

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.188 OF 2011

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

1. This Criminal Appeal arises from the judgment dated 11-02-2011 in Sessions Case No.170 of 2010 on the file of the Court of VII Additional District and Sessions Judge (F.T.C.), Madanapalle, Chittoor District (for short, 'the trial Court'), wherein the appellants/accused Nos.1 and 2 were convicted under Section 235(2) Cr.P.C. and sentenced to suffer imprisonment for life for the offence under Section 302 of the Indian Penal Code (for short, 'I.P.C.') and got acquitted under Section 235(1) of Cr.P.C. for the offence under Section 379 of I.P.C.

2. Heard Sri Suresh Kumar Reddy. Kalava, learned counsel for the appellants/accused, and the learned Public Prosecutor (A.P.), appearing for the respondent-State, and perused the record.

3. The case of the prosecution, in brief, is that on 13.06.2009 at 03:00 p.m., P.W.1 Gajula Chandra Sekhar, lodged a written report in Punganur police station alleging that on 12.06.2009 at about 07:00 p.m. his younger sister, Gajula Nagamma (hereinafter referred to as 'the deceased') left his house with a milk can and Account Book to supply milk to milk depot of P.W.7 Nakkanapalli Huda Ahamad, and when she did not return, he along with his relatives searched for her on that night, but could not trace her, and while they were continuing their search on 13.06.2009, at about 10:00 a.m., P.W.4 G.Dora

Babu and L.W.5 R.Reddeppa Reddy informed them about their noticing the deceased going into the house of M.Manjula @ Vijaya-1st appellant, situated opposite to the mosque in Melupatla village at about 08:00 p.m. on 12.06.2009, P.W.1 and P.W.2 P.Rajasekhar, went and enquired P.W.3 M.Ramachandra Reddy, owner of the house, where the appellants 1 and 2 used to reside, P.W.3 also informed that he noticed the deceased going into the house of appellants 1 and 2 along with milk can in her hand, accompanied by 1st appellant. Subsequently, P.W.7 and P.W.6 Rathnamma also informed about their witnessing the same. Thereupon, P.Ws.1 and 2 went to the house of the appellants 1 and 2 and noticed the entrance door slightly opened, milk can and account book were lying in the hall and the dead body of the deceased was lying in a small lane leading to bathroom, situated on the eastern side of the rented house of appellants 1 and 2. Further, they noticed the gold ornaments, *i.e.*, 1) one gold chain with thali, 2) black bead chain, 3) gold ring, 4) a pair of gold ear studs with hangings and 5) nose screw, all weighing about 30 grams, worth Rs.30,000/- missing from the dead body of deceased, than, P.W.1 immediately lodged a report to the Police, requesting to take necessary action.

4. On a report from P.W.1, P.W.14 B.Venkatesh, Head Constable of Punganur police station, registered the same as a case in Crime No.131 of 2009 for the offences under Sections 302 and 379 of I.P.C. On 13.06.2009, P.W.16 B.Srinivasulu, Inspector of Police, Punganur police station, took up the investigation, conducted inquest over the dead body of deceased, examined the scene of

offence, seized a steel milk can M.O.4 and a note book from the scene of offence under the cover of panchanama. On 21.06.2009 at 11:30 a.m. P.W.11 U.Sreenivasa Rao, V.R.O of Mangalam village, appeared before P.W.16-Inspector of Police, produced appellants 1 and 2, along with a report Ex.P-5, stating that the appellants 1 and 2 belong to Karnataka and presently residing in Melupatla, Punganur town, approached him and voluntarily confessed the commission of offences in his presence. The appellants 1 and 2 were arrested in the Circle Office, Punganur on 21.06.2009 at about 12:30 p.m. in the presence of P.W.11 and P.W.9 and on interrogation 1st appellant confessed that she was married to Muninarayana, own brother of her mother, about ten years back, begot two male children. Due to harassment, she left him and her children about five years back, went to Mulabagal village in Karnataka and got acquainted with the 2nd appellant, who was a driver, residing in Gandhinagar, Kolar town, Karnataka and thereafter they resided in the rent houses at Chintamani, Maluru and Mulabagal villages, five months prior to the incident, 2nd appellant got driver job at Punganur, through one Narayanappa, his close relative and started residing in the rented house of P.W.3, situated opposite to the mosque in Melupatla village, on a monthly rent of Rs.400/-. While so, three months prior to the offence, 2nd appellant stopped the job of driver at Nagamuni, brother of Municipal Chairman of Punganur, due to some differences with him and failed to secure any job, it became difficult for their sustenance, decided to earn easy money somehow or other and at that time, saw the deceased going to the house of her brother-PW.1,

who was residing backside of their house. Further, during casual visit to the house of P.W.1, on 11.06.2009, 1st appellant noticed the deceased wearing plenty of gold ornaments and enquired the deceased whether they are of pure gold, then the deceased informed that they were of pure gold, which was witnessed by L.W.7 G.Ranemma and 1st appellant decided to rob away the gold ornaments of deceased and informed the same to 2nd appellant and as per their plan on 12.06.2009 at about 07:00 p.m., 1st appellant invited the deceased, who was holding milk can and note book in her hand, and took her into their house, which was witnessed by P.Ws.3, 4, 6, 7 and LW.5 R.Reddeppa Reddy, and after going into the house, bolted the door from backside. Thereafter, appellants 1 and 2 began to converse with the deceased and all of a sudden 2nd appellant caught hold of her neck, pressed forcibly and pushed her down on that the deceased cried loudly as "*nannu vadulu lekunte maa annaku chebuthanu*", which was heard by P.W.8 P.Ashok. Thereafter, 2nd appellant sat on her, held her hands and legs firmly. 1st appellant kept a pillow on her face, pressed it forcibly to prevent her from crying and after some time Gajula Nagamma died. Thereafter, they robbed away the gold ornaments, i.e., 1) one gold chain, 2) thalibottu, 3) black bead chain, 4) gold ring, 5) ear studs with hangings and 6) a nose screw from the dead body, opened the door, when found the light glowing outside their house, requested P.W.3 to switch off the light and then took the dead body of the deceased and laid it in a small lane, situated on the eastern side of their house leading to bathroom, went away to Boyakonda by jeep.

