

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL No. 296 OF 2011

JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') questioning the judgment dated 06.03.2009, passed by the learned II Additional Sessions Judge, Warangal (for brevity, 'the trial Court') in Sessions Case No.787 of 2007, whereby the trial Court convicted the appellant-accused under Section 235(2) Cr.P.C. for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity, 'I.P.C.') and sentenced him to undergo imprisonment for life and also to pay fine of Rs.5,000/- (Rupees five thousand only) with a default sentence of rigorous imprisonment for a period of one year.

2. Heard Smt. A.Gayatri Reddy, the learned counsel appearing for the appellant, and the learned Public Prosecutor appearing for the State.

3. The case of the prosecution is as follows:

(a) The deceased in this case, i.e., Gopu Renuka aged 20 years, is the wife of the appellant. Their marriage took place about two years prior to the date of incident. During their wedlock, G.Renuka gave birth to one son and one daughter. It is alleged that the appellant is a womanizer and he was maintaining extra marital relations with several women, for which the deceased raised objection. So, the appellant decided to kill

her. In pursuance of his plan, on 25.08.2006 at the early hours, the appellant took his wife-Renuka by Maruthi car to a gravel quarry at Ammavaripet village on the pretext of supervision of work of machine at gravel quarry and while she was peeping into the gravel quarry water pond, he pushed her into pond, due to which she fell down in the water and drowned. On the next day, the appellant went to the said place and saw the dead body of his wife-G.Renuka floating on the water and thereafter went to his house. He had not informed anything about his wife-G.Renuka either to her mother-B.Laxmi or her sisters.

(b) On 30.08.2006, P.W.1-Gangilla Madhusudhan Reddy, who is the Village Secretary of Kothapally, went to inspect the dumping yard of the Municipal Authorities, situated on the left side of the Ammavaripet, which leads to Thimmapuram road in the lands of Krishna Reddy in Sy.No.246, while he was inspecting the said pond at about 11-00 a.m., he found one unknown female dead body aged between 20 to 25 years floating on water in a decomposed state. He also noticed that the tongue was protruded in between the teeth, maggots formed all over the dead body and wearing apparel was brinjal colour panjabi dress. He immediately called L.W.2-Jannu Bondaiah, P.W.2-B.Komuraiah, L.W.4-Baddam Upender and L.W.5-Bathula Venkata Swamy and they could not identify the dead body. On the same day i.e., on 30.08.2006 at about 01-00 p.m., P.W.1-G.Madhusudhan Reddy went to Madikonda Police Station and lodged Ex.P.1-report and the same was registered

by P.W.11-P.Srinivas, Sub Inspector of Police, Madikonda Police Station, as a case in Crime No.115 of 2006 under Section 174 Cr.P.C.

(c) During the course of investigation, P.W.11-Sub Inspector of Police, Madikonda Police Station recorded statement of P.W.1-G.Madhusudhan Reddy, visited the scene of offence, secured the presence of the witnesses, examined and recorded their statements, drafted a rough sketch noting down the physical features in the presence of the mediators, got photographed the dead body, conducted inquest over the dead body in the presence of the mediators and referred the dead body for postmortem examination. P.W.11 made efforts for identification of the deceased but in vain. P.W.13-Dr. Krupal Singh, Assistant Professor, KMC, Warangal, conducted autopsy over the dead body, issued postmortem examination report and opined that the cause of death was due to drowning and the approximate time of death was about 48 to 72 hours prior to his postmortem examination. After the postmortem examination, P.W.11 got the dead body buried at Pothannagar burial ground at Matwada through P.W.3-B.Surender. On 10.06.2007 at about 9-00 a.m., P.W.10-K.Srinivas, Sub Inspector of Police, Mulkanoor Police Station arrested the appellant and interrogated him in the presence of P.W.9-Polu Mogili and L.W.17-Salva Badraiah. The appellant had voluntarily confessed that he committed several property offences and also confessed that he killed his wife-G.Renuka and his mother-in-law-B.Laxmi, which

