

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HON'BLE SRI JUSTICE S.V. BHATT

AND

***HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**
+CRIMINAL APPEAL No. 895 OF 2011

%25.11.2017

#Between:

Sama Saraiah @Raju

...Appellant/ accused

AND

State of AP rep. by Public Prosecutor
High Court of A.P.

... Respondent

!Counsel for the appellant : M/ s. Dr.Y.Padhakrishna Murthy,

Counsel for the respondents : Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

1. (2002) 1 ALD CrI.36 SC
2. (2007) AILD 169 (SC) (DB)
3. (2014) 13 SCC 90
4. (AIR 1974-SC-1168)
5. AIR 1963 SC 2000
6. (2004) 2 ALD CrI.916 SC
7. 2016(4) R.C.R. (Criminal) 753
8. 1999 [5] SCC-96
9. 2003 (11) SCC 271 para 12
10. AIR 1977-SC-1830
11. (2017) 3 SCC 760
12. (2017) 7 SCC 177
13. (2008)- SCC (CrI)-264
14. 2003 SCC (CrI) 1965
15. (2008) 1 -SCC (CrI) 109
16. 2003 -SCC -(CrI)-2033
17. 1999-SCC (CrI)-376
18. (2007 1-SCC (CrI)-155
19. (2006) 2-SCC (CrI)-115
20. (2007) 3 SCC 1(DB)
21. (2017) (2) ALD (CrI 837(SC) (DB)
22. AIR 1981 -SC-1241

HON' BLE SRI JUSTICE S.V. BHATT

AND

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL APPEAL No. 895 OF 2011

JUDGMENT (per Hon' ble Dr. Justice B. Siva Sankara Rao)

The Criminal Appeal is filed by the sole accused (Sama Saraiah@ Raju) against the conviction judgment, dt.01.06.2011 in S.C.No.681 of 2010 passed by the III Addl. Sessions Judge, Karimnagar, where he was charged for the offences punishable u/ sections 302, 498-A & 201 IPC, pursuant to Cr.No.110 of 2010 of Jammikunta P.S. and from the investigation police filed the final report that was taken cognizance by the learned committal Magistrate for the offences supra in PRC No.65 of 2010 and on committal to the Sessions Division, the Sessions Case number was allotted by taken on file and made over to the learned Sessions Judge supra and from the charges framed after hearing from prima facie accusation on the prosecution material and on full-fledged trial covered by the evidence of the prosecution witnesses P.Ws. 1 to 22, with reference to Exs.P. 1 to P.13 and material objects 1 to 6, with no independent defence evidence of the accused; the trial judge having found the accused guilty on all the three charges for the three offences supra and after hearing the accused on quantum of sentence, convicted and sentenced him as per Section 235(2) CrPC on charge No.1 for the offence punishable u/ section 302 IPC, with imprisonment for life (rigorous) and to pay fine of Rs.5,000/- with default sentence of six(6) months Simple Imprisonment; on Charge Nos.2 and 3 for the respective offences punishable

u/ sections 498-A and 201 IPC, with imprisonment for 3 years (rigorous) and to pay fine of Rs.3,000/- with default sentence of three (3) months Simple Imprisonment in each and that all the three substantial sentences shall run concurrently and by giving set off of the period of remand.

2). It is said conviction judgment impugned in the appeal with contentions in the grounds of appeal vis-à-vis the oral submissions of the learned counsel for the appellant/ accused that the trial Court's conviction judgment instead of acquittal of the case rested on circumstantial evidence without linking the chain of circumstances by failure to prove beyond reasonable doubt of its case by the prosecution is contrary to law, weight of evidence, probabilities of the case, also unsustainable in law and on fact for even none of the ingredients of any of the three offences covered by the three charges could be proved as required by law, that the trial court has reached the conclusions purely based on assumptions and presumptions without substance and by ill-appreciation of the evidence of the witnesses with reference to contradictions and improbabilities and even there is no proof of any marriage between the accused and the deceased to attract the offence u/ section 498-A IPC, apart from no proof of the accused and deceased were last seen together and thus sought for setting aside the conviction judgment by acquitting the accused/ appellant on all the three charges by finding him not guilty for no proof beyond reasonable doubt.

3). Whereas, submission of the learned Public Prosecutor on behalf of the State and the prosecution agency is that the trial Court's judgment is a reasoned one to its every conclusion by well-appreciation of the facts with reference to law having fresh in mind of facts with opportunity of recording the evidence that shows even case rested on circumstances, by linking the chain with no any gap of the circumstances in proving guilt of the accused beyond reasonable doubt on all the three charges and as such for this Court while sitting in appeal, there is nothing to interfere even entire matter is at large for appreciation afresh and hence to dismiss the appeal.