2nd appellant disposed of some gold ornaments, *i.e.*, 1) gold chain, 2) thalibottu, 3) a pair of ear studs and 4) a nose screw in the shandy at Punganur on Monday for Rs.2,000/- to an unknown person. Thereafter, appellants 1 and 2 went to Tirumala, stayed there, after exhausting the money, returned to Boyakonda with intent to sell the remaining gold ornaments. Further, 1st appellant confessed that if the police follows her to her house in Melupatla, she would show the pillow with which she killed the deceased. Thereafter, P.W.16-Inspector of Police, Punganur, seized 1) gold ring studded with six red stones and 2) a black bead chain with 22 gold gundlus from the possession of 2nd appellant under the cover of mahazar at 12:30 p.m. in the presence of P.Ws.9 and 11 panch witnesses. In pursuance of the voluntary confession made by the appellants 1 and 2, P.W.16 seized a cotton pillow M.O.3 under a cover of separate mahazar at 03:00 p.m., from the house of appellants 1 and 2, in the presence of P.Ws.9 and 11 and sent both the appellants to judicial remand.

5. On 22.06.2009 at 10:30 a.m. during identification parade conducted by P.W.13 S.Munaswamy, V.R.O. of Katperi village, P.W.1 identified the gold ornaments of deceased, which were seized from the possession of 2nd appellant by P.W.16. P.W.15 Dr.T.Rama Chandra Prasad Rao, conducted autopsy over the dead body of deceased, issued Ex.P-10 post-mortem certificate opining that the deceased would have died due to asphyxia, *i.e.*, smothering and throttling. After completion of investigation, P.W.16 filed charge sheet against the appellants 1 and 2.

6. The case was taken on file as P.R.C. No.20 of 2009 by the Judicial Magistrate of I Class, Punganur.

7. After furnishing copies of documents to the appellants 1 and 2, the case was committed to the Court of Sessions, Chittoor, and the same was numbered as Sessions Case No.170 of 2010.

8. Considering the material available on record and on hearing both sides, the trial Court framed charges under Sections 302 and 379 of I.P.C. against the appellants 1 and 2, read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

9. During course of trial, the prosecution had examined P.Ws.1 to 16 and marked Exs.P-1 to P-12 and M.Os.1 to 9.

10. The appellants 1 and 2 were examined under Section 313 of the Code of Criminal Procedure and they denied the incriminating evidence appearing against them and reported no evidence on their behalf.

11. The trial Court, on considering the evidence and hearing arguments of both sides, arrived at a conclusion that the prosecution proved the guilt of the appellants 1 and 2 beyond all reasonable doubt for the offence under Section 302 I.P.C., convicted and sentenced them as indicated hereinbefore but acquitted them for the charge under Section 379 I.P.C.

12. Learned counsel for the appellants/accused Nos.1 and 2 would submit that the judgment under appeal is contrary to law and

evidence on record. Learned Judge having acquitted the appellants 1 and 2 for the offence under Section 379 I.P.C., erred in convicting them for the offence under Section 302 I.P.C. The learned Judge erred in relying on the evidence of P.Ws.1 to 10, who are interested witnesses. There is no motive or *mens-rea* to prove the guilt of the appellants 1 and 2. Recovery of M.O.1 gold chain and M.O.2 gold ring is not proved. P.W.1 admitted in chief-examination that M.O.1 gold chain and M.O.2 gold ring were found on the dead body of the deceased on 13.06.2009. There is abnormal delay in sending the F.I.R. to the Judicial First Class Magistrate, Punganur. The name of 2nd appellant does not found place in F.I.R., which shows that he is falsely implicated in this case. There is no direct evidence, the whole case is based on circumstantial evidence, and the chain to prove the accusation is broken. There is no admissible evidence under Section 27 of the Indian Evidence Act, 1872 (for short, 'the Act') and the so-called confessional statements alleged to have been made by the appellants 1 and 2 are inadmissible in evidence and as such the extra judicial confession is a weak piece of evidence. There are material discrepancies in the evidence of P.Ws.8 and 10 and other witnesses. Appellants 1 and 2 were not tenants of PW.3, no lease deed was filed. The prosecution failed to prove the guilt of the appellants 1 and 2 for the offence under Section 302 I.P.C. beyond all reasonable doubt and as such the learned trial Court Judge erroneously convicted them for the offence under Section 302 I.P.C. and prayed to set-aside the conviction and sentence recorded against the appellants 1 and 2.

13. Learned Public Prosecutor appearing for the respondent-State would contend that there are no omissions and commissions in the evidence of P.Ws.1 to 10. The appellants 1 and 2 were acquitted for the offence under Section 379 I.P.C. on the admission of PW.1 about the presence of M.Os.1 and 2 on the person of the dead body, is not a sufficient ground to hold that the appellants 1 and 2 are innocents. P.Ws.1, 2, 3, 7 and 8 have clearly and categorically in one voice stated that they saw 1st appellant taking the deceased into her house, situated opposite to a mosque in Melupatla village around 08:00 p.m. on 12.06.2009 and they also deposed about the presence of 2nd appellant in that house at that time. There is ample evidence on record to believe that the appellants 1 and 2 were the tenants in one of the portions of house belonging to P.W.3. The prosecution has proved the guilt of the appellants 1 and 2 beyond all reasonable doubt and rightly convicted and sentenced them for the offence under Section 302 I.P.C. and as such there is nothing to interfere with the impugned judgment under appeal.

