

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
TUESDAY, THE 01st DAY OF MARCH
TWO THOUSAND AND SIXTEEN
(01.03.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.832 of 2010

Between:

Akam Ramulu @ Ramnarayana Puramad

..... APPELLANT/ACCUSED

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellant : **Sri NASEEB AFSHAN**

Counsel for the Respondent : **PUBLIC PROSECUTOR**

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.832 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

This criminal appeal is filed against judgment dated 04.06.2010 in Sessions Case No.456 of 2009 on the file of the VII Additional District & Sessions Judge (Fast Track Court), Nizamabad at Bodhan, by and under which, the learned Sessions Judge has convicted the appellant/accused for the offence punishable under section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/- in default, to suffer simple imprisonment for a period of six months, and further convicted the appellant/accused for the offence punishable under section 307 IPC and sentenced him to undergo imprisonment for a period of 10 years and to pay a fine of Rs3,000/-, in default, to suffer simple imprisonment for a period of four months and it is ordered that both sentences shall run concurrently.

2. The case of the prosecution in brief is that as PW 9-Akam Sayamma was issueless, she had taken PW 2-Akam Savithri at the age of 13 years and brought up and performed her marriage with the accused and brought the accused as illatum son-in-law. The accused used to work as a cook in Kavya Hotel of PW 12-Musum Srinivas Reddy and stay at Bodhan visiting his family at Neela village. Both accused and PW 2 were blessed with two children, viz., the deceased daughter-Akam Jyothi and son PW 6-Akam Anil. The accused got addicted to bad vices and became drunkard and frequently used to quarrel with his wife PW 2 and her relatives and threaten that he would kill the children. While so, on 28.06.2009 at 4 p.m the accused brought his two children from Neela village to Bodhan on the pretext that he would join them in the school and at about 8.30 p.m he brutally murdered his daughter-Akam Jyothi, aged 11 years by throttling and threw the dead body in a drainage and attempted to commit murder of his son PW 6-Akam Anil behind Vishnu Bhavan Hotel and twisted the hand of his son and wrapped a rope around his neck and pushed him on the ground, left from the scene and

telephoned to PW 10-Chinnapatla Laxmanna, one of the neighbours and talked with his wife PW 2 and informed that he murdered his daughter and son. PW 6 survived and went to Kavya hotel and informed the incident to PWs 4 and 7 and he was referred to Government Hospital, Nizamabad. PW 4 informed the incident to PW 2. PW 15 treated PW 6 and issued Ex.P4 wound certificate. They searched for the dead body of the deceased. PW 11, one of the neighbours of PW 2 informed that the body of the deceased was found in the drainage behind Vishnu Bhavan Hotel. PW 1-Naradu Mallesh, who is the cousin brother of PW 2, lodged a complaint before PW 19-P.Kasireddy, Sub-Inspector of Police, Bodhan Town PS on 29.06.2009 at 11 a.m and the same was registered as a case in Cr.No.233/2009 under section 302 IPC. On receipt of copy of First Information Report, PW 20-AVR Narasimharao, Inspector of Police, took up investigation, visited the scene of offence, drew rough sketch, got taken the photographs of the deceased, examined the witnesses and recorded their statements, held inquest over the dead body of the deceased in the presence of PWs 16 and 18 and sent the dead body for post mortem. PW 17 conducted post mortem over the dead body and opined that the deceased died due to throttling. On 30.06.2009 PW 20 examined PW 6, the victim boy, and recorded his statement. On 02.07.2009 at 9.30 a.m PW 12, the owner of Kavya hotel, brought the accused and handed over him to PW 20, stating that the accused made extra judicial confession before him with regard to commission of the offence. PW 20 recorded the extra judicial confession of the accused in the presence of PWs 13 and 14 and arrested the accused. After completion of investigation, PW 20 filed charge sheet.

3. The plea of the accused is one of denial.

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 20 and marked Exs.P1 to P10. On behalf of defence, no oral and documentary evidence was adduced. Based on oral and documentary evidence, the learned Sessions Judge has convicted the

accused and sentenced him, as stated supra.

5. Learned Counsel appearing for the appellant-accused submits that the conviction and sentence of the appellant-accused is based on the most inconsistent and contradictory evidence of the material witnesses on almost all material aspects. She further submits that even if the unchallenged version of the prosecution witnesses is taken as gospel truth, it does not establish beyond reasonable doubt that it is the accused who committed the most horrendous act of brutalizing the eleven year old only daughter of the appellant himself, in addition to attempting to kill his only son. Learned Counsel submits that there are several crucial aspects which delink the chain of circumstances and the evidence of the prosecution witnesses sounds incongruous. That the prosecution failed to establish that it is the appellant-accused who took his children from the custody of his wife/mother of the children from Neela village, brought them to Bodhan, killed the daughter and attempted to kill the son, and informed his wife about the barbaric act committed by him. The conduct of the material prosecution witnesses immediately thereafter is unfathomable and it is difficult to believe that they would have conducted themselves in the manner in which they did. The delay in lodging the F.I.R., the manner in which the dead body was discovered, the non-recovery of the crime weapon with which the accused is alleged to have committed the crime, are some of the factors which adversely affect the main fabric of the case of the prosecution. The essential link namely the motive argues the Counsel, is absolutely lacking in the instant case for the appellant for having committed the crime. Learned Counsel submits that the Court below has failed to appreciate the evidence on record in proper perspective and has erroneously arrived at a conclusion that it is the accused who caused the death of the daughter and attempted to kill the son and therefore the same needs to be set aside.

