

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

CRIMINAL APPEAL No. 69 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 27.01.2011, passed by the learned III Additional Sessions Judge (Fast Track Court), Medak (for brevity, 'the trial Court') in Sessions Case No.206 of 2008, 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 to pay fine of Rs.500/- (Rupees five hundred only) with a default sentence of simple imprisonment for a period of two months

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

3. The prosecution case in brief is as follows:

(a) Smt. Anitha alias Laxmi is the deceased in this case. P.W.1-G.Pochaiah, who is father of the deceased, filed a complaint in Jogipet Police Station on 23.02.2008 stating that about two years back, he performed marriage of his daughter- Anitha alias Laxmi (deceased) with the appellant-accused. After the marriage, they lived happily for 1½ years. Thereafter, the appellant started harassing the deceased and left her in her

parental house. On 20.02.2008, the appellant came to the house of P.W.1 in the night and went away in the morning on 21.02.2008 and again, came in the midnight at 12 O'clock on 22.02.2008, the appellant and the deceased slept in a hut beside the room of P.W.1. When P.W.1 woke up at 5-00 a.m. on 23.02.2008 and called his daughter, there was no response and then he went near to his daughter and found his daughter dead. The appellant was not present there. P.W.1 suspected that the appellant might have killed his daughter by suspecting her character.

(b) Basing on Ex.P.1-report made by P.W.1, P.W.12-Sub Inspector of Police, Jogipet Police Station, registered a case in Crime No.24 of 2008 under Section 174 Cr.P.C. and issued F.I.R. Thereafter, he recorded statement of P.W.1 and issued a requisition to P.W.11-Tahsildar, Jogipet to conduct inquest over the dead body. P.W.11-Tahsildar, Jogipet came to the scene of offence and conducted inquest panchanama in the presence of mediators. P.W.12-Sub Inspector of Police conducted Ex.P.3-scene of offence panchanama in the presence of mediators and seized plastic mat and towel. He also recorded statements of witnesses and photographed the scene of offence and the dead body. After inquest, the dead body was shifted to Government Hospital, Jogipet for postmortem examination. As per the postmortem examination report, the cause of death was due to asphyxia as a result of throttling. P.W.12-Sub Inspector of Police altered Section of Law from Section 174 Cr.P.C. to Section 302

I.P.C. and issued express alteration memo. The Inspector of Police-P.W.13 took up the case for further investigation and recorded the statements of witnesses. On 29.02.2008, P.W.4-R.Goverdhan Reddy brought the appellant to the police station and produced him before P.W.13-Inspector of Police. P.W.13-Inspector of Police secured the presence of mediators, recorded the confession of the appellant and conducted seizure panchanama and then the appellant produced stolen articles, i.e., pair of ear-studs and silver anklets. Thereafter, the appellant was sent for judicial remand. After completion of the entire investigation, P.W.13-Inspector of Police filed charge sheet for the offences punishable under Sections 302 and 380 I.P.C. against the appellant before the Judicial Magistrate of First Class, Jogipet.

(c) The learned Judicial Magistrate of First Class, Jogipet, took cognizance of the case in P.R.C. No.17 of 2010 and committed the case to the Principal Sessions Judge, Medak at Sangareddy. The Principal Sessions Judge, Medak at Sangareddy, took the case on file and assigned number, i.e., Sessions Case No.206 of 2008, and made over it to the III Additional Sessions Court (Fast Track Court), Medak, for disposal according to law.

(d) The trial Court framed charges under Sections 302 and 380 I.P.C. The appellant pleaded not guilty and claimed to be tried. During trial, the prosecution examined P.Ws.1 to 13 and marked Exs.P.1 to P.10 and M.Os.1 to 7. After closure of

the prosecution evidence, the appellant-accused was examined under Section 313 Cr.P.C. explaining him the incriminating material in the evidence of prosecution witnesses. For which, he denied same. The appellant-accused did not examine any witnesses to defend him.

(e) The Trial Court, after perusal of the entire evidence on record and hearing both sides, held that the appellant-accused is found not guilty for the charge under Section 380 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. and sentenced him to undergo imprisonment for life and to pay fine of Rs.500/- (Rupees five hundred only) with a default sentence of simple imprisonment for a period of two (2) months.

