW4 situated near Peerla Chavidi Centre, Perala on the pretext of taking tiffin at her house. Thereafter, A1 bolted the doors of the house and strangulated the throat of the deceased with her upper saree with an intention to kill her by sitting on her chest. Meanwhile, PWs.1 and 2 returned from the house of PW4 and witnessed the occurrence through the window and cried loudly. A1 noticing that deceased did not die arranged an electric wire from the plug with a view to give a colour of electric shock to himself and deceased. On hearing the cries of PWs.1 and 2, PW3, LW4—Nandendla Venkateswarlu, LW8—Coli Rangarao and PW7 rushed to the house of the deceased and found the deceased and A1 lying unconscious. LW4—Nandendla Venkateswarlu tried to pull A1, but he received electric shock and so, PW3 switched off the main and removed the electric wire. Thereafter, PW1 shifted the deceased to the hospital of PW6 and from there to the Government Hospital, Chirala and admitted her. PW2 and PW7 took A1 in a rickshaw and admitted in Government Hospital, Chirala. A2 who is the family friend of deceased and A1, learnt about the

occurrence and went to Government Hospital, Chirala and there she advised PW1 not to disclose anything about the offence to anybody except stating that their parents suffered electric shock and thus screened the evidence of the offence. On receiving the hospital intimation, PW15—Head Constable, Chirala I Town police station rushed to the Government Hospital, Chirala and recorded the statement of PW1 and forwarded the same to Chirala II Town police station on the point of jurisdiction. In her statement, PW1 did not state anything about the offence, but she stated on the instructions of A2 as if her parents received electric shock. PW13—Head Constable, Chirala II Town police station received the statement of PW1 from Chirala I Town police station and made a GD entry to that effect.

c) While so, the further case of the prosecution is that as the condition of deceased was serious, she was referred to Government Hospital, Guntur for expert treatment and while undergoing treatment given by PW10 the deceased died on 06.06.2001 at about 10.30 AM.

On receiving the death intimation, PW16—Assistant Sub-Inspector, Chirala II Town police station registered a case in Cr.No.41 of 2001 under Section 174 Cr.P.C. and took up the investigation. He visited the scene of offence and inspected the same in the presence of PW8 and LW12—Darla Sastry and prepared Ex.P2—observation

report and examined PWs.1, 5, 7 and LW8 and recorded their statements and also prepared Ex.P16—rough sketch of scene of offence. On 07.06.2001 he visited the Government Hospital, Guntur and secured the presence of PW9, LW13—Mekapothula Srinivasa Rao, the mediators and conducted inquest over the deceased in the presence of blood relations PW1 and PW5 and Dasari Mutyalamma and during the course of inquest he examined blood relations and recorded their statements and he prepared Ex.P3—inquest report. After completion of inquest he sent the dead body for post-mortem examination.

d) PW12 conducted post-mortem examination on 07.06.2001 and issued Ex.P6—post mortem report opining that deceased died due to Apoplexy as a result of strangulation by ligature. On receiving Ex.P6, PW17—SI of Police, Chirala altered Section of law to Section 302 IPC and issued Ex.P17—Express FIR and then PW18—Inspector of Police, Chirala conducted further investigation and inspected the scene of offence and then examined PWs.1, 2, 5, Dasari Veeranjanyulu and Dasari Mutalamma. At that time, they revealed about the offence committed by their father. After investigation charge sheet was filed against A1 for the offences under Sections 302 and 498A IPC and against A2 for the offence under Section 201 IPC.

e) On appearance of accused, the trial Court framed charges under Sections 498A and 302 IPC against A1 and charge under Section 201 IPC against A2.

f) During trial, PWs.1 to 18 were examined and Exs.P1 to P17 were marked on behalf of prosecution. Ex.D1 was marked on behalf of accused but they have not examined any witnesses.