6. On the other hand, learned Public Prosecutor submits that it is a peculiar case where the father has nurtured grouse against his wife for

her refusal to come and stay with him at a place where he was working and instead preferred to stay in her parental home. The prosecution witnesses have clearly stated that under the influence of alcohol, the appellant-accused used to ill-treat the wife and threaten that he would eliminate the children and pursuant thereto, the appellant-accused has taken his son and daughter on the pretext of admitting them to a Government Hostel and killed the daughter and attempted to kill his son. With regard to the delay in lodging the complaint, learned Public Prosecutor submits that the surrounding circumstances need to be considered in adjudging as to whether the delay is fatal for the prosecution. That it is on record that the kith and kin of the wife of the appellant-accused were searching for the missing daughter and only after the dead body was traced, the complaint was lodged. Learned Public Prosecutor further submits that the cumulative effect of the evidence of the prosecution witnesses is that it is the appellant-accused who has committed the crime, justifying the conviction and sentence. Learned Public Prosecutor also submits that there are no merits in the appeal and the same is liable to be dismissed.

7. The point for consideration is as to whether the prosecution proved its case against the appellant-accused beyond reasonable doubt so as to sustain the conviction and sentence or whether it needs to be set aside, modified or varied?

8. **Point:-** The facts which are either admitted or are not seriously controverted are that the appellant-accused – Ramulu, who is originally a native of Belkondi village, Biloli Taluq of Nanded District was married to Savithri (PW.2), who was a native of Neela village, Ranjal Mandal of Nizamabad District, about 13 years prior to the incident. Smt.Akam Sayavva @ Sayamma (PW.9), the grandmother of PW.2 has brought up PW.2 from her childhood in view of the death of her parents. It is PW.9 who performed the marriage of PW.2 with the appellant-accused. The appellant-accused and PW.2 were blessed with a daughter – Jyothi,

aged about 11 years, and son – Anil (PW.6), aged about 8 years. The appellant-accused was working in Kavya Hotel as a cook in Bodhan, which belongs to one Srinivas Reddy (PW.12) of which M.Veera Reddy (PW.7) was the manager. Puramwar Narayana (PW.4) who is the nephew of the appellant-accused also joined the said hotel as a server. After having lived for some days in Biloli, Maharashtra State, the couple shifted to Neela village. The appellant-accused who was working in Bodhan used to visit Neela village at regular intervals.

9. On 29.06.2009, in the morning hours, the deceased – Jyothi was found lying dead in drainage canal situated behind Vishnu Bhavan Hotel. At that time, it was found that the right upper limb, muscle over right chest and axilla region, right ear and right eye ball, muscle over right side of face were missing. PW.6 – the son of the appellant-accused was also found to have sustained a grievous injury on his hand.

10. The contentious aspect however is as to whether it is the accused who has perpetrated the act which by all means can be termed as diabolical.

MOTIVE:-

11. This is a case which cannot be said to be based exclusively on circumstantial evidence. According to the prosecution, there is a direct eye-witness to the incident, namely, PW.6, the son of the appellant-accused, on whose life also an attempt to kill was allegedly made by the appellant-accused. There is no gain saying the fact that when a father is alleged to have brutally killed his daughter and also attempted to kill his own son, there should be motive which should be strong enough to proceed further in the matter of determining the guilt or otherwise of the appellant-accused. In the instant case, the motive is very feeble and we are of the opinion that even if what is alleged is true, the appellant-accused would not have resorted to such cruel act only because his wife-PW.2 was refusing to come and stay with him at Bodhan where he was working. According to the prosecution, since the wife-PW.2 was not

favourably responding to the command of the appellant-accused to come over to Bodhan and instead was preferring to stay at Neela village with her maternal grandmother and other relations, the appellant-accused developed grudge against his own family and committed the crime. It is not only admitted by PW.2 but also the other witnesses that the behaviour of the appellant-accused towards his wife and children was not so cruel as to infer such a strong motive to liquidate his son and daughter. It is an admitted fact that only when the appellant-accused was under the influence of alcohol, he is said to have subjected his wife to cruel treatment such as beating or abusing, but was never showing any signs of criminal tendency insofar as his children, namely, the deceased and PW.6 are concerned. As a matter of fact, it is admitted that except under the bouts of the alcohol influence, the appellant-accused was very affectionate and cordial not only with his children but also with his wife, PW.2. He was almost visiting Neela village every week from Bodhan where he was working. Absolutely no evidence is placed on record to show that the accused had any reason to nurture a grievance of such a magnitude so as to kill the daughter, and attempt to kill his only son. Even the relations of PW.2 admit that the behaviour of the appellant-accused towards his family was not so cruel warranting taking any action whatsoever against the appellant-accused except for advising him to behave well with his wife and children.