was recorded by P.W.10-K.Srinivas, Sub Inspector of Police, Mulkanoor Police Station in the presence of two panch witnesses. The appellant was arrested in Crime No.64 of 2007 of Mulkanoor Police Station registered for the offence punishable under Section 307 r/w 34 I.P.C. for an attempt to commit murder on P.W.6-B.Sunitha, who is the younger sister of G.Renuka and he was sent to judicial remand by the learned Judicial Magistrate of the First Class, Huzurabad. Thereafter, the Section of Law was altered in this case from Section 174 Cr.P.C. to Sections 302 and 201 I.P.C. and an express memo was issued to all concerned. P.W.14-K.Muralidhar, Inspector of Police, Ghanpur, Madikonda took up investigation in this case and filed a requisition before the learned Magistrate to issue a P.T. warrant. Accordingly, on 20.06.2007, a P.T. warrant was issued and the appellant was remanded in this case on production of P.T. warrant. P.W.14-K.Muralidhar, Inspector of Police, Ghanpur, Madikonda secured the presence of witnesses, examined and recorded their detailed statements. P.W.6-B.Sunitha, who is the younger sister of G.Renuka, saw the wearing apparel of the dead body through photographs and stated that the dead body belong to her sister-Gopu Renuka. After completion of investigation, P.W.14-Inspector of Police filed charge sheet against the appellant for the offences punishable under Sections 302 and 201 I.P.C.

(d) The learned IV Additional Judicial Magistrate of First Class, Warangal, took cognizance of the offences

punishable under Sections 302 and 201 I.P.C., registered the charge sheet as P.R.C. No.60 of 2007 and committed the case to the Principal Sessions Court, Warangal, as the case is exclusively triable by the Court of Sessions, where it was registered as Sessions Case No.787 of 2007 and the same was made over to the Court of II Additional Sessions Judge at Warangal (trial Court).

(e) On appearance of the appellant before the trial Court, charges for the offences punishable under Sections 302 and 201 I.P.C. were framed against him, read over and explained to him in his language. When questioned, he pleaded not guilty and claimed to be tried. During trial, the prosecution examined P.Ws.1 to 14 and marked Exs.P.1 to P.14 and M.O.1. After closure of evidence of the prosecution, the appellant-accused was examined under Section 313 Cr.P.C. explaining him the incriminating material appearing against him in the evidence of prosecution witnesses. For which, he pleaded not guilty. The appellant-accused did not examine any witnesses to defend him before the trial Court.

(f) The trial Court, after perusal of the entire evidence on record and after hearing both sides, held that the appellant-accused is found not guilty for the charge under Section 201 I.P.C. and accordingly acquitted him under Section 235(1) Cr.P.C. for the said charge; and further held that the appellant-accused is found guilty for the charge under Section 302 I.P.C. and accordingly convicted him under Section 235(2) Cr.P.C. for

the said charge and after hearing him on the question of sentence and sentenced the appellant to undergo imprisonment for life and to pay fine of Rs.5,000/- (Rupees five thousand only) with a default sentence of rigorous imprisonment for a period of one year. Questioning the said conviction and sentence imposed, the appellant-accused preferred the present appeal.

4. Learned counsel for the appellant would submit that there are no direct witnesses to the commission of the offence and the case rests on the circumstantial evidence; the prosecution failed to prove the guilt of the appellant by legal and reliable evidence; there is no legal and acceptable evidence to believe that the dead body belonged to G.Renuka; there is no evidence to believe that the death is homicidal; the trial Court erred in relying on the alleged confession of the appellant said to be made before the police, which is inadmissible in evidence; and ultimately, prayed to allow the appeal by setting aside the conviction and sentence recorded in the impugned judgment dated 06.03.2009 passed by the trial Court in Sessions Case No.787 of 2007.

5. On the other hand, learned Public Prosecutor would submit that there is ample evidence on record to prove the guilt of the appellant for the offence punishable under Section 302 I.P.C.; the trial Court had rightly convicted and sentenced the appellant; and ultimately, prayed to dismiss the appeal.

