

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.72 of 2011

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

Accused in Sessions Case No.101 of 2009, on the file of the VI Additional Sessions Judge, (Fast Track Court) East Godavari District, Rajahmundry, filed this appeal against the judgment, dated 18.01.2010, by and under which, the learned Sessions Judge has convicted the appellants/accused for the offences punishable under Sections 304-B r/w.Sec.34 IPC and sentenced A1 to undergo rigorous imprisonment for life and imposed compensation of Rs.25,000/- (Rupees twenty five thousand only) to be paid to the mother of Deceased No.1; and sentenced A2 to A4 to undergo rigorous imprisonment for a period of 10 (ten) years.

2. The case of the prosecution in brief is that Accused No.1 is the Priest of Saibaba Temple, Alamuru village, Accused Nos.2 & 3 are his parents and Accused No.4 is his sister.

3. Accused No.1 married one Madhavabotla Krishna Veni on 06.04.2002 and he was given a sum of Rs.50,000/- towards dowry. During their wedlock, they were blessed with three female children, viz., Satya Lakshmi Sowmya, aged 5 years, Krishna Ramya, aged 3 years and 5 months old baby, not yet named.

4. The father of Madhavabotla Krishna Veni died while she was in womb. She was the second issue to her parents. PW 4 is her mother and PW 2 is her brother. She was brought up and got married by her maternal uncle Kotturi Suryanarayana Murthy-PW 1.

5. Three months after the marriage, the accused started harassment and demanded her to bring more dowry from her mother and maternal uncle. Krishnaveni bore all the torture made by the accused with a hope that they will change in future. While so, on 20.06.2007 at 2 p.m Accused No.1 dropped his wife Krishnaveni and three children at her parental home at Munikudali village and demanded her to bring more money. On 21.06.2007 the elders dropped Krishnaveni and three children at in-laws house at 3 p.m and requested the accused that they would arrange the demanded amount. On the same day i.e., on 21.06.2007 at about 8.30 p.m, while Accused No.1 was attending to devotional work, his mother-Accused No.2 came raising cries, then the witnesses rushed to the spot and found dead bodies of Krishnaveni and her three female children in a pool of blood.

6. Krishnaveni, who could not endure the atrocious treatment of the accused, committed suicide after causing the deaths of her three children. PW 1 gave report to the concerned police. The police personnel rushed to the spot, and after following due procedure, they conducted inquest over the dead bodies and sent them for post mortem examination. After completion of investigation, PW 17 filed the charge sheet.

7. In support of its case, the prosecution examined PWs 1 to 18 and marked Exs.P1 to P27 and M.Os.1 to 4. On behalf of defence, DW 1 was examined and Exs.D1 and D9 were marked.

8. On appreciation of oral and documentary evidence, the trial Court has convicted the appellants of the offences alleged and awarded sentences against them, as noted hereinbefore.

9. The learned counsel for the appellant submits that the court below has grossly erred in finding the appellants guilty of the charge

punishable under Section 304-B r/w.34 IPC; that the evidence on record do not establish any of the ingredients; that the prosecution could not prove that the deceased committed suicide; that the investigating agency/prosecution has not placed before the court the true genesis of the incident and has erroneously filed the charge sheet accusing that the appellants are guilty of the offence; that the evidence on record shows that the investigating agency itself is not sure about the method and manner in which the incident took place and whether it is suicide or homicide; that the prosecution started initially under Section 302 IPC and later converted the same under Section 304B IPC; that there is any amount of doubt about the fact whether a person can inflict as many as 28 fatal injuries on self, two of which have substantially caused death. The court below failed to observe that a person, who receives cut injuries on the body, which obviously sobers the most anger or pathological mentally ill-person after receiving few injuries on the body, as fear and pain plays an important role even in mad person, bringing them to sobriety, that the injuries on Deceased No.1 are not indicative of self-inflicting of wounds. It indicates a psycho pathological stabbing spree. When the evidence discloses two version, the benefit of doubt should be given to the appellants. The nature of injuries and the manner of Deceased No.1 killed her three children with knife and the manner she allegedly has inflicted as many as 28 injuries with two types of knives discloses the manic disorder of Deceased No.1, but the court below has taken a spacious negative inference and convicted the appellants.