12. Even the immediate provocation for the appellant-accused to commit the crime is very weak. It is in the evidence of PW.2 – the wife that immediately after the marriage, they just lived for few days in the native village of the accused in Maharashtra and thereafter they shifted to Neela village and both the appellant-accused and PW.2 were living there along with the grand-mother/PW.9. She also admits that both her children were born while they were living together at Neela village. It is also admitted by her that the appellant-accused used to stay in a rented room in Bodhan where he was working and she used to visit the said

place whenever it was desired by the appellant-accused. What is noticed from the evidence of PW.2 is that she does not even say that the accused developed any hatred or ill-will towards her or her children on the ground that she was refusing to shift to Bodhan where the appellant-accused was working. There is a categorical admission made by PW.2 – the wife that at times other than being under the influence of alcohol, the appellant-accused used to look after the children well, advise them to study well and was also not quarrelling with her. She asserts that the accused never beat her when he has not consumed liquor. Similar admissions are made by other witnesses such as PW.3, who is the cousin brother of PW.2. He also says that the accused used to visit Neela village once in a week or ten days and used to beat PW.2 and their children whenever he consumed liquor and that the accused was not quarrelling with his wife or children when he was not drunk.

13. It is apparent from the evidence on record that only when the appellant was under the influence of alcohol, he used to create problems for the wife and used to scold children but at no other point he was exhibiting any kind of anger or hatred towards either the wife or the children for believing that the appellant/father would have taken their sufficiently grown-up son and daughter when he is a normal person from Neela village to Bodhan and cause physical harm to them. Therefore, the alleged motive for the appellant/father to kill the daughter and attempt to kill the son is too difficult to believe as being sufficient for the appellant-accused to commit the crime.

Regarding lodging the complaint:-

14. In a criminal case, promptitude with which an F.I.R. is lodged adds credibility to its version. Every delay in lodging the F.I.R., cannot be taken as fatal to the case of the prosecution unless it is shown that it is the outcome of consultations or confabulations. It is also well settled that the investigation is expected to be commenced only from the time the F.I.R., is lodged and if investigation is already commenced, the F.I.R.,

cannot be taken as the first hand information about the alleged incident available with the police.

15. In the instant case, the incident is said to have taken place in the evening of 28.06.2009 before 08.00 p.m. (there is conflicting version about the time of incident which will be adverted to hereinafter). The complaint was lodged by PW.1 at 11.00 a.m., on 29.06.2009 before PW.19 – the S.I. of Police, Bodhan, who registered the same as Cr.No.233 of 2009 and thereafter handed over the investigation to the C.I. of Police – PW.20 within an hour thereafter at the scene of offence which is situated near Rahamaniya Maszid and Zamad Islam behind Vishnu Bhavan Hotel. It is the claim of the police officials that till that time i.e., till 11.00 a.m., on 29.06.2009, they had no information whatsoever about a grave crime having been committed within their jurisdiction.

16. The evidence of the prosecution witnesses is at variance with what is claimed by the police officials. According to PW.1, he came to know about the death of the deceased and PW.6 having sustained injuries and admitted in the Government Headquarters hospital at Nizamabad at about 07.00 a.m., on 29.06.2009. Thereafter, himself along with PWs.3 and 8 went to the drainage canal and after having found the body and confirming that it is the dead body of the deceased – Jyothi, they went to Bodhan P.S., and lodged the complaint – Ex.P.1.

17. PW.3 is another witness who speaks about this aspect. It is in the evidence of PW.8 that himself along with PWs.3 and 11 searched for the daughter of the accused in the night of 28.06.2009 and since they could not trace her, they informed Bodhan Town P.S. He further claims that they searched for the girl till about 01.00 a.m., of 29.06.2009, but could not trace her and that the police also searched for Jyothi. It is further admitted by PW.8 that they returned back to Neela village but on the next day morning i.e., on 29.06.2009 while himself along with others came to Bodhan from Neela village, he received information **over phone from the police** that a dead body is there on the backside of Vishnu

Bhavan Hotel. It is further asserted by PW.8 that at about 10.15 p.m. itself on 28.06.2009, himself, PWs.3 and 11 went to Bodhan P.S., and informed the police that Jyothi, is missing.

18. On the same aspect, PW.11 stated that himself along with PWs.3 and 8 searched for the missing Jyothi during the night time and they met the police personnel who were on patrolling duty and informed them and the police people told the witnesses that they should inform the police if they find the missing girl.