4). The factual matrix of the case on hand from the entire material including with reference to the respective submissions as gleaned and perused in nutshell is as under:-

The deceased Sathemma was the third daughter of the defacto-complainant Mahankali Sankaraiah(P.W.1) of Kachepalli village, Bejjur Mandal of Adilabad District. The accused Soma Saraiah @ Raju is the eldest son of Soma Rajaiah and P.W.4-Pochavva of Korapalli. One Mahankali Bheemaiah of Pinchikalapet village, Bejjur Mandal brought the accused to the house of the P.W.1(which was happened four months prior to said Sathemma met with death), with the marriage proposal to accused with Sathemma, for which he replied to see their details by visiting them. Said Saraiah came and stayed in their house and later took away Sathemma and then P.W.1 thought that they might return after some days. While so, on 26.04.2010 his younger brother

Mahankali Bapu(P.W.2) made a phone call to him at about 9.00 A.M. or so that he received phone call from the accused Saraiah stating he killed Sathemma. On such information, himself and his relatives went to Korapalli and made search of his daughter and found the dead body at backside of FCI (godowns) in a canal in decomposed state. The said Saraiah physically harassed his daughter Sathemma by suspecting her character and killed her and thrown her body there. To take action he presented the Ex.P.1-report cause written there to Jammikunta Police on that day at the police station. It was registered as Cr.No.110 of 2010 by P.W.21 Sub Inspector-Srinivas for the offences punishable u/ sec.498-A and 302 IPC and issued Ex.P.8-Express FIR with copies to all concerned and took up investigation having examined the defacto-complainant by recorded his statement, prepared rough sketch covered by Ex.P.4 and photographed the body there covered by Exs.P.2 and 3(6 photos with C.D.) and brought the dead body to the Government hospital, Jammikunta and handed over further investigation to the Inspector of Police, P.W.22-Srinivasa Rao. P.W.22 visited Government hospital, Jammikunta, and verified the investigation of P.W.21 and took up further investigation on 27.04.2010. On his requisition, P.W.10-the Tahasildar, Jammikunta held inquest under Ex.P.5, in the presence of L.W.25-S Ram Reddy, P.Ws.1,2 supra, P.Ws.15 and 17 by names M.Ramesh and J.Babu besides L.W.2-M.Lakshmi, L.W.3-M.Purushotham, and P.W.22 having examined them cause photographed the dead body through P.W.13-T.Satish whose statement also recorded and P.W.19-

K.Bhasker Rao seized yellow saree, red colour blouse, yellow petticoat - M.Os. 1 to 3 from the body of the deceased and P.W.20- Doctor Sashirekha and L.W.31-Doctor Ankush conducted autopsy on the body of deceased Sathemma, covered by Ex.P.7 Post Mortem report, dt.27.04.2010. They finally opined that the death of Sathemma was due to throttling and also from blunt and heavy object inserted in the vaginal organ of the deceased. P.W.22 also visited the scene of offence and examined witnesses including P.W.4-Pochavva, LW.7-Sheshamma, P.W.5-Gowravva, L.W.9-Kumaraswamy, P.W.6-Manemma, L.W.11-Rajanarsu and L.W.12-Modhunamma and recorded their statements. In the course of further investigation, P.W.22-Inspector on reliable information rushed to Yellanthakunta and apprehended the accused at his rented house on 09.06.2010 at about 5.00 P.M. and secured presence of P.W.18-Peddi Adi Reddy and L.W.29-A.Rajamouli and also P.W.14-M.Srinivas and on questioned the accused having taken to custody and whatever the disclosure made by the accused voluntarily about his complicity to the crime was reduced to writing under Ex.P.6(marked as admissible portion of it) panchanama by seizure of M.Os.4 to 6-the blanket, stone and bicycle and the proceedings also covered by P.W.14 by video coverage and the accused was submitted to judicial custody later and cause sent the material objects to RFSL Karimnagar, and also examined in the course of investigation P.Ws.7 to 12-Yellamma, Yellaiah, Nagaraju, Ramu, Pooja and Ramesh respectively besides Pochaiah and Bheeshma L.Ws.17 and 20. On the requisition of the

Investigation Officer, L.W.32-the learned Magistrate recorded the statements u/ sec.164 CrPC of P.Ws.1,2,4 to 7 besides L.Ws.2,12 and 17 by names Lakshmi and Pochaiah etc. After FSL report and PM report received and on completion of investigation, filed the charge sheet, stating the above facts and that accused studied in Government High School, Jammikunta 7th class being eldest among 7 sons and was initially followed his father in their profession of beating drums and telling stories in the villages for livelihood and later accused by doing stove repair or begging or otherwise roaming in and around and luring women or girls by marriage or otherwise, including a married among the relatives, victims of him by staying for some time with all sorts of ill-treatment for which either they were fleeing away or keeping them somewhere by him and in that modus operandi, he lived with deceased by enticed from her parents for a short period and by harassment he ultimately killed her within four months of their living together on 24.02.2010 by throttling her and wrapped in a blanket the dead body and tied the same on his bicycle and taken away and thrown at the tunnel of drainage on the backside of the FCI godowns by concealing the evidence and his complicity if possible.