4. Learned counsel for the appellant-accused would submit that the trial Court committed a grave error in relying on the sole evidence of P.W.1 without any corroboration; the trial Court ought to have noted that there is nothing in Ex.P.1-report to show that M.Os.1 and 2 were stolen and the alleged recovery of M.Os.1 and 2 from the possession of the appellant is nothing but to implicate him in a false case; P.Ws.2, 3 and 6, who are said to be the neighbours of P.W.1 did not see the appellant at the house of P.W.1 on the intervening night of 22/23.02.2008; the trial Court committed grave irregularity in relying on the sole testimony of P.W.1 without corroboration; when the trial Court

did not believe that the commission of theft of M.Os.1 and 2 by the appellant discarding the testimony of P.W.13-Inspector of Police and panchas of confession and recovery, there is no motive for commission of the offence by the appellant; the trial Court ought to have acquitted the appellant for the charge under Section 302 I.P.C.; there is a delay in lodging Ex.P.1 report with the police; when P.W.1 stated that he do not know the contents of Ex.P.1, the evidence of P.W.1 ought to have rejected by the trial Court; and there are several discrepancies, contradictions and omissions in the evidence of the prosecution witnesses. Learned counsel for the appellant has relied on the decision of the Supreme Court in **Dasari Siva Prasad Reddy v. Public Prosecutor, High Court of Andhra Pradesh**¹ and contended that, at the most, the material on record leads to a suspicion against the appellant, however, a strong suspicion may exists against the appellant, such suspicion cannot be a basis to hold that the appellant had murdered his wife. Ultimately, learned counsel prayed to set aside the conviction and sentence recorded against the appellant for the offence punishable under Section 302 I.P.C.

5. The learned Public Prosecutor would contend that there is evidence of P.W.1, who is the father of the deceased, he has no reason to implicate the appellant falsely in this case; P.Ws.2, 3 and 6 have also stated that P.W.1 informed them the presence of the appellant on the intervening night of

¹ 2004(2) ALD (Crl.) 677 (SC)

22/23.02.2008; those witnesses have clearly and categorically stated the same; there is no reason for P.W.1 to falsely implicate the appellant in this case; the trial Court has analyzed the entire material on record, assigned valid reasons and rightly convicted and sentenced the appellant for the offence punishable under Section 302 I.P.C.; there are no material omissions and contradictions in the evidence of prosecution witnesses; and ultimately, prayed to dismiss the appeal by confirming the judgment passed by the trial Court.

6. In view of the contentions putforth by both sides, the following points have fallen for consideration:

- (1) Whether the death of Anitha alias Laxmi is homicidal?
- (2) Whether the circumstantial evidence is sufficient to hold the guilt of the appellant?
- (3) Whether the conviction and sentence recorded against the appellant for the offence punishable under Section 302 I.P.C. is sustainable?
- (4) To what result?

7. **POINT No.1:** The appellant suspected the fidelity of the deceased and started harassing her and he left her at her parental house one and half (1½) months prior to her death. On 20.02.2008, the appellant came to the house of P.W.1 at night and went away in the morning on the next day, i.e., on 21.02.2008 and again, at midnight 12 O'clock on 22.02.2008, the appellant came to the house of P.W.1, he had dinner, thereafter the deceased and the appellant slept in a hut, beside the room of

P.W.1. P.W.1 slept in his room by closing the door. When P.W.1 woke up at 5-00 a.m. on 22.02.2008 and called his daughter (deceased), there was no response. When he went near his daughter, he found her dead. Immediately, P.W.1 lodged a report-Ex.P.1 to the Station House Officer, Jogipet Police Station suspecting the appellant for the death of his daughter. To prove the guilty of the appellant, P.Ws.1 to 13 were examined and Exs.P.1 to P.10 were marked before the trial Court. P.Ws.4, 8 and 9 did not support the case of the prosecution and they were treated as hostile by the prosecution. The evidence of P.W.1 reveals that the deceased-Anitha @ Laxmi was his daughter, he performed her marriage with the appellant, in the marriage he has given dowry, gold and silver ornaments, etc., the couple lived happily for 1½ years, thereafter the appellant started harassing his daughter.