3a) The judgment shows the trial Court having regard to the evidence on record observed that there was no material on record to hold that A2 pressurised PW1 to speak falsehood and the evidence of PWs.1 and 2 showed PW5—their maternal uncle was present in the hospital immediately after the admission of deceased and it was not shown why PW1 not disclosed the real facts to the police and as per the prosecution she disclosed the alleged real facts only after three months when they were with their maternal grand parents and when they were examined by PW18, but they have not disclosed any reason why they did not state to the police those facts earlier. Thus, the trial Court did not believe the subsequent version of PWs.1 and 2 which is contrary to the earlier version of PW1 stated under Ex.P1. The trial Court held that PWs.1 and 2 were living with their grand parents when they made subsequent statements and therefore, there is every possibility to the parents of the deceased to pressurise them to speak falsehood against

A1 and hence, the evidence of PWs.1 and 2 is not reliable to convict A1.

b) Then, narrating the evidence of PWs.10 and 12—medical witnesses, the trial Court opined that it cannot be said from their evidence that deceased died only due to strangulation and even if it is held so, there is no reliable evidence to hold that A1 was responsible for the death of the deceased because along with deceased, A1 was also found lying down unconscious at the time of incident with electric shock.

c) The trial Court did not believe the charge against A2 on the ground that in Ex.D1, PW1 stated as if she was threatened by A1 not to disclose true fact to the police and contrary to it, in her evidence she stated as if A2 advised her not to speak the true facts and due to this inconsistency and also due to lack of material on record showing that A2 ill-advised PW1, the trial Court held the prosecution case against A2 cannot be believed and accordingly acquitted A1 and A2 of the charges levelled against them.

Hence, the appeal by the State.

4) Heard arguments of learned Public Prosecutor for the State (A.P) and Sri A. Hari Prasad Reddy, learned counsel representing for Smt.C.Vasundhara Reddy, learned counsel for R.1. Though notice to R.2/A.2 was

served but there is no representation.

5) Lampooning the judgment acquitting the accused, learned Public Prosecutor argued that the trial Court has not properly appreciated the evidence on record more particularly that of PWs.1 and 2—the eye witnesses on one hand and PWs.10 and 12—the medical witnesses on the other and came to a wrong conclusion. In expatiation, he submitted that the prosecution has given ample explanation for PW.1 not disclosing true facts in Ex.P.1 immediately after the incident as she was advised by A.2 not to reveal act of her father (A.1) and if she divulged, he might be arrested and they would become destitutes and because PWs.1 and 2 were tender-aged children at that time and were in a shock as both their parents were in an unconscious state, in such circumstances PW.1 stated in Ex.P.1 as if her mother and father were electrocuted. He submitted that the police at that point of time had no intention to implicate anybody in the case much less A.1 and A.2 and they believed the version of PWs.1 and 2 and therefore, they did not register any case against the accused but it was only after receiving post-mortem report disclosing the cause of death due to strangulation that the police commenced the investigation and during that course, they examined PWs.1 and 2 who revealed the true facts. He submitted that in those circumstances, the trial Court ought to have found the explanation offered by prosecution for variation in the version of PWs.1 and 2 as

truthful one and should have accepted their evidence narrating the method and manner of accused perpetrating the offence. However, the trial Court simply thrown away the valuable eye witness account of PWs.1 and 2 on a lopsided observation that there was variation in their version and there was no reason why PW.1 did not disclose the alleged true facts before PW.5, who immediately rushed to the hospital after admission of deceased and accused and also on the observation that the later version was given by PWs.1 and 2 long after the incident on the presence and influence of their grand parents. Learned P.P submitted that in the entire episode, what is germane for consideration is whether the first narration of PWs.1 and 2 regarding the incident is a genuine one or their later version is genuine. If their later version is accepted to be truthful and genuine one, the reason for their giving a false version in their earlier statement will not be of much importance. It may be due to prompting of either A.2 or someone or due to some other reason and therefore, there will be no much purpose in probing the reason except for fixing the culpability of A.2. Their later version is concerned, he argued, the same gets corroboration from the medical evidence also inasmuch as PW.12 clearly deposed that the death was due to apoplexy as a result of strangulation by ligature. This clearly rules out the death due to electrocution and confirms the strangulation. Even accepting also the

presence of symptoms of electric shock in the dead body such as presence of oedematous in the lungs and brain which is a characteristic of electrical death as deposed by PW.10, by that count, the homicidal death of the deceased cannot be disturbed because in the case of electrical death, the presence of ligature mark around the neck and fracture of hyoid bone are impossible. Since the deceased received electric shock as created by A.1, such symptoms might also be present in her body but predominantly she died of strangulation as firmly deposed by autopsy doctor and his evidence lends credence to the ocular evidence of PWs.1 and 2. He vehemently argued that the trial Court has not at all discussed the reason for presence of ligature marks and fracture of hyoid bone which are the root cause of the death of deceased and thereby failure of justice has occasioned. He relied upon the following decisions to buttress his argument that if the medical evidence is truthful, reliable, acceptable and corroborates the ocular evidence, the same can be accepted:

1) ***Mulakh Raj and others vs. Satish Kumar and others***^[1]

2) ***Vanga Srinivas vs. Public Prosecutor, High Court of A.P***^[2]

a) Nextly, pointing out the incriminating circumstances

against A.1, learned P.P. would submit that at the crucial time of incident, A.1 was alone with the deceased in the house by sending away his children to the house of PW.4 and therefore, it is his duty to explain the reason for the presence of ligature marks on the neck of the deceased and fracture of her hyoid bone. He failed to offer any explanation in the cross-examination of the prosecution witnesses and also during his 313 Cr.P.C examination. Added to it, he absconded from Government Hospital, Chirala though at that point of time none has suspected him or police booked any case against him. This unexplained conduct on his part also lends support to the accusation made against him. He relied upon the decision reported in ***Subedra Tewari vs. State of U.P.***^[3] on the point that the post criminal conduct of the accused is also relevant. He thus prayed to allow the appeal and convict the accused.

6 a) Per contra, supporting the judgment learned counsel for R.1 argued that as per prosecution, PWs.1 and 2 alone were the eye witnesses for the offence allegedly committed by A.1 and there is any amount of inconsistency in their version revealed before PW.15 immediately after the incident and revealed before PW.18 three months later and therefore, the trial Court rightly considered it not safe to rely upon their evidence. He argued that though as per prosecution, PW.1 gave a false

statement before PW.15 due to the alleged prompting of A.2 but it failed to produce any cogent material about the involvement of A.2. On the other hand in Ex.D.1, PW.1 stated as if she gave a false version to PW.15 due to the threat offered by her father. Thus Ex.D.1 rules out the involvement of A.2. When there was evidently no ill-advice of A.2, there was no reason for PW.1 to speak falsehood. Hence her earlier version was the correct version. Added to it, PW.5—the maternal uncle of PWs.1 and 2 reached the hospital within short time after the incident and PW.1 should have disclosed the truth atleast before PW.5 but she did not do so. This would also indicate that what she stated before PW.15 at the earliest point of time was the true version and the later version after three months was a tainted one due to the pressure offered by her maternal grand parents.

b) Then commenting on the evidence of PW.10 who treated the deceased in Government Hospital, Guntur and PW.12—the post-mortem doctor, he argued that though PW.12 opined that the death was due to strangulation by ligature, still basing on the presence of oedematous in the lungs and brain, PW.10 opined that it is a characteristic of electrical death and as such there is a variation in the opinion of PWs.10 and 12 regarding the cause of death. The earliest version of PW.1 correlates with the opinion of PW.10 and confirms the death due to electric shock. The

fact that A.1 also received electric shock and fell unconscious further strengthens the earlier version of PW.1 that her father tried to rescue her mother from the electric shock and thereby he too received the shock. Even the evidence of PW.3—the neighbour confirms the same. Therefore, it was essentially a case of electrical death. Learned counsel argued that in the process of pulling the deceased from the Switchboard, A.1 might have fallen on her and thereby her hyoid bone might have fractured. Regarding the appearance of ligature mark, he argued that the deceased was in an unconscious state for about 12 days and due to lying in uneven posture, some marks might have occurred on her neck and therefore, the appearance of ligature mark and fracture of hyoid bone noted in the post-mortem report need not be viewed seriously. Above all, the prosecution has not produced the ligature allegedly used to cause the strangulation. He thus argued that the second version of PWs.1 and 2 is not established by cogent evidence though some suspicion is evoked against A.1. He submitted that when two views are possible from the given facts and evidence, the view that is favourable to the accused has to be taken into consideration as per the golden principle of criminal jurisprudence. He further submitted that in an appeal against the acquittal, the Appellate Court shall rarely disturb the finding of the trial Court unless the appreciation of evidence or the law is perverse or there occasioned

failure of justice but the instant case is not such a one and hence the appeal may be dismissed. Regarding the relevant circumstances for interference of the Appellate Court, he cited the decision reported in **Ghurey Lal vs. State of U.P.**^[4].

7) In the light of above rival arguments, the point for determination is:

“Whether the prosecution could able to establish the guilt of A.1 and A.2 beyond all reasonable doubt?”