14. In view of the rival contentions put forth, the **point** for determination is whether the conviction and sentence recorded against the appellants/accused Nos.1 and 2, for the offence under Section 302 I.P.C., is liable to be set-aside?

15. **POINT:**

In view of the submissions of both the parties, it is appropriate to place the evidence on record. P.W.1 G.Chandra Sekhar, who is none other than the brother of the deceased, deposed that he has

two sisters and the deceased is his younger sister, given in marriage to one Veerabhadrapa of Mangalam village, nine years prior to her death. On the date of incident, the deceased wore 1) gold chain, 2) black beads chain, 3) ear studs with hangings and 4) gold ring, value of those ornaments was Rs.30,000/-. He deposed that M.Os.1 and 2 belong to her deceased sister. His evidence further reveals that he was having a cow, lives by grazing cows and also runs a petty shop. Two days prior to her death, deceased came to his house. One and half years prior to his chief-examination, deceased took milk to milk collection centre at about 07:00 p.m. but did not return, waiting till 09:00 p.m., he searched for her whereabouts up to 11:00 p.m. but could not trace her. On the next day morning while he was searching, at about 10:00 a.m. P.W.4 G.Dorababu and L.W.5 R.Reddeppa Reddy informed that they noticed the deceased talking with 1st appellant, on the previous night at their Melupatla village. 1st appellant was residing as a tenant in the house of P.W.3, he went to his house and enquired PW.3, who in turn informed him that he saw the deceased and 1st appellant going into the house of appellants at 09:00 p.m. on the previous day, then he went to the house of the appellants and found the door partially opened, when he called for the inmates, there was no response. By opening the door, he found the milk can and book, being used for supply of milk to milk collection centre. On further search, he found the dead body of his sister within the compound wall of PW.3, near a small lane leading to bathroom. Subsequently, as 1st appellant was not found in the village, he went to Punganur police station and lodged Ex.P-1 report

at about 03:30 p.m. He further stated that before going to milk centre, his deceased sister wore gold chain, gold black beads chain, ear studs with hangings, gold ring all worth about Rs.30,000/-. He identified M.O.1 gold black beads chain and M.O.2 gold ring and stated they belong to his deceased sister. He was examined by the police and was present at the time of conduct of inquest over the dead body of deceased.

16. The evidence of P.W.2 P.Rajasekhar reveals that he is a relative of PW.1 and on 12.06.2009 at about 09:00 p.m. as the whereabouts of deceased were not known, PW.1 and P.W.5 P.Manjunadha and he searched for the deceased, but could not find her and on the next day morning *i.e.*, on 13.06.2009 at 10:00 a.m., PW.4 and LW.5 R.Reddeppa Reddy informed them about their noticing the deceased talking with 1st appellant in front of the house of PW.3, on previous day at about 08:00 p.m. and accordingly, they went and searched the house of appellants, found the dead body of deceased within the compound of PW.3 and later he was examined by the police.

17. The evidence of P.W.3 M.Ramachandra Reddy reveals that he is native of Melupatla village, knows the appellants 1 and 2, who were his tenants and the deceased. About one and half years prior to his chief-examination, Nagamma died. Four months prior to her death, the appellants 1 and 2 occupied his house as tenants. 2nd appellant used to work as driver under one Nagaraju, Sarpanch. On 12.06.2009 at about 07:30 p.m., he noticed 1st appellant talking with deceased near his house and going into the house of the appellants.

Thereafter, he slept. At about 09:00 p.m., 1st appellant came and asked him to switch off the light as it was glowing. On the next day morning *i.e.*, 13.06.2009 at about 10:00 a.m., PWs.1 and 2 along with others came to his house, appellants 1 and 2 were absent. On search, they found the dead body of deceased near the bathroom of the house of the appellants 1 and 2. His evidence further reveals that no gold ornaments were found on the person of the dead body and he was examined by the police in this case.

18. The evidence of P.W.4 G.Dorababu, who is a native of Punganur town and lives by business, reveals that he knew PW.1 and his two sisters, deceased Nagamma is elder (*sic*) sister of PW.1. On 12.06.2009, he went to Melupatla village of Punganur town and at about 08:00 p.m., while he was talking with LW.5 R.Reddeppa Reddy by standing in front of a mosque in Melupatla village, he noticed 1st appellant and deceased going together into the house of the appellants. 2nd appellant accompanied 1st appellant and deceased and later he went to his house. On the next day morning, *i.e.*, on 13.06.2009 at about 10:00 a.m. he noticed PWs.1 and 5 in an annoyed condition and when he questioned about their annoyance, they informed that the whereabouts of deceased were not known, from yesterday, and then he told them that he saw the appellants 1 and 2 going into their house along with the deceased. On that, P.W.4, PWs.1 and 5 went to the house of PW.3 and enquired about the deceased, who in turn informed them that he saw the deceased going into the house of the appellants. On that, he along with PWs.1 and 5 and others searched the house of the

appellants and found the door partially opened. They called the inmates of the house, as there was no response, they went inside and noticed milk can, which was carried by the deceased, and a book in the hall and on further search found the dead body of deceased in the compound of PW.3 near bathroom. He further deposed that no gold ornaments were found on the dead body of deceased, but noticed that foath and blood stains in the mouth and nostrils of deceased. He was examined by the police and was present when inquest was held over the dead body of deceased.