19. PW.8 deposed that on the date of the incident, at about **08.00 or 08.30 p.m.**, PW.4 brought PW.6 in a bus to Neela village with a fracture on his left hand ankle. He further claims that several people including ladies gathered at Gandhi Chowk and when enquired, PW.6 informed them that his father has broken his hand and also killed his sister. PW.8 is the person who went in search of the girl along with others to Bodhan and were unsuccessful even though they searched for the deceased till about 01.00 a.m (midnight). He also claims that the police also searched for the deceased which is not the case of any other prosecution witnesses or the police. He is categorical in his statement that at about 10.15 p.m., on 28.06.2009 itself, himself, PWs.3 and 11 went to Bodhan Police Station and informed the police that Jyothi was missing.

20. If what is stated by the prosecution witnesses is believed, the claim of the jurisdictional police that they were not aware prior to 11.00 a.m., on 29.06.2009 about the incident having taken place appears to be palpably false. As per the prosecution witnesses, more than 12 hours prior to Ex.P.1 being lodged, the police people were aware about the missing of the deceased and even by the early morning of 29.06.2009, it is the police who informed PW.8 that Jyothi is found lying dead in a canal behind Vishnu Bhavan Hotel. Therefore, Ex.P.1 – the complaint cannot be taken as the first information report and apparently the police suppressed facts and have not placed the relevant material before the Court.

Regarding discovery of corpus delicti:-

21. The case of the prosecution is that the accused brought the deceased Jyothi and son PW.6 from Neela village to Bodhan in the evening of the Sunday i.e., 28.06.2009 and thereafter took both his children to a place near Masjid behind Vishnu Bhavan Hotel and killed the deceased daughter and attempted to kill PW.6. The dead body was found in a canal. It was discovered within 12 hours after the alleged murder. According to the prosecution witnesses, they have searched for the girl through out the night almost till 1.00 a.m., but they could not find her. Only next day morning, it is the police who informed PW.8 about tracing of the body in the canal. Who has seen the dead body for the first time lying in a canal is not on record. It is not that the *corpus delicti* was discovered in pursuance to any confession of the author of the crime. None except the accused, if really he has committed the crime, was aware about the dead body being thrown in the canal. Therefore, the prosecution has also not come out clean about the circumstances under which the dead body was located and identified.

22. As stated above, PW.6 – the son of the accused is said to be an eye-witness to the incident. According to him, his father killed his sister by strangulating and beat him (PW.6) by twisting his left hand ankle. PW.6 also claims that it is the accused who has killed the deceased by removing her right hand and right ear. According to PW.6, the accused was armed with a knife when he killed his sister – Jyothi. The evidence of PW.6 who is the child witness, aged about seven years, for reasons to be stated hereinafter, is highly artificial, outcome of tutelage and doubtful. According to the prosecution, the accused intended to kill both his children and after having killed his daughter, he has broken the hand of PW.6 and tied a rope around his neck and thinking that PW.6 is also dead, the accused went away from there. If that is true and if really the accused was armed with a knife, which he is said to have brutally used for slaughtering parts of the body of his daughter and whose **intention**

was also to kill the son – PW.6, the accused would have certainly used the very same knife for causing the death of the boy (PW.6) but would not have left the place after strangulating him with a rope thinking that PW.6 is also dead. PW.6 in his evidence admits that his mother (PW.2) and grandmother (PW.9) used to say in the house that he shall depose in the Court that it is the accused who killed Jyothi and beat him. Manifestly, in view of this admission from PW.6, the evidence of PW.6 becomes unreliable for the reason that it is the outcome of the tutoring made by his mother – PW.2 and grandmother – PW.9.

23. The evidence of PW.6 also becomes highly doubtful for the reason that a boy, aged about 7 years, deposed that there used to be disputes in between his mother and father and they went to a Member of Mandal Parishad Territorial Constituency (MPTC Member). The boy – PW.6 asserts in the cross-examination that even when he was examined by the police, he told them that the disputes in between the accused-father and PW.2 - mother were placed before MPTC Member. Further more, such a claim is not made by the mother – PW.2 or the grandmother – PW.9, leave alone the other relations of PW.2 who are examined as prosecution witnesses.

24. The incident is said to have taken place somewhere in between 05.00 p.m. and 08.00 p.m. The place where the alleged incident is said to have taken place was not a remote or a secluded place. It is a well known fact that during that point of time, several people will visit mosque since it is time for offering prayers and if really the accused has committed the crime at that place, it would have certainly attracted the attention of the people who were visiting that place or passing there from. Further more, it is claimed by PW.6 that he has seen his father killing the deceased and also attempted to kill him but somehow he escaped from there and came running to the Hotel but he did not alert or inform any persons on the way to Hotel. This is quite improbable and unnatural.