8) **POINT:** It is an appeal against acquittal. In **Ghurey Lal's** case (4 supra), the Apex Court happened to give some instances when the Appellate Court can reverse the acquittal recorded by the trial Court. It is useful to extract them.

“Para 70: In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. *The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:*

i) *The trial court's conclusion with regard to the facts is palpably wrong; 53*

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."

In the light of above beacon, it has now to be seen whether the judgment of the trial Court suffers from any of the above mentioned vices to upset it.

9) The incident occurred on 25.05.2001 at about 11:00am in the house of accused. As per prosecution, PWs.1 and 2 are the eye witnesses to the incident. It should be noted that the earliest version of PW.1 before PW.15 as stated in Ex.P.1 is diametrically opposite to the version of PWs.1 and 2 in their evidence. In the evidence of PW.1, she deposed that the deceased was her mother and A.1 is her father and they used to reside in Perala and

her father was working as Car Driver. She further deposed that her mother was killed by her father. On the date of incident, their father came to the house at about 10:00am and asked her and PW.2 to go to her paternal grandmother's house for eating idlies as she got idles for them and so both of them went to her paternal grandmother's house situated in Peerla Chavidi Centre, Perala and she enquired them as to why they came to her house and gave Vadiyalu and after eating them they returned back home and found doors closed and she knocked the door and her father stated that he would open the doors but he did not and so she peeped into the house through the window and found her mother lying on the floor and her father sat on her and trying to tie saree around her neck and then herself and PW.2 raised cries that her father was killing their mother and then their father kept an electric wire with a plug and sat on the chest of their mother and then he got up and opened the door by putting on the switch and got electric shock and fell on their mother by shivering and then the neighbours came and at that time blood and froth coming from the mouth of their mother. She further stated that the neighbours put off the main and her mother was shifted to Venkateshwara Private Hospital by herself and the neighbours and as the Doctor refused to admit her, they took her to Government Hospital and on the way the son of A.2 by name Rama Rao met them and she asked him to inform A.2 that her

mother met with an electric shock and they were taking her to Hospital and after sometime A.2 came to the Government Hospital and PW.1 informed her as to what she has seen and A.2 advised her not to disclose the said fact to the police and if the police take their father into custody, there would be nobody to look after them and accordingly, when the police enquired them, she stated to them that while her father was sleeping, her mother tried to insert the plug of the fan to the Switchboard and got electric shock and fell down and her father woke up and pulled the wire and he too received shock and hearing their cries the neighbours came and she brought her parents to hospital with the help of neighbours and her statement was recorded as Ex.P.1. This was the evidence of PW.1 in the Court. As stated supra, her version in Ex.P.1 is quite contrary to her evidence. The reason assigned was that at the instance of A.2 she stated as contained in Ex.P.1.

10) Then PW.2 also deposed in similar lines. He stated that on 25.05.2001 at about 10:00am, their father returned from Bazar and asked him and PW.1 to go to the house of their paternal grandmother to take idlies and accordingly they went to the house of PW.4 and after enquiring them as to why they came, PW.4 provided them Vadiyalu and after eating them, they returned back to house and found the doors of their house closed. When they tried to open

the doors, their father replied from inside that he would open the doors but he did not open and so himself and PW.1 peeped into the house through the window and found their mother lying on the floor and their father sitting on her and tried to tie a saree around her neck. Then himself and PW.1 cried that their father was killing their mother. Thereafter their father got up from their mother and arranged a wire with the plug and sat on their mother and tried to tie the wire around her neck and when they cried, he opened the door and put on the switch and got the electric shock and fell on their mother. On hearing their cries, the neighbours came there and switched off the main. The condition of their mother was serious and froth and blood were coming out from her mouth. Their father also fell down unconscious. PW.1 took their mother to Hospital. He borrowed Rs.10/- from their neighbour and went to inform about the incident to his maternal grand mother residing in Kolalapudi by phone but he could not contact her as the line was not connected and so he returned home. Their school teacher advised him to take his father to Government Hospital and accordingly himself and another boy shifted their father to Government Hospital and PW.1 was in the Hospital by that time. On the same day evening his father regained consciousness. On that night, PW.5 came to the Hospital. He went along with his uncle to his village Papayapalem. Their maternal grand parents came to the hospital and shifted his mother

to the Government Hospital, Guntur and his mother died on 06.06.2001. He further stated that prior to the death of his mother, his father always used to quarrel with her.