10. On the other hand, the learned Public Prosecutor submits that the trial Court has properly appreciated the evidence on record and convicted the accused. The discrepancies or inconsistencies that are

highlighted by the defence counsel are too trivial in nature which do not go to the root of the case and hence the appeal is liable to be dismissed.

11. We have carefully considered the respective submissions of the learned counsel for the parties and perused the material on record.

12. The point for consideration is whether the prosecution proved its case against the appellants beyond reasonable doubt so as to sustain the conviction and sentence recorded against them, or whether the same need to be set aside, modified or varied.

13. Briefly stated the case of the prosecution is that Deceased No.1 was married to the appellant/A1 about 6 years prior to 21.06.2007 and she was blessed with three daughters, who are Deceased Nos.2, 3 & 4. It is alleged that the appellants were subjecting Deceased No.1 to harassment, demanding additional dowry and unable to withstand the same. On 21.06.2007, Deceased No.1 is said to have killed her three daughters by inflicting stab injuries on them and also stabbed herself and died instantaneously.

14. Appellant/A1 is working as Purohit/Priest in Saibaba Temple. The incident is said to have taken place in between 7.30 p.m to 8.30 p.m. At that time, appellant/A1 was busy in performing Poojas in the temple. Appellant/A4 is the sister of A1 and she was married and living with her in-laws. The deceased and A1 were living in a small room which was within the compound of temple. All the deceased were seen alive at 7.30 p.m and at about 8.30 p.m it is alleged that A2, the mother of A1 is said to have noticed all the four deceased lying dead in pool of blood inside and in front of the store room, which was within the compound wall of the temple. She raised cries attracting the attention of others and the matter

was informed to PW 1, the maternal uncle of Deceased No.1, who came there and at about 11.30 p.m lodged the complaint with the police.

15. According to the investigating agency, Deceased No.1 killed Deceased Nos.2 to 4 and committed suicide unable to bear the torture and as a matter of fact, a day prior to their death, all the deceased went to Munikudali village where PW 1 and PW 4, the mother of Deceased No.1 were living. They are said to have stayed overnight and returned in the afternoon of 21.06.2007 and they were brought by PW 4, the mother and PW 10, a neighbouring resident. Both the ladies left the deceased in the temple and returned, but even before they reached their home, the message about the ghastly incident of the murder of three daughters and suicide by the mother reached the village. Even though the case was registered under Section 302 IPC and also under Section 304-B r/w.34 IPC, but the Investigating Officer concluded that the offence that is attracted is only one punishable under Section 304-B IPC, since the offence punishable under Section 302 IPC was only applicable to Deceased No.1, the mother of three children, who herself committed suicide and is no more. Therefore, what is required to be seen is as to whether the prosecution could make out its case punishable under Section 304-B IPC.

16. Section 304-B IPC reads as under:

“304-B Dowry death:- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation:- For the purpose of this sub-section “dowry” shall have the same meaning as in Section-2 of the Dowry Prohibition Act, 1961 (28 of 1961)

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

17. The essential ingredients to attract application of Section 304-B IPC are as under:

- (i) The death of woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) Such death should have occurred within seven years of her marriage;
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) Such cruelty or harassment should be for or in connection with demand for dowry;
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death;

18. Before invoking the provision under Section 113-B of the Indian Evidence Act and Section 304-B IPC, there should exist material to show that the deceased died under unnatural circumstances and soon before her death, she was subjected to cruelty and harassment. The prosecution has to rule out the possibility of a natural, accidental or homicidal death so as to bring it within the purview of the death occurring otherwise than in normal circumstances. The onus is on the prosecution to prove that all the ingredients exist and infirmities or lacunae in prosecution cannot be cured by false defence or plea.

19. In a Criminal case, the law will be set in motion by lodging the FIR, which is the earliest version about the incident. In the case in hand, PW.1 lodged Ex.P.1 – the complaint, at about 11.30 p.m., and it is