8. P.W.10-Dr. D.Mahender Reddy, who conducted autopsy over the dead body of the deceased-Smt. Anitha alias Laxmi, deposed that on 23.02.2008, he received requisition from the Station House Officer, Jogipet Police Station, to conduct autopsy and he conducted autopsy over the dead body between 3-10 p.m. and 4-30 p.m. on that day and found the following injuries:

- "1. Swelling at the front of the neck 1/2 x 1 cm black in colour.
2. Multiple contusions at the front of neck."

The time of death was 12 to 24 hours prior to the autopsy and the cause of death was due to asphyxia, as a result of throttling,

Ex.P.7 is the postmortem examination report issued by him. Ex.P.7-postmortem examination report corroborates the evidence of P.W.10-doctor. In the cross-examination, P.W.10 stated that he found nail marks near the neck, the contusion marks were also there. There is no reason for P.W.10 to depose in favour of the prosecution and issue false Ex.P.7-postmortem examination report. P.W.11-M.Sailu, Tahasildar, Andole Mandal, also deposed that on 23.02.2008, on requisition from police, he conducted inquest over the dead body of Smt. Anitha alias Laxmi in the presence of P.W.7-G.Durgesh, L.W.12-D.Channaiah and L.W.13-Bairunnisa Begum; Ex.P.4 is the inquest panchanama and they have given the opinion in column No.XV of Ex.P.4. He denied that the opinion given by panchas as mentioned in column No.XV is incorrect. Ex.P.1-report given to the police reveals the place of death as at the house of P.W.1, situated at Jogipet. The evidence of P.W.13-L.C.Nayak, Inspector of Police, who conducted investigation in this case, also reveals the place of death as stated above. There is also evidence of P.W.2-Papannaet Gopal and P.W.3-Laxmi in seeing the dead body of the deceased at the house of P.W.1. P.W.6-Irfana Begum also saw the dead body of the deceased at the house of P.W.1. P.W.7-G.Durgesh is a witness to the scene of offence panchanama and inquest panchanama conducted under Exs.P.3 and P.4 respectively, in whose presence, M.Os.3 and 4 (plastic mat and towel) were seized under the cover of inquest panchana. Through his evidence, M.O.5-polyester saree,

M.O.6-blouse and M.O.7-petticoat were marked. P.W.7 reiterated the same in his cross-examination. As per his evidence and the documents referred by him, the scene of offence in this case is at the house of P.W.1, situated at Jogipet. There is nothing to doubt his testimony. The above evidence clinchingly establishes that the death of Smt. Anitha alias Laxmi was homicidal and it was caused at the house of P.W.1.

9. **POINT Nos.2 TO 4:**

There is no direct evidence who have seen the alleged commission of offence by the appellant. The whole case of the prosecution is based on circumstantial evidence. It is apt to refer the decision of the Hon'ble Supreme Court rendered in **Sharad Birdhichand Sarda v. State of Maharashtra**², 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

² (1984) 4 SCC 116 = AIR 1984 SC 1622

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;
- (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."

10. 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."

11. The case of the prosecution is that on 22.02.2008, the appellant came to the house of P.W.1 situated at Jogipet in the midnight at 12 O'clock, had dinner and slept with the deceased in a hut beside the room of P.W.1. P.W.1 slept in his room by closing the doors. When P.W.1 woke up at 5-00 a.m. on 23.02.2008 and called his daughter (deceased), there was no response. Thereafter, he went near his daughter and found her dead. Then immediately, he lodged a report with the police under Ex.P.1. P.W.1 has deposed the same in his evidence. Ex.P.1-report corroborates with the evidence of P.W.1. The evidence of P.W.12-S.Vaidyanath, Sub Inspector of Police reveals that on 23.02.2008, P.W.1 came to the police station and lodged Ex.P.1-report, on that he registered a case in Crime No.24 of 2008 under Section 174 Cr.P.C. and issued Ex.P.8-F.I.R. He recorded the statement of P.W.1 and issued a requisition to P.W.11-M.Sailu, Tahasildar to conduct inquest panchanama. He also went to the scene of offence, recorded the statement of P.W.2, P.W.6 and others and photographed the dead body. During Ex.P.3-scene of offence panchanama, P.W.12 seized M.Os.3 and 4 (plastic mat and towel). Thereafter, he sent the dead body for autopsy. Basing on the opinion of P.W.10-doctor, Section of Law was altered from 174 Cr.P.C. to Section 302 I.P.C. and sent Ex.P.9-express F.I.R. to all concerned. Ex.P.9-express F.I.R. corroborates the evidence of P.W.12. In the cross-examination, P.W.12 stated that he did not prepare Ex.P.1-report. He admitted that under Ex.P.1-report,

there is no mention of theft of gold and silver ornaments from the dead body. He denied the suggestion that the appellant is not responsible for the death of Anitha alias Laxmi.