6. Admittedly, the entire case of the prosecution is based on circumstantial evidence. In this regard, it is apt to refer the decision of the Hon'ble Supreme Court rendered in **Sharad Birdhichand Sarda v. State of Maharashtra**¹, wherein it was held as hereunder:

"When a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

¹ (1984) 4 SCC 116 = AIR 1984 SC 1622

- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) they should exclude every possible hypothesis except the one to be proved; and
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

7. The conditions required to prove the guilty of the accused based on circumstantial evidence are enunciated in the following cases:

- "1. **Hanumant Govind Nargundkar v. State of M.P.** : AIR 1952 SC 3442.
- 2. **Sharad Birdhichand Sarda v. State of Maharashtra** : (1984) 4 SCC 116 : AIR 1984 SC 1622.
- 3. **C.Chenga Reddy v. State of A.P.** : (1996) 10 SCC 193."

8. In view of the contentions putforth by both sides, the following points have arisen for determination:

- (1) Whether the dead body in the instant case belonged to Gopu Renuka?
- (2) Whether the death in the instant case was homicidal?
- (3) Whether the prosecution proved its case that the appellant caused death of his wife-G.Renuka on 25.08.2006?
- (4) Whether the conviction and sentence recorded by the trial Court against the appellant for the

offence punishable under Section 302 I.P.C. is sustainable?

9. **POINT No.1:** P.W.1-G.Madhusudhan Reddy, Village Revenue Officer, Kothapalli, is the *de facto* complainant in this case. His evidence reveals that on 30.08.2006, the villagers of Kothapalli informed him that they noticed a dead body of an unknown female person in a pit near a dumping yard situated at Amavaripet village; he saw dead body at 11-45 a.m., it was in a decomposed condition; and on the same day, he lodged Ex.P.1-report with Station House Officer, Madikonda Police Station. As per the evidence of P.W.1, the dead body was in a decomposed state and he did not say anything about the identification of the dead body. P.W.2-Battula Komaraiah, working as 'Safai' in Madikonda Grampanchayat, deposed about noticing the dead body of a woman in a pit at the outskirts of Kothapalli village in the land of one Krishna Reddy, P.W.2 along with other workers removed the dead body from the said pit; the deceased was wearing violet colour Punjabi dress; the face was fully decomposed and there were insects on the face and he opined that the deceased might have died about ten days back. This witness also did not state anything about the identification of the dead body. P.W.3-Basupalli Surender, working as Public Health Worker in Warangal Municipality, deposed that on instructions from Madikonda Police, he took the dead body of one female person from mortuary room of MGM Hospital and cremated the dead body at Pothana Burial Ground, Warangal.

He also did not state anything about identification of the dead body.

10. P.W.4-Mydam Buraiah, doing mason work at Ammavaripet, deposed that about one year and six months prior to his examination in the Court, he went to his field at Ammavaripet at about 5-30 a.m., while he was returning to his home at about 6-00 or 6-30 a.m., he noticed the appellant and his wife were sitting in a stationed car at quarry; when he questioned, the appellant replied to him that they came for walking; and after attending the calls of nature and returned to his house. P.W.4 stated that he saw the wife of the appellant by appellant's side in the car at that time; three or four days thereafter, he had seen a news item in a daily newspaper that the dead body of a female person was found in a pit near the said quarry in a decomposed condition. The woman he saw was wearing violet colour Punjabi dress. Violet colour Punjabi dress was marked through his evidence as M.O.1. In the cross-examination, P.W.4 stated that he cannot read Telugu, through others, he came to know the news item and for the first time, he saw the wife of the deceased on the said date and subsequently he did not see her. He further stated in the cross-examination that when the dead body was found in the pit at quarry, he was at Hyderabad; for the last time, he saw the appellant along with his wife in a car on the above date; thereafter, he saw the appellant in the Court Hall on the date of giving evidence. He further stated in the cross-examination that he cannot identify the

deceased even if the photo is shown to him. He denied that he was deposing false.