Regarding medical evidence:-

25. According to the prosecution, the accused is alleged to have killed the deceased girl, aged about 11 years, by throttling her neck with the help of a rope. It is not the case of the prosecution that any sharp edged weapon such as knife was used by the accused. As stated, the dead body was found within 12 hours after the incident. The condition of the body as is evident from the inquest panchanama and also the photographs and the post-mortem report clearly show that the deceased was done to death in a most brutal manner. The right hand was missing from the body and was virtually chopped off. One ear was also missing. One eyelid was removed. Part of the face and chest was cut off. Who committed such acts is not explained. Nothing incriminating is recovered from or at the instance of the accused to show that he used any sharp edged weapon to cut the body and mutilate it to such an extent. A feeble attempt is made by some witnesses that some animals might have caused damage to the body. This is difficult to be accepted for the reason that if a dead body is manipulated by any wild animal, it will not be in such a condition in which it was found. No animal will cut the right hand and remove it altogether. Similarly, one eyeball and one ear and part of the chin and chest will not be chopped off by an animal. The doctor – PW.17 who conducted the autopsy over the dead body has found the loss of right upper limb, loss of muscle over right chest and axilla region, missing of right ear and right eyeball, missing of skin and muscle over right side of face, exposing of the teeth and these four injuries are certified by the Medical Officer to be post-mortem in nature. The photographs show that the wearing apparels on the dead body were also not there. The Medical Officer opined that the cause of death was due to throttling. There is no medical evidence as to how the parts of the body were found missing and significantly the Doctor did not notice any sign of attack by an animal.

26. Another significant aspect touching the medical evidence on

record is with regard to the treatment of PW.6. According to the prosecution, the accused with an intention to kill the boy has tied a rope around his neck and has twisted his hand which was broken. The said boy – PW.6 is said to have escaped from the accused and came running to the hotel where PWs.4 and 7 were present and he told them as to what happened. According to the prosecution, the injured boy was treated for the fracture of his hand in a private Nursing Home by name Shashank Hospital and he was treated by the Doctor – PW.15. The evidence of the prosecution witnesses on this aspect is altogether different. According to the mother – PW.2, it is PW.4 who brought her injured son to Neela village and informed that he does not know where the accused killed the daughter – Jyothi. PW.2 claims that thereafter she had taken her injured son to the Government Headquarters Hospital, Nizamabad, in an ambulance and there PW.6 was admitted. As per PW.2 – the mother on 29.06.2009 the injured PW.6 was admitted in a Government Hospital, Nizamabad.

27. According to PW.3, when himself, PWs.8 and 11 were searching for the missing children of the accused and PW.2, PWs.4 and 6 came to Gandhi Chowk of Neela village and they found the right hand ankle of PW.6 was broken. He further claims that then they called the ambulance and sent the injured – PW.6 along with PWs.2 and 4 to Nizamabad Government Hospital.

28. PW.4 gives an altogether different version on this aspect. According to him, in the night of 28.06.2009, at about 08.00 or 08.30 p.m., PW.6 came to the hotel and PW.4 found the ankle of left hand was broken, that he asked PW.6 as to what happened and PW.6 told him that it is the accused who killed Jyothi and beat him (PW.6) and caused the fracture to his left hand. PW.4 further claims that thereafter he had taken the injured – PW.6 to the Government Hospital at Bodhan and that the Doctors at Bodhan Government Hospital told him that they will not take up the treatment of PW.6 and gave a chit and asked him to take PW.6 to

Government Headquarters Hospital at Nizamabad. PW.4 further claims that the Manager (PW.7) asked him to take PW.6 to Government Hospital for treatment. PW.4 further claims that thereafter he took PW.6 to PW.2 in Neela village and thereafter they called 108 ambulance, and shifted PW.6 to Nizamabad and that PW.6 was not admitted in Government Headquarters Hospital at Nizamabad and therefore PW.6 was taken to a Private Nursing Home, the name of which he does not know.

29. As against the above, the evidence of the Medical Officer – PW.15 need to be seen. He is an Orthopaedic Surgeon of the Private Nursing Home. It is in his evidence that on 28.06.2009, he examined PW.6 who was brought by his mother (PW.2) and found *supra condylar fracture of left humerus*. PW.15 further admits that the boy (PW.6) was admitted in the hospital on 28.06.2009 and on 02.07.2009 operation was performed. PW.6 was discharged from the hospital on 05.07.2009. The evidence of the Medical Officer – PW.15 belies the entire story spelt out by several prosecution witnesses. As already stated, the injured boy PW.6, according to PW.2, was admitted in Government hospital at Nizamabad on 29.06.2009 and before that the boy was taken to the Government Hospital at Bodhan on the night of 28.06.2009. As against the above, it is the evidence of PW.15 that in the night of 28.06.2009 itself the boy PW.6 was admitted in hospital by none other than his own mother PW.2. What was the reason for all the prosecution witnesses to give a different version on this material aspect is not known. This leads to an irresistible inference that all the prosecution witnesses have given their own independent version which does not corroborate with one another, even on the material aspect of treatment being rendered to PW.6.