11) Thus as per the evidence of PWs.1 and 2, their father made an attempt on the life of their mother firstly by strangulating her with a saree and later on seeing them he tried to give a colour of electric shock by twisting an electric wire to his fingers and falling on her. However, the earliest version of PW.1 before PW.15 was quite a different story. On receiving the Hospital intimation at about 1:30pm on 25.05.2001, PW.15—the Head Constable Chirala I Town P.S, rushed to the Government Hospital, Chirala and found the deceased and A.1 in unconscious state and recorded the statement of PW.1 under Ex.P.1. In Ex.P.1 the version of PW.1 was that on 25.05.2001 at about 11:00am her mother tried to put the broken plug of the fan into the socket and received shock and raised cries and on hearing the same, her father who was sleeping there woke up and tried to pull the electric wire and the wire was cut and her father also received electric shock. Then she raised cries and the neighbours came and she shifted their parents to Hospital with the help of neighbours and as their parents were in an unconscious state, she gave statement to police. This is the statement given by the PW.1 immediately after the incident. Now the point is which of the two versions is

truthful one.

a) As per prosecution, earlier PW.1 gave false version due to ill-advice of A.2. However, it must be said, the prosecution did not substantiate this fact by cogent evidence. In the cross-examination, PW.1 admitted that she has not stated to the police when she was examined after the death of her mother about the son of A.2 meeting her on the way to the hospital and her requesting him to send A.2 to the hospital and most importantly, A.2 coming to the hospital and advising her not to disclose the facts as the police would arrest her father. Thus it shows that for the first time in her evidence, PW.1 deposed as if A.2 ill-advised her. Except her, none others including PW.15 deposed about the presence of A.2 in the hospital. Added to it, in her statement before PW.18 she altogether gave a different reason for not disclosing true facts. In Ex.D.1 she stated as if her father threatened her to state as if her mother received current shock and if she failed to say so, he would kill her also and out of fear she gave a false statement before PW.15. This contradiction raises a doubt whether A.2 gave any suggestion to PW.1. It may be noted that even the so-called threat offered by A.1 is also doubtful because by the time Ex.P.1—statement of PW.1 was recorded, he was in an unconscious state and hence that possibility also can be ruled out.

b) So at the outset, neither A.2 nor A.1 seemed to have

offered threat to PW.1 as claimed by prosecution. When such threat is omitted, the earlier statement of PW.1 in Ex.P.1 has to be accepted as genuine one. Per contra, by the time of the subsequent statement given before PW.18, they were in the house of their grand parents and hence their influencing PWs.1 and 2 to speak against A.1 cannot be ruled out. At any rate due to the material inconsistencies between the evidence of PWs.1 and 2 on one hand and the earlier statement of PW.1 under Ex.P.1 on the other, the trial Court rightly held that their evidence is not safe to be believed.

c) At this stage it is pertinent to refer the evidence of PW.3, who is the immediate neighbour of A.1's family. He deposed that on the date of offence, himself and LW.4 were playing caroms in their portion and on hearing the cries of PWs.1 and 2, they both rushed to the portion of A.1. PWs.1 and 2 informed them that their father was killing their mother. LW.4 opened the door and they found that the deceased was lying down and A.1 was lying on her and both were in an unconscious state. He further deposed that when LW.4 tried to lift A.1, he got electric shock and so this witness put-off the main. The fingers of A.1 were tied with wires. They brought a nearby compounder—Prasad Rao, who on seeing them, advised to take them to Government Hospital. PW.1 and neighbours took the deceased to the Hospital whereas

PW.2 and his Master shifted A.1 also to the Hospital. This witness was examined by the police three months after the incident.

Thus in his evidence, PW.3 claimed that PWs.1 and 2 informed him that A.1 was killing their mother. Hence, PW.3 is a hearsay witness. He denied the suggestion in the cross-examination that PWs.1 and 2 did not disclose him about A.1 killing their mother. Be that it may, the veracity of PW.3 is concerned, his conduct subsequent to the incident does not infuse faith in him. He admitted in the cross-examination that 10 or 15 days after the incident he came to know about the death of the deceased but the police have not examined him and his friend within those 10 days. He further admitted that after the death of deceased, he has not informed anything to the police. He also admitted that he has not stated to the police about tying of the wires to the fingers of A.1. So PW.3 who claimed to have known A.1 attempting to kill his wife through PWs.1 and 2, did not disclose this fact to anybody till he was examined three months after the incident. It is interesting to note that PWs.1 and 2 have not specifically stated about the presence of PW.3 and LW.4 at the place of incident but only stated that on hearing the cries, the neighbours came there. Most importantly PW.2 in his cross-examination stated that neither himself nor PW.1 disclosed what they have seen to the neighbours. In that

view of the matter, it is not safe to rely upon the evidence of PW.3.