5). Initially on the three charges framed against the accused for the offences supra, his answer is said Sathemma left his house and he is innocent. In section 313 CrPC examination, he has stated that P.W.1-father of the deceased consented for marriage of him with deceased. However stated that he did not bring Sathemma from the house of P.W.1., which answer is

contrary to his answer during hearing on charges as referred supra of said Sathemma left his house. The answer is relevant and admissible if not conclusive proof, at least to lend corroboration to the evidence let in during trial on the proof of the facts of the accused and deceased lived together at his place of residence. It is therefrom to consider how far his version of she left his company while they were living together at his house before her death is true.

6). The trial Court, from the evidence on record supra by its appreciation, observed that P.W.4-Pochavva, mother of the accused, in her evidence deposed of she is not residing with accused, they earlier performed three marriages to the accused one with Sheshamma, second with Padma and the third with P.W.6-Manemma and he secured one Saramma and blessed with a son, secured another Lachamma and got a daughter and a son, got two daughters through Manemma-P.W.6 and later secured Sathemma(deceased) with a proposal to marry her visited with his parents, the parents of Sathemma, they wanted to consider on enquiry, however, meantime he brought Sathemma from her parents house and started living with Sathemma at Korapalli where he was ill-treating and from the neighbours objected for it, he left Korapalli to Yellanthakunta and started living there in a rented house with Sathemma and she came to know he killed her there by suspecting her fidelity. The trial Court observed that there is nothing in the cross-examination of P.W.4 in this regard, which is duly corroborated by other evidence viz., besides the accused

killed the deceased Sathemma was revealed by his telephonic message to P.W.2 as deposed by P.W.2 in proof of the same and who in turn informed the same to P.W.1 who as deposed came to know of it and came to Jammikunta and searched and found the dead body and lodged complaint and P.W.6-Manemma, also deposed in corroboration to it of the modus operandi of the accused in securing women including a married women among relatives and living for short periods and ill-treating and their leaving him with unbearability and she also left him thereby and later he secured the deceased. P.W.7-Yellamma also deposed being the owner of the house at Yellanthakunta taken on rent by the accused at Rs.100/- per month where he stayed with wife and one son and one daughter and he was living by circus feats on cycle or otherwise for livelihood and he vacated the house and left to another house there at Yellanthakunta. P.W.5-Gowramma also deposed about the accused securing several women and his ill-treatment of them and accused borrowed amount and failed to repay to one Iron scrap owner through her mediation and accused took her with the children at Bejjanki on pretext of Durga Pooja of which P.W.4 was also called who is her elder sister and accused confined them with a threat to spoil her life and tortured for months and she escaped to Kunchenapalli and she did not lodge any complaint out of fear to him and to protect the reputation of her family. P.W.11-daughter of the accused studying in shishu(sishuvihar), stated residing in orphanage aged about 5 years, deposed without need of oath of got another younger brother and

their natural mother is Mamatha and accused brought the deceased and were residing together and she does not know what happened to that Sathemma(Satya). Said evidence of the prosecution establishes in all fours the chain of circumstances with connectivity of accused killed the deceased by ill-treatment brutally and screened the evidence and thereby liable for the offences including from the medical evidence and Forensic evidence in substantiating the same.

7). From the above, in deciding the appeal by sitting against the legality and correctness of the Trial Court's conviction judgment with findings supra, the following points arise for consideration:

i). Whether there is corpus delicti and if so whether it is homicidal (which are the fundamental facts necessary for the proof of commission of the crime of killing Sathemma-so called deceased)?

ii). If so whether the prosecution case of she was killed by the accused by ill-treatment and caused to disappear the evidence of commission of the offence is proved beyond reasonable doubt of the case rested on circumstantial or from any real or direct evidence or its combination?

iii). Whether the trial courts conviction judgment in finding the accused appellant guilty for all the three offences charged as proved is unsustainable and requires interference by this court while sitting in appeal by re-appreciation of the facts and law?

iv). To what result?

Points 1 to 3:

8). Before going further into the factual matrix, it is necessary to mention that the case of prosecution is rested on the

extra judicial confession of the accused over phone to the PW2 and its admissibility and relevancy under Sections 24 and 8 of the Indian Evidence Act(for short, 'the IE Act'), which in fact from in turn communication of P.W.2 to P.W.1, from that he set the law in motion, besides the discovery of the facts within the exclusive knowledge of the accused from the disclosure by accused to the investigating officer-P.W.22 leading to seizure of the MOs.4-6 and its admissibility and relevancy under Sections 27 and 8 of the IE Act, and the medical evidence from the postmortem examination of the deceased with reference to anti-mortem injuries and other oral and circumstantial evidence placed on record.