11. P.W.6-Bayyarapu Sunitha is none other than the sister of G.Renuka. She deposed about the marriage between the appellant and G.Renuka and stated that the appellant was harassing her sister-G.Renuka and he attempted to do away with her (P.W.6) life. Her evidence reveals that she stayed one month at her sister's house and her sister-G.Renuka also stayed with them for two months with the appellant; when she went to the house of her sister-G.Renuka and the appellant, she gave birth to a female child; at that time, G.Renuka was treated well by the appellant; one year thereafter, her sister-G.Renuka gave birth to a female child; thereafter, the appellant developed illicit intimacy with a girl by name Haritha, a resident of Kesamudram; when her sister-G.Renuka questioned the appellant, he beat her and harassed; one boy by name Chinna who was working in the house of the appellant informed about the said facts to her and her mother-B.Laxmi; when her mother-B.Laxmi questioned the appellant about development of illicit intimacy with another girl, then the appellant harassed her sister-G.Renuka, abused her mother and tried to beat her mother. She further deposed that thereafter she and her mother returned to their house at Komuravelli; one month thereafter the appellant came to their house at Komuravelli along with his daughter and informed to them that G.Renuka had eloped with another person; then she, her mother and her two sisters by name Geetha and Manga

have together went to Hanamkonda to the house of the appellant, they saw the said girl Haritha in the house of the appellant, who took one rented house at the same locality and asked her, her mother and her two sisters to stay there; they saw the said girl-Haritha was carrying the male child of the G.Renuka; when her mother-B.Laxmi questioned the appellant, he replied that as his wife-G.Renuka eloped with some other person, so again he married the said Haritha; then the appellant forced them to live with him in his house in order to rear up his two children, who were kids. She further deposed that when her mother-B.Laxmi entertained a doubt whether really her daughter-G.Renuka eloped with any other person, the appellant beat her mother; they noticed the girl-Haritha wearing Mangalasuthram of G.Renuka; thereafter the appellant forced her mother-B.Laxmi to sell away their two acres of agricultural land and the house property to give that money to him, so that he could look after them well; her mother-B.Laxmi sold away the two acres of land and also house property and gave Rs.1,50,000/- or Rs.2,00,000/- to the appellant; they were looked after for some time, again the appellant started beating her mother-B.Laxmi, when she asked the appellant about her sister-G.Renuka. She (P.W.6) along with Haritha and the appellant started on the motorcycle to go to Komuravelli, she asked the appellant to show her sister-G.Renuka and her mother-B.Laxmi, he stopped his motorcycle near a big well and told to consume toddy. Thereafter, along with Haritha, the appellant caught hold of her

two hands and two legs, lifted her and thrown her into the well and left that place; sometime thereafter, the owner of the well had lifted her from the well and enquired about her details; and from that day onwards, she is residing with her two sisters and two children of the G.Renuka at Komuravelli. She further deposed that Ghanpur police had shown her the clothes of her sister-G.Renuka (i.e., Punjabi dress in violet colour) at the quarry of Ammavaripet; she identified those clothes as they belong to her sister-G.Renuka. Admittedly, this witness P.W.6 was not present when the dead body was taken out from the pit and was buried by P.W.3-B.Surender at Pothana Burial Ground, Warangal. She stated in her evidence that the police have shown the clothes of her sister-G.Renuka, i.e., violet colour Punjabi dress, and she identified those clothes. Ex.P.4-six colour photographs of the deceased in this case taken by P.W.7-V.Shankar reveal that the dead body is in a highly decomposed state and not identifiable.

12. The trial Court, having believed the evidence of P.W.6-B.Sunitha and the evidence of P.W.4-M.Suraiah, who is circumstantial witness, held that M.O.1 was wore by the deceased in this case and the dead body in question belonged to G.Renuka. As per the evidence of P.W.4-M.Suraiah, he saw the appellant and his wife sitting in a car in the early hours around 6-00 a.m. P.W.4 identified M.O.1-clothes. It is not possible for a person to see the colour of the clothes, type of dress and also the feature of the woman sitting in the car and many people wear

violet colour Punjabi dresses. Further, as per the evidence of P.W.13-Dr. Krupal Singh, the death was caused due to drowning. No effort was made by the doctor and the investigating officer to conduct DNA test to establish the identity of the dead body. In view of that, there is no legally acceptable evidence to prove the identity of the dead body in this case. The finding of the trial Court is erroneous and the same is liable to be set aside. This point is answered accordingly.