mentioned therein that the Deceased No.1 along with the other deceased children came to his house on 20.06.2007 at about 02.00 p.m., and she was dropped there by the appellant/A.1. It is further mentioned in Ex.P.1 that when PW.1 enquired D.1, she told him that her in-laws and husband are harassing and beating her for want of more dowry and for the said purpose, A.1 is said to have dropped the deceased at the house of PW.1. It is further mentioned therein that next day i.e., on 21.06.2007 he sent PW.4, who is the mother of D.1, along with a neighbour PW.10, who went and dropped all the four deceased at Alamuru and returned. PW.1 further mentioned in the complaint – Ex.P.1 that he requested the two ladies viz., P.Ws.4 and 10 to inform the accused that the amount will be adjusted soon. On coming to know about the death of the four deceased persons, PW.1 rushed to Alamuru village and in Ex.P.1 it is mentioned that he has seen the dead body of Deceased No.2 in the store room adjacent to Shirdi Sai Baba Temple and the remaining dead bodies of D.1, Deceased No.3 and Deceased No.4 were found outside the store room. He suspected that since D.1 did not bring the demanded dowry, her husband, his sisters and in-laws might have forcibly killed D.1 and the three children.

20. What is manifest from Ex.P.1 is that A.1 left the deceased in her parental home demanding additional amount and next day, all the four deceased were taken by P.Ws.4 and 10 back to her matrimonial home and dropped there. No amount whatsoever was sent by PW.1 along with the deceased as demanded. It is also apparent from Ex.P.1 that the accused were suspected to have caused the death of all the four deceased by causing stab injuries.

21. The oral evidence in the instant case which is material is that of P.Ws.1 to 4 and 10. While PW.1 is the maternal uncle of D.1, P.Ws.2 and

4 are the brother and mother of D.1 respectively, whereas P.Ws.3 and 10 are the neighbouring residents of Munikudali village, which is the parental village of D.1.

22. It is in the evidence of PW.1 that he not only brought up D.1 right from her birth but also performed her marriage with A.1 and at that time he claims to have given dowry of Rs.50,000/- and Rs.5,000/- as Adapaduchu lanchanalu. It is further in his evidence that A.1 and D.1 were blessed with three daughters who are aged about 5 years, 3 years and 5 months when they met the tragic death. PW.1 claims that three months after the marriage, all the accused used to harass D.1 to bring additional amount. A day prior to the death, the deceased persons were brought to Munikudali village and left and when he asked D.1, she told that all the accused are demanding Rs.25,000/- and are subjecting her to harassment on the ground that she gave birth to three female children. It is further deposed by PW.1 that he gave Rs.5,000/- to D.1 and sent her along with P.W.10 who went there and dropped the deceased and returned. It is evident from the above evidence that it is contrary to what is mentioned in Ex.P.1. In Ex.P.1, the earliest complaint, PW.1 did not mention that he arranged Rs.5,000/- and gave it to D.1 and sent her along with P.Ws.4 and 10. It is the specific case of PW.1 that he sent D.1 without arranging any amount only with an assurance that amount will be arranged subsequently. In the cross-examination, PW.1 admitted that he did not tell the Investing Officer or the M.R.O., who conducted the inquest, about D.1 informing him about the demand of the accused of Rs.25,000/- and is arranging Rs.5,000/- and sending D.1 to her matrimonial home. It is further admitted in the cross-examination that the deceased used to visit their house once in a month or 45 days and

used to stay for three or four days and go away. If that is the case, the demand of additional amount would have been informed to PW.1 on previous occasions but not a day prior to the incident, that too, more than six years after the marriage between D.1 and A.1. A careful reading of the evidence of PW.1 shows that there was no harassment or ill-treatment as such of the deceased by the accused for non-fulfilment of any demand of additional dowry. Even what all PW.1 says is believed it only shows that a day prior to the death of the deceased, she came to him and told that the accused are subjecting her to cruel treatment demanding additional dowry of Rs.25,000/- and they are subjecting her to harassment on the ground that she gave birth to three female children.

23. Similar is the evidence of PW.2, who is the younger brother of D.1. He also stated that a day prior to the death, D.1 came with her children and informed that the accused are demanding Rs.25,000/- towards additional dowry and next day they arranged Rs.5,000/- and sent the deceased along with P.Ws.4 and 10. He also admitted in the cross-examination that he did not inform the said aspect about demand and harassment to any of the elders and that the accused never asked him any money at any point of time. In his previous statement before the police and also the Tahasildar who held the inquest, he did not say that they sent the deceased with a cash of Rs.5,000/- as against the demand of Rs.25,000/-. It is also in the evidence of PW.2 that the deceased used to come to their house at regular intervals and always she used to go voluntarily without any force and even on the date of the incident, D.1 herself voluntarily went to her matrimonial house but not by the force. What could be gathered from the evidence of this witness is that the deceased was a regular visitor to her parents house and she used to

voluntarily get back to her matrimonial home without there being any protest or any mediations. If really the deceased was subjected to harassment continuously for additional dowry, she would have certainly informed the same to her mother, brother and uncles, but would not have voluntarily get back to her matrimonial home even though the alleged amount of demand was not being met, without there being any mediation.