19. P.W.5 P.Manjunadha had corroborated the evidence of PWs.1 and PW.3 in all material particulars.

20. The evidence of P.W.6 Rathnamma reveals that she was one of the tenants in the house of PW.3. She knows the deceased in this case, who is sister of PW.1. She further deposed that one and half years prior to her examination-in-chief, around 08:00 p.m., she returned from tomato mandi and noticed appellants 1 and 2 standing at the door of their house. Then, 1st appellant went to the road and brought the deceased, who was having milk can and account book in her hand. On the next day morning, she saw PW.1 and others asking PW.3 about the whereabouts of deceased. Then PW.6 and others went into the house of the appellants, found milk can and account book, carried by the deceased and around 11:00 a.m., they found the dead body of deceased near a small lane leading to bathroom. She further stated that she was examined by police.

21. The evidence of P.W.7 N.Huda Ahamad reveals that he is a milk collecting agent. On 12.06.2009 at about 07:30 p.m., deceased came along with milk and supplied two liters of milk. He endorsed the same in the account book, being maintained. She supplied milk on behalf of her brother. Ex.P-2 is the milk book and Ex.P-3 is the relevant entry made in Ex.P-2, dated 12.06.2009. He further stated that on 12.06.2009, deceased came along with 1st appellant and after supplying the milk both of them went away. He identified his handwriting in Ex.P-2 i.e., Ex.P-3 and stated that he was examined by police.

22. The evidence of P.W.8 P.Ashok reveals that he was doing tomato business at Punganur and lives in Melupatla, on 12.06.2009 at about 08:30 p.m., when he was going to his house, noticed P.W.10 P.Prakash Reddy coming to his house and the relatives of deceased were searching for her. On that day, he along with PW.9 went to the house of appellants and heard the voice of a lady in a louder manner stating '*vadulu vadulu, lekunte maa annaku cheputha*' and returned from there. On the next day, he came to know that Nagamma died. He further stated that he was examined by the police.

23. The evidence of P.W.9 R.Subramanyam Reddy reveals that on 21.06.2009 when he was at Tahsildar office, Punganur town, he received a phone call from S.I. of Police, Punganur. On that, he reached Punganur police station, where P.W.11 U.Sreenivasa Rao, V.R.O. of Mangalam was present and S.I. of Police, informed him that the two persons present there were connected with the crime of

killing Nagamma. 1st appellant confessed in his presence that she committed the offence of killing the deceased and taking away her gold ornaments, present on her body and M.Os.1 and 2 were recovered from the appellants in his presence and the appellants signed on Ex.P-4 mahazarnama, which was attested by him.

24. The evidence of P.W.10 P.Prakash Reddy reveals that he knew 2nd appellant as a driver and on 12.06.2009 he went to his house to engage him as a driver of his car. When he went to the house of 2nd appellant, he heard the voice of a lady saying "*leave me, I will inform my brother*" and on hearing the same, he returned without talking to 2nd appellant under the impression that there was a quarrel in the house of the 2nd appellant and it was not good to talk with him at that time. On the next day, he came to know that Nagamma was killed by the appellants 1 and 2. He further deposed that he was examined by the police.

25. The evidence of P.W.11 U.Sreenivasa Rao reveals that he was Senior Assistant in the Collector's Office, Chittoor. On 21.06.2009 at about 10:00 a.m. appellants 1 and 2 came to his house confessed about their killing the Nagamma of Mangalam village on 12.06.2009 and committing theft of gold ornaments present on her person. Further confessed that after committing the offence they went to Boyakonda and Tirupati and sold some of the gold ornaments and now they were having black bead gold chain and gold ring. Thereafter, he submitted a written report Ex.P-5 to the C.I. of Police, and produced the appellants 1 and 2 before C.I. of Police, Punganur.

26. The evidence of P.W.12 P.Nagasubbamma reveals that she was a witness to inquest panchanama conducted over the dead body of deceased at Melupatla village at 03:30 p.m. along with L.W.14 B.Anji Reddy and L.W.15 G.Krishna Reddy, the inquest panchanama contains her signature, which was marked as Ex.P-7.

27. The evidence of P.W.13 S.Munaswamy reveals that he was a witness for identification proceedings of gold ornaments belonging to the deceased. M.Os.1 and 2 were placed with similar gold ornaments. Thereby, PW.1 G.Chandrasekhar was brought there, he identified M.Os.1 and 2 stating that M.Os.1 and 2 were of the deceased. Ex.P-8 is the identification proceedings of M.Os.1 and 2.

28. The evidence of P.W.14 B.Venkatesh reveals that he is Head Constable of Punganur P.S. On 13.06.2009 at 03:00 p.m., he received a written report from PW.1. On that, he registered a case in Crime No.131 of 2009 for the offences under Sections 302 and 379 I.P.C. and issued the F.I.R. Ex.P-9. Thereafter, PW.16, Inspector of Police, took up investigation in this case.

29. The evidence of P.W.15 T.Rama Chandra Prasad Rao reveals that he is a Civil Assistant Surgeon, Area Hospital, C.H.C., Punganur. On 13.06.2009, at about 06:30 p.m. he received a requisition from the Station House Officer, Punganur to conduct autopsy over the dead body of deceased and accordingly on 14.06.2009, at 09:00 a.m. he conducted post-mortem examination over the dead body of deceased and by that time rigor mortis was present and external injuries *i.e.*, epistaxis present; pectchical

hemorrhages over both eyes present; nail markings over neck on both sides present, swelling of face and neck present. On his conducting internal examination, hyoid bone fracture present on both edges; trachea contains blood; multiple teeth markings over upper and lower lips over inner sides present. He issued Ex.P-10 post-mortem examination certificate opining that the deceased would appear to have died of asphyxia due to smothering and throttling. Ex.P-10 corroborates with the testimony of PW.15.