13. **POINT No.2:** The evidence of P.W.13-Dr. Krupal Singh reveals that he had conducted autopsy over the dead body on 31.08.2006 and found that the dead body of the unknown woman was in advanced stage of decomposition, the plural cavities of the lungs contains about 500 to 1000 ml of water in brownish colour, stomach also contains 500 to 700 ml of water and all the organs in the dead body were decomposed. He opined that the cause of death is due to drowning in water and he issued Ex.P.10-postmortem examination report. He deposed that he cannot say whether it was a homicide or suicide. The approximate time of death was about 48 to 72 hours prior to the postmortem examination. P.W.7-V.Shankar, Photographer, deposed about taking the photographs of the dead body, which were marked as Ex.P.4 (six photographs). P.W.5-Munukunta Bazar in a witness for inquest panchanama. Ex.P.2 is the inquest panchanama. The evidence of P.W.5 and Ex.P.2-inquest panchanama reveal that the dead body was in a decomposed state and they could not arrive at a conclusion

whether the death was homicidal or suicidal or accidental. The trial Court had believed the evidence of P.W.13-doctor and Ex.P.10-postmortem examination report, the evidence of P.W.5-panch witness and Ex.P.2-inquest panchanama and the evidence of P.Ws.4 and 6. Admittedly, P.Ws.4 and 6 did not see the dead body. No witness examined on behalf of the prosecution had stated that the death is unnatural or homicidal, even there is no medical evidence to this effect. Under these circumstances, there is no legally acceptable evidence to believe that the death is homicidal and the finding of the trial Court in this regard is erroneous. Accordingly, this point is answered.

14. **POINT Nos.3 AND 4:** The evidence of P.W.10-K.Srinivas, Sub Inspector of Police, Mulkanoor Police Station, reveals that on 10.06.2007, when he was conducting vehicle checking at Mulkanoor bus stand along with his staff, they stopped a jeep, which was being driven by the appellant, on suspicion, he asked the appellant to produce documents pertaining to the said vehicle, but the appellant failed to do so, P.W.10 also found the appellant in suspicious circumstances and, on interrogation in the presence of P.W.9-Polu Mogili and L.W.17-S.Bhadraiah, the appellant voluntarily confessed that he has killed his wife-G.Renuka, his mother-in-law-B.Laxmi and attempted to kill P.W.6-B.Sunitha and further confessed the commission of theft of jeep and in total 13 property offences. Ex.P.7 is the relevant confession and seizure panchanama prepared by P.W.10 on 10.06.2007. The evidence of P.W.9-

Polu Mogili reveals that about 10 or 11 months prior to his deposition, at the instance of the police, he enquired the appellant along with L.W.17-Kalva Bhadraiah, the appellant confessed that he killed his mother-in-law-B.Laxmi and his wife-G.Renuka and made an attempt to kill his sister-in-law-B.Sunitha (P.W.6) by throwing them into a well and pelting stones; the appellant also confessed the offence in other crimes i.e., theft of jeep, van, tractor and trailer and water tanker. Ex.P.5 is the relevant portion in confessional panchanama of the appellant dated 10.06.2007. Ex.P.6 is the seizure panchanama dated 10.06.2007 and those documents contained his signature. In the cross-examination, P.W.9 denied that he is deposing false. The so-called confession made before the police is inadmissible. The prosecution can rely the confession leading to recovery as envisaged under Section 27 of the Indian Evidence Act, 1872. No incriminating material was recovered pursuant to the confession made by the appellant. P.W.8-M.Narasimhulu is the relative of P.W.6-B.Sunitha. He deposed about the appellant living with G.Renuka as husband and wife at Ammavaripet, and one year back, he was informed by the police that the appellant had thrown his wife-G.Renuka into a pit, on that information given by the police, he reached the police station. P.W.8 did not speak anything about the offence committed by the appellant. The trial Court had believed the evidence of P.W.4-M.Suraiah stating that he saw the appellant and G.Renuka together and also relied on the evidence of P.Ws.6 and 8. Admittedly, P.Ws.6

and 8 did not see G.Renuka disappearing and they are not the last seen persons. Whether the appellant had attempted to commit murder of P.W.6 is not the subject matter of this appeal. Learned counsel appearing on behalf of the appellant submitted that the appellant was acquitted in that case (P.W.6's attempt to murder case). However, it has nothing to do with the case on hand.