24. PW.3 is a neighbour of P.Ws.1 and 2 and he speaks about the fact that the deceased came to PW.1's house and went away. He enquired as to why she came there, the deceased informed that the accused are demanding and harassing her for additional dowry. He also speaks about the mobilization of Rs.5,000/- cash and sending the deceased along with P.Ws.4 and 10. In the cross-examination he admits that he is not an elder and that he belongs to Kapu community whereas the deceased and the prosecution witnesses were Brahmins. The evidence of PW.3 appears to be artificial. No reasons, whatsoever, are mentioned by PW.3 as to why PW.1 went and informed PW.3 about the arrival of D.1 and his going and enquiring from D.1 about the cause of her arrival. More particularly, in view of the fact that it is the admitted case of all the prosecution witnesses that the deceased used to come to her parental house at least once in 30 or 45 days and used to voluntarily get back to her matrimonial home. Therefore, when PW.3 says that on this particular occasion he went and enquired from D.1 as to why she came there and D.1 informed about the demand of amount cannot be believed.

25. PW.4 is the mother of the deceased and her evidence is similar to that of P.Ws.1 and 2. According to PW.4, they collected Rs.5,000/- from the villagers and she took the deceased along with the amount and

left her in the house of the accused. She further deposed that she returned to the village and then she came to know about the death of the deceased. PW.4 do not whisper anything about the presence of any of the accused in the house when she left the deceased in her matrimonial home. Even though she claims to have taken Rs.5,000/- out of the demanded amount of Rs.25,000/-, she do not say anything as to whom she gave that amount before returning back to the village. It is further in her evidence that she went to the house of the accused at about 02.00 p.m., and was there till about 06.00 p.m. She does not speak about the presence of the accused or they speaking to her. She also admits that she did not go and report about the grievance of her daughter to any male persons of other community in the village. She also admits that her daughter-D.1 did not ever tell her that the accused had harassed even the children. She also admits that she did not tell before the police that she had collected Rs.5,000/- from the villagers and carried it along with D.1 to Alamuru village. It is also in her evidence that her brother-PW.1 himself being a Purohit had financial problems. She also admits that the appellant/A.4 was married event prior to the marriage in between A.1 and D.1 and she is a resident of Vemagiri village where she is living with her husband and she had two daughters. PW.4 further admits that in her earliest statement before the police, she stated that the accused were harassing D.1 on the ground that she gave birth to three female children.

26. The other material witness is PW.10 who is said to be a neighbouring lady who accompanied PW.4 and deceased on the fateful day. She deposed that she along with PW.4 went to the house of the accused and left the deceased and returned back to their village and by then, a message was received that the incident took place.

27. The Investigating Officer is PW.17. He was working as Dy.Superintendent of Police at the relevant point of time. It is in the evidence of the Senior Police Officer that PW.1 did not inform him that the accused harassed the deceased. Similarly, the witnesses did not inform the Investigating Officer that the accused have sent her with a demand of Rs.25,000/-.

28. If the above evidence, which has got a direct bearing on the aspect of the charge is carefully perused, what is evident is that it do not specify the requirement of treating the death of the deceased as a dowry death. Absolutely no evidence is placed on record to show that there was any demand of dowry or that the deceased was subjected to harassment or cruel treatment soon before her death. At best, the evidence shows that long after the marriage i.e., nearly more than six years, D.1 came to her parental house and told them about the demand of Rs.25,000/-, out of which, a sum of Rs.5,000/- was arranged. There is absolutely no evidence to show as to what transpired on 21.06.2007 i.e., the day when the incident took place. Admittedly, the deceased was alive till about 07.30 p.m., and till about 06.30 p.m., on that day, from 02.00 p.m. onwards, P.Ws.4 and 10 were present along with the deceased when she was in her matrimonial home. None of these two witnesses speak even a single word as to what transpired there in between 02.00 p.m., and 06.00 p.m. on 21.06.2007. They do not even speak about the presence of any of the accused in the house when they left the deceased persons in the temple where the couple were living. If really the accused was harassing the deceased for demand of additional dowry and if the mother and a neighbouring lady viz., P.Ws.4 and 10 accompanied the deceased to her matrimonial home, they would have spoken to the accused and tried to