9).It is the settled law to refer in this regard on appreciation of evidence that Court need not blindly rely upon what a witness deposed but for appreciation of entire evidence on record with attending facts and circumstances including in judging the credibility of each of the witness to ascertain truth, which is the quest in the voyage of trial. Further, in appreciation of evidence, it is the settled law that, minor contradictions or inconsistencies cannot be used to jettison the evidence in its entity. The rule is that, corroboration cannot be expected with mathematical niceties in criminal cases. It is also the settled law that, discrepancies due to normal errors of perception and observation should not be given importance. It is also the settled law that mere lapses in investigation cannot be of any help to the accused unless prejudice shown caused to him. Further, evidence of a witness can be partly rejected and partly accepted for the doctrine of *falsus in uno*

falsus in omnibus does not apply in India and it is the duty of the Court to separate the grain from the chaff in arriving truth from the reliability of the version of a witness by ignoring any minor discrepancies, omissions, exaggerations and embellishments and even evidence of a hostile witness cannot be discarded as a whole but for to consider where it corroborates the other evidence by appreciation of credibility of the witness to that extent in arriving at truth by calling him into aid the experience of the Court in men and matters in different cases in evaluating by excluding exaggerated versions rather disbelieving evidence of the witnesses altogether for the reason even major portion of evidence of a witness found to be deficient where in case residue is sufficient to the relevancy and admissibility, it is the duty of the Court to separate the grain from the chaff, otherwise administration of criminal justice would come to a dead stop and it cannot be overlooked that witnesses just cannot help in giving embroidery to a story, however, truth is the main, as held in *Sukhdev Yadav Vs. State of Bihar*¹, *State of Maharashtra Vs. Tulshiram Bhanudas Kamble*² and *Paulmeli Vs. State of Tamilnadu*³. The law in appreciation of evidence from the fundamental principle is that no one can incriminate himself but for truth. It is also the principle to draw the ordinary presumption as laid down in *State of Punjab Vs., Harisingh*⁴ that, *a witness is speaking under an oath is truthful unless and until it is shown from test of cross-*

¹ (2002) 1 ALD CrI.36 SC

² (2007) AILD 169 (SC) (DB)

³ (2014) 13 SCC 90

⁴ (AIR 1974-SC-1168)

examination and with other attending circumstances brought on record to be unbelievable or untruthful and it should not be assumed that the witnesses are untruthful generally; unless, it is proved that they are telling the truth.

(a) Before appreciating the facts, it is also necessary to mention the well settled law from the five judges' Bench expression of the Apex Court reported in *M.G.Agarwal Vs. State*⁵ with reference to Sections 3 & 60 of the IE Act, at Para 18 that it is the well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made basis for an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. But in applying this principle, it is necessary to distinguish between facts, which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The Court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of

⁵ AIR 1963 SC 2000

guilt of the accused person or not, and in dealing with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.

(b) Further, as referred in the judgment of the lower Court at para-32 what is laid down by the expressions of the Apex Court in *Usman Main Vs. State of Bihar*⁶ if a case is rested wholly on circumstances from which an inference of guilt is sought to be drawn it must be on the circumstances taken cumulatively, complete a chain with no escape from the conclusion and within all human probabilities of the crime was committed by the accused and none else.

(c) Coming to the well defined concepts of 'proof beyond reasonable doubt and benefit of doubt and its application in appreciation of evidence particularly of a case rested on circumstantial evidence', in *Yogesh Singh vs Mahabeer Singh*⁷ it was held at paras-15 to 18 as follows:

“15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J., in *State of U.P. Vs. Krishna Gopal and Anr.*, (1988) 4 SCC 302:

“25. ...Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any

⁶ (2004) 2 ALD CrI.916 SC

⁷ 2016(4) R.C.R. (Criminal) 753

favorite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice." [See also Krishnan Vs. State, (2003) 7 SCC 56; Valson and Anr. Vs. State of Kerala, (2008) 12 SCC 24 and Bhaskar Ramappa Madar and Ors. Vs. State of Karnataka, (2009) 11 SCC 690].

16. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. [Vide Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808; State of Rajasthan Vs. Raja Ram, (2003) 8 SCC 180; Chandrappa & Ors. Vs. State of Karnataka, (2007) 4 SCC 415; Upendra Pradhan Vs. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain & Ors. Vs. State of Assam and Anr., (2015) 11 SCC 242].

17. However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by this Court in State of Punjab Vs. Jagir Singh-(1974) 3 SCC 277:

“A criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and fantasy. It concerns

itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge, the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures."

18. Similarly, in Shivaji Sahebrao Bobade & Anr. Vs. State of Maharashtra, (1973) 2 SCC 793, V.R. Krishna Iyer, J., stated thus:

"The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."