15. The circumstances from which the inference of guilt is sought to be drawn, must be cogently and firmly established the guilt of the appellant. Those circumstances should be of definite tendency unerringly pointing towards guilt of the appellant. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else. The circumstantial evidence, in order to sustain conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of the appellant and such evidence should not only be consistent with the guilt of the appellant but should be inconsistent with his innocence. [See: *Gambhiriv v. State of Maharashtra* (1982) 2 SCC 351 : AIR 1982 SC 1157]. No such evidence is available on record either to hold that the dead body in question belongs to G.Renuka or the appellant had caused death of G.Renuka. The trial Court, while determining the charge under Section 302 I.P.C., had relied on the evidence of P.W.6-B.Sunitha and

P.W.8-M.Narasimhulu. The trial Court also believed the evidence of P.W.4.

16. It is apt to refer the decision of the Hon'ble Supreme Court in **Dasari Siva Prasad Reddy v. Public Prosecutor, High Court of Andhra Pradesh**², wherein it was held that a strong suspicion, no doubt, may exist against the appellant but such suspicion cannot be the basis of conviction, going by the standard of proof required in a criminal case and the distance between 'may be true' and 'must be true' shall be fully covered by reliable evidence adduced by the prosecution. In the instant case, there is no such proof and standard of evidence. The death of G.Renuka alleged to have caused on 25.08.2006, P.W.4-circumstantial witness alleged to have seen the appellant along with his wife in a stationed car near a quarry on the date of the alleged offence during morning hours between 6-00 and 6-30. This witness deposed before the Court on 15.02.2008, i.e., more than one and half (1½) years of his seeing the appellant and his wife. No identification parade was conducted by the police to identify the appellant by this P.W.4. Further his statement was said to have been recorded by the police on 27.07.2007, which has come in the evidence of P.W.14-investigating officer. Admittedly, P.W.4 has no prior acquaintance either with the appellant or with G.Renuka. P.W.4 also admitted that he is an illiterate, even he cannot read Telugu, through other persons reading the newspaper, he came to know

² 2004(2) ALD (CrI.) 677 (SC)

the death at the subject quarry. P.W.4 has also clearly admitted that he saw the appellant and his wife for the first time on the alleged date, thereafter he did not see them. As per his evidence, even on the date of finding the dead body in the pit at quarry, he was not there, and he was in Hyderabad. With this background, it cannot be said that P.W.4 is a truthful witness. His entire evidence is doubtful. There is so much of gap, as indicated above, between the date of alleged offence and the identification of the appellant as well as G.Renuka. It is unsafe to rely on his testimony. The evidence of P.W.4 is not inspiring confidence to believe the commission of death of G.Renuka by the appellant. P.W.4 is not trustworthy witness. Though the defence of the appellant is that he is innocent and denied the incriminating evidence when he was examined under Section 313 Cr.P.C. stating *Abaddham* (false), in the circumstances of the case, he cannot be called to rebut the same, as required under Section 106 of the Indian Evidence Act, 1872. The prosecution failed to establish the complete chain of circumstances beyond reasonable doubt. There is also no DNA test conducted to prove that the dead body belonged to G.Renuka. The evidence of P.W.13-doctor reveals only the death of the deceased in this case was due to drowning and there is no oral or documentary evidence to prove the death in question was a homicidal. Further, there is no legally acceptable evidence to hold that the dead body in this case belonged to G.Renuka. When the identification of the dead body is doubtful,

the cause of death is also not established as homicidal, the finding of the trial Court believing the evidence of P.Ws.4, 6 and 8 and also considering M.O.1-violet colour Punjabi dress as that of G.Renuka, is erroneous.