30. The evidence of P.W.16 B.Srinivasulu reveals that he was the Inspector of Police, Punganur and on 13.06.2009 at about 03:00 p.m., he took up the investigation, visited the scene of offence, prepared rough sketch Ex.P-12 and conducted inquest in the presence of PWs.1 to 5 and LW.5 R.Reddeppa Reddy. After completion of inquest, send the dead body of deceased for conducting autopsy. Thereafter, he secured the witnesses, PWs.6 to 8, 10 and LW.7 Gajula Ranemma and recorded their statements. On 21.06.2009 at about 11:30 a.m. PW.11 appeared before him and produced appellants 1 and 2 along with a report Ex.P-5. Thereafter, PW.16 recorded the statement of PW.11, interrogated the appellants 1 and 2 separately in the presence of PWs.9 and 11. 2nd appellant produced M.Os.1 and 2 and stated that he sold away some of the ornaments of the deceased. PW.16 seized M.Os.1 and 2 under the cover of mahazarnama Ex.P-4. Thereafter, appellants 1 and 2 led PWs.9 and 11 to the scene of offence and shown the pillow M.O.3, which was seized by PW.16 at 02:45 p.m. on 21.06.2009 in the presence of said mediators mentioned in Ex.P-6. Thereafter, PW.16

sent the appellants 1 and 2 to the Judicial Magistrate of First Class, Punganur, for remand. His evidence further reveals that he seized the milk can M.O.4, polyester saree M.O.5, petty coat M.O.6, steel toe rings M.O.7, polyester jacket M.O.8 and broken pieces of bangles M.O.9 at the time of conducting inquest over the dead body of deceased. On 22.06.2009, PW.13 conducted identification proceedings for identification of M.Os.1 and 2. Ex.P-11 is six positive photographs with a corresponding C.D. On 30.06.2009, he received post-mortem certificate from PW.15 and filed charge sheet against the appellants 1 and 2.

31. Learned counsel for the appellants/accused Nos.1 and 2 relied on a decision of the Hon'ble Supreme Court in **Sardar Hussain and another Vs. State of Uttar Pradesh**¹, wherein it was held as follows at Para 8:

"8. As to identification of the dead body, the evidence on record is equally unsatisfactory. Shabbir (PW 1) has deposed that about 14 months before, Islam was taken by Sardar Hussain and Yasin. Yasin is the father-in-law of Sardar Hussain. He has also stated when Islam went with them, he was wearing a shirt of green check and a black striped tahmad. Islam was taken on the pretext that they would get him married. He has further stated that Mian Jan (PW 2) and Sadiq (PW 3) and one other person called Majid had seen Islam going with the Sardar Hussain and Yasin. But Main Jan (PW 2) and Sadiq (PW 3) did not speak anything about the dress which Islam was wearing when he

¹ AIR 1988 SC 1766

was taken by Sardar Hussain and Yasin. Secondly, how could Shabbir see all that he had stated. Islam and Shabbir were living separately. Islam was not taken after a meeting with Shabbir. It is not the case of Shabbir that Islam came to him and told him about the purpose of his going with the accused. If the purpose was to get Islam married, why did he allow Islam to go with the accused. Islam had by then parted company with them at the instance of Shabbir and mother, because they were of bad character. Is it understandable that such bad characters should arrange the marriage without the assistance or approval of Shabbir and mother? It is difficult to believe Shabbir in the circumstances.”

32. Learned counsel for the appellants/accused Nos.1 and 2 had further relied on a decision of the Hon’ble Supreme Court in ***Prem Prakash Mundra and others Vs. State of Rajasthan and another***² to submit that the allegations against the appellants 1 and 2, being lost seen in the company of deceased by the prosecution witnesses is doubtful. The dead body was not recovered at their instance and circumstantial evidence is not sufficient to connect the appellants with the offences with which they are charged. The appellants have not made any extra judicial confession. Relied on Para 6 of the above citation:

“6. The finding that the accused had a motive to commit the offence is well supported by the evidence on record. The evidence of PW-14 - Kavita, PW-15 - Gopal Bhandari, PW-19 - Bherulal, PW-20 - Ramesh Chandra and PW-1 -

² AIR 1998 SC 1189

Rooplal has also established beyond doubt that the accused had taken away Babloo on a cycle, from the place where he was playing just by the side of his house to the room in which the accused was staying. The evidence of these witnesses further establishes that Babloo was with him till about 8.00 P.M. It was contended by the learned counsel for the appellants that these circumstances, together with absence of any explanation by the accused as to when he left Babloo, were sufficient for convicting accused Bhagirath under Section 302 IPC. It was also contended that the High Court was not justified in not placing any reliance upon the circumstance that Bhagirath had pointed out the place where Babloo's dead body was buried."

33. Learned Public Prosecutor, in support of his contention, had relied on a decision of the Hon'ble Supreme Court in ***Sahadevan @ Sagadevan Vs. State, Represented by Inspector of Police, Chennai***³ wherein it was held as follows at Para 19:

"19.This Court in more than one case has held, that if the prosecution, based on reliable evidence, establishes that the missing person was last seen in the company of the accused and was never seen thereafter, it is obligatory on the accused to explain the circumstances in which the missing person and the accused parted company (See ***Joseph Vs. State of Kerala {(2000) 5 SCC 197}***). Therefore, we are in agreement with

³ 2003 (1) SCC 534

the finding of the courts below that Circumstance 7 also stands established against the appellants.”