10). In State of Haryana Vs. Bhagirath⁸ at paras 7 and 8, it was defined by referring to previous expressions that the benefit of doubt giving to accused as a matter of abundant caution is not proper. The rule of proof beyond reasonable doubt is nothing but moral certainty of Judge. Any restraint by way of abundant caution need not be enlarged with the concept of the benefit of doubt. Abundant caution is always desirable in all-spheres of human activity. The pristine doctrine of benefit of doubt can be invoked when there is only a reasonable doubt and not every or any doubt regarding the guilt of accused. It is only the reasonable doubt

⁸ 1999 [5] SCC-96

which a conscientious judicial mind entertains on a conspectus of the entire evidence, that the accused might not have committed the offence, which affords the benefit of doubt to accused at the end of trial. Benefit of doubt is not a legal dosage, to be administered at every segment of the evidence, but an advantage is to be afforded to accused at the fag end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of accused. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the ranges of a reasonable doubt, of course, the expression "reasonable doubt" is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty of the Judge.

11). In *State of Punjab Vs. Karnail Singh*⁹, it was held that "Exaggerated devotion to the rule of benefits of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escapes than to punish an innocent. Letting guilty escape is not doing justice according to law. From this, it is to say with reference to the propositions of law, that the factual matrix of the case is not solely rested on circumstantial evidence.

⁹ 2003 (11) SCC 271 para 12

12). From the above coming to the appreciation of evidence on facts of the case, there is an extra judicial confession made by the accused to P.W.2 over phone, that in turn informed by P.W.2 to P.W.1, in searching for deceased and found the body and set the law in motion by report to police in registering the crime and taken up investigation. P.W.2 deposed that he knows the accused from the time accused eloped Sathemma(deceased), daughter of P.W.1 and on 26.04.2010, the accused made a phone call to his cell phone at about 9.00 AM informing him that he killed Sathemma. He then informed to P.W.1 about what accused informed him over phone and he along with P.W.1, his brother Purushotham and Mahankali Lakshmi etc., rushed to Jammikunta as accused informed him that he has thrown deadbody of Sathemma at a drainage canal near FCI godown. They went there and found the deadbody of Sathemma and by then people even gathered. The deadbody was lying packed in a blanket and it was in decomposed condition. He was examined by police and he also stated the facts before the learned Magistrate, Karimnagar. In his cross-examination by accused, he deposed that he stated before police about the accused informed him that he threw the deadbody of Sathemma into a drainage channel near FCI godown, Jammikunta and denied the suggestion contra to it. He also deposed about his owning cell phone for last 5 to 6 years and his cell phone number as on 26.04.2010 was 9701796325 of Airtel Company SIM and Nokia phone. He deposed that the police seized the cell phone later from him and he does not know whether what enquiries they made

with regard to the calls received or made using the phone on 26.04.2010. He categorically deposed that accused telephoned to him on that day at 9.00 A.M. informing that he killed Sathemma and they all reached the place by 4.00P.M. at Jammikunta. He deposed that now he cannot say what is the cell phone number from which the accused made a call to his phone though he has shown the S.I. in his cell the number of the cell phone from which he received call from accused at 9.00A.M. and S.I. noted the fact. He denied the suggestion of accused has no acquaintance of him or with P.W.1 or with Sathemma and accused did not make any phone call to him much less on that day and much less informing of he killed Sathemma and thrown her deadbody near FCI godown Jammikunta at a canal. He deposed that by the time they reached the deadbody police also there.

13). From the above cross-examination, there is nothing to show he got any animosity against the accused. Even it is elicited to establish the factum of he got cell phone and accused made a call to the cell phone of him saying he killed Sathemma and thrown the deadbody near FCI godown at a channel in Jammikunta village and therefrom he informed to P.W.1 and they all thereafter rushed to Jammikunta in search and found the deadbody which is at about 4.00 P.M. or so. There is nothing to discredit his testimony in the chief-examination by said cross-examination of him. There are no any material contradictions brought from his evidence with reference to the evidence of P.W.22-the Investigating Officer who recorded his statement. In the cross-examination of P.W.22 in this

regard, on 16.03.2011 what he stated is when he examined P.W.2 he stated before him that accused informed him over phone of he killed Sathemma but did not state of he also informed about thrown the deadbody of Sathemma in the drainage canal. Thus what all the omission if at all is about throwing of the deadbody and corroborated about the factum of accused killed Sathemma-deceased. Even the factum of thrown the deadbody shown not stated before police when examined, in the cross-examination it is elicited and after getting answer even a suggestion denying the same given even, it is of no consequence much less to discredit his version.