30. It may also be stated here that according to the case of the prosecution and also its witnesses including the victim boy (PW.6), the accused having killed his daughter in the very presence of his son (PW.6), has tried to kill him also by tying a rope around his neck and

broke his hand and thereafter thinking that PW.6 is dead, the accused went away there from. However, the Medical Officer – PW.15 who treated PW.6 right from 28.06.2009 i.e., the date of incident till 05.07.2009 did not find any kind of injury or marks of rope around the neck of PW.6. The Medical Officer only found a fracture to the hand and nothing else.

31. In addition to the above, what is noticed is that the evidence of the material prosecution witnesses is quite discrepant and inconsistent as noticed hereunder:-

32. PW.1 is the de facto complainant. He is a resident of Lagod village of Biloli Taluq of Maharashtra State. He claims acquaintance with all the prosecution witnesses such as PWs.2, 3, 4, 7, 8 and 9. He also speaks about the family history of PW.2 and the accused and also the avocation of the accused. He is the own brother of PW.2. The relevant portion of his evidence is to the effect that accused brought his children to Bodhan at 04.00 p.m., on Sunday (28.06.2009), that on that day at about **07.00 p.m.**, the accused made a telephone to the landline of Chimpatla Sayanna, who is said to be a neighbour of PW.2 and called PW.2 over phone and informed her that he (the accused) killed his daughter at one place and his son at another place and he would also kill himself and if she (PW.2) comes, she will get three dead bodies (There is no person by name Chimpatla Sayanna, but there is one Chinnapatla Laxmanna who is said to be a neighbour of PW.2 and he is examined as PW.10). He further claims that exactly 12 hours thereafter i.e., **at about 07.00 a.m.**, on 29.06.2009, PW.3 – their cousin brother informed PW.1 over phone that the accused killed his daughter (Jyothi) and also beat his son – PW.6, due to which PW.6 sustained injuries. He further claims that he came down to Bodhan and met PW.3 and they along with PW.8 went near the drainage canal situated behind Vishnu Bhavan Hotel and found the dead body of the deceased. It is not spoken to by him that on what basis they straight went to drainage canal where the dead body was found lying. PW.1 admits that the information about the accused having committed

the crime was told to PW.2 by none other than the accused himself **at about 07.00 p.m.**, on 28.06.2009. Curiously for well about 12 hours neither of them moved their little finger even though such an information which would devastate any person was conveyed to them by none other than the perpetrator of the crime.

33. PW.2 is the wife of the accused and the mother of the deceased and injured. The relevant evidence tendered by her is to the effect that on Sunday at about 03.00 p.m., the accused took both their children to Bodhan for admitting in a Government Hostel inspite of her protests. She further stated that at about **05.00 p.m.**, the accused telephoned PW.10 and called her over phone and informed her that he killed his daughter and son. She further stated that thereafter the accused has gone to his parents village in Maharashtra State, which is nobody's case. She further deposed that PW.4 brought the injured – PW.6 to Neela village and informed her that he do not know where the accused killed her daughter. She further claims that PW.6 informed her as to what the accused has done. Even then she did not do anything through out the night. Only next day morning she claims that when she was in the Government Hospital along with her son – PW.6, she was informed by PW.1 and her brother PW.3 that her daughter – Jyothi was killed by the accused and that her dead body is in Government Hospital, Bodhan. It may be stated here that the dead body was found by the relations of PW.2 in the early hours on 29.06.2009 and thereafter the police people arrived at the scene only after 11.00 a.m., and as per the version of the Investigating Officer – PW.20, he prepared scene of offence panchanama in the presence of panchayatdars, recorded the statements of the witnesses and thereafter conducted inquest over the dead body of the deceased in the presence of PWs.16 and 18 and thereafter sent the dead body of the deceased to Government Hospital, Bodhan, for conducting autopsy. As per his evidence, the inquest panchanama concluded by 02.00 p.m., and only thereafter the body was

sent to the hospital. That means, the dead body of Jyothi reached the Government Hospital only after 02.00 p.m. Till the body was shifted to Government Hospital, Bodhan, PW.2 wants it to be believed that she was not aware about the dead body being found and the statutory proceedings being conducted as stated by PW.20 – the Investigating Officer.

34. According to P.Ws.16 and 18, the panchayatdars, inquest panchanama-Ex.P.7 was concluded by about 02.00 p.m. Surprisingly, the Investigating Officer would have it and is recorded in the inquest panchanama – Ex.P.7 that the dead body was subjected to post-mortem examination at 01.00 p.m., and was concluded by 03.00 p.m. This aspect is not only contrary to the testimony of inquest panchayatdars but is also contrary to the medical evidence on record. As per the evidence of the Doctor and the post-mortem report – Ex.P.8, the dead body along with the requisition reached the hospital only at 04.50 p.m. The Doctor – PW.17 deposed that he commenced the post-mortem examination at 05.00 p.m., and thereafter it will take two hours for completing the post-mortem. It is difficult to understand as to which of the versions is correct. If the independent witnesses are to be believed, the inquest panchanama was concluded by 02.00 p.m., and as per the Doctor, the dead body reached the Government Hospital at 04.50 p.m. The Investigating Officer – PW.20 in his inquest panchanama – Ex.P.7 recorded that the post-mortem over the dead body itself commenced at 01.00 p.m., and concluded by 03.00 p.m.