34. The evidence of PW.15 Dr.T.Rama Chandra Prasad Rao, Civil Assistant Surgeon, C.H.C, Punganur, reveals that he conducted autopsy over the dead body of deceased in this case on 14.06.2009 at 09:00 a.m. and found some external and internal injuries on the person of the deceased and issued Ex.P-10 post-mortem certificate opining that the deceased might have died due to asphyxia due to smothering and throttling. He has specifically stated that the deceased appears to have died 36 to 42 hours prior to his examination. Ex.P-10 post-mortem certificate corroborates with the evidence of PW.15. In his cross-examination, he stated that he cannot state whether three or more persons committed asphyxia. He further stated that one healthy person is sufficient to cause asphyxia. Nothing is attributed to PW.15 to depose in favour of the prosecution and issue Ex.P-10 post-mortem certificate. There is also the evidence of PW.1 brother of deceased that he found the dead body of the deceased on 13.06.2009 at 10:00 a.m. in a small lane leading to bathroom in the house of appellants. PW.2 also corroborated the evidence of PW.1. PW.4 has stated that when he found the dead body of the deceased in the compound of PW.3 foath and blood stains were present in the mouth and nostrils of deceased. PW.12 P.Nagasubbamma is a punch witness, in whose presence the inquest over the dead body of deceased was conducted. She further stated that she was told the deceased was killed by the appellants to grab her gold ornaments. She has also stated that Ex.P-7

panchanama was conducted over the dead body of deceased at Melukutla village in the presence of herself and LW.14 B.Anji Reddy and L.W.15 G.Krishna Reddy. There is no much dispute with regard to the homicidal death of the deceased in this case. The evidence of PW.15-doctor, who conducted autopsy over the dead body of deceased is that the deceased died due to asphyxia due to smothering and throttling. In case of a natural death, the injuries that were found on the dead body of deceased such as fracture of hyoid bone on both edges are not possible. Nail markings over neck on both sides and swelling of face and neck present are only possible when the death is a man made. The evidence on record clearly establishes that the death of the deceased in this case is a homicidal.

35. It has been consistently laid down by the Hon'ble Supreme Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See **Hukam Singh Vs. State of Rajasthan** (MANU/SC/0094/1977); **Eradu and others Vs. State of Hyderabad** (MANU/SC/0116/1955); **Earabhadrapa Vs. State of Karnataka** (AIR 1983 SC 446); **State of U.P. Vs. Sukhbasi and others** (MANU/SC/0115/1985); **Balwinder Singh Vs. State of Punjab** (MANU/SC/0160/1986); **Ashok Kumar Chatterjee Vs. State of M.P.** (MANU/SC/0035/1989). The circumstances from which an inference as to the guilt of the appellants/accused is drawn have to be proved

beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

36. In ***Bhagat Ram Vs. State of Punjab***⁴, it was held by the Hon'ble Supreme Court that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

37. It is also apt to refer to a decision of the Hon'ble Supreme Court in ***C. Chenga Reddy and others Vs. State of A.P***⁵, wherein it has been observed thus:

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....”

38. In ***Padala Veera Reddy Vs. State of A.P. and others***⁶, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

⁴ MANU/SC/0158/1954

⁵ MANU/SC/0928/1996

⁶ AIR (1990) SC 79

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) 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
- (4) 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.

39. In ***State of U.P. Vs. Ashok Kumar Srivastava***⁷, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

⁷ MANU/SC/0161/1992

40. Admittedly, the entire case of the prosecution is based on circumstantial evidence and on the extra judicial confession said to have made by the appellants 1 and 2 to P.W.11. The case of the prosecution is that the deceased was the younger sister of P.W.1. She came to his house two days prior to her death. On 12.06.2009 at 07:00 p.m., she left the house of PW.1 with milk can and a book being maintained to write the milk supply accounts supplied to the milk depot of PW.7. Thereafter, she was not seen alive. PW.1 has also clearly and categorically deposed the same in his evidence. The evidence of PW.1 is also that on next day at 10:00 a.m. the dead body of the deceased was found at the rented house of the appellants 1 and 2 in a lane leading to bathroom. The milk can marked as M.O.4 and account book (Ex.P-2) was found at the rented house of the appellants 1 and 2. The appellants were not found in their house.

41. P.W.7 who was running the milk depot in his evidence clearly stated about the deceased coming that evening and supplying the milk and his making endorsement in the account book marked as Ex.P-2. He has also stated in his evidence that Ex.P-3 is the relevant entry dated 12.06.2009 made by him in Ex.P-2, these Exs.P-2 and P-3 corroborates with the evidence of PW.7. PW.7 has also stated that he saw the deceased leaving the milk depot along with 1st appellant on that evening.

42. There is evidence of PW.2 who is the relative of PW.1 that PW.1 and others searching for the deceased on 12.06.2009 around

09:00 p.m. He has also stated that on 13.06.2009 at 10:00 a.m. on being search made by him, PW.1 and others the dead body of deceased was found within the premises of PW.3 near bathroom. It is also the evidence of PW.2 that PW.4 and one R.Reddeppa Reddy (L.W.5) informed him and PW.1 that they saw the deceased with 1st appellant in front of the house of PW.3 on previous day at 08:00 p.m.