14. From this now coming to the evidence of P.W.1 in testing the veracity of the evidence of P.W.2, what P.W.1 stated is that the deceased Sathemma is his third daughter. He knows Mahankali Bheemaiah, his cousin of Penchikalapet, Bejjur Mandal, Adilabad district, who informed about accused Saraiah and he belongs to Jammikunta and said Bheemaiah brought the accused Saraiah for the marriage proposal to accused with his third daughter Sathemma, which is four months prior to the finding of deadbody of Sathemma. He wanted time for the proposal to verify. Four days later accused came to his house with his parents and they saw his daughter Sathemma and P.W.1 informed them to visit their house at Jammikunta to confirm the marriage proposal. Few days later accused came to the house of P.W.1 during night and took away his daughter. Accused four days later informed over phone to the cell phone of P.W.1's son Purushotham that he brought

Sathemma to Jammikunta and they were staying together. It is four months later to the accused eloped Sathemma and she was staying with him, P.W.2 Babu informed that accused killed Sathemma and they all rushed to the house of accused at Jammikunta, he was absent and his parents were present and when he questioned them they informed about Sathemma was killed by the accused and the deadbody is at drainage channel near FCI godowns which they found in decomposed state and he went to Jammikunta P.S and lodged complaint which as per his narration drafted there which is Ex.P.1 dt. 26.04.2010(from which P.W.21 issued Ex.P.8 express FIR of Cr.No.110 of 2010 of even date. P.W.1 deposed that he was examined by Police and stated the facts so also before the Magistrate, Karimnagar. The saree, blouse and petticoat of Sathemma at that time found, collected during postmortem examination, were identified as M.Os.1 to 3. In his cross-examination, P.W.1 deposed that he stated before the police that first time accused and Bheemaiah came to his house and later accused with his parents came to his house. He denied the suggestion of he did not state so before police but for accused and his parents came together to his house. Once it is elicited in the cross-examination specifically even it is not stated in the statement before the police it cannot be called as omission but for what is stated in the chief examination that is not contained in the statement before police or in his report setting the law in motion. He denied the suggestion of he did not state in his statement or in his report about accused came in the night and eloped his daughter

by taken away with him and also did not state about four days later accused telephoned the fact of he and the deceased were living together. He deposed further that the deadbody was identified by him which is that of his daughter only(to confirm the *corpus delicti*). He deposed that by the time he with P.W.2 etc., went to the deadbody at Jammikunta on that day, police were there. He denied the suggestion of accused never visited to his house and never proposed to marry Sathemma and never took away Sathemma with him and Sathemma never lived with him. In fact, said suggestion is quite contrary to what the accused stated his answers during 228 CrPC examination on charges and also during section 313 CrPC examination. P.W.1 also denied the further suggestion of accused is nothing to do with the death of Sathemma and he never informed P.W.2 Babu of he killed Sathemma. What the omissions pointed out from his evidence with reference to the examination of P.Ws.1 and 2 are regarding only accused and Bheemaiah first time came and four days later accused with his parents came but for stated accused with his parents came. It is immaterial of who came first for even from that, the accused came to P.W.1's house for marrying Sathemma is reiterated in the cross-examination. However, contrary to it in the further cross-examination suggested of accused never came to their house and never took away Sathemma and never lived with Sathemma. If that is taken, the factum of the marriage proposal by accused brought through Bheemaiah to marry the deceased in proposing with P.W.1 and who thought to consider and later

accused taken away Sathemma from the house of P.W.1 and they lived together at the house of accused are clearly establishing. Further P.W.4-mother of the accused herself categorically deposed about the marriage proposal by accused to Sathemma for which they all went to the house of the P.W.1 and P.W.1 wants time to consider and before that accused enticed Sathemma from house of P.W.1 and started living with her at their village and the neighbours for his ill-treatment of Sathemma when questioned he shifted the residence to another rented house and P.W.7-Yellamma-the owner of the rented house also deposed the same. It all establishes that accused without marriage of Sathemma, eloped Sathemma and taken her away from the house of P.W.1 and started living with her. From this now coming to consider whether accused and Sathemma lived together till her death or Sathemma left while staying with accused at his house as stated by him in his answer to the examination on charges referred supra. In this regard P.W.11 no other than daughter of the accused aged 5 years by the time of her evidence, deposed that the accused is her father by name Saraiah and she got another younger brother and both of them are residing on orphanage by studying in Shishu vihar. She also deposed about her paternal grandparents used to reside with them in corroborating the evidence P.W.4-paternal grandmother. She further deposed that her natural mother's name is Mamatha. She got another mother by name Satya (deceased Sathemma) who used to reside with them and she does not know what happened to said another mother Satya (deceased

Sathemma). There is no cross-examination of the witness by the accused.