convince them to see reason for their inability to meet the alleged demand. None of the material witnesses speak anything as to what happened nearly six hours prior to the unfortunate incident. At the cost of repetition, it can be said that if really the deceased was subjected to cruel treatment or harassment of such magnitude, she would have informed the same to her mother and others who accompanied her to her matrimonial home and the two elderly women would have spoken to the accused, but absolutely nothing is spoken. The only evidence is that D.1 informed them about the demand and P.Ws.1 and 4 who collected Rs.5,000/- and took the deceased and dropped her at her matrimonial house. Whether that amount was given to the accused or to the deceased is not spoken to by any of the witnesses.

29. In view of the above, it is difficult to hold that the prosecution has proved that the deceased was subjected to harassment or cruel treatment soon before her death and that such a conduct of the accused has driven the deceased to resort to the extreme step of killing three daughters by stabbing them and thereafter commit suicide by stabbing herself. There is also no evidence on record that at the relevant point time, the accused were at the place where the deceased is said to have committed the horrendous act of stabbing to death her three daughters, aged 5 years, 3 years and 5 months and then stabbed herself and died instantaneously.

30. The next aspect of the matter is as to whether the death of the deceased persons is due to suicide or it is homicide. Learned Counsel appearing for the appellants vehemently submits that if the entire evidence on record and the surrounding facts and circumstances coupled with the medical evidence on record is carefully perused, it creates any

amount of doubt as to whether it was a suicide or a homicide. According to the learned Counsel, even the investigating agency was not sure as to whether it is a suicide or murder. The evidence on these aspects shall now be considered.

31. It may be recalled that the case of the prosecution is that D.1 along with her husband were living in a store room within the premises of Shirdi Sai Baba temple where A.1 was working as a Purohit. The deceased was last seen alive at about 07.30 p.m., on 21.06.2007 and at about 08.30 p.m., it is alleged that the mother of D.1 viz., PW.4 has seen all the four dead bodies lying with stab injuries. Upon carefully perusing the oral and documentary evidence on record and the over all circumstances, we have no hesitation in observing that the investigating agency has not placed before the Court the exact manner in which the incident took place. Even though it is alleged in the complaint itself that the deceased were killed, no investigation in that direction was made. However the Investigating Officer along with the panchayatdars who conducted the inquest and scene of offence panchanama opined that D.1 first killed D.2, D.3 and D.4 and thereafter killed herself and hence since it was a case of suicide within seven years of the marriage, it was alleged that the accused are liable for punishment under Section 304-B of I.P.C.

32. The circumstances which create any amount of doubt about this story of the prosecution are as under:-

- i) D.1 being the mother of deceased Nos.2 to 4 is said to have caused stab injuries on them and thereafter stabbed herself. It is not as though that the manner in which the deaths took place is either due to any poisoning etc. Stabbing by a mother of her three daughters, one after the other, is very

difficult to be countenanced. Howsoever cruel or the circumstances grave may be a mother will not resort to such a barbaric act of killing her own three daughters by brutally stabbing them.

- ii) The incident has taken place in the midst of busy area. It was within the temple premises where A.1 was performing poojas and in the store room. As a matter of fact, one dead body was found within the store room and the other dead bodies were found outside the store room. The eldest daughter was five years and the second daughter was three years and the third daughter was five months old.
- iii) The day when the incident took place was a Thursday and we can take judicial note of the fact that on Thursday there will be substantial number of devotees visiting Sai Baba temple, more particularly in the evening hours.
- iv) When D.1 has stabbed the three daughters, one after the other, absolutely there were no shouts or cries so as to attract the persons within the temple. This is also not possible.
- v) The scene of offence panchanama shows that there was a water tub nearby and the youngest daughter of D.1 namely D.4, who was five months old was found in the water tub.
- vi) As per the medical evidence on record, D.1 cut the veins of both of her hands which also may not be possible for the reason that once a cut injury is made on one hand and it starts bleeding, the hand will not have sufficient strength to cut the veins of the other hand.