12. P.W.1 specifically stated that on 20.02.2008 at midnight about 12 O'clock, the appellant came to his house and left in the morning. The same is finding place in Ex.P.1-report. According to P.W.1, the motive for commission of the death in this case is that the appellant suspected the fidelity of the deceased and started harassing her from six months prior to her death. The same is found in Ex.P.1-report. In cross-examination, P.W.1 denied the suggestion that Ex.P.1-report was not got written by him. He also denied that he paid Rs.10,000/- to prepare gold and silver ornaments. P.W.1 admitted that M.Os.1 and 2 (gold and silver ornaments) were shown to him on the next day by the police. Except this material discrepancy, there is no other material in the evidence of P.W.1. As per the investigation conducted by the police and the evidence of P.W.13-L.C.Naik, Inspector of Police, the appellant was arrested on 29.02.2008 and M.Os.1 and 2 were recovered pursuant to his confession under a cover of a panchanama. The trial Court disbelieved the commission of theft of M.Os.1 and 2 (gold and silver ornaments) by the appellant and extended the benefit of doubt and acquitted him of the charge under Section 380 I.P.C. The evidence of P.W.2-P.Gopal reveals that the appellant suspected the character of the deceased and harassed her, he along with P.W.1 and others went to the house of the

appellant and advised him to live happily, the deceased and the appellant lived happily for some time, thereafter the appellant again beat the deceased and left her at the house of P.W.1. When P.W.2 went to the scene of offence, P.W.1 told him that the appellant came to his house, had dinner and slept with the deceased in a room and on the next day morning he did not find the appellant and saw the dead body of his daughter. In the cross-examination, P.W.2 reiterated what he stated in the chief-examination and denied that he was deposing at the instance of P.W.1. P.W.3-Laxmi also stated that the appellant and the deceased lived happily for one year, thereafter the appellant started harassing the deceased by suspecting the character of the deceased, two or three times, they left the deceased at the house of appellant and advised the appellant to live happily, thereafter the deceased came to her parents' house three months prior to her death. She has also specifically stated that on one day, the appellant came to the house of P.W.1 and again, on the next day, the appellant came to the house of P.W.1, killed the deceased and went away. P.W.3 saw the dead body and found the injuries on the neck. She denied that she did not witness the appellant visiting the house of P.W.1 two times. She further denied that the appellant was not suspecting the character of the deceased. She also denied the suggestion that she was deposing false. P.W.4-Goverdhan Reddy is a witness in whose presence, the appellant said to have confessed the commission of offence in this case. He turned hostile and did

not support the case of the prosecution. The statement recorded by the police is marked as Ex.P.2. There is also a specific evidence of P.W.5-V.Srisailam that about two years back, when she was going to her village, he met the appellant near Gutta on the outskirts of Chandur village at about 10-00 p.m., when he asked the appellant, the appellant told him that he was coming from Medak. P.W.5 also stated that the appellant was going out of the village on the next day and he came to know the death of the deceased. P.W.5 in his cross-examination admitted that he did not state to the police that the appellant met him one day prior to the incident. It is a material omission in this case. P.W.5 denied that he was deposing false. P.W.5 is doubtful witness.

13. The evidence of P.W.6-Irfan Begum corroborated the evidence of P.Ws.1 to 3 in material particulars with regard to the marriage of the appellant and the deceased, harassment meted out by the appellant against the deceased suspecting her character and the appellant coming to the house of P.W.1 and staying with them. P.W.6 specifically stated that three days prior to the incident, the appellant telephoned to her cell number '9394199872', she gave the cell phone to the deceased to talk to appellant, on the next day she saw the appellant in the house of the deceased, thereafter she was informed by P.W.1 that the appellant again came to their house on the date of incident during night time at 12 O'clock and slept with the deceased in one room called 'verandah' and on the next day morning, the deceased found dead and the appellant was not present and