15). From the above evidence, it categorically establishes the accused and the deceased were residing together since four months prior to the death of the deceased in the house of accused along with the two children and the parents of accused were also residing. In his examination on charges what the accused stated as if deceased left his house is false from the evidence of P.W.4 read with that of the child witness P.W.11. In this regard, P.W.4 mother of the accused also categorically deposed that accused was beating Sathemma and when neighbours objected, he shifted the family of him with deceased to a rented premises at Yelenthakunta from Korepalli. In the cross-examination by the accused also, P.W.4 categorically stated the accused was ill-treating Sathemma and she is also afraid of the accused. There is nothing to attribute any motive against P.W.4 to depose falsely against her son-the accused. P.W.10-S Ramu of Yelenthakunta deposed that accused resided in their village for few days in the house of M.Pochamma on rent with his wife and two children. P.W.12 one of the important circumstantial witnesses by name Ramesh of Korepalli deposed that he knows the accused Saraiah who is living by circus feats and stove repairing etc and one day after midnight at about 1.30A.M. he saw the accused going with a cycle carrying a bag like thing and at that time, he was returning from the second show cinema and talking with one Bheeshma near belt shop for liquor and it was happened six months ago. He stated the facts to the

police. In the cross-examination he deposed that his house is one kilometer away to the theatre and two kilometers away to the Yelenthakunta and there is alternative way also from Yelenthakunta to reach their village. He denied the suggestion of he did not state the same to the police or he did not witness anything. In the evidence of P.W.22 Investigating Officer, there is no omission or contradiction from this witness P.W.12 brought in but for saying the witnesses are planted so also material objects.

16). From this evidence supra particularly that of the P.W.11-child and neighbours including P.W.10-Ramu, P.W.7-Yellamma and P.W.4-Pochavva, it establishes till deceased breathed last the accused and deceased were living together under same roof. Then it is for the accused to explain what happened to Sathemma. Here, there is corpus delicti and evidence of P.W.1 and 2 is clear of the deadbody is that of the deceased and P.W.3-Head Constable also clearly deposed of the deadbody found was capable of identification and once it is the deadbody of the deceased Sathemma found and P.W.12 evidence also shows accused carrying on his cycle after midnight soon after death of Sathemma some bag like thing in proceeding towards place of the deadbody found, it substantiates from the circumstances not only the false defence of the accused with different versions of never resided or does not know Sathemma or of she left his company while staying with him though she was in his company till breathed last and it is for him to explain the special circumstances within his knowledge else to draw adverse inference against him as laid down by the Apex Court

in Balaram Vs. State¹⁰ under sections 106 and 114 of the IE Act about her homicidal death that is proved from the postmortem examination evidence of P.W.20 doctor-Rajamohan Lal from the autopsy conducted on 27.04.2010 of death occurred 60 to 70 hours prior to that as indicated in Ex.P.7 P.M. report with injuries of depressed mark on neck with haematoma under and around neck structures and found fracture to the Hyoid bone and C.Cartilage fracture also found which are anti mortem and the death is due to throttling and also found a blunt heavy object on opening the private parts of the deceased with injury that appears pushed into her private parts the stone like blunt heavy object. It clearly shows she was brutally killed and there is no worth cross-examination of P.W.20 supra but for a stray sentence of Hyoid bone not sent for FSL.

17). Further, the accused having kept the cycle and the stone somewhere that is after arrest from his disclosure seized as proved by P.W.13 photographer and P.W.14 Videographer, P.W.22 Investigating Officer and P.W.18 Village Revenue Officer, and for the question No.36 in the Section 313CrPC examination, his answer is that the VRO-P.W.18 and the Inspector of Police-P.W.22 and his staff etc., followed him to Yelenthakunta to the house of P.W.4-his mother and videographer also accompanied them, though denied the further question of he made a disclosure about M.O.4 blanket where thrown and M.O.5 stone, M.O.6 cycle where kept, same as a fact discovered is relevant and admissible under Section 27 of the

¹⁰ AIR 1977-SC-1830

Evidence Act, not only the objects recovered but also the state of the mind of the accused as held by the Apex Court (3JB) in *Kishore Bhadke Vs. State of Maharashtra*¹¹ and of (2JB) in *Charandas Swamy Vs. State of Gujarat*¹². Even the same to be taken only as a corroborative piece with other evidence, it also from the fact that the accused after the occurrence and after concealing the evidence by throwing the dead body fled away and was in abscondence till he was arrested sometime later which all links the chain of circumstances pointing out the guilt of the accused to draw the hypothesis that but for in the hands of the accused, in the hands of no others the deceased was killed.

18). Apart from this, there is the extra-judicial confession as referred supra proved of accused killed the deceased which is admissible and relevant under Section 24 of the Indian Evidence Act. In this regard coming to the evidentiary value of it, the Apex Court in *Aloke Nath Dutta Vs., State of West Bengal*¹³ held that though extra judicial confession need not contain reproduction of exact words in the so-called extra judicial confession, the maker took the entire blame on himself without implicating others and no circumstance brought out doubting the extra judicial confession including by the cross-examination of the prosecution witnesses, held from that extra judicial confession, it proves the involvement of the accused in the crime beyond reasonable doubt to solely act upon since voluntary and in the form of natural response. To that

¹¹ (2017) 3 SCC 760

¹² (2017) 7 SCC 177

¹³ (2008)- SCC (Crl)-264

conclusion, the Apex Court referred good number of earlier expressions. From reading of this decision, it clearly proves from Paras 64 to 74 that even an extra judicial confession can be taken as a sole basis as against the maker if it is voluntary and acceptable.