43. PW.3 is neighbor, who has specifically stated that on 12.06.2009 at 07:30 p.m. he saw 1st appellant talking to deceased near his house and the deceased entering the house of 1st appellant along with 1st appellant. PW.3 also stated that 1st appellant came to him and asked to switch off the light at 09:00 p.m. as it was burning. There is also evidence of PW.3 that on the next day P.Ws.1, 2 and others enquired about the deceased and he informed them the happening and also stated P.Ws.1 and 2 and others went into the house of appellants and appellants were not present in the house, the deceased was also not present there, on search they found the dead body near bathroom of his house, no gold ornaments were found on the deceased.

44. There is also the evidence of P.W.4 that on 12.06.2009 when he went to the house of R.Reddeppa Reddy (L.W.5), situated in front of the mosque in Melupatla village, he noticed 1st appellant and deceased going into the house of PW.3. He also stated 2nd appellant accompanying 1st appellant and deceased, on the next day *i.e.*, on

13.06.2009. He spoke about finding of the dead body of the deceased on search made by PWs.1, 5 and others.

45. There is also the evidence of PW.5 that on 12.06.2009 around 08:00 or 08:30 p.m., searching for deceased along with P.W.1 and others and also finding the dead body on the next around 12:30 or 01:00 p.m. near the compound wall of PW.3. No gold ornaments worn by the deceased were found, he also deposed about noticing the milk can and book in the house of 1st appellant.

46. There is also specific evidence of PW.6 that she is one of the tenants in the house of PW.3, the appellants also residing in one of the portions of the house of PW.3 as tenants. One and half years back, she found appellants 1 and 2 standing at the door of their house, when she was sitting at the door of their house, 1st appellant going to road and bringing the deceased, the deceased was having milk can and book in her hands. She also stated that on the next day she found the dead body of the deceased near bathroom in a small lane. She found the milk can and book carried by the deceased at the house of appellants 1 and 2.

47. The evidence of P.W.8 is that when he went to the house of 2nd appellant along with P.W.10 at 08:30 p.m., he heard the voice of a lady in a louder manner saying "*vadulu vadulu, lekunte maa annaku chebutha*". P.W.10 has also stated that on 12.06.2009 when he went to the house of 2nd appellant to engage him as driver, he heard a sound from the house of 2nd appellant i.e., "*leave me, I will*

inform my brother”, then he left thinking that there was a quarrel in the house of 2nd appellant and it was not proper to talk to him.

48. There is also evidence of PW.9 that on 21.06.2009 there was a confession panchanama, M.O.1 gold chain and M.O.2 gold ring were recovered under a cover of panchanama Ex.P-4, he attested the same. P.Ws.1 to 6, 8 and 10 belong to Punganur village, living at Melupatla. They are neighbors. In the cross-examination they have denied that they were deposing false. These witnesses reiterated whatever they have stated in the chief-examination. As per the evidence placed on record, there is no animosity or grudge or reason to depose false against the appellants 1 and 2. Nothing is brought in the cross-examination of these witnesses to disbelieve their testimony. There is no reason for these witnesses to depose against the appellants 1 and 2. Generally in the villages, houses are taken on rent without any written document. Therefore, there need not be any written document/deed to prove that the appellants were the tenants at the house of PW.3 as contended by the appellants.

49. The point required to be answered is whether the appellants 1 and 2 have caused the death of deceased for gain?

50. The oral and documentary evidence adduced on behalf of the prosecution reveals that the deceased was found in the company of the appellants 1 and 2 on 12.06.2009 at 08:00 p.m. There is also evidence that the deceased was taken from milk centre to the house of appellants. Appellants 1 and 2 accompanied the deceased into their rented house, thereafter on the next day around 11:00 a.m. the

dead body was found within the premises of the rented house of the appellants 1 and 2. There were no gold ornaments on the dead body. M.O.4 milk can and Ex.P-2 account book carried by the deceased were found at the house of the appellants 1 and 2. Appellants were not found in their house. When the appellants 1 and 2 were examined with regard to incriminating evidence with regard to the deceased entering into their house along with them and finding M.O.4 milk can and Ex.P-2 account book in their house and with regard to finding the dead body of the deceased in their house, simply appellants 1 and 2 denied the same stating '*abadham*' (false).

51. The appellants 1 and 2 did not give any explanation and they did not rebut the circumstances appearing against them by leading any cogent and convincing oral evidence. As per Section 106 of the Indian Evidence Act, the appellants 1 and 2 are required to explain the facts within their knowledge. Section 106 of the Evidence Act reads as follows:

“106. Burden of proving fact especially with knowledge –
When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him
illustrations:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

52. In the case of ***State of M.P. Vs. Ratan Lal***⁸, the Hon'ble Supreme Court held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent with their innocence, the absence of such explanation itself is an additional link which completes the chain. Similar are the circumstances in the case on hand.

53. The answers given by the appellants 1 and 2 will go a long way in completing the chain of circumstances in establishing their guilt. The evidence of all prosecution witnesses is consistent, no hypothesis or accusation is possible with regard to the innocence of the appellants 1 and 2, the time gap of seeing the deceased alive in the company of appellants 1 and 2 and finding the dead body of the deceased within their premises in a lane leading to bathroom is short (11 hours). After the deceased being seen in the company of appellants 1 and 2, she was not seen in the company of any other person nor was seen alive at any other place till her dead body was found. Even when the search was conducted by PW.1 and others, no body informed him that the deceased was seen somewhere else after 08:00 p.m. on that un-fortunate night. Under Ex.P-12 rough sketch map there is specific mention, where the dead body was found, it corroborates with the evidence of PWs.1 to 4 and other witnesses. There was no opportunity or reason for any other person to cause the death of the deceased. The investigation conducted by the police also reveals the guilt of the appellants 1 and 2 for the offence under Section 302 I.P.C. The circumstantial evidence which

⁸ AIR 1994 SC 458

is placed on record, an inference of guilty can only be drawn. The inference of guilty is cogently and firmly established. There is definite evidence unerringly pointing towards the guilty of the appellants 1 and 2. The circumstances, taken cumulatively, form a chain was complete that there is no escape from the conclusion that, within all human probability, the death was caused by the appellants 1 and 2 and none else. The circumstantial evidence is amply clear to sustain conviction and incapable of explanation of any other hypothesis that of not guilty of the appellants. The evidence adduced by the prosecution is consistent with the guilty of the appellants 1 and 2 and it is not in-consistent with their innocence. All the prosecution witnesses PWs.1 to 10 are truthful witnesses. There are no material omissions and commissions in their evidence. There is no reason to disbelieve their testimony. Their evidence clearly establishes that the appellants 1 and 2 had caused the death of the deceased for gain.