- vii) The photographs are marked as Exs.P.18. We have perused the photographs and one of the photos show that both the breast of D.1 were exposed and the five months old daughter was lying very close by. What could be gathered there from is that just before the incident, D.1 was breast feeding the five month old daughter and that would not have been the case had it really been the case of D.1 killing all the three daughters and thereafter killing herself.
- viii) The injuries that were found on D.1 makes it difficult to believe that it is the case of suicide. The Medical Officer who conducted post-mortem examination on D.1 namely PW.7 found several injuries on the person of D.1 more particularly as many as 26 stab injuries are found on the middle of the abdomen of D.1 admeasuring 2 x 2 x 4 cms., we find it difficult to believe that D.1 would have inflicted injuries on both of her hands, abdomen and other parts of the body in addition to 26 stab injuries on the abdomen.
- ix) A careful perusal of the medical evidence on record strengthens the plea of the appellants that the incident did not take place in the manner in which it is alleged.

33. PW 7 is the Doctor who conducted postmortem examination on the dead body of Deceased No.1-M.Krishnaveni, and he found the following injuries:

“1) An incised cut injury on left hand wrist joint near the palm. Measuring transversely 4 x 1 x ½ cm size with clear cut margin.

2) An incised cut injury on right hand wrist joint near the right hand palm. Measuring transversely 4 x 2 x ½ cm size with clear cut margin.

3) A stab injury in the middle of chest at x iplisternun obliquely. Measuring 3 x 2 x 8 cm size. Spindle shaped with clear cut margin transversely situated.

4) A stab injury on upper abdomen below the Injury No.3, transversely measuring 2 x 2 x 8 cm size. Spindle shaped with clear cut margin.

5) Multiple stab injuries on middle of abdomen above the umbilicus, 26 stab injuries, measuring 2 x 2 x 4 cm, 2 x 2 x 3 cm, 2 x 2 x 5 cm size with clear cut margins. Spindle shaped.

6) A stab injury below the umbilicus. Measuring 2 x 3 x 6 cm size. Vertically situated. Spindle shaped with clear cut margins. All the injuries are of anti mortem in nature.

Ex.P4 is the postmortem certificate. According to PW 7, the cause of death is hemorrhage shock due to multiple stab injuries with a sharp edged knife.

34. PW 13 is the Doctor who conducted postmortem examination on the dead body of Deceased No.2-M.S.Lakshmisoumya, and he found the following injuries:

“1) A stab injury under the middle of the sternum 1” x ½” entering the chest cavity in oblique direction. Spindle shaped. Wound with clear cut margins.

2) A stab injury of 1” above the wound No.1, size 1” x ½” extending to the chest cavity, oblique directions, emphysematous cavity in surrounding tissue. Spindle shaped. Wound with clear cut margins.

3) A stab injury of 1½” x 1” entering into the chest cavity at upper abdomen. Spindle shaped. Wound with clear cut margins. Protrusion of part of left lobe of liver.

4) A stab injury of 1½” x 1” entering the chest cavity at left upper area, oblique in direction, emphysematous changes. Spindle shaped. Wound with clear cut margins.

5) Three stab injuries on left side of the abdomen at 10 cm lateral to umbilicus below the left nipple. Size 1” x ½” entering abdominal cavity in oblique direction. Spindle shaped. Wounds with clear cut margins.

6) A stab injury 1” medial to the wound No.5. Size ½” x ½” entering the abdomen cavity. Spindle shaped. Wound with clear cut margins.

7) A stab injury 1” above the umbilicus middling ½” x 1” entering the abdomen cavity through which intestines protruded out.

8) Two stab injuries on left buttock later side 1" x ½" x ½" cm oblique in direction. Spindle shaped. Clear cut margins.

9) A stab injury right hypochondrium 1" x ½" x ½" oblique in direction. Spindle shaped. Wound with clear cut margins.

Ex.P16 is the postmortem certificate. According to PW 13, the cause of death is shock and hemorrhage due to multiple stab injuries with sharp edged object.

35. PW 8 is the Doctor who conducted postmortem examination on the dead body of Deceased No.3-M.Krishna Ramya, and he found the following injuries:

"1) A stab injury 3 cm x 2 cm x 0.5 cm with clear cut margins on the left upper chest exposing subcutaneous fat.