35. Reverting back to the claim of PW.2, it is apparently an incorrect statement that she came to know while she was in the Government Hospital, Nizamabad that her daughter – Jyothi was killed by the accused and that her dead body is in the Government Hospital, Bodhan. It may be recalled that as per the medical evidence on record, PW.6 was never taken to the Government Hospital, Nizamabad and was not treated there, but on the other hand, PW.15 clearly says that PW.6 –

the injured was admitted in his hospital on 28.06.2005 itself and was operated upon on 02.07.2009 and discharged on 05.07.2009.

36. The other material witness is PW.3, who is the cousin brother of PW.2. The material part of his evidence is to the effect that on the date of the incident at about **04.00 or 05.00 p.m.**, the accused took his children to Bodhan even though PW.2 did not agree for it and refused to send the children. He further claims that on the same day (28.06.2009) at about 08.00 or 08.30 p.m., the accused made a telephone call to PW.10 and spoke to PW.2 and informed that he has already killed his children and that he will commit suicide and that she may come to Bodhan. PW.3 further claims that immediately his sister – PW.2 came to him and informed as to what the accused told her. It is further claimed by PW.3 that when himself, PWs.8 and 11 were about to go in search of the children of PW.2, PWs.4 and 6 came to Gandhi Chowk of Neela village and they found the right hand of PW.6 was broken. He further claims that thereafter himself along with PWs.8 and 11 went to Bodhan and searched for the deceased but could not trace her and they returned back to Neela village. He further claims that next day morning at **07.30 a.m.**, PW.11 informed him that the dead body of the deceased was lying in the bushes on the backside of Vishnu Bhavan Hotel in a drainage water canal. He further claims that on 28.06.2009 itself, when PW.6 was brought to Gandhi Chowk in Neela village, they were told that the accused has killed his daughter. When the eye-witness to the alleged ghastly incident informed several people in the village, their conduct subsequently is unbecoming of a prudent person. It is pertinent to mention that PW.3 admits that on the date of the incident also he was having and using a cell-phone. The time when they came to know about the accused having killed the deceased was somewhere around 09.30 p.m., on 28.06.2009 and thereafter even though PW.3 and others have sent the injured to hospital and themselves went in search of the girl to Bodhan and searched for her for almost half of the night, for unknown

reasons, they did not inform the police.

37. PW.4 is the nephew of the accused and also his co-worker in the same hotel. He deposed that on the date of the incident, the accused brought his daughter and son to the hotel at about **08.00 or 08.30 p.m.** He further deposed that within half-an-hour thereafter he found the ankle of the left hand of the son of the accused (PW.6) was broken, and when PW.4 enquired from PW.6 as to what happened, PW.6 told him that the accused killed Jyothi and also caused the fracture injury to his left hand. This means that by about 09.00 p.m., itself, PW.4 came to know about the alleged murder of the deceased and attempt on the life of PW.6 at the hands of the accused. The immediate reaction would be PW.4 asking PW.6 to show the place where his sister is killed and where is the body. That is not done by PW 4 who is a young man aged about 22 years. PW.4 further claims that he took the injured to Bodhan Government Hospital but they refused to treat the injured and instead gave a reference chit and advised him to take PW.6 to Government Headquarters Hospital at Nizamabad. This appears to be incorrect since a Government Hospital in a place such as Bodhan will not refuse to treat a boy who was having fracture on the left ankle and which was a medico legal case. That apart, no documentary evidence is produced to the effect that PW.4 took the injured – PW.6 first to the Government Hospital, Bodhan. PW.4 further wants it to be believed that instead of taking the injured boy to the Government Hospital, Nizamabad, as advised by the Government Hospital at Bodhan, he took PW.6 to Neela village and from there, they summoned an ambulance and took the injured – PW.6 to Nizamabad Hospital where also the Doctors refused to admit the boy and thereafter the injured was taken to a private hospital whose name he do not know. All these claims made by PW.4 are not borne out from the record and also unbelievable. PW.4 asserted that it is the accused only who killed his daughter – Jyothi, but in the cross-examination, he admits that he has not seen the accused killing Jyothi **but it is the police people who told**

him that the accused killed Jyothi. This assertion of PW.4 is contrary to his previous claim that it is PW.6 who told him that it is the accused who killed Jyothi.