17. In these circumstances, the prosecution failed to prove the charge under Section 302 I.P.C. framed against the appellant and the impugned judgment dated 13.01.2011 passed by the trial Court in Sessions Case No.787 of 2007 is liable to be set aside. These points are answered accordingly.

18. In every trial for manslaughter or for the offence of causing hurt to human body, opinions of medical officers are invited to ascertain the cause of death, injuries, whether the injuries are anti-mortem or post-mortem, the probable weapon used, the effect of injuries, medicines, poisons, the consequences of wounds whether they are sufficient in the ordinary course of nature to cause death, the duration of injuries and the probable time of death and also to identify the dead body. In this regard, DNA test is very helpful. In such trials sometimes the plea of unsoundness of mind or minority is taken by the accused. In trials for offences of kidnapping and rape, the question invariably in dispute is the age of the person kidnapped or of the girl raped. In all such cases the medical opinion is adduced to establish insanity and minority. In rape cases apart from showing the minority of the girl, the medical opinion is tendered to establish the offence of rape.

19. The word DNA stands for deoxyribonucleic acid. It is a biological blueprint of life DNA fingerprinting profile is unique to each individual and hence the DNA profiling is used to identify an individual and his lineage. The technological device is used to identify a person in criminal and civil cases. The main advantage of this device is that the test can be done on small samples and can accurately establish their originals with a high degree of certainty. DNA is hardly affected by the environmental factors. DNA is stable and therefore much resistance to degradation caused by the environmental changes. It shows the same genetic pattern irrespective of the biological material like hair, seminal stains fresh blood, soft tissues, hard tissue etc. DNA finger printing can connect the crime scene or a body to another particular individual. Dry blood stains and sperm can also be used for DNA test. These tests are highly useful in various criminal investigations involving offences like rape, murder, kidnapping, exchange of babies, infanticide, abandonment of newborn child, illegal abortion, paternity related disputes, immigration, inheritance, assignation etc. DNA test results are very reliable. Control samples are provided with the main sample to avoid error in test and reporting. However in order to make DNA evidence most successful, there must be a strong and robust legislation and reputed elaboration with standardized operational procedures. The laboratories engaged in DNA testing must be well equipped and technicians must be highly qualified and skilled. DNA test is such a new scientific

invention which is used for scientific investigation in criminal case. This technique is particularly much useful in cases where eye witnesses are not available.

20. The whole case is based on circumstantial evidence. A highly decomposed dead body was floating in a well. Even at the time of inquest, there were no witnesses to identify the dead body. Under these circumstances, the investigating officer ought to have collected blood samples, soft tissues, hard tissues, hair, etc., from the dead body and preserved the same and in the course of investigation, could have sent them along with the admitted blood samples, etc., of the relatives, to the Forensic Science Laboratory to establish the identify of the dead body. No such efforts were made in this case. In the cases of similar circumstances, all the investigating officers are required to subject the dead body for its proper identification by following the required procedures to conduct DNA test. The Director General Police shall direct all the Subordinate Officers, particularly the Investigating Officers, to collect the samples from the dead body, i.e., hair, tissues, blood, bloodstains, etc., and send them for DNA test for authentic identification of the deceased persons. The Registry is directed to communicate the copy of judgment to the Director General Police, State of Telangana and the State of Andhra Pradesh, who in turn, shall communicate the same to all their Subordinate Officers including the Investigating Officers for compliance.

21. In the result, the appellant is acquitted of the charge under Section 302 I.P.C., and consequently, the conviction and sentence recorded against the appellant for the said charge by the trial Court in Sessions Case No.787 of 2007, vide judgment dated 06.03.2009, is set aside. The Criminal Appeal is allowed accordingly. Since the appellant is on bail, he is directed to report before the Superintendent, Central Prison, Warangal, forthwith to set him free as per the procedure established, if he is not required in any other case.

22. As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand closed.



SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 11th August, 2017

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