M.Os.1 and 2 (gold and silver ornaments) were missing and they suspected the appellant in causing the death of the deceased. In the cross-examination, P.W.6 had given the details of the house of P.W.1, how it is situated and denied that she was deposing false. This evidence of P.W.6 corroborated with the evidence of P.Ws.1 to 3 in all material particulars. She is a neighbour of the deceased. There are no material omissions and commissions in the evidence of P.W.6. P.W.7-G.Durgesh is a witness to the scene of offence panchanama and inquest panchanama conducted under Exs.P.3 and P.4 respectively, in whose presence, M.Os.3 and 4 (plastic mat and towel) were seized under the cover of inquest panchana. Through his evidence, M.O.5-polyester saree, M.O.6-blouse and M.O.7-petticoat were marked. P.W.7 reiterated the same in his cross-examination. As per his evidence and the documents referred by him, the scene of offence in this case is at the house of P.W.1 situated at Jogipet. There is nothing to doubt his testimony. The evidence of P.W.11-M.Sailu corroborated the evidence of P.W.7 with regard to conduct of inquest panchanama over the dead body of the deceased under Ex.P.4. P.W.8-Tudum Yadaiah was examined to prove the confession and recovery of M.Os.1 and 2 (gold and silver ornaments). He did not support the case of the prosecution. P.W.10-Dr.D.Mahender Reddy had clearly and categorically stated that the death of the deceased in this case was homicidal, as discussed in detail while answering point No.1. P.W.13-L.C.Nayak, Inspector of Police, who filed charge

sheet in this case, deposed about the conducting of investigation in this case and filing of charge sheet against the appellant for the offences under Sections 302 and 380 I.P.C. He denied that the appellant is not responsible for the commission of the death in this case. No omissions or contradictions are brought on record in the evidence of P.W.13.

14. By examining P.Ws.1 to 3 and P.W.6, the prosecution established that there was marriage between the deceased and the appellant two years prior to her death and three months before the death of the deceased, the appellant started harassing her suspecting her fidelity and left the deceased at the house of P.W.1, situated at Jogipet. P.W.1 specifically stated that the appellant visited his house on 20.02.2008 and again on 22.02.2008, it is corroborated with Ex.P.1-report. P.W.3 also stated that on one day, the appellant came to the house of P.W.1 and went away and again on the next day came and killed the deceased and went away. The evidence of P.W.3 corroborated the evidence of P.W.1 in all material particulars. In the cross-examination of P.W.3, nothing is elicited to discard her testimony. There is no reason or motive or ill-will for P.W.3 to depose against the appellant. There is also specific evidence of P.W.6 that about three days prior to the incident, the appellant telephoned to her cell number '9394199872', on that she gave the cell phone to the deceased to talk to her husband (appellant), on the next day she saw the appellant in the house of P.W.1. This evidence of P.W.6 also

corroborated with the evidence of P.Ws.1 and 3 with regard to the deceased visiting the house of P.W.1 on 20.02.2008. In addition to this evidence, there is also the evidence of P.W.2 about the visiting of the appellant on the midnight of 22.02.2008 to the house of P.W.1. The same was informed to him by P.W.1. When a person enters a house at midnight and leaves before 5-00 a.m., generally nobody are awaken to witness the same, moreover there is darkness to identify the persons passing by then. As the appellant was suspecting the fidelity of the deceased, there was sufficient motive to cause death. As the appellant had visited the house of P.W.1 at 12 O'clock midnight and left the house before 5-00 a.m., there was no possibility for any other person to witness the same except P.W.1, inmate of the house and a neighbour. There is specific evidence of P.W.3-Laxmi implicating the appellant in this case. There is no reason for her to depose false against the appellant. By examining P.W.6, it is also established by the prosecution that the appellant was in touch with his wife (deceased) and he visited her on 20.02.2008. From the circumstances, it can be concluded that the appellant had taken all care not to be seen by the villagers. He was in touch with the deceased through cell phone of P.W.6. After seeing the dead body, P.W.1 started telling the neighbours that the appellant came to his house at 12 O'clock midnight, had dinner and slept with his daughter in a separate room and left before 5-00 a.m. There is no reason for P.W.1 to prepare false story on seeing a dead body, leaving the real culprit. P.W.1

specifically stated that the appellant had dinner in their house on that night and slept in the adjoining room along with the deceased. Therefore, the identity of the appellant cannot be doubted. Had there been any person entering into the room, there would have been commotion and disturbance in the house, no such evidence is on record. There is also specific mention in the evidence of P.W.1 that the appellant had caused the death of the deceased suspecting her fidelity. The appellant did not give any explanation as to why he left the house in the early morning before 5-00 a.m. without informing P.W.1. P.W.3 had also specifically stated that the appellant had come to the house of P.W.1 and caused the death of the deceased. No omissions or contradictions brought on record through cross-examination of P.Ws.1 and 3.