54. It is also relevant to state that there is extra judicial confession in this case said to have made before P.W.11 and P.W.11 prepared Ex.P-5 report and submitted the same to PW.16 investigating officer. The same is analyzed hereunder:

55. In the instant case, there is a specific evidence of P.W.11 that on 21.06.2009 at 10:00 a.m. the appellants 1 and 2 made extra judicial confession in his presence with regard to causing the death of the deceased in this case and committing the theft of gold ornaments of the deceased and P.W.11 prepared Ex.P-5 report and presented to PW.16, investigating officer. As per his evidence he

was V.R.O. at that time. In cross-examination he denied that he was deposing false. There was no coercion or inducement or promise to force the appellants 1 and 2 to confess the offence to P.W.11. P.W.11 was not having any authority over appellants 1 and 2 either to induce them or force them to make such extra judicial confession with reference to the death of the deceased in this case. By deposing against the appellants 1 and 2, P.W.11 would gain nor derive any advantage. It is not the case of the appellants 1 and 2 that they were not in fit state of mind nor the said confession was obtained by any inducement, threat or promise by P.W.11 with reference to the charges under Sections 302 and 379 I.P.C. In the light of Section 24 of the Evidence Act that the extra judicial confession made in this case satisfies that it is voluntary, it was not obtained by coercing, threatening or putting the appellants 1 and 2 in any disadvantageous position. There are no justifiable reasons to discard the extra judicial confession made by the appellants 1 and 2 and Ex.P-5 report. It can safely be held that the confession made by appellants 1 and 2, as free woman and man without the involvement of police or any other agency which was against them. So, the extra judicial confession made by the appellants 1 and 2 is deserving of the highest credit, as it flew from the sense of guilty of appellants 1 and 2.

56. In the circumstances of the case, the extra judicial confession made before P.W.11 by the appellants 1 and 2 is admissible in evidence and it is sufficient to believe that appellants 1 and 2 have caused the death of the deceased and committed theft of gold

ornaments worn by the deceased. Merely because the learned trial Judge has acquitted the appellants 1 and 2 of the charge under Section 379 I.P.C, the prosecution case cannot be doubted, relied on a decision of the Hon'ble Supreme Court in **Jaswant Gir Vs. State of Punjab**⁹. The extra judicial confession made by the appellants 1 and 2 can be sole basis for conviction under Section 302 I.P.C., as it satisfies all the ingredients of Section 302 I.P.C.

57. The trial Court had examined the entire evidence of PWs.1 to 16, Exs.P-1 to P-12 and M.Os.1 to 9 and held the charge against the appellants 1 and 2 for the offence under Section 302 I.P.C. was proved and convicted and sentenced them for the said offence. The trial Court acquitted the appellants 1 and 2 of the charge under Section 379 I.P.C. merely on the evidence of PW.1, who deposed that he found M.Os.1 and 2 on the person of the deceased, but in the instant case there is other oral and documentary evidence that all the gold ornaments which are six in number worn by the deceased were missing. Only M.Os.1 and 2 were recovered, the other items were not recovered as the appellants 1 and 2 admitted that they sold those ornaments in a shandy for Rs.2,000/-. As contended by the learned Public Prosecutor, PW.1 due to confusion stated that he found M.Os.1 and 2 on the person of the dead body, in the circumstances of the case, it is quite possible. There is specific evidence of PW.1 that except M.Os.1 and 2 other gold ornaments four in number worn by the deceased were not found on the dead body. Therefore, the motive for the commission of offence

⁹ 2005 (12) SCC 438

i.e., for gain is proved by the prosecution. There is no infirmity in the impugned judgment of the trial Court. The citations given on behalf of the appellants have no application to the case on hand. All the contentions raised on behalf of appellants 1 and 2 do fail. The prosecution proved the guilt of the appellants beyond all reasonable doubt for the offence under Section 302 I.P.C. The trial Court rightly convicted and sentenced the appellants 1 and 2 for the offence under Section 302 I.P.C. to suffer imprisonment for life. Therefore, the same is liable to be confirmed.

58. In the result, the Criminal Appeal is dismissed confirming the judgment dated 11.02.2011, passed in Sessions Case No.170 of 2010, by the learned VII Additional District and Sessions Judge (F.T.C.), Madanapalle.

59. As a sequel, miscellaneous petitions if any, pending in this Criminal Appeal, shall also stand dismissed.

SANJAY KUMAR, J

Dr.SHAMEEM AKTHER, J

Date: 16-08-2017.

Dsh

HON'BLE SRI JUSTICE SANJAY KUMAR

And

HON'BLE DR. JUSTICE SHAMEEM AKTHER

16



16082017

CRIMINAL APPEAL No.188 OF 2011

(Judgment of the Division Bench delivered by

Hon'ble Dr. Justice Shameem Akther)

Date. 16-08-2017

DSH