12) Coming to the medical evidence, no doubt apparently Ex.P.6—post-mortem report and the evidence of PW.12 supports the evidence of PWs.1 and 2 to the effect that A.1 strangled their mother. In Ex.P.6, PW.12 found the following injuries:

1) *Transverse Ligature mark of 18 x 3 cms, with partly healed and partly fallen scab present over front and sides of Neck at and above the level of Thyroid Cartilage present o/c. The sub cutaneous tissues of neck underneath the ligature mark shows diffused Greenish yellow colour contusion with Anterior-posterior compression fracture of Greater Cornua of Hyoid bone with body of Hyoid bone present with diffused Greenish yellow colour contusion to surrounding soft tissues seen.*

2) *Infected wound of 6 x 5 cms, skin deep present over Upper-Outer quadrant of Right Buttock.*

The above Injuries present are Ante-mortem in nature.

In respect of brain and lungs, he mentioned as congested and oedematous. He opined that the death was due to apoplexy as a result of strangulation by ligature. Thus as stated supra, his report supports the evidence of PWs.1 and 2. Be that it may, PW.10—the Doctor who treated the deceased in Government Hospital, Guntur also in his chief-examination stated about the presence of clinical features of throttling of Hypoxic

Encephalopathy and issued Ex.P.4—certificate. In the cross-examination he stated that Hypoxic is the condition of lack of oxygen with damage to the brain causing Encephalopathy. The death due to asphyxia will be caused in the case of electric shock and the presence of oedematous in the lungs as well as in the brain is a characteristic of electrical death. Thus if the evidence of PW.10 is correlated with Ex.P.6, the presence of oedematous in the brain and lungs symbolises electrical death. Thus the cumulative evidence of PWs.10 and 12 coupled with Exs.P.4 and P.6 gives an impression that the death of deceased might be due to electric shock as well as strangulation by ligature. That the death of deceased was due to electric shock gets corroboration from the earliest version of PW.1 under Ex.P.1 which we have accepted in the preceding part of the judgment. Then coming to the strangulation aspect, no doubt there is a ligature mark around the neck of the deceased and the greater cornua of Hyoid bone was fractured and these symptoms cannot generally be caused in cases of death due to electric shock. Hence these features show an accusing finger against A.1 as he was with the deceased in his house at the time of incident. During trial, the version of A.1 was that as he too fell unconscious along with deceased, he was not in a position to explain the cause for the presence of ligature mark and fracture of right bone. Be that it may, in the appeal the explanation

offered by learned counsel for R.1 is worth noting. According to him, in the process of saving his wife from electric shock, A.1 pulled the wire and dragged her and fell on her and thereby he might involuntarily hit the neck of the deceased causing the fracture of hyoid bone. Regarding the appearance of ligature mark, it was argued that after the incident, the deceased became unconscious and survived for about 12 days and due to lying in uneven posture, some marks might have occurred on her neck. This explanation though not fully convincing, the same cannot be brushed aside altogether. Further, as rightly argued by him, the police failed to produce the ligature used for the alleged strangulation. Therefore, though the suspicion is high against A.1 in respect of the alleged strangulation, since the prosecution could not establish the culpability of A.1 in that regard by cogent evidence, the charges against him cannot be sustained. As held in ***Ghurey Lal's*** case (4 supra) when two views are possible, the one that is favourable to the accused has to be accepted, is the cardinal principle and same has to be applied here.

13) So far as the offence under Sec.498-A is concerned, we accept the finding of the trial Court.

14) So on a conspectus of the entire facts and evidence on record, we don't find the perversity on the part of the trial Court in appreciation of facts, evidence and law

warranting our interference. The judgments cited by learned Public Prosecutor will not improve their case.

15) In the result, this Criminal Appeal is dismissed by confirming the judgment passed by the trial Court.

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

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

Date: 28.01.2016

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[\[1\]](#) (1992) 3 SCC 43

[\[2\]](#) (2007) 10 SCC 219

[\[3\]](#) 1989 Supp (1) SCC 91

[\[4\]](#) (2008) 10 SCC 450