2) Two abrasions on the right elbow 1 cm in diameter.

Ex.P6 is the postmortem certificate. According to PW 8, the cause of death is due to drowning in water.

36. PW 9 is the Doctor who conducted postmortem examination on the dead body of Deceased No.4-5 months baby, and he found the following injuries:

"1) A stab injury on right side abdomen in near epigastria region, 3" inch below right nipple with inverted edges, size about 1" inch length x ½" inch width x 2½" inch deep with black colour mass, comes out, wound with clotted blood present, edges congested, clear cut direction of wound from above downwards present.

2) A stab injury on abdomen left side 4" inches below left nipple, size about 1" inch x ½" inch x deep to abdomen cavities with protrusion of bowel, outside abdomen, edges are clear cut.

3) A stab injury on middle of abdomen, 1" inch above umbilicus, size about 1" inch x ½" inch x deep to abdomen cavities, with protrusion of bowel, outside abdomen, clear cut edges.

Ex.P8 is the postmortem certificate. According to PW 9, the cause of death is shock and hemorrhage due to stab injuries on abdomen with sharp edged weapon.

37. The crucial aspect of the matter is the admission of PW.7-the Doctor who conducted autopsy over the dead body of D.1. He admitted that very extensive force must have been used to cause the injuries on D.1 who was a weak and frail woman. The Doctor further admits that a normal woman like the deceased could not have caused the injuries which are found on the dead body of D.1.

38. PW.8 is another Medical Officer who conducted post-mortem examination over the dead body of D.3. In addition to the stab injuries, the Medical Officer found a fracture at the junction of hyoid bone which according to the Medical Officer indicates the case of throttling but not drowning. However, the Medical Officer admits that several injuries on the dead body of D.3 cumulatively or severally indicate the death due to drowning.

39. From the above medical evidence, we find it difficult to accept the case of the prosecution that it is D.1 who killed D.2 to D.4 and subsequently killed herself by stabbing indiscriminately.

40. As already stated, the complaint itself was to the effect that the deceased were murdered. No investigation appears to have been done in that direction. On the other hand, seeing the position of the dead bodies lying both inside and outside the store room, the Investigating Officer and the inquest panchayatdars opined that it is a case of D.1 killing D.2 to D.4 and committing suicide. Absolutely there is no basis on record for the Investigating Officer to come to that conclusion. The Investigating Officer-PW.17 who is a senior Police Officer of the rank of D.S.P., admits in his evidence that a mother killing three children and committing suicide is very abnormal case which will be resorted to only if there exists strong reasons. As already stated, in the instant case, the prosecution has not

placed on record as to what are the strong reasons for D.1 to commit such a serious and ghastly acts. She went to her parents' house a day earlier, stayed there over night and returned to her matrimonial home i.e., the Temple in the afternoon of 21.06.2007 and till about 06.30 p.m., her mother-PW.4 and PW.10 were very much with her. They did not observe any abnormal conduct or behaviour on the part of D.1 to believe that within one hour thereafter she would have killed all her three daughters one after the other and thereafter killed herself. The material on record shows that one dead body was lying in the shed behind the temple and three dead bodies were lying in front of the shed, which is an open area close by to the temple. The sketch of the scene of offence Ex.P.24 shows that within the compound immediately after entering, there is Dattatreya temple and thereafter one has to enter the main Sai Baba temple. Towards north of the temple, there is a lane leading to store room and towards west of the temple, there is a store room where the dead bodies were found lying.

41. For all the above reasons, we find it difficult to accept the case of the prosecution that the incident took place in the manner in which it is alleged. The true genesis of the incident is not placed before the Court nor proper investigation appears to have been conducted. The learned trial Judge has not appreciated the evidence on record in proper perspective and erred in holding that the evidence on record establishes the case of the prosecution. There is substantial amount of doubt in the entire case of the prosecution and the benefit thereof invariably goes to the appellants. The point is accordingly answered.

42. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused for the offences

under Section 304-B r/w.Sec.34 IPC are set aside. The appellants/accused are set at liberty forthwith, if they are in custody and if they are not required in any other case or crime, and the fine amount, if any, paid by them shall be refunded to them. The bail bonds of the appellants/accused shall stand cancelled.

SURESH KUMAR KAIT,J

Date: 22.12.2017
Dsr/Smr

M.S.K.JAI SWAL,J