15. The contention of the learned counsel for the appellant is that the chain is incomplete, however, the suspicion may be strong, such suspicion cannot be the basis for conviction, going by the standard of proof required to prove the guilt of the appellant. Learned counsel for the appellant relied on a decision reported in **Dasari Siva Prasad Reddy's** case (supra 1). In the instant case, the foundation of guilty of the appellant is found right from the lodging a report with the police. As per Ex.P.1-report, it was lodged at 8 a.m. on 23.02.2008. On perusal of Ex.P.8-F.I.R., it is found that the learned Judicial Magistrate of First Class had signed and put the date as '23.02.2008', he did not put the time of receipt of the original

F.I.R. In these circumstances, non-mention of time of receipt of F.I.R. by the learned Magistrate would not be a ground to disbelieve the prosecution case. Admittedly, P.W.1 is illiterate person. There is no reason for him to falsely implicate the appellant in the case of this nature leaving the real culprit. The evidence placed on record clinchingly established the presence of the appellant at the house of P.W.1 on 22.02.2008 at midnight around 12 O'clock and the appellant leaving the house on the next day morning before 5-00 a.m. and the dead body of the deceased being found by P.W.1 at 5-00 a.m. The circumstantial evidence which is placed on record had satisfied the test of inference of guilty of the appellant. The whole evidence is consistent, cogent and the guilty is firmly established. The above decision relied on by the learned counsel for the appellant has no application to the case on hand. All the circumstances placed on record are definitely un-erred towards the guilt of the appellant. The cumulative effect of the circumstances is so complete that there was no escape from the conclusion that in all human probabilities, the death was caused 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. The whole evidence placed on record is inconsistent with the innocence of the appellant. There is no reason to doubt the prosecution witnesses, P.Ws.1 to 3 and 6 and other material witnesses, except the witnesses who have turned hostile. When

the appellant was examined with regard to the incriminating evidence including with regard to his visiting the house of P.W.1 on 20.02.2008 and 22.02.2008 midnight, he has simply denied the same stating '*abadham*' (false) and also stated that he has mother and she is depending on him.

16. The appellant had not given any explanation and did not rebut the circumstances appearing against him by leading any cogent and convincing evidence. As per Section 106 of the Indian Evidence Act, 1872, the appellant is required to explain the facts within his 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."

17. In the case of **State of M.P. v. Ratan Lal**³, 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. The

³ AIR 1994 SC 458

answer given by the appellant will go a long way in completing the chain of circumstances in establishing his guilt. When various links involving in commission of the offence are made out and the appellant did not offer any explanation consistent with his innocence, the absence of such explanation itself is an additional link, which completes the chain. The trial Court has appraised the entire evidence on record, assigned reasons for believing the evidence of P.Ws.1 to 3 and 6 and other material witnesses, except hostile witnesses and held that the appellant had caused death of the deceased suspecting her fidelity. There was no possibility for any other person to enter into the house and cause the death. P.W.1 is a truthful witness so also other witnesses, except the hostile witnesses. The finding of the trial Court is based on record so also the conclusion.

18. It is apt to state that when the death was caused at the house of P.W.1 and when P.W.1 was present at his house on the date of incident, he is the right person to state who had caused the death. The evidence of P.W.1 cannot be disbelieved.

19. The material placed on record clearly establishes the guilt of the appellant beyond all reasonable doubt for the commission of death of his wife (deceased) suspecting her fidelity. The trial Court had analyzed the entire evidence on record in proper prospects and held that the appellant had committed the offence under Section 302 I.P.C. and convicted him accordingly. Point Nos.2 to 4 are answered accordingly.

20. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence recorded against the appellant, vide judgment dated 27.01.2011, in Sessions Case No.206 of 2008 on the file of the III Additional Sessions Judge (Fast Track Court), Medak.

21. As a sequel, miscellaneous petitions, if any pending in this appeal, shall also stand dismissed.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

18th August, 2017

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