38. The most significant deviation noticed in the evidence of PW.4 is that when the injured boy – PW.6 came to him within half-an-hour after having been brought by the accused, the boy – PW.6 was not able to speak since PW.6 was under the influence of alcohol drinks and therefore was not able to talk freely. This aspect is not claimed by any witnesses leave alone PW.6 himself. It is nobody's case that PW.6 was made to consume liquor due to which he was not in a position to talk freely on the night of 28.06.2009 as claimed by PW.4.

39. PW.7 is the Manager of the Hotel in which PW.4 and the accused were working. He introduced altogether a different story. He says that on 28.06.2009 between **07.30 p.m., and 08.00 p.m.**, PW.6 – the son of the accused came to the Hotel running, that since PW.6 was feeling tired, he gave water to drink, that in the meanwhile, the accused came there and taken away PW.6 along with him, and that he kept quiet since the accused is none other than the father of PW.6. It is pertinent to mention that PW.7 claims that he heard people talking in the locality at Bodhan that it is the accused who killed his daughter which implies that PW.6 did not inform PW.7 anything about it even though PWs.4 and 7 were together in the hotel when PW.6 came there with his injured hand and informed that the accused has killed his sister.

40. PW.10 is the person to whom the accused is alleged to have telephoned on the landline and called for and spoke to PW.2. He is a neighbouring resident of PW.2. He claims that he do not remember the landline phone number of his house over which the call was received since that phone is now disconnected. He has introduced another story about the events that took place immediately after PW.2 speaking to her husband/accused. According to PW.10, immediately after speaking over phone to the accused at 08.00 p.m., PW.2 started weeping and that

several people gathered there and when enquired, PW.2 told all the people gathered there that the accused has killed her daughter – Jyothi and also son – PW.6. Another significant aspect in the testimony of PW.10 is that on the next day also i.e., on 29.06.2009 at about 10.00 a.m., the accused again made a telephone call to his landline and spoke to him and that he informed the accused that PW.2 went to Nizamabad Government Hospital. PW.10 further claims that the accused asked him to call PW.3 from his house and accordingly PW.3 was called and the accused spoke to PW.3. PW.3 is conspicuously silent about his speaking with the accused more than 12 hours after everybody including PWs.3 and 10 came to know that the accused has killed the deceased. Curiously, in the cross-examination, PW.10 states that he did not enquire from the accused about death of the deceased even though he came to know about the alleged act of the accused killing the deceased.

41. It is in the evidence of PW.11 who is the neighbouring resident of PW.2 that on 28.06.2009 at about 08.30 p.m., he was informed by PW.2 in the presence of several others that the accused has taken PW.6 and the deceased to Bodhan and that PW.2 was informed by the accused that he killed the deceased and also the son – PW.6. He further speaks about PWs.4 and 6 coming to Neela village in the same night at about 10.30 p.m., and the material contradiction is that when PW.11 enquired from PW.4 as to whether the deceased – Jyothi also came to the Hotel of PW.4 along with PW.6, PW.4 told him that it is only PW.6 who came to the hotel but not deceased – Jyothi. PW.11 further claims that he along with PWs.3 and 8 went in search of the deceased and searched till about 01.00 a.m., and at that time they came across the police people to whom they informed.

42. PW.12 is the owner of the Hotel where the accused and PW.4 were working. He has added a new dimension to the entire case of the prosecution. When the incident took place on 28.06.2009, he categorically says that the incident took place on 30.06.2009. PW.12

deposed that on 30.06.2009, his Manager-PW.7 informed him over telephone at about 11.30 p.m., in the night, that the accused, who was not coming to the Hotel and doing the work for the last twenty days, came to the Hotel on that day along with his children and spoke to PW.4 and went away. PW.12 further claims to have been told about the events that are spoken to by PW.4. However, according to PW.12, all this took place on 30.06.2009 but not on 28.06.2009.

43. The other evidence on record comprises the panch witnesses for the scene of offence, the inquest panchanama and the confession alleged to have been made by the accused. When there is no dispute insofar as the scene of offence and the inquest panchanamas are concerned, but the alleged confession said to have been made by the accused is inadmissible for the reason that admittedly nothing incriminating has been recovered or seized from his person or at his instance. It may be stated here that according to the prosecution, and as per the evidence of PW.12 and the Investigating Officer, on 02.07.2009 the accused appeared before PW.12 – the owner of the hotel and made an extra-judicial confession before him and he produced the accused before the Investigating Officer-PW.20.

44. The cumulative effect of the foregoing discussion is that the prosecution has miserably failed to prove its case against the accused much less beyond reasonable doubt. The evidence on record is full of major discrepancies and inconsistencies and at times is self-contradictory. The learned trial Judge has not appreciated the evidence on record in proper perspective and has erroneously found the appellant-accused guilty of the charges and convicted him as stated above. The said Judgment cannot be sustained for the reasons discussed above.

45. In the result, the Criminal Appeal is allowed. The conviction and sentence of the appellant/accused for the offences punishable under Sections 302 and 307 of I.P.C., are set aside. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in

any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

Pending miscellaneous applications, if any, shall stand closed in consequence.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date:01.03.2016

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