19). In fact in the above referred *Aloke Nath Dutta's case of (2008) 2 SCC (Crl)-264* from para-68 following in *State of Rajasthan Vs., Raja Ram*¹⁴, held as follows:

"If the extra judicial confession is voluntary and true and made in a fit state of mind, can be relied upon by the Court. It has to be proved like any other fact. The value of evidence as to confession like any other evidence depends on the veracity of the witness to whom it has been made. It depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witness who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness, which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of conviction if it passes the test of credibility like any other evidence."

¹⁴ 2003 SCC (Crl) 1965

“The requirement of corroboration to extra judicial confession like any other evidence is a matter of prudence and not an invariable rule of law.

19). The Apex Court also referred another decision of *Gagan Kanojia Vs., State of Punjab*¹⁵ in support of the proposition in holding that extra judicial confession, as well known, can form the basis of a conviction. By way of abundant caution, however, the court may look for some corroboration. Extra judicial confession cannot ipso facto be termed to be tainted.

20). In another referred expression of the Apex Court reported in *Nazir Khan Vs., State of Delhi*¹⁶, it was held, A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt”, and to that conclusion also placed reliance on *Ramkhilari Vs., State of Rajasthan*¹⁷, *Namala Subba Rao Vs., State of A.P.*¹⁸; and also relied upon *Kulwinder Singh Vs., State of Punjab*¹⁹ – wherein it was laid down that, the evidentiary value of an extra judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances, but also the time when the confession had been made and the credibility of the witness, who testifies thereto.

21). Extra-judicial confession even made to a stranger can be considered if it is found to have been truthful and voluntarily made before a person who has no reason to state falsely as held in *Ram*

¹⁵ (2008) 1 -SCC (Crl) 109

¹⁶ 2003 -SCC -(Crl)-2033

¹⁷ 1999-SCC (Crl)-376

¹⁸ (2007 1-SCC (Crl)-155

¹⁹ (2006) 2-SCC (Crl)-115

Singh Vs. Sonia²⁰. Same is also reiterated in Satish and another etc., Vs. State of Haryana²¹.

22). It is also the position of law laid down in *Prahlad Vs., State*²². As such, where the extra judicial confession is shown voluntarily made by the accused and the witnesses no way inimical or interested to falsely implicate and there are no any other circumstances to doubt credibility of the witness; it can be a sole basis and no way a corroborative piece or a weak piece of evidence.

23). The settled law from the above expressions of the Apex Court is that extra Judicial confession even can form a sole basis for conviction even in a case totally rested upon circumstantial evidence.

24). Thus, from the above even the case rested partly on circumstantial evidence, all this cumulatively establishing including from the plea of the accused and his abscondence after the occurrence having thrown the deadbody on the back side of FCI godowns in screening the evidence and the ddeceased while living in his company was killed that shows it is the accused in whose hands the deceased met with death and in none else is proved from the evidence.

25). Coming to the attracting of offence covered by charge No.2 under Section 302 IPC or not against the accused, the above

²⁰ (2007) 3 SCC 1(DB)

²¹ (2017) (2) ALD (Crl 837(SC) (DB)

²² AIR 1981 -SC-1241

discussed evidence particularly of the doctor-PW.20 with reference to the Ex.P.7-PM report clearly establishes that the injuries are sufficient to cause death and there is nothing thereby to bring the case either under part-1 or part-2 of Section 304 IPC.

26). However, coming to the charge under Section 498-A IPC concerned, from the evidence on record there is no marriage or relation of wife and husband between accused and deceased to attract Section 498-A IPC and thus the finding of the trial Court on charge No.2 is liable to be set aside but for confirming the findings of the trial Court on charge Nos. 1 and 3.

POINT No.4:

27). Accordingly and in the result, the appeal is partly allowed to the extent while acquitting the accused for the offence under Section 498-A I.P.C., on charge No.2 as per section 235(1) Cr.P.C by ordering of refund of fine paid if any; his conviction and sentence passed by the trial court having been found guilty for the offences punishable under Sections 302 & 201 IPC on the charge Nos.1&3 under Section 235 (2) Cr.P.C. respectively are confirmed for nothing to interfere.

Consequently, miscellaneous petitions pending in this Criminal Appeal, if any, shall stand closed.

S.V. BHATT, J

Dr. B.SIVA SANKARA RAO J,

Date:25.11.2017

Note: L.R. Copy to be marked.

b/ o.vvr